

**CHANGE OF CONTROL (AGGREGATION OF HOLDINGS) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the power in section 157(1) (Guidance) of the Financial Services and Markets Act 2000.

**Commencement**

- B. This instrument comes into force on 6 February 2011.

**Amendments to the Handbook**

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

**Citation**

- D. This instrument may be cited as the Change of Control (Aggregation of Holdings) Instrument 2011.

By order of the Board  
19 January 2011

## Annex

### Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text, unless otherwise stated.

- 11.3.1A     G     For the purposes of Part XII (Control over authorised persons) of the Act, and in particular, calculations relating to the holding of shares and/or voting power, the definitions of “shares” and “voting power” are set out in section 191G of the Act.
- 11.3.1B     G     SUP 11 Annex 6G provides guidance on when one person’s holding of shares or voting power must be aggregated with that of another person for the purpose of determining whether an acquisition or increase of control will take place as contemplated by section 181 or 182 of the Act such that notice must be given to the FSA in accordance with section 178 of the Act before making the acquisition or increase. This will be:
- (1) where those persons are acting in concert, as contemplated by section 178(2) (Obligation to notify the Authority: acquisitions of control) of the Act; or
  - (2) in the case of voting power only, if any of the circumstances described in section 422(5) (Controller) of the Act apply.

After SUP 11 Annex 5, insert the following new annex. The text is not underlined.

#### **11 Annex 6G     Aggregation of holdings for the purpose of prudential assessment of controllers.**

##### **Q1:     What is this guidance about?**

**A:**     This guidance considers when one *person*’s holding of shares or voting power must be aggregated with that of another *person* for the purpose of determining whether those persons have decided to acquire or increase control over a UK authorised person, as contemplated by section 181 or 182 of the *Act*, such that notice must be given to the *FSA* in accordance with section 178 (Obligation to notify the Authority: acquisitions of control) of the *Act* before making the acquisition or deciding to increase their control.

##### **Q2:     When are shares or voting power to be aggregated?**

**A:**     There are two situations which would require the holdings of two or more *persons* to be aggregated for the purpose of determining whether they are acquiring or increasing control within the meaning of section 181 or 182 of the *Act*. The first is where shares or voting power are held or to be held by persons ‘acting in concert’ – this is referred to in sections 178(2) and 422(3) of the *Act*. The second is where a *person* (H) is attributed with voting power in a *firm* through the application of any of the circumstances described in section 422(5)(a) of the *Act* (‘deemed voting power’) in addition to any

other voting power that he holds (or is deemed to hold) in that *firm*. These two situations may apply concurrently. For example, H could be acting in concert pursuant to section 178(2) of the *Act* and have deemed voting power under section 422(5)(a)(i) of the *Act* where H has concluded an agreement that obliges him and a third party shareholder in the *firm* to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of that *firm*.

### Acting in Concert

#### Q3: What does ‘acting in concert’ mean for these purposes?

**A:** There is no definition of this phrase in the *Act*. The Glossary to the Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC (the ‘Acquisitions Directive’) published jointly by CEBS, CEIOPS and CESR (the ‘Level 3 Guidelines’) states that, for the purposes of the Acquisitions Directive, ‘persons are “acting in concert” when each of them decides to exercise his rights linked to the shares he acquires in accordance with an explicit or implicit agreement made between them.’ The relevant persons must therefore (1) hold shares and/or voting power in the *firm* or its *parent undertaking*, and (2) reach a decision to exercise the rights linked to those shares in accordance with an agreement (in writing or otherwise) between them.

While the rights ‘linked to’ shares for these purposes are most likely to be voting rights, persons may be ‘acting in concert’ where they decide to exercise other share-related rights, either in addition to or instead of voting rights, in accordance with an agreement made between them. As indicated in the Level 3 Guidelines, persons will begin acting in concert when they take the decision to exercise their rights in accordance with an agreement between them. This decision may be taken before or after the time the relevant persons decide to purchase shares in the *firm*. The agreement need not require them always to exercise the rights attached to their respective shares in the same way – see, for example, the response to Question 11 in respect of passive shareholdings.

#### Q4: Does section 178(2) of the Act have the effect that two or more persons who already hold shares or voting power in a firm or its parent undertaking and who subsequently decide to exercise their voting or other rights in accordance with an agreement between them are required to give prior notice under section 178(1) of the Act, if their aggregated holdings fall within any of the cases set out in section 181(2) of the Act or increase by any of the steps set out in section 182(2) of the Act?

**A:** Yes. Section 178(1) of the *Act* applies when a *person* ‘decides to acquire or increase control over a UK authorised person...’. For the purposes of Part XII of the *Act*, a *person*’s acquisition of control of a *firm* is determined by virtue of his holdings of shares or voting power in that *firm* or in a *parent undertaking* of that *firm*. In determining whether control has been acquired, section 178(2) of the *Act* requires the holdings of shares or voting power of *persons* who are acting in concert to be aggregated. As noted in the response to Question 3, *persons* begin acting in concert when they decide to exercise their voting or other rights in accordance with an agreement between them. Once this decision has been taken, shares or voting rights must be aggregated to determine whether control has been or will be acquired. The

same analysis applies to increases in control and reductions in control, as set out in sections 182 and 183 of the *Act*, respectively. Accordingly, the requirement to aggregate holdings of shares and/or voting power under section 178(2) of the *Act* may apply to existing holdings, as well as to new purchases, of shares and/or voting power.

**Q5: What types of arrangement amount to acting in concert in acquiring or holding shares or voting power for the purposes of these Sections of the Act?**

**A:** Although the term ‘acting in concert’ has a potentially wide meaning, not all common actions taken by shareholders in relation to shares or voting power will require the aggregation of holdings of shares or voting power for the purposes of section 178 of the *Act*. In particular, there are many circumstances in which *persons*, who between them hold 10% or more of the shares or voting power in a *firm* or its *parent undertaking*, may engage in a concerted exercise of voting power, without this amounting to ‘acting in concert’ in a manner requiring aggregation of their holdings under section 178(2) of the *Act*. An agreement by one shareholder to vote with other shareholders on a specific issue, for example, rather than on an ongoing or sustained basis, would not generally be regarded by the *FSA* as acting in concert so as to require a section 178 notice to be given by that group of shareholders, even where the group collectively holds 10% or more of the voting power in the *firm*. However, see further on this point in the response to Question 9.

**Deemed voting power**

**Q6: What is meant by ‘deemed voting power’?**

**A:** ‘Deemed voting power’ is the term used in this guidance to describe those cases set out in section 422(5)(a) of the *Act* in which one *person*’s holding of voting power is attributed to another. There may be circumstances in which deemed voting power must be aggregated with other (actual or deemed) voting power for the purposes of determining whether section 181(2)(b) of the *Act* applies, but the cases set out in section 422(5)(a) may result in the attribution of voting power to a *person* (H) without aggregation where H holds no other actual or deemed voting power in the relevant firm and is not acting in concert with any other person (for example, where H exercises the voting power attaching to shares deposited with him pursuant to a discretion granted to him in the absence of (1) specific instructions from the actual shareholders, and (2) any agreement with the shareholders as to how he should exercise that voting power or any other rights attached to those shares - see section 422(5)(a)(vi) of the *Act*).

The provisions of section 422(5)(a) of the *Act* were transposed into the *Act* in order to implement Directive 2004/109/EC (the ‘Transparency Directive’). These provisions have direct application to Part XII of the *Act*, and in particular to the meaning of ‘voting power’ for the purposes of that Part, by virtue of section 191G (Interpretation) of the *Act*.

In introducing the cases in which the voting power of a third party may be attributed to H, the Transparency Directive refers to the ability ‘to acquire, to dispose of, or to exercise voting rights in any of the [relevant] cases or a combination of them.’ No new purchase of shares is therefore required in order for these attribution provisions to apply.

**Q7: Where X holds 10% of the voting power in a firm and X is the subsidiary of H, which itself has no holding at all directly in the firm, is H a controller?**

**A:** Yes. This follows from section 422(5)(a)(v) of the *Act*, which provides that voting power includes, in relation to a *person* (H), voting power held by a subsidiary of H. The voting power held by X is attributed to H, making H a *controller*.

For the purposes of section 178 of the *Act*, both H and its subsidiary, would be required to notify and obtain the *FSA*'s approval prior to acquiring or increasing control.

### **Practical application of aggregation of holdings**

**Q8: Does there need to be a new purchase of shares or voting rights in order for the notification requirement to arise?**

**A:** No. As stated in the response to Question 4, the aggregation of shares and/or voting power is relevant to existing holdings of shares and/or voting power where no new purchase is to take place, as well as to new purchases.

**Q9: Do the aggregation provisions apply to shareholders agreeing how they will vote on a particular issue, for example, for reasons of good corporate governance?**

**A:** We would not generally regard shareholders as acting in concert for the purposes of section 178(2) of the *Act* or as having deemed voting power requiring aggregation pursuant to section 422(5)(a)(i) of the *Act* simply because they have agreed to vote together on a particular issue, for example:

- rejection of a proposal for the remuneration of directors;
- appointment/removal of a particular director; or
- approval/rejection of an acquisition or disposal proposed by the *firm*'s board of directors.

However, there may be circumstances in which voting together on a specific issue would amount to acting in concert for these purposes. Where, for example, shareholders who have no previous agreement in relation to the exercise of their voting rights agree to act together for the purpose of voting through the resolution(s) required to enable them to obtain control of the board of a *firm*, that is likely to constitute acting in concert for these purposes, although it may not fall within section 422(5)(a)(i) of the *Act*, if those shareholders have no 'lasting common policy' towards the *firm*'s management.

Those circumstances are likely to be exceptional and, while it is not possible in this guidance to give a definitive list of how they might arise, the *FSA* remains willing to provide *firms* with individual guidance on the point in cases of uncertainty.

**Q10: What about agreements that specific issues will be put to a vote of shareholders?**

**A:** An agreement that does no more than require particular management actions to be put to a vote of shareholders, such as major acquisitions, disposals or new issues of shares, would not of itself trigger the requirement to notify. This is because there is no

agreement as to how the shareholders will exercise their rights on, or whether the shareholders will adopt a common policy towards, those proposals. An agreement which gives certain shareholders veto rights over key decisions by the *firm* may, however, bring those shareholders within the ambit of section 178(1) of the *Act* regardless of whether they are acting in concert, by virtue of their being able to exercise significant influence over the management of the *firm* – see section 181(2)(c) of the *Act*.

**Q11: What about agreements as to how to exercise voting power on future issues generally?**

**A:** This would involve acting in concert, and thus require the aggregation of holdings by the parties to the agreement, for the purposes of section 178 of the *Act*. It may also fall within the ambit of section 422(5)(a)(i) of the *Act*, but this will depend on whether the parties to the agreement have adopted a lasting common policy that relates to the management of the relevant undertaking.

Acting in concert not only covers agreements to exercise voting power, but may also arise as a result of ‘passive shareholder agreements’. In these, a shareholder (the ‘passive shareholder’) agrees explicitly or implicitly with another shareholder or group of shareholders (the ‘active shareholder’) that it will not exercise its voting power. For example, where the passive shareholder holds 2% of the voting power and the active shareholder holds 9% of the voting power, each would be regarded as having control (11% of the voting power) because their holdings are required to be aggregated under the acting in concert provisions. However, persons that acquire shares as part of an investment or hedging programme and adhere consistently to a stated policy of not voting those shares would not, by reason of that policy alone, be regarded as having entered into an agreement with other shareholders and so would not be regarded as acting in concert with them.

**Q12: Are multiple purchasers of shares, who are each party to a share purchase agreement and whose combined shareholding will fall within section 181(2) of the Act, required to give notice pursuant to section 178(1) of the Act, on the basis that the existence of the agreement means they are acting in concert?**

**A:** If it is clear that the only ‘agreement’ between one or more persons consists in their being parties to the same share purchase agreement, the terms of which pertain strictly to the purchase of shares and do not govern or otherwise seek to regulate the purchasers’ relationship with each other following completion of the share purchase, those purchasers would not be regarded by the *FSA* as acting in concert for the purpose of requiring notification under section 178 of the *Act*. If, however, the share purchase agreement contains provisions governing or otherwise regulating the exercise of the rights linked to the shares to be acquired by the purchasers (or the purchasers have entered into or propose to enter into a shareholders’ or other agreement with similar effect), the proposed acquirers may be regarded by the *FSA* to be acting in concert for the purpose of requiring notification under section 178 of the *Act*, depending on the terms of the relevant agreement(s). Further guidance on the effect of some of the typical provisions included in shareholders’ agreements is contained in the response to Question 14. Prospective shareholders who are uncertain as to the effect of any of the provisions of their agreement(s) in these circumstances may wish to seek (either formally or informally) individual guidance at an early stage from the *FSA*.

Where there is evidence to suggest that the parties do in fact intend to co-operate in relation to the exercise of voting or other rights relating to the shares they are acquiring, notwithstanding that no provisions to that effect appear in the share purchase or other written agreement, this may warrant the conclusion that there is an implicit agreement between them by virtue of which they are acting in concert.

**Q13: What about agreements that are conditional on any necessary approval by the FSA?**

**A:** Notice must be given under section 178(1) of the *Act* before control is acquired. The point in time at which this occurs may depend on a number of circumstances. In the context of a share purchase agreement that provides for *FSA* approval of the purchaser to be obtained before the acquisition is completed, the purchaser will not usually be required to give a section 178 notice prior to entering into the agreement. However, there may be circumstances in which control is actually acquired at the time the agreement is entered into, for example, where the parties have agreed that the purchaser will be entitled (whether by virtue of a power of attorney contained in the agreement or otherwise) to exercise the voting rights attached to the shares being acquired in the period between signing and completion. In that case, the purchaser will need to consider whether to give notice under section 178(1) prior to entering into the agreement.

**Q14: What about pre-emption rights, ‘drag along’ rights and ‘tag along’ rights?**

**A:** Typical examples of these arrangements are unlikely to trigger the requirement to notify under section 178(1) of the *Act* in themselves.

Bare pre-emption rights will simply indicate each shareholder’s (the ‘offeror’) agreement to give fellow shareholders an option to purchase his shares, if he wishes to sell. The acquisition of shares under these arrangements cannot take place until the offeror decides to sell his shares and other shareholders decide to buy them.

Shareholders will not usually be regarded as acting in concert in holding or acquiring shares simply by agreeing to give each other future pre-emption rights. In the event that some shareholders enter into an agreement to buy the offeror’s shares, those shareholders are only likely to be regarded as acting in concert by virtue of that agreement in the circumstances described in the response to Question 12 above.

The existence of ‘drag along’ and ‘tag along’ rights in a shareholders’ agreement designed to ensure equivalent treatment of shareholders of the same class in the event an offer is made, or to be made, by a non-shareholder to purchase the shares of any single shareholder in a private company would not, in and of themselves, result in the shareholders who have the benefit of those rights being considered to be acting in concert in their holding or acquiring of shares.

**Q15: How does this guidance relate to the definition of ‘acting in concert’ in the Takeover Code (the ‘Code’)?**

**A:** Although similar terminology may be used, the definition of ‘acting in concert’ in the Code derives from the Takeovers Directive and has particular relevance in determining whether the relationship between persons with interests in shares carrying voting rights is such as to require those rights to be aggregated for the purpose of assessing whether, under Rule 9.1, the threshold for the making of a mandatory offer to all other shareholders in a company to which the Code applies has been reached. The notes on the definition in the Code and on Rule 9.1 make clear that the Takeover Panel’s views in relation to acting in concert ‘...relate only to the Code and should not be taken as guidance on any other statutory or regulatory provisions’.

This guidance is given for a quite different purpose. It is relevant to considering whether the holdings of persons who have reached an agreement in relation to the shares or voting rights they do or will hold must be aggregated for the purpose of determining whether they are subject to the requirements for prudential assessment specified in sections 185 *et seq* of the *Act*. This guidance has no relevance to how ‘acting in concert’ is to be interpreted in the context of the Code.



**INTEGRATED REGULATORY REPORTING (AMENDMENT NO 10)  
INSTRUMENT 2011**

**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 purposes of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 June 2011.

**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 10) Instrument 2011.

By order of the Board  
19 January 2011

**Annex**

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

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

**16 Annex 24R                      Data items for SUP 16.12**

*see following pages for changes to FSA004 and FSA0045*



**Breakdown under Advanced IRB**

- 28 Total
- 29 Central governments and central banks
- 30 Institutions
- 31 Corporates
- 32 Of which: to corporate SME BIPRU 4.4.59 to BIPRU 4.4.60
- 40 Of which: to specialised lending BIPRU 4.5


**Breakdown of other IRB exposure classes**

- 33 Total
- 34 Equity claims
- 35 Securitisation positions
- 36 Non-credit obligation assets


**FSA045**  
**IRB portfolio risk**

**Sovereigns Central Government and Central Banks - credit**

**A**

- 1 Tick here if you have no exposures in these asset classes
- 2 Please indicate whether your PDs are PiT or TTC or Hybrid PiT
- 3 Enter number of days in the definition of Default

PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
Lower PD bound	Upper PD bound							
Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%							
2								
3								
4								
5								
6								
7								
...								
n								
5	In default							
6	Total							

**Banks Institutions - credit risk**

7  
8  
9  
10

Tick here if you have no exposures in these asset classes  
Please indicate whether your PDs are PiT or TTC or Hybrid PiT  
Enter number of days in the definition of Default

<b>A</b>

PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
Lower PD bound	Upper PD bound							
Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%							
2								
3								
4								
5								
6								
7								
...								
n								
11	In default							
12	Total							

**Corporates - credit risk**

13  
14  
15  
16

Tick here if you have no exposures in these asset classes  
Please indicate whether your PDs are PiT or TTC or Hybrid PiT  
Enter number of days in the definition of Default

**A**


PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
Lower PD bound	Upper PD bound							
Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%							
2								
3								
4								
5								
6								
7								
...								
n								
In default								
Total								

17  
18

**Retail Mortgages**

19  
20  
21  
22

Tick here if you have no exposures in these asset classes  
Please indicate whether your PDs are PiT or TTC or Hybrid PiT  
Enter number of days in the definition of Default

<b>A</b>

PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
Lower PD bound	Upper PD bound							
Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%							
2								
3								
4								
5								
6								
7								
...								
n								
In default								
Total								

23  
24



**QRRE**

- 25 Tick here if you have no exposures in these asset classes
- 26 Please indicate whether your PDs are PiT or TTC or Hybrid PiT
- 27 Enter number of days in the definition of Default

<b>A</b>

	PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
	Lower PD bound	Upper PD bound							
	Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%								
2									
3									
4									
5									
6									
7									
...									
n									
29	In default								
30	Total								

**Other retail**

31 Tick here if you have no exposures in these asset classes  
 32 Please indicate whether your PDs are PiT or TTC or Hybrid PiT  
 33 Enter number of days in the definition of Default

<b>A</b>

34	PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
	Lower PD bound	Upper PD bound							
	Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%								
2									
3									
4									
5									
6									
7									
...									
n									
35	In default								
36	Total								

**SME retail**

**37**  
**38**  
**39**  
**40**

Tick here if you have no exposures in these asset classes  
Please indicate whether your PDs are PiT or TTC or Hybrid PiT  
Enter number of days in the definition of Default

<b>A</b>

	PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
	Lower PD bound	Upper PD bound							
	Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%								
2									
3									
4									
5									
6									
7									
...									
n									
	In default								
	Total								

**41**  
**42**

**Central Government and Central Banks - counterparty credit**

**A**

**43**

Tick here if you have no exposures in these asset classes

**44**

Please indicate whether your PDs are PiT or TTC or Hybrid PiT

**45**

Enter number of days in the definition of Default

**46**

PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
Lower PD bound	Upper PD bound							
Above %	Up to %	A	B	C	D	E	F	G
0.000%		000s	000s	days	%	%	000s	000s
1								
2								
3								
4								
5								
6								
7								
...								
n								
In default								
Total								

**47**

**48**

**Institutions - counterparty credit risk**

**49**  
**50**  
**51**  
**52**

Tick here if you have no exposures in these asset classes

Please indicate whether your PDs are PiT or TTC or Hybrid PiT

Enter number of days in the definition of Default

<b>A</b>

	PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
	Lower PD bound	Upper PD bound							
	Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%								
2									
3									
4									
5									
6									
7									
...									
n									
	In default								
	Total								

**53**  
**54**

**Corporates - counterparty credit risk**

**55**  
**56**  
**57**  
**58**

Tick here if you have no exposures in these asset classes

Please indicate whether your PDs are PiT or TTC or Hybrid PiT

Enter number of days in the definition of Default

<b>A</b>

	PD range at reporting date		Gross exposure value	Exposure at default estimate	Maturity	Probability of default	Loss Given Default	Expected Loss	RWEA
	Lower PD bound	Upper PD bound							
	Above %	Up to %	A 000s	B 000s	C days	D %	E %	F 000s	G 000s
1	0.000%								
2									
3									
4									
5									
6									
7									
...									
n									
	In default								
	Total								

**59**  
**60**

**16 Annex 25 G                      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*.

For firms on an IRB approach, this ~~should be~~ is exposure at default calculated in accordance with *BIPRU 4* and *BIPRU 5* ~~and is the exposure value before the risk weight is applied.~~

**Column C**

For firms on the IRB approach this should be calculated in accordance with *BIPRU 4.3.6R* excluding any adjustments.

**Column D**

Firms should report here the amount of any provision/impairment which arises from the individual assessment of a particular asset.

**Column E**

Firms should report here the amount of any provision/impairment which arises from a review of groups of assets.

**Column F**

Firms should report here any other credit valuation adjustments for the given exposure class.

**Breakdown under the standardised approach to credit risk by exposure classes excluding securitisation positions****1A    Total capital requirement**

This is the total capital requirement, being the sum of data elements 2A to 17A and 37A and 38A. This is the same as the capital requirement reported in data element 79A in FSA003.

[CEBS' CR SA column 22]

**1B    Total exposure value**

This is the total exposure value, being the sum of data elements 2B to 17B and 37B and 38B.

**1D    Total individual impairment**

This is the total of individual impairments, being the sum of data elements 2D to 17D and 37D and 38D.

**1E Total collective impairments**

This is the total collective impairments, being the sum of data elements 2E to 17E and 37E and 38E.

**1F Total other (credit valuation adjustment)**

This is the total of all other credit valuation adjustments, being the sum of data elements 2F to 17F and 37F and 38F.

...

**2D Central government or central banks**

This is the provision/impairment which arises from the individual assessment of an asset within the exposure class defined in *BIPRU 3.2.9R(1)*.

**2E Central government or central banks**

This is the provision/impairment which arises from a review of groups of assets within the exposure class defined in *BIPRU 3.2.9R(1)*.

**2F Central government or central banks**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU 3.2.9R(1)*.

...

**3B Regional governments or local authorities**

This is the exposure value relating to the asset class defined in *BIPRU 3.2.9R(2)*.

[CEBS' *CR SA column 20*]

**3D Regional government or local authorities**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU 3.2.9R(2)*.

**3E Regional government or local authorities**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU 3.2.9R(2)*.

**3F Regional government or local authorities**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU 3.2.9R(2)*.



...

**4B Administrative bodies and non-commercial undertakings**

This is the exposure value relating to the asset class defined in *BIPRU* 3.2.9R(3).

[CEBS' *CR SA column 20*]

**4D Administrative bodies and non-commercial undertakings**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 3.2.9R(3).

**4E Administrative bodies and non-commercial undertakings**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 3.2.9R(3).

**4F Administrative bodies and non-commercial undertakings**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 3.2.9R(3).

...

**5B Multilateral development banks**

This is the exposure value relating to the asset class defined in *BIPRU* 3.2.9R(4).

[CEBS' *CR SA column 20*]

...

**5D Multilateral development banks**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 3.2.9R(4).

**5E Multilateral development banks**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 3.2.9R(4).

**5F Multilateral development banks**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 3.2.9R(4).

...

**6B International organisations**

This is the exposure value relating to the asset class defined in *BIPRU* 3.2.9R(5).

[CEBS' *CR SA column 20*]

**6D International organisations**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 3.2.9R(5).

**6E International organisations**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 3.2.9R(5).

**6F International organisations**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 3.2.9R(5).

...

**7B Institutions**

This is the exposure value relating to the asset class defined in *BIPRU* 3.2.9R(6).

[CEBS' *CR SA column 20*]

**7D Institutions**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 3.2.9R(6).

**7E Institutions**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 3.2.9R(6).

**7F Institutions**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 3.2.9R(6).

...

**8B Corporates**

This is the exposure value relating to the asset class defined in *BIPRU* 3.2.9R(7).

[CEBS' *CR SA column 20*]

**8D Corporates**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU 3.2.9R(7)*.

**8E Corporates**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU 3.2.9R(7)*.

**8F Corporates**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU 3.2.9R(7)*.

...

**9B Retail**

This is the exposure value relating to the asset class defined in *BIPRU 3.2.9R(8)*.

[CEBS' *CR SA column 20*]

**9D Retail**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU 3.2.9R(8)*.

**9E Retail**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU 3.2.9R(8)*.

**9F Retail**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU 3.2.9R(8)*.

**10A Secured on real estate property**

~~This is the capital requirement, calculated in accordance with *BIPRU 3*, relating to the asset class defined in *BIPRU 3.2.9R(9)*.~~

~~[CEBS' *CR SA column 22*]~~

**10B Secured on real estate property**

~~This is the exposure value relating to the asset class defined in *BIPRU 3.2.9R(9)*.~~

~~[CEBS' *CR SA column 20*]~~

**37A Secured by mortgages on residential property**

This is the capital requirement calculated in accordance with *BIPRU* 3 relating to the asset class set out in *BIPRU* 3.4.56R.

**37B Secured by mortgages on residential property**

This is the exposure value relating to the asset class set out in *BIPRU* 3.4.56R.

**37D Secured by mortgages on residential property**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class set out in *BIPRU* 3.4.56R.

**37E Secured by mortgages on residential property**

This is the provision/impairment which arises from a review of groups of assets within the asset class set out in *BIPRU* 3.4.56R.

**37F Secured by mortgages on residential property**

This is for any other credit valuation adjustments relating to the asset class set out in *BIPRU* 3.4.56R.

**38A Secured by mortgages on commercial real estate**

This is the capital requirement calculated in accordance with *BIPRU* 3 relating to the asset class set out in *BIPRU* 3.4.89R to 3.4.94R.

**38B Secured by mortgages on commercial real estate**

This is the exposure value relating to the asset class set out in *BIPRU* 3.4.89R.

**38D Secured by mortgages on commercial real estate**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class set out in *BIPRU* 3.4.89R.

**38E Secured by mortgages on commercial real estate**

This is the provision/impairment which arises from a review of groups of assets within the asset class set out in *BIPRU* 3.4.89R.

**38F Secured by mortgages on commercial real estate**

This is for any other credit valuation adjustments relating to the asset class set out in *BIPRU* 3.4.89R.

...

**11B Past due items**

This is the exposure value relating to the asset class defined in *BIPRU* 3.2.9R(10).

[CEBS' CR SA column 20]

**11D Past due items**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU 3.2.9R(10)*.

**11E Past due items**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU 3.2.9R(10)*.

**11F Past due items**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU 3.2.9R(10)*.

...

**12B Items belonging to regulatory high-risk categories**

This is the exposure value relating to the asset class defined in *BIPRU 3.2.9R(11)*.

[CEBS' CR SA column 20]

**12D Items belonging to regulatory high-risk categories**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU 3.2.9R(11)*.

**12E Items belonging to regulatory high-risk categories**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU 3.2.9R(11)*.

**12F Items belonging to regulatory high-risk categories**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU 3.2.9R(11)*.

...

**13B Covered bonds**

This is the exposure value relating to the asset class defined in *BIPRU 3.2.9R(12)*.

**13D Covered bonds**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU 3.2.9R(12)*.

**13E Covered bonds**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 3.2.9R(12).

### **13F Covered bonds**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 3.2.9R(12).

...

### **14B Securitisation positions**

This is the exposure value relating to the asset class defined in *BIPRU* 3.2.9R(13).

[CEBS' *CR SEC SA column 19*]

### **14D Securitisation positions**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 3.2.9R(13).

### **14E Securitisation positions**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 3.2.9R(13).

### **14F Securitisation positions**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 3.2.9R(13).

...

### **15B Short term claims on institutions and corporates**

This is the exposure value relating to the asset class defined in *BIPRU* 3.2.9R(14).

[CEBS' *CR SA column 20*]

### **15D Short term claims on institutions and corporates**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 3.2.9R(14).

### **15E Short term claims on institutions and corporates**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 3.2.9R(14).

### **15F Short term claims on institutions and corporates**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU*

3.2.9R(14).

...

**16B Collective investment undertakings**

This is the exposure value relating to the asset class defined in BIPRU 3.2.9R(15).

[CEBS' CR SA column 20]

**16D Collective investment undertakings**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in BIPRU 3.2.9R(15).

**16E Collective investment undertakings**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in BIPRU 3.2.9R(15).

**16F Collective investment undertakings**

This is for any other credit valuation adjustments relating to the asset class defined in BIPRU 3.2.9(15).

...

**17B Other items**

This is the exposure value relating to the asset class defined in BIPRU 3.2.9R(16).

**17D Other items**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in BIPRU 3.2.9R(16).

**17E Other items**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in BIPRU 3.2.9R(16).

**17F Other items**

This is for any other credit valuation adjustments relating to the asset class defined in BIPRU 3.2.9R(16).

## Breakdown under the foundation IRB approach to credit risk

...

### **18B Total exposure value**

This is the total exposure value, being the sum of 19B to 21B.

### **18C Total expected loss**

This is the total expected loss reported in data elements 19C to 21C.

### **18D Total individual impairments**

This is the total individual impairments, being the sum of data elements 19D to 21D.

### **18E Total collective impairments**

This is the total collective impairments, being the sum of data elements 19E to 21E.

### **18F Total other (credit valuation adjustment)**

This is the total for all other credit valuation adjustments, being the sum of data elements 19F to 21F.

...

### **19B Central governments and central banks**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(1).

[*CEBS' CR IRB column 11*]

### **19C Central governments and central banks**

This is the expected loss calculated in accordance with *BIPRU* 4.4.61R to *BIPRU* 4.4.62R gross of tax adjustments relating to the asset class defined in *BIPRU* 4.3.2R(1).

### **19D Central governments and central banks**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(1).

### **19E Central governments and central banks**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(1).

### **19F Central governments and central banks**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(1).



...

## **20B Institutions**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(2).

[*CEBS' CR IRB column 11*]

## **20C Institutions**

This is the expected loss calculated in accordance with *BIPRU* 4.4.61R to *BIPRU* 4.4.62R gross of tax adjustments relating to the asset class defined in *BIPRU* 4.3.2R(2).

## **20D Institutions**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(2).

## **20E Institutions**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(2).

## **20F Institutions**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(2).

...

## **21B Corporates**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(3).

[*CEBS' CR IRB column 11*]

## **21C Corporates**

This is the expected loss calculated in accordance with *BIPRU* 4.4.61R to *BIPRU* 4.4.62R gross of tax adjustments relating to the asset class defined in *BIPRU* 4.3.2R(3).

## **21D Corporates**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(3).

## **21E Corporates**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(3).

## **21F Corporates**

This is for any other credit valuation adjustments relating to the asset class defined in BIPRU 4.3.2R(3).

...

**22B Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is the exposure value relating to exposures to the asset class defined in BIPRU 4.3.2R(3) that meet the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R. It is part of 21B.

[CEBS' CR IRB column 11]

**22C Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is the expected loss calculated in accordance with BIPRU 4.4.61 to BIPRU 4.4.62 gross of tax adjustments relating to the asset class defined in BIPRU 4.3.2R(3) that meet the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R. It is part of 21C.

**22D Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in BIPRU 4.3.2R(3) that meets the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R. It is part of 21D.

**22E Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in BIPRU 4.3.2R(3) that meet the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R. It is part of 21E.

**22F Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is for any other credit valuation adjustments relating to the asset class defined in BIPRU 4.3.2R(3) that meet the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R. It is part of 21F.

**39A Of which: To specialised lending BIPRU 4.5**

This is the capital requirement relating to those exposures within the specialised lending exposure class, defined in BIPRU 4.5.3R, to which the slotting approach set out in BIPRU 4.5.8R is applied. It is part of 21A.

**39B Of which: To specialised lending BIPRU 4.5**

This is the exposure value relating to those exposures within the specialised lending exposure class, defined in BIPRU 4.5.3R, to which the slotting approach set out in BIPRU 4.5.8R is applied.. It is part of 21B.

**39C Of which: To specialised lending BIPRU 4.5**

This is the expected loss relating to those exposures within the specialised lending exposure class, defined in BIPRU 4.5.3R, to which the slotting approach set out in BIPRU 4.5.8R is

applied.. It is part of 21C.

**39D Of which: To specialised lending BIPRU 4.5**

This is the provision/impairment relating to those exposures within the specialised lending exposure class, defined in BIPRU 4.5.3R, to which the slotting approach set out in BIPRU 4.5.8R is applied. It is part of 21D.

**39E Of which: To specialised lending BIPRU 4.5**

This is the provision/impairment relating to those exposures within the specialised lending exposure class, defined in BIPRU 4.5.3R, to which the slotting approach set out in BIPRU 4.5.8R is applied. It is part of 21E.

**39F Of which: To specialised lending BIPRU 4.5**

This is for any other credit valuation adjustments relating to those exposures within the specialised lending exposure class, defined in BIPRU 4.5.3R, to which the slotting approach set out in BIPRU 4.5.8R is applied. It is part of 21F.

...

**23B Total capital requirement exposure value**

This is the exposure value relating to the asset class defined in BIPRU 4.3.2R(4) and is the sum of 24B to 27B.

[CEBS' CR IRB column 11]

**23C Total expected loss**

This is the expected loss relating to the asset class defined in BIPRU 4.3.2R(4) and is the sum of 24C to 27C.

**23D Total individual impairments**

This is the total individual impairments, being the sum of data elements 24D to 27D. We understand most firms will not carry out individual assessments on retail exposures so in the majority of instances column D for these exposure classes will be zero.

**23E Total collective impairments**

This is the total collective impairments, being the sum of data elements 24E to 27E.

**23F Total other (credit valuation adjustment)**

This is the total for all other credit valuation adjustments, being the sum of data elements 24F to 27F.

...

**24B Retail mortgages**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.43R.

[*CEBS' CR IRB column 11*]

**24C Retail mortgages**

This is the expected loss, calculated in accordance with *BIPRU* 4.6.47R to *BIPRU* 4.6.48R relating to the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.43R.

**24D Retail mortgages**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.43R.

**24E Retail mortgages**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.43R.

**24F Retail mortgages**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.43R.

...

**25B Qualifying Revolving Retail Exposures**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.44R to *BIPRU* 4.6.46R~~G~~.

[*CEBS' CR IRB column 11*]

**25C Qualifying Revolving Retail Exposures**

This is the expected loss, calculated in accordance with *BIPRU* 4.6.47R to *BIPRU* 4.6.48R relating to the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.44R to *BIPRU* 4.6.46G.

**25D Qualifying Revolving Retail Exposures**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.44R to *BIPRU* 4.6.46G.

**25E Qualifying Revolving Retail Exposures**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.44R to *BIPRU* 4.6.46G.

**25F Qualifying Revolving Retail Exposures**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(4) and subject to *BIPRU* 4.6.44R to *BIPRU* 4.6.46G.

...

**26B Retail SME**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(4) for an exposure to a *Retail SME*.

[*CEBS' CR IRB column 11*]

**26C Retail SME**

This is the expected loss, calculated in accordance with *BIPRU* 4.6.47R to *BIPRU* 4.6.48R relating to the asset class defined in *BIPRU* 4.3.2R(4) for an exposure to a *Retail SME*.

**26D Retail SME**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(4) for an exposure to a *Retail SME*.

**26E Retail SME**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(4) for an exposure to a *Retail SME*.

**26F Retail SME**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(4) for an exposure to a *Retail SME*.

...

**27B Other retail**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(4) that is not otherwise reported in 24B, 25B or 26B.

[*CEBS' CR IRB column 11*]

**27C Other retail**

This is the expected loss, calculated in accordance with *BIPRU* 4.6.47R to *BIPRU* 4.6.48R relating to the asset class defined in *BIPRU* 4.3.2R(4) that is not otherwise reported in 24C, 25C or 26C.

**27D Other retail**

This is the provision/impairment which arises from the individual assessment of an asset

within the asset class defined in *BIPRU* 4.3.2R(4) that is not otherwise reported in 24D, 25D or 26D.

### **27E Other retail**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(4) that is not otherwise reported in 24E, 25E or 26E.

### **27F Other retail**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(4) that is not otherwise reported in 24F, 25F or 26F.

### **28A Total Capital Requirement**

This is the total capital requirement, being the sum of 29B to 31B. This is the same as the capital requirement reported in data element 83A in FSA003.

### **28B Total exposure value**

This is the total exposure value, being the sum of ~~23B~~ 29B to ~~26B~~ 31B.

### **28C Total expected loss**

This is the total expected loss value, being the sum of 29C to 31C.

### **28D Total individual impairments**

This is the total individual impairments, being the sum of 29D to 31D.

### **28E Total collective impairments**

This is the total collective impairments, being the sum of 29E to 31E.

### **28F Total other (credit valuation adjustment)**

This is the total of all other credit valuation adjustments, being the sum of 29F to 31F.

### **29B Central governments and central banks**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(1).

[*CEBS' CR IRB column 11*]

### **29C Central governments and central banks**

This is the expected loss, calculated in accordance with *BIPRU* 4.4.61R to *BIPRU* 4.4.62R relating to the asset class defined in *BIPRU* 4.3.2R(1). Firms should be aware that central government has an extended meaning, see *BIPRU* 4.4.2R.

### **29D Central governments and central banks**

This is the provision/impairment which arises from the individual assessment of an asset

within the asset class defined in *BIPRU* 4.3.2R(1). Firms should be aware that central government has an extended meaning, see *BIPRU* 4.4.2R.

### **29E Central governments and central banks**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(1). Firms should be aware that central government has an extended meaning, see *BIPRU* 4.4.2R.

### **29F Central governments and central banks**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(1). Firms should be aware that central government has an extended meaning, see *BIPRU* 4.4.2R.

...

### **30B Institutions**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(2).

[*CEBS' CR IRB column 11*]

### **30C Institutions**

This is the expected loss, calculated in accordance with *BIPRU* 4.4.61R to *BIPRU* 4.4.62R relating to the asset class defined in *BIPRU* 4.3.2R(2). Firms should be aware that institutions has an extended meaning, see *BIPRU* 4.4.3R.

### **30D Institutions**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(2). Firms should be aware that institutions has an extended meaning, see *BIPRU* 4.4.3R.

### **30E Institutions**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(2). Firms should be aware that institutions has an extended meaning, see *BIPRU* 4.4.3R.

### **30F Institutions**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(2). Firms should be aware that institutions has an extended meaning, see *BIPRU* 4.4.3R.

...

### **31B Corporates**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(3).

[CEBS' CR IRB column 11]

### **31C Corporates**

This is the expected loss, calculated in accordance with BIPRU 4.4.61R to BIPRU 4.4.62R relating to the asset class defined in BIPRU 4.3.2R(3).

### **31D Corporates**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in BIPRU 4.3.2R(3).

### **31E Corporates**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in BIPRU 4.3.2R(3).

### **31F Corporates**

This is for any other credit valuation adjustments relating to the asset class defined in BIPRU 4.3.2R(3).

...

### **32B Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is the exposure value relating to exposures to the asset class defined in BIPRU 4.3.2R(3) that meet the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R. It is part of 31B.

[CEBS' CR IRB column 11]

### **32C Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is the expected loss calculated in accordance with BIPRU 4.4.61 to BIPRU 4.4.62 relating to the asset class defined in BIPRU 4.3.2R(3) that meet the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R, and should not include any adjustments. It is part of 31C.

### **32D Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in BIPRU 4.3.2R(3) that meets the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R. It is part of 31D.

### **32E Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in BIPRU 4.3.2R(3) that meet the size requirements in BIPRU 4.4.59R and BIPRU 4.4.60R. It is part of 31E.

### **32F Of which: To companies according to BIPRU 4.4.59R to BIPRU 4.4.60R**



This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R (3) that meet the size requirements in *BIPRU* 4.4.59R and *BIPRU* 4.4.60R. It is part of 31F.

#### **Row 40 – general application**

If a firm's IRB permission allows it to use the advanced IRB approach for the sovereign, institution, and corporate exposure class, it should include data relating to all specialised lending exposures (defined in *BIPRU* 4.5.3R) to which the slotting approach set out in *BIPRU* 4.5.8R is applied in this row.

#### **40A Of which: To specialised lending BIPRU 4.5**

This is the capital requirement relating to those exposures within the specialised lending exposure class, defined in *BIPRU* 4.5.3R, to which the slotting approach set out in *BIPRU* 4.5.8R is applied. It is part of 31A.

#### **40B Of which: To specialised lending BIPRU 4.5**

This is the exposure value relating to those exposures within the specialised lending exposure class, defined in *BIPRU* 4.5.3R, to which the slotting approach set out in *BIPRU* 4.5.8R is applied. It is part of 31B.

#### **40C Of which: To specialised lending BIPRU 4.5**

This is the expected loss relating to those exposures within the specialised lending exposure class, defined in *BIPRU* 4.5.3R, to which the slotting approach set out in *BIPRU* 4.5.8R is applied. It is part of 31C.

#### **40D Of which: To specialised lending BIPRU 4.5**

This is the provision/impairment relating to those exposures within the specialised lending exposure class, defined in *BIPRU* 4.5.3R, to which the slotting approach set out in *BIPRU* 4.5.8R is applied. It is part of 31D.

#### **40E Of which: To specialised lending BIPRU 4.5**

This is the provision/impairment relating to those exposures within the specialised lending exposure class, defined in *BIPRU* 4.5.3R, to which the slotting approach set out in *BIPRU* 4.5.8R is applied. It is part of 31E.

#### **40F Of which: to specialised lending BIPRU 4.5**

This is for any other credit valuation adjustments relating to those exposures within the specialised lending exposure class, defined in *BIPRU* 4.5.3R, to which the slotting approach set out in *BIPRU* 4.5.8R is applied. It is part of 31F.

#### **Other IRB exposure classes**

#### **33A ~~Total other exposure classes~~ capital requirement**

This is the same as the capital requirement reported in data element 84A in FSA003. It is the

sum of 34A to 36A.

**33B Total other exposure classes value**

This is the total exposure value, being the sum of 34B to 36B.

**33C Total expected loss**

This is the total expected loss. As expected loss is only applicable to Equity claims, the total will be the same value as 34C.

**33D Total individual impairments**

This is the total individual impairments, being the sum of 34D to 36D.

**33E Total collective impairments**

This is the total collective impairments, being the sum of 34E to 36E.

**33F Total other (credit valuation adjustment)**

This is the total of all other credit valuation adjustments, being the sum of 34F to 36F.

...

**34B Equity claims**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(5).

[*CEBS' CR EQU IRB column 9*]

**34C Equity claims**

This is the expected loss relating to assets within the asset class defined in *BIPRU* 4.3.2R(5).

**34D Equity claims**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(5).

**34E Equity claims**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(5).

**34F Equity claims**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(5).

...

### **35B Securitisation positions**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(6).

[*CEBS' CR SEC IRB column 17*]

### **35D Securitisation positions**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(6).

### **35E Securitisation positions**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(6).

### **35F Securitisation positions**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(6).

...

### **36B Non credit-obligation assets**

This is the exposure value relating to the asset class defined in *BIPRU* 4.3.2R(7). It is calculated as the figure in 36A divided by 8%.

### **36D Non credit-obligation assets**

This is the provision/impairment which arises from the individual assessment of an asset within the asset class defined in *BIPRU* 4.3.2R(7).

### **36E Non credit-obligation assets**

This is the provision/impairment which arises from a review of groups of assets within the asset class defined in *BIPRU* 4.3.2R(7).

### **36F Non credit-obligation assets**

This is for any other credit valuation adjustments relating to the asset class defined in *BIPRU* 4.3.2R(7).

## **FSA004 – Credit risk validations**

### **Internal validations**

Data elements are referenced by row then column

Validation number	Data element		
1			[deleted – replaced by validation 14]
2	1B	=	<del>2B+3B+4B+5B+6B+7B+8B+9B+10B</del> <del>37B+38B</del> +11B+12B+13B+14B+15B+16B+17B
3	18A	=	19A+20A+21A
4	18B	=	19B+20B+21B
5	22A	≤	21A
6	22B	≤	21B
7	23A	=	24A+25A+26A+27A
8	23B	=	24B+25B+26B+27B
9	28A	=	29A+30A+31A
10	28B	=	29B+30B+31B
11	32A	≤	31A
12	32B	≤	31B
13	36B	=	36A/8%
14	1A	=	2A + 3A + 4A + 5A + 6A + 7A + 8A + 9A + <del>10A</del> <u>37A+38A</u> + 11A + 12A + 13A + 14A + 15A + 16A + 17A
15	33A	=	34A + 35A + 36A
16	33B	=	34B + 35B + 36B

...

### **FSA045 – IRB portfolio risk**

...

#### **Currency**

You should report in the currency of your annual audited accounts ~~ie~~ i.e. in Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Figures should be reported in 000s, to 3 decimal places.

...

#### **~~Definiton~~ Definition of default – number of days**

The exact number of days past due that is applied to each asset class as part of the definition of default.

## **Credit risk**

### **Gross exposure value**

~~Exposure before taking into account credit risk mitigation and credit conversion factors (CCFs).~~ Exposure value without taking into account value adjustments and provision/impairments, conversion factors and the effect of credit risk mitigation techniques, except in the case of Funded Credit Protection in the form of master netting agreements.

...

### **PD – ~~probability~~ Probability of default**

The probability of default of a counterparty over a one year period, calculated in accordance with *BIPRU* 4. This should be the long-run PD and take into account the 0.03% PD floor.

...

### **Risk weighted exposure amount**

Calculate in accordance with *BIPRU* 4.

## **Counterparty credit risk**

### **Gross exposure value**

Exposure value without taking into account value adjustments and provision/impairments, conversion factors and the effect of credit risk mitigation techniques, except in the case of Funded Credit Protection in the form of master netting agreements.

### **Exposure at default estimate**

Calculate in accordance with *BIPRU* 4. This should be the downturn EAD.

### **Maturity**

This is the exposure weighted average maturity in days. It should take into account the maturity floor and ceiling.

### **PD – Probability of default**

The probability of default of a counterparty over a one year period, calculated in accordance with *BIPRU* 4. This should be the long-run PD and take into account the 0.03% PD floor.

### **LGD – Loss given default**

The ratio of the loss on an exposure due to the default of a counterparty to the amount outstanding at default, calculated in accordance with *BIPRU* 4. This should be the downturn LGD.

**Expected loss**

Calculate in accordance with *BIPRU 4*.

**Risk weighted exposure amount**

Calculate in accordance with *BIPRU 4*.

...

**SUPERVISION MANUAL (AMENDMENT NO 17) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 138 (General rule-making power); 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 20 January 2011.

**Amendments to the Handbook**

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

**Amendment to Instrument**

- E. Annex E to the Controlled Functions (Amendment) Instrument 2010 (FSA 2010/48) is amended in accordance with the Annex to this instrument.

**Citation**

- F. This instrument may be cited as the Supervision Manual (Amendment No 17) Instrument 2011.

By order of the Board  
19 January 2011

## Annex

### Amendments to the Supervision manual (SUP)

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

The amendment shown below to SUP 10.9.1R(1) is in substitution for the amendment made to that sub-paragraph by the Controlled Functions (Amendment) Instrument 2010 (FSA 2010/48).

#### 10.9 Significant management functions

##### Application

10.9.1 R *SUP* 10.9 applies only to a *firm* which:

- (1) under *SYSC* 2.1.1R, or *SYSC* ~~4.4.4G~~ 4.1.1R, apportions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit; or
- (2) undertakes *proprietary trading*.

...



**RETAIL DISTRIBUTION REVIEW (TRAINING AND COMPETENCE)  
INSTRUMENT 2011**

**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);
    - (d) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex A, Part 1 of Annex B and Annex C come into force on 1 February 2011;
  - (2) Part 2 of Annex B comes into force on 1 July 2011; and
  - (3) the remainder of the instrument comes into force on 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)
Glossary of definitions	Annex A
Training and Competence sourcebook (TC)	Annex B
Fees manual (FEES)	Annex C
Supervision manual (SUP)	Annex D

**Citation**

- E. This instrument may be cited as the Retail Distribution Review (Training and Competence) Instrument 2011.

By order of the Board  
19 January 2011

## Annex A

### Amendments to the Glossary of definitions

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

#### Part 1: Comes into force on 1 February 2011

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

*accredited body* any of the bodies recognised by the *FSA* to act as an accredited body.

*retail investment adviser* an *employee* who carries on activities 2, 3, 4, 6, 12 and 13 in *TC* Appendix 1.1.1R.

#### Part 2: Comes into force on 31 December 2012

Amend the following as shown:

*accredited body* any of the bodies recognised by the *FSA* ~~to act as an accredited body~~ for the purpose of providing the independent verification required under *TC* 2.1.27R.



## TC 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	<u>Meets full qualification requirement up to and after 1 January 2013</u>
b	<u>Meets full qualification requirement up to 31 December 2012; and after 1 January 2013 when 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> by 31 December 2012</u>
c	<u>Meets full qualification requirement up to 31 December 2012</u>
d + e	<u>Meets full qualification requirement up to 31 December 2012</u>

### Key for the following qualification tables for activity numbers 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

1	meets full qualification requirement
2 +3	meets full qualification requirement
4 + 5 + 6	Meets full qualification requirement

Qualification table for : Advising on (but not dealing in) <i>securities</i> (which are not <i>stakeholder pension schemes</i> or <i>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
Chartered Financial Analyst Program Level 1 plus Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)	CFA Institute/ CFA Society of UK	± a
Chartered Financial Analyst plus Unit 1 of the	CFA Institute/ CFA Society of UK	± a

Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)		
Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on securities	CFA Institute/ CFA Society of UK	± a
Chartered Financial Analyst plus Unit 1 of the Investment Management Certificate (pre-2010 exam standards)	CFA Institute/ CFA Society of UK	± b
Chartered Financial Analyst Program Level 1 plus Investment Management Certificate (pre-2010 exam standards)	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	± b
Investment Management Certificate	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	± c
Fellow by examination	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	± b
Associate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	± b
Investment Advice Diploma (where candidate holds 3 modules including the securities module)	The Chartered Institute for Securities & Investment	± a
Masters in Wealth Management (Post 2010 examination standards)	The Chartered Institute for Securities & Investment	± a
Masters in Wealth Management (pre 2010 examination standards)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Certificate in Private Client Investment Advice and Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Certificate in Private Client Investment Advice and Management (attained through competency interview and presentation only)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Diploma (where candidate holds 3 modules as recommended by the <i>firm</i> )	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Investment Advice Certificate	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Member of the Securities Institute (MSI Dip) (where candidate holds 3 modules as recommended by the <i>firm</i> )	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Certificate in Securities	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± c
Certificate in Investment Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± c
Level 6 Diploma in Wealth Management	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	± c

Securities Institute Level 3 Certificate in Investments (Investment Management)	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	± c
Securities Institute Level 3 Certificate in Investments (Securities)	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	± c
Securities Institute Level 3 Certificate in Investments (Securities and Financial Derivatives)	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	± c
Certificate in Securities and Financial Derivatives – Retail	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	± c
SFA Securities Representatives Examination	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	± c
Fellow or Associate	Faculty or Institute of Actuaries	± a
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	b
Associate or Fellow (life and pensions route only)	Chartered Insurance Institute	b
Registered Representative Full Membership Exams – where candidates hold all 3 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 and Investment Institute)).	± b
BA (Hons) Financial Services, Planning and Management	Manchester Metropolitan University	± a
TSA Registered Representative Examinations	The Securities Association (now The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute))	± c
BA in Accounting and Finance	University of Stirling	± b
BA in Finance	University of Stirling	± b
MSc in Finance	University of Stirling	± b
MSc in International Accounting and Finance (where candidates hold modules as recommended by the <i>firm</i> )	University of Stirling	± b
MSc in Investment Analysis	University of Stirling	± b
ACI Dealing Certificate	ACI	± d
ACI Diploma	ACI	± d
Secondary Examination	Analyst Association of Japan	± d
Diploma	Association of Belgian Financial Analysts	± d
Certified International Investment Analyst (CIIA)	The Association of Certified International Investment Analysts (ACIIA)	± d
Canadian Securities course plus Conduct and	Canadian Securities Institute	± d

Practices Handbook		
Investment Practice version of the Investment Management Certificate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals / Institute of Investment Management and Research)	<u>2</u> <u>d</u>
Securities Institute Level 3 Certificate in Investments (Investment Management) – Unit 5	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>2</u> <u>d</u>
Securities Institute Level 3 Certificate in Investments (Securities) plus Securities Institute Level 3 Certificate in Investments (Derivatives) – Unit 3	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>2</u> <u>d</u>
Certified European Financial Analyst	EFFAS Societies with accredited examinations	<u>2</u> <u>d</u>
Series 7 – General Securities Representative Examination	Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	<u>2</u> <u>d</u>
Certificate in Financial Markets	Financial Services Institute of Australasia (Formerly the Securities Institute of Australia)	<u>2</u> <u>d</u>
Diploma of Financial Markets	Financial Services Institute of Australasia (Formerly the Securities Institute of Australia)	<u>2</u> <u>d</u>
Examination	French Society of Investment Analysts	<u>2</u> <u>d</u>
International Fixed Income and Derivatives (IFID) Certificate Programme	ICMA Centre / University of Reading (Formerly ISMA Centre / University of Reading)	<u>2</u> <u>d</u>
Registered Representative Examination	Irish Stock Exchange / Dublin City University	<u>2</u> <u>d</u>
Registered Stock Broker	The Irish Stock Exchange	<u>2</u> <u>d</u>
Promotore Finanziario Examination	Italian Exchange	<u>2</u> <u>d</u>
Membership Examination	Johannesburg Stock Exchange	<u>2</u> <u>d</u>
Registered Representative of Public Securities Examination (pre-April 1990)	Japanese Bankers Association	<u>2</u> <u>d</u>
Representative of Public Securities Qualification – Class 1	Japanese Bankers Association	<u>2</u> <u>d</u>
Representative of Public Securities Examination (pre- April 1990)	Japanese Securities Dealers Association	<u>2</u> <u>d</u>
Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association	<u>2</u> <u>d</u>
Trainee Dealers Representative Examination	Kuala Lumpur Stock Exchange	<u>2</u> <u>d</u>
Elementary, Intermediate and International Capital Markets course	Korea Securities Trading Institute	<u>2</u> <u>d</u>
Certificate	New Zealand Stock Exchange	<u>2</u> <u>d</u>
Examination	NIBE SVV The Dutch Institute for the Banking, Insurance and Stockbroking Industry	<u>2</u> <u>d</u>
International Capital Markets Qualification (including the Fixed Interest and Bond Markets Module)	Securities Institute/ South African Institute of Financial Markets	<u>2</u> <u>d</u>
Dealers Representative Examinations	Singapore Exchange	<u>2</u> <u>d</u>

Ordinary and Senior Certificates	South African Institute of Financial Markets	<u>2 d</u>
Unit 1 – UK Regulation and Markets	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals / Institute of Investment Management and Research)	<u>3 e</u>
Diploma – Regulation and Compliance Paper	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>
Unit 1 – Financial Regulation	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>
Unit 6 – Principles of Financial Regulation	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>
Investment Administration Qualification – IMRO Regulatory Environment Module	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>
Investment Administration Qualification – SFA Regulatory Environment Module	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>
Securities and Investment Institute – Unit 1 Financial Regulation – (Formerly the Securities Institute Regulatory Paper)	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>
Investment Administration Qualification – Unit 2 FSA Regulatory Environment – (Formerly the Investment Administration Qualification – Regulatory Environment Module)	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>
Investment Advice Certificate – Paper 1	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>
SFA Registered Persons Examination – Section 1 (Regulation)	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	<u>3 e</u>

<b>Qualification table for : Advising on (but not dealing in) Derivatives – Activity number 3 in TC Appendix 1.1.1R</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
Certified International Wealth Manager	Association of International Wealth Managers	<u>1 a</u>
Chartered Financial Analyst plus Unit 1 of the Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)	CFA Institute/ CFA Society of UK	<u>1 a</u>
Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet RDR specialist standards for securities	CFA Institute/ CFA Society of UK	<u>1 a</u>
Chartered Financial Analyst plus Unit 1 of the Investment Management Certificate (pre-2010 exam standards)	CFA Institute/ CFA Society of UK	<u>1 b</u>
Chartered Financial Analyst Program Level 1 plus Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	<u>1 a</u>
Chartered Financial Analyst Program Level 1	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute	<u>1 b</u>



plus Investment Management Certificate ( <u>pre-2010 exam standards</u> )	of Investment Management and Research)	
Associate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	± <u>b</u>
Investment Management Certificate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	± <u>c</u>
Fellow by examination	CFA Society UK (Formerly United Kingdom Society of Investment Professionals/Institute of Investment Management and Research)	± <u>b</u>
Masters in Wealth Management (post 2010 examination standards)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± <u>a</u>
Investment Advice Diploma	The Chartered Institute for Securities & Investment	± <u>a</u>
Member of the Securities Institute (MSI Dip) (where candidate holds 3 modules as recommended by the <i>firm</i> )	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± <u>b</u>
Masters in Wealth Management (pre 2010 examination standards)	The Chartered Institute for Securities & Investment	± <u>b</u>
Diploma (where candidate holds 3 modules as recommended by the <i>firm</i> )	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± <u>b</u>
Certificate in Private Client Investment Advice and Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± <u>b</u>
Certificate in Private Client Investment Advice and Management (attained through a CISI competency interview and presentation only)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± <u>b</u>
Investment Advice Certificate	The Chartered Institute for Securities and Investment (Formerly the Securities & Investment Institute)	± <u>b</u>
Certificate in Derivatives	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± <u>c</u>
Certificate in Financial Derivatives	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± <u>c</u>
Certificate in Investment Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± <u>c</u>
Level 6 Diploma in Wealth Management	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	± <u>c</u>
Certificate in Securities and Financial Derivatives	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	± <u>c</u>
Securities Institute Level 3 Certificate in Investments (Derivatives)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	± <u>c</u>
Securities Institute Level 3 Certificate in Investments (Investment Management)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	± <u>c</u>
Securities Institute Level 3 Certificate in Investments (Securities & Financial Derivatives)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	± <u>c</u>
SFA Futures and Options Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	± <u>c</u>

SFA Securities and Financial Derivatives Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	+ c
SFA Securities Representative plus Financial Derivatives Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	+ c
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	+ b
Associate or Fellow (life and pensions route only)	Chartered Insurance Institute	+ b
Fellow or Associate	Faculty or Institute of Actuaries	+ a
Registered Representative Full Membership Exams – where candidates hold all 3 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 and Investment Institute)).	+ b
BA (Hons) Financial Services, Planning and Management	Manchester Metropolitan University	+ a
TSA Registered Representative Examinations	The Securities Association	+ c
International Capital Markets Qualification (ICMQ) including a pass in Futures, Options and other Derivative Products paper	Securities Institute/South African Institute of Financial Markets	+ c
BA in Finance and Accounting	University of Stirling	+ b
MSc in Finance	University of Stirling	+ b
MSc in International Accounting and Finance (where candidates hold modules as recommended by the <i>firm</i> )	University of Stirling	+ b
MSc in Investment Analysis	University of Stirling	+ b
ACI Dealing Certificate	ACI	≥ d
ACI Diploma	ACI	≥ d
Secondary Examination	Analyst Association of Japan	≥ d
Certified International Investment Analyst (CIIA)	The Association of Certified International Investment Analysts (ACIIA)	≥ d
Chartered Financial Analyst	CFA Institute	≥ d
Investment Practice paper of the Investment Management Certificate	CFA Society UK (Formerly United Kingdom Society of Investment Professionals/Institute of Investment Management and Research)	≥ d
Securities Institute Level 3 Certificate in Investments (Investment Management) – Unit 5	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	≥ d
Diploma including passes in both the Australian Futures Trading and Options papers	Financial Services Institute for Australasia (Formerly the Securities Institute of Australia)	≥ d
International Fixed Income and Derivatives	ICMA Centre / University of Reading (Formerly ISMA Centre / University of Reading)	≥ d

(IFID) Certificate Programme		
Registered Representative of Public Securities Examination (pre April 1990)	Japanese Bankers Association	2 d
Representative of Public Securities Qualification – Class 1	Japanese Bankers Association	2 d
Representative of Public Securities Examination (pre April 1990)	Japanese Securities Dealers Association	2 d
Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association	2 d
Series 3 – Futures Representative Examination	National Futures Association	2 d
Examination	NIBE SVV the Dutch Institute for Banking, Insurance and Stockbroking Industry	2 d
Examination	Norwegian Society of Financial Analysts	2 d
Singapore Exchange Futures Trading Test	Singapore Institute of Banking and Finance	2 d
Registered Representative Examination	Sydney Futures Exchange	2 d
Diploma – Regulation and Compliance Paper	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e
Investment Administration Qualification – IMRO Regulatory Environment module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e
Investment Administration Qualification – SFA Regulatory Environment module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e
Investment Administration Qualification – Unit 2 FSA Regulatory Environment (Formerly the Investment Administration Qualification – Regulatory Environment module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e
Investment Advice Certificate – Paper 1	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e
Securities & Investment Institute – Unit 1 Financial Regulation (Formerly the Securities Institute Regulatory Paper)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e
SFA Registered Persons Examination – Section 1 (Regulation)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e
Unit 1 – Financial Regulation	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e
Unit 1 – UK Regulation and Markets	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	3 e
Unit 6 – Principles of Financial Regulation	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3 e

**Qualification table relating to : Advising on *Packaged Products* (which are not *broker funds*) and *Friendly Society* tax-exempt policies - Activity Numbers 4 and 6 in TC Appendix 1.1.1 R**

Qualification	Qualification Provider	Key
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BA in Financial Services (1995 to 2001)	Bournemouth University	± b
MA in Financial Services (1995 to 2001)	Bournemouth University	± b
Post Graduate in Financial Services (1995 to 2001)	Bournemouth University	± b
Diploma in Professional Financial Advice	Calibrand/Scottish Qualifications Authority	± a
Diploma in Investment Planning (Existing Adviser) Post 2010 examination standards	Chartered Institute of Bankers in Scotland	± a
Diploma in Investment Planning (New Adviser) Post 2010 examination standards	Chartered Institute of Bankers in Scotland	± a
Diploma in Investment Planning (Retail Banking) (New Adviser) Post 2010 examination standards	Chartered Institute of Bankers in Scotland	± a
Diploma in Investment Planning (Retail Banking) (Existing Adviser) Post 2010 examination standards	Chartered Institute of Bankers in Scotland	± a
Associate (March 1992 to July 1994 syllabus (including top-up test))	Chartered Institute of Bankers in Scotland	± b
Associate (post August 1994 syllabus)	Chartered Institute of Bankers in Scotland	± b
Certificate in Investment Planning	Chartered Institute of Bankers in Scotland	± b
Chartered Banker (where candidates hold UK Financial Services and Investment modules)	Chartered Institute of Bankers in Scotland	± b
Diploma in Investment Planning (current)	Chartered Institute of Bankers in Scotland	± b
Certificate in Financial Planning (Post 17/09/2004)	Chartered Institute of Bankers in Scotland	± c
Masters in Wealth Management ( <u>pre-2010 exam standards</u> )	The Chartered Institute for Securities & Investment	± b
Masters in Wealth Management (Post 2010 examination standards)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± a
Investment Advice Diploma	The Chartered Institute for Securities & Investment	± a
Investment Advice Certificate	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	± b
Certificate in Private Client Investment Advice and Management (attained through competency interview and presentation only)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Certificate in Private Client Investment Advice and Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Diploma (where candidates hold 3 modules as recommended by the firm)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Member of the Securities Institute (MSI Dip) (where candidate holds 3 modules as recommended by the firm)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Level 6 Diploma in Wealth Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	c
<del>Regulated</del> Diploma in <u>Regulated</u> Financial Planning	Chartered Insurance Institute	± a

Diploma in Regulated Financial Planning (attained through a CII alternative assessment day)	Chartered Insurance Institute	† a
Advanced Diploma in Financial Planning	Chartered Insurance Institute	† b
Advanced Financial Planning Certificate	Chartered Insurance Institute	† b
Associate (ACII) (where candidate holds appropriate life and pension modules)	Chartered Insurance Institute	† b
Associate (ALIA Dip)	Chartered Insurance Institute	† b
Diploma in Financial Planning	Chartered Insurance Institute	† b
Fellow (FCII) (where candidates hold appropriate life and pensions modules)	Chartered Insurance Institute	† b
Certificate in Financial Planning	Chartered Insurance Institute	† c
Financial Planning Certificate (No new registrations after 17/12/2004)	Chartered Insurance Institute	† c
Fellow (FLIA Dip)	Chartered Insurance Institute	† b
Fellow or Associate	Faculty or Institute of Actuaries	† a
FSSC Advanced Apprenticeship in Advising on Financial Products (Financial Advice Pathway)		† c
Associate (where candidate has passed the investment module)	<del>ifs</del> ifs School of Finance (Formerly the Chartered Institute of Bankers)	† b
Diploma for Financial Advisers (pre 2010 examination standards)	<del>ifs</del> ifs School of Finance (Formerly the Chartered Institute of Bankers)	† b
Professional Investment Certificate	<del>ifs</del> ifs School of Finance (Formerly the Chartered Institute of Bankers)	† b
Diploma for Financial Advisers (post 2010)	<del>ifs</del> ifs School of Finance (Formerly the Chartered Institute of Bankers)	† a
Certificate for Financial Advisers (Post 1/11/2004)	<del>ifs</del> ifs School of Finance (Formerly the Chartered Institute of Bankers)	† e
Certificate for Financial Advisers (Pre 31/10/2004)	<del>ifs</del> ifs School of Finance (Formerly Chartered Institute of Bankers)	† e
Professional Certificate in Banking (PCertB) (where candidate has passed the Practice of Financial Advice module)	<del>ifs</del> ifs School of Finance (Formerly Chartered Institute of Bankers)	† a
Certified Financial Planner	Institute of Financial Planning	† b
Fellowship	Institute of Financial Planning	† b
BA (Hons) Financial Services, Planning and Management	Manchester Metropolitan University	† a
BA in Financial Services (1995 to 2001)	Sheffield Hallam University	† b
MA in Financial Services (1995 to 2001)	Sheffield Hallam University	† b
Post Graduate in Financial Services (1995 to 2001)	Sheffield Hallam University	† b
BA in Finance	University of Stirling	† b
BA in Finance and Accounting	University of Stirling	† b

BA in Financial Services (1995 to 2001)	University of the West of England	† b
MA in Financial Services (1995 to 2001)	University of the West of England	† b
Post Graduate in Financial Services (1995 to 2001)	University of the West of England	† b
Certificate in Investment Planning Paper 1 (Pre 31/10/2004)	Chartered Institute of Bankers in Scotland	‡ e
Certificate in Investment Planning (Post 17/09/2004)	Chartered Institute of Bankers in Scotland	‡ e
Certificate in Investment and Financial Advice – Paper 1	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	‡ e
Investment Advice Certificate Paper 1	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	‡ e
Financial Planning Certificate – Paper 1	Chartered Insurance Institute	‡ e
Certificate in Financial Planning – Paper 1	Chartered Insurance Institute	‡ e
Certificate for Financial Advisers – Paper 1 (Post 1/11/2004)	<del>ifs</del> ifs School of Finance (Formerly the Chartered Institute of Bankers)	‡ e
Certificate for Financial Advisers Paper 1 (Pre 31/10/2004)	<del>ifs</del> ifs School of Finance (Formerly the Chartered Institute of Bankers)	‡ e
Certificate in Mortgage Advice and Practice (CeMAP) – Paper 1 (Pre 31/10/2004)	<del>ifs</del> ifs School of Finance (Formerly the Chartered Institute of Bankers)	‡ e

<b>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</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
Certified International Wealth Manager	Association of International Wealth Managers	† a
Chartered Financial Analyst Program Level 1 plus Investment Management Certificate (Level 4 certificate) ( <u>post-2010 exam standards</u> )	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	† a
Chartered Financial Analyst plus Unit 1 of the Investment Management Certificate (Level 4 certificate) ( <u>post-2010 exam standards</u> )	CFA Institute/ CFA Society of UK	† a
Investment Management Certificate (Level 4 certificate) ( <u>post-2010 exam standards</u> ) plus other qualifications that meet RDR specialist standards for securities	CFA Institute/ CFA Society of UK	† a
<u>Chartered Financial Analyst plus Unit 1 of the Investment Management certificate (pre-2010 exam standards)</u>	<u>CFA Institute/CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/Institute of Investment Management and Research)</u>	b
Chartered Financial Analyst Program Level 1 plus Investment Management Certificate ( <u>pre-2010 exam standards</u> )	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	† b
Fellow by examination	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of	† b

	Investment Management and Research)	
Associate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	† <u>b</u>
Investment Advice Diploma (where candidate holds 3 modules including the securities module)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>a</u>
Masters in Wealth Management (based on post 2010 examination standards)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>a</u>
Masters in Wealth Management (based on pre 2010 examination standards)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>b</u>
Certificate in Private Client Investment Advice and Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>b</u>
Certificate in Private Client Investment Advice and Management (attained through competency interview and presentation only)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>b</u>
Diploma (where candidate holds 3 modules as recommended by the <i>firm</i> )	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>b</u>
Member of the Securities Institute (MSI Dip) (where candidate holds 3 modules as recommended by the <i>firm</i> )	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>b</u>
Certificate in Securities – Retail	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>c</u>
Certificate in Securities and Financial Derivatives – Retail	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	† <u>c</u>
Certificate in Investment Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	† <u>c</u>
Level 6 Diploma in Wealth Management	The Chartered Institute for Securities and Investment (Formerly the Securities and Investment Institute)	† <u>c</u>
Securities Institute Level 3 Certificate in Investments (Investment Management)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	† <u>c</u>
Securities Institute Level 3 Certificate in Investments (Securities & Financial Derivatives)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	† <u>c</u>
Securities Institute Level 3 Certificate in Investments (Securities)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	† <u>c</u>
SFA Securities Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	† <u>c</u>
SFA Securities and Financial Derivatives Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	† <u>c</u>
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	† <u>b</u>
Associateship (must include a pass in the Investment Paper)	<del>ifs</del> <u>ifs</u> School of Finance (Formerly the Chartered Institute of Bankers)	† <u>b</u>
Registered Representative Full Membership Exams –	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment)	† <u>b</u>

where candidates hold all 3 papers or have both the Stock Exchange Practice and Techniques of Investment papers	(Formerly the Securities and Investment Institute)).	
BA (Hons) Financial Services, Planning and Management	Manchester Metropolitan University	± a
TSA Registered Representative Examinations	The Securities Association	± c
BA in Finance	University of Stirling	± b
BA in Finance and Accounting	University of Stirling	± b
MSc in Investment Analysis	University of Stirling	± b
MSc in Finance	University of Stirling	± b
ACI Dealing Certificate	ACI	± d
ACI Diploma	ACI	± d
Secondary Examination	Analyst Association of Japan	± d
Diploma	Association of Belgian Financial Analysts	± d
Certified International Investment Analyst (CIIA)	The Association of Certified International Investment Analysts (ACIIA)	± d
Canadian Securities Course plus Conduct and Practices Handbook	Canadian Securities Institute	± d
Certified European Financial Analyst	EFFAS Societies with accredited examinations	± d
Series 7 – General Securities Representatives Examination	Financial Industry Regulatory Authority (FINRA) – Formerly the National Association of Securities Dealers (NASD)	± d
Certificate in Financial Markets	Financial Services Institute of Australasia (Formerly the Securities Institute of Australia)	± d
Diploma of Financial Markets	Financial Services Institute of Australasia (Formerly the Securities Institute of Australia)	± d
Examination	French Society of Investment Analysts	± d
International Fixed Income and Derivatives (IFID) Certificate Programme	ICMA Centre / University of Reading (Formerly ISMA Centre / University of Reading)	± d
General Certificate Programme	ICMA Centre / University of Reading (Formerly ISMA Centre / University of Reading)	± d
Irish Registered Representative Examination	Irish Stock Exchange/ Dublin City University	± d
Promotore Finanziario Examination	Italian Exchange	± d
Registered Representative of Public Securities Examination (pre April 1990)	Japanese Bankers Association	± d
Representative of Public Securities Qualification – Class 1	Japanese Bankers Association	± d
Registered Representative of Public Securities Examination (pre April 1990)	Japanese Securities Dealers Association	± d
Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association	± d
Membership Examinations	Johannesburg Stock Exchange	± d



Elementary, Intermediate and International Capital Markets Courses	Korea Securities Training	<u>2 d</u>
Trainee Dealers Representative Examination Certificate	Kuala Lumpur Stock Exchange New Zealand Stock Exchange	<u>2 d</u> <u>2 d</u>
Examination	NIBE SVV the Dutch Institute for the Banking, Insurance and Stockbroking Industry	<u>2 d</u>
International Capital Markets Qualification (inclusive of the Fixed Interest and Bond Markets Module)	Securities Institute/ South African Institute of Financial Markets	<u>2 d</u>
Dealers Representative Examination	Singapore Exchange	<u>2 d</u>
Diploma	The Swiss Stock Exchange	<u>2 d</u>
Professional Certificate in Stockbroking	University College Dublin (UCD) / The Institute of Bankers School of Professional Finance	<u>2 d</u>
Investment Administration Qualification – IMRO Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3 e</u>
Investment Administration Qualification – SFA Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3 e</u>
Investment Administration Qualification – Unit 2 FSA Regulatory Environment – (Formerly the Investment Administration Qualification Regulatory Environment Module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3 e</u>
Securities & Investment Institute – Unit 1 Financial Regulation (Formerly the Securities Institute Regulatory Paper)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3 e</u>
Unit 1 – Financial Regulation	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3 e</u>
Unit 1 – UK Regulation and Markets	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	<u>3 e</u>
Unit 6 – Principles of Financial Regulation	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3 e</u>
SFA Registered Persons Examination – Section 1 (Regulation)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3 e</u>

<b>Qualification table for : Advising on and dealing with or for clients in Derivatives – Activity number 13 in TC Appendix 1.1.1R</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
Certified International Wealth Manager	Association of International Wealth Managers	<u>1 a</u>
Chartered Financial Analyst Program Level 1 plus Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	<u>1 a</u>
Chartered Financial Analyst plus Unit 1 of the Investment Management certificate (Level 4 certificate) (pre-2010 exam standards)	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	<u>b</u>

Chartered Financial Analyst Program Level 1 plus Investment Management Certificate (pre-2010 exam standards)	CFA Institute/ CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	± b
Associate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	± b
Chartered Financial Analyst plus Unit 1 of the Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)	CFA Institute/ CFA Society of UK	± a
Investment Management Certificate (Level 4 certificate) (post-2010 exam standards) plus other qualifications that meet specialist standards for advising on securities	CFA Institute/ CFA Society of UK	± a
Fellow by examination	CFA Society UK (Formerly United Kingdom Society of Investment Professionals/Institute of Investment Management and Research)	± b
Associateship – must include a pass in the Investment Paper	Chartered Institute of Bankers in Scotland	± b
Investment Advice Diploma	The Chartered Institute for Securities & Investment	± a
Certificate in Private Client Investment Advice and Management	The Chartered Institute for Securities & Investment	± b
Certificate in Private Client Investment Advice and Management (attained through a CISI competency interview and presentation only)	The Chartered Institute for Securities & Investment	± b
Masters in Wealth Management (based on pre 2010 examination standards)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Diploma (where candidate holds 3 modules as recommended by the <i>firm</i> )	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b
Certificate in Derivatives	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± c
Certificate in Financial Derivatives	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± c
Certificate in Investment Management	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± c
Level 6 Diploma in Wealth Management	The Chartered Institute for Securities <del>and</del> Investment (Formerly the Securities and Investment Institute)	± c
Certificate in Securities and Financial Derivatives	The Chartered Institute for Securities <del>and</del> Investment (Formerly the Securities and Investment Institute)	± c
Securities Institute Level 3 Certificate in Investments (Derivatives)	The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> Investment Institute)	± c
Securities Institute Level 3 Certificate in Investments (Investment Management)	The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> Investment Institute)	± c
Securities Institute Level 3 Certificate in Investments (Securities & Financial Derivatives)	The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> Investment Institute)	± c
Member of the Securities Institute (MSI Dip)	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	± b

(where candidate holds 3 modules as recommended by the <i>firm</i> )		
SFA Futures and Options Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> Investment Institute)	+ <u>b</u>
SFA Securities and Financial Derivatives Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> Investment Institute)	+ <u>b</u>
Financial Derivatives paper of Diploma	The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> Investment Institute)	+ <u>b</u>
SFA Securities Representative Examination plus Financial Derivatives Module	The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> Investment Institute)	+ <u>b</u>
Financial Futures and Options paper of the Diploma	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	+ <u>a</u>
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	+ <u>b</u>
Associateship – (must include a pass in the Investment Paper)	<del>ifs</del> <u>ifs</u> School of Finance (Formerly the Chartered Institute of Bankers)	+ <u>b</u>
Associateship – (must include a pass in the Investment Management Paper)	<del>ifs</del> <u>ifs</u> School of Finance (Formerly the Chartered Institute of Bankers)	+ <u>b</u>
Registered Representative Full Membership Exams – where candidates hold all 3 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 and Investment Institute)).	+ <u>b</u>
BA (Hons) Financial Services, Planning and Management	Manchester Metropolitan University	+ <u>a</u>
TSA Registered Representative Examination	The Securities Association	+ <u>b</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</u>
BA in Finance and Accounting	University of Stirling	+ <u>b</u>
MSc in Finance	University of Stirling	+ <u>b</u>
MSc in International Accounting and Finance (where candidates hold modules as recommended by the <i>firm</i> )	University of Stirling	+ <u>b</u>
MSc in Investment Analysis	University of Stirling	+ <u>b</u>
ACI Dealing Certificate	ACI	≥ <u>d</u>
ACI Diploma	ACI	≥ <u>d</u>
Secondary Examination	Analyst Association of Japan	≥ <u>d</u>
Certified International Investment Analyst (CIIA)	The Association of Certified International Investment Analysts (ACIIA)	≥ <u>d</u>

Derivatives Fundamentals Course and Futures/Options Licensing Course	Canadian Securities Institute	<u>2</u> <u>d</u>
Diploma including passes in both the Australian Futures Trading and Options Trading papers	Financial Services Institute of Australasia (Formerly the Securities Institute of Australia)	<u>2</u> <u>d</u>
International Fixed Income and Derivatives (IFID) Certificate Programme	ICMA Centre / University of Reading (Formerly ISMA Centre / University of Reading)	<u>2</u> <u>d</u>
Registered Representative of Public Securities Examination (pre April 1990)	Japanese Bankers Association	<u>2</u> <u>d</u>
Representative of Public Securities Qualifications – Class 1	Japanese Bankers Association	<u>2</u> <u>d</u>
Representative of Public Securities Examination (pre April 1990)	Japanese Securities Dealers Association	<u>2</u> <u>d</u>
Representative of Public Securities Qualifications – Type 1	Japanese Securities Dealers Association	<u>2</u> <u>d</u>
Series 3 National Commodities Futures Examination	National Futures Association	<u>2</u> <u>d</u>
Examination	NIBE SVV the Dutch Institute for the Banking, Insurance and Stockbroking Industry	<u>2</u> <u>d</u>
Examination	Norwegian Society of Financial Analysts	<u>2</u> <u>d</u>
Singapore Exchange Futures Trading Test	Singapore Institute of Banking and Finance	<u>2</u> <u>d</u>
Ordinary and Senior Certificates	South African Institute of Financial Markets	<u>2</u> <u>d</u>
Unit 1 – Financial Regulation	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3</u> <u>e</u>
Unit 1 – UK Regulation and Markets	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management and Research)	<u>3</u> <u>e</u>
Unit 6 – Principles of Financial Regulation	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3</u> <u>e</u>
Diploma – Regulation and Compliance Paper	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3</u> <u>e</u>
Investment Administration Qualification – IMRO Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3</u> <u>e</u>
Investment Administration Qualification – SFA Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3</u> <u>e</u>
Investment Administration Qualification – Unit 2 SFA Regulatory Environment (Formerly the Investment Administration Qualification – Regulatory Environment Module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3</u> <u>e</u>
Securities & Investment Institute – Unit 1 Financial Regulation (Formerly the Securities Institute Regulatory Paper)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>3</u> <u>e</u>

After Appendix 5G insert the following new appendices. The text is not underlined.

## **Appendix 6G            Accredited bodies**

### Introduction

1.            An *accredited body* is a body recognised by the *FSA* to act as an accredited body.
2.            Information on *accredited bodies*, including *guidance* on the process for including an applicant body in the list, is set out below and the obligation to pay the application fee is set out in *FEES* 3.2.
3.            The role of an *accredited body* relates to rules in *TC* which come into force on 31 December 2012.

### Process for including a body in the list of accredited bodies

4.            In considering the compatibility of a proposed addition with the *regulatory objectives*, the *FSA* will determine whether the applicant will, if accredited, contribute to securing an appropriate degree of protection for *consumers* having regard in particular to:
  - (1) the matters set out in paragraphs 10 to 20; and
  - (2) the rules and practices of the applicant.
5.            An application to the *FSA* to be added to the list of *accredited bodies* should set out how the applicant will satisfy the criteria in paragraphs 10 to 20. The application should be accompanied by a report from a suitable auditor which sets out its independent assessment of the applicant's ability to meet these criteria. An application form is available from the *FSA* upon request.
6.            When considering an application for *accredited body* status the *FSA* may:
  - (1) carry out any enquiries and request any further information that it considers appropriate, including consulting other regulators;
  - (2) ask the applicant or its specified representative to answer questions and explain any matter the *FSA* considers relevant to the application;
  - (3) take into account any information which the *FSA* considers appropriate to the application; and
  - (4) request that any information provided by the applicant or its specified representative is verified in such a manner as the *FSA* may specify.
7.            The *FSA* will confirm its decision in writing to the applicant.
8.            The *FSA* will enter into an agreement with the applicant or *accredited body* which will specify the requirements that the *accredited body* must meet. These will include the matters set out in paragraphs 10 to 20. Approval as an *accredited body* becomes effective only when the name of the applicant is added to the *Glossary*

definition of *accredited body*.

9. Paragraphs 10 to 20 set out the criteria which an applicant should meet to become an *accredited body* and which an *accredited body* should meet at all times.

Acting in the public interest and furthering the development of the profession

10. The *FSA* will expect an *accredited body* to act in the public interest, to contribute to raising consumer confidence and professional standards in the retail investment advice market and to promoting the profession.

Carrying out effective verification services

11. If independent verification of a *retail investment adviser's* professional standards has been carried out by an *accredited body*, the *FSA* will expect the *accredited body* to provide the *retail investment adviser* with evidence of that verification in a *durable medium* and in a form agreed by the *FSA*. This is referred to in this Appendix and *TC 2.1.28R* as a 'statement of professional standing'.
12. The *FSA* will expect an *accredited body* to have in place effective procedures for carrying out its verification activities. These should include:
- (1) verifying that each *retail investment adviser* who is a member of or subscriber to the *accredited body's* verification service has made an annual declaration in writing that the *retail investment adviser* has, in the preceding *12 months*, complied with *APER* and completed the continuing professional development required;
  - (2) verifying annually the continuing professional development records of no less than 10% of the *retail investment advisers* who have used its service in the previous *12 months* to ensure that the records are accurate and the continuing professional development completed by the *retail investment advisers* is appropriate; and
  - (3) verifying that, if required by *TC*, the *retail investment advisers* who use its services have attained an appropriate qualification. This should include, where relevant, checking that appropriate qualification gap-fill records have been completed by the *retail investment advisers*.
13. The *FSA* will not expect an *accredited body* to carry out the verification in paragraph 12(3) if a *retail investment adviser* provides the *accredited body* with evidence in a *durable medium* which demonstrates that another *accredited body* has previously verified the *retail investment adviser's* appropriate qualification, including, where relevant, appropriate qualification gap-fill.
14. The *FSA* will expect an *accredited body* to make it a contractual condition of membership (where a *retail investment adviser* is a member of the *accredited body*) or of using its verification service (where a *retail investment adviser* is not a member of the *accredited body*) that, as a minimum, the *accredited body* will not continue to verify a *retail investment adviser's* standards and will withdraw its statement of professional standing if the *accredited body* is provided with false

information in relation to a *retail investment adviser's* qualifications or continuing professional development or a false declaration in relation to a *retail investment adviser's* compliance with *APER*. In this regard, an *accredited body* must have in place appropriate decision-making procedures with a suitable degree of independence and transparency.

Having appropriate systems and controls in place and providing evidence to the FSA of continuing effectiveness

15. The *FSA* will expect an *accredited body* to ensure that it has adequate resources and systems and controls in place in relation to its role as an *accredited body*.
16. The *FSA* will expect an *accredited body* to have effective procedures in place for the management of conflicts of interest and have a well-balanced governance structure with at least one member who is independent of the sector.
17. The *FSA* will expect an *accredited body* to have a code of ethics and to ensure that its code of ethics and verification service terms and conditions do not contain any provisions that conflict with *APER*.

Ongoing cooperation with the FSA

18. The *FSA* will expect an *accredited body* to provide the *FSA* with such documents and information as the *FSA* reasonably requires, and to cooperate with the *FSA* in an open and transparent manner.
19. The *FSA* will expect an *accredited body* to share information with the *FSA* (subject to any legal constraints) in relation to the professional standards of the *retail investment advisers* who use its service as appropriate. Examples might include conduct issues, complaints, dishonestly obtaining or falsifying qualifications or continuing professional development or a failure to complete appropriate continuing professional development. The *FSA* will expect an *accredited body* to notify the *firm* if issues such as these arise.
20. The *FSA* will expect an *accredited body* to submit to the *FSA* an annual report by a suitable independent auditor which sets out that auditor's assessment of the quality of the body's satisfaction of the criteria in paragraphs 10 to 19 in the preceding 12 *months* and whether, in the auditor's view, the body is capable of satisfying the criteria in the subsequent 12 *months*. The *FSA* will expect this annual report to be submitted to the *FSA* within three *months* of the anniversary of the date on which the *accredited body* was added to the *Glossary* definition of *accredited body*.

Withdrawal of accreditation

21. If an *accredited body* fails or, in the *FSA's* view, is likely to fail to satisfy the criteria, the *FSA* will discuss this with the *accredited body* concerned. If, following a period of discussion, the *accredited body* has failed to take appropriate corrective action to ensure that it satisfies and will continue to satisfy the criteria, the *FSA* will withdraw the *accredited body's* accreditation by removing its name from the list of *accredited bodies* published in the *Glossary*.

The *FSA* will expect the body to notify each *retail investment adviser* holding a current statement of professional standing of the *FSA*'s decision. A statement of professional standing issued by the *accredited body* before the withdrawal of accreditation will continue to be valid until its expiration.

*continued*



## Appendix 7G Guidelines for qualification gap-fill for retail investment advisers

### Who should use these guidelines?

Under the RDR professionalism requirements if you are a *retail investment adviser* then you need to meet a new standard of qualification from 31 December 2012 in order to act as a *retail investment adviser*. If you already hold certain qualifications specified in TC Appendix 4 you will not need to attain any further examinations. Instead you will need to fill any knowledge gaps against the Financial Services Skills Council's examination standards using qualification gap-fill. To do this you should use the templates in this Appendix which reproduce the Financial Services Skills Council's examination standards and allow you to identify the gaps that you will need to fill. You will need to have your gap-fill verified by an *accredited body* before 31 December 2012 to enable these qualifications to count as appropriate qualifications.

### Please note:

- In order to take advantage of qualification gap-fill you must hold a qualification for each specific activity you perform, for example if you hold a qualification for *packaged products* but also give advice on *securities* you will need to hold an appropriate qualification for both of these activities.
- The template below is an updated version of the template we published in CP09/31. Advisers who are using the template from CP09/31 can continue to do so.

### Instructions for use

First, you should establish which tables below you need to use. This is based on the *TC* Appendix 1.1 activity you will be performing. The revised examination standards under the RDR are divided into core and specialist content.

The core modules apply to all *retail investment advisers* and are as follows:

- (1) Financial Services, regulation and ethics
- (2) Investment principles and risk
- (3) Personal taxation

**This means that all qualification gap-filling must include tables 1, 2 and 3 set out below.**

Second, you need to establish which of the specialist modules you need to gap-fill. This depends on which *TC* Appendix 1.1 activities you carry out, as defined in *TC* Appendix 1.1. The matrix below helps to show which tables you need to use to complete gap-fill for the specialist content, with the tables numbered 4, 5, 6 and 7.

**Figure 1**

Table number Adviser's activity, as per TC Appendix 1.1	4 Securities	5 Derivatives	6 Pensions and retirement planning	7 Application standards for packaged products
2 – <i>advising on securities</i>	✓	✗	✗	✗
3 – <i>Advising on derivatives</i>	✗	✓	✗	✗
4 – <i>Advising on packaged products which are not broker funds</i>	✗	✗	✓	✓
6 – <i>Advising on friendly society tax-exempt policies</i>	✗	✗	✓	✓
12 – <i>Advising on and dealing in securities which are not stakeholder pension schemes or broker funds</i>	✓	✗	✗	✗

13 – <i>Advising on and dealing in derivatives</i>	x	✓	x	x
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There is no specialist module for *packaged products* (distinct from application standards for *packaged products*) because the *packaged product* content is a combination of the three core modules, along with pensions & retirement planning and protection. The examination standard for protection is not included here because the level has not changed, so there is no gap to fill.

Once you have worked out which tables you need to use, you should check the learning outcomes in column 2. The indicative content in column 3 provides additional guidance on the areas to be covered<sup>1</sup>. If the qualification or CPD you completed meets the learning outcome, you need do nothing more in that area other than record the fact in column 4 or 5. If it does not meet the learning outcome, you will need to undertake and evidence, in column 5, the qualification gap-fill you have completed to meet the new requirements before 31 December 2012. If you remain uncertain, you should contact your qualification awarding body or your intended *accredited body* who should be able to help. Column 6 should be completed by your *accredited body*.

The prime focus of qualification gap-filling should be on the relevance of the learning activity to the learning outcome and indicative content to be achieved. This can be from any source: firm, professional body, training provider etc, and from any time provided it is completed before 31<sup>st</sup> December 2012. CPD carried out in the past can be used to meet the qualification gap-fill requirements where this can be appropriately verified.

## Core content

### Table 1 – Financial Services, Regulation and Ethics

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<sup>1</sup> Please note that the application standards for packaged products have outcome standards in column 1 and assessment in column 2. For this you will need to check if your qualification covered the outcome standard and record the result.

1	2	3	4	5	6
Attainment level	Learning outcome	Indicative content	Covered in qualification? (Y/N)	Evidence of learning activity	Verification of qualification top-up and date
Understand	The UK financial services industry in its European and global context				
		<ul style="list-style-type: none"> <li>• role and structure of the UK and international markets, key participants</li> </ul>			
		<ul style="list-style-type: none"> <li>• the impact of the EU on UK regulation</li> </ul>			
		<ul style="list-style-type: none"> <li>• the role of government – economic and industrial policy, regulation, taxation and social welfare</li> <li>• the function and operation of financial services within the wider economy</li> </ul>			
Understand	How the retail consumer is served by the financial services industry				
		<ul style="list-style-type: none"> <li>• obligations towards consumers and their perception of financial services;</li> </ul>			
		<ul style="list-style-type: none"> <li>• consumers' main financial needs and how they are prioritised:</li> </ul>			
		<ul style="list-style-type: none"> <li>- managing debt</li> </ul>			
		<ul style="list-style-type: none"> <li>- budgeting and borrowing, including house purchase</li> </ul>			
		<ul style="list-style-type: none"> <li>- protection</li> <li>- saving and investing</li> </ul>			

		- retirement			
		- estate planning and tax planning			
		• how those needs are met:			
		- mortgages and loans			
		- life and health insurance			
		- savings and investments			
		- State benefits			
		- the main types of pension provision			
Understand	The legal concepts and considerations relevant to financial advice				
		• legal persons and power of attorney			
		• basic law of contract and agency			
		• ownership of property			
		• insolvency and bankruptcy			
		• wills and intestacy			
		• use of trusts:			
	- the main types of trusts and their uses				
	- how to create and administer trusts				
Understand	The regulation of financial services				
		• the role of the Financial Services Authority (FSA), HM Treasury and the Bank of England – market regulation			
		• the role of other regulating bodies such as the Competition Commission, the Office of Fair Trading, the Pensions Regulator, the Information Commissioner			
	• Financial Services and Markets Act (FSMA) 2000, other relevant legislation				
	• the role of EU regulation and relevant Directives				

		<ul style="list-style-type: none"> <li>• additional oversight – senior management, trustees, auditors, external compliance support services</li> </ul>				
Understand	The FSA’s responsibilities and approach to regulation					
		<ul style="list-style-type: none"> <li>• Statutory objectives and how the FSA is structured to achieve these:                             <ul style="list-style-type: none"> <li>- powers and activities</li> <li>- financial stability and prudential regulation</li> <li>- powers to deal with financial crime</li> <li>- financial capability – National Strategy</li> </ul> </li> <li>• the FSA Handbook – the main principles and rules                             <ul style="list-style-type: none"> <li>- the High Level Standards</li> <li>- Prudential Standards</li> <li>- Business Standards                                     <ul style="list-style-type: none"> <li>◦ Conduct of Business (COBS)</li> <li>◦ rules for dealing with client assets</li> <li>◦ Market Conduct code</li> <li>◦ Training and Competence</li> </ul> </li> <li>- Regulatory Processes:                                     <ul style="list-style-type: none"> <li>◦ authorisation, supervision, approved persons, significant influence functions, controlled functions, appointed representatives</li> </ul> </li> </ul> </li> <li>• risk-based supervision, discipline and enforcement, sanctions to deal with criminal activities</li> </ul>				
	Apply	The principles and risk as set out in the regulatory framework				
			<ul style="list-style-type: none"> <li>• regulated activities and authorisation requirements</li> <li>• approved person and controlled function responsibilities</li> </ul>			

		<ul style="list-style-type: none"> <li>• record keeping, reporting and notification requirements</li> </ul>			
		<ul style="list-style-type: none"> <li>• professionalism and the training and competence requirements</li> </ul>			
		<ul style="list-style-type: none"> <li>• Anti money laundering and proceeds of crime obligations</li> </ul>			
		<ul style="list-style-type: none"> <li>• Data protection including data security</li> </ul>			
		<ul style="list-style-type: none"> <li>• complaints procedures and responsibilities to consumers</li> </ul>			
		<ul style="list-style-type: none"> <li>• the Financial Ombudsman Service (FOS)</li> </ul>			
		<ul style="list-style-type: none"> <li>• the Financial Services Compensation Scheme (FSCS)</li> </ul>			
Apply	The regulatory advice framework in practice for the consumer				
		<ul style="list-style-type: none"> <li>• client relationships and adviser responsibilities:                             <ul style="list-style-type: none"> <li>- types of clients</li> <li>- fiduciary relationship – duty of care, confidentiality, primacy of clients’ interests</li> <li>- clarity of service provision and charges, status disclosure including terms of business and client agreements, execution only</li> <li>- limitations to own authority or expertise, referrals to and relationships with relevant specialists</li> <li>- clients’ cancellation rights</li> </ul> </li> </ul>			
		<ul style="list-style-type: none"> <li>• regulated advice standards</li> </ul>			
		<ul style="list-style-type: none"> <li>• monitoring and reviewing clients’ plans and circumstances and taking account of relevant changes</li> </ul>			

Understand	The range of skills required when advising clients				
		<ul style="list-style-type: none"> <li>Communicating clearly, assessing and adapting to the differing capabilities of clients</li> </ul>			
		<ul style="list-style-type: none"> <li>gathering information, assessment and analysis of client's needs and circumstances, reaching conclusions and making appropriate recommendations</li> </ul>			
Understand	The FSA's use of principles and outcomes based regulation to promote ethical and fair outcomes				
		<ul style="list-style-type: none"> <li>the Principles for Business and the discretionary obligations these place on firms</li> </ul>			
		<ul style="list-style-type: none"> <li>corporate culture and leadership</li> <li>the responsibilities that rest with approved persons and the need for integrity, competence and fair outcomes for clients, including dealing with conflicts of interest</li> </ul>			
Apply	The Code of Ethics and professional standards to business behaviours of individuals				
		<ul style="list-style-type: none"> <li>the over-arching Code of Ethics</li> </ul>			
		<ul style="list-style-type: none"> <li>the professional principles and values on which the Code is based</li> </ul>			



		<ul style="list-style-type: none"> <li>identifying ethical dilemmas</li> <li>the steps involved in managing ethical dilemmas</li> </ul>			
Critically evaluate	The outcomes that distinguish between ethical and compliance driven behaviours				
		<ul style="list-style-type: none"> <li>typical behavioural indicators – positive and negative</li> </ul>			
	<ul style="list-style-type: none"> <li>the outcomes which may result from behaving ethically – for the industry, the firm, individual advisers and consumers</li> </ul>				
	<ul style="list-style-type: none"> <li>the outcomes which may result from limiting behaviour to compliance with the rules – for the industry, firm, individual advisers and consumers</li> </ul>				

**Table 2 – Investment principles and risk**

Attainment level	Learning outcome	Indicative content	Covered in qualification? (Y/N)	Evidence of qualification top-up?	Verification of qualification top-up and date
Analyse	The characteristics, inherent risks, behaviour and correlation of asset classes				
		<ul style="list-style-type: none"> <li>cash and cash equivalents:                             <ul style="list-style-type: none"> <li>main types, costs and charges</li> </ul> </li> </ul>			

		<ul style="list-style-type: none"> <li>• fixed interest securities:               <ul style="list-style-type: none"> <li>- main types</li> <li>- running and redemption yields, interest rates and yield curves</li> <li>- markets and indices</li> <li>- transaction costs – purchase and sale</li> </ul> </li> <li>• equities:               <ul style="list-style-type: none"> <li>- main types, private equity</li> <li>- valuation measures – price/earnings (P/E) ratio, dividend yield and cover, Net Asset Value (NAV)</li> <li>- stock markets – indices, listings</li> <li>- transaction costs</li> </ul> </li> <li>• property:               <ul style="list-style-type: none"> <li>- main types, residential and commercial, income profile and gearing</li> <li>- valuation</li> <li>- performance benchmarking</li> <li>- transaction and on-going costs</li> </ul> </li> <li>• alternative investments such as commodities, and physical assets</li> <li>• pricing, liquidity and fair value</li> <li>• correlation of asset classes – relevance to asset allocation</li> </ul>			
Understand	The macro-economic environment and its impact on asset classes				
		<ul style="list-style-type: none"> <li>• main long term UK and global socio-economic trends</li> <li>• overview of world economies and globalisation of markets</li> </ul>			

		<ul style="list-style-type: none"> <li>• economic and financial cycles – predictability, regional economy differences</li> </ul>			
		<ul style="list-style-type: none"> <li>• the key economic indicators – trends and their interpretation</li> </ul>			
		<ul style="list-style-type: none"> <li>• significance of monetary and fiscal policy</li> </ul>			
		<ul style="list-style-type: none"> <li>• relevance of money, inflation, deflation, interest rates and exchange rates</li> </ul>			
		<ul style="list-style-type: none"> <li>• balance of payments and international capital flows</li> </ul>			
		<ul style="list-style-type: none"> <li>• the role of financial investment in the economy</li> </ul>			
Understand	The merits and limitations of the main investment theories				
		<ul style="list-style-type: none"> <li>• key features of the main investment theories: <ul style="list-style-type: none"> <li>- modern portfolio theory</li> <li>- multi factor theory</li> <li>- efficient market hypothesis</li> <li>- capital asset pricing model (CAPM)</li> </ul> </li> <li>• portfolio theory, diversification and hedging: <ul style="list-style-type: none"> <li>- correlation between asset classes</li> <li>- total return and an awareness of beta and alpha</li> <li>- risk adjusted returns</li> </ul> </li> <li>• basics of behavioural finance – market and individual behaviours</li> </ul>			
Apply	The principles of the time value of money				
		<ul style="list-style-type: none"> <li>• compound interest and discounting</li> <li>• real returns and nominal returns</li> </ul>			
Analyse and explain	The nature and impact of the main types of risk on investment performance				

		<ul style="list-style-type: none"> <li>• liquidity and access</li> </ul>			
		<ul style="list-style-type: none"> <li>• income and capital growth including shortfall</li> </ul>			
		<ul style="list-style-type: none"> <li>• short term volatility</li> </ul>			
		<ul style="list-style-type: none"> <li>• long term performance</li> </ul>			
		<ul style="list-style-type: none"> <li>• gearing</li> </ul>			
		<ul style="list-style-type: none"> <li>• currency</li> </ul>			
		<ul style="list-style-type: none"> <li>• inflation</li> </ul>			
		<ul style="list-style-type: none"> <li>• interest rates</li> </ul>			
		<ul style="list-style-type: none"> <li>• systemic and non-systemic, including fraud and counterparty, institutional, market timing</li> </ul>			
Analyse	The characteristics, inherent risks, behaviours and relevant tax considerations of investment products				
		<ul style="list-style-type: none"> <li>• the advantages and disadvantages of direct investment in securities and assets compared to indirect investment through collectives and other products</li> </ul>			
		<ul style="list-style-type: none"> <li>• the main types and use of indirect investment products:                             <ul style="list-style-type: none"> <li>- investment structures:                                     <ul style="list-style-type: none"> <li>◦ collective investment funds – onshore and offshore</li> <li>◦ Exchange Traded Funds (ETFs) and Exchange Traded Commodities (ETCs)</li> <li>◦ closed ended funds / investment companies – onshore and offshore</li> <li>◦ Individual Savings Account (ISAs) and Child Trust Funds (CTFs)</li> <li>◦ National Savings and Investments</li> </ul> </li> </ul> </li> </ul>			

		<ul style="list-style-type: none"> <li>◦ life assurance based investments – onshore and offshore</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ defined contribution (DC) pension arrangements</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ Real Estate Investment Trusts (REITs) and other property based products</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ Venture Capital Trusts (VCTs) and Enterprise Investments Schemes (EISs) – basic structures and uses</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ broker funds and distributor influenced funds (DIFs)</li> </ul>			
		<ul style="list-style-type: none"> <li>- derivatives:</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ basic structure, main types and uses</li> </ul>			
		<ul style="list-style-type: none"> <li>- investment strategy based products:</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ hedge fund and funds of hedge funds</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ absolute return funds</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ structured products – income and capital growth, structure and analysis</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ with profit funds – main principles</li> </ul>			
Apply	The investment advice process				
		<ul style="list-style-type: none"> <li>• know your client requirements:</li> </ul>			
		<ul style="list-style-type: none"> <li>- explain the investment process</li> </ul>			
		<ul style="list-style-type: none"> <li>- establish client relationships, capability and circumstances including assets and debts</li> </ul>			
		<ul style="list-style-type: none"> <li>- agree and prioritise needs and wants</li> </ul>			
		<ul style="list-style-type: none"> <li>- agree investment objectives, growth, income, time horizons, debt and credit management and repayment</li> </ul>			
		<ul style="list-style-type: none"> <li>- determine and agree risk profile – objective and subjective factors</li> </ul>			

		- assess affordability and other suitability considerations, ethical, social responsibility and religious preferences			
		- agree strategy and rationale to achieve the objectives			
		- agree benchmark / performance measures and review process			
		• asset allocation:			
		- alignment with client risk profile and requirements			
		- diversification and correlation benefits			
		- accumulation and decumulation			
Understand	The principles of investment planning				
		• asset allocation:			
	- stochastic modelling				
	- strategic and tactical asset allocation				
	• portfolio construction:				
	- stock and fund selection				
	- diversification by sector, geographical area and currency				
	- main fund management strategies and styles				
	- costs, charges, Total Expense Ratios (TERs), Portfolio Turnover Rates (PTRs)				
	- selection of products, tax wrapper and services				
	- provider selection and due diligence				
	- recommendations and suitability				
	• wrap and other platforms:				
	- concept and uses				
- benefits and risks					
- costs/charges					

Analyse	The performance of investments				
		<ul style="list-style-type: none"> <li>• portfolio performance:                             <ul style="list-style-type: none"> <li>- methods of evaluating portfolio performance</li> <li>- selection and use of benchmarks</li> <li>- new money and timing factors</li> </ul> </li> <li>• portfolio review and administration:                             <ul style="list-style-type: none"> <li>- changes in client circumstances</li> <li>- changes in financial environment</li> <li>- new products and services available</li> <li>- maintenance of products and services</li> <li>- use of external services / benchmarking</li> <li>- rebalancing</li> </ul> </li> </ul>			

**Table 3 – Personal taxation**

Attainment level	Learning outcome	Indicative content	Covered in qualification? (Y/N)	Evidence of qualification top-up and date	Verification of qualification top-up and date
Understand	The UK tax system as relevant to the needs and circumstances of individuals and trusts				
		<ul style="list-style-type: none"> <li>• income tax – sources of income, liability, allowances, reliefs, priorities for taxing income, income of trusts and beneficiaries</li> <li>• National Insurance Contributions (NICs) – liability</li> </ul>			

		for employers, employees, self-employed contribution levels, voluntary NICs			
		<ul style="list-style-type: none"> <li>• Capital Gains Tax (CGT) – liability, rate, disposals, gains and losses, reliefs and exemptions, capital gains of trusts</li> </ul>			
		<ul style="list-style-type: none"> <li>• Inheritance Tax (IHT) – liability, transfers, nil rate band, rates, reliefs and exemptions, assets held in trusts, transfers to and from trusts</li> </ul>			
		<ul style="list-style-type: none"> <li>• residence and domicile – main rules, impact on liability to income tax, CGT and IHT</li> </ul>			
		<ul style="list-style-type: none"> <li>• UK tax compliance – self assessment, Pay as You Earn (PAYE), tax returns, tax payments, tax evasion and avoidance issues</li> </ul>			
		<ul style="list-style-type: none"> <li>• Stamp duty reserve tax and stamp duty land tax – transactions subject to tax, rates of tax, main reliefs</li> </ul>			
		<ul style="list-style-type: none"> <li>• outline of Value Added Tax (VAT) and Corporation Tax</li> </ul>			
Analyse	The taxation of investments as relevant to the needs and circumstances of individuals and trusts				
		<ul style="list-style-type: none"> <li>• direct investments – cash and cash equivalents, fixed interest securities, equities and property</li> </ul>			
	<ul style="list-style-type: none"> <li>• indirect investments:</li> </ul>				
	<ul style="list-style-type: none"> <li>- pension arrangements</li> </ul>				
	<ul style="list-style-type: none"> <li>- Individual Savings Accounts (ISAs) and Child Trust Funds (CTFs)</li> </ul>				
	<ul style="list-style-type: none"> <li>- onshore and offshore collectives and investment companies</li> </ul>				
		<ul style="list-style-type: none"> <li>- onshore and offshore life assurance policies</li> </ul>			



		- Real Estate Investment Trusts (REITS)			
		- Venture Capital Trusts (VCTs) and Enterprise Initiative Schemes (EISs) – basic outline			
Analyse	The role and relevance of tax in the financial affairs of individuals and trusts				
		<ul style="list-style-type: none"> <li>the impact of taxes on individuals, trusts and their investments</li> </ul>			
		<ul style="list-style-type: none"> <li>key principles of income tax planning – spouse, civil partners, children, pension contributions, ISA allowances, use of the main CGT exemptions and reliefs</li> </ul>			
		<ul style="list-style-type: none"> <li>main uses of lifetime gifts and trusts in basic IHT mitigation</li> </ul>			
Apply	the knowledge of personal taxation to the provision of investment advice				
		<ul style="list-style-type: none"> <li>to carry out computations on the most common elements of income tax and NICs; CGT; IHT including the impact of lifetime transfers and transfers at death</li> </ul>			
		<ul style="list-style-type: none"> <li>to make elementary tax planning recommendations in the context of investment advice</li> </ul>			

## Specialist content

Table 4 – Securities

Attainment level	Learning outcome	Indicative content	Covered in qualification? (Y/N)	Evidence of qualification top-up and date	Verification of qualification top-up and date
Understand	The securities market structure, features, regulatory and trading environment				
		<ul style="list-style-type: none"> <li>• role, structure and regulation of global securities markets: <ul style="list-style-type: none"> <li>- primary, secondary and dual listing</li> <li>- exchange trading and over-the-counter (OTC) trading</li> <li>- role of regulators, other supervisory bodies and trade associations</li> </ul> </li> <li>• market participants and roles</li> <li>• domestic markets: <ul style="list-style-type: none"> <li>- issuing, listing, quotation, admission to market: <ul style="list-style-type: none"> <li>◦ UK Listing Authority</li> <li>◦ PLUS Market</li> <li>◦ AIM Market</li> <li>◦ issuing securities without a prospectus</li> </ul> </li> <li>- Markets for trading: <ul style="list-style-type: none"> <li>◦ equities</li> </ul> </li> </ul> </li> </ul>			

		<ul style="list-style-type: none"> <li>◦ Government bonds</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ corporate bonds</li> </ul>			
		<ul style="list-style-type: none"> <li>- Other trading venues:</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ Multilateral Trading Facilities (MTFs)</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ Systemic Internalisers</li> </ul>			
		<ul style="list-style-type: none"> <li>◦ dark pools</li> </ul>			
		<ul style="list-style-type: none"> <li>• international markets:</li> </ul>			
		<ul style="list-style-type: none"> <li>- developed markets</li> </ul>			
		<ul style="list-style-type: none"> <li>- emerging markets</li> </ul>			
		<ul style="list-style-type: none"> <li>- foreign exchange market</li> </ul>			
		<ul style="list-style-type: none"> <li>- structure and access considerations</li> </ul>			
Apply	Dealing principles and practice to relevant client investment activity				
		<ul style="list-style-type: none"> <li>• dealing – domestic markets, rules and principles:</li> </ul>			
		<ul style="list-style-type: none"> <li>- Best Execution</li> </ul>			
		<ul style="list-style-type: none"> <li>- aggregation and allocation</li> </ul>			
		<ul style="list-style-type: none"> <li>- front running</li> </ul>			
		<ul style="list-style-type: none"> <li>• international markets – main differences in principle and practice</li> </ul>			
Understand	Clearing, settlement and custody principles and practice relevant to client investment activity				
		<ul style="list-style-type: none"> <li>• clearing and central counterparty – UK process, duties, risks</li> </ul>			
		<ul style="list-style-type: none"> <li>• settlement:</li> </ul>			
		<ul style="list-style-type: none"> <li>- UK process</li> </ul>			
		<ul style="list-style-type: none"> <li>- International Central Securities Depositories</li> </ul>			

		(CSDs)			
		<ul style="list-style-type: none"> <li>• custody of assets and client money</li> </ul>			
		<ul style="list-style-type: none"> <li>• relevance and impact of corporate actions</li> </ul>			
Assess	The factors that influence market behaviour relevant to investment advice				
		<ul style="list-style-type: none"> <li>• factors that influence market and individual security movements:</li> </ul>			
		<ul style="list-style-type: none"> <li>- volume, liquidity and impact of trading activities – domestic and international markets</li> </ul>			
		<ul style="list-style-type: none"> <li>- derivatives market, interactivity of timed events, relationship with cash market</li> </ul>			
		<ul style="list-style-type: none"> <li>- research and ratings</li> </ul>			
		<ul style="list-style-type: none"> <li>- Market Abuse regime</li> </ul>			
		<ul style="list-style-type: none"> <li>• information and disclosure:</li> </ul>			
		<ul style="list-style-type: none"> <li>- issuer reporting and announcement, corporate actions</li> </ul>			
		<ul style="list-style-type: none"> <li>- transparency obligations – transaction reporting, share ownership and disclosure, short selling</li> </ul>			
		<ul style="list-style-type: none"> <li>- market data convention</li> </ul>			
Analyse	The characteristics, features, behaviours and risks of securities in the context of the market for these products				
		<ul style="list-style-type: none"> <li>• equities:</li> </ul>			
		<ul style="list-style-type: none"> <li>- share classes</li> </ul>			
		<ul style="list-style-type: none"> <li>- American Depositary Receipts (ADRs) and</li> </ul>			

		Global Depository Receipts (GDRs)			
		- comparative valuation measures and relevance			
		• debt securities:			
		- domestic and international government securities			
		- corporate debt securities			
		- duration, interest rates movements, price/yield relationship			
		- creditor ratings, creditor rankings			
		• derivative substitutes:			
		- warrants and covered warrants			
		- contracts for difference (CFDs)			
		• collectives:			
		- open and closed ended			
		- asset value, pricing and gearing			
		- asset cover, redemption yields			
		- investment management styles and fund selection			
		- passported products			
		• ETFs and structured products			
		• cash and cash equivalents			
		• Foreign Exchange			
<i>These standards include the requirement to COMBINE and APPLY the learning content from all units of the Appropriate Qualification</i>					
Apply	The relevant factors and considerations to decide and implement investment recommendations				
		• obtain the range of client information and subjective factors to understand their needs, wants, values and risk profile essential to planning			

		<ul style="list-style-type: none"> <li>● synthesise client and relevant market information to provide the basis for assumptions and decisions</li> </ul>			
		<ul style="list-style-type: none"> <li>● analyse the advantages and disadvantages of the appropriate options</li> </ul>			
		<ul style="list-style-type: none"> <li>● select, recommend, explain and justify, and transact:</li> </ul>			
		<ul style="list-style-type: none"> <li>- sources and use of research and other information</li> </ul>			
		<ul style="list-style-type: none"> <li>● holding securities within an investment portfolio:</li> </ul>			
		<ul style="list-style-type: none"> <li>- direct holdings, indirect holdings and combinations</li> </ul>			
		<ul style="list-style-type: none"> <li>- role of derivative substitutes</li> </ul>			
		<ul style="list-style-type: none"> <li>- rationale, advantages and disadvantages</li> </ul>			
		<ul style="list-style-type: none"> <li>- impact on overall client objectives and priorities</li> </ul>			
		<ul style="list-style-type: none"> <li>- asset allocation factors and relationship to overall portfolio</li> </ul>			
		<ul style="list-style-type: none"> <li>- matching to client risk appetite</li> </ul>			
		<ul style="list-style-type: none"> <li>● take account of relevant tax, accounting and costs considerations</li> </ul>			
		<ul style="list-style-type: none"> <li>● comply with advice and dealing regulation specific to securities – COBS</li> </ul>			
		<ul style="list-style-type: none"> <li>● client reporting requirements</li> </ul>			
		<ul style="list-style-type: none"> <li>● communication, monitoring, review and maintenance of the portfolio to achieve the client's objectives, deal with change and respond to setbacks</li> </ul>			

Table 5 – Derivatives

Attainment level	Learning outcome	Indicative content	Covered in qualification? (Y/N)	Evidence of qualification top-up?	Verification of qualification top-up and date
Understand	The derivatives market structure, features, regulatory and trading environment				
		<ul style="list-style-type: none"> <li>• role, structure and regulation of global derivatives markets: <ul style="list-style-type: none"> <li>- role of regulators, other supervisory bodies and trade associations</li> </ul> </li> <li>• range of derivative instruments and typical risks: <ul style="list-style-type: none"> <li>- financial derivatives</li> <li>- commodity derivatives</li> <li>- property derivatives</li> <li>- exotic derivatives</li> </ul> </li> <li>• market terminology</li> <li>• key market participants and roles</li> <li>• exchange trading and over-the-counter (OTC) trading – main differences: <ul style="list-style-type: none"> <li>- standard and bespoke</li> <li>- maturity, expiry, margin, collateral, liquidity</li> <li>- clearing and settlement</li> <li>- transparency and confidentiality</li> <li>- trading mechanisms</li> <li>- counterparties</li> </ul> </li> </ul>			

		<ul style="list-style-type: none"> <li>- documentation</li> </ul>			
		<ul style="list-style-type: none"> <li>• central counterparty (CCP) clearing of OTC transactions</li> </ul>			
Understand	The principles, components, characteristics and risks of derivatives relative to the underlying				
		<ul style="list-style-type: none"> <li>• relationships to underlying</li> </ul>			
		<ul style="list-style-type: none"> <li>• physically settled versus cash settled</li> </ul>			
		<ul style="list-style-type: none"> <li>• general pricing principles – futures, options</li> </ul>			
Understand	The market environment, product types and characteristics of Exchange Traded derivatives				
		<ul style="list-style-type: none"> <li>• main products:</li> </ul>			
		<ul style="list-style-type: none"> <li>- futures</li> </ul>			
		<ul style="list-style-type: none"> <li>- options</li> </ul>			
		<ul style="list-style-type: none"> <li>• main UK and international exchanges</li> </ul>			
		<ul style="list-style-type: none"> <li>• trading platforms:</li> </ul>			
		<ul style="list-style-type: none"> <li>- mechanisms and procedures</li> </ul>			
		<ul style="list-style-type: none"> <li>• wholesale trading facilities:</li> </ul>			
		<ul style="list-style-type: none"> <li>- significance and uses</li> </ul>			
		<ul style="list-style-type: none"> <li>• clearing mechanisms and processes</li> </ul>			
Understand	The pricing, trading and market practice of Exchange Traded derivatives	<ul style="list-style-type: none"> <li>• calculation of profit/loss on delivery or expiry – futures and options</li> </ul>			
		<ul style="list-style-type: none"> <li>• mechanisms for futures pricing:</li> </ul>			
		<ul style="list-style-type: none"> <li>- factors influencing pricing</li> </ul>			



		<ul style="list-style-type: none"> <li>- bases for calculation</li> </ul>			
		<ul style="list-style-type: none"> <li>• mechanisms of options pricing:                             <ul style="list-style-type: none"> <li>- factors influencing pricing and premiums</li> <li>- bases for calculation</li> </ul> </li> </ul>			
		<ul style="list-style-type: none"> <li>• price discovery for commodities</li> </ul>			
		<ul style="list-style-type: none"> <li>• market transparency, reporting and monitoring</li> </ul>			
		<ul style="list-style-type: none"> <li>• order / instruction flow and order type</li> </ul>			
		<ul style="list-style-type: none"> <li>• input and matching, trade registration processes</li> </ul>			
Understand	The main types and characteristics of OTC traded derivatives				
		<ul style="list-style-type: none"> <li>• forwards and forward rate agreements (FRAs)</li> </ul>			
		<ul style="list-style-type: none"> <li>• OTC option products</li> </ul>			
		<ul style="list-style-type: none"> <li>• contracts for difference</li> </ul>			
		<ul style="list-style-type: none"> <li>• swaps:                             <ul style="list-style-type: none"> <li>- interest rate swaps</li> </ul> </li> </ul>			
		<ul style="list-style-type: none"> <li>• credit derivatives:                             <ul style="list-style-type: none"> <li>- credit default swaps</li> </ul> </li> </ul>			
		<ul style="list-style-type: none"> <li>• structured products</li> </ul>			
		<ul style="list-style-type: none"> <li>• OTC trade capture, confirmation and clearing mechanisms</li> </ul>			
Understand	Clearing, margin, settlement, exercise and delivery of both Exchange Traded and OTC derivatives				
		<ul style="list-style-type: none"> <li>• definition and purpose of clearing:                             <ul style="list-style-type: none"> <li>- roles and relationships</li> <li>- risks and guarantees</li> <li>- central counterparty clearing</li> </ul> </li> </ul>			

		<ul style="list-style-type: none"> <li>• purpose, types and application of margin:               <ul style="list-style-type: none"> <li>- parties involved</li> <li>- processing, collection and payment</li> <li>- pricing factors and calculation</li> </ul> </li> <li>• purpose, types and application of collateral</li> <li>• delivery and settlement</li> <li>• exercise of options, assignment of obligations, abandonment and expiry</li> </ul>			
Evaluate	The purpose, merits, limitations and risks of the main derivatives strategies for trading, hedging and investment relevant to client investment activity				
		<ul style="list-style-type: none"> <li>• trading and speculation</li> <li>• hedging:               <ul style="list-style-type: none"> <li>- options strategies</li> <li>- futures strategies</li> </ul> </li> <li>• investment and derivatives, including use of synthetics:               <ul style="list-style-type: none"> <li>- portfolio hedging</li> <li>- portfolio yield enhancement</li> <li>- structured funds and ETFs</li> </ul> </li> </ul>			
<i>These standards include the requirement to COMBINE and APPLY the learning content from all units of the Appropriate Qualification</i>					
Apply	The relevant factors and considerations to decide and implement investment recommendations				

		<ul style="list-style-type: none"> <li>● obtain the range of client information and subjective factors to understand their needs, wants, values and risk profile essential to planning</li> </ul>			
		<ul style="list-style-type: none"> <li>● synthesise client and relevant market information to provide basis for assumptions and decisions</li> </ul>			
		<ul style="list-style-type: none"> <li>● analyse the advantages and disadvantages of the appropriate strategies</li> </ul>			
		<ul style="list-style-type: none"> <li>● select, recommend, explain and justify, and transact:</li> </ul>			
		<ul style="list-style-type: none"> <li>- sources and use of research and other information</li> </ul>			
		<ul style="list-style-type: none"> <li>● holding derivatives within an investment portfolio:</li> </ul>			
		<ul style="list-style-type: none"> <li>- direct holdings, indirect holdings and combinations</li> </ul>			
		<ul style="list-style-type: none"> <li>- rationale, advantages and disadvantages</li> </ul>			
		<ul style="list-style-type: none"> <li>- impact on overall client objectives and priorities</li> </ul>			
		<ul style="list-style-type: none"> <li>- main factors to consider when holding both securities and derivatives within the portfolio</li> </ul>			
		<ul style="list-style-type: none"> <li>- asset allocation factors and relationship to overall portfolio</li> </ul>			
		<ul style="list-style-type: none"> <li>- matching to client risk appetite and trade-offs</li> </ul>			
		<ul style="list-style-type: none"> <li>● take account of relevant tax, accounting and costs considerations</li> </ul>			
		<ul style="list-style-type: none"> <li>● comply with advice and dealing regulations specific to derivatives – COBS</li> </ul>			
		<ul style="list-style-type: none"> <li>● client reporting requirements</li> </ul>			
		<ul style="list-style-type: none"> <li>● communication, monitoring, review and maintenance of the portfolio to achieve the client’s objectives, deal with change and respond to</li> </ul>			

		setbacks			
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**Table 6 – Pensions and retirement planning**

Attainment level	Learning outcome	Indicative content	Covered in qualification? (Y/N)	Evidence of qualification top-up?	Verification of qualification top-up and date
Understand	The political, economic and social environment factors which provide the context for pensions planning				
		<ul style="list-style-type: none"> <li>• role of Government, policy direction, challenges and proposed reforms</li> </ul>			
		<ul style="list-style-type: none"> <li>• corporate responsibilities, challenges and impact on pension provision</li> </ul>			
		<ul style="list-style-type: none"> <li>• demographic trends, longevity and ageing population</li> </ul>			
		<ul style="list-style-type: none"> <li>• incentives, disincentives and attitudes to saving</li> </ul>			
		<ul style="list-style-type: none"> <li>• main scheme types and methods of pension provision:                             <ul style="list-style-type: none"> <li>- State pension benefits</li> <li>- DB schemes, funding and benefits</li> <li>- DC schemes, funding and benefits</li> </ul> </li> </ul>			
Understand	How the HMRC tax regime applies to pension planning				

		<ul style="list-style-type: none"> <li>• funding/contributions to registered pension schemes, tax relief provision</li> </ul>			
		<ul style="list-style-type: none"> <li>• pension scheme investment funds</li> </ul>			
		<ul style="list-style-type: none"> <li>• death benefits before and after crystallisation</li> </ul>			
		<ul style="list-style-type: none"> <li>• pension scheme retirement benefits</li> </ul>			
		<ul style="list-style-type: none"> <li>• outline of the annual allowance, lifetime allowances, special annual allowance, and associated charges</li> </ul>			
		<ul style="list-style-type: none"> <li>• outline of relevant transitional reliefs post- Finance Act 2006</li> </ul>			
		<ul style="list-style-type: none"> <li>• outline of the tax treatment of other scheme types:                             <ul style="list-style-type: none"> <li>- Employer Funded Retirement Benefit Schemes (EFRBS)</li> <li>- Qualifying Recognised Overseas Pension Schemes (QROPS)</li> </ul> </li> </ul>			
Understand	The relevant aspects of pensions law and regulation to pensions planning				
		<ul style="list-style-type: none"> <li>• Pensions Regulator compliance requirements</li> <li>• pension protection schemes</li> <li>• trust and contract based pension schemes</li> <li>• role and duties of trustees and administrators</li> <li>• pensions and divorce</li> <li>• employment law relevant to pensions</li> <li>• bankruptcy law and pension assets</li> </ul>			
Understand	The structure, relevance and application of the State Schemes to an individual's pension				

	planning				
		<ul style="list-style-type: none"> <li>• basic state retirement benefits</li> </ul>			
		<ul style="list-style-type: none"> <li>• additional state retirement benefits, historic and current</li> </ul>			
		<ul style="list-style-type: none"> <li>• contracting in/out considerations</li> </ul>			
		<ul style="list-style-type: none"> <li>• pension credit framework</li> </ul>			
Understand	The structure, characteristics and application of Defined Benefit schemes to an individual's pension planning				
		<ul style="list-style-type: none"> <li>• main attributes and benefits of DB pension provision</li> </ul>			
		<ul style="list-style-type: none"> <li>• main types, variations and hybrids</li> </ul>			
		<ul style="list-style-type: none"> <li>• rules and operation of DB schemes</li> </ul>			
		<ul style="list-style-type: none"> <li>• funding methods and issues</li> </ul>			
		<ul style="list-style-type: none"> <li>• roles of trustees and other parties, and scheme reporting</li> </ul>			
		<ul style="list-style-type: none"> <li>• factors to consider and benefits on leaving, early and normal retirement</li> </ul>			
		<ul style="list-style-type: none"> <li>• benefits on ill health and death</li> </ul>			
		<ul style="list-style-type: none"> <li>• eligibility criteria and top up options</li> </ul>			
		<ul style="list-style-type: none"> <li>• transfer issues and considerations</li> </ul>			
		<ul style="list-style-type: none"> <li>• public sector schemes</li> </ul>			
Analyse	The range of Defined Contribution scheme options as they apply to an individual's pension planning				

		<ul style="list-style-type: none"> <li>• main attributes and benefits of DC pension provision</li> </ul>			
		<ul style="list-style-type: none"> <li>• legal bases for schemes and main impacts</li> </ul>			
		<ul style="list-style-type: none"> <li>• main types of DC schemes and their rules and operation</li> </ul>			
		<ul style="list-style-type: none"> <li>• contributions – methods and issues</li> </ul>			
		<ul style="list-style-type: none"> <li>• contracting out, rebates and the contracting out decision</li> </ul>			
		<ul style="list-style-type: none"> <li>• benefits on leaving and death before crystallisation</li> </ul>			
		<ul style="list-style-type: none"> <li>• scheme options, limitations and restrictions</li> </ul>			
		<ul style="list-style-type: none"> <li>• crystallisation options and impact of decisions</li> </ul>			
		<ul style="list-style-type: none"> <li>• transfer issues and considerations</li> </ul>			
		<ul style="list-style-type: none"> <li>• stakeholder pensions</li> </ul>			
		<ul style="list-style-type: none"> <li>• Personal Accounts</li> </ul>			
Analyse	The options and factors to consider for drawing pension benefits				
		<ul style="list-style-type: none"> <li>• State retirement benefits</li> </ul>			
		<ul style="list-style-type: none"> <li>• DB schemes:                             <ul style="list-style-type: none"> <li>- scheme benefits, payment guarantees, survivor benefits</li> </ul> </li> </ul>			
		<ul style="list-style-type: none"> <li>• DC schemes:                             <ul style="list-style-type: none"> <li>- secured pensions, types of annuities and main features</li> <li>- unsecured pensions</li> <li>- compliance requirements</li> </ul> </li> </ul>			
		<ul style="list-style-type: none"> <li>• phased retirement – options, benefits and risks</li> </ul>			
		<ul style="list-style-type: none"> <li>• timing of decisions and implementation</li> </ul>			
		<ul style="list-style-type: none"> <li>• triviality rules</li> </ul>			

Evaluate	The aims and objectives of retirement planning including the relevant investment issues				
		<ul style="list-style-type: none"> <li>● assessing and quantifying retirement aims and objectives:</li> </ul>			
		<ul style="list-style-type: none"> <li>- availability and prioritisation of savings</li> </ul>			
		<ul style="list-style-type: none"> <li>- assumptions and impacts</li> </ul>			
		<ul style="list-style-type: none"> <li>- conflicts with other objectives</li> </ul>			
		<ul style="list-style-type: none"> <li>- timescales and risk</li> </ul>			
		<ul style="list-style-type: none"> <li>● investments available to meet this objective:</li> </ul>			
		<ul style="list-style-type: none"> <li>- suitability and risk</li> </ul>			
		<ul style="list-style-type: none"> <li>- rates of return needed</li> </ul>			
		<ul style="list-style-type: none"> <li>- accumulation and decumulation strategies, life-styling</li> </ul>			
		<ul style="list-style-type: none"> <li>- products and wrappers, advantages and constraints, critical yield</li> </ul>			
		<ul style="list-style-type: none"> <li>- other sources of non-pension income</li> </ul>			
		<ul style="list-style-type: none"> <li>● asset allocation factors, relationship to overall portfolio</li> </ul>			
		<ul style="list-style-type: none"> <li>● self investment:</li> </ul>			
		<ul style="list-style-type: none"> <li>- main characteristics</li> </ul>			
		<ul style="list-style-type: none"> <li>● alternative sources for pension income</li> </ul>			
		<ul style="list-style-type: none"> <li>- alternative sources of capital including non-pension investment assets, home equity, proceeds from sale of a business, inheritance</li> </ul>			
		<ul style="list-style-type: none"> <li>- advantages and drawbacks</li> </ul>			
		<ul style="list-style-type: none"> <li>● factors affecting regular reviews</li> </ul>			



**Table 7 – Application standards for packaged products**

Outcome standards	Assessment	Covered in qualification? (Y/N)	Evidence of qualification top-up?	Verification of qualification top-up and date
Candidates should be able to:	Assessment at this level will seek to test ability to:			
<ul style="list-style-type: none"> <li>Obtain appropriate client information and understand clients' needs, wants, values and risk profile essential to the financial planning process</li> </ul>	<ul style="list-style-type: none"> <li>Identify and use relevant understanding, methods and skills to address problems that are complex and non-routine while normally fairly well defined</li> </ul>			
<ul style="list-style-type: none"> <li>Synthesise the range of client information, subjective factors and indicators to provide the basis for financial planning assumptions and decisions</li> </ul>				
<ul style="list-style-type: none"> <li>Analyse a client's situation and the advantages and disadvantages of the appropriate options</li> </ul>	<ul style="list-style-type: none"> <li>Take responsibility for overall courses of action as well as exercise autonomy and judgement</li> </ul>			
<ul style="list-style-type: none"> <li>Formulate suitable financial plans for action</li> </ul>	<ul style="list-style-type: none"> <li>Initiate and use appropriate investigation to inform actions</li> <li>Analyse, interpret and evaluate relevant information and ideas</li> </ul>			
<ul style="list-style-type: none"> <li>Explain and justify recommendations</li> </ul>				
<ul style="list-style-type: none"> <li>Implement, review and maintain financial plans to achieve the clients' objectives and adapt to changes in circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Review the effectiveness and appropriateness of methods, actions and results</li> </ul>			

**Part 2: Comes into force on 1 July 2011**

Amend the following as shown.

2.1.15 R [to follow]

2.1.16 G [to follow]

2.1.17 R [to follow]

2.1.18 G [to follow]

2.1.19 G [to follow]

2.1.20 G [to follow]

2.1.21 G [to follow]

2.1.22 G [to follow]

2.1.23 G [to follow]

2.1.24 R [to follow]

2.1.25 R [to follow]

2.1.26 R [to follow]

2.1.27 R [to follow]

2.1.28 R [to follow]

2.1.29 G [to follow]

2.1.30 G [to follow]

Notification requirements

2.1.31 R *A firm must notify the FSA as soon as reasonably practicable after it becomes aware, or has information which reasonably suggests, that any of the following events has occurred or may have occurred in relation to any of its retail investment advisers, and the event is significant:*

(1) *a retail investment adviser, who has been assessed as competent for the purposes of TC 2.1.1R, is no longer considered competent for those purposes;*

(2) *a retail investment adviser has failed to attain an appropriate qualification within the time limit prescribed by TC 2.2A.1R(1);*

(3) *a retail investment adviser has failed to comply with a Statement of Principle in carrying out his controlled function; and*

(4) a retail investment adviser has performed an activity in TC Appendix 1 before having demonstrated the necessary competence for the purposes of TC 2.1.1R and without appropriate supervision.

2.1.32 G When considering whether an event is significant a firm should include the following in its considerations:

(1) the potential risk of consumer detriment as a result of the event;

(2) whether the event or a pattern of events indicate recurrent issues in relation to one or more retail investment advisers; and

(3) its obligations under Principle 11.

2.1.33 G The Retail Investment Adviser Competence Notification Form approved by the FSA for notifications under TC 2.1.31R may be found at the FSA's website [www.fsa.gov.uk/Pages/Doing/Regulated/Notify/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/index.shtml).

...

## Sch 2 Notification requirements

2.1G ~~There are no notification or reporting requirements in TC.~~

<u>Handbook reference</u>	<u>Matter to be notified</u>	<u>Contents of notification</u>	<u>Trigger event</u>	<u>Time allowed</u>
<u>TC 2.1.31R</u>	<u>Notifications – issues relating to the competency and behaviour of retail investment advisers.</u>	<p>(1) <u>Information about any circumstances relevant to the issue; and</u></p> <p>(2) <u>information about any steps which a firm has taken or intends to take to rectify the position or prevent any future potential occurrence.</u></p>	<u>Becoming aware, or having information which reasonably suggests that any of the following has occurred or may occur, and the event is significant:</u>	<u>As soon as reasonably practicable.</u>
			<u>(1) a retail investment adviser, who has been assessed as competent for the purposes of TC 2.1.1R, is no longer considered competent for the purposes of</u>	

			<u>TC 2.1.1.R:</u>	
			<u>(2) a retail investment adviser has failed to attain an appropriate qualification within the time limit prescribed by TC 2.2A.1R(1):</u>	
			<u>(3) a retail investment adviser has failed to comply with a Statement of Principle in carrying out his controlled function; and</u>	
			<u>(4) a retail investment adviser has performed an activity in TC Appendix 1 before having demonstrated the necessary competence for the purposes of TC 2.1.1R and without appropriate supervision.</u>	

**Part 3: Comes into force on 31 December 2012**

Supervision

- 2.1.4 G *Firms* should ensure that those supervising *employees* carrying on an activity in *TC* Appendix 1 have the necessary coaching and assessment skills as well as technical knowledge and experience to act as a competent supervisor and assessor. In particular *firms* should consider whether it is appropriate to require those supervising *employees* not assessed as competent to attain an appropriate qualification as well except where the *employee* is giving advice on ~~*packaged products*~~ *retail investment products*, see *TC 2.1.5R*.
- 2.1.5 R Where an *employee* is giving advice on ~~*packaged products*~~ *retail investment products* to *retail clients* and has not been assessed as competent to do so,

the *firm* must ensure that the individual supervising and assessing that *employee* has attained an appropriate qualification.

...

#### Qualification requirements before starting activities

...

2.1.8A R A firm must ensure that an *employee* who was assessed as competent as a *retail investment adviser* for the purposes of TC 2.1.1R at 30 June 2009 does not carry on the activity of a *retail investment adviser* without first attaining an appropriate qualification.

#### Exemption from appropriate qualification requirements

- 2.1.9 R (1) If a *firm* is satisfied that an *employee* meets the conditions in this *rule* then the requirements to have attained each module of an appropriate qualification will only apply if that *employee* is carrying on one of the activities specified in this *rule*.
- (2) The conditions are that a *firm* should be satisfied that an *employee*:
- (a) has at least three years' up-to-date relevant experience in the activity in question obtained while employed outside the *United Kingdom*;
  - (b) has not previously been required to comply fully with the relevant qualification requirements in TC 2.1.1R; and
  - (c) has attained the relevant regulatory module of an appropriate qualification;
- but (b) and (c) do not apply to an *employee* who is benefiting from the "30-day rule" exemption in SUP 10.10.7BR, unless the *employee* benefits from that rule because he is advising *retail clients* on ~~*packaged products*~~ *retail investment products* or is a *broker fund adviser*.
- (3) The relevant activities are:
- (a) *advising on investments* which are ~~*packaged products*~~ *retail investment products*, if that advice is given to *retail clients*;
  - (b) the activity of *broker fund adviser*;
  - (c) *advising on syndicate participation at Lloyd's*; or
  - (d) the activity of a *pension transfer specialist*.

...

Continuing professional development

- 2.1.15 R ~~{to follow}~~ Subject to TC 2.1.17R, a firm must ensure that a retail investment adviser who has been assessed as competent for the purposes of TC 2.1.1R remains competent by completing a minimum of 35 hours of appropriate continuing professional development in each 12 month period.
- 2.1.16 G ~~{to follow}~~ In order to meet the requirement in TC 2.1.15R, a retail investment adviser should complete no less than 21 hours of structured continuing professional development activities.
- 2.1.17 R ~~{to follow}~~ A firm is permitted to suspend the requirements of TC 2.1.15R in respect of a retail investment adviser for the period of time during which the retail investment adviser is continuously absent from work, if that absence is due to:
- (1) maternity, paternity or adoption leave;
  - (2) long-term illness or disability;
  - (3) caring responsibilities for a family member who has a long-term illness or disability; or
  - (4) any other absence allowed in order for the firm to meet its statutory duties in relation to equality and diversity.
- 2.1.18 G ~~{to follow}~~ In TC 2.1.17R(3), a family member includes a partner, parent, grandparent, sibling or child.
- 2.1.19 G ~~{to follow}~~ In deciding whether to suspend the requirements of TC 2.1.15R, a firm should take into account:
- (1) the retail investment adviser's individual circumstances;
  - (2) the length of time the retail investment adviser is likely to be absent from carrying on the activity; and
  - (3) its statutory duties in relation to equality and diversity.
- 2.1.20 G ~~{to follow}~~ Examples of structured continuing professional development activities include participating in courses, seminars, lectures, conferences, workshops, web-based seminars or e-learning which require a contribution of thirty minutes or more.
- 2.1.21 G ~~{to follow}~~ Examples of unstructured continuing professional development activities include:
- (1) conducting research relevant to the individual's role;
  - (2) reading industry or other relevant material;

- (3) participating in professional development coaching or mentoring sessions.
- 2.1.22 G ~~{to follow}~~ All continuing professional development should:
- (1) be relevant to the *retail investment adviser's* current role and any anticipated changes to that role;
- (2) maintain the *retail investment adviser's* knowledge by reference to current qualification standards relevant to the *retail investment adviser's* role;
- (3) contribute to the *retail investment adviser's* professional skill and knowledge;
- (4) address any identified gaps in the *retail investment adviser's* technical knowledge;
- (5) have written learning objectives based on learning needs and a documented learning outcome;
- (6) be measurable and capable of being independently verified by an *accredited body*.
- 2.1.23 G ~~{to follow}~~ Continuing professional development completed by a *retail investment adviser* in relation to activities other than acting as a *retail investment adviser* should not be taken into account for the purposes of TC 2.1.15R unless it is also relevant to the activity of acting as a *retail investment adviser*.
- 2.1.24 R ~~{to follow}~~ A *firm* must, for the purposes of TC 3.1.1R (Record keeping), make and retain records of:
- (1) the continuing professional development completed by each *retail investment adviser*; and
- (2) the dates of and reasons for any suspension of the continuing professional development requirements under TC 2.1.17R.
- 2.1.25 R ~~{to follow}~~ A *firm* must not prevent a *retail investment adviser* from obtaining a copy of the records relating to that *retail investment adviser* which are maintained by the *firm* for the purposes of TC 2.1.24R.

#### Annual declarations

- 2.1.26 R ~~{to follow}~~ A *firm* must ensure that a *retail investment adviser* confirms annually in writing that the *retail investment adviser* has, in the preceding 12 months:
- (1) complied with *APER*; and

- (2) if applicable, completed the continuing professional development required under TC 2.1.15R.

Independent verification

- 2.1.27 R ~~{to follow}~~ A firm must obtain from an accredited body independent verification of the firm's compliance with:
- (1) in respect of its retail investment advisers only, the requirement in TC 2.1.1R to attain each module of an appropriate qualification;
  - (2) TC 2.1.15R; and
  - (3) TC 2.1.26R.
- 2.1.28 R ~~{to follow}~~ The independent verification in TC 2.1.27R must be obtained by a firm:
- (1) in respect of a competent retail investment adviser who began to carry on the activity of a retail investment adviser on or before 31 December 2012, within 60 days of that date and of the anniversary of that date thereafter;
  - (2) in respect of a retail investment adviser who began to carry on the activity of a retail investment adviser on or after 1 January 2013, within 60 days of the date on which the retail investment adviser was assessed as competent as a retail investment adviser and of the anniversary of that date thereafter.
- 2.1.29 G ~~{to follow}~~ Independent verification for the purposes of TC 2.1.27R should take the form of a statement of professional standing issued by an accredited body.
- 2.1.30 G ~~{to follow}~~ The Glossary definition of accredited body contains a list of bodies recognised by the FSA for the purpose of providing the independent verification required under TC 2.1.27R. Information on accredited bodies, including guidance on the process for including a body in the list is set out in TC Appendix 6G and the obligation to pay the application fee is set out in FEES 3.2.



After TC 2.2A insert the following new section. The text is not underlined.

## **2.2B Reporting requirements**

### Application

- 2.2B.1 R This section applies to a *firm* with *employees* that are *retail investment advisers*.

### Purpose

- 2.2B.2 G (1) The purpose of this section is to set out the requirement for *firms* which employ *retail investment advisers* to notify each individual *retail investment adviser's* professional standards data to the *FSA*.
- (2) The purpose of collecting this data is to assist the *FSA* in the ongoing supervision of *firms* which employ *retail investment advisers* and to enable the *FSA* to gain an understanding of the professional development of individual *retail investment advisers* in the interests of protecting customers.

### Reporting requirement

- 2.2B.3 R (1) A *firm* must submit a report (the 'data report') to the *FSA* containing the information required by *TC 2.2B.4R* quarterly, within 20 *business days* of the end of the quarter, unless (3) applies.
- (2) The reporting periods are the four calendar quarters of each year beginning on 1 January.
- (3) A *firm* need not submit a data report if no changes have occurred in relation to the information submitted by the *firm* in its previous report.
- (4) A *firm* may submit a data report more frequently than quarterly if it wishes.

### Content of the report

- 2.2B.4 R The report must contain professional standards data as follows:
- (1) the *firm's* name and *FSA* Firm Reference Number;
- (2) the names and *FSA* Individual Reference Numbers of the *firm's* *employees* who are *retail investment advisers*, including trainees;
- (3) whether a *retail investment adviser* has attained an appropriate qualification;
- (4) if a *retail investment adviser* has not attained an appropriate qualification, the date on which the *employee* began to carry on the

activity of a *retail investment adviser*; and

(5) the name of the *accredited body* used for the purposes of *TC 2.1.27R*.

2.2B.5 R The data report must comply with the provisions of *TC Appendix 8R*.

2.2B.6 R A *firm* must submit the data report to the *FSA* electronically in a standard format prescribed by the *FSA*.

2.2B.7 R A data report will not have been submitted to the *FSA* in accordance with *TC 2.2B.6R* unless all mandatory data reporting fields (as set out in *TC Appendix 8R*) have been completed correctly and the report has been accepted by the relevant *FSA* reporting system.

Amend the following as shown.

**Appendix 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3**

**App 1.1.1R**

Activity	Products/Sectors		Is there an appropriate qualification requirement?
<i>Designated investment business</i> carried on for a <i>retail client</i>			
...			
Advising	...		
	4.	<del><i>Packaged products</i></del> <i>Retail investment products</i> which are not <i>broker funds</i>	Yes
...			

...

**Appendix 6G Accredited bodies**

Introduction

...

1. An *accredited body* is a body ~~recognised by the *FSA* to act as an accredited body~~ appearing in the list of such bodies in the *Glossary*.

...

3. ~~The role of an *accredited body* relates to rules in *TC* which come into force on 31 December 2012. [deleted]~~

...

12. The *FSA* will expect an *accredited body* to have in place effective procedures for carrying out its verification activities. This should include:

- (1) verifying that each *retail investment adviser* who is a member of or subscriber to the *accredited body's* verification service has made an annual declaration in writing that the *retail investment adviser* has, in the preceding 12 months, complied with *APER* and completed the continuing professional development required under *TC 2.1.15R*;

...

...



## Schedule 1 Record keeping requirements

### Sch -1.1 G

TC 2.1.24R provides:	
A <i>firm</i> must, for the purposes of TC 3.1.1R (Record keeping), make and retain records of:	
(1)	<u>the continuing professional development completed by each <i>retail investment adviser</i>; and</u>
(2)	<u>the dates of and reasons for any suspension of the continuing professional development requirements under TC 2.1.17R.</u>

### Sch 1.1 G

TC 3.1.1R provides:	
...	

## Schedule 2 Notification requirements

2.1G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
TC 2.1.31R	...	...	...	...
TC 2.2B.3R	<u>Notifications – professional standards data</u>	<p>(1) <u>The <i>firm's</i> name and FSA Firm Reference Number;</u></p> <p>(2) <u>the names and FSA Individual Reference Numbers of the <i>firm's employees</i> who are <i>retail investment advisers</i>, including trainees;</u></p> <p>(3) <u>whether a <i>retail investment adviser</i> has attained an appropriate qualification;</u></p> <p>(4) <u>if a <i>retail investment adviser</i> has not attained an</u></p>	<u>The end of each quarter.</u>	<u>Within 20 <i>business days</i> of the end of the quarter, unless TC 2.2B.3R(3) applies.</u>

		<p><u>appropriate qualification, the date on which the <i>employee</i> began to carry on the activity of a <i>retail investment adviser</i>; and</u></p> <p><u>(5) the name of the <i>accredited body</i> used for the purposes of <i>TC 2.1.27R</i>.</u></p>		
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## Annex C

## Amendments to the Fees manual (FEES)

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

## Comes into force on 1 February 2011

## 3.2 Obligation to pay fees

...

Method of payment

...

## 3.2.3 R ...

(2) The FSA does not specify a method of payment for a *person* seeking to:

(a) become a *recognised body* or a *designated professional body*; or

(b) ~~to~~ be added to the list of *designated investment exchanges* or accredited bodies.

...

3.2.4 G The FSA expects that a *person* seeking to become a *recognised body* or a *designated professional body* or to be added to the list of *designated investment exchanges* or accredited bodies will generally pay their respective fees by electronic credit transfer.

...

## 3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
<u>(z1) An applicant for recognition as an accredited body.</u>	<u>£2,500</u>	<u>On or before the date the application is made.</u>

## Annex D

### Amendments to the Supervision manual (SUP)

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

**Comes into force on 31 December 2012**

#### 10.10 Customer functions

...

Customer function (CF 30)

...

- 10.10.7C G The *FSA* would expect an individual from overseas to be accompanied on a visit to a *customer*. *TC 2.1.9R(2)* provides that the *firm* will have to be satisfied that the individual has at least three years' up-to-date relevant experience obtained outside the *United Kingdom*. However, the remaining provisions of *TC 2.1.9R(2)* are disapplied in these circumstances (except for an individual who gives advice to *retail clients* on ~~*packaged products*~~ *retail investment products* or is a *broker fund adviser*). The effect of this is that such individuals need not pass the relevant regulatory module of an appropriate qualification (see *TC 2.1.9R(2)*).



**FEES (ELECTRONIC MONEY APPLICATION FEES) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 156 (General supplementary powers);
    - (b) section 157 (Guidance); and
    - (c) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority);
  - (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); and
  - (3) the following provisions of the Electronic Money Regulations 2011 (SI 2011/99):
    - (a) regulation 59 (Costs of supervision); and
    - (b) 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 10 February 2011.

**Amendments to the Handbook**

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

**Citation**

- F. This instrument may be cited as the Fees (Electronic Money Application Fees) Instrument 2011.

By order of the Board  
9 February 2011

## 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.

- fee-paying electronic money issuer* any of the following when they issue *electronic money*:
- (a) an *authorised electronic money institution*;
  - (b) a *small electronic money institution*;
  - (c) an *EEA authorised electronic money institution*;
  - (d) a *full credit institution*, including a branch of the *full credit institution* within the meaning of article 4(3) of the *BCD* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with article 38 of the *BCD*;
  - (e) the Post Office Limited;
  - (f) the Bank of England, when not acting in its capacity as a monetary authority or carrying out functions of a public nature;
  - (g) government departments and local authorities, when carrying out functions of a public nature;
  - (h) a *credit union*;
  - (i) a municipal bank; and
  - (j) the National Savings Bank.

*A full credit institution that is an EEA firm is only a fee-paying electronic money issuer if it is exercising an EEA right in accordance with Part II of Schedule 3 to the Act (Exercise of passport rights by EEA firms) to issue electronic money in the United Kingdom. An EEA authorised electronic money institution is only a fee-paying electronic money issuer if it is exercising a right under Article 3 of the Electronic Money Directive to issue electronic money in the United Kingdom.*

Amend the following definition as shown.

- firm* (1) an *authorised person*, but not a *professional firm*

unless it is an *authorised professional firm* (see also *GEN 2.2.18R* for the position of an authorised partnership or unincorporated association which is dissolved).

...

- (5) (in *FEES 3* to *FEES 5*) includes a *fee-paying payment service provider* in accordance with *FEES 3.1.1AR*, *FEES 4.1.1AR* and *FEES 5.1.1AR* and in *FEES 3* also includes a *fee-paying electronic money issuer*.

## Annex B

### Amendments to the Fees manual (FEES)

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

2.1.5 G Paragraph 17 of Schedule 1 to and section 99 of the *Act*, ~~and~~ regulation 92 of the *Payment Services Regulations* and regulation 59 of the *Electronic Money Regulations* enable the *FSA* to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the *FSCS* levy, *FOS* levies and case fees and *CFEB* levies are set out in *FEES* 6.1, *FEES* 5.2 and *FEES* 7.1.4G respectively. *Fee-paying payment service providers* and *fee-paying electronic money issuers* are not required to pay the *FSCS* levy but are liable for *FOS* levies.

2.1.5A G Regulation 92 of the *Payment Services Regulations* ~~provides~~ and regulation 59 of the *Electronic Money Regulations* each provide that the functions of the *FSA* under the respective regulations are treated for the purposes of paragraph 17 of Schedule 1 to the *Act* as functions conferred on the *FSA* under the *Act*. Paragraphs 17(2) and (3) however, have not been included ~~by the *Payment Services Regulations*~~. These are, respectively, the *FSA* *FSA's* obligation to ensure that the amount of penalties received or expected to be received are not to be taken into account in determining the amount of any fee payable and the provision that allows fees to be raised to repay borrowed monies in respect of expenses incurred, before or after the coming into force of the *Act* or the Bank of England Act 1998.

...

2.1.11 G Whilst paragraph 17(2) of Schedule 1 to the *Act* has not been applied to the fee-raising power of the *FSA* under the *Payment Services Regulations* and the *Electronic Money Regulations*, regulation 92(2) and 59(2) of these regulations respectively ~~requires~~ require the *FSA* to apply amounts paid to it by way of penalties imposed under ~~the~~ these regulations towards expenses incurred in carrying out its functions under the regulations, or for any incidental purpose.

...

#### Recovery of Fees

2.2.3 G Paragraph 17(4) and paragraph 19B of Schedule 1 to and section 99(5) of the *Act* permit the *FSA* to recover fees (including fees relating to *payment services*, the issuance of *electronic money* and, where relevant, *FOS* levies and *CFEB* levies), and section 213(6) permits the *FSCS* to recover shares of the *FSCS* levy payable, as a debt owed to the *FSA* and *FSCS* respectively, and the *FSA* and the *FSCS*, as relevant, will consider taking action for recovery (including interest) through the civil courts. Also, the *FOS Ltd* (in

respect of case fees) may take steps to recover any money owed to it (including interest).

...

3.1.1 R This chapter applies to every ~~person~~ *person* set out in ~~FEES 1.1.2R(1)~~ column 1 of the Table of application, notification and vetting fees in FEES 3.2.7R.

3.1.1A R A reference to "*firm*" in this chapter includes a reference to a *fee-paying payment service provider* and a *fee-paying electronic money issuer* ~~but not one which is a small e-money issuer.~~

3.1.2 G This chapter does not apply to ~~an EEA firm that wishes to exercise an EEA right:~~

(a) an EEA firm that wishes to exercise an EEA right; or

(b) an EEA authorised payment institution; or

(c) an EEA authorised electronic money institution.

...

3.1.4 G Most of the detail of what fees are payable by the persons referred to in FEES 3.1.3G is set out in FEES 3 Annex 1R – ~~FEES 3 Annex 6R~~ 10R.

...

3.1.6B G Application fees for authorisation or registration under the *Electronic Money Regulations* are set out in FEES 3 Annex 10R. The fee depends on whether the firm is an *authorised electronic money institution* or a *small electronic money institution*.

...

3.2.5 G (1) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part IV permission* or authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*. Any application received by the FSA without the accompanying appropriate fee, in full and without deduction (see FEES 3.2.1R), will not be treated as an application made, incomplete or otherwise, in accordance with section 51(3)(a), or section 44, of the *Act* or regulation 5(3) or 12(3) of the *Payment Services Regulations* or regulation 5 or 12 of the *Electronic Money Regulations*. Where this is the case, the FSA will contact the applicant to point out that the application cannot be progressed until the appropriate fee has been received. In the event that the appropriate authorisation fee, in full and without deduction, is not forthcoming, the application will be returned to the applicant and no application will have been made.

...

## 3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(zf) An applicant for a <i>ceding insurer's waiver</i> .	...	...
<u>(zg) An applicant for authorisation as an authorised electronic money institution under regulation 5 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R. Where an application only involves a simple change of legal status as set out in FEES 3 Annex 1R Part 6, the fee payable is 50% of the tariff that would otherwise be payable in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zh) An applicant for registration as a small electronic money institution under regulation 12 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R. Where an application only involves a simple change of legal status as set out in FEES 3 Annex 1R Part 6, the fee payable is 50% of the tariff that would otherwise be payable in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zi) An application by a small electronic money institution for authorisation as an authorised money institution because regulation 16 of the <i>Electronic Money Regulations</i> applies.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
<u>(zj) An authorised electronic money institution applying to vary its authorisation under regulation 8 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>

<u>(zk) A small electronic money institution applying to vary its registration under regulation 12 of the <i>Electronic Money Regulations</i>.</u>	<u>The amount set out in FEES 3 Annex 10R.</u>	<u>On or before the date the application is made.</u>
--	--	---

### 3 Annex 1R Authorisation fees payable

...

#### Part 6 – Change of legal status

An application involving only a simple change of legal status for the purposes of <i>FEES</i> 3.2.7R(a), <i>FEES</i> 3.2.7R(y), <del>and</del> <i>FEES</i> 3.2.7R(za), <i>FEES</i> 3.2.7R(zg) and <i>FEES</i> 3.2.7R(zh) is from an applicant:	
(1) which is a new legal entity intending to carry on the business, using the same business plan, of an existing <i>firm</i> with no outstanding regulatory obligations cancelling its <i>Part IV permission</i> , or authorisation or registration under the <i>Payment Services Regulations</i> or the <i>Electronic Money Regulations</i> , and	
(2) which is to:	
	(a) have the same or narrower <i>permission</i> , scope of authorisation or registration under the <i>Payment Services Regulations</i> or <i>Electronic Money Regulations</i> and the same <i>branches</i> (if any), as the <i>firm</i> ;
	(b) assume all of the rights and obligations in connection with <u>any of the regulated activities</u> , <del>and</del> <i>payment services</i> and <i>electronic money issuance</i> carried on by the <i>firm</i> ;
...	

...

After FEES 3 Annex 9R, insert the following new Annex. The text is not underlined.

### 3 Annex 10R Fees payable for authorisation as an authorised electronic money institution or registration as a small electronic money institution or variation thereof in accordance with the *Electronic Money Regulations*

#### Authorisation, registration and variation fees payable

Application type for authorisation, registration or variation under Part 2 of the <i>Electronic Money Regulations</i>	Amount payable
(1) <i>small electronic money institution</i>	£1,000

(2) <i>authorised electronic money institution</i>	£5,000
--	--------

...

After FEES TP 5 insert the following new transitional provisions. The text is not underlined.

**TP 6 Transitional arrangements in relation to the introduction of the Electronic Money Regulations**

6.1 Introduction

6.1.1 G *FEES* TP 6 deals with transitional arrangements relating to the introduction of the *Electronic Money Regulations* in 2011.

6.2 Application fees

6.2.1 G Under regulation 74 of the *Electronic Money Regulations* a person who before 30th April 2011 issued electronic money in accordance with a *Part IV permission* may notify the *FSA* that it wishes to be authorised as an *authorised electronic money institution* or to be registered as a *small electronic money institution*. This covers the category of *firm* called an ELMI. That category is abolished by the *Electronic Money Regulations*.

6.2.2 G No fee under *FEES* 3 is payable for that notification.

6.2.3 G Before it was amended by the *Electronic Money Regulations*, article 9C of the *Regulated Activities Order* allowed a small electronic money issuer to obtain a certificate from the *FSA* that allowed it to issue electronic money without being authorised. Regulation 76 of the *Electronic Money Regulations* applies to such an issuer. Such an issuer can apply under the *Electronic Money Regulations* to become an *authorised electronic money institution* or to be registered as a *small electronic money institution*. If it does, a fee is payable under *FEES* 3 in the same way as it is for any other new application.

Amend the following as shown.

**Schedule 4 Powers exercised**

...

Sch 4.2	G	The following additional powers have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>FEES</i> :
		...
		Section 123 (Role of the FSCS) of the Banking Act 2009
		<u>Regulation 59 (Costs of supervision) of the <i>Electronic Money</i></u>



	<u>Regulations</u>
--	--------------------

...

Sch 4.4	G	The following additional <del>power powers</del> <u>has</u> <u>have</u> been exercised by the <i>FSA</i> to make <del>the <i>guidance</i></del> <u>guidance</u> in <i>FEES</i> :
		Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
		<u>Regulation 60 (Guidance) of the <i>Electronic Money Regulations</i></u>

## **ELECTRONIC MONEY AND PAYMENT SERVICES INSTRUMENT 2011**

### **Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes:
- (1) the rules and guidance in Annexes A and K to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
  - (2) the rules, standard terms and guidance in Annexes A and K to this instrument for VJ participants relating to the Voluntary Jurisdiction;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) section 226A (Consumer Credit Jurisdiction);
  - (b) section 227 (Voluntary Jurisdiction);
  - (c) paragraph 8 (Guidance) of Schedule 17 (The Ombudsman Scheme);
  - (d) paragraph 16B (The Consumer Credit Jurisdiction) of Schedule 17; and
  - (e) paragraph 18 (The Voluntary Jurisdiction) of Schedule 17.
- B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

### **Powers exercised by the Financial Services Authority**

- C. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
    - (a) section 69 (Statement of policy) as applied by paragraph 1 of Schedule 3 to the Electronic Money Regulations 2011 (“the Regulations”);
    - (b) section 138 (General rule-making power);
    - (c) section 156 (General supplementary powers);
    - (d) section 157(1) (Guidance);
    - (e) section 169(9) (Investigations etc. in support of overseas regulator) as applied by paragraph 3 of Schedule 3 to the Regulations;
    - (f) section 210(1) (Statements of policy) as applied by regulation 53 (6) of the Regulations;
    - (g) section 226 (Compulsory Jurisdiction);
    - (h) section 234 (Industry funding);
    - (i) section 395(5) (The Authority’s procedures) as applied by paragraph 8 of Schedule 3 to the Regulations;
    - (j) paragraph 17 (1) (Fees) of Schedule 1; and
    - (k) paragraph 13 (Authority’s procedural rules) of Schedule 17;

- (2) regulation 49 (Reporting requirements) of the Regulations;
- (3) regulation 60 (Guidance) of the Regulations;
- (4) regulation 82 (Reporting requirements) of the Payment Services Regulations 2009 (“the 2009 Regulations”);
- (5) regulation 93 (Guidance) of the 2009 Regulations; and
- (6) the other powers referred to in Schedule 4 to the General Provisions of the Handbook.

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

### Commencement

E. This instrument comes into force as follows:

- (1) the amendments in Part 1 of Annex A, and Annex M come into force on 10 February 2011;
- (2) the amendments in Part 3 of Annex A and Part 2 of Annex E come into force on 30 April 2012;
- (3) the remainder of the instrument comes into force on 30 April 2011.

### Notes

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

### Revocation of the Electronic Money sourcebook (ELM)

G. The provisions of the Electronic Money sourcebook (ELM) are revoked with effect from 30 April 2012.

### Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Threshold Conditions (COND)	Annex D
General Provisions (GEN)	Annex E
General Prudential sourcebook (GENPRU)	Annex F
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex G
Conduct of Business sourcebook (COBS)	Annex H
Supervision manual (SUP)	Annex I
Decision Procedure and Penalties manual (DEPP)	Annex J

Dispute Resolution: Complaints sourcebook (DISP)	Annex K
Electronic Money sourcebook (ELM)	Annex L

### **Material outside the Handbook**

- I. The Perimeter Guidance manual (PERG) is amended in accordance with Annex M to this instrument.
- J. The Building Societies Regulatory Guide (BSOG) is amended in accordance with Annex N to this instrument.
- K. The Enforcement Guide (EG) is amended in accordance with Annex O to this instrument.

### **Citation**

- L. This instrument may be cited as the Electronic Money and Payment Services Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited  
1 February 2011

By order of the Board of the Financial Services Authority  
9 February 2011

## Annex A

### Amendments to the Glossary of definitions

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

#### Part 1: Comes into effect on 10 February 2011

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

<i>authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ):  (a) a <i>person</i> included by the <i>FSA</i> in the <i>FSA Register</i> as an <i>authorised electronic money institution</i> pursuant to regulation 4(1)(a) of the <i>Electronic Money Regulations</i> ; or  (b) a <i>person</i> deemed to have been granted authorisation by the <i>FSA</i> by virtue of regulation 74 of the <i>Electronic Money Regulations</i> .
<i>average outstanding electronic money</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ) 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 calendar months, calculated on the first calendar day of each calendar month and applied for that calendar month.
<i>EEA authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ) a <i>person</i> authorised in an <i>EEA State</i> other than the <i>United Kingdom</i> to issue <i>electronic money</i> and provide <i>payment services</i> in accordance with the <i>Electronic Money Directive</i> .
<i>EEA branch of an authorised electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ) a branch established by an <i>authorised electronic money institution</i> , in the exercise of its <i>passport rights</i> , to issue <i>electronic money</i> , provide <i>payment services</i> , distribute or redeem <i>electronic money</i> or carry out other activities in accordance with the <i>Electronic Money Regulations</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>Electronic Money Directive</i>	Directive 2009/110/EC of the European Parliament and of the Council of 16th September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC.
<i>electronic money institution</i>	(in accordance with regulation 2(1) of the <i>Electronic Money Regulations</i> ) an <i>authorised electronic money institution</i> or a <i>small electronic money institution</i> .

- electronic money issuer* (1) (except in *DISP*) any of the following *persons* when they issue *electronic money*:
- (a) *authorised electronic money institutions*;
  - (b) *small electronic money institutions*;
  - (c) *EEA authorised electronic money institutions*;
  - (d) *credit institutions*;
  - (e) the Post Office Limited;
  - (f) the Bank of England, the European Central Bank and the national central banks of *EEA States* other than the United Kingdom, when not acting in their capacity as a monetary authority or other public authority;
  - (g) government departments and local authorities when acting in their capacity as public authorities;
  - (h) *credit unions*;
  - (i) municipal banks;
  - (j) the National Savings Bank.

[**Note:** article 2(3) of the *Electronic Money Directive*]

- (2) (in *DISP*) as in (1) but:
- (a) excluding *credit institutions*, *credit unions* and municipal banks; and
  - (b) including a *person* who meets the conditions set out in regulation 75(1) or regulation 76(1) of the *Electronic Money Regulations*.

*Electronic Money Regulations*

the *Electronic Money Regulations* 2011 (SI 2011/99).

*passport right*

(in accordance with regulation 2(1) of the *Electronic Money Regulations*) the entitlement of a *person* to establish a branch or provide services in an *EEA State* other than that in which they are authorised to provide *electronic money* issuance services:

- (a) in accordance with the Treaty on the Functioning of the European Union as applied in the *EEA*; and
- (b) subject to the conditions of the *Electronic Money Directive*.

*small electronic money institution* (in accordance with regulation 2(1) of the *Electronic Money Regulations*) a person included by the *FSA* in the *FSA Register* pursuant to regulation 4(1)(b) of the *Electronic Money Regulations*.

Amend the following definitions as shown:

*agent* (in relation to *payment services* or *electronic money*) a person who acts on behalf of a *payment institution* or an *electronic money institution* in providing *payment services*.

[**Note:** article 4(22) of the *Payment Services Directive*]

*electronic money* (1) ~~The~~ the investment, specified in article 74A of the *Regulated Activities Order* (Electronic money), which is monetary value, as represented by a claim on the issuer, which is:

- (a) stored on an electronic device;
- (b) issued on receipt of funds; and
- (c) accepted as a means of payment by *persons* other than the issuer.

(2) (in PERG and FEES) electronically (including magnetically) stored monetary value as represented by a claim on the *electronic money issuer* which is:

- (a) issued on receipt of funds for the purpose of making payment transactions as defined in Article 4(5) of the *Payment Services Directive*; and
- (b) accepted by a *person* other than the *electronic money issuer*;

but does not include:

- (c) monetary value stored on instruments that can be used to acquire goods or services only:
  - (i) in or on the *electronic money issuer*'s premises; or
  - (ii) under a commercial agreement with the *electronic money issuer*, either within a limited network of service providers or for a limited range of goods or services; or
- (d) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or

IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

**Part 2: Comes into effect on 30 April 2011**

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

*issuing electronic money* the activity specified in article 9B of the *Regulated Activities Order* (Issuing electronic money), which is the activity of issuing *electronic money* by:

- (a) a *credit institution*, a *credit union* or a municipal bank; or
- (b) a person who is deemed to have been granted authorisation under regulation 74 of the *Electronic Money Regulations* or who falls within regulation 76(1) of the *Electronic Money Regulations*.

Amend the following definitions as shown:

*base currency* ...

- (2) (in ~~ELM~~, *GENPRU* and *BIPRU*) (in relation to a *firm*) the currency in which that *firm's* books of account are drawn up.

*CAD investment firm* has the meaning set out *BIPRU* 1.1.14R (Types of investment firm: CAD investment firm), which in summary is an *investment firm* that is subject to the requirements imposed by *MiFID* (or which would be subject to that Directive if its head office were in an *EEA State*) but excluding a *bank*, a *building society*, an ~~ELMI~~, a *credit institution*, a *local* and an *exempt CAD firm*.

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

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

...

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

- (g) the *licensee*, *firm*, ~~or~~ *payment service provider* or *electronic*



money issuer was:

- (i) covered by a standard licence under the Consumer Credit Act 1974 (as amended); or
- (ii) authorised to carry on an activity by virtue of section 34(A) of that Act; or
- (iii) in accordance with regulation 26(2) of the *Payment Services Regulations* or regulation 31 of the *Electronic Money Regulations*, was not required to hold a licence for consumer credit business under section 21 of the Consumer Credit Act 1974; and

(h) the activity was carried on in the course of a business of a type specified in accordance with section 226A(2)(e) of the *Act*:

...

*credit institution* (1) (except in *REC*) (in accordance with articles 4(1) and 107 of the *BCD*) :

- (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; and
- (b) ~~an electronic money institution within the meaning of the *E-Money Directive*; [deleted]~~

~~but so that:~~

- (c) ~~(except for the purposes of *GENPRU*, *ELM*, *BIPRU* and *IPRU(INV)* (in so far as it relates to *exempt CAD firms*)) an institution within (1)(b) that does not have the right to benefit from the mutual recognition arrangements under *BCD* is excluded; and [deleted]~~

(d) ...

(2) ...

(3) (in relation to the definition of *electronic money issuer*) a credit institution as defined by (1)(a) and includes a branch of the credit institution within the meaning of Article 4(3) of the *Banking Consolidation Directive* which is situated within the *EEA* and which has its head office in a territory outside the *EEA* in accordance with Article 38 of the *Banking Consolidation Directive*.

*electronic money* (1) ~~(except in *PERG* (and *FEES*) the *investment*, specified in article 74A of the *Regulated Activities Order* (*Electronic money*), which~~

~~is monetary value, as represented by a claim on the issuer, which is:~~

- ~~(a) stored on an electronic device;~~
- ~~(b) issued on receipt of funds; and~~
- ~~(c) accepted as a means of payment by persons other than the issuer~~

(2) ~~(in PERG and FEES)~~ electronically (including magnetically) stored monetary value as represented by a claim on the *electronic money issuer* which is:

- (a) issued on receipt of funds for the purpose of making payment transactions as defined in Article 4(5) of the *Payment Services Directive*; and
- (b) accepted by a *person* other than the *electronic money issuer*;

but does not include:

- (c) monetary value stored on instruments that can be used to acquire goods or services only:
  - (i) in or on the *electronic money issuer's* premises; or
  - (ii) under a commercial agreement with the *electronic money issuer*, either within a limited network of service providers or for a limited range of goods or services; or
- (d) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

*financial institution*

- (1) (in accordance with paragraph 5(c) of Schedule 3 to the *Act* (EEA Passport Rights: EEA firm) and article 4(5) of the *Banking Consolidation Directive* (Definitions)), but not for the purposes of *ELM*, *GENPRU*, *BIPRU* and *INSPRU*), an undertaking, other than a *credit institution*, the principal activity of which is to acquire holdings or to carry on one or more of the listed activities listed in points 2 to 12 and 15 of Annex I to the *BCD*, which is a subsidiary of the kind mentioned in article 24 of the *BCD* and which fulfils the conditions in that article.

- (2) for the purposes of ~~ELM~~, *GENPRU*, *BIPRU* and *INSPRU* and in accordance with Articles 1(3) (Scope) and 4(5) (Definitions) of the *Banking Consolidation Directive* the following:
- (a) an *undertaking*, other than a *credit institution*, the principal activity of which is to acquire holdings or to carry on one or more of the *listed activities* listed in points 2 to 12 and 15 of Annex I to the *Banking Consolidation Directive* including the services and activities provided for in Sections A and B of Annex I of the *MiFID* when referring to the financial instruments provided for in Section C of Annex I of that Directive;
  - (b) (for the purposes of consolidated requirements) those institutions permanently excluded by Article 2 of the *Banking Consolidation Directive* (Scope), with the exception of the *central banks* of *EEA States*; ~~and~~
  - (c) ~~(for the purposes of ELM) an asset management company.~~

*foreign currency* (~~in ELM, GENPRU and BIPRU~~) (in relation to a *firm*) any currency other than the *base currency*.

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

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

...

- immediate group* ...
- (2) (in ~~ELM 7~~ and *BIPRU* and in relation to any *person*) has the same meaning as in paragraph (1), with the omission of (1)(e).
- incoming ECA provider* a *person*, other than an *exempt person* or a *person* who has been given a waiver in accordance with article 8(1) of the *E-Money Directive*, who:
- (a) provides an *electronic commerce activity*, from an *establishment* in an *EEA State* other than the *United Kingdom*, with or for an *ECA recipient* present in the *United Kingdom*; and
- (b) is a national of an *EEA State* or a company or firm mentioned in article 54 of the *Treaty*.
- initial capital* (1) ~~(in *ELM*) items coming into stage A of the calculation in *ELM* 2.4.2R (Calculation of initial capital and own funds): [deleted]~~
- ...
- insurance holding company* (1) a *parent undertaking*, other than an *insurance undertaking*, the main business of which is to acquire and hold participations in *subsidiary undertakings* and which fulfils the following conditions:
- (a) its *subsidiary undertakings* are either exclusively or mainly *insurance undertakings*; and
- (b) at least one of those *subsidiary undertakings* is an *insurer* or an *EEA firm* that is a *regulated insurance entity* or a *reinsurance undertaking*;
- a *parent undertaking*, other than an *insurance undertaking*, that fulfils the conditions in paragraphs (1)(a) and (b) of this definition is not an *insurance holding company* if:
- (c) it is a *mixed financial holding company*; and
- (d) notice has been given in accordance with Article 4(2) of the *Financial Groups Directive* that the *financial conglomerate* of which it is a *mixed financial holding company* is a *financial conglomerate*.
- (2) For the purposes of:
- (a) the definition of the *insurance sector*;
- (b) ~~*ELM*~~; and [deleted]
- (c) the definition of *material insurance holding*;

paragraph (1)(b) of this definition does not apply.

<i>investment management firm</i>	(subject to <i>BIPRU</i> TP 1.3R (Revised definition of investment management firm for certain transitional purposes)), a <i>firm</i> whose <i>permitted activities</i> include <i>designated investment business</i> , which is not an <i>authorised professional firm</i> , <i>bank</i> , <i>BIPRU investment firm</i> , <del><i>ELMI</i></del> , <i>building society</i> , <i>credit union</i> , <i>energy market participant</i> , <i>friendly society</i> , <i>ICVC</i> , <i>insurer</i> , <i>media firm</i> , <i>oil market participant</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 3</i> or <i>IPRU-INV 13</i> (Personal investment firms) and which is within (a), (b) or (c):
<i>lower tier two capital</i>	(1) <del>(in <i>ELM</i>) the lower tier two capital of an <i>ELMI</i> calculated in accordance with <i>ELM 2.4</i> (Calculation of initial capital and own funds).</del> <u>[deleted]</u> ...
<i>material holding</i>	(1) <del>(for the purposes of <i>ELM</i>) a holding or position set out in <i>ELM 2.4.17R</i> (Material holdings).</del> <u>[deleted]</u>  (2) (for the purposes of <i>GENPRU</i> and <i>BIPRU</i> ) has the meaning in <i>GENPRU 2.2.209R</i> (Deductions from tiers one and two: Material holdings ( <u><i>BIPRU firm only</i></u> )).
<i>own funds</i>	...  (2) <del>(in <i>ELM</i>) the own funds of an <i>ELMI</i> calculated in accordance with <i>ELM 2.4</i> (Calculation of initial capital and own funds).</del> <u>[deleted]</u> ...
<i>participant firm</i>	...  (i) <del>an <i>ELMI</i> in relation to <i>issuing e-money</i>.</del> <u>[deleted]</u> ...
<i>participation</i>	(for the purposes of <del><i>ELM</i></del> , <i>UPRU</i> and <i>GENPRU</i> and for the purposes of <i>BIPRU</i> and <i>INSPRU</i> as they apply on a consolidated basis): ...
<i>payment service provider</i>	(1) (except in <i>DISP</i> ) (in accordance with regulation 2(1) of the <i>Payment Service Regulations</i> ) any of the following <i>persons</i> when they carry out a <i>payment service</i> :  (a) an <i>authorised payment institution</i> ;

- (b) a *small payment institution*;
- (c) an *EEA authorised payment institution*;
- (d) a *full credit institution*;
- (e) an ~~*e-money issuer*~~ *electronic money issuer*;

...

- (2) (in *DISP* and *FEES* 5.5) as in (1) but excluding a *full credit institution* and an ~~*e-money firm*~~.

*personal investment firm*

(subject to *BIPRU* TP 1 (Revised definition of personal investment firm for certain transitional purposes)) a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, *BIPRU investment firm*, ~~*ELMI*~~, building society, credit union, energy market participant, friendly society, ICVC, insurer, media firm, oil market participant, service company, incoming *EEA firm* (without a *top-up permission*), incoming *Treaty firm* (without a *top-up permission*), *UCITS management company* or *UCITS qualifier* (without a *top-up permission*), whose *permission* does not include a *requirement* that it comply with *IPRU(INV)* 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c):

...

*qualifying debt security*

- (1) ~~(for the purposes of *ELM*) a security falling into *ELM* 3.3.9R (Liquid assets).~~ [deleted]
- (2) (for the purposes of *BIPRU*) a debt *security* that satisfies the conditions in *BIPRU* 7.2.49R (Definition of a qualifying debt security).

*respondent*

- (1) (in *DISP*) a *firm* (except a *UCITS qualifier*), *payment service provider*, *electronic money issuer*, *licensee* or *VJ participant* covered by the *Compulsory Jurisdiction*, *Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) (in *DISP* 2 and 3) includes, as a result of sections 226 and 226A of the Act:
  - (a) an *unauthorised person* who was formerly a *firm* in respect of a *complaint* about an act or omission which occurred at the time when the *firm* was *authorised*, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; ~~and~~
  - (b) a *person* who was formerly a *licensee* in respect of a *complaint* about an act or omission which occurred at

the time when it was a *licensee*, provided the *complaint* falls within a description specified in the consumer credit rules in force at the time of the act or omission;

(c) a person who was formerly a payment service provider in respect of a complaint about an act or omission which occurred at the time when it was a payment service provider, provided that the compulsory jurisdiction rules were in force in relation to the activity in question; and

(d) a person who was formerly an electronic money issuer in respect of a complaint about an act or omission which occurred at the time when it was an electronic money issuer, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

*securities and futures firm*

(subject to BIPRU TP 1 (Revised definition of securities and futures firm for certain transitional purposes)) a firm whose permitted activities include *designated investment business*, which is not an *authorised professional firm, bank, BIPRU investment firm* (unless it is an *exempt BIPRU commodities firm*) ~~ELMI~~, *building society, credit union, friendly society, ICVC, insurer, media firm, service company, incoming EEA firm* (without a *top-up permission*), *incoming Treaty firm* (without a *top-up permission*), *UCITS management company* or *UCITS qualifier* (without a *top-up permission*), whose permission does not include a requirement that it comply with IPRU(INV) 5 (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e), (f) or (g):

...

*tier one capital*

(1) ~~(in ELM) the tier one capital of an ELMI calculated in accordance with ELM 2.4 (Calculation of initial capital and own funds). [deleted]~~

...

*tier two capital*

(1) ~~(in ELM) the tier two capital of an ELMI calculated in accordance with ELM 2.4 (Calculation of initial capital and own funds). [deleted]~~

...

*upper tier two capital*

(1) ~~(in ELM) the upper tier two capital of an ELMI calculated in accordance with ELM 2.4 (Calculation of initial capital and own funds). [deleted]~~

Delete the following definitions. The deleted text is not shown.

*absolute FX exposure limit*

*consolidated sub-group*

*consumer e-money card*

*consumer e-money device*

*consumer e-money holder*

*daily e-money outstandings amount*

*EEA consolidated group*

*EEA financial parent undertaking*

*EEA group large exposure*

*EEA group risk own funds*

*EEA group risk own funds requirement*

*ELM financial rules*

*ELMI*

*e-money*

*E-Money Directive*

*e-money electronic device*

*e-money firm*

*e-money float*

*e-money float exposure*

*e-money issue price*

*e-money issuer*

*e-money outstandings*

*e-money scheme rules*

*financial services undertaking*

*FX exposure*

*FX exposure limit*

*granting an e-money permission*



*group of closely related counterparties*

*issuing e-money*

*large e-money float exposure*

*net FX open currency position*

*own funds requirement*

*qualifying liquid asset*

*redemption right*

*regulatory capital resources*

*relevant financial services company*

*reportable large exposure*

*sufficiency liquid*

*UK consolidated group*

*UK financial parent undertaking*

*UK group large exposure*

*UK group risk own funds*

*UK group risk own funds requirement*

*zero weighted asset*

*Zone A credit institution*

**Part 3: Comes into effect on 30 April 2012**

Delete the following definitions. The deleted text is not shown.

*ELM*

*small e-money issuer*

*small e-money issuer certificate*

## Annex B

### Amendments to the Principles for Businesses (PRIN)

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

- 3.1.8 G The *Principles* will not apply to the extent that they purport to impose an obligation which is inconsistent with the *Payment Services Directive* or the *Electronic Money Directive*. For example, there may be circumstances in which *Principle 6* may be limited by the harmonised conduct of business obligations applied by the *Payment Services Directive* and *Electronic Money Directive* to *credit institutions* ~~and *e-money issuers*~~ (see Parts 5 and 6 of the *Payment Services Regulations* and Part 5 of the *Electronic Money Regulations*).

## 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.

#### 12.1 Application

12.1.1 R Subject to SYSC 12.1.2R to SYSC 12.1.4R, this section applies to each of the following which is a member of a *group*:

(1) a *firm* that falls into any one or more of the following categories:

...

(b) an ~~ELMI~~; [deleted]

...

...

...

BIPRU firms and other firms to which BIPRU 8 applies

...

12.1.14 R SYSC 12.1.13R applies to a *firm* that is:

(1) an ~~ELMI~~; [deleted]

...

12.1.15 R In the case of a *firm* that:

(1) is an ~~ELMI~~ or a *BIPRU firm*; and

(2) has a *mixed-activity holding company* as a *parent undertaking*;

the risk management processes and internal control mechanisms referred to in SYSC 12.1.8R must include sound reporting and accounting procedures and other mechanisms that are adequate to identify, measure, monitor and control transactions between the *firm's parent undertaking mixed-activity holding company* and any of the *mixed-activity holding company's subsidiary undertakings*.

## Annex D

### Amendments to the Threshold Conditions (COND)

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

#### 2.1 Threshold condition 1: Legal status

##### 2.1.1 UK Paragraph 1, Schedule 6 to the Act

(1)	If the regulated activity concerned is the effecting or carrying out of contracts of insurance the authorised person must be a body corporate (other than a limited liability partnership), a registered friendly society or a member of Lloyd's.
(2)	If the person concerned appears to the [FSA] to be seeking to carry on, or to be carrying on, a regulated activity constituting accepting deposits <del>or issuing electronic money</del> , it must be-
(a)	a body corporate; or
(b)	a partnership.

...

##### 2.1.3 G ~~The words “or *issuing electronic money*” in paragraph 1(2) of Schedule 6 to the Act were added by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 with effect from 27 April 2002. [deleted]~~

## Annex E

### Amendments to the General Provisions (GEN)

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

#### Part 1: Comes into force on 30 April 2011

1.3.1 G The FSA recognises that there may be occasions when, because of a particular emergency, a *person* (generally a *firm*, but in certain circumstances, for example in relation to *price stabilising rules* ~~or *small-e-money issuer rules*~~, an *unauthorised person*) may be unable to comply with a particular *rule* in the *Handbook*. The purpose of GEN 1.3.2R is to provide appropriate relief from the consequences of contravention of such a *rule* in those circumstances.

...

5.1.1 G This chapter contains:

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

...

...

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

Application	
1.1	The FSA grants this licence to <i>firms, authorised payment institutions, <u>authorised electronic money institutions</u>, appointed representatives, agents and tied agents</i> .
...	
Permission to use the FSA logo	
3.1	A UK domestic firm, its <i>appointed representatives and tied agents</i> , <del>and</del> an <i>authorised payment institution</i> and its <i>agents</i> <u>and an authorised electronic money institution and its agents</u> are permitted to use the FSA logo:
	(1) as part of a statement by that <i>person</i> , in a letter or electronic equivalent, that it or, in relation to an <i>appointed representative, agent or tied agent</i> , its principal, is authorised and regulated by the FSA; or
	(2) if required to do so by the FSA.
...	

...

**Schedule 4 Powers exercised**

...

Sch 4.3G	The following additional powers have been exercised by the <i>FSA</i> to make the rules in <i>GEN</i> :
	...
	Regulation 92 (Costs of <del>compliance</del> <u>supervision</u> ) of the <i>Payment Services Regulations</i>
	<u>Regulation 49 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>
	<u>Regulation 59 (Costs of supervision) of the <i>Electronic Money Regulations</i></u>
	...

...

Sch 4.5G	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :
	...
	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> <u>and paragraph 1 of Schedule 3 to the <i>Electronic Money Regulations</i></u> )
	...
	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i> <u>and paragraph 3 of Schedule 3 to the <i>Electronic Money Regulations</i></u> )
	Section 210 (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> <u>and regulation 53 (6) of the <i>Electronic Money Regulations</i></u> )
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> <u>and paragraph 8 of Schedule 3 to the <i>Electronic Money Regulations</i></u> )

Sch 4.6G	The following additional powers and related provisions have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :
----------	---

	...
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<u>Regulation 60 (Guidance) of the <i>Electronic Money Regulations</i></u>
	...

Sch 4.7G

...
-----

Sch 4.7AG

<u>The following additional powers and related provisions have been exercised by the FSA in GEN to direct, require or specify:</u>	
	<u>Regulation 49 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>

...

Sch 4.10G

The following additional powers have been exercised by the FSA to make the other <del>guidance</del> <u>guidance</u> in GEN:	
	...
	<u>Regulation 60 (Guidance) of the <i>Electronic Money Regulations</i></u>

**Part 2: Comes into force 30 April 2012**

**Schedule 4 Powers exercised**

...

Sch 4.2G

The following powers and related provisions in or under the Act have been exercised by the FSA to make the <i>rules</i> in GEN:	
	...
	<del>Articles 9G (Obtaining information from certified persons etc) and 9H (Rules prohibiting the issue of electronic money at a discount) of the <i>Regulated Activities Order</i></del>
	...

...

Sch 4.7G

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> in <i>GEN</i> to direct, require or specify:	
	...
	<del>Articles 9D (Applications for certificates) and 9F (Revocation of certificate on request) of the <i>Regulated Activities Order</i></del>
	...



Annex F

Amendments to the General Prudential sourcebook (GENPRU)

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

3 Annex 1R Capital adequacy calculations for financial conglomerates (GENPRU 3.1.26R and GENPRU 3.1.29R)

...

7 Table

...		
<del>E-money</del>	4.5	<p>If there are no <del>full credit institutions or investment firms in a banking and investment services conglomerate but there are one or more e-money issuers</del>, the <del>sectoral rules in BIPRU 8</del> are amended as follows:</p> <p>(1) the <del>rules in ELM</del> that apply on a solo basis must be used to establish the capital requirements for the <del>e-money issuers</del>; and</p> <p>(2) for the purpose of (1), those <del>rules in ELM</del> shall be amended by calculating the amount of deductions in respect of <del>ownership shares</del> and capital falling into <del>ELM 2.4.17R(6)</del> in accordance with paragraph 3.3(2).</p>

...

9 Table: PART 6: Definitions used in this Annex

...		
Solo capital resources requirement: Banking sector and investment service sector	6.2	<p>...</p> <p>(3) The <del>solo capital resources requirement</del> of an <del>e-money issuer</del> <u>electronic money institution</u> is the <u>capital resources requirement that applies to it under the <i>Electronic Money Regulations</i></u>.<sup>÷</sup></p> <p>(a) <del>(in the case of an ELMI) the capital resources requirement that applies to it under ELM; or</del></p> <p>(b) <del>(in any other case) the capital resources requirement that would apply to it under ELM if it were an ELMI incorporated in the United Kingdom.</del></p> <p>...</p>

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

## Annex G

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

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

8.1.1 R This chapter applies to:

- (1) a *BIPRU firm* that is a member of a *UK consolidation group*;
- (2) a *BIPRU firm* that is a member of a *non-EEA sub-group*; and
- (3) ~~an *ELMI* that is a member of a *UK consolidation group* or a *non-EEA sub-group* if that group includes a *BIPRU firm*; and [deleted]~~
- (4) a *firm* that is not a *BIPRU firm* and is a *parent financial holding company in a Member State in a UK consolidation group*.

## Annex H

### Amendments to the Conduct of Business sourcebook (COBS)

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

1.1.1A R This sourcebook does not apply to a *firm* with respect to the activity of *accepting deposits* carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*, except for *COBS 4.6* (Past, simulated past and future performance), *COBS 4.7.1R* (Direct offer financial promotions), *COBS 4.10* (Systems and controls and approving and communicating financial promotions), *COBS 13* (Preparing product information) and *COBS 14* (Providing product information to clients) which apply as set out in those provisions, *COBS 4.1* and the Banking: Conduct of Business sourcebook (*BCOBS*).

1.1.1B R *COBS 4.4.3R*, *COBS 5* (Distance communications), *COBS 15.2* (The right to cancel), *COBS 15.3* (Exercising a right to cancel), *COBS 15.4* (Effects of cancellation) and *COBS 15 Annex 1* (Exemptions from the right to cancel) apply to a *firm* with respect to the activity of *issuing electronic money* as set out in those provisions.

...

4.1.1A R *COBS 4.4.3R* applies to a *firm* with respect to the activity of *issuing electronic money*.

...

4.4.3 R To ensure that a *firm* pays due regard to the information needs of its *clients*, and communicates information to them in a way which is clear, fair and not misleading with respect to the activity of *issuing electronic money*, a *firm* must ensure that, in good time before the *firm* issues *electronic money* to a *person*, it has been communicated to that *person* on paper or in another *durable medium* that the *compensation scheme* does not cover claims made in connection with *issuing electronic money*.

...

15.1.1 G This chapter is relevant to a *firm* that enters into a contract cancellable under this chapter. In summary, this means it is relevant to:

- (1) most providers of retail financial products that are based on *designated investments*; and
- (2) *firms* that enter into *distance contracts* with *consumers* that relate to *designated investment business*; and
- (3) *firms* that enter into *distance contracts* the making or performance of which by the *firm* constitutes, or is part of, the activity of *issuing*

electronic money.

...

Cancellable contracts

15.2.1 R A consumer has a right to cancel any of the following contracts with a firm:

Cancellable contract	Cancellation period	Supplementary provisions
...		
<b>Non-life/pensions (at a distance):</b> a <i>distance contract</i> , relating to ...		
<ul style="list-style-type: none"> <li>• <i>accepting deposits</i></li> <li>• <i>designated investment business</i></li> <li>• <u><i>issuing electronic money</i></u></li> </ul>	14 calendar days	Exemptions may apply (see COBS 15 Annex 1)

...

## TP 2 Other Transitional Provisions

(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
...					
<u>2.15</u>	<u>The changes to COBS set out in Annex H of the Electronic Money and Payment Services Instrument 2011</u>	<u>R</u>	<u>In relation to a person deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i>, the changes effected by the Annex listed in column (2) do not apply and COBS 5 and COBS 15.3.1R, COBS 15.3.4R and COBS 15.4, as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that person is deemed to be authorised by virtue of regulation 74 of the <i>Electronic Money Regulations</i>.</u>	<u>30 April 2011</u>	<u>30 April 2011</u>

## Annex I

### Amendments to the Supervision manual (SUP)

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

## 3 Auditors

### 3.1 Application

...

#### 3.1.2 R Applicable sections (see SUP 3.1.1R)

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...		
<del>(5B)</del> <u>ELMI</u>	<del>SUP 3.1 – SUP 3.7</del>	<del>SUP 3.1, SUP 3.2, SUP 3.8</del>
...		

...

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

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<u>IPRU (BANK)</u>	Only the following apply, and only if the firm is a credit institution <del>other than an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive that has the right to benefit from the mutual recognition arrangements under the Banking Consolidation Directive</del> <u>(IPRU(BANK))</u>	Does not apply. But if the firm is a credit institution whose notification to the FSA of its intention to provide services in the United Kingdom covers services provided through

	3.2.1R): (1) <i>IPRU(BANK)</i> 3.5.1R; and (2) <i>IPRU(BANK)</i> chapters LM and LS.	a <i>branch</i> , see column (2).
...		
<i>ELM</i>	<del><i>ELM</i> 6 applies.</del>	<del>Does not apply.</del>
...		

...

## 15.4 Notified persons

15.4.1 R (1) An *overseas firm*, which is not an *incoming firm*, must notify the *FSA* within 30 *business days* of any *person* taking up or ceasing to hold the following positions:

...

(c) for a *bank* ~~or an *ELMI*~~: the two or more *persons* who effectively direct its business in accordance with *SYSC* 4.2.2R and ~~*ELM* 5.3.1R, respectively;~~

...

...

## 16 Reporting requirements

### 16.1 Application

16.1.1 R This chapter applies to every *firm* within a category listed in column (2) of the table in *SUP* 16.1.3R and in accordance with column (3) of that table.

16.1.1A D The directions and *guidance* in *SUP* 16.13 apply to an *authorised payment institution* and a *small payment institution*.

16.1.1B D The directions and *guidance* in *SUP* 16.15 apply to *electronic money issuers* that are not *credit institutions*.

...

16.1.3 R Application of different sections of *SUP* 16 (excluding *SUP* 16.13 and *SUP* 16.15)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<i>SUP</i> 16.6	<i>Bank</i> , <del><i>ELMI</i></del>	<i>SUP</i> 16.6.4R to <i>SUP</i>

		16.6.5R
	...	
<i>SUP 16.7</i>	<i>Bank, other than an EEA bank with permission for cross border services only.</i>	<i>SUP 16.7.7R to SUP 16.7.15R</i>
	...	
	<del><i>ELMI</i></del>	<del><i>SUP 16.7.64R to SUP 16.7.66R</i></del>
...		
<p>Note 1 = Where an <i>authorised professional firm</i> is required by <i>IPRU(INV)</i> 2.1.2R(1) to comply with chapter 3, 5, 10 or 13 of <i>IPRU(INV)</i>, section <i>SUP 16.7</i> applies to such a <i>firm</i> as if it were the relevant <i>firm</i> category in the right hand column of <i>IPRU(INV)</i> 2.1R.</p>		
<p><u>Note 2 = The application of <i>SUP 16.13</i> is set out under <i>SUP 16.13.1G</i> and the application of <i>SUP 16.15</i> is set out under <i>SUP 16.15.1G</i>.</u></p>		

...

#### Structure of the chapter

16.3.2 G This chapter has been split into the following sections, covering:

...

(10) reporting under the *Payment Services Regulations*; ~~and~~

(11) client money and asset return (*SUP 16.14*); and

(12) reporting under the *Electronic Money Regulations*.

*[Editor's Note: sub-paragraph (11) was added by FSA 2010/52 and comes into force on 1 June 2011.]*

...

## 16.6 Compliance reports

### Application

...

16.6.2 G Applicable provisions of this section (see *SUP 16.6.1G*)

Category of firm	Applicable provisions
------------------	-----------------------



<i>Bank, <del>ELMI</del></i>	<i>SUP 16.6.4R - SUP 16.6.5R</i>
...	

...

Banks

16.6.4 R A ~~bank and an ELMI~~ must submit compliance reports to the FSA in accordance with *SUP 16.6.5R*.

16.6.5 R Compliance reports from a bank ~~and an ELMI~~ (see *SUP 16.6.4R*)

...

**16.12 Integrated Regulatory Reporting**

...

Reporting requirement

...

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 date
RAG 1	<ul style="list-style-type: none"> <li>• accepting deposits</li> <li>• <del>issuing electronic money</del></li> <li>• meeting of repayment claims</li> <li>• managing dormant account funds (including the investment of such funds)</li> </ul>	<i>SUP 16.12.5R</i>	<i>SUP 16.12.6R</i>	<i>SUP 16.12.7R</i>
...				

...

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 <i>data item</i>	Prudential category of firm, 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 ...</i>	<i>EEA bank ...</i>	<b>Electronic money institutions</b>	<i>Credit union</i>	<i>Dormant account fund operator (note 15)</i>
<i>Annual report and accounts</i>	No standard format		No standard format, but in English			No standard format		No standard format
...								
Balance sheet	...	...				FSA020	...	
Income statement	...	...	...			FSA021	...	
Capital adequacy	...	...				FSA022	...	
...								
Market risk	...	...				FSA023		
...								
Large exposures	...	...				FSA024	...	
...								
Liquidity (other than stock)		...				FSA025		...
...								
<b>ELMI questions</b>						FSA026		
Non-EEA sub-group	...					FSA028 (note 8)		
...								

...

16.12.7 R The applicable due dates ...

...	
Note 1	Applicable to UK banks, <u>and</u> dormant account fund operators <u>and</u> <del>electronic money institutions.</del>

...

Purpose

- 16.13.2 G The purpose of this section is to give directions to *authorised payment institutions* and *small payment institutions* under regulation 82 (Reporting requirements) of the *Payment Services Regulations* in relation to:

...

- 16.13.2A G The purpose of this section is also to set out the rules applicable to *authorised payment institutions* and *small payment institutions* in relation to complete and timely reporting and failure to submit reports.

Reporting requirement

- 16.13.3 D (1) An *authorised payment institution* or a *small payment institution* must submit to the ~~FSA~~ FSA the duly completed return applicable to it as set out in column (2) of the table in SUP 16.13.4D.

...

- 16.13.3A D SUP 16.3.11R (Complete reporting) and SUP 16.3.13R (Timely reporting) also apply to *authorised payment institutions* and *small payment institutions* as if a reference to *firm* in these rules were a reference to *authorised payments institutions* and *small payment institutions*.

- 16.13.3B R SUP 16.3.14R (Failure to submit reports) also applies to *authorised payment institutions* and *small payment institutions* as if a reference to *firm* in this rule were a reference to *authorised payments institutions* and *small payment institutions*

After SUP 16.14 insert the following new section. The text is not underlined.

[Editor's Note: SUP 16.14 was added by FSA 2010/52 and comes into force on 1 June 2011.]

**16.15 Reporting under the Electronic Money Regulations**

Application

- 16.15.1 G This section applies to *electronic money issuers* that are not *credit institutions* (see SUP 16.1.1BD).

Purpose

- 16.15.2 G The purpose of this section is to give directions to the *electronic money issuers* referred to in SUP 16.1.1BD under regulation 49 (Reporting requirements) of the *Electronic Money Regulations* in relation to:

- (1) the information in respect of their issuance of *electronic money* and

provision of *payment services* and their compliance with requirements imposed by or under Parts 2 to 5 of the *Electronic Money Regulations* that they must provide to the *FSA*; and

- (2) the time at which and the form in which they must provide that information.

- 16.15.3 G The purpose of this section is also to set out the rules applicable to these types of *electronic money issuers* in relation to complete and timely reporting and, where relevant, the failure to submit reports.

Reporting requirement

- 16.15.4 D An *electronic money issuer* that is not a *credit institution* must submit to the *FSA*:

- (1) the duly completed return applicable to it as set out in column (2) of the table in *SUP 16.15.8D*; and
- (2) the return referred to in (1):
- (a) in the format specified as applicable in column (3) of the table in *SUP 16.15.8D*;
- (b) at the frequency and in respect of the periods specified in column (4) of that table;
- (c) by the due date specified in column (5) of that table; and
- (d) by electronic means made available by the *FSA* where necessary.

- 16.15.5 D *SUP 16.4.5R* (Annual Controllers Report) and *SUP 16.5.4R* (Annual Close Links Reports) apply to an *authorised electronic money institution* as if a reference to *firm* in these *rules* were a reference to an *authorised electronic money institution*.

- 16.15.6 D *SUP 16.3.11R* (Complete reporting) and *SUP 16.3.13R* (Timely reporting) apply to an *authorised electronic money institution* and a *small electronic money institution* as if a reference to *firm* in these *rules* were a reference to an *authorised electronic money institution* and a *small electronic money institution*.

- 16.15.7 R *SUP 16.3.14R* (Failure to submit reports) also applies to an *authorised electronic money institution* and a *small electronic money institution* as if a reference to *firm* in these *rules* were a reference to an *authorised electronic money institution* and a *small electronic money institution*.

- 16.15.8 D The table below sets out the format, reporting frequency and due date for submission in relation to regulatory returns that apply to *electronic money issuers* that are not *credit institutions*.

(1) Type of <i>electronic money issuer</i>	(2) Return	(3) Format	(4) Reporting Frequency	(5) Due date (Note 4)
<i>Authorised electronic money institution (Note 1)</i>	Balance sheet	FSA059	Half yearly (Note 3)	30 <i>business days</i>
	Income statement	FSA060	Half yearly (Note 3)	30 <i>business days</i>
	Capital requirements	FSA061	Half yearly (Note 3)	30 <i>business days</i>
	Safeguarding	FSA062	Half yearly (Note 3)	30 <i>business days</i>
	Supplementary information	FSA063	Half yearly (Note 3)	30 <i>business days</i>
	<i>Annual report and accounts</i>	No standard format	Annual (Note 3)	80 <i>business days</i>
<i>Small electronic money institutions (Note 2)</i>	Return	FSA064	Half yearly (note 5)	30 <i>business days</i>
	Total electronic money outstanding @ 31st December	FSA065	Annual (Note 5)	1 month
	<i>Annual report and accounts</i>	No standard format	Annual (Note 5)	80 <i>business days</i>
(a) the Post Office Limited  (b) the Bank of England, the ECB and the national central banks of <i>EEA States</i> other than the <i>United Kingdom</i>  (c)	<i>Average outstanding electronic money</i>	No standard format	Half yearly (Note 6)	30 <i>business days</i>

Government departments and local authorities				
(d) <i>credit unions</i>				
(e) municipal banks				
(f) the National Savings Bank				
Note 1	When submitting the completed returns required, the <i>authorised electronic money institution</i> must use the format of the returns set out in SUP 16 Annex 30AD to SUP 16 Annex 30ED.			
Note 2	When submitting the completed returns required, the <i>small electronic money institution</i> must use the format of the returns set out in SUP 16 Annex 30FD to SUP 16 Annex 30GD.			
Note 3	Where the <i>authorised electronic money institution's</i> reporting frequency is half yearly or annual, this field is calculated from the <i>authorised electronic money institution's</i> accounting reference date.			
Note 4	The due dates for returns are the last day of the periods given in column (5) of the table above following the relevant reporting frequency period set out in column (4) of the table above.			
Note 5	The reporting frequency in relation to FSA065 is calculated from 31 December each calendar year. Otherwise, where the <i>small electronic money institution's</i> reporting frequency is half yearly or annual, this field is calculated from the <i>small electronic money institution's</i> accounting reference date.			
Note 6	This is calculated from 31 December each calendar year.			

After SUP 16 Annex 29R insert the following new Annexes. The text is not underlined.

**16 Annex 30D            Electronic money: returns**

The returns for electronic money institutions are set out in SUP 16 Annex 30AD to 16 Annex GD. *[Editor's Note: SUP 16 Annex 29R was added by FSA 2010/52 and comes into force on 1 June 2011.]*

**16 Annex 30AD Authorised electronic money institutions - balance sheet return**

**FSA059 Authorised electronic money institutions - balance sheet**

	Currency	<input type="text"/>	Please select £ or €
	Currency units	<input type="text" value="Thousands"/>	
1	Cash	<input type="text"/>	
2	Secure low-risk liquid assets	<input type="text"/>	
3	Material holdings in financial institutions	<input type="text"/>	
4	Investments in own shares	<input type="text"/>	
5	Other current assets	<input type="text"/>	
6	Intangible assets	<input type="text"/>	
7	Other fixed assets	<input type="text"/>	
8	Total assets	<input type="text"/>	
9	Electronic money outstandings	<input type="text"/>	
10	o/w electronic money issue price	<input type="text"/>	
11	Other current liabilities	<input type="text"/>	
12	Non current liabilities (excluding provisions)	<input type="text"/>	
13	Paid up share capital	<input type="text"/>	
14	Share premium account	<input type="text"/>	
15	Audited reserves (excluding revaluations)	<input type="text"/>	
16	Externally verified interim profits	<input type="text"/>	
17	Partnership capital	<input type="text"/>	
18	Initial capital	<input type="text"/>	
19	Interim net losses	<input type="text"/>	

20	Revaluation reserves	<input type="text"/>
21	Own Funds	<input type="text"/>
22	Subordinated debt capital	<input type="text"/>
23	Provisions	<input type="text"/>
24	Unaudited current year's profits	<input type="text"/>
25	Total liabilities	<input type="text"/>

**16 Annex 30BD Authorised electronic money institutions - income statement**

**FSA060 Authorised electronic money institutions - income statement**

	Currency	<input type="text"/>	Please select £ or €
	Currency units	<input type="text" value="Thousands"/>	
	<b>Income (including regulated business revenue)</b>		A
1	Total income	<input type="text"/>	
	<b>Expenses</b>	<input type="text"/>	
2	Total expenses	<input type="text"/>	
3	Tax expense	<input type="text"/>	
4	Dividends	<input type="text"/>	
5	Extraordinary items	<input type="text"/>	
6	Retained Profit	<input type="text"/>	

**16 Annex 30 CD Authorised electronic money institutions - capital requirements return**

**FSA061 Authorised electronic money institutions - capital requirements**

Currency	<input type="text"/>	Please select £ or €
----------	----------------------	----------------------



Currency units

Thousands

1 The firm completing this is subject to the capital rules for

A

2 Electronic money issuance and related payment services only (*Answer Yes or No*)

If 'yes' complete Part One, Section 1 **only**.

3 Electronic money issuance, related payment services and unrelated payment services (*Answer Yes or No*)

If 'yes' complete **both** Part One, Sections 1 and 2.

## PART ONE: CAPITAL REQUIREMENT

### Section 1 (electronic money business)

4 Initial capital requirement

350

*Min €350,000*

Own funds requirement

5 Total own funds

6 Electronic money outstandings at period end

7 Average daily outstanding electronic money at the end of each calendar day over preceding 6 months

8 Own funds requirement

*2% of average outstanding electronic money figure (field A7)*

9 Total capital requirement (higher of initial capital and own funds requirements)

### Section 2 (electronic money institutions engaged in unrelated payment services)

10 Please indicate which method your firm uses to calculate its own funds requirement

*Select one method only – A, B or C and complete the relevant section below.*

#### *Method A (Fixed overheads method)*

11 Total fixed overheads for preceding year

12 Own funds requirement (10% of fixed overheads for preceding year)

***Method B (Scaled average monthly payment method)***

13	Total payment volume (in Euro)	<input type="text"/>
14	4% of first €5m of payment volume	<input type="text"/>
15	2.5% of payment volume between €5m and €10m	<input type="text"/>
16	1% of payment volume between €10m and €100m	<input type="text"/>
17	0.5% of payment volume between €100m and €250m	<input type="text"/>
18	0.25% of any remaining payment volume	<input type="text"/>
19	Total	<input type="text"/>
20	Scaling factor	<input type="text"/>
21	Own funds requirement	<input type="text"/>

***Method C (Scaled income method)***

*Relevant Indicator*

22	Interest income	<input type="text"/>
23	Interest expenses	<input type="text"/>
24	Gross commissions and fees received	<input type="text"/>
25	Gross other operating income	<input type="text"/>
26	Total Relevant Indicator	<input type="text"/>

*Multiplication Factor*

27	10% of the first €2.5m of the total relevant indicator	<input type="text"/>
28	8% of the total relevant indicator between €2.5m and €5m	<input type="text"/>
29	6% of the total relevant indicator between €5m and €25m	<input type="text"/>
30	3% of the total relevant indicator between €25m and €50m	<input type="text"/>
31	1.5% of any remaining amount of the total relevant indicator	<input type="text"/>
32	Total	<input type="text"/>
33	Scaling factor	<input type="text"/>
34	Own funds requirement	<input type="text"/>

Total capital requirement

35	Initial capital requirement from Section 1 (X)	350
36	Own funds requirement from Section 1 + own	<input type="text"/>

	funds requirement calculated using methods A, B or C (Y)	
37	Total capital requirement (higher of X and Y)	

**Part Two: TOTAL CAPITAL RESOURCES**

38	Paid up capital	
39	Reserves	
40	Retained profit/loss	
41	Revaluation reserves	
42	Eligible general or collective provisions	
43	Eligible securities and instruments	
44	Cumulative preference shares (other than fixed term)	
45	Eligible members' commitments	
46	Eligible borrowers' commitments	
47	Eligible fixed term cumulative preference shares and subordinated loans	
48	Total resources	

Deductions

49	Own shares at book value	
50	Intangible assets	
51	Material losses	
52	Deductible holdings of shares	
53	Deductible participations	
54	Deductible instruments	
55	Total deductions	

56	Total capital resources	
57	Period end £/€ exchange rate used	
58	Total capital resources (Euro equivalent)	
59	Total capital requirement (in Euro)	
60	Capital surplus/deficit (in Euro)	

**16 Annex 30DD      Authorised electronic money institutions – safeguarding return**

**FSA062 Authorised electronic money institutions - safeguarding return**

METHOD OF SAFEGUARDING OF CLIENT ASSETS

		A	B	C
	<i>Mark 'X' in all appropriate boxes in columns A &amp; B</i>	Electronic money	Unrelated payment services	Name of institution/ custodian/insurer
1	Placed in a separate account with an authorised credit institution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
2	Invested in approved secure low-risk liquid assets held in a separate account with an authorised custodian	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
3	Covered by an insurance policy with an authorised insurer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
4	Covered by a guarantee from an authorised insurer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
5	Covered by a guarantee from an authorised credit institution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>

**16 Annex 30ED      Authorised electronic money institutions - supplementary information**

**FSA063 Authorised electronic money institutions - supplementary information**

		Yes/No	Explanation if No
1	Have the firm's own funds been equal to or greater than its own funds requirement throughout the reporting period?		
2	Have all funds received from customers been immediately segregated and safeguarded throughout the reporting period?		
3	Please report the number of electronic money accounts open with the firm at the end of the reporting period.		
4	Please report the number of agents the firm was responsible for at the end of the reporting period		

**Audited Accounts**

5	If your firm is incorporated, does it qualify for the Companies House small firms exemption from having its accounts audited? <i>Please answer 'yes' or 'no'.</i>	
6	If your firm is required to submit audited accounts, please report the date on which your accounts were last audited. <i>Please enter date</i>	
7	Is your firm a 'hybrid' firm conducting other non-regulated business with an obligation to submit separate accounts for its electronic money and payment services business? <i>Please answer 'yes' or 'no'.</i>	
8	If you have answered 'yes' to 7 above, please enter the date these accounts were last submitted to us. <i>Please enter date</i>	

16 Annex 30FD Small electronic money institution return

**FSA064 Small electronic money institution return**

**Section 1: Capital Adequacy**

A

*(\*\*Full completion of Section 1 of this return is only required if the actual or, where applicable, projected figure for 'average outstanding electronic money' in respect of the relevant period is equal to or exceeds €500,000. If the figure is below this threshold the capital requirement does not apply and figures for fields A3 and A4 only should be entered.\*\*)*

Currency	<input type="text"/>	Please select £ or €
Currency units	<input type="text" value="Thousands"/>	

**PART ONE: CAPITAL REQUIREMENT**

1	Initial capital requirement	<input type="text"/>	<i>2% of average outstanding electronic money figure (A4)</i>
---	-----------------------------	----------------------	---

*Own funds requirement*

2	Total own funds	<input type="text"/>
---	-----------------	----------------------

3	Electronic money outstandings at period end	<input type="text"/>
---	---	----------------------

4	Average outstanding electronic money at the end of each calendar day over preceding 6 months	<input type="text"/>
---	--	----------------------

5	Own funds requirement	<input type="text"/>	<i>2% of average outstanding electronic money figure (A4)</i>
---	-----------------------	----------------------	---

6	Total capital requirement (higher of initial capital and own funds requirements)	<input type="text"/>
---	--	----------------------

**Part Two: TOTAL CAPITAL RESOURCES**

7	Paid up capital	<input type="text"/>
8	Reserves	<input type="text"/>
9	Retained profit/loss	<input type="text"/>

10	Revaluation reserves	
11	Eligible general or collective provisions	
12	Eligible securities and instruments	
13	Cumulative preference shares (other than fixed term)	
14	Eligible members' commitments	
15	Eligible borrowers' commitments	
16	Eligible fixed term cumulative preference shares and subordinated loans	
17	Total resources	
	Deductions	
18	Own shares at book value	
19	Intangible assets	
20	Material losses	
21	Deductible holdings of shares	
22	Deductible participations	
23	Deductible instruments	
24	Total deductions	
25	Total capital resources	
26	Period end £/€ exchange rate used	
27	Total capital resources (Euro equivalent)	
28	Total capital requirement (in Euro)	
29	Capital surplus/deficit (in Euro)	

## Section 2: Method of safeguarding of client assets

		A	B	C
	<i>Mark 'X' in all appropriate boxes in columns A &amp; B</i>	Electronic money	Unrelated payment services	Name of institution/custodian/insurer
1	Placed in a separate account with an authorised credit institution			
2	Invested in approved secure low-risk liquid assets held in a separate account with an authorised custodian			
3	Covered by an			

	insurance policy with an authorised insurer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Covered by a guarantee from an authorised insurer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Covered by a guarantee from an authorised credit institution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Section 3: Supplementary Information

		Yes/No	Explanation if No
1	Has the firm continued to meet the condition for registration that average outstanding electronic money generated by the firm's total business activities must not exceed €5,000,000 throughout the reporting period?	<input type="checkbox"/>	<input type="checkbox"/>
2	Has the firm continued to meet the condition for registration that the rolling monthly average of the total amount of any unrelated payment transactions (over any period of 12 months) must not exceed €3,000,000 throughout the reporting period?	<input type="checkbox"/>	<input type="checkbox"/>
3	If the actual or, where applicable, projected figure for 'average outstanding electronic money' in respect of the relevant period is equal to or greater than €500,000, has the firm's own funds been equal to or greater than its own funds requirement (2% of their average outstanding electronic money) throughout the reporting period? <i>Answer N/A if the average amount of outstanding electronic money is below €500,000.</i>	<input type="checkbox"/>	<input type="checkbox"/>
4	Have all funds received from customers been immediately segregated and safeguarded	<input type="checkbox"/>	<input type="checkbox"/>



	throughout the reporting period?	
5	Please report the number of electronic money accounts open with the firm at the end of the reporting period.	
6	Please report the number of agents the firm was responsible for at the end of the reporting period.	

**Audited Accounts**

7	If your firm is incorporated, does it qualify for the Companies House small firms exemption from having its accounts audited? <i>Please answer 'yes' or 'no'.</i>	
8	If your firm is required to submit audited accounts, please report the date on which your accounts were last audited. <i>Please enter date</i>	
9	Is your firm a 'hybrid' firm conducting other non-regulated business with an obligation to submit separate accounts for its electronic money and payment services business? <i>Please answer 'yes' or 'no'.</i>	
10	If you have answered 'yes' to 7 above, please enter the date these accounts were last submitted to us. <i>Please enter date</i>	

**16 Annex 30GD Small electronic money institutions - total outstanding electronic money return**

**FSA065 Small electronic money institutions - total electronic money outstanding @ 31st December**

1	Total amount of outstanding electronic money issued at 31/12:	
---	---	--

Amend the following as shown.

**Appendix 1 Prudential categories and sub-categories**

...

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

<i>Prudential categories</i> (Note 1)	Applicable prudential requirements (Note 2)	Prudential sub-categories
...		
<i>ELMI</i>	<i>ELM</i>	
...		

...

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
...					
12L	...				
	(5) <i>SUP</i> 16.7.66 [deleted]	R	An <i>ELMI</i> that is required to report a consolidated reporting statement on capital adequacy in the case of <i>ELM</i> 7.3.2R in respect of reporting dates after 31 December 2007 will use FSA003 in place of FSA009. FSA003 should be submitted in accordance with <i>SUP</i> 16.12.3R(3).	1 January 2008	1 January 2008
	...				
	(7) <i>SUP</i> 16.7.65R, <i>SUP</i> 16.7.66R [deleted]	R	An <i>ELMI</i> will not be required to report under these rules in respect of reporting dates after 31 December 2007 but will instead report under <i>SUP</i> 16.12.5R.	1 January 2008 to 1 April 2009	1 January 2008
12 M	...				
	(18) <i>SUP</i>	R	An <i>ELMI</i> must submit the <i>ELM</i> CA/LE (unconsolidated	1 January 2008 to 30 August	1 January 2008

	16.7.65R, <i>SUP</i> 16.7.66R [deleted]		and consolidated) for reporting dates between 1 January 2008 and 30 August 2008 in accordance with the rules set out in <i>SUP</i> 16.7.66R.	2008	
...					

...

Insert the following new transitional provision after SUP TP 1.5. The text is not underlined.

**TP 1.6 Electronic Money Transitional Provision**

<u>(1)</u>	<u>(2) Material to which the transitional provision applies</u>	<u>(3)</u>	<u>(4) Transitional provision</u>	<u>(5) Transitional provisions: dates in force</u>	<u>(6) Handbook provision: coming into force</u>
1	The changes to <i>SUP</i> set out in Annex I of the Electronic Money and Payment Services Instrument 2011	R	In relation to a person deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i> , the changes effected by the Annex listed in column (2) do not apply and the provisions of <i>SUP</i> , as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that person is deemed to be authorised by virtue of regulation 74 of the <i>Electronic Money Regulations</i> .	30 April 2011	30 April 2011

...

Amend the following as shown.

**Schedule 4 Powers exercised**

...

Sch 4.4G

The following additional powers and related provisions have been exercised by the <i>FSA</i> to give the directions and make the <i>guidance</i> in <i>SUP</i> .	
	...
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<u>Regulation 49 (Reporting requirements) of the <i>Electronic Money Regulations</i></u>
	<u>Regulation 60 (Guidance) of the <i>Electronic Money Regulations</i></u>

**Annex J**

**Amendments to the Decision Procedure and Penalties manual (DEPP)**

In this Annex, underlining indicates new text.

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

Insert the following table at the end of DEPP 2 Annex 1

<u>Electronic Money Regulations</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulations 9(6) and 15</u>	<u>where the FSA is proposing to refuse an application for authorisation as an <i>authorised electronic money institution</i>, or for registration as a <i>small electronic money institution</i>, or impose a requirement, or refuse to vary an authorisation or registration</u>		<u><i>Executive procedures</i></u>
<u>Regulations 9(7)(a) and 15</u>	<u>when the FSA is deciding to refuse an application for authorisation as an <i>authorised electronic money institution</i>, or for registration as a <i>small electronic money institution</i>, or impose a requirement or refuse to vary an authorisation or registration</u>		<u><i>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</i></u>
<u>Regulations 10(4), 10(5)(a) and 15</u>	<u>when the FSA is proposing or deciding to either cancel an <i>authorised electronic money institution's</i> authorisation, or to cancel a <i>small electronic money institution's</i> registration otherwise than at that institution's own request *</u>		<u><i>RDC</i></u>
<u>Regulations 11(6), 11(9), 11(10)(b) and 15</u>	<u>when the FSA is exercising its powers to vary an <i>electronic money institution's</i> authorisation or vary a <i>small electronic money institution's</i> registration on its own initiative</u>		<u><i>RDC or Executive procedures (Note 1)</i></u>

<u>Regulation 29(2)</u>	<u>when the FSA is proposing to refuse to register an EEA branch of an authorised electronic money institution</u>		<u>Executive procedures</u>
<u>Regulation 29(3)(a)</u>	<u>when the FSA is deciding to refuse to register an EEA branch of an authorised electronic money institution</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulation 29(2) and Regulation 29(3)(a)</u>	<u>when the FSA is proposing or deciding to cancel the registration of an EEA branch of an authorised electronic money institution*</u>		<u>RDC</u>
<u>Regulation 34(9)</u>	<u>when the FSA is proposing to refuse an application for registration as an agent</u>		<u>Executive procedures</u>
<u>Regulation 34(10)(a)</u>	<u>when the FSA is deciding to refuse an application for registration as an agent</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Regulations 35(2) and 35(3)(a)</u>	<u>when the FSA is proposing or deciding to remove an agent from the FSA Register otherwise than at the request of the electronic money institution *</u>		<u>RDC</u>
<u>Regulations 53(1) and 53(3)</u>	<u>when the FSA is proposing, or deciding, to publish a statement that an electronic money issuer has contravened the Electronic Money Regulations *</u>		<u>RDC</u>
<u>Regulations 53 (1) and 53 (3)</u>	<u>when the FSA is proposing or deciding, to impose a financial penalty *</u>		<u>RDC</u>
<u>Regulations 53(1)</u>	<u>When the FSA is proposing or</u>		<u>RDC</u>

<u>and 53(3)</u>	<u>deciding to suspend the authorisation of an <i>authorised electronic money institution</i> or registration of a <i>small electronic money institution</i>, or to limit or otherwise restrict the carrying on of <i>electronic money</i> issuance or <i>payment services</i> business by an <i>electronic money institution</i> *</u>		
<u>Regulations 56(1) and 56(3)</u>	<u>when the <i>FSA</i> is proposing or deciding to exercise its powers to require restitution *</u>		<u><i>RDC</i></u>
<u>Regulation 74(7)</u>	<u>when the <i>FSA</i> is proposing to decide not to include a person on the register</u>		<u><i>Executive procedures</i></u>
<u>Regulation 74(8) (a)</u>	<u>when the <i>FSA</i> is deciding not to include a person on the register</u>		<u><i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i></u>
<u>Schedule 3, paragraph 1</u>	<u>when the <i>FSA</i> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>Electronic Money Regulations</i> (Note 2)</u>		<u><i>RDC</i></u>
<u>Schedule 3, paragraph 1</u>	<u>when the <i>FSA</i> is proposing or deciding to impose a financial penalty against a relevant person (Note 2)</u>		<u><i>RDC</i></u>

Notes:

(1) The *RDC* will take the decision to give the notice exercising the *FSA*'s own-initiative power if the action involves:

(a) removing a type of activity from an authorisation or registration; or

(b) refusing an application to include a type of activity in an authorisation or registration; or

(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or

(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.

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



## Annex K

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

#### INTRO 1 Introduction

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

...

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

...

#### Background

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

- (1) *persons* carrying on *regulated activities* (*firms*), ~~or~~ providing *payment services* (*payment service providers*) or providing *electronic money issuance services* (*electronic money issuers*) and which are covered by the *Compulsory Jurisdiction*;

...

...

#### Application to payment service providers

...

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

...

#### Application to electronic money issuers

1.1.10C R This chapter (except the *complaints record rule*, the *complaints reporting rules*, and the *complaints data publication rules*) applies to *electronic money issuers* in respect of *complaints* from *eligible complainants* concerning activities carried on from an establishment maintained by it or its *agent* in the *United Kingdom*.

1.1.10D G (1) In this sourcebook, the term *electronic money issuer* does not include *credit institutions*, *credit unions* or *municipal banks* (which will be carrying on a *regulated activity* if they issue *electronic money* and will be covered by this sourcebook as *firms* in those circumstances), but it does include *small electronic money institutions* and *persons* who meet the conditions set out in regulation 75(1) or regulation 76(1) of the *Electronic Money Regulations*.

(2) Although *electronic money institutions* are not required to comply with the *complaints record rule*, it is in their interest to retain records of *complaints* so that these can be used to assist the *Financial Ombudsman Service* should this be necessary.

...

Exemptions for firms, ~~and~~ payment service providers and electronic money issuers

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

...

...

## 1 Annex 2G Application of DISP 1 to type of respondent

...

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 - 1.8 Complaints resolution rules etc.	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
...						
incoming <i>EEA authorised payment institution</i> providing cross-border	...	...	...	...	...	...

<i>payment services from outside the UK</i>						
<i>electronic money issuer in relation to complaints concerning issuance of electronic money</i>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<i>EEA branch of an authorised electronic money institution or an EEA branch of any other UK electronic money issuer in relation to complaints concerning issuance of electronic money</i>	<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>incoming branch of an EEA authorised electronic money institution in relation to complaints concerning issuance of electronic money</i>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>
<i>incoming EEA authorised electronic money institution providing cross border electronic money issuance services from outside the UK</i>	<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>licensee</i>	...	...	...	...	...	...

...

- 2.1.1 G ...
- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, ~~and payment services~~ and issuance of electronic money, and covers:

...

...

Activities by payment service providers

- 2.3.2A R ...

Activities by electronic money issuers

- 2.3.2B R The Ombudsman can consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by an electronic money issuer in carrying on:

(1) issuance of electronic money; or

(2) consumer credit activities;

or any ancillary activities, including advice, carried on by the electronic money issuer in connection with them.

General

- 2.3.3 G *Complaints* about acts or omissions include those in respect of activities for which the *firm*, ~~or payment service provider~~ or electronic money issuer is responsible (including business of any *appointed representative* or *agent* for which the *firm*, ~~or payment institution~~ or electronic money institution has accepted responsibility).

...

To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The Ombudsman can consider a *complaint* under the *Voluntary Jurisdiction* if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:

...

(c) activities which (at ~~1 July 2009~~ 30 April 2011) were *regulated activities* or would be *regulated activities* if they

were carried on from an establishment in the *United Kingdom* (these activities are listed in *DISP 2 Annex 1G*);

...

(m) issuance of electronic money;

...

...

#### Compulsory Jurisdiction

2.6.1 R The *Compulsory Jurisdiction* covers only *complaints* about the activities of a *firm* (including its *appointed representatives*), ~~or~~ of a *payment service provider* (including *agents* of a *payment institution*) or of an electronic money issuer (including agents of an electronic money institution) carried on from an establishment in the *United Kingdom*.

2.6.2 G This:

- (1) includes incoming *EEA firms*, incoming *EEA authorised payment institutions*, incoming EEA authorised electronic money institutions and *incoming Treaty firms*; but

- (2) ...

...

#### Eligible complainants

...

2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:

- (1) the complainant is (or was) a customer, ~~or~~ payment service user or electronic money holder of the *respondent*;

- (2) the complainant is (or was) a potential customer, ~~or~~ payment service user or electronic money holder of the *respondent*;

...

- (14) (where the *respondent* is a *dormant account fund operator*) the complainant is (or was) a ~~customer~~ customer of a *bank* or *building society* which transferred any *balance* from a *dormant account* to the *respondent*.

...

Exceptions

- 2.7.9 R The following are not *eligible complainants*:
- (1) (in all jurisdictions) a *firm, payment service provider, electronic money issuer, licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:
    - (a) the *firm* itself has *permission* to carry on; or
    - (ab) the *firm, or payment service provider or electronic money issuer* itself is entitled to carry on under the *Payment Services Regulations* or the *Electronic Money Regulations*; or
    - (b) the *licensee* or *VJ participant* itself conducts;

and which is subject to the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* or the *Voluntary Jurisdiction*;

...

...

**2 Annex 1G Regulated activities for the Voluntary Jurisdiction at ~~1 July 2009~~ 30 April 2011**

This table belongs to *DISP 2.5.1 R*

The activities which (at ~~1 July 2009~~ 30 April 2011) were *regulated activities* for the *Voluntary Jurisdiction* were, 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*:

...

## Annex L

### Amendments to the Electronic Money sourcebook (ELM)

The following chapters of ELM are deleted with effect from 30 April 2011. The text of the deleted sections and provisions is not shown.

- 1 **Application, contents, purpose and general**
- 2 **Initial and continuing own funds requirements**
- 3 **Management of the e-money float**
- 4 **Limitations on activities**
- 5 **Systems and controls; Rules for making calculations**
- 6 **Redemption, information requirements and purse limits**
- 7 **Consolidated financial supervision**
- 8 **Small e-money issuers**

Delete all of ELM TP 1 and replace with the following new text which is not underlined:

#### TP 1 Transitional Provision relating to the Electronic Money Regulations

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
1	The changes to <i>ELM</i> set out in Annex L of the Electronic Money and Payment Services Instrument 2011	R	<p>(1) Except as set out in (2), in relation to a <i>person</i> deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i>, the provisions of <i>ELM</i>, as they were in force as at 29 April 2011, will apply from 30 April 2011 for as long as that <i>person</i> is deemed to be authorised by virtue of regulation 74 of the <i>Electronic Money Regulations</i>.</p> <p>(2) The provisions of <i>ELM</i> 4.4, <i>ELM</i> 6 (except for <i>ELM</i> 6.8.2AR and 6.8.7R) and <i>ELM</i> 8 do not apply in relation to a <i>person</i> who falls within (1).</p>	30 April 2011	30 April 2011

2	The changes to <i>ELM</i> set out in Annex L of the Electronic Money and Payment Services Instrument 2011	R	<p>In relation to a <i>person</i> who meets the conditions set out in regulation 76 (1) of the <i>Electronic Money Regulations</i> (a <i>small e-money issuer</i> who, before 30th April 2011 has carried on the activity of electronic money issuance in accordance with the <i>small e-money issuer certificate</i>), <i>ELM</i> 8.4, <i>ELM</i> 8.6, <i>ELM</i> 8.7 and <i>ELM</i> 8 Annex 2, as they were in force as at 29 April 2011, will apply from 30 April 2011 until:</p> <p>(a) 30 April 2012; or</p> <p>(b) that <i>person</i> is included in the <i>FSA Register</i> as an <i>authorised electronic money institution</i> pursuant to regulation 4(1)(a) of the <i>Electronic Money Regulations</i> or as a <i>small electronic money institution</i> pursuant to regulation 4(1)(b) of the <i>Electronic Money Regulations</i>;</p> <p>whichever is the earlier.</p>	30 April 2011	30 April 2011
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**Annex M**

**Amendments to the Perimeter Guidance manual (PERG)**

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

**Comes into effect on 10 February 2011**

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

Chapter:	Applicable to:	About:
...		
<i>PERG 3.3A:</i> <del>Issuing e-money</del> <u>Guidance on the scope of the Electronic Money Regulations</u>	a <i>person</i> who needs to know <ul style="list-style-type: none"> <li>whether a particular electronic payment product is <del>e-money</del> <u>electronic money</u> and whether the <i>person</i> issuing it needs to be <del>authorised</del> <u>authorised or registered</u> under the <i>Act</i> <u>Electronic Money Regulations</u></li> <li><del>whether any communications about the product will be restricted</del></li> </ul>	<ul style="list-style-type: none"> <li>the scope of the <del>regulated activity of issuing e-money</del> <u>Electronic Money Regulations</u></li> <li><del>the application of the restrictions in section 21 of the Act (Restrictions on financial promotion) to communications about e-money</del></li> </ul>

...

**2.6 Specified investments: a broad outline**

...

Deposits

...

2.6.3 G Certain transactions are excluded. ... In addition, there is a separate exclusion in article 9 of the Order (Sums received in consideration for the issue of debt securities) and another in article 9A (Sums received in exchange for electronic money). ~~PERG 3.2.15G to PERG 3.2.19G~~ PERG 3A Q4 contains guidance on the exclusion relating to *electronic money*.

...

## Electronic money

2.6.4A G *Electronic money* is specified as an *investment* in article 74A of the *Regulated Activities Order* (as amended by the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002* (SI 2002/682)). It is defined, in article 2 of that Order, as monetary value, as represented by a claim on the issuer, which is stored on an electronic device, issued on receipt of funds and accepted as a means of payment by *persons* other than the issuer. Further *guidance* is given in *PERG 3* (Guidance on the scope of the regulated activity of issuing e-money), but only when issued by:

- (1) a full credit institution, a credit union or a municipal bank; or
- (2) a person deemed to have been granted authorisation under regulation 74 of the *Electronic Money Regulations*; or a person who falls within regulation 76(1) of the *Electronic Money Regulations* (see *PERG 3A*, Q30 and 31).

The authorisation and registration requirements for any other person intending to issue *electronic money* are governed by the *Electronic Money Regulations*. Guidance on these regulations is available in *PERG 3A*.

...

## 2.7 Activities: a broad outline

...

### Issuing ~~e-money~~ electronic money

2.7.2A G ~~Guidance on the regulated activity of issuing e-money is given in *PERG 3*. See *PERG 2.6.4AG* for a description of those *persons* to whom this specified activity applies.~~

...

### Agreeing

2.7.21 G Agreeing to carry on most *regulated activities* is itself a *regulated activity*. But this is not the case if the underlying activities to which the agreement relates are those of *accepting deposits, issuing ~~e-money~~ electronic money, effecting or carrying out contracts of insurance, operating a multilateral trading facility, managing dormant account funds,...*

...

## 2.8 Exclusions applicable to particular regulated activities

...

### Issuing e-money

- 2.8.2A G Certain 'small issuers' of *e-money* may apply to the *FSA* for a certificate to be excluded from the *regulated activity* of *issuing e-money*. To be eligible, ~~the issuer must be a *body corporate* or a *partnership* (other than a *full credit institution*) with its head office in the *United Kingdom* and it must meet certain conditions. The *FSA* must give that issuer a certificate if it appears to the *FSA* that the issuer meets those conditions. Further *guidance* on those conditions and how the application is made is given in *ELM* 8.4 (The conditions for giving a small e-money issuer certificate). [deleted]~~

...

## 2.9 Regulated activities: exclusions applicable in certain circumstances

- 2.9.1 G The various exclusions outlined below deal with a range of different circumstances.
- (1) Each set of circumstances described in *PERG* 2.9.3G to *PERG* 2.9.17G has some application to several *regulated activities* relating to *securities*, *relevant investments* or *home finance transactions*. They have no effect in relation to the separate *regulated activities* of *accepting deposits*, *issuing e-money* *electronic money*, *effecting or carrying out contracts of insurance*, *advising on syndicate participation at Lloyd's*, ...

...

Delete all of *PERG* 3. The deleted text is not shown.

After *PERG* 3 [deleted] insert the following new chapter. The text is not underlined.

## Chapter 3A: Guidance on the scope of the Electronic Money Regulations 2011

### 3A.1 Introduction

#### **Q1. What is the purpose of these questions and answers ('Q&As') and who should be reading them?**

The purpose of these Q&As is to help *persons* to consider whether they fall within the scope of the *Electronic Money Directive* which repealed and replaced an earlier *Electronic Money Directive* (2000/46/EC). The *Electronic Money Directive* is given effect in the *United Kingdom* by the *Electronic Money Regulations*. The Q&As are intended to help these *persons* consider whether they need to be authorised or registered for the purposes of *electronic money* issuance in the *United Kingdom*.

The *Electronic Money Regulations* create a separate authorisation and registration regime for issuers of *electronic money* that are not *full credit institutions*, *credit unions* or municipal banks:

- the conditions for authorisation as an *authorised electronic money institution* are set out at regulation 6 of the *Electronic Money Regulations*;
- *small electronic money institutions* have less stringent capital requirements than *authorised electronic money institutions*; however, they need to be registered in accordance with regulation 13 of the *Electronic Money Regulations*;
- *full credit institutions*, *credit unions* and municipal banks are exempt from requiring authorisation and registration under the *Electronic Money Regulations* but must have a *Part IV permission* for *issuing electronic money* and are subject to some of the conduct of business requirements in the *Electronic Money Regulations*.

A reference in this chapter to:

- individual regulations is a reference to the *Electronic Money Regulations* unless otherwise stated; and
- ‘municipal bank’ means a company which, immediately before 1st December 2001, fell within the definition in section 103 of the Banking Act 1987.

The Q&As that follow are set out in the following sections:

- General issues (*PERG 3A.2*)
- The definition of electronic money (*PERG 3A.3*)
- Small electronic money institutions, mixed businesses, distributors, agents and exempt bodies (*PERG 3A.4*)
- Exclusions (*PERG 3A.5*)
- Territorial scope (*PERG 3A.6*)
- Transitional arrangements (*PERG 3A.7*)

### 3A.2 General issues

#### **Q2. Why does it matter whether or not we fall within the scope of the Electronic Money Regulations?**

It matters because if you issue *electronic money* in the *United Kingdom* and do not fall within an exclusion or exemption you must be:

- (a) an *authorised electronic money institution*; or

- (b) a *small electronic money institution*; or
- (c) an *EEA authorised electronic money institution*; or
- (d) a *full credit institution*; or
- (e) the Post Office Limited; or
- (f) the Bank of England or a central bank when not acting in its capacity as a monetary authority or other public authority; or
- (g) a government department or local authority when acting in its capacity as a public authority; or
- (h) a *credit union*, municipal bank or the National Savings Bank.

Otherwise you risk committing a criminal offence under regulation 63.

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

The answers given in these Q&As represent the *FSA's* views but the interpretation of financial services legislation is ultimately a matter for the courts. How the scope of *Electronic Money Regulations* affects the regulatory position of any particular *person* will depend on their individual circumstances. If you have doubts about your position after reading these Q&As, you may wish to seek legal advice. The Q&As do not purport to be exhaustive and are not a substitute for reading the relevant legislation. In addition to *FSA* guidance, some of the *Electronic Money Directive* provisions may be the subject of guidance or communications by the European Commission.

### **Q4. As an electronic money issuer am I carrying on the regulated activity of accepting deposits when I receive a sum in exchange for electronic money?**

No, provided the sum paid over is exchanged immediately for *electronic money*; see article 9A of the *Regulated Activities Order*.

Some *electronic money* products may be charged up by means of scratch cards that can be purchased from shops. The price paid for the card is the monetary value of the *electronic money*. The card contains a number. The purchaser then enters the number on a web site to activate the *electronic money* account. There is thus a delay between the payment for the *electronic money* and its use by the holder. In our view, this delay does not make the payment for the *electronic money* a *deposit*. This is because the means of spending the *electronic money* is put into the hands of the purchaser when they purchase the card.

### **Q5. I intend to issue electronic money in the United Kingdom. How does the authorisation and registration process apply to me?**

It depends on a number of factors:

- i) Unless you are a *person* falling within ii) to iv) below you must apply under the *Electronic Money Regulations* for either:
  - authorisation to be an *authorised electronic money institution* (see regulation 6 for the relevant conditions); or
  - registration to be a *small electronic money institution* (see regulation 13).
- ii) If you are a *credit union*, municipal bank or a *UK* or non-EEA *full credit institution*:
  - authorisation and variation of *permission* remains that imposed by Part IV of the *Act*. This means you will need to have a separate *Part IV permission* in order to issue *electronic money*;
  - where you issue *electronic money* you will be subject to the provisions on issuance and redeemability of *electronic money* in the *Electronic Money Regulations*;
  - note that you may also be subject to the conduct of business requirements in the *Payment Services Regulations*.
- iii) If your head office is located in an *EEA state* other than the *United Kingdom* you cannot apply for authorisation or registration under the *Electronic Money Regulations*. However, you may be entitled to issue *electronic money* in the *United Kingdom* as an *EEA authorised electronic money institution*, in which case the Competent Authority in your Home State will be responsible for your authorisation.
- iv) Government departments, local authorities, the Post Office Limited and the National Savings Bank cannot apply for authorisation or registration under the *Electronic Money Regulations* but they must give notice to the *FSA* if they issue or propose to issue *electronic money*.

Transitional arrangements may also be relevant, see *PERG 3A.7*.

#### **Q6. We are a payment institution. How will the Electronic Money Regulations apply to us?**

If you are a *payment institution* that does not intend to issue *electronic money* or act as agent for an *electronic money institution* the *Electronic Money Regulations* are unlikely to apply to you.

If you are a *payment institution* that wishes to also issue *electronic money* then, in our view, you should cancel your authorisation or registration as a *payment institution* and apply to be an *electronic money institution*. An *electronic money institution* does not need to be authorised or registered under the *Payment Services Regulations* to provide *payment services*.

**Q7. As an electronic money institution how will the Payment Services Regulations apply to us?**

The issuance of *electronic money* is not itself a *payment service* but it is likely to entail the provision of *payment services*. For example, issuing a *payment instrument* is a *payment service* and *electronic money* is likely to be issued on a *payment instrument* in order to make a payment transaction. See Q20 at *PERG* 15 for more detail on what amounts to issuing *payment instruments*.

As an *electronic money institution* you are permitted to engage in the provision of *payment services* as well as other activities, see regulation 32 and Q19 below, without needing to be separately authorised or registered under the *Payment Services Regulations*.

The conduct of business requirements in Parts 5 and 6 of the *Payment Services Regulations* apply to all *payment service providers*, including *electronic money issuers*.

**3A.3 The definition of electronic money**

**Q8. How is electronic money defined in the Electronic Money Regulations?**

The definition in the *Electronic Money Regulations* mirrors that in the *Electronic Money Directive*. *Electronic money* means monetary value as represented by a claim on the issuer which is:

- (1) stored electronically, including magnetically;
- (2) issued on receipt of funds;
- (3) used for the purposes of making payment transactions (as defined in regulation 2 of the *Payment Services Regulations*);
- (4) accepted as a means of payment by persons other than the issuer;

and is not otherwise excluded by the *Electronic Money Regulations*, see *PERG* 3A.5.

*Electronic money* is an electronic payment product. The value is held electronically or magnetically on the payment instrument itself (either locally or remotely) and payments using the value are made electronically. So, for example, monetary value stored on a:

- prepaid payment card;
- personal computer; or
- a *plastic card* that uses magnetic stripe technology;

may all fall within the definition if the value is intended to be used for the purposes of making payment transactions.

**Q9. Does the electronic money definition only apply to card-based schemes?**

No. Any electronic payment scheme that involves prepaid monetary value that can be used to purchase goods and services directly from third party merchants is capable of being *electronic money*. This would include account-based schemes.

Recital (7) of the *Electronic Money Directive* states that the intention is to introduce a definition of *electronic money* in order to make it technically neutral so as to cover all situations where the payment service provider issues pre-paid stored value in exchange for funds. Hence the definition expressly captures both electronically and magnetically stored value and there is no longer a reference to there needing to be an 'electronic device' on which the *electronic money* is stored. These changes make it clear that *electronic money* stored on computers hard drives or account-based schemes are caught.

**Q10. Can you explain why pre-payment is a necessary ingredient of electronic money?**

The definition of *electronic money* says that for a product to be *electronic money*, it must be issued on receipt of funds. This part of the definition means that *electronic money* is a prepaid product. That is, unlike credit provided through a credit card, the *customer* pays for the spending power in advance. This is why credit cards are excluded from the definition of *electronic money*. This does not mean that *electronic money* paid for with a credit card falls outside the definition. The purchase of the *electronic money* represents the purchase of monetary value. The fact that the purchaser is lent the funds to buy the *electronic money* does not affect this. There are two contracts, one for the *sale* of *electronic money* and one for credit.

Value on a debit card may be *electronic money* or a *deposit*. Guidance on this is given in Q15.

**Q11. Does it matter that the device on which electronic value is held may be used for other purposes?**

No. The fact that the device on which monetary value is stored is made available, for example, on a *plastic card* that also functions as a debit or credit card or is a mobile phone does not stop that monetary value from being *electronic money*.

**Q12. Does it matter that the monetary value can be spent with the issuer and third parties?**

No. If monetary value can be spent with third parties, it does not stop being *electronic money* just because the *electronic money* can also be spent with the issuer. This is so even if in practice most of the *electronic money* is spent with the issuer and only a small portion spent with third parties.



**Q13. Are electronic travellers cheques electronic money?**

An electronic travellers cheque is a product, based on a plastic card, designed to replace paper travellers cheques. There are two types of electronic travellers cheques:

- (1) ones that can also be used to buy goods and services from third parties; and
- (2) ones whose only function is to allow the holder to withdraw cash in a foreign currency from ATMs when abroad.

The plastic card is loaded with value, the holder pays for the value on issue and uses the value to purchase goods and services. It is likely then to meet the first three conditions in the definition of *electronic money* listed at Q8. The remaining condition is whether the value is accepted as a means of payment by persons other than the issuer.

An electronic travellers cheque falling into (1) above is likely to be *electronic money* as it can be used to purchase goods from third parties.

An electronic travellers cheque falling into (2) is unlikely to be *electronic money* provided that:

- it can only be used to withdraw foreign currency from ATMs owned by the issuer of the value; or
- the withdrawal of foreign currency by a cardholder will never involve the purchase of the currency from the owner of the ATM but instead the repayment of prepaid value by the issuer of the prepaid value.

**Q14. If I use a trust account to store monetary value in respect of funds I have accepted payment for, will I be issuing electronic money?**

Putting monetary value into a trust account does not, of itself, prevent the *person* who accepts the payment for electronic value from issuing *electronic money*.

**Q15. How does electronic money differ from deposits?**

Recital (13) of the *Electronic Money Directive* provides that *electronic money* does not constitute a deposit-taking activity under the *BCD* “in view of its specific character as an electronic surrogate for coins and banknotes, which is used for making payments, usually of limited amount and not as a means of saving.”

In distinguishing *electronic money* and *deposits*, relevant factors include the following.

- If the monetary value is kept on an account that can be used by non-electronic means, that points towards it being a *deposit*. For example, an account on which cheques can be drawn is unlikely to be *electronic money*.

- If a product is designed in such a way that it is only likely to be used for making payments of limited amounts and not as a means of saving, that feature points towards it being *electronic money*. Relevant features might include how long value is allowed to remain on the account, disincentives to keeping value on the account and the payment of interest on it.
- One should have regard to whether the product is sold as *electronic money* or as a *deposit*.

In other words, a *deposit* involves the creation of a debtor-creditor relationship under which the *person* who accepts the *deposit* stores value for eventual return. *Electronic money*, in contrast, involves the purchase of a means of payment.

**Q16. What sort of factors will the FSA take into account in deciding whether a particular scheme might be electronic money?**

In considering this question relevant factors include:

- the risks incurred by the holder of the value;
- the nature of the rights and obligations of the holder of the prepaid value, the issuer of the value and third parties involved in the scheme; and
- what the scheme allows the holder of the value to do.

Therefore artificial features of a scheme that disguise, or try to disguise, the payment function as the supply of another sort of service are not likely to prevent the scheme from involving the issuance of *electronic money*.

**3A.4 Small electronic money institutions, mixed businesses, distributors, agents and exempt bodies**

**Q17. What criteria must we meet to be a small electronic money institution?**

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

- your total business activities immediately before the time of registration generates an *average outstanding electronic money* that does not exceed 5 million euros;
- the monthly average, over the period of 12 months preceding the application, of the total amount of payment transactions which are not related to the issuance of *electronic money* and are executed by you or your agents in the *United Kingdom*, must not exceed 3 million euros;
- immediately before the time of registration you must hold such initial capital, if any, which is required in accordance with Part 1 of Schedule 2 to the regulations;

- you must have taken adequate measures for the purposes of safeguarding *electronic money* holders' fund as set out at regulation 20;
- you must satisfy the *FSA* that the persons responsible for the management of your *electronic money* and *payment services* are of good repute and possess appropriate knowledge and experience to issue *electronic money* and provide those *payment services* that you intend to undertake;
- 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 or *financial crime*;
- you must be a body corporate whose head office is in the *United Kingdom*;
- you must comply with the registration requirements of the Money Laundering Regulations 2007, where they apply to you.

**Q18. We satisfy the conditions for registration as a small electronic money institution - does that mean we have to register as one?**

Not necessarily, there are other options available to you.

If you register as a *small electronic money institution*, you cannot acquire passport rights under the *Electronic Money Directive*. So you may wish to become an *authorised electronic money institution* if you wish to take advantage of a passport.

If your business does not currently exceed the thresholds referred to in the first two bullets at Q17, but you expect that it will, you may also wish to apply for authorisation rather than registration.

**Q19. We are a firm providing non-financial products and services to the general public. Would it be possible for us to obtain authorisation as an electronic money institution?**

Yes. One of the changes made by the *Electronic Money Regulations* is to allow *electronic money institutions* to undertake mixed business. So, *electronic money institutions* may, in addition to issuing *electronic money*, engage in the following activities:

- the provision of *payment services*; and
- the provision of operational and closely related ancillary services, including ensuring the execution of payment transactions, foreign exchange services, safe-keeping activities and the storage and processing of data; and
- the operation of payment systems, as defined at regulation 2(1); and
- business activities other than the issuance of *electronic money*.

**Q20. We are a branch of a firm which has its head office outside the EEA. If we became an electronic money institution can we also engage in mixed business?**

Yes, but you can only provide *payment services* that are linked to the issuance of *electronic money*. You cannot undertake any of the other *payment services*.

**Q21. We act as agent for an electronic money institution. What is the scope of our activities under the regulations?**

As such an agent you may provide *payment services* on behalf of your principal, but only if you are registered by them on the *FSA Register*. You may also distribute or redeem *electronic money* for your principal. You cannot however issue *electronic money* on their behalf.

**Q22. We distribute and redeem electronic money. What is the scope of our activities under the regulations?**

In some *electronic money* schemes an originator creates *electronic money* and then sells it to banks and other distributors. The latter then sell the *electronic money* to the public. In our view reference to the issuer of *electronic money* in the *Electronic Money Regulations* is a reference to the originator and not the distributor.

So, provided you are not:

- issuing *electronic money* yourself; or
- acting as an agent for an *electronic money institution*, see Q21;

you do not need to be authorised or registered under the *Electronic Money Regulations*. However, the *electronic money institution* that is acting as your principal should notify the *FSA* that you are acting as a distributor, see regulations 26 and 37 and Schedule 1.

You should also bear in mind that if, in distributing and redeeming *electronic money*, your activities amount to *payment services* you will need to consider whether you are required to be authorised or registered under the *Payment Services Directive*, see *PERG 15* for further guidance.

**Q23. We have been registered by one of our principals as an agent under the Payment Services Regulations. If we wish to act as agent for an electronic money institution as well will we need to be registered again?**

Yes. If your principal is an *electronic money institution*, it is its responsibility to apply for registration on your behalf even if you have been registered as agent under the *Payment Services Regulations*. Assuming your principal is not an *EEA firm*, you are required to be

registered on the *FSA Register* before you provide *payment services* for your principal, subject to any relevant transitional provisions which may delay or avoid the need for registration. If your principal is an *EEA firm*, your principal will need to comply with the relevant Home State legislation relating to your appointment, and your Home State competent authority will need to notify the *FSA*.

**Q24. We are a credit union. Are we exempt from the regulations?**

Yes, in part. You are exempt from the authorisation and registration requirements in the regulations. However, if you wish to issue *electronic money* you must ensure you have the relevant *Part IV permission*. You will also be subject to the safeguarding requirements in Part 3 and the redeemability provision in Part 5 of the *Electronic Money Regulations*.

**Q25. We are a municipal bank. Are we exempt from the regulations?**

Save that you are not subject to the safeguarding requirements in Part 3 of the regulations, your position is identical to that of *credit unions*, see Q24.

### 3A.5 Exclusions

**Q26. Are there any exclusions from the definition of electronic money that we should be aware of?**

Yes. The *Electronic Money Regulations* have two express exclusions:

- the first covers monetary value stored on instruments that may be used to purchase goods and services only in the issuer's premises or within a limited network of service providers or for a limited range of goods or services (regulation 3(a)). See *PERG 15 Q40 & Q41* which deal with the same term for the purposes of the *Payment Services Regulations*; and
- the second covers monetary value used to make payment transactions executed by means of any telecommunication, digital or IT device where the goods or services are delivered to and used through such a device but only where the operator of the device does not act only as an intermediary between the user and the supplier (regulation 3(b)). See *PERG 15 Q23* for guidance on what 'acting only as an intermediary' might include.

**Q27. We offer branded prepaid cards which consumers can use to purchase goods in a particular shopping mall. Are we issuing electronic money?**

Yes, it is likely that you will be issuing *electronic money* unless you are able to fall within an exclusion. The most likely exclusion is if the card is only used to purchase goods and

services in your premises or within a limited network of service providers. In our view you will only be able to take advantage of this exclusion here if:

- it is made clear in the relevant terms and conditions of the card that the purchaser of the value is only permitted to use the card to buy from merchants located within that particular shopping mall; and
- the facility to use the card to purchase goods and services outside this shopping mall has been disabled.

**Q28. For the purposes of the second exclusion referred to at Q26, can you explain when goods or services are “used through” a telecommunication, digital or IT device (“a relevant device”)?**

It is important to realise that it is the good or service purchased on a relevant device that must be used through that device for the purposes of this exclusion.

So, for example, where a person purchases travel or cinema tickets using prepaid credit on a mobile phone and the ticket is sent to this phone and then used to gain entry onto a transport system or into a cinema, what is being purchased are rights to travel or to watch a film. The ticket itself is a form of receipt confirming the purchase of such rights. Accordingly, as the travel rights or the visit to the cinema cannot be experienced on a relevant device, such a purchase is likely to fail the “used through” part of the regulation 3(b) exclusion.

Examples of the sorts of goods and services that could meet the “used through” part of the regulation 3(b) exclusion are music, online newspaper or video content, electronic books and mobile phone applications. This is because these products are all capable of being enjoyed through the relevant device they have been delivered to.

For more guidance on this exclusion see *PERG* 15, Q23 and 24.

### **3A.6 Territorial scope**

**Q29. We are a non-EEA firm with a branch in the United Kingdom and we wish to issue electronic money. Can we apply for authorisation or registration?**

Yes. You may apply to be an *authorised electronic money institution* if you are a body corporate (regulation 6(4)(b)). However, you cannot apply to be a *small electronic money institution* unless your head office is in the *United Kingdom* (regulation 13(9)).

### 3A.7 Transitional arrangements

#### **Q30. We are a firm with a Part IV permission to issue electronic money. Do we need to have applied for authorisation under the regulations prior to 30 April 2011?**

No. Provided that you:

- have been lawfully issuing *electronic money* in the *United Kingdom* prior to 30 April 2011; and
- are not a person mentioned in paragraphs (c) to (j) in the *Glossary* definition of *electronic money issuer*;

regulation 74 will apply to grant you deemed authorisation under regulation 9.

If you are granted such a deemed authorisation you must, before 1 July 2011:

- tell us what type of *electronic money institution* you wish to become; and
- provide us with such information as we may reasonably require.

We will then consider whether to include you on the *FSA Register* as an *authorised electronic money institution* or a *small electronic money institution*. If we do then your deemed authorisation will cease at that time. If we do not then your deemed authorisation will cease when the period for a reference to the *Tribunal* has elapsed without a reference being made or, if the matter is referred, at such time as the *Tribunal* may direct.

If, by 1 July 2011, you do not tell us what type of *electronic money institution* you wish to be, or you notify us that you do not wish to be an *electronic money institution*, your deemed authorisation will cease on 30 October 2011 or, if your *Part IV permission* is cancelled before that date, on the cancellation of that *permission*.

#### **Q31. We are currently a small electronic money issuer. Do we need to have applied for authorisation under the regulations prior to 30 April 2011?**

No, under regulation 76, provided:

- you are a *small electronic money issuer*; and
- before the 30 April 2011 you carried on the activity of issuing *electronic money* in accordance with your certificate;

you may continue until 30 April 2012 to carry on that activity without requiring authorisation or registration under the regulations.

However, Part 5 and 6 of the regulations will apply to you as will Articles 9C to 9I and 9K of the *Regulated Activities Order*.

Amend the following as shown.

## 8.7 Engage in investment activity

...

### 8.7.2 G ...

So, it is quite possible for a *person* to be carrying on a business in the *United Kingdom* for which he does not require *authorisation* because the business activity either is not connected with financial services or falls within one of the exclusions in the *Regulated Activities Order* but find that the restriction in section 21 applies to his communications. It should also be noted that ~~e-money~~ electronic money is not a *controlled investment*. This means that the restriction in section 21 does not apply to the communication of an invitation or inducement that concerns ~~e-money~~ electronic money. This is unless the communication is a *financial promotion* for some other reason. For guidance on *electronic money* see *PERG 3A*.

...

## 15.2 General

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

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

...

(e) an ~~e-money issuer~~ electronic money issuer (that is either an ~~e-money issuer~~ with a Part IV permission or a *small e-money issuer* or an EEA ~~e-money issuer~~ exercising passport rights); or

...

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

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

...

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



Yes. If you are an ~~e-money~~ electronic money issuer, you will be subject to the conduct of business requirements in the PSD regulations. The authorisation and registration regime applying to UK ~~e-money~~ electronic money issuers is split between remains that imposed by the *Act* (see PERG 2.6.4A) and that imposed by the *Electronic Money Regulations* (see PERG 3.2 3A for guidance ~~about the regulated activity of issuing e-money~~ on the scope of the *Electronic Money Regulations*).

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

...

#### 15.4 Small payment institutions, agents and exempt bodies

...

**Q30. We are an agent of an ~~e-money issuer~~ electronic money institution for the purpose of providing payment services. Do we need to apply to the FSA for registration under the PSD regulations?**

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

As such an agent you will need to be registered by your principal under the *Electronic Money Regulations*, see PERG 3A Q21. However, in our view you do not need to be registered as an agent under the PSD regulations unless you are also providing payment services on behalf of another payment institution.

## Annex N

### Amendments to the Building Societies Regulatory Guide (BSOG)

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

- 1.1.3 G The following terms are used in this Guide and have the meaning described here:

...	
"credit institution"	an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; <del>or an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive (Directive 2000/46/EC) which has the right to benefit from the mutual recognition arrangements under the BCD</del>
...	

## Annex O

### Amendments to the Enforcement Guide (EG)

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

After EG 19.103 insert the following new text.

#### **Electronic Money Regulations 2011**

- 19.104 The FSA has investigation and sanctioning powers in relation to both criminal and civil breaches of the Electronic Money Regulations. The *Electronic Money Regulations* impose requirements including, amongst other things, various provisions regulating the rights and obligations of electronic money institutions.
- 19.105 The FSA's approach to enforcing the *Electronic Money Regulations* will mirror its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the electronic money issuer or relevant person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
- 19.106 The *Electronic Money Regulations*, for the most part, mirror the FSA's investigative, sanctioning and regulatory powers under the *Act*. The FSA has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the *Act*. Key features of the FSA's approach are described below.

#### ***The conduct of investigations under the Electronic Money Regulations***

- 19.107 The *Electronic Money Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating breaches of the *Electronic Money Regulations*.
- 19.108 The FSA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *Electronic Money Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FSA's policy in civil investigations under the *Electronic Money Regulations* is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

#### ***Decision making under the Electronic Money Regulations***

- 19.109 The *RDC* is the FSA's decision maker for some of the decisions under the *Electronic Money Regulations* as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where

appropriate, *DEPP* 3.3 and 3.4. *DEPP* 3.4 applies for urgent notices under regulations 11(6), (9) and (10)(b) (including as applied by regulation 15).

- 19.110 For decisions made by *executive procedures* the procedures to be followed will be those described in *DEPP* 4.
- 19.111 The *Electronic Money Regulations* do not require the FSA to have published procedures to commence criminal prosecutions. However, in these situations the FSA expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*.
- 19.112 The *Electronic Money Regulations* require the FSA to give third party rights as set out in section 393 of the *Act* and to give access to material as set out in section 394 of the *Act* in certain cases.
- 19.113 Certain FSA decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the *Tribunal* by an aggrieved party.

***Imposition of penalties under the Electronic Money Regulations***

- 19.114 When determining whether to take action to impose a penalty the FSA's policy includes having regard to the relevant factors in *DEPP* 6.2 and *DEPP* 6.4. When determining the level of a financial penalty the FSA's policy includes having regard to relevant principles and factors in *DEPP* 6.5 to 6.5D.
- 19.115 When determining whether to suspend the authorisation or, as the case may be, the registration of an electronic money institution or limit or otherwise restrict the carrying on of electronic money issuance or payments services business by an electronic money issuer the FSA's policy will have regard to the relevant factors in *DEPP* 6A.
- 19.116 As with cases under the *Act*, the FSA may settle or mediate appropriate cases involving civil breaches of the *Electronic Money Regulations* to assist it to exercise its functions under the Regulations in the most efficient and economic way. See *DEPP* 5, *DEPP* 6.7 and *EG* 5 for further information on the settlement process and the settlement discount scheme.

***Statement of policy in section 169(7) interviews (as implemented by the Electronic Money Regulations)***

- 19.117 The Electronic Money Regulations apply section 169 of the *Act* which requires the FSA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *Electronic Money Regulations* the FSA will follow the procedures described in *DEPP* 7.

**PRUDENTIAL SOURCEBOOK FOR INSURERS (AMENDMENT NO 2)  
INSTRUMENT 2011**

**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 6 March 2011.

**Amendments to the Handbook**

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

**Citation**

- E. This instrument may be cited as the Prudential Sourcebook for Insurers (Amendment No 2) Instrument 2011.

By order of the Board  
24 February 2011

## Annex

## Amendments to the Prudential sourcebook for Insurers (INSPRU)

In this Annex, underlining indicates new text.

- 6.1.42A R For the purposes of calculating *group capital resources*, a *firm* must exclude:
- (1) the book value of any investment by a *related undertaking* of the *undertaking* in INSPRU 6.1.17R in shares of, or loans to, an *undertaking* that is not a *related undertaking*, where that *undertaking* has invested in the *capital resources* of a *regulated related undertaking* of the *undertaking* in INSPRU 6.1.17R; and
  - (2) any item of capital not in (1) to the extent that it is the result of or otherwise attributable to reciprocal financing arrangements entered into by the *undertaking* in INSPRU 6.1.17R or by a *related undertaking* of an *undertaking* in INSPRU 6.1.17R.
- 6.1.42B G The *Insurance Groups Directive* gives an example of reciprocal financing as when an *insurance undertaking*, or any of its *related undertakings*, holds shares in, or makes loans to, another *undertaking* which, directly or indirectly, holds an element eligible for the solvency margin of the first undertaking. However, there are other instances of reciprocal financing, for example where a *group undertaking* provides a guarantee to an *undertaking* outside the *group*, in whole or partial reliance on which the *non-group undertaking* invests in or provides any kind of financial accommodation to support the *capital resources* of a *group undertaking* whose *capital resources* are relevant to the *group capital resources* calculation. INSPRU 6.1.42AR(2) requires that *firms* exclude from *group capital resources* those items of capital resulting from or attributable to such reciprocal financing arrangements.

**MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 10) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 119 (The code); and
  - (2) section 121 (Codes: procedure).

**Commencement**

- B. This instrument comes into force on 6 March 2011.

**Amendments to the Handbook**

- C. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 10) Instrument 2011.

By order of the Board  
24 February 2011

## Annex

### Amendments to the Market Conduct sourcebook (MAR)

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

#### 1.3 Market abuse (insider dealing)

...

Factors to be taken into account: “on the basis of”

1.3.3 E ...

1.3.4 E ~~In the opinion of the FSA, if the *inside information* is the reason for, or a material influence on, the decision to *deal* or attempt to *deal*, that indicates that the *person's behaviour* is “on the basis of” *inside information*.~~ [deleted]



**DECISION PROCEDURE AND PENALTIES MANUAL AND ENFORCEMENT  
GUIDE (AMENDMENT NO 2) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 69(1) (Statement of policy) as applied by paragraph 1 of the Schedule to the Cross-Border Payment in Euro Regulations 2010 (SI 2010/89) (“the Regulations”);
  - (b) section 138 (General rule-making power);
  - (c) section 157(1) (Guidance);
  - (d) section 210(1) (Statements of policy) as applied by paragraph 3 of the Schedule to the Regulations; and
  - (e) section 395(5) (The Authority’s procedures) as applied by paragraph 5 of the Schedule to the Regulations, and by paragraph 7 of Schedule 5 to the Payment Services Regulations 2009 (SI 2009/209); and
- (2) regulation 14 (Guidance) of the Regulations.
- 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 6 March 2011.

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C

**Amendments to the Enforcement Guide**

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

**Citation**

- F. This instrument may be cited as the Decision Procedure and Penalties Manual and Enforcement Guide (Amendment No 2) Instrument 2011.

By order of the Board  
24 February 2011

## 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.

*Cross-Border Payments in Euro Regulations*      the Cross-Border Payments in Euro Regulations 2010 (SI 2010/89).

*EU Cross-Border Regulation*      Regulation (EC) No. 924/2009 of the European Parliament and of the Council on cross-border payments in the European Community.

Amend the following as shown.

*employee*      ...

(2) (for the purposes of:

...

(aa) *GEN 4* (Statutory status disclosure);

(ab) *GEN 6.1* (Payment of financial penalties);

...

*restriction notice*      a notice served under ~~section~~ sections 191B or 301J of the *Act*.

*settlement decision makers*      (in *DEPP* and *EG*) two members of the *FSA*'s executive of at least director of division level (which may include an acting director) with responsibility for deciding whether to give *statutory notices* in the circumstances described in *DEPP 5*.

*settlement discount scheme*      (in *DEPP* and *EG*) the scheme described in *DEPP 6.7* by which the financial penalty that might otherwise be payable, or the length of the period of suspension or restriction that might otherwise be imposed, in respect of a *person*'s misconduct or contravention may be reduced to reflect the timing of any settlement agreement.

*Tribunal*      the ~~*Financial Services and Markets Tribunal*~~ Upper Tribunal, namely the Tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007, and to which the functions of the Financial Services and Markets Tribunal were transferred on 6 April 2010 by the Transfer of Tribunal Functions Order 2010.

Delete the following definition. The deleted text is not shown.

*Financial Services and Markets Tribunal*

## Annex B

### Amendments to the General Provisions sourcebook (GEN)

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

#### 6.1 ~~Insurance against~~ Payment of financial penalties

...

- 6.1.4 R In this chapter ‘financial penalty’ means a financial penalty that the *FSA* has imposed, or may impose, under the *Act*. It does not include a financial penalty imposed by any other body.

##### Payment of a penalty imposed on an employee

- 6.1.4A R No firm, except a sole trader, may pay a financial penalty imposed by the FSA on a present or former employee, director or partner of the firm or of an affiliated company.

...

- 6.1.7 G GEN 6.1.4AR, GEN 6.1.5R and GEN 6.1.6R do not prevent a *firm* or *member* from entering into, arranging, claiming on or making any payment under a *contract of insurance* which indemnifies any *person* against all or part of the costs of defending *FSA* enforcement action or any costs they may be ordered to pay to the *FSA*.

## Annex C

### Amendments to the Decision Procedure and Penalties manual (DEPP)

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

- 1.1.2 G The purpose of *DEPP* is to satisfy the requirements of sections 63C(1), 69(1), 93(1), 124(1), 131J(1), 169~~(7)~~ (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.

#### 1.2 Introduction to statutory notices

Statutory and related notices

...

- 1.2.6A G *Statutory notice associated decisions* do not include decisions relating to the publication of a *statutory notice*.

...

- 2.5.7 G The *RDC* will take the decision to give a *supervisory notice* exercising the *FSA*'s own initiative power (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity) if the action involves a fundamental change (see *DEPP* 2.5.8G) to the nature of a *permission*. Otherwise, the decision to give the *decision notice* will be taken by *FSA* staff under *executive procedures*.

- 2.5.7A G Notwithstanding *DEPP* 2.5.7G, *FSA* staff under *executive procedures* will be the decision maker whenever a *firm* agrees not to contest the *FSA*'s exercise of its own initiative power, including where the *FSA*'s action involves a fundamental change to the nature of a *permission*.

...

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

...

Section of the Act	Description	Handbook reference	Decision maker
...			

<u>89K(2)/(3)</u>	<u>when the FSA is proposing or deciding to publish a statement that an issuer of securities admitted to trading on a regulated market is failing or has failed to comply with an applicable transparency obligation</u>		<u>RDC</u>
...			
<u>256(4)/(5)</u>	<u>when the FSA is proposing or deciding to refuse a request for the revocation of the authorisation order of an AUT</u>		<u>RDC</u>
...			
313B(9)	<u>when the FSA has required an institution to suspend a financial instrument from trading and it is proposing or deciding to refuse an application by the institution or the issuer for the cancellation of the suspension. [deleted]</u>	<del>REC 4.2D</del>	<i>Executive procedures</i>
313B(10)/ (11)	<u>when the FSA has required an institution to suspend a financial instrument from trading and it is proposing or deciding to refuse an application by the institution or the issuer for the cancellation of the suspension [deleted]</u>	<del>REC 4.2D</del>	<i>Executive procedures</i>
<u>313BB(5)/ 313BC(5)</u>	<u>when, upon the application of an institution, the FSA is proposing or deciding not to revoke a requirement imposed on an institution under section 313A or is proposing or deciding that a requirement imposed on a class of institutions under section 313A will continue to apply to the applicant</u>	<u>REC 4.2D</u>	<u>Executive procedures</u>
<u>313BD(5)/ 313BE(4)</u>	<u>when, upon the application of an issuer, the FSA is proposing or deciding not to revoke a requirement imposed on an institution or a class of institutions under section 313A or to revoke a</u>	<u>REC 4.2D</u>	<u>Executive procedures</u>

	<u>requirement imposed on a class of institutions under section 313A in relation to the class apart from one or more specified members of it, or one or more specified members of the class only</u>		
...			

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

<b>Regulated Covered Bonds Regulations 2008</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
...			
Regulation 35(1)/(3)	when the <i>FSA</i> is proposing or deciding to impose a penalty on a person under regulation 34*	RCB 6	<i>RDC</i>



<u>Cross-Border Payments in Euro Regulations 2010</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulations 7(1) and 7(3)</u>	<u>when the FSA is proposing or deciding to impose a financial penalty*</u>		<u>RDC</u>
<u>Regulations 7(1) and 7(3)</u>	<u>when the FSA is proposing or deciding to publish a statement that a <i>payment service provider</i> has contravened the <i>EU Cross-Border Regulation</i> *</u>		<u>RDC</u>
<u>Regulations 10(1) and 10(3)</u>	<u>when the FSA is proposing or deciding to exercise its powers to require restitution *</u>		<u>RDC</u>
<u>Schedule paragraph 1</u>	<u>when the FSA is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <i>EU Cross-Border Regulation</i> (Note 1)</u>		<u>RDC</u>
<u>Schedule paragraph 1</u>	<u>when the FSA is proposing or deciding to impose a financial penalty against a relevant person (Note 1)</u>		<u>RDC</u>
<p><u>Note:</u>  <u>(1) The <i>Cross-Border Payments in Euro Regulations</i> do not require third party rights and access to FSA material when the FSA exercises this power. However, the FSA generally intends to allow for third party rights and access to material when exercising this power.</u></p>			

## 2 Annex 2G Supervisory notices

...

<b>Section of the Act</b>	<b>Description</b>	<b>Handbook reference</b>	<b>Decision maker</b>
---------------------------	--------------------	---------------------------	-----------------------

...			
<u>78A(2)/(8)(b)</u>	<u>when the FSA discontinues or suspends the listing of a security on the application of the issuer of the security</u>	<u>LR 5</u>	<u>Executive procedures</u>
...			
<u>191B(1)</u>	<u>when the FSA gives a restriction notice under section 191B</u>		<u>Executive procedures</u>
<u>197(3)/(6)/(7)(b)</u>	when the FSA is exercising its power of intervention in respect of an <i>incoming firm</i>	<i>SUP 14</i>	<i>RDC or executive procedures</i>  <i>See DEPP 2.5.7G and 2.5.7AG</i>
...			
<u>301J(1)</u>	<u>when the FSA gives a restriction notice under section 301J</u>		<u>Executive procedures</u>
...			

...

- 4.2.1 G If FSA staff recommend that action be taken and they consider that the decision falls within the responsibility of a *senior staff committee*:

...

the decision may be taken by a member of the FSA’s executive of at least director of division level (which may include an acting director) or, in the case of a *senior staff committee* which reports directly to the FSA’s senior executive committee, by a member of that committee.

...

- 5.1.1 G ...

- (3) The decision will be taken jointly by two members of the FSA’s executive of at least director of division level (which may include an acting director) (the “*settlement decision makers*”).

...

Withdrawal of authorisation

- 6.5D.4A G The FSA may withdraw a firm's *authorisation* under section 33 of the *Act*, as well as impose a financial penalty. Such action by the FSA does not affect the FSA's assessment of the appropriate financial penalty in relation to a *breach*. However, the fact that the FSA has withdrawn a firm's *authorisation*, as a result of which the firm may have less earning potential, may be relevant in assessing whether the penalty will cause the firm serious financial hardship.

...

- 6.7.1 G *Persons* subject to enforcement action may be prepared to agree the amount of any financial penalty, or the length of any period of suspension or restriction, and other conditions which the FSA seeks to impose by way of such action. Such conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The FSA recognises the benefits of such agreements, in that they offer the potential for securing earlier redress or protection for consumers and the saving of cost to the *person* concerned and the FSA itself in contesting the financial penalty, suspension or restriction. The penalty that might otherwise be payable, or the length of the period of suspension or restriction that might otherwise be imposed, in respect of a *breach* by the *person* concerned will therefore be reduced to reflect the timing of any settlement agreement.

The settlement discount scheme applied to financial penalties

- 6.7.2 G In appropriate cases the FSA's approach will be to negotiate with the *person* concerned to agree in principle the amount of a financial penalty having regard to the FSA's statement of policy as set out in DEPP 6.5 to DEPP 6.5D and DEPP 6.6. (This starting figure will take no account of the existence of the *settlement discount scheme* described in this section.) Such amount ("A") will then be reduced by a percentage of A according to the stage in the process at which agreement is reached. The resulting figure ("B") will be the amount actually payable by the *person* concerned in respect of the *breach*. However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.

...

The settlement discount scheme applied to suspensions and restrictions

- 6.7.6 G The *settlement discount scheme* which applies to the amount of a financial penalty, described in DEPP 6.7.2G to DEPP 6.7.5G, also applies to the length of the period of a suspension or restriction, having regard to the FSA's statement of policy as set out in DEPP 6A.3.

...

6A.3.4 G The FSA and the person on whom a suspension or restriction is to be imposed may seek to agree the length of the period of suspension or restriction and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the length of a period of suspension or restriction which might otherwise have been imposed will be reduced to reflect the stage at which the FSA and the person concerned reached an agreement.

**Schedule 3 Fees and other required payments**

...

Sch 3.2	G	The FSA’s power to impose financial penalties is contained in:
		...
		the <i>Payment Services Regulations</i>
		<u>the <i>Cross-Border Payments in Euro Regulations</i></u>

**Schedule 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 statements of policy in <i>DEPP</i> :
		...
		Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> and by <u>paragraph 1 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u> )
		...
		Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> and by <u>paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u> )
		Section 395 (The Authority’s procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> and by <u>paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u> )
		...

Sch 4.2 G

The following additional powers and related provisions have been exercised by the <i>FSA</i> to make the statements of policy in <i>DEPP</i> :	
...	
	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
	<u>Regulation 14 (Guidance) of the <i>Cross-Border Payments in Euro Regulations</i></u>

## Annex D

### Amendments to the Enforcement Guide (EG)

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

- 2.1 The FSA's effective and proportionate use of its enforcement powers plays an important role in the pursuit of its *regulatory objectives* of protecting *consumers*, maintaining confidence in the *financial system*, financial stability ~~promoting public awareness~~ and reducing *financial crime*. For example, using enforcement helps to contribute to the protection of *consumers* and to deter future contraventions of FSA and other applicable requirements and *financial crime*. It can also be a particularly effective way, through publication of enforcement outcomes, of raising awareness of regulatory standards.
- ...
- 5.14 The *settlement discount scheme* allows a reduction in a financial penalty, period of suspension or period of restriction that would otherwise be imposed on a *person* according to the stage at which the agreement is reached. Full details of the scheme are set out in *DEPP* 6.7.
- ...
- 5.19A The procedure for the *settlement discount scheme* where the outcome is potentially a financial penalty, described in paragraphs 5.14 to 5.19, will also apply where the outcome is potentially a suspension or restriction.
- ...
- 6.7 For ~~both~~ *supervisory notices* (as defined in section 395(13)) which have taken effect, *decision notices* and *final notices*, section 391 of the *Act* requires the FSA to publish, in such manner as it considers appropriate, such information about the matter to which the notice relates as it considers appropriate. However, section 391 provides that the FSA cannot publish information if publication of it would, in its opinion, be unfair to the *person* with respect to whom the action was taken or prejudicial to *consumers*.
- Decision notices and ~~Final~~ *final* notices
- 6.8 The FSA will consider the circumstances of each case, but will ordinarily publicise enforcement action where this has led to the issue of a *final notice*. The FSA may also publicise enforcement action where this has led to the issue of a *decision notice*. The FSA will decide on a case-by-case basis whether to publish information about the matter to which a *decision notice* relates, but expects normally to publish a *decision notice* if the subject of enforcement action decides to refer the matter to the *Tribunal*. The FSA may also publish a *decision notice* before a person has decided whether to refer the matter to the *Tribunal* if the FSA considers there is a compelling reason to do so. For example, the FSA may consider that early publication of the detail of its reasons for taking action is necessary for market

confidence reasons or to allow *consumers* to avoid any potential harm arising from a *firm's* actions. If a *person* decides not to refer a matter to the *Tribunal*, the FSA will generally only publish a *final notice*. Publication will generally include placing the notice on the FSA web site and this will often be accompanied by a press release. The FSA will also consider what information about the matter should be included on the *FSA Register*. Additional guidance on the FSA's approach to the publication of information on the *FSA Register* in certain specific types of cases is set out at the end of this chapter.

6.8A If the FSA intends to publish a *decision notice*, it will give advance notice of its intention to the *person* to whom the *decision notice* is given and to any third party to whom a copy of the notice is given. The FSA will consider any representations made, but will normally not decide against publication solely because it is claimed that publication could have a negative impact on a *person's* reputation. The FSA will also not decide against publication solely because a *person* asks for confidentiality when they refer a matter to the *Tribunal*.

6.8B Publication will generally include placing the *decision notice* or *final notice* on the FSA website and this will often be accompanied by a press release. The FSA will also consider what information about the matter should be included on the *FSA Register*. Additional guidance on the FSA's approach to the publication of information on the *FSA Register* in certain specific types of cases is set out at the end of this chapter.

6.9 However, as required by the *Act* (see paragraph 6.7 above), the FSA will not publish information if publication of it would, in its opinion, be unfair to the *person* in respect of whom the action is taken or prejudicial to the interests of *consumers*. It may make that decision where, for example, publication could damage market confidence or undermine market integrity in a way that could be damaging to the interests of *consumers*.

6.10 Publishing ~~*final notices*~~ notices is important to ensure the transparency of FSA decision-making; it informs the public and helps to maximise the deterrent effect of enforcement action. The FSA will upon request review *decision notices*, *final notices* and related press releases that are published on the FSA's website ~~after a period of six years~~. The FSA will determine at that time whether continued publication is appropriate, or whether notices and publicity should be removed or amended.

6.10A In carrying out its review the FSA will consider all relevant factors. In particular, the FSA will take into account:

- the seriousness of the *person's* misconduct;
- the nature of the action taken by the FSA and the level of any sanction imposed on the *person*;
- whether the FSA has continuing concerns in respect of the *person* and any risk they might pose to the FSA's objectives;
- whether the *person* is a *firm* or an individual;

- whether the publication sets out the FSA's expectations regarding behaviour in a particular area, and if so, whether that message still has educational value;
- public interest in the case (both at the time and subsequently);
- whether continued publication is necessary for deterrence, consumer protection or market confidence reasons;
- how much time has passed since publication; and
- any representations made by the person on the continuing impact on them of the publication.

6.10B The FSA expects usually to conclude that notices and related press releases that have been published for less than six years should not be removed from the website, and that notices and related press releases relating to prohibition orders which are still applicable should not be removed from the website regardless of the length of time they have been published.

6.10C In cases where the FSA publishes a *decision notice* and the subject of enforcement action successfully refers the matter to the *Tribunal*, the FSA will make it clear on its website that the *decision notice* no longer applies. The FSA will normally do this by publishing a discontinuation notice.

...

6.12 Publishing the reasons for variations of *Part IV permission* (and interventions), and maintaining an accurate public record, are important elements of the FSA's approach to its *consumer* protection objective. The FSA will always aim to balance both the interests of *consumers* and the possibility of unfairness to the *person* subject to the FSA's action. The FSA will publish relevant details of both fundamental and non-fundamental variations of *Part IV permission* and interventions which it imposes on *firms*. But it will use its discretion not to do so if it considers this to be unfair to the person on whom the variation is imposed or prejudicial to the interests of consumers. Publication will generally include placing the notice on the FSA web site and this may be accompanied by a press release. As with *decision notices* and *final notices*, *supervisory notices* and related press releases that are published on the FSA's ~~web site~~ website will be reviewed upon request ~~after a period of six years~~. The FSA will determine at that time whether continued publication is appropriate, or whether notices and related press releases should be removed or amended. The FSA will determine this on the same basis as it will decide whether a *decision notice* or *final notice* should be removed (see paragraphs 6.10, 6.10A and 6.10B above). The FSA expects usually to conclude that *supervisory notices* and related press releases that have been published for less than six years should not be removed from the website.

...

6.18 Where the behaviour to which a *decision notice*, *final notice*, civil action, or criminal action relates has occurred in the context of a *takeover bid*, the FSA will



consult the *Takeover Panel* over the timing of publication if the FSA believes that publication may affect the timetable or outcome of that bid, and will give due weight to the *Takeover Panel's* views.

...

6.20 To help it fulfil its *regulatory objectives* of protecting *consumers* and ~~promoting public awareness~~, the FSA will keep on the *FSA Register* a record of *firms* or individual auditors or actuaries who have been the subject of disqualification orders.

...

7.1 Financial penalties and *public censures* are important regulatory tools. However, they are not the only tools available to the FSA, and there will be many instances of non-compliance which the FSA considers it appropriate to address without the use of financial penalties or *public censures*. Having said that, the effective and proportionate use of the FSA's powers to enforce the requirements of the *Act*, the *rules* and the Statements of Principle for Approved Persons will play an important role in the FSA's pursuit of its *regulatory objectives*. Imposing financial penalties and *public censures* shows that the FSA is upholding regulatory standards and helps to maintain market confidence, ~~promote public awareness of regulatory standards~~ and deter *financial crime*. An increased public awareness of regulatory standards also contributes to the protection of *consumers*.

...

7.4 The FSA's statement of policy in relation to the imposition of financial penalties is set out in *DEPP* 6.2 (Deciding whether to take action), *DEPP* 6.3 (Penalties for market abuse) and *DEPP* 6.4 (Financial penalty or public censure). The FSA's statement of policy in relation to the amount of a financial penalty is set out in *DEPP* 6.5 to *DEPP* 6.5D. The FSA's statement of policy in relation to financial penalties for late submission of reports is set out in *DEPP* 6.6.

#### **Apportionment of financial penalties**

7.5 In a case where the FSA is proposing to impose a financial penalty on a *person* for two or more separate and distinct areas of misconduct, the FSA will consider whether it is appropriate to identify in the *decision notice* and *final notice* how the penalty is apportioned between those separate and distinct areas. Apportionment will not however generally be appropriate in other cases.

...

7.8A Chapter 6 of the General Provisions of the FSA Handbook also contains a rule prohibiting a *firm*, except a *sole trader*, from paying a financial penalty imposed by the FSA on a present or former *employee*, *director* or *partner* of the *firm* or of an *affiliated company*.

...

8.1 The FSA has powers under section 45 of the *Act* to vary or cancel an *authorised*

*person's Part IV permission*. The FSA may use these powers where:

- (1) the person is failing or is likely to fail to satisfy the threshold conditions;
- (2) the person has not carried on any *regulated activity* for a period of at least 12 months; or
- (3) it is desirable to exercise the power ~~vary or cancel the person's *Part IV permission*~~ in order to meet any of its regulatory objectives ~~protect the interests of consumers or potential consumers~~.

...

8.17 However, where the FSA has cancelled a *firm's Part IV permission*, it is required by section 33 of the *Act* to go on to give a direction withdrawing the *firm's authorisation*. Accordingly, the FSA may decide to keep a *firm's Part IV permission* in force to maintain the *firm's* status as an *authorised person* and enable it (the FSA) to monitor the *firm's* activities. An example is where the FSA needs to supervise an orderly winding down of the *firm's* regulated business (see SUP 6.4.22 (When will the FSA grant an application for cancellation of *permission*)). Alternatively, the FSA may decide to keep a *firm's Part IV permission* in force to maintain the *firm's* status as an *authorised person* to use administrative enforcement powers against the *firm*. ~~This may be, for example, where the FSA proposes to impose a financial penalty on the *firm* under section 206 of the *Act*.~~

...

9.6 Where the FSA issues a *prohibition order*, it may indicate in the *decision notice* or *final notice* that it would be minded to revoke the order on the application of the individual in the future, in the absence of new evidence that the individual is not fit and proper. If the FSA gives such an indication, it will specify the number of years after which it would be minded to revoke or vary the prohibition on an application. However, the FSA will only adopt this approach in cases where it considers it appropriate in all the circumstances. In deciding whether to adopt this approach, the factors the FSA may take into account include, but are not limited to, where appropriate, the factors at paragraphs 9.9 and at 9.17. The FSA would not be obliged to revoke an order after the specified period even where it gave such an indication. Further, if an individual's *prohibition order* is revoked, he would still have to satisfy the FSA as to his fitness for a particular role in relation to any future application for approval to perform a *controlled function*.

...

9.10 The FSA may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a *controlled function* or other function in relation to *regulated activities*. It may also take account of the particular *controlled function* which an *approved person* is performing for a *firm*, the nature and activities of the *firm* concerned and the markets within which it operates.

...

11.3 ...

- (10) The behaviour of the persons suffering loss

The FSA will consider the conduct of the persons who have suffered loss. As part of its *regulatory objectives objective* of ~~increasing consumer awareness of the financial system~~ and protecting *consumers*, the FSA is required to publicise information about the *authorised* status of *persons* and is empowered to give information and guidance about the regulation of financial services. This information should help *consumers* avoid suffering losses. When the FSA considers whether to obtain restitution on behalf of *persons*, it will consider the extent to which those *persons* may have contributed to their own loss or failed to take reasonable steps to protect their own interests.

...

...

- 12.1 The FSA has powers under sections 401 and 402 of the *Act* to prosecute a range of criminal offences in England, Wales and Northern Ireland. The FSA may also prosecute criminal offences where to do so would be consistent with meeting any of its statutory objectives ~~for which it is not the statutory prosecutor, but where the offences form part of the same criminality as the offences it is prosecuting under the *Act*.~~

...

- 12.5 In some cases, the FSA may decide to issue a formal caution rather than to prosecute an offender. In these cases the FSA will follow the Home Office Guidance on the cautioning of offenders, currently contained in the Home Office Circular ~~18/1994~~ 16/2008.

...

- 12.11 The FSA has agreed guidelines that establish a framework for liaison and cooperation in cases where one or more other authority (such as the Crown Prosecution Service or Serious Fraud Office) has an interest in prosecuting any aspect of a matter that the FSA is considering for investigation, investigating or considering prosecuting. These guidelines are set out in annex 2 to this guide. The FSA is also a signatory to the Prosecutors' Convention and the Investigators' Convention.

...

- 19.73 The *Money Laundering Regulations* add to the range of options available to the FSA for dealing with anti-money laundering failures. These options are:

...

- to take regulatory action against authorised firms for failures which breach the

FSA's rules and requirements (for example, under Principle 3 or SYSC 3.2.6R or SYSC 6.1.1R); and

...

...

19.84 The FSA will apply the approach to publicity that it has outlined in EG 6. However, as the *Money Laundering Regulations* do not require the FSA to issue final notices, the FSA will publish such information about the matter to which the decision notice relates as it considers appropriate. This will generally involve publishing the decision notice on the FSA's website, with or without an accompanying press release, and updating the Public Register. ~~The timing of publicity will be consistent with the FSA's approach in comparable cases under the Act.~~

...

### **Counter Terrorism Act 2008**

19.89A The FSA has investigation and sanctioning powers in relation to both criminal and civil breaches of the Counter Terrorism Act 2008 ("the Counter Terrorism Act"). The Counter Terrorism Act allows the Treasury to issue directions imposing requirements on relevant persons in relation to transactions or business relationships with designated persons of a particular country. Relevant persons may be required to take the following action:

- apply enhanced customer due diligence measures;
- apply enhanced ongoing monitoring of any business relationship with a designated person;
- systematically report details of transactions and business relationships with designated persons; or
- limit or cease business with a designated person.

19.89B The FSA is responsible for monitoring and enforcing compliance with requirements imposed by the Treasury under the Counter Terrorism Act by 'credit institutions' that are authorised persons and by 'financial institutions' (except money service businesses that are not authorised persons and consumer credit financial institutions). 'Credit institutions' and 'financial institutions' are defined in Part 2 of Schedule 7 to the Counter Terrorism Act.

19.89C The investigation and sanctioning powers given to the FSA by the Counter Terrorism Act are similar to those given to the FSA by the *Money Laundering Regulations*. The FSA's approach to using its powers under the Counter Terrorism Act will be consistent with its approach to using its powers under the *Money Laundering Regulations*, described in paragraphs 19.78 to 19.84 above.

### **Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008**

19.89D The Lloyd's Accounting Regulations implement the Audit and Accounts Directives in relation to the Lloyd's insurance market. They aim to increase the transparency of the accounts published by Lloyd's syndicates by imposing requirements in relation to the preparation and disclosure of the accounts. The Regulations give the FSA the power to institute criminal proceedings for an offence committed under the Regulations.

19.89E Our policy in relation to the prosecution of criminal offences and the circumstances in which we would expect to commence criminal proceedings is set out in EG 12.

...

### ***Imposition of penalties under the Payment Services Regulations***

19.101 When imposing a financial penalty the FSA's policy includes having regard to the relevant factors in *DEPP* 6.2, ~~*DEPP* 6.3~~ and *DEPP* 6.4. The FSA's policy in relation to determining the level of a financial penalty includes having regard, where relevant, to *DEPP* 6.5 to *DEPP* 6.5D.

...

19.103 The *Payment Services Regulations* apply section 169 of the *Act* which requires the FSA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *Payment Services Regulations* the FSA will follow the procedures described in *DEPP* 7.

...

### **Cross-Border Payments in Euro Regulations 2010**

19.118 The *Cross-Border Payments in Euro Regulations* lay down rules on cross-border payments in euros, to ensure that compliance with the *EU Cross-Border Regulation* is guaranteed by effective, proportionate and dissuasive sanctions. The main aim of the *EU Cross-Border Regulation* is to ensure that the charges for cross-border payments in euro are equal to the charges for identical national payments in euro within a Member State. The *Cross-Border Payments in Euro Regulations* give the FSA investigation and sanctioning powers in relation to *breaches* of the *EU Cross-Border Regulation*, including:

- the power to require information
- the power of public censure; and
- the power to impose financial penalties.

19.119 The FSA's policy for using the powers given to it by the *Cross-Border Payments in Euro Regulations* is the same as its policy for using the equivalent powers given to it by the *Payment Services Regulations*, set out in EG 19.90 to 19.103, as, for the most part, these powers are very similar. As the *Payment Services Regulations*, for the most part, mirror the FSA's investigative, sanctioning and regulatory powers under the *Act*, the FSA will therefore adopt enforcement procedures akin to those

used under the Act.

## **Annex 2 – Guidelines on investigation of cases of interest or concern to the Financial Services Authority and other prosecuting and investigating agencies**

...

1. These guidelines have been agreed by the following bodies (the agencies):

...

- the Department for Business, ~~Enterprise and Regulatory Reform (BERR)~~ Innovation and Skills (BIS);

...

9. The following are indicators of whether action by the FSA or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.

...

(a) Tending towards action by the FSA

...

- Where the suspected conduct in question would be best dealt with by:
  - ...
  - regulatory action which can be referred to the ~~Financial Services and Markets Tribunal~~ Tribunal (including proceedings for market abuse); and

...

(b) Tending towards action by one of the other agencies

...

- Where the suspected conduct in question would be best dealt with by:
  - criminal proceedings for which the *FSA* is not the statutory prosecutor;
  - proceedings for disqualification of directors under the Company Directors Disqualification Act 1986 (normally appropriate for ~~BERR~~ BIS action);

- winding up proceedings which the FSA does not have statutory powers to bring (normally appropriate for ~~BERR~~ BIS action); or
- criminal proceedings in Scotland.

...

## APPENDIX TO THE GUIDELINES ON INVESTIGATION OF CASES OF INTEREST OR CONCERN TO THE FINANCIAL SERVICES AUTHORITY AND OTHER PROSECUTING AND INVESTIGATING AGENCIES

### 1. The FSA

1.1 The FSA is the single statutory regulator for all financial business in the UK. Its regulatory objectives under the Financial Services and Markets Act 2000 (the 2000 Act) are:

- market confidence;
- financial stability;
- ~~public awareness~~;
- the protection of consumers; and
- the reduction of financial crime.

...

1.4 The FSA has the power to take the following enforcement action:

- discipline authorised firms under Part XIV of the 2000 Act and approved persons under s66 of the 2000 Act;
- impose penalties on persons that perform controlled functions without approval under s.63A of the 2000 Act;

...

(except in Scotland) prosecute certain offences, including under the Money Laundering Regulations 2007, the Transfer of Funds (Information on the Payer) Regulations 2007, Part V Criminal Justice Act 1993 (insider dealing) and various offences under the 2000 Act including (**Note:** The FSA may also prosecute any other offences where to do so would be consistent with meeting any of its statutory objectives ~~which are incidental to those which it has express statutory power to prosecute~~):

...

**2. BERR BIS**

2.1 The Secretary of State for Business, ~~Enterprise and Regulatory Reform~~ Innovation and Skills exercises concurrently with the FSA those powers and functions marked with an asterisk in paragraphs 1.3 above. The investigation functions are undertaken by Companies Investigation Branch (CIB) and the prosecution functions by the Legal Services Directorate.

...

2.3 The Solicitors Office advises on investigation work carried out by CIB and undertakes criminal investigations and prosecutions in respect of matters referred to it by CIB, the Insolvency Service or other directorates of ~~BERR~~ BIS or its agencies.

...



**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (WINDING UP AND  
SUB-FUND TERMINATION AND MISCELLANEOUS AMENDMENTS)  
INSTRUMENT 2011**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 6 March 2011.

**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 (Winding Up and Sub-fund Termination and Miscellaneous Amendments) Instrument 2011.

By order of the Board  
24 February 2011

## Annex

### Amendments to the Collective Investments Schemes sourcebook (COLL)

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

#### Income allocation and distribution

6.8.3 R ...

(3A) The amount available for income allocations must be calculated by:

...

- (c) making any other transfers between the *income account* and the *capital account* that are required in relation to:
  - (i) stock dividends;
  - (ii) *income equalisation* included in income allocations from other *collective investment schemes*;
  - (iii) the allocation of payments in accordance with *COLL 6.7.10R* (Allocation of payments to income or capital);
  - (iv) taxation; ~~and~~
  - (v) the aggregate amount of *income property* included in *units issued* and *units cancelled* during the period; and
  - (vi) amounts determined by the authorised fund manager to be the reportable income of other *collective investment schemes*.

...

### 7.3 Winding up a solvent ICVC and terminating a sub-fund of an ICVC

Explanation of COLL 7.3

7.3.1 G ...

- (4) *COLL 7.3.3G* gives an overview of the main steps in winding up a solvent *ICVC* or terminating a *sub-fund* under *FSA rules*, assuming *FSA approval*.

...

## Guidance on winding up or termination

7.3.3 G This table belongs to ~~COLL 7.3.3G~~ 7.3.1G(4) (Explanation of COLL 7.3)

<p>Summary of the main steps in winding up a solvent <i>ICVC</i> or terminating <del>a</del> <u>a</u> <i>sub-fund</i> under <i>FSA rules</i>, assuming <i>FSA</i> approval.  Notes: N = Notice to be given to the <i>FSA</i> under regulation 21 of <i>OEIC Regulations</i>  E = commencement of winding up or termination  W/U = winding up  FAP = final accounting period (<i>COLL 7.3.8R(4)</i>)</p>			
Step number	Explanation	When	<i>COLL rule</i> (unless stated otherwise)
...			
4	Normal business ceases; <del>publish notices</del> <u>notify unitholders</u>	E	7.3.6
...			
7	Send final account or termination account and auditor's report to the <i>FSA</i> & <i>unitholders</i>	Within <del>2</del> <u>4 months</u> of FAP	7.3.8(6)
...			

...

## Consequences of commencement of winding up or termination

7.3.6 R ...

(2) Once winding up or termination has commenced:

- (a) *COLL 6.2* (Dealing), *COLL 6.3* (Valuation and pricing) and *COLL 5* (Investment and borrowing powers) cease to apply to the *ICVC* or to the *units* and *scheme property* in the case of a *sub-fund*;
- (b) the *ICVC* must cease to *issue* and ~~cancel~~ cancel units, except in respect of the final cancellation under *COLL 7.3.7R(5)*;
- (c) the *ACD* must cease to *sell* or redeem *units* or to arrange for the *issue* or *cancellation* of *units*, except in respect of the final cancellation under *COLL 7.3.7R(5)*;

...

...

## Manner of winding up or termination

7.3.7 R ...

- (5) On or before the date on which the final account is sent to *unitholders* in accordance with *COLL 7.3.8R* (Final account and termination account), the *ACD* must arrange for all units in issue to be cancelled and for the depositary to make a final distribution to the unitholders, in the same proportions as provided by (4), of the balance remaining (net of a provision for any further expenses of the *ICVC* or *sub-fund*).

...

7.3.7A G For the purposes of this section an *ICVC* may be treated as having been wound up or a *sub-fund* terminated upon completion, where relevant, of all of the steps in (1) to (3):

- (1) payment or adequate provision being made (by the *ACD*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;
- (2) the *scheme property* being realised or distributed in accordance with *COLL 7.3.7R(8)*; and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

## Final account and termination account

7.3.8 R (1) Once the *ICVC's* affairs are ~~fully~~ wound up or termination of the *sub-fund* has been completed (including distribution or provision for distribution in accordance with *COLL 7.3.7R(5)*), the *ACD* must prepare an account of the winding up or termination showing:

- (a) how it has been conducted; and
- (b) how the *scheme property* has been disposed of.

...

- (4) The final account must state the date on which the *ICVC's* affairs were ~~fully~~ wound up and the date stated must be regarded as the final *day* of the accounting period of the *ICVC* then running ('final accounting period') for the purpose of *COLL 4.5*.

(4A) The termination account must state the date on which the *sub-fund's* affairs were terminated.

...

- (6) Within ~~two~~ four *months* of the date of the completion of the winding up of the *ICVC* or termination of the *sub-fund*, the *ACD* must send a copy of the final account or termination account and the auditor's report on it to the *FSA* and to each *person* who was a *unitholder* (or the first named of joint *unitholders*) immediately before ~~its end~~ the winding up or termination commenced.

...

#### Reports and accounts

- 7.3.10 R (1) The *ACD* need not (as would be required under *COLL* 4.5.13R (Provision of short report)) ~~send to each *unitholder* a copy of any~~ prepare a short report relating to an *annual accounting period* or *half-yearly accounting period* which ~~began~~ begins after commencement of winding up or termination, if the *directors* of the *ICVC*, after consulting the *FSA* depository, have reasonably determined that this is not required in the ~~interest~~ interests of *unitholders*.
- (1A) The *ACD* must consult with the *depository* before determining that a short report is not required in the interests of *unitholders*.
- (2) Where (1) applies, a copy of the ~~short or~~ long report must be supplied free of charge to any *unitholder* upon request.
- (3) Where (1) applies, the *ACD* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination including, if known, its likely duration.
- (4) The *ACD* must send a copy of the information required by (3) to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with *COLL* 7.3.7R(5).
- 7.3.10A G (1) The effect of *COLL* 7.3.10R(1), if exercised by the *directors* of the *ICVC*, is that the *ACD* must continue to prepare annual and half-annual long reports and to make them available to *unitholders* in accordance with *COLL* 4.5.14R.
- (2) Where there are outstanding unrealised assets, keeping *unitholders* appropriately informed may, for example, be carried out by providing updates at six-monthly or more frequent intervals.

...

## 7.4 Winding up an AUT and terminating a sub-fund of an AUT

### Explanation of *COLL* 7.4

7.4.1 G ...

- (4) COLL 7.4.2AG gives an overview of the main steps in winding up an AUT or terminating a sub-fund under FSA rules, assuming FSA approval.

...

Guidance on winding up or termination

7.4.2A G This table belongs to COLL 7.4.1G(4) (Explanation of COLL 7.4)

<u>Summary of the main steps in winding up an AUT or terminating a sub-fund under FSA rules</u>			
<u>Notes: N = Notice to be given to the FSA under section 251 of the Act.</u>			
<u>E = commencement of winding up or termination</u>			
<u>W/U = winding up</u>			
<u>FAP = final accounting period (COLL 7.4.5R(4))</u>			
<u>Step number</u>	<u>Explanation</u>	<u>When</u>	<u>COLL rule (unless stated otherwise)</u>
<u>1</u>	<u>Receive FSA approval</u>	<u>N + one month</u> <u>On receipt of notice from the FSA</u>	<u>Section 251 of the Act</u>
<u>2</u>	<u>Normal business ceases; notify unitholders</u>	<u>E</u>	<u>7.4.3R</u>
<u>3</u>	<u>Trustee to realise and distribute proceeds</u>	<u>ASAP after E</u>	<u>7.4.4R(1) to (5)</u>
<u>4</u>	<u>Send annual long report of manager and trustee to the FSA</u>	<u>Within 4 months of FAP</u>	<u>7.4.5R(5)</u>
<u>5</u>	<u>Request FSA to revoke relevant authorisation order</u>	<u>On completion of W/U</u>	<u>7.4.4R(6)</u>

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

- 7.4.3 R (1) Upon the happening of any of the events or dates referred to in ~~paragraph~~ (2) and not otherwise:
- (a) COLL 6.2 (Dealing), COLL 6.3 (Valuation and pricing) and COLL 5 (Investment and borrowing powers) cease to apply to the AUT or to the units and scheme property in the case of a

sub-fund;

- (b) the *trustee* must cease to *issue* and ~~cancel~~ cancel units, except in respect of the final cancellation under COLL 7.4.4R(1) or (2);
  - (c) the *manager* must cease to *sell* and redeem *units*;
  - (d) the *manager* must cease to arrange the *issue* or *cancellation* of *units* under COLL 6.2.7R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under COLL 7.4.4R(1) or (2); and
  - (da) no transfer of a unit may be registered and no other change to the register of unitholders may be made without the approval of the person responsible for the register in accordance with COLL 6.4.4R(1); and
  - (e) ...
- (1A) If the manager has not previously notified unitholders of the proposal to wind up the AUT or terminate the sub-fund, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the unitholders.

...

#### Manner of winding up or termination

- 7.4.4 R (1) Where COLL 7.4.3R(2)(f) applies, the *trustee* must cancel all units in issue and wind up the *AUT* or terminate the *sub-fund* in accordance with the approved *scheme of arrangement*.
- (2) In any other case falling within COLL 7.4.3R:
- (a) once the *AUT* falls to be wound up or *sub-fund* terminated, the *trustee* must realise the *scheme property*;
  - (b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the *trustee* must cancel all units in issue and distribute the proceeds of that realisation to the *unitholders* and the *manager* proportionately to their respective interests in the *AUT* or *sub-fund* as at the date, or the date of the relevant event referred to in COLL 7.4.3R; and
  - (c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the *trustee* after one year from

the date on which they became payable must be paid by the *trustee* into court (or, in Scotland, as the court may direct), subject to the *trustee* having a right to retain any expenses properly incurred by him relating to that payment.

- (3) For an *AUT* which is a *relevant pension scheme*, payments must not be made to *unitholders* in the *AUT*, the realisation proceeds having to be paid by the *trustee* in accordance with the *trust deed*.
- (4) Where the *trustee* and one or more *unitholders* agree, the requirement in (2) to realise the *scheme property* does not apply to that part of the property proportionate to the entitlement of that or those *unitholders*.
- (5) The *trustee* ~~may~~ must distribute the part of the *scheme property* referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the *trustee* for ensuring that; that or those *unitholders* bear a proportional share of the liabilities and costs.
- (6) On completion of the winding up in respect of the events referred to in *COLL 7.4.3R(2)(c)*, *COLL 7.4.3R(2)(d)*, ~~or~~ *COLL 7.4.3R(2)(e)* or *COLL 7.4.3R(2)(f)*, the *trustee* must notify the *FSA* in writing and at the same time the *manager* or *trustee* must request the *FSA* to revoke the relevant *authorisation order*.

7.4.4A G For the purposes of this section, an *AUT* may be treated as having been wound up or a *sub-fund* terminated upon completion, where relevant, of all of the steps in (1) to (3):

- (1) payment or adequate provision being made (by the *trustee* after consulting the *manager*) to cover the expenses relating to the winding up or termination and all liabilities of the *scheme*;
- (2) the *scheme property* being realised or distributed in accordance with *COLL 7.4.4R(5)*; and
- (3) the net proceeds being distributed to the *unitholders* named in the *register* on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

#### Accounting and reports during winding up or termination

- 7.4.5 R (1) For any *annual* or *half-yearly accounting period* which ~~began~~ begins after commencement of the winding up or termination, the *manager* ~~*trustee* (after consulting the *manager* (if appropriate) and the *FSA*) may direct that~~ is not required to prepare a short report (*COLL 4.5.13R* (Provision of short report)) ~~may be dispensed with, provided that it has taken reasonable care to determine it has reasonably determined that the report is not required in the interests of the *unitholders*.~~
- (1A) The *manager* must consult the *trustee* before determining that a short



report is not required in the interests of *unitholders*.

- (2) Where (1) applies, a copy of the ~~short and~~ long report must be supplied free of charge to any *unitholder* upon request.
- (2A) Where (1) applies, the *manager* must ensure that it keeps *unitholders* appropriately informed about the winding up or termination, including its likely duration.
- (2B) The *manager* must send a copy of the information required by COLL 7.4.5R(2A) to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with COLL 7.4.4R(2)(b).
- (3) ~~The period in question in (2) must be reported on together with the following period in the next report prepared for the purposes of this rule. [deleted]~~
- (4) At the conclusion of the winding up or termination, the accounting period then running is regarded as the final *annual accounting period*.
- (5) ~~Within two~~ four *months* after the end of the final *annual accounting period* or the termination of the *sub-fund*, the annual long reports of the *manager* and *trustee* must be published and sent to the FSA ~~and to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before its end.~~
- (6) The *manager* must, on publication of the annual long report in (5), write to each *person* who was a *unitholder* or the first named of joint *unitholders* immediately before the commencement of winding up or termination to inform them that the annual long report is available free-of-charge on request.

- 7.4.6    G    (1) The effect of COLL 7.4.5R(1), if exercised by the *manager* and *trustee*, is that the *manager* must continue to prepare annual and half-yearly long reports and to make them available to *unitholders* in accordance with COLL 4.5.14R.
- (2) Where there are outstanding unrealised assets, keeping *unitholders* appropriately informed may, for example, be carried out by providing updates to *unitholders* at six-monthly or more frequent intervals.

## Schedule 2 Notification requirements

2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...	...	...	...	...
<i>COLL 7.3.8 R (6)</i>	Winding up a solvent <i>ICVC (ACD)</i>	Final accounts	Completion of winding up	<del>Two months</del> <u>Four months</u>
<i>COLL 7.3.8 R (6)</i>	Winding up a solvent <i>ICVC sub-fund (ACD)</i>	Termination account and auditor's report	Termination of <i>sub-fund</i>	<del>Two months</del> <u>Four months</u>
...	...	...	...	...
<i>COLL 7.4.5 R (5)</i>	Winding up an <i>AUT</i> or <i>AUT sub-fund</i>	Annual reports of the <i>manager and trustee</i>	Annual reports of the <i>manager and trustee</i>	<del>Two months</del> <u>Four months</u>
...	...	...	...	...

**EMPLOYERS' LIABILITY INSURANCE: DISCLOSURE BY INSURERS  
INSTRUMENT 2011**

**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 6 March 2011.

**Amendments to the Handbook**

- D. The Insurance: Conduct of Business sourcebook (ICOBS) 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 Employers' Liability Insurance: Disclosure by Insurers Instrument 2011.

By order of the Board  
24 February 2011

## Annex A

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

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

After ICOBS 8.3 insert the following new section. The text is not underlined.

#### 8.4 Employers' Liability Insurance

##### Application

- 8.4.1 R (1) The general application *rule* in *ICOBS* 1.1.1R applies to this section subject to the modifications in (2).
- (2) This section applies to:
- (a) any *firm* solely with respect to the activities of:
    - (i) *carrying out contracts of insurance*; or
    - (ii) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;

in relation to *general insurance contracts* and, in either case, including business accepted under *reinsurance to close*;
  - (b) all *incoming EEA firms* or *incoming Treaty firms* falling within (a) including those providing *cross border services*.
- (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 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).
- 8.4.2 G *ICOBS* 8.4 does not generally apply to activities carried out in relation to a *reinsurance contract* (see *ICOBS* 1.1.2R and *ICOBS* 1 Annex 1 Part 2 1.1R) but it does apply to business accepted under *reinsurance to close*.

## 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* 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) produce an employers' liability register complying with the requirements in (2) and *ICOBS* 8 Annex 1;
  - (b) obtain 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 register has been properly prepared in accordance with the requirements of *ICOBS* 8.4; and
  - (c) obtain an independent assurance report addressing the accuracy and completeness of the employers' liability register, 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*.
- (2) For the purposes of (1)(a) the employers' liability register is required to:
- (a) include the date upon which the register was produced;
  - (b) include a database which:
    - (i) reliably stores information required by *ICOBS* 8 Annex 1;
    - (ii) in relation to information required by *ICOBS* 8 Annex 1.1.1R(1), contains accurate information and, in relation to information required by *ICOBS* 8 Annex 1.1.1R(2), contains information which faithfully reproduces the information that the *firm* has; and
    - (iii) has an effective search function which allows a person inputting data included on the register relating to a particular employer over a particular period to retrieve information on the register relating to a potential employers' liability claim corresponding to that employer and period;

- (c) allow for requests for information or searches relating to a potential claim to be made by:
    - (i) individuals with the potential claim, or their authorised representative, or
    - (ii) any employer to whom the potential claim relates; or
    - (iii) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
    - (iv) a relevant *insurance intermediary* acting for an *insurer* in (iii);
  - (d) allow for requests by a tracing office which meets the conditions in *ICOBS* 8.4.9R relating to the use of information on the *firm's* register to the extent that the information is necessary, and used solely, to enable the tracing office to provide comprehensive searching facilities to its users; and
  - (e) allow for responses to requests or searches in (c) to be provided without delay.
- (3) For the purposes of (1)(b) and (c) the *director's* certificate and independent assurance report 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 within 3 *months* of the date in (a).
- (4) For the purposes of (1):
- (a) *United Kingdom* commercial lines *employers' liability insurance* means commercial lines *employers' liability insurance* where both the employer's business was or is carried on, and the employees' course of employment was or is, in the *United Kingdom*; and
  - (b) commercial lines business comprises *contracts of insurance* carried out in relation to *persons* whose *employers' liability insurance* relates to a business or profession they carry on.
- 8.4.5 G (1) For the purposes of *ICOBS* 8.4.4R(2)(c) and (d), a *firm* may put in place appropriate screening on its employers' liability register to monitor:
- (a) requests for information and searches to ensure that they are being made for a legitimate purpose by persons falling into one of the categories in *ICOBS* 8.4.4R(2)(c); and
  - (b) requests from tracing offices to ensure that the information is necessary, and will only be used by the tracing office, for the purposes of providing users of the tracing service with the same

information as the *firm* itself would have provided had the inquirer approached the *firm* directly.

If a *firm* has any reason to suspect that the information is, or may be, being misused then it may restrict the use of the information provided or request its return.

- (2) For the purposes of *ICOBS* 8.4.4R(2)(e) the *FSA* expects that, in the ordinary course, a person searching or making an information request will be provided with a response within one *business day* of the initial request.
- (3) In the *FSA*'s view, commercial lines business does not include *employers' liability insurance* provided for retail consumers, for example, in relation to insurance taken out to cover liability in relation to domestic arrangements such as home help.

#### FSA notification requirements

8.4.6 R A *firm* must:

- (1) notify the *FSA*, within one *month* of falling within *ICOBS* 8.4.1R(2), as to whether or not it, or, if relevant, a member of the *syndicates* it manages, carries on business falling within *ICOBS* 8.4.4R(1) and, if it does, include in that notification:
  - (a) details of the internet address of the *firm* or tracing office at which the employers' liability register is made available;
  - (b) the name of a contact person at the *firm* and their telephone number or postal address, or both; and
  - (c) the period over which the *firm* or *syndicate* member provided cover under relevant *policies* or, if still continuing, the date that cover commenced; and
  - (d) the *firm*'s *FSA* Firm Reference Number; and
- (2) ensure that the notification in (1):
  - (a) is approved and signed by a *director* of the *firm*; and
  - (b) contains a statement that to the best of the *director*'s knowledge the content of the notification is true and accurate.

#### Requirement to make employers' liability register and supporting documents available

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

- (a) the information on the employers' liability register either:
  - (i) on the *firm*'s website at the address notified to the *FSA* in

*ICOB*S 8.4.6R(1); or

- (ii) by arranging for a tracing office which meets the conditions in *ICOB*S 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.
- (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;
  - (b) maintain records of all the tracing information and copies of all documents it has provided to the tracing office;
  - (c) retain all legal rights in relation to the ownership and use of the information and documents provided to the tracing office to enable the *firm* to provide that information or documentation to another tracing office or to make it available itself; and
  - (d) send to the tracing office its *FSA* Firm Reference Number.

- 8.4.8 E For the purposes of *ICOB*S 8.4.4R(2)(d) and *ICOB*S 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 *ICOB*S 8.4.9R(1) to (6), and an independent assurance 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 *ICOB*S 8.4.9R(1) to (6).

#### Qualifying tracing offices

- 8.4.9 R The conditions referred to in *ICOB*S 8.4.4R(2)(d) and *ICOB*S 8.4.7R(1)(a)(ii) are that the tracing office is one which:
- (1) maintains a database which:
    - (a) accurately and reliably stores information submitted to it by *firms* for the purposes of complying with these *rules*;
    - (b) has systems which can adequately keep it up to date in the light of new information provided by *firms*;
    - (c) has an effective search function which allows a person inputting data included on the database relating to a particular employer over a particular period to retrieve information on the database relating to a potential employers' liability claim corresponding to



that employer and period;

- (2) maintains adequate records of the *director's* certificates and independent assurance reports sent to it by *firms* for the purposes of complying with these *rules*;
- (3) has effective arrangements for information security, information back up and business continuity and to prevent the misuse of data;
- (4) accepts search requests in relation to information in (1) relating to a potential claim from:
  - (a) individuals with the potential claim, or their authorised representative; or
  - (b) the employer to whom the potential claim relates; or
  - (c) an *insurer* which is potentially jointly and severally liable with another *firm* in relation to the potential claim; or
  - (d) a relevant *insurance intermediary* acting for an *insurer* in (c);
- (5) provides responses to requests in (4) without delay;
- (6) has adequate arrangements for providing to a *firm*, upon request and without delay, a full copy of the information on the database that the *firm* has provided to it;
- (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 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) provides to a *firm* making use of the tracing office for the purposes of *ICOBS* 8.4.7R(1)(a)(ii):
  - (a) a copy of its annual report promptly after publication; and
  - (b) upon request and without delay a full copy of the information on the database that the *firm* has provided to it.

- 8.4.10 G (1) *ICOBS* 8.4.4R(2)(b) and *ICOBS* 8.4.9R(1) require a *firm*, or a tracing office used by a *firm*, to have an effective search function in relation to the employers' liability register database. In the *FSA's* view an effective search function is one which finds all matches in the register to any specified whole word.

- (2) For the purposes of *ICOBS* 8.4.9R(5) the term ‘without delay’ should have the same meaning as in *ICOBS* 8.4.5G(2).
- (3) In order to assist *firms* with their obligations under these *rules* the *FSA* has agreed to publish on its website at [http://www.fsa.gov.uk/Pages/consumerinformation/product\\_news/insurance/employers\\_liability/index.shtml](http://www.fsa.gov.uk/Pages/consumerinformation/product_news/insurance/employers_liability/index.shtml) a list of *persons* providing tracing office facilities which have published the *directors’* certificate and independent assurance report referred to in *ICOBS* 8.4.9R(7).

#### 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 which ceases to be true or accurate; and
  - (b) of the new position, in accordance with the notification requirements in *ICOBS* 8.4.6R;
- within one *month* of the change.
- (2) A *firm* producing an employers’ liability register must:
- (a) update the register with any new or more accurate information falling within *ICOBS* 8 Annex 1:
    - (i) by virtue of the entry into or renewal of, or of a claim made in relation to, a *policy*, as required by *ICOBS* 8 Annex 1 Part 1; and
    - (ii) in all other cases, by virtue of the *firm* having received that new or more accurate information;
  - (b) make the updated information in (a) available, in accordance with *ICOBS* 8.4.7R, no later than:
    - (i) in relation to new or more accurate information arising out of the entry into or renewal of, or a claim made in relation to, a *policy*, three *months* from the date of entry, renewal or the date upon which the claim was made; and
    - (ii) in all other cases, three *months* from the date upon which the *firm* received the new or more accurate information;
  - (c) update the register, no less frequently than once every three *months*, and include the date that the register was updated and a statement that the register may be relied on as up-to-date as at a date three *months* prior to the date upon which the register was updated, or such later date as applicable to the *firm*;

- (d) obtain a *director's* certificate:
  - (i) no later than twelve *months* after the date of the most recent *director's* certificate, obtained in accordance with *ICOBS* 8.4.4R(1)(b) or this *rule*;
  - (ii) complying with the requirements, and containing the statement, 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 *months* prior to the date of the *director's* certificate;
- (e) obtain an independent assurance report:
  - (i) no later than twelve *months* after the date of the most recent independent assurance report, obtained 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 *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 *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 For the purposes of *ICOBS* 8.4.11R(2)(c) a *firm* is required to include the date at which it updates the register. However, depending on the *firm's* processes for making information available for the purposes of *ICOBS* 8.4.11R(2)(b), the register may only be relied upon as being up-to-date as at a date three *months* prior to the date on which the *firm* has updated the register, or such lesser period as applicable to the *firm* as is consistent with the *firm's* processes. *ICOBS* 8.4.11R(2)(c) requires the *firm* to include a statement as to the date at which the register may be relied upon as containing up-to-date information which can be no earlier than three *months* prior to the new date on the register, but may be later depending on the *firm's* circumstances.

#### Transfers of insurance business

8.4.13 R The transferor in an *insurance business transfer scheme* must provide the transferee with the information and documents the transferor holds in compliance with *ICOBS* 8.4 in respect of the insurance business transferred.

**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..

1.2 R FORM (*see next page*)

**EMPLOYERS' LIABILITY REGISTER (effective date: [ ])**

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	Postcode	Address Line 1	Address Line 2	Town/City	County	ERN (HMRC Employer reference number)	CHRN (Companies House reference number)
Employer's Name 1.2	Postcode	Address Line 1	Address Line 2	Town/City	County		
Employer's Name 1.3	Postcode	Address Line 1	Address Line 2	Town/City	County		
...							
Policy Number 2	Policy inception date	Policy end date					
Employer Name 2.1	Postcode	Address Line 1	Address Line 2	Town/City	County	ERN (HMRC Employer reference number)	CHRN (Companies House reference number)
...							

NOTES

1. The register must be completed by all insurers and managing agents managing the insurance business of *syndicates* of Lloyd's members that are carrying out contracts of insurance that provided commercial lines employers' liability cover to employers carrying on, or who carried on, business in, and in relation to their employees' course of employment in, the *UK*.

2. All *policies* under which UK commercial lines employers' liability cover has been provided to employers which commenced or were renewed or for which claims were made on or after 1 April 2011 must be included.
3. The register must include all employers covered by a *policy*, for example, all employers in a group where the *policy* is taken out in the name of one entity in the group.
4. The FRN number is that given to the insurer by the FSA. The FRN is not required to be included in the form if a *firm* uses a qualifying tracing office to make available its register in accordance with *ICOBS* 8.4.7R(1)(a)(ii).
5. The register must include all names by which an employer was known between the *policy* inception date and the *policy* end date must be listed including the name registered with Companies House where applicable and trading names. Trading names, if different from the registered name, should be appended to the registered name.
6. The employer's address is the latest address for that employer. Where the employer is registered with Companies House, the employer's address is the latest address registered with Companies House.
7. The ERN is the employers' reference number provided by Her Majesty's Revenue and Customs for that employer.
8. The CHRN is the employers' reference number provided, where relevant, by the Registrar of Companies. The CHRN may be included by utilising a facility which searches data obtained or downloaded from Companies House.

*continued*

## Part 2 In relation to information not required to be included

- 2.1 R A *firm carrying out contracts of insurance*, 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]”

- 2.2 G The purpose of 2.1R is to inform users of the register that the *firm* may be potentially liable in relation to *policies* other than those on 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 may be amended as necessary to refer to the *policies* that are not included.

Amend the following as shown.

## TP 1 Transitional Provisions

...

### Employers' liability insurance: disclosure by insurers

7 R For the purposes of *ICOBS* 8.4.6R a *firm* falling within *ICOBS* 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.

8 R (1) For the purposes of *ICOBS* 8.4.4R(1)(a), *ICOBS* 8.4.4R(2)(b)(ii) and *ICOBS* 8 Annex 1, and subject to TP 13:

- (a) a *firm* is not required to include information required by *ICOBS* 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 *ICOBS* 8.4.7R the information required by *ICOBS* 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 *ICOBS* 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 *ICOBS* 8.4.4R(3)(a) a *firm* required to produce an employers' liability register under *ICOBS* 8.4.4R(1)(a) must obtain a *director's* certificate and an independent assurance report:

- (a) in relation to the register as at 1 April 2012; and
- (b) by 1 July 2012.

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

9 G The effect of TP 8R(1) and *ICOBS* 8 Annex 1.1.1R is that from 1 April 2011 until 1 April 2012, a *firm* is required to include in its employers' liability register the information required by the form in *ICOBS* 8 Annex 1.1.2R relating to *policies* entered into, renewed or in respect of which a claim is



made (subject to TP 13 below), but only to the extent that the *firm* has that information (with the exception of the HMRC Employer Reference Number and information relating to all employers covered by the *policy*, other than the principal employer *policyholder*, where information is only required in relation to *policies* entered into, renewed or claims made on or after 1 April 2012). The *firm* has a maximum of three *months* to make the information available from the date of entry, renewal or making of claim (subject to TP 13 below). From 1 April 2012 *firms* will need to include all the information in the form in *ICOBS* 8 Annex 1.1.2R for *policies* entered or renewed on or after that date. *Firms* will continue to be required to include only information that the *firm* holds for *policies* in relation to which a claim is made (subject to TP 13 below) on or after 1 April 2012 (unless those *policies* were also entered into or renewed by the *firm* on or after 1 April 2012).

- 10 R For the purposes of *ICOBS* 8.4.4R(2)(a), for a *firm* required to produce an employers' liability register under *ICOBS* 8.4.4R(1)(a) from 1 April 2011, the date of the initial version of the register must be 1 April 2011.

This rule applies until 1 April 2012.

- 11 E For the purposes of *ICOBS* 8.4.8E, a public statement by a tracing office, approved by the *directors* of the tracing office, stating that the tracing office complies in all material respects with the requirements in *ICOBS* 8.4.9R(1) to (6) may be relied upon as tending to establish that a *firm* has satisfied the requirements to use a tracing office satisfying the conditions in *ICOBS* 8.4.9R(1) to (6).

This rule applies until 1 April 2012.

- 12 R For the purposes of the condition referred to in *ICOBS* 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 *directors* of the tracing office, stating that the tracing office complies in all material respects with the requirements in *ICOBS* 8.4.9R(1) to (6).

- 13 R For the purposes of *ICOBS* 8.4.11R2(a), 8.4.11R2(b), *ICOBS* 8 Annex 1, TP 8 and TP 9, in relation to references to claims made in relation to *policies*:

- (1) for claims received by a *firm* prior to 1 April 2011 which have not been settled as at 1 April 2011, those claims must be treated, for the purposes of the above *rules*, as having been made on or after 1 April 2011, and for the purposes of the above *rules*, the *firm* must include information in the form in *ICOBS* 8 Annex 1.1.2R, in accordance with and including the notes, held by the *firm* (with the exception of information within TP 8R(1)(d) until 1 April 2012) within three *months* of the date upon which the claim was settled, on or after 1 April 2011; and
- (2) if, as at 1 April 2011, a *firm's* systems records claims by reference to the date the claim was created in the *firm's* systems or the date upon which it was settled, then 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.

## ICOBS Schedule 2: Notification requirements

Sch 2.1 G ~~There are no notification requirements in *ICOBS*.~~

<u>Handbook reference</u>	<u>Matters to be notified</u>	<u>Contents of notification</u>	<u>Trigger event</u>	<u>Time allowed</u>
<u><i>ICOBS</i> 8.4.6R</u>	<u>Whether or not business falling within <i>ICOBS</i> 8.4.4R(1) is being carried out</u>	<u>Statement by <i>director</i> that, to the best of the <i>director's</i> knowledge, content is true and accurate, and if relevant details of the internet address at which the employers' liability register is made available, the <i>firm's</i> contact details and the period over which the <i>firm</i> or <i>syndicate</i> member provided cover under relevant <i>policies</i>.</u>	<u><i>Firms</i> or <i>syndicate</i> members carry out contracts of insurance which are general insurance contracts</u>	<u>One month</u>
<u><i>ICOBS</i> 8.4.11R</u>	<u>Changes to the accuracy of the contents of the notification in <i>ICOBS</i> 8.4.6R(1)</u>	<u>Details of the change and of the new position</u>	<u>Changes to the accuracy of a notification made under <i>ICOBS</i> 8.4.6R</u>	<u>Within one month of the change</u>

## Annex B

## Amendments to the Supervision manual (SUP)

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

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

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>ICOBS</i>	<i>ICOBS</i> applies except to the extent necessary to be compatible with European law. <i>Guidance</i> on the territorial application of <i>ICOBS</i> is contained in <del>ICOBS</del> <u>ICOBS</u> 1 Ann 1 Part 4.	<u>ICOBS 8.4 applies except to the extent necessary to be compatible with European law. Other chapters of <i>ICOBS</i> does do not apply, except to the extent necessary to be compatible with European law. <i>Guidance</i> on the territorial application of <i>ICOBS</i> is contained in <del>ICOBS</del> <u>ICOBS</u> 1 Ann 1 Part 4.</u>
...		

**BANKING: CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 2)  
INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power); and
  - (2) section 157(1) (Guidance).
- B. The rule-making 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 6 March 2011.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Banking: Conduct of Business sourcebook (BCOBS) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Banking: Conduct of Business Sourcebook (Amendment No 2) Instrument 2011.

By order of the Board  
24 February 2011

## Annex A

### Amendments to the Glossary of definitions

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

- priority debt* (in *BCOBS*) an obligation on the part of a *consumer* to make a payment:
- (a) where the remedies for a breach of that obligation potentially include seeking possession of, or seeking to exercise a power of sale in respect of:
    - (i) the sole or main residence of the *consumer* (for example, an obligation to pay secured by a mortgage or charge in respect of land, an obligation to pay rent under a tenancy, or an obligation to make payment under a licence to occupy land); or
    - (ii) the *consumer's* essential goods or services (for example, an obligation to pay under a hire purchase, conditional sale or hire agreement that relates to, or an obligation to pay secured by a charge on, the *consumer's* cooker, refrigerator, or the means to travel to work); or
  - (b) where that obligation arises out of an order of the court, an Act or secondary legislation (for example, an obligation to pay council tax, child support maintenance, income tax or court fines); or
  - (c) where that obligation arises under a contract for the provision of utility supplies (for example, water, gas or electricity).
- right of set-off* (in *BCOBS*) any right of a *firm*, whether under a contract for a *retail banking service* or the general law, to set off or combine:
- (a) any debt due from a *consumer*; or
  - (b) any debit balance on an account held by a *consumer*;
- against or with:
- (c) any sum payable by the *firm* to the *consumer*; or
  - (d) any credit balance on an account held by the *consumer*;
- that has the effect of reducing, discharging or extinguishing the *firm's*

liability to the *consumer* or the credit balance on the account held by the *consumer*.

*subsistence balance* (in *BCOBS*) any sum of money payable by a *firm* to a *consumer* or standing to the credit of the *consumer* in an account with the *firm* where that sum is needed by the *consumer* to meet essential living expenses or *priority debts* (whether owed to the *firm* or a third party).

## Annex B

## Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

- 1.1.5 R BCOBS 4.1.4AG(2)(a), BCOBS 5.1.3AG, BCOBS 5.1.3BG and BCOBS 5.1.13R ~~does~~ do not apply to a credit union.
- ...
- 4.1.4 G The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:
- ...
- (8) ~~information about compensation arrangements in accordance with COMP 16~~ the terms of any compensation scheme if the *firm* cannot meet its obligations in respect of the *retail banking service*;
- ...
- 4.1.4A G (1) This guidance applies to a *firm* only with respect to its *communications* and dealings with *consumers* where a *firm* has a *right of set-off*.
- (2) To ensure compliance with the appropriate information *rule*, the *firm* should:
- (a) (i) provide an explanation of the nature and extent of the *firm's right of set-off*, and
- (ii) if the *firm* considers that it is entitled to exercise a right to set off or combine a debt due solely from a *consumer*, or a debit balance on an account held in the sole name of a *consumer*, against or with a credit balance on an account held in the joint names of that *consumer* and another *consumer*, also provide an explanation of that right to the *consumers* in whose names the joint account is held;
- in good time before the *consumer* is bound by the contract for the *retail banking service*. This information may be incorporated in the terms and conditions that apply to the contract for the *retail banking service*;
- (b) (i) on the first occasion that the *firm* proposes to exercise a

right of set-off in its dealings with the consumer; and

- (ii) where appropriate, on any subsequent occasion that the firm proposes to exercise a right of set-off in its dealings with the consumer;

provide general information in relation to the nature of the firm's right of set-off and the generic circumstances in which the firm may rely on that right within a reasonable period before the firm seeks to exercise its right of set-off. The FSA considers that this information should be provided at least 14 days before the firm seeks to exercise its right of set-off. It may be communicated in a standard form of words and may be incorporated in another communication sent by the firm to the consumer; and

- (c) where it has exercised a right of set-off, provide prompt notification of this to the consumer. This notification should clearly identify the date that the firm exercised its right of set-off and the amount debited from the consumer's account in reliance on that right.

- (3) The information referred to in (2) should be provided in plain and intelligible language on paper or in another durable medium.
- (4) In determining whether it is appropriate to provide general information under (2)(b)(ii), the firm should consider the period of time that has elapsed since the firm last provided that information under (2)(b)(i) or (ii).
- (5) Nothing in (2)(a)(ii) should be considered as expressing a view on the validity, enforceability or fairness of any right of set-off in relation to a joint account that a firm considers it is entitled to exercise.

...

#### Set-off

5.1.3A G To ensure compliance with its obligations under BCOBS 5.1.1R and Principle 6, on any occasion where it proposes to exercise a right of set-off, a firm (other than a credit union) should, with respect to its dealings with consumers:

- (1) review the information available and accessible to the firm relating to the consumer's account, on an individual basis, and estimate the amount of any subsistence balance;
- (2) refrain from seeking to set off or combine:
- (a) any debt due from, or a debit balance on an account held by, a consumer against or with that subsistence balance;



- (b) any debt due from, or a debit balance on an account held by, a consumer in a personal capacity against or with any sum of money payable by the firm to the consumer or standing to the credit of the consumer in an account held with the firm, where the firm knows or reasonably ought to know that:
- (i) a third party is beneficially entitled to that money or that the consumer is a fiduciary in respect of that money; or
  - (ii) the consumer has received that money from a government department, local authority or NHS direct payment body for a specific purpose or is under a legal obligation to a third party to retain and deal with that money in a particular way.

5.1.3B G (1) If it becomes apparent to a firm after it has exercised a right of set-off that it has set off or combined a debt due from, or a debit balance on an account held by, a consumer against or with:

- (a) the consumer's subsistence balance; or
- (b) money payable by the firm to the consumer, or standing to the credit of the consumer in an account held with the firm, that falls within BCOBS 5.1.3AG(2)(b)(i) or (ii);

the firm should refund to the consumer the sum debited from the account of the consumer in exercise of the right of set-off unless it is fair not to do so.

- (2) If, in the circumstances referred to in (1), the firm does not provide a refund of the sum debited from the account in exercise of the right of set-off, the firm should be able to justify that it is fair not to do so and should consider taking other remedial action having regard to its obligations under BCOBS 5.1.1R and Principle 6.

## 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
...					
<u>6</u>	<u>BCOBS 4.1.1R</u>	<u>R</u>	<u>A firm need not have regard to BCOBS 4.1.4AG in interpreting and applying BCOBS 4.1.1R until 6 September 2011.</u>	<u>6 March 2011 to 6 September 2011</u>	<u>6 March 2011</u>

**HANDBOOK ADMINISTRATION (NO 21) INSTRUMENT 2011****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 2 of Annex B (SYSC) comes into force on 1 May 2011;
  - (2) the remainder of this instrument comes into force on 6 April 2011.

**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
General provisions (GEN)	Annex C
Fees manual (FEES)	Annex D
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex E
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex H
Supervision manual (SUP)	Annex I
Dispute Resolution: Complaints sourcebook (DISP)	Annex J
Credit Unions sourcebook (CRED)	Annex K
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex L

**Amendments to material outside the Handbook**

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

**Citation**

- F. This instrument may be cited as the Handbook Administration (No 21) Instrument 2011.

By order of the Board  
24 March 2011

## 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 place. The new text is not underlined.

*Money Advice Service*                      the consumer financial education body (*CFEB*) established by the *FSA* under section 6A(1) of the *Act* (Enhancing public understanding of financial matters etc).

*RSRB permission*                              (in *FEES*) an *authorisation* to carry on one or more *regulated sale and rent back activities*.

Amend the following as shown.

*CFEB*    ~~Consumer Financial Education Body Limited~~ the consumer financial education body established by the *FSA* under section 6A(1) of the *Act* (Enhancing public understanding of financial matters etc) and having the name Money Advice Service.

*relevant person*                                      (1)    (in *COMP*) a *person* ~~(other than a person with an interim *RSRB permission* because he has submitted an application for interim permission in accordance with article 32(1) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) which has been approved by the *FSA*)~~ for *claims* against whom the *compensation scheme* provides cover, as defined in *COMP* 6.2.1R.

...

Delete the following definitions.

~~*Consumer Financial Education Body Limited*~~                      ~~the *body corporate* established by the *FSA* under section 6A(1) of the *Act* (Enhancing public understanding of financial matters etc.)~~

~~*full RSRB permission*~~                                      ~~(in *FEES*) an *authorisation* which is not an *interim RSRB permission* to carry on one or more *regulated sale and rent back activities*.~~

~~*interim RSRB permission*~~                                      ~~(in *SYSC* and *FEES*) a *Part IV permission* to carry on one or more *regulated sale and rent back activities* deemed to have been granted by article 32 (Interim permission and interim variation of permission) of the Financial Services and Markets~~

~~Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) to a *person* because he has submitted an application for interim permission or an interim variation of permission in accordance with article 32(1) of the Order and such permission has been given by the FSA.~~

*moneymadeclar*

~~information for consumers produced and published by the Consumer Financial Education Body.~~

## 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.

**Part 1: Comes into force on 6 April 2011**

4.1.2A G Other *firms* should take account of the comprehensiveness and proportionality *rule* (SYSC 4.1.2R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3G ~~but a *firm* with an *interim RSRB permission* to the extent that it carries on *regulated sale and rent back activity*, need not take into account the specific technical criteria described in SYSC 4.1.7R, SYSC 5.1.7R and SYSC 7.~~

...

4.4.1A R ~~SYSC 4.4.3R (Maintaining a clear and appropriate apportionment) also applies to a *firm* with an *interim RSRB permission* to the extent that it carries on *regulated sale and rent back activity*. [deleted]~~

**Part 2: Comes into force on 1 May 2011**

Chief Risk Officer

21.1.2 G (1) A Chief Risk Officer should:

...

(j) provide risk-focused advice and information into the setting and individual application of the *firm's remuneration* policy (where the *Remuneration Code* applies, see ~~Remuneration Principle 2~~ at in particular SYSC 19.3.3E 19A.3.15E).

...

## Annex C

## Amendments to the General Provisions (GEN)

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

## Schedule 4 Powers exercised

...

Sch 4.5 G

The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :	
	...
	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> <u>and paragraph 1 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u> )
	...
	Section 210 (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> <u>and paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u> )
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> <u>and paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i></u> )

Sch 4.6 G

The following additional powers and related provisions have been exercised by the <i>FSA</i> to issue the parts of the statements in <i>GEN</i> :	
	...
	Regulation 93 ...
	<u>Regulation 14 (Guidance) of the <i>Cross-Border Payments in Euro Regulations</i></u>

...

Sch 4.10 G

The following additional powers have been exercised by the <i>FSA</i> to make the other <i>guidance</i> in <i>GEN</i> :	
	Regulation 93 ...
	<u>Regulation 14 (Guidance) of the <i>Cross-Border Payments in Euro</i></u>



	<u>Regulations</u>
--	--------------------

**Annex D**

**Amendments to the Fees manual (FEES)**

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

1.1.2 R ...

(4) *FEES* 1, 2 and 6 apply to:

- (a) every participant firm ~~other than a person with an interim RSRB permission (and no other permissions)~~ because he has submitted an application for interim permission in accordance with article 32(1) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) and that permission has been given;

...

...

...

3.1.2 G This chapter does not apply to:

- ~~(a)~~ (1) an EEA firm that wishes to exercise an EEA right; or
- ~~(b)~~ (2) an EEA authorised payment institution; or
- ~~(c)~~ (3) an EEA authorised electronic money institution.

...

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(zi) An application by a <i>small electronic money institution</i> for authorisation as an authorised <u>electronic money institution</u> because regulation 16 of the <i>Electronic Money Regulations</i> applies.	The amount set out in <i>FEES</i> 3 Annex 10R.	On or before the date the application is made.
...		

...

### 3 Annex 1R Authorisation fees payable

...

#### Part 2 – Complexity Groupings Straightforward Cases

Straightforward cases	
Activity grouping	Description
...	
A.18	<p><i>Home finance providers, advisers and arrangers (excluding home finance providers).</i></p> <p><del>In the case of applicants for <i>interim RSRB permission</i> within this activity group the specified amount payable is £1,000.</del></p>
...	

#### Moderately Complex Cases

Moderately complex cases	
Activity grouping	Description
...	
A.2	<p><i>Home finance providers and administrators.</i></p> <p><del>In the case of applicants for <i>interim RSRB permission</i> within this activity group the specified amount payable is £3,000.</del></p>
...	

...

...

6.1.1 R This chapter applies to:

- (1) ~~every participant firm other than a person with an *interim RSRB permission* (and no other *permissions*) because he has submitted an application for *interim permission* in accordance with article 32(1) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2009 (SI 2009/1342) and that permission has been given;~~

...

...

## 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
...					
5.	<i>FEES 3 Annex 1R Part 1 and Activity Groups A.2 and A.18</i> [deleted]	R	<p>The amount payable under <i>FEES 3 Annex 1R Part 1</i> is modified as follows:</p> <p>(a) for an applicant for <i>full RSRB permission</i> within the A.18 activity group who was granted, up until 29 June 2010, an <i>interim RSRB permission</i> within this activity group that was not an interim variation of permission, the specified amount payable is £500;</p> <p>(b) for an applicant for <i>full RSRB permission</i> within the A.2 activity group who was granted, up until 29 June 2010, an <i>interim RSRB permission</i> within this activity group that was not an interim variation of permission, the specified amount is £2,000.</p>	29 January 2010 to 29 June 2010	29 January 2010
6.	<i>FEES 3.2.7R(p)</i> [deleted]	R	<p>(1) The fee payable under <i>FEES 3.2.7R(p)</i> is modified in relation to a <i>firm</i> applying for any one or more <i>regulated sale and rent back activity</i> as follows.</p> <p>(2) Unless (3) applies, if the variation involves the <i>firm</i> applying for any one or more <i>regulated sale and rent back activity</i> and that <i>firm</i> was granted, up until 29 June 2010, an <i>interim RSRB permission</i> that was an interim variation of permission, the fee is 50% of the highest of the tariffs set out in <i>FEES 3 Annex 1R</i> which apply to that application net of any <i>interim RSRB permission</i> application fee paid to the <i>FSA</i>.</p> <p>(3) If the activity groups applicable to a <i>firm</i>, as specified at Part 1 of <i>FEES 4 Annex 1R</i>, were not altered when it was granted an <i>interim RSRB permission</i> that was an interim variation of permission and will not alter if it is granted a <i>full</i></p>	29 January 2010 to 29 June 2010	29 January 2010

			<i>RSPB permission, no fee is payable.</i>		
...					

## Annex E

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

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

**10 Large exposures requirements**

...

**10.10A Connected counterparties: trading book limits**

...

Percentages applicable under BIPRU 10.10A.9R

10.10A.10 R This table belongs to *BIPRU* 10.10A.9R

<del>Excess exposure</del> <u>Trading book concentration risk excess</u> (as a percentage of the <i>firm's capital resources</i> calculated at stage (T) of the <i>capital resources table</i> (Total capital after deductions))	Percentage
<del>25% up</del> <u>Up to 40%</u>	200%
Portion from 40% - 60%	300%
Portion from 60% - 80%	400%
Portion from 80% - 100%	500%
Portion from 100% - 250%	600%
Portion over 250%	900%

## Annex F

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

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

- 4.1.19 G A registered social landlord is a non-profit organisation which provides and manages homes for rent and sale for people who might not otherwise be able to rent or buy on the open market. It can be a housing association, a housing society or a non-profit making housing company. ~~The Housing Corporation, which was set up by Parliament in 1964, funds homes built by registered social landlords from money received from central government.~~ The Homes and Communities Agency and the Tenant Services Authority were set up by Parliament in 2008 and cooperate in providing financial assistance for social housing.

## Annex G

## Amendments to the Conduct of Business sourcebook (COBS)

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

## 9 Annex 2G Sale processes for stakeholder products

...

...

General Standards - all sales	
...	
21	A <i>firm</i> may provide a copy of the table setting out initial monthly pension amounts, found within the “Stakeholder pension decision tree” factsheet, available on <del>www.moneymadeclear.org.uk</del> <u>www.moneyadvice.service.org.uk</u> in accordance with COBS 13 Annex 2 1.8R, but in doing so should also provide and explain the caveats and assumptions behind the table. A <i>firm</i> should make it clear that the decision on how much to invest is the <i>retail client’s</i> responsibility and that he should get further advice if has any concerns.
...	

...

## 13 Annex 2 Projections

...

R	
1.8	In the case of a <i>stakeholder pension scheme</i> , the specimen benefits table, contained within the “Stakeholder pension decision tree” factsheet available on <del>www.moneymadeclear.org.uk</del> <u>www.moneyadvice.service.org.uk</u> and headed “Pension Table...How much should I save towards a pension?” which sets out initial monthly pension amounts, may be used instead of a <i>standardised deterministic projection</i> but only if it is accompanied by an explanation of the caveats and assumptions behind the table.

...

19.4.1 R In this section:

...

(3) ‘open market option statement’ means:



- (a) the fact sheet “Your pension: it’s time to choose” available on [www.moneymadeclear.org.uk](http://www.moneymadeclear.org.uk) [www.moneyadvice.service.org.uk](http://www.moneyadvice.service.org.uk), together with a written summary of the *retail client’s* open market option, which is sufficient for the *client* to be able to make an informed decision about whether to exercise, or to decline to exercise, an open market option; or

...

**Annex H**

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

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

5.6.65 R The following text must be included at the end of Section 7 “Are you comfortable with the risks?” The ~~moneymadeclear~~ Money Advice Service information sheet “You can afford your mortgage now, but what if...?” will help you consider the risks. You can get a free copy from ~~www.moneymadeclear.org.uk~~ http://www.moneyadvice.service.org.uk, or by calling 0300 500 5000.

...

5.6.145 R The following text must be included at the end of Section 7 ‘Are you comfortable with the risks?’ The ~~moneymadeclear~~ Money Advice Service information sheet “You can afford your mortgage now, but what if...?” will help you consider the risks. You can get a free copy from ~~www.moneymadeclear.org.uk~~ http://www.moneyadvice.service.org.uk, or by calling 0300 500 5000.

...

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

...

<b>[...]. Where can you get more information about mortgages?</b>
The <del>Consumer Financial Education Body</del> <u>Money Advice Service</u> publishes useful guides on choosing a mortgage. These are available free through its website: <del>www.moneymadeclear.org.uk</del> <u>www.moneyadvice.service.org.uk</u> , or by calling 0300 500 5000. The website also provides Comparative Tables to help you shop around.

...

...

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

...

<b>1. About this information</b>
...
The <del>Consumer Financial Education Body (CFEB)</del> <u>Money Advice Service</u>

provides useful information on lifetime mortgages and other ways of releasing equity from your home in a booklet called 'Raising money from your home'. You can get this free through the ~~CFEB~~ Money Advice Service website ~~www.moneymadeclear.org.uk~~ www.moneyadvice.service.org.uk or by calling 0300 500 5000.

...

## 9 Annex 2R

### The illustration: table of contents, prescribed text and prescribed section headings and sub-headings

...

#### 1. About this information

...

The ~~Consumer Financial Education Body (CFEB)~~ Money Advice Service provides useful information on ways of releasing equity from your home in a booklet called 'Raising money from your home'. You can get this free through the ~~CFEB~~ Money Advice Service website ~~www.moneymadeclear.org.uk~~ www.moneyadvice.service.org.uk or by calling 0300 500 5000.

...

...

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*:

- (1) the current ~~moneymadeclear~~ Money Advice Service information sheet "~~Just the facts about problems~~ Problems paying your mortgage";

...

13.4.2 G (1) The ~~moneymadeclear~~ Money Advice Service information sheet "~~Just the facts about problems~~ Problems paying your mortgage" is available on the website ~~www.moneymadeclear.org.uk~~ www.moneyadvice.service.org.uk; copies can also be obtained by calling 0300 500 5000.

...

13.4.3 G (1) A *firm* may provide the information in MCOB 13.4.1R (2), (3), (4), (5) and (6) orally, for example by telephone, but must provide the information in a *durable medium* with a copy of the ~~moneymadeclear~~ Money Advice Service information sheet "~~Just the facts about problems~~ Problems paying your mortgage" within 15

*business days* of becoming aware of the *customer's* account falling into *arrears*.

...

...

- 13.7.1 R Where the *regulated mortgage contract* is for a business purpose, a *firm* may as an alternative to *MCOB 13.4.1R(1)* provide the following information in a *durable medium* instead of the ~~*moneymadeclear*~~ *Money Advice Service* information sheet “~~Just the facts about problems~~ *Problems paying your mortgage*”:

...

...

### TP 1.1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
14	<u><i>MCOB 5.6.2R</i></u> , <u><i>MCOB 5.6.65R</i></u> , <u><i>MCOB 5.6.145R</i></u> and <u><i>MCOB 5 Annex 1R</i></u>	R	<u>A firm may continue to use an illustration that has been prepared in accordance with the rules in <i>MCOB 5.6</i> in effect at 5 April 2011.</u>	<u>From 6 April 2011 to 5 July 2011</u>	<u>6 April 2011</u>
15	<u><i>MCOB 9.4.2R</i></u> , <u><i>MCOB 9 Annex 1R</i></u> and <u><i>MCOB 9 Annex 2R</i></u>	R	<u>A firm may continue to use an illustration that has been prepared in accordance with the rules in <i>MCOB 9.4</i> in effect at 5 April 2011.</u>	<u>From 6 April 2011 to 5 July 2011</u>	<u>6 April 2011</u>
16	<u><i>MCOB 13.4.1R(1)</i></u>	R	<u>A firm 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>	<u>From 6 April 2011 to 5 July 2011</u>	<u>6 April 2011</u>

## Annex I

### Amendments to the Supervision manual (SUP)

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

- 7.2.6 G A *firm* has a right of referral to the ~~*Financial Services and Markets Tribunal*~~ in respect of the exercise by the *FSA* of its powers to vary, on its own initiative, the *firm's Part IV permission*.

...

#### 10.7 Required functions

...

- 10.7.4 G Generally, in relation to a *UK* establishment of an *overseas firm* or a *firm* which is part of an *overseas group*, where an overseas manager's responsibilities in relation to the *United Kingdom* are strategic only, he will not need to be an *approved person*. However, where, in accordance with *SYSC 3* or *SYSC 4* to *SYSC 10*, he is responsible for implementing that strategy in the *United Kingdom*, and has not delegated that responsibility to a *senior manager* in the *United Kingdom*, he is likely to be performing a *controlled function*, such as, for example, the *chief executive function*. ~~This is subject to *SUP 10.1.13AR*, which applies where the *firm* is a *MiFID investment firm* and the only regulated activities carried out by it in the *United Kingdom* are *MiFID business*.~~

**Annex J****Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

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

**Appendix 3      Handling Payment Protection Insurance complaints**

...

App 3.7.15      So that the complainant can make the decision on the continuation of cover from an informed position, the *firm* should:

...

- (5) refer the complainant to ~~www.moneymadeclear.org.uk~~  
www.moneyadvice.service.org.uk as a source of information about a range of alternative *payment protection contracts*.

**Annex K****Amendments to the Credit Unions sourcebook (CRED)**

In this Annex, striking through indicates deleted text.

**14.6 Individual requirements**

...

The FSA's powers to set individual requirements on its own initiative

...

- 14.6.6 G A *credit union* may refer this decision to the ~~*Financial Services and Markets Tribunal*~~.

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

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

- 4.2D.2 G The procedure the *FSA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a ~~financial instrument~~ financial instrument from trading is set out in ~~section~~ sections 313B to 313BE of the *Act*. ...
- 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:
- (1) publish its decision in such manner as it considers appropriate, unless the decision has already been published under section 313B(2)(b) of the *Act*; and
  - (2) inform the competent authorities of all other *EEA States* of its decision.



## Annex M

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 3A Guidance on the scope of the Electronic Money Regulations 2011

...

##### 3A.7 Transitional arrangements

...

**Q31. We are currently a small ~~electronic money~~ e-money issuer. Do we need to have applied for authorisation under the regulations prior to 30 April 2011?**

No, under regulation 76, provided:

- you are a *small ~~electronic money~~ e-money issuer*; and
- before the 30 April 2011 you carried on the activity of issuing *electronic money* in accordance with your certificate;

you may continue until 30 April 2012 to carry on that activity without requiring authorisation or registration under the regulations.

...

4.13.1 G Certain named *persons* are exempted by the *Exemption Order* from the need to obtain *authorisation*. The following bodies are exempt in relation to carrying on by them of any of the *regulated mortgage activities*:

- (1) local authorities (paragraph 47 of the Schedule to the *Exemption Order*) but not their *subsidiaries*;
- (2) registered social landlords in England and Wales within the meaning of Part I of the Housing Act 1996 (paragraph 48(2)(a) of the Schedule to the *Exemption Order*) but not their subsidiaries;
- (3) registered social landlords in Scotland within the meaning of the Housing (Scotland) Act 2001 (paragraph 48(2)(b) of the Schedule to the *Exemption Order*) but not their subsidiaries;
- (4) ~~The Housing Corporation~~ Office of Tenants and Social Landlords (known as the Tenant Services Authority) (paragraph 48(2)(c) of the Schedule to the *Exemption Order*);
- (4A) The Homes and Communities Agency (paragraph 48(2)(ca) of the Schedule to the *Exemption Order*);
- (5) Scottish Homes (paragraph 48(2)(d) of the Schedule to the *Exemption Order*); and

- (6) The Northern Ireland Housing Executive (paragraph 48(2)(e) of the Schedule to the *Exemption Order*).

...

5.14.5 G In addition to certain named *persons* exempted by the *Exemption Order* from the need to obtain *authorisation*, the following bodies are exempt in relation to *insurance mediation activities* that do not relate to *life policies*:

- (1) local authorities but not their subsidiaries;
- (2) registered social landlords in England and Wales within the meaning of Part I of the Housing Act 1996 but not their subsidiaries;
- (3) registered social landlords in Scotland within the meaning of the Housing (Scotland) Act 2001 but not their subsidiaries;
- (4) ~~the Housing Corporation~~ the Office of Tenants and Social Landlords (known as the Tenant Services Authority);
- (4A) the Homes and Communities Agency;
- (5) Scottish Homes; and
- (6) The Northern Ireland Housing Executive.

...

8.4.21 G These will be advertisements that contain encouragement to contact the advertiser. They are likely to be inducements to do business with him or to get more information from him. If so, they will be inducements to *engage in investment activity* if they seek to persuade or incite *persons* to buy or sell *investments* or to get investment services. See *PERG 8.4.7G* for more *guidance* on preliminary communications and whether they are a significant step in the chain of events which are intended to lead to the recipient *engaging in investment activity*. Where advertisements invite *persons* to send for a prospectus, article ~~73~~ 71 (Material relating to prospectus for public offer of unlisted securities) may provide an exemption. Any *financial promotion* which contains more information than is allowed by article ~~73~~ 71 but which is not the prospectus itself is likely to require *approval* by an *authorised person* unless another exemption applies.

...

9.4.3 G In the *FSA's* view, it is the very existence of the *body corporate* that is the *collective investment scheme*. There are a number of statutory references that support this view. For example, it is clear that paragraph 21 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI 2001/1062) (Arrangements not amounting to a collective investment scheme) is drafted on the basis that it

is the *body corporate* itself that is (or would be) the *collective investment scheme*. This provision ~~states~~ sets out that 'no body corporate other than an open-ended investment company, a limited liability partnership or certain other types of mutual body amounts to a collective investment scheme'. So, any particular *body corporate* is either an *open-ended investment company* or it is not. It cannot be both at the same time, although it may change from one to the other over time (see *PERG 9.7.5G* (The investment condition: the 'reasonable investor') for further *guidance* on this point).

...

## CONTROLLED FUNCTIONS (AMENDMENT NO 2) INSTRUMENT 2011

### Purpose of this instrument

- A. The purpose of this instrument is to postpone the date on which certain amendments to the Handbook made by the Controlled Functions (Amendment) Instrument 2010 (FSA 2010/48) come into force and to make consequential changes to the parts of the Handbook amended by that instrument.

### 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 59 (Approval for particular arrangements);
- (2) section 60 (Applications for approval);
- (3) section 64 (Conduct: statements and codes);
- (4) section 138 (General rule-making power);
- (5) section 156 (General supplementary powers); and
- (6) section 157(1) (Guidance).

- 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 as set out in paragraph E of this instrument.

### Amendments to the Controlled Functions (Amendment) Instrument 2010

- E. The Controlled Functions (Amendment) Instrument 2010 is amended as follows:

- (1) The amendments to the Handbook made by that instrument and listed in Annex A to this instrument are postponed and come into force on a date to be notified.
- (2) The changes made to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) are further amended by Annex B. The further change made by Annex B comes into force on 1 May 2011 and lasts until the date referred to in (1).
- (3) On the date referred to in (1) the change made by Annex B is revoked and replaced by the change made by the Controlled Functions (Amendment) Instrument 2010.
- (4) The changes to SUP TP 1 made by the Controlled Functions (Amendment) Instrument 2010 are revoked. Instead:

- (a) SUP TP 1 is amended in accordance with Annex C to this instrument. These changes come into effect on 1 May 2011; and
  - (b) SUP TP 1 is further amended in accordance with Annex D to this instrument. These changes come into effect on the date specified in (1).
- (5) The commencement date for the rest of the Controlled Functions (Amendment) Instrument 2010 remains unchanged.

*[Editor's Note: The modules of the Handbook which are affected by the provisions of paragraph E of this instrument are:*

<i>Glossary of Definitions</i>	<i>see Annex A</i>
<i>Senior Management Arrangements, Systems and Controls sourcebook (SYSC)</i>	<i>see Annexes A and B</i>
<i>Statements of Principle and Code of Practice for Approved Persons (APER)</i>	<i>see Annex A</i>
<i>The Fit and Proper Test for Approved Persons (FIT)</i>	<i>see Annex A</i>
<i>Supervision manual (SUP)</i>	<i>see Annexes A, C and D</i>
<i>Credit Unions sourcebook (CRED)</i>	<i>see Annex A</i>

]

### **Citation**

- F. This instrument may be cited as the Controlled Functions (Amendment No 2) Instrument 2011.

By order of the Board  
24 March 2011

## Annex A

## Postponed amendments to the Handbook

The changes to the following provisions of the Handbook made by the Controlled Functions (Amendment) Instrument 2010 (FSA 2010/48) are postponed in accordance with this instrument.

<b>Handbook module</b>	<b>Handbook rules and guidance amended by the Controlled Functions (Amendment) Instrument 2010 whose commencement date is postponed</b>
Glossary	All
SYSC	3.2.10G 3.2.16G 6.2.2G 6.2.3G 7.1.8G 14.1.39G 14.1.43G
APER	All
FIT	2.2.3G
SUP	10.1.7R 10.1.16R 10.4.5R 10.5.1G 10.6.2R 10.6.3G 10.6.4R 10.6.5G 10.6.8R 10.6.9G 10.6.9AR to 10.6.9ER 10.6.10R 10.6.10AG 10.6.30R to 10.6.33G 10.8 (all)

	10.9.2G 10.9.3G 10.9.10R(2) 10.12.2BD 10 Annex 9
CRED	All

## 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.

The text against which the changes are marked is the text as inserted into the Handbook by the Controlled Functions (Amendment) Instrument 2010. That text is amended as follows.

#### **21 Risk control: additional guidance**

##### **21.1 Risk control: guidance on governance arrangements**

Chief Risk Officer

21.1.2 G (1) ...

- (2) *Firms* will need to seek the *FSA's* approval for a Chief Risk Officer to perform the systems and controls ~~risk~~ function (see SUP 10 (Approved persons)).



## Annex C

## Amendments to the Supervision manual (SUP)

**Comes into force on 1 May 2011**

Insert the following new rows in the SUP Transitional Provisions in place of those made by the Controlled Functions (Amendment) Instrument 2010 (FSA 2010/48). The text is not underlined.

**TP 1 Transitional provisions**

**Transitional provisions applying to the Supervision manual only**

...

**TP 1.2**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8K	SUP 10.1.13R to SUP 10.1.14R	R	<p>(1) This rule deals with the extension of the <i>significant management function</i> through the amendment to SUP 10.1.13R (Incoming EEA firms: passported activities from a branch) and SUP 10.1.14R (Incoming EEA firms etc with top-up permission activities from a UK branch) by the Controlled Functions (Amendment) Instrument 2010 as amended by the Controlled Functions (Amendment No 2) Instrument 2011.</p> <p>(2) This rule applies to a <i>person</i> who would otherwise have been performing the <i>significant management function</i> with respect to a <i>firm</i> immediately before the first date in column (5) if the extension described in (1) had been in force then.</p> <p>(3) The functions that would otherwise have formed part of the <i>significant management function</i> because of the extension described in (2), as respects that <i>person</i> and that <i>firm</i>, are not treated as forming part of <i>significant management function</i>.</p>	1 May 2011 to 31 October 2011	1 November 2011

			<p>(4) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>person</i> and that <i>firm</i> if and when an application is made for the person to perform the <i>significant management function</i> for that <i>firm</i> and that application is granted.</p> <p>(5) If the <i>FSA</i> has received a completed application for that <i>person</i> to perform the <i>significant management function</i> no later than three months after the first date in column (5) and that application has not been finally decided by the time that the transitional period in column (5) would otherwise have come to an end, that transitional period is extended until the application has been finally decided.</p> <p>(6) An application for a <i>person</i> to perform a <i>controlled function</i> is finally decided on the earliest of the following dates:</p> <ul style="list-style-type: none"> <li>(a) when the application is withdrawn;</li> <li>(b) when the <i>FSA</i> grants approval;</li> <li>(c) where the <i>FSA</i> has refused the application and the matter is not referred to the <i>Tribunal</i>, on the date on which the right to refer the matter to the <i>Tribunal</i> expires;</li> <li>(d) where the <i>FSA</i> has refused the application and the matter is referred to the <i>Tribunal</i>, when the reference is determined by the <i>Tribunal</i> and the time for bringing an appeal has expired;</li> <li>(e) if the application is determined by the court, when the court makes that determination.</li> </ul>		
8L		G	<p><i>SUP TP 8KR</i> provides a period in which applications can be made. It says that if an application for approval is still being processed at the end of the transitional period, the <i>person</i> is still able to carry on performing the function while the approval is being processed. However, this only applies if the application for approval is made within a specified period. If the application is made later than that there is a risk that the application will not have been decided before the end of the transitional period, in which case the <i>person</i> will have to stop carrying out the function.</p>		

## Annex D

## Amendments to the Supervision manual (SUP)

Comes into force after 1 May 2011 on a date to be notified (see paragraph E(4)(b) of instrument)

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

## TP 1 Transitional provisions

## Transitional provisions applying to the Supervision manual only

...

## TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
8K	SUP 10.1.13R to SUP 10.1.14R	R	<p>(1) ...</p> <p>(6) <u>An application for a <i>person</i> to perform a <i>controlled function</i> is finally decided on the earliest of the following dates: SUP TP 8TR contains various supplemental provisions applicable to this <i>rule</i>.</u></p> <p>(a) <del>when the application is withdrawn;</del></p> <p>(b) <del>when the FSA grants approval;</del></p> <p>(c) <del>where the FSA has refused the application and the matter is not referred to the Tribunal, on the date on which the right to refer the matter to the Tribunal expires;</del></p> <p>(d) <del>where the FSA has refused the application and the matter is referred to the Tribunal, when the reference is determined by the Tribunal and the time for bringing an appeal has expired;</del></p> <p>(e) <del>if the application is determined by the court, when the court makes that determination.</del></p>		

<p>8L</p>	<p><u>SUP</u> <u>10.6.9AR to</u> <u>SUP</u> <u>10.6.9ER</u></p>	<p><u>G</u> <u>R</u></p>	<p>(1) <del>SUP TP 8KR provides a period in which applications can be made. It says that if an application for approval is still being processed at the end of the transitional period, the person is still able to carry on performing the function while the approval is being processed. However, this only applies if the application for approval is made within a specified period. If the application is made later than that there is a risk that the application will not have been decided before the end of the transitional period, in which case the person will have to stop carrying out the function.</del></p> <p><u>This rule applies to a person who meets the following conditions immediately before the transitional start date:</u></p> <p>(a) <u>he was approved to carry on one of the existing governing functions for a firm;</u> <u>and</u></p> <p>(b) <u>he would otherwise have been performing one of the granular governing functions if those functions had existed then.</u></p> <p>(2) <u>The firm must notify the FSA of each approved person falling into (1). The firm must give that notification before the second date in column (5). The notification must include the granular governing functions referred to in (1)(b).</u></p> <p>(3) <u>The functions described in (1)(b), as respects that person and that firm, are not treated as forming part of the granular governing functions until the earlier to occur of the date on which the firm gives the notification under (2) and the second date in column (5).</u></p> <p>(4) <u>If the notification in (2) is given in accordance with that paragraph, the approval referred to in paragraph (1)(a) covers the granular governing functions referred to in (1)(b) as respects that person and that firm.</u></p> <p>(5) <u>SUP TP 8TR contains various supplemental provisions applicable to this rule.</u></p>	<p><u>Transitional start date to first transitional end date</u></p>	<p><u>Day following first transitional end date</u></p>
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Insert the following new rows. The text is not underlined.

(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
...					
8M	SUP 10.6.30AR and SUP 10.13.6AR	R	<p>(1) This <i>rule</i> applies to a <i>person</i> who immediately before the transitional start date:</p> <p>(a) was approved to carry on an existing <i>governing function</i> for a subsidiary <i>firm</i>; and</p> <p>(b) would have been performing the <i>parent entity significant influence function</i> with respect to that subsidiary <i>firm</i> if that function had existed then.</p> <p>(2) SUP 10.6.31R(1) applies, so that the approval referred to in paragraph (1) covers the <i>parent entity significant influence function</i> as respects that <i>person</i> and that <i>firm</i>.</p> <p>(3) The subsidiary <i>firm</i> must notify the FSA of any <i>person</i> to whom this <i>rule</i> applies who has ceased to perform the <i>governing function</i> referred to in (1)(a) because of the removal of the functions forming part of the <i>parent entity significant influence function</i> from the <i>director function</i> and the <i>non-executive director function</i> by the Controlled Functions (Amendment) Instrument 2010. The <i>firm</i> must give that notification within three months of the date in (1). Form C does not apply for the purpose of that notification.</p> <p>(4) SUP TP 8TR contains various supplemental provisions applicable to this <i>rule</i>.</p>	Not applicable	Not applicable
8N	SUP 10.6.30R	R	<p>(1) This <i>rule</i> applies to a <i>person</i> who meets the following conditions immediately before the transitional start date:</p> <p>(a) he would otherwise have been performing the <i>parent entity significant influence function</i> with respect to a subsidiary <i>firm</i> if that function had existed then;</p>	Transitional start date to second transitional end date	

			<p>(b) he is not approved to perform a <i>governing function</i> for the subsidiary firm;</p> <p>(c) he was not performing the <i>director function</i> or the <i>non-executive director function</i> for the subsidiary firm (as those <i>controlled functions</i> were defined before the Controlled Functions (Amendment) Instrument 2010); and</p> <p>(d) either the parent was not a <i>UK firm</i> or he is not approved to perform any <i>governing function</i> for the parent.</p> <p>(2) The <i>parent entity significant influence function</i>, as respects that <i>person</i> and that subsidiary firm, is not treated as a <i>controlled function</i>.</p> <p>(3) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>person</i> and that subsidiary firm if and when an application is made for the person to perform the <i>parent entity significant influence function</i> for that firm and that application is granted.</p> <p>(4) If the FSA has received a completed application for that <i>person</i> to perform the <i>parent entity significant influence</i> no later than three months after the first date in column (5) and that application has not been finally decided by the time that the transitional period in column (5) would otherwise have come to an end, that transitional period is extended until the application has been finally decided.</p> <p>(5) SUP TP 8TR contains various supplemental provisions applicable to this <i>rule</i>.</p>		
80	SUP 10.6.30R	R	<p>(1) This <i>rule</i> applies to a person who meets the following conditions immediately before the transitional start date:</p> <p>(a) he would otherwise have been performing the <i>parent entity significant influence function</i> with respect to a subsidiary firm if that function had existed then;</p> <p>(b) he is not approved to perform a <i>governing function</i> for that subsidiary firm;</p> <p>(c) the parent was a <i>UK firm</i>;</p>	Transitional start date to first transitional end date	Day following first transitional end date

			<p>(d) he was not performing the <i>director function</i> or the <i>non-executive director function</i> for the subsidiary <i>firm</i> (as those <i>controlled functions</i> were defined before the Controlled Functions (Amendment) Instrument 2010); and</p> <p>(e) he was approved to carry on a <i>governing function</i> for the parent.</p> <p>(2) The subsidiary <i>firm</i> must notify the FSA of each <i>approved person</i> falling into (1). The <i>firm</i> must give that notification before the second date in column (5).</p> <p>(3) The <i>parent entity significant influence function</i>, as respects that <i>person</i> and that subsidiary <i>firm</i>, is not treated as a <i>controlled function</i> until the earlier to occur of the date on which the <i>firm</i> gives the notification under (2) and the second date in column (5).</p> <p>(4) If the notification in (2) is given in accordance with that paragraph, the approval referred to in paragraph (1)(e) covers the <i>parent entity significant influence function</i> as respects that <i>person</i> and that subsidiary <i>firm</i>.</p> <p>(5) SUP TP 8TR contains various supplemental provisions applicable to this <i>rule</i>.</p>		
8P	SUP 10.8.1R to SUP 10.8.3R	R	<p>(1) This <i>rule</i> applies to a person who meets the following conditions immediately before the transitional start date:</p> <p>(a) he was approved to carry on what prior to the Controlled Functions (Amendment) Instrument 2010 was <i>controlled function</i> 28 (the systems and controls function) for a <i>firm</i>; and</p> <p>(b) he would otherwise have been performing any of the <i>systems and controls functions</i> for that <i>firm</i> if those functions had existed then.</p> <p>(2) The <i>firm</i> must notify the FSA of each <i>approved person</i> falling into (1). The <i>firm</i> must give that notification before the second date in column (5). The notification must include the <i>systems and controls functions</i> the <i>approved person</i> would otherwise have been performing.</p>	Transitional start date to first transitional end date	Day following first transitional end date

			<p>(3) The deletion of what was <i>controlled function</i> 28, as respects that <i>person</i> and that <i>firm</i>, does not take effect until the earlier to occur of the date on which the <i>firm</i> gives the notification under (2) and the second date in column (5).</p> <p>(4) If the notification in (2) is given in accordance with that paragraph, the approval referred to in paragraph (1)(a) covers the <i>systems and controls functions</i> referred to in (1)(b) as respects that <i>person</i> and that <i>firm</i>.</p> <p>(5) <i>SUP</i> TP 8TR contains various supplemental provisions applicable to this <i>rule</i>.</p>		
8Q	<i>SUP</i> 10.8.1R to <i>SUP</i> 10.8.3R	R	<p>(1) This <i>rule</i> applies to a <i>person</i> who meets the following conditions:</p> <p>(a) immediately before the transitional start date he was approved to perform a <i>governing function</i> for a <i>firm</i>; and</p> <p>(b) as a result of the deletion of <i>SUP</i> 10.6.2R(1) by the Controlled Functions (Amendment) Instrument 2010) he would on the transitional start date otherwise have required approval to perform one of the <i>systems and controls functions</i> for that <i>firm</i>.</p> <p>(2) The <i>firm</i> must notify the <i>FSA</i> of each <i>approved person</i> falling into (1).</p> <p>(3) The <i>firm</i> must give the notification in (2) within the period specified in (4) or (5). The period begins from the transitional start date.</p> <p>(4) (a) The notification period is three months for a <i>firm</i> that meets at least one of the conditions in this <i>rule</i>.</p> <p>(b) The first condition is that the <i>firm</i> is a <i>UK bank</i> or <i>building society</i> that had <i>capital resources</i> exceeding £1 billion on its last <i>accounting reference date</i>.</p> <p>(c) The second condition is that the <i>firm</i> is a <i>BIPRU 730K firm</i> that had <i>capital resources</i> exceeding £750 million on its last <i>accounting reference date</i>.</p> <p>(d) The third condition is that:</p>	As specified in column 4	



			<p>(i) the <i>firm</i> is a <i>full credit institution</i>, a <i>BIPRU 730K firm</i> or a <i>third country BIPRU 730K firm</i>;</p> <p>(ii) the <i>firm</i> is part of a <i>group</i>; and</p> <p>(iii) on the <i>firm's</i> last <i>accounting reference date</i> total capital resources held within the <i>group</i>:</p> <p>(A) by <i>UK banks</i> or <i>building societies</i> exceeded £1 billion; or</p> <p>(B) by <i>BIPRU 730K firms</i> exceeded £750 million.</p> <p>(5) The notification period is twelve months for all other <i>firms</i>.</p> <p>(6) The deletion of what was <i>controlled function 28</i>, the deletion referred to in paragraph (1) and the introduction of the <i>controlled functions</i> referred to in paragraph (1)(b), as respects that <i>person</i> and that <i>firm</i>, do not take effect until the earlier to occur of the date on which the <i>firm</i> gives the notification under (2) and the end of the notification period.</p> <p>(7) If the notification in (2) is given in accordance with that paragraph, the approval referred to in paragraph (1)(a) covers the <i>systems and controls functions</i> referred to in (1)(b) as respects that <i>person</i> and that <i>firm</i>.</p> <p>(8) <i>SUP TP 8TR</i> contains various supplemental provisions applicable to this <i>rule</i>.</p>		
8R	<i>SUP</i> 10.6.9AR to <i>SUP</i> 10.6.9ER	R	<p>(1) This <i>rule</i> applies to a <i>person</i> who meets the following conditions immediately before the transitional start date:</p> <p>(a) he was not approved to carry on one of the existing <i>governing functions</i> for a <i>firm</i> and was not performing any of those functions for that <i>firm</i>; and</p> <p>(b) he would otherwise have been performing one of the granular <i>governing functions</i> if those functions had existed then.</p> <p>(2) The granular function described in (1)(b), as respects that <i>person</i> and that <i>firm</i>, is not treated as being a <i>controlled function</i>.</p>	Transitional start date to first transitional end date	Day following first transitional end date

			<p>(3) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>person</i> and that <i>firm</i> if and when an application is made for the person to perform the granular <i>governing function</i> for that <i>firm</i> and that application is granted.</p> <p>(4) If the <i>FSA</i> has received a completed application for that <i>person</i> to perform the granular <i>governing function</i> no later than 3 months after the first date in column (5) and that application has not been finally decided by the time that the transitional period in column (5) would otherwise have come to an end, that transitional period is extended until the application has been finally decided.</p> <p>(5) <i>SUP TP 8TR</i> contains various supplemental provisions applicable to this <i>rule</i>.</p>		
8S		G	<p>(1) <i>SUP TP 8LR</i> deals with the introduction of the granular <i>governing functions</i> by the Controlled Functions (Amendment) Instrument 2010. It deals with a <i>firm</i> for which an <i>approved person</i> has been approved to perform any of the <i>governing functions</i> and will require approval for one of the granular <i>governing functions</i>. The <i>firm</i> is required to notify the <i>FSA</i> of all such <i>approved persons</i>. If it does, the <i>approved person</i> will be approved to carry out that granular <i>governing function</i> and no new approval to perform that <i>controlled function</i> will be required. Otherwise the <i>approved person</i> will need to apply for approval.</p> <p>(2) <i>SUP TP 8MR</i> deals with a <i>person</i> who is performing the <i>parent entity significant influence function</i> for a subsidiary <i>firm</i> and is approved to carry out one of the <i>governing functions</i> for the subsidiary. The policy in <i>SUP 10.6.31R(1)</i> is that approval for an existing <i>governing function</i> also includes approval for the <i>parent entity significant influence function</i>. The purpose of this transitional <i>rule</i> is that this should be the case for all those who fall into this category when the <i>parent entity significant influence function</i> was introduced by the Controlled Functions (Amendment) Instrument 2010.</p>		

		<p>(3) Before the Controlled Functions (Amendment) Instrument 2010, the functions forming the <i>parent entity significant influence function</i> formed part of the <i>director function</i> and the <i>non-executive director function</i>. SUP TP 8MR also deals with an <i>approved person</i> who only required approval for the <i>director function</i> or the <i>non-executive director function</i> because he was performing a role that after the Controlled Functions (Amendment) Instrument 2010 falls under the <i>parent entity significant influence function</i>. As a result of the Controlled Functions (Amendment) Instrument 2010 the <i>approved person</i> will have ceased to perform the <i>director function</i> or the <i>non-executive director function</i>. The <i>firm</i> is required to notify the <i>FSA</i> of such <i>persons</i>. The result is that such <i>persons</i> will be approved for the <i>parent entity significant influence function</i> in place of the <i>director function</i> or the <i>non-executive director function</i>.</p> <p>(4) SUP TP 8PR deals with the splitting into the three <i>systems and controls functions</i> of what was a single <i>controlled function</i> by the Controlled Functions (Amendment) Instrument 2010. A <i>firm</i> must notify the <i>FSA</i> of its <i>approved person</i> who is covered by this change. If it does, the <i>approved person</i> will be approved to carry out the <i>systems and controls function</i> that he has been performing and no new approval to perform that <i>controlled function</i> will be required. Otherwise the <i>approved person</i> will need to apply for approval.</p> <p>(5) SUP TP 8QR deals with the same issue in the case of those also affected by the removal of the <i>rule</i> that said that a <i>person</i> performing certain of the <i>governing functions</i> did not need separate approval for the <i>controlled function</i> that was split to form the <i>systems and controls functions</i>. The same procedures apply.</p> <p>(6) SUP TP 8NR and SUP TP 8OR deal with the <i>parent entity significant influence function</i> in relation to those who are not approved to carry out a <i>governing function</i> for the subsidiary <i>firm</i>. A <i>person</i> carrying on that function for a subsidiary <i>firm</i> whose parent is a <i>UK firm</i> will not need a new approval to perform that <i>controlled function</i> as long as notice is given in accordance with SUP TP 8TR and he is already approved to carry on a <i>governing function</i> for the parent. In other cases SUP TP 8NR sets out a period</p>		
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			<p>within which the <i>person</i> may get approval without having to cease to carry on that function in the mean time. An example of a <i>firm</i> to which SUP TP 8NR applies is a UK <i>firm</i> that is a limited liability partnership.</p>		
			<p>(7) SUP TP 8NR, SUP TP 8KR and SUP TP 8RR provide a period in which applications can be made. They say that if an application for approval is still being processed at the end of the transitional period, the <i>person</i> is still able to carry on performing the function while the approval is being processed. However this only applies if the application for approval is made within a specified period. If the application is made later than that there is a risk that the application will not have been decided before the end of the transitional period, in which case the <i>person</i> will have to stop carrying out the function.</p> <p>(8) SUP TP 8RR deals with the possibility (perhaps unlikely) that some of the granular <i>governing functions</i> are not carried out by a director or partner. It provides a transitional period during which application for approval can be made.</p>		
8T	SUP TP 8KR to SUP TP 8SG	R	<p>(1) This <i>rule</i> defines various terms used in SUP TP 8KR to SUP TP 8SG and sets out various other supplemental matters.</p> <p>(2) An application for a <i>person</i> to perform a <i>controlled function</i> is finally decided on the earliest of the following dates:</p> <p>(a) when the application is withdrawn;</p> <p>(b) when the <i>FSA</i> grants approval;</p> <p>(c) where the <i>FSA</i> has refused the application and the matter is not referred to the <i>Tribunal</i>, on the date on which the right to refer the matter to the <i>Tribunal</i> expires;</p> <p>(d) where the <i>FSA</i> has refused the application and the matter is referred to the <i>Tribunal</i>, when the reference is determined by the <i>Tribunal</i> and the time for bringing an appeal has expired;</p> <p>(e) if the application is determined by the court, when the court makes that determination.</p>		

		<p>(3) The notification under <i>SUP TP 8LR, SUP TP 8MR, SUP TP 8OR, SUP TP 8PR and SUP TP 8QR</i> must include sufficient information for the <i>FSA</i> to identify the <i>person</i> concerned and at a minimum must contain (i) the <i>person's</i> full name; (ii) his individual register reference number; and (iii) the <i>firm's</i> register reference number. The register means the register maintained by the <i>FSA</i> under section 347 of the <i>Act</i> (The record of authorised persons etc).</p> <p>(4) The granular <i>governing functions</i> mean <i>controlled functions 2a, 2b, 2c, 2d and 2e</i> as set out in the <i>table of controlled functions</i>.</p> <p>(5) The existing <i>governing functions</i> mean <i>controlled functions 1, 2, 3, 4, 5 and 6</i> as set out in the <i>table of controlled functions</i>.</p> <p>(6) The terms subsidiary <i>firm</i> and parent refer to the <i>parent entity significant influence function</i>. The subsidiary <i>firm</i> is the <i>firm</i> referred to <i>SUP 10.3.1R</i>. The parent refers to the <i>holding company</i> or <i>parent undertaking</i> from which that function is being carried on.</p> <p>(7) Transitional start date means the date specified under paragraph E(4)(b) of the <i>Controlled Functions (Amendment No 2) Instrument 2011</i>.</p> <p>(8) First transitional end date means the date falling three months after the transitional start date.</p> <p>(9) Second transitional end date means the date falling six months after the transitional start date.</p> <p>(10) References to the <i>Controlled Functions (Amendment) Instrument 2010</i> are to that instrument as amended by the <i>Controlled Functions (Amendment No 2) Instrument 2011</i></p>		
...				

**TRAINING AND COMPETENCE (QUALIFICATIONS AMENDMENTS)  
INSTRUMENT 2011**

**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 1 April 2011.

**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 (Qualifications Amendments) Instrument 2011.

By order of the Board  
24 March 2011

## 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</i> or <i>broker funds</i> ) – Activity number 2 in TC Appendix 1.1.1R		
Qualification	Qualification provider	Key
...		
Associate or Fellow (life and pensions route only)	Chartered Insurance Institute	b
<del>Registered Representative</del> <u>London Stock Exchange Full Membership Exams</u> – where candidates hold <del>all 3</del> <u>three or four</u> 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 <del>and</del> <u>&amp;</u> Investment Institute)).	b
...		
Investment Administration Qualification – Unit 2 <del>SFA</del> <u>FSA</u> Regulatory Environment – (Formerly the Investment Administration Qualification - Regulatory Environment Module)	The Chartered Institute for Securities <del>and</del> <u>&amp;</u> Investment (Formerly the Securities <del>and</del> <u>&amp;</u> Investment Institute)	e
<u>Investment Operations Certificate - FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>e</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
...		
Chartered Financial Analyst plus Unit 1 of the Investment Management Certificate (Level 4 certificate) (post-2010 exam standards)	CFA Institute/ CFA Society of UK	a
Investment Management Certificate (Level 4	CFA Institute/ CFA Society of UK	a

certificate) (post-2010 exam standards) plus other qualifications that meet RDR specialist standards for <u>securities derivatives</u>		
...		
Fellow or Associate	Faculty or Institute of Actuaries	a
<del>Registered Representative</del> <u>London Stock Exchange Full Membership Exams</u> – where candidates hold <del>all 3</del> <u>three or four</u> 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 and Investment Institute)).	b
...		
Investment Administration Qualification – Unit 2 <del>SFA</del> <u>FSA</u> Regulatory Environment – (Formerly the Investment Administration Qualification - Regulatory Environment <del>module</del> <u>Module</u> )	The Chartered Institute for Securities <del>and</del> <u>&amp;</u> Investment (Formerly the Securities <del>and</del> <u>&amp;</u> Investment Institute)	e
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>e</u>
...		

<b>Qualification table relating to : Advising on Packaged Products (which are not broker funds) and Friendly Society tax-exempt policies - Activity Numbers 4 and 6 in TC Appendix 1.1.1R</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
Diploma in Investment Planning (Retail Banking) (Existing Adviser) Post 2010 examination standards	Chartered Institute of Bankers in Scotland	a
<u>Diploma in investment planning (work based assessment)</u>	<u>Chartered Institute of Bankers in Scotland</u>	<u>a</u>
...		
Chartered Banker (where candidates hold UK Financial Services and Investment modules)	Chartered Institute of Bankers in Scotland	b
Certificate in Investment Planning (pre 17/09/2004)	Chartered Institute of Bankers in Scotland	b
Diploma in Investment Planning (current)	Chartered Institute of Bankers in Scotland	b
Certificate in <del>Financial</del> <u>Investment</u> Planning (Post 17/09/2004)	Chartered Institute of Bankers in Scotland	c
...		
Fellowship	Institute of Financial Planning	b
<u>London Stock Exchange Full Membership Exams – where candidates hold three or four papers or have</u>	<u>London Stock Exchange (records now kept by The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)).</u>	<u>b</u>



<u>both the Stock Exchange Practice and Techniques of Investment papers</u>		
...		

<b>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</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
Associateship (must include a pass in the Investment Paper)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	b
<del>Registered Representative</del> <u>London Stock Exchange Full Membership Exams – where candidates hold all 3 three or four papers or have both the Stock Exchange Practice and Techniques of Investment papers</u>	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> & Investment Institute))	b
...		
Investment Administration Qualification – Unit 2 <del>SFA</del> <u>FSA</u> Regulatory Environment – (Formerly the Investment Administration Qualification - Regulatory Environment Module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	e
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>e</u>
...		

<b>Qualification table for : Advising on and dealing with or for clients in <i>Derivatives</i> – Activity number 13 in TC Appendix 1.1.1R</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
Certificate in Private Client Investment Advice and Management (attained through a CISI competency interview and presentation only)	The Chartered Institute for Securities <del>and</del> & Investment ( <u>Formerly the Securities &amp; Investment Institute</u> )	b
<u>Masters in Wealth Management (based on post 2010 examination standards)</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>a</u>
...		
Associateship – (must include a pass in the Investment Management Paper)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	b
<del>Registered Representative</del> <u>London Stock Exchange Full Membership Exams – where candidates hold all 3 three or four papers or have both the Stock</u>	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment (Formerly the Securities <del>and</del> & Investment Institute))	b

Exchange Practice and Techniques of Investment papers		
...		
Investment Administration Qualification – SFA Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	e
Investment Administration Qualification – Unit 2 <del>SFA</del> <u>FSA</u> Regulatory Environment (Formerly the Investment Administration Qualification – Regulatory Environment Module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	e
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>e</u>
...		

...

Qualification table for : Advising on investments in the course of corporate finance business – Activity number 8 in TC Appendix 1.1.1R		
Qualification	Body	Key
...		
Investment Administration Qualification – SFA Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3
Investment Administration Qualification – Unit 2 <del>SFA</del> <u>FSA</u> Regulatory Environment – (Formerly the Investment Administration Qualification – Regulatory Environment Module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>3</u>

...

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
...		
Certificate in Private Client Investment Advice and Management (attained through a CISI competency interview and presentation only)	The Chartered Institute for Securities & Investment ( <u>Formerly the Securities &amp; Investment Institute</u> )	1
<u>Diploma (where candidate holds 3 modules as</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>1</u>

<u>recommended by the firm)</u>		
...		
Securities Institute Level 3 Certificate in Investments (Investment Management)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	1
<del>Registered Representative</del> London Stock Exchange Full Membership Exams – where candidates hold <del>all three</del> <u>three or four</u> papers or hold both the Stock Exchange Practice and Technique of Investment Papers	London Stock Exchange (records are now kept by the Chartered Institute for Securities & Investment; formerly the Securities <del>and</del> & Investment Institute)	1
...		
Investment Administration Qualification – IMRO Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3
Investment Administration Qualification – <del>FSA</del> <u>SFA</u> Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3
Investment Administration Qualification – Unit 2 FSA Regulatory Environment – (Formerly the Investment Administration Qualification - Regulatory Environment Module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	3
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>3</u>
...		

<b>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 <i>depository</i> of a <i>collective investment scheme</i> – Activity number 15 in TC Appendix 1.1.1R</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
Investment Administration Qualification – Introduction to Securities and Investment <del>module</del> <u>Module</u>	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	4
<u>Investment Operations Certificate – Introduction to Securities and Investment Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>4</u>
...		
Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland	5
Investment Administration Qualification – <del>FSA</del> <u>SFA</u> Regulatory Environment <u>Module</u>	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	5
...		
Investment Administration Qualification – FSA	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	5

<u>Regulatory Environment Module</u>		
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>5</u>
...		
Diploma Operations Management Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
Investment Administration Qualification – Collective Investment Schemes Administration module Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
Investment Administration Qualification – Asset Servicing Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Asset Servicing Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – CREST Settlement Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate - CREST Settlement Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – Exchange – Traded Derivative Administration Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Exchange – Traded Derivative Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – ISA Administration Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – ISA Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – Operational Risk Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Operational Risk Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
Investment Administration Qualification – OTC Derivatives Administration Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – OTC</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>

<u>Derivatives Administration Module</u>		
...		
Investment Administration Qualification – Private Client Administration Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Private Client Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>

*continued*

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
...		
Investment Administration Qualification – Introduction to Securities and Investment <del>module</del> Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	4
<u>Investment Operations Certificate – Introduction to Securities and Investment Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>4</u>
...		
Certificate in Investment Planning – Paper 1	Chartered Institute of Bankers in Scotland	5
Investment Administration Qualification – <del>FSA SFA</del> Regulatory Environment Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	5
...		
Investment Administration Qualification – FSA Regulatory Environment Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	5
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>5</u>
...		
TSA Registered Representative Examinations	The Securities Association	5
Investment Administration Qualification – Global Securities Operations <del>module</del> Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Global Securities Operations Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>

Investment Administration Qualification – Private Client Administration <del>module</del> Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Private Client Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – Asset Servicing Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Asset Servicing Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – CREST Settlement Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – CREST Settlement Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – Exchange-Traded Derivative Administration Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Exchange-Traded Derivative Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – ISA Administration Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – ISA Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		

Investment Administration Qualification – Operational Risk Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Operational Risk Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
Investment Administration Qualification – OTC Derivatives Administration Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – OTC Derivatives Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		

**Qualification table for : Overseeing on a day to day basis administrative functions in relation to managing *investments***

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

**Activity number 17 in TC Appendix 1.1.1R**

<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
Investment Administration Qualification – Introduction to Securities and Investment <del>module</del> <u>Module</u>	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	4
<u>Investment Operations Certificate – Introduction to Securities and Investment Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>4</u>
...		
Investment Administration Qualification – FSA Regulatory Environment <del>module</del> <u>Module</u>	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	5



<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>5</u>
...		
Investment Administration Qualification – IMRO Regulatory Environment Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	5
<del>Investment Administration Qualification – Regulatory Environment Module</del>	<del>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</del>	<del>5</del>
Investment Administration Qualification – FSA SFA Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	5
...		
Investment Administration Qualification – Asset Servicing module Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Asset Servicing Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
Investment Administration Qualification – CREST Settlement module Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – CREST Settlement Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
Investment Administration Qualification – Global Securities Operation module Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Global Securities Operation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Diploma – Operations Management Module	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6
<del>Investment Administration Qualification</del>	<del>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</del>	<del>6</del>
...		
Investment Administration Qualification – Exchange-Traded	The Chartered Institute for Securities & Investments (Formerly the Securities & Investment Institute)	6

Derivative Administration Module		
<u>Investment Operations Certificate – Exchange-Traded Derivative Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – ISA Administration Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – ISA Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – Operational Risk Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Operational Risk Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		
Investment Administration Qualification – Private Client Administration Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
<u>Investment Operations Certificate – Private Client Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>

**Qualification table for : Carrying out on a day to day basis administrative functions in relation to effecting or carrying out *contracts of insurance* which are *life policies*:**

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

**Activity number 18 in TC Appendix 1.1.1R**

<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
Investment Administration	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	4

Qualification – Introduction to Securities and Investment Module		
<u>Investment Operations Certificate – Introduction to Securities and Investment Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>4</u>
...		
Investment Administration Qualification – IMRO Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	5
Investment Administration Qualification – FSA SFA Regulatory Environment Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	5
Investment Administration Qualification – Unit 2 FSA Regulatory Environment – (Formerly the Investment Administration Qualification – Regulatory Environment Module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	<u>5</u>
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>5</u>
...		

<p><b>Qualification table for : Overseeing on a day to day basis administrative functions in relation to the operation of <i>stakeholder pension schemes</i>:</b></p> <ul style="list-style-type: none"> <li>- (i) new business administration;</li> <li>- (ii) receipt of or alteration to contributions;</li> <li>- (iii) preparing projections and annual statements;</li> <li>- (iv) administration of transfers;</li> <li>- (v) handling claims, including pension payments;</li> <li>- (vi) fund allocation and switching.</li> </ul> <p><b>Activity number 19 in TC Appendix 1.1.1R</b></p>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
Investment Administration Qualification – Introduction to Securities and Investment	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	

Module		
<u>Investment Operations Certificate – Introduction to Securities and Investment Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>4</u>
...		
Investment Administration Qualification – Unit 2 FSA Regulatory Environment – (Formerly the Investment Administration Qualification – Regulatory Environment <del>module</del> Module)	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	5
<u>Investment Operations Certificate – FSA Financial Regulation Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>5</u>
...		

...

**Appendix 7G Guidelines for qualification gap fill for retail investment advice**

...

Analyse and explain	The nature and impact of the main types of risk on investment performance				
	<ul style="list-style-type: none"> <li>• liquidity and access</li> <li>• income and capital growth including shortfall</li> <li>• short term volatility</li> <li>• long term performance</li> <li>• gearing</li> <li>• currency</li> <li>• inflation</li> <li>• interest rates</li> <li>• <del>systemic</del> <u>systematic</u> and non-<del>systemic</del> <u>systematic</u>, including fraud and counterparty, institutional, market timing</li> </ul>				

...

**FEES PROVISIONS (2011/2012) INSTRUMENT 2011**

**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 2011.

**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 (2011/2012) Instrument 2011.

By order of the Board  
24 March 2011

## 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 ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

Table of fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date
The Law Society of England & Wales	£34,545 <del>£41,530</del>	30 April <del>2010</del> <u>2011</u>
...	...	
...		

...

**4 Annex 6R Periodic fees for recognised investment exchanges and recognised clearing houses payable in relation to the period 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

...

Part 1 – Periodic fees for UK recognised bodies

Name of UK recognised body	Amount payable	Due date
Euroclear UK & Ireland Limited	£277,500	30 April <del>2010</del> <u>2011</u>
	<del>£325,000</del>	
...	...	
ICE Futures Europe Ltd	£230,000	30 April <del>2010</del> <u>2011</u>
	<del>£255,000</del>	
...	...	
LIFFE Administration and Management	£325,000	30 April <del>2010</del> <u>2011</u>
	<del>£400,000</del>	
...	...	
LCH Clearnet Limited	£298,000 <del>£375,000</del>	30 April <del>2010</del> <u>2011</u>

	...	
The London Metal Exchange Limited	£198,000 £237,500	30 April 2010 2011
	...	
London Stock Exchange plc	£261,000 £335,000	30 April 2010 2011
	...	
EDX London Ltd	£42,500 £60,000	30 April 2010 2011
	...	
PLUS Markets Plc	£97,500 £110,000	30 April 2010 2011
	...	
European Central Counterparty Limited	£163,500 £187,500	30 April 2010 2011
	...	
ICE Clear Europe Limited	£184,000 £275,000	30 April 2010 2011
	...	
<u>Chicago Mercantile Exchange Clearing Europe</u>	<u>£125,000</u>	<u>30 April 2011</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 2010 to 31 March 2011	£1,000,000,000



<u>1 April 2011 to 31 March 2012</u>	<u>£1,000,000,000</u>
--------------------------------------	-----------------------

**LIQUIDITY STANDARDS (MISCELLANEOUS AMENDMENTS NO 2)  
INSTRUMENT 2011**

**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 25 March 2011.

**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.

**Citation**

- F. This instrument may be cited as the Liquidity Standards (Miscellaneous Amendments No 2) Instrument 2011.

By order of the Board  
24 March 2011

## Annex A

### Amendments to the Glossary of definitions

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

*low frequency  
liquidity reporting  
firm*

any of the following:

- (a) a *simplified ILAS BIPRU firm*; or
- (b) a *standard ILAS BIPRU firm* whose most recent *annual report and accounts* show balance sheet assets of less than £1 billion (or its equivalent in foreign currency translated into sterling at the balance sheet date); or
- (c) a *standard ILAS BIPRU firm* that meets the following conditions:
  - (i) it does not have any *annual report and accounts* and it has been too recently established to be required to have produced any;
  - (ii) it has submitted a projected balance sheet to the FSA as part of an application for a *Part IV permission* or a variation of one; and
  - (iii) the most recent such balance sheet shows that the *firm* will meet the size condition set out in (b) in all periods covered by those projections.

In respect of an *incoming EEA firm* or *third country BIPRU firm* that is also a *standard ILAS BIPRU firm* and which reports on the basis of its branch operation in the *United Kingdom*, if the balance sheet assets attributable to the *UK branch* can be determined from the *firm's* most recent *annual report and accounts* (or, if applicable, the projected balance sheet) or any *data item* submitted by the *firm*, then Paragraphs paragraphs (b) and (c) apply at the level of the *firm branch* rather than of the *branch firm* in the case of any *firm* reporting on the basis of the activities of its branch operation in the *United Kingdom*.

## 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.

**TP 29 Liquid assets buffer scalar: simplified ILAS BIPRU firms**

<b>Application</b>	
29.1	R <i>BIPRU TP 29 applies to a <del>firm which on 1 June 2010</del> is a <i>simplified ILAS BIPRU firm</i>.</i>
<b>Duration of transitional provisions</b>	
29.2	R <i>BIPRU TP 29 applies from 1 December 2009 until <del>30 September 2013</del> <u>31 December 2015</u>.</i>
<b>Transitional provisions</b>	
29.3	R <i>A <i>simplified ILAS BIPRU firm</i> falling into <i>BIPRU TP 29.1</i> must ensure that:</i>
	(1) <i>at all times between 1 October 2010 and <del>30 September 2011</del> <u>28 February 2012</u>, its liquid assets buffer is no less than 30% of the amount of its <i>simplified buffer requirement</i>;</i>
	(2) <i>at all times between <del>1 October 2011</del> <u>1 March 2012</u> and <del>30 September 2012</del> <u>30 June 2013</u>, its liquid assets buffer is no less than 50% of its <i>simplified buffer requirement</i>; and</i>
	(3) <i>at all times between <del>1 October 2012</del> <u>1 July 2013</u> and <del>30 September 2013</del> <u>31 December 2015</u>, its liquid assets buffer is no less than 70% of its <i>simplified buffer requirement</i>.</i>
29.4	G <i>The effect of <i>BIPRU TP 29.3</i> is that a <i>firm</i> that is a <i>simplified ILAS BIPRU firm</i> as at <del>1 December 2009</del> has a transitional period <u>until 31 December 2015</u> of <del>three years within which</del> to build up its liquid assets buffer so that at the end of that period it holds in its buffer assets equal to 100% of its <i>simplified buffer requirement</i>.</i>
29.5	G <i>In relation to a <i>firm</i> which becomes a <i>simplified ILAS BIPRU firm</i> after <del>1 December 2009</del> and before <del>1 October 2010</del> <u>25 March 2011</u>, the FSA will consider as part of that <i>firm's simplified ILAS waiver</i> application <del>whether it is appropriate</del> <u>how to apply the scalar approach described in <i>BIPRU TP 29.3</i> to the <i>firm</i> in question and if so from what date that approach should apply.</u> <del>Where the FSA agrees that the scalar approach is appropriate, it</del> <u>The FSA</u> will incorporate the scalar into the terms of the <i>firm's simplified ILAS waiver</i>.</i>

**PENSIONS (ANNUITISATION AND INCOME WITHDRAWALS RULES)  
(AMENDMENT) INSTRUMENT 2011**

**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 purposes of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. (1) Part 2 of Annex B to this instrument comes into force on 6 April 2011.  
(2) The remainder of this instrument comes into force when the Finance Act 2011 comes into force.

**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 Pensions (Annuitisation and Income Withdrawals Rules) (Amendment) Instrument 2011.

By order of the Board  
24 March 2011

## 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.

*drawdown pension* (as defined in paragraph 4 of Schedule 28 to the Finance Act 2004):

- (a) a *short-term annuity*; or
- (b) an *income withdrawal*.

Amend the following as shown.

- income withdrawals* (a) (as defined in paragraph 7 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme, amounts (other than an annuity) which the member is entitled to be paid from the member's drawdown pension fund (as defined in paragraph 8 of that Schedule) in respect of an arrangement; or:
- (i) ~~if the member has not reached the age of 75, amounts (other than the payment of annuity) which the member is entitled to be paid from the member's unsecured pension fund (as defined in paragraph 8 of that Schedule) in respect of an arrangement;~~
  - (ii) ~~if the member has reached the age of 75, amounts which the member is entitled to be paid from the member's alternatively secured pension fund (as defined in paragraph 11 of that Schedule) in respect of an arrangement; or~~
- (b) payments made under interim arrangements in accordance with section 28A of the Pension Schemes Act 1993;

in respect of an election to make income withdrawals, a reference to a *retail client*, an investor or a *policyholder* includes, after that *person's* death, his surviving spouse, his surviving civil partner or anyone

who is, at that time, his dependant, or both.

*short-term annuity*

(as defined in paragraph 6 of Schedule 28 to the Finance Act 2004) in relation to a member of a pension scheme, an annuity payable to the member if:

- (a) it is purchased by the application of sums or assets representing the whole or any part of the member's ~~unsecured~~ drawdown pension fund (as defined in paragraph 8 of that Schedule) in respect of an arrangement;
- (b) it is payable by an insurance company;
- (c) the member had an opportunity to select an insurance company;
- (d) it is payable for a term which does not exceed five years ~~and ends before the member reaches age 75~~; and
- (e) it is either a level annuity, an increasing annuity or a relevant linked annuity.

Delete the following definitions.

~~*alternatively secured pension*~~

~~(as defined in paragraph 5 of Schedule 28 to the Finance Act 2004) *income withdrawal*.~~

~~*unsecured pension*~~

~~(as defined in paragraph 4 of Schedule 28 to the Finance Act 2004):~~

- ~~(a) a *short-term annuity*; or~~
- ~~(b) an *income withdrawal*.~~

**Annex B**

**Amendments to the Conduct of Business sourcebook (COBS)**

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

**Part 1: Comes into force when the Finance Act 2011 comes into force**

**9.4 Suitability reports**

...

Additional content for income withdrawals

9.4.10 G When a *firm* is making a *personal recommendation* to a *retail client* about *income withdrawals* or purchase of *short-term annuities*, explanation of possible disadvantages in the *suitability report* should include the risk factors involved in entering into an *income withdrawal* or purchase of a *short-term annuity*. These may include:

...

- (5) ~~the maximum income that can be withdrawn under an alternatively secured pension after age 75 is significantly less than the maximum that applies before age 75. [deleted]~~

...

**13 Annex 2 Projections**

...

R		
Additional requirements: <del>unsecured and alternatively secured</del> <u>drawdown</u> pensions		
2.9	(1)	A <i>standardised deterministic projection</i> for <del>an unsecured or alternatively secured pension</del> <u>a drawdown pension</u> must be based on the requirements contained in (2) to the extent that they impose additional or conflicting requirements to the balance of the <i>rules</i> in this section.
	(2)	A <i>standardised deterministic projection</i> for <del>an unsecured or alternatively secured pension</del> <u>a drawdown pension</u> must be based on an assumption that the current gilt-index yield will continue to apply throughout the relevant term and include:
		(a) <u>where relevant</u> , the maximum initial income specified in the tables published by the Government Actuaries Department for



			<del>an unsecured or alternatively secured pension</del> (as the case may be) <u>a drawdown pension</u> ;
		...	
		(d)	(under the heading ‘What the benefits might be’), the amount of income and the projected value of the fund at each fifth anniversary for the <i>lower, intermediate <del>and</del> and higher rate of return</i> for as long as the fund is projected to exist at the <i>higher rate of return</i> ;
		(e)	the projected open market values and the amounts of annuity <del>at age 75 or the date at which it is reasonably assumed that an annuity will be purchased</del> (which, for an <i>alternatively secured pension</i> , <del>must be after ten years</del> ) <u>that might be purchased after 10 years</u> ; and
		...	

...

**13 Annex 3 Charges**

...

2.2 The effect of charges table:

...

(3) must be completed in accordance with the following notes:

R		
1A	(a)	...
	...	
	(d)	For <del>an alternatively secured</del> <u>a drawdown pension</u> <u>include</u> figures <u>must be included for each year for a term of ten years for each of the first ten years, or less if the value of the fund is projected at the higher rate of return to reach zero before then.</u>
	...	
1B	(a)	...
	(b)	For <del>an alternatively secured pension</del> figures <u>must be included for each year for a term of ten years.</u> <del>[deleted]</del>
	...	

## 14.2 Providing product information to clients

The provision rules

14.2.1 R A *firm* that sells:

...

(3B) the variation of a *personal pension scheme* to a *retail client*, which involves an election by the *client* to make *income withdrawals* or a purchase of a *short-term annuity*, must provide that *client* with such information as is necessary for the *client* to understand the consequences of the variation, including where relevant, the information required by COBS 13 Annex 2.2.9R (Additional requirements: ~~unsecured and alternatively secured~~ drawdown pensions);

...

**Part 2: Comes into force on 6 April 2011**

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>2.15</u>	<u>COBS 9.4.10G</u> ; <u>COBS 13 Annex 2</u> ; <u>COBS 13 Annex 3</u> ; <u>COBS 14.2.1R</u>	<u>R</u>	<u>A firm which anticipates the coming into force of the Finance Act 2011 by carrying on any regulated activity in relation to a drawdown pension (as defined in paragraph 4 of Schedule 28 to the Finance Act 2004) must act as if the amendments to the Handbook set out in Annex A and Annex</u>	<u>6 April 2011 until the coming into force of the Finance Act 2011</u>	<u>6 April 2011</u>

			<p><u>B Part 1 to the Pensions (Annuitisation and Income Withdrawals) (Amendment) Instrument 2011 (FSA 2011/19) were in force.</u></p>		
<u>2.16</u>	<p><u>COBS 9.4.10G;</u>  <u>COBS 13 Annex 2;</u>  <u>COBS 13 Annex 3;</u>  <u>COBS 14.2.1R</u></p>	<u>G</u>	<p><u>A firm intending to anticipate the coming into force of the Finance Act 2011 by carrying on any regulated activity 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></p>	<p><u>6 April 2011 until the coming into force of the Finance Act 2011</u></p>	<p><u>6 April 2011</u></p>

**CHILD TRUST FUNDS (AMENDMENT) INSTRUMENT 2011**

**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 6 April 2011.

**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 Child Trust Funds (Amendment) Instrument 2011.

By order of the Board  
24 March 2011

## Annex A

### Amendments to the Glossary of definitions

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

- private customer* (for the purposes only of *COBS* TP 1 (Transitional Provisions in relation to Client Categorisation)):
- (1) (except in *COB* 3, *COB* 4.2 and *COB* 6.4) subject to (h), a *client* who is not a market counterparty or an *intermediate customer*, including:
- ...
- (f) (in *COB* 6.1 to 6.5) where the *regulated activity* (except for a personal recommendation relating to a contribution to a *CTF*) relates to a *CTF* and there is no *registered contact*, the *person* to whom the ~~annual~~ statement must be sent in accordance with Regulation 10 of the *CTF Regulations*;
- (g) (in *COB* 6.7) where the *regulated activity* (except for a personal recommendation relating to a contribution to a *CTF*) relates to a *CTF* and there is no *registered contact*, the *child*, via the person to whom the ~~annual~~ statement must be sent in accordance with Regulation 10 of the *CTF Regulations*;
- ...
- ...

## Annex B

### Amendments to the Conduct of Business sourcebook (COBS)

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

Who is the client?

3.2.3 R ...

(5) If a *firm* provides services relating to a contribution to or interest in a *CTF* (except for a *personal recommendation* relating to a contribution to a *CTF* or in relation to the *communication* or *approval* of a *financial promotion*), the *firm's* only client is:

- (a) the *registered contact*, if there is one;
- (b) otherwise, the *person* to whom the ~~annual~~ statement must be sent in accordance with Regulation 10 of the *CTF Regulations*.

...

Special cases

16.2.6 R In relation to business that is not *MiFID* or *equivalent third country business*, a *firm* need not despatch a confirmation if:

- (1) the *firm* has agreed with the *client* (in the case of a *retail client*, in writing and with the *client's* informed consent) that confirmations need not be supplied, either generally or in specified circumstances; or
- (2) the *designated investment* is a *life policy*, *stakeholder pension scheme* or a *personal pension scheme* (other than a *SIPP*); or
- (3) the *designated investment* is held within a *CTF* and the ~~annual~~ statement provided under the *CTF Regulations* includes the information that would have been contained in a confirmation under this section (other than information that has since become irrelevant).

...

Periodic reporting: special situations

16.3.10 R In relation to business that is not *MiFID* or *equivalent third country business*, a *firm* need not provide a *periodic statement*:

- (1) to a *client* habitually resident outside the *United Kingdom* if the *client* concerned has so requested or the *firm* has taken reasonable

steps to establish that he does not wish to receive it;

- (2) in respect of a *CTF*, if the ~~annual~~ statement provided under the *CTF Regulations* contains the *periodic information*.

...

- 16.4.1 R (1) A *firm* that holds *client designated investments* or *client money* for a *client* must send that *client* at least once a year a statement in a *durable medium* of those *designated investments* or that *client money* unless such a statement has been provided in a *periodic statement*.
- (2) A *credit institution* need not send a statement in respect of *deposits* held by it.
- (3) This *rule* does not apply in relation to a *firm* holding *client designated investments* or *client money* under a *personal pension scheme* or a *stakeholder pension scheme* where doing so is not *MiFID* or *equivalent third country business*.
- (4) A *CTF* account provider holding *client designated investments* or *client money* under a *CTF* where doing so is not *MiFID* or *equivalent third country business* must provide a statement but need not do so more frequently than required by Regulation 10 of the *CTF Regulations*.

**SUPERVISION MANUAL (AUDITOR'S CLIENT ASSETS REPORT)  
(AMENDMENT) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance); and
  - (4) section 340 (Appointment).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 June 2011.

**Amendments to the Handbook**

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

**Citation**

- F. This instrument may be cited as the Supervision Manual (Auditor's Client Assets Report) (Amendment) Instrument 2011.

By order of the Board  
24 March 2011



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

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

*limited assurance engagement* a 'limited assurance engagement' as described in the Glossary of terms in the Auditing Practices Board Standards and Guidance for Auditors issued in 2010.

*reasonable assurance engagement* a 'reasonable assurance engagement' as described in the Glossary of terms in the Auditing Practices Board Standards and Guidance for Auditors issued in 2010.

## Annex B

## Amendments to the Supervision manual (SUP)

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

## 3.1.2 R Applicable sections (see SUP 3.1.1R)

	(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1)	<i>Authorised professional firm</i> which is required by <i>IPRU(INV)</i> 2.1.2R to comply with chapters 3, 5, <del>10</del> or 13 of <i>IPRU(INV)</i> and which has an auditor appointed under or as a result of a statutory provision other than in the Act ( <del>Note</del> <u>Notes 1 and 6</u> )	<i>SUP</i> 3.1 - <i>SUP</i> 3.7 <sub>2</sub> <u><i>SUP</i> 3.11</u>	<i>SUP</i> 3.1, <i>SUP</i> 3.2, <i>SUP</i> 3.8, <i>SUP</i> 3.10
(2)	<i>Authorised professional firm</i> not within (1) to which the <i>custody chapter</i> or <i>client money chapter</i> applies, <del>unless the firm is regulated by The Law Society (England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland (Note 2)</del>	<i>SUP</i> 3.1 - <i>SUP</i> 3.7 <sub>2</sub> <u><i>SUP</i> 3.11</u>	<i>SUP</i> 3.1, <i>SUP</i> 3.2, <i>SUP</i> 3.8, <i>SUP</i> 3.10
...			
(4)	<i>Bank, building society</i> or <i>dormant account fund operator</i> which in each case carries on <i>designated investment business</i> ( <del>Note</del> <u>Notes 2A and 6</u> )	<i>SUP</i> 3.1- <i>SUP</i> 3.7 <sub>2</sub> <u><i>SUP</i> 3.11</u>	<i>SUP</i> 3.1, <i>SUP</i> 3.2, <i>SUP</i> 3.8, <i>SUP</i> 3.10
...			
(7)	<i>Investment management firm</i> , (other than an <i>exempt CAD firm</i> ), <i>personal investment firm</i> (other than a <i>small personal investment firm</i> or <i>exempt CAD firm</i> ); or <i>securities and futures firm</i> (other than an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodities firm</i> ) which, in each case, has an auditor appointed under or as a result of a statutory provision other than in the Act (Notes 3 and <u>3A 6</u> )	<i>SUP</i> 3.1 - <i>SUP</i> 3.7 <sub>2</sub> <u><i>SUP</i> 3.11</u>	<i>SUP</i> 3.1, <i>SUP</i> 3.2, <i>SUP</i> 3.8, <i>SUP</i> 3.10
(7A)	<i>Investment management firm</i> (other than an	<i>SUP</i> 3.1 -	<i>SUP</i> 3.1,

	<i>exempt CAD firm), personal investment firm (other than a small personal investment firm or exempt CAD firm); or securities and futures firm (other than an exempt CAD firm or an exempt BIPRU commodities firm) not within (7) to which the custody chapter or client money chapter applies</i>	<i>SUP 3.7, <u>SUP 3.11</u></i>	<i>SUP 3.2, SUP 3.8, SUP 3.10</i>
(7B)	<i>UCITS firm (Note 6)</i>	<i>SUP 3.1 - SUP 3.7, <u>SUP 3.11</u></i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
(7C)	<i>UK MiFID investment firm, which has an auditor appointed under or as a result of a statutory provision other than in the Act (Note Notes 3B and 6)</i>	<i>SUP 3.1 - 3.7, <u>SUP 3.11</u></i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
(7D)	<i>Sole trader or partnership that is a UK MiFID investment firm (other than an exempt CAD firm) (Note Notes 3C and 6)</i>	<i>SUP 3.1 - SUP 3.7, <u>SUP 3.11</u></i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
...			
(10)	<i>Insurance intermediary (other than an exempt insurance intermediary) to which the insurance client money chapter (except for CASS 5.2 (Holding money as agent)) applies (see Note 4)</i>	<i>SUP 3.1 - SUP 3.7, <u>SUP 3.11</u></i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
...			
...			
<p>Note 2 = In row (2):</p> <p><del>(a) The non-directive custody chapter is treated as applying only if (i) the firm safeguards and administers investments in connection with managing investments (other than when acting as trustee) or (ii) it safeguards and administers investments in relation to bonded investments (and, in either case, it has not opted to conduct all business that would fall within the non-directive custody chapter under the MiFID custody chapter).</del></p> <p><del>(b) The non-directive client money chapter is treated as applying only if the firm receives or holds client money other than under an arrangement where commission is rebated to the client (and assuming that it has not opted to conduct all business that would fall within the non-directive client money chapter under the MiFID client money chapter);</del></p> <p><del>but, if the custody rules or the client money rules above are treated as applying, then SUP 3.10 (Duties of auditors: notification and report on client assets) applies to the whole of the business within the scope of the custody rules or the client</del></p>			

~~money rules above. [deleted]~~

Note 2A = For this purpose, *designated investment business* does not include either or both:

(a) *dealing* which falls within the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc) (or agreeing to do so); and

(b) *dealing in investments as principal* (or agreeing to do so):

(i) by a *firm* whose *permission to deal in investments as principal* is subject to a *limitation* to the effect that the *firm*, in carrying on this *regulated activity*, is limited to entering into transactions in a manner which, if the *firm* was an *unauthorised person*, would come within article 16 of the *Regulated Activities Order* (Dealing in contractually based investments); and

(ii) in a manner which comes within that *limitation*;

having regard to article 4(4) of the *Regulated Activities Order* (Specified activities: general).

...

Note 3A = ~~If the *firm* has elected to comply with the *MiFID custody chapter* or the *MiFID client money chapter* also in respect of its *non MiFID business* then *SUP 3.10* will apply to the whole of the business within the scope of the *MiFID custody chapter* or the *MiFID client money chapter*. [deleted]~~

...

Note 6 = Where *SUP 3.11* applies to a *firm*, and *SUP 3.10* applies to the auditor of that *firm*, those sections apply whether or not that *firm's permission* prevents it from holding *client money* or *custody assets* and whether or not it holds *client money* or *custody assets*.

...

#### ~~Authorised professional firms~~

3.1.8 G This chapter applies to an ~~authorised professional firm~~ as set out in rows (1) to (3) of *SUP 3.1.2R*:

- (1) a *firm* in row (1) is treated in the same way as its equivalent in row (7);
- (2) large parts of this chapter apply to a *firm* in row (2) and its auditor; the report on client assets under *SUP 3.10* (Duties of auditors: notification and report on client assets) must cover compliance for the whole of the business within the scope of whichever of the *custody rules* and the *client money rules* are treated as applying; but there is no requirement for the auditor to prepare a report to the *FSA* on the *firm's* financial statements;
- (3) this chapter has limited application to a *firm* in row (3) and its auditor. [deleted]

...

**3.10 Duties of auditors: notification and report on client assets**

Application

3.10.1 R ~~Where this section requires an auditor of a *firm* to report on a *firm's* compliance with *rules*, this section applies to the auditor only to the extent that the *firm* is required to comply with the relevant *rules*. [deleted]~~

...

Client assets report: content

3.10.4 R An auditor of a *firm* must submit a client assets report addressed to the *FSA*, ~~signed in his capacity as auditor~~, which:

- (1) (a) states the matters set out in *SUP* 3.10.5R; ~~or~~ and
- (b) specifies the matters to which *SUP* 3.10.9R and *SUP* 3.10.9AR refer; or
- (2) if the *firm* claims not to hold *client money* or *custody assets*, states whether anything has come to the auditor's attention that causes him to believe that the *firm* held *client money* or *custody assets* during the period covered by the report.

3.10.4A R (1) For the purpose of *SUP* 3.10.4R(1), an auditor must ensure that the report is prepared in accordance with the terms of a *reasonable assurance engagement*.

(2) For the purpose of *SUP* 3.10.4R(2), an auditor must ensure that the report is prepared in accordance with the terms of a *limited assurance engagement*.

3.10.5 R Client assets report

Whether in the auditor's opinion	
(1)	the <i>firm</i> has maintained systems adequate to enable it to comply with the <i>custody rules</i> , the <i>collateral rules</i> <del>and</del> , the <i>client money rules</i> (except <i>CASS</i> 5.2) <u>and the <i>mandate rules</i></u> throughout the period <del>since the last date as at which a report was made;</del>
(2)	the <i>firm</i> was in compliance with the <i>custody rules</i> , the <i>collateral rules</i> <del>and</del> , the <i>client money rules</i> (except <i>CASS</i> 5.2) <u>and the <i>mandate rules</i></u> , at the date as at which the report has been made;
(3)	in the case of an <i>investment management firm</i> , <i>personal investment firm</i> , a <i>UCITS firm</i> , <i>securities and futures firm</i> or <i>BIPRU investment</i>

	<i>firm</i> , when a <i>subsidiary</i> of the <i>firm</i> is <u>during the period</u> a <i>nominee company</i> in whose name <i>custody assets</i> of the <i>firm</i> are registered <u>during the period</u> , that <i>nominee company</i> has maintained throughout the <del>year</del> <u>period</u> systems for the custody, identification and control of <i>custody assets</i> which:
(a)	<del>are</del> <u>were</u> adequate; and
(b)	<del>include</del> <u>included</u> reconciliations at appropriate intervals between the records maintained (whether by the <i>firm</i> or the <i>nominee company</i> ) and statements or confirmations from <i>custodians</i> or from the <i>person</i> who <del>maintains</del> <u>maintained</u> the record of legal entitlement; and
(4)	if there has been a <i>secondary pooling event</i> during the period, the <i>firm</i> has complied with the <i>rules</i> in CASS 5.6 and CASS 7A (Client money distribution) in relation to that pooling event.

3.10.5A R In relation to a client assets report provided in accordance with SUP 3.10.4R, an auditor must ensure that it:

- (1) is submitted in the form prescribed by SUP 3 Annex 1R; and
- (2) is signed on behalf of the audit firm by the individual with primary responsibility for a firm's client assets report and in that individual's own name.

3.10.5B G SUP 3.10.4R provides that an auditor must ensure that a client assets report is prepared in accordance with the terms of, as the case may be, a reasonable assurance engagement or a limited assurance engagement. However, the FSA also expects an auditor to have regard, where relevant, to material published by the Auditing Practices Board that deals specifically with the client assets report which the auditor is required to submit to the FSA. In the FSA's view, a client assets report that is prepared in accordance with that material is likely to comply with SUP 3.10.4R and SUP 3.10.5R where that report is prepared for a firm within the scope of the material in question.

3.10.5C R (1) An auditor must ensure that the information provided to it by a firm in accordance with SUP 3.11.1G is included in the client assets report.

(2) If by the date at which the report is due for submission in accordance with SUP 3.10.7R or SUP 3.10.8AR an auditor has not received the information prescribed in SUP 3.11.1G it must submit the report without that information, together with an explanation for its absence.

Client assets report: period covered

3.10.6 R The period covered by a report under SUP 3.10.4R must end not more than

53 weeks after the period covered by the previous report on such matters, or, if none, after the *firm* is *authorised* or becomes a *firm* to which ~~SUP 3.10 applies~~ subject to SUP 3.11 and its auditor becomes subject to SUP 3.10.

Client assets report: timing of submission

- 3.10.7 R An auditor must deliver a client assets report under SUP 3.10.4R to the FSA within ~~a reasonable time from~~ four months of the end of each period covered, unless it is the auditor of a *firm* falling within category (10) of SUP 3.1.2R.
- 3.10.7A G ~~A period of four months, in ordinary circumstances, would be considered by the FSA as a reasonable time for the auditor to deliver the client assets report to the FSA. [deleted]~~
- 3.10.8 R (1) ~~If an auditor is unable to report to the FSA within a reasonable time, the auditor must notify the FSA and advise the FSA of the reasons why it has been unable to meet the requirements of SUP 3.10.7R~~ expects that it will fail to comply with SUP 3.10.7R, it must no later than the end of the four month period in question:
- (a) notify the FSA that it expects that it will be unable to deliver a client assets report by the end of that period; and
- (b) ensure that the notification in (a) is accompanied by a full account of the reasons for its expected failure to comply with SUP 3.10.7R.
- (2) If an auditor fails to comply with SUP 3.10.7R, it must promptly:
- (a) notify the FSA of that failure; and
- (b) ensure that the notification in (a) is accompanied by a full account of the reasons for its failure to comply with SUP 3.10.7R.

...

- 3.10.8D R An auditor must:
- (1) deliver to a *firm* a draft of its client assets report such that the *firm* has an adequate period of time to consider the auditor's findings and to provide the auditor with comments of the kind to which SUP 3.11.1G refers; and
- (2) unless it is the auditor of a *firm* falling within category (10) of SUP 3.1.2R, deliver to the *firm* a copy of the final report at the same time as it delivers that report to the FSA in accordance with SUP 3.10.7R.

...

Client assets report: requirements not met or inability to form opinion

- 3.10.9 R If the client assets report under *SUP* 3.10.4R states that one or more of the applicable requirements described in *SUP* 3.10.5R(1) to (4) has or have not been met, the auditor must specify in the report each of those requirements, and the respects in which it has or they have not been met.
- 3.10.9A R (1) Whether or not an auditor concludes that one or more of the requirements specified in *SUP* 3.10.5R(1) to (4) has or have been met, the auditor must ensure that the client assets report identifies each individual *rule* in respect of which a breach has been identified.
- (2) If an auditor does not identify a breach of any individual *rule*, it must include a statement to that effect in the client assets report.
- 3.10.9B R For the purpose of *SUP* 3.10.9R and *SUP* 3.10.9AR, an auditor must ensure that the information prescribed under those *rules* is submitted using, respectively, Part 1 (Auditor's Opinion) and Part 2 (Breaches Schedule) of *SUP* 3 Annex 1R.
- 3.10.9C G (1) The *FSA* expects that the list of breaches will include every breach of a *rule* in *CASS* insofar as that *rule* is within the scope of the client assets report and is identified in the course of the auditor's review of the period covered by the report, whether identified by the auditor or disclosed to it by the *firm*, or by any third party.
- (2) For the purpose of determining whether to qualify its opinion or express an adverse opinion, the *FSA* would expect an auditor to exercise its professional judgment as to the significance of a *rule* breach, as well as to its context, duration and incidence of repetition. The *FSA* would expect an auditor to consider the aggregate effect of any breaches when judging whether a *firm* had failed to comply with the requirements described in *SUP* 3.10.5R(1) to (4).
- ...
- 3.10.11 G ~~An auditor may at the *firm's* request include the matters required under this section in a separate report to that required under section *SUP* 3.9. [deleted]~~
- ...

After *SUP* 3.10 insert the following new section. The text is not underlined.

### **3.11 Review of auditor's client assets report**

- 3.11.1 G A *firm* should ensure that:
- (1) it considers the draft client assets report provided to the *firm* by its auditor in accordance with *SUP* 3.10.8DR(1) in order to provide an explanation of:



- (a) the circumstances that gave rise to each of the breaches identified in the draft report; and
    - (b) any remedial actions that it has undertaken or plans to undertake to correct those breaches; and
  - (2) the explanation provided in accordance with (1):
    - (a) is submitted to its auditor in a timely fashion and in any event before the auditor is required to deliver a report to the *FSA* in accordance with *SUP* 3.10.7R or to the *firm* in accordance with *SUP* 3.10.8AR as the case may be; and
    - (b) is recorded in the relevant field in the draft report submitted to it by its auditor.
- 3.11.2 R A *firm* must ensure that the final client assets report delivered to it in accordance with *SUP* 3.10.8AR or *SUP* 3.10.8DR(2) is reported to that *firm's governing body*.
- 3.11.3 G The *FSA* expects a *firm* to use the client assets report as a tool to evaluate the effectiveness of the systems that it has in place for the purpose of complying with requirements to which *SUP* 3.10.5R refers. Accordingly, a *firm* should ensure that the report is integrated into its risk management framework and decision-making.
- 3.11.4 G *SUP* 3.4.2R provides that a *firm* must take reasonable steps to ensure that its auditor has the required skill, resources and experience to perform its functions. The *FSA* expects a *firm* to keep under review the adequacy of the skill, resources and experience of its auditor and should critically assess the content of the client assets report as part of that ongoing review.

...

*continued*

After SUP 3.11 insert the following new annex. The text is not underlined.

## **SUP 3 Annex 1R**

### **Auditor's client assets report Part 1 – Auditor's Opinion**

**Independent auditor's report on client assets to the Financial Services Authority in respect of [*Firm name*], FSA reference number [*number*], for the period started [*dd/mm/yyyy*] and ended [*dd/mm/yyyy*]**

#### **Part 1: Auditor's Opinion on Client Assets**

We report in respect of [*Firm name*] ('the firm') on the matters set out below for the period started [*dd/mm/yyyy*] and ended [*dd/mm/yyyy*] ('the period').

Our report has been prepared as required by SUP 3.10.4R and is addressed to the Financial Services Authority ('the FSA') in its capacity as regulator of financial services firms under the Financial Services and Markets Act 2000.

#### **Basis of opinion**

We have carried out such procedure as we considered necessary for the purposes of this report in accordance with [*specify Standard/Guidance used*] issued by the [*specify organisation name*].

This opinion relates only to the period and should not be seen as providing assurance as to any future position, as changes to systems or control procedures may alter the validity of our opinion.

#### **Opinion**

In our opinion:

[The firm has maintained] [Except for...the firm has maintained] [Because of...the firm did not maintain] systems adequate to enable it to comply with [the custody rules,] [the collateral rules,] [the mandate rules] [and] [the client money rules] throughout the period since [the last date at which a report was made] [the firm was authorised] [the firm became subject to SUP 3.11 and we, its auditor, became subject to SUP 3.10].\*

[The firm was] [Except for...the firm was] [Because of...the firm was not] in compliance with the [the custody rules,] [the collateral rules,] [the mandate rules] [and] [the client money rules] as at the period end date.\*

~ / ~

The scope of the firm's permissions did not allow it to hold [client money] [or] [custody assets].

The directors (or equivalent corporate officers) of the firm have stated that the firm did not hold [client money] [or] [custody assets] during the period. Based on review procedures

performed, nothing has come to our attention that causes us to believe that the firm held [client money] [or] [custody assets] during the period.

~ / ~

In our opinion, [*name of nominee companies*], subsidiaries of the firm which are nominee companies during the period in whose name custody assets are registered, those nominee companies have maintained throughout the period systems for the custody, identification and control of custody assets which:

- a) were adequate; and
- b) included reconciliations at appropriate intervals between the records maintained (whether by the firm or the nominee company) and statements or confirmations from custodians or from the person who maintained the record of legal entitlement. \*\*

~ / ~

In relation to the secondary pooling event during the period, the firm has complied with the rules in [CASS 5.6] [and] [CASS 7A (client money distribution)] in relation to that pooling event.

~ / ~

### **Other matters**

The report should be read in conjunction with the Breaches Schedule that we have prepared and which is appended to it. [Our opinion expressed above does not extend to the Breaches Schedule.]

[*Signature of the partner/individual with primary responsibility within the audit firm*]  
[*Typed name of signing individual*]

for and on behalf of [*Name of the audit firm*]

[*registered office*]  
[*Date report*]

#### Instructions for Part 1:

\* If the auditor expresses an adverse opinion (i.e. states the firm ‘did not maintain...’ or ‘was not in compliance...’) he must set out the reasons why. This can be done by reference to items in columns A to D in Part 2 of the auditor’s report on client assets.

If the auditor expresses a qualified opinion (i.e. states ‘that except for ....., the firm did maintain’ or ‘that except for ....., the firm was in compliance’) he must do so by reference to items in columns A to D in Part 2 of the auditor’s report on client assets.

\*\* In accordance with SUP 3.10.5R(3), the opinion relating to the nominee company is only required to be included in the case of a nominee company in whose name custody assets are registered where that company is a subsidiary of an investment management firm, personal investment firm, a UCITS firm, securities and futures firm or BIRPU investment firm.

**Auditor's client assets report Part 2 – Breaches Schedule****Part 2: Identified CASS Breaches that have occurred during the period**

[*Firm name*], FSA reference number [*number*], for the period started [*dd/mm/yyyy*] and ended [*dd/mm/yyyy*]

**In accordance with SUP 3.10.9AR, Columns A to D are to be completed by and are the responsibility of the auditor. In accordance with SUP 3.11.1G, Column E should be completed by the firm. The auditor has no responsibility for the content of Column E.**

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>
<b>Item No.</b>	<b>Rule Reference(s)</b>	<b>Identifying party</b>	<b>Breach Identified</b>	<b>Firm's Comment</b>
1				
...				

**Instructions for Part 2:**

In Columns A to D of the above schedule the auditor is to set out all the breaches of CASS by the firm occurring during the period subject to the auditor's report. These must include the breaches the auditor has identified through its work (such as in the sample testing of reconciliations) and breaches identified by the firm or any other party (such as those included in the firm's breaches register). In relation to any breach identified, the auditor must provide in Column D any information that it has as respects the severity and duration of the breach identified and, where relevant, the frequency with which that breach has occurred.

The auditor must provide a 'nil' return for this part of the report where no CASS rule breach has been identified.

In Column E the firm should set out any remedial actions taken (if any) associated with the breaches cited, together with an explanation of the circumstances that gave rise to the breach in question.

**TP 1 Transitional Provisions**

...

After TP 1.6 insert the following new transitional provisions. The text is not underlined.

**TP 1.7 Client assets report**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook provision: coming into force
1	The <i>rules and guidance</i> in SUP 3.10	R	In relation to an auditor of a <i>firm</i> whose client assets report period ends on or before 29 September 2011, that auditor may comply with SUP 3.10 as it was in force on 31 May 2011.	From 1 June 2011	1 June 2011
2	The <i>rules and guidance</i> in SUP 3.11	R	In relation to a <i>firm</i> whose client assets report period ends on or before 29 September 2011, the <i>rules and guidance</i> to which column (2) refers do not apply.	From 1 June 2011	1 June 2011

...

**Sch 2 Notification requirements**

...

**Sch 2.2G**

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 3.10.4R	Auditor: <del>client</del> assets <u>client assets</u>	Either:	<del>Report period must end no</del>	<del>A reasonable time</del> <u>Other</u>

	<p><u>report.</u></p>	<p>(1) Whether <i>firm</i> has: maintained systems to comply with <i>CASS</i> (<i>client assets</i>), is in compliance with the <i>client asset rules</i> at the report date, and <i>nominee company</i> records are adequate a report which states the matters set out in <u>SUP 3.10.5R</u> and which specifies the matters to which <u>SUP 3.10.9R</u> and <u>SUP 3.10.9AR</u> refer; or</p> <p>(2) if the <i>firm</i> claims not to hold <i>client money</i> or <i>custody assets</i>, a report which states whether anything has come to the auditor's attention that causes him to believe that they were held <u>during the period covered by the report.</u></p>	<p><del>more than 53 weeks after previous report</del> The obligation in <u>SUP 3.10.7R</u> to submit a report within a specified period of time.</p>	<p>than in the case of the auditor of a <u>firm</u> falling within category (10) of <u>SUP 3.1.2R</u>, four months from the end of the period covered by the report.</p>
<p><u>SUP 3.10.8R(1)</u></p>	<p><del>Failure</del> <u>Expectation</u> by auditor <del>to report under SUP 3.10.4R</del> that it will fail to comply with <u>SUP 3.10.7R.</u></p>	<p>Auditor to report the <del>failure and the reasons why it has been unable to meet the requirements of SUP 3.10.7R</del> fact of its expected failure to <u>comply and a full account of the reasons for its expected failure.</u></p>	<p><del>Failure</del> <u>The expected failure</u> by the auditor to <u>comply with SUP 3.10.7R</u> deliver a report under <del>SUP 3.10.4R</del> to the <i>FSA</i> so as to be received <u>within four months of the end of each the period covered by the report.</u></p>	<p><del>Not specified</del> <u>No later than the end of the four month period in question.</u></p>

<p><u>SUP</u> <u>3.10.8R(2)</u></p>	<p><u>Failure by auditor</u> <u>to comply with</u> <u>SUP 3.10.7R.</u></p>	<p><u>Auditor to report the</u> <u>fact of its failure and</u> <u>a full account of the</u> <u>reasons for its failure.</u></p>	<p><u>Failure to</u> <u>comply with</u> <u>SUP 3.10.7R.</u></p>	<p><u>Promptly.</u></p>
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**INTEGRATED REGULATORY REPORTING (AMENDMENT NO 11)  
INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) 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 6 April 2011.

**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 11) Instrument 2011.

By order of the Board  
24 March 2011



## Annex

## 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.

<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 RAG 1
...				
FSA007	Annually <del>(note 3)</del>			
...				
...				
...				
Note 3	<del>The reporting date for this <i>data item</i> is six months after a <i>firm's</i> most recent <i>accounting reference date</i>. [deleted]</del>			
...				

- 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
...						
FSA007						<del>2</del> 6 months
...						

...

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

...

**FSA002 – Income statement**

...

**6B      Of which: Other**

...

It also comprises any interest received not reported in items 3B to 5B.

Include here any interest received on swaps entered into for the purposes of hedging interest rate risk.

...

**9B      Of which: Performance fees**

This will include incentive fees received by the firm.

To avoid double counting, data input here should not include amounts input under data element 10B below. Data element 9B and data element 10B are mutually exclusive.

**10B      Of which: Investment management fees**

Include all underwriting fees and commissions, and fees and commissions from valuations, management of investments and unit trusts and pension funds.

To avoid double counting, data input here should not include amounts input under data element 9B above. Data element 9B and data element 10B are mutually exclusive.

...

**FSA030 – Income Statement****Introduction**

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor firms' capital adequacy and financial soundness.

The Income Statement should be reported on a cumulative basis throughout the firm's financial year.

...

Description	Data element	Guidance
<b>Dealing Profit /(Loss)</b>		
<b><u>A firm should complete only the sections relevant to the business it undertakes.</u></b>		
Dealing profits or (loss) - trading	1A	This is the total gross profit or loss which arises from market making and other dealings as principal in the financial year to date. Stamp duty, exchange fees, commissions and brokerage and any related interest paid or payable should be deducted.

Revenue	<b>A firm should complete only the sections relevant to the business it undertakes</b>	
...		
Investment management fees	7A	This is the total of underwriting fees and commissions, valuations, management of investments and unit trusts, pension funds, discretionary management and collective investment schemes.  <u>Data element 7A and data element 10A are mutually exclusive.</u>
Investment Advisory Fees	8A	Include all fees arising from investment advice (see <i>PERG 2.7.15G</i> ).
Corporate Finance	9A	This is the total of all income earned by the firm from corporate finance business.
<u>UCITS management fees</u>	<u>10A</u>	<u>The total fees attributable from UCITS fees should be disclosed here.</u>  <u>Data element 7A and data element 10A are mutually exclusive.</u>
Other revenue	12A	You should record here any income that has derived from its business in the financial year, which has not been recorded under commissions or fees.  Such income may include interest on client money, where the firm is permitted to retain this, or payments made by product providers on a basis other than fees or commissions.
<u>Total revenue</u>	<u>14A</u>	<u>This is the sum of the revenue which is split under data elements 5-13.</u>

...

**FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)****Introduction**

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor a firm's capital adequacy and financial soundness.

...

...		
Limit of indemnity required – single	35E	<p>You should record here the required indemnity limits on the firm's PII policy or policies, in relation to single claims. <del>This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.</del> <u>These can be reported either in Euros or the currency of the report, if different.</u></p> <p><u>See MIPRU 3.2.8R for requirements about the calculation of indemnity limits where the <i>policy</i> is denominated in a currency other than Euros.</u></p>
Limit of indemnity required – aggregate	35F	<p>You should record here the required indemnity limits on the firm's PII policy or policies, in aggregate. <del>This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.</del> <u>These can be reported either in Euros or the currency of the report, if different.</u></p> <p><u>See MIPRU 3.2.8R for requirements about the calculation of indemnity limits where the <i>policy</i> is denominated in a currency other than euros.</u></p>
Limited of indemnity obtained – single	35G	<p>You should record here the indemnity limits on the firm's PII policy or policies obtained in relation to single claims. <del>This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.</del> <u>These can be reported either in Euros or the currency of the report, if different.</u></p> <p><u>See MIPRU 3.2.8R for requirements about the calculation of indemnity limits where the <i>policy</i> is denominated in a currency other than euros.</u></p>
Limited of indemnity obtained – aggregate	35H	<p>You should record here the indemnity limits on the firm's PII policy or policies obtained in</p>

		<p>aggregate. <del>This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.</del> <u>These can be reported either in Euros or the currency of the report, if different.</u></p> <p><u>See MIPRU 3.2.8R for requirements about the calculation of indemnity limits where the <i>policy</i> is denominated in a currency other than euros.</u></p>
...		

...

### FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

#### Introduction

The purpose is to provide a framework for the collection of information required by the FSA as a basis for its supervision activities. It also has the purpose to help the FSA to monitor a firms' capital adequacy and financial soundness.

...

...		
Limit of indemnity required – single	38E	<p>You should record here the required indemnity limits on the firm's PII policy or policies, in relation to single claims, as under <i>IPRU(INV)</i> 13.1.4(2)R. <del>This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.</del> <u>These can be reported either in Euros or the currency of the report, if different.</u></p> <p><u>See MIPRU 3.2.8R for requirements about the calculation of indemnity limits where the <i>policy</i> is denominated in a currency other than euros.</u></p>
Limit of indemnity required – aggregate	38F	<p>You should record here the required indemnity limits on the firm's PII policy or policies, in aggregate, as under <i>IPRU(INV)</i> 13.1.4(2)R. <del>This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.</del> <u>These can be reported either in Euros or the currency of the report, if different.</u></p> <p><u>See MIPRU 3.2.8R for requirements about the calculation of indemnity limits where the <i>policy</i> is denominated in a currency other than euros.</u></p>
Limited of indemnity	38G	You should record here the indemnity limits on the firm's PII policy or policies obtained in

<p>obtained – single</p>		<p>relation to single claims, as under <i>IPRU(INV)</i> 13.1.4(2)R. <del>This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.</del> <u>These can be reported either in Euros or the currency of the report, if different.</u></p> <p><u>See <i>MIPRU</i> 3.2.8R for requirements about the calculation of indemnity limits where the <i>policy</i> is denominated in a currency other than euros.</u></p>
<p>Limited of indemnity obtained – aggregate</p>	<p>38H</p>	<p>You should record here the indemnity limits on the firm’s PII policy or policies obtained in aggregate, as under <i>IPRU(INV)</i> 13.1.4(2)R. <del>This should be reported in the currency of the report, converted at the closing rate of exchange on the reporting date, if it is in a different currency.</del> <u>These can be reported either in Euros or the currency of the report, if different.</u></p> <p><u>See <i>MIPRU</i> 3.2.8R for requirements about the calculation of indemnity limits where the <i>policy</i> is denominated in a currency other than euros.</u></p>
<p>...</p>		

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 2)  
INSTRUMENT 2011**

**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 31 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 Retail Distribution Review (Adviser Charging No 2) Instrument 2011.

By order of the Board  
28 April 2011

## Annex

## 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

...

Ongoing payment of adviser charges

6.1A.22 R A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:

- (1) the *adviser charge* is in respect of an ongoing service for the provision of *personal recommendations* or related services and the *firm* has disclosed that service along with the *adviser charge*; or
- (2) the *adviser charge* relates to a *retail investment product* ~~to~~ for which ~~the *retail client* has contracted to contribute to regularly over a period of time~~ an instruction from the *retail client* for regular payments is in place and the *firm* has disclosed that no ongoing *personal recommendations* or service will be provided.

Disclosure of total adviser charges payable

...

6.1A.24A G If the price of the *retail investment product* may vary as a result of fluctuations in the financial markets and the *adviser charge* is expressed as a percentage of that price, a *firm* need not disclose to the *retail client* the total *adviser charge* payable to the *firm* or any of its *associates* by the *retail client* until after execution of the transaction, provided it then does so promptly.

6.1A.25 ...

6.1A.26 G To comply with the *rule* on disclosure of total *adviser charges* (COBS 6.1A.24R) and the *fair, clear and not misleading rule*, a *firm's* disclosure of the total *adviser charge* should:

...

- (4) if an ongoing *adviser charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure ~~how that the *adviser charge* may increase as the fund grows, for example by illustrating the *adviser charge* assuming a fund growth rate which is consistent with an *intermediate rate of return*~~; and

...



...

**6.1C Consultancy charging and remuneration**

...

6.1C.19 G To comply with the *rule* on disclosure of total adviser charges (COBS 6.1C.18R) and the *fair, clear and not misleading rule*, a firm’s disclosure of the total *consultancy charge* should:

...

- (3) if an ongoing *consultancy charge* is expressed as a percentage of funds under management, clearly reflect in the disclosure how that *consultancy charge* may increase as the fund grows, ~~for example by illustrating the *consultancy charge* assuming a fund growth rate which is consistent with an *intermediate rate of return*.~~

...

**6.2A Describing advice services**

...

6.2A.6 R ...

- (3) If a firm provides *restricted advice*, a ~~firm~~ its disclosure must ~~include in its disclosure an explanation about whether the advice is limited to retail investment products from a single company, a single group of companies or a limited number of companies~~ explain the nature of the restriction.

...

...

**6 Annex 1G Services and costs disclosure document described in COBS 6.3.7G(1)**

...



about our services and costs



[Note 2]]

[Note 1]  
[Note 3]  
[123 Any Street  
Some Town  
ST21 7QB]

...

**2. Which service will we provide you with? [Note 4] [Note 5]**

- Independent advice – We will advise and make a recommendation for you after we have assessed your needs. Our recommendation will be based on a comprehensive and fair analysis of the market. [Note 6]
- Restricted advice – We will advise and make a recommendation for you after we have assessed your needs, but we only offer advice on limited types of products, or products from one company or a limited number of companies. [Note 7].
- No advice – 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.

...

**Note 7** – if the *firm* selects this box, it will be offering:

- (a) products from a limited number of companies; or
- (b) products of a single company or single group of companies; or
- (c) its own products (e.g. where 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); or
- (d) basic advice on stakeholder products; or
- (e) limited types of products; or
- (f) limited types of products from a single company or from a limited number of companies.

The *firm* should replace the preceding text with the relevant text as set out below. If the *firm* does not select this box, then no amendments should be made to the preceding text.

(a)	“Restricted advice – We will advise and make a recommendation for you after we have assessed your needs. We [can] [Note a] only offer products from a limited number of companies. You may ask us for a list of the companies whose products we offer.” [Note b].
(b)	“Restricted advice – We will advise and make a recommendation for you after we have assessed your needs. We [can] [Note a] only offer products from [name of provider].” or if the provider has only one product the <i>firm</i> should amend the text to the singular, for example “We [can] [Note a] only offer a pension from [name of provider].”
(c)	“Restricted advice – <u>We only offer our own products.</u> We will advise and make a recommendation for you after we have assessed your needs. <del>We only offer our own products.</del> <u>You may ask us for a list of the products we offer advice on.</u> [Note e]
(d)	“Restricted advice – We will provide basic advice on a limited range of stakeholder products and in order to do this we will ask some questions about your income, savings and other circumstances, but we will not conduct a full assessment of your needs or offer advice on whether a non-stakeholder product may be more suitable.” [Note c]: “We [can] [Note a] offer products from a single stakeholder product provider.”; or “We [can] [Note a] offer products from a limited number of stakeholder product providers You may ask us for a list of the companies whose products we offer.” [Note b]; or “We only offer our own stakeholder products.”
(e)	“Restricted advice – We will advise and make a recommendation for you after we have assessed your needs. <u>We only offer advice on limited types of products. You may ask us for a list of the products we offer.</u> [Note b]
(f)	“Restricted advice – We will advise and make a recommendation for you after we have assessed your needs. We offer advice on limited types of products (which we offer from [a single company] [from a limited number of companies] [Note d]). You may ask us for a list of the companies and products we offer advice on.” [Note b]

[Note a] – insert “can” if the *firm*’s range of products is determined by any contractual obligation.

[Note b] – the list of products will be the range of *retail investment products* that is appropriate having regard to the services that the *firm* is providing, or may provide, to the *client*. For services provided in relation to non-investment insurance contracts, this is the list required by *ICOBS 4.1.6R(2)*.

[Note c] – the *firm* should insert one of the three statements, whichever is relevant.

[Note d] – the *firm* should select this option if it does not only offer its own products. The firm should insert one of the two statements, whichever is relevant.

[Note e] – the *firm* should only select this option if it only offers its own 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)**

....



about our services and costs

[Note 1]



[Note 2]

[Note 3]  
[123 Any Street  
Some Town  
ST21 7QB]

...

---

**3 Which service will we provide you with? [Note 4][Note 6]**

---

**Investment**

- Independent advice – We will advise and make a recommendation for you after we have assessed your needs. Our recommendation will be based on a comprehensive and fair analysis of the market. [Note A]
- Restricted advice – We will advise and make a recommendation for you after we have assessed your needs, but we only offer advice on limited types of products, or products from one company or a limited number of companies. [Note B].
- No advice - 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.

...

**Note B**– if the *firm* selects this box, it will be offering:

- a) products from a limited number of companies; or
- b) products of a single company or single group of companies; or
- c) its own products (e.g. where 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); or
- d) basic advice on stakeholder products; or
- e) limited types of products; or

f) limited types of products from a single company or from a limited number of companies.

The *firm* should replace the preceding text with the relevant text as set out below. If the *firm* does not select this box, then no amendments should be made to the preceding text.

(a)	“Restricted advice – We will advise and make a recommendation for you after we have assessed your needs. We [can] <b>[Note a]</b> only offer products from a limited number of companies. You may ask us for a list of the companies whose products we offer.” <b>[Note b]</b> .
(b)	“Restricted advice – We will advise and make a recommendation for you after we have assessed your needs. We [can] <b>[Note a]</b> only offer products from [name of provider].” or if the provider has only one product the <i>firm</i> should amend the text to the singular, for example “We [can] <b>[Note a]</b> only offer a pension from [name of provider].”
(c)	“Restricted advice – <u>We only offer our own products.</u> We will advise and make a recommendation for you after we have assessed your needs. <del>We only offer our own products.</del> You may ask us for a list of the products we offer advice on.” <b>[Note e]</b>
(d)	“Restricted advice – We will provide basic advice on a limited range of stakeholder products and in order to do this we will ask some questions about your income, savings and other circumstances, but we will not conduct a full assessment of your needs or offer advice on whether a non-stakeholder product may be more suitable.” <b>[Note c]:</b> “We [can] <b>[Note a]</b> offer products from a single stakeholder product provider.”; or “We [can] <b>[Note a]</b> offer products from a limited number of stakeholder product providers You may ask us for a list of the companies whose products we offer.” <b>[Note b]</b> ; or “We only offer our own stakeholder products.”
(e)	“ <u>Restricted advice – We will advise and make a recommendation for you after we have assessed your needs. We only offer advice on limited types of products. You may ask us for a list of the products we offer.</u> ” <b>[Note b]</b>
(f)	“ <u>Restricted advice – We will advise and make a recommendation for you after we have assessed your needs. We offer advice on limited types of products (which we offer from [a single company] [from a limited number of companies] <b>[Note d]</b>). You may ask us for a list of the companies and products we offer advice on.</u> ” <b>[Note b]</b>

[Note a] – insert “can” if the *firm*’s range of products is determined by any contractual obligation.

[Note b] – the list of products will be the range of *retail investment products* that is appropriate having regard to the services that the firm is providing, or may provide, to the *client*. For services provided in relation to non-investment insurance contracts, this is the list required by *ICOBS 4.1.6R(2)*.

[Note c] – the *firm* should insert one of the three statements, whichever is relevant.

[Note d] – the *firm* should select this option if it does not only offer its own products. The firm should insert one of the two statements, whichever is relevant.

[Note e] – the *firm* should only select this option if it only offers its own products.

**PERMITTED LINKS (AMENDMENT NO 3) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 141 (Insurance business rules);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 6 May 2011.

**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 Permitted Links (Amendment No 3) Instrument 2011.

By order of the Board  
28 April 2011

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

*approved index* in relation to *permitted links*:

- (a) ...
- (b) a national index of retail prices published by or under the authority of a government, or by a body recognised under the national legislation, of a *Zone A country*; or

**Annex B**

**Amendments to the Conduct of Business sourcebook (COBS)**

In this Annex, underlining indicates new text.

- 21.3.2 G (1) Nothing in these rules prevents a *firm* making allowance in the value of any *permitted link* for any notional tax loss associated with the relevant *linked assets* for the purposes of fair pricing.
- (2) In the FSA's view the Consumer Prices Index, as well as the Retail Prices Index, is a national index of retail prices and so may be used as an *approved index* for the purposes of COBS 21.3.1R(1).

**BANKING: CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 3)  
INSTRUMENT 2011**

**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 157(1) (Guidance);
  - (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 May 2011.

**Amendments to the Handbook**

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

**Citation**

- E. This instrument may be cited as the Banking: Conduct of Business Sourcebook (Amendment No 3) Instrument 2011.

By order of the Board  
28 April 2011



## Annex

## Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

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

- 4.2.2 G A firm should ~~consider indicating~~ indicate the rate or rates of interest that apply to a *retail banking service* in each statement of account provided or made available to a *banking customer* in respect of that *retail banking service* in accordance with *BCOBS 4.2.1R(1)*.

...

- 5.1.8 G A firm may find it helpful to take account of the European Banking Industry Committee Common Principles for Bank Account Switching and the ~~British Bankers' Association/ Building Societies Association/ Tax Incentivised Savings Association Cash ISA Transfers: Guidelines~~ Cash ISA to Cash ISA Transfer Industry Guidelines.

## 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
...					
<u>7</u>	<u>The changes to BCOBS 4.2.2G set out in the Banking: Conduct of Business Sourcebook (Amendment No 3) Instrument 2011</u>	<u>R</u>	<u>A firm need not have regard to the changes referred to in column (2) in interpreting and applying BCOBS 4.1.1R or BCOBS 4.2.1R until 31 December 2011.</u>	<u>6 May 2011 to 31 December 2011</u>	<u>6 May 2011</u>

**CLIENT ASSETS REPORTING (AMENDMENT) INSTRUMENT 2011**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 June 2011.

**Amendments to the Handbook**

- D. (1) The Client Assets sourcebook (CASS) is amended in accordance with Annex A to this instrument.
- (2) Part 1 of Annex C to the Client Assets Sourcebook (Enhancement) Instrument 2010 (FSA 2010/52) (which amends the Supervision manual (SUP)) is amended in accordance with Annex B to this instrument.

**Citation**

- E. This instrument may be cited as the Client Assets Reporting (Amendment) Instrument 2011.

By order of the Board  
28 April 2011

## Annex A

## Amendments to the Client Assets sourcebook (CASS)

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

## 1A CASS firm classification and operational oversight

### 1A.1 Application

- 1A.1.1 R (1) Subject to (2) and (3), ~~This~~ ~~this~~ chapter applies to a *firm* to which either or both of CASS 6 (Custody rules) and CASS 7 (Client money rules) applies.
- (2) In relation to a *firm* to which CASS 5 (Client money: insurance mediation activity) and CASS 7 (Client money rules) apply, this chapter does not apply in relation to *client money* that a *firm* holds in accordance with CASS 5.
- (3) The rules and guidance in CASS 1A.2 apply to a *firm* even if at the date of the determination or, as the case may be, the notification, either or both of CASS 6 and CASS 7 do not apply to it, provided that:
- (a) either or both of those chapters applied to it during part or all of the previous calendar year; or
- (b) it projects that either or both will apply to it in the current calendar year.

...

### 1A.2 CASS firm classification

...

- 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.

...

1A.2.10 R For the purpose of the annual notification to which *CASS* 1A.2.8R and *CASS* 1A.2.9R refer, 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.

...

...

**Sch 2 Notification requirements**

Sch 2.1 G

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
...				
<u>CASS</u> <u>1A.2.8AR</u>	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 <i>CASS</i> <u>1A.2.8AR</u>	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 <i>CASS</i> <u>1A.2.8AR</u>	The need to comply with <i>CASS</i> <u>1A.2.8AR</u>	31 July 2011 unless contrary provision is made in <i>CASS</i> <u>1A.2.8AR</u>
...				

## Annex B

### Amendments to the Supervision manual (SUP)

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

The amendment to SUP 16.1.3R made by the Client Assets Sourcebook (Enhancement) Instrument 2010 (FSA 2010/52) is replaced with the following amendment.

- 16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13 and SUP 16.15)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
<i>SUP</i> 16.12	...	...
<u><i>SUP</i> 16.14</u>	<u><i>A CASS large firm and a CASS medium firm</i></u>	<u>Entire section</u>
...		

The text of SUP 16.14 as inserted by the Client Assets Sourcebook (Enhancement) Instrument 2010 (FSA 2010/52) is replaced with the following. The text is all new and is not underlined.

#### **16.14 Client money and asset return**

Application

- 16.14.1 R This section applies to a *CASS large firm* and a *CASS medium firm*.

Purpose

- 16.14.2 G The purpose of the *rules* and *guidance* in this section is to ensure that the *FSA* receives regular and comprehensive information from a *firm* which is able to hold *client money* and *safe custody assets* on behalf of its *clients*.

Report

- 16.14.3 R (1) *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.

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.

16.14.5 G For the avoidance of doubt, the effect of *SUP* 16.14.4R(1) is that any *client money* held in accordance with *CASS* 5 is to be excluded from any calculations which the *CMAR* requires.

The text of *SUP* TP 1.13B as inserted by the Client Assets Sourcebook (Enhancement) Instrument 2010 (FSA 2010/52) is amended as follows.

**TP 1 Transitional Provisions**

...

TP 1.2

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
13B	<i>SUP</i> 16.14.5R(2) [deleted]	R	In the case of a <i>CASS</i> <i>small firm</i> with a reporting period ending on 30 June 2011, that period begins on 1 June 2011	<del>1 June 2011</del> until 30 June 2011	<del>1 June 2011</del>

The text of the changes to SUP Schedule 2 as made by the Client Assets Sourcebook (Enhancement) Instrument 2010 (FSA 2010/52) is amended as follows.

**Sch 2 Notification requirements**

...

Sch 2.2 G

...

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
...	...	...	...	...
<i>SUP 16.13.3D to SUP 16.13.4D</i>	...	...	...	...
<i>SUP 16.14.5R</i>	<i>CMAR</i>	The items listed in the form contained in <i>SUP 16 Annex 29R</i>	For <i>CASS large firms</i> and <i>CASS medium firms</i> , the end of each <i>month</i> .  For <i>CASS small firms</i> , the conclusion of each <i>six month period ending on 30 June and 31 December</i> .	For <i>CASS large firms</i> and <i>CASS medium firms</i> , within 15 <i>business days</i> of the end of each <i>month</i> .  For <i>CASS small firms</i> , within 15 <i>business days</i> of the conclusion of each <i>six month period ending on 30 June and 31 December</i> .
...				

**SUPERVISION MANUAL (CORE INFORMATION) (AMENDMENT)  
INSTRUMENT 2011**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 6 May 2011.

**Amendments to the Handbook**

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

**Citation**

- E. This instrument may be cited as the Supervision Manual (Core Information) (Amendment) Instrument 2011.

By order of the Board  
28 April 2011



## Annex

## Amendments to the Supervision manual (SUP)

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

**15 Notifications to the FSA**

...

**15.5 Core information requirements**

...

15.5.4 R ...

Change in telephone numbers

15.5.5 R ~~{deleted}~~ A firm must give the FSA reasonable advance notice of a change in any of the following telephone numbers, and give details of the new telephone number and the date of the change:

- (1) the number of the firm's principal place of business in the United Kingdom;
- (2) in the case of an overseas firm, the number of its head office.

15.5.6 G ~~{deleted}~~ SUP 15.5.4R and SUP 15.5.5R mean that a firm should notify the FSA of a change in telephone number even if the address of the office is not changing.

...

Submitting notifications to the FSA

- 15.5.9 R
- (1) A firm other than a credit union must submit any notice under SUP 15.5.1R, SUP 15.5.4R, SUP 15.5.5R and SUP 15.5.7R by submitting the form in SUP 15 Ann 3R online at [www.fsa.gov.uk](http://www.fsa.gov.uk).
  - (2) A credit union must submit any notice under SUP 15.5.1R, SUP 15.5.4R, SUP 15.5.5R and SUP 15.5.7R by submitting the form in SUP 15 Ann 3R in the way set out in SUP 15.7.4R to SUP 15.7.9G (Form and method of notification).
  - (3) Where a firm is obliged to submit a notice online under (1), if the FSA's information technology systems fail and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a firm must submit any notice under SUP 15.5.1R, SUP 15.5.4R, SUP 15.5.5R and SUP 15.5.7R in the form in SUP 15 Ann 3R and in the way set out in SUP 15.7.4R to

SUP 15.7.9G (Form and method of notification).

...

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

...

Applicable sections		Application
...		
SUP 15.5.5R to SUP 15.5.6G	<del>Change in legal status</del> <u>Change in telephone numbers</u>	<del>Do not apply</del> <u>Applies in full</u>
...		

...

**Sch 2 Notification requirements**

...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 15.5.5 R	<del>Notifications—change in legal status</del> <u>Change to certain telephone numbers.</u>	<del>The fact of the proposed change in liability</del> <u>Details of the new number and the date of the change.</u>	<del>A proposed change in a firm's legal status which limits the liability of any of its members or partners</del> <u>Change to certain telephone numbers.</u>  <u>This includes:</u>	Reasonable advance notice.

			(1) re- registration as a limited liability company of a <i>company</i> incorporated with unlimited liability; and	
			(2) a general <i>partner in a firm</i> becoming a limited <i>partner</i> .	
...				

**PERIODIC FEES (2011/2012) AND OTHER FEES INSTRUMENT 2011**

- 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); 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 June 2011.

**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 (2011/2012) and Other Fees Instrument 2011.

By order of the Board  
26 May 2011

## Annex A

## Amendments to the Glossary of definitions

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

<i>fee-paying payment service provider</i>	<p>any of the following when they provide <i>payment services</i>:</p> <p>(a) a <i>payment institution</i>;</p> <p>(b) a <i>full credit institution</i>;</p> <p>(c) an <del>e-money</del> <u>electronic money issuer (except where it is an electronic money issuer whose only payment service activities are those relating to the issuance of electronic money by itself or if it is a credit union, a municipal bank or the National Savings Bank)</u>;</p> <p>(d) the Post Office Limited;</p> <p>(e) the Bank of England, other than when acting in its capacity as a monetary authority or carrying out functions of a public nature; and</p> <p>(f) government departments and local authorities, other than when carrying out functions of a public nature.</p> <p><i>A full credit institution or an e-money issuer</i> that is an <i>EEA firm</i> is only a <i>fee-paying payment service provider</i> if it is exercising an <i>EEA right</i> in accordance with Part 2 of Schedule 3 to the <i>Act</i> (exercise of passport rights) to provide <i>payment services</i> in the <i>United Kingdom</i>. An <i>EEA authorised payment institution</i> or an <i>EEA authorised electronic money institution</i> is only a <i>fee-paying payment service provider</i> if it is exercising a right under Article 25 of the <i>Payment Services Directive</i> or Article 3 of the <i>Electronic Money Directive</i> to provide <i>payment services</i> in the <i>United Kingdom</i>.</p>
<i>firm</i>	<p>...</p> <p>(5) (in <i>FEES 3</i>, <i>FEES 4</i>, <del>to</del> <i>FEES 5</i> and <i>FEES 7</i>) includes a <i>fee-paying payment service provider</i> and a <u><i>fee-paying electronic money issuer</i></u> in accordance with <i>FEES 3.1.1AR</i>, <i>FEES 4.1.1AR</i>, and <i>FEES 5.1.1AR</i> and <i>FEES 7.1.1R</i> and <del>in <i>FEES 3</i> also includes a <i>fee-paying electronic money issuer</i>.</del></p>

## Annex B

### Amendments to the Fees manual (FEES)

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

#### Application

1.1.2 R This manual applies in the following way:

...

(2) *FEES* 1, 2 and 4 apply to:

...

(j) every *fee-paying payment service provider*;

(k) every *fee-paying electronic money issuer*.

(3) *FEES* 1, 2 and 5 apply to:

(a) every *firm*, ~~and *fee-paying payment service provider*~~ and *fee-paying electronic money issuer* which is subject to the *Compulsory Jurisdiction of the Financial Ombudsman Service*; and

...

...

(5) *FEES* 1, 2 and 7 apply to:

...

(d) the *Society*;

(e) every *fee-paying payment service provider* except the Bank of England, government departments and local authorities;

(f) every *fee-paying electronic money issuer* except the Bank of England, government departments, local authorities, municipal banks and the National Savings Bank.

...

...

### 3 Annex 1R Authorisation fees payable

#### Part 1 – Authorisation fees payable

...

#### Moderately Complex Cases

Activity grouping	Description
A.1 [deleted]	<i>E-money issuers only</i> [deleted]
...	

...

#### 4.1 Introduction

##### Application

...

4.1.1A R A reference to “*firm*” in this chapter includes a reference to a *fee-paying payment service provider* and a *fee-paying electronic money issuer*.

...

4.1.4 G ...

(3) The periodic fees for *fee-paying payment service providers* and *fee-paying electronic money issuers* 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*.

...

Modifications for persons becoming subject to periodic fees during the course of a financial year

...

4.2.7 R A *firm* (other than an *ICVC* or *UCITS qualifier*) which becomes authorised or registered, or whose *permission* and/or *payment service* activities are extended, during the course of the financial year must pay a fee which is calculated by:

(1) identifying each of the tariffs set out in Part 1 of FEES 4 Annex 2R and/or FEES 4 Annex 11R as appropriate for the relevant financial year that apply to the *firm* only after the *permission* is received or



extended or *payment service* activities are authorised or registered or extended or *electronic money* issuance activities are authorised or registered under the *Electronic Money Regulations*, but ignoring:

...

...

4.2.7A G Projected valuations for a *firm's* first year will be collected for the 12 month period beginning with the date a *firm* becomes authorised or registered, or the date its *permission* and/or *payment service* activities are extended. That information will be used to calculate the periodic fee for the remainder of the financial year in which the *firm* was authorised or registered or its *permission* and/or *payment service* activities were extended (adjusted in accordance with *FEES* 4.2.7R) and to calculate the periodic fee for the following financial year. Projected valuations are not relevant for those fee payers that are only required to pay fixed fees.

4.2.7B R (1) This *rule* deals with the calculation of:

- (a) a *firm's* fees for its second financial year. This is the *FSA* financial year following the *FSA* financial year in which it was given *permission* and/or was authorised or registered under the *Payment Services Regulations* or the Electronic Money Regulations or had its *permission* and/or *payment services* activities extended (“the relevant permissions”); and

...

...

- (5) The rest of this *rule* only applies to a *firm* that becomes authorised or registered, or extends its *permission* and/or *payment services* activities, on or after 1 April 2009.

...

...

4.2.8 R In relation to an *incoming EEA firm* or an *incoming Treaty firm* the modification provisions of *FEES* 4.2.7R apply only in relation to the relevant *regulated activities* of the *firm*, which are *passported activities* or *Treaty* activities and which are carried on in the *United Kingdom*, and which are not provided on a *cross border services* basis. For *payment services* and electronic money issuance, the adjustment only applies to the business to which the calculation made in *FEES* 4.3.12AR relates.

...

## 4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
Any <i>firm</i> (except an <i>ICVC</i> or a <i>UCITS</i> <i>qualifier</i> )	As specified in <i>FEES</i> 4.3.1R	(1) Unless (2) or (3) apply, on or before the relevant dates specified in <i>FEES</i> 4.3.6R. (2) Unless (3) applies, if an event specified in column 4 occurs during the course of a financial year, 30 <i>days</i> after the occurrence of that event, or if later the dates specified in <i>FEES</i> 4.3.6R. (3) Where the <i>permission</i> is for <i>operating a multilateral trading facility</i> , the date specified in <i>FEES</i> 4 Annex 10 (Periodic fees for MTF operators).	<i>Firm</i> receives <i>permission</i> , or becomes authorised or registered under the <i>Payment Services Regulations</i> or the <i>Electronic Money Regulations</i> ; or <i>firm</i> extends <i>permission</i> or its <i>payment service</i> activities
...			
<i>Sponsors</i>	£ <del>12,500</del> <u>20,000</u> per year for the period from 1 April to 31 March the following year (see Note)	...	...
...			

...

4.3.2 G (1) The amount payable by each *firm* will depend upon the category (or categories) of *regulated activities* or *payment services* it is engaged

in (fee-blocks) and whether it is issuing *electronic money*, and on the amount of business it conducts in each category (tariff base). The fee-blocks and tariffs are identified in *FEES* 4 Annex 1R (and guidance on calculating certain of the tariffs is at *FEES* 4 Annex 12G), while *FEES* 4 Annex 2R sets out the tariff rates for the relevant financial year. In the case of *firms* that provide *payment services* and/or issue *electronic money*, the relevant fee blocks, tariffs and rates are set out in *FEES* 4 Annex 11R.

- (2) *Incoming EEA firms, incoming Treaty firms, and EEA authorised payment institutions and EEA authorised electronic money institutions* receive a discount to reflect the reduced scope of the *FSA*'s responsibilities in respect of them. The level of the discount varies from fee-block to fee-block, according to the division of responsibilities between the *FSA* and *Home state regulators* for *firms* in each fee-block (see *FEES* 4.3.11G, *FEES* 4.3.12R and *FEES* 4.3.12AR).

Calculation of periodic fee (excluding fee-paying payment service providers and fee-paying electronic money issuers)

- 4.3.3 R The periodic fee referred to in *FEES* 4.3.1R is (except in relation to the *Society, and fee-paying payment service providers and fee-paying electronic money issuers*) calculated as follows:

...

Calculation of periodic fee for fee-paying payments service providers and fee-paying electronic money issuers

- 4.3.3A R The periodic fee referred to in *FEES* 4.3.1R in relation to *fee-paying payment service providers and fee-paying electronic money issuers* is calculated in accordance with *FEES* 4 Annex 11R.

Modification for firms with new or extended permissions

- 4.3.4 G (1) A *firm* which becomes authorised or registered during the course of a financial year will be required to pay a proportion of the periodic fee which reflects the proportion of the year for which it will have a *permission* or the right to provide particular *payment services* or the right to issue *electronic money* - see *FEES* 4.2.5G and *FEES* 4.2.6R.

...

- (3) These provisions apply (with some changes) to *incoming EEA firms, and incoming Treaty firms, EEA authorised payment institutions and EEA authorised electronic money institutions*.

...

...

## Time of payment

- 4.3.6 R (1) If the *firm's* periodic fee for the previous financial year was at least £50,000, the *firm* must pay:
- ...
- ...
- (3) If a *firm* has applied to cancel its *Part IV permission* in the way set out in SUP 6.4.5D (Cancellation of permission), or its status as a *payment institution* under regulation 10 of the *Payment Services Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 14 of the *Payment Services Regulations* (Supplementary provisions), or its status as an *electronic money issuer* under regulation 10 of the *Electronic Money Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 15 of the *Electronic Money Regulations* (Supplementary provisions), then (1) and (2) do not apply but it must pay the total amount due when the application is made.
- ...
- (4A) If the FSA has cancelled a *firm's* authorisation or registration under regulation 10 of the *Payment Services Regulations* or regulation 10 of the *Electronic Money Regulations* or its registration under regulation 10 as applied by regulation 14 of the *Payment Services Regulations* or its registration under regulation 10 as applied by regulation 15 of the *Electronic Money Regulations*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.
- ...
- ...

Incoming EEA firms, incoming Treaty firms, ~~and~~ EEA authorised payment institutions and EEA authorised electronic money institutions

- 4.3.11 G The FSA recognises that its responsibilities in respect of an *incoming EEA firm*, an *incoming Treaty firm*, ~~or~~ an *EEA authorised payment institution* or an EEA authorised electronic money institution are reduced compared with a *firm* which is incorporated in the *United Kingdom*. Accordingly the periodic fees which would otherwise be applicable to *incoming EEA firms*, *incoming Treaty firms*, ~~and~~ *EEA authorised payment institutions* and EEA authorised electronic money institutions are reduced.
- ...
- 4.3.12A R For:

- (a) a full credit institution ~~or an e-money issuer~~ which is a fee-paying payment service provider and an EEA firm; or ~~for an EEA authorised payment institution;~~
- (b) a full credit institution which is a fee-paying electronic money issuer and an EEA firm; or
- (c) an EEA authorised payment institution; or
- (d) an EEA authorised electronic money institution;

the calculation required by FEES 4.3.3AR is modified as follows:

- (1) the tariffs set out in Part 5 of FEES 4 Annex 11R are only applied to the payment services or electronic money issuance of the firm ~~which are~~ carried on from an establishment in the *United Kingdom*, including any payment services provided carried on through any of its *agents* established in the *United Kingdom*; and

...

#### Firms Applying to Cancel or Vary Permission Before Start of Period

4.3.13 R (1) If:

- (a) a firm makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in SUP 6.3.15D(3) (Variation of permission) and SUP 6.4.5D (Cancellation of permission), or applies to vary (by reducing its scope) or cancel its authorisation or registration (regulation 8 and 10(1) of the *Payment Services Regulations* including as applied by regulation 14 of the *Payment Services Regulations*) or applies to cancel its authorisation or registration (regulation 10 and 12 of the *Electronic Money Regulations* including as applied by regulation 15 of the *Electronic Money Regulations*); an issuer makes an application for de-listing; or a sponsor notifies the FSA of its intention to be removed from the list of approved sponsors; and

...

FEES 4.2.1R applies to the firm as if the relevant variation or cancellation of the firm's *permission* or authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*, de-listing or removal from the list of approved sponsors, took effect immediately before the start of the period to which the fee relates.

...

4.3.14 G Where a firm has applied to cancel its *Part IV permission*, or its authorisation

or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*, or the FSA has exercised its *own-initiative powers* to cancel a *firm's Part IV permission* or the FSA has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 14 (Supplementary provisions) of the *Payment Services Regulations* to cancel a *firm's* authorisation or registration under the *Payment Services Regulations* or the FSA has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 15 (Supplementary provisions) of the *Electronic Money Regulations*, the due dates for payment of periodic fees are modified by FEES 4.3.6R(3), FEES 4.3.6R(4) and FEES 4.3.6R(4A) respectively.

...

Information relating to payment services and the issuance of electronic money

- 4.4.7 D ~~An authorised payment institution, the Post Office Limited, government departments and local authorities or an EEA authorised payment institution~~ A fee-paying payment service provider and a fee-paying electronic money issuer must notify to the FSA the value (as at the valuation date specified in Part 4 of FEES 4 Annex 11R) of each element of business on which the periodic fee (other than a flat fee) payable by the *firm* under FEES 4 Annex 11R is to be calculated, including any *payment services* carried on by its *agents* from an establishment in the *United Kingdom*.
- 4.4.8 D ~~An authorised payment institution, the Post Office Limited, government departments and local authorities or an EEA authorised payment institution~~ A firm must send to the FSA in writing the information required under FEES 4.4.7D as soon as reasonably practicable, and in any event within two *months*, after the date specified as the valuation date in Part 4 of FEES 4 Annex 11R.
- 4.4.9 D To the extent that ~~an authorised payment institution or an EEA authorised payment institution~~ a firm has provided the information required by FEES 4.4.7D to the FSA as part of its compliance with another provision of the *Handbook*, it is deemed to have complied with the provisions of ~~this section~~ that direction.

...

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

Part 1	...
--------	-----

Activity group	Fee payer falls in the activity group if
A.1 Deposit acceptors	its <i>permission</i> includes <i>accepting deposits</i> ; <u>or operating a dormant account fund</u> <del>or issuing e-money</del> ; BUT DOES

	NOT include either of the following:
	...
...	

Part 2	...
--------	-----

Activity group	Tariff base
A.1	... For <i>e-money issuers</i> : Outstanding balance of <i>e-money liabilities</i> ...

...

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
...	
Where a <i>firm's</i> tariff data is in a currency other than sterling, it should be converted into sterling at the exchange rate prevailing on the relevant valuation date.	
A.1	For <i>banks</i> : ... For <i>e-money issuer</i> : MELs, valued at the end of the financial year ended in the calendar year ending 31 December. ...

...

**4 Annex 2R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

Part 1	This table shows the tariff rates applicable to each fee block
--------	--

...		
Note 1	<p>In the case of activity group A.1 there are two tariff rates. The rate in column 1 is the general periodic fee. The rate in column 2 is the reclaim funds set up fee and is payable by all <i>firms</i> except <i>credit unions</i> and <i>e-money issuers</i>. The total periodic fee for the A1 fee block is determined by adding the amounts obtained under both columns.</p> <p>...</p>	
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
		Column 2 Reclaim Fund Set-Up fee
	>10 – 140	29.90 <u>33.44</u>
	>140 – 630	29.90 <u>33.44</u>
	>630 – 1,580	29.90 <u>33.44</u>
	>1,580 – 13,400	37.38 <u>41.80</u>
	>13,400	49.34 <u>55.18</u>
...	<p>The tariff rates in A.1 are not relevant for the <i>permissions</i> relating to <i>operating a dormant account fund</i>. Instead a flat fee of <del>£6,018</del> <u>£6,000</u> is payable in respect of these <i>permissions</i>. The flat fee of <del>£6,018</del> is made up of a portion of the general periodic fee of <del>£6,000</del> and a reclaim fund set up fee of <del>£18</del>.</p>	
A.2	Band width (No. of mortgages and/or <i>home finance transactions</i> )	Fee (£/mortgage)
	>50 - 130	<del>1.26</del> <u>1.79</u>
	>130 – 320	<del>1.26</del> <u>1.79</u>
	>320 – 4,570	<del>1.26</del> <u>1.79</u>



	>4, 570 – 37,500	<del>4.26</del> <u>1.79</u>		
	>37,500	<del>4.26</del> <u>1.79</u>		
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	<del>50.00</del> <u>25.00</u>	25.00
	Band Width (£ million of GPI)	Fee (£/£m or part £m of GPI)		
	>0.5 – 10.5	<del>531.58</del> <u>505.51</u>	<del>110.45</del> <u>119.38</u>	<del>93.40</del> <u>127.57</u>
	>10.5 – 30	<del>531.58</del> <u>505.51</u>	<del>110.45</del> <u>119.38</u>	<del>93.40</del> <u>127.57</u>
	>30 – 245	<del>531.58</del> <u>505.51</u>	<del>110.45</del> <u>119.38</u>	<del>93.40</del> <u>127.57</u>
	>245 – 1,900	<del>531.58</del> <u>505.51</u>	<del>110.45</del> <u>119.38</u>	<del>93.40</del> <u>127.57</u>
	>1,900	<del>531.58</del> <u>505.51</u>	<del>110.45</del> <u>119.38</u>	<del>93.40</del> <u>127.57</u>
	PLUS			
	Gross technical liabilities (GTL)	Column 1 General Periodic fee	Column 2 Solvency 2 Implementation fee	Column 3 Solvency 2 Special Project fee
	Band Width (£ million of GTL)	Fee (£/£m or part £m of GTL)		
	>1 – 12.5	<del>28.39</del> <u>26.82</u>	<del>5.65</del> <u>6.42</u>	<del>5.55</del> <u>7.25</u>
	>12.5 – 70	<del>28.39</del> <u>26.82</u>	<del>5.65</del> <u>6.42</u>	<del>5.55</del> <u>7.25</u>
	>70 – 384	<del>28.39</del> <u>26.82</u>	<del>5.65</del> <u>6.42</u>	<del>5.55</del> <u>7.25</u>
	>384 – 3,750	<del>28.39</del> <u>26.82</u>	<del>5.65</del> <u>6.42</u>	<del>5.55</del> <u>7.25</u>
	>3,750	<del>28.39</del> <u>26.82</u>	<del>5.65</del> <u>6.42</u>	<del>5.55</del> <u>7.25</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	<del>706.46</del> <u>628.82</u>	<del>137.00</del> <u>147.39</u>	<del>114.60</del> <u>151.35</u>
	>5 – 40	<del>706.46</del> <u>628.82</u>	<del>137.00</del> <u>147.39</u>	<del>114.60</del> <u>151.35</u>
	>40 – 260	<del>706.46</del> <u>628.82</u>	<del>137.00</del> <u>147.39</u>	<del>114.60</del> <u>151.35</u>
	>260 – 4,000	<del>706.46</del> <u>628.82</u>	<del>137.00</del> <u>147.39</u>	<del>114.60</del> <u>151.35</u>
	>4,000	<del>706.46</del> <u>628.82</u>	<del>137.00</del> <u>147.39</u>	<del>114.60</del> <u>151.35</u>
	PLUS			
	Mathematical reserves (MR)	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 MR)	Fee (£/£m or part £m of MR)		
	>1 –20	<del>15.32</del> <u>13.44</u>	<del>3.00</del> <u>3.10</u>	<del>2.95</del> <u>3.06</u>
	>20 – 270	<del>15.32</del> <u>13.44</u>	<del>3.00</del> <u>3.10</u>	<del>2.95</del> <u>3.06</u>
	>270 – 7,000	<del>15.32</del> <u>13.44</u>	<del>3.00</del> <u>3.10</u>	<del>2.95</del> <u>3.06</u>
>7,000 – 45,000	<del>15.32</del> <u>13.44</u>	<del>3.00</del> <u>3.10</u>	<del>2.95</del> <u>3.06</u>	

	>45,000	<del>15.32</del> <u>13.44</u>	<del>3.00</del> <u>3.10</u>	<del>2.95</del> <u>3.06</u>
A.5	Band Width (£ million of Active Capacity (AC))	Fee (£/£m or part £m of AC)		
	>50 – 150	<del>54.55</del> <u>56.34</u>		
	>150 – 250	<del>54.55</del> <u>56.34</u>		
	>250 – 500	<del>54.55</del> <u>56.34</u>		
	>500 – 1,000	<del>54.55</del> <u>56.34</u>		
	>1,000	<del>54.55</del> <u>56.34</u>		
A.6	Flat fee	<del>1,500,514</del> <u>1,419,112.28</u>		
	PLUS			
	Solvency 2 Special Project Flat fee (£)	<del>249,603.72</del> <u>975,000</u>		
	PLUS			
	Solvency 2 Implementation Flat fee (£)	<del>300,100.80</del> <u>331,238.49</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	<del>8.52</del> <u>6.80</u>		
	>150 – 2,800	<del>8.52</del> <u>6.80</u>		
	>2,800 – 17,500	<del>8.52</del> <u>6.80</u>		
	>17,500 – 100,000	<del>8.52</del> <u>6.80</u>		
	>100,000	<del>8.52</del> <u>6.80</u>		
	...			
...	...			
A.9	Band Width (£ million of Gross Income (GI))	Fee (£/£m or part £m of GI)		

	>1 – 4.5	<del>1,052.62</del> <u>1,380.85</u>
	>4.5 – 17	<del>1,052.62</del> <u>1,380.85</u>
	>17 – 145	<del>1,052.62</del> <u>1,380.85</u>
	> 145 – 750	<del>1,052.62</del> <u>1,380.85</u>
	>750	<del>1,052.62</del> <u>1,380.85</u>
A.10	Band Width (No. of traders)	Fee (£/trader)
	2 – 3	<del>3,196.91</del> <u>3,565.73</u>
	4 – 5	<del>3,196.91</del> <u>3,565.73</u>
	6 – 30	<del>3,196.91</del> <u>3,565.73</u>
	31 – 180	<del>3,196.91</del> <u>3,565.73</u>
	>180	<del>3,196.91</del> <u>3,565.73</u>
...		
A.12	Band Width (No. of persons)	Fee (£/person)
	2 – 5	<del>426.35</del> <u>757.17</u>
	6 – 35	<del>426.35</del> <u>757.17</u>
	36 – 175	<del>426.35</del> <u>757.17</u>
	176 – 1,600	<del>426.35</del> <u>757.17</u>
	>1,600	<del>426.35</del> <u>757.17</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	<del>1,290.54</del> <u>1,290.54</u>
	4 – 30	<del>1,290.54</del> <u>1,290.54</u>
	31 – 300	<del>1,290.54</del> <u>1,290.54</u>
	301 – 2,000	<del>1,290.54</del> <u>1,290.54</u>

	>2,000	1,290.54 <u>1,290.54</u>
	...	
A.14	Band Width (No. of persons)	Fee (£/person)
	2 – 4	<del>1,340.87</del> <u>2,809.83</u>
	5 – 25	<del>1,340.87</del> <u>2,809.83</u>
	26 – 80	<del>1,340.87</del> <u>2,809.83</u>
	81 – 199	<del>1,340.87</del> <u>2,809.83</u>
	>199	<del>1,340.87</del> <u>2,809.83</u>
...		
A.18	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100 –180	<del>10.54</del> <u>13.12</u>
	>180 – 1,000	<del>10.54</del> <u>13.12</u>
	>1,000 – 12,500	<del>10.54</del> <u>13.12</u>
	>12,500 – 50,000	<del>10.54</del> <u>13.12</u>
	>50,000	<del>10.54</del> <u>13.12</u>
A.19	Band Width (£ thousands of Annual Income (AI))	Fee (£/£ thousand or part £ thousand of AI)
	>100 –325	<del>2.43</del> <u>1.94</u>
	>325 – 10,000	<del>2.43</del> <u>1.94</u>
	>10,000 – 50,750	<del>2.43</del> <u>1.94</u>
	>50,750 – 250,000	<del>2.43</del> <u>1.94</u>
	>250,000	<del>2.43</del> <u>1.94</u>
B. Market operators	£35,000	
B. Service companies	Bloomberg LP	£45,000

	<del>EMX Co Ltd</del>	£35,000
	LIFFE Services Ltd	£35,000
	[row deleted]	
	OMGEO Ltd	£35,000
	Reuters Ltd	£45,000
	Swapswire Ltd	£35,000
...		
...		

## Part 2

This table shows the permitted deductions that apply where financial penalties are received ~~under the Act~~ 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)	<del>7.5%</del> <u>16.8%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.1	<del>7.5%</del> <u>17.0%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.2	<del>7.5%</del> <u>20.8%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.3	<del>7.5%</del> <u>16.9%</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	<del>7.5%</del> <u>16.9%</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	<del>7.5%</del> <u>16.8%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.6	<del>7.5%</del> <u>16.8%</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 flat fee or Solvency 2

	Implementation flat fee (as defined in Part 1).
A.7	<del>7.5%</del> <u>18.1%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.9	<del>7.5%</del> <u>16.8%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.10	<del>7.5%</del> <u>18.6%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.12	<del>9.3%</del> <u>21.7%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.13	<del>7.8%</del> <u>17.7%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.14	<del>7.5%</del> <u>20.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.18	<del>7.5%</del> <u>18.2%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.19	<del>7.5%</del> <u>17.3%</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)	The Solvency 2 Special Project fee forms part of the periodic fee payable under fee <del>block</del> <u>blocks</u> A3 and A4 ( <del>the "insurance fee blocks"</del> ).				
(2)	The Solvency 2 Special Project fee is only payable by a <i>firm</i> if it meets the conditions in Part <del>(5)</del> <u>and the conditions set out in paragraph (3) of this Part.</u> <del>In addition:</del> <table border="1"> <tr> <td>(a)</td> <td><del>where the <i>firm</i> falls into fee block A.3, the Solvency 2 Special Project fee is only payable with respect to that insurance fee block if the amount of the periodic fees payable by it under FEES 4.3 in respect of the financial year 2009/10 with respect to that insurance fee block was at least £49,000; [deleted]</del></td> </tr> <tr> <td>(b)</td> <td><del>where the <i>firm</i> falls into fee block A.4, the Solvency 2 Special Project fee is only payable with respect to that insurance fee block if the amount of the periodic fees payable by it under FEES 4.3 in respect of the financial year 2009/10 with respect</del></td> </tr> </table>	(a)	<del>where the <i>firm</i> falls into fee block A.3, the Solvency 2 Special Project fee is only payable with respect to that insurance fee block if the amount of the periodic fees payable by it under FEES 4.3 in respect of the financial year 2009/10 with respect to that insurance fee block was at least £49,000; [deleted]</del>	(b)	<del>where the <i>firm</i> falls into fee block A.4, the Solvency 2 Special Project fee is only payable with respect to that insurance fee block if the amount of the periodic fees payable by it under FEES 4.3 in respect of the financial year 2009/10 with respect</del>
(a)	<del>where the <i>firm</i> falls into fee block A.3, the Solvency 2 Special Project fee is only payable with respect to that insurance fee block if the amount of the periodic fees payable by it under FEES 4.3 in respect of the financial year 2009/10 with respect to that insurance fee block was at least £49,000; [deleted]</del>				
(b)	<del>where the <i>firm</i> falls into fee block A.4, the Solvency 2 Special Project fee is only payable with respect to that insurance fee block if the amount of the periodic fees payable by it under FEES 4.3 in respect of the financial year 2009/10 with respect</del>				

		to that insurance fee block was at least £55,000. [deleted]
	(c)	[deleted]
	(d)	[deleted]
(3)		<del>[deleted]</del> The conditions are that:
	(a)	<u>before 1 April 2011 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 FSA that it has met the criteria for entry into pre-Internal Model Approval Process status (‘pre-IMAP’); and</u>
	(b)	<u>the recipient remains in pre-IMAP status on 1 April 2011.</u>
(4)		<del>The prior year fee referred to in (2) for a particular insurance fee block does not take into account the Solvency 2 Special Project fee or the Solvency 2 Implementation fee. For the purposes of (3)(b), the recipient will be deemed to be in pre-IMAP status unless, before 1 April 2011:</del>
	(a)	<u>the recipient informs the FSA in writing that it wishes to withdraw from pre-IMAP status; or</u>
	(b)	<u>the recipient has been informed by the FSA in writing that it is no longer in pre-IMAP status.</u>
(5)		<del>[deleted]</del> For the purposes of this Part a reference to pre-IMAP means the status achieved by the recipient by joining the process established by the FSA whereby the FSA and the recipient engage with a view to the FSA establishing whether an internal model developed by the recipient is likely to meet the tests and standards specified in the <i>Solvency 2 Directive</i> .
(6)		<del>[deleted]</del> A reference to ‘group’ in this Part means a group determined by reference to the provisions contained in Title III, Chapter I of the <i>Solvency 2 Directive</i> .
...		

...

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.

...	
(2)	...



	(a)	...
	(b)	the <i>firm</i> has not notified the <i>FSA</i> before the start of the financial year <del>2010/11</del> <u>2011/12</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 <del>2010/11</del> <u>2011/12</u> ;
	...	
...		

...

**4 Annex 4 R Periodic fees in relation to collective investment schemes payable for the period 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

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>	<del>560</del> <u>585</u>	1-2	1	<del>560</del> <u>585</u>
		3-6	2.5	<del>1,400</del> <u>1,463</u>
		7-15	5	<del>2,800</del> <u>2,925</u>
		16-50	11	<del>6,160</del> <u>6,435</u>
		>50	22	<del>12,320</del> <u>12,870</u>
Section 272 of the <i>Act</i>	<del>2,280</del> <u>2,380</u>	1-2	1	<del>2,280</del> <u>2,380</u>
		3-6	2.5	<del>5,700</del> <u>5,950</u>
		7-15	5	<del>11,400</del> <u>11,900</u>
		16-50	11	<del>25,080</del> <u>26,180</u>
		>50	22	<del>50,160</del> <u>52,360</u>
Fees are charged according to the number of funds or <i>sub-funds</i> operated by a <i>firm</i> as at 31 March <del>2010</del> <u>2011</u> . ...				

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

Table of fees payable by Designated Professional Bodies

Name of Designated Professional	Amount payable	Due date
---------------------------------	----------------	----------

Body		
The Law Society of England & Wales	£41,530	30 April 2011
	<del>£48,565</del> <u>£31,660</u>	1 September <del>2010</del> <u>2011</u>
The Law Society of Scotland	<del>£14,620</del> <u>£13,990</u>	1 July <del>2010</del> <u>2011</u>
The Law Society of Northern Ireland	<del>£13,380</del> <u>£12,920</u>	1 July <del>2010</del> <u>2011</u>
The Institute of Actuaries	<del>£10,130</del> <u>£10,110</u>	1 July <del>2010</del> <u>2011</u>
The Institute of Chartered Accountants in England and Wales	<del>£27,350</del> <u>£24,660</u>	1 July <del>2010</del> <u>2011</u>
The Institute of Chartered Accountants of Scotland	<del>£11,450</del> <u>£11,200</u>	1 July <del>2010</del> <u>2011</u>
The Institute of Chartered Accountants in Ireland	<del>£10,700</del> <u>£10,650</u>	1 July <del>2010</del> <u>2011</u>
The Association of Chartered Certified Accountants	<del>£18,040</del> <u>£16,980</u>	1 July <del>2010</del> <u>2011</u>
The Council for Licensed Conveyancers	<del>£11,290</del> <u>£11,230</u>	1 July <del>2010</del> <u>2011</u>
Royal Institution of Chartered Surveyors	<del>£14,390</del> <u>£13,800</u>	1 July <del>2010</del> <u>2011</u>
...		

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

...

Part 1 - Periodic fees for UK recognised bodies

Name of UK recognised body	Amount payable	Due date
Euroclear UK & Ireland Limited	£325,000	30 April 2011
	<del>£372,500</del> <u>£275,000</u>	1 September <del>2010</del> <u>2011</u>
ICE Futures Europe Ltd	£255,000	30 April 2011

	<del>£280,000</del> <u>£245,000</u>	1 September 2010 2011
LIFFE Administration and Management	£400,000	30 April 2011
	<del>£475,000</del> <u>£350,000</u>	1 September 2010 2011
LCH Clearnet Limited	£375,000	30 April 2011
	<del>£452,000</del> <u>£325,000</u>	1 September 2010 2011
The London Metal Exchange Limited	£237,500	30 April 2011
	<del>£277,000</del> <u>£212,500</u>	1 September 2010 2011
London Stock Exchange plc	£335,000	30 April 2011
	<del>£409,000</del> <u>£280,000</u>	1 September 2010 2011
EDX London Ltd	£60,000	30 April 2011
	<del>£77,500</del> <u>£30,000</u>	1 September 2010 2011
PLUS Markets Plc	£110,000	30 April 2011
	<del>£122,500</del> <u>£85,000</u>	1 September 2010 2011
European Central Counterparty Limited	£187,500	30 April 2011
	<del>£211,500</del> <u>£167,500</u>	1 September <del>2010</del> <u>2011</u>
ICE Clear Europe Limited	£275,000	30 April 2011
	<del>£366,000</del> <u>£265,000</u>	1 September <del>2010</del> <u>2011</u>
Chicago Mercantile Exchange Clearing Europe	£125,000	30 April 2011
	<u>£275,000</u>	<u>1 September</u> <u>2011</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	1 July <del>2010</del> <u>2011</u>
Chicago Board of Trade	£40,000	1 July <del>2010</del> <u>2011</u>
EUREX (Zurich)	£40,000	1 July <del>2010</del> <u>2011</u>
National Association of Securities and Dealers Automated Quotations (NASDAQ)	£40,000	1 July <del>2010</del> <u>2011</u>
New York Mercantile Exchange Inc.	£40,000	1 July <del>2010</del> <u>2011</u>
The Swiss Stock Exchange	£40,000	1 July <del>2010</del> <u>2011</u>
Sydney Futures Exchange Limited	£40,000	1 July <del>2010</del> <u>2011</u>
ICE Futures US Inc	£40,000	1 July <del>2010</del> <u>2011</u>
NYSE Liffe US	£40,000	1 July <del>2010</del> <u>2011</u>
SIS x-clear AG	£100,000	1 July <del>2010</del> <u>2011</u>
Eurex Clearing AG	<del>£200,000</del> <u>£70,000</u>	1 July <del>2010</del> <u>2011</u>
ICE Clear US Inc	£70,000	1 July <del>2010</del> <u>2011</u>
Chicago Mercantile Exchange (CME) (ROCH)	<del>£200,000</del> <u>£100,000</u>	1 July <del>2010</del> <u>2011</u>
European Multi-Lateral Clearing Facility	£100,000	1 July <del>2010</del> <u>2011</u>
Cassa di Compensazione e Garanzia (CC&G)	£70,000	1 July <del>2010</del> <u>2011</u>
<u>LCH Clearnet SA</u>	<u>£100,000</u>	<u>1 July 2011</u>
...		

**4 Annex 7 R Periodic fees in relation to the Listing Rules for the period 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

Fee type	Fee amount
Annual fees for the period 1 April <del>2010</del> <u>2011</u> to 31 March <del>2011</del> <u>2012</u>	

...	
-----	--

There is deducted from the fee specified in this Annex ~~0.0%~~ 4.7% 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 8 R Periodic fees in relation to the disclosure rules and transparency rules for the period 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

Annual fees for the period 1 April <del>2010</del> <u>2011</u> to 31 March <del>2011</del> <u>2012</u>
...

There is deducted from the fee specified in this Annex 4.7% 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 9 R Periodic fees in respect of securities derivatives for the period from 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

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 ~~2009~~ 2010 to 31 December ~~2009~~ 2010 inclusive.

The fee shown in the table below for *firms* (but not *market operators*) will be subject to a deduction of ~~7.7%~~ 16.7%, 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	£550 <u>£585</u>
1,001 - 100,000	£2,775 <u>£2,950</u>
100,001 - 1,000,000	£8,340 <u>£8,875</u>
1,000,001 - 5,000,000	£20,000 <u>£21,300</u>
5,000,001 - 20,000,000	£35,435 <u>£37,750</u>
>20,000,000	£54,000 <u>£57,500</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> using an International Securities Identity Number	£10,300 <u>£11,000</u>

...

**4 Annex 10 R Periodic fees for MTF operators payable in relation to the period 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

Name of MTF operator	Fee payable (£)	Due date 1 July <del>2010</del> <u>2011</u>
<del>Baikal Global Ltd</del>	<del>25,000</del>	
Barclays Bank Plc	<del>3,600</del> <u>4,000</u>	
<u>Baltic Derivatives Trading Ltd</u>	<u>20,000</u>	
BATS Trading Ltd	80,000	
BGC Brokers L.P	<del>3,600</del> <u>4,000</u>	
Cantor Index Limited	<del>7,750</del> <u>8,000</u>	
<del>CantorCO2e Limited</del>	<del>3,600</del>	
Chi-X Europe Limited	<del>125,000</del> <u>130,000</u>	
EuroMTS Limited	30,000	
GFI Brokers Limited	<del>3,600</del> <u>4,000</u>	
GFI Securities Limited	<del>3,600</del> <u>4,000</u>	

ICAP Electronic Broking Limited	<del>6,000</del> <u>6,250</u>	
ICAP Energy Limited	<del>3,600</del> <u>4,000</u>	
ICAP Europe Limited	<del>3,600</del> <u>4,000</u>	
ICAP Shipping Tanker Derivatives Limited	<del>3,600</del> <u>4,000</u>	
ICAP Securities Limited	<del>3,600</del> <u>4,000</u>	
ICAP WCLK Limited	<del>3,600</del> <u>4,000</u>	
<u>J.P.Morgan Cazenove Limited</u>	<u>4,000</u>	
Liquidnet Europe Limited	70,000	
MF Global UK Limited	<del>3,300</del> <u>4,000</u>	
My Treasury Limited	<del>3,600</del> <u>4,000</u>	
<del>NASDAQ OMX Europe Limited</del>	70,000	
<u>Nomura</u>	<u>4,000</u>	
<u>Sigma X MTF</u>	<u>4,000</u>	
SmartPool Trading Limited	<del>20,000</del> <u>22,500</u>	
TFS-ICAP Limited	<del>3,600</del> <u>4,000</u>	
Tradeweb Europe Limited	<del>12,500</del> <u>13,000</u>	
Tradition (UK) Limited	<del>3,600</del> <u>4,000</u>	
Tradition Financial Services Limited	<del>3,600</del> <u>4,000</u>	
Tullett Prebon (Europe) Limited	<del>3,600</del> <u>4,000</u>	
Tullett Prebon	<del>3,600</del> <u>4,000</u>	

(Securities) Limited		
<u>Turquoise Global Holdings Ltd</u>	<u>140,000</u>	
<del>Turquoise Services Limited</del>	80,000	
<u>UBS Ltd</u>	<u>4,000</u>	
	...	...
	In any other case <del>£3,000</del> <u>£3,500</u>	In any other case, 1 July <del>2010</del> <u>2011</u>

There is deducted from the fee specified in this Annex ~~7.5%~~ 16.7% of the fee payable to take into account financial penalties received by the *FSA* under section 66, 123 and 206 of the Act in the previous financial year.

...

**4 Annex 11 R** **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 in relation to the period 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

<u>Part 1 – Method for calculating the fee for fee-paying payment service providers</u>	
(1)	The periodic fee for <i>fee-paying payment service providers</i> is calculated by <u>identifying the relevant activity group under Part 2 and then adding the minimum fee to an additional fee calculated by multiplying the tariff base identified in Part 3 of FEES 4 Annex 11R by the appropriate rates applying to each tranche of the tariff base as indicated in the table at Part 5. For <i>small payment institutions</i> and <i>small e-money issuers</i> <u>electronic money institutions</u> the tariff rates are not relevant and a flat fee is payable.</u>
	...

<u>Part 1A – Method for calculating the fee for fee-paying electronic money issuers</u>	
(1)	<u>The periodic fee for <i>fee-paying electronic money issuers</i> is calculated by identifying the relevant activity group under Part 2A and then multiplying the tariff base identified in Part 3 of FEES 4 Annex 11R by the appropriate rates applying to each tranche of the tariff base as indicated in the table at Part 5. For <i>small electronic</i></u>



	<u>money institutions</u> , the tariff rates are not relevant and a flat fee is payable.	
(2)	<u>A fee-paying electronic money issuer may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:</u>	
	(a)	<u>it has reasonable grounds for believing that the costs of identifying the firm's UK business separately from its non-UK business in the way described in Part 3 of FEES 4 Annex 11R is disproportionate to the difference in fees payable; and</u>
	(b)	<u>it notifies the FSA in writing at the same time as it provides the information concerned under FEES 4.4 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.</u>
(3)	<u>For a fee-paying electronic money issuer which is required to comply with FEES 4.4 (Information on which fees are calculated) and has not done so for this period:</u>	
	(a)	<u>the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10;</u>
	(b)	<u>an additional administrative fee of £250 is payable; and</u>
	(c)	<u>the minimum total fee (including the administrative fee in (b)) is £650.</u>

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

Add the fee calculated under Part 1 to the fee calculated under Part 1A.

Part 2 – Activity groups relevant to fee-paying payment service providers

...

Activity group	Fee payer falls into this activity group if:
G.2 Certain deposit acceptors and <del>e-money issuers</del>	it is a <u>fee-paying payment service provider</u> not falling within any of the other fee-blocks in this table
G.3 Large payment institutions	it is a <u>fee-paying payment service provider that is an authorised payment institution, an EEA authorised payment institution, or the Post Office Limited or a fee-paying electronic money issuer (except if it is a small electronic money institution)</u>
G.4 Small payment institutions	it is a <u>fee-paying payment service provider that is a small payment institution or a small <del>e-money issuer</del> electronic money institution</u>

...	
-----	--

Part 2A – Activity groups relevant to fee-paying electronic money issuers

This table shows how the *electronic money* issuance by *fee-paying electronic money issuers* is linked to activity groups ('fee-blocks'). A *fee-paying electronic money issuer* can use the table to identify which fee-blocks it falls into based on its authorisation, registration or permission, as applicable.

<u>Activity group</u>	<u>Fee payer falls into this activity group if:</u>
<u>G.10 Large electronic money institutions</u>	<u>it is a <i>fee-paying electronic money issuer</i> (except if it is a <i>small electronic money institution</i>)</u>
<u>G.11 Small electronic money institutions</u>	<u>it is a <i>small electronic money institution</i></u>

Part 3

This table indicates the tariff base for each fee-block. The tariff base is the means by which the FSA measures the 'amount of business' conducted by *fee-paying payment service providers* and *fee-paying electronic money issuers*.

<u>Activity Group</u>	<u>Tariff base</u>
...	
<u>G.10</u>	<u>Average outstanding electronic money as defined under regulation 2(1) of the <i>Electronic Money Regulations</i>.</u> <u>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 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>
<u>G.11</u>	<u>Not applicable.</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* can calculate its tariff data by applying the tariff bases set out in Part 2 3 with reference to the valuation dates shown in this table.

<u>Activity group</u>	<u>Valuation date</u>
-----------------------	-----------------------

...	
Where a <i>fee-paying payment service provider's</i> <u>the tariff data of a fee-paying payment service provider or a fee-paying electronic money issuer</u> is in a currency other than sterling, it must be converted into sterling at the exchange rate prevailing on the relevant valuation date.	
G.2	For <i>banks, e-money issuers</i> and <i>building societies</i> as in FEES 4 Annex 1R Part 3.
...	
<u>G.10</u>	<u>31 December.</u>
<u>G.11</u>	<u>Not relevant.</u>

Part 5 – Tariff rates		
Activity group	Fee payable in relation to <del>2010/11</del> <u>2011/12</u>	
G2	Minimum fee (£)	400
	£ million or part £m of Modified Eligible Liabilities (MELS)	Fee (£/£m or part £m of MELS)
	> 0.1	<del>0.42292</del> <u>0.45265</u>
	> 0.25	<del>0.42292</del> <u>0.45265</u>
	> 1.0	<del>0.42292</del> <u>0.45265</u>
	> 10.0	<del>0.42292</del> <u>0.45265</u>
	> 50.0	<del>0.42292</del> <u>0.45265</u>
	> 500.0	<del>0.42292</del> <u>0.45265</u>
G.3	Minimum fee (£)	400
	£ thousands or part £ thousand of Relevant Income	Fee (£/£thousand or part £ thousand of Relevant Income)
	<del>≥0.1</del> <u>≥ 100</u>	<del>0.48508</del> <u>0.29950</u>
	<del>≥0.25</del> <u>≥ 250</u>	<del>0.48508</del> <u>0.29950</u>

	$\geq 1.0 > 1000$	<u>0.48508</u> <u>0.29950</u>
	$\geq 10.0 > 10,000$	<u>0.48508</u> <u>0.29950</u>
	$\geq 50.0 > 50,000$	<u>0.48508</u> <u>0.29950</u>
	$\geq 500.0 > 500,000$	<u>0.48508</u> <u>0.29950</u>
...		
<u>G.10</u>	<u>Minimum fee (£)</u>	<u>1,500</u>
	<u>£million or part £m of average outstanding electronic money (AOEM)</u>	<u>Fee (£/£m or part £m of AOEM)</u>
	<u>&gt;5.0</u>	<u>150.00</u>
<u>G.11</u>	<u>£1,000</u>	

Part 6 – Permitted deductions for financial penalties pursuant to regulation 85 of the Payment Services Regulations and regulation 51 of the Electronic Money Regulations, as applicable

*Fee-paying payment service providers and fee-paying electronic money issuers* may make deductions as provided in this Part.

Activity group	Nature of deduction	Amount of deduction
G.2	Financial penalties received	<del>0.0%</del> <u>0.1%</u>
G.3	Financial penalties received	<del>0.0%</del> <u>0.1%</u>
G.4	Financial penalties received	<del>0.0%</del> <u>0.1%</u>
G.5	Financial penalties received	<del>0.0%</del> <u>0.1%</u>
<u>G.10</u>	<u>Financial penalties received</u>	<u>0.1%</u>
<u>G.11</u>	<u>Financial penalties received</u>	<u>0.1%</u>

Part 7 – This table shows the modifications to fee tariffs that apply to *EEA authorised payment institutions*, *EEA authorised electronic money institutions*, and *full credit institutions* and *e-money issuers* that are *EEA firms*.

Activity group	Percentage deducted from the tariff payable under Part 5 applicable to the firm	Minimum amount payable

G.2	40%	
G.3	40%	
<u>G.10</u>	<u>40%</u>	

...

## 5 Financial Ombudsman Service Funding

...

- 5.1.1A R A reference to “*firm*” in this chapter includes a reference to a *fee-paying payment service provider* and *fee-paying electronic money issuer* except in FEES 5.5 and where “*firm*” is used elsewhere in this chapter in connection with the obligation to pay case fees.

...

- 5.4.1A D The information requirement set out under FEES 5.4.1R is applied under this direction to a *fee-paying payment service provider* and a *fee-paying electronic money issuer*.

...

- 5.8.2 R (1) This *rule* deals with the calculation of:
- (a) a *firm’s general levy* in the 12 months ending on the 31 March in which it obtains *permission*, or was authorised under the *Payment Services Regulations* or the *Electronic Money Regulations* or had its *permission* and/or *payment services* activities extended (“*relevant permissions*”) and the following 12 months ending on the 31 March; and

...

### 5 Annex 1 R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for ~~2010/11~~ 2011/12

Introduction: annual budget

1. The *annual budget* for ~~2010/11~~ 2011/12 approved by the FSA is ~~£113.7m~~ £127.9m.

2. The total amount expected to be raised through the *general levy* in ~~2010/11~~ 2011/12 will be ~~£17.7m~~ £42.7m (net of £1.8m 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, home finance administrators</i> (excluding <i>firms</i> in block 14) and <i>dormant account fund operators</i>	... For an <i>e-money firm</i> , the tariff base includes the number of <i>e-money accounts</i> multiplied by 0.15. (7) ...	<del>£0.0278</del> <u>£0.0643648</u> per relevant account subject to a minimum levy of £100
2-Insurers - general (excluding <i>firms</i> in blocks 13 and 15)	...	<del>£0.108</del> <u>£0.21626</u> per £1,000 of relevant gross premium income subject to a minimum levy of £100
3-The <i>Society</i> (of Lloyd's)	...	<del>£20,000</del> <u>£48,116</u> to be allocated by the <i>Society</i>
4-Insurers - life (excluding <i>firms</i> in block 15)	...	<del>£0.033</del> <u>£0.038445</u> per £1,000 of relevant adjusted 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 <del>£200</del> <u>£485</u>
6 – <i>Operators, trustees and depositaries of collective investment schemes</i> and <i>operators of personal pension schemes</i> and <i>stakeholder pension schemes</i>	...	Levy of <del>£50</del> <u>£120</u>
7 – Dealers as principal	...	Levy of <del>£50</del> <u>£125</u>
8-Advisory <i>arrangers, dealers or brokers</i> holding and controlling <i>client money</i> and/or	...	<del>£35</del> <u>£36.98</u> per relevant <i>approved person</i> subject to a minimum levy of £35

assets		
9-Advisory <i>arrangers</i> , dealers or brokers not holding and controlling <i>client money</i> and/or assets	...	<del>£35</del> <u>£30.02</u> per relevant <i>approved person</i> subject to a minimum levy of £35
10 – Corporate finance advisers	...	Levy of <del>£50</del> <u>£130</u>
11-fee-paying <i>payment service providers</i> (but excluding <i>firms</i> in any other Industry block <u>except Industry block 18</u> )	For <i>authorised payment institutions</i> , <i>electronic money issuers</i> (except for <i>small electronic money institutions</i> ), the Post Office Limited, the Bank of England, government departments and local authorities, and <i>EEA authorised payment institutions</i> relevant income as described in <i>FEES 4 Annex 11R Part 3</i>	<del>£0.015</del> <u>£0.040854</u> per £1,000 of relevant income subject to a minimum levy of £75
	For <i>small payment institutions</i> and <i>small electronic-money institutions</i> <del><i>small e-money issuers</i></del> a flat fee	Levy of <del>£75</del> <u>£150</u>
...		
13 – Cash plan health providers	...	Levy of <del>£50</del> <u>£125</u>
14 – <i>Credit unions</i>	...	Levy of <del>£50</del> <u>£125</u>
15 – <i>Friendly societies</i> whose tax-exempt business represents 95% or more of their total relevant business	...	Levy of <del>£50</del> <u>£125</u>
16-Home finance providers, advisers and arrangers (excluding	...	Levy of <del>£90</del> <u>£110</u>

<i>firms</i> in blocks 13, 14 & 15)		
17-General insurance mediation (excluding <i>firms</i> in blocks 13, 14 & 15)	<i>Annual income</i> (as defined in <i>MIPRU</i> 4.3) relating to <i>firm's relevant business</i>	<del>£0.31</del> <u>£1.649277</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
<u>18 – fee-paying electronic money issuers</u>	For all <u>fee-paying electronic money issuers except for small electronic money institutions, a flat fee</u>  For <u>small electronic money institutions, a flat fee</u>	<u>£180</u>  <u>£180</u>

Notes	
...	
5	The <i>industry blocks</i> in the table are based on the equivalent activity groups set out in Part 1 of <i>FEES</i> 4 Annex 1R <u>and Part 2 and Part 2A of <i>FEES</i> 4 Annex 11R.</u>
6	Where the tariff base in the table is defined in similar terms as that for the equivalent activity group in Part 2 of <i>FEES</i> 4 Annex 1R <u>or Part 3 of <i>FEES</i> 4 Annex 11R,</u> it must be calculated in the same way as that tariff base - taking into account only the <i>firm's relevant business</i> .
7	<del>(1) An <i>e-money</i> account is, subject to (2), <i>e-money</i> that has been issued by an <i>e-money firm</i> issuer and which can reasonably be regarded as being held by the owner of the as a single balance and under the same arrangements. (2) An account that would be an <i>electronic money</i> account under (1) will not be one where, as at 31 December, it carries a nil balance and/or has been inactive for a period of 12 months or more. [deleted]</del>
...	

...

- 7.1.4 G Paragraph 12(1) of Part 2 of Schedule 1A to the *Act* enables the *FSA* to make rules requiring ~~any~~ certain *authorised persons* or *payment service providers*



~~or electronic money issuers or class of authorised persons or class of payment service providers~~ to pay to the FSA specified amounts or amounts calculated in a specified way in order to meet a proportion of:

...

...

- 7.1.10 G This chapter sets out the method by which the *CFEB* levy will be calculated. Details of the actual levy payable will vary from year to year, depending on the *CFEB*'s annual budget. These details are set out in *FEES* 7 Annex 1R. New details will be prepared and consulted on for each financial year.

#### Exemption

- 7.1.11 G A firm is not liable to pay a *CFEB* levy in relation to *payment services* or *electronic money* issuance if it is the Bank of England, a government department, a local authority, a municipal bank or the National Savings Bank.

...

- 7.2.1 R A firm must pay each *CFEB* levy applicable to it:
- (1) ...
  - (2) in accordance with the provisions of *FEES* 4.3.6R as modified by *FEES* 7.2.1AR.
- 7.2.1A R (1) For the purposes of *FEES* 7.2.1R(2), *FEES* 4.3.6R(1), as applied by *FEES* 7.2.8R, is modified so that if a firm's periodic fees for the previous financial year was at least £50,000, the firm must pay:
- (a) an amount equal to 50% of the *CFEB* levy payable for the previous year, by 30 April in the financial year to which the sum due under *FEES* 7.2.1R relates; and
  - (b) the balance of the *CFEB* levy due for the current financial year by 1 September in the financial year to which that sum relates.
- (2) For the purposes of *FEES* 7.2.1R(2), *FEES* 4.3.6R(2), as applied by *FEES* 7.2.8R, is modified so that if the firm's periodic fee for the previous financial year was less than £50,000, the firm must pay its *CFEB* levy in full by 1 July in the financial year to which that sum relates.

...

- 7.2.3 R The amount payable by a firm with respect to a particular activity group is calculated as follows:
- (1) calculate the size of the firm's tariff base for that activity group using the tariff base calculations in Part 2 of *FEES* 4 Annex 1R and Part 3 of *FEES* 4 Annex 11R and the valuation date requirements in Part 3 of

*FEES 4 Annex 1R and Part 4 of FEES 4 Annex 11R;*

...

- 7.2.4 R For the purposes of *FEES 7.2.3R*:
- (1) a *firm* may apply the relevant tariff bases and rates to its non-UK business, as well as to its UK business, if:
    - (a) it has reasonable grounds for believing that the costs of identifying the *firm's* UK business separately from its non-UK business in the way described in Part 2 of *FEES 4 Annex 1R and Part 1 of FEES 4 Annex 11R* are disproportionate to the difference in fees payable; and

...

- (2) for a *firm* which has not complied with *FEES 4.4.2R* (Information on which fees are calculated) or *FEES 4.4.8D* (Information relating to payment services and the issuance of electronic money) for this period, the *CFEB* levy is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10.

- 7.2.5 R The modifications in Part 3 of *FEES 4 Annex 2R and Part 7 of FEES 4 Annex 11R* apply.

...

- 7.2.9A D *FEES 4.4.7D to FEES 4.4.9D* (Information relating to *payment services and the issuance of electronic money*) also apply to *FEES 7*.

- 7.2.10 G References in a *FEES 4 rule* incorporated into *FEES 7* by cross-reference to a periodic fee should be read as being to the *CFEB* levy. References in a *FEES 4 rule* incorporated into *FEES 7* to ~~*fee-paying payment service providers, market operators, service companies, MTF operators, investment exchanges, clearing houses, designated professional bodies*~~ or Solvency 2 Implementation fees, Solvency 2 Implementation Flat fees, Solvency 2 Special Project fees and Solvency 2 Special Project Flat fees should be disregarded.

...

- 7.2.12 R Table of *FEES 4* rules that correspond to *FEES 7* rules

FEES 4 rules	Corresponding FEES 7 rules
...	
<i>FEES 4.3.3 R</i>	<i>FEES 7.2.2R</i>

<u>FEES 4.3.3AR</u>	<u>FEES 7.2.2R</u>
<u>FEES 4.3.12R</u>	<u>FEES 7.2.5R</u>
<u>FEES 4.3.12AR</u>	<u>FEES 7.2.5R</u>
Part 1 of <u>FEES 4 Annex 2R</u>	Part 1 of <u>FEES 7 Annex 1R</u>
Part 2 of <u>FEES 4 Annex 11R</u>	<u>Part 1 of FEES 7 Annex 1R</u>
Part 5 of <u>FEES 4 Annex 11R</u>	<u>Part 1 of FEES 7 Annex 1R</u>

**7 Annex 1 R**      **CFEB levies for the period from 1 April ~~2010~~ 2011 to 31 March ~~2011~~ 2012**

Part 1

This table shows the *CFEB levies* applicable to each activity group (fee-block)

Activity Group	<i>CFEB levy payable</i>	
A.1	Band Width (£ million of Modified Eligible Liabilities (MELs))	Fixed sum (£/£m or part £m of MELs)
	> 10 - 140	<del>3.67</del> <u>5.01</u>
	> 140 - 630	<del>3.67</del> <u>5.01</u>
	>630 - 1,580	<del>3.67</del> <u>5.01</u>
	>1,580 - 13,400	<del>3.67</del> <u>5.01</u>
	>13,400	<del>3.67</del> <u>5.01</u>
	Note 1 For a <i>firm</i> in A.1 which has a limitation on its <i>permission</i> to the effect that it may <i>accept deposits</i> from <i>wholesale depositors</i> only, this levy is calculated as above less 30%.	

A.2	Band Width (no. of mortgages and/or <i>home finance transactions</i> )	Fixed sum (£/mortgage)
	>50 – 130	<del>0.10</del> <u>0.142</u>
	>130 – 320	<del>0.10</del> <u>0.142</u>
	>320 – 4,570	<del>0.10</del> <u>0.142</u>
	>4, 570 – 37,500	<del>0.10</del> <u>0.142</u>
	>37,500	<del>0.10</del> <u>0.142</u>
A.3	<b>Gross premium income (GPI)</b>	
	Band Width (£ million of GPI)	Fixed sum (£/£m or part £m of GPI)
	>0.5 – 10.5	<del>45.21</del> <u>55.74</u>
	>10.5 - 30	<del>45.21</del> <u>55.74</u>
	>30 - 245	<del>45.21</del> <u>55.74</u>
	>245 - 1, 900	<del>45.21</del> <u>55.74</u>
	>1,900	<del>45.21</del> <u>55.74</u>
	PLUS	
	<b>Gross technical liabilities (GTL)</b>	
	Band Width (£ million of GTL)	Fixed sum (£/£m of part £m of GTL)
	>1 – 12.5	<del>2.29</del> <u>3.01</u>
	>12.5 - 70	<del>2.29</del> <u>3.01</u>
	>70 - 384	<del>2.29</del> <u>3.01</u>
	>384 - 3,750	<del>2.29</del> <u>3.01</u>
>3,750	<del>2.29</del> <u>3.01</u>	
A.4	<b>Adjusted annual gross premium income (AGPI)</b>	

	Band Width (£ million of AGPI)	Fixed sum (£/£m or part £m of AGPI)
	>1 - 5	<del>56.32</del> <u>72.65</u>
	>5 - 40	<del>56.32</del> <u>72.65</u>
	>40 - 260	<del>56.32</del> <u>72.65</u>
	>260 - 4,000	<del>56.32</del> <u>72.65</u>
	>4,000	<del>56.32</del> <u>72.65</u>
	PLUS	
	<b>Mathematical reserves (MR)</b>	
	Band Width (£ million of MR)	Fixed sum (£/£m or part £m of MR)
	>1 – 20	<del>1.23</del> <u>1.57</u>
	>20 - 270	<del>1.23</del> <u>1.57</u>
	>270 - 7,000	<del>1.23</del> <u>1.57</u>
	>7,000 - 45,000	<del>1.23</del> <u>1.57</u>
	>45,000	<del>1.23</del> <u>1.57</u>
A.5	Band Width (£ million of Active Capacity (AC))	Fixed sum (£/£m or part £m of AC)
	>50 - 150	<del>4.25</del> <u>5.63</u>
	>150 - 250	<del>4.25</del> <u>5.63</u>
	>250 - 500	<del>4.25</del> <u>5.63</u>
	>500 - 1,000	<del>4.25</del> <u>5.63</u>
	>1,000	<del>4.25</del> <u>5.63</u>
A.6	Flat levy	<del>£120,590</del> <u>£159,941.90</u>
A.7	For class 1(C), (2) and (3) firms:	
	Band Width (£ million of Funds under Management)	Fixed sum (£/£m of part £m of FuM)

	(FuM))	
	>10 - 150	<del>0.68</del> <u>0.79</u>
	>150 - 2,800	<del>0.68</del> <u>0.79</u>
	>2,800 - 17,500	<del>0.68</del> <u>0.79</u>
	>17,500 - 100,000	<del>0.68</del> <u>0.79</u>
	>100,000	<del>0.68</del> <u>0.79</u>
	...	
A.9	Band Width (£ million of Gross Income (GI))	Fixed sum (£/£m of part £m of GI)
	>1 - 4.5	<del>83.19</del> <u>83.73</u>
	>4.5 - 17	<del>83.19</del> <u>83.73</u>
	>17 - 145	<del>83.19</del> <u>83.73</u>
	> 145 - 750	<del>83.19</del> <u>83.73</u>
	>750	<del>83.19</del> <u>83.73</u>
A.10	Band Width (no. of traders)	Fixed sum (£/trader)
	2 - 3	<del>253.40</del> <u>318.75</u>
	4 - 5	<del>253.40</del> <u>318.75</u>
	6 - 30	<del>253.40</del> <u>318.75</u>
	31 - 180	<del>253.40</del> <u>318.75</u>
	>180	<del>253.40</del> <u>318.75</u>
A.12	Band Width (no. of persons)	Fixed sum (£/person)
	2 - 5	<del>33.90</del> <u>43.13</u>
	6 - 35	<del>33.90</del> <u>43.13</u>
	36 - 175	<del>33.90</del> <u>43.13</u>
	176 - 1,600	<del>33.90</del> <u>43.13</u>
	>1,600	<del>33.90</del> <u>43.13</u>
	...	

A.13	For class (2) firms	
	Band Width (no. of persons)	Fixed sum (£/person)
	2 – 3	<del>102.10</del> <u>160.79</u>
	4 - 30	<del>102.10</del> <u>160.79</u>
	31 - 300	<del>102.10</del> <u>160.79</u>
	301 - 2,000	<del>102.10</del> <u>160.79</u>
	>2,000	<del>102.10</del> <u>160.79</u>
	...	
A.14	Band Width (no. of persons)	Fixed sum (£/person)
	2 – 4	<del>106.11</del> <u>126.34</u>
	5 - 25	<del>106.11</del> <u>126.34</u>
	26 - 80	<del>106.11</del> <u>126.34</u>
	81 - 199	<del>106.11</del> <u>126.34</u>
	>199	<del>106.11</del> <u>126.34</u>
A.18	Band Width (£ thousands of Annual Income (AI))	Fixed sum (£/£ thousand or part £ thousand of AI)
	>100 - 180	<del>0.85</del> <u>1.36</u>
	>180 - 1,000	<del>0.85</del> <u>1.36</u>
	>1,000 - 12,500	<del>0.85</del> <u>1.36</u>
	>12,500 - 50,000	<del>0.85</del> <u>1.36</u>
	>50,000	<del>0.85</del> <u>1.36</u>
A.19	Band Width (£ thousands of Annual Income (AI))	Fixed sum (£/£ thousand or part £ thousand of AI)
	>100 - 325	<del>0.20</del> <u>0.256</u>
	>325 - 10,000	<del>0.20</del> <u>0.256</u>
	>10,000 - 50,750	<del>0.20</del> <u>0.256</u>
	>50,750 - 250,000	<del>0.20</del> <u>0.256</u>

	>250,000	<del>0.20</del> <u>0.256</u>
<u>G.3</u>	<u>£ thousands or part £ thousand of Relevant Income</u>	<u>Fee (£/£thousand or part £ thousand of Relevant Income)</u>
	<u>&gt;100</u>	<u>0.04787</u>
	<u>&gt;250</u>	<u>0.04787</u>
	<u>&gt;1,000</u>	<u>0.04787</u>
	<u>&gt;10,000</u>	<u>0.04787</u>
	<u>&gt;50,000</u>	<u>0.04787</u>
	<u>&gt;500,000</u>	<u>0.04787</u>
<u>G.4</u>	<u>A flat fee of £10</u>	
<u>G.10</u>	<u>£ million or part £m of average outstanding electronic money (AOEM)</u>	<u>Fee (£/£m or part £m of AOEM)</u>
	<u>&gt; 5.0</u>	<u>12.00</u>
<u>G.11</u>	<u>A flat fee of £10</u>	
<u>Notes</u>		
<u>(1) The definitions of fee-blocks G5 and G10 under Part 2 and Part 2A of FEES 4 Annex 11R are modified, for the purposes of FEES 7, so that they exclude the Bank of England, government departments, local authorities, municipal banks and the National Savings Bank.</u>		
<u>(2) The definitions of those fee-blocks are further amended to exclude EEA firms and those firms which hold a Part IV permission.</u>		

Part 2	
(1)	...
(2)	...
(3)	A firm is referred to in this paragraph if it falls within the following activity groups: A.1; A.2; A.3 (excluding UK ISPVs); A.4; A.5; A.7; A.9; A.10; A.12; A.13; A.14; A.18; <del>and</del> A.19; <u>G.3 and G.10.</u>

...



**TP 6 Transitional arrangements in relation to the introduction of the Electronic Money Regulations**

...

6.2.3 G ...

**6.3 Periodic fees**

6.3.1 G A person subject to the transitional arrangements in regulation 74 of the Electronic Money Regulations will be deemed to be an authorised electronic money institution during the transitional period applicable to it. It will also retain its Part IV permission in relation to electronic money.

6.3.2 G A person subject to those transitional arrangements will be liable for the periodic fees payable by an authorised electronic money institution.

6.3.3 R (1) This rule deals with periodic fees payable under FEES 4.3 by a person subject to the transitional regime in regulation 74 of the Electronic Money Regulations.

(2) The fees are calculated as if the person had been an authorised electronic money institution from the beginning of the FSA's financial year 2011/12.

(3) The fees for the FSA's financial year 2011/12 are based on information supplied by the person before the periodic fee becomes payable.

(4) If the person has notified the FSA that it wishes to be registered as a small electronic money institution and it is registered as a small electronic money institution under regulation 74 during a financial year of the FSA then, for the purpose of the periodic fees for that financial year, it is treated as remaining as an authorised electronic money institution. Therefore no periodic fee is payable for that financial year in its capacity as a small electronic money institution.

6.3.4 R If the transitional period under the Electronic Money Regulations comes to an end during a financial year of the FSA without the person being included by the FSA in the register as an authorised electronic money institution or as a small electronic money institution, periodic fees due at the start of that financial year must be paid immediately after the end of that transitional period.

6.3.5 R (1) This rule deals with periodic fees payable under FEES 4.3 by a person subject to the transitional regime in regulation 76 of the Electronic Money Regulations.

- (2) Such an issuer is treated as a *small electronic money institution*. However the periodic fee is the same as the periodic fee for fee block G4 not fee block G11.
- (3) If the *person* has notified the *FSA* that it wishes to be registered as a *small electronic money institution* and it is so registered during a financial year of the *FSA*, then while the transitional period under regulation 76 is still current in any part of that financial year, for the purpose of the periodic fees for that financial year, it is treated as remaining as a *small electronic money institution*.
- (4) If the *person* has notified the *FSA* that it wishes to be authorised as an *authorised electronic money institution* and it is so authorised during a financial year of the *FSA*, then while the transitional period under regulation 76 is still current in any part of that financial year then, for the purpose of the periodic fees for that financial year:
- (a) it is treated in the same way as a newly authorised *authorised electronic money institution*; but
- (b) any periodic fee paid or payable for that financial year under (2) is taken into account so that no additional periodic fee is paid under (2).
- 6.3.6 G The transitional arrangements in regulation 75 of the *Electronic Money Regulations* deal with a *person* other than a *credit institution* that issued *electronic money* in the *United Kingdom* under an *EEA* passport. It may continue until 30th October 2011 to carry on that activity.
- 6.3.7 R (1) This rule deals with periodic fees payable under FEES 4.3 by a *person* subject to the transitional regime in regulation 75 of the *Electronic Money Regulations*.
- (2) During the transitional period under the *Electronic Money Regulations* the *person* is treated as an *EEA authorised electronic money institution*. It is treated as having held this status from the beginning of the *FSA*'s financial year 2011/12.
- (3) The fees for the financial year 2011/12 are based on information supplied by the *person* before the periodic fee becomes payable.
- 6.3.8 G If the *person* becomes an *EEA authorised electronic money institution* during the transitional period under the *Electronic Money Regulations* it is treated as remaining as an *EEA authorised electronic money institution* during the *FSA*'s financial year 2011/12. Therefore no additional periodic fee is payable.
- 6.3.9 R If the transitional status of a *person* under the *Electronic Money Regulations* comes to an end before it gets its final status as an *electronic money issuer* under those regulations, any periodic fees that are due at the time its transitional status ends must be paid immediately thereafter.

**6.4**      **FOS general levy**

6.4.1      R      *FEES* TP 6.3 applies to the general levy described in *FEES* 5.3 in the same way as it does to periodic fees under *FEES* 4.3.

**6.5**      **CFEB levy**

6.5.1      R      *FEES* TP 6.3, except *FEES* TP 6.3.5, applies to the *CFEB* levy in the same way as it does to periodic fees under *FEES* 4.3.

**PERIODIC FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)  
(2011/2012) INSTRUMENT 2011**

**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 2011.

**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) (2011/2012) Instrument 2011.

By order of the Board  
26 May 2011

## 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 ~~2010~~ 2011 TO 31 MARCH ~~2011~~ 2012

##### Part 1

Periodic fee payable by Registered Societies (on 30 June ~~2010~~ 2011)

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.

**CONDUCT OF BUSINESS SOURCEBOOK (AUTOMATIC ENROLMENT INTO QUALIFYING PENSION SCHEMES) INSTRUMENT 2011**

**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 1 October 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 Conduct of Business Sourcebook (Automatic Enrolment into Qualifying Pension Schemes) Instrument 2011.

By order of the Board  
26 May 2011

## Annex A

### Amendments to the Glossary of definitions

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

<u><i>automatic enrolment scheme</i></u>	<u>a scheme that meets the conditions in Part 1 of the Pensions Act 2008. In summary this is a qualifying <i>occupational pension scheme</i> or qualifying <i>personal pension scheme</i> that enables automatic enrolment arrangements to take place.</u>
<i>distance contract</i>	<p>any contract concerning financial services concluded between a supplier and a <i>consumer</i> under an organised distance sales or service provision scheme run by the supplier which, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication (that is, any means which, without the simultaneous physical presence of the supplier or intermediary and the <i>consumer</i>, may be used for the distance marketing of a service between those parties) up to and including the time at which the contract is concluded.</p> <p>A contract is not a distance contract if:</p> <ul style="list-style-type: none"> <li>(a) making, performing or marketing it does not constitute or form part of a <i>regulated activity</i>; <u>or</u></li> <li>(b) it is entered into on a strictly occasional basis outside a commercial structure dedicated to the conclusion of distance contracts; or</li> <li>(c) a <i>consumer</i>, and an intermediary acting for a product provider, are simultaneously physically present at some stage before the conclusion of the contract; <u>or</u></li> <li>(d) <u>it is entered into to comply with the requirement in Part 1 of the Pensions Act 2008 to automatically enrol or re-enrol employees into an <i>automatic enrolment scheme</i>.</u></li> </ul> <p>[Note: recitals 15 and 18 to, and articles 2(a) and (e) of, the <i>Distance Marketing Directive</i>]</p>
<i>pension opt-out</i>	<p>a transaction, resulting from the decision of a <i>retail client</i> who is an individual to:</p> <ul style="list-style-type: none"> <li>(a) opt out of an <i>occupational pension scheme</i> <u>or <i>group personal pension scheme to which his employer contributes and of which he is a member</i></u>; or</li> <li>(b) decline to become a member of an <i>occupational pension</i></li> </ul>

*scheme or group personal pension scheme 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;*

*in favour of a stakeholder pension scheme or a personal pension scheme.*



## Annex B

### Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

#### 13.3 Contents of a key features document

General requirements

13.3.1 R A *key features document* must:

...

(2) explain:

...

- (e) (for a *personal pension scheme* that is not an automatic enrolment scheme) clearly and prominently, that *stakeholder pension schemes* are generally available and might meet the *client's* needs as well as the scheme on offer.

...

#### 15.5 Special situations

...

Other legislation including for child trust funds and automatic enrolment into pensions

15.5.2 R This chapter applies as modified to the extent necessary for it to be compatible with any enactment.

15.5.3 G For example:

(1) ...

(2) where legislation does not permit sums within a *personal pension scheme* or *CTF* to be returned to a *consumer*, the requirement to do so on cancellation is modified to permit payment to another provider on behalf of the *consumer*, the *firm* should notify him, where relevant, as soon as possible that it holds money awaiting re-investment instructions; if that money is held in a non-interest bearing account this should be drawn to his attention;

(3) the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 contain provisions relevant to cancellation rights; in particular they provide rights of opt-out from

an automatic enrolment scheme; the cancellation rights in this chapter are modified to permit a provider to adopt the opt-out process in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 in relation to all members of an automatic enrolment scheme; the cancellation rules will continue to apply for any single premium contributions or transfers where these would normally attract this right.

...

## 19.2 Personal pensions, FSAVCs and AVCs

...

### Suitability

...

- 19.2.2 R When a *firm* prepares a *suitability report* it must:
- (1) (in the case of a *personal pension scheme*), explain why it considers the *personal pension scheme* to be at least as suitable as a *stakeholder pension scheme*; and
  - (2) (in the case of 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 or group personal pension scheme* which is available to the *retail client*.

## **CLIENT ASSETS REPORTING (AMENDMENT NO 2) INSTRUMENT 2011**

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

### **Commencement**

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex D to this instrument comes into force on 1 June 2011;
  - (2) the remainder of this instrument comes into force on 1 October 2011.

### **Amendments to the Handbook**

- D. (1) The Client Assets sourcebook (CASS) is amended in accordance with Annex A to this instrument.
- (2) The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

### **Amendments to the Client Assets Reporting (Amendment) Instrument 2011**

- E. (1) The Client Assets Reporting (Amendment) Instrument 2011 (FSA 2011/26) is amended in accordance with Annex C to this instrument.
- (2) The commencement of Annex B to the Client Assets Reporting (Amendment) Instrument 2011 (FSA 2011/26) is deferred to 1 October 2011.

### **Amendments to the Client Assets Sourcebook (Enhancement) Instrument 2010**

- F. (1) Part 1 of Annex C to the Client Assets Sourcebook (Enhancement) Instrument 2010 (FSA 2010/52) (which amends the Supervision manual (SUP)) is amended in accordance with Annex D to this instrument.
- (2) The commencement of Part 1 of Annex C to the Client Assets Sourcebook (Enhancement) Instrument 2010 (FSA 2010/52) (which amends the Supervision manual (SUP)) is deferred to 1 October 2011.

**Citation**

- G. This instrument may be cited as the Client Assets Reporting (Amendment No 2) Instrument 2011.

By order of the Board  
26 May 2011

**Annex A****Amendments to the Client Assets sourcebook (CASS)**

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

**1A.2 CASS firm classification**

...

- 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 a *CMAR* for the ~~period~~ or month ending 31 December in compliance with ~~*SUP* 16.14.5R~~ *SUP* 16.14.3R.

...

## Annex B

### Amendments to the Supervision manual (SUP)

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

After SUP 16 Annex 29R insert the following new annex. The text is not underlined.

*[Editor's Note: The text of 16 Annex 29R is being replaced by the text shown in Annex D to this instrument.]*

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

This annex consists only of 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.

##### **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.

## 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). If the auditor is not listed on the menu, where available, a *firm* should choose 'Other'.

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.

3 Does the *firm* hold *client money*?

A *firm* should state "Yes" or "No".

4 Does the *firm* safeguard and administer *safe custody assets*?

A *firm* should state "Yes" or "No".

5 Is the *firm* subject to a CFTC Part 30 exemption order?

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 the *firm* operate the alternative approach?

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.

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.

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 belonging to *clients* in respect of the activity or service in question.

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.

**Section 2 Balances**9 Highest *client money* balance 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 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 has or have been placed with a sub-custodian, either by a custodian with which that *firm* has deposited that *money* or those assets, or by that *firm* if it is a 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 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 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.

#### 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 resource

#### 14 *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.

Included in the *client money* requirement is 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.

15 Unallocated to individual *clients* but identified as *client money*

A *firm* should report the amount of unallocated *client money* that it holds. 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* accounted for by as yet uncleared payments to that *firm's clients* drawn on a *client bank account* of the *firm*. In this data field a *firm* should therefore include cheques and other payable orders, 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 *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. CASS 7.4.21R explains when such an excess might arise.

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.

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).

- 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 *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.

In relation to data fields 14 to 20, a *firm* should report by reference to the results of its internal reconciliations 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.

## 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 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.

## Section 6 Segregation of safe custody assets

- 25A Where and how held

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.

25B Name of institution

A *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 *safe custody assets* which it holds 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 of the individual legal entity with which the *safe custody assets* have been deposited.

25C Number of lines of stock

In relation to each *nominee company* or third party institution identified in 25B, a *firm* should report the total number of lines of stock being *safe custody assets* 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 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*.

## 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.

In relation to the 30-day field, a *firm* should report items which have remained unreconciled for no more than 30 *days*.

In relation to the 60-day field, a *firm* should report items which have remained unreconciled for at least 31 *days*, but no more than 60 *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.

### 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 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 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 and may do so using its own description of an asset type.

## Section 8 Record keeping and breaches

### 31 Has the *firm* complied with the requirements in CASS 6.5.1R, CASS 6.5.2R and CASS 6.5.6R?

A *firm* should indicate whether it has complied in all material respects with the requirements set out in CASS 6.5.1R, CASS 6.5.2R and CASS 6.5.6R.

- 32 Following reconciliation, is the *firm* unable, in any material respect, to comply with CASS 6.5.10R?

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.

- 33 Has the *firm* complied with the requirements in CASS 7.6.1R, CASS 7.6.2R and CASS 7.6.9R?

A *firm* should indicate whether it has complied in all material respects with the requirements set out in CASS 7.6.1R, CASS 7.6.2R and CASS 7.6.9R.

- 34 Following reconciliation, is the *firm* unable, in any material respect, to comply with CASS 7.6.13R to CASS 7.6.15R

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.

In relation to data fields 31 and 33, a *firm* should only report in the affirmative if it has been in compliance with the *rules* specified in those data fields at all times throughout the reporting period in question. 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.

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.

## 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.

## 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	=	14A-19A
10	25D(total)	=	$25DT = \sum 25D$
11	28D	=	28A+28B-28C
12	29D	=	29A+29B-29C
13	30D(total)	=	$30DT = 28D + 29D$

## Annex C

### Further amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

To the text of SUP 16.14, as inserted by the Client Assets Reporting (Amendment) Instrument 2011 (FSA 2011/26), there is added the following text.

#### **16.14 Client money and asset return**

...

##### Method of submission

16.14.6 R A CMAR must be submitted by electronic means made available by the FSA.



**Annex D**

**Further amendments to the Supervision manual (SUP)**

**Part 1: Comes into force on 1 June 2011**

SUP 16 Annex 29R, as made by the Client Assets Sourcebook (Enhancement) Instrument 2010 (FSA 2010/52), is revoked.

**Part 2: Comes into force on 1 October 2011**

After SUP 16 Annex 28BG insert the following new annex. 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: [insert link to form included below]*

*see next page*





Section 8 - Record Keeping & Breaches

Record Keeping

*This section should only be completed if the answer to question 3A is "Yes"*

	A	B	C	D	E	F
	Number of accounts held at beginning of reporting period	Number of new accounts opened during the reporting period	Number of accounts closed during the reporting period	Total number of accounts at the end of the reporting period	Number of trust status letters and/or acknowledgement letters in place that cover these accounts	Explanation of discrepancies
28 Client bank account						
29 Client transaction account						
30 Total						

Notifiable CASS Breaches

*This section should be completed by all firms*

- 31 Has the firm complied with the requirements in CASS 6.5.1R, 6.5.2R and 6.5.6R ? A
- 32 Following reconciliation is the firm unable, in any material respect, to comply with the requirements in CASS 6.5.10R
- 33 Has the firm complied with the requirements in CASS 7.6.1R, 7.6.2R and 7.6.9R?
- 34 Following reconciliation, is the firm unable, in any material respect to comply with the requirements in CASS 7.6.13R to 7.6.15R

Section 9 - Outsourcing & Offshoring

*This section should be completed by all firms*

	A	B	C	D
	Who do you outsource and/or offshore your client money and/or custody asset operations to? (name of entity)	What function of your CASS operations do you outsource and/or offshore?	Location of service provider	Significant changes being made or planned to existing arrangements
35				

**LISTING RULES SOURCEBOOK (AMENDMENT NO 7) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 rules);
  - (2) section 75 (Applications for listing);
  - (3) section 96 (Obligations of issuers of listed securities);
  - (4) section 101 (Part 6 rules: general provisions);
  - (5) section 138 (General rule-making power);
  - (6) section 156 (General supplementary powers);
  - (7) section 157(1) (Guidance); and
  - (8) schedule 7 (The Authority as Competent Authority for Part 6).

**Commencement**

- B. This instrument comes into force on 6 June 2011.

**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 7) Instrument 2011.

By order of the Board  
26 May 2011

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

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

*premium listing (commercial company)* a *premium listing* of equity ~~securities~~ shares (other than those of a *closed-ended investment fund* or of an *open-ended investment company*).

*premium listing (investment company)* a *premium listing* of equity ~~securities~~ shares of a *closed-ended investment fund* or of an *open-ended investment company*.

## Annex B

### Amendments to the Listing Rules sourcebook (LR)

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

#### Admission to trading

- 2.2.3 R Other than in regard to *securities* to which LR 4 applies, to be *listed*, *equity securities* ~~*shares*~~ must be admitted to trading on a *regulated market* for *listed securities* operated by a RIE. All other *securities* must be admitted to trading on a RIE's market for *listed securities*.

#### Pre-emption rights

...

- 9.3.12 R LR 9.3.11R does not apply to:

...

- (4) ~~an overseas company with a premium listing that has obtained the consent of its shareholders to issue equity securities other than in accordance with LR 9.3.11R either:~~

- (a) ~~within the terms of an authority equivalent to that required by section 570 or 571 of the Companies Act 2006; or~~
- (b) ~~in accordance with the law of its country of incorporation provided that the country has implemented Article 29 of Directive 77/91/EEC~~

an overseas company with a premium listing if a disapplication of statutory pre-emption rights has been authorised by shareholders that is equivalent to an authority given in accordance either with section 570 or section 571 of the Companies Act 2006 or in accordance with the law of its country of incorporation provided that the country has implemented article 29 of Directive 77/91/EEC and the issue of equity securities or sale of treasury shares that are equity shares by the listed company is within the terms of the authority; or

- (5) an open-ended investment company.

## 9.5 Transactions

...

- 9.5.6 R A listed company must ensure that the offer relating to a *rights issue* remains open for acceptance for at least 10 *business days*. For the purposes of calculating the period of 10 *business days*, the first *business day* is the date on which the offer is first open for acceptance.

Open offers

...

- 9.5.7A R A listed company must ensure that the *open offer* remains open for acceptance for at least 10 *business days*. For the purposes of calculating the period of 10 *business days*, the first *business day* is the date on which the offer is first open for acceptance.

- 9.5.8 R A listed company must ensure that in relation to communicating information on an *open offer*:

- (1) if the offer is subject to shareholder approval in general meeting the announcement must state that this is the case; and
- (2) the *circular* dealing with the offer must not contain any statement that might be taken to imply that the offer gives the same entitlements as a *rights issue* unless it is an offer with a compensatory element.

- 9.5.8A R If existing *shareholders* do not take up their rights to subscribe in an *open offer* with a compensatory element:

- (1) the listed company must ensure that the *equity securities* to which the offer relates are offered for subscription or purchase on terms that any premium obtained over the subscription or purchase price (net of expenses) is to be for the account of the holders, except that if the proceeds for an existing holder do not exceed £5, the proceeds may be retained for the *company's* benefit; and
- (2) the *equity securities* may be allotted or sold to underwriters, if on the expiry of the subscription period no premium (net of expenses) has been obtained.

- 9.5.8B R A listed company must ensure that for a subscription in an *open offer* with a compensatory element the following are notified to a *RIS* as soon as possible:

- (1) the offer price and principal terms of the offer; and
- (2) the results of the offer and, if any *securities* not taken up are sold, details of the sale, including the date and price per *share*.

...

Temporary documents of title (including renounceable documents)

- 9.5.15 R A listed company must ensure that any temporary document of title (other than



one issued in global form) for an *equity security*:

- (1) is serially numbered;
- (2) states where applicable:
  - ...
  - (h) for a *rights issue*, the time, being not less than 10 *business days* calculated in accordance with LR 9.5.6R, in which the offer may be accepted, and how *equity securities* not taken up will be dealt with; and
  - ...

...

#### Additional information

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

...

- (2) a statement showing the interests disclosed to the *listed company* in accordance with *DTR 5* as at the end of the period under review and, ~~as at a date not more than one month prior to the date of the notice of the annual general meeting:~~
  - (a) ~~all information disclosed to the *listed company* in accordance with *DTR 5*~~ all interests disclosed to the *listed company* in accordance with *DTR 5* that have occurred between the end of the period under review and a date not more than one month prior to the date of the notice of the annual general meeting; or
  - (b) ~~that there have been no disclosures, if no disclosures have been made~~ if no interests have been disclosed to the *listed company* in accordance with *DTR 5* in the period described in (a), a statement that no changes have been disclosed to the *listed company*.

...

#### Report to shareholders

9.8.8 R The report to the shareholders by the Board required by LR 9.8.6R(7) must contain the following:

...

- (12) for *defined benefit schemes*:

- (a) details of the amount of the increase during the period under review (excluding inflation) and of the accumulated total amount at the end of the period in respect of the accrued benefit to which each *director* would be entitled on leaving service or is entitled having left service during the period under review;
- (b) either:
  - (i) the transfer value (less *director's* contributions) of the relevant increase in accrued benefit (to be calculated in accordance with ~~Actuarial Guidance Note GN11~~ regulations 7 to 7E of the Occupational Pension Schemes (Transfer Values) Regulations 1996 but making no deduction for any under-funding) as at the end of the period; or

...

...

...

Transactions to which this chapter does not apply

- 11.1.6 R *LR 11.1.7R to LR 11.1.10R do not apply to a related party transaction if it is a transaction or arrangement:*
- (1) of a kind referred to in paragraph 1 ~~or 1A~~ of *LR 11 Annex 1R R* (a small transaction or a transaction the terms of which were agreed before a person became a related party); or
  - (2) of a kind referred to in ~~paragraph~~ paragraphs 2 to 9 ~~10~~ of *LR 11 Annex 1R R* and does not have any unusual features.

...

...

**11 Annex 1R Transactions to which related party transaction rules do not apply**

	<b>Small transaction</b>
1	A transaction or arrangement where each of the applicable <i>percentage ratios</i> is equal to or less than 0.25%.
	<b><del>Issue of new securities and sale of treasury shares</del></b>
	Transaction agreed before person became a related party
1A	...

...	
-----	--

...

### Omission of information

- 13.1.7    G    The FSA may authorise the omission of information required by LR 13.3 to LR 13.6, LR 13.8 and LR 13 Annex 1R, if it considers that disclosure of that information would be contrary to the public interest or seriously detrimental to the listed company, provided that that omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the matter covered by the circular.
- 13.1.8    R    A request to the FSA to authorise the omission of specific information in a particular case must:
- (1)    be made in writing by the listed company;
  - (2)    identify the specific information concerned and the specific reasons for the omission; and
  - (3)    state why in the listed company's opinion one or more grounds in LR 13.1.7G apply.

...

### Admission to trading

- 14.3.1    R    Other than in regard to securities to which LR 4 applies, the listed equity ~~securities~~ shares of a company must be admitted to trading on a regulated market for listed securities operated by a RIE.

...

### Temporary documents of title (including renounceable documents)

- 14.3.9    R    A company must ensure that any temporary document of title (other than one issued in global form) for a share:
- (1)    is serially numbered;
  - (2)    states where applicable:

...

    - (g)    for a rights issue, the time, being not less than 10 business days calculated in accordance with LR 9.5.6R, in which the offer may be accepted, and how shares not taken up will be dealt with; and

...

## Independence

...

15.2.12-A R For the purposes of LR 15.2.11R:

- (1) the chairman of the board or equivalent body of the *applicant* must be independent; and
- (2) a majority of the board or equivalent body of the *applicant* must be independent (the chairman may be included within that majority).

15.2.12A R For the purposes of LR 15.2.11R and LR 15.2.12-AR, a majority of the board or equivalent body of the *applicant* (including the Chairman) must not be the following are not independent:

- (1) *directors, employees, partners, officers or professional advisers of or to:*
  - (a) *an investment manager of the applicant; or*
  - (b) *a master fund or investment manager referred to in LR 15.2.11R(2); or*
  - (c) *any other company in the same group as the investment manager of the applicant; or*
- (2) *directors, employees or professional advisers of or to other investment companies or funds that are:*
  - (a) *managed by the same investment manager as the investment manager to the applicant; or*
  - (b) *managed by any other company in the same group as the investment manager to the applicant.*

...

## Annual financial report additional requirements for property investment entities

...

15.6.4 R A valuation required by LR 15.6.3R must:

- (1) either:
  - (a) be made in accordance with the Appraisal and Valuation Standards ~~(5th edition)~~ (6th edition) issued by the Royal Institution of Chartered Surveyors; or
  - (b) where the valuation does not comply in all applicable respects with the Appraisal and Valuation Standards ~~(5th edition)~~ (6th

edition) issued by the Royal Institution of Chartered Surveyors, include a statement which sets out a full explanation of such non-compliance; and

- (2) be carried out by an external valuer as defined in the Appraisal and Valuation Standards (~~5th edition~~) (6th edition) issued by the Royal Institution of Chartered Surveyors.

...

Requirements with continuing application

16.4.1 R An *open-ended investment company* must comply with:

- (1) LR 9 (Continuing obligations) except LR 9.2.6BR, ~~and LR 9.2.15R~~ 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).

...

~~Certificates representing equity securities of a UK company~~

18.2.10 R ~~Certificates representing equity shares of a company incorporated in the United Kingdom will be admitted to listing only if the shares they represent are already listed or are the subject of an application for listing at the same time. [deleted]~~

...

**App 1.1 Relevant definitions**

...

...	
<i>premium listing (commercial company)</i>	a <i>premium listing</i> of equity <del>securities</del> <u>shares</u> (other than those of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i> ).
<i>premium listing (investment company)</i>	a <i>premium listing</i> of equity <del>securities</del> <u>shares</u> of a <i>closed-ended investment fund</i> or of an <i>open-ended investment company</i> .
...	

...

**TR 5 Transitional Provision for companies incorporated in the United Kingdom**

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	<i>LR 9.3.12R (1), (2) and (3)</i>	R	Where a <i>listed company</i> has an authority to disapply statutory pre-emption rights under section 95 of the Companies Act 1985 and that authority remains in force on or after 6 April 2010, the <i>company</i> can continue to rely on it until it expires and will not need to seek a new authority under section 571 of the Companies Act 2006.	From 6 April 2010	6 April 2010

**DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO 3) INSTRUMENT 2011**

**Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes:
- (1) the rule in Annex A of this instrument for firms relating to the Compulsory Jurisdiction;
  - (2) the rules and guidance in Annex A and Parts 1, 2A, 3 and 4A of Annex B of this instrument for licensees relating to the Consumer Credit Jurisdiction; and
  - (3) the standard terms and guidance in Annex A and Parts 1, 2A, 3 and 4A of Annex B to this instrument for VJ participants relating to the Voluntary Jurisdiction;

in exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) section 226A (Consumer credit jurisdiction);
  - (b) section 227 (Voluntary jurisdiction);
  - (c) section 229 (Awards);
  - (d) paragraph 8 (Guidance) of Schedule 17;
  - (e) paragraph 14 (The scheme operator’s rules) of Schedule 17;
  - (f) paragraph 16B (Consumer credit jurisdiction: Procedure for complaints etc) of Schedule 17; and
  - (g) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making of these rules and standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

**Powers exercised by the Financial Services Authority**

- C. The Financial Services Authority makes the rules and guidance in this instrument for firms relating to the Compulsory Jurisdiction in the exercise of the following powers and related provisions in the Act:
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 226 (Compulsory jurisdiction);
  - (5) section 229 (Awards); and
  - (6) paragraph 13 (Authority’s procedural rules) of Schedule 17.
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

## **Commencement**

- E. This instrument comes into force as follows:
- (1) Part 1 of Annex B comes into force on 1 July 2011;
  - (2) Annex A and Parts 2A and 2B of Annex B come into force on 1 September 2011;
  - (3) Part 3 of Annex B comes into force on 1 January 2012; and
  - (4) Parts 4A and 4B of Annex B come into force on 1 July 2012.

## **Amendments to the Handbook**

- F. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- G. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

## **Citation**

- H. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No 3) Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited  
10 May 2011

By order of the Board of the Financial Services Authority  
26 May 2011



## Annex A

### Amendments to the Glossary of definitions

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

**Comes into force on 1 September 2011**

*final  
response*

....

- (2) ~~(in *DISP*) a written response from a *respondent* which:~~
- ~~(a) accepts the *complaint* and, where appropriate, offers redress or remedial action; or~~
  - ~~(b) offers redress or remedial action without accepting the *complaint*; or~~
  - ~~(c) rejects the *complaint* and gives reasons for doing so;~~
- ~~and which:~~
- ~~(d) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and~~
  - ~~(e) informs the complainant that if he remains dissatisfied with the *respondent's* response, he may now refer his *complaint* to the *Financial Ombudsman Service* and must do so within six months. [deleted]~~
- (3) (in *DISP*) has the meaning given in *DISP* 1.6.2R(1).

## Annex B

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

#### Part 1: Comes into force on 1 July 2011

...

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

...

...

- 1.3.1A R These procedures must ensure that a *complaint* may be made free of charge.

...

**Part 2A: Comes into force on 1 September 2011**

...

1.3.2A G These procedures should, taking into account the nature, scale and complexity of the *respondent's* business, ensure that lessons learned as a result of determinations by the *Ombudsman* are effectively applied in future *complaint* handling, for example by:

- (1) relaying a determination by the *Ombudsman* to the individuals in the *respondent* who handled the *complaint* and using it in their training and development;
- (2) analysing any patterns in determinations by the *Ombudsman* concerning *complaints* received by the *respondent* and using this in training and development of the individuals dealing with *complaints* in the *respondent*; and
- (3) analysing guidance produced by the *FSA*, other relevant regulators and the *Financial Ombudsman Service* and communicating it to the individuals dealing with *complaints* in the *respondent*.

...

1.4.1 R Once a *complaint* has been received by a *respondent*, it must:

- (1) investigate the *complaint* competently, diligently and impartially, obtaining additional information as necessary;

...

1.4.2 G Factors that may be relevant in the assessment of a *complaint* under *DISP* 1.4.1R(2), include the following:

...

- (4) appropriate analysis of decisions by the *Financial Ombudsman Service* concerning similar *complaints* received by the *respondent* (procedures for which are described in *DISP* 1.3.2AG).

...

Final or other response within eight weeks

1.6.2 R The *respondent* must, by the end of eight weeks after its receipt of the *complaint*, send the complainant:

- (1) a *final response* a 'final response', being a written response from the *respondent* which:

- (a) accepts the *complaint* and, where appropriate, offers redress or remedial action; or
- (b) offers redress or remedial action without accepting the *complaint*; or
- (c) rejects the *complaint* and gives reasons for doing so;  
and which:
- (d) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and
- (e) informs the complainant that if he remains dissatisfied with the *respondent's* response, he may now refer his *complaint* to the *Financial Ombudsman Service* and must do so within six months; or

(2) ...

1.6.3 G ~~*Respondents* are not obliged to comply with the requirements in *DISP* 1.6.2R where they are able to rely on any of the following *rules*:~~

- (1) ~~the complainant's written acceptance *rule* (*DISP* 1.6.4R);~~
- (2) ~~the *rules* for *respondents* with two stage *complaints* procedures (*DISP* 1.6.5R); or~~
- (3) ~~the *complaints forwarding rules* (*DISP* 1.7). [deleted]~~

**Part 2B: Comes into force on 1 September 2011**

1.1.9 G ~~*A complaint* about pre-commencement investment business which was regulated by a *recognised professional body* will be handled under the arrangements of that professional body and is outside the scope of this sourcebook. [deleted]~~

1.1.9A G The scope of this sourcebook does not include:

- (1) *a complaint* about pre-commencement investment business which was regulated by a *recognised professional body* (those *complaints* will be handled under the arrangements of that professional body); or
- (2) *a complaint* about the administration of an *occupational pension scheme*, because this is not a *regulated activity* (firms should refer complainants to the Pensions Advisory Service rather than to the *Financial Ombudsman Service*).

...

- 1.3.3B     G     The processes that a *firm* should have in place in order to comply with *DISP* 1.3.3R may include, taking into account the nature, scale and complexity of the *firm's* business including, in particular, the number of *complaints* the *firm* receives:
- (1) the collection of management information on the causes of *complaints* and the products and services *complaints* relate to, including information about *complaints* that are resolved by the *firm* by close of business on the *business day* following its receipt;
  - (2) a process to identify the root causes of *complaints* (*DISP* 1.3.3R(1));
  - (3) a process to prioritise dealing with the root causes of *complaints*;
  - (4) a process to consider whether the root causes identified may affect other processes or products (*DISP* 1.3.3R(2));
  - (5) a process for deciding whether root causes discovered should be corrected and how this should be done (*DISP* 1.3.3R(3));
  - (6) regular reporting to the *senior personnel* where information on recurring or systemic problems may be needed for them to play their part in identifying, measuring, managing and controlling risks of regulatory concern; and
  - (7) keeping records of analysis and decisions taken by *senior personnel* in response to management information on the root causes of *complaints*.
- 1.3.4     G     ~~A *firm* should use the information it gains from dealing with *complaints* that relate to *MiFID business* in accordance with this chapter to inform its compliance with its obligations to monitor the adequacy and effectiveness of its measures and procedures to detect and minimise any risk of compliance failures (*SYSC* 6.1). In respect of *complaints* that relate to *MiFID business*, a *firm* should put in place appropriate management controls and take reasonable steps, in the same way as for *complaints* that do not relate to *MiFID business* (see *DISP* 1.3.3R and *DISP* 1.3.3BG), in order to detect and minimise any risk of compliance failures (*SYSC* 6.1) and to comply with *Principle 6* (Customers' interests).~~
- 1.3.5     G     ~~A *firm* should have regard to *Principle 6* (Customers' interests) when it identifies problems, root causes or compliance failures and consider whether it ought to act on its own initiative with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by such factors, but who have not complained. [deleted]~~

1.3.6      G      Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its provision of, or failure to provide, a financial service, it should (in accordance with *Principle 6* (Customers' interests) and to the extent that it applies) consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by, such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

- (1) ascertain the scope and severity of the consumer detriment that might have arisen; and
- (2) consider whether it is fair and reasonable for the *firm* to undertake proactively a redress or remediation exercise, which may include contacting *customers* who have not complained.

1.3.7      R      (1) A *firm* must appoint an individual at the *firm*, or in the same group as the *firm*, to have responsibility for oversight of the *firm's* compliance with *DISP* 1.

(2) The individual appointed must be carrying out a governing function at the *firm* or in the same group as the *firm*.

1.3.8      G      *Firms* are not required to notify the name of the individual to the *FSA* or the *Financial Ombudsman Service* but would be expected to do so promptly on request. There is no bar on a *firm* appointing different individuals to have the responsibility at different times where this is to accommodate part-time or flexible working.

...

1.9.2      G      The records of the measures taken for resolution of *complaints* may be used to assist with the collection of management information pursuant to *DISP* 1.3.3BG(1) and regular reporting to the *senior personnel* pursuant to *DISP* 1.3.3BG(6).

**Part 3: Comes into force on 1 January 2012**

3.7.4      R      The maximum money award which the *Ombudsman* may make is ~~£100,000~~ £150,000.

**TP Transitional provision**

(1)	(2) Material provision to which transitional	(3)	(4) Transitional provision	(5) Transitional provision: dates	(6) Handbook provision: coming
-----	--	-----	----------------------------	-----------------------------------	--------------------------------

	provision applies			in force	into force
...					
28	<u>DISP 3.7.4R</u>	<u>R</u>	For a <i>complaint</i> referred to the <i>Financial Ombudsman Service</i> before 1 January 2012 the maximum money award which the <i>Ombudsman</i> may make is £100,000.	From 1 January 2012	1 January 2012

**Part 4A: Comes into force on 1 July 2012**

~~Respondents with two stage complaints procedures~~

1.6.5 R ~~If, within eight weeks of receiving a *complaint*, the *respondent* sends the complainant a written response which:~~

- ~~(1) offers redress or remedial action (whether or not it accepts the *complaint*) or rejects the *complaint* and gives reasons for doing so;~~
- ~~(2) informs the complainant how to pursue his *complaint* with the *respondent* if he remains dissatisfied;~~
- ~~(3) refers to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *respondent's* response; and~~
- ~~(4) indicates it will regard the *complaint* as closed if it does not receive a reply within eight weeks.~~

~~the *respondent* is not obliged to continue to comply with *DISP 1.6.2R* unless the complainant indicates that he remains dissatisfied, in which case, the obligation to comply with *DISP 1.6.2R* resumes. [deleted]~~

1.6.6 R ~~If the complainant takes more than a week to reply to a written response of the kind described in *DISP 1.6.5R*, the additional time in excess of a week will not count for the purposes of the time limits in *DISP 1.6.2R* or the *complaints reporting rules*. [deleted]~~

1.6.6A G The information regarding the *Financial Ombudsman Service* required to be provided in responses sent under the *complaints time limit rules* (*DISP 1.6.2R*, and *DISP 1.6.4R* and ~~*DISP 1.6.5R*~~) should be set out prominently within the text of those responses.

...

- 1.6.7 G It is expected that within eight weeks of their receipt, almost all *complaints* to a *respondent* will have been substantively addressed by it through a *final response* or response as described in *DISP* 1.6.4R or ~~*DISP* 1.6.5R.~~

**Part 4B: Comes into force on 1 July 2012**

- 1.10.3 G For the purpose of *DISP* 1.10.2R, when completing the return, the *firm* should take into account the following matters.

- (1) ...
- (2) Under *DISP* 1.10.2R(3)(a), a *firm* should report any *complaint* to which it has given a response which upholds the *complaint*, even if any redress offered is disputed by the complainant. For this purpose, 'response' includes a response under the complainant's written acceptance rule (*DISP* 1.6.4R), ~~the two-stage complaints procedures rule (*DISP* 1.6.5R) (unless a *final response* was sent later)~~ and a *final response*. Where a *complaint* is upheld in part or where the *firm* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, a *firm* should treat the *complaint* as upheld for reporting purposes. However, where a *firm* rejects a *complaint*, yet chooses to make a goodwill payment to the complainant, the *complaint* should be recorded as 'rejected'.

- (3) ...

...

- 1.10.7 R A closed *complaint* is a *complaint* where:

- (1) the *firm* has sent a *final response*; or
- (2) the complainant has indicated in writing acceptance of the *firm's* earlier response under *DISP* 1.6.4R or ~~...~~
- (3) ~~for a *firm* which operates a two-stage complaints procedure, the complainant has not indicated that he remains dissatisfied within eight weeks of the response sent by the *firm* under *DISP* 1.6.5R.~~

...

- 1.10.8 G ~~If a *complaint* is reported as closed under *DISP* 1.10.2R(2) because the complainant has not replied to the *firm* within eight weeks of a written response which meets the requirements in *DISP* 1.6.5R, the *firm* may treat the date of that response as the date when the *complaint* was closed for the purposes of the reporting requirements in *DISP* 1.10.2R(2). [deleted]~~



...

1 Annex 1R Illustration of the reporting requirements, referred to in DISP 1.10.1R

**Complaints Return (DISP 1 Ann 1R)**

...

**NOTES ON THE COMPLETION OF THIS RETURN**

...

**Complaints opened**

~~*Firms operating the two-stage process (DISP 1.6.5R) may decide to re-open a closed complaint after more than eight weeks from the complainant's receipt of its non-final response where the complainant has indicated he remains dissatisfied. These re-opened complaints should be reported in this return as new complaints.*~~

**TP Transitional provisions**

(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
...					
29	<u>DISP 1.10.2R and DISP 1 Annex 1R</u>	R	<u>Where a firm reports information on any complaints closed under a two-stage procedure before 1 July 2012, the rules and guidance in DISP 1.6.6R, DISP 1.10.3G(2), DISP 1.10.7R(3) and DISP 1.10.8R and DISP 1 Annex 1R apply as they stood on 30 June 2012.</u>	<u>1 July 2012 to 31 December 2012</u>	<u>1 August 2009</u>

**HANDBOOK ADMINISTRATION (NO 22) INSTRUMENT 2011****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 on 1 July 2011.

**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)
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex A
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C

**Amendments to material outside the Handbook**

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

**Citation**

- F. This instrument may be cited as the Handbook Administration (No 22) Instrument 2011.

By order of the Board  
23 June 2011

**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.

**TP 29 Liquid assets buffer scalar: simplified ILAS BIPRU firms**

...

Transitional provisions

- 29.3 R A *simplified ILAS BIPRU firm* falling into BIPRU TP 29.1 must ensure that:
- (1) at all times between 1 October 2010 and ~~28~~ 29 February 2012, its liquid assets buffer is no less than 30% of the amount of its *simplified buffer requirement*;

...

**Annex B**

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

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

- 2.4.1 G Representatives or appointees of the *FSA* (which may include individuals engaged by a market research firm) may approach a *firm*, its agents or its *appointed representatives* in the role of potential retail consumers ~~with any authorisation under the Regulation of Investigatory Powers Act 2000 that is considered appropriate~~. This is known as ‘mystery shopping’.

In **SUP 16 Annex 24R (Data items for SUP 16.12)**, the following data items are deleted and replaced in each case by “[deleted]”. The deleted text is not shown.

- FSA020
- FSA021
- FSA022
- FSA023
- FSA024
- FSA025
- FSA026

In **SUP 16 Annex 25G (Guidance notes for data items in SUP 16 Annex 24R)**, the guidance notes relating to the following data items are deleted and replaced in each case by “[deleted]”. The deleted text is not shown.

- FSA020
- FSA021
- FSA022
- FSA023
- FSA024
- FSA025
- FSA026

Amend the following as shown.

**TP 1.6 Electronic Money Transitional Provision**

(1)	(2) Material to which the transitional provision	(3)	(4) Transitional provision	(5) Transitional provisions: dates in force	(6) Handbook provision: coming into
-----	--	-----	----------------------------	---	-------------------------------------

	applies				force
1	...				
<u>2</u>	<u>The changes to SUP 16 Annex 24R and SUP 16 Annex 25G set out in the Handbook Administration (No 22) Instrument 2011</u>	<u>R</u>	<u>In relation to a person deemed to have been granted authorisation by virtue of regulation 74 of the <i>Electronic Money Regulations</i>, the changes referred to in column (2) do not apply and the provisions of SUP, as they were in force as at 29 April 2011, will apply for as long as that person is deemed to be authorised by virtue of regulation 74 of the <i>Electronic Money Regulations</i>.</u>	<u>Indefinitely</u>	<u>1 July 2011</u>

Annex C

**Amendments to the Decision Procedure and Penalties manual (DEPP)**

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

2.5.2 G ... Similarly, in enforcement cases the *RDC* might take the decision to give a ~~warning notice~~ warning notice, but the decision to give a *decision notice* could be taken by the *settlement decision makers* on the basis that the *person* concerned does not contest the action proposed (see *DEPP* 5).

...

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

...

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

...

Step 2 – the seriousness of the ~~market abuse~~ market abuse

6.5C.2 G ...

## Annex D

### Amendments to the Enforcement Guide (EG)

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

1.8 The material in this guide does not form part of the FSA Handbook and is not ~~guidance~~ guidance on ~~rules~~ rules, but it is ‘general guidance’ as defined in section 158 of the *Act*. ...

...

2.5 Other than in the area of a *firm’s* failure to satisfy the FSA’s *Threshold Conditions* for authorisation (as to which, see paragraph 2.11), the selection method for cases involving *firms* and *approved persons*, *market abuse* and listing matters (for example, breaches of the listing, prospectus or disclosure ~~rules~~ rules) occurs at two main levels:

...

...

2.18 The FSA’s approach to regulation involves a combination of high-level principles and detailed ~~rules~~ rules and ~~guidance~~ guidance. While this broad structure is both necessary and desirable, the FSA is moving towards a more principles-based approach. This is because the FSA believes an approach that is based less on detailed ~~rules~~ rules and that focuses more on outcomes will allow it to achieve its *regulatory objectives* in a more efficient and effective way. ...

...

2.20 ... This has sometimes been described as the “reasonable predictability test” or “condition of predictability”, but it would be wrong to think of this as a legal test to be met in deciding whether there has been a breach of FSA ~~rules~~ rules. ...

...

2.23 *Guidance* is not binding on those to whom the FSA’s *rules* apply. Nor are the variety of materials (such as case studies showing good or bad practice, FSA speeches, and generic letters written by the FSA to Chief Executives in particular sectors) published to support the ~~rules~~ rules and *guidance* in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant ~~rules~~ rules.

2.24 ... However, *guidance* does not set out the minimum standard of conduct needed to comply with a ~~rule~~ rule, nor is there any presumption that departing from *guidance* indicates a breach of a ~~rule~~ rule. If a *firm* has complied with the *Principles* and other ~~rules~~ rules, then it does not matter whether it has also complied with other material the FSA has issued.

...

2.29 ... The FSA does not regard adherence to Industry Guidance as the only means of complying with FSA ~~rules~~ rules and *Principles*. ...

2.30 Industry Guidance may be relevant to an enforcement case in ways similar to those described at paragraph 2.25. But the FSA is aware of the concern that ~~firms~~ firms must have scope to exercise their own judgement about what FSA ~~rules~~ rules require, and that Industry Guidance should not become a new prescriptive regime in place of detailed FSA ~~rules~~ rules. ...

...

2.35 The FSA attaches considerable importance to the timely submission by *firms* of reports required under FSA ~~rules~~ rules. ...

...

3.22 Some themes or issues are common to any discussion about the potential use or value of a report to the FSA. These include:

...

- (7) whether the investigation will be limited to ascertaining facts or will also include advice or opinions about breaches of FSA ~~rules~~ rules or requirements;

...

...

5.23 The FSA recognises the importance of consistency in its decision-making and that it must consider the approach previously taken to, say, the application of a particular ~~rule~~ rule or *Principle* in a given context. ...

...

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:

...

- (d) where there has been a contravention of the ~~Part VI rules~~ Part 6 rules, under section 91 of the *Act*;

...

- (2) It may impose a financial penalty:

...



- (b) where there has been a contravention of the ~~Part 6 rules~~ Part 6 rules, under section 91 of the *Act*;

...

...

7.8 Chapter 6 of the General Provisions module of the FSA Handbook contains ~~rules~~ rules prohibiting a *firm* or *member* from entering into, arranging, claiming on or making a payment under a *contract of insurance* that is intended to have, or has, the effect of indemnifying any *person* against a financial penalty.

...

7.9 ~~Rule~~ Rule 1.5.33 in the FSA's Prudential Sourcebook for Insurers prohibits a *long-term insurer* (including a *firm* qualifying for *authorisation* under Schedule 3 or 4 to the *Act*), which is not a mutual, from paying a financial penalty from a long-term insurance fund.

...

7.15 A private warning is not intended to be a determination by the FSA as to whether the recipient has breached the FSA's ~~rules~~ rules. ...

...

8.14 ... Examples of the types of circumstances in which the FSA may cancel a *firm's Part IV permission* include:

...

- (7) repeated failures to comply with ~~rules~~ rules or requirements;

...

...

13.13 In addition, the FSA will consider, where relevant, factors including:

...

- (12) in the case of an *unauthorised company* or *partnership* carrying on a *regulated activity* as part of a larger enterprise, the extent to which the *company's* or *partnership's* survival can be anticipated without the continuance of the unauthorised ~~regulated activity~~ regulated activity;

...

...

13.29 Exceptionally, the FSA will consider making such a challenge using its powers in sections 356 and 357 of the *Act* after considering, in particular, the following

matters:

...

(5) the nature and complexity of the ~~regulated activity~~ *regulated activity*;

...

...

13.36 ... These circumstances may include:

(1) where the FSA has relevant information which it believes may not otherwise be drawn to the court's attention; especially where the FSA has been asked to attend for a particular purpose (for example to explain the operation of its ~~rules~~ *rules*);

...

...

14.7 ... General factors that the FSA may consider include, but are not limited to:

(1) the seriousness of the breach of *financial promotion* ~~rules~~ *rules* by the *operator* (the matters listed at paragraph 14.1(1)(a) to (f) may be relevant in this context); and

...

...

15.1 ... The FSA's power to disqualify auditors in breach of duties imposed by *trust scheme rules* also assist the FSA to achieve these *regulatory objectives* by ensuring that auditors fulfil the duties imposed on them by these ~~rules~~ *rules*.

...

15.3 *Actuaries* appointed by *firms* under ~~rule~~ *rule* 4.3.1 of the FSA's Supervision Manual are *approved persons* and as such will be subject to the FSA's *Statements of Principle* and *Code of Practice for Approved Persons*. ...

...

15.6 ... These may include, but are not limited to, the following factors:

(1) the nature and seriousness of any breach of ~~rules~~ *rules* and the effect of that breach: the ~~rules~~ *rules* are set out in *SUP 3* (Auditors) and *SUP 4* (Actuaries), and in the case of *firms* which are *ICVCs*, in *COLL 4* (Investor relations) and *COLL 7* (Suspension of dealings and termination of authorised funds). ... ;

...

...

16.8 When it decides whether to exercise its power to disapply an exemption from the *general prohibition* in relation to a *member*, the FSA will take into account all relevant circumstances which may include, but are not limited to, the following factors:

...

- (3) The extent of the *member's* compliance with ~~rules~~ rules made by the FSA under section 332(1) of the *Act* (Rules in relation to whom the general prohibition does not apply) or by the relevant *designated professional body* under section 332(3) of the *Act*;

...

...

19.5 ... As registrant-only societies are not subject to the ~~rules~~ rules imposed by the *Act* and by the FSA Handbook, the requirement that they submit annual returns provides an important check that the interests and investments of members, potential members, creditors and other interested parties are being safeguarded. ...

...

19.27 Under the *OEIC Regulations*, the FSA may also use its disqualification powers against auditors who fail to comply with a duty imposed on them under FSA ~~rules~~ rules. ...

...

19.62 ... Where a failure by a firm to meet the requirements of the Regulations also amounts to a breach of the FSA's ~~rules~~ rules, the FSA will consider all the circumstances of the case when deciding whether to take action for a breach of its ~~rules~~ rules or under the Regulations. ...

...

19.73 The *Money Laundering Regulations* add to the range of options available to the FSA for dealing with anti-money laundering failures. These options are:

...

- to take regulatory action against authorised firms for failures which breach the FSA's ~~rules~~ rules and requirements (for example, under Principle 3 or SYSC 3.2.6R or SYSC 6.1.1R); and

...

19.74 ... In the majority of cases where both the Regulations and the FSA ~~rules~~ rules apply and regulatory action, as opposed to criminal proceedings, is appropriate,

the FSA generally expects to continue to discipline authorised firms under the *Act*.

...

**APPENDIX TO THE GUIDELINES ON INVESTIGATION OF CASES OF  
INTEREST OR CONCERN TO THE FINANCIAL SERVICES AUTHORITY AND  
OTHER PROSECUTING AND INVESTIGATING AGENCIES**

...

1.4 The FSA has the power to take the following enforcement action:

...

- prohibit an individual from being employed in connection with a ~~regulated activity~~ *regulated activity*, under s.56 of the 2000 Act;

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS  
(REMUNERATION CODE) (NO 3) INSTRUMENT 2011**

**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 July 2011.

**Amendments to the Handbook**

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

**Citation**

- D. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Code) (No 3) Instrument 2011.

By order of the Board  
23 June 2011

## 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.

## TP 3 Remuneration code

...

- 5 G (1) ~~The FSA recognises that firms may require additional time to comply in full with the requirements of the *Remuneration Code* where they were not subject to the version of the *Remuneration Code* that applied before 1 January 2011. The FSA considers that a firm may be able to rely on the proportionality provisions in SYSC 4.1.2R and SYSC 19.3.3R to justify not complying with the requirements of the *Remuneration Code* relating to remuneration structures by 1 January 2011 provided it takes reasonable steps to comply as soon as reasonably possible and in any event by 1 July 2011.~~
- (2) ~~On a similar basis and on the same timescales set out in (1), a firm which was subject to the previous version of the *Remuneration Code* may be able to justify not complying with the requirement to pay 50% of variable remuneration in shares or other non-cash instruments (SYSC 19.3.47R). [deleted]~~

...

- 7 G (1) This guidance applies to a firm to which the *Remuneration Code* applies, where both of the following conditions are satisfied:
- (a) condition 1 is that the firm is a non-listed firm; and
- (b) condition 2 is that any parent undertaking of the firm is a non-listed undertaking.
- (2) The FSA considers that, where each of the conditions set out below is satisfied, a firm to which this guidance applies might (but will not necessarily) be able to rely on the proportionality provisions of SYSC 4.1.2R and the remuneration principles proportionality rule (of SYSC 19A.3.3R) to justify not complying with the requirement to pay at least 50% of variable remuneration in shares or other non-cash instruments (SYSC 19A.3.47R).
- (a) Condition 1 is that the firm is taking the necessary steps to comply with the requirement as soon as reasonably possible and, in any event, by 1 July 2012.

- (b) Condition 2 relates to the proportion of cash that would have been issued in *shares* or other non-cash instruments had SYSC 19A.3.47R been complied with (“relevant cash”). The relevant cash should not be paid at the point in time that the *shares* or other non-cash instruments would have vested. This is because *shares* or other non-cash instruments continue to have risk-alignment features following vesting due to the requirement for the *firm* to apply an appropriate retention policy (SYSC 19A.3.47R(2)). Instead, the *firm* should pay the relevant cash following a period of deferral, the length of which should mirror the retention policy that would have been applied had SYSC 19A.3.47R been complied with. Where the relevant cash is already subject to deferral in accordance with SYSC 19A.3.49R, this period of deferral should be added to the period determined under SYSC 19A.3.49R. The relevant cash should be subject to performance adjustment in accordance with Remuneration Principle 12(h) (SYSC 19A.3.51R to SYSC 19A.3.53G) until it vests.
- (c) Condition 3 is that the *firm* has adopted and is maintaining specific and effective arrangements, processes and mechanisms to manage the risks raised by its non-compliance with SYSC 19A.3.47R.
- (3) The *guidance* in (1) to (2) ceases to have effect on 1 July 2012. As a result this *guidance* does not apply to *remuneration* which vests on or after 1 July 2012 (including *remuneration* awarded before 1 July 2012, but where deferral under SYSC 19A.3.49R leads to it vesting on or after 1 July 2012).

**FEES (MISCELLANEOUS AMENDMENTS AND FINANCIAL OMBUDSMAN  
SERVICE RULES) (NO 2) INSTRUMENT 2011**

**Powers exercised by the Financial Ombudsman Service<sup>1</sup>**

A. The Financial Ombudsman Service Limited makes this instrument:

- (1) the rules and guidance relating to the payment of fees under the Compulsory Jurisdiction;
- (2) the rules and guidance for licensees relating to payment of fees under the Consumer Credit Jurisdiction; and
- (3) the standard terms for VJ participants relating to the payment of fees under the Voluntary Jurisdiction;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (a) paragraph 8 (Guidance) of Schedule 17;
- (b) paragraph 15 (Fees) of Schedule 17;
- (c) paragraph 16C (Fees) of Schedule 17; and
- (d) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

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

**Powers exercised by the Financial Services Authority<sup>1</sup>**

C. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:

- (1) the Act:
  - (a) section 156 (General supplementary powers);
  - (b) section 157(1) (Guidance);
  - (c) section 234 (Industry funding);
  - (d) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
  - (e) paragraph 12(1) (Funding of the relevant costs by authorised persons or payment service providers) of Part 2 of Schedule 1A (Further provision about the Consumer Financial Education Body);
- (2) the following provisions of the Payment Services Regulations 2009 (SI 2009/209):

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<sup>1</sup> (a) The new text in FEES 5.5A is solely made by the Financial Ombudsman Service.

(b) Changes to existing rules are made by whichever of the Financial Services Authority or Financial Ombudsman Service made the rule being changed or deleted.

(c) All other changes are made by the Financial Services Authority.



- (a) regulation 92 (Costs of supervision); and
  - (b) regulation 93 (Guidance); and
- (3) the following provisions of the Electronic Money Regulations 2011 (SI 2011/99):
- (a) regulation 59 (Costs of Supervision); and
  - (b) regulation 60 (Guidance).
- D. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

### **Commencement**

- E. This instrument comes into force on 1 July 2011.

### **Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

### **Citation**

- G. This instrument may be cited as the Fees (Miscellaneous Amendments and Financial Ombudsman Service Rules) (No 2) Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited  
22 June 2011

By order of the Board of the Financial Services Authority  
23 June 2011

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

*electronic money issuer* ...  
(2) (in *DISP* and *FEES 5.5A*) as in (1) but:  
...

## Annex B

### 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

- 1.1.1 G *FEES* applies to all *persons* required to pay a fee or levy under a provision of the *Handbook*. The purpose of this chapter is to set out to whom the *rules* and *guidance* in *FEES* apply. *FEES* 2 (General Provisions) contains general provisions which may apply to any type of fee payer. *FEES* 3 (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example various application fees (including those in relation to authorisation, variation of *Part IV permission*, *listing* and the Basel Capital Accord) and fees relating to certain notifications and document vetting requests. *FEES* 4 (Periodic fees) covers all periodic fees and transaction reporting fees. *FEES* 5 (Financial Ombudsman Service Funding) relates to *FOS* levies (in *FEES* 5.1) and case fees (in *FEES* 5.5A). ~~and *FEES* 6 (Financial Services Compensation Scheme Funding) relates to the *FSCS* levy. *FEES* 7 relates to the *CFEB* levy.~~
- 1.1.2 R This manual applies in the following way:  
...  
*FEES* 1, 2 and 7 do not apply to an *incoming EEA firm* or an *incoming Treaty firm* that has not established a *branch* in the *United Kingdom*.  
The application statement at *FEES* 1.1.2R(3) does not apply to *FEES* 5.5A, *FEES* 5 Annex 2R or *FEES* 5 Annex 3R.
- 1.1.3 G The application of *FEES* 5.5A and *FEES* 5 Annex 3R is set out in *FEES* 5.5A.1R. The relevant provisions of *FEES* 5 and *FEES* 2 are applied to *VJ participants* by the *standard terms* (see *DISP* 4).  
...
- 2.1.1 R Except to the extent referred to in *FEES* 2.1.1AR, ~~This~~ this chapter applies to every *person* who is required to pay a fee or share of a levy to the *FSA*, *FOS Ltd* or *FSCS*, as the case may be, by a provision of the *Handbook*.
- 2.1.1A R This chapter does not apply in relation to *FEES* 5.5A, *FEES* 5 Annex 2R or *FEES* 5 Annex 3R.  
...
- 2.1.4 G The purpose of this chapter is to set out the general provisions applicable to those who are required to pay fees or levies to the *FSA*, ~~case fees to the~~

~~FOS Ltd~~ or a share of the FSCS levy.

- 2.1.5 G Paragraph 17 of Schedule 1 to and section 99 of the *Act*, regulation 92 of the *Payment Services Regulations* and regulation 59 of the *Electronic Money Regulations* enable the FSA to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the FSCS levy, FOS levies ~~and case fees~~ and CFEB levies are set out in FEES 6.1, FEES 5.2 and FEES 7.1.4G respectively. Case fees payable to the FOS Ltd are set out in FEES 5.5A. Fee-paying payment service providers and fee-paying electronic money issuers are not required to pay the FSCS levy but are liable for FOS levies.

...

- 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)), FOS levy ~~or case fee~~, 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:

...

...

- 2.2.2 G The FSA, (for periodic fees, FOS and FSCS levies and CFEB levies), ~~and the FOS Ltd (for FOS case fees)~~, expect to issue invoices at least 30 days before the date on which the relevant amounts fall due. ~~FOS case fees are invoiced on a monthly basis.~~ Accordingly it will generally be the case that a person will have at least 30 days from the issue of the invoice before an administrative fee becomes payable.

...

- 2.2.3 G Paragraph 17(4) and paragraph 19B of Schedule 1 to and section 99(5) of the *Act* permit the FSA to recover fees (including fees relating to *payment services*, the issuance of *electronic money* and, where relevant, FOS levies and CFEB levies), and section 213(6) permits the FSCS to recover shares of the FSCS levy payable, as a debt owed to the FSA and FSCS respectively, and the FSA and the FSCS, as relevant, will consider taking action for recovery (including interest) through the civil courts. ~~Also, the FOS Ltd (in respect of case fees) may take steps to recover any money owed to it (including interest).~~

- 2.2.4 G In addition, the FSA may be entitled to take regulatory action in relation to the non-payment of fees, FOS levies and CFEB levies. The FSA may also take regulatory action in relation to the non-payment of ~~FOS case fees or a share of the FSCS levy~~, after reference of the matter to the FSA by ~~the FOS Ltd or the FSCS respectively~~. What action (if any) that is taken by the FSA will be decided upon in the light of the particular circumstances of the case.

...

2.3.1 R If it appears to the *FSA*, or the *FSCS* (in relation to any *FSCS* levy only) ~~or the *FOS Ltd* (in relation to any *FOS* case fee only)~~, that in the exceptional circumstances of a particular case, the payment of any fee, *FSCS* levy, *FOS* levy or *CFEB* levy would be inequitable, the *FSA*, or the *FSCS* ~~or the *FOS Ltd*~~, as relevant, may (unless *FEES* 2.3.2BR applies) reduce or remit all or part of the fee or levy in question which would otherwise be payable.

2.3.2 R If it appears to the *FSA*, or the *FSCS* (in relation to any *FSCS* levy only) ~~or the *FOS Ltd* (in relation to any *FOS* case fee only)~~, that in the exceptional circumstances of a particular case to which *FEES* 2.3.1R does not apply, the retention by the *FSA*, the *FSCS*, ~~the *FOS Ltd*~~ or the *CFEB*, as relevant, of a fee, *FSCS* levy, *FOS* levy or *CFEB* levy which has been paid would be inequitable, the *FSA*, the *FSCS*, ~~the *FOS Ltd*~~ or the *CFEB*, may (unless *FEES* 2.3.2BR applies) refund all or part of that fee or levy.

...

#### Application

5.1.1 R ~~This chapter applies~~ Rules and guidance made by the *FSA* in this chapter apply to:

- (1) every *firm* which is subject to the *Compulsory Jurisdiction*, ~~and (apart from *FEES* 5.3, 5.4 and 5.8) every *licensee* which is subject to the *Consumer Credit Jurisdiction* of the *Financial Ombudsman Service*; and~~
- (2) every other *person* who is ~~subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*.~~

5.1.1-A G Whilst no rule made by the *FSA* in this chapter applies to *licensees* subject to the *Consumer Credit Jurisdiction* or to *VJ participants*, some of the *guidance* may do. The application of rules made by the *FOS Ltd* in this chapter is set out in *FEES* 5.5A and described in *FEES* 5.1.2AG.

5.1.1A R A reference to "*firm*" in this chapter includes a reference to a *fee-paying payment service provider* and *fee-paying electronic money issuer* ~~except in *FEES* 5.5 and where "*firm*" is used elsewhere in this chapter in connection with the obligation to pay case fees.~~

5.1.1B R *FEES* 5.1.1.AR does not apply to *FEES* 5.5A or *FEES* 5 Annex 2R or Annex 3R unless otherwise stated in rules made by the *FOS Ltd*.

5.1.2 G ~~The relevant provisions of *FEES* 5 are applied to *VJ participants* by the *standard terms* (see *DISP* 4). The rules set out in the table under *FEES* 5.1.2AG are made by the *FOS Ltd*. All other *FEES* 5 rules are made by the *FSA*.~~

5.1.2A G Table of *FEES* 5 rules made by the *FOS Ltd*

<u>FEES 5 rules made by the FOS Ltd</u>	<u>Description</u>
<u>FEES 5.5A</u>	<u>Rules relating to case fees</u>
<u>FEES 5 Annex 2R</u>	<u>Annual Levy Payable in Relation to the Voluntary Jurisdiction</u>
<u>FEES 5 Annex 3R</u>	<u>Case Fees Payable</u>

- 5.1.3 G ~~References in this chapter to “firms” are to be construed, where relevant, as including:~~
- ~~(1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints* (see Transitional Provisions 6 and 7 of *DISP*); and~~
  - ~~(2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.~~
- ~~[deleted]~~
- 5.1.3A G ~~References in this chapter to *licensees* are to be construed, where relevant, as a result of section 226A of the *Act*, as including *persons* who were formerly *licensees* in respect of complaints about acts or omissions which occurred at the time when they were *licensees*, provided the complaint falls within a description specified in the *Consumer Credit Jurisdiction* rules in force at the time of the act or omission. [deleted]~~
- 5.1.4 R ~~A *firm* which is exempt under *DISP* 1.1.12R is also exempt from *FEES* 5.1, 5.2, 5.3, 5.4 and to *FEES* 5.6.~~
- ...
- 5.1.6 R ~~A *firm* which becomes exempt under *FEES* 5.1.4 R during the course of a *financial year* is to be treated for the purposes of its contribution to the *general levy*, as a *firm* to which *FEES* 5.9 applies. [deleted]~~
- 5.1.6A G *Firms* which cease to be *authorised* and therefore subject to the *Compulsory Jurisdiction* part way through the year will not receive a refund of their *general levy* except in exceptional circumstances.
- ...
- 5.3.7 G Under the *standard terms*, *VJ participants* will be required to pay to *FOS Ltd* an amount calculated on a similar basis towards the costs of operating the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*, see *FEES* 5 Annex 2R. *FOS Ltd* will be responsible for invoicing and collecting this amount.

...

Delete all of FEES 5.5. The deleted text is not shown.

After FEES 5.5 [deleted] insert the following new section. The text is not underlined.

*[Editor's Note: FEES 5.5A in part replaces (with amendments) other provisions in FEES 5. To assist readers, the identity of the previous provision is shown in italics under the new provision.]*

## **5.5A Case fees**

### Application

- 5.5A.1  
5.1.1R
- R The requirements in *FEES 5.5A* apply to:
- (1) every *firm, payment service provider or electronic money issuer* which is subject to the *Compulsory Jurisdiction* and every *licensee* which is subject to the *Consumer Credit Jurisdiction* of the *Financial Ombudsman Service*; and
  - (2) every other *person* who is subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*.
- 5.5A.2
- G *DISP 4.2.6R* applies certain *rules* in *FEES* to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*'. As a result, *VJ participants* are required to pay the case fees set out in *FEES 5.5A.6R, FEES 5.5A.13R and FEES 5 Annex 3R*.
- 5.5A.3  
5.1.3G
- R References in *FEES 5.5A* to "*firms*" are to be construed, where relevant, as including:
- (1) in accordance with the *Ombudsman Transitional Order, unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints* (see *Transitional Provisions 6 and 7 of DISP*); and
  - (2) as a result of section 226 of the *Act, unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.
- 5.5A.4  
5.1.3AG
- G References in *FEES 5.5A* and *FEES 5 Annex 3R* to *licensees* are to be construed, where relevant as a result of section 226A (Consumer credit jurisdiction) of the *Act*, as including *persons* who were formerly *licensees* in respect of complaints about acts or omissions which occurred at the

time when they were *licensees*, provided the complaint falls within a description specified in the *Consumer Credit Jurisdiction* rules in force at the time of the act or omission.

#### Purpose

- 5.5A.5  
5.1.7G in  
part and  
5.1.13G
- R The purpose of *FEES 5.5A* is to set out the requirements on *firms*, *payment service providers*, *electronic money issuers*, *VJ participants* (through the *standard terms*) and *licensees* to pay case fees (invoiced and collected directly by the *FOS Ltd*) in order to fund the operation of the *Financial Ombudsman Service*. *FEES 5.5A* also provides for *unauthorised persons* to pay case fees to the *FOS Ltd* in respect of any *relevant complaints* which it handles.

#### Standard Case fee

- 5.5A.6  
5.5.1R
- R A *firm* or a *licensee* must pay to the *FOS Ltd* the standard case fee specified in *FEES 5 Annex 3R* in respect of each *chargeable case* relating to that *firm* or *licensee* which is closed by the *Financial Ombudsman Service*, unless a special case fee is payable or has been paid in respect of that case under *FEES 5.5A.13R* to *FEES 5.5A.22R*.
- 5.5A.7  
5.5.1AR
- R *FEES 5.5A.6R* applies to *payment service providers* and *electronic money issuers* in the same way as it applies to *firms*.
- 5.5A.8  
5.5.2G
- G The standard case fee, which will be subject to consultation each year, will be calculated by dividing the *annual budget* for the *Compulsory Jurisdiction*, less the amount to be raised by the *general levy*, by the estimated number of *chargeable cases* which the *Financial Ombudsman Service* expects to close in the relevant *financial year*.
- 5.5A.9  
5.5.2AG
- G For the purposes of the *Consumer Credit Jurisdiction*, the standard case fee, which will be subject to consultation each year, will be calculated by dividing the *annual budget* for the *Consumer Credit Jurisdiction*, less the amount to be raised by the sum determined by the *FOS Ltd* under section 234A (Funding by consumer credit licensees etc) of the *Act*, by the estimated number of *chargeable cases* which the *Financial Ombudsman Service* expects to close in the relevant *financial year*.
- 5.5A.10  
5.5.3R
- R A *credit union* which is subject to the *minimum levy* in an *industry block* is not required to pay a standard case fee in respect of *chargeable cases* relating to that *industry block*.
- 5.5A.11  
5.5.4R
- R Any *firm* falling into either *industry block 13* or *industry block 15* in *FEES 5 Annex 1R* is not required to pay the standard case fee in respect of *chargeable cases* relating to those *industry blocks*.
- 5.5A.12  
5.5.5G
- G The *firms* in *industry blocks 13* and *15* are cash plan health providers and small *friendly societies*. These arrangements have been made in respect of these *firms* to take account of the fact that the amount at issue is likely to be small relative to the case fee. Instead, the full unit cost of handling



complaints against these *firms* will be recovered through the *general levy* in accordance with the relevant tariff-base and no case fee will be payable. Similar arrangements have been made under *FEES 5.5A.10R* in respect of small *credit unions*.

Special case fees: complaints from small businesses

5.5A.13  
5.5.6R R A *firm* must pay to the *FOS Ltd* a special case fee, as specified in *FEES 5 Annex 3R* in respect of each *chargeable case* relating to that *firm* which is closed by the *Financial Ombudsman Service* and which was referred to the *Financial Ombudsman Service* by *eligible complainants* who fall within *DISP 2.7.3R(2)* or *DISP 2.7.6R(12)(a)*.

5.5A.14  
5.5.6AR R *FEES 5.5A.13R* applies to *payment service providers* and *electronic money issuers* in the same way it applies to *firms*.

Special case fees: firms which cease to be authorised, persons which cease to be payment service providers or electronic money issuers and persons which cease to be licensees

5.5A.15  
5.5.7R R A *firm* which ceases to be *authorised* must pay to the *FOS Ltd* a special case fee, as specified in *FEES 5 Annex 3R* in respect of each *chargeable case* relating to that *firm* which is closed by the *Financial Ombudsman Service* and which concerned an act or omission occurring when the *firm* was *authorised* and where the complaint was made after its *authorisation* ceased.

5.5A.16  
5.5.7AR R *FEES 5.5A.15R* applies to *persons* which cease to be *licensees* in the same way as it applies to *firms* which cease to be *authorised*.

5.5A.17  
5.5.7BR R *FEES 5.5A.15R* applies to *persons* which cease to be *payment service providers* or *electronic money issuers* in the same way as it applies to *firms* which cease to be *authorised*.

Special case fees: relevant complaints against persons who were subject to a former scheme

5.5A.18  
5.5.8R R An *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay to the *FOS Ltd* a special case fee as specified in *FEES 5 Annex 3R* in respect of each *chargeable case* relating to that *unauthorised person* which is closed by the *Financial Ombudsman Service*.

5.5A.19  
5.5.9G G Under the *Ombudsman Transitional Order*, the *FOS Ltd* can handle complaints about members of a *former scheme* which that scheme could have handled before *commencement*, even if the *unauthorised person* concerned does not become *authorised* by the *FSA* after that date. Where the *FOS Ltd* handles those complaints, the *unauthorised person* concerned will be required to pay a special case fee.

Special case fees for 2001/02

- 5.5A.20  
5.5.10R R A *firm* which was a member of *PIA* before *commencement* must pay to the *FOS Ltd* a special case fee, as specified in *FEES 5 Annex 3R*, in respect of each *chargeable case* relating to that firm received by the *Financial Ombudsman Service* after *commencement* and before 31 March 2002.
- 5.5A.21  
5.5.11R R *FEES 5.5A.20R* does not apply in relation to a *chargeable case* which relates to a complaint which proceeded or would have proceeded under a *former scheme* other than the *PIA Ombudsman scheme*.
- 5.5A.22  
5.5.12R R A *firm* which was not a member of a *former scheme* before the *commencement day* must pay to the *FOS Ltd* a special case fee, as specified in *FEES 5 Annex 3R*, in respect of each *chargeable case* which relates to business conducted by the firm after the *commencement day* and which is closed by the *Financial Ombudsman Service* before 31 March 2002.
- 5.5A.23  
5.5.14G G A *firm* which was, before *commencement*, a member of *PIA* and a *former scheme* other than the *PIA Ombudsman scheme* will not, on account of the exclusion in *FEES 5.5A.21R*, be required to pay the special case fee specified by *FEES 5.5A.20R* in respect of all *chargeable cases* relating to it, but only those which arise in respect of investment business matters which would have been eligible under the *PIA Ombudsman scheme*.

#### Case fee exemption

- 5.5A.24  
5.5.15R R Notwithstanding the above, a *firm, payment service provider, electronic money issuer* or *licensee* will only be liable for, and the *FOS Ltd* will only invoice for, the standard case fee or, as the case may be, the special case fee, in respect of the fourth and subsequent *chargeable cases* in any *financial year*.
- 5.5A.25  
5.5.16G G A case fee exemption provision was first applied in the financial year 1 April 2004 to 31 March 2005. For that financial year only, each authorised firm was invoiced for a standard case fee for the third and subsequent chargeable case received by the *Financial Ombudsman Service*, subject to the annual levy having been invoiced and paid by the firm within the *Financial Ombudsman Service's* normal credit terms. For the financial year commencing 1 April 2005 and for subsequent financial years, the case fee exemption provision contained in *FEES 5.5A.24R* applies. This provision is not retrospectively applicable to financial years prior to 1 April 2005.
- 5.5A.26  
5.1.4R R A *firm, payment service provider* or *electronic money issuer* which is exempt under *DISP 1.1.12R* is also exempt from *FEES 5.5A*.
- 5.5A.27  
5.1.4AR R A *firm, payment service provider* or *electronic money issuer* will only be exempt from *FEES 5.5A.28R* to *FEES 5.5A.30R*, as applicable, for any given *financial year* if it met the conditions in *DISP 1.1.12R* on 31 March of the immediately preceding *financial year*.

## Payment

- 5.5A.28  
5.7.2R R A *firm* or *licensee* must pay to the *FOS Ltd* any standard case fee or special case fee which it is liable to pay under *FEES* 5.5A.6R, 5.5A.13R, 5.5A.15R, 5.5A.18R, 5.5A.20R, or 5.5A.22R, as appropriate, in respect of *chargeable cases* for which it is invoiced by the *FOS Ltd* within 30 calendar *days* of the date when the invoice is issued by the *FOS Ltd*.
- 5.5A.29  
5.7.2AR R *FEES* 5.5A.28R applies to *payment service providers* and *electronic money issuers* in the same way it applies to *firms*.
- 5.5A.30  
5.7.3R R A *firm* or an *unauthorised person* which is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay any standard case fee or special case fee within 30 calendar *days* of the date when the invoice is issued by the *FOS Ltd*.

## Leaving the Financial Ombudsman Service

- 5.5A.31  
5.9.1R R Where a *firm* ceases to be *authorised* part way through a *financial year*:
- (1) it will remain liable to pay standard case fees in respect of *chargeable cases* against it which are closed by the *Financial Ombudsman Service* for the remainder of that *financial year*; and
  - (2) it must pay the special case fee specified under *FEES* 5.5A.15R in respect of any other *chargeable cases* against it which are closed by the *Financial Ombudsman Service*.
- 5.5A.32  
5.9.1AR R *FEES* 5.5A.31R applies to *persons* ceasing to be *licensees* or *payment service providers* or *electronic money issuers* part way through a *financial year* in the same way as it applies to *firms* which cease to be *authorised*.
- 5.5A.33  
5.9.2G G *Firms*, *payment service providers* and *electronic money issuers* will continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *authorised*, or cease to be *payment service providers* or *electronic money issuers*. *Firms*, *payment service providers* and *electronic money issuers* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which their *authorisation* ceased or, as the case may be, they ceased to be *payment service providers* or they cease to be *electronic money issuers*. The special case fee will apply to any complaint closed after the end of that year since the *firm* or *payment service provider* or *electronic money issuer* will no longer be contributing to the *general levy*.
- 5.5A.34  
5.9.3G G *Licensees* will also continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *licensees*. *Licensees* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service*

before the end of the year in which they ceased to be *licensees*. The special case fee will apply to any complaint closed after the end of that year since the *licensee* will no longer be contributing to any sum determined under section 234A of the *Act*.

Late payments and remission of case fees

- 5.5A.35 R *FEES* 2.2.1R applies as if a reference in that rule to the *FOS* levy is a reference to case fees payable under *FEES* 5.5A and a reference to the *FSA* is a reference to the *FOS Ltd*.
- 5.5A.36 G The *FOS Ltd* (in respect of case fees) may take steps to recover any money owed to it (including interest).
- 2.2.4G
- 5.5A.37 R *FEES* 2.3.1R and 2.3.2R applies as if a reference in those rules to the *FOS* levy is a reference to case fees payable under *FEES* 5.5A and a reference to the *FSA* is a reference to the *FOS Ltd*.

Amend the following as shown.

- 5.7.2 R ~~A firm or licensee must pay to *FOS Ltd* any standard case fee or special case fee which it is liable to pay under *FEES* 5.5.1R, *FEES* 5.5.6R, *FEES* 5.5.7R, *FEES* 5.5.8R, *FEES* 5.5.10R, or *FEES* 5.5.12R, as appropriate, in respect of chargeable cases for which it is invoiced by *FOS Ltd* within 30 calendar days of the date when the invoice is issued by *FOS Ltd*. [deleted]~~
- 5.7.2A R ~~*FEES* 5.7.2R applies to payment service providers in the same way it applies to firms. [deleted]~~
- 5.7.3 R ~~A firm or an unauthorised person who is subject to the *Compulsory Jurisdiction* in relation to a relevant complaint must pay any standard case fee or special case fee within 30 calendar days of the date when the invoice is issued by *FOS Ltd*. [deleted]~~
- ...
- 5.9.1 R ~~Where a firm ceases to be authorised part way through a financial year.....*Financial Ombudsman Service*. [deleted]~~
- 5.9.1A R ~~*FEES* 5.9.1R applies to persons ceasing to be licensees or payment service providers part way through a financial year in the same way as it applies to firms which cease to be authorised. [deleted]~~
- 5.9.2 G ~~*Firms* which cease to be authorised part way through the year will not receive a refund of their general levy except in exceptional circumstances..... or payment service provider will no longer be contributing to the general levy. [deleted]~~
- 5.9.3 G ~~*Licensees* will also continue to be liable for any case fees relating to chargeable cases closed by the *Financial Ombudsman Service* after they~~

~~cease to be licensees. Licensees will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which they ceased to be licensees. The special case fee will apply to any complaint closed after the end of that year since the licensee will no longer be contributing to any sum determined under section 234A of the Act. [deleted]~~

...

Annex C

**Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

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

- 4.2.6 R The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*':
- ...
- (7) ~~*FEES 5.5.1R*~~ *FEES 5.5A.6R* (standard case fee);
- (8) ~~*FEES 5.5.6R*~~ *FEES 5.5A.13R* (special case fee);
- (9) ~~*FEES 5.5.15R*~~ *FEES 5.5A.24R* (case fee exemption);
- ...
- (10) *FEES 5.7.1R*, ~~*5.7.2R to 5.7.4R*~~ *5.7.4R*, *5.5A.28R* and *5.5A.30R* (payments) but substituting, in *FEES 5.7.1R*, 'the *FOS Ltd*' for '*the FSA*' and 'annual levy specified in *FEES 5 Annex 2R*' for '*general levy*';
- ...

**Sch 4 Powers Exercised**

...

Sch 4.5 G The powers to make rules relating to the Ombudsman Scheme are shared between the *FSA* and the *FOS Ltd*. The *FOS Ltd*'s rules are subject to *FSA* consent or approval. The rules made exclusively by the *FOS Ltd* are:

...	
<i>FEES 5</i>	<del><i>FEES 5.1.6R</i></del> <del><i>FEES 5.5</i></del> (all rules) <u><i>FEES 5.5A</i></u> (all rules) <del><i>FEES 5.7.2R</i></del> <del><i>FEES 5.7.3R</i></del> <del><i>FEES 5.9.1R</i></del> <i>FEES 5 Annex 2R</i> <i>FEES 5 Annex 3R</i>

...

**RETAIL DISTRIBUTION REVIEW (HOLLOWAY SICKNESS POLICIES)  
INSTRUMENT 2011**

**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 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)
Glossary of definitions	Annex A
Training and Competence sourcebook (TC)	Annex B
Conduct of Business sourcebook (COBS)	Annex C

**Citation**

- E. This instrument may be cited as the Retail Distribution Review (Holloway Sickness Policies) Instrument 2011.

By order of the Board  
23 June 2011

## 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.

*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* 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 *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 *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 *Holloway sickness policies* will meet the conditions in (i) within three months of the relevant assessment having been carried out;
  - (iii) the assessment in (ii) is carried out at least annually and on a more frequent basis if a change is made to the projection rates or pricing of the relevant *Holloway sickness policies*;
- (b) in the case of an intermediary who makes a *personal recommendation* to a *retail client* in relation to a *Holloway sickness policy*, the intermediary has received a written notification from the *firm* which underwrites the policy confirming that the conditions



in (a) have been met.

Amend the following definition as shown.

*retail investment adviser* an *employee* who carries on activities 2, 3, 4, 6, 12 and 13 in TC Appendix 1.1.1R (other than in relation to a *Holloway sickness policy* where the *Holloway policy special application conditions* are met).

## Annex B

## Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

<b>App 1.1</b>	<b>Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3</b>		
<b>App 1.1.1R</b>			
Activity	Products/Sectors	Is there an appropriate qualification requirement?	
...			
Advising	...		
	6	<i>Friendly Society tax-exempt policies (other than <u>Holloway sickness policies where the <u>Holloway policy special application conditions</u> are met</u>)</i>	Yes
	...		
...			

## Annex C

### Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

#### **6.1A Adviser charging and remuneration**

Application – Who? What?

...

6.1A.2A R This section does not apply to a *firm* when it makes a *personal recommendation to a retail client in relation to a Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

...

#### **6.1B Retail investment product 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 the firm's Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

...

#### **6.2A Describing advice services**

Application – Who? What?

...

6.2A.1A R This section does not apply to a *firm* when it makes a *personal recommendation to a retail client in relation to a Holloway sickness policy*, provided that the *Holloway policy special application conditions* are met.

**MONEY MARKET FUNDS INSTRUMENT 2011****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);
  - (2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
  - (3) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. The Annex to this instrument comes into force on 1 July 2011.

**Amendments to the Handbook**

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

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

**Citation**

- E. This instrument may be cited as the Money Market Funds Instrument 2011.

By order of the Board  
23 June 2011

## Annex A

### Amendments to the Glossary of definitions

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

<i>CESR's guidelines on a common definition of European money market funds</i>	the Committee of European Securities Regulators' guidelines on a common definition of European money market funds: 19 May 2010 (CESR/10-049). These are available at <a href="http://www.esma.europa.eu">www.esma.europa.eu</a>
<i>money market fund</i>	an <i>authorised fund</i> or, in the case of an <i>umbrella</i> , a <i>sub-fund</i> (if it were a separate fund) which satisfies the conditions in <i>COLL 5.9.5R</i> (Investment conditions: money market funds) and is not a <i>qualifying money market fund</i> .
<i>short-term money market fund</i>	an <i>authorised fund</i> or, in the case of an <i>umbrella</i> , a <i>sub-fund</i> (if it were a separate fund) which satisfies the conditions in <i>COLL 5.9.3R</i> (Investment conditions: short-term money market funds) and is not a <i>qualifying money market fund</i> .
<i>weighted average life</i>	(in accordance with the definitions section in <i>CESR's guidelines on a common definition of European money market funds</i> ) the weighted average of the remaining life (maturity) of each <i>security</i> held in a fund, meaning the time until the principal is repaid in full (disregarding interest and not discounting).
<i>weighted average maturity</i>	(in accordance with the definitions section in <i>CESR's guidelines on a common definition of European money market funds</i> ) a measure of the average length of time to maturity of all of the underlying <i>securities</i> in a fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the <i>security</i> must be repaid.

**Annex B****Amendments to the Conduct of Business sourcebook (COBS)**

In this Annex, underlining indicates new text.

...

Money market funds

- 13.3.3 **R** A key features document for a short-term money market fund, a money market fund or a qualifying money market fund must include a statement identifying it as such a fund and a statement that the authorised fund's investment objectives and policies will meet the conditions of the definition of short-term money market fund, money market fund or qualifying money market fund, as appropriate.

...

**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.

...

Table: contents of the prospectus

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

...		
Investment objectives and policy		
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :	
	...	
	(qa)	where the <i>authorised fund</i> is a <u>qualifying money market fund, short-term money market fund or money market fund</u> , a <del>statement to that effect</del> <u>identifying it as such a fund</u> and a statement that the <i>authorised fund's</i> investment objectives and policies will meet the conditions specified in the definition of <u>qualifying money market fund, short-term money market fund or money market fund</u> , as appropriate;
	...	
...		

...

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)

...

...		
Investment information		
(8)	a short description of the <i>scheme's</i> objectives including:	
	...	
	(b)	... ; <del>and</del>

	(c)	... ; <u>and</u>
	(d)	<u>where the scheme is a qualifying money market fund, short-term money market fund or money market fund, a statement identifying it as such a fund and a statement that the scheme's investment objectives and policies will meet the conditions in the definition of qualifying money market fund, short-term money market fund or money market fund, as appropriate;</u>
...		

...

Application

5.1.1 R ...

(4) COLL 5.9 applies to the authorised fund manager and the depositary of an authorised fund which is a UCITS scheme or a non-UCITS retail scheme operating as a money market fund or a short-term money market fund.

...

5.2.2 R This table belongs to COLL 5.2.1R

Rule	ICVC	ACD	Manager of an AUT	Depositary of an ICVC	Trustee of an AUT
...					
<u>5.2.9AR</u>		<u>x</u>	<u>x</u>		
5.2.10(R) (1)	...				
...					

...

Guidance on assessing liquidity and quality of money-market instruments

5.2.7I G ...

(2) Where an approved money-market instrument forms part of the scheme property of a qualifying money market fund, short-term money market fund or money market fund, the authorised fund manager should adequately monitor that the instrument continues to be of high quality, taking into account both its credit risk and its final maturity.



[**Note:** *CESR's UCITS eligible assets guidelines* with respect to article 4(2) of the *UCITS eligible assets Directive*. Paragraph 11 of *CESR's guidelines on a common definition of European money market funds*.]

...

5.2.9A R The ability to hold up to 10% of the *scheme property* in ineligible assets under *COLL 5.2.8R(4)* is subject to the following limitations:

- (1) for a *qualifying money market fund*, the 10% restriction is limited to *high quality money market instruments* with a maturity or residual maturity of not more than *397 days*, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than *60 days*;
- (2) for a *short-term money market fund* or a *money market fund*, the 10% restriction is limited to *high quality approved money-market instruments* as determined under *COLL 5.9.6R* (*High quality money market instruments*).

...

5.6.5C R Where a *scheme* is a *short-term money market fund* or a *money market fund*, the ability to hold up to 20% of *scheme property* in ineligible assets under *COLL 5.6.5R(2)* is limited to *high quality approved money-market instruments* as determined under *COLL 5.9.6R* (*High quality money market instruments*).

#### Money Market funds

5.6.5D R *Approved money-market instruments* held within a *non-UCITS retail scheme* which is a *short-term money market fund* or *money market fund* must also satisfy the criteria in *COLL 5.2.7FR* to *COLL 5.2.7HR* (*Approved money-market instruments*).

...

After COLL 5.7 insert the following new sections. The text is not underlined.

**5.8 Investment powers and borrowing limits for feeder UCITS [to follow]**

**5.9 Investment powers and other provisions for money market funds**

#### Application

5.9.1 R This section applies to the *authorised fund manager* and the *depository* of an *authorised fund* and to an *ICVC* which is a *UCITS scheme* or a *non-UCITS retail scheme* operating as a *money market fund* or a *short-term money market fund*.

## Explanation

- 5.9.2 G (1) This section contains *rules* on the types of permitted investments which *schemes* operating as *short-term money market funds* and *money market funds* may invest in. These *rules* are in addition to the requirements in *COLL 5.2* (for *UCITS schemes*) and *COLL 5.6* (for *non-UCITS retail schemes*).
- (2) The purpose of these *rules* is to protect *consumers* by ensuring that an *authorised fund* or *sub-fund* which describes itself as a ‘money market’ fund operates in a more restricted fashion, and aims to maintain the capital value of the fund and provide a return in line with money market rates.

## Investment conditions: short-term money market funds

- 5.9.3 R A *short-term money market fund* must satisfy the following conditions:
- (1) its primary investment objective must be to maintain the principal of the *scheme* and aim to provide a return in line with money market rates;
  - (2) it must invest only in *approved money-market instruments* and *deposits with credit institutions*;
  - (3) it must, on an ongoing basis, ensure the *approved money-market instruments* it invests in are of high quality, as determined by the *authorised fund manager*;
  - (4) it must:
    - (a) provide daily net asset value and price calculation and daily subscription and *redemption of units*; or
    - (b) where it is a *non-UCITS retail scheme* marketed solely through employee savings schemes and to a specific category of investor that is subject to divestment restrictions, provide weekly subscription and *redemption* opportunities to investors;
  - (5) it must limit its investment in *securities* to those with a residual maturity until the legal redemption date of less than or equal to 397 *days*;
  - (6) it must ensure that its *scheme property* has a *weighted average maturity* of no more than 60 *days*;
  - (7) it must ensure that its *scheme property* has a *weighted average life* of no more than 120 *days*;
  - (8) it must not take direct or indirect exposure to equity or *commodities*, including via *derivatives*;

- (9) it must only use *derivatives* in line with the money market investment strategy of the *scheme* and where using *derivatives* that give exposure to foreign exchange must do so only for the purposes of hedging;
- (10) it must only invest in non-base currency *securities* where its exposure is fully hedged;
- (11) it must limit its investment in other *collective investment schemes* as follows:
  - (a) if it is a *UCITS scheme*, *collective investment schemes* which satisfy the requirements of *COLL 5.2.13R*; or
  - (b) if it is a *non-UCITS retail scheme*, *collective investment schemes* which satisfy the requirements of *COLL 5.6.10R*;

which meet the definition of a “Short-Term Money Market Fund” in *CESR’s guidelines on a common definition of European money market funds*; and

- (12) it must aim to maintain a fluctuating net asset value or a constant net asset value.

[**Note:** box 2, paragraphs 1, 2, 3 (first sentence), 5, 6, 7, 8, 11, 12 and 13 of *CESR’s guidelines on a common definition of European money market funds*]

- 5.9.4 G For the purposes of *COLL 5.9.3R(12)*, a constant net asset value should be taken as referring to an unchanging face net asset value where income in the fund is accrued daily and can either be paid out to the *unitholder* or used to purchase more *units* in the *scheme*. An *authorised fund* with a constant net asset value should generally value *scheme property* on an amortised cost basis which takes the acquisition cost of the *security* and adjust this value for amortisation of premiums (or discounts) until maturity.

[**Note:** definition of “Constant NAV Money Market Funds” in *CESR’s guidelines on a common definition of European money market funds*]

Investment conditions: money market funds

- 5.9.5 R In addition to satisfying the conditions in *COLL 5.9.3R(1)*, (2), (3), (4), (8), (9) and (10), a *money market fund* must:
- (1) limit investment in *securities* to those with a residual maturity until the legal redemption date of less than or equal to two years, provided that the time remaining until the next interest rate reset date is less than or equal to 397 *days*. Floating rate securities should reset to a money market rate or index;
  - (2) ensure its *scheme property* has a *weighted average maturity* of no more than 6 *months*;

- (3) ensure its *scheme property* has a *weighted average life* of no more than 12 months;
- (4) limit its investment in other *collective investment schemes* as follows:
  - (a) if it is a *UCITS scheme*, *collective investment schemes* which satisfy the requirements of *COLL 5.2.13R* (Investment in collective investment schemes); or
  - (b) if it is a *non-UCITS retail scheme*, *collective investment schemes* which satisfy the requirements of *COLL 5.6.10R* (Investment in collective investment schemes);

which meet the definition of a “Money Market Fund” or a “Short-Term Money Market Fund” in *CESR’s guidelines on a common definition of European money market funds*; and

- (5) have a fluctuating net asset value.

[**Note:** box 3, paragraphs 1, 3, 4, 5, 6 and 7 of *CESR’s guidelines on a common definition of European money market funds*]

#### High quality money market instruments

- 5.9.6 R In determining whether *approved money-market instruments* are high quality in accordance with *COLL 5.9.3R(3)*, the *authorised fund manager* must take into account a range of factors including, but not limited to:
- (1) the credit quality of the instrument; an instrument will be considered not to be high quality unless it is:
    - (a) an *approved money-market instrument* which has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is of an equivalent quality as determined by the *authorised fund manager’s* internal rating process; or
    - (b) for a *money market fund*, an *approved money-market instrument* of investment grade quality which is issued or guaranteed by one of the following:
      - (i) a central authority of an *EEA State* or, if the *EEA State* is a federal state, one of the members making up the federation; or
      - (ii) a regional or local authority of an *EEA State*; or
      - (iii) the European Central Bank or a central bank of an *EEA State*; or

- (iv) the European Union or the European Investment Bank;
- (2) the nature of the asset class represented by the instrument;
- (3) for structured financial instruments, the *operational risk* and *counterparty risk* inherent within the structured financial transaction; and
- (4) the liquidity profile.

[**Note:** box 2, paragraphs 3 (second sentence) and 4 and box 3, paragraph 2 of *CESR's guidelines on a common definition of European money market funds*]

#### Calculating weighted average life and weighted average maturity

- 5.9.7 R (1) When calculating the *weighted average life* for *securities* (including structured financial instruments) for the purposes of *COLL 5.9.3R(7)* and *COLL 5.9.5R(3)*, the maturity calculation must be based on either:
- (a) the residual maturity of the instruments; or
  - (b) if the financial instrument embeds a put *option*, the exercise date of the put *option* if the following conditions are fulfilled at all times;
    - (i) the put *option* can be freely exercised by the *authorised fund manager* at its exercise date;
    - (ii) the strike price of the put *option* remains close to the expected value of the instrument at the next exercise date; and
    - (iii) the investment strategy of the *scheme* implies that there is a high probability that the *option* will be exercised at the next exercise date.
- (2) Where calculating the *weighted average life* for floating rate *securities* and structured financial instruments, the *security's* stated final maturity should be used and not the interest rate reset dates.
- (3) When calculating the *weighted average life* and *weighted average maturity* for the purposes of *COLL 5.9.3R(6)* and (7), and *COLL 5.9.5R(2)* and (3), an *authorised fund manager* must take into account the impact of *derivatives*, *deposits* and *efficient portfolio management*.

[**Note:** definition of “weighted average life” (second sentence) and box 2, paragraphs 9 and 10 of *CESR's guidelines on a common definition of European money market funds*]

#### CESR guidelines

- 5.9.8 G In addition to the parts of the *CESR's guidelines on a common definition of European money market funds* specifically referred to in this section, the *authorised fund managers* should have regard to the other parts of those guidelines when applying the *rules* in this section.

...

Amend the following as shown.

Sale and redemption: guidance

- 6.2.17 G ...
- (4) *CESR's guidelines on a common definition of European money market funds* recommend that, for a *UCITS scheme* which is a *short-term money market fund* or a *money market fund*, the settlement period in *COLL 6.2.16R(5)* should expire at the close of business on the *third business day*.

[Note: paragraph 14 of *CESR's guidelines on a common definition of European money market funds*]

...

Valuation points

- 6.3.4 R ...
- (6B) *UCITS schemes* operating as *short-term money market funds* must have at least one *valuation point* every *business day* at which the valuation is carried out on an amortised cost or mark to market basis.
- (6C) *Non-UCITS retail schemes* operating as *short-term money market funds* must have at least one *valuation point* every *business day* or, where the scheme is marketed solely through *employee savings schemes* or to a specific category of investors that is subject to *redemption* restrictions, at least one every week at which the valuation is carried out on an amortised cost or mark to market basis.
- (6D) *Money market funds* must value with the appropriate frequency as required in (6B) or (6C) on a mark to market basis.

...

...

Valuation and pricing guidance

- 6.3.6 G This table belongs to *COLL 6.3.2GG(2)(a)* and *COLL 6.3.3R* (Valuation).

...

1	The valuation of scheme property	
	...	
	(2B)	<u>Short-term money market funds may value approved money-market instruments on an amortised cost basis.</u>
	<b>[Note: paragraph 21 of CESR's guidelines on a common definition of European money market funds]</b>	
...		

...

Maintaining the value of a qualifying money market fund or a short-term money market fund

- 6.3.13 R The *authorised fund manager* of a *qualifying money market fund or a short-term money market fund* valuing *scheme property on an amortised cost basis* must:

...

- 6.3.14 G The *authorised fund manager* should advise the *depository* when the mark to market value of a *qualifying money market fund or a short-term money market fund* valuing *scheme property on an amortised cost basis* varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *authorised fund manager* of a *qualifying money market fund or short-term money market fund* should agree procedures with the *depository* designed to stabilise the value of the *scheme* in these events.

...

Restrictions on the use of the term 'money market fund'

- 6.9.8A R An authorised fund or a sub-fund may only be named or marketed as a 'money market fund' if it is:

- (1) a qualifying money market fund; or
- (2) a short-term money market fund; or
- (3) a money market fund.

**[Note: Box 1, paragraph 2 of CESR's guidelines on a common definition of European money market funds]**

...

Names of schemes, sub-funds, and classes of units

- 8.2.3 R (1) *The authorised fund manager must ensure that the name of the scheme, a sub-fund or a class of unit is not undesirable or misleading.*
- (2) *An authorised fund or a sub-fund may only be named or marketed as a ‘money market fund’ if it is:*
- (a) *a short-term money market fund; or*
- (b) *a money market fund.*

[Note: Box 1, paragraph 2 of CESR’s guidelines on a common definition of European money market funds]

...

Table: contents of qualified investor scheme prospectus

- 8.3.4 R This table belongs to COLL 8.3.2R.

...	
3	Investment objectives and policy
...	
(6)	<u>Where the scheme is a money market fund or a short-term money market fund, a statement identifying it as such a fund and a statement that the scheme’s investment objectives and policies will meet the conditions in the definition of money market fund or short-term money market fund, as appropriate.</u>
...	

...

Money market funds

- 8.4.4A R The authorised fund manager of a qualified investor scheme which operates as a money market fund or short-term money market fund must satisfy the conditions in COLL 5.9.3R (Investment conditions: short-term money market funds) and COLL 5.9.5R (Investment conditions: money market funds) respectively.

[Note: box 2 and box 3 of CESR’s guidelines on a common definition of European money market funds]

- 8.4.4B R Approved money-market instruments held within a qualified investor scheme which is a short-term money market fund or money market fund must also satisfy the criteria in COLL 5.2.7FR to COLL 5.2.7HR (Approved money-market instruments).



- ...
- 8.5.9 R ...
- (4A) Where a *scheme* operates as a *short-term money market fund*, the value of the *scheme property* must be determined either on an amortised cost or mark to market basis.
- (4B) Where a *scheme* operates as a *money market fund*, the value of the *scheme property* must be determined on a mark to market basis.
- (5) The Subject to (5A), the *scheme* must have a *valuation point* on each *dealing day*.
- (5A) Where a *scheme* operates as a *money market fund* or a *short-term money market fund* which is marketed solely through employee savings schemes or to a specific category of investors that are subject to *redemption* restrictions, the *scheme* may have at least one *valuation point* every week.
- ...

Maintaining the value of a short-term money market fund

- 8.5.9A R The *authorised fund manager* of a *short-term money market fund* which values *scheme property* on an amortised cost basis must:
- (1) carry out a valuation of the *scheme property* on a mark to market basis at least once a week and at the same *valuation point* used to value the *scheme property* on an amortised cost basis; and
- (2) ensure that the value of the *scheme property* when valued on a mark to market basis, does not differ by more than 0.5% from the value of the *scheme property* when valued on an amortised cost basis.
- [**Note:** paragraph 21 of *CESR's guidelines on a common definition of European money market funds*]
- 8.5.9B G The *authorised fund manager* should advise the *depository* when the mark to market value of a *short-term money market fund* valuing *scheme property* on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *authorised fund manager* of a *short-term money market fund* should agree procedures with the *depository* designed to stabilise the value of the *scheme* in these events.
- ...

**TP 1 Transitional Provisions**

## TP 1.1

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
<u>17</u>	[to follow]				
<u>18</u>	[to follow]				
<u>19</u>	[to follow]				
<u>20</u>	[to follow]				
<u>21</u>	<u>COLL 4.2.5R (3)(qa)</u>	<u>R</u>	Where a <i>scheme</i> meets the conditions in <u>COLL 5.9.3R (Investment conditions: short-term money market funds)</u> or <u>COLL 5.9.5R (Investment conditions: money market funds)</u> on 30 June 2011 an <i>authorised fund manager</i> need not include the statement in <u>COLL 4.2.5R (3)(qa)</u> .	<u>1 July 2011 to 31 December 2011</u>	<u>1 July 2011</u>
<u>22</u>	<u>COLL 4.6.8R(8)(d)</u>	<u>R</u>	Where a <i>scheme</i> meets the conditions in <u>COLL 5.9.3R</u> or <u>COLL 5.9.5R</u> on 30 June 2011 an <i>authorised fund manager</i> need not include the statement in <u>COLL 4.6.8R(8)(d)</u> .	<u>1 July 2011 to 31 December 2011</u>	<u>1 July 2011</u>
<u>23</u>	<u>COLL 5.9.3R and COLL 5.9.5R</u>	<u>R</u>	The conditions in <u>COLL 5.9.3R</u> and <u>COLL 5.9.5R</u> that a <i>money market fund</i> or a <i>short-term money</i>	<u>1 July 2011 to 31 December 2011</u>	<u>1 July 2011</u>

			<u>market fund</u> must satisfy do not apply to <u>investments acquired prior to 1 July 2011.</u>		
<u>24</u>	<u>COLL 8.3.4R(6)</u>	<u>R</u>	Where a <u>scheme</u> meets the conditions in <u>COLL 5.9.3R</u> or <u>COLL 5.9.5R</u> on 30 June 2011 an <u>authorised fund manager</u> need not include the statement in <u>COLL 8.3.4R(6)</u> .	<u>1 July 2011 to 31 December 2011</u>	<u>1 July 2011</u>

## UCITS IV DIRECTIVE INSTRUMENT 2011

### 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 145 (Financial promotion rules);
    - (d) section 156 (General supplementary powers);
    - (e) section 157(1) (Guidance);
    - (f) section 213 (The compensation scheme);
    - (g) section 214 (General);
    - (h) section 226 (Compulsory jurisdiction);
    - (i) section 247 (Trust scheme rules);
    - (j) section 340 (Appointment); and
    - (k) section 395 (The Authority’s procedures);
  - (2) paragraph 13(4) (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme) to the Act;
  - (3) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
  - (4) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 1 July 2011.

### 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
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B

General Provisions (GEN)	Annex C
General Prudential sourcebook (GENPRU)	Annex D
Prudential sourcebook for UCITS Firms (UPRU)	Annex E
Conduct of Business sourcebook (COBS)	Annex F
Supervision manual (SUP)	Annex G
Decision Procedure and Penalties manual (DEPP)	Annex H
Dispute Resolution: Complaints sourcebook (DISP)	Annex I
Compensation sourcebook (COMP)	Annex J
Collective Investment Schemes sourcebook (COLL)	Annex K
Regulated Covered Bonds Specialist sourcebook (RCB)	Annex L
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex M

### Material outside the Handbook

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

### Notes

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

### Citation

- G. This instrument may be cited as the UCITS IV Directive Instrument 2011.

By order of the Board  
1 July 2011

## 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>AFM</i>	<i>authorised fund manager.</i>
<i>collective portfolio management</i>	in relation to a <i>management company</i> , the activity of management of <i>UCITS schemes</i> , <i>EEA UCITS schemes</i> or other collective investment undertakings not covered by the <i>UCITS Directive</i> that the <i>firm</i> is permitted to carry on in accordance with article 6(2) of the <i>UCITS Directive</i> . This includes the functions mentioned in Annex II to that directive.
<i>counterparty risk</i>	(in <i>COLL</i> and in accordance with article 3(7) of the <i>UCITS implementing Directive</i> ) the risk of loss for a <i>UCITS</i> resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow.
<i>cross-border UCITS merger</i>	(in <i>COLL</i> and in accordance with article 2(1)(q) of the <i>UCITS Directive</i> ) a <i>UCITS merger</i> of two or more <i>UCITS</i> : <ul style="list-style-type: none"> <li>(a) at least two of which are established in different <i>EEA States</i>; or</li> <li>(b) established in the same <i>EEA State</i> into a newly constituted <i>UCITS</i> established in another <i>EEA State</i>;</li> </ul> but at least one of which is established in the <i>United Kingdom</i> .
<i>domestic UCITS merger</i>	(in <i>COLL</i> and in accordance with article 2(1)(r) of the <i>UCITS Directive</i> ) a <i>UCITS merger</i> between two or more <i>UCITS schemes</i> in relation to which a <i>UCITS marketing notification</i> has been made in respect of at least one of the relevant <i>schemes</i> .
<i>EEA key investor information document</i>	a <i>document</i> that: <ul style="list-style-type: none"> <li>(a) relates to an <i>EEA UCITS scheme</i>;</li> <li>(b) Complies with the requirements of the <i>KII Regulation</i>; and</li> <li>(c) is provided in a language stipulated by article 94(1)(b) of the <i>UCITS Directive</i>.</li> </ul>
<i>EEA UCITS scheme</i>	a <i>collective investment scheme</i> established in accordance with the

	<i>UCITS Directive</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> .
<i>feeder UCITS</i>	(in accordance with article 58(1) of the <i>UCITS Directive</i> ): <ul style="list-style-type: none"> <li>(a) a <i>UCITS scheme</i> or a <i>sub-fund</i> of a <i>UCITS scheme</i> which has been approved by the <i>FSA</i>; or</li> <li>(b) an <i>EEA UCITS scheme</i> or a <i>sub-fund</i> of an <i>EEA UCITS scheme</i> which has been approved by the <i>competent authority</i> of the <i>UCITS Home State</i>;</li> </ul> to invest at least 85% of its assets in the <i>units</i> of a single <i>master UCITS</i> .
<i>fund application rules</i>	(in <i>COLL</i> and <i>SUP</i> ) the <i>rules</i> set out in <i>COLL</i> 12.3.5R ( <i>COLL</i> fund rules under the management company passport: the fund application rules) that relate to the constitution and functioning of a <i>UCITS scheme</i> and that an <i>EEA UCITS management company</i> must comply with when acting as the <i>operator</i> of the <i>UCITS scheme</i> , whether from a <i>branch</i> in the <i>United Kingdom</i> or under the freedom to provide <i>cross border services</i> , as required by article 19(3) of the <i>UCITS Directive</i> .
<i>key investor information</i>	key information for investors on the essential elements of a <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> , as detailed in article 78 of the <i>UCITS Directive</i> and in the <i>KII Regulation</i> .
<i>key investor information document</i>	a short <i>document</i> containing <i>key investor information</i> for investors on the essential elements of a <i>UCITS scheme</i> , as detailed in <i>COLL</i> 4.7.2R (Key investor information).
<i>KII Regulation</i>	Commission Regulation (EU) No 583/2010, specifying the form and contents of <i>key investor information</i> , the text of which is reproduced in <i>COLL</i> Appendix 1EU.
<i>master-feeder agreement</i>	(in <i>COLL</i> ) a written agreement between the <i>management company</i> of a <i>master UCITS</i> and the <i>management company</i> of a <i>feeder UCITS</i> in accordance with <i>COLL</i> 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules).
<i>master UCITS</i>	(in accordance with article 58(3) of the <i>UCITS Directive</i> ) a <i>UCITS scheme</i> , an <i>EEA UCITS scheme</i> or a <i>sub-fund</i> of such a <i>scheme</i> where: <ul style="list-style-type: none"> <li>(a) at least one of its <i>unitholders</i> is a <i>feeder UCITS</i>;</li> <li>(b) it is not itself a <i>feeder UCITS</i>; and</li> <li>(c) it does not hold <i>units</i> of a <i>feeder UCITS</i>.</li> </ul>
<i>merging UCITS</i>	(in <i>COLL</i> ) in relation to a <i>UCITS merger</i> , the <i>UCITS scheme</i> , <i>EEA UCITS scheme</i> or <i>sub-fund</i> of such a <i>scheme</i> , that under the

	proposed arrangements will be transferring all its assets and liabilities to the <i>receiving UCITS</i> .
<i>Qualifying management company holding</i>	(in <i>COLL</i> ) a direct or indirect holding in a <i>management company</i> which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists; and for this purpose the voting rights referred to in articles 9 and 10 of the <i>Transparency Directive</i> must be taken into account.
<i>rebalancing of the portfolio</i>	(in <i>COLL</i> and in accordance with article 2(1) of the <i>UCITS implementing Directive No 2</i> ) means a significant modification of the composition of the <i>scheme property</i> of a <i>UCITS scheme</i> or the portfolio of an <i>EEA UCITS scheme</i> .
<i>receiving UCITS</i>	(in <i>COLL</i> ) in relation to a <i>UCITS merger</i> , the <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> or <i>sub-fund</i> of that <i>scheme</i> , whether it is an existing <i>scheme</i> (or a <i>sub-fund</i> of it) or one that is being formed for the purpose of that merger, which under the proposed arrangements will be receiving the assets and liabilities of one or more <i>merging UCITS</i> .
<i>risk limit system</i>	(in <i>COLL</i> and in accordance with article 40(2)(d) of the <i>UCITS implementing Directive</i> ) a documented system of internal limits concerning the measures used by a <i>management company</i> to manage and control the relevant risks for each <i>UCITS</i> it manages, taking into account all the risks which may be material to the <i>UCITS</i> , as referred to in the second paragraph of article 38(1) of the <i>UCITS implementing Directive</i> and ensuring consistency with the <i>UCITS</i> ' risk profile.
<i>synthetic risk and reward indicator</i>	(in <i>COLL</i> and in accordance with article 2(2) of the <i>UCITS implementing Directive No 2</i> ) a synthetic indicator within the meaning of article 8 of the <i>KII Regulation</i> .
<i>UCITS</i>	undertakings for collective investment in transferable securities that are established in accordance with the <i>UCITS Directive</i> .
<i>UCITS Home State</i>	the <i>Home State</i> of a <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> .
<i>UCITS implementing Directive</i>	Commission Directive (2010/43/EU) of the European Parliament and of the Council implementing Directive 2009/65/EC (UCITS IV) as regards certain provisions concerning organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a <i>depository</i> and a <i>management company</i> .
<i>UCITS implementing Directive No 2</i>	Commission Directive (2010/44/EU) of the European Parliament and of the Council implementing Directive 2009/65/EC (UCITS IV) as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure.



<i>UCITS marketing notification</i>	<p>(in <i>COLL</i>) a notification in respect of a <i>UCITS scheme</i>, for the purpose of <i>marketing units</i> in another <i>EEA State</i>, pursuant to:</p> <ul style="list-style-type: none"> <li>(a) paragraph 20B(5) (Notice of intention to market) of Schedule 3 (EEA Passport Rights) to the <i>Act</i>; or</li> <li>(b) article 46 of the Council Directive of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (No 85/611/EEC).</li> </ul>
<i>UCITS merger</i>	<p>(in <i>COLL</i> and in accordance with article 2(1)(p) of the <i>UCITS Directive</i>) a merger between one or more <i>UCITS schemes</i> or between one or more <i>UCITS schemes</i> and <i>EEA UCITS schemes</i> being an operation whereby:</p> <ul style="list-style-type: none"> <li>(a) one or more <i>merging UCITS</i>, on being dissolved without going into liquidation, transfers all of its assets and liabilities to an existing <i>receiving UCITS</i>, in exchange for the issue to its <i>unitholders</i> of <i>units</i> of the <i>receiving UCITS</i> and, if applicable, a cash payment not exceeding 10% of the net asset value of those <i>units</i> (a “merger by absorption”); or</li> <li>(b) two or more <i>merging UCITS</i>, on being dissolved without going into liquidation, transfer all of its assets and liabilities to a <i>receiving UCITS</i> which they form, in exchange for the issue to their <i>unitholders</i> of <i>units</i> of the <i>receiving UCITS</i> and, if applicable, a cash payment not exceeding 10% of the net asset value of those <i>units</i> (a “merger by formation of a new <i>UCITS</i>”); or</li> <li>(c) one or more <i>merging UCITS</i>, which continue to exist until the liabilities have been discharged, transfer its net assets to another <i>receiving UCITS</i>, and for this purpose the <i>merging UCITS</i> and the <i>receiving UCITS</i> may be <i>sub-funds</i> of the same <i>UCITS</i> (a “merger by <i>scheme of arrangement</i>”);</li> </ul> <p>but at least one of which is established in the <i>United Kingdom</i>.</p>
<i>UCITS Regulations 2011</i>	the Undertaking for Collective Investment in Transferable Securities Regulations 2011 (SI 2011/1613).
<i>UK UCITS management company</i>	a <i>management company</i> that is established in the <i>United Kingdom</i> and is <i>authorised</i> and regulated by the <i>FSA</i> .
Amend the following as shown.	
<i>asset management company</i>	a management company within the meaning of Article <del>1a(2)</del> <u>2(1)(b)</u> of the <i>UCITS Directive</i> , as well as an <i>undertaking</i> the registered

office of which is outside the *EEA* and which would require authorisation in accordance with Article ~~5(1)~~ 6(1) of the *UCITS Directive* if it had its registered office within the *EEA*.

*class*

...

(2) (in *COLL*):

- (a) a particular class of *units* of an *authorised fund*; or
- (b) all of the *units* relating to a single *sub-fund*; or
- (c) a particular class of *units* relating to a single *sub-fund*;  
or
- (d) in relation to an *EEA UCITS scheme*, any arrangement equivalent to (a), (b) or (c).

...

*client*

(1) ...

...

(b) “client” includes:

...

(iiiA) any person to whom *collective portfolio management services* are provided, irrespective of whether or not it is *authorised*;

...

*complaint*

...

(3) (in *DISP* 1.1, the complaints awareness rules only in relation to *collective portfolio management* and the *complaints handling rules* and the *complaints record rule* only in relation to *MiFID business and collective portfolio management*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

...

*control*

(1) (except in (2) and (2A)) ...

...

- (2A) (in relation to a *management company* carrying on *collective portfolio management*) control as defined in articles 1 and 2 of the Seventh Council Directive 83/349/EEC (The Seventh Company Law Directive).
- (3) (except in (2) and (2A)) ...
- (4) (except in (2) and (2A)) ...
- (5) (except in (2) and (2A)) ...
- ...
- covered bond*
- (1) (in accordance with Article ~~22(4)~~ 52(4) of the *UCITS Directive* and except for the purposes of the *IRB approach* or the *standardised approach* to credit risk) a bond that is issued by a *credit institution* which has its registered office in an *EEA State* and is subject by law to special public supervision designed to protect bondholders and in particular protection under which sums deriving from the issue of the bond must be invested in conformity with the law in assets which, during the whole period of validity of the bond, are capable of covering claims attaching to the bond and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.
- ...
- depository*
- (1) (except in *LR*):
- ...
- (ca) (in relation to an *EEA UCITS scheme*) the *person* fulfilling the function of a depository in accordance with article 2(1)(a) of the *UCITS Directive*;
- ...
- durable medium*
- (a) ...
- (b) ...
- (in relation to *MiFID* or equivalent *third country business* or *collective portfolio management*, if the relevant *rule* implements the *MiFID implementing Directive*, the *UCITS Directive*, the *UCITS implementing Directive* or the *UCITS implementing Directive No 2*) the instrument must be:
- ...

[**Note:** article 2(f) and Recital 20 of the *Distance Marketing*

*Directive*, article 2(12) of the *Insurance Mediation Directive*, and articles 2(2), 3(1) and 3(3) of the *MiFID implementing Directive*, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

<i>EEA firm</i>	(in accordance with paragraph 5 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) any of the following, if it does not have its relevant office in the <i>United Kingdom</i> :  ... (f) (from <del>13 February 2004</del> <u>1 July 2011</u> ) a <del>management company</del> <u>management company</u> (as defined in article 1(a) of the <i>UCITS Directive</i> which has been authorised under article 5 of that directive by its <i>Home State regulator</i> );  ...
<i>EEA simplified prospectus</i>	a marketing document which <del>contains information about an EEA simplified prospectus scheme</del> and meets the requirements of Article 28 of the <i>UCITS Directive</i> <u>the UCITS Directive (No 85/611/EEC)</u> (as at 30 June 2011).
<i>EEA simplified prospectus scheme</i>	<del>a UCITS scheme</del> <u>an EEA UCITS scheme</u> which is a <i>recognised scheme</i> under section 264 of the <i>Act</i> (Schemes constituted in other EEA States) and which is permitted by the laws and regulations of its <i>Home State</i> to market its <i>units</i> on the basis of an <i>EEA simplified prospectus</i> .
<i>EEA UCITS management company</i>	(as defined in article 1a (2) of the <i>UCITS Directive</i> ) <del>any incoming EEA firm, the regular business of which is the management of UCITS in the form of unit trusts or common funds or of investment companies (collective portfolio management of UCITS) or of both; this includes the functions mentioned in Annex II.</del>  <u>any incoming EEA firm that is a management company.</u>
<i>execution criteria</i>	the criteria set out in <i>COBS</i> 11.2.6R, that is:  ... (d) the characteristics of the <i>execution venues</i> to which that order can be directed; <u>and</u>  (e) <u>for a management company, the objectives, investment policy and risks specific to the UCITS scheme or EEA UCITS scheme, as indicated in its prospectus or instrument constituting the scheme.</u>

<i>execution venue</i>	for the purposes of the provisions relating to best execution in COBS 11.2 <u>and in COLL</u> , execution venue means ...
<i>Home State</i>	... <p>(10) <u>(in relation to a UCITS): the EEA State in which the unit trust, common fund or investment company is established and authorised under article 5 of the UCITS Directive.</u></p> <p>(a) <del>with regard to a UCITS constituted as a unit trust/common fund, the EEA State in which the management company's registered office is situated;</del></p> <p>(b) <del>with regard to a UCITS constituted as an investment company, the EEA State in which the investment company's registered office is situated.</del></p> <p>...</p>
<i>Home State regulator</i>	... <p>(2) (in relation to a UK firm <u>or UCITS scheme</u>) the FSA.</p> <p>...</p> <p>(5) <u>(in relation to an EEA UCITS scheme) the competent authority of the EEA State in which the scheme is authorised.</u></p>
<i>Host State</i>	... <p>(4) <u>(in relation to the UCITS Directive) the EEA State, other than the UCITS Home State, in which units of a UCITS are marketed in accordance with a notification made under article 93 of that directive.</u></p> <p>...</p>
<i>Host State regulator</i>	... <p>(4) <u>(in relation to an EEA UCITS scheme which is a recognised scheme) the FSA.</u></p> <p>(5) <u>(in relation to a UCITS that is the subject of a notification in accordance with article 93 of the UCITS Directive) the competent authority of an EEA State (other than the United Kingdom) in which units of the UCITS may be marketed to the public.</u></p>
<i>instrument</i>	...

<i>constituting the scheme</i>	<p>(ba) <u>(in relation to an EEA UCITS scheme) the fund rules or instrument of incorporation of such a scheme;</u></p> <p>(c) (in relation to a <i>collective investment scheme</i> other than an <i>authorised fund</i> or an <u>EEA UCITS scheme</u>) any instrument to which ...</p>
<i>key features scheme</i>	<p>a <i>scheme</i> that is not:</p> <p>(a) a <del>simplified prospectus</del> <u>UCITS scheme or an EEA UCITS scheme;</u></p> <p>...</p>
<i>liquidity risk</i>	<p>(1) <u>(in COLL and in accordance with article 3(8) of the UCITS implementing Directive) the risk that a position in a UCITS' portfolio cannot be sold, liquidated or closed out at limited cost in an adequately short timeframe and that the ability of the scheme to comply at any time with COLL 6.2.16R (Sale and redemption) or, in the case of an EEA UCITS scheme, article 84(1) of the UCITS Directive is thereby compromised.</u></p> <p>(2) (except in COLL) the risk that a <i>firm</i>, although solvent, either does not have available sufficient financial resources to enable it to meet its obligations as they fall due, or can secure such resources only at excessive cost.</p>
<i>management company</i>	<p><del>means a company as defined in article 1a(2) of Council Directive 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).</del></p> <p><u>(in accordance with article 2(1)(b) of the UCITS Directive) a company, the regular business of which is the management of UCITS in the form of unit trusts, common funds or investment companies (collective portfolio management), including, where permitted by its Home State regulator, the additional services referred to in article 6(3) of that directive.</u></p>
<i>manager</i>	<p>(1) (in relation to an AUT) the <u>firm, including, if relevant, an EEA UCITS management company,</u> which is the manager of the AUT in accordance with the <i>trust deed</i>.</p> <p>...</p>
<i>market risk</i>	<p>(1) <u>(in COLL and in accordance with article 3(9) of the UCITS implementing Directive) the risk of loss for a UCITS resulting from fluctuation in the market value of positions in the scheme's portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates,</u></p>

- equity and commodity prices or an issuer's credit worthiness.
- (2) (except in *COLL*) (in relation to a *firm*) the risks that arise from fluctuations in values of, or income from, assets or in interest or exchange rates.
- MiFID investment firm* ...
- ...
- (3) a *UCITS investment firm* (only when providing the services referred to in Article ~~5(3)~~ 6(3) of the *UCITS Directive* in relation to the *rules* implementing the articles of *MiFID* referred to in Article ~~5(4)~~ 6(4) of that Directive);
- ...
- non-directive firm* ...
- ...
- (c) a *management company* as defined in article ~~1a.2~~ 2(1)(b) of the *UCITS Directive*, authorised under that directive;
- ...
- operational risk* (1) (in *COLL* and in accordance with article 3(10) of the *UCITS implementing Directive*) the risk of loss for a *UCITS* resulting from inadequate internal processes and failures in relation to the people and systems of the *management company* or from external events, and it includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the *scheme*.
- (2) (except in *COLL*) (in accordance with Article 4(22) of the *Banking Consolidation Directive*) the risk of loss resulting from inadequate or failed internal processes, people and systems or from external events, including legal risk.
- participant firm* (1) (except in *FEES* 1 and *FEES* 6) a *firm* or *member* other than:
- (a) (in accordance with section 213(10) of the *Act* (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons) an *incoming EEA firm* which is:
- (i) a *credit institution*;
- (ii) a *MiFID investment firm*; or

- (iii) ~~a UCITS management company; [deleted]~~
- (iv) both (i) and (ii); or
- (v) an IMD insurance intermediary or an IMD reinsurance intermediary which is neither (i) or (ii);

in relation to its *passport activities*, unless it has *top-up cover* ~~(and in the case of a UCITS management company, only in relation to the services referred to in Article 5(3) of the UCITS Directive, that is managing investments (other than of a collective investment scheme), advising on investments or safeguarding and administering investments;~~

(aa ) (in accordance with section 213(10) of the Act (The compensation scheme) and regulation 2 of the Electing Participants Regulations (Persons not to be regarded as relevant persons) an incoming EEA firm which is a management company other than to the extent that it carries on the following activities from a branch in the United Kingdom or under the freedom to provide cross border services:

- (i) collective portfolio management for a UCITS scheme; or
- (ii) managing investments (other than of a collective investment scheme), advising on investments or safeguarding and administering investments (the services referred to in article 6(3) of the UCITS Directive), but only if it has top-up cover;

...

relevant person

...

(2) any of the following:

...

(d) a natural person who is directly involved in the provision of services to the *firm* or its *appointed representative* (or where applicable, *tied agent*) under an *outsourcing* arrangement or (in the case of a management company) a delegation arrangement to third parties, for the purpose of the provision by the *firm of regulated activities* or (in the case of a management company) collective portfolio



management.

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

*scheme of arrangement*

...

(b) ...

- (ii) *units* in the transferee *sub-fund* or one or more of the transferee *sub-funds*, to which the property is reattributed.

This arrangement includes an arrangement that constitutes a domestic UCITS merger or a cross-border UCITS merger.

*senior personnel*

- (1) those *persons* who effectively direct the business of the *firm*, which could include a *firm's governing body* and other *persons* who effectively direct the business of the *firm*.

- (2) (in relation to a *management company* and in accordance with article 3(4) of the *UCITS implementing Directive*) the *person* or *persons* who effectively conduct the business of the *management company*.

*simplified prospectus scheme*

- (a) ~~a *UCITS scheme* that is not a recognised scheme under section 264 of the *Act* (Schemes constituted in other EEA States); or~~

- (b) a *key features scheme* in respect of which a *simplified prospectus* has been, or will be, produced instead of a *key features document* (see COBS 13.1.3R(2)).

*sub-fund*

(a) ...

- (aa) (in relation to an *EEA UCITS scheme*) any part of that *scheme* that constitutes an investment compartment for the purposes of the *UCITS Directive*;

- (b) (in relation to a *collective investment scheme* that is not an *authorised fund* or an *EEA UCITS scheme*) any part of that *scheme*...

*supervisory function*

- (1) any function within a *common platform firm* that is responsible for the supervision of its *senior personnel*.

- (2) (in relation to a *management company* and in accordance with article 3(6) of the *UCITS implementing Directive*) the *relevant persons* or body or bodies responsible for the supervision of its *senior personnel* and for the assessment and periodic review of the adequacy and effectiveness of the risk management process and of

the policies, arrangements and procedures put in place to comply with its obligations under the UCITS Directive.

*UCITS Directive*

the European Parliament and Council Directive of 20 December 1985 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (No 85/611/EEC 2009/65/EC), as amended.

*UCITS firm*

a firm which:

- (a) is ~~the operator of a UCITS scheme~~ a management company, including where in addition the firm is also the operator of a collective investment scheme which is not a UCITS scheme; and
- (b) does not have a Part IV permission (or an equivalent permission from its Home State regulator) to carry on any regulated activities other than those which are in connection with, or for the purpose of, such schemes.

*UCITS investment firm*

a firm which:

- ~~(1)~~ is ~~the operator of a UCITS scheme~~ a management company
  - ~~(a)~~ (whether or not it is also the operator of other ~~schemes~~ collective investment schemes); and
  - ~~(2)~~ has a Part IV permission (or an equivalent permission from its Home State regulator) to manage ~~investments~~ investments where:
    - ~~(a)~~ the investments managed ~~managed~~ include one or more of the instruments listed in Section C of Annex 1 to MiFID; and
    - ~~(b)~~ the permission extends to activities permitted by ~~article 5(3)~~ article 6(3) of the *UCITS Directive* as well as those permitted by ~~article 5(2)~~ article 6(2).

*UCITS management company*

...

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

*UCITS scheme*

- (a) an authorised fund ~~whose instrument constituting the scheme contains a statement that it is a UCITS scheme~~ authorised by the FSA in accordance with the UCITS Directive:

- (i) with the sole object of collective investment in transferable securities or in other liquid financial instruments permitted by COLL 5.2 (General

investment powers and limits for UCITS schemes) of capital raised from the public and which operates on the principle of risk-spreading; and

(ii) with units which are, at the request of unitholders, repurchased or redeemed, directly or indirectly, out of the scheme's assets; and for this purpose action taken by or on behalf of a scheme to ensure that the stock exchange value of its units does not significantly vary from their net asset value is to be regarded as equivalent to that repurchase or redemption; or

(b) ~~an umbrella, that is a UCITS scheme~~ each of whose *sub-funds* would be a UCITS scheme if it had a separate *authorisation order*;

unless;

(c) ~~the scheme raises capital without promoting the sale of its units to the public within the EEA or any part of it; or [deleted]~~

(d) the *scheme's units* under its ~~trust deed~~ or its *instrument constituting the scheme*, may be sold only to the public in non-EEA States; or

(e) the scheme (other than a master UCITS which has at least two feeder UCITS as unitholders) raises capital without promoting the sale of its units to the public within the EEA or any part of it.

**[Note: article 1 of the UCITS Directive]**

*unitholder*

~~(in CIS) (in relation to an AUT, and subject to CIS 11.3.2R (Special meaning of unitholder)):~~

(a) ~~(in relation to a unit which is represented by a bearer certificate) the person who holds the bearer certificate;~~

(b) ~~(in relation to a unit that is not represented by a bearer certificate) the person whose name is entered on the register in relation to that unit.~~

~~(in COLL)~~

(a) ...

*website conditions*

...

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

38(2) of the *KII Regulation*

## 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.

**1 Annex 1 Detailed application of SYSC**

...

<b>Part 2</b>	<b>Application of the common platform requirements (SYSC 4 to 10)</b>		
...			
<u>2.7A</u>	<u>G</u>	<u>EEA UCITS management companies</u> are also reminded that they must comply with:	
		(1)	<u>the common platform requirements indicated in Column A+ (Application to a management company) in Part 3 of this Annex;</u>
		(2)	<u>the common platform record-keeping requirements; and</u>
		(3)	<u>the common platform requirements on financial crime;</u>
		<u>in relation to activities carried on from a branch in the United Kingdom. Where the common platform requirement addresses matters within the scope of article 12 of the UCITS Directive, an EEA UCITS management company should note that those matters may also be subject to the rules of its Home State regulator.</u>	
		<u>[Note: articles 12(1)(b), 14(1)(c), 14(1)(d), 17(4), 18(3) and 19(1) of the UCITS Directive and articles 4(1)(e), 10(1), 10(2) and 10(3) of the UCITS implementing Directive]</u>	
	<b>What?</b>		
2.8	R	...	
		(3)	<u>ancillary activities; and</u>
		(4)	<u>in relation to MiFID business, ancillary services; and</u>
		(5)	<u>collective portfolio management.</u>
...			
	<b>Where?</b>		

...		
2.16	R	The <i>common platform requirements</i> , except the <i>common platform requirements on financial crime</i> and the <i>common platform record-keeping requirements</i> , apply to a firm that is not a <u>UK UCITS management company</u> in relation to <i>passport activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> .
2.16A	R	(1) <u>The <i>common platform requirements</i> referred to in Column A+ of Part 3 (below) apply to a <u>UK UCITS management company</u> in relation to <i>passport activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i>.</u>
		(2) <u>Any other <i>common platform requirement</i> applies to a <u>UK UCITS management company</u> in relation to <i>passport activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> to the extent that the requirement addresses matters within the scope of article 12 of the <i>UCITS Directive</i>.</u>
2.16B	G	The matters referred to in paragraph 2.16AR of this Annex may also be subject to the rules of the <u>UK UCITS management company's Host State regulator</u> .

<b>Part 3</b>		<b>Table summarising the application of the common platform requirements to different types of firm</b>
3.1	G	The <i>common platform requirements</i> apply in the following <del>two</del> <u>three</u> ways (subject to the provisions in Part 2 of this Annex).
...		
3.2A	G	<u>For a <i>management company</i>, they apply in accordance with Column A+ in the table below.</u>
...		

Provision	COLUMN A	<u>COLUMN A+</u>	COLUMN B
SYSC 4	Application to a common platform firm <u>other than to a UCITS investment firm</u>	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers, managing agents and the Society

SYSC 4.1.1R	Rule but SYSC 4.1.1R(2) applies only to a <i>BIPRU firm</i>	<u>Rule but SYSC 4.1.1R(2) applies only to a <i>BIPRU firm</i></u>	Rule but SYSC 4.1.1R(2) applies only to a <i>third country BIPRU firm</i>
SYSC 4.1.2R	Rule	<u>Rule for a <i>UCITS investment firm</i>; otherwise guidance</u>	Guidance
SYSC 4.1.2AG	Not applicable	<u>Guidance for a <i>UCITS firm</i>; not applicable to a <i>UCITS investment firm</i></u>	Guidance
<u>SYSC 4.1.2BR</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 4.1.2CR</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
SYSC 4.1.3R	Rule applies only to a <i>BIPRU firm</i>	<u>Rule for a <i>UCITS investment firm</i>; otherwise not applicable</u>	Not applicable
SYSC 4.1.4R	Rule	<u>Rule</u>	(1) and (3) Guidance (2) Rule
SYSC 4.1.4AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.5R	Rule applies only to a <i>MiFID investment firm</i>	<u>Rule</u>	Not applicable
SYSC 4.1.6R	Rule	<u>Rule for a <i>UCITS investment firm</i>; otherwise guidance</u>	Guidance
SYSC 4.1.7R	Rule	<u>Rule</u>	Guidance
SYSC 4.1.7AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.8G	Guidance	<u>Guidance</u>	Guidance
SYSC 4.1.9R	Rule	<u>Rule</u>	Not applicable

SYSC 4.1.10R	Rule	<u>Rule</u>	Guidance - except reference to SYSC 4.1.9R which does not apply to these <i>firms</i>
SYSC 4.1.10AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 4.1.11G	Guidance	<u>Guidance</u>	Guidance
<u>SYSC 4.1.13G</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
<u>SYSC 4.1.14G</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
SYSC 4.2.1R	Rule	<u>Rule</u>	- UK branch of <i>non-EEA bank</i> - rule applies.  - Other <i>firms</i> – Guidance
SYSC 4.2.1AG	Not applicable	<u>Not applicable</u>	- Guidance
SYSC 4.2.2R	Rule	<u>Rule</u>	- UK branch of a <i>non-EEA bank</i> - Rule applies  - Other <i>firms</i> - this provision does not apply
SYSC 4.2.3G - 4.2.5G	Guidance	<u>Guidance</u>	- UK branch of a <i>non-EEA bank</i> - Guidance  - Other <i>firms</i> - these provisions do not apply
SYSC 4.2.6R	Rule	<u>Rule for a UCITS investment firm; otherwise not applicable</u>	- UK branch of a <i>non-EEA bank</i> - Rule applies  - Other <i>firms</i> - this provision does not apply
SYSC 4.3.1R	Rule	<u>Rule</u>	Rule (but not applicable to <i>incoming</i>



			<i>EEA firms, incoming Treaty firms or UCITS qualifiers)</i>
SYSC 4.3.2R	Rule	<u>Rule</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</i> )
SYSC 4.3.2AG	Not applicable	<u>Not applicable</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</i> )
SYSC 4.3.3G	Guidance	<u>Guidance</u>	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers)</i> )
SYSC 4.4.1R	Not applicable	<u>Not applicable</u>	Rule applies this section only to: (1) an <i>authorised professional firm</i> in respect of its <i>non-mainstream regulated activities</i> unless the <i>firm</i> is also conducting other <i>regulated activities</i> and has appointed <i>approved persons</i> to perform the <i>governing functions</i> with equivalent responsibilities for the <i>firm's non-mainstream regulated activities</i> and other <i>regulated activities</i> ; (2) activities carried on by a <i>firm</i> whose principal purpose is to carry on activities other than <i>regulated activities</i> and which is: (a) an <i>oil market participant</i> ; (b) a <i>service company</i> ;

			<p>(c) an <i>energy market participant</i>;  (d) a wholly-owned subsidiary of:</p> <p>(i) a local authority;  (ii) a registered social landlord;</p> <p>(e) a <i>firm</i> with <i>permission</i> to carry on <i>insurance mediation activity</i> in relation to <i>non-investment insurance contracts</i> but no other <i>regulated activity</i>;</p> <p>(3) an <i>incoming Treaty firm</i>, an <i>incoming EEA firm</i> and a <i>UCITS qualifier</i>, (but only SYSC 4.4.5R(2) applies for these <i>firms</i>); and  (4) a <i>sole trader</i>, but only if he employs any <i>person</i> who is required to be approved under section 59 of the <i>Act</i> (Approval for particular arrangements).</p>
SYSC 4.4.2G	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.3R	Not applicable	<u>Not applicable</u>	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.4G	Not applicable	<u>Not applicable</u>	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.5R	Not applicable	<u>Not applicable</u>	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R

<u>SYSC</u> 4.4.6G	<u>Not applicable</u>	<u>Not applicable</u>	<u>Guidance only</u> <u>applying to the <i>firms</i></u> <u>specified in <i>SYSC</i></u> <u>4.4.1R</u>
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<b>Provision</b>	<b>COLUMN A</b>	<b><u>COLUMN A+</u></b>	<b>COLUMN B</b>
<b>SYSC 5</b>	<b>Application to a common platform firm other than to a <u>UCITS investment firm</u></b>	<b><u>Application to a UCITS management company</u></b>	<b>Application to all other firms apart from insurers, managing agents and the Society</b>
<i>SYSC</i> 5.1.1R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 5.1.2G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.3G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.4G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.4AG	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.5G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.5AG	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.6R	Rule	<u>Rule</u>	Guidance
<i>SYSC</i> 5.1.7R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC</i> 5.1.7AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<i>SYSC</i>	Guidance	<u>Guidance</u>	Guidance

5.1.8G			
<i>SYSC</i> 5.1.9G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.10G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.11G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 5.1.12R	Rule	<u>Rule</u>	Guidance
<i>SYSC</i> 5.1.12AG	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC</i> 5.1.13R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 5.1.14R	Rule	<u>Rule</u>	Guidance
<i>SYSC</i> 5.1.15G	Not applicable	<u>Not applicable</u>	Guidance

<b>Provision</b>	<b>COLUMN A</b>	<b><u>COLUMN A+</u></b>	<b>COLUMN B</b>
<b>SYSC 6</b>	<b>Application to a common platform firm <u>other than to a UCITS investment firm</u></b>	<b><u>Application to a UCITS management company</u></b>	<b>Application to all other firms apart from insurers, managing agents and the Society</b>
<i>SYSC</i> 6.1.1R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.1.2R	Rule	<u>Rule</u>	Guidance
<i>SYSC</i> 6.1.2AG	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC</i> 6.1.3R	Rule	<u>Rule</u>	- Guidance - This provision shall be read with the

			following additional sentence at the start. "Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to have a separate compliance function. Where a <i>firm</i> has a separate compliance function, the <i>firm</i> should also take into account 6.1.3R and 6.1.4R as guidance."
SYSC 6.1.3AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 6.1.4R	Rule	<u>Rule</u>	(1) (3) and (4) Guidance (2) - Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <del>retail clients</del> <u>retail clients</u> or <del>professional clients</del> <u>professional clients</u> .  - Guidance for all other <i>firms</i> .
<u>SYSC 6.1.4-AG</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Guidance</u>
<u>SYSC 6.1.4AR</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <i>retail clients</i> or <i>professional clients</i>.</u>
SYSC 6.1.5R	Rule	<u>Rule</u>	- Guidance  - " <i>investment services and activities</i> " shall be read as "financial

			services and activities"
<i>SYSC</i> 6.1.6RG	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC</i> 6.2.1R	Rule	<u>Rule</u>	Guidance
<i>SYSC</i> 6.2.1AG	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC</i> 6.2.2G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.1R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.3.2G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.3R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.3.4G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.5G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.6G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.7G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 6.3.8R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.3.9R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 6.3.10G	Guidance	<u>Guidance</u>	Guidance

<b>Provision</b>	<b>COLUMN A</b>	<b><u>COLUMN A+</u></b>	<b>COLUMN B</b>
<b>SYSC 7</b>	<b>Application to a common platform firm</b>	<b><u>Application to a UCITS management company</u></b>	<b>Application to all other firms apart from insurers,</b>

	<b><u>other than to a UCITS investment firm</u></b>		<b>managing agents and the Society</b>
SYSC 7.1.1G	Guidance	<u>Guidance</u>	Guidance
SYSC 7.1.2R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.2AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<u>SYSC 7.1.2BG</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>
SYSC 7.1.3R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.4R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.4AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
<u>SYSC 7.1.4BG</u>	<u>Not applicable</u>	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	<u>Guidance</u>
SYSC 7.1.5R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.6R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.7R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 7.1.7AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance

<u>SYSC</u> <u>7.1.7BG</u>	<u>Guidance</u> <u>applies only to a</u> <u>BIPRU firm</u>	<u>Guidance for a UCITS</u> <u>investment firm;</u> <u>otherwise not</u> <u>applicable</u>	<u>Guidance</u>
<u>SYSC</u> <u>7.1.7CG</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
<u>SYSC</u> <u>7.1.8G(1),</u> <u>(2)</u>	(1) <u>Guidance</u> <u>applies only to a</u> <u>BIPRU firm</u>  (2) <u>Guidance</u>	(1) <u>Guidance for a</u> <u>UCITS investment firm;</u> <u>otherwise not</u> <u>applicable</u>  (2) <u>Guidance</u>	(1) Not applicable  (2) <u>Guidance</u>
<u>SYSC</u> <u>7.1.9R</u>	<u>Rule applies</u> <u>only to a</u> <u>BIPRU firm</u>	<u>Rule for a UCITS</u> <u>investment firm;</u> <u>otherwise not</u> <u>applicable</u>	Not applicable
<u>SYSC</u> <u>7.1.10R</u>	<u>Rule applies</u> <u>only to a</u> <u>BIPRU firm</u>	<u>Rule for a UCITS</u> <u>investment firm;</u> <u>otherwise not</u> <u>applicable</u>	Not applicable
<u>SYSC</u> <u>7.1.11R</u>	<u>Rule applies</u> <u>only to a</u> <u>BIPRU firm</u>	<u>Rule for a UCITS</u> <u>investment firm;</u> <u>otherwise not</u> <u>applicable</u>	Not applicable
<u>SYSC</u> <u>7.1.12G</u>	<u>Guidance</u> <u>applies only to a</u> <u>BIPRU firm</u>	<u>Guidance for a UCITS</u> <u>investment firm;</u> <u>otherwise not</u> <u>applicable</u>	Not applicable
<u>SYSC</u> <u>7.1.13R -</u> <u>7.1.16R</u>	<u>Rule applies</u> <u>only to a</u> <u>BIPRU firm</u>	<u>Rule for a UCITS</u> <u>investment firm;</u> <u>otherwise not</u> <u>applicable</u>	Not applicable

<b>Provision</b>	<b>COLUMN A</b>	<b><u>COLUMN A+</u></b>	<b>COLUMN B</b>
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SYSC 8	Application to a common platform firm other than to a <u>UCITS investment firm</u>	<u>Application to a UCITS management company</u>	Application to all other firms apart from insurers, managing agents and the Society
SYSC 8.1.1R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.1AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.2G	Guidance	<u>Guidance</u>	Guidance
SYSC 8.1.3G	Guidance	<u>Guidance</u>	Guidance
SYSC 8.1.4R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.5R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.5AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.6R	Rule	<u>Rule</u>	Rule
SYSC 8.1.7R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.8R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.9R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC	Rule	<u>Rule for a UCITS investment firm;</u>	Guidance

8.1.10R		<u>otherwise guidance</u>	
SYSC 8.1.11R	Rule	<u>Rule for a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.11AG	Not applicable	<u>Not applicable to a UCITS investment firm; otherwise guidance</u>	Guidance
SYSC 8.1.12G	Guidance	<u>Guidance</u>	Guidance
<u>SYSC 8.1.13R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u>SYSC 8.1.14G</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>
SYSC 8.2	<i>MiFID investment firms only</i>	<u>UCITS investment firms only</u>	Not applicable
SYSC 8.3	<i>MiFID investment firms only</i>	<u>UCITS investment firms only</u>	Not applicable

<b>Provision</b>	<b>COLUMN A</b>	<b><u>COLUMN A+</u></b>	<b>COLUMN B</b>
<b>SYSC 9</b>	<b>Application to a common platform firm other than to a <u>UCITS investment firm</u></b>	<b><u>Application to a UCITS management company</u></b>	<b>Application to all other firms apart from insurers, managing agents and the Society</b>
SYSC 9.1.1R	Rule	<u>Rule</u>	Rule
SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	<u>Rule applies only in relation to <i>MiFID business of a UCITS investment firm</i></u>	Not applicable
SYSC 9.1.3R	Rule applies only in relation to <i>MiFID</i>	<u>Rule applies only in relation to <i>MiFID business of a UCITS</i></u>	Not applicable

	<i>business</i>	<u><i>investment firm</i></u>	
SYSC 9.1.4G	Guidance	<u>Guidance</u>	Guidance
SYSC 9.1.5G	Guidance	<u>Guidance</u>	Guidance
SYSC 9.1.6G	Guidance	<u>Guidance</u>	Guidance
SYSC 9.1.7G	Guidance applies only in relation to <i>MiFID business</i>	<u>Guidance applies only in relation to <i>MiFID business of a UCITS investment firm</i></u>	Not applicable

<b>Provision</b>	<b>Column A</b>	<b><u>COLUMN A+</u></b>	<b>Column B</b>
<b>SYSC 10</b>	<b>Application to a common platform firm <u>other than to a UCITS investment firm</u></b>	<b><u>Application to a UCITS management company</u></b>	<b>Application to all other firms apart from insurers, managing agents and the Society</b>
SYSC 10.1.1R	Rule	<u>Rule</u>	Rule
SYSC 10.1.2G	Guidance	<u>Guidance</u>	Guidance
SYSC 10.1.3R	Rule	<u>Rule</u>	Rule
SYSC 10.1.4R	Rule	<u>Rule</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of <del>production of</del> <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3

SYSC 10.1.4AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 10.1.5G	Guidance	<u>Guidance</u>	Guidance
SYSC 10.1.6R	Rule	<u>Rule</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of <del>production of</del> <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3
SYSC 10.1.6AG	Not applicable	<u>Not applicable</u>	Guidance
SYSC 10.1.7R	Rule	<u>Rule</u>	Rule
SYSC 10.1.8R	Rule	<u>Rule</u>	Rule
SYSC 10.1.8AR	Rule	<u>Rule</u>	Rule
SYSC 10.1.9G	Guidance	<u>Guidance</u>	Guidance
SYSC 10.1.10R	Rule	<u>Rule</u>	Guidance - but applies as a <i>rule</i> in relation to the production or arrangement of <del>production of</del> <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3
SYSC 10.1.11R	Rule	<u>Rule</u>	Guidance - but applies as a <i>rule</i> in relation to the production or

			arrangement of <del>production of</del> <i>investment research</i> in accordance with <i>COBS</i> 12.2, or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS</i> 12.3
<i>SYSC</i> 10.1.11A G	Not applicable	<u>Not applicable</u>	Guidance
<i>SYSC</i> 10.1.12G - <i>SYSC</i> 10.1.15G	Guidance	<u>Guidance for <i>SYSC</i> 10.1.12G; not applicable for <i>SYSC</i> 10.1.13G – <i>SYSC</i> 10.1.15G</u>	Guidance
<i>SYSC</i> 10.1.16R	Not applicable	<u>Not applicable</u>	Rule
<u><i>SYSC</i> 10.1.17R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u><i>SYSC</i> 10.1.18G</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Not applicable</u>
<u><i>SYSC</i> 10.1.19R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u><i>SYSC</i> 10.1.20R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<u><i>SYSC</i> 10.1.21R</u>	<u>Not applicable</u>	<u>Rule</u>	<u>Not applicable</u>
<i>SYSC</i> 10.2.1R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 10.2.2R	Rule	<u>Rule</u>	Rule
<i>SYSC</i> 10.2.3G	Guidance	<u>Guidance</u>	Guidance
<i>SYSC</i> 10.2.4R	Rule	<u>Rule</u>	Rule
<i>SYSC</i>	Guidance	<u>Guidance</u>	Guidance

10.2.5G			
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...

#### 4.1 General requirements

4.1.1 R ...

[**Note:** article 22(1) of the *Banking Consolidation Directive*, article 13(5) second paragraph of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

...

4.1.2B R For a management company, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R must also take account of the UCITS schemes and EEA UCITS schemes managed by the management company.

[**Note:** article 12(1) second paragraph of the *UCITS Directive*]

##### Resources for management companies

4.1.2C R A management company must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.

[**Note:** articles 12(1)(a) and 14(1)(c) of the *UCITS Directive*]

##### Mechanisms and procedures for a BIPRU firm

4.1.3 R ...

4.1.4 R A firm (with the exception of a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the firm, and the nature and range of the ~~(for a common platform firm) investment services and activities or (for every other firm)~~ financial services and activities undertaken in the course of that business:

- (1) (if it is a *common platform firm* or a *management company*) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- (2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the firm; ~~and~~

- (3) (if it is a *common platform firm*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; and
- (4) (if it is a *management company*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *management company* as well as effective information flows with any third party involved.

[**Note:** articles 5(1) final paragraph, 5(1)(a), 5(1)(c) and 5(1)(e) of the *MiFID implementing Directive* and articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the *UCITS implementing Directive*]

4.1.4A G A *firm* that is not a *common platform firm* or a management company should take into account the decision-making procedures and effective internal reporting *rules* (*SYSC* 4.1.4R(1), ~~and~~ (3) and (4)) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in *SYSC* Annex 1.3.3G.

4.1.5 R A *MiFID investment firm* and a management company must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[**Note:** article 5(2) of the *MiFID implementing Directive* and article 4(2) of the UCITS implementing Directive]

...

4.1.7 R A *common platform firm* and a management company must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its *regulated activities*, or, in the case of a management company, its collective portfolio management activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of ~~its regulated activities~~ those activities.

[**Note:** article 5(3) of the *MiFID implementing Directive*, ~~and~~ annex V paragraph 13 of the *Banking Consolidation Directive* and article 4(3) of the UCITS implementing Directive]

...

#### Accounting policies

4.1.9 R A *common platform firm* and a management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the *FSA*, to deliver in a timely manner to the *FSA* financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[**Note:** article 5(4) of the *MiFID implementing Directive* and article 4(4) of the *UCITS implementing Directive*]

#### Regular monitoring

- 4.1.10 R A *common platform firm* and a *management company* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with SYSC 4.1.4R to SYSC 4.1.9R and take appropriate measures to address any deficiencies.

[**Note:** article 5(5) of the *MiFID implementing Directive* and article 4(5) of the *UCITS implementing Directive*]

...

## 4.2 Persons who effectively direct the business

- 4.2.1 R The *senior personnel* of a *common platform firm*, a *management company* or of the *UK branch* of a *non-EEA bank* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.

[**Note:** article 9(1) of *MiFID*, article 7(1)(b) of the *UCITS Directive* and article 11(1) second paragraph of the *Banking Consolidation Directive*]

...

- 4.2.2 R A *common platform firm*, a *management company* and the *UK branch* of a *non-EEA bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R.

[**Note:** article 9(4) first paragraph of *MiFID*, article 7(1)(b) of the *UCITS Directive* and article 11(1) first paragraph of the *Banking Consolidation Directive*]

...

- 4.2.4 G At least two independent minds should be applied to both the formulation and implementation of the policies of a *common platform firm*, a *management company* and the *UK branch* of a *non-EEA bank*. ...

- 4.2.5 G Where there are more than two individuals directing the business of a *common platform firm*, a *management company* or the *UK branch* of a *non-EEA bank*, the *FSA* does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. ...

...

## 4.3 Responsibility of senior personnel



4.3.1 R ...  
 [Note: article 9(1) of the *MiFID implementing Directive* and articles 9(1) and 9(3) of the *UCITS implementing Directive*]

4.3.2 R A *common platform firm* (with the exception of a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the Act (Approval for particular arrangements)) and a *management company*, must ensure that :

...

[Note: article 9(2) and article 9(3) of the *MiFID implementing Directive* and articles 9(4) and 9(6) of the *UCITS implementing Directive*]

...

## 5.1 Skills, knowledge and expertise

5.1.1 R A *firm* must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

[Note: article 5(1)(d) of the *MiFID implementing Directive*, articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 5(1) of the *UCITS implementing Directive*]

...

### Segregation of functions

5.1.6 R A *common platform firm* and a *management company* must ensure that the performance of multiple functions by its *relevant persons* does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally.

[Note: article 5(1)(g) of the *MiFID implementing Directive* and article 5(3) of the *UCITS implementing Directive*]

...

### Awareness of procedures

5.1.12 R A *common platform firm* and a *management company* must ensure that its *relevant persons* are aware of the procedures which must be followed for the proper discharge of their responsibilities.

[Note: article 5(1)(b) of the *MiFID implementing Directive* and article 4(1)(b) of the *UCITS implementing Directive*]

### General

5.1.13 R The systems, internal control mechanisms and arrangements established

by a *firm* in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of ~~(for a common platform firm) investment services and activities~~ or ~~(for every other firm)~~ financial services and activities undertaken in the course of that business.

[**Note:** article 5(1) final paragraph of the *MiFID implementing Directive* and articles 4(1) final paragraph and 5(4) of the *UCITS implementing Directive*]

- 5.1.14 R A *common platform firm* and a management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.

[**Note:** article 5(5) of the *MiFID implementing Directive* and articles 4(5) of the UCITS implementing Directive]

...

## 6.1 Compliance

- 6.1.1 R A *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where appropriate, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

[**Note:** article 13(2) of *MiFID* and article 12(1)(a) of the UCITS Directive]

- 6.1.2 R A *common platform firm* and a management company must, taking into account the nature, scale and complexity of its business, and the nature and range of ~~investment services and activities~~ financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the *FSA* to exercise its powers effectively under the *regulatory system* and to enable any other *competent authority* to exercise its powers effectively under *MiFID* or the UCITS Directive.

[**Note:** article 6(1) of the *MiFID implementing Directive* and article 10(1) of the UCITS implementing Directive]

...

- 6.1.3 R A *common platform firm* and a management company must maintain a permanent and effective compliance function which operates

independently and which has the following responsibilities:

- (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2R, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and
- (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.

[**Note:** article 6(2) of the *MiFID implementing Directive* and article 10(2) of the *UCITS implementing Directive*]

...

6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a *common platform firm* and a *management company* must ensure that the following conditions are satisfied:

- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
- (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2R;
- (3) the *relevant persons* involved in the compliance function must not be involved in the performance of services or activities they monitor;
- (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[**Note:** article 6(3) first paragraph of the *MiFID implementing Directive* and article 10(3) of the *UCITS implementing Directive*]

...

6.1.4A R (1) A *firm* which is not a *common platform firm* or *management company* and which carries on ...

...

6.1.5 R A *common platform firm* and a *management company* need not comply with SYSC 6.1.4R(3) or SYSC 6.1.4R(4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of ~~(for a *common platform firm*) *investment services and activities*~~ or ~~(for every other *firm*)~~ financial services and activities, the requirements under those *rules* are not proportionate and that its

compliance function continues to be effective.

[**Note:** article 6(3) second paragraph of the *MiFID implementing Directive* and article 10(3) second paragraph of the *UCITS implementing Directive*]

...

## 6.2 Internal audit

- 6.2.1 R A common platform firm and a management company must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of ~~investment services and activities~~ its financial services and activities, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:

...

[**Note:** article 8 of the *MiFID implementing Directive* and article 11 of the *UCITS implementing Directive*]

...

## 7.1 Risk control

...

- 7.1.2B G A management company should be aware that COLL 6.11 contains requirements implementing article 12 of the UCITS implementing Directive in relation to risk control and internal reporting that will apply to it.

...

## 8.1 General outsourcing requirements

...

### Additional requirements for a management company

- 8.1.13 R A management company must retain the necessary resources and expertise so as to monitor effectively the activities carried out by third parties on the basis of an arrangement with the firm, especially with regard to the management of the risk associated with those arrangements.

[**Note:** article 5(2) of the *UCITS implementing Directive*]

- 8.1.14 G A management company should be aware that SUP 15.8.6R (Delegation by UCITS management companies) and COLL 6.6.15AR (Committees and delegations) contain requirements implementing article 13 of the

UCITS Directive in relation to delegation that will apply to it.

...

**9.1 General rules on record-keeping**

...

- 9.1.1 R A *firm* must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FSA* or any other relevant *competent authority* under *MiFID* or the *UCITS Directive* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

[**Note:** article 13(6) of *MiFID*, ~~and~~ article 5(1)(f) of the *MiFID implementing Directive*, article 12(1)(a) of the *UCITS Directive* and article 4(1)(e) of the *UCITS implementing Directive*]

...

**10.1 Application**

- 10.1.1 R (1) This section applies to a *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).
- (2) This section also applies to a *management company*.

...

## Types of conflicts

- 10.1.4 R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may entail a material risk of damage to the interests of a *client*, a *common platform firm* and a *management company* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:

...

(2A) in the case of a *management company* providing *collective portfolio management services* for a *UCITS scheme*, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a *client* other than the *UCITS scheme*;

...

- (4) carries on the same business as the *client* or in the case of a management company, carries on the same activities for the UCITS scheme and for another client or clients which are not UCITS schemes; or

...

The conflict of interest may result from the *firm* or *person* providing a service referred to in SYSC 10.1.1R or engaging in any other activity or, in the case of a management company, whether as a result of providing collective portfolio management services or otherwise.

[**Note:** Article 21 of *MiFID implementing Directive* and article 17(1) of the UCITS implementing Directive]

...

#### Record of conflicts

- 10.1.6 R A *common platform firm* and a management company must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of ~~the~~ that firm in which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or, in the case of an ongoing service or activity, may arise.

[**Note:** Article 23 of *MiFID implementing Directive* and article 20(1) of the UCITS implementing Directive]

...

#### Disclosure of conflicts

- 10.1.8 R ...
- (3) This rule does not apply to the extent that SYSC 10.1.21R applies.

...

#### Conflicts policy

- 10.1.10 R (1) A *common platform firm* and a management company must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (2) Where the *common platform firm* or the management company is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

[**Note:** Article 22(1) of *MiFID implementing Directive* and article 18(1) of the *UCITS implementing Directive*]

Contents of policy

- 10.1.11 R (1) The *conflicts of interest policy* must include the following content:
- (a) it must identify in accordance with SYSC 10.1.3R and SYSC 10.1.4R, by reference to the specific services and activities carried out by or on behalf of the *common platform firm* or *management company*, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and
  - ...
- (2) The procedures and measures provided for in paragraph (1)(b) must:
- (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the *common platform firm* or the *management company* and of the *group* to which ~~it~~ either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients*; and
  - (b) include each of the following as are necessary and appropriate for the *common platform firm* or the *management company* to ensure the requisite degree of independence:
  - ...
- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a *common platform firm* and a *management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

[**Note:** Article 22(2) and (3) of *MiFID implementing Directive* and articles 18(2), 19(1) and 19(2) of the *UCITS implementing Directive*]

...

Additional requirements for a management company

- 10.1.17 R A *management company*, when identifying the types of conflict of interests for the purposes of SYSC 10.1.4R, must take into account:
- (1) the interests of the *firm*, including those deriving from its belonging to a *group* or from the performance of services and activities, the

interests of the *clients* and the duty of the *firm* towards the *UCITS scheme* or *EEA UCITS scheme* it manages; and

- (2) where it manages two or more *UCITS schemes* or *EEA UCITS schemes*, the interests of all of them.

**[Note:** article 17(2) of the *UCITS implementing Directive*]

- 10.1.18     **G**     For a *management company*, references to *client* in SYSC 10.1.4R and in the other *rules* in this section should be construed as referring to any *UCITS scheme* or *EEA UCITS scheme* managed by that *firm* or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

Structure and organisation of a management company

- 10.1.19     **R**     A *management company* must be structured and organised in such a way as to minimise the risk of a *UCITS scheme's*, *EEA UCITS scheme's* or *client's* interests being prejudiced by conflicts of interest between the *management company* and its *clients*, between two of its *clients*, between one of its *clients* and a *UCITS scheme* or an *EEA UCITS scheme*, or between two such *schemes*.

**[Note:** articles 12(1)(b) and 14(1)(d) of the *UCITS Directive*]

Avoidance of conflicts of interest for a management company

- 10.1.20     **R**     A *management company* must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the *UCITS schemes* and *EEA UCITS schemes* it manages are fairly treated.

**[Note:** articles 12(1)(b) and 14(1)(d) of the *UCITS Directive*]

Disclosure of conflicts of interest for a management company

- 10.1.21     **R**     (1)     Where the organisational or administrative arrangements made by a *management company* for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *UCITS scheme* or *EEA UCITS scheme* it manages or of its *unitholders* will be prevented, the *senior personnel* or other competent internal body of the *firm* must be promptly informed in order for them to take any necessary decision to ensure that in all cases the *firm* acts in the best interests of the *scheme* and of its *unitholders*.
- (2)     A *management company* must report situations referred to in (1) to the *unitholders* of the *UCITS scheme* or *EEA UCITS scheme* it manages by any appropriate *durable medium* and give reasons for its decision.

**[Note:** articles 20(2) and 20(3) of the *UCITS implementing Directive*]



...

**Schedule 1 Record keeping requirements**

...

**Sch 1.2 G | Record keeping requirements**

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>SYSC 9.1.1R</u>	<u>Business and internal organisation</u>	<u>Details of the firm's orderly records of services and transactions undertaken</u>	<u>Within a reasonable time</u>	<u>Adequate</u>
...				

**Annex C****Amendments to the General Provisions (GEN)**

In this Annex, underlining indicates new text.

- 4.1.4 R *GEN 4.5* (Statements about authorisation and regulation by the *FSA*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*.

**Annex D****Amendments to the General Prudential sourcebook (GENPRU)**

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

2.1.8 G ...

- (3) In the case of a *UCITS investment firm* this section implements (in part) Article ~~5a~~ 7 of the *UCITS Directive*.

## Annex E

### Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

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

#### 1.1 Introduction

...

- 1.1.3 G This sourcebook only applies to *UCITS firms*. *UCITS investment firms* are *BIPRU limited licence firms* and the prudential requirements for those *firms* are set out in the Prudential sourcebook for banks, building societies and investment firms and the General prudential sourcebook. The difference between the two types of *UCITS management companies* is that a *UCITS investment firm* in addition to carrying on the activities permitted by Article ~~5.2~~ 6(2) of the *UCITS Directive* (scheme management), may also carry on the activities permitted by Article ~~5.3~~ 6(3) such as portfolio management.

...

#### 1.2 Purpose

- 1.2.1 G (1) ...
- (2) This sourcebook also implements certain requirements of the *UCITS Directive* ~~as amended by the amending Council Directive 2001/107/EC~~ which among other matters imposes capital requirements on a *UCITS management company*.

...

## Annex F

## Amendments to the Conduct of Business sourcebook (COBS)

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

## 1 Annex 1 Application

...

## Part 3: Guidance

...

## 9 UCITS Directive: effect on territorial scope

9.1 G The *UCITS Directive* covers undertakings for collective investment in transferable securities (~~UCITS~~ UCITS) meeting the requirements of the Directive, and their ~~management companies~~ management companies and ~~depositories~~ depositories. The rules in this sourcebook within the Directive's scope (all of which will apply to a management company) are those in:

- (1) COBS 2.1 (Acting honestly, fairly and professionally);
- (2) COBS 2.3 (Inducements);
- (3) COBS 4.2.1R (The fair, clear and not misleading rule);
- (4) COBS 4.3.1R (Financial promotions to be identifiable as such);
- (5) COBS 4.13 (UCITS);
- (6) COBS 11.2 (Best execution);
- (7) COBS 11.3 (Client order handling);
- (8) COBS 11.7 (Personal account dealing);
- (9) COBS 14 (Providing product information to clients) relating to the ~~distribution~~ provision of a simplified prospectus key investor information by the ~~management company~~ management company (in addition to applying to a management company, COBS 14.2 also applies to an ICVC that is a UCITS scheme); and

~~Those rules are the responsibility of the Home State of the UCITS. The Directive explicitly permits other EEA States in which a UCITS is marketed to continue to apply rules, including marketing and advertising rules, outside the field~~

~~governed by the Directive. The Directive also applies certain rules derived from *MiFID* to management companies in relation to certain business activities. (See articles 1(6) and 44 of the *UCITS Directive*).~~

(10) COBS 16.2 (Occasional reporting).

- 9.1A     G     The majority of the *COBS rules* referred to in paragraph 9.1 are rules of conduct which each *EEA State* must draw up under article 14.1 of the *UCITS Directive* which *management companies* authorised in that State must observe at all times. The exceptions are *COBS 4* and *COBS 14* in so far as they relate to a *UCITS scheme*, which form part of the *FSA's fund application rules* and which are the responsibility of the *UCITS Home State* (for a *UCITS scheme*, the *FSA* – see *COLL 12.3.5R (COLL fund rules under the management company passport: the fund application rules)* and article 19 of the *UCITS Directive*).
- 9.1B     G     Where a *management company* is providing *collective portfolio management* services for a *UCITS* established in a different *EEA State*, responsibility for its compliance with the applicable rules of conduct drawn up under article 14 will generally be for the *management company's Home State*, but when a *branch* is established it will be the responsibility of the *Host Member State (UCITS Home State)* (see articles 17(4) and 17(5) of the *UCITS Directive*).
- 9.1C     G     Under the *UCITS Directive* certain *Host State* marketing and *MiFID*-specific rules might also apply to a *management company* providing *collective portfolio management* services for a *UCITS* established in a different *EEA State*. Consequently, an *EEA UCITS management company* should note that, under *COBS*, certain of the *FSA's rules* apply to it, including the *financial promotion rules*. *COBS 4.13 (UCITS)* is concerned with *marketing communications for UCITS schemes and EEA UCITS schemes*.
- 9.1D     G     *EEA UCITS management companies* should be aware that there is a special narrower application of *COBS* for *scheme management activity* provided for by *COBS 18.5 (Operators of collective investment schemes)*.
- 9.2     G     Accordingly, the territorial scope of this sourcebook is modified so that:
- (1)     the *rules* relating to the distribution of a *simplified prospectus* apply to the *management company (operator)* of a *UCITS* whose *Home State* is the *United Kingdom* when marketing in other *EEA States*;
  - (2)     those *rules* do not apply to a *management company* of a

~~UCITS whose Home State is another EEA State when marketing in the United Kingdom; other rules, such as the financial promotion rules and the information gathering and suitability rules (see COBS 9 Suitability (including basic advice) apply without modification of this territorial scope, but subject to section 266 of the Act. [deleted]~~

- 9.3 G The Directive does not affect the territorial scope of *rules* as they apply to an intermediary (that is not a management company) selling *units* of a UCITS UCITS.

[Note: articles 12, 14, 17, 18, 19 and 94 of the UCITS Directive]

...

## 2.1 Acting honestly, fairly and professionally

The client's best interests rule

- 2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client's best interests rule*).

...

- (3) For a management company, this rule applies in relation to any UCITS scheme or EEA UCITS scheme the firm manages.

[Note: article 19(1) of MiFID and article 14(1)(a) and (b) of the UCITS Directive]

...

## 2.3 Inducements

Rule on inducements

- 2.3.1 R A *firm* must not pay or accept any fee or commission ...

[Note: article 26 of the MiFID implementing Directive and articles 29(1) and 29(2) of the UCITS implementing Directive]

- 2.3.1A R COBS 2.3.1R applies to a UK UCITS management company and EEA UCITS management company when providing collective portfolio management services, as if:

- (1) references to a client, were references to any UCITS it manages; and
- (2) in (2)(b) and (c) and (3) of that rule, references to MiFID or equivalent third country business were also references to the collective portfolio management activities of investment management and administration for the scheme.

[Note: article 29(1) of the UCITS implementing Directive]

...

2.3.2 R A firm ...

[Note: article 26 of the MIFID implementing Directive and article 29(2) of the UCITS implementing Directive]

2.3.2A R COBS 2.3.2R applies to a UK UCITS management company and EEA UCITS management company when providing collective portfolio management services, as if references to a client were references to a unitholder of the scheme.

[Note: article 29(2) of the UCITS implementing Directive]

...

#### **4 Communicating with clients, including financial promotions**

...

4.1.4 G ...

(3) In this chapter “financial promotion” and “direct offer financial promotion” include communications that are marketing communications for the purposes of the UCITS Directive.

...

Where? Modifications to comply with EU law

4.1.9 G ...

(2) One effect of the *EEA territorial scope rule* is that the rules in this chapter will not generally apply to ~~a simplified prospectus that relates to a simplified prospectus scheme from another EEA State~~ an EEA key investor information document but will, for example, apply to a firm (including an EEA UCITS management company) when marketing in the United Kingdom the units of an EEA UCITS scheme that is a recognised scheme.

...

...

The fair, clear and not misleading rule

4.2.1 R (1) A firm must ensure that a communication or a *financial promotion* is fair, clear and not misleading.

...



[**Note:** article 19(2) of *MiFID*, ~~and~~ recital 52 to the *MiFID implementing Directive* and article 77 of the *UCITS Directive*]

...

- 4.3.1 R (1) A *firm* must ensure that a *financial promotion* addressed to a *client* is clearly identifiable as such.

[**Note:** article 19(2) of *MiFID* and article 77 of the *UCITS Directive*]

...

- (4) In the case of a marketing communication that relates to a *UCITS scheme* or an *EEA UCITS scheme*, (2) and (3) do not limit the application of this rule.

...

- 4.6.4B G ...

- (2) This guidance does not apply to a *prospectus*, *key investor information document* or *simplified prospectus* drawn up in accordance with *COLL*.

...

- 4.7.5 G ~~*COLL* 4.6.12R requires an *authorised fund manager* to ensure that its *financial promotions*, which contain an invitation to purchase the *units* in a *UCITS scheme*, indicate that a *simplified prospectus* and a full *prospectus* exist, and the places where they may be obtained by the public or how the public may have access to them. [deleted]~~

- 4.7.5A G *COBS* 4.13.2R (Marketing communications relating to *UCITS schemes* or *EEA UCITS schemes*) and *COBS* 4.13.3R (Marketing communications relating to feeder *UCITS*) contain additional disclosure requirements for *firms* in relation to marketing communications (other than *key investor information*) that concern particular investment strategies of a *UCITS scheme* or *EEA UCITS scheme*.

After *COBS* 4.12 insert the following new section. The text is not underlined.

## 4.13 UCITS

### Application

- 4.13.1 R (1) This section applies to a *firm* in relation to a communication to a *client*, including an *excluded communication*, that is a marketing communication within the meaning of the *UCITS Directive*.

- (2) This section does not apply to:
- (a) *image advertising*; or
  - (b) the *instrument constituting the scheme*, the *prospectus*, the *key investor information* (or alternatively the *simplified prospectus* or *EEA simplified prospectus*) or the periodic reports and accounts of either a *UCITS scheme* or an *EEA UCITS scheme*.

[**Note:** recital (58) of the *UCITS Directive*]

Marketing communications relating to UCITS schemes or EEA UCITS schemes

- 4.13.2 R (1) A *firm* must ensure that a marketing communication that comprises an invitation to purchase *units* in a *UCITS scheme* or *EEA UCITS scheme* and that contains specific information about the *scheme*:
- (a) makes no statement that contradicts or diminishes the significance of the information contained in the *prospectus* and the *key investor information document* or *EEA key investor information document* for the *scheme*;
  - (b) indicates that a *prospectus* exists for the *scheme* and that the *key investor information document* or *EEA key investor information document* is available; and
  - (c) specifies where and in which language such information or *documents* may be obtained by investors or potential investors or how they may obtain access to them.
- (2) Where a *UCITS scheme* or an *EEA UCITS scheme* may invest more than 35% of its *scheme property* in *transferable securities* and money market instruments issued or guaranteed by an *EEA State*, one or more of its local authorities, a third country or a public international body to which one or more *EEA States* belong, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy and indicating the particular *EEA States*, local authorities, third countries or public international bodies in the *securities* of which the *scheme* intends to invest or has invested more than 35% of its *scheme property*.
- (3) Where a *UCITS scheme* or *EEA UCITS scheme* invests principally in *units* in *collective investment schemes*, *deposits* or *derivatives*, or replicates a stock or debt securities index in accordance with *COLL 5.2.31R* (Schemes replicating an index) or equivalent national measures implementing article 53 of the *UCITS Directive*, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to the investment policy.

- (4) Where the net asset value of a *UCITS scheme* or *EEA UCITS scheme* has, or is likely to have, high volatility owing to its portfolio composition or the portfolio management techniques that are or may be used, the *firm* must ensure that a marketing communication relating to the *scheme* contains a prominent statement drawing attention to that characteristic.

[**Note:** articles 54(3), 70(2), 70(3) and 77 of the *UCITS Directive*]

Marketing communications relating to a feeder UCITS

- 4.13.3 R A *firm* must ensure that a marketing communication (other than a *key investor information document* or *EEA key investor information document*) relating to a *feeder UCITS* contains a statement that the *feeder UCITS* permanently invests at least 85% in value of its assets in *units* of its *master UCITS*.

[**Note:** article 63(4) of the *UCITS Directive*]

Amend the following as shown.

#### 6.4 Disclosure of charges, remuneration and commission

...

Disclosure of commission (or equivalent) for packaged products

- 6.4.3 R ...

- (4) This *rule* does not apply if:

...

- (c) the *firm* provides the *client* with a *key features document*, ~~or a *simplified prospectus*, a *key investor information document* or *EEA key investor information document*~~, in accordance with *COBS 14*, provided that the *firm* discloses to the *client* the actual amount or value of *commission* or *equivalent* within five *business days* of effecting the transaction.

...

...

#### 11.1 Application

...

Application of section on personal account dealing

...

- 11.1.5 G The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS 11.7*) to the extent necessary to be compatible with European law (see paragraph 1.1R of Part 3 of *COBS 1 Annex 1*). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment firm* or a *UK UCITS management company* from a *branch* in another *EEA state*, but does not apply to the *UK branch* of an *EEA MiFID investment firm* in relation to its *MiFID business* or of an *EEA UCITS management company* in relation to activities it is entitled to carry on in the *United Kingdom* under the *UCITS Directive*.

...

## 11.2 Best execution

Obligation to execute orders on terms most favourable to the client

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

[**Note:** article 21(1) of *MiFID* and article 25(2) first sentence of the *UCITS implementing Directive*]

...

Execution of decisions by UCITS management companies to deal on behalf of the schemes they manage

- 11.2.1A R A management company must, in relation to each UCITS scheme or EEA UCITS scheme it manages, act in the best interests of the scheme when executing decisions to deal on its behalf in the context of the management of its portfolio, and COBS 11.2.1R applies in relation to all such decisions.

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

Application of best execution obligation

- 11.2.2 G ...

...

Management companies: execution and transmission of orders

- 11.2.5A G (1) A management company should, for each UCITS scheme or EEA UCITS scheme it manages, act in the best interests of the scheme when directly executing orders to deal on its behalf or when transmitting those orders to third parties.
- (2) When executing orders on behalf of any such scheme it manages, a management company is expected to take all reasonable steps to

obtain the best possible result for the *scheme* on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

[**Note:** recital (19) to the *UCITS implementing Directive*]

#### Best execution criteria

11.2.6 R When executing a *client* order, a *firm* must take into account the following criteria for determining the relative importance of the *execution factors*:

...

(4) the characteristics of the *execution venues* to which that order can be directed; and

(5) for a *management company*, the objectives, investment policy and risks specific to the *UCITS scheme* or *EEA UCITS scheme*, as indicated in its *prospectus* or *instrument constituting the scheme*.

[**Note:** article 44(1) of the *MiFID implementing Directive* and article 25(2) second sentence of the *UCITS implementing Directive*]

...

#### Requirement for order execution arrangements including an order execution policy

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

[**Note:** article 21(2) of *MiFID* and article 25(3) first paragraph of the *UCITS implementing Directive*]

...

11.2.23A R A *management company* must make available appropriate information on its execution policy and on any material changes to that policy to the unitholders of each *scheme* it manages.

[**Note:** article 25(3) second part of the second paragraph of the *UCITS implementing Directive*]

11.2.24 R ...

...

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

- 11.2.25 R (1) A firm (other than a management company providing collective portfolio management services for a UCITS scheme or an EEA UCITS scheme) must obtain the prior consent of its *clients* to the execution policy.
- (2) In the case of a management company providing collective portfolio management services for an ICVC that is a UCITS scheme, or for an EEA UCITS scheme that is structured as an investment company, the management company must obtain the prior consent of the ICVC or investment company to the execution policy.
- (3) In the case of a management company that is the ACD of an ICVC that is a UCITS scheme, (2) does not apply where the ACD is the sole director of the ICVC.

[**Note:** paragraph 2 of article 21(3) of *MiFID* and article 25(3) first part of the second paragraph of the UCITS implementing Directive]

...

#### Monitoring the effectiveness of execution arrangements and policy

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

[**Note:** article 21(4) of *MiFID* and article 25(4) first paragraph of the UCITS implementing Directive]

#### Review of the order execution policy

- 11.2.28 R (1) A *firm* must review annually its execution policy, as well as its order execution arrangements.
- (2) This review must also be carried out whenever a material change occurs that affects the *firm's* ability to continue to obtain the best possible result for the execution of its *client* orders on a consistent basis using the venues included in its execution policy.

[**Note:** article 46(1) of the *MiFID implementing Directive* and article 25(4) second paragraph of the UCITS implementing Directive]

#### Demonstration of execution of orders in accordance with execution policy

- 11.2.29 R (1) A *firm* other than a management company must be able to demonstrate to its *clients*, at their request, that it has executed their orders in accordance with its execution policy.

- (2) A management company must be able to demonstrate that it has executed orders on behalf of any UCITS scheme or EEA UCITS scheme it manages in accordance with its execution policy.

[**Note:** article 21(5) of *MiFID* and article 25(5) of the *UCITS implementing Directive*]

Duty of portfolio managers, ~~and~~ receivers and transmitters and management companies to act in clients' best interests

- 11.2.30 R A *firm* must, when providing the service of *portfolio management* or, for a management company, collective portfolio management, comply with the obligation to act in accordance with the best interests of its *clients* when placing orders with other entities for execution that result from decisions by the *firm* to deal in *financial instruments* on behalf of its *client*.

[**Note:** article 45(1) of *MiFID implementing Directive* and article 26(1) of the UCITS implementing Directive]

...

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

[**Note:** article 45(3) of the *MiFID implementing Directive* and article 26(1) of the UCITS implementing Directive]

- (1) take all reasonable steps to obtain the best possible result for its *clients* taking into account the *execution factors*. The relative importance of these factors must be determined by reference to the *execution criteria* and, for ~~retail clients~~ *retail clients*, to the requirement to determine the best possible result in terms of the total consideration (see *COBS 11.2.7R*).

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

[**Note:** paragraph 1 and 2 of article 45(4) of the *MiFID implementing Directive* and article 26(2) first paragraph of the UCITS implementing Directive]

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

to comply with its obligations under this section or, for a *management company*, must only enter into arrangements for execution where those arrangements are consistent with the requirements of this section, when it places an order with, or transmits an order to, that entity for execution;

[**Note:** paragraph 1 of article 45(5) of the *MiFID implementing Directive* and article 26(2) second paragraph of the *UCITS implementing Directive*]

- (3) provide appropriate information to its *clients* on the policy established in accordance with *COBS* 11.2.32R(2) or, for a *management company*, make available to *unitholders* appropriate information on that policy and on any material changes to it;

[**Note:** paragraph 2 of article 45(5) of the *MiFID implementing Directive* and article 26(2) second paragraph last sentence of the *UCITS implementing Directive*]

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

[**Note:** first paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) first paragraph of the *UCITS implementing Directive*]

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

[**Note:** second paragraph of article 45(6) of the *MiFID implementing Directive* and article 26(3) second paragraph of the *UCITS implementing Directive*]

11.2.32A R *A management company* must be able to demonstrate that it has placed orders on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages in accordance with the policy referred to in *COBS* 11.2.32R(2).

[**Note:** article 26(4) of the *UCITS implementing Directive*]

11.2.33 G ...

11.2.34 R The provisions applying to a *firm* which places orders with, or transmits orders to, other entities for execution (see *COBS* 11.2.30R to *COBS* 11.2.33G) will not apply when the *firm* which provides the services of *portfolio management* or *collective portfolio management* and/or service of reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its ~~client's~~ *client's* portfolio. In those cases the requirements of this section for *firms* who execute orders apply (see *COBS* 11.2.1R to *COBS* 11.2.29R).



[**Note:** article 45(7) of the *MiFID implementing Directive* and article 25 of the *UCITS implementing Directive*]

### 11.3 Client order handling

#### General principles

- 11.3.1 R (1) A firm (other than a management company providing collective portfolio management services) which is authorised to execute orders on behalf of *clients* must implement procedures and arrangements which provide for the prompt, fair and expeditious execution of *client* orders, relative to other orders or the trading interests of the *firm*.
- [**Note:** paragraph 1 of article 22(1) of *MiFID*]
- (2) ...
- (3) A management company providing collective portfolio management services, must establish and implement procedures and arrangements in respect of all *client* orders it carries out which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the *UCITS scheme* or *EEA UCITS scheme* it manages.
- [**Note:** article 27(1) first paragraph of the *UCITS implementing Directive*]
- 11.3.2 R A *firm* must satisfy the following conditions when carrying out *client* orders:
- ...
- [**Note:** article 47(1) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 27(1) second paragraph of the *UCITS implementing Directive*]
- ...
- 11.3.4 R Where a *firm* is responsible for overseeing or arranging the settlement of an executed order or executes the order itself in the course of providing *collective portfolio management services*, it must take all reasonable steps to ensure that any *client financial instruments* or *client funds* received in settlement of that executed order are promptly and correctly delivered to the account of the appropriate *client*.
- [**Note:** article 47(2) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 27(1) third paragraph of the *UCITS implementing Directive*]

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

[**Note:** article 47(3) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 27(2) of the *UCITS implementing Directive*]

...

#### Aggregation and allocation of orders

- 11.3.7 R A *firm* is not permitted to carry out a *client* order or a transaction for own account in aggregation with another *client* order unless the following conditions are met:
- (1) it must be unlikely that the aggregation of orders and transactions will work overall to the disadvantage of any *client* whose order is to be aggregated;
  - (2) it must be disclosed to each *client* whose order is to be aggregated that the effect of aggregation may work to its disadvantage in relation to a particular order;
  - (3) an order allocation policy must be established and effectively implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders and transactions, including how the volume and price of orders determines allocations and the treatment of partial executions.

[**Note:** article 48(1) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 28(1) of the *UCITS implementing Directive*]

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

[**Note:** article 48(2) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 28(2) of the *UCITS implementing Directive*]

#### Aggregation and allocation of transactions for own account

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

[**Note:** article 49(1) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 28(3) of the *UCITS implementing Directive*]

- 11.3.10 R (1) If a *firm* aggregates a *client* order with a transaction for own account and the aggregated order is partially executed, it must allocate the related trades to the *client* in priority to the *firm*.

- (2) However, if the *firm* is able to demonstrate on reasonable grounds that without the combination it would not have been able to carry out the order on such advantageous terms, or at all, it may allocate the transaction for own account proportionally, in accordance with its order allocation policy.

[**Note:** article 49(2) of *MiFID implementing Directive*, ~~and~~ article 19(1) of *MiFID* and article 28(4) of the *UCITS implementing Directive*]

...

11.3.13 G In this section, carrying out *client* orders includes:

...

- (2) the placing of orders with other entities for execution that result from decisions to deal in *financial instruments* on behalf of *clients* when providing the services of *portfolio management* or *collective portfolio management*;

...

...

## 11.7 Personal account dealing

Rule on personal account dealing

11.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain arrangements aimed at preventing the following activities...

- (1) entering into a *personal transaction* which meets at least one of the following criteria:

...

- (c) it conflicts or is likely to conflict with an obligation of the *firm* to a *customer* under the *regulatory system* or any other obligation of the *firm* under *MiFID* or the *UCITS Directive*;

...

[**Note:** article 12(1) of *MiFID implementing Directive* and article 13(1) of the *UCITS implementing Directive*]

...

11.7.4 R The arrangements required under this section must in particular ...

[**Note:** article 12(2) of *MiFID implementing Directive* and article 13(2) of the *UCITS implementing Directive*]

## Disapplication of rule on personal account dealing

11.7.5 R This section does not apply to ...  
 [Note: article 12(3) of *MiFID implementing Directive* and article 13(3) of the *UCITS implementing Directive*]

11.7.6 R For the purposes of this section, a *person* who is not:

- (1) a director, partner or equivalent, manager or *appointed representative* (or, where applicable, a *tied agent*) of the *firm*; or
- (2) a director, partner or equivalent, or manager of any *appointed representative* (or, where applicable, a *tied agent*) of the *firm*;

will only be a *relevant person* to the extent that they are involved in the provision of *designated investment business* or *collective portfolio management services*.

...

**13.1 The obligation to prepare product information**

...

## Exceptions

13.1.3 R A *firm* is not required to prepare:

...

- (2) a *key features document* for:
  - (a) a *unit* in a *UCITS scheme* or a *simplified prospectus scheme*; or
  - (b) a *unit* in an ~~*EEA simplified prospectus scheme*~~ *EEA UCITS scheme* which is a *recognised scheme*; or

...
- (3) a *key features illustration*;
  - (a) for a *unit* in a *UCITS scheme* or a *simplified prospectus scheme*; or
  - (b) for a *unit* in an *EEA UCITS scheme* which is a *recognised scheme*; or
  - (c) if it includes the information from the *key features illustration* in a *key features document*; or

...

- 13.1.4 R A single *document* prepared for more than one *key features scheme*, or simplified prospectus scheme ~~or EEA simplified prospectus scheme~~ may combine more than one *key features document*, *simplified prospectus* or *EEA simplified prospectus* or any combination of them, if the *schemes* are offered through a *funds supermarket service* and the *document* clearly describes the difference between the *schemes*.

...

## 14.2 Providing product information to clients

The provision rules

- 14.2.1 R A *firm* that sells:
- (1) a *packaged product* to a *retail client*, must provide a *key features document* and a *key features illustration* to that *client* (unless the *packaged product* is a *unit* in a *UCITS scheme*, *simplified prospectus scheme*, or an *EEA simplified prospectus scheme*, or an *EEA UCITS scheme* which is a *recognised scheme*);
  - ...
  - (6) ~~a *unit* in an *EEA simplified prospectus scheme* to a *client*, must offer an up-to-date copy of the *scheme's EEA simplified prospectus* to that *client*; [deleted]~~
  - (7) a *unit* in a *UCITS scheme*, or in an *EEA UCITS scheme* which is a *recognised scheme*, to a *client*, must:
    - (a) provide a copy of the *scheme's key investor information document* or, as the case may be, *EEA key investor information document* to that *client*; and
    - (b) where the *client* is a *retail client*, provide separately (unless already provided) the information required by *COBS 13.3.1R(2)* (General requirements) and, if that *client* is present in the *EEA*, the information required by (5)(a) and (b);
  - (8) where the *operator* of a *non-UCITS retail scheme* has a dispensation from the *FSA* in the form of a *general waiver* by consent under which it may market *units* of the *scheme* on the basis of a *key investor information document* (as modified by the *general waiver direction*, a “NURS KII document”), rather than on the basis of a *key features document* or *simplified prospectus*, a *firm* that sells *units* in the *scheme* must comply with its obligations under this rule by:
    - (a) providing the *retail client* with the relevant NURS KII document; and
    - (b) offering any *client* that is not a *retail client* the relevant

NURS KII document;

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”.

...

[**Note:** in respect of ~~(5)~~ and ~~(6)~~ ~~(7)~~, articles 1, 33(1) and 44 and 80 of the *UCITS Directive*]

Provision of key investor information document

- 14.2.1A R
- (1) This rule applies to an authorised fund manager of a UCITS scheme that is either an authorised unit trust or an ICVC, and an ICVC that is a UCITS scheme.
  - (2) An authorised fund manager and an ICVC in (1) that sells units in a UCITS scheme directly, or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, must ensure that investors are provided with the key investor information document for the scheme.
  - (3) An authorised fund manager and an ICVC in (1) that does not sell units in a UCITS scheme directly, or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility, must ensure that the key investor information document for the scheme is provided on request to product manufacturers and intermediaries selling, or advising investors on, potential investments in those UCITS schemes or in products offering exposure to them.
  - (4) The key investor information document must be provided to investors free of charge.
  - (5) An authorised fund manager and an ICVC in (1) may, instead of providing the key investor information document to investors in paper copy in accordance with (2), provide it in a durable medium other than paper or by means of a website that meets the website conditions, in which case the authorised fund manager and ICVC must:
    - (a) deliver a paper copy of the key investor information document to the investor on request and free of charge; and
    - (b) make available an up-to-date version of the key investor information document to investors on the website of the ICVC or authorised fund manager.

[**Note:** articles 80 and 81 of the *UCITS Directive*]

...

Exception to the provision rules: key features documents, ~~and~~ simplified prospectuses and key investor information documents

- 14.2.5 R A *firm* is not required to provide:
- ...
- (4) a *simplified prospectus* if:
- (a) ~~another person is required to offer the *simplified prospectus* to the client by the rules of another EEA State; or [deleted]~~
- (b) ...
- ...
- ~~[Note: in respect of (4), articles 1, 33(1) and 44 of the UCITS directive]~~

...

Exception to the provision rules: key features documents, key features illustrations ~~and~~, simplified prospectuses and key investor information documents

- 14.2.9 R A *firm* is not required to provide a *key features document*, a *key features illustration* or a *simplified prospectus* for a *key features scheme* or *simplified prospectus scheme* if:
- ...
- ~~[Note: articles 1, 33(1) and 44 of the UCITS directive]~~

- 14.2.9A R For the purposes of the provision rules in relation to a *key investor information document*, a *firm*:
- (1) may satisfy the requirement to provide the document to the investor by providing it to a *person* who has written authority to make investment decisions on that investor's behalf; and
- (2) is not required to consider as a new transaction:
- (a) a subscription to *units* in a *UCITS scheme* or an *EEA UCITS scheme* in which the *client* already holds *units*; or
- (b) a series of connected transactions undertaken as the consequence of a single investment decision; or
- (c) a decision by the *client* to switch from one class of *units* to another in the same *scheme*;
- if an up-to-date version of the *key investor information document* for the *scheme* or the relevant class of *units* has already been provided

to that client.

[**Note:** article 80 of the *UCITS Directive*]

- 14.2.10 G
- (1) Although a *firm* is not always required to provide a *simplified prospectus* to a *client* (COBS 14.2.9R), the obligation to offer the prospectus to the *client* (COBS 14.2.1R(5)) remains.
  - (2) The FSA would regard a decision to subscribe to a regular monthly savings plan as a single investment decision for the purpose of COBS 14.2.9AR(2)(b). However, a subsequent decision by the client to increase the amount of the regular contributions to be invested in units of a particular scheme or to direct the contributions to a different scheme, would in each case constitute a new transaction.

Exception to the provision rules: aggregated scheme documents

- 14.2.11 R
- A *firm* may provide a single *document*, which describes more than one *key features scheme*; or simplified prospectus scheme ~~or EEA simplified prospectus scheme~~, or any combination of those *schemes*, if:
- ...
- (3) (in the case of a *simplified prospectus scheme* ~~or an EEA simplified prospectus scheme~~) the *firm* also offers ~~copies~~ a copy of the relevant ~~prospectuses~~ prospectus to the *client*.

[~~**Note:** article 33(1) of the *UCITS directive*~~]

...

The timing rules

- 14.2.14 R
- When the *rules* in this section require a *firm* to:
- (1) offer a *simplified prospectus* ~~or an EEA simplified prospectus scheme~~ to a *client*, that prospectus must be offered free of charge before the conclusion of the contract; or
  - (2) provide a *key features document*, a *simplified prospectus*, ~~an EEA simplified prospectus scheme~~ or any other *document* or information to a *client*, the *document* or information must be provided free of charge and in good time before the *firm* carries on the relevant business; or
  - (3) provide a *key investor information document* or *EEA key investor information document* to a *client*, it must be provided in good time before the *client's* proposed subscription for *units* in the *scheme*.

[**Note:** article 33(1) ~~80~~ of the *UCITS directive* Directive]



...

Exception to the timing rules: distance contracts and voice telephony communications

- 14.2.16 R (1) A *firm* may provide a *document*, or the information required to be provided by the *rules* in this section, in a *durable medium* immediately after the conclusion of a *distance contract*, if the contract has been concluded at a *client's* request using a means of distance communication that does not enable the *document* or information to be provided in that form in good time before the *client* is bound by the contract.
- (2) The exception in (1) does not apply in relation to the provision of an EEA key investor information document or a key investor information document required to be provided under COBS 14.2.1R and COBS 14.2.1AR.
- 14.2.17 R (1) Where the *rules* in this section require a *document* or information to be provided, in the case of a voice telephony communication, a *firm* must:
- (1)(a) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information (COBS 5 Annex 2R) orally to the *client*;
- (2)(b) if the ~~client~~ *client* does not give explicit consent to only receiving limited information, and the parties wish to proceed by voice telephony communication, provide the distance marketing information (COBS 5 Annex 1R) orally to the ~~client~~ *client*;
- (3)(c) in the case of (1)(a) or (2)(b), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.
- (2) The exception in (1) does not apply in relation to the provision of an EEA key investor information document or a key investor information document required to be provided under COBS 14.2.1R and COBS 14.2.1AR.

...

### 14.3 Information about designated investments

...

- 14.3.7 G Providing a *key features document*, *key investor information document*, *EEA key investor information document* or *simplified prospectus* may satisfy the requirements of the *rules* in this section.

...

## Information about UCITS schemes

- 14.3.11 R If a *firm* provides a *client* with a ~~*simplified prospectus*~~ or an ~~*EEA simplified prospectus*~~ *key investor information document* or *EEA key investor information document* that meets the requirements of ~~article 28~~ articles 78 and 79 of the UCITS Directive (see COLL 4.7 (Key investor information and marketing communications)) and the KII Regulation, it will have provided appropriate information for the purpose of the requirement to disclose information on:

...

- 14.3.12 G A ~~*simplified prospectus*~~ provides key investor information document and EEA key investor information document provide sufficient information in relation to the costs and associated charges in respect of the *UCITS scheme* itself. However, a *firm* distributing ~~units~~ units in a *UCITS scheme* should also inform a *client* about all of the other costs and associated charges related to the provision of its services in relation to *units* in the *UCITS scheme*.

...

**16.2 Occasional reporting**

## Execution of orders other than when managing investments

- 16.2.1 R ...
- (6) In relation to subscription and redemption orders for units in a UCITS scheme or EEA UCITS scheme executed by an authorised fund manager, paragraphs (1), (3) and (5) of this rule apply as if references to:
- (a) a client and to a retail client were references to a unitholder in the scheme; and
- (b) trade confirmation information in paragraphs (1)(b) and (5)(b) were to the information in paragraph (7).
- (7) The notice referred to in paragraph (1)(b) must, where applicable, for subscription and redemption orders for units in a UCITS scheme or EEA UCITS scheme executed by an authorised fund manager, include the following information:
- (a) the identification of the management company;
- (b) the name or other designation of the unitholder;
- (c) the date and time of receipt of the order and method of

payment;

- (d) the date of execution;
- (e) the identification of the UCITS scheme or EEA UCITS scheme;
- (f) the nature of the order (subscription or redemption);
- (g) the number of units involved;
- (h) the unit price at which the units were subscribed or redeemed;
- (i) the reference valuation date;
- (j) the gross value of the order including charges for subscription or net amount after charges for redemptions; and
- (k) the total sum of the commissions and expenses charged and where the investor so requests, an itemised breakdown.

[**Note:** article 40 paragraphs (1) to (4) of the *MiFID implementing Directive* and article 24 of the *UCITS implementing Directive*]

...

## 18.5 Operators of collective investment schemes

...

### Additional application of COBS rules for management companies

18.5.2A R A management company must:

- (1) in addition to complying with the COBS rules specified in COBS 18.5.2R, comply with COBS 11.7 (Personal account dealing); and
- (2) comply with COBS 2.3 (Inducements) as modified by COBS 2.3.2AR.

[**Note:** article 13(1) to 13(4) of the *UCITS implementing Directive*]

## 18.9 ICVCs

- 18.9.1 R (1) Only the The financial promotion rules in COBS apply to an ICVC, except that COBS 4.13 (UCITS) applies only to an ICVC that is a UCITS scheme.
- (2) COBS 14.2 (Providing product information to clients) applies to an ICVC that is a UCITS scheme.

...

**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>2.6A</u>	<u>COBS 14.2 and COBS 14.3</u>		(1) <u>A firm is not required to provide a <i>key investor information document</i> or <i>EEA key investor information document</i> to a client 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 of the 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>.</u>	<u>From 1 July 2011 to 30 June 2012</u>	<u>1 July 2011</u>
			(2) <u>Paragraph (1) does not apply where:</u>		
			(a) <u>in the case of a <i>management company</i>, it has already published a <i>key investor information document</i> or an <i>EEA key investor information document</i>;</u> <u>or</u>		
			(b) <u>in the case of any other <i>firm</i>, the document in</u>		

				(a) <u>has already been provided to it in accordance with the requirements of COBS 14.2;</u>		
				<u>in respect of the UCITS or sub-fund or class of units of the scheme, in relation to which a sale of units is proposed.</u>		
[ <b>Note:</b> article 118(2) of the <i>UCITS Directive</i> ]						

## Annex G

### Amendments to the Supervision manual (SUP)

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

#### 11.8 Changes in the circumstances of existing controllers

11.8.1 R A *firm* must notify the *FSA* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:

...

- (4) if a *controller*, who is authorised in another *EEA State* as ~~an~~ a *MiFID investment firm*, ~~or~~ *BCD credit institution* or *UCITS management company* or under the *Insurance Directives* or the *Insurance Mediation Directive*, ceases to be so authorised (registered in the case ~~of~~ an *IMD insurance intermediary*).

...

#### 13 Exercise of passport rights by UK firms

##### 13.1 Application and purpose

Application

...

13.1.3 G This chapter does not apply to:

...

- (4) the marketing of the *units* of a *UCITS scheme* by its ~~operator~~ *management company* in another *EEA State* under the *UCITS Directive* (see ~~*COLLG 2.1.8G*~~ paragraph 20B of Part III of Schedule 3 to the *Act* and *COLL 12.4 (UCITS product passport)*).

...

##### 13.3 Establishing a branch in another EEA State

...

The conditions for establishing a branch

13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are

satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

- (1) ...
- (2) the *FSA* has given notice (known as a *consent notice*) to the *Host State regulator*; ~~and~~
- (2A) if the *UK firm's EEA right* relates to providing *collective portfolio management* services, the *FSA* has provided to the *Host State regulator*:
  - (a) confirmation that the *firm* has been *authorised* as a *management company* under the provisions of the *UCITS Directive*;
  - (b) a description of the scope of the *firm's authorisation*; and
  - (c) details of any restriction on the types of *EEA UCITS scheme* that the *firm* is *authorised* to manage; and
- (3)
  - (a) ...
  - (b) in any other case:
    - (i) the *Host State regulator* has notified the *UK firm* (or, where the *UK firm* is passporting under the *Insurance Directives*, the *FSA*) of the *applicable provisions* or, in the case of a *UK firm* passporting under *MiFID* or the *UCITS Directive*, that the *branch* may be established ; or
    - (ii) ...

...

Issue of a consent notice to the Host State regulator

- 13.3.5 G (1) If the *UK firm's EEA right* derives from the *Banking Consolidation Directive*, ~~or *MiFID* or the *UCITS Directive*~~, the *FSA* ...
- (1A) If the *UK firm's EEA right* derives from the *UCITS Directive*, the *FSA* will give the *Host State regulator* a *consent notice* within two months unless it has reason to doubt the adequacy of the *UK firm's* resources or its administrative structure. The *Host State regulator* then has a further two months to prepare for the supervision of the *UK firm*.

...

13.3.6 G ...

(3) Where a consent notice is given under the UCITS Directive, the FSA will at the same time:

(a) communicate to the Host State regulator details of the compensation scheme intended to protect investors; and

(b) enclose the information described at SUP 13.3.2G(2A).

...

UCITS management companies: other information to be provided to the Host State

13.3.8 G A UK firm seeking to provide collective portfolio management services from a branch in another EEA State, is advised that it will need to refer to the rules of the competent authority of the UCITS Home State implementing article 20 of the UCITS Directive which will require it to submit to that competent authority information relating to its depositary agreement and certain delegation arrangements.

## 13.4 Providing cross border services into another EEA State

...

Issuing a consent notice or notifying the Host State regulator

13.4.4 G (1) If the UK firm's EEA right derives from MiFID, the Banking Consolidation Directive or the UCITS Directive, paragraph 20(3) of Part III of Schedule 3 to the Act requires the FSA to send a copy of the notice of intention to the Host State Regulator within one month of receipt. However, a UK firm passporting under the Banking Consolidation Directive or MiFID may start providing cross border services as soon as it satisfies the relevant conditions (see SUP 13.4.2G).

...

(2B) Where a consent notice is given under the UCITS Directive, the FSA will at the same time:

(a) communicate to the Host State regulator details of the compensation scheme intended to protect investors; and

(b) provide to the Host State regulator:

(i) confirmation that the firm has been authorised as a management company under the provisions of the UCITS Directive;



- (ii) a description of the scope of the firm's authorisation;  
and
- (iii) details of any restriction on the types of EEA UCITS  
scheme that the firm is authorised to manage.

...

Applicable provisions for cross border services

- 13.4.6 G (1) ~~If the UK firm is passporting under the UCITS Directive, then when the Host State regulator receives the notice of intention, it should inform the UK firm of any applicable provisions. [deleted]~~

...

...

UCITS management companies: other information to be provided to the Host State

- 13.4.7 G A UK firm seeking to provide collective portfolio management services in another EEA State under the freedom to provide cross border services, is advised that it will need to refer to the rules of the competent authority of the UCITS Home State implementing article 20 of the UCITS Directive which will require it to submit to that competent authority information relating to its depositary agreement and certain delegation arrangements.

## 13.5 Notices of intention

...

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 must submit a notice in the form set out in:

...

- (4) SUP 13 Annex 6R, if the UK firm is a management company passporting under the UCITS Directive.

...

## 13 Annex 1R **Passporting: Notification of intention to establish a branch in another EEA state**

...

[see next page]

Financial Services Authority

# Passporting

## Notification of intention to establish a branch in another EEA state



(SUP 13 Annex 1 R – Notification under SUP 13.5.1 R)

### Full name of firm

### Purpose of this form

You should complete this form if you are a *UK firm* that wishes to exercise a passport right to establish your first *branch* in a particular *EEA State*. You should also use this form if you are a *UK firm* that wishes to notify us – the *FSA* – of changes to the details of your current *branch*.

### Important information you should read before completing this form

A *UK firm* can only use this form if it is entitled to establish a *branch* in another *EEA State* subject to the conditions of a relevant *single market directive* (see Schedule 3 of the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. *UK firms* should consult the legislation or take their own legal advice both in the *UK* and in the relevant *EEA State(s)* if they are in any doubt.

We give guidance on this in Chapter 13 of the Supervision manual (*SUP*). In particular, a *UK firm* that wants to exercise an *EEA right* must have the specific activity included in its Scope of Permission (unless the *UK firm* is a *subsidiary* of a *firm* which is a *credit institution* that meets the criteria set out in the *Banking Consolidation Directive*).

### Filling in the Form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 10.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 10.
3. All firms should answer sections 1, 2 and 10. Sections 3-9 refer to specific directives and only relevant sections should be completed. However, please answer all questions in the sections relevant to you.
4. If there is not enough space on the form, you may need to use separate sheets of paper. Clearly mark each separate sheet of paper with the relevant question number.

The Financial Services Authority  
 25 The North Colonnade  
 Canary Wharf  
 London  
 E14 5HS  
 UK  
 Telephone: +44 (0)20 7066 1000  
 Fax: +44 (0)20 7066 9798  
 Website: [www.fsa.gov.uk](http://www.fsa.gov.uk)

Registered as a Limited Company in England and Wales No 1920623. Registered Office as above.

## 9 Undertakings for Collective Investment in Transferable Securities

**9.1** You must select those activities that you wish to carry out under the *UCITS Directive* as listed in article 6(2) and (3) of the *UCITS Directive*.

<u>Management of <i>UCITS</i></u>	<input type="checkbox"/>
<u>Management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where those portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i>.</u>	<input type="checkbox"/>
<u>Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i>.</u>	<input type="checkbox"/>
<u>Safekeeping and administration in relation to <i>units</i> of collective investment undertakings.</u>	<input type="checkbox"/>

**9.2** Please give details of the *firm's* programme of operations

### Note to Question 9.2

Provide a programme of operations setting out the activities and services envisaged according to article 6(2) and (3) and the organisational structure of the *branch* which must include a description of the risk management process.

Provide also a description of the procedures and arrangements for dealing properly with investor complaints, including how it is ensured that there are no restrictions on investors exercising such rights and the arrangements for making information available at the request of the public or the *competent authority* of the *UCITS Home State*.

For a suggested template *firms* may adhere to question 4.2 when preparing a programme of operations

**Note: Other Requirements for UCITS management companies**

In addition to the submission of this notice to the FSA, management companies should note, where the application is to manage a UCITS in another EEA State, they will be required by the rules of the competent authority of the UCITS Home State implementing article 20 of the UCITS Directive to provide them with:

- (1) the written agreement that has been entered into with the depositary; and
- (2) information on delegation arrangements regarding the functions of investment management and administration, as referred to in Annex II to the UCITS Directive.

If the management company already manages other UCITS of the same type as the company is proposing to manage in the UCITS Home State, article 20 provides that reference to the documentation already provided shall be sufficient for the purposes of (1) and (2).

**9.3 Please confirm if the information referred to above has been submitted to the competent authority of the UCITS Home State. If it has not been submitted or if article 20 is not applicable please explain why, including (if applicable) when it is expected that the information will be provided.**

## 910 Declaration

...

**I enclose the following sections (mark the appropriate section) \***

Section 1 – Contact Details (mandatory)

...

Section 9 - Undertakings for Collective Investments in Transferable Securities

Section 910 – Declaration (mandatory)

...

...

After SUP 13 Annex 5 insert the following new annex. The text is not underlined.

**13 Annex 6R      Passporting: UCITS Directive**

*[see next page]*

Financial Services Authority

# Passporting

## Notification of intention to provide cross border services in another EEA state



(SUP 13 Annex 6R – Notification under SUP 13.5.2R)

### Full name of firm

### Purpose of this form

You should complete this form if you are a *UK firm* that wishes to exercise a passport right to provide *cross border services* in another *EEA State* under the Undertakings for Collective Investment in Transferable Securities Directive (“the *UCITS Directive*”).

You may also use this form if you are a *UK firm* that wishes to notify us (the *FSA*) of changes to the details of its current *cross border services*.

### Important information you should read before completing this form

A *UK firm* can only use this form if it is entitled to provide *cross border services* into another *EEA State* subject to the conditions of the *UCITS Directive* (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. *UK firms* should consult the legislation or take legal advice both in the *UK* and in the relevant *EEA State(s)* if they are in any doubt.

We give guidance on this in Chapter 13 of the Supervision manual (*SUP*). In particular, a *UK firm* that wants to exercise an *EEA right* must have the specific activity included in its Scope of Permission.

### Filling in the form

1. If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
2. If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
3. If there is not enough space on the form, you may need to use separate sheets of paper. Clearly, mark each separate sheet of paper with the relevant question number.

The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS  
UK

Telephone: +44 (0)20 7066 1000

Fax: +44 (0)20 7066 9798

Website: [www.fsa.gov.uk](http://www.fsa.gov.uk)

Registered as a Limited Company in England and Wales No 1920623. Registered Office as above.

# 1 Contact details

## 1.1 Details of the person we will contact about this application

FSA reference number	
Contact name	
Telephone number	
Fax number	
Email address	

## 2 Details of the services to be provided

2.1 Please indicate the *EEA State(s)* into which services are to be provided.

### Note to Question 2.1

*UK firms* have the right to provide *cross border services* to Gibraltar. References in this form to an *EEA State* include references to Gibraltar (see the Financial Services and Markets Act (Gibraltar) Order 2001).

States required	
Austria	<input type="checkbox"/>
Belgium	<input type="checkbox"/>
Bulgaria	<input type="checkbox"/>
Cyprus	<input type="checkbox"/>
Czech Republic	<input type="checkbox"/>
Denmark	<input type="checkbox"/>
Estonia	<input type="checkbox"/>
Finland	<input type="checkbox"/>
France	<input type="checkbox"/>
Germany	<input type="checkbox"/>
Gibraltar	<input type="checkbox"/>
Greece	<input type="checkbox"/>
Hungary	<input type="checkbox"/>
Iceland	<input type="checkbox"/>
Ireland	<input type="checkbox"/>
Italy	<input type="checkbox"/>
Latvia	<input type="checkbox"/>
Liechtenstein	<input type="checkbox"/>
Lithuania	<input type="checkbox"/>
Luxembourg	<input type="checkbox"/>
Malta	<input type="checkbox"/>
Netherlands	<input type="checkbox"/>
Norway	<input type="checkbox"/>
Poland	<input type="checkbox"/>
Portugal	<input type="checkbox"/>
Romania	<input type="checkbox"/>
Slovak Republic	<input type="checkbox"/>
Slovenia	<input type="checkbox"/>
Spain	<input type="checkbox"/>
Sweden	<input type="checkbox"/>
All States	<input type="checkbox"/>



**2.2** If the *firm* intends to provide services into more than one *EEA State*, will these services vary for each State?

Yes ▶

No ▶

**2.3** Tell us the proposed date for the business to start.

Date	dd/mm/yy
------	----------

### 3 Undertakings for Collective Investment in Transferable Securities

**3.1 You must select those activities that you wish to carry out under the *UCITS Directive* as listed in article 6(2) and (3) of the *UCITS Directive*.**

Management of <i>UCITS</i>	<input type="checkbox"/>
Management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where those portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	<input type="checkbox"/>
Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	<input type="checkbox"/>
Safekeeping and administration in relation to <i>units</i> of collective investment undertakings.	<input type="checkbox"/>

**3.2 Please give details of the *firm's* programme of operations**

**Note to Question 3.2**

Provide a programme of operations setting out the activities and services envisaged according to article 6(2) and (3) which must include a description of the risk management process.

Provide also a description of the procedures and arrangements for dealing properly with investor complaints, including how it is ensured that there are no restrictions on investors exercising such rights and the arrangements for making information available at the request of the public or the *competent authority* of the *UCITS Home State*.

**Note: Other Requirements for UCITS management companies**

In addition to the submission of this notice to the *FSA*, *management companies* should note, where the application is to manage a *UCITS* in another *EEA State*, they will be required by the rules of the *competent authority* of the *UCITS Home State* implementing article 20 of the *UCITS Directive* to provide them with:

- (1) the written agreement that has been entered into with the *depository*; and
- (2) information on delegation arrangements regarding functions of investment management and administration, as referred to in Annex II to the *UCITS Directive*.

If the *management company* already manages other *UCITS* of the same type as the company is proposing to manage in the *UCITS Home State*, article 20 provides that reference to the documentation already provided shall be sufficient for the purposes of (1) and (2).

- 3.3 Please confirm if the information referred to above has been submitted to the competent authority of the UCITS Home State. If it has not been submitted or if article 20 is not applicable please explain why, including (if applicable) when it is expected that the information will be provided.**

--	--

## 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 seek appropriate professional advice before supplying information to us.

There will be a delay in processing the application if any information is inaccurate or incomplete. And 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 knowingly or recklessly to give the *FSA* information that is false or misleading in a material particular.
- 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	
Signature	
Date	dd/mm/yy

I enclose the following sections

Section 1 – Contact details

Section 2 – Details of the services

Section 3 – Undertakings for Collective Investment  
in Transferable Securities

Section 4 – Declaration

## Where to send this form

- 1) Please address the form to:
  - (a) a member of or for the attention of our Passport Notification Unit, or if submitted with an application for *Part IV permission*, our Authorisation Department; and
  - (b) send it to us by one of the methods described in (2) below.
  
- (2) Please send the form by:
  - (a) emailing it to [passport.notifications@fsa.gov.uk](mailto:passport.notifications@fsa.gov.uk), if not submitted with an application for *Part IV Permission*; or
  - (b) leaving the application at our Canary Wharf office (see (a) above) and obtaining a time-stamped receipt; or
  - (c) posting it to The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS; or
  - (d) hand delivering it to a member of the Passport Notification Unit or, if submitted with an application for *Part IV permission*, to the Authorisation Department; or
  - (e) faxing it to the Passport Notification Unit on 020 7066 9798 (if not submitted with an application for *Part IV Permission*).

**If you have any questions or need additional information, please contact the Passport Notification Unit on 020 7066 1000 or email [passport.notifications@fsa.gov.uk](mailto:passport.notifications@fsa.gov.uk).**

Amend the following as shown.

### 13A.3 Qualifications for authorisation under the Act

...

- 13A.3.1C G (1) Under paragraph 15A(1) of Part II of Schedule 3 to the Act, an EEA UCITS management company intending to exercise an EEA right to provide collective portfolio management services for a UCITS scheme must, before it undertakes that activity, obtain the FSA's approval to manage that UCITS scheme. Firms should use the application form set out in SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom) for this purpose.
- (2) If the FSA refuses the application referred to in (1), it will give a notice to the firm and the firm's Home State regulator in accordance with paragraph 15A of Part II of Schedule 3 to the Act. Before refusing an application, the FSA will consult with the firm's Home State regulator.
- (3) Under paragraph 15B(1) of Part II of Schedule 3 to the Act, if any representations are made to the FSA by a firm to which the notice referred to in (2) has been given, the FSA is required to decide whether to withdraw that notice. If the FSA decides not to withdraw that notice it must give the firm a decision notice.
- (4) For details of the FSA's procedures for the giving of notices see DEPP 2 (Statutory notices and allocation of decision making).

...

- 13A.3.2 G (1) On qualifying for authorisation, subject to ~~SUP 13A.3.2G(2)~~ SUP 13A.3.1CG(1), an EEA firm will have permission to carry on each permitted activity (see (3) below) which is a regulated activity.
- (2) (a) ~~Paragraph (1) does not apply to the activity of dealing in units in a collective investment scheme in the United Kingdom where:~~
- (i) ~~the firm is an EEA UCITS management company;~~
  - (ii) ~~the firm satisfies the establishment conditions in SUP 13A.4.1G; and~~
  - (iii) ~~the FSA notifies the EEA firm and the EEA firm's Home State regulator that the way in which it intends to market a relevant scheme in the United Kingdom does not comply with the law in force in the United Kingdom.~~

- (b) ~~The FSA's notice under (2)(a)(iii) has to be given to the EEA firm within two months of receiving the consent notice (see paragraph 13(1) of Part II of Schedule 3 to the Act) and will be similar to a warning notice.~~
- (c) ~~For details of the FSA's procedures for the giving of warning notices see DEPP 2 (Statutory notices and allocation of decision making). [deleted]~~

...

#### 13A.4 EEA firms establishing a branch in the United Kingdom

The conditions for establishing a branch

13A.4.1 ...

13A.4.1A G An EEA UCITS management company may not exercise an EEA right to provide collective portfolio management services for a UCITS scheme from a branch in the United Kingdom until approved by the FSA to do so (see SUP 13A.3.1CG).

...

#### 13A.5 EEA firms providing cross border services into the United Kingdom

...

The conditions for providing cross border services into the United Kingdom

13A.5.3 G ...

(3) An EEA UCITS management company may not exercise an EEA right to provide collective portfolio management services for a UCITS scheme on a cross border services basis until approved by the FSA to do so (see SUP 13A.3.1CG).

...

13A.5.5 G An EEA firm (other than an EEA UCITS management company) that has satisfied the service conditions in paragraph 14 of Part II of Schedule 3 to the Act is entitled to start providing cross border services into the United Kingdom. In the case of an EEA UCITS management company, FSA approval must first be obtained, as explained in SUP 13A.5.3G (see also SUP 13A.3.1CG). However, an EEA firm that wishes to start providing cross border services but has not yet received notification of the applicable provisions may wish to contact the FSA's Passport Notifications Unit (see SUP 13A.8.1G(2)).

...

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

...		
(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
SYSC	<p>...</p> <p><i>SYSC 1 Annex 1.2.7G reminds EEA MiFID investment firms that they must comply with the common platform record-keeping requirements in relation to a branch in the United Kingdom.</i></p> <p><u><i>SYSC 1 Annex 1, Part 2, 2.7AG provides guidance on the application of the common platform requirements to the UK branch of an EEA UCITS management company.</i></u></p> <p>SYSC 9 ...</p> <p>...</p>	...
...		
COLL	<p><u>The following provisions of COLL apply to an EEA UCITS management company providing collective portfolio management services for</u></p>	<p>As column (2)(d), (e), (f) and (g) and the other parts of COLL specified.</p>



	<p><u>a UCITS scheme:</u></p> <p><u>(a) COLL 6.6A.2R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);</u></p> <p><u>(b) COLL 6.6A.4R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);</u></p> <p><u>(c) COLL 6.6A.5R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);</u></p> <p><u>(d) COLL 12.3.4R (Provision of documentation to the FSA: EEA UCITS management companies);</u></p> <p><u>(e) the fund application rules (see COLL 12.3.5R (COLL fund rules under the management company passport: the fund application rules);</u></p> <p><u>(f) COLL 12.3.6R (Requirement to make information available to the public or the FSA);</u></p> <p><u>(g) COLL 12.3.7G (EEA UCITS management companies: compliance with FSA rules); and</u></p> <p><u>(h) COLL 12.3.8G (EEA UCITS management companies: conduct of business rules).</u></p>	
--	--	--

	<p><u>An EEA UCITS management company providing collective portfolio management services for a UCITS scheme should be aware that it will be expected to comply with the above rules in relation to all aspects of the functioning of the relevant UCITS scheme where, for example, COLL apply if the firm:</u></p> <p><del>(a) is the operator or depositary of an AUT or ICVC; or [deleted]</del></p> <p>(b) wishes to apply for an <i>authorisation order</i> to establish an AUT or ICVC <u>as a UCITS scheme</u>; or</p> <p><u>(ba) is the management company of a UCITS scheme that wishes to exercise an EEA right to market its units in another EEA State</u>; or</p> <p><del>(c) is the operator of a recognised scheme; or</del></p> <p><del>(d) wishes to apply for recognition of a recognised scheme.</del></p>	
...		

**13A Annex 2G Matters reserved to a Home State regulator**

...
Application of the common platform requirements in SYSC to EEA MiFID investment firms

8	Whilst the <i>common platform requirements</i> (located in SYSC 4 – SYSC 10) do not generally apply to <i>incoming EEA firms</i> (but for <i>EEA UCITS management companies</i> , see 8A below), <i>EEA MiFID investment firms</i> must comply with the <i>common platform record-keeping requirements</i> in relation to a <i>branch</i> in the <i>United Kingdom</i> .
<u>Application of SYSC to EEA UCITS management companies</u>	
8A	<u>SYSC 1 Annex 1 (Detailed application of SYSC), Part 2, 2.7AG provides guidance on the application of the <i>common platform requirements</i> to the <i>UK branch</i> of an <i>EEA UCITS management company</i>.</u>
...	
<u>Requirements under the UCITS Directive</u>	
11A	<u>Article 19(8) of the <i>UCITS Directive</i> prohibits an <i>EEA State</i> from imposing additional requirements on a <i>management company</i> providing <i>collective portfolio management</i> services for a <i>UCITS</i> in its territory on a cross-border basis by establishing a <i>branch</i> or under the freedom to provide <i>cross border services</i> in respect of the subject matter of the <i>UCITS Directive</i>, except in the cases expressly permitted (see 11C below).</u>
11B	<u>A <i>management company</i> which provides <i>collective portfolio management</i> services on a cross-border basis by establishing a <i>branch</i> in another <i>EEA State</i> or under the freedom to provide services must comply with the <i>rules</i> of the <i>UCITS Home State</i> which relate to the constitution and functioning of the <i>UCITS</i>. Where the <i>UCITS Home State</i> is the <i>United Kingdom</i>, the applicable <i>rules</i> that the <i>EEA UCITS management company</i> must comply with are as follows:</u>
	(1) <u><i>COLL 12.3.4R</i> (Provision of documentation to the FSA: <i>EEA UCITS management companies</i>);</u>
	(2) <u>the <i>fund application rules</i> (see <i>COLL 12.3.5R</i> (<i>COLL fund rules</i> under the management company passport: the fund application rules)); and</u>
	(3) <u><i>COLL 12.3.6R</i> (Requirement to make information available to the public or the FSA).</u>
11C	<u>A <i>management company</i>, however, which provides <i>collective portfolio management</i> services from a <i>branch</i> in another <i>EEA State</i>, is obliged under article 17(4) to comply with the applicable rules of the <i>Host State regulator</i> drawn up under article 14(1) that require a <i>management company</i> to:</u>
	(1) <u>act honestly and fairly in conducting its business activities in the best interests of the <i>UCITS</i> it manages and the integrity of</u>

		<u>the market;</u>
	(2)	<u>act with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;</u>
	(3)	<u>have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;</u>
	(4)	<u>try to avoid conflicts of interests and, when they cannot be avoided, to ensure that the UCITS it manages is fairly treated;</u> <u>and</u>
	(5)	<u>comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.</u>
11D	<u>The rules implementing the requirements set out in paragraph 11C (1) to (5) are as follows:</u>	
	(1)	<u>SYSC, to the extent indicated in column A+ (Application to management company) of Part 3 of SYSC 1 Annex 1 (Detailed application of SYSC); and</u>
	(2)	<u>COBS, to the extent indicated at paragraph 9.1 of Part 3 of COBS 1 Annex 1 (Application).</u>
	(3)	<u>COLL 6.6A.2R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders) (branch only);</u>
	(4)	<u>COLL 6.6A.4R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes) (branch only); and</u>
	(5)	<u>COLL 6.6A.5R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company) (branch only).</u>
<u>Territorial application of the Handbook</u>		
12	...	
...		

After SUP 13A Annex 2G insert the following new annex. The text is not underlined.

**13A Annex 3R EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom**

Under paragraph 15A(1) of Part II of Schedule 3 to the *Act*, an *EEA UCITS management company* intending to exercise an *EEA right* to provide *collective portfolio management* services for a *UCITS scheme* must, before it undertakes that activity, obtain the *FSA's* approval to manage that *UCITS scheme*. *Firms* should use the application form below for this purpose. *Firms* may cross refer to other sources where the information has already been provided to the *FSA*.

<b>Application by an EEA UCITS management company to manage one or more UCITS schemes established in the United Kingdom (paragraph 15A(1) of Part II of Schedule 3 to the Financial Services and Markets Act 2000).</b>	
Name and registered address of <i>management company</i> :	
Contact details for the person submitting the application (including telephone number and email address):	
<i>EEA State</i> in which <i>management company</i> is authorised:	
Details of <i>competent authority</i> providing authorisation of the <i>management company</i> :	
Set out details of the scope of authorisation of the <i>management company</i> including the type of funds for which authorisation to manage has been obtained and any limitations that apply to the authorisation:	
Name of each <i>UCITS scheme</i> to which this application for approval relates:	
Is the <i>management company</i> authorised to manage the type of <i>UCITS scheme</i> to which this approval relates? If not provide details:	
Has the <i>management company</i> submitted the information required by <i>COLL 12.3.4R</i> (Provision of documentation to the <i>FSA</i> : <i>EEA UCITS management companies</i> ), including the depositary agreement and information on delegation arrangements? Provide details:	

Signed by: Title: Dated:
When completed send this form to: CIS Authorisations The Financial Services Authority 25 the North Colonnade London. E14 5HS Or electronically to: cis@fsa.gov.uk

Amend the following as shown.

## 15.8 Notification in respect of particular products and services

...

Delegation by UK UCITS management companies

- 15.8.6 R ~~A *UCITS management company* must notify the *FSA* as soon as reasonably practicable if it delegates any of its functions to a third party.~~  
If a *UK UCITS management company* intends to delegate to a third party any one or more of its functions for the more efficient conduct of its business, it must first inform the *FSA* in an appropriate manner.

**[Note:** article 13(1)(a) of the *UCITS Directive***]**

- 15.8.7 G A *UK UCITS management company* which delegates any of its functions to a third party must, as well as complying with *SUP* 15.8.6R, comply with the requirements in *SYSC* 8.1.13R (Additional requirements for a management company) and *COLL* 6.6.15AR(2).

...

**Appendix 3 Guidance on passporting issues**

...

**App 3.9.6 G Activities set out in Article 5 6(2) and (3) of the UCITS Directive**

...

## Annex H

## Amendments to the Decision Procedure and Penalties manual (DEPP)

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

- 2.5.16 G A notice under ~~section 264(2)~~ of paragraph 15A(4) of Schedule 3 to the Act (~~notification of non-compliance with UK law~~) relating to a ~~collective investment scheme constituted in another EEA State~~ the application by an EEA firm for approval to manage a UCITS scheme is not a *warning notice*, but the FSA will operate a procedure for a ~~section 264(2)~~ this notice which will be similar to the procedure for a *warning notice*.

...

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

...

Section of the Act	Description	Handbook reference	Decision maker
...			
<u>252A(4)(b)/ (6)(a)</u>	<u>when the FSA is proposing or deciding to refuse approval of a proposal by the manager of a feeder UCITS to make an alteration to the trust deed to enable the feeder UCITS to convert into a UCITS scheme which is not a feeder UCITS</u>	<u>COLL 11</u>	<u>Executive procedures</u>
...			
264(2)/265(4)	<del>when the FSA is notifying or deciding not to withdraw a notice, to the operator and relevant EEA State authorities, that the way in which a collective investment scheme constituted in another EEA State intends to invite persons in the United Kingdom to participate in the scheme does not comply with UK law [deleted]</del>	<del>COLL 9</del> See DEPP 2.5.16G	<del>Executive procedures</del>
...			



Paragraph <u>15A(4) of Schedule 3</u>	when the <i>FSA</i> is notifying an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i>	<u>SUP 13A</u>  <u>See DEPP 2.5.16 G</u>	<u>Executive procedures</u>
Paragraph 15A(5) of Schedule 3	when the <i>FSA</i> is notifying or deciding not to withdraw a notice issued to an <i>EEA UCITS management company</i> wishing to deal in units in a <i>collective investment scheme</i> in the <i>United Kingdom</i> and relevant <i>EEA State</i> authorities, that the way in which the <i>EEA UCITS management company</i> intends to market a <i>relevant scheme</i> in the <i>United Kingdom</i> does not comply with <i>UK law</i> [deleted]	<u>SUP 13A</u>	<u>Executive procedures</u>
Paragraph <u>15B(3)(a) of Schedule 3</u>	when the <i>FSA</i> is deciding not to withdraw a notice issued to an <i>EEA firm</i> wishing to manage a <i>UCITS scheme</i> and to its <i>Home State regulator</i> that the <i>EEA firm</i> does not comply with the <i>fund application rules</i> , or is not authorised by its <i>Home State regulator</i> to manage the type of <i>collective investment scheme</i> for which <i>authorisation</i> is required, or has not provided the documentation required under article 20(1) of the <i>UCITS Directive</i>	<u>SUP 13A</u>	<u>Executive procedures</u>

...

OEIC Regulations reference	Description	Handbook reference	Decision maker
----------------------------	-------------	--------------------	----------------

...			
<u>Regulation 22A(5)(b)/(8) (a)</u>	when the <i>FSA</i> is proposing or deciding to refuse approval of a proposal by an <i>ICVC</i> which is a <i>feeder UCITS</i> to make an alteration to its <i>instrument of incorporation</i> to enable it to convert into a <i>UCITS scheme</i> which is not a <i>feeder UCITS</i>	<u>COLL 11</u>	<u>Executive procedures</u>
...			

## Annex I

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

#### INTRO 1 Introduction

...

##### Chapter 1: Treating complainants fairly

DISP 1 contains rules and guidance on how *respondents* should deal with *complaints* promptly and fairly, including *complaints* that could be referred to the *FOS*. Some of these rules also apply to certain *branches* of *firms* elsewhere in the *EEA* and certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*.

...

#### 1.1 Purpose and application

##### Purpose

- 1.1.1 G This chapter contains *rules* and *guidance* on how *respondents* should deal promptly and fairly with *complaints* in respect of business carried on from establishments in the *United Kingdom* ~~or~~ by certain *branches* of *firms* in the *EEA* or by certain *EEA firms* carrying out activities in the *United Kingdom* under the freedom to provide *cross border services*. It is also relevant to those who may wish to make a *complaint* or refer it to the *Financial Ombudsman Service*.

...

##### Application to firms

- 1.1.3 R ...
- (3) The *complaints data publication rules* do not apply in respect of activities carried on from a *branch* of an *EEA firm* in the *United Kingdom* or activities carried on by an *EEA firm* in the *United Kingdom* under the freedom to provide *cross border services*.

...

##### Application to UCITS management companies

- 1.1.10E R For *complaints* related to *collective portfolio management services* of a *UK UCITS management company* for a *UCITS scheme* or an *EEA UCITS scheme*, *DISP* 1.1.3R(1) applies, except where modified as follows:

- (1) the consumer awareness rules, complaints handling rules and complaints record rule apply in respect of complaints from unitholders rather than from eligible complainants; and
- (2) the consumer awareness rules, the complaints handling rules and the complaints record rule, as modified in (1), also apply where the services are provided from a branch in another EEA State (and any reference to respondent in the consumer awareness rules includes such a branch):

1.1.10F     **R**     For complaints related to collective portfolio management services of an EEA UCITS management company for a UCITS scheme, DISP 1.1.3R(1) applies, except where modified as follows:

- (1) where the services are provided from a branch in the United Kingdom, the consumer awareness rules, complaints handling rules and complaints record rule apply in respect of complaints from unitholders rather than from eligible complainants; and
- (2) this chapter, except the consumer awareness rules, complaints handling rules, complaints record rule and complaints data publication rules, also applies to an EEA UCITS management company providing services in the United Kingdom under the freedom to provide cross border services.

...

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

- (2)     Notwithstanding (1):
  - (a)     *the complaints handling rules and complaints record rule will continue to apply in respect of complaints concerning MiFID business; and*
  - (b)     the consumer awareness rules, the complaints handling rules and the complaints record rule will continue to apply in respect of complaints concerning the provision of collective portfolio management services.

...

## **1.2     Consumer awareness rules**

Publishing and providing summary details

1.2.1 R ...

[Note: article 15 of the UCITS Directive]

...

1.2.3 G These summary details should cover at least:

(1) ...

(2) (where the complaint falls within the jurisdiction of the Financial Ombudsman Service) that, if the complaint is not resolved, the complainant may be entitled to refer it to the Financial Ombudsman Service.

...

1.2.5A G DISP 1.2.5G does not apply to a branch of a UK UCITS management company in another EEA State.

### 1.3 Complaints handling rules

1.3.1 R ...

[Note: article 10 of the MiFID implementing Directive and article 6(1) of the UCITS implementing Directive]

1.3.1A R ...

[Note: article 6(3) of the UCITS implementing Directive]

#### Procedures for UCITS management companies

1.3.1B R A UK UCITS management company must ensure that the procedures it establishes under DISP 1.3.1R for the reasonable and prompt handling of complaints require that:

(1) there are no restrictions on unitholders exercising their rights in the event that the UCITS is authorised in an EEA State other than the United Kingdom; and

(2) unitholders are allowed to file complaints in any of the official languages of the Home State of the UCITS scheme or EEA UCITS scheme or of any EEA State to which a notification has been transmitted by the competent authority of the scheme's Home State in accordance with article 93 of the UCITS Directive.

[Note: article 15 of the UCITS Directive]

...

**1.5 Complaints resolved by close of the next business day**

1.5.1 R The following *rules* do not apply to a *complaint* that is resolved by a *respondent* by close of business on the *business day* following its receipt:

...

- (4) the *complaints record rule*, if the *complaint* does not relate to *MiFID business or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*; and

...

...

**1.9 Complaints record rule**

1.9.1 R A *firm*, including, in the case of *MiFID business or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*, a *branch* of a *UK firm* in another *EEA State*, must keep a record of each *complaint* received and the measures taken for its resolution and retain that record for:

- (1) at least five years where the *complaint* relates to *MiFID business or collective portfolio management services for a UCITS scheme or an EEA UCITS scheme*; and
- (2) three years for all other *complaints*;

from the date the *complaint* was received.

[**Note:** article 10 of the *MiFID implementing Directive* and article 6(2) of the *UCITS implementing Directive*]

...

**1 Annex 2G Application of DISP 1 to type of respondent**

...

Type of respondent	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4 – 1.8 Complaints resolution rules etc	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication rules
<i>firm (other than a UCITS management company when providing collective portfolio management services in</i>	...					

<u>respect of a UCITS scheme or an EEA UCITS scheme</u> ) in relation to <u>complaints concerning non-MiFID business</u>						
<u>firm</u> in relation to <u>complaints concerning MiFID business</u>	...					
<u>UK UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme or an EEA UCITS scheme provided under the freedom to provide cross border services.</u>	<u>Applies for unitholders</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>
<u>branch of a UK UCITS management company in another EEA State in relation to complaints concerning collective portfolio management services in respect of an EEA UCITS scheme</u>	<u>Applies for unitholders</u>	<u>Applies for unitholders</u>	<u>Does not apply</u>	<u>Applies for unitholders</u>	<u>Does not apply</u>	<u>Does not apply</u>
<u>branch of a UK firm (other than a UK UCITS management company when providing collective portfolio management services in respect of an</u>	...					

<i>EEA UCITS scheme) in another EEA State in relation to complaints concerning non-MiFID business</i>						
<i>branch of a UK firm in another EEA State in relation to complaints concerning MiFID business</i>	...					
<i>incoming branch of an EEA firm (other than an EEA UCITS management company when providing collective portfolio management services in respect of an EEA UCITS scheme) in relation to complaints concerning non-MiFID business</i>	...					
<i>branch of an EEA firm in relation to complaints concerning MiFID business</i>	...					
<i>incoming branch of an EEA UCITS management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme</i>	<u>Applies for unitholders</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Applies for unitholders</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>
<i>incoming EEA UCITS</i>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Applies for eligible</u>	<u>Does not apply</u>	<u>Applies for eligible</u>	<u>Does not apply</u>



<u>management company in relation to complaints concerning collective portfolio management services in respect of a UCITS scheme provided under the freedom to provide cross border services</u>			<u>complainants</u>		<u>complainants</u>	
...						

...

## 2.6 What is the territorial scope of the relevant jurisdiction?

### Compulsory Jurisdiction

- 2.6.1 R (1) The *Compulsory Jurisdiction* covers ~~only~~ *complaints* about the activities of a *firm* (including its *appointed representatives*), of a *payment service provider* (including *agents* of a *payment institution*) or of an *electronic money issuer* (including *agents* of an *electronic money institution*) carried on from an establishment in the *United Kingdom*.
- (2) The *Compulsory Jurisdiction* also covers *complaints* about *collective portfolio management services* provided by an *EEA UCITS management company* managing a *UCITS scheme* from an establishment in another *EEA State* under the freedom to provide *cross border services*.
- 2.6.2 G This:
- (1) includes incoming *EEA firms*, incoming *EEA authorised payment institutions*, incoming *EEA authorised electronic money institutions* and *incoming Treaty firms*; but
- (2) excludes *complaints* about business conducted in the *United Kingdom* on a services basis from an establishment outside the *United Kingdom* (other than *complaints* about *collective portfolio management services* provided by an *EEA UCITS management company* in managing a *UCITS scheme*).

...

## Schedule 1 Record keeping requirements

...

### Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>DISP 1.9.1 R</i>	...			5 years for <i>complaints</i> relating to <i>MiFID business</i> or <i>collective portfolio management services</i> and 3 years for all other <i>complaints</i>

## Annex J

## Amendments to the Compensation sourcebook (COMP)

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

- 5.5.2 R *COMP 5.5.1R* only applies if the *protected investment business* was carried on from:
- (1) an establishment of the *relevant person* in the *United Kingdom*; or
  - (2) a *branch* of a *UK firm* which is:
    - (a) a *MiFID investment firm* established in another *EEA State*; or
    - (b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than ~~of a collective investment scheme~~ *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*);

and the *claim* is an *ICD claim*; or
  - (3) both (1) and (2); or
  - (4) (a) a UK branch of an EEA UCITS management company; or  
 (b) an establishment of such an EEA UCITS management company in its Home State from which cross border services are being carried on;  

and in either case the management company is providing collective portfolio management services for a UCITS scheme but only if the claim relates to that activity.
- ...
- 6.2.2 G (1) ~~An incoming EEA firm, which is a credit institution, an IMD insurance intermediary, or a MiFID investment firm or a UCITS management company, and its appointed representatives are not relevant persons in relation to the firms's passported activities, unless it has top-up cover (and in the case of a UCITS management company, only in relation to managing investments (other than of a collective investment scheme), advising on investments or safeguarding and administering investments).~~ (See definition of "participant firm").
- (2) An EEA UCITS management company providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom or under the freedom to provide cross border services, is a

relevant person to the extent that it carries on those services.

- (3) An EEA UCITS management company carrying on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments, is not a relevant person in relation to those activities, unless it has top-up cover.

...

- 14.1.4 G (1) An incoming EEA firm, which is a credit institution, an IMD insurance intermediary, or an MiFID investment firm or a UCITS management company is not a participant firm in relation to its passported activities unless it “tops-up” into the compensation scheme (for a UCITS management company, this is only for certain passported activities). This reflects section 213(10) of the Act (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons). If an incoming EEA firm also carries on non-passported activities (or, for a UCITS management company, certain passported activities) for which the compensation scheme provides cover, it will be a participant firm in relation to those activities and will be covered by the compensation scheme for those activities in the usual way.

- (2) Whether an incoming EEA firm which is an EEA UCITS management company is a participant firm in relation to its passported activities depends on the nature of its activities. In so far as it carries on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments, it is not a participant firm unless it “tops-up” into the compensation scheme. To the extent that such a firm provides collective portfolio management services for a UCITS scheme from a branch in the United Kingdom or under the freedom to provide cross border services, it is a participant firm in respect of those services.

- 14.1.5 G In relation to an incoming EEA firm’s passported activities, its Home State compensation scheme must provide compensation cover in respect of business within the scope of the *Deposit Guarantee Directive*, *Investors Compensation Directive* and ~~article 5(3)~~ article 6(3) of the *UCITS Directive*, whether that business is carried on from a UK branch or on a cross border services basis. (For a an EEA UCITS management company, this is only for certain passported activities, namely managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments.) ...

...

- 14.2.3 G A notice under COMP 14.2.1R should include details confirming that the incoming EEA firm falls within a prescribed category. In summary:

- (1) the *firm* must be:
  - (a) a credit institution; or
  - (b) an IMD insurance intermediary; or
  - (c) ~~an~~ a MiFID investment firm; or
  - (d) a UCITS management company that carries on the activities of managing investments (other than collective portfolio management), advising on investments or safeguarding and administering investments;
- (2) the *firm* must have established a *branch* in the *United Kingdom* in the exercise of an *EEA right*; and
- (3) the scope and/or level of cover provided by the *firm's Home State* compensation scheme must be less than that provided by the *compensation scheme*.

After COMP 14.4 insert the following new section. The text is not underlined.

#### **14.5 EEA UCITS management companies**

- 14.5.1 R Where an *EEA UCITS management company* provides *collective portfolio management* services for a *UCITS scheme* from a *branch* in the *United Kingdom*, or under the freedom to provide *cross border services*, the *FSCS* must allocate the *firm* to the *sub-class* or *sub-classes* which seems to the *FSCS* to be most appropriate, taking into account the nature of the *firm's* business activities.

## Annex K

### Amendments to the Collective Investment Schemes sourcebook (COLL)

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

#### Application

- 1.1.1 G (1) This sourcebook, except for *COLL* 9 (Recognised schemes), applies to:
- ...
- (b) *ACDs*, other *directors* and *depositories* of *ICVCs*; ~~and~~
- (c) *managers* and *trustees* of *authorised unit trust schemes* (*AUTs*);  
and
- (d) to the extent indicated, *UK UCITS management companies* operating *EEA UCITS schemes*.
- (2) ...
- (3) *COLL* 11.5 (Auditors) also applies to auditors of *master UCITS* and *feeder UCITS* which are *UCITS schemes*.
- (4) This sourcebook also applies to *EEA UCITS management companies* of *UCITS schemes* to the extent required by the *UCITS Directive*.

...

#### EEA territorial scope: compatibility with European law

- 1.1.1B R (1) The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law.
- (2) This rule overrides every other rule in this sourcebook.

#### EEA UCITS management companies of UCITS schemes

- 1.1.1C G An *EEA UCITS management company* that is providing *collective portfolio management services* for a *UCITS scheme* from a *branch* in the *United Kingdom*, or under the freedom to provide *cross border services*, is advised that where it operates a *UCITS scheme* as its designated *management company*, it meets the *Glossary* definition of an “*ACD*” of an *ICVC* or a “*manager*” of an *AUT* which in either case is a *UCITS scheme*. Such *firms* should be aware that provisions in this sourcebook that apply to an *ACD* or a *manager* of a *UCITS scheme* accordingly apply to them, unless otherwise indicated: see *COLL* 12.3 (*EEA UCITS management companies*) for further details.

## Purpose

1.1.2 G ...

- (2) In addition, this sourcebook implements part of the requirements of the *UCITS Directive* to meet *EU* law obligations relevant to *authorised funds* and *management companies*, with other requirements implemented in other parts of the *Handbook*.

UCITS management company and product passport

1.1.2A G *COLL 12* provides for the application of *COLL* in relation to the *management company* passport under the *UCITS Directive*. It explains how the passporting regime applies to both *UK UCITS management companies* and *EEA UCITS management companies* when providing *collective portfolio management* services on a cross-border basis. It also explains how the product passport (for *UCITS*) operates and how *UCITS schemes* may be marketed in other *EEA States*.

...

Umbrella schemes

1.2.1A G *Any authorised fund* may be structured as an *umbrella* with separate *sub-funds*.

[**Note:** article 1(2) second paragraph of the *UCITS Directive*]

...

UCITS schemes

1.2.3 R *A UCITS scheme* is deemed to be established in the *United Kingdom*, irrespective of whether it has been established under the laws of *England and Wales*, *Scotland* or *Northern Ireland*.

[**Note:** article 4 of the *UCITS Directive*]

Master UCITS

1.2.4 R *A master UCITS* that has two or more *feeder UCITS* as its only *unitholders* satisfies the requirement that a *UCITS scheme* must invest capital raised from the public.

[**Note:** article 58(4) of the *UCITS Directive*]

...

Application by an EEA UCITS management company to manage a UCITS scheme

2.1.5 G An *EEA UCITS management company* that proposes to act as the *manager* of an *AUT* or the *ACD* of an *ICVC* that is a *UCITS scheme*, should be aware that

it is required under paragraph 15A(1) of Schedule 3 to the Act to apply to the FSA for approval to do so. The form that the firm must use for this purpose is set out in SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom). In addition, those firms are required to provide to the FSA certain fund documentation, as specified by COLL 12.3.4R (Provision of documentation to the FSA: EEA UCITS management companies).

[**Note:** article 20(1) of the *UCITS Directive*]

Table: contents of the instrument constituting the scheme

- 3.2.6 R This table belongs to COLL 3.2.4R (Matters which must be included in the instrument constituting the scheme)

...	
	<u>Feeder UCITS</u>
<u>7D</u>	<u>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.</u>
...	

...

UCITS obligations

- 3.2.8 R ...
- (2) ~~If it is proposed to market units of a UCITS scheme in any EEA State other than the United Kingdom, the authorised fund manager of that scheme must notify the FSA of its proposal, specifying the EEA State concerned. [deleted]~~
- (3) ~~The ICVC or the manager must make the notification in (2) no later than the notification to the authorities in that EEA State of that proposal. [deleted]~~

...

~~Availability of prospectus and long report~~ Provision and filing of the prospectus

- 4.2.3 R (1) ~~An ICVC or the manager of an AUT~~ The authorised fund manager of an AUT or an ICVC must:
- (a) ~~supply~~ provide a copy of the scheme's most recent prospectus drawn up and published in accordance with COLL 4.2.2R (Publishing the prospectus) free of charge to any person on request; and



- (b) file a copy of the *scheme's* original *prospectus*, together with all revisions thereto, with the *FSA* and, where a *UCITS scheme* is managed by an *EEA UCITS management company*, with that company's *Home State regulator* on request.
- (1A) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the *prospectus* may be provided in a *durable medium* or by means of a website that meets the *website conditions*.
- (2) ~~An *ICVC* or the *manager* of an *AUT* which in either case is a *UCITS scheme* intending to market *units* in the territory of another *EEA State* must:~~
- (a) ~~ensure that the following *documents* are drawn up in the, or one of the, official languages of the *EEA State* or a language approved by the *Host State regulator*:~~
- (i) ~~the *prospectus*;~~
- (ii) ~~the *instrument constituting the scheme*; and~~
- (iii) ~~the latest annual and half-yearly long reports of the *scheme*;~~
- (b) ~~supply copies of the most recent version of the *documents* in (a) to any purchaser of *units* free of charge on request; and~~
- (c) ~~file copies of the most recent version of the *documents* in (a) with the *competent authority* of each such *Host State*, provided in the language or one of the languages of that *State* or a language approved by the *competent authority* of that *State*.~~  
~~[deleted]~~

...

[Note: articles 74, 75(1) and 75(2) of the *UCITS Directive*]

Provision and filing of the prospectus of a master UCITS

- 4.2.3A R (1) The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* must:
- (a) where requested by an investor, provide a copy of the *prospectus* of its *master UCITS* free of charge; and
- (b) file a copy of the *prospectus* of its *master UCITS* and any amendments thereto with the *FSA*.
- (2) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the *prospectus* of the *master UCITS* may be provided in a *durable medium* other than paper or by

means of a website that meets the *website conditions*.

[**Note:** articles 63(3), 63(5), 75(1) and 75(2) of the *UCITS Directive*]

...

Table: contents of the prospectus

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

...		
Investment objectives and policy		
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :	
	...	
	(ka)	where a <i>scheme</i> is a feeder <i>scheme</i> ( <u>other than a feeder UCITS</u> ), 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 feeder <i>scheme</i> may make in it;
	...	
	(r)	where the net asset value of a <i>UCITS scheme</i> is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect; <del>and</del>
	(s)	for a <i>UCITS scheme</i> , a statement that any <i>unitholder</i> may obtain on request the types of information (which must be listed) referred to in <i>COLL 4.2.3R(3)</i> (Availability of prospectus and long report); <u>and</u>
	(t)	<u>for a UCITS scheme that is or is intended to be a master UCITS, a statement that it is not a feeder UCITS and will not hold units of a feeder UCITS.</u>
	...	
Contracts and other relationships with parties		
11	The following relevant details:	
	...	
	(g)	<u>what functions (if any) the <i>authorised fund manager</i> has</u>

		delegated and to whom; and a list of:
	(i)	<u>the functions which the <i>authorised fund manager</i> has delegated in accordance with <i>FSA rules</i> or, for an <i>EEA UCITS management company</i>, in accordance with applicable <i>Home State</i> measures implementing article 13 of the <i>UCITS Directive</i>; and</u>
	(ii)	<u>the <i>person</i> to whom such functions have been delegated; and</u>
	...	
<u>Information on a feeder UCITS</u>		
25A	<u>In the case of a <i>feeder UCITS</i>, the following information:</u>	
	(a)	<u>a declaration that the <i>feeder UCITS</i> is a feeder of a particular <i>master UCITS</i> and as such permanently invests at least 85% in value of the <i>scheme property</i> in <i>units</i> of that <i>master UCITS</i>;</u>
	(b)	<u>the investment objective and policy, including the risk profile; and whether the performance records of the <i>feeder UCITS</i> and the <i>master UCITS</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>master UCITS</i> is invested in accordance with <i>COLL 5.8.3R</i> (Balance of scheme property: investment restrictions on a feeder UCITS);</u>
	(c)	<u>a brief description of the <i>master UCITS</i>, its organisation, its investment objective and policy, including the risk profile, and an indication of how the <i>prospectus</i> of the <i>master UCITS</i> may be obtained;</u>
	(d)	<u>a summary of the <i>master-feeder agreement</i> or where applicable, the internal conduct of business rules referred to in <i>COLL 11.3.2R(2)</i> (Master-feeder agreement and internal conduct of business rules);</u>
	(e)	<u>how the <i>unitholders</i> may obtain further information on the <i>master UCITS</i> and the <i>master-feeder agreement</i>;</u>
	(f)	<u>a description of all remuneration or reimbursement of costs payable by the <i>feeder UCITS</i> by virtue of its investment in <i>units</i> of the <i>master UCITS</i>, as well as the aggregate charges of the <i>feeder UCITS</i> and the <i>master UCITS</i>; and</u>

	(g)	a description of the tax implications of the investment into the <i>master UCITS</i> for the <i>feeder UCITS</i> .
[Note: article 63(1) of the <i>UCITS Directive</i> ]		
...		

...

#### Appointment of a new ACD or manager

- 4.3.6A R (1) In the case of a *UCITS scheme*, the appointment of a new *ACD* of an *ICVC* under *COLL 6.5.3R* (Appointment of an *ACD*) or the replacement of the *manager* of an *AUT* who proposes to retire under *COLL 6.5.8R* (Retirement of a manager of an *AUT*) must, if in either case the new *authorised fund manager* is established in a different *EEA State* to the outgoing *authorised fund manager*, be treated as a significant change in accordance with *COLL 4.3.6R*.
- (2) Paragraph (1) does not apply:
- (a) if the appointment of the new *authorised fund manager* is the subject of an *extraordinary resolution* approved by a meeting of *unitholders*; or
- (b) following the termination of the appointment of the *ACD* of an *ICVC* under *COLL 6.5.4R(2)* or (3) (Termination of appointment of an *ACD*), if the *directors* of the *ICVC* other than the *ACD*, or the *depository* if there are no such *directors*, consider that it would be in the best interests of *unitholders* to appoint a new *ACD* without delay.

#### Guidance on significant changes

- 4.3.7 G ...
- (4) The requirement in *COLL 4.3.6AR(1)* applies in all cases where the outgoing *authorised fund manager* (whether established in the *United Kingdom* or in another *EEA State*) is to be replaced by an *authorised fund manager* established in any other *EEA State* (including the *United Kingdom*).

...

#### Appointment of an AFM without prior written notice to unitholders

- 4.3.10 R (1) In the case of a *UCITS scheme*, the appointment of a new *authorised fund manager* as a result of:
- (a) in the case of an *ICVC*, the termination of the appointment of the previous *ACD* under *COLL 6.5.4R(2)* or (3) (Termination of

appointment of an ACD); or

- (b) in the case of an AUT, the replacement of the *manager* under COLL 6.5.7R(2) (Replacement of a manager);

must, if the new *authorised fund manager* is established in a different EEA State to the outgoing *authorised fund manager*, be notified to *unitholders*.

- (2) The new *authorised fund manager* must immediately notify *unitholders* of its appointment under (1) in an appropriate manner.

#### Change events relating to feeder UCITS

- 4.3.11 R Where the *authorised fund manager* of a UCITS scheme which is a *feeder UCITS* is notified of any change in respect of its *master UCITS* which has the effect of a change to the *feeder UCITS*, the *authorised fund manager* must:
- (1) classify it as a fundamental change, significant change or a notifiable change to the *feeder UCITS* 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*;
- (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.
- 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* has been informed of the relevant change to the *master UCITS*.
- 4.3.13 G (1) The *authorised fund manager* of the *feeder UCITS* should assess the change to the *master UCITS* in terms of its impact on the *feeder UCITS*. For example, a change to the investment objective and policy of the *master UCITS* that alters its risk profile would constitute a fundamental change for the *feeder UCITS*. In order for the *feeder UCITS* to continue investing in the *master UCITS*, the *authorised fund manager* of the *feeder UCITS* should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *master UCITS* 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* will have the same significance for the *feeder UCITS* and its *unitholders*. For example, a change to how the *prices* of the *units* in the *master UCITS* are published might not be a significant change for the *feeder UCITS* 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* receives insufficient notice of the intended change to the *master UCITS* 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*.

...

#### Contents of a short report

- 4.5.5 R (1) The short report for an *authorised fund*, or for a *scheme* which is an *umbrella*, its *sub-fund*, must contain for the relevant period:
- (a) (i) the name of the *scheme* or *sub-fund*;
  - (ii) its stated investment objectives and the policy and strategy pursued for achieving those objectives;
  - (iii) a brief assessment of its risk profile;
  - (iv) in the case of a *UCITS scheme*, the figure for the *synthetic risk and reward indicator* disclosed in its most up-to-date *key investor information document* and any subsequent changes to that figure during that period; and
  - (v) the name and address of the *authorised fund manager*;

...

- (1A) The short report of a *UCITS scheme* which is a *feeder UCITS* must also include:
- (a) a statement on the aggregate charges of the *feeder UCITS* and the *master UCITS*;
  - (b) a description of how the annual and half-yearly long reports of its *master UCITS* can be obtained; and
  - (c) where the *master UCITS* is a *UCITS scheme*, a description of how its annual and half-yearly short reports can be obtained.

**[Note: article 63(2) of the *UCITS Directive*]**

...

#### Significant information to be contained 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;

...

Contents of the annual long report

4.5.7 R ...

- (5) An annual long report of a UCITS scheme which is a feeder UCITS must also include:

(a) a statement on the aggregate charges of the feeder UCITS and the master UCITS; and

(b) a description of how the annual long report of its master UCITS can be obtained.

**[Note: article 63(2) of the UCITS Directive]**

Contents of the half-yearly long report

4.5.8 R ....

- (4) The half-yearly long report of a UCITS scheme which is a feeder UCITS must also include a description of how the half-yearly and annual reports of its master UCITS can be obtained.

**[Note: article 63(2) second subparagraph of the UCITS Directive]**

...

Authorised fund manager's report

4.5.9 R The matters set out in (1) to (13) must be included in any *authorised fund manager's* report, except where otherwise indicated:

...

- (9A) in the case of a UCITS scheme, the figure for the synthetic risk and reward indicator disclosed in its most recent key investor information document and any changes to that figure that have taken place during the period;

...

...

Publication and availability of annual and half-yearly long report

4.5.14 R ...

(2) The reports referred to in (1) must:

...

(d) be sent to the FSA and, if the UCITS scheme is managed by an EEA UCITS management company, to that company's Home State regulator on request.

[**Note:** article 74 of the *UCITS Directive*]

Provision of annual and half-yearly long reports for master and feeder UCITS

4.5.15 R (1) The authorised fund manager of a UCITS scheme which is a feeder UCITS must:

(a) where requested by an investor, provide copies of the annual and half-yearly long reports of its master UCITS free of charge; and

(b) file copies of the annual and half-yearly long reports of its master UCITS with the FSA.

(2) Except where an investor requests paper copies or the use of electronic communications is not appropriate, the annual and half-yearly long reports of its master UCITS may be provided in a durable medium other than paper or by means of a website that meets the website conditions.

[**Note:** articles 63(3) and 63(5) of the *UCITS Directive*]

...

After COLL 4.6 insert the following new sections. The text is not underlined.

#### **4.7 Key investor information and marketing communications**

Application

4.7.1 R This section applies to an *ICVC*, an *authorised fund manager* of an *AUT* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT* or *ICVC* is a *UCITS scheme*.

Key investor information

4.7.2 R (1) An *authorised fund manager* must, for each *UCITS scheme* which it manages, draw up a short document in English containing *key investor information* (a “*key investor information document*”) for investors.



- (2) The words “key investor information” must be clearly stated in this document.
- (3) *Key investor information* must include appropriate information about the essential characteristics of the *UCITS scheme* which is to be provided to investors so that they are reasonably able to understand the nature and risks of the investment product that is being offered to them and, therefore, to take investment decisions on an informed basis.
- (4) *Key investor information* must provide information on the following essential elements in respect of the *UCITS scheme*:
  - (a) identification of the scheme;
  - (b) a short description of its investment objectives and investment policy;
  - (c) past performance presentation or, where relevant, performance scenarios;
  - (d) costs and associated charges; and
  - (e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the *scheme*.
- (5) The essential elements referred to in (4) must be comprehensible to the investor without any reference to other documents.
- (6) A *key investor information document* must clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the *prospectus* and the annual and half-yearly reports can be obtained on request and free of charge at any time, and the language in which that information is available to investors.
- (7) *Key investor information* must be written in a concise manner and in non-technical language. It must be drawn up in a common format, allowing for comparison, and must be presented in a way that is likely to be understood by retail investors.
- (8) *Key investor information* must be used without alterations or supplements, except translation, in each *EEA State* where a *UCITS marketing notification* has been made so as to enable the *marketing* of the *scheme’s units* in that State.

[**Note:** article 78 of the *UCITS Directive*]

Form and content of a key investor information document

4.7.3 G The *KII Regulation* sets out the form and content of a *key investor information*

*document*. This Regulation is directly applicable in the *United Kingdom* and accordingly its articles (but not the preceding recitals) are binding on all *firms* to which it applies. Under the Regulation an *authorised fund manager* must ensure that each *key investor information document* it produces for a *UCITS scheme* complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in *COLL* Appendix 1EU (The KII Regulation).

#### Translation of a key investor information document

- 4.7.4 G While the original *key investor information document* is required by *COLL* 4.7.2R to be drawn up in English, an *authorised fund manager* may prepare an accurate translation of it into any language for the purpose of *marketing* the *units* of the *UCITS scheme* in the *United Kingdom*. Any such translation should be prepared without alterations or supplements.

#### Pre-contractual information

- 4.7.5 R The *key investor information document* must:
- (1) constitute pre-contractual information (see *COBS* 14.2.1AR (Provision of key investor information document));
  - (2) be fair, clear and not misleading; and
  - (3) be consistent with the relevant parts of the *prospectus*.

[**Note:** article 79(1) of the *UCITS Directive*]

- 4.7.6 G
- (1) Section 90ZA of the *Act* (Liability for key investor information) provides that a *person* will not incur civil liability solely on the basis of the *key investor information document*, including any translation of it, unless it is misleading, inaccurate or inconsistent with the relevant parts of the *prospectus*.
  - (2) Article 20 of the *KII Regulation* prescribes the wording of a warning to investors that must be included in the “practical information” section of the *key investor information document*. It states that an *authorised fund manager* may be held liable solely on the basis of any statement contained in the document that is misleading, inaccurate or inconsistent with the relevant parts of the *prospectus* for the *UCITS scheme*.

#### Revision and filing of key investor information

- 4.7.7 R
- (1) An *authorised fund manager* must keep up to date the essential elements of the *key investor information document* for each *UCITS scheme* which it manages.
  - (2) An *authorised fund manager* must file the *key investor information document* for each *UCITS scheme* which it manages, and any amendments thereto, with the *FSA*.

- (3) An *authorised fund manager* of a *feeder UCITS* must, in addition to (1) and (2), file the *key investor information* of its *master UCITS*, and any amendments thereto, with the *FSA*.

[**Note:** articles 63(3) and 82 of the *UCITS Directive*]

Synthetic risk and reward indicators and ongoing charges disclosures in the KII

- 4.7.8 G (1) *Authorised fund managers* are advised that CESR issued two separate guidelines regarding the methodology that should be used in calculating the *synthetic risk and reward indicator* and the ongoing charges figure, both of which must be disclosed in the *key investor information document* for each *UCITS scheme* which they manage.
- (2) In line with the *KII Regulation*, *firms* in producing their *key investor information documents* should take account of CESR's methodologies in calculating the figures for the *synthetic risk and reward indicators* and for ongoing charges to be disclosed in those documents. For ease of reference links to these guidelines are shown below, as follows:

Methodology for the calculation of the synthetic risk and reward indicator in the KII (CESR/10-673)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=6961&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=6961&from_id=28)

Methodology for the calculation of the ongoing charges figure in the KII (CESR/10-674)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=6962&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=6962&from_id=28)

- (3) *Firms* should note that these methodologies may in due course become directly applicable obligations in the light of the European Securities and Markets Authority's powers to develop implementing technical standards in this area.

- 4.7.9 G *Authorised fund managers* are further advised that CESR issued guidelines in relation to several other matters concerning *key investor information*. These are:

Guidelines – Selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (CESR/10-1318)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=7333&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=7333&from_id=28)

Guidelines – Transition from the Simplified Prospectus to the Key Investor Information document (CESR/10-1319)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=7334&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=7334&from_id=28)

CESR's guide to clear language and layout for the Key Investor Information document (CESR/10-1320)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=7335&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=7335&from_id=28)

CESR's template for the Key Investor Information document (CESR/10-1321)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=7336&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=7336&from_id=28)

*CESR's guidelines on a common definition of European money market funds*, which refer to matters that should be included in the *key investor information for money market funds* and *short-term money market funds* (CESR/10 – 049)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=6638&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=6638&from_id=28)

#### Marketing communications

- 4.7.10 G *COBS* 4.13.2R(1)(b) and (c) (Marketing communications relating to UCITS schemes or EEA UCITS schemes) require an *authorised fund manager* to ensure that its marketing communications that contain an invitation to purchase *units* in a *UCITS scheme* or *EEA UCITS scheme*, indicate that a *prospectus* and *key investor information* exist, specifying where they may be obtained by the public or how the public may have access to them.

### 4.8 Notifications for UCITS master-feeder arrangements

#### Application

- 4.8.1 R This section applies to an *ICVC*, an *authorised fund manager* of an *AUT* or *ICVC* and any other *director* of an *ICVC* where, in each case, the *AUT* or *ICVC* is a *UCITS scheme*.

#### Purpose

- 4.8.2 G The purpose of this section is to explain the type, form and timing of the notifications that are required before an existing *UCITS scheme* can begin to operate as a *feeder UCITS* for the first time, or an existing *feeder UCITS* can change to a different *master UCITS*. The process for making those changes is set out in *COLL* 11.2 (Approval of a feeder UCITS).

#### Information to be provided to unitholders

- 4.8.3 R (1) An *authorised fund manager* of a *UCITS scheme* that has been approved by the *FSA* to operate as a *feeder UCITS*, including as a *feeder UCITS* of a different *master UCITS*, must provide the following information to its *unitholders* at least 30 calendar days before the date when the *feeder UCITS* is to start to invest in *units* of the *master UCITS* or, if it has

already invested in them, the date when its investment will exceed the limit applicable under *COLL 5.2.11R(9)* (Spread: general):

- (a) a statement that the *FSA* has approved the investment of the *feeder UCITS* in *units* of that *master UCITS*;
  - (b) the *key investor information* of the *feeder UCITS* and the *master UCITS*;
  - (c) the date when the *feeder UCITS* is to start to invest in *units* of the *master UCITS* or, if it has already invested in them, the date when its investment will exceed the limit applicable under *COLL 5.2.11R(9)*;
  - (d) a statement that the *unitholders* have the right, for 30 calendar days from the moment this information is provided, to request the repurchase or *redemption* of their *units* without any charges other than those retained by the *UCITS scheme* to cover disinvestment costs.
- (2) Where a *UCITS marketing notification* has been made in relation to a *feeder UCITS*, the *authorised fund manager* of the *feeder UCITS* must ensure that an accurate translation of the information in (1) is provided to *unitholders* in:
- (a) the official language, or one of the official languages, of the *feeder UCITS' Host State*; or
  - (b) a language approved by the *Host State regulator*.

[**Note:** article 64 first and second paragraphs of the *UCITS Directive*]

#### Method of providing information

- 4.8.4 R The *authorised fund manager* of the *feeder UCITS* must provide to *unitholders* the information required under *COLL 4.8.3R* in a *durable medium*.

[**Note:** article 29 of the *UCITS implementing Directive No 2*]

Amend the following as shown.

#### Application

- 5.1.1 R (1) Subject to 1(A), *COLL 5.1* to *COLL 5.5* apply to the *authorised fund manager* and the *depository* of an *authorised fund*, and to an *ICVC*, which is or ever has been a *UCITS scheme*.
- (1A) The only sections of *COLL 5* that apply to the *authorised fund manager* and the *depository* of a *feeder UCITS*, and to an *ICVC* which is a *feeder UCITS*, are *COLL 5.3* and *COLL 5.8*, although particular

rules in COLL 5.1, COLL 5.2 and COLL 5.5 are incorporated by reference.

...

...

Application

5.2.1 R (1) This section applies to an *ICVC*, an *ACD*, a *manager* of an *AUT*, a *depository* of an *ICVC* and a *trustee* of an *AUT*, where such *ICVC* or *AUT* is a *UCITS scheme*, in accordance with COLL 5.2.2R (Table of application).

(2) COLL 5.2.23CR (Valuation of OTC derivatives) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

5.2.2 R This table belongs to COLL 5.2.1R

Rule	<i>ICVC</i>	<i>ACD</i>	<i>Manager of an AUT</i>	<i>Depositar y of an ICVC</i>	<i>Trustee of an AUT</i>
...					
<u>5.2.22AG</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>X</u>
...					
<u>5.2.23CR</u>		<u>x</u>	<u>x</u>		
<u>5.2.24R</u>		* <del></del>	* <del></del>		
<u>5.2.25G</u>		* <del></del>	* <del></del>	* <del></del>	<del>X</del>
...					
<u>5.2.34G</u>		<u>x</u>	<u>x</u>		

...

UCITS schemes: permitted types of scheme property

5.2.6A R The *scheme property* of a *UCITS scheme* must, except where otherwise provided in the *rules* in this chapter, consist solely of any or all of:

...

(6) (for an *ICVC*) moveable and immovable property that is ~~necessary~~ essential for the direct pursuit of the *ICVC*'s business;

...

[**Note:** articles ~~19(4)~~ 50(1) (in conjunction with other *rules* in this section) and ~~(2)(e)~~ 50(3) of the *UCITS Directive*]

...

5.2.7F R ...

[**Note:** article ~~1(9)~~ 2(1)(o) of the *UCITS Directive*]

...

5.2.8 R ...

[**Note:** article ~~19~~ 50(1)(a)-(d) and (h) and 2 (2)(a) of the *UCITS Directive* and article 3(1) of the *UCITS eligible assets Directive*]

...

5.2.9 G (1) This section specifies criteria based on those in article ~~19~~ 50 of the *UCITS Directive*, as to the nature of the markets in which the property of a *UCITS scheme* may be invested.

...

5.2.10 R (1) ...  
A

[**Note:** article ~~19~~ 50(1)(h), ~~first to third indents (i) to (iii)~~ of the *UCITS Directive*]

...

...

5.2.10E G ...

[**Note:** article ~~19~~ 50(1)(h)(iv), ~~fourth indent~~ of the *UCITS Directive* and article 7 of the *UCITS eligible assets Directive*]

...

Spread: general

5.2.11 R ...

(11) ~~For the purpose of calculating the limits in (7) and (10), the exposure in respect of any *OTC derivative* may be reduced to the extent that~~

~~collateral is held in respect of it if the collateral meets each of the conditions specified in (12). [deleted]~~

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

[Note: article 22 52 of the UCITS Directive]

Guidance on spread: general

- 5.2.11A G (1) ~~COLL 5.2.11R(11) to (14) reflect the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities (in this Section referred to as “the Commission Recommendation on the use of financial derivative instruments”). This Recommendation may be accessed via [www.europa.eu.int/eur-lex/pri/en/oj/dat/2004/l\\_199/l\\_19920040607en00240029.pdf](http://www.europa.eu.int/eur-lex/pri/en/oj/dat/2004/l_199/l_19920040607en00240029.pdf). [deleted]~~
- (2) The attention of *authorised fund managers* is specifically drawn to condition (d) in COLL 5.2.11R(12) under which the collateral has to be



~~legally enforceable at any time. It is the FSA's view that it is advisable for an authorised fund manager to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross border dimension. Depositaries will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under COLL 6.6.4R (General duties of the depositary). [deleted]~~

(3) In applying the spread ...

...

#### Counterparty risk and issuer concentration

- 5.2.11B R (1) An authorised fund manager of a UCITS scheme must ensure that counterparty risk arising from an OTC derivative transaction is subject to the limits set out in COLL 5.2.11R(7) and (10).
- (2) When calculating the exposure of a UCITS scheme to a counterparty in accordance with the limits in COLL 5.2.11R(7), the authorised fund manager must use the positive mark-to-market value of the OTC derivative contract with that counterparty.
- (3) An authorised fund manager may net the OTC derivative positions of a UCITS scheme with the same counterparty, provided:
- (a) it is able legally to enforce netting agreements with the counterparty on behalf of the UCITS scheme; and
  - (b) the netting agreements in (a) do not apply to any other exposures the UCITS scheme may have with that same counterparty.
- (4) An authorised fund manager of a UCITS scheme may reduce the exposure of the scheme property to a counterparty to an OTC derivative transaction through the receipt of collateral. Collateral received must be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.
- (5) An authorised fund manager of a UCITS scheme must take collateral into account in calculating exposure to counterparty risk in accordance with the limits in COLL 5.2.11R(7) when it passes collateral to the counterparty to an OTC derivative transaction on behalf of the UCITS scheme.
- (6) Collateral passed in accordance with (5) may be taken into account on a net basis only if the authorised fund manager is able legally to enforce netting arrangements with this counterparty on behalf of the UCITS scheme.

- (7) An authorised fund manager of a UCITS scheme must calculate the issuer concentration limits referred to in COLL 5.2.11R on the basis of the underlying exposure created through the use of OTC derivatives in accordance with the commitment approach.
- (8) In relation to exposures arising from OTC derivative transactions, as referred to in COLL 5.2.11R(10), the authorised fund manager must include in the calculation any counterparty risk relating to the OTC derivative transactions.

**[Note:** article 43 of the *UCITS implementing Directive*]

...

#### Investment in collective investment schemes

5.2.13 R A *UCITS scheme* must not invest in *units* in a *collective investment scheme* (“second *scheme*”) unless the second *scheme* satisfies all of the following conditions, and provided that no more than 30% of the value of the *UCITS scheme* is invested in second *schemes* within (1)(b) to (e):

(1) the second *scheme* must:

...

(c) be authorised as a *non-UCITS retail scheme* (provided the requirements of article ~~49~~ 50(1)(e) of the *UCITS Directive* are met); or

(d) be authorised in another *EEA State* (provided the requirements of article ~~49~~ 50(1)(e) of the *UCITS Directive* are met); or

...

(provided the requirements of article ~~49~~ 50(1)(e) of the *UCITS Directive* are met);

...

#### Qualifying non-UCITS collective investment schemes

5.2.14 G ...

(2) Article ~~49~~ 50 of the *UCITS Directive* sets out the general investment limits. So, a *non-UCITS retail scheme*, or its equivalent *EEA scheme* which has the power to invest in gold or immovables would not meet the criteria set in *COLL 5.2.13R(1)(c)* and *COLL 5.2.13R(1)(d)*.

(3) In determining whether a *scheme* meets the requirements of article ~~49~~ 50(1)(e) of the *UCITS Directive* for the purposes of *COLL 5.2.13R(1)(d)* or *COLL 5.2.13R(1)(e)*, the *authorised fund manager* should consider the following factors before deciding that the *scheme*

provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a *UCITS scheme*:

...

[**Note:** article 26 of *CESR's UCITS eligible assets guidelines* with respect to article ~~49~~ 50(1)(e) of the *UCITS Directive*]

- (4) The requirement for supervisory equivalence, as described in article ~~49~~ 50(1)(e) (first indent) of the *UCITS Directive*, also applies to *schemes* (that are not *UCITS schemes*) established in other *EEA States*. In considering whether the second scheme satisfies this requirement, the *authorised fund manager* should have regard to the first section of article 26 of *CESR's UCITS eligible assets guidelines*.

...

#### Derivatives: general

5.2.19 R (1) A transaction in *derivatives* or a forward transaction must not be effected for a *UCITS scheme* unless:

- (a) ...
- (b) the transaction is covered, as required by ~~*COLL 5.3.3R* (Cover for transaction in derivatives and forward transactions)~~ *5.3.3AR* (Cover for investment in derivatives and forward transactions).

...

...

#### Guidance on financial indices underlying derivatives

5.2.20B G (1) ...

(2) If the composition of an index is not sufficiently diversified in order to avoid undue concentration, its underlying assets should be combined with the other assets of the *UCITS scheme* when assessing compliance with the requirements on cover for transactions in *derivatives* and forward transactions set out in ~~*COLL 5.3.3R*~~ *5.3.3AR* and spread set out in *COLL 5.2.11R*.

...

#### Requirement to cover sales

5.2.22 R ...

- (3) ~~Paragraph (1) does not apply where:~~
- (a) ~~the risks of the underlying financial instrument of a derivative~~

can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or

- (b) ~~the authorised fund manager or the depositary has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes:~~
  - (i) ~~cash;~~
  - (ii) ~~liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or~~
  - (iii) ~~other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant). [deleted]~~
- (4) ~~In the asset classes referred to in (3), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven business days at a price closely corresponding to the current valuation of the financial instrument on its own market. [deleted]~~

#### Guidance on requirement to cover sales

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

- (1) In the FSA's view the requirement in COLL 5.2.22R(1)(a) can be met where:
  - (a) the risks of the underlying financial instrument of a derivative can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or
  - (b) the authorised fund manager or the depositary has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes:
    - (i) cash;
    - (ii) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or
    - (iii) other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant).

- (2) In the asset classes referred to in (1), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven *business days* at a price closely corresponding to the current valuation of the financial instrument on its own market.

...

#### Valuation of OTC derivatives

- 5.2.23C R (1) For the purposes of COLL 5.2.23R(2), an *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must:
- (a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of the exposures of a *UCITS scheme* or an *EEA UCITS scheme* to *OTC derivatives*; and
  - (b) ensure that the fair value of *OTC derivatives* is subject to adequate, accurate and independent assessment.
- (2) Where the arrangements and procedures referred to in (1) involve the performance of certain activities by third parties, the *authorised fund manager* or *UK UCITS management company* must comply with the requirements in SYSC 8.1.13R (Additional requirements for a management company) and COLL 6.6A.4R(5) and (6) (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes) or, where appropriate, the equivalent requirements of the *UCITS Home State regulator* implementing article 5(2) and article 23(4), second subparagraph, of the *UCITS implementing Directive*.
- (3) The arrangements and procedures referred to in this *rule* must be:
- (a) adequate and proportionate to the nature and complexity of the *OTC derivative* concerned; and
  - (b) adequately documented.

[Note: article 51(1) second paragraph of the *UCITS Directive* and articles 44(2) and 44(4) of the *UCITS implementing Directive*]

#### Risk management

- 5.2.24 R (1) An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a *scheme's* positions and their contribution to the overall risk profile of the *scheme*. [deleted]
- (2) The following details of the risk management process must be notified by the *authorised fund manager* to the *FSA* in advance of the use of the process as required by (1):

- (a) the methods for estimating risks in *derivative* and forward transactions; and
  - (b) the types of *derivatives* and forwards to be used within the *scheme* together with their underlying risks and any relevant quantitative limits. [deleted]
- (3) The *authorised fund manager* must notify the *FSA* in advance of any material alteration to the details in (2)(a) or (b). [deleted]

#### Risk management process

- 5.2.25 G
- (1) The risk management process should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*. [deleted]
  - (2) The *depository* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *COLL* 6.6.4R (General duties of the depository) and *COLL* 6.6.14R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate. [deleted]
  - (3) An *authorised fund manager* is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic on non-linear dependence in the value of a position to its underlying. [deleted]
  - (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by *SYSC* 4.1 (General requirements). [deleted]
  - (5) The risk management process should enable the analysis required by *COLL* 5.2.24R to be undertaken at least daily or at each valuation point whichever is the more frequent. [deleted]
  - (6) *Firms* carrying out the risk management process should note the methodologies set out in Article 3 (Appropriately calibrated standards to measure market risk) of the Commission Recommendation on the use of financial derivative instruments. [deleted]
  - (7) In assessing the risk of *OTC derivatives*, *firms* should note the methodologies set out in Article 5.3 (Invitation to use standards laid down in Directive 2000/12/EC as a first reference) of the Commission Recommendation on the use of financial *derivative* instruments. [deleted]
  - (8) An *authorised fund manager* should undertake the risk assessment with the highest care when the counterparty to the *derivative* is an *associate* of the *authorised fund manager* or the credit issuer. [deleted]

~~[Note: CESR's UCITS eligible assets guidelines with respect to article 8(2)(d) of the UCITS eligible assets Directive.]~~

...

Disclosure requirements in relation to UCITS schemes or EEA UCITS schemes that employ particular investment strategies

- 5.2.34 G Authorised fund managers of UCITS schemes or EEA UCITS schemes should bear in mind that where a UCITS scheme, or an EEA UCITS scheme that is a recognised scheme under section 264 of the Act, employs particular investment strategies such as investing more than 35% of its scheme property in government and public securities, or investing principally in units in collective investment schemes, deposits or derivatives, or replicating an index, COBS 4.13.2R (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and COBS 4.13.3R (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.

...

Introduction

- 5.3.2 G (1) ...
- (2) ... ~~COLL 5.3.3R (Cover for transactions in derivatives and forward transactions)~~ This section sets out detailed requirements for cover of a scheme.

...

~~Cover for transactions in derivatives and forward transactions~~

- 5.3.3 R (1) ~~A transaction in derivatives or forward transaction may be entered into only if the maximum exposure, in terms of the principal or notional principal created by the transaction to which the scheme is or may be committed by another person, is covered globally under (2). [deleted]~~
- (2) ~~Exposure is covered globally if adequate cover from within the scheme property is available to meet the scheme's total exposure, taking into account the value of the underlying assets, any reasonably foreseeable market movement, counterparty risk, and the time available to liquidate any positions. [deleted]~~
- (3) ~~Cash not yet received into the scheme property but due to be received within one month is available as cover for the purposes of (2). [deleted]~~
- (4) ~~Property the subject of a transaction under COLL 5.4 (Stock lending) is only available for cover if the authorised fund manager has taken~~

~~reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required. [deleted]~~

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

#### Cover for investment in derivatives and forward transactions

5.3.3A R The authorised fund manager of a UCITS scheme must ensure that its global exposure relating to derivatives and forward transactions held in the UCITS scheme does not exceed the net value of the scheme property.

[Note: article 51(3) first paragraph of the UCITS Directive]

#### Daily calculation of global exposure

5.3.3B R An authorised fund manager of a UCITS scheme must calculate its global exposure on at least a daily basis.

[Note: article 41(2) of the UCITS implementing Directive]

5.3.3C R For the purposes of this section, exposure must be calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions.

[Note: article 51(3) second paragraph of the UCITS Directive]

#### Guidance on cover

5.3.4 G (1) ~~An authorised fund manager should note that the scope of COLL 5.3.3R COLL 5.3.3CR is extended in relation to underwriting commitments by COLL 5.5.8R(4) (General power to accept or underwrite placings).~~

- (2) Property the subject of a transaction under COLL 5.4 (Stock lending) should not be considered as available for cover unless the authorised fund manager has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

...

#### Continuing nature of limits and requirements

5.3.6 R (1) ~~An authorised fund manager must, (as frequently as necessary), recalculate the amount of cover required in respect of derivatives and forward positions already in existence under this section. [deleted]~~

- (2) ~~Derivatives and rights under forward transaction may be retained in the scheme property only so long as they remain covered globally under~~



~~COLL 5.3.3R~~. [deleted]

Calculation of global exposure

5.3.7 R An authorised fund manager must calculate the global exposure of any UCITS scheme it manages either as:

- (1) the incremental exposure and leverage generated through the use of derivatives and forward transactions (including embedded derivatives as referred to in COLL 5.2.19R(3A) (Derivatives: general)), which may not exceed 100% of the net value of the scheme property; or
- (2) the market risk of the scheme property.

[**Note:** article 41(1) of the *UCITS implementing Directive*]

5.3.8 R (1) An authorised fund manager must calculate the global exposure of a UCITS scheme by using:

- (a) the commitment approach; or
- (b) the value at risk approach.

(2) An authorised fund manager must ensure that the method selected in (1) is appropriate, taking into account:

- (a) the investment strategy pursued by the UCITS scheme;
- (b) the types and complexities of the derivatives and forward transactions used; and
- (c) the proportion of the scheme property comprising derivatives and forward transactions.

(3) Where a UCITS scheme employs techniques and instruments including repo contracts or stock lending transactions in accordance with COLL 5.4 (Stock lending) in order to generate additional leverage or exposure to market risk, the authorised fund manager must take those transactions into consideration when calculating global exposure.

(4) For the purposes of (1), value at risk means a measure of the maximum expected loss at a given confidence level over the specific time period.

[**Note:** articles 41(3) and 41(4) of the *UCITS implementing Directive*]

Commitment approach

5.3.9 R Where an authorised fund manager of a UCITS scheme uses the commitment approach for the calculation of global exposure, it must:

- (1) ensure that it applies this approach to all derivative and forward transactions (including embedded derivatives as referred to in COLL

5.2.19R(3A) (Derivatives: general)), whether used as part of the scheme's general investment policy, for the purposes of risk reduction or for the purposes of efficient portfolio management in accordance with the rules of this chapter; and

- (2) convert each derivative or forward transaction into the market value of an equivalent position in the underlying asset of that derivative or forward (standard commitment approach).

[**Note:** articles 42(1) and 42(2) first paragraph of the *UCITS implementing Directive*]

5.3.10 R

- (1) An authorised fund manager of a UCITS scheme may apply other calculation methods which are equivalent to the standard commitment approach.
- (2) An authorised fund manager may take account of netting and hedging arrangements when calculating global exposure of a UCITS scheme, where those arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.
- (3) Where the use of derivatives or forward transactions does not generate incremental exposure for the UCITS scheme, the underlying exposure need not be included in the commitment calculation.
- (4) Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS scheme in accordance with COLL 5.5.4R (General power to borrow) need not form part of the global exposure calculation.

[**Note:** articles 42(2) final paragraph, 42(3), 42(4) and 42(5) of the *UCITS implementing Directive*]

CESR guidelines

- 5.3.11 G Authorised fund managers are advised that both CESR and its successor body, the European Securities and Markets Authority (ESMA) have issued guidelines which, in accordance with the UCITS implementing Directive, authorised fund managers should comply with in applying the rules in this section:

Guidelines: Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=7000&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=7000&from_id=28)

Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS (ESMA/2011/112)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=7542&fro](http://www.esma.europa.eu/index.php?page=document_details&id=7542&fro)

[m\\_id=28](#)

...

General power to accept or underwrite placings

5.5.8 R ...

- (4) The exposure of an *authorised fund* to agreements and understandings within (2) must, on any *day*, be:
- (a) covered 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); and

...

...

Derivatives: general

5.6.12 R (1) A transaction in *derivatives* or a forward transaction must not be effected for a *non-UCITS retail scheme* unless the transaction is:

- (a) of a kind specified in COLL 5.6.13R (Permitted transactions (derivatives and forwards)); and
- (b) covered, as required by ~~COLL 5.3.3R (Cover for transactions in derivatives and forward transactions)~~ COLL 5.3.3AR (Cover for investment in derivatives and forward transactions).

...

After COLL 5.7 insert the following new section. The text is not underlined.

**5.8** ...

Application

5.8.1 R (1) This section applies to:

- (a) the *authorised fund manager* of a *feeder UCITS*;
- (b) the *depository* of a *feeder UCITS*; and
- (c) an *ICVC* which is a *feeder UCITS*;

where the *scheme* is a *UCITS scheme*.

- (2) Where this section refers to a *rule* or *guidance* in COLL 5.1 to COLL 5.5, those *rules* and *guidance*, and any *rules* and *guidance* to which they

refer, must be read as if a reference to a *UCITS scheme* were a reference to a *feeder UCITS*.

- (3) Where the *sub-fund* of a *UCITS scheme* is a *feeder UCITS*, the provisions in this section apply to each *sub-fund* as they would for an *authorised fund*.

#### Permitted types of scheme property

- 5.8.2 R A *feeder UCITS* must invest at least 85% in value of the *scheme property* in *units* of a single *master UCITS*.

[**Note:** article 58(1) of the *UCITS Directive*]

#### Balance of scheme property: investment restrictions on a feeder UCITS

- 5.8.3 R A *feeder UCITS* may hold up to 15% in value of the *scheme property* in one or more of the following:
- (1) cash or *near cash* in accordance with *COLL 5.5.3R* (Cash and near cash);
  - (2) *derivatives* and forward transactions which may be used only for the purposes of hedging and in accordance with the *rules* set out at *COLL 5.8.7R* (Other provisions applicable to a feeder UCITS); and
  - (3) (for an *ICVC*) movable and immovable property which is essential for the direct pursuit of the business.

[**Note:** article 58(2) first subparagraph of the *UCITS Directive*]

#### Exposure to derivatives

- 5.8.4 R In calculating the global exposure of a *feeder UCITS* to *derivatives* and forward transactions in accordance with *COLL 5.3.3AR* (Cover for investment in derivatives and forward transactions), the *feeder UCITS* must combine its own direct exposure under *COLL 5.8.3R(2)* with either:
- (1) the *master UCITS*' actual exposure to *derivatives* and forward transactions in proportion to the *feeder UCITS*' investment into the *master UCITS*; or
  - (2) the *master UCITS*' potential maximum global exposure to *derivatives* and forward transactions provided for in the *master UCITS*' *instrument constituting the scheme* or its *prospectus* in proportion to the *feeder UCITS* investment into the *master UCITS*.

[**Note:** article 58(2) second subparagraph of the *UCITS Directive*]

#### Prudent spread of risk

- 5.8.5 R An *authorised fund manager* must ensure that, to the extent that the *feeder*

*UCITS* invests in assets other than *units* of a *master UCITS*, the *feeder UCITS* complies with *COLL 5.2.3R(1)* (Prudent spread of risk).

Investment powers: general

- 5.8.6 R The *scheme property* of a *feeder UCITS* must be invested only in accordance with the relevant provisions in this section and up to any maximum limit so stated, but the *instrument constituting the scheme* may restrict the investment and borrowing powers of a *scheme* further than the relevant restrictions in this section.

Other provisions applicable to a feeder UCITS

- 5.8.7 R The following *rules* and *guidance* in *COLL 5.1* (Introduction), *COLL 5.2* (General investment powers and limits for UCITS schemes) and *COLL 5.5* (Cash, borrowing, lending and other provisions) apply to the *authorised fund manager* of a *UCITS scheme* which is a *feeder UCITS* and to an *ICVC* which is a *feeder UCITS*:
- (1) *COLL 5.1.1R* (Application), *COLL 5.1.2G(1)* (Purpose) and *COLL 5.1.3R* (Treatment of obligations);
  - (2) *COLL 5.2.1R* (Application), *COLL 5.2.2R* (Table of application) and *COLL 5.2.2AG*;
  - (3) *COLL 5.2.5R* (Valuation) and *COLL 5.2.6G* (Valuation guidance);
  - (4) *COLL 5.2.10R* (Eligible markets: requirements);
  - (5) *COLL 5.2.11R(7)* (Spread: general);
  - (6) *COLL 5.2.11BR* (Counterparty risk and issuer concentration);
  - (7) *COLL 5.2.15R(1)* (Investment in associated collective investment schemes);
  - (8) *COLL 5.2.19R(1)*, (2) and (4) (Derivatives: general);
  - (9) *COLL 5.2.20R* (Permitted transactions (derivatives and forwards));
  - (10) *COLL 5.2.20AR* (Financial indices underlying derivatives), *COLL 5.2.20BG(1)* and *COLL 5.2.20BG(4)* (Guidance on financial indices underlying derivatives);
  - (11) *COLL 5.2.21R* (Transactions for the purchase of property);
  - (12) *COLL 5.2.22R* (Requirement to cover sales) and *COLL 5.2.22AG* (Guidance on requirement to cover sales);
  - (13) *COLL 5.2.23R* (OTC Transactions in derivatives), *COLL 5.2.23AR* and *COLL 5.2.23BR*;

- (14) *COLL 5.2.23CR* (Valuation of OTC derivatives);
- (15) *COLL 5.2.26R* (Investment in deposits);
- (16) *COLL 5.5.1R* to *COLL 5.5.7AG* (Cash, borrowing, lending and other provisions); and
- (17) *COLL 5.5.9R* (Guarantees and indemnities) and *COLL 5.5.10G* (Guidance on restricting payments).

Amend the following as shown.

Application

- 6.3.1 R (1) This section applies to an *authorised fund manager*, a *depository*, an *ICVC* and any other *director* of an *ICVC*.
- (2) *COLL 6.3.3AR* to *COLL 6.3.3DR* (Accounting procedures):
- (a) apply to:
- (i) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the *freedom to provide cross border services*; and
  - (ii) an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* from a *branch* in the *United Kingdom*;
- in addition to applying in accordance with (1); but
- (b) do not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* under the *freedom to provide cross border services*.

...

Accounting procedures

- 6.3.3A R (1) *An authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure the *employment of the accounting policies and procedures referred to in SYSC 4.1.9R (Accounting policies)*, so as to ensure the *protection of unitholders*.
- (2) Accounting for the *scheme* shall be carried out in such a way that all *assets and liabilities* of the *scheme* can be directly identified at all times.

(3) If the scheme is an umbrella, separate accounts must be maintained for each sub-fund.

[Note: article 8(1) of the *UCITS implementing Directive*]

6.3.3B R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS Home State, so as to ensure that the calculation of the net asset value of each scheme it manages is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

[Note: article 8(2) of the *UCITS implementing Directive*]

6.3.3C G (1) The accounting policies and procedures referred to in COLL 6.3.3BR should enable the authorised fund manager of a UCITS scheme to value the scheme property accurately at each valuation point and to calculate dealing prices by reference to that valuation.

(2) Where different share or unit classes exist, it should be possible to extract from the accounting records the net asset value of each different class.

[Note: recital (9) of the *UCITS implementing Directive*]

6.3.3D R An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each scheme it manages.

[Note: article 8(3) of the *UCITS implementing Directive*]

...

Table of application

6.6.2 R This table belongs to COLL 6.6.1R.

Rule	ICVC	ACD	Any other directors of an ICVC	Depositary of an ICVC	Manager of an AUT	Trustee of an AUT
...						
6.6.15R	x	x	x	x	✗	x
<u>6.6.15AR</u>		<u>x</u>			<u>x</u>	

*						
...						
<u>Note</u> <u>Notes:</u>	(1)	“x” means “applies”, but not every paragraph in every <i>rule</i> will necessarily apply.				
	(2)	* <u>COLL 6.6.15AR has a special application as set out in COLL 6.6.15AR(1).</u>				

...

## General duties of the depositary

6.6.4 R ...

- (5) The depositary of a UCITS scheme must ensure that in transactions involving the scheme property of a UCITS scheme, any consideration is remitted for the account of the scheme within the usual time limits.
- (6) Where the UCITS scheme is being managed by an EEA UCITS management company, the depositary must enter into a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform its functions in accordance with COLL 6.6.5R.
- (7) The agreement in (6):
- (a) may cover more than one UCITS scheme; and
- (b) must as a minimum contain the information set out in COLL 6 Annex 1R.

[Note: articles 22(3)(a), (d) and (e), 23(5), 32(3) and 33(5) of the UCITS Directive and article 36 first sentence of the UCITS implementing Directive]

6.6.4A G The requirements of SUP 2 (Information gathering by the FSA on its own initiative) apply to the depositary of a UCITS scheme, under which it must enable the FSA to obtain, on request, all information that the depositary has obtained while discharging its duties and that is necessary for the FSA to supervise the scheme’s compliance with the requirements referred to in COLL 6.6.4R(6).

[Note: articles 23(4) and 33(4) of the UCITS Directive]

...

## Committees and delegation

6.6.15 R (1) ...

(1A) The directors of an ICVC have the power to retain the services of



anyone to assist in the performance of their functions, subject to the duty of the ACD to comply with COLL 6.6.15AR.

- (2) ~~The authorised fund manager of a scheme and the directors of an ICVC have the power to retain the services of anyone in the performance of their respective functions, provided that:~~
- (a) ~~a mandate in relation to managing investments of the scheme property is not given to:~~
    - (i) ~~the depositary; or~~
    - (ii) ~~any other person whose interests may conflict with those of the authorised fund manager or unitholders; or~~
    - (iii) ~~an authorised person operating from an establishment in the United Kingdom unless such person has a Part IV permission to manage investments; or~~
    - (iv) ~~any other person operating from an establishment in a country other than the United Kingdom unless such person:~~
      - (A) ~~is authorised or registered in such country for the purpose of asset management; and~~
      - (B) ~~is subject to prudential supervision in such country;~~

~~and in addition if that person is not an EEA firm, co-operation is ensured between the FSA and the overseas regulator of that person;~~
  - (b) ~~the authorised fund manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;~~
  - (c) ~~the mandate permits the authorised fund manager to:~~
    - (i) ~~give further instructions to the person so retained; and~~
    - (ii) ~~withdraw the mandate with immediate effect when this is in the interests of the unitholders; and~~
  - (d) ~~the mandate does not prevent effective supervision of the authorised fund manager and it must not prevent the authorised fund manager from acting, or the scheme from being managed in the best interests of the unitholders. [deleted]~~
- (3) ~~Subject to the provisions of the OEIC Regulations and to (1), where services are retained under (2), the responsibility which the authorised fund manager had in respect of such services prior to that retention of~~

~~services will remain unaffected.~~ [deleted]

...

- (6) Where *COLL* 6.5.5R(4) (Other directors) applies, the *directors* have, in respect of the functions of the *ACD* under *COLL* 6.6.3R (Functions of the authorised fund manager), the same rights and responsibilities as for an *ACD* under this *rule* and *COLL* 6.6.15AR.

6.6.15A R (1) This rule applies to:

- (a) an authorised fund manager (other than an EEA UCITS management company) of an AUT or an ICVC where such AUT or ICVC is a UCITS scheme or a non-UCITS retail scheme; and
- (b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

- (2) The authorised fund manager has the power to retain the services of any person to assist it in the performance of its functions, provided that:

- (a) a mandate in relation to managing investments of the scheme is not given to:

- (i) the depositary; or
- (ii) any other person whose interests may conflict with those of the authorised fund manager or unitholders; or
- (iii) an authorised person operating from an establishment in the United Kingdom unless such person has a Part IV permission to manage investments; or
- (iv) any other person operating from an establishment in a country other than the United Kingdom unless such person:

(A) is authorised or registered in such country for the purpose of asset management; and

(B) is subject to prudential supervision in such country;

and in addition if that person is not an EEA firm, co-operation is ensured between the FSA and the overseas regulator of that person;

- (b) the authorised fund manager ensures that at all times it can monitor effectively the relevant activities of any person so

retained;

- (c) the mandate permits the *authorised fund manager* to:
- (i) give further instructions to the *person* so retained; and
- (ii) withdraw the mandate with immediate effect when this is in the interests of the *unitholders*;
- (d) the mandate does not prevent effective supervision of the *authorised fund manager* and it must not prevent the *authorised fund manager* from acting, or the *scheme* from being managed, in the best interests of the *unitholders*; and
- (e) having regard to the nature of the functions to be carried out under the mandate, the *person* to whom the mandate is given must be qualified and capable of undertaking those functions.
- (3) Subject to the provisions of the *OEIC Regulations* and *COLL* 6.6.15R(1) and (1A), where services are retained under (2), the responsibility which the *authorised fund manager* had in respect of such services prior to that retention of services will remain unaffected.

[Note: article 13 of the *UCITS Directive*]

...

- 6.6.16 G (1) ...
- (2) *SUP* 15.8.6R (Delegation by UCITS management companies) requires ~~an~~ the *authorised fund manager* of a *UCITS* scheme to inform the *FSA* where before it delegates one of its duties is delegated to another *person*.
- (3) For the purpose of *COLL* 6.6.15AR(2)(a)(iv), adequate co-operation will be ensured where the *FSA* has entered into a co-operation agreement of the kind referred to in article ~~50(4)~~ 102(3) of the *UCITS Directive* with the relevant *overseas regulator*.

...

After *COLL* 6.6 insert the following new section. The text is not underlined.

## **6.6A Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes**

### Application

- 6.6A.1 R (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS* scheme, a *depository*, an *ICVC* and any other *director* of an *ICVC* which is a *UCITS*

*scheme*; and

- (b) subject to (2), a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* under the freedom to provide *cross border services*.
- (2) *COLL 6.6A.6R* ((Strategies for the exercise of voting rights) also applies to a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State*, as well as applying in accordance with (1).
- (3) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management services* for a *UCITS scheme* under the freedom to provide *cross border services*.

Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders

6.6A.2 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must:

- (1) ensure that the *unitholders* of any such *scheme* it manages are treated fairly;
- (2) refrain from placing the interests of any group of *unitholders* above the interests of any other group of *unitholders*;
- (3) apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;
- (4) (a) ensure that fair, correct and transparent pricing models and valuation systems are used for each *scheme* it manages, in order to comply with the duty to act in the best interests of the *unitholders*; and
  - (b) be able to demonstrate that the investment portfolio of each such *scheme* it manages is accurately valued; and
- (5) act in such a way as to prevent undue costs being charged to any such *scheme* it manages and its *unitholders*.

[**Note:** article 22 of the *UCITS implementing Directive*]

- 6.6A.3 G (1) Examples of malpractices for the purposes of *COLL 6.6A.2R(3)* would include market timing and late trading, which may have detrimental effects on *unitholders* and may undermine the functioning of the market.
- (2) Examples of undue costs for the purposes of *COLL 6.6A.2R(5)* would include unreasonable charges and excessive trading, taking into

account the *scheme's* investment objectives and policy.

[**Note:** recital (18) of the *UCITS implementing Directive*]

Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes

6.6A.4 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must:

- (1) ensure a high level of diligence in the selection and ongoing monitoring of *scheme property*, in the best interests of the *scheme* and the integrity of the market;
- (2) ensure it has adequate knowledge and understanding of the assets in which any *scheme* it manages is invested;
- (3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any *UCITS scheme* or *EEA UCITS scheme* it manages are carried out in compliance with the objectives and the investment strategy and *risk limit system* of the *scheme*;
- (4) when implementing its risk management policy, and where it is appropriate after taking into account the nature of a proposed investment:
  - (a) formulate forecasts and analyse the investment's impact on the portfolio composition, liquidity and risk and reward profile of the *scheme* before carrying out the investment; and
  - (b) carry out the analysis in (a) only on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;
- (5) exercise due skill, care and diligence when entering into, managing or terminating any arrangement with third parties in relation to the performance of risk management activities; and
- (6) before entering into any arrangements of the type referred to in (5):
  - (a) take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively; and
  - (b) establish methods for the on-going assessment of the standard of performance of the third party.

[**Note:** article 23 of the *UCITS implementing Directive*]

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

6.6A.5 R The *authorised fund manager* of a *UCITS scheme* or the *UK UCITS management company* of an *EEA UCITS scheme* must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[**Note:** article 14(1)(e) of the *UCITS Directive*]

#### Strategies for the exercise of voting rights

- 6.6A.6 R
- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must develop adequate and effective strategies for determining when and how voting rights attached to ownership of *scheme property*, or the instruments held by an *EEA UCITS scheme*, are to be exercised, to the exclusive benefit of the *scheme* concerned.
  - (2) The strategy referred to in (1) must determine measures and procedures for:
    - (a) monitoring relevant corporate events;
    - (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant *scheme*; and
    - (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.
  - (3) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must make available to *unitholders*:
    - (a) a summary description of the strategies referred to in (1); and
    - (b) free of charge and on their request, details of the actions taken on the basis of the strategies referred to in (1).

[**Note:** article 21 of the *UCITS implementing Directive*]

Amend the following as shown.

#### Charges on buying and selling units

- 6.7.7 R ...
- (3) This rule is subject to *COLL 6.3.7R (SDRT provision)*, ~~and~~ *COLL 6.3.8R (Dilution)* and *COLL 11.3.11R (Obligations of the master UCITS)*.

...

## Prohibition on promotional payments

- 6.7.12 R (1) ...
- (2) Paragraph (1) does not apply to the costs an *authorised fund* incurs preparing and printing the *simplified prospectus*, *key investor information document*, *key features document* or *key features illustration*, provided the *prospectus* states, in accordance with COLL 4.2.5R(13) and (14) (Table: contents of the prospectus), that these costs are properly payable to the *authorised fund manager* from *scheme property*.

...

Income allocation and distribution

- 6.8.2B R The allocation or distribution of the income of a UCITS scheme must be determined in accordance with its instrument constituting the scheme, its prospectus and the general law of the United Kingdom.

[Note: article 86 of the UCITS Directive]

~~Income allocation and distribution~~

- 6.8.3 R (1) ...
- ...
- 6.9.10 G (1) ...
- (2) The restrictions of business imposed by COLL 6.9.9R reflect the position under Article ~~5~~ 6 of the *UCITS Directive*. In accordance with recital ~~(7)~~ (12) of the ~~amending UCITS Management Directive (2001/107/EC)~~ the activities referred to at COLL 6.9.9R(3)(a) to COLL 6.9.9R(3)(c) may be performed on behalf of *EEA UCITS management companies*.

...

After COLL 6.9 insert the following new sections. The text is not underlined.

**6.10 Senior personnel responsibilities**

## Application

- 6.10.1 R (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*; and
- (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross*

*border services.*

- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

#### Senior personnel responsibilities

- 6.10.2 R In complying with SYSC 4.3.1R (Responsibility of senior personnel), an *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that its *senior personnel*:
- (1) are responsible for the implementation of the general investment policy for each *scheme* it manages, as defined, where relevant, in the *prospectus* or the *instrument constituting the scheme*;
  - (2) oversee the approval of investment strategies for each *scheme* it manages;
  - (3) are responsible for ensuring that the *authorised fund manager* or *UK UCITS management company* has a permanent and effective compliance function as referred to in SYSC 6.1 (Compliance), even if this function is performed by a third party;
  - (4) ensure and verify on a periodic basis that the general investment policy, the investment strategies and the *risk limit system* of each *scheme* it manages are properly and effectively implemented and complied with, even if the risk management function is performed by a third party;
  - (5) approve and review on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each *scheme* it manages, so as to ensure that those decisions are consistent with the approved investment strategies; and
  - (6) approve and review on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in COLL 6.12.5R (Risk management policy), including the *risk limit system* for each *scheme* it manages.

[**Note:** article 9(2) of the *UCITS implementing Directive*]

- 6.10.3 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that its *senior personnel* receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in COLL 6.10.2R(2) to (5).

[**Note:** article 9(5) of the *UCITS implementing Directive*]



## 6.11 Risk control and internal reporting

### Application

- 6.11.1 R (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*; and
  - (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

### Permanent risk management function

- 6.11.2 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must establish and maintain a permanent risk management function.
- (2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the *authorised fund manager's* or *UK UCITS management company's* business and of each *scheme* it manages.
- (3) The *authorised fund manager* or *UK UCITS management company* must be able to demonstrate that:
- (a) appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities; and
  - (b) its risk management process satisfies the requirements of *COLL 6.12.3R* (Risk management process) or, where appropriate, the relevant *UCITS Home State* measures implementing article 51 of the *UCITS Directive*.

[**Note:** articles 12(1) and 12(2) of the *UCITS implementing Directive*]

- 6.11.3 G Where the risk management function required under *COLL 6.11.2R*(1) is not hierarchically and functionally independent, the *authorised fund manager* or *UK UCITS management company* should nevertheless be able to demonstrate that its risk management process satisfies the requirements of *COLL 6.12.3R* (Risk management process) and that, in particular, the appropriate safeguards have been adopted.

[**Note:** article 12(2) third paragraph and recital (12) of the *UCITS*

*implementing Directive]*

Duties of the permanent risk management function

- 6.11.4 R (1) The permanent risk management function must:
- (a) implement the risk management policy and procedures;
  - (b) ensure compliance with the *risk limit system*, including statutory limits concerning global exposure and counterparty risk, as required by *COLL 5.2* (General investment powers and limits for UCITS schemes) and *COLL 5.3* (Derivative exposure) or, where appropriate, the relevant *UCITS Home State* measures implementing articles 41, 42 and 43 of the *UCITS implementing Directive*;
  - (c) provide advice to the *governing body*, as regards the identification of the risk profile of each *scheme* it manages;
  - (d) provide regular reports to the *governing body* and, where it exists, the *supervisory function* on:
    - (i) the consistency between the current level of risk incurred by each *scheme* it manages and the risk profile agreed for that *scheme*;
    - (ii) the compliance of each *scheme* it manages with the *risk limit system* referred to in (b); and
    - (iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
  - (e) provide regular reports to the *senior personnel* outlining the current level of risk incurred by the relevant *scheme* and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate remedial action can be taken; and
  - (f) review and support, where appropriate, the arrangements for the valuation of *OTC derivatives*, as referred to in *COLL 5.2.23R* (OTC transactions in derivatives), *COLL 5.2.23CR* (Valuation of OTC derivatives) and in this *rule* or, where appropriate, the relevant *UCITS Home State* measures implementing article 44 of the *UCITS implementing Directive*.
- (2) The permanent risk management function must have the authority and access to all relevant information necessary to fulfil the duties set out in (1).

[**Note:** articles 12(3), 12(4) and 44(3) of the *UCITS implementing Directive*]

## 6.12 Risk management policy and risk measurement

### Application

- 6.12.1 R This section applies to:
- (1) an *authorised fund manager* and a *depository* of a *UCITS scheme*; and
  - (2) a *UK UCITS management company* providing *collective portfolio management services* for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
- 6.12.2 G In the *FSA's* view the requirements relating to risk management policy and risk measurement set out in this section are the regulatory responsibility of the *management company's Home State regulator* but to the extent that they constitute *fund application rules*, are also the responsibility of the *UCITS' Home State regulator*. As such, these responsibilities may overlap between the *competent authorities* of the *Home* and *Host States*. *EEA UCITS management companies* providing *collective portfolio management services* for a *UCITS scheme*, whether from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services*, are therefore advised that they will be expected to comply with the requirements of this section, except for *COLL 6.12.3R(2)* which, as a notification requirement, is a matter reserved for the rules of the *management company's Home State*.

### Risk management process

- 6.12.3 R
- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must use a risk management process enabling it to monitor and measure at any time the risk of the *scheme's* positions and their contribution to the overall risk profile of the *scheme*.
  - (2) An *authorised fund manager* (excluding the *EEA UCITS management company* of a *UCITS scheme*) or a *UK UCITS management company* of an *EEA UCITS scheme* must regularly notify the following details of the risk management process to the *FSA* and at least on an annual basis:
    - (a) a true and fair view of the types of *derivatives* and forward transactions to be used within the *scheme* together with their underlying risks and any relevant quantitative limits; and
    - (b) the methods for estimating risks in *derivative* and forward transactions.

[**Note:** article 51(1), first and third paragraphs, of the *UCITS Directive* and article 45(1) of the *UCITS implementing Directive*]

- 6.12.4 G
- (1) The risk management process in *COLL* 6.12.3R should take account of the investment objectives and policy of the *scheme* as stated in the most recent *prospectus*.
  - (2) The *depository* of a *UCITS scheme* should take reasonable care to review the appropriateness of the risk management process in line with its duties under *COLL* 6.6.4R (General duties of the depository) and *COLL* 6.6.14R (Duties of the depository and authorised fund manager: investment and borrowing powers), as appropriate.
  - (3) An *authorised fund manager* or a *UK UCITS management company* is expected to demonstrate more sophistication in its risk management process for a *scheme* with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.
  - (4) An *authorised fund manager* or a *UK UCITS management company* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by *SYSC* 4.1 (General requirements).
  - (5) The risk management process should enable the analysis required by *COLL* 6.12.3R to be undertaken at least daily or at each *valuation point*, whichever is more frequent.
  - (6) An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS scheme* should undertake the risk assessment required by *COLL* 5.2.20R(7)(d) (Permitted transactions (derivatives and forwards)) with the highest care when the counterparty to the *derivative* transaction is an *associate* of the *authorised fund manager*, the *UK UCITS management company* or the credit issuer.

[**Note:** *CESR's UCITS eligible assets guidelines* with respect to article 8(2)(d) of the *UCITS eligible assets Directive*]

#### Risk management policy

- 6.12.5 R
- (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must establish, implement and maintain an adequate and documented risk management policy for identifying the risks to which that *scheme* is or might be exposed.
  - (2) The risk management policy must comprise such procedures as are necessary to enable the *authorised fund manager* or *UK UCITS management company* to assess the exposure of each *UCITS* it manages to *market risk*, *liquidity risk* and *counterparty risk*, and to all other risks, including *operational risk*, that might be material for that *scheme*.

- (3) The risk management policy must address at least the following elements:
- (a) the techniques, tools and arrangements that enable the *authorised fund manager* or *UK UCITS management company* to comply with the obligations set out in this section and *COLL 5.3* (Derivative exposure);
  - (b) the allocation of responsibilities within the *authorised fund manager* or *UK UCITS management company* pertaining to risk management; and
  - (c) the terms, contents and frequency of reporting of the risk management function referred to in *COLL 6.11.2R* (Permanent risk management function) to the *governing body*, *senior personnel* and, where appropriate, to the *supervisory function*.
- (4) To meet its obligations in (1), (2) and (3) an *authorised fund manager* or a *UK UCITS management company* must take into account the nature, scale and complexity of its business and of the *UCITS* it manages.

[**Note:** article 38 of the *UCITS implementing Directive*]

- 6.12.6 G *UK UCITS management companies* operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in *COLL 6.12.5R(3)(a)* are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 40 and 41 of the *UCITS implementing Directive*.

#### Monitoring of risk management policy

- 6.12.7 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must assess, monitor and periodically review:
- (a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in *COLL 6.12.5R*;
  - (b) the level of compliance by the *authorised fund manager* or the *UK UCITS management company* with the risk management policy and with those arrangements, processes and techniques referred to in *COLL 6.12.5R*; and
  - (c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

- (2) The *authorised fund manager* (excluding an *EEA UCITS management company* of a *UCITS scheme*) or a *UK UCITS management company* of an *EEA UCITS scheme* must notify the *FSA* of any material changes to the risk management process.

[**Note:** article 39(1) and 39(2) of the *UCITS implementing Directive*]

- 6.12.8 G *UK UCITS management companies* are advised that when they applied for *authorisation* from the *FSA* under the *Act*, their ability to comply with the requirements in *COLL 6.12.7R* would have been assessed by the *FSA* as an aspect of their fitness and properness in determining whether the *threshold conditions* set out in Schedule 6 (Threshold conditions) of the *Act* were met. *Firms* are further advised that their compliance with these requirements is subject to review by the *FSA* on an ongoing basis in determining whether they continue to meet the *threshold conditions*.

[**Note:** article 39(3) of the *UCITS implementing Directive*]

#### Measurement and management of risk

- 6.12.9 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must adopt adequate and effective arrangements, processes and techniques in order to:
- (a) measure and manage at any time the risks to which that *UCITS* is or might be exposed; and
  - (b) ensure compliance with limits concerning global exposure and *counterparty risk*, in accordance with *COLL 5.2.11BR* (Counterparty risk and issuer concentration) and *COLL 5.3* (Derivative exposure).
- (2) For the purposes of (1), the *authorised fund manager* or a *UK UCITS management company* must take the following actions for each *UCITS* it manages:
- (a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;
  - (b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
  - (c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the *UCITS*;

- (d) establish, implement and maintain a *risk limit system* for each *UCITS*;
  - (e) ensure that the current level of risk complies with that *risk limit system*; and
  - (f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to that *risk limit system*, result in timely remedial actions in the best interests of *unitholders*.
- (3) The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the *authorised fund manager* or the *UK UCITS management company* and the *UCITS* it manages and be consistent with the *UCITS'* risk profile.

[**Note:** articles 40(1) and 40(2) of the *UCITS implementing Directive*]

6.12.10 G *UK UCITS management companies* operating *EEA UCITS schemes* are advised that to the extent that the matters referred to in *COLL 6.12.9R(1)(b)* are viewed by the *UCITS Home State regulator* as falling under its responsibility, they will be expected to comply with the *UCITS Home State* measures implementing articles 41 and 43 of the *UCITS implementing Directive*.

- 6.12.11 R (1) An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS scheme* must employ an appropriate *liquidity risk* management process in order to ensure that each *UCITS* it manages is able to comply at any time with *COLL 6.2.16R* (Sale and redemption) or the equivalent *UCITS Home State* measures implementing article 84(1) of the *UCITS Directive*.
- (2) Where appropriate, the *authorised fund manager* or *UK UCITS management company* must conduct stress tests to enable it to assess the *liquidity risk* of the *UCITS* under exceptional circumstances.

[**Note:** article 40(3) of the *UCITS implementing Directive*]

6.12.12 R An *authorised fund manager* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure that, for each *UCITS* it manages, the liquidity profile of the investments of the *scheme* is appropriate to the *redemption* policy laid down in the *instrument constituting the scheme* or the *prospectus*.

[**Note:** article 40(4) of the *UCITS implementing Directive*]

CESR guidelines: Risk management principles for UCITS

- 6.12.13 G *Authorised fund managers* are advised that CESR issued guidelines prior to the revision of the *UCITS Directive* in 2009 which, to the extent they remain compatible with the *rules* and other *guidance* in *COLL*, should be complied with in applying the *rules* in this section. These guidelines are available at:

Guidelines – Risk management principles for UCITS (CESR/09-178)

[http://www.esma.europa.eu/index.php?page=document\\_details&id=5620&from\\_id=28](http://www.esma.europa.eu/index.php?page=document_details&id=5620&from_id=28)

## 6.13 Record keeping

### Application

- 6.13.1 R (1) This section applies to:
- (a) an *authorised fund manager* of a *UCITS scheme*; and
  - (b) a *UK UCITS management company* providing *collective portfolio management* services for an *EEA UCITS scheme* from a *branch* in another *EEA State* or under the freedom to provide *cross border services*.
- (2) This section does not apply to an *EEA UCITS management company* providing *collective portfolio management* services for a *UCITS scheme* under the freedom to provide *cross border services*.

### Recording of portfolio transactions

- 6.13.2 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure, for each portfolio transaction relating to a *scheme* it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.
- (2) The record referred to in (1) must include:
- (a) the name or other designation of the *scheme* and of the *person* acting on behalf of the *scheme*;
  - (b) the details necessary to identify the instrument in question;
  - (c) the quantity;
  - (d) the type of the order or transaction;
  - (e) the price;
  - (f) for orders, the date and exact time of the transmission of the order and the name or other designation of the *person* to whom



the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;

- (g) the name of the *person* transmitting the order or executing the transaction;
- (h) where applicable, the reasons for the revocation of an order; and
- (i) for executed transactions, the counterparty and *execution venue* identification.

[**Note:** article 14 of the *UCITS implementing Directive*]

#### Recording of subscription and redemption orders

- 6.13.3 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must take all reasonable steps to ensure that every subscription and *redemption* order it receives relating to *units* in any such *scheme* it manages are centralised and recorded immediately after receipt of that order.
- (2) The record referred to in (1) must include information on the following:
- (a) the relevant *scheme*;
  - (b) the *person* giving or transmitting the order;
  - (c) the *person* receiving the order;
  - (d) the date and time of the order;
  - (e) the terms and means of payment;
  - (f) the type of the order;
  - (g) the date of execution of the order;
  - (h) the number of *units* subscribed or redeemed;
  - (i) the subscription or *redemption* price for each *unit*;
  - (j) the total subscription or *redemption* value of the *units*; and
  - (k) the gross value of the order including charges for subscription or net amount after charges for *redemption*.

[**Note:** article 15 of the *UCITS implementing Directive*]

#### Recordkeeping requirements

- 6.13.4 R (1) An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure the retention of the records referred to in *COLL 6.13.2R* and *COLL 6.13.3R*

for a period of at least five years or, in exceptional circumstances and where directed by the *FSA*, for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the *FSA* to exercise its supervisory functions under the *UCITS Directive*.

- (2) Following the termination of its authorisation, an *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the *UCITS* to another *authorised fund manager* or *management company*, arrange for those records for the past five years to be accessible to that other manager.
- (3) The *authorised fund manager* or the *UK UCITS management company* must retain the records referred to in *COLL 6.13.2R* and *COLL 6.13.3R* in a medium that allows the storage of information in a way accessible for future reference by the *FSA*, and in such a form and manner that the following conditions are met:
  - (a) the *FSA* must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;
  - (b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and
  - (c) it must not be possible for the records to be otherwise manipulated or altered.

[**Note:** article 16 of the *UCITS implementing Directive*]

#### Electronic data processing

- 6.13.5 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or *redemption* order, in order to be able to comply with *COLL 6.13.2R* (Recording of portfolio transactions) and *COLL 6.13.3R* (Recording of subscription and redemption orders).

[**Note:** article 7(1) of the *UCITS implementing Directive*]

- 6.13.6 R An *authorised fund manager* of a *UCITS scheme* or a *UK UCITS management company* of an *EEA UCITS scheme* must ensure a high level of security during the electronic data processing referred to in *COLL 6.13.5R* as well as the integrity and confidentiality of the recorded information, as appropriate.

[**Note:** article 7(2) of the *UCITS implementing Directive*]

After COLL 6.13 insert the following new Annex. The text is not underlined.

**6 Annex 1R Particulars of the standard agreement between an EEA UCITS management company and a depositary**

This table belongs to *COLL 6.6.4R(7)(b)* (General duties of the depositary) on the conclusion and prescribed minimum content of a standard agreement between an *EEA UCITS management company* (which is an *authorised fund manager* of a *UCITS scheme*) and the *depositary* of that *scheme*.

<b>Contents of the standard agreement</b>	
(1)	Provisions related to the procedures to be followed by the parties to the agreement:
(a)	a description of the procedures, included those relating to the safekeeping, to be adopted for each type of asset of the <i>UCITS scheme</i> that is entrusted to the <i>depositary</i> ;
(b)	a description of the procedures to be followed where the <i>authorised fund manager</i> envisages a modification of the <i>instrument constituting the scheme</i> or the <i>prospectus</i> of the <i>UCITS scheme</i> , and identifying when the <i>depositary</i> should be informed, or where a prior agreement from the <i>depositary</i> is needed to proceed with the modification;
(c)	a description of the means and procedures by which the <i>depositary</i> will transmit to the <i>authorised fund manager</i> all relevant information that the <i>authorised fund manager</i> needs to perform its duties, including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the <i>authorised fund manager</i> and the <i>UCITS scheme</i> to have timely and accurate access to information relating to the accounts of the <i>UCITS scheme</i> ;
(d)	a description of the means and procedures by which the <i>depositary</i> will have access to all relevant information it needs to perform its duties;
(e)	a description of the procedures by which the <i>depositary</i> has the ability to enquire into the conduct of the <i>authorised fund manager</i> and to assess the quality of information transmitted, including by way of on-site visits; and
(f)	a description of the procedures by which the <i>authorised fund manager</i> can review the performance of the <i>depositary</i> in respect of the <i>depositary's</i> contractual obligations.

	[ <b>Note:</b> article 30 of the <i>UCITS implementing Directive</i> ]	
(2)	Provisions related to the exchange of information and to obligations on confidentiality and money laundering:	
	(a)	a list of all the information that needs to be exchanged between the <i>UCITS scheme</i> , its <i>authorised fund manager</i> and <i>depository</i> related to the <i>issue, cancellation, sale and redemption of units of the UCITS scheme</i> ;
	(b)	the confidentiality obligations applicable to the parties to the agreement. These obligations must be drawn up so as not to impair the ability of either the <i>FSA</i> or the <i>Home State regulator</i> of the <i>EEA UCITS management company</i> to gain access to relevant <i>documents</i> and information; and
	(c)	information on the duties and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.
	[ <b>Note:</b> article 31 of the <i>UCITS implementing Directive</i> ]	
(3)	Provisions related to the appointment of third parties:	
	In cases where the parties to the agreement envisage the appointment of third parties to carry out their duties, the following provisions:	
	(a)	an undertaking by both parties to provide details, on a regular basis, of any third parties appointed by the <i>depository</i> or the <i>authorised fund manager</i> to carry out their respective duties;
	(b)	an undertaking that on request by one of the parties, the other will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party; and
	(c)	a statement that a <i>depository's</i> liability as referred to at <i>COLL 6.6.15R(5)</i> (Committees and delegation) will not be affected by the fact that it has entrusted to a third party all or some of the assets in its safekeeping.
	[ <b>Note:</b> article 32 of the <i>UCITS implementing Directive</i> ]	
(4)	Provisions related to potential amendments and the termination of the agreement:	
	(a)	the period of validity of the agreement;
	(b)	the conditions under which the agreement may be amended or

	terminated; and
(c)	conditions which are necessary to facilitate transition to another <i>depository</i> and, in the event of that transition, the procedure by which the <i>depository</i> should send all relevant information to the other <i>depository</i> .
	[ <b>Note:</b> article 33 of the <i>UCITS implementing Directive</i> ]
(5)	Applicable law:
	A provision specifying that the law of the <i>United Kingdom</i> applies to the agreement.
	[ <b>Note:</b> article 34 of the <i>UCITS implementing Directive</i> ]
(6)	Electronic transmission of information:
	In cases where the parties to the agreement agree to the use of electronic transmission for part or all of the information that is to flow between them, a provision ensuring that a record is kept of that information.
	[ <b>Note:</b> article 35 of the <i>UCITS implementing Directive</i> ]
(7)	Scope of the agreement:
	Where the agreement is to cover more than one <i>UCITS scheme</i> managed by the <i>authorised fund manager</i> , a provision listing the <i>UCITS schemes</i> covered by the agreement.
	[ <b>Note:</b> article 36 last sentence of the <i>UCITS implementing Directive</i> ]
(8)	Service level agreement:
	The parties to the agreement may include either in the agreement or in a separate written agreement the details of the means and procedures referred to in (1)(c) and (d).
	[ <b>Note:</b> article 37 of the <i>UCITS implementing Directive</i> ]

Amend the following as shown.

## **7 Suspension of dealing and termination of authorised funds**

### **7.1 Introduction**

#### Application

7.1.1 R (1) This chapter applies to an *ICVC*, an *ACD*, any other *director* of a ~~an~~ *ICVC*,

a *depository* of an *ICVC*, a *manager* of an *AUT* and a *trustee* of an *AUT*, where such *AUT* or *ICVC* is a *UCITS scheme* or a *non-UCITS retail scheme* in accordance with *COLL 7.1.2R* (Table of application).

- (2) *COLL 7.7 (UCITS mergers) applies only to a domestic UCITS merger or a cross-border UCITS merger.*

Table of application

7.1.2 R This table belongs to *COLL 7.1.1R*.

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depository of an ICVC</i>	<i>Manager</i>	<i>Trustee</i>
...						
<u>7.7</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>
...						

...

Requirement

7.2.1 R ...

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

Temporary suspension of units of a master UCITS

7.2.1A R Where:

- (1) an authorised fund manager of a UCITS scheme which is a master UCITS 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 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;

the authorised fund manager of each of its feeder UCITS (which is a UCITS scheme) is entitled to suspend the issue, cancellation, sale or redemption of its units for the same period of time as the master UCITS.

[Note: article 60(3) of the *UCITS Directive*]

...

Schemes of arrangement: explanation

7.6.1 G ...

- (3) COLL 7.6.2R(3) to (6) apply to a domestic UCITS merger and cross-border UCITS merger. Arrangements constituting any such merger are in addition subject to the requirements of COLL 7.7 (UCITS mergers), implementing the requirements of the UCITS Directive.

...

After COLL 7.6 insert the following new section. The text is not underlined.

## 7.7 UCITS mergers

### Application

7.7.1 R This section applies to an *ICVC*, an *authorised fund manager* of an *AUT* or *ICVC*, any other *director* of an *ICVC* and the *depository* of any such *scheme* where, in each case, the *AUT* or *ICVC* is a *UCITS scheme* that is a party to:

- (1) a *domestic UCITS merger*; or
- (2) a *cross-border UCITS merger*.

7.7.2 G (1) The effect of *COLL 7.7.1R*, and in particular the narrow *Glossary* definition of *domestic UCITS merger* which is drafted in accordance with article 2.1(r) of the *UCITS Directive*, is that this section will not apply to a merger in the *United Kingdom* between two or more *UCITS schemes* unless one of them has been the subject of a *UCITS marketing notification*.

- (2) For arrangements to constitute a *cross-border UCITS merger*, at least two of the relevant *UCITS* must be:
  - (a) established in different *EEA States*; or
  - (b) established in the same *EEA State* and be merging into a newly constituted *UCITS* established in another *EEA State*.

### References to a UCITS scheme

7.7.3 R In this section references to:

- (1) a *UCITS scheme*, a *merging UCITS*, a *receiving UCITS* or to an *EEA UCITS scheme* include the *sub-fund* of any such *scheme*;
- (2) the *management company* of an *EEA UCITS scheme* are to the *operator* of the *scheme*.

[**Note:** article 37 of the *UCITS Directive*]

### UCITS mergers

- 7.7.4 R A *domestic UCITS merger* between two or more *UCITS schemes*, or a *cross-border UCITS merger* between one or more *UCITS schemes* which is or are the *merging UCITS* and one or more *EEA UCITS schemes*, is permissible provided:
- (1) it is effected in accordance with the requirements of:
    - (a) the *UCITS Regulations 2011*, which include the need for the *FSA* to have made a prior order approving the proposed merger (which may be made subject to (2)); and
    - (b) this chapter; and
  - (2) in the case of a *UCITS scheme* that is:
    - (a) a *merging UCITS* in a *domestic* or *cross-border UCITS merger*, an *extraordinary resolution* is approved by *unitholders* in accordance with *COLL 7.6.2R(3)* and (4) (Schemes of arrangement: requirements); and
    - (b) a *receiving UCITS* in a *domestic* or *cross-border UCITS merger*, the *manager* and *trustee* of the *AUT* and the *directors* of the *ICVC* comply with *COLL 7.6.2R(5)* and (6).

[**Note:** articles 39(1), 39(4) and 44 first paragraph of the *UCITS Directive*]

#### Meetings of unitholders

- 7.7.5 G (1) The effect of *COLL 7.7.4R(2)(a)* is that the 75% majority that is needed in support for an *extraordinary resolution* of *unitholders* to be passed is without prejudice to the presence quorum that is required by *COLL 4.4.6R* (Quorum).
- (2) Any meeting of *unitholders* that is needed to give effect to a proposed *UCITS merger* is subject to the requirements of *COLL 4.4* (Meeting of unitholders and service of notices).

#### UCITS Regulations 2011

- 7.7.6 G (1) The requirements and the process which must be followed to give effect to a proposal for a *UCITS merger* as specified by Chapter VI of the *UCITS Directive* (see articles 37 to 48) have been implemented in the *United Kingdom* by the provisions of Part 4 of the *UCITS Regulations 2011*. The main features of the regime as set out in those provisions include:
- (a) the different types of merger operation that will be recognised for a *UCITS merger*;
  - (b) the need for the *FSA* to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the *UCITS Regulations 2011*, where the arrangements proposed constitute either:



- (i) a *domestic UCITS merger*; or
  - (ii) a *cross-border UCITS merger* in which the *merging UCITS* is a *UCITS scheme* (a *UK UCITS*);
  - (c) the information that has to be given to the *FSA* in order to obtain the approval under (b);
  - (d) the need for draft terms of merger to be prepared;
  - (e) the role of the relevant *depositories* and *auditors*;
  - (f) the need for appropriate and accurate information to be prepared for the benefit of *unitholders*;
  - (g) rights of *redemption* and suspension of *dealing* in *units* in the relevant *UCITS*; and
  - (h) the consequences of the proposed merger.
- (2) *Firms* are advised that they do not need to seek approval from the *FSA* under section 251 (Alteration of schemes and changes of manager or trustee) of the *Act* or, as the case may be, regulation 21 (The Authority's approval for certain changes in respect of a company) of the *OEIC Regulations* where they are required to obtain the prior approval of the *FSA* to a proposed merger under regulation 9 of the *UCITS Regulations 2011*.
- (3) A summary of how the regime for *UCITS mergers* operates is to be found in *COLLG*.

#### Common draft terms of merger

- 7.7.7 R (1) The *authorised fund manager* of a *UCITS scheme* that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger*, must in conjunction with any other *authorised fund manager* or, as the case may be, *management company* of an *EEA UCITS scheme* that is a party to the proposed merger, draw up common draft terms of the proposed *UCITS merger*.
- (2) The common draft terms in (1) must set out the following particulars:
- (a) an identification of the type of *UCITS merger* and of the *UCITS* involved;
  - (b) the background to and the rationale for the proposed *UCITS merger*;
  - (c) the expected impact of the proposed *UCITS merger* on the *unitholders* of both the *merging UCITS* and the *receiving UCITS*;

- (d) the criteria adopted for valuation of the assets and, where applicable, the liabilities of the *UCITS* on the date for calculating the exchange ratio as referred to in regulation 13 (Consequences of a merger) of the *UCITS Regulations 2011*;
- (e) the calculation method of the exchange ratio;
- (f) the planned effective date of the *UCITS merger*;
- (g) the rules applicable respectively to the transfer of assets and the exchange of *units*; and
- (h) in the case of a *UCITS merger* where the *receiving UCITS* or the *sub-fund* is being specially formed for the purpose, the *instrument constituting the scheme* of the newly constituted *receiving UCITS*.

[**Note:** article 40(1) of the *UCITS Directive*]

- 7.7.8 G The *management companies* of the *merging UCITS* and the *receiving UCITS* may decide to include further items in the common draft terms of the *UCITS merger*.

[**Note:** article 40(2) of the *UCITS Directive*]

#### Verification by the depositary

- 7.7.9 R The *depositary* of a *UCITS scheme* that is either a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger* must verify that the statements in the common draft terms of merger required under *COLL 7.7.7R (2)(a), (f) and (g)*, to the extent they relate to the *scheme* for which it is the *depositary*, conform with the provisions of the *regulatory system* and the *instrument constituting the scheme*.

[**Note:** article 41 of the *UCITS Directive*]

#### Information to be given to unitholders

- 7.7.10 R (1) The *authorised fund manager* of a *UCITS scheme* that is a *merging UCITS* or a *receiving UCITS* in a proposed *UCITS merger* must ensure that a *document* containing appropriate and accurate information on the merger is provided to the *unitholders* of that *scheme* so as to enable them to:
- (a) make an informed judgment about the impact of the proposal on their investment;
  - (b) exercise their rights under regulation 12 (Right of redemption) of the *UCITS Regulations 2011*; and
  - (c) where applicable, exercise their right to vote on whether or not to approve the merger in accordance with *COLL 7.7.4R(2)(a)* (*UCITS mergers*).

- (2) Where a *UCITS scheme* is the *merging UCITS* in a *domestic UCITS merger* or *cross-border UCITS merger*, its *authorised fund manager* must provide the *information document* in (1):
- (a) to the *unitholders* of the *merging UCITS* and (in the case of a *domestic UCITS merger*) the *receiving UCITS* only after the *FSA* has given its approval to the *UCITS merger* proposal under regulation 9 of the *UCITS Regulations 2011*; and
  - (b) where the *receiving UCITS* (in the case of a *cross-border UCITS merger*) is an *EEA UCITS scheme*, to the *unitholders* of that *scheme* only after the *Home State regulator* of each *merging UCITS* has authorised the *UCITS merger* proposal under national measures implementing article 39 of the *UCITS Directive*;

and in either case must do so at least 30 days before the last date by which *unitholders* may request repurchase or *redemption* of their *units* or, where applicable, conversion without additional charge.

- (3) The *information document* to be provided to the *unitholders* of the *merging UCITS* and the *receiving UCITS* under (1) must include the following:
- (a) the background to and the rationale for the proposed *UCITS merger*;
  - (b) the possible impact of the proposed *UCITS merger* on *unitholders*, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the *UCITS merger*;
  - (c) any specific rights *unitholders* have in relation to the proposed *UCITS merger*, including but not limited to:
    - (i) the right to obtain additional information;
    - (ii) the right to obtain a copy of the report of the independent auditor or the *depository* on request;
    - (iii) the right to request the repurchase or *redemption* or, where applicable, the conversion of their *units* without charge under regulation 12 of the *UCITS Regulations 2011* or, if applicable, the equivalent national implementing measure of the *UCITS Home State*; and
    - (iv) the last date for exercising that right;
  - (d) the relevant procedural aspects and the planned effective date of the merger; and

- (e) a copy of the *key investor information* of the *receiving UCITS*.
- (4) If a *UCITS marketing notification* in respect of the *merging UCITS* or *receiving UCITS* has been made, the information *document* referred to in (3) must be provided in the official language, or one of the official languages, of the relevant *Host State* in which *units* of the *UCITS scheme* are to be marketed, or in a language approved by its *Host State regulator*. The *authorised fund manager* of the relevant *UCITS scheme* must provide an accurate translation of the information *document*.

[**Note:** article 43(1), 43(2), 43(3) and 43(4) of the *UCITS Directive*]

General rules regarding the content of merger information to be provided to unitholders

- 7.7.11 R (1) The information *document* that must be provided to *unitholders* under *COLL 7.7.10R* (Information to be given to unitholders) by the *authorised fund manager* of a *UCITS scheme* must be written in a concise manner and in non-technical language.
- (2) In the case of a proposed *cross-border UCITS merger*, the *authorised fund manager* of the *UCITS scheme*, being either the *merging UCITS* or the *receiving UCITS* respectively, must explain in plain language any terms or procedures relating to the *EEA UCITS scheme* which differ from those commonly used in the *United Kingdom*.
- (3) The information to be provided to the *unitholders* of the *merging UCITS* must meet the needs of investors who have no prior knowledge of the features of the *receiving UCITS* or of the manner of its operation, drawing their attention to the *key investor information* of the *receiving UCITS* and emphasising the desirability of reading it.
- (4) The information to be provided to the *unitholders* of the *receiving UCITS* must focus on the operation of the merger and its potential impact on the *receiving UCITS*.

[**Note:** article 3 of the *UCITS implementing Directive No 2*]

- 7.7.12 G (1) The information provided to *unitholders* under *COLL 7.7.10R* and *COLL 7.7.13R* on any proposed *merger* should reflect the different needs of the *unitholders* of the *merging UCITS* and the *receiving UCITS* and assist their understanding of what is being proposed.
- (2) The reference to “conversion” in *COLL 7.7.10R(2)* means an exchange of *units* in the *merging UCITS* or *receiving UCITS* for *units* in another *UCITS scheme* or *EEA UCITS scheme* that has similar investment policies and that is managed by the same *authorised fund manager* or one of its *affiliated companies*.

[**Note:** recital (1) of the *UCITS implementing Directive No 2*]

Specific rules regarding the content of merger information to be provided to unitholders

## of the merging UCITS

- 7.7.13 R (1) Where the *merging UCITS* is a *UCITS scheme*, the information document that its *authorised fund manager* must provide to its *unitholders* under *COLL 7.7.10R(3)(b)* must also include:
- (a) details of any differences in the rights of *unitholders* of the *merging UCITS* before and after the proposed *UCITS merger* takes effect;
  - (b) if the *key investor information* of the *merging UCITS* and the *receiving UCITS* show *synthetic risk and reward indicators* in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;
  - (c) a comparison of all charges, fees and expenses for both *schemes*, based on the amounts disclosed in their respective *key investor information*;
  - (d) if the *merging UCITS* applies a performance-related fee, an explanation of how it will be applied up to the point at which the *merger* becomes effective;
  - (e) if the *receiving UCITS* applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those *unitholders* who previously held *units* in the *merging UCITS*;
  - (f) in cases where costs associated with the preparation and the completion of the *merger* may be charged to either the *merging* or the *receiving UCITS* or any of their *unitholders*, details of how those costs are to be allocated; and
  - (g) an explanation of whether the *authorised fund manager* of the *merging UCITS* itself intends to undertake any *rebalancing of the portfolio* before the merger takes effect.
- (2) The information to be provided under *COLL 7.7.10R(3)(c)* must also include:
- (a) details of how any accrued income in each *scheme* is to be treated; and
  - (b) an indication of how the report of the independent auditor or the *depository* may be obtained.
- (3) The information to be provided in accordance with *COLL 7.7.10R(3)(d)* must include:
- (a) where required by *COLL 7.6.2R* (Schemes of arrangement: requirements), the procedure by which *unitholders* will be asked to approve the merger proposal, and what arrangements will be

- made to inform them of the outcome;
- (b) the details of any intended suspension of *dealing* in *units* to enable the merger to be carried out efficiently; and
  - (c) when the merger will take effect in accordance with regulation 13 of the *UCITS Regulations 2011*.
- (4) The information to be provided to the *unitholders* of the *merging UCITS* must include:
- (a) the period during which those *unitholders* will be able to continue making subscriptions and requesting *redemptions* of *units* in the *scheme*;
  - (b) the time when those *unitholders* not making use of their rights granted under regulation 12 of the *UCITS Regulations 2011*, within the relevant time limit, will be able to exercise their rights as *unitholders* of the *receiving UCITS*; and
  - (c) an explanation that once the merger proposal is approved by the resolution of a general meeting of the *unitholders* of the *merging UCITS*, those *unitholders* who vote against the proposal or who do not vote at all, and who do not make use of their rights granted under regulation 12 of the *UCITS Regulations 2011* within the relevant time limit, will become *unitholders* of the *receiving UCITS*.
- (5) If a summary of the key points of the merger proposal is provided at the beginning of the *document* providing information on the merger proposal, it must cross-refer to the parts of the *document* where further information is provided.

[**Note:** article 4 of the *UCITS implementing Directive No 2*]

Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

- 7.7.14 R (1) Where the *receiving UCITS* is a *UCITS scheme*, the information that its *authorised fund manager* must provide to its *unitholders* under *COLL 7.7.10(3)(b)* must also include an explanation of whether the *authorised fund manager* expects the merger to have any material effect on the portfolio of the *receiving UCITS*, and whether it intends to undertake any *rebalancing of the portfolio* either before or after the merger takes effect.
- (2) In addition to (1), the *authorised fund manager* of the *receiving UCITS* must provide to its *unitholders* the information referred to in *COLL 7.7.13R(2), (3), and (5)*.

[**Note:** article 4 of the *UCITS implementing Directive No 2*]

- 7.7.15 G (1) An *authorised fund manager* may add other information to that which is required by *COLL 7.7.12R* to *COLL 7.7.14R* if it considers that it is relevant in the context of the proposed *UCITS merger*. For example, it may be appropriate for the information provided in accordance with *COLL 7.7.13R(3)(a)* to contain a recommendation by the respective *manager* of an *AUT* or the *directors* of an *ICVC* as to the course of action the *unitholders* should take.
- (2) Where an *authorised fund manager* chooses to include a summary of the key points as allowed by *COLL 7.7.13R(5)*, its inclusion does not relieve the *authorised fund manager* of its obligation to avoid the use of long or technical explanations in the rest of the document.

[**Note:** recitals (2) and (3) and article 4(6) of the *UCITS implementing Directive No 2*]

#### Key investor information

- 7.7.16 R The *authorised fund manager* of a *merging UCITS* must provide an up-to-date version of the *key investor information* of the *receiving UCITS* to its existing *unitholders*.

[**Note:** article 5(1) of the *UCITS implementing Directive No 2*]

- 7.7.17 R (1) Where a *UCITS scheme* is the *receiving UCITS* in a *cross-border UCITS merger*, its *authorised fund manager* must ensure that an up-to-date version of the *key investor information document* of the *receiving UCITS* is made available to the *management company* of the *merging UCITS* for the purpose of providing it to investors in that *UCITS*.
- (2) Where the *key investor information document* of the *receiving UCITS* has been amended for the purpose of (1), the *authorised fund manager* of the *receiving UCITS* must also provide it to all its existing *unitholders*.

[**Note:** article 5(2) of the *UCITS implementing Directive No 2*]

#### New unitholders

- 7.7.18 R Between the date when the information required under *COLL 7.7.10R* is provided to *unitholders* and the date when the merger takes effect, the information document and the up-to-date *key investor information* of the *receiving UCITS* must be provided to each *person* who purchases or subscribes for *units* in either the *merging UCITS* or the *receiving UCITS* or who asks to receive copies of the *instrument constituting the scheme*, *prospectus* or *key investor information* of either *scheme*.

[**Note:** article 6 of the *UCITS implementing Directive No 2*]

#### Method of providing merger information to unitholders

- 7.7.19 R The *authorised fund manager* of the *merging UCITS* and the *receiving UCITS*

must provide the information required by *COLL 7.7.10R* to *COLL 7.7.14R* to *unitholders* in a *durable medium*.

[**Note:** article 7 of the *UCITS implementing Directive No 2*]

#### Merger costs

- 7.7.20 R The *authorised fund manager* of a *UCITS scheme* that is either a *merging UCITS* or a *receiving UCITS* must ensure that any legal, advisory, administrative or any other costs associated with the preparation and completion of the *UCITS merger* are not charged to either *scheme* or to any of its *unitholders*.

[**Note:** article 46 of the *UCITS Directive*]

#### Effective merger date, exchange ratio calculation date and publication of merger

- 7.7.21 G (1) In a *domestic UCITS merger*, the effective date of the merger will be the date specified by the *FSA* in its order authorising the proposed merger in accordance with regulation 9 of the *UCITS Regulations 2011*.
- (2) For a *UCITS scheme* which is the *receiving UCITS* in a *cross-border UCITS merger*, the effective date of the merger will be the date agreed by the *FSA* and the *merging UCITS' Home State regulator*.
- (3) For a *UCITS scheme* which is the *receiving UCITS* in a *domestic UCITS merger* or a *cross-border UCITS merger*:
- (a) the date for calculating the exchange ratio of *units* of the *merging UCITS* into *units* of the *receiving UCITS* and, where applicable, for determining the relevant net asset value for cash will be the date specified in the common terms of merger for that purpose; and
- (b) the *FSA* will publish the entry into effect of the merger in the record it keeps under section 347 (The record of authorised persons etc) of the *Act* in accordance with regulation 14 of the *UCITS Regulations 2011*.
- (4) For a *UCITS scheme* which is the *merging UCITS* in a *cross-border UCITS merger*, the dates referred to in (2) and (3)(a) will be determined by the laws of the *receiving UCITS Home State*. Those dates will be after the date on which the merger proposal has been approved in accordance with *COLL 7.7.4R (2)(a)* (*UCITS mergers*).

[**Note:** article 47 of the *UCITS Directive*]

#### Confirmation obligation on completion of a UCITS merger



- 7.7.22 R The *authorised fund manager* of a *UCITS scheme* that is the *receiving UCITS* in either a *domestic* or *cross-border UCITS merger* must confirm in writing to the *depository* of the *UCITS scheme* and the *FSA* that the merger transfer is complete.

[**Note:** article 48(4) of the *UCITS Directive*]

- 7.7.23 G Regulation 13 of the *UCITS Regulations 2011* sets out the conditions that must be fulfilled for a merger transfer to be considered complete.

Amend the following as shown.

## 9.2 Section 264 recognised schemes

~~Information and documents to be supplied with a section 264 notification~~

- 9.2.1 G (1) ~~If the *operator* of a *collective investment scheme* constituted in a *EEA State* gives notice to the *FSA* under section 264 of the *Act*, it should include the information described in paragraphs (2) to (4) below (see the *Financial Services and Markets Act 2000 (Collective Investment Schemes Constituted in Other EEA States) Regulations 2001 (SI 2001/2383)*, as amended):~~ [deleted]
- (2) ~~The *documents* must be in English, or accompanied by a translation in English.~~ [deleted]
- (3) ~~The *documents* should be certified by the *operator* to be true copies of the original.~~ [deleted]
- (4) ~~The *FSA* will need the following information and documentation in connection with the notification:~~
- (a) ~~the name of the *scheme*;~~
- (b) ~~the legal form of the *scheme*;~~
- (c) ~~the name and address of the *operator*;~~
- (d) ~~the address of the place in the *United Kingdom* for the service on the *operator* of notices or other *documents*;~~
- (e) ~~the name and address of any supervisory authority or authorities to which the *operator* is subject in the *EEA State* in which it is established;~~
- (f) ~~whether the *operator* intends to market the *scheme* in the *United Kingdom* in a manner which will involve it carrying on a *regulated activity* in the *United Kingdom*;~~
- (g) ~~the name and address of the *depository*;~~

- (h) ~~the address in the *United Kingdom* where the *scheme* facilities (see *COLL 9.4*) will be maintained;~~
- (i) ~~details of the arrangements for the *marketing* of *units* in the *United Kingdom*, namely:~~
  - (i) ~~the proposed commencement date;~~
  - (ii) ~~whether the *units* will be sold by or through any employed sales force, *authorised persons*, or unsolicited calls;~~
- (j) ~~the attestation or certificate from the authorities of the *EEA State* in which the *scheme* is authorised which demonstrates that the *scheme* complies with the *UCITS Directive*;~~
- (k) ~~a copy of the *instrument constituting the scheme*;~~
- (l) ~~a copy of the *prospectus* and the simplified prospectus of the *scheme*; and~~
- (m) ~~a copy of the latest annual report and any subsequent half-yearly report. [deleted]~~

#### Marketing of units of an EEA UCITS scheme

- 9.2.2 G (1) The *units* of an *EEA UCITS scheme* in respect of which a notification has been transmitted to the *FSA* by the *competent authority* of the *UCITS Home State* in accordance with article 93 of the *UCITS Directive* may be marketed in the *United Kingdom*. This is the effect of section 264 (Schemes constituted in other EEA States) read in conjunction with section 238(4)(c) (Restrictions on promotion) of the *Act*.
- (2) Where a *management company* wishes to market the *units* of an *EEA UCITS scheme* it manages, without establishing a *branch* or providing any other services in the *United Kingdom*, a *management company passport* is not required for such *marketing* activities.
- (3) In this Chapter references to an *EEA UCITS scheme* include its *sub-funds*.

[Note: article 16(1) second paragraph, article 91(1) and 91(4) of the *UCITS Directive*]

...

## 9.4 Facilities in the United Kingdom

...

### Documents

- 9.4.2 R (1) The *operator* of a *recognised scheme* must maintain facilities in the *United Kingdom* for any *person*, for inspection (free of charge) and for the

obtaining (free of charge, in the case of the *documents* at (c) and (d), and otherwise at no more than a reasonable charge) of copies in English of:

...

- (d) for a section 264 *recognised scheme*, the ~~*simplified prospectus*~~ *EEA key investor information document*; and

...

After COLL 10 insert the following new chapters. The text is not underlined.

## 11 Master-feeder arrangements under the UCITS Directive

### 11.1 Introduction

#### Application

11.1.1 R This chapter applies to:

- (1) an *authorised fund manager* of an *AUT* or an *ICVC*;
- (2) any other *director* of an *ICVC*;
- (3) an *ICVC*; and
- (4) a *trustee* of an *AUT* or a *depository* of an *ICVC*;

where such *AUT* or *ICVC* is a *UCITS scheme* that is a *feeder UCITS* or a *master UCITS* in accordance with *COLL 11.1.2R* (Table of application).

#### Table of application

11.1.2 R This table belongs to *COLL 11.1.1R*

Reference	<i>ICVC</i>	<i>ACD</i>	Any other <i>directors</i> of an <i>ICVC</i>	<i>Manager</i>	<i>Trustee</i> of an <i>AUT</i> or <i>depository</i> of an <i>ICVC</i>
11.1.1R	x	x	x	x	x
11.1.3G	x	x	x	x	x
11.2.1G	x	x	x	x	
11.2.2R	x	x	x	x	
11.3.1R	x	x	x	x	

11.3.2R	x	x	x	x	
11.3.3G	x	x	x	x	
11.3.4G	x	x	x	x	
11.3.5R	x	x	x	x	
11.3.6R	x	x	x	x	
11.3.7R	x	x	x	x	
11.3.8R	x	x	x	x	
11.3.9R	x	x	x	x	
11.3.10G	x	x	x	x	
11.3.11R	x	x	x	x	
11.3.12R	x	x	x	x	
11.3.13R	x	x	x	x	
11.3.14G	x	x	x	x	
11.4.1R	x	x	x	x	x
11.4.2R					x
11.4.3R					x
11.4.4G					x
11.4.5G					x
11.5.6R	x	x	x	x	
11.6.1G	x	x	x	x	x
11.6.2R	x	x	x	x	x
11.6.3R	x	x	x	x	
11.6.4R	x	x	x	x	
11.6.5R	x	x	x	x	
11.6.6R	x	x	x	x	
11.6.7R	x	x	x	x	

11.6.8G	x	x	x	x	
11.6.9R	x	x	x	x	
11.6.10R	x	x	x	x	
11.6.11G	x	x	x	x	
11.6.12R	x	x	x	x	
11.6.13R	x	x	x	x	
11 Annex 1R	x	x	x	x	
11 Annex 2R	x	x	x	x	
<b>Note 1:</b> “x” means “applies”, but not every paragraph in every provision referred to will necessarily apply.					
<b>Note 2:</b> <i>COLL</i> 11.5 (with the exception of <i>COLL</i> 11.5.6R) applies to auditors.					

## Purpose

- 11.1.3 G (1) This chapter sets out:
- (a) the notification requirements for a *UCITS scheme* to be approved as a *feeder UCITS* under section 283A (Master-feeder structures) of the *Act*; and
  - (b) the requirements which apply to a *feeder UCITS* where its *master UCITS* is wound up, merges with another *UCITS* or is divided into one or more *UCITS*.
- (2) This chapter also ensures there is a flow of information and *documents* between a *feeder UCITS* and its *master UCITS*. In particular, it allows the *authorised fund manager, depositary* and auditor of a *feeder UCITS* to obtain all information and *documents* necessary to perform their functions.
- (3) *COLL* 11.5 (Auditors) also imposes requirements on auditors of a *master UCITS* and a *feeder UCITS*.
- (4) In this section references to:
- (a) a *UCITS scheme*, a *feeder UCITS*, a *master UCITS*, or *EEA UCITS scheme* include the *sub-fund* of any such *scheme* and references to winding up a *scheme* are to be read as also applying to the termination of a *sub-fund*; and
  - (b) the *management company* of an *EEA UCITS scheme* are to the

*operator of the scheme.*

## 11.2 Approval of a feeder UCITS

### Explanation

- 11.2.1 G (1) Section 283A(1) (Master-feeder structures) of the *Act*, in implementation of article 59(1) of the *UCITS Directive*, provides that the *operator* of a *UCITS scheme* may not invest a higher proportion of *scheme property* in *units* of another *UCITS* than is permitted by *rules* made by the *FSA* implementing article 55 of the *UCITS Directive*, unless the investment is approved by the *FSA* in accordance with that section.
- (2) The *FSA* has implemented article 55(1) of the *UCITS Directive* in *COLL 5.2.11R(9)*, which provides that not more than 20% in value of a *scheme* is to consist of the *units* of any one *collective investment scheme*.

### Application for approval of an investment in a master UCITS

- 11.2.2 R (1) An application for approval of an investment in a *master UCITS* under section 283A of the *Act* must be accompanied by the following documents:
- (a) the *instrument constituting the scheme* of the *feeder UCITS* and of the *master UCITS*;
  - (b) the *prospectus* and the *key investor information* referred to in *COLL 4.7.2R* (Key investor information) of the *feeder UCITS* and of the *master UCITS*;
  - (c) the *master-feeder agreement* or the internal conduct of business rules in accordance with *COLL 11.3.2R(2)* (Master-feeder agreement and internal conduct of business rules);
  - (d) where applicable, the information to be provided to *unitholders* in accordance with *COLL 4.8.3R* (Information to be provided to unitholders);
  - (e) if the *master UCITS* and the *feeder UCITS* have different *depositories*, the information-sharing agreement in accordance with *COLL 11.4.1R(2)* (Information-sharing agreement between depositories); and
  - (f) if the *master UCITS* and the *feeder UCITS* have different auditors, the information-sharing agreement in accordance with *COLL 11.5.1R* (Information-sharing agreement between auditors).
- (2) Where the *master UCITS* is an *EEA UCITS scheme*, the application for approval must also be accompanied by an attestation by the *master*

*UCITS's Home State regulator that the master UCITS:*

- (a) is an *EEA UCITS scheme* or a *sub-fund* of it; and
  - (b) fulfils the conditions set out in article 58(3)(b) and (c) of the *UCITS Directive*.
- (3) The *documents* referred to in (1) and (2) must be provided in English.

[**Note:** article 59(3) of the *UCITS Directive*]

### 11.3 Co-ordination and information exchange for master and feeder UCITS

Authorised fund manager of a master UCITS: provision of documentation

- 11.3.1 R The *authorised fund manager* of a *UCITS scheme* that is a master *UCITS* must provide the *management company* of its *feeder UCITS* with all *documents* and information necessary for the latter to meet its regulatory obligations under the *UCITS Directive*.

[**Note:** article 60(1) first paragraph first sentence of the *UCITS Directive*]

Master-feeder agreement and internal conduct of business rules

- 11.3.2 R (1) The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* must enter into a *master-feeder agreement* which, at a minimum, complies with *COLL 11 Annex 1R*.
- (2) Where a *master UCITS* and a *feeder UCITS* are managed by the same *management company*, the *master-feeder agreement* may be replaced by internal conduct of business rules which, at a minimum, comply with *COLL 11 Annex 2R*.
- (3) The *authorised fund manager* of a *feeder UCITS* must not invest in *units* of the *master UCITS* in excess of the limit applicable under *COLL 5.2.11R(9)* (Spread: general) (20%) until the period of 30 calendar days referred to in *COLL 4.8.3R(1)* (Information to be provided to unitholders) has elapsed and the following have become effective:
- (a) the *master-feeder agreement*, or, if applicable under (2), the internal conduct of business rules;
  - (b) the information-sharing agreement of the *depositories* in accordance with *COLL 11.4.1R(2)* (Information-sharing agreement between depositories); and
  - (c) the information-sharing agreement of the auditors in accordance with *COLL 11.5.1R* (Information-sharing agreement between auditors).

- (4) An *authorised fund manager* of a *feeder UCITS* must make a copy of the *master-feeder agreement* or, where applicable, the internal conduct of business rules, available to *unitholders* free of charge on their request.

[**Note:** article 60(1) first paragraph last sentence, second and third paragraphs, article 61(1) second paragraph, article 62(1) second paragraph and article 64 third paragraph of the *UCITS Directive*]

- 11.3.3 G Where an *authorised fund manager* of a *feeder UCITS* enters into a *master-feeder agreement* or, if applicable, internal conduct of business rules, with the *management company* of an *EEA UCITS scheme*, references in *COLL 11 Annex 1R* and *COLL 11 Annex 2R* to *COLL rules* implementing provisions in the *UCITS Directive* which are the responsibility of the *EEA UCITS scheme's Home State regulator* should be read as referring to the corresponding provisions in the laws and regulations of that *EEA State*.

- 11.3.4 G In relation to the requirements in *COLL 11 Annex 1(3)* and *Annex 2(2)*, where the dealing arrangements between a *master UCITS* and a *feeder UCITS* do not differ from those applying to all non-*feeder UCITS unitholders* of the *master UCITS*, the *master-feeder agreement* or the internal conduct of business rules do not have to replicate those standard dealing arrangements, but may cross-refer to the relevant parts of the *prospectus* of the *master UCITS*.

[**Note:** recital (8) to the *UCITS implementing Directive No 2*]

#### Law applicable to the master-feeder agreement

- 11.3.5 R (1) Where the *feeder UCITS* and the *master UCITS* are *UCITS schemes*, the *master-feeder agreement* must provide that the law of a specified part of the *United Kingdom* applies to the agreement and that both parties agree to the exclusive jurisdiction of the courts of that part of the *United Kingdom*.
- (2) Where the *feeder UCITS* and the *master UCITS* are established in different *EEA States*, the *master-feeder agreement* must provide that the applicable law shall be either:
- (a) the law of the *EEA State* in which the *feeder UCITS* is established; or
  - (b) the law of the *EEA State* in which the *master UCITS* is established;

and that both parties agree to the exclusive jurisdiction of the courts of the *EEA State* whose law they have stipulated to be applicable to the agreement.

[**Note:** article 14 of the *UCITS implementing Directive No 2*]

#### Avoidance of opportunities for market timing



- 11.3.6 R (1) The *authorised fund managers* of a *master UCITS* and its *feeder UCITS* must take appropriate measures to co-ordinate the timing of their net asset value calculation and publication, including the publication of *dealing prices*, in order to avoid market timing in their *units*, preventing arbitrage opportunities.
- (2) Where either the *master UCITS* or *feeder UCITS* is an *EEA UCITS scheme* managed by an *EEA UCITS management company*, the *authorised fund manager* must co-ordinate with that *management company*.

[**Note:** article 60(2) of the *UCITS Directive*]

#### Obligations of the feeder UCITS

- 11.3.7 R (1) An *authorised fund manager* of a *feeder UCITS* must monitor effectively the activity of the *master UCITS*.
- (2) In performing this obligation, the *authorised fund manager* of the *feeder UCITS* may rely on information and *documents* received from the *master UCITS*, or where applicable, the *master UCITS' management company*, *depository* or auditor, unless there is a reason for doubting their accuracy.

[**Note:** article 65(1) of the *UCITS Directive*]

#### Inducements

- 11.3.8 R Where, in connection with an investment in the *units* of the *master UCITS*, a distribution fee, commission or other monetary benefit is received by:
- (1) a *feeder UCITS*; or
- (2) an *authorised fund manager* of a *feeder UCITS*; 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 UCITS*.

[**Note:** article 65(2) of the *UCITS Directive*]

#### Obligations of the master UCITS

- 11.3.9 R The *authorised fund manager* of a *master UCITS* must immediately inform the *FSA* of the identity of each *feeder UCITS* which invests in its *units*.

[**Note:** article 66(1) first sentence of the *UCITS Directive*]

- 11.3.10 G Where the *FSA* is informed in accordance with *COLL 11.3.9R* that a *feeder UCITS* which is an *EEA UCITS scheme* has invested in *units* of the *master UCITS*, section 261A (Information for home state regulator) of the *Act* and regulation 29A (Information for home state regulator) of the *OEIC Regulations* require the *FSA* to inform the *Home State regulator* of the *feeder UCITS*

immediately.

[**Note:** article 66(1) second sentence of the *UCITS Directive*]

- 11.3.11 R (1) An *authorised fund manager* of a *master UCITS* must not impose any *preliminary charge* or *redemption charge* on the *feeder UCITS* for the *issue, sale, redemption* or *cancellation* of *units* in the *master UCITS*.
- (2) Where the *authorised fund manager* of a *master UCITS* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* by a *feeder UCITS* which is, or is like, 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 charge.

[**Note:** article 66(2) of the *UCITS Directive*]

- 11.3.12 R An *authorised fund manager* of a *master UCITS* must ensure the timely availability of all information that is required in accordance with its obligations under the *regulatory system*, the general law and the *instrument constituting the scheme*, to:
- (1) the *feeder UCITS* (or where applicable its *management company*);
- (2) the *competent authority* of the *feeder UCITS*;
- (3) the *depository* of the *feeder UCITS*; and
- (4) the auditor of the *feeder UCITS*.

[**Note:** article 66(3) of the *UCITS Directive*]

#### Obligations to unitholders of a master UCITS

- 11.3.13 R The *authorised fund manager* of a *UCITS scheme* that operates, or intends to operate, as a *master UCITS* must:
- (1) not enter into a *master-feeder agreement* or, where applicable, internal conduct of business rules in accordance with *COLL 11.3.2R(2)* unless it is satisfied on reasonable grounds that the arrangements with the *feeder UCITS* will not unfairly prejudice the interests of any other *unitholder* or *class of unitholders* in the *master UCITS*;
- (2) consider, in relation to:
- (a) each item of information it makes available to the *feeder UCITS* or its *management company*; and
- (b) each matter notified by the *depository* of the *master UCITS* in accordance with *COLL 11.4.3R* (Notification of irregularities);

whether it would unfairly prejudice the interests of those *unitholders* in the *master UCITS* other than the *feeder UCITS* by not making that information available to them, or by not informing them of that matter at the same time in an appropriate manner; and

- (3) in relation to any matter within (2)(b) where it does not notify other *unitholders* at the same time:
  - (a) record the grounds for determining that the interests of those *unitholders* are not unfairly prejudiced by its decision; and
  - (b) inform all *unitholders* of that matter in an appropriate manner and timescale.

- 11.3.14 G (1) The appropriate manner and timescale of notification referred to in *COLL* 11.3.13R(2) and (3)(b) will depend on the nature and significance of the matter. Consequently, the *authorised fund manager* will need to assess each matter individually.
- (2) An appropriate manner of notification could include sending an immediate notification to the *unitholders*, or arranging for the information to be published on one or more websites where it is reasonable likely to be seen by investors.
- (3) Where *COLL* 11.3.13R(3)(b) applies, it might be appropriate to include the information in the next long report of the *scheme*.

## 11.4 Depositaries

### Information-sharing agreement between depositaries

- 11.4.1 R (1) An *authorised fund manager* of a *feeder UCITS* is responsible for communicating to the *depository* of the *scheme* any information about the *master UCITS* which is required for the completion of the *depository's* regulatory obligations.
- (2) Where a *master UCITS* and its *feeder UCITS* have different *depositaries*, the *depositaries* must enter into an information-sharing agreement in order to ensure fulfilment of their respective duties.

[**Note:** article 61(1) first and fourth paragraphs of the *UCITS Directive*]

### Contents of the information-sharing agreement between depositaries

- 11.4.2 R (1) The information-sharing agreement referred to in *COLL* 11.4.1R(2) must include:

- (a) identification of the *documents* and categories of information which are to be routinely shared between both *depositories*, and whether that information or those *documents* are provided by one *depository* to the other or made available on request;
  - (b) the manner and timing, including any applicable deadlines, of the transmission of information by the *depository* of the *master UCITS* to the *depository* of the *feeder UCITS*;
  - (c) the co-ordination of the involvement of both *depositories*, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
    - (i) the procedure for calculating the net asset value of each *scheme*, including any measures appropriate to protect against the activities of market timing in accordance with COLL 11.3.6R (Avoidance of opportunities for market timing);
    - (ii) the processing of instructions by the *feeder UCITS* to purchase, subscribe or request the repurchase or *redemption* of *units* in the *master UCITS*, and the settlement of those transactions, including any arrangement to transfer assets in kind;
  - (d) the co-ordination of accounting year-end procedures;
  - (e) what details the *depository* of the *master UCITS* must provide to the *depository* of the *feeder UCITS* of breaches by the *master UCITS* of the law and the *instrument constituting the scheme* and how and when those details will be provided;
  - (f) the procedure for handling ad hoc requests for assistance from one *depository* to the other; and
  - (g) identification of particular contingent events which ought to be notified by one *depository* to the other on an ad hoc basis, and how and when this will be done.
- (2) Where a *master-feeder agreement* exists in accordance with COLL 11.3.2R(1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositories* must provide that:
- (a) the law of the *EEA State* applying to the *master-feeder agreement* will also apply to the information-sharing agreement; and
  - (b) both *depositories* agree to the exclusive jurisdiction of the courts of that *EEA State*.

- (3) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with *COLL 11.3.2R(2)* (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the *depositories* must provide that:
- (a) the law applying to the information-sharing agreement shall be either that of the *EEA State* in which the *feeder UCITS* is established or, where different, that of the *EEA State* in which the *master UCITS* is established; and
  - (b) both *depositories* agree to the exclusive jurisdiction of the courts of the *EEA State* whose law is applicable to the information-sharing agreement.

[**Note:** articles 24 and 25 of the *UCITS implementing Directive No 2*]

#### Notification of irregularities

- 11.4.3 R (1) Where a *depository* of a *master UCITS* detects any irregularities with regards to the *scheme* which may have a negative impact on the relevant *feeder UCITS*, the *depository* must immediately inform:
- (a) the *FSA*;
  - (b) the *feeder UCITS* or, where applicable, its *management company*; and
  - (c) the *depository* of the *feeder UCITS*.
- (2) The irregularities referred to in (1) include, but are not limited to:
- (a) errors in the valuation of the *scheme property* performed in accordance with *COLL 6.3.3R* (Valuation);
  - (b) errors in transactions for or settlement of the *sale, issue, repurchase* or *redemption* of *units* in the *scheme* undertaken by the *feeder UCITS*;
  - (c) errors in the payment or capitalisation of income arising from the *scheme property*, or in the calculation of any related withholding tax;
  - (d) breaches of the investment objectives, policy or strategy of the *scheme* as described in the *instrument constituting the scheme*, the *prospectus* or the *key investor information*; and
  - (e) breaches of investment and borrowing limits set out in *COLL*, the *instrument constituting the scheme*, the *prospectus* or the *key investor information*.

[**Note:** article 61(2) of the *UCITS Directive* and article 26 of the *UCITS implementing Directive No 2*]

- 11.4.4 G (1) When notifying the *FSA* of any irregularities in accordance with *COLL 11.4.3R(1)*, the *depository* of the *master UCITS* should also inform the *depository* of the *feeder UCITS* how the *master UCITS* or its *authorised fund manager* has resolved or proposes to resolve the irregularity.
- (2) Where the *depository* of a *UCITS scheme* that is a *feeder UCITS* is informed by the *depository* of a *master UCITS* of an irregularity and is not satisfied that the resolution or proposed resolution is in the interests of the *unitholders* of the *scheme*, it should promptly report its view to the *authorised fund manager* of the *scheme*, or in the case of an *ICVC*, the *directors*.

[**Note:** recital (16) to the *UCITS implementing Directive No 2*]

#### Disclosure by a trustee or depository

- 11.4.5 G Section 351A (Disclosure under the *UCITS directive*) of the *Act* provides that where a *trustee* of an *AUT* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for the *depositories* of *ICVCs* that are *feeder UCITS* and *master UCITS*.

## 11.5 Auditors

#### Information-sharing agreement between auditors

- 11.5.1 R Where a *master UCITS* and a *feeder UCITS* have different auditors, those auditors must enter into an information-sharing agreement in order to ensure the fulfilment of their respective duties, including the arrangements taken to comply with *COLL 11.5.3R* and *COLL 11.5.4R* (Preparation of the audit report).

[**Note:** article 62(1) first paragraph of the *UCITS Directive*]

#### Contents of the information-sharing agreement between auditors

- 11.5.2 R (1) The information-sharing agreement referred to in *COLL 11.5.1R* must include:
- (a) identification of the *documents* and categories of information which are to be routinely shared between both auditors;
- (b) whether the information or *documents* referred to in (a) are to be

- provided by one auditor to the other or made available on request;
- (c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the *master UCITS* to the auditor of the *feeder UCITS*;
  - (d) the co-ordination of the involvement of each auditor in the accounting year-end procedures for their respective *scheme*;
  - (e) identification of matters that must be treated as irregularities and disclosed in the audit report for the *master UCITS* for the purposes of *COLL 11.5.3R(2)*;
  - (f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report for the *master UCITS*; and
  - (g) provisions regarding the preparation of the audit reports referred to in *COLL 11.5.3R* and *COLL 4.5.12R* (Report of the auditor) and the manner and timing for the provision of the audit report for the *master UCITS* (and drafts of it) to the auditor of the *feeder UCITS*.
- (2) Where the *feeder UCITS* and the *master UCITS* have different accounting year-end dates, the information-sharing agreement must include the manner and timing by which the auditor of the *master UCITS* is to make the ad hoc report as required by *COLL 11.5.4R* and to provide it (and drafts of it) to the auditor of the *feeder UCITS*.
  - (3) Where a *master-feeder agreement* exists in accordance with *COLL 11.3.2R(1)* (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that:
    - (a) the law of the *EEA State* applying to the *master-feeder agreement* will also apply to the information-sharing agreement between auditors; and
    - (b) both auditors agree to the exclusive jurisdiction of the courts of that *EEA State*.
  - (4) Where the *master-feeder agreement* has been replaced by internal conduct of business rules in accordance with *COLL 11.3.2R(2)* (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that:
    - (a) the law applying to the information-sharing agreement shall be either that of the *EEA State* in which the *feeder UCITS* is established or, where different, that of the *EEA State* in which

the *master UCITS* is established; and

- (b) both auditors agree to the exclusive jurisdiction of the courts of the *EEA State* whose law is applicable to the information-sharing agreement.

[**Note:** articles 27 and 28 of the *UCITS implementing Directive No 2*]

Preparation of the audit report

11.5.3 R When preparing its audit report, the auditor of a *feeder UCITS* must:

- (1) take into account the audit report of the *master UCITS*; and
- (2) report on any irregularities revealed in the audit report of the *master UCITS* and their impact on the *feeder UCITS*.

[**Note:** article 62(2) first paragraph first sentence and second paragraph of the *UCITS Directive*]

11.5.4 R Where a *master UCITS* and one or more of its *feeder UCITS* have different accounting years, the auditor of the *master UCITS* must make an ad hoc report on the closing date of the accounting year of each *feeder UCITS*.

[**Note:** article 62(2) first paragraph second sentence of the *UCITS Directive*]

Disclosure by an auditor

11.5.5 G Section 351A of the *Act* provides that where an auditor of an *AUT* which is a *master UCITS* or a *feeder UCITS*, or any *person* acting on their behalf, makes a disclosure to comply with *rules* implementing Chapter VIII of the *UCITS Directive*, that disclosure is not to be taken as a contravention of any duty to which the *person* making the disclosure is subject. The *OEIC Regulations* (see regulation 83A) contain corresponding provisions for auditors of *ICVCs* that are *feeder UCITS* and *master UCITS*.

Responsibility of authorised fund managers

11.5.6 R The *authorised fund managers* of a *master UCITS* and a *feeder UCITS* must ensure that the terms on which auditors of their respective *schemes* are appointed require each auditor to comply with the *rules* in this section.

## 11.6 Winding up, merger and division of master UCITS

Explanation

11.6.1 G (1) Section 258A(1) and (2) (Winding up or merger of master UCITS) of the *Act*, in implementation of article 60 of the *UCITS Directive*, provides that where a *master UCITS* is wound up, for whatever reason, the *FSA* is to direct the *manager* and *trustee* of any *AUT* which is a



*feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:

- (a) the *FSA* approves under section 283A (Master-feeder structures) of the *Act* the investment by the *feeder UCITS* of at least 85% in value of the *scheme property* in *units* of another *master UCITS*; or
  - (b) the *FSA* approves under section 252A (Proposal to convert to a non-feeder UCITS) of the *Act* an amendment of the *trust deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (2) Section 258A(3) and (4) of the *Act* further provides that where a *master UCITS* merges with another *UCITS* or is divided into two or more *UCITS*, the *FSA* is to direct the *manager* and *trustee* of any *AUT* which is a *feeder UCITS* of the *master UCITS* to wind up the *scheme*, unless one of the following conditions is satisfied:
- (a) the *FSA* approves under section 283A of the *Act* the investment by the *feeder UCITS* of at least 85% in value of the *scheme property* in *units* of:
    - (i) the *master UCITS* which results from the merger;
    - (ii) one of the *UCITS* resulting from the division; or
    - (iii) another *UCITS* or *master UCITS*; or
  - (b) the *FSA* approves under section 252A of the *Act* an amendment of the *trust deed* of the *feeder UCITS* which would enable it to convert into a *UCITS scheme* which is not a *feeder UCITS*.
- (3) The *OEIC Regulations* (see regulations 33A and 33B respectively) contain corresponding provisions for *feeder UCITS* which are structured as *ICVCs*.

Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FSA direction

- 11.6.2 R (1) The commencement of winding up of a *UCITS scheme* that is a *master UCITS* must take place no sooner than 3 months after a notification is made to its *unitholders* and, where applicable, the *competent authorities* of the *feeder UCITS Home State*, informing them of the binding decision to wind up the *master UCITS*.
- (2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the *United Kingdom* regarding the compulsory liquidation of *AUTs* or *ICVCs*.

[**Note:** article 60(4) last sentence of the *UCITS Directive*]

Application for approval by a feeder UCITS where a master UCITS is wound up

- 11.6.3 R Where the *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* is notified that its *master UCITS* is to be wound up, it must submit to the *FSA* the following:
- (1) where the *authorised fund manager* of the *feeder UCITS* intends to invest at least 85% in value of the *scheme property* in *units* of another *master UCITS*:
    - (a) its application for approval under section 283A of the *Act* for that investment;
    - (b) where applicable, its notice under section 251 (Alteration of schemes and changes of manager or trustee) of the *Act* or regulation 21 (The Authority's approval for certain changes in respect of a company) of the *OEIC Regulations* of any proposed amendments to its *instrument constituting the scheme*;
    - (c) the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* (Provision and filing of the prospectus) and *COLL 4.7.7R(1)* (Revision and filing of key investor information); and
    - (d) the other *documents* required in accordance with *COLL 11.2.2R* (Application for approval of an investment in a master UCITS);
  - (2) where the *authorised fund manager* of the *feeder UCITS* intends to convert it into a *UCITS scheme* that is not a *feeder UCITS*:
    - (a) its application for approval under section 252A of the *Act* or regulation 22A of the *OEIC Regulations* of the proposed amendments to its *instrument constituting the scheme*; and
    - (b) the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* and *COLL 4.7.7R(1)*; and
  - (3) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[**Note:** article 20(1) of the *UCITS implementing Directive No 2*]

Timing of applications for approval: winding up of a master UCITS

- 11.6.4 R (1) The information in *COLL 11.6.3R* must be submitted no later than two *months* after the date on which the *master UCITS* has informed the *authorised fund manager* of the *feeder UCITS* of the binding decision to be wound up.

- (2) By way of derogation from (1), where the *master UCITS* has informed the *authorised fund manager* of the *feeder UCITS* of the binding decision to be wound up more than five *months* before the date at which the winding up will start, the *authorised fund manager* must submit the information to the *FSA* at the latest three *months* before the day the winding up will start.

[**Note:** article 20(1) first sentence and article 20(2) of the *UCITS implementing Directive No 2*]

Application for approval by a feeder UCITS where a master UCITS merges or divides

- 11.6.5 R Where the *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* is notified that the *master UCITS* is to merge with another *UCITS scheme* or *EEA UCITS scheme* or divide into two or more such *schemes*, it must submit to the *FSA* the following:
- (1) where the *authorised fund manager* of the *feeder UCITS* intends it to continue to be a *feeder UCITS* of the same *master UCITS*:
    - (a) its application under section 283A of the *Act*, for approval;
    - (b) where applicable, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of any proposed amendments to the *instrument constituting the scheme*; and
    - (c) where applicable, the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* and *COLL 4.7.7R(1)*;
  - (2) where the *authorised fund manager* of the *feeder UCITS* intends it to become a *feeder UCITS* of another *master UCITS* resulting from the proposed merger or division of the *master UCITS*, or intends the *feeder UCITS* to invest at least 85% in value of the *scheme property* in *units* of another *master UCITS* not resulting from the merger or division:
    - (a) its application under section 283A of the *Act* for approval of that investment;
    - (b) where applicable, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of any proposed amendments to the *instrument constituting the scheme*;
    - (c) the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* and *COLL 4.7.7R(1)*;
    - (d) the other *documents* required in accordance with *COLL 11.2.2R*;
  - (3) where the *authorised fund manager* of the *feeder UCITS* intends it to

convert into a *UCITS scheme* that is not a *feeder UCITS*:

- (a) its application for approval under section 252A of the *Act* or regulation 22A of the *OEIC Regulations* of the proposed amendments to the *instrument constituting the scheme*; and
  - (b) the amendments to its *prospectus* and its *key investor information* in accordance with *COLL 4.2.3R(1)(b)* and *COLL 4.7.7R(1)*; and
- (4) where the *authorised fund manager* of the *feeder UCITS* intends to wind up the *scheme*, a notice under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* of a proposal to that effect.

[**Note:** article 22(1) of the *UCITS implementing Directive No 2*]

#### Interpretation of COLL 11.6.5R

- 11.6.6 R (1) For the purposes of *COLL 11.6.5R(1)*, a *feeder UCITS* will be considered as continuing to be a *feeder UCITS* of the same *master UCITS* where:
- (a) the *master UCITS* is the *receiving UCITS* in a proposed *UCITS merger*; or
  - (b) the *master UCITS* is to continue materially unchanged as one of the resulting *UCITS schemes* or *EEA UCITS schemes* in a proposed division.
- (2) For the purposes of *COLL 11.6.5R(2)*, a *feeder UCITS* will be considered as becoming a *feeder UCITS* of another *master UCITS* resulting from the merger or division of the *master UCITS* where:
- (a) the *master UCITS* is the *merging UCITS* and, as a result of the *UCITS merger*, the *feeder UCITS* becomes a *unitholder* of the *receiving UCITS*; or
  - (b) the *feeder UCITS* as a result of the division becomes a *unitholder* of a *UCITS scheme* or *EEA UCITS scheme* that is materially different to the *master UCITS*.

[**Note:** article 22(2) of the *UCITS implementing Directive No 2*]

#### Timing of applications for approval: merger or division of a master UCITS

- 11.6.7 R (1) The information in *COLL 11.6.5R* must be submitted to the *FSA* no later than one *month* after the date on which the *authorised fund manager* of the *feeder UCITS* has received the information of the planned merger or division in accordance with regulation 13(6) of the *UCITS Regulations 2011*.

- (2) By way of derogation from (1), where the *master UCITS* provides the information referred to in, or comparable with, *COLL 7.7.10R* (Information to be given to unitholders) to the *authorised fund manager* of the *feeder UCITS* more than four *months* before the proposed effective date of the merger or division of the *master UCITS*, the *authorised fund manager* must submit the information to the *FSA* at least three *months* before the proposed effective date.

[**Note:** article 22(1) first sentence and article 22(3) of the *UCITS implementing Directive No 2*]

#### Repurchase or redemption of units in a master UCITS

- 11.6.8 G Regulation 12(4) (Right of redemption) of the *UCITS Regulations 2011* provides that where a *master UCITS* merges with another *scheme*, the *master UCITS* must enable its *feeder UCITS* to repurchase or *redeem* all the *units* of the *master UCITS* in which they have invested before the consequences of the merger become effective, unless the *FSA* approves the continued investment by the *feeder UCITS* in a *master UCITS* resulting from the merger.
- 11.6.9 R (1) Where:
- (a) the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under *COLL 11.6.5R(2)* and (3); and
  - (b) does not receive the necessary approvals from the *FSA* by the *business day* preceding the last *day* on which the *authorised fund manager* of the *feeder UCITS* can request repurchase or *redemption* of its *units* in the *master UCITS*;
- the *authorised fund manager* of the *feeder UCITS* must exercise the right to repurchase or *redeem* its *units* in the *master UCITS* under regulation 12(4) of the *UCITS Regulations 2011*.
- (2) The *authorised fund manager* of the *feeder UCITS* must also exercise the right in (1) to ensure that the right of its own *unitholders* to request repurchase or *redemption* in the *feeder UCITS* in accordance with *COLL 4.8.3R(1)(d)* (Information to be provided to unitholders) is not affected.
  - (3) Before exercising the right in (1), the *authorised fund manager* of the *feeder UCITS* must consider any available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own *unitholders*.
  - (4) Where the *authorised fund manager* of the *feeder UCITS* requests repurchase or *redemption* in accordance with (1), it must receive one of the following:
    - (a) the repurchase or *redemption* proceeds in cash; or
    - (b) some or all of the repurchase or *redemption* proceeds as a

transfer in kind, where the *authorised fund manager* of the *feeder UCITS* so wishes and where its *instrument constituting the scheme* and the *master-feeder agreement* provide for it.

- (5) Where (4)(b) applies, the *authorised fund manager* of the *feeder UCITS* may realise any part of the transferred assets for cash at any time.

[**Note:** articles 23(4) and 23(5) of the *UCITS implementing Directive No 2*]

#### Conditions on reinvestment of cash

11.6.10 R Where:

- (1) the *FSA* approves an application under sections 283A (Master-feeder structures) or 252A (Proposal to convert to a non-feeder *UCITS*) of the *Act* or regulation 22A of the *OEIC Regulations* that arises as a result of the winding-up, merger or division of the *master UCITS* (other than an application pursuant to *COLL 11.6.5R(1)*); and
- (2) the *authorised fund manager* of the *feeder UCITS* holds or receives cash in accordance with *COLL 11.6.9R(4)* or as a result of a winding-up;

the *authorised fund manager* may not re-invest that cash, except for the purpose of efficient cash management, before the date on which the *feeder UCITS* invests in *units* of the *master UCITS* in accordance with *COLL 11.3.2R(3)* (Master-feeder agreement and internal conduct of business rules) or in accordance with its new investment objectives and policy.

[**Note:** article 23(6) of the *UCITS implementing Directive No 2*]

11.6.11 G *COLL 11.6.10R* gives effect to sections 283A(4) and 252A(8) of the *Act* and regulation 22A(4) of the *OEIC Regulations* which require the *FSA* to impose certain conditions when approving the re-investment of cash received from a *master UCITS* which has been wound up.

#### Requirements following approval by the FSA

11.6.12 R Where the *authorised fund manager* of a *feeder UCITS* has submitted the *documents* required under *COLL 11.6.3R(1)*, *COLL 11.6.3R(2)*, *COLL 11.6.5R(1)*, *COLL 11.6.5R(2)* or *COLL 11.6.5R(3)* and has received written notice of any required approvals from the *FSA*, it must:

- (1) inform the *master UCITS* of those approvals; and
- (2) in the case of the required approvals received in respect of *documents* submitted under *COLL 11.6.3R(1)* and *COLL 11.6.5R(2)*, take the necessary measures to comply with the requirements of *COLL 4.8.3R* as soon as possible.

[**Note:** articles 21(2), 21(3), 23(2) and 23(3) of the *UCITS implementing Directive No 2*]

## Notification by feeder UCITS of intention to be wound up

11.6.13 R Where the *authorised fund manager* of a *feeder UCITS* gives notice to the *FSA* under section 251 of the *Act* or regulation 21 of the *OEIC Regulations* that it intends to wind up the *scheme*, it must inform:

- (1) the *unitholders* of the *feeder UCITS*; and
- (2) where notice is given under *COLL 11.6.5R(4)* (Application for approval by a feeder UCITS where a master UCITS merges or divides), the *authorised fund manager* of the *master UCITS*;

of its intention without undue delay.

[**Note:** articles 20(3) and 22(4) of the *UCITS implementing Directive No 2*]

## 11 Annex 1R Contents of the standard master-feeder agreement

This table belongs to the *rule* on the conclusion and prescribed content of a standard *master-feeder agreement* (*COLL 11.3.2R(1)*).

(1)	Provisions related to access to information by a <i>master UCITS</i> and a <i>feeder UCITS</i> :	
(a)	how and when the <i>master UCITS</i> provides the <i>feeder UCITS</i> with a copy of its <i>instrument constituting the scheme</i> , <i>prospectus</i> and <i>key investor information</i> or any amendment of them;	
(b)	how and when the <i>master UCITS</i> informs the <i>feeder UCITS</i> of a delegation of investment management and risk management functions to third parties in accordance with <i>COLL 6.6.15AR</i> ;	
(c)	where applicable, how and when the <i>master UCITS</i> provides the <i>feeder UCITS</i> with internal operational documents, such as its risk management process and its compliance reports;	
(d)	what details of breaches by the <i>master UCITS</i> of;	
	(i)	the law;
	(ii)	the <i>instrument constituting the scheme</i> ; and
	(iii)	the <i>master-feeder agreement</i> ;
	must be notified to the <i>feeder UCITS</i> and the manner and timing thereof;	
(e)	where a <i>feeder UCITS</i> uses <i>derivatives</i> for hedging purposes, how and when the <i>master UCITS</i> will provide the <i>feeder UCITS</i> with information	

	about its actual exposure to <i>derivatives</i> to enable the <i>feeder UCITS</i> to calculate its own global exposure as envisaged by <i>COLL 5.8.4R</i> (Exposure to derivatives); and
(f)	a statement that the <i>master UCITS</i> must inform the <i>feeder UCITS</i> of any other information-sharing arrangements entered into with third parties and, where applicable, how and when the <i>master UCITS</i> makes those other information-sharing arrangements available to the <i>feeder UCITS</i> .
[ <b>Note:</b> article 8 of the <i>UCITS implementing Directive No 2</i> ]	
(2)	Provisions related to the basis of investment and divestment by the <i>feeder UCITS</i> :
(a)	a statement of which <i>classes of units</i> of the <i>master UCITS</i> are available for investment by the <i>feeder UCITS</i> ;
(b)	the charges and expenses to be borne by the <i>feeder UCITS</i> and details of any rebate or retrocession of charges or expenses by the <i>master UCITS</i> ; and
(c)	where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the <i>feeder UCITS</i> to the <i>master UCITS</i> .
[ <b>Note:</b> article 9 of the <i>UCITS implementing Directive No 2</i> ]	
(3)	Provisions related to standard dealing arrangements:
(a)	co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of <i>units</i> ;
(b)	co-ordination of transmission of dealing orders by the <i>feeder UCITS</i> , including, where applicable, the role of transfer agents or any other third party;
(c)	where applicable, any arrangements necessary to take account of the fact that the <i>units</i> of the <i>master UCITS</i> or the <i>feeder UCITS</i> are listed or traded on a secondary market;
(d)	where necessary, appropriate measures to ensure compliance with the requirements in <i>COLL 11.3.6R</i> (Avoidance of opportunities for market timing);
(e)	where the <i>units</i> of the <i>feeder UCITS</i> and the <i>master UCITS</i> are denominated in different currencies, the basis for conversion of dealing orders;
(f)	settlement cycles and payment details for purchases or subscriptions and repurchases or <i>redemptions</i> of <i>units</i> of the <i>master UCITS</i> including, where agreed between the parties, the terms on which the <i>master UCITS</i>



	may settle <i>redemption</i> requests by a transfer of assets in kind to the <i>feeder UCITS</i> , notably where a <i>master UCITS</i> is wound up, merges with another <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> or divides into two or more such <i>schemes</i> ;
(g)	procedures to ensure enquiries and complaints from <i>unitholders</i> are handled appropriately; and
(h)	where the <i>instrument constituting the scheme</i> and <i>prospectus</i> of the <i>master UCITS</i> give it certain rights or powers in relation to <i>unitholders</i> , and the <i>master UCITS</i> chooses to limit or forego the exercise of all or any such rights and powers in relation to the <i>feeder UCITS</i> , a statement of the terms on which it does so.
[Note: article 10 of the <i>UCITS implementing Directive No 2</i> ]	
(4)	Provisions related to events affecting dealing arrangements:
(a)	the manner and timing of a notification by either the <i>master UCITS</i> or the <i>feeder UCITS</i> of the temporary suspension and resumption of repurchase, <i>redemption</i> , purchase or subscription of its <i>units</i> ; and
(b)	the arrangements for notifying and resolving pricing errors in the <i>master UCITS</i> .
[Note: article 11 of the <i>UCITS implementing Directive No 2</i> ]	
(5)	Provisions related to the standard arrangements for the audit report:
(a)	where the <i>feeder UCITS</i> and the <i>master UCITS</i> have the same accounting years, the co-ordination of the production of their periodic reports; and
(b)	where the <i>feeder UCITS</i> and the <i>master UCITS</i> have different accounting years, arrangements for the <i>feeder UCITS</i> to obtain any necessary information from the <i>master UCITS</i> to enable it to produce its periodic reports on time and which ensure that the auditor of the <i>master UCITS</i> is in a position to produce an ad hoc report on the closing date of the accounting year of the <i>feeder UCITS</i> in accordance with <i>COLL 11.5.4R</i> (Preparation of the audit report).
[Note: article 12 of the <i>UCITS implementing Directive No 2</i> ]	
(6)	Provisions related to changes to the standing arrangements:
How and when notice is to be given:	
(a)	by the <i>master UCITS</i> of proposed and effective amendments to its <i>instrument constituting the scheme</i> , <i>prospectus</i> and <i>key investor information</i> , if these details differ from the standard arrangements for notification of <i>unitholders</i> laid down in the

		<i>instrument constituting the scheme or prospectus of the master UCITS;</i>
	(b)	by the <i>master UCITS</i> of a planned or proposed winding up, <i>merger</i> or <i>division</i> ;
	(c)	by either the <i>feeder UCITS</i> or the <i>master UCITS</i> that it has ceased or will cease to meet the qualifying conditions to be a <i>feeder UCITS</i> or a <i>master UCITS</i> respectively;
	(d)	by either the <i>feeder UCITS</i> or the <i>master UCITS</i> that it intends to replace its <i>management company</i> , its <i>depository</i> , its auditor or any third party which is mandated to carry out investment management or risk management functions; and
	(e)	by the <i>master UCITS</i> of other changes to standing arrangements that it undertakes to provide.
[Note: article 13 of the <i>UCITS implementing Directive No 2</i> ]		

## 11 Annex 2R Contents of the internal conduct of business rules

This table belongs to the *rule* on the conclusion and prescribed content of the internal conduct of business rules (*COLL 11.3.2R(2)*).

(1)	Provisions related to conflicts of interest	
	(a)	The internal conduct of business rules referred to in <i>COLL 11.3.2R(2)</i> must include appropriate measures to mitigate conflicts of interest that may arise between:
		(i) the <i>feeder UCITS</i> and the <i>master UCITS</i> ; or
		(ii) the <i>feeder UCITS</i> and other <i>unitholders</i> of the <i>master UCITS</i> ;
		to the extent that these are not sufficiently addressed by the measures applied by the <i>management company</i> in order to meet the requirements of the provisions listed in (b).
	(b)	The provisions referred to in (a) are:
		(i) <i>SYSC 10.1.4R</i> (Types of conflicts);
		(ii) <i>SYSC 10.1.6R</i> (Record of conflicts);
		(iii) <i>SYSC 10.1.10R</i> (Conflicts policy);

	(iv)	SYSC 10.1.11R (Contents of policy);
	(v)	SYSC 10.1.17R (Additional requirements for a management company);
	(vi)	SYSC 10.1.19R (Structure and organisation of a management company);
	(vii)	SYSC 10.1.20R (Avoidance of conflicts of interest for a management company);
	(viii)	SYSC 10.1.21R (Disclosure of conflicts for a management company); and
	(ix)	COLL 6.6A.6R (Strategies for the exercise of voting rights);
		or the equivalent provisions implementing articles 12(1)(b) and 14(1)(d) of the <i>UCITS Directive</i> and Chapter III of the <i>UCITS implementing Directive</i> .
[Note: article 15 of the <i>UCITS implementing Directive No 2</i> ]		
(2)	Provisions related to the basis of investment and divestment by the <i>feeder UCITS</i> :	
	(a)	a statement of which <i>classes of units</i> of the <i>master UCITS</i> are available for investment by the <i>feeder UCITS</i> ;
	(b)	the charges and expenses to be borne by the <i>feeder UCITS</i> and details of any rebate or retrocession of charges or expenses by the <i>master UCITS</i> ; and
	(c)	where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the <i>feeder UCITS</i> to the <i>master UCITS</i> .
[Note: article 16 of the <i>UCITS implementing Directive No 2</i> ]		
(3)	Provisions related to standard dealing arrangements:	
	(a)	co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of <i>units</i> ;
	(b)	co-ordination of transmission of dealing orders by the <i>feeder UCITS</i> , including, where applicable, the role of transfer agents or any other third party;
	(c)	where applicable, any arrangements necessary to take account of the fact that <i>units</i> of the <i>master UCITS</i> or the <i>feeder UCITS</i> are listed or traded on a secondary market;

(d)	where necessary, appropriate measures to ensure compliance with the requirements in <i>COLL</i> 11.3.6R (Avoidance of opportunities for market timing);
(e)	where the <i>units</i> of the <i>feeder UCITS</i> and the <i>master UCITS</i> are denominated in different currencies, the basis for conversion of dealing orders;
(f)	settlement cycles and payment details for purchases or subscriptions and repurchases or <i>redemptions</i> of <i>units</i> of the <i>master UCITS</i> including, where agreed between the parties, the terms on which the <i>master UCITS</i> may settle <i>redemption</i> requests by a transfer of assets in kind to the <i>feeder UCITS</i> , notably where a <i>master UCITS</i> is wound up, merges with another <i>UCITS scheme</i> or <i>EEA UCITS scheme</i> or divides into two or more such <i>schemes</i> ; and
(g)	where the <i>instrument constituting the scheme</i> and <i>prospectus</i> of the <i>master UCITS</i> give it certain rights or powers in relation to <i>unitholders</i> , and the <i>master UCITS</i> chooses to limit or forego the exercise of all or any such rights and powers in relation to the <i>feeder UCITS</i> , a statement of the terms on which it does so.
<b>[Note:</b> article 17 of the <i>UCITS implementing Directive No 2</i> ]	
(4)	Provisions related to events affecting dealing arrangements:
(a)	the manner and timing of notification by either the <i>master UCITS</i> or the <i>feeder UCITS</i> of the temporary suspension and resumption of repurchase, <i>redemption</i> , purchase or subscription of its <i>units</i> ; and
(b)	the arrangements for notifying and resolving pricing errors in the <i>master UCITS</i> .
<b>[Note:</b> article 18 of the <i>UCITS implementing Directive No 2</i> ]	
(5)	Provisions related to the standard arrangements for the audit report:
(a)	where the <i>feeder UCITS</i> and the <i>master UCITS</i> have the same accounting years, the co-ordination of the production of their periodic reports; and
(b)	where the <i>feeder UCITS</i> and the <i>master UCITS</i> have different accounting years, arrangements for the <i>feeder UCITS</i> to obtain any necessary information from the <i>master UCITS</i> to enable it to produce its periodic reports on time and which ensure that the auditor of the <i>master UCITS</i> is in a position to produce an ad hoc report on the closing date of the accounting year of the <i>feeder UCITS</i> in accordance with <i>COLL</i> 11.5.4R (Preparation of the audit report).
<b>[Note:</b> article 19 of the <i>UCITS implementing Directive No 2</i> ]	

## 12 Management company and product passports under the UCITS Directive

### 12.1 Introduction

#### Application

- 12.1.1 R (1) *COLL* 12.1 (Introduction) – *COLL* 12.3 (EEA UCITS management companies) apply to:
- (a) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
  - (b) (i) an *EEA UCITS management company* that acts as:
    - (A) the *manager* of an *AUT*; or
    - (B) the *ACD* of an *ICVC*;
  - (ii) any other director of an *ICVC*; and
  - (iii) an *ICVC*;
- that is a *UCITS scheme*.
- (2) *COLL* 12.4 (UCITS product passport) applies in accordance with *COLL* 12.4.1R (Application).

#### Purpose

- 12.1.2 G (1) This chapter contains *rules* and *guidance* relating to the operation of the *management company* passport under the *UCITS Directive* and explains how the passporting regime applies to:
- (a) a *UK UCITS management company* that operates an *EEA UCITS scheme*; and
  - (b) an *EEA UCITS management company* that acts as the *manager* of an *AUT* or the *ACD* of an *ICVC* that is a *UCITS scheme*;
- whether from a *branch* it establishes in an *EEA State* other than its *Home State* or under the freedom to provide *cross border services*.
- (2) *COLL* 12.4 (UCITS product passport) contains *rules* and *guidance* relating to the operation of the product passport under the *UCITS Directive* under which a *UCITS scheme* established in the *United Kingdom* may passport into and be marketed in another *EEA State* (the *Host State*).
- 12.1.3 G Where an *authorised fund manager* wishes to market the *units* of a *UCITS scheme* it operates in a *Host State*, without establishing a *branch* or pursuing

any other activities in that State, a *management company* passport is not required for those *marketing* activities. A *UCITS marketing notification* should be made for the relevant *UCITS scheme* (see COLL 12.4 (UCITS product passport) in order to access the market of the *Host State*. The *marketing* must be carried on in conformity with the laws and regulations of that *Host State* implementing Chapter XI of the *UCITS Directive*.

[**Note:** article 16(1) second paragraph of the *UCITS Directive*]

## 12.2 UK UCITS management companies

### Application

- 12.2.1 R This section applies to a *UK UCITS management company* that operates an *EEA UCITS scheme* by establishing a *branch* in another *EEA State* or under the freedom to provide *cross-border services*.

### References in COLL to authorised fund manager

- 12.2.2 R Where this section refers to *rules* in any other part of this sourcebook, references in those *rules* and any relevant *guidance* to an *authorised fund manager*, *AFM* or *operator* of a *UCITS scheme* are to be interpreted as if they are referring to a *UK UCITS management company* of the *EEA UCITS scheme*.

### Home State/Host State split of regulatory and supervisory responsibilities for UK UCITS management companies operating under a passport

- 12.2.3 R A *UK UCITS management company* that operates an *EEA UCITS scheme* must in relation to that activity comply with the *rules* which relate to:
- (1) the organisation of the *management company*, including delegation arrangements;
  - (2) risk-management procedures;
  - (3) prudential rules and supervision;
  - (4) operating conditions; and
  - (5) reporting requirements.

[**Note:** article 19(1) of the *UCITS Directive*]

### Arrangements and organisational decisions

- 12.2.4 R A *UK UCITS management company* that operates an *EEA UCITS scheme* must decide and be responsible for adopting and implementing all the arrangements and organisational decisions that are necessary to ensure compliance with rules drawn up by the *EEA State* in which that *scheme* is established, in implementation of its obligations under articles 19(3) and 19(4) of the *UCITS*

*Directive.*

[**Note:** article 19(6) of the *UCITS Directive*]

- 12.2.5 G The *FSA's* equivalent *rules* under articles 19(3) and 19(4) of the Directive are set out in *COLL* 12.3.5R (*COLL* fund rules under the management company passport: the fund application rules) and *COLL* 6.6.3R (Functions of the authorised fund manager).

Rules of conduct: UK UCITS management companies operating in another Member State

- 12.2.6 G (1) Each *EEA State*, including the *United Kingdom*, is required to implement article 14 of the *UCITS Directive* by drawing up rules of conduct which *management companies* authorised in that State must observe at all times, except as explained in (3).
- (2) *UK UCITS management companies* operating an *EEA UCITS scheme* under the freedom to provide *cross border services* (otherwise than by establishing a *branch* in that State) are advised that, as provided for elsewhere in the *Handbook*, they are required to comply with the following *rules* and *guidance* in relation to such business, as follows:
- (a) *COLL* 6.6A.2R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);
  - (b) *COLL* 6.6A.4R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
  - (c) *COLL* 6.6A.5R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);
  - (d) *SYSC*, to the extent indicated in column A+ (Application to a management company) of Part 3 of *SYSC* 1 Annex 1 (Detailed application of *SYSC*); and
  - (e) *COBS*, to the extent indicated at paragraph 9.1 of Part 3 of *COBS* 1 Annex 1 (Application).
- (3) Rules of conduct drawn up by a *Host State* under article 14 of the *UCITS Directive* are for *branch* operations reserved to that State under article 17(4) of that Directive. A *UK UCITS management company* operating an *EEA UCITS scheme* from a *branch* in an *EEA State* other than the *United Kingdom*, should be aware that it will be expected to comply with the relevant requirements of its *Host State regulator* that correspond to the *rules* referred to at (2)(a) to (c) and (e). Further *guidance* on the *COBS* position may be found at paragraph 9 of Part 3 of *COBS* 1 Annex 1 (Application). As explained at paragraph 2.16AR of Part 2 of *SYSC* 1 Annex 1 (Detailed application of *SYSC*), *SYSC*, to the

extent indicated in column A+ (Application to a management company) of Part 3 of SYSC 1 Annex 1, applies to a *UK UCITS management company* in relation to *passport activities* carried on by it from a *branch* in another *EEA State*, reflecting that responsibility for such matters is shared between the *management company's Home* and *Host State regulators*.

[**Note:** articles 14, 17(4) and 18(3) of the *UCITS Directive*]

Notification to the UCITS Home State regulator

- 12.2.7 G (1) A *UK UCITS management company* which applies to operate an *EEA UCITS scheme* in another *EEA State* is advised that it must comply with the requirements of the *Host State regulator* regarding provision to them of the following *documents*:
- (a) the written agreement it has entered into with the *depository* of the *EEA UCITS scheme*, as referred to in articles 23 and 33 of the *UCITS Directive*; and
  - (b) information on delegation arrangements (if any), regarding functions of investment management and administration which are to be delegated to a third party.
- (2) If the *UCITS management company* already manages other *UCITS* of the same type in the *EEA State* referred to in (1), reference to the *documents* already provided should be sufficient.
- (3) Any subsequent material modifications of the *documents* referred to in (1) must be notified by the *UK UCITS management company* to the *Host State regulator*.

[**Note:** article 20(1) and 20(4) of the *UCITS Directive*]

Requirement to make information available to the public or the competent authority of the scheme's Home Member State

- 12.2.8 G A *UK UCITS management company* that operates an *EEA UCITS scheme* is advised that in accordance with the requirements of the *Host State regulator* it must establish appropriate procedures and arrangements to make information available at the request of the public or that regulator.

### 12.3 EEA UCITS management companies

Application

- 12.3.1 R This section applies to an *EEA UCITS management company* that provides *collective portfolio management* services in the *United Kingdom* by acting as the *manager* of an *AUT* or the *ACD* of an *ICVC* which is a *UCITS scheme*, either by establishing a *branch* or under the freedom to provide *cross border*



*services.*

Purpose

- 12.3.2 G (1) An *EEA UCITS management company* may be the *manager* of an *AUT*, or the *ACD* of an *ICVC*, that is a *UCITS scheme* (see *SUP 13A* (Qualifying for authorisation under the Act)).
- (2) An *EEA UCITS management company* that acts as the *manager* of an *AUT*, or the *ACD* of an *ICVC*, that is a *UCITS scheme* may conduct its business from a *branch* in the *United Kingdom* or under the freedom to provide *cross border services* (without establishing a *branch* in the *United Kingdom*).
- (3) The *Glossary* definition of an “*authorised fund manager*” includes an *EEA UCITS management company*.
- (4) This section provides for the application of the *FSA Handbook* to such a *firm*.

[**Note:** article 16(1) of the *UCITS Directive*]

Further reading on the UCITS management company passport regime

- 12.3.3 G A summary of how the passport for *UCITS management companies* established by the *UCITS Directive* is intended to operate, including the processes for applying for the necessary approvals and describing the regulatory split of responsibilities between the *competent authorities* of the relevant *Home State* and *Host State*, is to be found in *COLLG*.

Provision of documentation to the FSA: EEA UCITS management companies

- 12.3.4 R (1) An *EEA UCITS management company* which applies to manage a *UCITS scheme* under paragraph 15A(1) of Schedule 3 to the *Act* must provide the *FSA* with the following *documents*:
- (a) the written agreement that has been entered into with the *depository* of the *scheme*, as referred to in *COLL 6.6.4R(6)* (General duties of the depository);
- (b) information on any delegation arrangements it has made regarding the functions of investment management and administration, as referred to in Annex II of the *UCITS Directive*; and
- (c) the form required under *SUP 13A Annex 3R* (EEA UCITS management companies: application for approval to manage a UCITS established in the United Kingdom).
- (2) If the *EEA UCITS management company* already manages other *UCITS schemes* of the same type in the *United Kingdom* and under the same arrangements, reference to the *documents* already provided to the *FSA* is

sufficient compliance with (1)(a) and (b).

- (3) If any subsequent material modification is made to any of the *documents* referred to in (1)(a) and (b), the *EEA UCITS management company* must promptly notify the *FSA* of those changes.

[**Note:** article 20(1) first and second paragraphs and article 20(4) of the *UCITS Directive*]

COLL fund rules under the management company passport: the fund application rules

- 12.3.5 R An *EEA UCITS management company* that manages a *UCITS scheme* must comply with the *rules* of the *Handbook* which relate to the constitution and functioning of the *UCITS scheme* (the *fund application rules*), as follows:
- (1) the setting up and authorisation of the *UCITS scheme* (*COLL 1* (Introduction), *COLL 2* (Authorised fund applications), *COLL 3* (Constitution), *COLL 6.5* (Appointment and replacement of the authorised fund manager and the depositary), *COLL 6.6* (Powers and duties of the scheme, the authorised fund manager and the depositary) (unless disapplied), *COLL 6.7* (Payments), *COLL 6.9.1R* (Application) to *COLL 6.9.8G* (Undesirable or misleading names: umbrellas – guidance) and *COLL 6.9.11R* (Notification to the FSA in its role as registrar of ICVCs));
  - (2) the *issue* and *redemption of units* (*COLL 6.1* (Introduction and application), *COLL 6.2* (Dealing) (with the exception of *COLL 6.2.19R* (Limited redemption) and *COLL 6.2.20G* (Limited redemption: guidance)) and *COLL 7.2* (Suspension and restart of dealings));
  - (3) investment policies and limits, including the calculation of total exposure and leverage, and restrictions on borrowing, lending and uncovered sales (*COLL 5.1* (Introduction) to *COLL 5.5* (Cash, borrowing, lending and other provisions), *COLL 5.8* (Investment powers and borrowing limits for feeder UCITS), *COLL 6.12* (Risk management policy and risk measurement) and *COLL 11* (Master-feeder arrangements under the UCITS Directive));
  - (4) the value of the *scheme property* and the accounting of the *UCITS scheme* (*COLL 6.1* (Introduction and application) and *COLL 6.3* (Valuation and pricing) (unless disapplied));
  - (5) the calculation of the *issue* or *redemption price*, and errors in the net asset value and related investor compensation (*COLL 6.1* (Introduction and application) and *COLL 6.3* (Valuation and pricing));
  - (6) the distribution or reinvestment of the *income property* (*COLL 6.8* (Income: accounting, allocation and distribution));
  - (7) the disclosure and reporting requirements of the *UCITS scheme*, including the *prospectus*, *key investor information document* and

periodic reports (*COLL* 4.1 (Introduction), *COLL* 4.2 (Pre-sale notifications), *COLL* 4.5 (Reports and accounts) and *COLL* 4.7 (Key investor information and marketing communications));

- (8) the arrangements made for *marketing* (*COBS* 4 (Communicating with clients, including financial promotions), *COBS* 14 (Providing product information to clients) and *COLL* 4.7 (Key investor information and marketing communications));
- (9) the relationship with *unitholders* (*COLL* 4.1 (Introduction), *COLL* 4.3 (Approvals and notifications) and *COLL* 4.4 (Meetings of unitholders and service of notices));
- (10) the merging, restructuring, winding up and liquidation of the *UCITS scheme* (*COLL* 7.1 (Introduction) and *COLL* 7.3 (Winding up a solvent ICVC and terminating a sub-fund of an ICVC) to *COLL* 7.7 (UCITS mergers) (including *COLL* 7.6.2R(3) to (6)));
- (11) where applicable, the content of the *register* (*COLL* 6.4 (Title and registers));
- (12) the exercise of *unitholders'* voting rights and other *unitholders'* rights in relation to (1) to (11) (including *COLL* 4.1 (Introduction), *COLL* 4.3 (Approvals and notifications), *COLL* 4.4 (Meetings of unitholders), Dispute resolution: Complaints sourcebook) (*DISP* - see *DISP* 1 Annex 2G for a summary of the relevant requirements that apply) and the Compensation sourcebook (*COMP*)); and
- (13) the application and periodic fees of the *UCITS scheme* (*FEES*)).

[**Note:** articles 16(3) and 19(3) of the *UCITS Directive*]

Requirement to make information available to the public or the FSA

- 12.3.6 R (1) An *EEA UCITS management company* that manages a *UCITS scheme* must establish appropriate procedures and arrangements to make information available at the request of the public or the *FSA*.
- (2) The *EEA UCITS management company* must ensure that the procedures and arrangements it establishes in accordance with (1), enable the *FSA* to obtain any information it requests directly from the *management company*.

[**Note:** article 15 second paragraph and article 21(2) third paragraph, of the *UCITS Directive*]

EEA UCITS management companies: compliance with FSA rules

- 12.3.7 G An *EEA UCITS management company* that operates a *UCITS scheme* is advised that in particular it needs to comply with:

- (1) *COLL 6.6.3R* (Functions of the authorised fund manager) requiring it to fulfil the obligations placed on it by the *instrument constituting the scheme* and the *prospectus* of that *scheme*;
- (2) Dispute resolution: Complaints sourcebook (*DISP* - see *DISP 1 Annex 2G* for a summary of the relevant requirements that apply, which include the *complaints handling rules* (under which the *management company* is required to be subject to the *Compulsory Jurisdiction* of the *UK's Financial Ombudsman Service*), as set out in *DISP 2* and *3*, but note that the application of many of the requirements in *DISP* differs depending on whether the *collective portfolio management* services are being provided from a *branch* in the *UK* or under the freedom to provide *cross border services*);
- (3) and to the extent applicable, the Compensation sourcebook (*COMP*) requiring it to participate in the *UK's Financial Services Compensation Scheme* which provides compensation cover where valid claims relating to a *UCITS scheme* arise from the default of a *management company*.

[**Note:** article 16(3), 19(4) and 19(6) of the *UCITS Directive*]

EEA UCITS management companies: conduct of business rules

- 12.3.8 G (1) In addition to the requirements of this section, an *EEA UCITS management company* that provides *collective portfolio management* services from a *branch* in the *United Kingdom* must comply with the following *rules* that implement the requirements of article 14(1) of the *UCITS Directive*:
- (a) *COLL 6.6A.2R* (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);
  - (b) *COLL 6.6A.4R* (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
  - (c) *COLL 6.6A.5R* (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);
  - (d) *SYSC*, to the extent indicated in column A+ (Application to a management company) of Part 3 of *SYSC 1 Annex 1* (Detailed application of *SYSC*); and
  - (e) *COBS*, to the extent indicated at paragraph 9.1 of Part 3 of *COBS 1 Annex 1* (Application).
- (2) The effect of article 18(3) of the *UCITS Directive* is that an *EEA UCITS management company* managing a *UCITS scheme* under the freedom to provide *cross border services* without establishing a *branch* in the *United Kingdom*, has to comply with the relevant conduct of business

rules drawn up by its *Home State regulator* that implement the requirements of article 14(1) of the Directive. So the *rules* set out at (1) do not apply to such a *management company*. However, such *management companies* must comply in all respects with the *fund application rules* referred to in COLL 12.3.5R.

[**Note:** articles 14, 16(3), 17(4), 18(3) and article 19(3) of the *UCITS Directive*]

## 12.4 UCITS product passport

### Application

12.4.1 R (1) This section applies to:

- (a) an *authorised fund manager* of an *AUT* or *ICVC*;
- (b) any other *director* of an *ICVC*; and
- (c) an *ICVC*;

which is a *UCITS scheme* whose *units* may be marketed in another *EEA State* (the *Host State*).

- (2) The *marketing of units* of a *UCITS scheme* in the *Host State* may not commence until the *FSA* has, in accordance with paragraph 20B(5) (Notice of intention to market) of Schedule 3 to the *Act*, notified the *authorised fund manager*, in response to the application of that *firm*, that it has transmitted a *UCITS marketing notification* to the appropriate *Host State regulator*.

12.4.2 G The effect of article 58(4) (b) of the *UCITS Directive* is that a *UCITS scheme* that is a *master UCITS* which only has one or more *feeder UCITS* in another *EEA State* and therefore does not raise capital directly from the public in that *EEA State* will not thereby be exercising its right to market its *units* in that *Host State* in accordance with Chapter XI of the *UCITS Directive*.

[**Note:** article 58(4)(b) of the *UCITS Directive*]

### Availability of facilities

12.4.3 G The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* should be aware that it may be required by the laws, regulations and administrative provisions of the *Host State regulator* to maintain facilities in that State, including for making payments to *unitholders*, repurchasing or redeeming *units* and making available the information which is required to be provided in relation to the *scheme*.

[**Note:** article 92 of the *UCITS Directive*]

## Keeping fund documentation up to date and notification of changes

- 12.4.4 R (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in the *Host State* must ensure that:
- (a) its *instrument constituting the scheme*, its *prospectus* and, where appropriate, its latest annual report and any subsequent half-yearly report; and
  - (b) its *key investor information document*;
- together with their translations (wherever necessary), are kept up to date.
- (2) The *authorised fund manager* must notify any amendments to the *documents* referred to in (1) to each relevant *Host State regulator* and must indicate to them where those *documents* can be obtained electronically.
- (3) In the event of a change in the information regarding the arrangements made for *marketing*, communicated in the notification letter submitted to the *FSA* under paragraph 20B of Schedule 3 to the *Act*, or a change regarding the *classes* of *units* to be marketed, the *authorised fund manager* must give written notice of the change to each relevant *Host State regulator* before implementing the change.
- (4) For the purposes of (2) and (3), the *authorised fund manager* may give written notice of the change by sending an e-mail to the e-mail address maintained by each relevant *Host State regulator*.
- (5) The e-mail referred to in (4) notifying the update or amendment may:
- (a) describe the update or the amendment that has been made; or
  - (b) provide the new version of the *document* as an attachment, in which case it must be provided in a commonly used electronic format.

[**Note:** articles 93(2), 93(7) second and third sentences and 93(8) of the *UCITS Directive* and article 32(2) and article 32(3) of the *UCITS implementing Directive No 2*]

## Provision of information and documents

- 12.4.5 R (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that investors within the territory of that *Host State* are provided with all the information and *documents* which it is required by the *Handbook* to provide to investors in the *United Kingdom*.
- (2) The information and *documents* referred to in (1) must be provided to investors in the way prescribed by the laws, regulations or

administrative provisions of the *Host State* and in compliance with the following provisions:

- (a) the *key investor information document* must be translated into the official language or one of the official languages of the *Host State* or into a language approved by its *Host State regulator*;
  - (b) information or *documents* other than the *key investor information document* (including the *prospectus*, the *instrument constituting the scheme* and the latest annual and half-yearly long reports of the *scheme*) must be translated, at the choice of the *authorised fund manager*, into the official language, or one of the official languages, of the *Host State*, or into a language approved by its *Host State regulator*, or provided in a language customary in the sphere of international finance; and
  - (c) accurate translations of information or *documents* under (a) or (b) must be produced under the responsibility of the *authorised fund manager*.
- (3) The requirements in this *rule* also apply to any changes to the information or *documents* referred to in (1) and (2).

[**Note:** articles 94(1) and 94(2) of the *UCITS Directive*]

- 12.4.6 G The frequency of the publication of the *issue, sale, cancellation, repurchase or redemption prices* of *units* of the *UCITS scheme* when they are marketed in another *EEA State* is governed by *COLL 6.3.11R* (Publication of prices).

[**Note:** article 94(3) of the *UCITS Directive*]

Reference to the scheme's legal form

- 12.4.7 R For the purpose of pursuing its *marketing* activities in another *Host State*, an *authorised fund manager* of a *UCITS scheme* may use the same reference to the *scheme's* legal form (such as *open-ended investment company* or *investment company with variable capital* or *authorised unit trust*) in its designation in the *Host State* as is used in the *United Kingdom*.

[**Note:** article 96 of the *UCITS Directive*]

UCITS *Host State's* access to documents and updates of documents

- 12.4.8 R (1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that an electronic copy of each *document* referred to in *COLL 12.4.4R(1)* is made available on:
- (a) the website of the *UCITS scheme* or the *authorised fund manager*;  
or
  - (b) another website designated by the *authorised fund manager* in the notification letter submitted to the *FSA* under paragraph 20B of

Schedule 3 to the *Act* or any updates to it.

- (2) Any *document* that is made available on a website referred to in (1) must be provided in an electronic format in common use.
- (3) The *authorised fund manager* of the *UCITS scheme* must ensure that each relevant *Host State regulator* has access to the website referred to in (1).

[**Note:** article 31 of the *UCITS implementing Directive No 2*]



Insert the following new Appendix to COLL. The text is not underlined.

## **Appendix 1EU: KII Regulation**

### **COMMISSION REGULATION (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32), and in particular Article 75(4), Article 78(7), and Article 81(2) thereof,

Whereas:

- (1) Directive 2009/65/EC specifies the main principles that should be followed in preparing and providing key investor information, including requirements concerning its format and presentation, its objectives, the main elements of the information that is to be disclosed, who should deliver the information to whom, and the methods that should be used for such delivery. Details on the content and format have been left to be developed further by means of implementing measures, which should be specific enough to ensure that investors receive the information they need in respect to particular fund structures.
- (2) The form of a Regulation is justified as this form alone can ensure that the exhaustive content of key investor information is harmonised. Furthermore, a key investor information document will be more efficient where requirements applicable to it are identical in all Member States. All stakeholders should benefit from a harmonised regime on the form and content of the disclosure, which will ensure that information about investment opportunities in the UCITS' market is consistent and comparable.
- (3) In some cases, key investor information can be delivered more effectively when the key investor information document is provided to investors through a website, or where the key investor information document is attached to another document when it is given to the potential investor. In these cases, however, the context in which the key investor information document appears should not undermine the key investor information document, or imply that it is an item of promotional literature or that accompanying items of promotional literature are of equal or greater relevance to the retail investor.
- (4) It is necessary to ensure that the content of the information is relevant, the organisation of the information is logical and the language appropriate for retail investors. To address these concerns, this Regulation should ensure that the key

investor information document is able to engage investors and aid comparisons through its format, presentation and the quality and nature of the language used. This Regulation aims to ensure consistency in the format of the document, including a common running order with identical headings.

- (5) This Regulation specifies the content of the information on investment objectives and the investment policy of UCITS so that investors can easily see whether or not a fund is likely to be suitable for their needs. For this reason, the information should indicate whether returns can be expected in the form of capital growth, payment of income, or a combination of both. The description of the investment policy should indicate to the investor what the overall aims of the UCITS are and how these objectives are to be achieved. With regard to the financial instruments in which investments are to be made, only those which may have a material impact on UCITS' performance need to be mentioned, rather than all possible eligible instruments.
- (6) This Regulation lays down detailed rules on the presentation of the risk and reward profile of the investment, by requiring use of a synthetic indicator and specifying the content of narrative explanations of the indicator itself and risks which are not captured by the indicator, but which may have a material impact on the risk and reward profile of the UCITS. In applying the rules on the synthetic indicator account should be taken of the methodology for the calculation of the synthetic indicator as developed by competent authorities working within the Committee of European Securities Regulators. The management company should decide on a case-by-case basis which specific risks should be disclosed by analysing the particular characteristics of each fund, bearing in mind the need to avoid over-burdening the document with information that retail investors will find difficult to understand. In addition the narrative explanation of the risk and reward profile should be limited in size in terms of the amount of space it occupies within the key investor information document. It should be possible to have cross-references to the prospectus of the UCITS where full details of its risks are disclosed.
- (7) Consistency should be ensured between the explanation of risks in the key investor information document and the management company's internal processes related to risk management, established in accordance with Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interests, conduct of business, risk management and content of the agreement between a depositary and a management company (see page 42 of this Official Journal). For instance, so as to ensure consistency, the permanent risk management function should where appropriate be given the opportunity to review and comment on the risk and reward profile section of the key investor information document.
- (8) This Regulation specifies the common format for the presentation and explanation of charges, including relevant warnings, so that investors are appropriately informed about the charges they will have to incur and their proportion to the amount of capital actually invested into the fund. In applying these rules, account should be taken of the work on the methodology for the calculation of charges figures as developed by competent authorities working within the Committee of European Securities Regulators.

- (9) The detailed rules on the presentation of information about past performance are based on the requirements for such information in the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1). This Regulation supplements the rules of Directive 2004/39/EC by including specific requirements necessary for harmonising the information for the purpose of facilitating comparisons between different key investor information documents. In particular, this Regulation prescribes that only net annual returns shall be shown, through a bar chart format. Certain aspects of the presentation of the bar chart should be regulated, including the limited circumstances in which simulated data might be used.
- (10) It should be recognised that cross-referring to information might be useful to the investor but it is essential that the key investor information document should contain all information necessary for the investor to understand the essential elements of the UCITS. If cross-references to sources of information other than the prospectus and periodic reports are used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the cross-references should not downplay their significance.
- (11) The key investor information document should be reviewed and revised as appropriate and as frequently as is necessary to ensure that it continues to meet the requirements for key investor information specified in Articles 78(2) and 79(1) of Directive 2009/65/EC. As a matter of good practice, management companies should review the key investor information document before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund.
- (12) The form or content of key investor information may need to be adjusted to specific cases. Consequently, this Regulation tailors the general rules applicable to all UCITS so as to take into account the specific situation of certain types of UCITS, namely those having different investment compartments or share classes, those with fund of funds structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.
- (13) With regard to UCITS having different share classes, there should be no obligation to produce a separate key investor information document for every such share class, so long as investors' interests are not compromised. The details of two or more classes may be combined into a single key investor information document only where this can be done without making the document too complicated or crowded. Alternatively, a representative class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class. In determining whether the use of a representative class is fair, clear and not misleading, regard should be had to the characteristics of the UCITS, the nature of the differences represented by each class, and the range of choices on offer to each investor or group of investors.
- (14) In the case of a fund of funds, the right balance is kept between the information on the UCITS that the investor invests in and its underlying collectives. The key investor information document of a fund of funds should therefore be prepared on the basis

that the investor does not wish or need to be informed in detail about the individual features of each of the underlying collectives, which in any case are likely to vary from time to time if the UCITS is being actively managed. However, in order for the key investor information document to deliver effective disclosure of the fund of funds' objective and investment policy, risk factors, and charging structure, the characteristics of its underlying funds should be transparent.

- (15) In the case of master-feeder structures, the description of the feeder UCITS' risk and reward profile should not be materially different to that of the corresponding section in the master UCITS' key investor information document so that the feeder can copy information from the key investor information document of the master wherever it is relevant. However, this information should be supplemented by relevant statements or duly adjusted in those cases where ancillary assets held by the feeder might modify the risk profile compared to the master, addressing the risks inherent in these ancillary assets, for instance where derivatives are used. The combined costs of investing in the feeder and the master should be disclosed to investors in the feeder.
- (16) With regard to structured UCITS, such as capital protected and other comparable UCITS, the provision of prospective performance scenarios in place of past performance information is required. Prospective performance scenarios involve calculating the expected return of the fund under favourable, adverse, or neutral hypotheses regarding market conditions. These scenarios should be chosen so as to effectively illustrate the full range of possible outcomes according to the formula.
- (17) Where the key investor information and the prospectus are to be provided in a durable medium other than paper or by means of a website, additional safety measures are necessary for investor protection reasons, so as to ensure that investors receive information in a form relevant to their needs, and so as to maintain the integrity of the information provided, prevent alterations that undermine its comprehensibility and effectiveness, and avoid manipulation or modification by unauthorised persons. This Regulation contains a reference to rules on durable medium laid down in the Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26) in order to ensure the equal treatment of investors and a level playing field in financial sectors.
- (18) In order to allow management companies and investment companies to adapt to the new requirements contained in this Regulation in an efficient and effective manner, the starting date of application of this Regulation should be aligned with the transposition of Directive 2009/65/EC.
- (19) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC (OJ L 25, 29.1.2009, p. 18), has been consulted for technical advice.
- (20) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

## CHAPTER I

### **SUBJECT MATTER AND GENERAL PRINCIPLES**

#### *Article 1*

##### **Subject matter**

This Regulation lays down the detailed rules for the implementation of Articles 75(2), 78(2) to (5) and 81(1) of Directive 2009/65/EC.

#### *Article 2*

##### **General principles**

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UCITS it manages.
2. This Regulation shall apply to any investment company which has not designated a management company authorised pursuant to Directive 2009/65/EC.

#### *Article 3*

##### **Principles regarding the key investor information document**

1. This Regulation specifies in an exhaustive manner the form and content of the document containing key investor information (hereinafter referred to as key investor information document). No other information or statements shall be included except where this Regulation states otherwise.
2. The key investor information shall be fair, clear and not misleading.
3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the UCITS and its risks and benefits.

## CHAPTER II

### **FORM AND PRESENTATION OF KEY INVESTOR INFORMATION**

#### *SECTION 1*

##### ***Title of document, order of contents and headings of sections***

#### *Article 4*

##### **Title and content of document**

1. The content of the key investor information document shall be presented in the order as set out in paragraphs 2 to 13.
2. The title 'Key investor information' shall appear prominently at the top of the first page of the key investor information document.
3. An explanatory statement shall appear directly underneath the title. It shall read:  
  
*'This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest'.*
4. The identification of the UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the UCITS shall follow the compartment or share class name. Where a code number identifying the UCITS, investment compartment or share class exists, it shall form part of the identification of the UCITS.
5. The name of the management company shall be stated.
6. In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.
7. The section of the key investor information document entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.
8. The section of the key investor information document entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.
9. The section of the key investor information document entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.
10. The section of the key investor information document entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.
11. The section of the key investor information document entitled 'Practical information' shall contain the information set out in Section 5 of Chapter III of this Regulation.
12. Authorisation details shall consist of the following statement:  
  
*'This fund is authorised in [name of Member State] and regulated by [identity of competent authority]'.*

In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:

*'[Name of management company] is authorised in [name of MemberState] and regulated by [identity of competent authority]'.*

13. Information on publication shall consist of the following statement:

*'This key investor information is accurate as at [the date of publication]'.*

## SECTION 2

### ***Language, length and presentation***

#### *Article 5*

#### **Presentation and language**

1. A key investor information document shall be:
  - (a) presented and laid out in a way that is easy to read, using characters of readable size;
  - (b) clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:
    - (i) the language used is clear, succinct and comprehensible;
    - (ii) the use of jargon is avoided;
    - (iii) technical terms are avoided when everyday words can be used instead;
  - (c) focused on the key information that investors need.
2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.
3. Where the design of the corporate branding of the management company or the group to which it belongs is used, it shall not distract the investor or obscure the text.

#### *Article 6*

#### **Length**

The key investor information document shall not exceed two pages of A4-sized paper when printed.

## CHAPTER III

**CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT****SECTION 1*****Objectives and investment policy****Article 7***Specific contents of the description**

1. The description contained in the ‘Objectives and investment policy’ section of the key investor information document shall cover those essential features of the UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:
  - (a) the main categories of eligible financial instruments that are the object of investment;
  - (b) the possibility that the investor may redeem units of UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;
  - (c) whether the UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;
  - (d) whether the UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;
  - (e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:
  - (a) where the UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;
  - (b) where the UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary,



to the details on the algorithm and its workings which appear in the prospectus;

- (c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as ‘growth’, ‘value’ or ‘high dividends’;
- (d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UCITS;
- (e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;
- (f) where a minimum recommended term for holding units in the UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

*‘Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]’.*

- 3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by a management company as specified under paragraphs 1(d) and 2 (b), (c) and (d).
- 4. The ‘Objectives and investment policy’ section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UCITS’ investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UCITS.

## **SECTION 2**

### ***Risk and reward profile***

#### *Article 8*

#### **Explanation of potential risks and rewards, including the use of an indicator**

- 1. The ‘Risk and reward profile’ section of the key investor information document shall contain a synthetic indicator, supplemented by:
  - (a) a narrative explanation of the indicator and its main limitations;
  - (b) a narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.
3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Management companies shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:
  - (a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UCITS;
  - (b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UCITS may shift over time;
  - (c) a statement that the lowest category does not mean a risk-free investment;
  - (d) a brief explanation as to why the UCITS is in a specific category;
  - (e) details of the nature, timing and extent of any capital guarantee or protection offered by the UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.
5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:
  - (a) credit risk, where a significant level of investment is made in debt securities;
  - (b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UCITS as a whole;
  - (c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;
  - (d) operational risks and risks related to safekeeping of assets;
  - (e) impact of financial techniques as referred to in Article 50(1)(g) of Directive 2009/65/EC such as derivative contracts on the UCITS' risk profile where

such techniques are used to obtain, increase or reduce exposure to underlying assets.

#### *Article 9*

### **Principles governing the identification, explanation and presentation of risks**

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS' management company as laid down in Directive 2010/43/EU. Where a management company manages more than one UCITS, the risks shall be identified and explained in a consistent fashion.

## **SECTION 3**

### ***Charges***

#### *Article 10*

### **Presentation of charges**

1. The 'Charges' section of the key investor information document shall contain a presentation of charges in the form of a table as laid down in Annex II.
2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:
  - (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the UCITS;
  - (b) a single figure shall be shown for charges taken from the UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the UCITS over the defined period, and based on the figures for the preceding year;
  - (c) the table shall list and explain any charges taken from the UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

#### *Article 11*

### **Explanation of charges and a statement about the importance of charges**

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:
  - (a) with regard to entry and exit charges:

- (i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;
  - (ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;
- (b) with regard to ‘ongoing charges’, there shall be a statement that the ongoing charges figure is based on the last year’s expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.
2. The ‘Charges’ section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UCITS, including the costs of marketing and distributing the UCITS, and that these charges reduce the potential growth of the investment.

### *Article 12*

#### **Additional requirements**

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.
2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, this shall be stated within the ‘Objectives and investment policy’ section, as indicated in Article 7(2)(e).
3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UCITS’ last financial year shall be included as a percentage figure.

### *Article 13*

#### **Specific cases**

1. Where a new UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.
2. Paragraph 1 shall not apply in the following cases:
  - (a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be displayed;
  - (b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the management company gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

### *Article 14*

## **Cross-referencing**

The 'Charges' section shall include, where relevant, a cross-reference to those parts of the UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

## **SECTION 4**

### ***Past performance***

#### *Article 15*

### **Presentation of past performance**

1. The information about the past performance of the UCITS shall be presented in a bar chart covering the performance of the UCITS for the last 10 years.

The size of the bar chart referred to in the first subparagraph shall allow for legibility, but shall under no circumstances exceed half a page in the key investor information document.

2. UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.
3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.
4. For a UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.
5. The bar chart layout shall be supplemented by statements which appear prominently and which:
  - (a) warn about its limited value as a guide to future performance;
  - (b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;
  - (c) indicate the year in which the fund came into existence;
  - (d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UCITS which do not have entry or exit charges.

6. A key investor information document shall not contain any record of past performance for any part of the current calendar year.

*Article 16***Past performance calculation methodology**

The calculation of past performance figures shall be based on the net asset value of the UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

*Article 17***Impact and treatment of material changes**

1. Where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS' past performance prior to that material change shall continue to be shown.
2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

*Article 18***Use of a benchmark alongside the past performance**

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UCITS' past performance.
2. For UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UCITS did not exist.

*Article 19***Use of 'simulated' data for past performance**

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:
  - (a) a new share class of an existing UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS;
  - (b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:
    - (i) the feeder's strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets;

- (ii) the feeder's characteristics do not differ materially from those of the master.
2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.
  3. A UCITS changing its legal status but remaining established in the same Member State shall retain its performance record only where the competent authority of the Member State reasonably assesses that the change of status would not impact the UCITS' performance.
  4. In the case of mergers referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC, only the past performance of the receiving UCITS shall be maintained in the key investor information document.

## **SECTION 5**

### ***Practical information and cross-references***

#### *Article 20*

#### **Content of 'practical information' section**

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in every Member State in which the UCITS is marketed:
  - (a) the name of the depositary;
  - (b) where and how to obtain further information about the UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;
  - (c) where and how to obtain other practical information, including where to find the latest prices of units;
  - (d) a statement that the tax legislation of the UCITS' home Member State may have an impact on the personal tax position of the investor;
  - (e) the following statement:

*'[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant part of the prospectus for the UCITS.'*

2. Where the key investor information document is prepared for a UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.
3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26.

### *Article 21*

#### **Use of cross-references to other sources of information**

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors' understanding of the essential elements of the investment is included in the key investor information document itself.

Cross-references shall be permitted to the website of the UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum.

## ***SECTION 6***

### ***Review and revision of the key investor information document***

#### *Article 22*

#### **Review of key investor information**

1. A management company or investment company shall ensure that a review of key investor information is carried out at least every twelve months.
2. A review shall be carried out prior to any proposed change to the prospectus, the fund rules or the instrument of incorporation of the investment company where these changes were not subject to review as referred to in paragraph 1.
3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key investor information document.

#### *Article 23*

#### **Publication of the revised version**



1. Where a review referred to in Article 22 indicates that changes need to be made to the key investor information document, its revised version shall be made available promptly.
2. Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.
3. A key investor information document with duly revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year.

#### *Article 24*

#### **Material changes to the charging structure**

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.
2. Where the ‘ongoing charges’ calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for ‘ongoing charges’ that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS in future.

This change of basis shall be disclosed through the following statement:

*‘The ongoing charges figure shown here is an estimate of the charges.[Insert short description of why an estimate is being used rather than an ex-post figure.] The UCITS’ annual report for each financial year will include detail on the exact charges made.’*

## CHAPTER IV

### **PARTICULAR UCITS STRUCTURES**

#### ***SECTION 1***

#### ***Investment compartments***

#### *Article 25*

#### **Investment compartments**

1. Where a UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.
2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:
  - (a) that the key investor information document describes a compartment of a UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UCITS named at the beginning of the key investor information document;
  - (b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;
  - (c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.
3. Where the management company sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units, that charge shall be stated separately in the 'Charges' section of the key investor information document.

## **SECTION 2**

### ***Share classes***

#### *Article 26*

#### **Key investor information document for share classes**

1. Where a UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.
2. The key investor information pertinent to two or more classes of the same UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.
3. The management company may select a class to represent one or more other classes of the UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.
4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

#### *Article 27*

### **Practical information section**

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UCITS that are marketed in their own Member State.

## **SECTION 3**

### ***Fund of funds***

#### *Article 28*

### **Objectives and investment policy section**

Where the UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in Article 50(1)(e) of Directive 2009/65/EC, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

#### *Article 29*

### **Risk and reward profile**

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UCITS as a whole.

#### *Article 30*

### **Charges section**

The description of the charges shall take account of any charges that that UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UCITS' calculation of its own ongoing charges figure.

## **SECTION 4**

### ***Feeder UCITS***

#### *Article 31*

#### **Objectives and investment policy section**

1. The key investor information document for a feeder UCITS, as defined in Article 58 of Directive 2009/65/EC, shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.
2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented as appropriate by either of the following:
  - (i) an indication that the feeder UCITS' investment returns will be very similar to those of the master UCITS; or
  - (ii) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

#### *Article 32*

#### **Risk and reward profile section**

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.
2. Any liquidity risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

#### *Article 33*

#### **Charges section**

The 'Charges' section of the key investor information document shall cover both the costs of investing in the feeder UCITS and any costs and expenses that the master UCITS may charge to the feeder UCITS.

In addition, it shall combine the costs of both the feeder and the master UCITS in the ongoing charges figure for the feeder UCITS.

#### *Article 34*

#### **Practical information section**

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS.
2. The information referred to in paragraph 1 shall include:
  - (a) a statement that the master UCITS' prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);
  - (b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with Article 63(5) of Directive 2009/65/EC;
  - (c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder's tax treatment, a statement to this effect.

#### *Article 35*

#### **Past performance**

1. The past performance presentation in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.
2. Paragraph 1 shall not apply:
  - (a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or
  - (b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder existed, based on the past performance of the master UCITS; or
  - (c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

### ***SECTION 5***

#### ***Structured UCITS***

#### *Article 36*

#### **Performance scenarios**

1. The key investor information document for structured UCITS shall not contain the ‘Past performance’ section.

For the purposes of this Section, structured UCITS shall be understood as UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS with similar features.

2. For structured UCITS, the ‘Objectives and investment policy’ section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.
3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UCITS’ potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.
4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula.

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UCITS.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements.

However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

### *Article 37*

#### **Length**

The key investor information document for structured UCITS shall not exceed three pages of A4-sized paper when printed.

## CHAPTER V

**DURABLE MEDIUM***Article 38***Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website**

1. Where, for the purposes of Directive 2009/65/EC, the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:
  - (a) the provision of the key investor information document or the prospectus using such a durable medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on; and
  - (b) the person to whom the key investor information document or the prospectus is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.
2. Where the key investor information document or the prospectus is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:
  - (a) the provision of that information in that medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on;
  - (b) the investor must specifically consent to the provision of that information in that form;
  - (c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;
  - (d) the information must be up to date;
  - (e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.
3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the management company and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI

**FINAL PROVISIONS**

*Article 39*

**Entry into force**

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.
2. This Regulation shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 July 2010.

*For the Commission*

*The President*

José Manuel BARROSOL



*ANNEX I***REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR**

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.
2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 to 7 running from left to right, representing levels of risk and reward, from lowest to highest.
3. It shall be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.
4. The category into which the UCITS falls shall be prominently indicated.
5. No colours shall be used for distinguishing between items on the scale.

*ANNEX II***PRESENTATION OF CHARGES**

The charges shall be presented in a table structured in the following way: One-off charges taken before or after you invest	
<b>Entry charge</b>	<input type="checkbox"/> %
<b>Exit charge</b>	<input type="checkbox"/> %
This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]	
Charges taken from the fund over a year	
<b>Ongoing charge</b>	<input type="checkbox"/> %
Charges taken from the fund under certain specific conditions	
<b>Performance fee</b>	<input type="checkbox"/> % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]

— A percentage amount shall be indicated for each of these charges.

— In the case of a performance fee, the amount charged in the fund's last financial year shall be included as a percentage figure.

*ANNEX III***PRESENTATION OF THE PAST PERFORMANCE INFORMATION**

The bar chart presenting past performance shall comply with the following criteria:

1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;
2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns hard to distinguish;
3. the X-axis shall be set at the level of 0% performance;
4. a label shall be added to each bar indicating the return in percentage that was achieved;
5. past performance figures shall be rounded to one decimal place.

Amend the following as shown.

**TP 1 Transitional Provisions**

**COLL TP 1.1**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
	Extra time provisions				
...					
17	<del>{to follow}</del> <u>COLL 4.5.5R (1)(a)(iv) and COLL 4.5.9R(9A)</u>	<u>R</u>	<u>An authorised fund manager need not include in the short report or long report for a UCITS scheme the figure for the synthetic risk and reward indicator that would have been disclosed in its most recent key investor information document provided that, as at the accounting reference date to which the report relates, marketing of units in the scheme is being done on the basis of a simplified prospectus meeting the requirements of the Handbook.</u>	<u>From 1 July 2011 to 31 October 2012</u>	<u>1 July 2011</u>
<b>[Note: article 118(2) of the UCITS Directive]</b>					

18	<del>[to follow]</del> Each and every rule in <i>COLL</i> that relates to <i>key investor information</i>	<u>R</u>	(1) <u>This rule applies to:</u>  <u>(a) an <i>authorised fund manager</i> of a <i>UCITS</i> scheme;</u> <u>and</u>  <u>(b) an <i>ICVC</i> which is a <i>UCITS</i> scheme and any other <i>director</i> of that <i>ICVC</i>;</u>	<u>From 1 July 2011 to 30 June 2012</u>	<u>1 July 2011</u>
			<u>where the <i>authorisation order</i> for the <i>scheme</i> was made before 1 July 2011 and for this purpose, where this transitional provision is being applied in relation to an existing <i>umbrella</i> as at 1 July 2011 and an <i>authorisation order</i> is made for a new <i>sub-fund</i> of the <i>umbrella</i> after that date, this transitional provision shall also be applied to that <i>sub-fund</i>.</u>		
			(2) <u>A person in (1) need not comply with any rule in <i>COLL</i> that relates to <i>key investor information</i> provided it continues to produce, publish, provide, and meet all other applicable regulatory requirements in relation to, a <i>simplified prospectus</i> for the <i>UCITS</i> scheme as set out in <i>COLL</i> 4.6 (Simplified Prospectus provisions) (as it stands at 30 June 2011), and all references in any rule in <i>COLL</i> to <i>key investor information</i> should be read as references to the <i>simplified prospectus</i>.</u>	<u>From 1 July 2011 to 30 June 2012</u>	<u>1 July 2011</u>
			(3) <u>A person in (1) that makes use of this provision from 1 July 2011 may cease to do so in respect of the <i>UCITS</i> scheme or any <i>sub-fund</i> of</u>		

			<p><u>the <i>scheme</i> at any time before [30 June 2012], but having done so, may not, in relation to that <i>scheme</i> or <i>sub-fund</i>, make use subsequently of this provision in respect of any rules or guidance in <i>COLL</i>.</u></p>			
			<p>(4) <u>A person in (1) that makes use of this provision in accordance with (2) in relation to a <i>UCITS scheme</i> or <i>sub-fund</i> of the <i>scheme</i>, or that ceases to do so in accordance with (3), must do so in respect of all <i>classes</i> of <i>units</i> in issue in that <i>scheme</i> or <i>sub-fund</i>, whether the <i>units</i> of any such <i>class</i> were first issued before, on or after 1 July 2011.</u></p>			
<p>[Note: article 118(2) of the <i>UCITS Directive</i>]</p>						
19	<p><del>[to follow]</del> <u><i>COLL</i></u> <u>4.4.12R</u></p> <p><u><i>COLL</i></u> <u>4.4.13R</u></p> <p><u><i>COLL</i></u> <u>7.7.19R</u></p>	R	<p><u>Where a <i>UCITS scheme</i> is to be the receiving <i>UCITS</i> in a proposed <i>UCITS merger</i> and no meeting of <i>unitholders</i> is required to be held under <i>COLL</i> 7.6.2R(5) and (6), the <i>authorised fund manager</i> may satisfy its duty to the <i>unitholders</i> of the receiving <i>UCITS</i> under <i>COLL</i> 7.7.19R (Method of providing merger information to unitholders) to provide the information by making it public in an appropriate manner.</u></p>		<p><u>From 1 July 2011 to 31 December 2013</u></p>	<p><u>1 July 2011</u></p>
20	<p><del>[to follow]</del> <u><i>COLL</i></u> <u>4.4.12R</u></p> <p><u><i>COLL</i></u> <u>4.4.13R</u></p> <p><u><i>COLL</i></u> <u>7.7.19R</u></p>	G	(1)	<p><u>In determining the appropriate manner of making the information public, the <i>authorised fund manager</i> should ensure that:</u></p>	<p><u>From 1 July 2011 to 31 December 2013</u></p>	<p><u>1 July 2011</u></p>
			(a)	<p><u>a <i>unitholder</i> can obtain the information at a</u></p>		

					<u>reasonable cost;</u>		
				(b)	<u>the information is available at reasonable times;</u>		
				(c)	<u>publication is consistent with the manner in which the <i>authorised fund manager</i> makes other types of information about the <i>scheme</i> public, so that it is reasonably likely to come to the attention of <i>unitholders</i>.</u>		
			(2)		<u>Examples of what might be deemed appropriate include one or more of:</u>		
				(a)	<u>publication in a national newspaper;</u>		
				(b)	<u>supply through an advertised local rate or freephone telephone number;</u>		
				(c)	<u>publication on the internet; or</u>		
				(d)	<u>communication to all existing <i>unitholders</i>, before the merger has taken effect.</u>		
			(3)		<u>In addition to the methods of publication in (2), the <i>authorised fund manager</i> should consider publishing appropriate information about the merger in the next long report of the <i>scheme</i>. This might include an updated explanation of the matters set out in <i>COLL 7.7.14R(1)</i> (Specific rules regarding the content of merger information to be provided to <i>unitholders</i> of the receiving UCITS).</u>		

...
-----

## Schedule 1 Record keeping requirements

### Sch 1.1G Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>COLL 6.13.2R</u>	<u>Portfolio transactions relating to a UCITS</u>	<u>Full details</u>	<u>After transaction</u>	<u>5 years</u>
<u>COLL 6.13.3R</u>	<u>Subscription and redemption orders</u>	<u>Full details</u>	<u>After receipt of order</u>	<u>5 years</u>
<u>COLL 6.13.4R</u>	<u>Records referred to in COLL 6.13.2R and COLL 6.13.3R</u>	<u>Full details</u>	<u>After termination of authorisation of UCITS management company</u>	<u>Outstanding term of 5 year period</u>
...				

## Schedule 2 Notification requirements

...

Sch 2.2G

Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COLL 3.2.8R (2)</i>	Marketing of <i>UCITS</i> scheme in another <i>EEA State</i>	Details, including <i>EEA state</i> concerned	Intention to market	Immediate
...				
<i>COLL 4.2.3AR (1)(b)</i>	Copy of <i>prospectus</i> of the <i>master UCITS</i>	Full details, together with any <u>amendments</u>	<u>On publication</u>	<u>Immediately on publication</u>
...				
<i>COLL 4.5.15R (1)(b)</i>	Copies of the annual and half-yearly long reports of the <i>master UCITS</i>	Full details	<u>End of <i>annual</i> or <i>half-yearly</i> accounting period</u>	<u>Immediately on publication</u>
<i>COLL 4.7.7R(2)</i>	<i>Key investor information document</i>	Full details, together with any <u>amendments</u>	<u>On first use</u>	<u>Immediate</u>
<i>COLL 4.7.7R(3)</i>	<i>Key investor information document of the master UCITS</i>	Full details, together with any <u>amendments</u>	<u>On first use</u>	<u>Immediate</u>
...				
<i>COLL 5.2.24R (2) &amp; COLL 5.2.24R (3)</i>	Risk management process and any material alteration to it	Methods of estimating risk, types of <i>derivative</i> , their underlying risk and any quantitative limits	Intention to use derivatives in the management of a <i>scheme</i> or any subsequent proposed material alteration to the risk	Before policy is implemented

			<u>management process</u>	
<u>COLL 6.12.3R</u>	<u>Risk management process</u>	<u>Details in COLL 6.12.2R(2)(a) and (b) and any material alterations thereof</u>	<u>On first use of process</u>	<u>On a regular basis and at least annually</u>
<u>COLL 6.12.6R(2)</u>	<u>Material change to the risk management process</u>	<u>Full details of change</u>	<u>On first use of amended process</u>	<u>Immediate</u>
...				
<u>COLL 7.7.22R</u>	<u>Confirmation of the completion of the merger transfer</u>	<u>Details of completion</u>	<u>On completion of transfer</u>	<u>Immediate</u>
...				
<u>COLL 11.3.9R</u>	<u>Identity of investing feeder UCITS</u>	<u>Full details</u>	<u>After investment</u>	<u>Immediate</u>
<u>COLL 11.4.3R</u>	<u>Notification of irregularities relating to a master UCITS</u>	<u>Full details</u>	<u>Detection</u>	<u>Immediate</u>
...				

...



## Annex L

### Amendments to the Regulated Covered Bonds Specialist sourcebook (RCB)

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

- 1.1.2 G The general purpose of this sourcebook is to set out the guidance, directions and rules made by the *FSA* under the *RCB Regulations*. Those regulations enable bonds to be issued which comply with Article ~~22(4)~~ 52(4) of the *UCITS Directive*.

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

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

- 5.4.9 R Undertakings whose registered office is in a third country which would have required authorisation in accordance with Article 5(4) 6(1) of the *UCITS Directive* or with regard to portfolio management under point 4 of section A of Annex 1 to *MiFID* if it had its registered office or, only in the case of an *investment firm*, its head office within the *EEA*, shall be exempted from aggregating holdings with the holdings of its *parent undertaking* under this rule ~~provide~~ provided that they comply with equivalent conditions of independence as *management companies* or *investment firms*.  
[Article 23(6) *TD*]

## Annex N

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 13.1 Introduction

...

##### MiFID scope

...

In addition to investment firms, MiFID is also relevant to credit institutions providing investment services or performing investment activities (see Q5) and ~~UCITS management companies~~ to UCITS management companies to which article ~~5(4)~~ 6.4 of the UCITS Directive applies (in other words, UCITS investment firms).

...

#### 13.2 General

...

**Q6. We are a UCITS management company that, in addition to managing unit trusts and investment companies, provides portfolio management services to third parties. How does MiFID apply to us?**

If you are the ~~management company~~ management company of a *UCITS scheme* with a permission to manage investments including MiFID financial instruments pursuant to ~~article 5.3~~ article 6.3 of the UCITS Directive, certain MiFID provisions apply to you when you provide investment services to third parties (see ~~article 5.4~~ article 6.4 UCITS Directive). These include initial capital endowment, organisational and conduct of business requirements. You are a *UCITS investment firm* for the purposes of the ~~FSA Handbook~~ FSA Handbook. ~~Article 5.4~~ Article 6.4 of the UCITS Directive is reflected in paragraph (3) of the *Handbook* definition of “MiFID investment firm”.

...

#### 13.5 Exemptions from MiFID

...

**Q43. Are we right in thinking that MiFID does not apply to collective investment undertakings and their operators?**

...

In the case of *UCITS management companies*, some MiFID provisions will apply to those who provide portfolio management services (other than *collective portfolio management*), investment advice or safekeeping and administration services in relation to ~~units~~ units to third parties, by virtue of article ~~5(4)~~ 6(4) of the *UCITS Directive* (see Q6).

**GLOSSARY AMENDMENT (DEFINITION OF HOLLOWAY SICKNESS POLICY)  
INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 141 (Insurance business rules);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 August 2011.

**Amendments to the Handbook**

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

**Citation**

- E. This instrument may be cited as the Glossary Amendment (Definition of Holloway Sickness Policy) Instrument 2011.

By order of the Board  
28 July 2011

## Annex

### Amendments to the Glossary of definitions

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

- Holloway  
sickness  
policy* a ~~policy~~ long-term insurance contract offered or effected by a *friendly society* under the Holloway system, providing permanent health benefits and, in addition, investment benefits, where the investment benefits:
- (a) are derived from surpluses accrued by the *friendly society* and apportioned to *policyholders*; and
  - (b) are payable to *policyholders* at maturity, on retirement, on death, or as otherwise specified by contractual provisions or individual society rules.

**FINANCIAL SERVICES COMPENSATION SCHEME (PAYMENT OF LEVIES)  
(AMENDMENT) INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 156 (General supplementary powers);
  - (2) section 213 (The compensation scheme);
  - (3) section 214 (General); and
  - (4) section 223 (Management expenses).
- 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 2011.

**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 Financial Services Compensation Scheme (Payment of Levies) (Amendment) Instrument 2011.

By order of the Board  
28 July 2011

## Annex

## Amendments to the Fees manual (FEES)

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

- 6.7.6 R If a *firm* ceases to be a *participant firm* or carry out activities within one or more *sub-classes* part way through a ~~*financial year*~~ financial year of the *compensation scheme*:
- (1) it will remain liable for any unpaid levies which the *FSCS* has already made on the *firm*; and
  - (2) the *FSCS* may make ~~a levy~~ one or more levies upon it (which may be before or after the firm has ceased to be a *participant firm* or carry out activities within one or more *sub-classes*, but must be before it ceases to be an *authorised person*) for the costs which it would have been liable to pay had the *FSCS* made a levy on all *participant firms* or firms carrying out activities within that *sub-class* in the financial year it ceased to be a *participant firm* or carry out activities within that *sub-class* at the time of the levy on the *firm*;.
  - (3) ~~the *FSCS* may make a levy upon the *firm* (which may be before or after the firm has ceased to be a *participant firm*, but must be before it ceases to be an *authorised person*) for the purpose of meeting its expenses in relation to *compensation costs* and/or *management expenses* incurred or expected to be incurred at any time in the future in respect of defaults which have already occurred; [deleted]~~
  - (4) ~~the *FSCS* may estimate any costs referred to in (3) by any method or approach it considers appropriate, and adjust them to reflect the time value of money based on the funding arrangements in place in relation to the default; and [deleted]~~
  - (5) ~~paragraphs (3) and (4) apply notwithstanding any other provision in this chapter. [deleted]~~



## VENTURE CAPITAL INVESTMENTS INSTRUMENT 2011

### **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 August 2011.

### **Amendments to the Handbook**

- D. The General Prudential sourcebook (GENPRU) is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with Annex B to this instrument.

### **Citation**

- F. This instrument may be cited as the Venture Capital Investments Instrument 2011.

By order of the Board  
28 July 2011

## Annex A

## Amendments to the General Prudential sourcebook (GENPRU)

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

## 2.2 Capital resources

...

Deductions from tiers one and two: Material holdings (BIPRU firm only)

...

2.2.209 R (1) A Subject to (2) and (3), a material holding is:

~~(1)~~(a) a BIPRU firm's holdings of shares and any other interest in the capital of an individual *credit institution* or *financial institution* (held in the *non-trading book* or the *trading book* or both) exceeding 10% of the *share capital* of the issuer, and, where this is the case, any holdings of subordinated debt of the same issuer are also included as a *material holding*; the full amount of the holding is a *material holding*; or

~~(2)~~(b) a BIPRU firm's holdings of shares, any other interest in the capital and subordinated debt in an individual *credit institution* or *financial institution* (held in the *non-trading book* or the *trading book* or both) not deducted under ~~(1)~~ (a) if the total amount of such holdings exceeds 10% of that *firm's capital resources* at stage N (Total tier one capital plus tier two capital after deductions) of the calculation in the *capital resources table* (calculated before deduction of its *material holdings*); only the excess amount is a *material holding*; or

~~(3)~~(c) a bank or building society's aggregate holdings in the *non-trading book* of shares, any other interest in the capital, and subordinated debt in all *credit institutions* or *financial institutions* not deducted under ~~(1) or (2)~~ (a) or (b) if the total amount of such ~~holdings~~ holdings exceeds 10% of that *firm's capital resources* at stage N of the calculation in the *capital resources table* (calculated before deduction of its *material holdings*); only the excess amount is a *material holding*; or

~~(4)~~(d) a *material insurance holding*.

(2) If a BIPRU firm holds shares in the capital of Business Growth Fund plc or another financial institution which makes venture

capital investments (in this section and its related annexes, a “Venture Capital Investor”) and the following conditions are met:

- (a) the sole business of the Venture Capital Investor is the making of *venture capital investments* together with the performance of *ancillary activities* in relation to the administration of the *venture capital investments*;
- (b) none of the *venture capital investments* made by the Venture Capital Investor is an investment (direct or indirect) in:
  - (i) a *credit institution*; or
  - (ii) a *financial institution* the principal activity of which is to perform any activity other than the acquisition of holdings in other *undertakings*;
- (c) the relevant proportion of the Venture Capital Investor is included in the *firm’s UK consolidation group* in accordance with *BIPRU 8.5*; and
- (d) the *firm* assigns a *risk weight* to its *exposure* to the Venture Capital Investor as if it were an *equity exposure* to which the simple *risk weight* approach is applied as set out in *BIPRU 4.7.9R* to *BIPRU 4.7.12R* (and in calculating its *capital resources requirement* the *firm* must assign a *risk weight* to that *exposure* in accordance with those *rules* and notwithstanding that those *rules* would not otherwise apply to that calculation);

the Venture Capital Investor may be ignored for the purposes of determining whether there is a *material holding*.

- (3) If a *BIPRU firm* holds *shares* in the capital of a *subsidiary undertaking* which is a *financial institution* solely by reason of its principal activity being the acquiring of holdings and which in turn holds (directly or indirectly) *shares* in the capital of a Venture Capital Investor (in this section and its related annexes, a “Venture Capital Holding Company”) and the following conditions are met:

- (a) the Venture Capital Investor meets the conditions in (2)(a) and (b);
- (b) the Venture Capital Holding Company is included in the *firm’s UK consolidation group* in accordance with *BIPRU 8.5*;
- (c) the proportion of the value of the Venture Capital Holding Company attributable to investment in Venture Capital Investors and the proportion of the value of the

Venture Capital Holding Company attributable to investment in other investments can be identified and valued on a regular basis; and

- (d) the firm assigns a risk weight to its exposure to the proportion of the Venture Capital Holding Company that represents the value of its investment in Venture Capital Investors as if it were an equity exposure to which the simple risk weight approach is applied as set out in BIPRU 4.7.9R to BIPRU 4.7.12R (and in calculating its capital resources requirement the firm must assign a risk weight to that exposure in accordance with those rules and notwithstanding that those rules would not otherwise apply to that calculation);

the proportion of the firm's investment in the Venture Capital Holding Company that represents the value of its investment in Venture Capital Investors may be ignored for the purposes of determining whether there is a material holding. The proportion of the firm's investment in the Venture Capital Holding Company that represents the value of other investments is a material holding.

...

2.2.216A G (1) ...

- (2) The effect of those *rules* is to achieve the deduction of all investments in *subsidiary undertakings* and *participations* for *banks* and *building societies* by ensuring that amounts not already deducted under other *rules* are accounted for at this stage of the calculation of *capital resources*, except where the investment has been made in:

- (a) a Venture Capital Investor and the conditions in GENPRU 2.2.209R(2) are met; or
- (b) a Venture Capital Holding Company and the conditions in GENPRU 2.2.209R(3) are met;

- (3) The following investments in *subsidiary undertakings* and *participations* should be deducted at this stage:
- (a) those not deducted in Part 1 of stage M because of the operation of the thresholds in *GENPRU 2.2.205R* (on qualifying holdings) and *GENPRU 2.2.209R* (on material holdings); and
- (b) those which do not meet the definition of *qualifying holding* or *material holding*, but excluding investments in Venture Capital Investors which are ignored in

accordance with GENPRU 2.2.209R(2) and investments in Venture Capital Holding Companies which are ignored in accordance with GENPRU 2.2.209R(3), for the purposes of determining whether there is a material holding.

(4) ...

...

Deductions from tiers one and two: Connected lending of a capital nature (bank only)

2.2.221 R (1) *GENPRU 2.2.221R to GENPRU 2.2.235G only apply to a bank.*

(2) If a firm has elected to ignore an investment in a Venture Capital Investor or a Venture Capital Holding Company in accordance with GENPRU 2.2.209R(2) or (3), for the purposes of determining whether there is a material holding, GENPRU 2.2.221R to GENPRU 2.2.233R do not apply to any lending by the firm to that Venture Capital Investor or Venture Capital Holding Company, provided that any lending to the Venture Capital Holding Company is made to and deployed by the firm solely in connection with the Venture Capital Investor.

...

## 2 Annex 2R Capital resources table for a bank

The capital resources calculation for a bank		
Type of capital	Related text	Stage
...	...	...
<b>Deductions from the totals of tier one and two</b>		<b>(M)</b>
...	...	...
<p><i>Reciprocal cross-holdings</i></p> <p>Investments in <i>subsidiary undertakings</i> and <i>participations</i> excluding:</p> <p>(1) any amount which is already deducted as <i>material holdings</i> or <i>qualifying holdings</i>; and</p> <p>(2) any investment in a <u>Venture Capital Investor</u> or a <u>Venture Capital Holding Company</u> which has been <u>ignored in accordance with GENPRU 2.2.209R(2) or (3) for the purposes of determining whether there is a material holding.</u></p>	<p>GENPRU 2.2.217R to GENPRU 2.2.220R</p> <p>GENPRU 2.2.216AG</p>	(Part 2 of stage M)
...	...	...

...

## 2 Annex 3R Capital resources table for a building society

The capital resources calculation for a building society		
Type of capital	Related text	Stage

...	...	...
<b>Deductions from the totals of tier one and two</b>		<b>(M)</b>
...	...	...
<p><i>Reciprocal cross-holdings</i></p> <p>Investments in <i>subsidiary undertakings</i> and <i>participations</i> excluding:</p> <p>(1) any amount which is already deducted as <i>material holdings</i> or <u><i>qualifying holdings</i></u>; and</p> <p>(2) any investment in a <u>Venture Capital Investor</u> or a <u>Venture Capital Holding Company</u> which has been <u>ignored in accordance with GENPRU 2.2.209R(2) or (3) for the purposes of determining whether there is a material holding.</u></p>	<p><i>GENPRU 2.2.217R to GENPRU 2.2.220R</i></p> <p><i>GENPRU 2.2.216AG</i></p>	(Part 2 of stage M)
...	...	...

## 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.

**8.6 Consolidated capital resources**

...

8.6.20 R ...

Venture Capital Investments

8.6.21 R Part 2 of stage M in the *capital resources table* for banks in *GENPRU 2 Annex 2R* and the *capital resources table* for building societies in *GENPRU 2 Annex 3R* is adjusted so as to read as follows in relation to the deduction of investments in *subsidiary undertakings* and *participations*:

<u><b>Deductions from the totals of tier one and tier two</b></u>		<u><b>(M)</b></u>
...	...	...
<p>...</p> <p><u>Investments in <i>subsidiary undertakings</i> and <i>participations</i> excluding:</u></p> <p><u>(1) any amount which is already deducted as <i>material holdings</i> or <i>qualifying holdings</i>; and</u></p> <p><u>(2) any investment in an <i>undertaking</i> that meets the following conditions:</u></p> <p><u>(a) the investment has been made by a Venture Capital Investor and the <i>firm</i> is entitled to ignore (i) the Venture Capital Investor making that investment in accordance with <i>GENPRU 2.2.209R(2)</i> or (ii) the Venture Capital Holding Company (or a proportion of it) which holds the Venture Capital Investor in accordance with <i>GENPRU</i></u></p>	<p>...</p> <p><u><i>GENPRU 2.2.216AG</i></u></p>	<p><u>(Part 2 of stage M)</u></p>



<p><u>2.2.209R(3) for the purposes of determining whether there is a <i>material holding</i>:</u></p> <p><u>(b) the investment is a <i>venture capital investment</i>; and</u></p> <p><u>(c) the <i>undertaking</i> is not (i) a <i>credit institution</i> or (ii) <i>financial institution</i> the principal activity of which is to perform any activity other than the acquisition of holdings in other <i>undertakings</i>.</u></p>		
---	--	--

...

### 10.3 Identification of counterparties

...

- 10.3.8 R (1) ~~For~~ 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:
- ~~(1)~~(a) P is *closely related* to the *firm*; or
  - ~~(2)~~(b) P is an *associate* of the *firm*; or
  - ~~(3)~~(c) the same *persons* significantly influence the *governing body* of P and of the *firm*; or
  - ~~(4)~~(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.



**CAPITAL REQUIREMENTS DIRECTIVE (HANDBOOK AMENDMENTS NO 3)  
INSTRUMENT 2011**

**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 August 2011.

**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 Capital Requirements Directive (Handbook Amendments No 3) Instrument 2011.

By order of the Board  
28 July 2011

## Annex A

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

In this Annex, underlining indicates new text.

Operational risk

...

7.1.16 R ...

7.1.16A G In meeting the general standard referred to in SYSC 7.1.16R, a BIPRU firm that undertakes market-related activities should be able to demonstrate to the FSA:

- (1) in the case of a BIPRU firm calculating its ORCR using the basic indicator approach or standardised approach, that it has considered;  
or
- (2) in the case of a BIPRU firm with an AMA permission, compliance with

the Committee of European Banking Supervisors' Guidelines on the management of operational risk in market-related activities, published in October 2010. These can be found at  
[http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Management-of-op-risk/CEBS-2010-216-\(Guidelines-on-the-management-of-op-.aspx](http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Management-of-op-risk/CEBS-2010-216-(Guidelines-on-the-management-of-op-.aspx)

## Annex B

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

In this Annex, underlining indicates new text.

#### General risk management standards

- 6.3.16 G (1) In common with all *BIPRU firms*, a *firm* calculating its *ORCR* using the *basic indicator approach* is required to meet the general risk management standards set out in *SYSC 4.1.1R* to *SYSC 4.1.2R* and *SYSC 7.1.16R*.
- (2) In meeting those general risk management standards, a firm that undertakes market-related activities should be able to demonstrate to the FSA that it has considered the Committee of European Banking Supervisors' Guidelines on the management of operational risk in market-related activities, published in October 2010. These can be found at  
[http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Management-of-op-risk/CEBS-2010-216-\(Guidelines-on-the-management-of-op-.aspx](http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Management-of-op-risk/CEBS-2010-216-(Guidelines-on-the-management-of-op-.aspx)

...

#### Eligibility

...

- 6.4.1A G In meeting the general risk management standards referred to in *BIPRU 6.4.1R(1)*, a *firm* that undertakes market-related activities should be able to demonstrate to the *FSA* that it has considered the Committee of European Banking Supervisors' Guidelines on the management of operational risk in market-related activities, published in October 2010. These can be found at  
[http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Management-of-op-risk/CEBS-2010-216-\(Guidelines-on-the-management-of-op-.aspx](http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Management-of-op-risk/CEBS-2010-216-(Guidelines-on-the-management-of-op-.aspx)

...

#### Minimum standards

...

- 6.5.5A G In meeting the general risk management standards referred to in *BIPRU 6.5.5R(1)*, a *firm* that undertakes market-related activities should be able to demonstrate compliance with the Committee of European Banking Supervisors' Guidelines on the management of operational risk in market-related activities, published in October 2010. These can be found at

[http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Management-of-op-risk/CEBS-2010-216-\(Guidelines-on-the-management-of-op-.aspx](http://www.eba.europa.eu/documents/Publications/Standards---Guidelines/2010/Management-of-op-risk/CEBS-2010-216-(Guidelines-on-the-management-of-op-.aspx)

**CAPITAL RESOURCES REQUIREMENTS FOR PERSONAL INVESTMENT  
FIRMS (AMENDMENT) INSTRUMENT 2011**

**Purpose**

- A. The purpose of this instrument is to postpone the date on which certain amendments to the Handbook made by:
- (1) the Capital Resources and Professional Indemnity Insurance Requirements for Personal Investment Firms Instrument 2009 (FSA 2009/62);
  - (2) the Handbook Administration (No 16) Instrument 2009 (FSA 2009/69);
  - (3) the Handbook Administration (No 18) Instrument 2010 (FSA 2010/19); and
  - (4) the Supervision Manual (Retail Mediation Activities Return) (Amendment No 3) Instrument 2010 (FSA 2010/70);

come into force and to make consequential changes to transitional provisions to be introduced by those instruments.

**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);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- C. The rule-making provisions listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- D. (1) Subject to (2), this instrument comes into force on 1 August 2011.  
(2) Part 2 of the Annex to this instrument comes into force on 31 December 2013.

**Amendments to instruments**

- E. The amendments made by Part 2 of Annex B (IPRU(INV)) to the Capital Resources and Professional Indemnity Insurance Requirements for Personal Investment Firms Instrument 2009 (FSA 2009/62) are postponed and come into force on 31 December 2013 instead of 31 December 2011.
- F. The amendments made by Annex E (IPRU(INV)) to the Handbook Administration (No 16) Instrument 2009 (FSA 2009/69) are postponed and come into force on 31 December 2013 instead of 31 December 2011.

- G. The amendments made by Part 2 of Annex D (IPRU(INV)) to the Handbook Administration (No 18) Instrument 2010 (FSA 2010/19) are postponed and come into force on 31 December 2013 instead of 31 December 2011.
- H. The Supervision Manual (Retail Mediation Activities Return) (Amendment No 3) Instrument 2010 (FSA 2010/70), which amends Section 16.12 of the Supervision manual (SUP), comes into force on 31 December 2013 instead of 31 December 2011.

**Amendments to the Handbook**

- I. The Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) is amended in accordance with the Annex to this instrument.

**Citation**

- J. This instrument may be cited as the Capital Resources Requirements for Personal Investment Firms (Amendment) Instrument 2011

By order of the Board  
28 July 2011



## Annex

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

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

**Part 1: Comes into force on 1 August 2011**

**1 Table Transitional provisions applying to IPRU(INV)**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
4	13.1.21 and 13.1.23 <u>[deleted]</u>	R	The requirement to hold additional capital resources <del>where a policy excludes business or activities that have been carried out by the firm in the past or will be carried out by the firm only</del> apply to a <i>professional indemnity policy</i> taken out, renewed or extended with effect from 31 December 2009.	<del>31 December 2009 to 31 December 2010</del>	<del>31 December 2009</del>

**Part 2: Comes into force on 31 December 2013**

**1 Table Transitional provisions applying to IPRU(INV)**

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force

...					
<u>5</u>	<u>13.3.2</u>	<u>R</u>	<p><u>Unless the <i>firm</i> is already subject to a higher capital resources requirement, a <i>category B firm</i> must meet the capital resources requirements in this rule, instead of those in <i>IPRU(INV)</i> 13.3.2R, until 31 December 2015.</u></p> <p><u>From 31 December 2013 to 31 December 2014, the <i>firm's</i> capital resources requirement must be calculated in accordance with whichever of (1) or (2) produces the higher amount:</u></p> <p><u>(1) 1/12 of its fixed annual expenditure, calculated in accordance with 13.3.3R to 13.3.8R; or</u></p> <p><u>(2) £15,000.</u></p> <p><u>From 31 December 2014 to 31 December 2015, the <i>firm's</i> capital resources requirement must be calculated in accordance with whichever of (3) or (4) produces the higher amount:</u></p> <p><u>(3) 1/6 of its fixed annual expenditure, calculated in accordance with 13.3.3R to 13.3.8R; or</u></p> <p><u>(4) £15,000.</u></p>	<p><u>From 31 December 2013 to 31 December 2015</u></p>	<p><u>31 December 2013</u></p>
<u>6</u>	<u>13.3.13(2)</u>	<u>R</u>	<p><u>A <i>category B firm</i> can calculate the amount of the <i>firm's</i> total capital and reserves excluding preference <i>share</i> capital, less the amount of its intangible assets, multiplying it by 400% until 31 December 2015.</u></p>	<p><u>From 31 December 2013 to 31 December 2015</u></p>	<p><u>31 December 2013</u></p>

**LIQUIDITY REPORTING (MISCELLANEOUS AMENDMENTS)  
INSTRUMENT 2011**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 November 2011.

**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 Liquidity Reporting (Miscellaneous Amendments) Instrument 2011.

By order of the Board  
28 July 2011

## Annex

## Amendments to the Supervision manual (SUP)

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

16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of <i>data item</i>	<i>Firms</i> prudential category and applicable <i>data items</i> (note 1)							
	<i>BIPRU firms</i> (note 17)			<i>Firms</i> other than <i>BIPRU firms</i>				
	730K	125K and <i>UCITS investment firms</i>	50K	<i>IPRU (INV)</i> Chapter 3	<i>IPRU (INV)</i> Chapter 5	<i>IPRU (INV)</i> Chapter 9	<i>IPRU (INV)</i> Chapter 13	<i>UPRU</i>
...								
Daily Flows	FSA047 (Notes 26, 29, <del>and</del> 31 <u>and</u> 33)							
Enhanced Mismatch Report	FSA048 (Notes 26, 29, <del>and</del> 31 <u>and</u> 33)							
Liquidity Buffer Qualifying Securities	FSA050 (Notes 27, 30, <del>and</del> 31 <u>and</u> 33)							
Funding Concentration	FSA051 (Notes 27, 30, <del>and</del> 31 <u>and</u> 33)							
Pricing data	FSA052 (Notes 27, 30, <del>and</del> 31 <u>and</u> 33)							
Retail and corporate funding	FSA053 (Notes 27, 30, <del>and</del> 31 <u>and</u> 33)							
Currency Analysis	FSA054 (Notes 27, 30, <del>and</del> 31 <u>and</u> 33)							
Systems and Controls Questionnaire	FSA055 ( <del>Note</del> <u>Notes</u> 28 <u>and</u> 33)							
...								
Note 1	...							

<u>Note 33</u>	<u>FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an ILAS BIPRU firm. An ILAS BIPRU firm does not need to complete FSA055. A non-ILAS BIPRU firm must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.</u>
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...

16.12.15 R The applicable *data items* referred to in SUP 16.12.4R according to type of *firm* are set out in the table below:

Description of data item	Firms' prudential category and applicable data items (note 1)							
	BIPRU			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
Daily Flows	FSA047 (Notes 23, 26, and 28 and 30)							
Enhanced Mismatch Report	FSA048 (Notes 23, 26, and 28 and 30)							
Liquidity Buffer Qualifying Securities	FSA050 (Notes 24, 27, and 28 and 30)							
Funding Concentration	FSA051 (Notes 24, 27, and 28 and 30)							
Pricing data	FSA052 (Notes 24, 27, and 28 and 30)							
Retail and corporate funding	FSA053 (Notes 24, 27, and 28 and 30)							
Currency Analysis	FSA054 (Notes 24, 27, and 28 and 30)							
Systems and Controls Questionnaire	FSA055 (Note Notes 25 and 30)							
...								
Note 1	...							

<u>Note 30</u>	<u>FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an ILAS BIPRU firm. An ILAS BIPRU firm does not need to complete FSA055. A non-ILAS BIPRU firm must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.</u>
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...

16.12.22 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>Data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>					
	<i>BIPRU 730k firm</i>	<i>BIPRU 125k firm and UCITS investment firm</i>	<i>BIPRU 50k firm</i>	<i>Exempt CAD firms subject to IPRU(INV) Chapter 13</i>	<i>Firms (other than exempt CAD firms) subject to IPRU(INV) Chapter 13</i>	<i>Firms that are also in one or more of RAGs 1 to 6 and not subject to IPRU(INV) Chapter 13</i>
...						
Daily Flows	FSA047 (Notes 16, 19, <del>and 21</del> and 24)					
Enhanced Mismatch Report	FSA048 (Notes 16, 19, <del>and 21</del> and 24)					
Liquidity Buffer Qualifying Securities	FSA050 (Notes 17, 20, <del>and 21</del> and 24)					
Funding Concentration	FSA051 (Notes 17, 20, <del>and 21</del> and 24)					
Pricing data	FSA052 (Notes 17, 20, <del>and 21</del> and 24)					
Retail and corporate funding	FSA053 (Notes 17, 20, <del>and 21</del> and 24)					
Currency Analysis	FSA054 (Notes 17, 20, <del>and 21</del> and 24)					
Systems and Controls Questionnaire	FSA055 ( <del>Note</del> Notes 18 and 24)					
...						

Note 1	...
Note 24	<u>FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an ILAS BIPRU firm. An ILAS BIPRU firm does not need to complete FSA055. A non-ILAS BIPRU firm must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.</u>

...

16.12.25 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable <del>data item</del> data item</i> (note 1)							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>
...								
Daily Flows	FSA047 (Notes 21, 24, <del>and 26</del> and 28)							
Enhanced Mismatch Report	FSA048 (Notes 21, 24, <del>and 26</del> and 28)							
Liquidity Buffer Qualifying Assets	FSA050 (Notes 22, 25, <del>and 26</del> and 28)							
Funding Concentration	FSA051 (Notes 22, 25, <del>and 26</del> and 28)							
Pricing data	FSA052 (Notes 22, 25, <del>and 26</del> and 28)							
Retail and corporate funding	FSA053 (Notes 22, 25, <del>and 26</del> and 28)							
Currency Analysis	FSA054 (Notes 22, 25, <del>and 26</del> and 28)							
Systems and Controls Questionnaire	FSA055 ( <del>Note</del> Notes 23 and 28)							
...								
Note 1	...							

Note 28	FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an <i>ILAS BIPRU firm</i> . An <i>ILAS BIPRU firm</i> does not need to complete FSA055. A <i>non-ILAS BIPRU firm</i> must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.

...

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

...

### FSA047      Daily Flows

The purpose of this *data item* is to record details of an *ILAS BIPRU firm*'s liquidity flows. ~~See further~~ This guidance should be read in conjunction with the rules and guidance in SUP 16.12.4R.

#### Valuation

Except where outlined, a *firm* should follow the *FSA's rules and guidance* on valuation set out in *GENPRU 1.3*. A *firm* not subject to *GENPRU 1.3*, for example, an *incoming EEA firm*, should follow its applicable accounting standards.

All collateral, cash and related deposits segregated for the benefit of a *client* should be excluded from FSA047 irrespective of the accounting treatment used by the *firm*.

...

#### Completion and submission to the FSA

...

**A ~~firm~~ *firm* should refer to the relevant Guidance Notes for FSA048 to complete the relevant *data elements* of this *data item*.**

FSA047 time bands are defined by the reporting date and the application of the 'modified following' market convention, ignoring the existence of any non-settlement weekdays (bank holidays) in any currency.

...

### FSA048      Enhanced Mismatch Report

The purpose of this *data item* is to record details of an *ILAS BIPRU firm*'s liquidity mismatch positions. ~~See further~~ This guidance should be read in conjunction with the rules and guidance in SUP 16.12.4R.

#### Valuation



Except where outlined, a *firm* should follow the *FSA's rules and guidance* on valuation set out in *GENPRU 1.3*. A *firm* not subject to ~~GENPRU~~ GENPRU 1.3, for example, an *incoming EEA firm*, should follow its applicable accounting standards.

All collateral, cash and related deposits segregated for the benefit of a *client* should be excluded from FSA048 irrespective of the accounting treatment used by the *firm*.

...

### **Completion and submission to the FSA**

A *firm* should complete this *data item* and report cash flows in the relevant time bands based on their residual contractual maturity. Asset flows should be entered according to their latest maturity. Liability cash flows should be entered according to their earliest possible date of outflow. Any flows or balances between entities included within the scope of the return should be eliminated in accordance with generally accepted accounting principles.

FSA048 time bands are defined by the reporting date and the application of the 'modified following' market convention, ignoring the existence of any non-settlement weekdays (bank holidays) in any currency.

...

### **Part 1 Memo items**

...

#### **4 Prior period's peak intra-day collateral used for UK settlement and clearing systems**

...

A *firm* should note that the amount to be reported in this *data element* should be the minimum amount of collateral it would have needed to post in order to meet its actual payment and settlement obligations as mandated by the requirements of the system(s) in question. It is not, therefore, the amount of collateral that was in fact posted by the *firm* which could include significant over-collateralisation.

Direct participation in settlement systems does not include intra-day floating charges associated with facilities provided by custodians to facilitate securities settlement.

#### **5 Prior period's peak intra-day collateral used for settlement and clearing systems outside the UK**

...

A *firm* should note that the amount to be reported in this *data element* should be the minimum amount of collateral it would have needed to post in order to meet its actual payment and settlement obligations as mandated by the requirements of the system(s) in question. It is not, therefore, the amount of collateral that was in fact posted by the *firm* which could include

significant over-collateralisation.

Direct participation in settlement systems does not include intra-day floating charges associated with facilities provided by custodians to facilitate securities settlement.

## Part 2 Security, transferrable whole-loan and commodity flows

...

Repos, reverse repos, securities loans and collateral swaps:

...

Tri-party repo and tri-party reverse repo transactions should be treated in the same manner as all other *repo* and *reverse repo* transactions ...

In the case of a tri-party reverse repo, where the collateral provider has an option over the nature of the collateral provided, firms should report the actual collateral held on the reporting date, then on the earliest effective date of substitution, report that collateral leaving and an inflow of substitution collateral on a “worst case” basis, and assume that position will then remain unchanged until the maturity date of the transaction. Repo transactions should be reported on the basis of the actual collateral posted for the direction of the transaction.

Where a *firm* enters into forward-starting reverse repo transactions...

...

## 9 Own-name securities and transferrable whole-loans

...

Any own-name securities or whole-loans that do not qualify for inclusion on line 9 should not be reported elsewhere in part 2. Any repo collateralised using own-name securities or whole-loans that do not qualify to be reported in part 2 should be reported as an unsecured borrowing in part 6.

## 10 High quality asset-backed securities

...

## 53 SME deposits

A *firm* should report in this row all its deposits and account balances where the account holder is a *small or medium enterprise (SME)*. A ~~firm~~ *firm* should also report here deposits and account balances where the account holder is a partnership, ~~or~~ a sole trader, or a charity which would be ~~a small and medium-sized enterprise~~ an SME if it were a company.

...

## 56 Client/brokerage free cash

A *firm* should report here all cash balances which it has received from its prime

brokerage/prime services *clients* and which are not segregated from the *firm's* own assets. A *firm* should not include ~~excess~~ derivatives margin cash in this row.

...

#### 57 Principal FX cash flows (including currency swaps)

...

For example, if a *firm* was completing this *data item* to show its contractual assets and liabilities denominated in *US dollars* and it had transacted a forward foreign exchange contract to ~~sell~~ sell \$75m against the ~~purchase~~ purchase of an equivalent amount of another currency four months after the reporting date, it would enter -75,000 in column F and make no other entries.

...

#### Part 10 Derivatives margining and exposure

Figures reported in rows 74 to 77 relate to any variation and initial margin given or received in respect of *derivative* transactions. A *firm* should report together figures for own account and client accounts but exclude any margin (cash or collateral) segregated for the benefit of a client and any subsequent placement of segregated margin.

...

#### Part 11 Assets included in Part 2 held under re-hypothecation rights

Rows 78 to 89 relate to securities reported in Part 2 of this *data item*, held as *clients'* assets or net ~~derivatives~~ derivatives margin collateral received in relation to which the *firm* has re-hypothecation rights. Row 81 is intentionally left blank.

...

#### FSA051 Funding Concentration

The purpose of this *data item* is to record details of an *ILAS BIPRU firm's* funding concentrations. ~~See further~~ This guidance should be read in conjunction with the rules and guidance in SUP 16.12.4R.

...

#### Part 1 Wholesale deposits

In this part of the *data item* the *firm* should analyse and report the counterparties responsible for the 30 largest concentrations of deposits reported in lines 45 to 50 inclusive of FSA047 and FSA 048.

## Part 2 Repo funding

In this part of the *data item* the *firm* should analyse and report the counterparties responsible for the 30 largest concentrations of repo funding as reported in Part 5 of FSA047 and FSA 048.

...

### FSA052 Pricing Data

The purpose of this *data item* is to record details relating to the average transaction volume of, and process which the *firm* pays for, certain of its wholesale liabilities. ~~See further~~ This guidance should be read in conjunction with the rules and guidance in SUP 16.12.4R.

...

#### General

...

##### (i) Cash deposits

A *firm* should report all fixed term cash deposits reportable in lines 45 to 49 of FSA047 and FSA048 in row 1 if denominated in GBP, in row 5 if denominated in USD or row 9 if denominated in EUR.

##### (ii) Senior unsecured securities

A *firm* should report all senior unsecured securities issued reportable in line 40 of FSA047 and FSA 048 in row 2 if denominated in GBP, in row 6 if denominated in USD or in row 10 if denominated in EUR.

##### (iii) Covered Bonds

A *firm* should report all covered bonds encumbering the *firm's* own assets the issuance of which would be reportable in line 43 of FSA047 and FSA 048 in row 3 if denominated in GBP, in row 7 if denominated in USD or in row 11 if denominated in EUR.

##### (iv) Asset-backed securities (including ABCP)

A *firm* should report all debt issued by the *firm's* SSPEs as reported on line 51 of FSA047 and FSA048. A *firm* should report such liabilities in row 4 if denominated in GBP, in row 8 if denominated in USD or in row 12 if denominated in EUR.

...

Weighted Average Spread and Volume Analysis:

...

For the purpose of reporting the average spread paid, a *firm* should report:

- (1) for an instrument with an original maturity of less than or equal to one year, the spread payable by the *firm* for that liability, if it were to have been swapped to the benchmark overnight index for the appropriate currency no later than close of business on the day of the transaction, and;
- (2) for an instrument with an original maturity in excess of one year, the spread at issuance were it to be swapped to the relevant benchmark floating three month LIBOR for GBP and USD and EURIBOR for EUR, no later than close of business on the day of the transaction.

For the purposes of calculating the average spread paid a *firm* should calculate the all-in cost in the currency of issue ignoring any FX swap, but including any premium or discount and fees payable or receivable, with the term of any theoretical or actual interest rate swap matching the term of the liability. The spread is the liability rate minus the swap rate.

...

## **FSA054                      Currency Analysis**

The purpose of this *data item* is to record details of a *firm's* currency mismatches. ~~See further~~ This guidance should be read in conjunction with the rules and guidance in SUP 16.12.4R.

...

### **Completion and submission to the FSA**

A *firm* should complete this *data item* on a contractual basis based on an analysis of the *firm's* ~~balance sheet~~ cash flow and cash balances as reportable for FSA047 and FSA 048, combined (rows 1, and 18 to 23 and 25 to 56), based on the FSA047 and FSA048 reporting date closest to the FSA054 on the reporting date in question.

### **General**

...

In considering whether a *firm's* assets, liabilities or shareholders' equity are denominated in a specific currency, a *firm* should ignore the effect of any *derivatives*.

For example e.g., if a *firm* issues a liability in GBP and enters into a *derivative* to swap the cash flows of that liability to another currency, for the purposes of this *data item*, it should ~~would~~ be denominated in GBP.

...

## CONSUMER REDRESS SCHEMES INSTRUMENT 2011

### Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the rules and gives the guidance in Annex A and Part 2 of Annex C to this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
- (1) paragraph 8 (Guidance) of Schedule 17; and
  - (2) paragraph 14 (The scheme operator’s rules) of Schedule 17.
- B. The making of these rules and the giving of this guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

### Powers exercised by the Financial Services Authority

- C. The Financial Services Authority makes the rules and gives the guidance in Annex A, Annex B, Part 1 of Annex C, Annex D and Annex E to this instrument in the exercise of the following powers and related provisions of the Act:
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 210(1) (Statements of policy);
  - (5) section 213 (The compensation scheme);
  - (6) section 214 (General);
  - (7) section 226 (Compulsory jurisdiction);
  - (8) section 395(5) (The Authority’s procedures); and
  - (9) paragraph 13 (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme).
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- E. This instrument comes into force on 1 August 2011.

### Amendments to the Handbook

- F. 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
Decision Procedure and Penalties manual (DEPP)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Compensation sourcebook (COMP)	Annex D
--------------------------------	---------

**Material outside the Handbook**

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

**Citation**

- H. This instrument may be cited as the Consumer Redress Schemes Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited  
20 July 2011

By order of the Board of the Financial Services Authority  
28 July 2011

## 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.

*consumer redress scheme* a scheme imposed:

- (a) by *rules* on *authorised persons*, *payment service providers* or *electronic money issuers* under section 404 (Consumer redress schemes) of the *Act*; or
- (b) on a particular *firm* by a *requirement* imposed on its *permission*, or on a particular *payment service provider* or *electronic money issuer* by a *requirement* imposed on its *authorisation*, as envisaged by section 404F(7) of the *Act* but only to the extent that section 404B of the *Act* is engaged by the scheme.

*redress determination* a written communication from a *respondent* under a *consumer redress scheme* which:

- (a) sets out the results of the *respondent's* determination under the scheme;
- (b) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and
- (c) informs the complainant that if he is dissatisfied, he may now make a *complaint* to the *Financial Ombudsman Service* and must do so within *six months*.

Amend the following definitions as shown.

*chargeable case* any *complaint* referred to the *Financial Ombudsman Service*, except where:

- (a) the *Ombudsman* considers it apparent from the *complaint*, when it is received, and from any *final response* or *redress determination* which has been issued by the *firm* or *licensee*, that the *complaint* should not proceed because:

...

...



*complaint*

- (1) ...
- (2) (in *DISP*, except *DISP* 1.1 and the *complaints handling rules* and the *complaints record rule* in relation to *MiFID business*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a redress determination, which:
- ...
- (3) (in *DISP* 1.1, the complaints awareness rules only in relation to *collective portfolio management* and the *complaints handling rules* and the *complaints record rule* only in relation to *MiFID business* and *collective portfolio management*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a redress determination, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

...

**Annex B**

**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 Act	Description	Handbook reference	Decision maker
...			
207(1)/ 208(1)	when, <del>in respect of an <i>authorised person</i></del> , the <i>FSA</i> is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a <i>permission</i> or impose a restriction in relation to the carrying on of a <i>regulated activity</i> (under section 206A). <u>This applies in respect of an <i>authorised person</i>, or an <i>unauthorised person</i> to whom section 404C applies.*</u>		<i>RDC</i>

## Annex C

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

#### Part 1 Provisions made by the Financial Services Authority

##### 1.1 Purpose and application

...

###### Consumer redress schemes

1.1.11A R Where the subject matter of a *complaint* falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *complaints resolution rules*, the *complaints time limits rules*, the *complaints record rule* and the *complaints reporting rules* do not apply.

...

##### 2.3 To which activities does the Compulsory Jurisdiction apply?

...

###### Consumer redress schemes

2.3.2C G As a result of section 404B(11) of the *Act*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction* a *complaint* from a complainant who:

- (1) is not satisfied with a *redress determination* made by a *respondent* under a *consumer redress scheme*; or
- (2) considers that a *respondent* has failed to make a *redress determination* in accordance with a *consumer redress scheme*.

...

##### 2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1 R The *Ombudsman* can only consider a *complaint* if:

- (1) the *respondent* has already sent the complainant its *final response*;  
or
- (2) eight weeks have elapsed since the *respondent* received the *complaint*; or

(3) in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*:

(a) the *respondent* has already sent the complainant its *redress determination* under the scheme; or

(b) the *respondent* has failed to send a *redress determination* in accordance with the time limits specified under the scheme.

2.8.2 R The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

(1) more than six *months* after the date on which the *respondent* sent the complainant its *final response* or *redress determination*; or

...

...

#### Reviews of past business

2.8.5 R The six-year and the three-year time limits do not apply where:

(1) ~~the time limit has been extended under a scheme for review of past business approved by the Treasury under section 404 of the Act (Schemes for reviewing past business); or [deleted]~~

(2) ...

...

### 3.7 Awards by the Ombudsman

...

3.7.4A G The effect of section 404B(5) of the Act is that the maximum award which the *Ombudsman* may make also applies in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*.

#### TP 1.1 Transitional Provisions Table

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in	(6) Handbook provision: coming into

				force	force
...					
<u>27A</u>	<u>Amendments to <i>DISP</i> made in the Consumer Redress Schemes Instrument 2011</u>		<u>The amendments do not apply in relation to any <i>consumer redress scheme</i> imposed before the instrument came into force on a particular <i>firm</i>, or on a particular <i>payment service provider</i> or <i>electronic money issuer</i>, as envisaged by section 404F(7) of the <i>Act</i>.</u>	<u>From 1 August 2011 indefinitely</u>	<u>1 August 2011</u>

**Part 2 Provisions made by the Financial Ombudsman Service**

**3.2 Jurisdiction**

...

3.2.2A R If the subject matter of a *complaint* falls to be dealt with by the *respondent* under a *consumer redress scheme*, and the time limits specified under the scheme for doing so have not yet expired, the *Ombudsman* will refer it to the *respondent* to be dealt with under the scheme.

...

**3.3 Dismissal without consideration of the merits and test cases**

...

Grounds for dismissal

3.3.4 R The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:

...

(5) the *respondent* has reviewed the subject matter of the *complaint* in accordance with:

(a) ...

- (b) ~~the terms of a scheme order under section 404 of the Act (Schemes for reviewing past business); or [deleted]~~
- (c) any formal regulatory requirement, standard or guidance published by the *FSA* or other regulator in respect of that type of *complaint*;

(including, if appropriate, making an offer of redress to the complainant), unless he considers that they did not address the particular circumstances of the case; or

- (5A) the respondent has reviewed the subject matter of the complaint and issued a redress determination in accordance with the terms of a consumer redress scheme; or

...

...

### 3.6 Determination by the Ombudsman

Fair and reasonable

...

- 3.6.2 G Section 228 of the *Act* sets the ‘fair and reasonable’ test for the *Compulsory Jurisdiction* (other than in relation to *consumer redress schemes*) and the *Consumer Credit Jurisdiction* and *DISP* 3.6.1R extends it to the *Voluntary Jurisdiction*.

...

#### Consumer redress schemes

- 3.6.5A G As a result of section 404B of the Act, if the subject matter of a complaint falls to be dealt with (or has properly been dealt with) under a consumer redress scheme, the Ombudsman will determine the complaint by reference to what, in the opinion of the Ombudsman, the redress determination under the consumer redress scheme should be or should have been.

...

### 3.7 Awards by the Ombudsman

...

Money awards

3.7.2 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:

...

3.7.2A G In relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a money award is a payment of such amount as the *Ombudsman* determines that a *respondent* should make (or should have made) to a complainant under the scheme.

3.7.2B G A money award under *DISP* 3.7.2AG may specify the date by which the amount awarded is to be paid.

...

3.7.6 G If the *Ombudsman* considers that fair compensation requires payment of a larger amount, he may recommend that the *respondent* pays the complainant the balance. The effect of section 404B(6) of the *Act* is that this is also the case in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*.

...

#### Interest awards

3.7.8 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, an ~~A~~ interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

3.7.8A G A money award under *DISP* 3.7.2AG may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by the date specified in the award.

...

#### Directions

3.7.11 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a direction may require the ~~respondent~~ *respondent* to take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken).

3.7.11A    G    In relation to a *complaint* the subject matter of which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, a direction may require the *respondent* to take such action as the *Ombudsman* determines the *respondent* should take (or should have taken) under the scheme.



## Annex D

### Amendments to the Compensation sourcebook (COMP)

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

#### 8.2 Rejection of application for compensation

...

8.2.3 R The *FSCS* must reject an application for compensation if:

...

(1) the *FSCS* considers that a civil claim in respect of the liability would have been defeated by a defence of limitation at the earlier of:

(a) the date on which the *relevant person* is determined to be *in default*; and

(b) the date on which the claimant first indicates in writing that he may have a claim against the *relevant person*;

unless *COMP* 8.2.4R or *COMP* 8.2.4AR applies; or

(2) ...

...

8.2.4A R For a *claim* which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *FSCS* must disregard a defence of limitation which became available after the scheme was made or imposed.

...

#### 12.4 The compensation calculation

...

##### Consumer redress schemes

12.4.22 R For a *claim* which falls to be dealt with (or has properly been dealt with) under a *consumer redress scheme*, the *FSCS* must apply the scheme in:

(1) assessing whether a *relevant person* has complied with the relevant regulatory requirements;

(2) assessing whether non-compliance has caused the claimant loss; and

(3) calculating the compensation due (where the *FSCS* may rely on calculations made by the *FSA* or other competent persons acting on the *FSA*'s behalf or authorised to make them under the scheme);

unless the *FSCS* considers that departure from the scheme is essential in order to provide the claimant with fair compensation.

## Annex E

### Amendments to the Enforcement Guide (EG)

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

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*:

...

(1A) sections 69 and 210 require the FSA to publish statements of policy on the imposition of financial penalties, suspensions or restrictions on *firms*, ~~and approved persons~~ and unauthorised persons to whom section 404C applies, the amount of financial penalties imposed, and the period for which suspensions or restrictions are to have effect;

...

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:

...

(f) against a *firm*, or an unauthorised person to whom section 404C applies, under section 205 of the *Act*.

(2) It may impose a financial penalty:

...

(d) on a *firm*, or an unauthorised person to whom section 404C applies, under section 206 of the *Act*.

**RETAIL DISTRIBUTION REVIEW (PLATFORMS) INSTRUMENT 2011****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);
    - (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 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)
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 Retail Distribution Review (Platforms) Instrument 2011.

By order of the Board  
28 July 2011

## Annex A

### Amendments to the Glossary of definitions

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

*intermediate unitholder* a firm whose name is entered in the register of a non-UCITS retail scheme or a UCITS scheme, or which holds units in a non-UCITS retail scheme or a UCITS scheme indirectly through a third party acting as a nominee, and which:

- (a) is not the beneficial owner of the relevant unit; and
- (b) does not manage investments on behalf of the relevant beneficial owner of the unit; or
- (c) does not act as a depositary of a collective investment scheme or on behalf of such a depositary in connection with its role in holding property subject to the scheme.

For the purposes of this definition, 'register' has the meaning set out in paragraph (3) of the Glossary definition of 'register'.

*platform service* a service which:

- (a) involves arranging and safeguarding and administering assets; and
- (b) distributes retail investment products which are offered to retail clients by more than one product provider;

but is neither:

- (c) solely paid for by adviser charges; nor
- (d) ancillary to the activity of managing investments for the retail client.

*platform service provider* a firm providing a platform service.

Delete the following definition.

~~*funds supermarket service* a service consisting of the provision by a firm of regulated activities for a customer which consists of arranging (bringing about) deals in~~

~~investments and safeguarding and administering investments with particular reference to regulated collective investment schemes where:~~

- ~~(a) the schemes are managed by other firms;~~
- ~~(b) the customer's units are held under arrangements in which their legal title is held by a nominee company; and~~
- ~~(c) the service relates to schemes offered by several product providers, at least one of whom is not an affiliated company of another provider.~~

## 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.

#### 6.1A Adviser charging and remuneration

...

Requirement to be paid through adviser charges

...

6.1A.8 G Examples of payments and benefits that should not be accepted under the requirement to be paid through *adviser charges* include:

- (1) a share of the *retail investment product* charges or platform service provider's charges, or retail investment product provider's or platform service provider's revenues or profits (~~except if the firm providing the personal recommendation is the retail investment product provider~~); and
- (2) a commission set and payable by a *retail investment product* provider in any jurisdiction.

...

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

Application – Who? What?

- 6.1B.1 R (1) This section applies to:
- (a) a *firm* which is a *retail investment product* provider; and
  - (b) in relation to COBS 6.1B.9R, COBS 6.1B.10G and COBS 6.1B.11G, a platform service provider;
- in circumstances where a *retail client* receives a *personal recommendation* in relation to ~~the firm's~~ a *retail investment product*.
- (2) This section does not apply to a *retail investment product* provider in circumstances where a *firm* gives advice or provides services to an employer in connection with a *group personal pension scheme* or

*group stakeholder pension scheme.*

...

Requirement not to offer commissions

...

- 6.1B.6 G The requirement not to offer or pay commission does not prevent a *firm* from making a payment to a third party in respect of administration or other charges incurred, for example a payment to a ~~fund supermarket~~ platform service provider or a third party administrator.

...

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 by means of a platform service must:
- (1) obtain and validate instructions from a *retail client* in relation to an *adviser charge*;
  - (2) offer sufficient flexibility in terms of the *adviser charges* it facilitates; and
  - (3) not pay out or advance *adviser charges* to the *firm* to which the *adviser charge* is owed over a materially different time period, or on a materially different basis to that in which it recovers the *adviser charge* from the *retail client* (including paying any *adviser charges* to the *firm* that it cannot recover from the *retail client*).

...

After COBS 6.1D insert the following new sections. The text is not underlined.

## **6.1E Platform service providers**

Platform service providers: fees and commission

- 6.1E.1 R (1) If, in relation to a *retail investment product*, a *platform service provider* arranges to accept a fee or commission paid by a third party or a *person* acting on behalf of a third party, it must clearly disclose the amount of that fee or commission to the *professional client* or *retail client* in a *durable medium* in good time before the provision of *designated investment business*.



- (2) In the event that it is not possible to make the disclosure in (1) in good time before the provision of *designated investment business*, the disclosure must be made as soon as practicable thereafter.

- 6.1E.2 G If a *platform service provider* accepts a fee or commission referred to in COBS 6.1E.1R, it should pay due regard to its obligations under *Principle 6* (Customers' interests), *Principle 7* (Communications with clients) and the *client's best interests rule*, and ensure that it presents *retail investment products* to *professional clients* and *retail clients* without bias.

## 6.1F Using a platform service for arranging and advising

Client's best interests rule and using a platform service

- 6.1F.1 R A *firm* (other than a *platform service provider*) which:
- (1) *arranges* for a *retail client* to buy a *retail investment product* or makes a *personal recommendation* to a *retail client* in relation to a *retail investment product*; and
  - (2) uses a *platform service* for that purpose;
- must ensure that it uses a *platform service* which presents its *retail investment products* without bias.
- 6.1F.2 G When selecting and using a *platform service* for the purpose described in COBS 6.1F.1R, a *firm* should be mindful of its duty to comply with the *client's best interests rule* and the *rule* on inducements (COBS 2.3.1R).

## 6.1G Re-registration of title to retail investment products

- 6.1G.1 R If a *client* requests a *firm* (F) to transfer the title to a *retail investment product* which is held by F directly, or indirectly through a third party, on that *client's* behalf to another *person* (P), and F may lawfully transfer the title to that *retail investment product* to P, F must execute the *client's* request within a reasonable time.
- 6.1G.2 R A *firm* acting as a *registrar* should carry out a request by F for the re-registration of ownership of a *retail investment product* to P within a reasonable time.

Amend the following as shown.

**6.2A Describing advice services**

...

Firms holding themselves out as independent

...

6.2A.4A R In complying with COBS 6.2A.3R, a firm which:

- (1) holds itself out to a retail client as acting independently; and
- (2) relies upon a single platform service to facilitate the majority of its personal recommendations in relation to retail investment products;

must take reasonable steps to ensure that, as appropriate, the platform service provider bases its selection of retail investment products on a comprehensive, fair and unbiased analysis of the relevant market.

6.2A.4B G When a firm considers whether a platform service provider's selection of retail investment products is based on an unbiased analysis of the relevant market, a firm should take into account any fees, commission or non-monetary benefits the platform service provider receives in relation to those retail investment products.

...

**13.1 The obligation to prepare product information**

...

Exceptions

...

13.1.4 R A single document prepared for more than one key features scheme or simplified prospectus scheme may combine more than one key features document, simplified prospectus or EEA simplified prospectus or any combination of them, if the schemes are offered through a ~~fund~~ supermarket service platform service and the document clearly describes the difference between the schemes.

...

**14.2 Providing product information to clients**

...

Exception to the provision rules: aggregated scheme documents

- 14.2.11 R A *firm* may provide a single *document*, which describes more than one *key features scheme* or *simplified prospectus scheme*, or any combination of those *schemes*, if:
- (1) the *schemes* are offered through a ~~*funds supermarket service platform service*~~;
  - (2) the *document* clearly describes the difference between the relevant *schemes*; and
  - (3) (in the case of a *simplified prospectus scheme*) the *firm* also offers a copy of the relevant prospectus to the *client*.

After COBS 14.3 insert the following new section. The text is not underlined.

#### 14.4 Provision of information by an intermediate unitholder

Provision of information to the beneficial owner

- 14.4.1 R (1) An *intermediate unitholder* which receives a copy of the short report referred to in *COLL 4.5.13R* from an *authorised fund manager*, must notify the beneficial owner of the *unit* or, if relevant, a *person* acting on that beneficial owner's behalf, that a copy of the short report is available from the *intermediate unitholder* free of charge upon request.
- (2) The notification in (1) must be in writing and made no more than three *months* after the end of the *month* in which the short report was received by the *intermediate unitholder*.
- 14.4.2 R If the notification in *COBS 14.4.1R* is sent by means of an *electronic communication*, the *electronic communication* must contain either a copy of the report or a hyperlink to the section of a website under the control of the *intermediate unitholder* where the relevant short report may be read in full. If the *electronic communication* contains a hyperlink, the short report must remain accessible to the beneficial owner via that section of the website until the *authorised fund manager* sends the *intermediate unitholder* a subsequent annual short report in relation to the relevant *unit*.
- 14.4.3 G The notification in *COBS 14.4.1R* may include one or more short reports and may be made at the same time as other *Handbook* notifications, for example, a *periodic statement*. If the notification in *COBS 14.4.1R* is made at the same time as any other communication, the notification should be clearly and separately identifiable as such and presented in a prominent manner. An *intermediate unitholder* may make the notification in *COBS 14.4.1R* by

sending a copy of the short report to the beneficial owner of the *unit* or, if relevant, a *person* acting on that beneficial owner's behalf.

- 14.4.4 R (1) Except where *COBS* 14.4.1R and *COBS* 14.4.8R apply, an *intermediate unitholder* which receives any document or written notification required by *COLL* to be sent by an *authorised fund manager* or *depository* to a *unitholder* must send that notification to the beneficial owner of the *unit* or, if relevant, a person acting on that beneficial owner's behalf:
- (2) Paragraph (1) does not apply to:
- (a) information about a merger proposal provided under *COLL* 7.7.10R (Information to be given to unitholders) in circumstances where a meeting of *unitholders* will not be convened to vote on that proposal; and
- (b) information provided under *COLL* 11.3.13R (Obligations to unitholders of a master UCITS).
- (3) The notification in (1) must be in writing and be sent as soon as reasonably practicable after the *intermediate unitholder* has received the notification from the *authorised fund manager* or *depository*.
- 14.4.5 R If the notification in *COBS* 14.4.4R is sent by means of an *electronic communication* it must contain:
- (1) either a copy of the notification from the *authorised fund manager* or *depository* or a hyperlink to the section of a website which is under the control of the *intermediate unitholder* where the notification from the *authorised fund manager* or the *depository* may be read in full; and
- (2) a summary of the content of the notification from the *authorised fund manager* or *depository* together with sufficient information to enable the beneficial owner to understand the subject matter of that notification and its possible consequences.
- 14.4.6 R If the *electronic communication* in *COBS* 14.4.5R contains a hyperlink:
- (1) in the case of the notification made to the *intermediate unitholder* by the *authorised fund manager* or *depository* under *COLL* 7.2.1R(2A), the notification must be accessible continuously to the beneficial owner by means of the website until the suspension of dealing in *units* has ceased; and
- (2) in the case of all other notifications required under *COBS* 14.4.4R, the notification from the *authorised fund manager* or *depository* must be

accessible continuously by means of the website for such period of time as the beneficial owner may reasonably need to inspect it.

- 14.4.7 R If a *firm* is acting on behalf of the beneficial owner of a *unit* and it receives a notification from an *intermediate unitholder* under *COBS* 14.4.1R or *COBS* 14.4.4R, it must send that notification to the beneficial owner of the *unit* as soon as reasonably practicable.

#### Voting rights

- 14.4.8 R (1) An *intermediate unitholder* which receives a notification under *COLL* 4.4.5R (Notice of general meetings) from an *authorised fund manager* or *depository* must notify the beneficial owner of the *unit* or, if relevant, a *person* acting on that beneficial owner's behalf.
- (2) The notification in (1) must be made as soon as reasonably practicable but, in any event, before the effective date of any change to be made as a result of a resolution passed at the meeting.
- (3) The notification in (1) must:
- (a) explain that the *unit* is held by the *intermediate unitholder* or, if relevant, through a third party acting as nominee;
  - (b) if applicable, explain that voting rights are not available to the beneficial owner;
  - (c) contain a summary of the subject matter of the notification from the *authorised fund manager* or *depository* together with an explanation of the consequences of a vote for and of a vote against the proposal; and
  - (d) contain a summary of the *intermediate unitholder's* policy in relation to the exercise or facilitation of voting rights which must include, if relevant, whether the *intermediate unitholder* intends to exercise the relevant voting rights without consideration of the views of any of the beneficial owners.
- 14.4.9 R A *firm* must not make a specific charge for the provision of the notifications in *COBS* 14.4.1R, *COBS* 14.4.4R, *COBS* 14.4.7R and *COBS* 14.4.8R.

#### Information requests by authorised fund managers for liquidity management purposes

- 14.4.10 R If an *intermediate unitholder* receives a reasonable request from an *authorised fund manager* for information relating to the beneficial owners of the *units* of a *scheme* that it operates which the *authorised fund manager*

reasonably needs for the purposes of liquidity management, the *intermediate unitholder* must provide that information to the *authorised fund manager* as soon as is reasonably practicable.

- 14.4.11 G Examples of information which may be reasonably requested by an *authorised fund manager* include:
- (1) a breakdown of the total number of *units* held by the *intermediate unitholder* in each *scheme* to indicate the number of *units* attributable to individual beneficial owners; and
  - (2) information about the types of distribution channel which have been used to sell the *units* to the relevant beneficial owners.
- 14.4.12 G In determining whether a request from an *authorised fund manager* is reasonable, an *intermediate unitholder* may take into account the frequency with which such requests have been received from that *authorised fund manager*.

Amend the following as shown

## 18.5 Operators of collective investment scheme

...

Application or modification of general COBS rules for operators

### 18.5.2 R

...

Table: Application of conduct of business rules

Application of conduct of business rules

Chapter, section or rule	Description	Modifications
...		
5.2	E-Commerce	
<u>6.1G.2</u>	<u>Re-registration requests: firms acting as registrars</u>	
11.2	Best execution	In the case of an

		<i>unregulated collective investment scheme, COBS 18.5.4R (Modification of best execution) applies instead of COBS 11.2 in the circumstances set out in COBS 18.5.4R.</i>
...		

...

## Annex C

### Amendments to the Collective Investment Schemes sourcebook (COLL)

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

#### Payments out of scheme property: guidance

- 6.7.5G
- (1) Details of permissible types of payments out of *scheme property* are to be set out in full in the *prospectus* in accordance with *COLL* 4.2.5R(13) and *COLL* 4.2.5R(14) (Table: contents of the prospectus).
  - (2) An *authorised fund manager* should consider whether a payment to an *affected person* is unfair because of its amount or because it confers a disproportionate benefit on the *affected person*.
  - (3) *COLL* 6.4.7R(2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate *classes* of *unit* that relates solely to the payments that may be taken out of *scheme property*.
  - (4) Payments to third parties as referred to in *COLL* 6.7.4R(4) include ~~payment~~ payments to ~~providers of fund supermarket services~~ platform service providers and other similar platform services.



**HANDBOOK ADMINISTRATION (NO 23) INSTRUMENT 2011****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 on 1 October 2011.

**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
Financial Stability and Market Confidence sourcebook (FINMAR)	Annex B
Insurance: Conduct of Business sourcebook (ICOBS)	Annex C
Supervision manual (SUP)	Annex D
Collective Investment Schemes sourcebook (COLL)	Annex E
Prospectus Rules sourcebook (PR)	Annex F

**Citation**

- E. This instrument may be cited as the Handbook Administration (No 23) Instrument 2011.

By order of the Board  
22 September 2011

## Annex A

### Amendments to the Glossary of definitions

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

*Lloyd's complaint procedures*      the procedures maintained by the *Society* under *DISP* ~~1.7.1R~~  
1.11.1R.

## Annex B

### Amendments to the Financial Stability and Market Confidence sourcebook (FINMAR)

In this Annex, striking through indicates deleted text.

#### 2.2 Disclosure of disclosable short positions

Disclosure during a rights issue period

- 2.2.1 R A *person* who has a *disclosable short position* must provide *disclosure* of his position where:
- (1) ...
  - (2) the *disclosable short position*:
    - (a) is reached or exceeded, ~~or the position falls below a *disclosable short position*,~~ during a *rights issue period*; or
    - (b) has been reached or exceeded immediately before the beginning of the *rights issue period* and has not fallen below a *disclosable short position* at the time the *rights issue period* commences.

## Annex C

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

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

- 2.4.1 G (1) The Senior Management Arrangements, Systems and Controls sourcebook contains high-level record-keeping requirements (see SYSC 3.2.20R and SYSC 9.1.1R). ~~These require firms to take reasonable care to make and retain adequate records of matters and dealings which are the subject of requirements and standards under the regulatory system, which includes this sourcebook.~~

...

## Annex D

## Amendments to the Supervision manual (SUP)

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

16.1.2 G The only categories of *firm* to which no section of this chapter applies are:

...

(2) an *incoming EEA firm* or *incoming Treaty firm*, unless it is:

(a) a *firm* of a type listed in SUP 16.1.3R as a type of *firm* to which SUP 16.6, ~~SUP 16.7~~, SUP 16.9, SUP 16.12 or SUP 16.14 applies; or

...

...

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13 and SUP 16.15)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
...		
SUP 16.7	<del>Bank, other than an EEA bank with permission for cross border services only</del>	SUP 16.7.7R to SUP 16.7.15R
	<del>Building society</del>	SUP 16.7.16R to SUP 16.7.19R
	<del>Service company</del>	SUP 16.7.20R to SUP 16.7.21R
	<del>UK ISPV</del>	SUP 16.7.21AR and SUP 16.7.21BR
	<del>Securities and futures firm (other than an oil market participant to which IPRU(INV) 3 does not apply)</del>	SUP 16.7.22R to SUP 16.7.34G
	<del>Investment management firm</del>	SUP 16.7.35R to SUP 16.7.41R
	<del>Authorised professional firm (note)</del>	SUP 16.7.54R and SUP 16.7.54AR
	<del>Society of Lloyd's</del>	SUP 16.7.55R to SUP 16.7.56R and SUP 16.7.59R(1) and SUP

		16.7.59R(2)
<i>Members' adviser</i>		<i>SUP 16.7.57R to SUP 16.7.58R, SUP 16.7.59R(3), SUP 16.7.60G and SUP 16.7.61G</i>
<i>Credit Union</i>		<i>SUP 16.7.62R to SUP 16.7.63R</i>
<i>UCITS management company</i>		<i>SUP 16.7.67R to SUP 16.7.72R</i>
<i>Member of a financial conglomerate</i>		<i>SUP 16.7.82R to SUP 16.7.83R</i>
<i>Insurer Friendly society</i>		<i>SUP 16.7.73R to SUP 16.7.75R</i>
<i>A firm not subject to other reporting requirements in SUP 16.7.1G—SUP 16.7.75R (nor to reporting requirements in IPRU(INV) or IPRU(FSOC)):</i>		<i>SUP 16.7.76R to SUP 16.7.81G</i>
(1)	with <i>permission to carry on one or more of:</i>	
	(a) <i>insurer mediation activity; or</i>	
	(b) <i>home finance mediation activity; or</i>	
	(c) <i>home finance providing activity; or</i>	
	(d) <i>administering a home finance transaction; or</i>	
(2)	which is a <i>personal investment firm</i>	
...		
<p>Note 1 = <del>Where an <i>authorised professional firm</i> is required by IPRU(INV) 2.1.2R(1) to comply with chapter 3, 5, 10 or 13 of IPRU(INV), section SUP 16.7 applies to such a <i>firm</i> as if it were the relevant <i>firm</i> category in the right hand column of IPRU(INV) 2.1R. [deleted]</del></p>		
<p>Note 2 = ...</p>		

**Annex E****Amendments to the Collective Investment Schemes sourcebook (COLL)**

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

- 7.7.15      G      (1)      An *authorised fund manager* may add other information to that which is required by *COLL ~~7.7.12R~~ 7.7.10R* to *COLL 7.7.14R* if it considers that it is relevant in the context of the proposed *UCITS merger*. ...

...

## Annex F

### Amendments to the Prospectus Rules sourcebook (PR)

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

*[Editor's Note: The change to PR 1.2.1R was made administratively on 31 July 2011 to correspond with an amendment made to s.86 of the Act on that day. This instrument confirms that change.]*

#### 1.2 Requirement for a prospectus and exemptions

Requirement for a prospectus

- 1.2.1 UK Sections 85 and 86 of the *Act* provide for when a *prospectus* approved by the *FSA* will be required:

85	...		
86	Exempt offers to the public		
	(1)	A person does not contravene section 85(1) if -	
		...	
		(b)	the offer is made to or directed at fewer than <del>100</del> <u>150</u> persons, other than qualified investors, per EEA State;
		...	
	...		



**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS  
(AMENDMENT NO 3) INSTRUMENT 2011**

**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 2011.

**Amendments to the Handbook**

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

**Notes**

- E. In the Annex to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Amendment No 3) Instrument 2011.

By order of the Board  
22 September 2011

## Annex

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

In this Annex, underlining indicates new text.

#### 6.1 Compliance

...

- 6.1.7     R     (1)     This rule applies to a common platform firm conducting investment services and activities from a branch in another EEA State.
- (2)     References to the regulatory system in SYSC 6.1.1R, SYSC 6.1.2R and SYSC 6.1.3R apply in respect of a firm's branch as if "regulatory system" includes a Host State's requirements under MiFID and the MiFID implementing Directive which are applicable to the investment services and activities conducted from the firm's branch.

[Note: article 13(2) of MiFID]

**TRAINING AND COMPETENCE SOURCEBOOK (ACCREDITED BODIES AND QUALIFICATIONS AMENDMENTS NO 2) INSTRUMENT 2011**

**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); 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) except as in (2) below, 1 October 2011;
  - (2) in respect of each body listed in Part 2 of Annex A:
    - (i) on 1 October 2011 if the agreement for the purposes of accreditation in the form prescribed by the FSA and duly executed by that body has been received by the FSA on or before 1 October 2011; or
    - (ii) if such agreement is not received until after 1 October 2011, on the date that agreement is received, provided that the agreement has been received by 31 October 2011

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Training and Competence sourcebook (TC) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Training and Competence Sourcebook (Accredited Bodies and Qualifications Amendments No 2) Instrument 2011.

By order of the Board  
22 September 2011

## Annex A

### Amendments to the Glossary of definitions

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

*[Editor's Note: The effect of the amendments shown in this Annex will be to revoke the changes made in Part 2 of Annex A to the Retail Distribution (Training and Competence) Instrument 2011 [FSA 2011/5).]*

**Part 1:** Comes into force on 1 October 2011

*accredited body* any of the following bodies recognised by the FSA ~~to act as an accredited body~~ for the purpose of providing the independent verification required under TC 2.1.27R:

- (a) CFA Society of the UK;
- (b) The Chartered Insurance Institute;
- (c) The Institute of Financial Planning.

**Part 2:** Comes into force on 1 October if the agreement for the purposes of accreditation in the form prescribed by the FSA and duly executed by that body is received by the FSA by 1 October 2011; or, if such agreement is not received until after 1 October 2011, on the date the agreement is received, provided that the agreement has been received by 31 October 2011.

*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:

...

- (c) The Institute of Financial Planning;
- (d) The Chartered Institute for Securities and Investment;
- (e) The Chartered Institute of Bankers in Scotland;
- (f) The ifs School of Finance.

## Annex B

### Amendments to the Training and Competence sourcebook (TC)

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

#### Qualification requirements before starting activities

...

2.1.7 R A *firm* must ensure that an *employee* does not carry on any of the following activities without first attaining each module of an appropriate qualification:

(1) [deleted]

(1A) advising on and dealing in *securities* which are not *stakeholder pension schemes*, *personal pension schemes* or *broker funds*;

...

...

#### Appendix 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

Activity	Products/Sector	Is there an appropriate qualification requirement?
<i>Designated investment business</i> carried on for a <i>retail client</i>		
...		
Advising	2. <i>Securities</i> which are not <i>stakeholder pension schemes</i> , <u><i>personal pension schemes</i></u> or <i>broker funds</i>	Yes
...		
Advising and dealing	12. <i>Securities</i> which are not <i>stakeholder pension schemes</i> , <u><i>personal pension schemes</i></u> or <i>broker funds</i>	Yes
...		
Dealing	13A <i>Securities</i> which are not <i>stakeholder pension schemes</i> , <u><i>personal pension schemes</i></u> or <i>broker funds</i>	No
...		

## 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> , <i>personal pension schemes</i> or <i>broker funds</i> ) – Activity number 2 in TC Appendix 1.1.1R		
Qualification	Qualification provider	Key
...		
Associate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)	b
Certificate in Investment Planning	Chartered Institute of Bankers in Scotland	c
Investment paper (post-August 1994 syllabus)	Chartered Institute of Bankers in Scotland	c
...		
Advanced Financial Planning Certificate ( <del>must include a pass in G70 paper</del> )	Chartered Insurance Institute	b
Associate or Fellow (life and pensions route only)	Chartered Insurance Institute	b
Financial Planning Certificate	Chartered Insurance Institute	c
G70 paper of the Advanced Financial Planning Certificate	Chartered Insurance Institute	c
Certificate for Financial Advisers (Pre 31/10/2004)	Ifs School of Finance (formerly the Chartered Institute of Bankers)	c
Initial test of competence	Institute of Chartered Accountants in England and Wales	c
Initial test of competence	Institute of Chartered Accountants in Ireland	c
Initial test of competence	Institute of Chartered Accountants in Scotland	c
...		
Elementary, Intermediate and International Capital Markets course	Korea Securities Trading Institute	d
Module B(ii), Securities and Portfolio Management	Law Society of England and Wales	d
...		

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

...		
Fellow by examination	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)	b
Certificate in Investment Planning	<u>Chartered Institute of Bankers in Scotland</u>	<u>c</u>
Investment paper (post August 1994 syllabus)	<u>Chartered Institute of Bankers in Scotland</u>	<u>c</u>
...		
Advanced Financial Planning Certificate ( <del>must include a pass in G70 paper</del> )	Chartered Insurance Institute	b
Associate or Fellow (life and pensions route only)	Chartered Insurance Institute	b
Fellow or Associate	Faculty or Institute of Actuaries	a
Financial Planning Certificate	<u>Chartered Insurance Institute</u>	<u>c</u>
G70 paper of the Advanced Financial Planning Certificate	<u>Chartered Insurance Institute</u>	<u>c</u>
Certificate for Financial Advisers (pre 31/10/2004)	<u>Ifs School of Finance (formerly Chartered Institute of Bankers)</u>	<u>c</u>
Initial test of competence	<u>Institute of Chartered Accountants in England and Wales</u>	<u>c</u>
Initial test of competence	<u>Institute of Chartered Accountants in Ireland</u>	<u>c</u>
Initial test of competence	<u>Institute of Chartered Accountants in Scotland</u>	<u>c</u>
...		
Investment Practice paper of the Investment Management Certificate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)	d
Investment Paper (pre-August 1994 syllabus)	<u>Chartered Institute of Bankers in Scotland</u>	<u>d</u>
...		
International Fixed Income and Derivatives (IFID) Certificate Programme	ICMA Centre/ University of Reading (Formerly ISMA Centre/ University of Reading)	d
<u>Investment Management Paper from the Associateship</u>	<u>Ifs School of Finance (formerly the Chartered Institute of Bankers)</u>	<u>d</u>
Investment Planning Paper – Paper 2	<u>Institute of Bankers in Ireland</u>	<u>d</u>
...		
Representative of Public Securities Qualification – Type 1	Japanese Securities Dealers Association	d
Module B(ii), Securities and Portfolio Management	<u>Law Society of England and Wales</u>	<u>d</u>
...		

**Qualification table relating to : Advising on *Packaged Products* (which are not *broker funds*) and *Friendly Society* tax-exempt policies - Activity Numbers 4 and 6 in**



TC Appendix 1.1.1 R		
Qualification	Qualification Provider	Key
...		
Certificate in Investment Planning (Post 17/09/2004)	Chartered Institute of Bankers in Scotland	c
Investment Paper (post-August 1994 Syllabus)	Chartered Institute of Bankers in Scotland	c
...		
Certificate for Financial Advisers (Post 1/11/2004)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	e c
Certificate for Financial Advisers (Pre 31/10/2004)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	e c
Professional Certificate in Banking (PCertB) (where candidate has passed the Practice of Financial Advice module)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	a
Initial test of competence	Institute of Chartered Accountants in England and Wales	c
Initial test of competence	Institute of Chartered Accountants in Ireland	c
Initial test of competence	Institute of Chartered Accountants in Scotland	c
Certified Financial Planner	Institute of Financial Planning	b
Fellowship	Institute of Financial Planning	b
Module B(i) Retail Branded/Packaged Products	Law Society of England and Wales	d
...		
Post Graduate in Financial Services (1995 to 2001)	University of the West of England	b
Investment Management Paper from the Associateship	ifs School of Finance (formerly the Chartered Institute of Bankers)	d
Investment Planning Paper 2	Institute of Bankers in Ireland	d
Investment paper (pre-August 1994 syllabus)	Chartered Institute of Bankers in Scotland	d
Certificate in Investment Planning Paper 1 (Pre 31/10/2004)	Chartered Institute of Bankers in Scotland	e
Certificate in Investment Planning – Paper 1 (Post 17/09/2004)	Chartered Institute of Bankers in Scotland	e
...		

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

...		
Associate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)	b
<u>Investment Management Certificate (Level 3)</u>	<u>CFA Society of UK</u>	<u>c</u>
Associateship – must include a pass in the investment paper	Chartered Institute for Bankers in Scotland	<u>b</u>
...		
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	b
<u>G70 paper of the Advanced Financial Planning Certificate</u>	<u>Chartered Insurance Institute</u>	<u>b</u>
Associateship (must include a pass in the Investment Paper)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	b
London Stock Exchange Full Membership Exams – 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)	a <u>b</u>
BA (Hons) Financial Services, Planning and Management	Manchester Metropolitan University	e <u>a</u>
...		
Trainee Dealers Representative Examination	Kuala Lumpur Stock Exchange	d
<u>Module B(ii), Securities and Portfolio Management</u>	<u>Law Society of England and Wales</u>	<u>d</u>
...		

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
...		
Fellow by examination	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)	b
<u>Investment Management Certificate</u>	<u>CFA Society of UK</u>	<u>c</u>
...		
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	b
<u>G70 Paper of Advanced Financial Planning Certificate</u>	<u>Chartered Insurance Institute</u>	<u>c</u>
...		
Representative of Public Securities Qualifications – Type 1	Japanese Securities Dealers Association	d

<u>Module B(ii), Securities and Portfolio Management</u>	<u>Law Society of England and Wales</u>	<u>d</u>
...		

...

<b>Qualification table for : <i>Advising on syndicate participation at Lloyd's</i> - Activity number 9 in TC Appendix 1.1.1R</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
Lloyd's Market Certificate	Lloyd's/ Chartered Insurance Institute	1
<u>Award in London Market Insurance</u>	<u>Chartered Insurance Institute</u>	<u>1</u>
...		

...

<b>Qualification table for : <i>Overseeing on a day to day basis safeguarding and administering investments or holding client money</i> – Activity number 16 in TC Appendix 1.1.1R</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...	...	...
Investment Administration Qualification – ISA and PEP Administration Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
<u>Investment Administration Qualification – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
<u>Investment Operations Certificate – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		

<b>Qualification table for : <i>Overseeing on a day to day basis administrative functions in relation to managing investments</i></b>
<ul style="list-style-type: none"> <li>- (i) arranging settlement;</li> <li>- (ii) monitoring and processing corporate actions;</li> </ul>

- (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**

<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...	...	...
Investment Operations Certificate – Private Client Administration Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
<u>Investment Administration Qualification – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
<u>Investment Operations Certificate – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities &amp; Investment (Formerly the Securities &amp; Investment Institute)</u>	<u>6</u>
...		

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND  
INVESTMENT FIRMS (GROUP RISK CONSOLIDATION)  
INSTRUMENT 2011**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 31 December 2011.

**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 Prudential Sourcebook for Banks, Building Societies and Investment Firms (Group Risk Consolidation) Instrument 2011.

By order of the Board  
22 September 2011

## 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.

**8 Group risk consolidation**

...

**8.7 Consolidated capital resources requirements**

...

Use of the solo requirements of a regulator outside the EEA

8.7.35 R (1) ~~This rule applies where:~~

- (a) ~~an institution in a firm's UK consolidation group or non-EEA sub-group is subject to any of the sectoral rules applicable to its financial sector for a state or territory outside the EEA that correspond to the FSA's rules that would otherwise apply under this section;~~
- (b) ~~those sectoral rules are shown in BIPRU 8 Annex 6R (Non-EEA regulators' requirements deemed CRD-equivalent for individual risks) as having been assessed as being equivalent to the FSA's rules in relation to the consolidated requirement component in question; and~~
- (c) ~~that institution is incorporated in and has its head office in that state or territory. [deleted]~~

(2) ~~If the conditions in this rule are satisfied, a firm may apply the sectoral rules referred to in (1) in order to calculate the risk capital requirement for the institution referred to in (1) provided that:~~

- (a) ~~the firm has no reason to believe that the use of the sectoral rules referred to in (1) would produce a lower figure for the consolidated requirement component than would be produced by calculating the risk capital requirement under the FSA's rules in accordance with this section; or~~
- (b) ~~the firm increases the amount produced under the sectoral rules referred to in (1) and the firm has no reason to believe that the use of such figures would produce a lower figure for the consolidated requirement component than would be produced by calculating the risk capital requirement under the FSA's rules in accordance with this section. [deleted]~~

- 8.7.36 G ~~If a firm wants to include in its consolidated capital resources requirement a solo capital resource requirement for an individual risk calculated under the rules of a non-EEA regulator not assessed as equivalent in BIPRU 8 Annex 6R (Non-EEA regulators' requirements deemed CRD equivalent for individual risks) it will need to apply for a waiver. A firm applying for such a waiver should demonstrate that the local requirements result in a capital charge that is at least as much as required under the corresponding FSA rules. [deleted]~~

...

Use of the consolidated requirements of a regulator outside the EEA

- 8.7.38 R ~~(1) This rule applies if:~~
- ~~(a) a firm is applying an accounting consolidation approach to part of its UK consolidation group or non-EEA sub-group under method three as described in BIPRU 8.7.13R(4)(a);~~
  - ~~(b) the part of the group in (a) constitutes the whole of a group subject to the consolidated capital requirements of a third country competent authority under the sectoral rules for the banking sector or the investment services sector; and~~
  - ~~(c) those sectoral rules are shown in BIPRU 8 Annex 6R (Non-EEA regulators' requirements deemed CRD equivalent for individual risks) as having been assessed as being equivalent to the FSA's rules in relation to the consolidated requirement component in question.~~
- ~~(2) If the conditions in this rule are satisfied, a firm may apply the consolidated capital requirement in (1)(b) as the risk capital requirement for the group identified in (1)(a) so far as that consolidated capital requirement corresponds to the FSA's rules that would otherwise apply under this section. However a firm may only do this if it also complies with BIPRU 8.7.35R(2). [deleted]~~

Prohibition on using the standardised rules of a regulator outside the EEA

- 8.7.38A R (1) This rule applies to a firm if:
- (a) an institution in its UK consolidation group or non-EEA sub-group is subject to any of the rules or requirements of, or administered by, a third-country competent authority applicable to its financial sector that correspond to the sectoral rules applicable to that financial sector ("corresponding sectoral rules"); or
  - (b) a part of its UK consolidation group or non-EEA sub-group constitutes the whole of a group subject to the consolidated capital requirements of a third-country competent authority

under the corresponding sectoral rules applicable to the banking sector or the investment services sector for a state or territory outside the EEA.

- (2) A firm may not use the requirements under any of the corresponding sectoral rules of a state or territory outside the EEA in order to calculate the consolidated capital resources requirement of its UK consolidation group or non-EEA sub-group for the purpose of this chapter.

...

## 8.8 Advanced prudential calculation approaches

...

Prohibition on using the rules of an overseas regulator

- 8.8.3 R Even if a firm has an *advanced prudential calculation approach permission* that allows it to use an *advanced prudential calculation approach* for the purposes of this chapter, the firm may not use the requirements of another state or territory to the extent they provide for that *advanced prudential calculation approach*. Therefore a firm may not use *BIPRU 8.7.34R* ~~to~~ and ~~*BIPRU 8.7.38R*~~ *8.7.37R* (Use of the capital requirements of ~~an overseas regulator~~ another EEA competent authority) if that would involve using an *advanced prudential calculation approach*.



## Annex B

### 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

...

#### FSA003 - Capital adequacy

...

#### 77A    Total credit risk capital component

See *BIPRU* 3.1.5R, as modified if a firm has an IRB permission.

A further breakdown of this figure is provided quarterly in FSA004 for those firms that are required to report that data item.

For *UK consolidation group* reporting, this is the part of the *consolidated credit risk requirement* corresponding to the *credit risk capital component* (i.e. the capital requirements for credit risk excluding concentration risk and counterparty risk). This will be the sum of data elements ~~78A~~, 79A and 80A.

[*CEBS' CA 2.1*]

#### 78A    Credit risk for UK consolidation group reporting calculated under non-EEA rules

This is only relevant for *UK consolidation groups*. The only amount to be included here is the part (if any) of data element 77A calculated ~~(when this is allowed under *BIPRU* 8) using the rules of a non-EEA regulator.~~

~~If the *UK consolidation group* is comprised wholly of firms authorised and incorporated in the *EEA*, this data element will not be applicable.~~

This field no longer applies and should have a zero entered when being completed on a *UK consolidation group* basis. For any other reporting basis the element should not be submitted.

...

#### 85A    Total operational risk capital requirement

This is only relevant for *UK banks*, *building societies* and *full scope BIPRU investment firms*. It is also relevant for any *BIPRU limited activity firm* or *BIPRU limited licence firm* that has a waiver under *BIPRU* 6.1.2G (to apply an *ORCR* rather than a fixed overheads requirement).

See *BIPRU 6*.

A *full scope BIPRU investment firm* that meets the conditions set out in *BIPRU TP 5.1R* should enter here the full *ORCR* that would have applied but for *BIPRU TP 5.7R*. The reduction as a result of that rule should be reported in data element 90A.

A further breakdown of this figure is provided in FSA007 for firms on the standardised approach, alternative standardised approach or the advanced measurement approach.

For *UK consolidation group* reporting, this is the *consolidated operational risk requirement*. This will be the sum of data elements ~~86A~~, 87A, 88A and 89A, but is subject to the restrictions in *BIPRU 8* on combining certain methods of calculating *operational risk* capital requirements.

[CEBS' CA 2.4]

### **86A Operational risk for UK consolidation group reporting calculated under non-EEA rules**

~~This is only relevant for UK consolidation groups.~~

~~The only amount to be included here is the part (if any) of their consolidated operational risk requirement calculated (when this is allowed under BIPRU 8) using the rules of a non-EEA regulator.~~

~~If the UK consolidation group consists wholly of firms authorised and incorporated in the EEA, this data element will not be applicable.~~

This field no longer applies and should have a zero entered when being completed on a UK consolidation group basis. For any other reporting basis the element should not be submitted.

...

### **93A Total market risk capital requirement**

See *BIPRU 7* and also *GENPRU 2.2.46R*.

A further breakdown of this figure (~~less 94A in the case of UK consolidation group reports~~) is provided in FSA005 for firms that meet the reporting thresholds defined in *SUP 16.12.5R* (note 4), *SUP 16.12.11R* (note 4), *SUP 16.12.15R* (note 4), *SUP 16.16.12.22AR* (note 4) and *SUP 16.12.25AR* (note 4).

For *UK consolidation group* reporting, this is the *consolidated market risk requirement*. This will be the sum of data elements ~~94A~~, 95A and 102A.

[CEBS' CA 2.3]

### **94A Market risk capital requirement for UK consolidation group reporting calculated under non-EEA rules**

~~This is only relevant for UK consolidation groups.~~

~~The only amount to be included here is the part (if any) of their *consolidated market risk requirement* calculated (when this is allowed under *BIPRU 8*) using the rules of a non-*EEA* regulator.~~

~~If the *UK consolidation group* consists wholly of firms authorised and incorporated in the *EEA*, this data element will not be applicable.~~

This field no longer applies and should have a zero entered when being completed on a *UK consolidation group* basis. For any other reporting basis the element should not be submitted.

...

**LIQUIDITY STANDARDS (MISCELLANEOUS AMENDMENTS NO 3)  
INSTRUMENT 2011**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 November 2011.

**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 3) Instrument 2011.

By order of the Board  
22 September 2011

## Annex A

### Amendments to the Glossary of definitions

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

*DLG by default* (in relation to a *UK ILAS BIPRU firm* (a *group liquidity reporting firm*) and any reporting period under *SUP 16* (Reporting requirements)) the *firm* and each *person* identified in accordance with the following:

...

- (b) (in a case in which the *firm* is not the only *UK ILAS BIPRU firm* in its *group*):
  - (i) each of those other *UK ILAS BIPRU ~~firm~~ firms*; and
  - (ii) each *person* identified by applying the tests in (a) separately to the *firm* and to each of those other *UK ILAS BIPRU firms*, so that applying (b) to the *firm* and to each of those *UK ILAS BIPRU firms* results in their having the same *defined liquidity group*;
  - (iii) no *DLG by default* exists where the *group* consists only of *UK ILAS BIPRU firms*.

...

*low frequency liquidity reporting firm* any of the following:

- (a) a *simplified ILAS BIPRU firm*; or
- (b) a *standard ILAS BIPRU firm* whose most recent *annual report and accounts* show balance sheet assets of less than £15 billion (or its equivalent in foreign currency translated into sterling at the balance sheet date); or

...

## 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, unless otherwise stated.

The credit pipeline component

12.6.15 R The credit pipeline component is the sum represented by 25% of a *firm's* credit facilities offered to its ~~retail~~ *customers* but which are yet to be drawn down, including:

- (1) offers to make loans secured on residential property;
- (2) overdraft facilities; and
- (3) credit card facilities.

...

In the following provision, the text and formulae have been deleted and replaced with a new version. The old text is not shown, and the new text is not shown underlined.

12.6.17 G In mathematical terms the calculation in *BIPRU* 12.6.9R and *BIPRU* 12.6.16R may be represented as follows:

Liquidity Buffer ≥ Wholesale net cash outflow component + Retail and SME deposit component + Credit pipeline component	
Liquidity buffer	$FSA048_{18,1} + FSA048_{19,1} + FSA048_{6,1} + FSA048_{6,2} + FSA048_{25,2} + FSA048_{34,2}$ $+ \inf \{f(x) : x = 1,2,3..y\}$ <p>where :</p> $f(x) = \sum_{m=1}^x FSA047_{6,m} + \sum_{m=1}^x FSA047_{25,m} + \sum_{m=1}^x FSA047_{34,m}$
Retail and SME deposit component	$\left( 0.2 \times \sum_{n=53}^{54} \sum_{m=1}^{10} FSA048_{n,m} \right) + \left( 0.1 \times \sum_{m=1}^{10} FSA048_{55,m} \right)$
Credit pipeline component	$0.25 \times \left( \sum_{n=59}^{69} FSA048_{n,1} \right)$

Wholesale net cash outflow component	$\min \left( \begin{aligned} &0, \left( \sum_{n=20}^{22} FSA048_{n,1} \right) + \left( \sum_{n=26}^{30} FSA048_{n,2} \right) + \left( \sum_{n=35}^{39} FSA048_{n,2} \right) + \left( \sum_{n=44}^{51} FSA048_{n,1} \right) + \\ &+ \left( \sum_{m=1}^5 FSA048_{52,m} \right) + FSA048_{56,1} + \inf \{g(x) : x = 1,2,3 \dots y\} \end{aligned} \right)$ <p style="margin: 0;"><i>where:</i></p> $g(x) = \sum_{m=1}^y \left[ \left( \sum_{n=20}^{23} FSA047_{n,m} \right) + \left( \sum_{n=26}^{30} FSA047_{n,m} \right) + \left( \sum_{n=35}^{51} FSA047_{n,m} \right) + FSA047_{57,m} \right]$
---	---

Where :

y = number of business days in three months

$FSA_{xxx}_{m,n}$  = The entry in FSAXXX row m column n

$\inf \{f(x) : x = 1,2,3\}$  represents the greatest lower bound of the function f(x) over the range x = 1,2,3

Amend the following as shown.

### TP 30                    Liquidity floor for certain banks

#### Application

30.1            R    *BIPRU* TP 30 applies to a *firm* which as at 1 December 2009 is a *standard ILAS BIPRU firm* and which as at 30 November 2009 calculated its liquidity resources in accordance with Chapter LM of *IPRU(BANK)*.

#### Duration of transitional provisions

30.2            R    *BIPRU* TP 30 applies:

- (1)            in the case of an *incoming EEA firm* or a *third country BIPRU firm*, from 1 November 2010 until the earlier of the date on which the *firm* receives *individual liquidity guidance* from the FSA and ~~30 November 2011~~ 31 December 2012; and
  
- (2)            in the case of any other *firm*, from 1 October 2010 until the earlier of the date on which the *firm* receives *individual liquidity guidance* from the FSA and ~~30 November 2011~~ 31 December 2012.

#### Transitional provisions

- 30.3 R A *standard ILAS BIPRU firm* falling into *BIPRU TP 30.1* must ensure that at all times between 1 October 2010 or 1 November 2010 (as relevant) and the expiry of *BIPRU TP 30* it maintains liquidity resources which are no less in amount than the higher of:
- (1) the amount ~~its~~ it assesses as adequate in its *ILAA*; and
  - (2) the amount that it would have maintained during that period had it calculated its liquidity resources solely in accordance with Chapter LM of *IPRU(BANK)* in the form in which it appeared on 30 September 2010 or 31 October 2010 (as relevant).



## Annex C

## Amendments to the Supervision manual (SUP)

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

## 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>
...							
Pricing data	FSA052 (Notes 17, <del>21</del> and 22 and 24)	FSA052 (Notes 17, <del>21</del> and 22 and 24)	FSA052 (Notes 17, 19, <del>21</del> and 22 and 24)	FSA052 (Notes 17, 19, <del>21</del> and 22 and 24)	FSA052 (Notes 17, 19, <del>21</del> and 22 and 24)		
...							
...							
Note 24	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>						

...

## Regulated Activity Group 3

...

16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of data item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
Pricing data	FSA052 (Notes 27, 30, 31, and 33 and 34)							
...								
...								
Note 34	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>							

...

Regulated Activity Group 4

...

16.12.15 R The applicable data items referred to in SUP 16.12.4R according to type of firm are set out in the table below:

Description of data item	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
Pricing data	FSA052 (Notes 24, 27, 28, and 30 and 31)							
...								
...								
Note 31	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>							

...

Regulated Activity Group 7

...

16.12.22A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>Data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>					
	<i>BIPRU 730k firm</i>	<i>BIPRU 125k firm and UCITS investment firm</i>	<i>BIPRU 50k firm</i>	<i>Exempt CAD firms subject to IPRU(INV) Chapter 13</i>	<i>Firms (other than exempt CAD firms) subject to IPRU(INV) Chapter 13</i>	<i>Firms that are also in one or more of RAGs 1 to 6 and not subject to IPRU(INV) Chapter 13</i>
...						
Pricing data	FSA052 (Notes 17, 20, <del>21</del> and 24 and 25)					
...						
...						
Note 25	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>					

...

Regulated Activity Group 8

...

16.12.25A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>
...								
Pricing data	FSA052 (Notes 22, <del>25</del> , 26, and 28 and 29)							

...								
...								
<u>Note 29</u>	<p><u>This <i>data item</i> must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u></p>							

**FINANCIAL PROMOTIONS GUIDANCE (AMENDMENT) INSTRUMENT 2011**

**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 22 March 2012.

**Amendments to the Handbook**

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

**Citation**

- E. This instrument may be cited as the Financial Promotions Guidance (Amendment) Instrument 2011.

By order of the Board  
22 September 2011

**Annex A****Amendments to the Conduct of Business sourcebook (COBS)**

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

- 4.2.5 G ~~[deleted]~~ A communication or a *financial promotion* should not describe a feature of a product or service as “guaranteed”, “protected” or “secure”, or use a similar term unless:
- (1) that term is capable of being a fair, clear and not misleading description of it; and
  - (2) the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

**Annex B****Amendments to the Banking: Conduct of Business sourcebook (BCOBS)**

In this Annex, underlining indicates new text.

- 2.2.5      G      A communication or a *financial promotion* should not describe a feature of a product or service as “guaranteed”, “protected” or “secure”, or use a similar term unless:
- (1)      that term is capable of being a fair, clear and not misleading description of it; and
  - (2)      the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 3)  
INSTRUMENT 2011**

**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 149 (Evidential provisions);
    - (d) section 156 (General supplementary powers); and
    - (e) section 157(1) (Guidance); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 31 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 Retail Distribution Review (Adviser Charging No 3) Instrument 2011.

By order of the Board  
22 September 2011



## Annex

## 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

...

Requirement to be paid through adviser charges

6.1A.4 R Except as specified in COBS 6.1A.4AR and COBS 6.1A.4BR, ~~A~~ a firm must:

- (1) only be remunerated for the *personal recommendation* (and any other related services provided by the *firm*) by *adviser charges*; and
- (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in relation to the *personal recommendation* or any other related service, regardless of whether it intends to refund the payments or pass the benefits on to the *retail client*; and
- (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *adviser charges* in relation to the *retail client's retail investment product* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *adviser charges* are recovered from the *retail client*.

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*.

Re-registration of commission when a retail client moves to a new adviser

- 6.1A.4B R If a *retail client* chooses to become a *client* of a *firm* and that *firm* or its *associate* enters into an arrangement in COBS 6.1A.4AR(2), the *firm* must:
- (1) before the arrangement is entered into, disclose to the *retail client* that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;
  - (2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the *retail client* with an ongoing service; and
  - (3) as soon as reasonably practicable after it makes the disclosure in (1):
    - (a) disclose to the *retail client*, as a cash amount or percentage of funds under management, the amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
    - (b) provide the *retail client* with a description of the ongoing service it will provide to the *retail client* in accordance with (2).

...

Ongoing payment of adviser charges

- 6.1A.22 R A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:
- (1) the *adviser charge* is in respect of an ongoing service for the provision of *personal recommendations* or related services and:
    - (a) the *firm* has disclosed that service along with the *adviser charge*; ~~or~~ and
    - (b) the *retail client* is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the *retail client* to give any reason; or
  - (2) the *adviser charge* relates to a *retail investment product* for which an instruction from the *retail client* for regular payments is in place and

the *firm* has disclosed that no ongoing *personal recommendations* or services will be provided.

6.1A.22A G To comply with the *rule* on providing a *retail client* with the right to cancel an ongoing service for the provision of *personal recommendations* or related services without penalty (COBS 6.1.A.22R(1)(b)) a *firm* should:

- (1) ensure that any notice period of the *retail client's* right of cancellation is reasonable;
- (2) not make any charge in respect of cancellation of the ongoing service except for an amount which is in proportion to the extent of the service already provided by the *firm* up to the date of cancellation of the ongoing service; and
- (3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* to which the ongoing service relates.

6.1A.22B R If a *retail client* exercises his right to cancel an ongoing service, the *firm* must clearly disclose to the *retail client* whether charges for other services provided by the *firm*, such as *custody* services, will continue to be payable by the *retail client*.

...

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

...

6.1B.5 R Except as specified in COBS 6.1B.5AR, A *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, or to any other third party for the benefit of that *firm*, in relation to a *personal recommendation* (or any related services), except those that facilitate the payment of *adviser charges* from a *retail client's* investments in accordance with this section.

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*.

...

## 6.1C Consultancy charging and remuneration

...

Requirement to be paid through consultancy charges

...

- 6.1C.5 R Except as specified in COBS 6.1C.5AR and COBS 6.1C.5BR, A *firm* must:
- (1) only be remunerated for giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* by *consultancy charges* or by a fee payable by the employer;
  - (2) not solicit or accept (and ensure that none of its *associates* solicits or accepts) any other commissions, remuneration or benefit of any kind in relation to that advice, or those services, regardless of whether it intends to refund the payments or pass the benefits on to the *group personal pension scheme* or *group stakeholder pension scheme*; and
  - (3) not solicit or accept (and ensure that none of its *associates* solicits or accepts) *consultancy charges* which are paid out or advanced by another party over a materially different time period, or on a materially different basis, from that in or on which the *consultancy charges* are recovered from the relevant *group personal pension scheme* or *group stakeholder pension scheme*.
- 6.1C.5A 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 6.1C.5R if:

- (a) the employer's part of the relevant scheme was established on or before 30 December 2012; and
- (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; and
- (2) enter into an arrangement under which the right to receive the commission, remuneration or benefit in (1) is transferred to that *firm* or its *associate*.

Re-registration of commission when an employer moves to a new adviser

- 6.1C.5B** **R** If an employer chooses to appoint a *firm* to provide advice or services in connection with a *group personal pension scheme* or a *group stakeholder pension scheme* and that *firm* or its *associate* enters into an arrangement in *COBS 6.1C.5AR(2)*, the *firm* must:
- (1) before the arrangement is entered into, disclose to the employer that the transfer of the commission, remuneration or benefit of any kind will be requested by the *firm* or its *associate*;
  - (2) throughout the period during which the *firm* or its *associate* receives the commission, remuneration or benefit of any kind, provide the employer with an ongoing service; and
  - (3) as soon as reasonably practicable after it makes the disclosure in (1):
    - (a) disclose to the employer the basis and amount of the commission, remuneration or benefit of any kind it expects to receive and any it has received; and
    - (b) provide the employer with a description of the ongoing service it will provide to the employer in accordance with (2).

...

**6.1D** **Product provider requirements relating to consultancy charging and remuneration**

...

Requirement not to offer commission, provide factoring or offer credit to a third party

- 6.1D.4** **R** (1) Except as specified in *COBS 6.1D.6AR*, A *firm* must not offer or pay (and must ensure that none of its *associates* offers or pays) any commissions, remuneration or benefit of any kind to another *firm*, *employee benefit consultant* or third party in relation to the sale or purchase of:

- (a) a group personal pension scheme or group stakeholder pension scheme ...
- (b) an investment ...

...

...

6.1D.6A 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 6.1D.4R if:
  - (a) the employer’s part of the relevant scheme was established on or before 30 December 2012; and
  - (b) the offer or payment was permitted by the rules in force on 30 December 2012; 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.

...

**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
	...				
2.2	...				
2.2B-1	<del>COBS 6.1C (Consultancy charging and remuneration) and COBS 6.1D (Product provider requirements</del>	R	<del>COBS 6.1C (Consultancy charging and remuneration) and COBS 6.1D (Product provider requirements relating to consultancy charging and remuneration) do not prohibit a firm or its associates from offering or</del>	From 31 December 2012	31 December 2012

	relating to consultancy charging and remuneration)		<p>paying a commission, remuneration or benefit to another <i>firm</i>, an <i>employee benefit consultant</i> or another third party for the benefit of that <i>firm</i>, <i>employee benefit consultant</i> or third party in relation to a <i>group personal pension scheme</i> or <i>group stakeholder pension scheme</i> if:</p> <p>(1) the employer's part of the relevant scheme was established on or before; and</p> <p>(2) the relevant offer or payment was permitted by the <i>rules</i> in force on;</p> <p>30 December 2012.</p>		
...					

**RETAIL DISTRIBUTION REVIEW (KEY FEATURES ILLUSTRATIONS)  
INSTRUMENT 2011**

**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. (1) Part 2 of Annex B comes into force on 1 October 2012.
- (2) The remainder of 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 (Key Features Illustrations) Instrument 2011.

By order of the Board  
22 September 2011



## 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.

generic key features illustration

(in COBS) a key features illustration which reflects the terms of a contract which is representative of the type of business normally undertaken by the firm, or the type of business it is promoting, rather than the terms of a particular contract with, or that will be offered to, a particular client.

Amend the following as shown.

*appropriate charges information*

(in COBS) information about charges which is calculated and presented in accordance with the charges rules in COBS 13.4.1R and COBS 13 ~~Annex~~ Annexes 3 or 4.

## 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.

#### Part 1: Comes into force on 31 December 2012

#### 13.1 The obligation to prepare product information

...

##### Information on life policies

13.1.2 R ...

##### Exceptions

13.1.3 R *A firm* is not required to prepare:

...

(3) *a key features illustration*;

(a) ...

(b) ...

(c) if it includes the information from the *key features illustration* in a *key features document*; or

(d) for a packaged product which, at the end of its fixed term, provides for the return of the initial capital invested and a specified level of growth linked by a pre-set formula to the performance of a specified asset or index or a combination of assets or indices; or

...

...

#### 13.4 Contents of a key features illustration

...

##### Exceptions

13.4.2 R ~~*A key features illustration must not include a generic projection unless*~~  
When the rules in this chapter require a key features illustration to be prepared, it must not take the form of a generic key features illustration:

- (1) unless there are reasonable grounds for believing that ~~that projection~~ it will be sufficient to enable a *retail client* to make an informed decision about whether to invest; or
- (2) if it is part of a *direct offer financial promotion* which contains a *personal recommendation*; or
- (3) if a *personal pension scheme* or a *stakeholder pension scheme* is facilitating the payment of an *adviser charge*; or
- (4) if a *group personal pension scheme* or a *group stakeholder pension scheme* is facilitating the payment of a *consultancy charge* and the combined effect of the *consultancy charges* facilitated by the product and the product charges is not consistent for all investors in the relevant group or sub-group; or
- (5) unless it is prepared for groups or sub-groups of employees in a *group personal pension scheme* or a *group stakeholder pension scheme* and it contains:
  - (a) a *generic projection* which is prepared in accordance with COBS 13 Annex 2 paragraph 1.3 and based on a default fund or other commonly selected fund;
  - (b) an effect of charges table calculated in accordance with COBS 13 Annex 4R paragraph 2 and contains additional rows that show a range of typical periods to retirement age; and
  - (c) reduction in yield information which is calculated in accordance with COBS 13 Annex 4R paragraph 3.3(2) and combines the product charge and, if applicable, the *consultancy charge*.

13.4.3 G A ~~generic projection~~ *key features illustration* is unlikely to be sufficient to enable a *retail client* to make an informed decision about whether to invest if the *premium* or investment returns on the product will be materially affected by the personal characteristics of the investor.

...

After COBS 13.5 insert the following new section. The text is not underlined.

## **13.6 Preparing product information: changes to adviser and consultancy charges**

13.6.1 R A *firm* that agrees to start facilitating the payment of an *adviser charge* or *consultancy charge*, or an increase in such a charge, from an in-force *packaged product*, must prepare sufficient information for the *retail client* to be able to understand the likely effect of that facilitation, in good time before that information has to be provided.

Amend the following as shown.

## 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).

...

R		
1.3	(1)	If a <i>generic projection</i> is prepared for a <i>stakeholder pension scheme</i> or <i>personal pension scheme</i> <u>in circumstances where a <i>generic key features illustration</i> is permitted under <i>COBS</i> 13.4.2R</u> , sufficient separate <i>projections</i> , covering a range of different contractual periods and contributions, must be included for a <i>retail client</i> to be able to make an informed decision about whether to invest.
	...	

...

R	
1.8	In the case of a <i>stakeholder pension scheme</i> <u>in circumstances where a <i>generic key features illustration</i> is permitted under <i>COBS</i> 13.4.2R</u> , the specimen benefits table, contained within the “Stakeholder pension decision tree” factsheet available on <a href="http://www.moneyadvice.service.org.uk">www.moneyadvice.service.org.uk</a> and headed “Pension Table...How much should I save towards a pension?” which sets out initial monthly pension amounts, may be used instead of a <i>standardised deterministic projection</i> but only if it is accompanied by an explanation of the caveats and assumptions behind the table.

...

R	
Assumptions: charges	
2.6	The <i>charges</i> allowed for in a <i>standardised deterministic projection</i> :
(1)	must properly reflect:
	(a) all of the charges, expenses and deductions a <i>client</i> will, or may <del>be expected</del> expect to pay be taken after investment into the product;

...

## 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	<del>Appropriate</del> <u>Appropriate charges information</u> comprises:		
	(1)	(a)	a description of the nature and amount of the <i>charges a client</i> will or may be expected to bear <u>in relation to the product and, if applicable, any investments within the product</u> ;
		(b)	<u>if applicable, a description of the nature and amount of the <i>adviser charges a retail client</i> has agreed may be taken, including whether it is taken before or after investment into the product</u> ;
	(2)	an ‘effect of charges’ table; and	
	(3)	‘reduction in yield’ information.	
...			
Exceptions			
1.3	An effect of charges table and reduction in yield information are not required for:		
	...		
	(3)	<p>a <i>stakeholder pension scheme</i>, if the following is included instead:  <del>“There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £500 throughout the year, this means we deduct [£500 x y/100] that year. If your fund is valued at £7500 throughout the year, we will deduct [£7500 x y/100] that year.”</del> [deleted]</p>	
	(4)	<p>a <i>stakeholder product</i> <del>that is not a stakeholder pension scheme</del>, or a product that will be held in a CTF where the relevant product and the CTF levy their <i>charges</i> annually, if the following is included instead:</p>	

		<p>“There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £250 throughout the year, this means we deduct [<math>£250 \times y/100</math>] that year. If your fund is valued at £500 throughout the year, this means we deduct [<math>£500 \times y/100</math>] that year. [After ten years these deductions reduce to [<math>£250 \times r/100</math>] and [<math>£500 \times r/100</math>] respectively.]”</p> <p>where <del>(in the case of (3) and (4))</del> ‘y’ is the annual charge and ‘r’ is the reduced annual charge (if any).</p>
...		

R	
2	Effect of charges table
...	

2.2 The effect of charges table:

- (1) for a *life policy, personal pension scheme or a stakeholder pension scheme* must be in the following form unless the firm chooses to adopt the form of the effect of charges table in COBS 13 Annex 4:

R					
Note 1A	Note 2	Note 3	Note 4	Note 5	Note 6
At end of year	Total paid in to date	Withdrawals	Total actual deductions to date	Effect of deductions to date	What you might get back
	£	£	£	£	£
1					
...					
5					
10					
...					

- (2) for any other *packaged product* must be in the following form:

R				
Note 1B	Note 2	Note 3	Note 5	Note 6

At end of year	Investment to date	Income	Effect of deductions to date	What you might get back
	£	£	£	£
1				
5				
10				
...				

(3) must be completed in accordance with the following notes:

R		
<u>Note 1A</u>	(a)	This column must include the first five years, every subsequent fifth year and the final year of the <i>projection period</i> .
	(b)	Figures may be shown for every subsequent tenth year rather than subsequent fifth year where the <i>projection period</i> exceeds 25 years, or for whole of life policies.
	(c)	For whole of life policies, should the projected fund reach zero before the end of the <i>projection period</i> this must be highlighted.
	(d)	<del>For a <i>drawdown pension</i> include figures for each of the first ten years, or less if the value of the fund is projected at the <i>higher rate of return</i> to reach zero before then. [deleted]</del>
	(e)	If there is discontinuity in the trend of <i>surrender values</i> , the appropriate intervening years must also be included.
	(f)	Figures for a longer term may be shown.
<u>Note 1B</u>	(a)	This column must include the first year, the fifth year and every subsequent fifth year of the <i>projection period</i> .
	(b)	[deleted]
	(c)	Figures for a longer term may be shown.
<u>Note 2</u>		This column must show the cumulative contributions paid to the end of each relevant year.
<u>Note 3</u>		This column must show the cumulative withdrawals taken or income paid to the end of each relevant year (if any). The column may be omitted if withdrawals or income are not anticipated or allowed.
<u>Note</u>		This column is optional. If it is retained, it must show the total actual

4	deductions to the end of each relevant year calculated using the following method:
	(a) apply the <i>intermediate rate of return</i> for the relevant product to the figure in the ‘effect of deductions to date’ column for the previous year;
	(b) subtract this figure from the figure in the ‘effect of deductions to date’ column for the year being shown; and
	(c) add the resulting figure to the figure in the ‘total actual deductions to date’ column for the previous year (if any).
<u>Note</u> 5	This column may be deleted if the product is a without profits <i>life policy</i> with benefits that are guaranteed except on surrender or variation, a <i>life policy</i> with a term not exceeding five years, or a <i>life policy</i> that will be held in a <i>CTF</i> .  If this column is not deleted, the ‘effect of deductions to date’ figure must be calculated by taking the accumulated value of the fund without reference to <i>charges</i> and then subtracting from this figure the figure in the ‘what you might get back column’ for the same year.
<u>Note</u> 6	This column must show <i>standardised deterministic projection</i> of the surrender value, cash-in value or transfer value, calculated in accordance with the <i>rules</i> in COBS 13 Annex 2 (Projections) at the appropriate <i>intermediate rate of return</i> to the end of each relevant year.

...

G	
2.4	The effect of 2.3R is that, for example, the column labels and explanatory text may be adjusted to reflect the nature of the contract. <del>For instance:</del>
	<del>The column titled ‘What you might get back’ might be replaced with ‘What the transfer value might be’ for personal pensions, or ‘Open market value’ for <i>income withdrawals</i> or <i>short term annuities</i>.</del>
	<del>The <i>withdrawals</i> column may be called ‘Total income taken’ for <i>income withdrawals</i> or <i>short term annuities</i>.</del>
	<del>The table may be titled ‘What effect will the deductions have?’ for <i>income withdrawals</i> or <i>short term annuities</i>.</del>

...



After Annex 3 insert the following new annex. The text is not underlined.

**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 a 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 a 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 a 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.	
Exception			
1.2	An effect of charges table and reduction in yield information are not required for a <i>stakeholder pension scheme</i> , where <i>adviser charges</i> or <i>consultancy charges</i> are not being facilitated by the scheme, if the following is included instead:  “There is an annual charge of y% of the value of the funds you accumulate. If your fund is valued at £500 throughout the year, this means we deduct [£500 x y/100] that year. If your fund is valued at £7500 throughout the year, we will deduct [£7500 x y/100] that year.”		

R

2	Effect of charges table					
2.1	Each effect of charges table must be accompanied by:					
	(1)	an explanation of what the table shows;				
	(2)	a statement that all relevant guarantees have been taken into account (if there are any);				
	(3)	a warning that one effect of the <i>charges</i> referred to is that a <i>retail client</i> could get back less than they invest (if that is the case); and				
	(4)	the rate of return used to calculate the figures in the table.				
2.2	Subject to Note 2 below, an effect of charges table must be in the following form:					
	Note 1	Note 2	Note 3	Note 4	Note 5	Note 6
	At end of year	Total paid in to date	Withdrawals	If there were no charges	If only product and investment charges are taken	After all charges are taken
		£	£	£	£	£
	1					
	...					
	5					
	At age [xx]					
Note 1	This column must include at least the first, third and fifth year and the intended date of retirement.					
	For a <i>drawdown pension</i> , figures must be included for each of the first ten years, or less if the value of the fund is projected at the higher rate of return to reach zero before then.					
Note 2	This column is optional. If it is retained it must show the cumulative contributions paid to the end of each relevant year.					
Note 3	This column must show the cumulative withdrawals intended to be taken to the end of each relevant year. The column may be omitted if withdrawals are not anticipated or allowed.					
Note	This column must show a <i>standardised deterministic projection</i> of the					

4	benefits, calculated in accordance with the <i>rules</i> in COBS 13 Annex 2 (Projections) at the appropriate <i>intermediate rate of return</i> to the end of each relevant year, but without taking any <i>charges</i> into account.
Note 5	This column must show a <i>standardised deterministic projection</i> of the benefits, calculated in accordance with the <i>rules</i> in COBS 13 Annex 2 (Projections) at the appropriate <i>intermediate rate of return</i> to the end of each relevant year, but taking into account only the <i>charges</i> described in COBS 13 Annex 4R paragraph 1.1(1)(a).
Note 6	<p>This column must show a <i>standardised deterministic projection</i> of the benefits, calculated in accordance with the <i>rules</i> in COBS 13 Annex 2 (Projections) at the appropriate <i>intermediate rate of return</i> to the end of each relevant year taking into account all charges described in COBS 13 Annex 4R paragraph 1.1(1)(a) and (c).</p> <p>Where both <i>adviser charges</i> and <i>consultancy charges</i> are being facilitated from a product this column should show the combined effect of those charges.</p> <p>This column may be omitted if there are no <i>adviser charges</i> or <i>consultancy charges</i>.</p>

R	
Exception	
2.3	An effect of charges table may be amended, but only if and to the extent that it is necessary to properly reflect the nature and effect of, for example, the <i>adviser charges</i> , <i>consultancy charges</i> or the <i>charges</i> inherent in a particular product.

G	
2.4	The effect of COBS 13 Annex 4 paragraph 2.3R is that, for example, the column labels and explanatory text may be adjusted to reflect the nature of the contract or the terminology used.
2.5	An effect of charges table must be appropriately titled, for example, 'How the charges reduce the value of your pension fund'.

R	
3	Reduction in yield
3.1	Product reduction in yield ('A') is 'B' less 'C' where:

	(1)	'B' is the <i>intermediate rate of return</i> for the relevant product; and	
	(2)	'C' is determined by:	
		(a)	carrying out a <i>standardised deterministic projection</i> to the <i>projection date</i> , but without taking any <i>adviser charges</i> or <i>consultancy charges</i> into account, using 'B'; and then
		(b)	calculating the annual rate of return ('C') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if <i>charges</i> are excluded.
3.2	Total reduction in yield ('D') is 'B' less 'E' where:		
	(1)	'B' is the <i>intermediate rate of return</i> for the relevant product; and	
	(2)	'E' is determined by:	
		(a)	carrying out a <i>standardised deterministic projection</i> to the <i>projection date</i> taking all <i>charges</i> into account, using 'B'; and then
		(b)	calculating the annual rate of return ('E') (rounded to the nearest tenth of 1 %) required to achieve the same projection value if <i>charges</i> are excluded.
3.3	(1)	A <i>firm</i> must present the product reduction in yield as 'A%', as part of a statement which explains that 'product charges reduce your anticipated rate of returns from 'B%' to 'C%''', or in some other appropriate way.	
	(2)	If <i>adviser charges</i> or <i>consultancy charges</i> , or both <i>adviser charges</i> and <i>consultancy charges</i> are to be facilitated by the product, a <i>firm</i> must also present the reduction in yield as 'D%', as part of a statement which explains that 'all charges reduce your anticipated rate of returns from 'B%' to 'E%''', or in some other appropriate way and explain the difference between the two reduction in yield figures.	
3.4	If contributions will be invested in more than one fund in a single designated investment or made by an initial lump sum payment that is followed by regular contributions, the reduction in yield must be:		
	(1)	calculated separately for each fund or for the single contribution and the regular contributions, as applicable; and	
	(2)	presented:	
		(a)	on a fund-by-fund, or single contribution and regular contribution, basis, together with a statement which explains the nature and effect of a reduction in yield, the

			reason for the inclusion of more than one reduction in yield figure and the reason for the differences between them; or
		(b)	(if the reduction in yield results are so similar that one figure could reasonably be regarded as representative of the others) as a single figure together with a statement which explains the nature and effect of a reduction in yield, and that the reduction in yield figure given is representative of the reduction in yield figures for each of the funds or for the single and regular contributions, as applicable; or
		(c)	through a single figure combining the separate figures for each fund or contribution in a proportionate manner, with an appropriate description.

Amend the following as shown.

## 14.2 Providing product information to clients

...

14.2.1B R When the rules in this chapter require the offer or provision of a key features illustration, a firm may provide a generic key features illustration if that generic key features illustration has been prepared in accordance with COBS 13.4.2R.

14.2.1C R A firm that arranges to start the facilitation of, or an increase in, an adviser charge or consultancy charge from an in-force packaged product, must provide to the retail client sufficient information for the retail client to be able to understand the likely effect of that facilitation.

14.2.2 R The documents or information required to be provided or offered by ~~the first provision rule (COBS 14.2.1R and COBS 14.2.1CR)~~ must be in a durable medium or made available on a website (where that does not constitute a durable medium) that meets the website conditions.

**Part 2: Comes into force on 1 October 2012**

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
...					
<u>2.5A</u>	<u>COBS 13.4.2R</u>	<u>R</u>	<u>A firm may rely on COBS 13.4.2R(5) (as introduced by the Retail Distribution Review (Key Features Illustrations) Instrument 2011) as if it was in force from 1 October 2012.</u>	<u>1 October 2012 until 31 December 2012</u>	<u>31 December 2012</u>
...					

**CLIENT ASSETS SOURCEBOOK (COLLATERAL TRANSFER AND LIENS  
AMENDMENT) INSTRUMENT 2011**

**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 October 2011.

**Amendments to the Handbook**

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

**Notes**

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

**Citation**

- F. This instrument may be cited as the Client Assets Sourcebook (Collateral Transfer and Liens Amendment) Instrument 2011.

By order of the Board  
22 September 2011

## Annex

## Amendments to the Client Assets sourcebook (CASS)

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

## 6 Custody rules

### 6.1 Application

...

#### Title transfer collateral arrangements

- 6.1.6 R (1) The *custody rules* do not apply where a *client* transfers full ownership of a *safe custody asset* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations.
- [Note: recital 27 to MiFID]
- (2) Excepted from (1) is a transfer of the full ownership of a *safe custody asset*:
- (a) belonging to a *retail client*;
  - (b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* ~~(other than or a rolling spot forex contract)~~ that is a future, and in either case where that contract is entered into with a firm acting as market maker; and
  - (c) which is made to that *firm* or to any other *person arranging* on its behalf.
- 6.1.6A R (1) Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's safe custody assets*.
- (2) The application of (1) is confined to the taking of a transfer of full ownership:
- (a) whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* ~~(other than or a rolling spot forex contract)~~ that is a future, and in either case where that contract is entered into with a firm acting as market maker; and



- (b) which is made to that *firm* or to any other *person* arranging on its behalf.

...

### 6.3 Depositing assets and arranging for assets to be deposited with third parties

...

- 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*;~~

...

...

- 6.3.5 R ...

[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 ...

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

...

### 7.2 Definition of client money

...

Title transfer collateral arrangements

- 7.2.3 R (1) Where a *client* transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such *money* should no longer be regarded as *client money*.

[Note: recital 27 to *MiFID*]

- (2) Excepted from (1) is a transfer of the full ownership of *money*:

- (a) belonging to a *retail client*;
- (b) whose purpose is to secure or otherwise cover that *client's* present or future, actual, contingent or prospective obligations under a *contract for differences* (~~other than~~ or a *rolling spot forex contract*) that is a future, and in either case where that contract is entered into with a firm acting as market maker; and
- (c) which is made to that *firm* or to any other *person* arranging on its behalf.

- 7.2.3A R (1) Subject to (2), where a *firm* makes arrangements for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations of a *retail client* those arrangements must not provide for the taking of a transfer of full ownership of any of that *client's money*.
- (2) The application of (1) is confined to the taking of a transfer of full ownership:
- (a) whose purpose is to secure or otherwise cover that *retail client's* obligations under a *contract for differences* (~~other than~~ or a *rolling spot forex contract*) that is a future, and in either case where that contract is entered into with a firm acting as market maker; and
  - (b) which is made to that *firm* or to any other *person* arranging on its behalf.

...

#### 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 <del>in relation to agreements executed before 1 March 2011.</del>	<del>1 March 2011 until 1 October 2011</del> 1 October 2011 until 31 March 2012	<del>1 March 2011</del> 1 October 2011
8A	CASS 6.3.6R	R	The <i>rule</i> listed in column (2) does not apply.	1 October 2011 until 31	1 October 2011

				<u>March 2012</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 <u>application to a rolling spot forex contract.</u>	<del>1 December 2010 to 31 December 2010</del> <u>1 October 2011 until 31 October 2011</u>	<del>1 December 2010</del> <u>1 October 2011</u>
		G	Notwithstanding the operation of CASS TP 1.1(9)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.		
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 <u>application to a rolling spot forex contract.</u>	<del>1 December 2010 to 31 December 2010</del> <u>1 October 2011 until 31 October 2011</u>	<del>1 December 2010</del> <u>1 October 2011</u>
		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.		

**SUPERVISION MANUAL (AMENDMENT NO 18) INSTRUMENT 2011**

**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 2011.

**Amendments to the Handbook**

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

**Citation**

- E. This instrument may be cited as the Supervision Manual (Amendment No 18) Instrument 2011.

By order of the Board  
22 September 2011

## Annex

## Amendments to the Supervision manual (SUP)

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

How to submit reports

...

- 16.3.8 R A written report must be:
- (1) ~~given to or addressed for the attention of the firm's usual supervisory contact at the FSA; and~~
  - (2) delivered to the FSA by one of the methods listed in SUP 16.3.9R.
- 16.3.9 R Method of submission of reports (see SUP 16.3.8R)

Method of delivery	
1.	<i>Post</i> to the published address of the FSA for postal submission of reports
2.	Leaving the report <u>marked for the attention of "Central Reporting"</u> at the published address of the FSA for hand delivery of reports and obtaining a dated receipt
3.	<del>Electronic mail to an address for the firm's usual supervisory contact at the FSA and obtaining an electronic confirmation of receipt</del> <u>Electronic mail or fax to the published e-mail address or fax number of the FSA's Central Reporting team</u>
4.	<del>Hand delivery to the firm's usual supervisory contact at the FSA and obtaining a dated receipt</del>
5.	<del>Fax to the number notified by the firm's usual supervisory contact at the FSA, and receiving a successful transmission report for all pages of the report.</del>
<del>6.</del> <u>4</u>	Online submission via the <u>appropriate systems accessible from the FSA's website at <a href="http://www.fsa.gov.uk">www.fsa.gov.uk</a>.</u>
7.	<del>Electronic submission via the Early Reporting System available from or through the FSA's website.</del>

- 16.3.10 G (1) The current published address of the *FSA* for postal submission of reports is:

Central Reporting

The Financial Services Authority  
PO BOX 35747  
London E14 5WP

- (2) The current published address of the *FSA* for hand delivery of reports is:

(a)

Central Reporting

The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

if the *firm's* usual supervisory contact at the *FSA* is based in London, or:

(b)

The Financial Services Authority  
Quayside House  
127 Fountainbridge  
Edinburgh EH3 8DJ

if the *firm's* usual supervisory contact at the *FSA* is based in Edinburgh.

- (3) The current published email address and fax number for the *FSA's* Central Reporting team is DMT.Inbox@fsa.gov.uk (except in the case of close links reporting where the email address is closelinks@fsa.gov.uk) and 020 7066 3905. The Central Reporting team does not handle general correspondence between *firms* and the *FSA*. Accordingly, *firms* should not make submissions to the Central Reporting team's email address or fax number other than as directed in SUP 16.3.8R.

**RETAIL DISTRIBUTION REVIEW (RETAIL MEDIATION ACTIVITIES RETURN  
AND COMPLAINTS DATA) INSTRUMENT 2011**

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

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

**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 Retail Distribution Review (Retail Mediation Activities Return and Complaints Data) Instrument 2011.

By order of the Board  
22 September 2011

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

In this Annex, underlining indicates new text.

*complaint*

...

- (2) (in SUP 10 and DISP, except *DISP* 1.1 and the *complaints handling rules* and the *complaints record rule* in relation to *MiFID business*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, which:

...

...



## Annex B

### Amendments to the Supervision manual (SUP)

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

#### Ongoing alerts for retail adviser complaints

10.13.20A R (1) A firm must notify the FSA, in the form set out in SUP 10 Annex 9R, where:

(a) in any twelve month period, it has upheld three complaints about matters relating to the retail investment activities carried out by any one retail investment adviser; or

(b) it has upheld a complaint about matters relating to the retail investment activities carried out by a retail investment adviser, where the redress paid exceeds £50,000.

(2) (a) Notifications made under (1)(a) must be made by the end of the period of 20 business days, beginning on the day in which the firm has upheld the third complaint.

(b) Notifications made under (1)(b) must be made by the end of the period of 20 business days, beginning on the day in which the firm has upheld the complaint.

10.13.20B G For the purpose of SUP 10.13.20AR:

(1) when calculating the number of complaints in SUP 10.13.20AR(1)(a) the firm should exclude complaints previously notified to the FSA under this rule;

(2) redress, under SUP 10.13.20AR(1)(b), should be interpreted to include an amount paid, or cost borne, by the firm, where a cash value can be readily identified, and should include:

(a) amounts paid for distress and inconvenience;

(b) a free transfer out to another provider which transfer would normally be paid for;

(c) goodwill payments and goodwill gestures;

(d) interest on delayed settlements;

(e) waiver of an excess on an insurance policy; and

(f) payments to put the consumer back into the position the

consumer should have been in had the act or omission not occurred; and

- (3) if a *firm* reports on the amount of redress paid under SUP 10.13.20AR(1)(b), the redress should not include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy); the refund of the overcharge would not count as redress.

[**Note:** See *DISP* 1.10.2AR for the duty to notify *complaints* under the *complaints reporting rules*]

10.13.20C R Notifications under SUP 10.13.20AR must be made electronically using a method of notification prescribed by the FSA.

...

After SUP 10 Annex 8G insert the following new annex. The text is not underlined.

**10 Annex 9R Form G: The Retail Investment Adviser Complaints Alerts Form**

The Retail Investment Adviser Complaints Alerts Form G approved by the FSA for notifications under SUP10.13.20AR may be found at the FSA's website [www.fsa.gov.uk/Pages/Doing/Regulated/Notify/index.shtml](http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/index.shtml)

**Form G: Retail Investment Adviser Complaints Alerts Form**  
(all fields are mandatory except where indicated)

This form relates to *SUP* 10.13.20AR

Firm details			
Firm Name		Firm Reference Number (FRN)	
Person making notification			
Name		Individual Reference Number (IRN) (where applicable)	
Position in firm		Contact telephone number	
Contact email address		Date of submission	

Retail Investment Adviser	
Name	Individual Reference Number (IRN)*

\*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](mailto:RIAnotifications@fsa.gov.uk) for assistance.

Trigger		Subject of complaint									
		Advising, selling and arranging		Terms and disputed sums / charges		General admin / customer service		Arrears related		Other	
		Date(s) upheld		Date(s) upheld		Date(s) upheld		Date(s) upheld		Date(s) upheld	
(1)	<i>complaint</i> upheld where the redress paid exceeds £50,000										
(2)	three <i>complaints</i> upheld in any	Number (1, 2 or 3)	Date(s) upheld	Number (1, 2 or 3)	Date(s) upheld	Number (1, 2 or 3)	Date(s) upheld	Number (1, 2 or 3)	Date(s) upheld	Number (1, 2 or 3)	Date(s) upheld

twelve <i>month</i> period (other than claims that have already been notified to the FSA using this form)										
---	--	--	--	--	--	--	--	--	--	--

Amend the following as shown.

16.12.22A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of data item	<i>Firms' prudential category and applicable data item (note 1)</i>					
	<i>BIPRU 730k firm</i>	<i>BIPRU 125k firm and UCITS investment firm</i>	<i>BIPRU 50k firm</i>	<i>Exempt CAD firms subject to IPRU(INV) Chapter 13</i>	<i>Firms (other than exempt CAD firms) subject to IPRU(INV) Chapter 13</i>	<i>Firms that are also in one or more of RAGs 1 to 6 and not subject to IPRU(INV) Chapter 13</i>
...						
Fees and levies	...	...	...	...	...	
<u>Adviser charges</u>	<u>Section K RMAR</u> (Note 26)	<u>Section K RMAR</u> (Note 26)	<u>Section K RMAR</u> (Note 26)	<u>Section K RMAR</u> (Note 26)	<u>Section K RMAR</u> (Note 26)	<u>Section K RMAR</u> (Note 26)
<u>Consultancy charges</u>	<u>Section L RMAR</u> (Note 27)	<u>Section L RMAR</u> (Note 27)	<u>Section L RMAR</u> (Note 27)	<u>Section L RMAR</u> (Note 27)	<u>Section L RMAR</u> (Note 27)	<u>Section L RMAR</u> (Note 27)
IRB portfolio risk ...	...	...	...			
...						
Note 26	<u>This item only applies to firms that provide advice on retail investment products.</u>					
Note 27	<u>This item applies only to firms that provide advice and related services to employers on group personal pension schemes and/or group stakeholder pension schemes.</u>					

...

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 investment firm</i>	Solo consolidated <i>BIPRU investment firm</i>	<i>UK Consolidation Group or defined liquidity</i>	Annual regulated business revenue up to	Annual regulated business revenue over £5

			<i>group</i>	and including £5 million	million
...					
Section J RMAR	...	...	...	...	...
<u>Section K</u> <u>RMAR</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>
<u>Section L</u> <u>RMAR</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>	<u>Half yearly</u>
Note 1	...				
...					

16.12.24 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.23R, unless indicated otherwise.

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
...						
Section J RMAR						...
<u>Section K</u> <u>RMAR</u>					<u>30 business days</u>	
<u>Section L</u> <u>RMAR</u>					<u>30 business days</u>	
Note 1	...					
...						

...

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

...

**SECTION B: Profit and Loss account**

**B1: Regulated Business Revenue**

A                      B                      C                      D                      E

		Commissions		Fees / Adviser charges / Consultancy charges	Other income (reg activities)	Regulated business revenue
		Gross	Net			
<u>1</u>	Regulated mortgage contracts					
<u>2</u>	Non-investment insurance					
<u>3</u>	Retail investment products					
<u>4</u>	TOTAL					

**B2: Other P&L**

<u>5</u>	Income from other FSA regulated activities	
<u>6</u>	Other Revenue (income from non-regulated activities)	
<u>7</u>	TOTAL REVENUE	
<u>8</u>	TOTAL EXPENDITURE	
<u>9</u>	Profit/Loss on ordinary activities before taxation	
<u>10</u>	Profit/Loss on extraordinary activities before taxation	
<u>11</u>	Taxation	
<u>12</u>	Profit/Loss for the period before dividends and appropriations	
<u>13</u>	Dividends and other appropriations	
<u>14</u>	Retained Profit	

...

**SECTION G: Training and Competence**

- 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 appropriate examinations
- 7** Number of advisers that have left since the last reporting date

	A	B	C	D
	Advising on mortgages	Advising on non-investment insurance (retail customer)	Advising on retail investment products	Total

**What types of advice were provided?  
(tick all that apply)**

- 15** Independent
- 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** Restricted / Multi-tie - the products of a limited number of providers
- 12** Restricted / Single-tie - the products of one provider
- 16** Restricted - limited types of products

	Mortgage	Non-Inv Insurance	Retail Investment products

Clawed back commission (retail investment firms only)

- 13** Clawed back commission by:
- 14**

Number	
Value	

...

After "Section J" insert new Section K and L. The text is not underlined.



**SECTION K: Adviser charges**

**A B C D E F G**

**Retail investment product revenue from adviser charges**

		<i>Independent advice</i>			<i>Restricted advice</i>		Total
		<i>Adviser charges invoiced directly to retail clients</i>	<i>Adviser charges invoiced via product providers</i>	<i>Adviser charges invoiced via platform service providers</i>	<i>Adviser charges invoiced directly to retail clients</i>	<i>Adviser charges invoiced via product providers</i>	<i>Adviser charges invoiced via platform service providers</i>
1	Revenue from initial <i>adviser charges</i>						
2	Revenue from ongoing <i>adviser charges</i>						
3	TOTAL						

**Payments of initial adviser charges**

		<i>Independent advice</i>			<i>Restricted advice</i>		Total
		<i>Adviser charges invoiced directly to retail clients</i>	<i>Adviser charges invoiced via product providers</i>	<i>Adviser charges invoiced via platform service providers</i>	<i>Adviser charges invoiced directly to retail clients</i>	<i>Adviser charges invoiced via product providers</i>	<i>Adviser charges invoiced via platform service providers</i>
4	Number of lump-sum payments						
5	Regular instalments as proportion of the total due						
6	TOTAL						

**Number of one-off advice services**

		<i>Independent advice</i>	<i>Restricted advice</i>	Total
7	Number of one-off advice services			

**Retail clients paying for ongoing advice services**

Number

- 8 *Retail clients* paying for ongoing advice services at the end of the reporting period
- 9 *Retail clients* who started paying for ongoing advice services during the reporting period
- 10 *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 (£)					
12 Initial <i>adviser charge</i> as percentage of investment (%)					
13 Initial adviser charge as a fixed fee (£)					
14 Initial adviser charge as a combined charging structure (£)					
15 Ongoing <i>adviser charges</i> per hour (£)					
16 Ongoing <i>adviser charge</i> as percentage of investment (%)					
17 Ongoing adviser charge as a fixed fee (£)					
18 Ongoing adviser charge as a combined charging structure (£)					

**SECTION L: Consultancy charges**

**Retail investment revenue from *group personal pension schemes* or *group stakeholder pension schemes* fees and consultancy charges**

A B C D E

- 1 Revenue from initial services
- 2 Revenue from ongoing services
- 3 Revenue from one-off services
- 4 TOTAL

<i>Fees</i> invoiced directly to employer clients	<i>Consultancy charges</i> invoiced via <i>product providers</i>	<i>Consultancy charges</i> invoiced via <i>platform service providers</i>	Total

**Number of employers that received one-off services**

- 5 Number of employers that received one-off service in reporting period

**Employer clients receiving ongoing *group personal pension schemes* or *group stakeholder pension schemes* services**

- 6 Number of employer clients receiving ongoing *group personal pension scheme* services at the end of the reporting period
- 7 Number of employer clients who started receiving ongoing *group personal pension scheme* services during the reporting period
- 8 Number of employer clients who stopped receiving ongoing *group personal pension scheme* services during the reporting period


**Range of consultancy charges**

- 9 First year's projected *consultancy charges* ( as % of first year's total employer and employee contributions ) applying to *group personal pension schemes* or *group stakeholder pension schemes* set up in reporting period

Highest	Lowest	Typical

**Types of consultancy charges in typical scheme (tick all that apply)**

- 10 Active members
- 11 Deferred members

% of employer contributions	% of member contributions	% of fund (annual management charge)	Flat amount per member	Other

Amend the following as shown.

**16 Annex 18BG      Notes for Completion of the Retail Mediation Activities Return  
(‘RMAR’)**

...

**Contents**

...

Section K:            Adviser charges

Section L:            Consultancy charges

...

**Scope**

...

6. The following *firms* are required to complete the *RMAR*:

...

(c) *firms* (defined as *retail investment firms*) that have *retail customers*, and have *permission* to carry on the following activities in relation to *retail ~~investments~~ investment products*:

- *Advising on investments*;
- *Arranging (bringing about) deals in investments*;
- *Making arrangements with a view to transactions in investments*; and

(d) *personal investment firms*.

*Retail ~~investments~~ investment products* are defined as:

- (a) a *life policy*; or
- (b) a *unit*; or
- (c) a *stakeholder pension scheme*; or
- (d) a *personal pension scheme*; or
- (e) an interest in an *investment trust savings scheme*; or
- (f) a *security in an investment trust*; or
- (g) any other *designated investment* which offers exposure to underlying financial assets, in a packaged form which modifies that exposure when compared with a direct holding in the financial asset; or
- (e)(h) a *structured capital-at-risk product*;

whether or not any of (a) to (h) are held within an *ISA* or a *CTF*.

...

Note also that all *long-term care insurance contracts* are defined as *life policies*, and as such

are included as *retail ~~investments~~ investment products*.

...

**EEA Firms**

...

10. In broad terms, *incoming EEA firms* carrying on *regulated activities* through a branch in the *United Kingdom* are not required to complete the sections of the RMAR in the following table.

Prudential reporting requirements	Section A (balance sheet)
	Section B (profit & loss)
	Section C ( <i>client money</i> )
	Section D (capital requirements)
	Section E (professional indemnity insurance)
Threshold conditions	Section F (save in relation to questions about <i>approved persons</i> )
Training & competence	Section G
<u>Adviser charges</u>	<u>Section K</u>
<u>Consultancy charges</u>	<u>Section L</u>

11. *Firms* that only carry on *reinsurance mediation* are not required to complete ~~section~~ sections C, K or L.

...

**Authorised professional firms**

...

14. Where APFs are required to submit financial information (i.e. sections A to E), they should do so in relation to all of their *regulated activities*. ~~Section~~ Sections F, K and L should also be completed in relation to all *regulated activities*. Other sections (G to I) need not include information in relation to *non-mainstream regulated activities*. However, APFs may complete all sections on the basis of all of their *regulated activities* if this approach is more cost effective.

**Accounting principles**

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

...

**Section B: guide for completion of individual fields**

...	
-----	--

<u>Fees / Adviser charges / Consultancy charges</u>	You should record here <u>adviser charges</u> and <u>consultancy charges</u> , and net income received from <u>customers</u> or other sources on a fixed fee rather than commission basis, but only in respect of the relevant <u>regulated activities</u> .
Other income from regulated activities	You should record here any income that has derived from the relevant <u>regulated activities</u> during the reporting period, which has not been recorded under commissions or fees, <u>adviser charges</u> or <u>consultancy charges</u> .  Such income may include interest on <u>client money</u> , where the <u>firm</u> is permitted to retain this, or payments made by <u>product providers</u> on a basis other than fees or commissions.
...	...

...

### Section G: Training & Competence

...

### 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 ( <u>for example</u> , they restrict their product range by <u>product provider</u> and type of product), or in relation to more than one business type (i.e. <del>home finance transaction</del> <u>home finance transaction</u> advising, advising on <u>non-investment insurance contracts</u> , or <u>retail investment products</u> ), tick all that apply.
<u>Independent</u>	<u>For a retail investment firm to provide independent advice its personal recommendations must be based on a comprehensive and fair analysis of the relevant market, and be unbiased and unrestricted (COBS 6.2A.3R).</u>
Independent (whole of market plus option of fee-only)	To <del>provide independent advice</del> <u>hold itself out as acting independently</u> , a <u>firm carrying on home finance mediation activity</u> must consider products from across the whole of the market, and offer its clients the opportunity to pay by fee ( <del>MCOB 4.3.7R, COBS 6.2.15R</del> ).
Whole of market (without fee-only option)	A <u>firm carrying on home finance mediation activity</u> provides whole of market recommendations when it has considered a large number of products that are generally available from the market as a whole.

On the basis of a fair analysis of the market	<p><del>A firm gives recommendations on a fair analysis of the market when it has considered a large number of providers in the relevant sector(s) of the market (ICOB 4.2.11R).</del></p> <p><u>If an insurance intermediary informs a customer that it gives advice on the basis of a fair analysis of the market, it must give that advice on the basis of an analysis of a sufficiently large number of contracts of insurance available on the market to enable it to make a recommendation, in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer's needs. (See ICOBS 5.3.3R, see also ICOBS 4.1.6R and ICOBS 4.1.8G).</u></p>
<u>Restricted / Multi-tie / - the products of a limited number of providers</u>	<p><del>A firm provides advice on multi-tie advice when it recommends products selected from a limited number of provider firms only.</del></p> <p><u>Restricted advice applies to advice on retail investment products. Multi-tie applies to insurance mediation activity and home finance mediation activity.</u></p>
<u>Restricted / Single-tie / - the products of one provider</u>	<p><del>A firm provides single-tie advice on when it recommends products selected from one provider firm only.</del></p> <p><u>Restricted advice applies to advice on retail investment products. Single-tie applies to insurance mediation activity and home finance mediation activity.</u></p>
<u>Restricted – limited types of products</u>	<p><u>A firm provides advice on limited types of products.</u></p>

...

After “Section J: data required for calculation of fees” insert the following new annexes (Section K: Adviser Charges and Section L: Consultancy Charges). The text is not underlined.

### **Section K: Adviser charges**

In this section we are seeking data from *firms* in relation to *adviser charges* (COBS 6.1A and COBS 6.1B). We will use the data we collect to monitor and analyse the way *retail investment firms* implement the rules on *adviser charges*.

Data in this section should be reported on a cumulative basis throughout the *firm's* financial year, with the exception of the minimum and maximum *adviser charges*, which are the costs of advice services that a *firm* discloses to a *retail client* in writing, in good time before making the *personal recommendation* (or providing any related service) (COBS 6.1A.17R).

The *firm's* charging structure can be based on published tariffs or price lists and only needs to be updated as and when the tariffs or prices lists are updated.

All the data in this section should only be in relation to the provision of a *personal recommendation* by the *firm* in respect of a *retail investment product* (or any related service provided by the *firm*).

If a *firm* makes a management charge which covers *adviser charges* and charges for services that do not relate to a *personal recommendation* on *retail investment products*, then *firms* should report the full amount of the management charge received. *Firms* should not differentiate between the amounts relevant to the different services. For example, if a *firm* makes a management charge for a non-discretionary management service that predominantly relates to *advice* on stocks and shares, but provides *personal recommendations* on *retail investment products* as part of this service, then it should report the whole of this charge in section K.

In most cases, *firms* are asked to split the data based on whether the advice was *independent* or *restricted*. *Independent advice* is a *personal recommendation* to a *retail client* in relation to a *retail investment product* which is based on a comprehensive and fair analysis of the relevant market, and is unbiased and unrestricted (COBS 6.2A.3R). *Restricted advice* is advice which is not *independent advice*. *Restricted advice* includes *basic advice*, but the rules on *adviser charges* do not apply to a *firm* when it gives *basic advice*, so revenue from *basic advice* should not be captured here.

For revenue from *adviser charges* and payments of initial *adviser charges*, *firms* are also asked to split the data based on the payment mechanism, i.e. whether the *adviser charges* have been received directly from *retail clients*, via *product providers*, or via *platform service providers*. COBS 6.1B.9R allows for *firms* to facilitate the payment of *adviser charges* from a *retail investment product* or otherwise by means of a *platform service*.

*Firms* that have *appointed representatives* should include their *appointed representatives* as well as the *firm* itself in the information submitted in this section.

Data elements are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

### Section K: guide for completion of individual fields

Adviser charge revenue	
Initial <i>adviser charges</i> (row 1)	<p>These are all <i>adviser charges</i> invoiced to <i>retail clients</i> during the reporting period for services that are not ongoing.</p> <p>These charges may be paid as a one-off lump sum, or as regular contributions over a period of time if the <i>adviser charge</i> relates to a <i>retail investment product</i> for which an instruction from the <i>retail client</i> for regular payments is in place and the <i>firm</i> has disclosed that no ongoing <i>personal recommendations</i> or service will be provided (COBS</p>



	6.1A.22R (2)).
Ongoing <i>adviser charges</i> (row 2)	These are all <i>adviser charges</i> , which are not initial charges, invoiced to <i>retail clients</i> during the reporting period for an ongoing service (COBS 6.1A.22R (1)).
<i>Adviser charges</i> invoiced directly to <i>retail clients</i> (column A, data elements 1A to 6A)	These are all <i>adviser charges</i> invoiced directly to <i>retail clients</i> .
<i>Adviser charges</i> invoiced via <i>product providers</i> (column A, data elements 1B to 6B)	These are all <i>adviser charges</i> invoiced via <i>retail investment product providers</i> who facilitate, directly or through a third party, the payment of <i>adviser charges</i> from a <i>retail client's retail investment product</i> .
<i>Adviser charges</i> invoiced via <i>platform service providers</i> (column C, data elements 1C to 6C)	These are all <i>adviser charges</i> invoiced via <i>platform service providers</i> who facilitate, directly or through a third party, the payment of <i>adviser charges</i> by means of a <i>platform service</i> .
<b>Payments of initial adviser charges</b>	
(See above three rows for an explanation of the different payment mechanisms.)	
Number of lump-sum payments (row 4)	<p>This is the number of initial <i>adviser charge</i> payments invoiced as a lump sum during the reporting period, i.e. the <i>client</i> pays the entire initial <i>adviser charge</i> in one payment.</p> <p>If an initial charge is not paid in full, we expect it to be recorded under row 5 of Section K as 'Regular instalments as proportion of the total due.</p>
Regular instalments as the proportion of the total due (row 5)	<p>An initial <i>adviser charge</i> may be structured to be payable over a period of time when it relates to a <i>retail investment product</i> for which an instruction from the <i>retail client</i> for regular payments is in place and the <i>firm</i> has disclosed that no ongoing <i>personal recommendations</i> or service will be provided (COBS 6.1A.22R(2)). Each instalment should be captured by the <i>firm</i> as a fraction, to two decimal places, representing the amount paid off as a proportion of the amount owed. The sum of these fractions should be reported in the appropriate data field in row 5 to two decimal places.</p> <p>This could be calculated either using (1) the length of the repayment period, if these instalments are of equal value, or (2) the amount paid. These two methods are outlined below (both methods should arrive at the same answer).</p> <p>(1) For each <i>retail client</i> calculate the number of <i>months</i> in the reporting period in which equal instalments are made</p>

	<p>divided by the total number of <i>months</i> in which payments are due to be made. Sum up fractions based on payment mechanism and type of advice and report in the appropriate field.</p> <p>(2) For each instalment calculate the amount paid divided by the total amount due. Sum up fractions based on payment mechanism and type of advice and report in the appropriate field.</p>
Number of one-off advice services (row 7)	This should be the number of one-off advice services provided during the reporting period, to which there is a corresponding initial <i>adviser charge</i> .
<b>Retail clients paying for ongoing advice services</b>	
<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 clients</i> who start 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 clients</i> who stop 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.
<b>Charging structure</b>	
What types of adviser charging structures are offered?	Only those fields relevant to the <i>firm's</i> charging structure should be completed.
Combined charging structure (£)	When a <i>firm</i> operates charging structures which are a combination of per hour, percentage of investment and/or fixed fee, <i>firms</i> should record the actual minimum and maximum charges charged in the reporting period and not the published tariff or price list for that combined charging structure. For example, where the <i>firm's</i> charging structure is a combination of a fixed fee element and a percentage basis the <i>firm</i> will need to work out what the actual maximum and minimum <i>adviser charges</i> charged in the reporting period were in order to report values in UK Sterling (£).
Minimum and maximum <i>adviser charges</i>	Where a <i>firm</i> has no range in their charging structure, the minimum and maximum <i>adviser charges</i> should be recorded as the same.
Typical charging structure	If a <i>firm</i> has more than one charging structure, it should

<p>(tick all that apply)</p>	<p>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 the charging structures that are relevant.</p>
------------------------------	--

## Section L: Consultancy charges

In this section we are seeking data from *firms* in relation to *consultancy charges* (COBS 6.1C). We will use the data we collect to monitor and analyse the way *retail investment firms* implement the rules on *consultancy charges*.

*Consultancy charges* are payable on behalf of an employee to a *firm* or other intermediary in respect of advice given or services provided in connection with *group personal pensions schemes* (including a group *SIPP*) and *group stakeholder pension schemes*.

*Consultancy charge* data should be reported on a cumulative basis throughout the *firm's* financial year, with the exception of the highest, lowest and typical *consultancy charges*. All the data in this section should only be in respect of *retail investment products*.

*Firms* are asked to split the data on revenue from *consultancy charges* by payment mechanism, i.e. whether the *consultancy charges* have been received directly as a *fee* from the employer, via *product providers*, or via *platform service providers*. COBS 6.1D.9R allows for *firms* to facilitate the payment of *consultancy charges* from a *retail investment product* or otherwise by means of a third party such as a *platform service provider*.

*Firms* that have *appointed representatives* should include their *appointed representatives* as well as the *firm* itself in the information submitted in this section.

Data elements are referred to by row first, then by column, so data element 2B will be the element numbered 2 in column B.

## Section L: guide for completion of individual fields

<b>Retail investment revenue from either or both group personal pension scheme and group stakeholder pension scheme fee and consultancy charges</b>	
Initial services (row 1)	This is the revenue invoiced during the reporting period for services provided at the scheme outset. For example, the initial services for setting up the scheme such as advice on the selection of scheme provider and launching the scheme to employees.
Ongoing services (row 2)	This is the revenue invoiced during the reporting period for an ongoing service. For example, assisting the employer with the annual scheme renewal or promoting the scheme to new joiners.
One-off services (row 3)	This is the revenue invoiced for services provided during the term of the scheme, which have not been included in row 1 or row 2. For example, one-off advice or services an employer may seek about an existing scheme such as whether it meets the government's requirements for auto-

	enrolment.
<i>Fees</i> invoiced directly to employer clients (column A, data elements 1A to 4A)	These are all of the <i>fees</i> invoiced directly to employer clients.
<i>Consultancy charges</i> invoiced via <i>product providers</i> (column B, data elements 1B to 4B)	These are all <i>consultancy charges</i> invoiced via <i>retail investment product providers</i> who facilitate, directly or through a third party, the payment of <i>consultancy charges</i> .
<i>Consultancy charges</i> invoiced via <i>platform service providers</i> (column C, data elements 1C to 4C)	These are all <i>consultancy charges</i> invoiced via <i>platform service providers</i> who facilitate, directly or through a third party, the payment of <i>consultancy charges</i> by means of a <i>platform service</i> .
<b>Number of employers that received one-off services</b>	
Number of employers that received one-off services in the reporting period (row 5)	This should be the number of employers who received services of a one-off nature not included previously in any initial or ongoing charges within the reporting period and where no ongoing service is envisaged.
<b>Employer clients paying for either or both ongoing group personal pension scheme and stakeholder pension scheme services</b>	
Employer clients receiving ongoing services (row 6)	This should be the number of employer clients receiving ongoing services (i.e. paying ongoing <i>consultancy charges</i> ) at the end of the reporting period.
Employer clients who start receiving ongoing services (row 7)	This should be the number of employer clients who began receiving an ongoing service (i.e. paying ongoing <i>consultancy charges</i> ) during the reporting period.
Employer clients who stop receiving ongoing services (row 8)	This should be the number of employer clients who stopped receiving an ongoing service (i.e. paying ongoing <i>consultancy charges</i> ) during the reporting period.
<b>Range of consultancy charges</b>	
Highest, lowest and typical <i>consultancy charges</i> (row 9)	<i>Firms</i> need to report the highest, lowest and typical <i>consultancy charges</i> calculated as the first year's projected <i>consultancy charges</i> (as % of first year's total employer and employee contributions) applying to <i>group personal pension schemes</i> and <i>group stakeholder pension schemes</i> set up in the reporting period.
<b>Types of consultancy charges in typical scheme</b>	
Charging structures offered to active and deferred members of <i>group personal pension</i>	Only those fields relevant to the <i>firm's</i> typical charging structure should be completed.

<i>schemes and group stakeholder pension schemes</i>	Tick all that apply.
--	----------------------

Amend the following as shown.

### Transitional provisions

#### TP 1.2

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional Provision	Transitional Provision: dates in force	Handbook provision; coming into force
...					
8M	<u>SUP 10.13.20A R</u>	<u>R</u>	<u>This rule applies to complaints upheld on or after 31 December 2012.</u>	<u>From 31/12/2012</u>	<u>31/12/2012</u>
...					
12M	...				
	<u>(20A) SUP 16.12.22AR</u>	<u>R</u>	<u>(1) Where a firm is required under SUP 16.12.22AR to submit information on adviser charges in Section K of the RMAR or consultancy charges in Section L of the RMAR the firm is not required to report information collected prior to 31 December 2012.</u>  <u>(2) The first reporting period for Section K or Section L of the RMAR begins on the first day of the firm's first full reporting period (as specified in SUP 16.12) after 31 December 2012.</u>	<u>31/12/2012 to 30/06/2013</u>	<u>31/12/2012</u>
...					

...

## Schedule 2 Notification requirements

...

Sch 2.2 G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<u>SUP 10.13.20A R</u>	<u>Retail investment advisers (RIA) – if a firm has upheld a complaint and paid redress of over £50,000, or has upheld 3 complaints in the last 12 months, about matters relating to the retail investment activities carried out by a retail investment adviser</u>	<u>Approved Persons Form G Retail Investment Adviser Complaints Alerts Form (see SUP 10 Annex 9R)</u>	<u>A complaint is upheld with a claim value of over £50,000 or three complaints are upheld in a 12 month period about matters relating to the retail investment activities carried out by a retail investment adviser</u>	<u>By the end of the period of 20 business days beginning on the day on which the matter to be notified occurs</u>
...				

## Annex C

## Amendments to Dispute Resolution: Complaints sourcebook (DISP)

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

- 1.10.2A    R    (1)    Twice a year a *firm* must provide the *FSA* with a complete report concerning *complaints* received from *eligible complainants* about matters relating to the *retail investment activities* carried out by its *retail investment advisers*. The report must be set out in the format in *DISP 1 Annex 1CR*.
- (2)    *DISP 1 Annex 1CR* requires (for the relevant reporting period) information about:
- (a)    the total number of *complaints* received by the *firm* about matters relating to the *retail investment activities* carried out by its *retail investment advisers*;
- (b)    the total number of *complaints* closed by the *firm* about matters relating to the *retail investment activities* carried out by its *retail investment advisers*;
- (c)    the total number of *complaints* upheld by the *firm* about matters relating to the *retail investment activities* carried out by its *retail investment advisers*; and
- (d)    the total amount of redress paid in respect of *complaints* upheld during the reporting period about matters relating to the *retail investment activities* carried out by its *retail investment advisers*.
- (3)    For the purpose of *DISP 1 Annex 1CR retail investment adviser information* must be reported by *FSA Individual Reference Number (IRN)*.
- 1.10.3    G    For the purpose of *DISP 1.10.2R* and *DISP 1.10.2AR*, when completing the return, the *firm* should take into account the following matters.
- ...
- (3)    If a *firm* reports on the amount of redress paid under *DISP 1.10.2R(4)* or *DISP 1.10.2AR*, redress should be interpreted to include an amount paid, or cost borne, by the *firm*, where a cash value can be readily identified, and should include:
- (a)    amounts paid for distress and inconvenience;
- (b)    a free transfer out to another provider which transfer would normally be paid for;



- (c) goodwill payments and goodwill gestures;
  - (d) interest on delayed settlements;
  - (e) waiver of an excess on an insurance policy; and
  - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred.
- (4) If a *firm* reports on the amount of redress paid under *DISP* 1.10.2R(4) or *DISP* 1.10.2AR, the redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *firm* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

[Note: See *SUP* 10.13.20AR for the ongoing duty to notify *complaints* about matters relating to the *retail investment activities* of a *retail investment adviser*].

After *DISP* 1 Annex 1BR insert the following new annex. The text is not underlined.

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

This annex belongs to *DISP* 1.10.2AR

**COMPLAINTS BY RETAIL INVESTMENT ADVISERS REPORTING / NIL RETURN DECLARATION**

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

Yes / No

2 We wish to declare a nil return

Yes / No

**Total complaints, complaints closed, complaints upheld and total redress paid during the reporting period**

	A	B	C	D	E	F
	IRN	Name of RIA	Total number of complaints received	Total number of complaints closed	Total number of complaints Upheld	Total redress paid
1						
2						
3						
4						

## NOTES ON THE COMPLETION OF THIS RETURN

### Nil returns

If no *complaints* have been received during the reporting period or none of the *complaints* received is about matters relating to the retail investment activities carried out by a *retail investment adviser* the *firm* may submit a NIL RETURN by clicking on the relevant box.

...

Amend the following as shown:

### 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
...					
30	<u>DISP 1.10.2AR</u>	<u>R</u>	<u>Where a firm, which has a reporting period ending on or before 30 June 2013</u>	<u>31 December 2012 to 30 June 2013.</u>	<u>31 December 2012</u>

		<p><u>submits its report to the FSA in accordance with the complaints reporting rule at DISP 1.10.2AR the number of complaints must be calculated for the period from the 31 December 2012 to the end of the firm's relevant reporting period.</u></p>		
--	--	--	--	--

...

**INTEGRATED REGULATORY REPORTING (AMENDMENT NO 12)  
INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) 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 2011.

**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 12) Instrument 2011.

By order of the Board  
22 September 2011

## Annex

## Amendments to the Supervision manual (SUP)

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

## 16.12 Integrated Regulatory Reporting

...

## Regulatory 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 <i>data item</i>	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>	[deleted]	<i>Credit union</i>	<i>Dormant account fund operator (note 15)</i>
...								
Market risk	FSA005 (notes 2, 4)	FSA005 (notes 2, 4)						
...								
Forecast data	FSA014 (note 11)	FSA014 (note 11)						
...								
Securitisat- ion: non- trading book	FSA046 ( <del>note</del> <u>Notes 2 and 14</u> )	FSA046 ( <del>note</del> <u>Notes 2 and 14</u> )						
...								
Securitisat- ion: trading book	FSA058 ( <del>Note</del> <u>Notes 2 and 23</u> )	...						

...	
Note 4	This applies to a <i>firm</i> that is required to submit <i>data item</i> FSA003 and, at any time within the 12 months up to its latest <i>accounting reference date</i> (“the relevant period”), was reporting <i>data item</i> <del>FSA004</del> FSA005 (“Firm A”) or not reporting this item (“Firm B”). In the case of Firm A it must report this <i>data item</i> if one or both of its last two submissions in the relevant period show that the threshold was exceeded. In the case of Firm B it must report this item if both the last two submissions in the relevant period show that the threshold has been exceeded. The threshold is exceeded where <i>data element</i> 93A in <i>data item</i> FSA003 is greater than £50 million, or its currency equivalent, at the relevant reporting date for the <i>firm</i> .
...	
Note 11	<del>deleted</del> Members of a <i>UK consolidation group</i> should only submit this <i>data item</i> at the <i>UK consolidation group level</i> .
...	

...

16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of <i>data item</i>	<i>Firms prudential category and applicable data items</i> (note 1)							
	<i>BIPRU firms</i> (note 17)			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	<i>IPRU (INV)</i> Chapter 3	<i>IPRU (INV)</i> Chapter 5	<i>IPRU (INV)</i> Chapter 9	<i>IPRU (INV)</i> Chapter 13	<i>UPRU</i>
...								
Threshold conditions							Section F RMAR <del>(note 21)</del> (Note 15)	
Client money and client assets	...	...	...	...	...	...	Section C RMAR <del>(note 21)</del> (Note 15) or FSA039	...
...								
...								
Note 15	FSA029, FSA030, <del>and FSA032</del> and FSA039 <del>must be completed by</del> <u>only apply to a firm</u> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i> . <del>Section Sections A, or Section B, C, D1, D2 and F RMAR and Sections D1 and D2 RMAR only apply to a firm</del> <u>Section Sections A, or Section B, C, D1, D2 and F RMAR</u> only apply to a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is not an <i>exempt CAD firm</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	Firms' prudential category and applicable data items (note 1)							
	BIPRU firms			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
...								
Note 15	FSA029, FSA030, and FSA032 and FSA039 <del>must be completed by</del> only apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm. <del>Section Sections A, B, C, D1, D2 or and F RMAR and Sections D1 and D2 RMAR only apply to a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm.</del>							
...								

...

16.12.19A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of data item	Firm's prudential category and applicable data item (note 1)				
	IPRU(INV) Chapter 3	IPRU(INV) Chapter 5	IPRU(INV) Chapter 9	IPRU(INV) Chapter 13	UPRU
...					
Threshold conditions				Section F RMAR (Note 7)	
...					
...					
Note 2	<del>This does not apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm. [deleted]</del>				
...					
Note 7	FSA029, and FSA030, FSA032 and FSA039 only apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm, and Sections A, and B, C, D1, D2 and F RMAR only apply to a firm subject to IPRU(INV) Chapter 13				

	which is not an <i>exempt CAD firm</i> .
--	--

- 16.12.20 R The applicable reporting frequencies for submission of *data items* referred to in SUP 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

...	
Annual reconciliation	Annually
...	

...

- 16.12.22 R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>					
	<i>BIPRU 730k firm</i>	<i>BIPRU 125k firm and UCITS investment firm</i>	<i>BIPRU 50k firm</i>	<i>Exempt CAD firms subject to IPRU(INV) Chapter 13</i>	<i>Firms (other than exempt CAD firms) subject to IPRU(INV) Chapter 13</i>	<i>Firms that are also in one or more of RAGs 1 to 6 and not subject to IPRU(INV) Chapter 13</i>
...						
Solvency statement	No standard format (note 11)					
Balance sheet	...	...	...	<u>FSA029</u>	...	
Income statement	...	...	...	<del>Section B RMAR</del> <u>FSA030</u>	...	
...						
...						
Note 11	<del>Only applicable to firms that have an IRB permission to use the IRB approach and BIPRU 4.</del> <u>Only applicable to a firm that is a sole trader or a partnership, when the report must be submitted by each partner.</u>					
...						

...

- 16.12.25A R The applicable *data items* referred to in SUP 16.12.4R are set out according



to type of *firm* in the table below:

Description of <i>data item</i>	<i>Firms' prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>
...								
Client money and client assets	...	...	...	...	...	...	<u>Section C RMAR (Note 13)</u> or FSA039	FSA039 or <del>Section C RMAR</del> (note 17)
...								
...								
Note 13	<u>This does not apply to <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i>. FSA039 must only be completed by a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is an <i>exempt CAD firm</i>. Section C RMAR must only be completed by a <i>firm</i> subject to <i>IPRU(INV)</i> Chapter 13 which is not an <i>exempt CAD firm</i>.</u>							
...								

...

16.12.27 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.26R, unless indicated otherwise .

<i>Data item</i>	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
...						
FSA047	...	...	...	15 <i>business days</i> or one <i>Month</i> (Note 5 3)		
FSA048	...	...	...	15 <i>business</i>		

				<i>days or one Month (Note 5 3)</i>		
...						
...						
Note 3	It is one <i>Month</i> if the report relates to a <i>non-UK DLG</i> by <i>modification</i> .					

...

16.12.31 R Table of data items from an *authorised professional firm*

Report	Return (note 1)	Frequency ( <u>Note 4</u> )	Due date
...			
...			
Note 4	Reporting dates are calculated from a <i>firm's accounting reference date</i> .		

...

**16 Annex 24R Data items for SUP 16.12**

...

**FSA031  
Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)**

...

PII policy	PII Basic information								PII detailed information		
	A Annualised premium	B Insurer (from list)	C Start date	D Renewal date	L Currency of indemnity limits	E Limit of indemnity required Single Aggregate		G Limit of indemnity received Single Aggregate		J Business line (from list)	K Policy excess
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											

**FSA032  
Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)**

...

PII policy	PII Basic information								PII detailed information			
	A Annualised premium	B Insurer (from list)	C Start date	D Renewal date	M Currency of indemnity limits	E Limit of indemnity required Single Aggregate		G Limit of indemnity received Single Aggregate		J Business line	K Policy excess	L Policy exclusions
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												

...

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

...

### FSA004 – Credit risk validations

#### Internal validations

Data elements are referenced by row then column.

Validation number	Data element		
...			
5	<u>22A</u>	$\leq$	<u>21A</u> [deleted]
6	<u>22B</u>	$\leq$	<u>21B</u> [deleted]
...			
11	<u>32A</u>	$\leq$	<u>31A</u> [deleted]
12	<u>32B</u>	$\leq$	<u>31B</u> [deleted]
...			
<u>17</u>	<u>1D</u>	$=$	$\Sigma(2D:9D) + 37D + 38D + \Sigma(11D:17D)$
<u>18</u>	<u>1E</u>	$=$	$\Sigma(2E:9E) + 37E + 38E + \Sigma(11E:17E)$
<u>19</u>	<u>1F</u>	$=$	$\Sigma(2F:9F) + 37F + 38F + \Sigma(11F:17F)$
<u>20</u>	<u>18C</u>	$=$	$\Sigma(19C:21C)$
<u>21</u>	<u>18D</u>	$=$	$\Sigma(19D:21D)$
<u>22</u>	<u>18E</u>	$=$	$\Sigma(19E:21E)$
<u>23</u>	<u>18F</u>	$=$	$\Sigma(19F:21F)$
<u>24</u>	<u>21A</u>	$\geq$	<u>22A</u> + <u>39A</u>
<u>25</u>	<u>21B</u>	$\geq$	<u>22B</u> + <u>39B</u>
<u>26</u>	<u>21C</u>	$\geq$	<u>22C</u> + <u>39C</u>
<u>27</u>	<u>21D</u>	$\geq$	<u>22D</u> + <u>39D</u>
<u>28</u>	<u>21E</u>	$\geq$	<u>22E</u> + <u>39E</u>
<u>29</u>	<u>21F</u>	$\geq$	<u>22F</u> + <u>39F</u>
<u>30</u>	<u>23C</u>	$=$	$\Sigma(24C:27C)$
<u>31</u>	<u>23D</u>	$=$	$\Sigma(24D:27D)$
<u>32</u>	<u>23E</u>	$=$	$\Sigma(24E:27E)$
<u>33</u>	<u>23F</u>	$=$	$\Sigma(24F:27F)$
<u>34</u>	<u>28C</u>	$=$	$\Sigma(29C:31C)$
<u>35</u>	<u>28D</u>	$=$	$\Sigma(29D:31D)$
<u>36</u>	<u>28E</u>	$=$	$\Sigma(29E:31E)$
<u>37</u>	<u>28F</u>	$=$	$\Sigma(29F:31F)$
<u>38</u>	<u>31A</u>	$\geq$	<u>32A</u> + <u>40A</u>
<u>39</u>	<u>31B</u>	$\geq$	<u>32B</u> + <u>40B</u>
<u>40</u>	<u>31C</u>	$\geq$	<u>32C</u> + <u>40C</u>
<u>41</u>	<u>31D</u>	$\geq$	<u>32D</u> + <u>40D</u>
<u>42</u>	<u>31E</u>	$\geq$	<u>32E</u> + <u>40E</u>
<u>43</u>	<u>31F</u>	$\geq$	<u>32F</u> + <u>40F</u>
<u>44</u>	<u>33D</u>	$=$	<u>34D</u> + <u>35D</u> + <u>36D</u>
<u>45</u>	<u>33E</u>	$=$	<u>34E</u> + <u>35E</u> + <u>36E</u>
<u>46</u>	<u>33F</u>	$=$	<u>34F</u> + <u>35F</u> + <u>36F</u>

...

**FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)**

...

<i>Professional Indemnity Insurance</i>		
....		
...		
Renewal date	35D	...
<u>Currency of indemnity limits</u>	<u>35L</u>	<u>Using the appropriate International Organization for Standardization ISO 4217 three digit code (e.g. GBP), enter the currency in which the indemnity limits, in fields 35E to 35H are reported.</u>
Limit of indemnity required – single	35E	...
...		

...

**FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)**

<i>Professional Indemnity Insurance</i>		
...		
...		
Renewal date	38D	...
<u>Currency of indemnity limits</u>	<u>38M</u>	<u>Using the appropriate International Organization for Standardization ISO 4217 three digit code (e.g. GBP), enter the currency in which the indemnity limits, in fields 38E to 38H are reported.</u>
Limit of indemnity required – single	38E	...
...		

**COMPENSATION SOURCEBOOK (OCCUPATIONAL PENSION SCHEME TRUSTEES) INSTRUMENT 2011**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 October 2011.

**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 (Occupational Pension Scheme Trustees) Instrument 2011.

By order of the Board  
22 September 2011

**Annex**

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

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

4.2.2 R Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

This table belongs to COMP 4.2.1R

...			
(9)	<i>Bodies corporate</i> in the same group as the <i>relevant person in default</i> unless that <i>body corporate</i> is:		
	<del>(i)</del> (a)	a trustee <del>that falls within COMP 4.2.2R(1) or (4)</del> <u>of:</u>	
		(i)	<u>a stakeholder pension scheme (which is not an occupational pension scheme) or a personal pension scheme (but in each case if the trustee is a firm it will only be an eligible claimant if its claim arises out of a regulated activity for which it does not have a permission);</u>
		(ii)	<u>(if the claim is with respect to a long-term insurance contract) a small self-administered scheme or an occupational pension scheme; or</u>
		(iii)	<u>(if the claim is not with respect to a long-term insurance contract) 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</u>
	<del>(ii)</del> (b)	...	
...			

...

## TP1.1 Transitional Provisions Table

COMP 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>27</u>	<u>COMP 4.2.2R(9)</u>	<u>R</u>	<u>The changes referred to in (2), made by the Compensation Sourcebook (Occupational Pension Scheme Trustees) Instrument 2011 do not apply in relation to a <i>claim against a relevant person</i> that was <i>in default</i> before <u>1 October 2011</u>.</u>	<u>From 1 October 2011 indefinitely</u>	<u>From 1 October 2011</u>



**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS  
(REMUNERATION CODE) (NO 4) INSTRUMENT 2011**

**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);
  - (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 January 2012.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Code) (No 4) Instrument 2011.

By order of the Board  
2 November 2011

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

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

*third country BIPRU  
730k firm*

an *overseas firm* that:

- (a) is not an *EEA firm*;
- (b) has its head office outside the *EEA*; and
- (c) would be a *BIPRU 730k firm* if it had been a *UK domestic firm*, had carried on all its business in the *United Kingdom* and had obtained whatever authorisations for doing so as are required under the *Act*.

## 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.

Effect of breaches of the Remuneration Principles

- 19A.3.53 R SYSC 19A Annex 1 makes provision about voiding and recovery.  
A
- 19A.3.54 R (1) ~~The Subject to (1A) to (3), the rules detailed provisions on voiding and recovery in SYSC 19A Annex 1 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 (1D).
- (1B) Condition 1 is that the firm is a UK bank or building society that had capital resources exceeding £1,000 million 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.
- (1D) Condition 3 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 is:
    - (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):
- (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.

...

- 19A.3.55 G (1) Section 139A(9) of the *Act* enables the *FSA* to make *rules* that render void any provision of an agreement that contravenes specified prohibitions in the *Remuneration Code*, and that provide for the recovery of any payment made, or other property transferred, in pursuance of such a provision. SYSC 19A.3.53AR and SYSC 19A.3.54R (together with SYSC 19A Annex 1) is such a rule are such rules and ~~renders~~ render void provisions of an agreement that contravene the specified prohibitions on guaranteed variable remuneration, non-deferred variable remuneration and replacing payments recovered or property transferred. This is an exception to the general position set out in section 151(2) of the *Act* that a contravention of a *rule* does not make any transaction void or unenforceable.
- (2) ~~SYSC TP3.6R provides that SYSC 19A.3.54R and SYSC 19A Annex 1 apply, until 1 January 2012, only in relation to a firm that was subject to the version of the Remuneration Code that applied before 1 January 2011. [deleted]~~

**19A Annex 1 Detailed provisions on voiding and recovery (SYSC 19A.3.53AR and SYSC 19A.3.54R)**

Rendering contravening provisions of agreements void		
1	R	Any provision of an agreement that contravenes a prohibition on <i>persons</i> being remunerated in a way specified in a <i>rule</i> to which this <del>annex</del> <u>rule</u> applies (a “contravening provision”) is void.
1A	R	A contravening provision does not cease to be void because:
		(1) <u>the firm concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54(1B) to (1D); or</u>
		(2) <u>the member of Remuneration Code staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>
2	R	A contravening provision that, at the time a <i>rule</i> to which this <del>annex</del> <u>rule</u> applies was made, is contained in an agreement made before that time is not rendered

		void by 1R unless it is subsequently amended so as to contravene such a <i>rule</i> .	
3	G	The effect of 2R, in accordance with section 139A(11) of the <i>Act</i> , is to prevent contravening provisions being rendered void retrospectively. Contravening provisions may however be rendered void if they are contained in an agreement made after the <i>rule</i> containing the prohibition is made by the <i>FSA</i> but before the <i>rule</i> comes into effect. <u>For further relevant transitional provisions, see SYSC TP3.6A.</u>	
3A	R	(1)	A pre-existing provision is not rendered void by 1R.
		(2)	<u>In this Annex a “pre-existing provision” is any provision of an agreement that would (but for this rule) be rendered void by 1R that was agreed at a time when either:</u>
		(a)	<u>the firm concerned did not satisfy any of the conditions set out in SYSC 19A.3.54(1B) to (1D); or</u>
		(b)	<u>the member of Remuneration Code staff concerned satisfied both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>
		(3)	<u>But an amendment to, or in relation to, a pre-existing provision is not to be treated as a pre-existing provision where the amendment is agreed at a time when both:</u>
		(a)	<u>the firm concerned satisfies at least one of the conditions set out in SYSC 19A.3.54(1B) to (1D); and</u>
		(b)	<u>the member of Remuneration Code staff concerned does not satisfy both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>
...			
5	R	In relation to any payment made or other property transferred in pursuance of a contravening provision <u>other than a pre-existing provision</u> , a <i>firm</i> must take reasonable steps to:	
		(1)	recover any such payment made or other property transferred by the <i>firm</i> ; and
		(2)	ensure than any other person (“P”) recovers any such payment made or other property transferred by that person.
5A	R	<u>Paragraph 5R continues to apply in one or both of the following cases:</u>	
		(1)	<u>the firm concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54(1B) to (1D);</u>
		(2)	<u>the member of Remuneration Code staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>

...			
Replacing payments recovered or property transferred			
7	R	(1)	A <i>firm</i> must not award, pay or provide variable <i>remuneration</i> to a person <del>whose</del> <u>who has received remuneration in pursuance of</u> <del>has caused the firm to breach</del> a contravening provision <u>other than a pre-existing provision</u> (the “contravening <i>remuneration</i> ”) unless the <i>firm</i> has obtained a legal opinion stating that the award, payment or provision of the <i>remuneration</i> complies with the <i>Remuneration Code</i> .
		(2)	This <i>rule</i> applies only to variable <i>remuneration</i> relating to a performance year to which the contravening <i>remuneration</i> related.
		(3)	The legal opinion in (1) must be properly reasoned and be provided by an appropriately qualified independent individual.
		(4)	<u>Paragraph (1) continues to apply in one or both of the following cases:</u>
		(a)	<u>the firm concerned ceases to satisfy any of the conditions set out in SYSC 19A.3.54(1B) to (1D);</u>
		(b)	<u>the member of <i>Remuneration Code</i> staff concerned starts to satisfy both of the conditions set out in SYSC 19A.3.54R(3)(a) and (b).</u>

...

**TP 3 Remuneration code**

...			
6	R		Until 1 January 2012, SYSC 19A.3.54R and SYSC 19A Annex 1 (on voiding and recovery) apply only in relation to a <i>firm</i> that was subject to the version of the <i>Remuneration Code</i> that applied before 1 January 2011.
6A	R	(1)	<u>Paragraph (2) applies in relation to a <i>firm</i> that was not subject to the version of the <i>Remuneration Code</i> that applied before 1 January 2011 but satisfies at least one of the conditions set out in SYSC 19A.3.54R(1B) to (1D).</u>
		(2)	<u>Where this paragraph applies, a contravening provision that is contained in an agreement made before 3 November 2011 is not rendered void by SYSC 19A Annex 1.1R unless it is subsequently amended so as to contravene a rule to which SYSC 19A Annex 1.1R applies.</u>
6B	G		<u>The effect of 6R is to limit the provisions on voiding and recovery to <i>firms</i> which were subject to the version of the <i>Remuneration Code</i> which applied</u>

		<p><u>before 1 January 2011. That transitional provision comes to an end on 1 January 2012. A new limit providing for voiding to apply only in relation to certain types of firm is provided in SYSC 19A.3.54R(1B) to (1D). Paragraph 6AR applies to <i>firms</i> which become subject to the provisions on voiding after the transitional provision in 6R comes to an end. It prevents certain contravening provisions which predate the making of the new <i>rules</i> limiting the application of voiding from becoming void.</u></p>		
...				

**CAPITAL INSTRUMENTS (NOTIFICATION) INSTRUMENT 2011****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 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 1 February 2012.

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
General Prudential sourcebook (GENPRU)	Annex B
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex C
Prudential sourcebook for Insurers (INSPRU)	Annex D

**Citation**

- E. This instrument may be cited as the Capital Instruments (Notification) Instrument 2011.

By order of the Board  
2 November 2011



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

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

*capital instrument* (in *GENPRU*2 ~~and~~ *BIPRU* and *INSPRU* 6 and in relation to an *undertaking*)  
any *security* issued by or loan made to that *undertaking* or any other investment in, or external contribution to the capital of, that *undertaking*.

## Annex B

## Amendments to the General Prudential sourcebook (GENPRU)

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

2.2.6 G This table belongs to *GENPRU 2.2.5G*

Topic	Location of text
...	
Capital used to meet the <i>base capital resources requirement</i> for <i>BIPRU firms</i> .	<i>GENPRU 2.2.60R to GENPRU 2.2.61G</i>
<u>Notification of issuance of <i>capital instruments</i>.</u>	<u><i>GENPRU 2.2.61AR to GENPRU 2.2.61HG</i></u>
...	

...

2.2.61 G ...

Notification of issuance of capital instruments

2.2.61A R This section applies to a *firm* intending to issue a *capital instrument* on or after 1 March 2012 for inclusion in its *capital resources*.

2.2.61B R A *firm* must notify the *FSA* in writing of its intention to issue a *capital instrument* which it intends to include within its *capital resources* at least one *month* before the intended date of issue, unless there are exceptional circumstances which make it impracticable to give such a period of notice, in which event the *firm* must give as much notice as is practicable in those circumstances. When giving notice, a *firm* must:

- (1) provide details of the amount of capital the *firm* is seeking to raise through the intended issue and whether the capital is intended to be issued to external investors or within its *group*;
- (2) identify the stage of the *capital resources table* the *capital instrument* is intended to fall within;
- (3) include confirmation from a *senior manager* of the *firm* responsible for authorising the intended issue that the *capital instrument* complies with the *rules* applicable to instruments included in the stage of the *capital resources table* identified in (2); and
- (4) provide a copy of the term sheet and details of any features of the *capital instrument* which are novel, unusual or different from a

capital instrument of a similar nature previously issued by the firm or widely available in the market or not specifically contemplated by GENPRU 2.2.

This rule does not apply to a firm which intends to issue a capital instrument listed in GENPRU 2.2.61ER

- 2.2.61C R A firm must provide a further notification to the FSA in writing including all the information required in GENPRU 2.2.61BR(1) to (4) as soon as it proposes any change to the intended date of issue, amount of issue, type of investors, stage of capital or any other feature of the capital instrument to that previously notified to the FSA.
- 2.2.61D R If a firm proposes to establish a debt securities program for the issue of capital instruments for inclusion within its capital resources, it must:
- (1) notify the FSA of the establishment of the program; and
  - (2) provide the information required by GENPRU 2.2.61BR(1) to (4) at least one month before the first proposed drawdown. Any changes must be notified to the FSA in accordance with GENPRU 2.2.61CR.
- 2.2.61E R The capital instruments to which GENPRU 2.2.61BR does not apply are:
- (1) ordinary shares which:
    - (a) are the most deeply subordinated capital instrument issued by the firm;
    - (b) meet the criteria set out in GENPRU 2.2.83R(2) and (3) and, for a BIPRU firm, GENPRU 2.2.83AR; and
    - (c) are the same as ordinary shares previously issued by the firm;
  - (2) debt instruments issued from a debt securities program, provided that program was notified to the FSA prior to its first drawdown, in accordance with GENPRU 2.2.61DR; and
  - (3) capital instruments which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to capital instruments previously issued by the firm.
- 2.2.61F R A firm must notify the FSA in writing, no later than the date of issue, of its intention to issue a capital instrument listed in GENPRU 2.2.61ER which it intends to include within its capital resources. When giving notice, a firm must:
- (1) provide the information set out at GENPRU 2.2.61BR(1) to (3); and
  - (2) confirm that the terms of the capital instrument have not changed since the previous issue by the firm of that type of capital instrument.

2.2.61G **G** GENPRU 2.2.61BR provides that, in exceptional circumstances, a *firm* may provide less than one *month*'s notice of the intended issue. The *FSA* is unlikely to consider circumstances to be exceptional unless they are such that there is a risk of a *firm*'s *capital resources* falling below its *capital resources requirement* if a one-month notification period is observed. In such circumstances, a *firm* should notify the *FSA* as soon as it has resolved to issue further capital, and provide details of its circumstances and why it is not possible to provide one *month*'s notice of the intended issue.

2.2.61H **G** Details of the notification to be provided by a *BIPRU firm* in relation to *capital instruments* issued by another *undertaking* in its *group* for inclusion in its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group* are set out in *BIPRU 8.6.1AR* to *BIPRU 8.6.1FR*. Details of the notification to be provided by an *insurer* in relation to *capital instruments* issued by another *undertaking* in its *group* for inclusion in its *group capital resources* are set out in *INSPRU 6.1.43AR* to *INSPRU 6.1.43FR*.

...

## Sch 2 Notification and reporting requirements

...

Handbook reference	Matter to be notified	Contents of notification	Trigger events	Time allowed
...				
<i>GENPRU 2.2.19R</i>	...			
<u><i>GENPRU 2.2.61BR</i></u>	<u>Intention to issue a <i>capital instrument</i> for inclusion in <i>capital resources</i></u>	<u>Fact of intention and details of intended amount, issue date, type of investor, stage of capital, features of instrument and confirmation of compliance with <i>rules</i></u>	<u>Intention to issue</u>	<u>One <i>month</i> prior to issue, unless exceptional circumstances prevent a <i>firm</i> adhering to a <i>one-month</i> period</u>
<u><i>GENPRU 2.2.61CR</i></u>	<u>Proposed changes to details of the issue of a <i>capital instrument</i> notified under</u>	<u>Proposed change and all information required under <i>GENPRU 2.2.61BR(1)</i> to</u>	<u>Intention to change any details of the issue previously notified to the</u>	<u>As soon as the changes are proposed</u>

	<u>GENPRU 2.2.61BR</u>	<u>(4)</u>	<u>FSA</u>	
<u>GENPRU 2.2.61DR</u>	<u>Proposed establishment of a debt securities program</u>	<u>All information required under GENPRU 2.2.61BR(1) to (4)</u>	<u>Intention to establish</u>	<u>One month prior to first drawdown</u>
<u>GENPRU 2.2.61FR</u>	<u>Issue of capital instruments for inclusion in capital resources where instrument or facility previously notified to the FSA</u>	<u>All information required under GENPRU 2.2.61BR(1) to (3) and confirmation no changes have been made to the terms of the instrument since a previous similar issue</u>	<u>Intention to issue</u>	<u>No later than date of issue</u>

## Annex C

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

In this Annex, underlining indicates new text.

General

8.6.1 R ...

Notification of issuance of capital instruments

8.6.1A R This section applies to a *firm* if another member of its *group* intends to issue a *capital instrument* on or after 1 March 2012 for inclusion in the *firm's capital resources* or *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group*.

8.6.1B R A *firm* must notify the *FSA* in writing of the intention of another member of its *group* which is not a *firm* to issue a *capital instrument* which the *firm* intends to include within its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group* as soon as it becomes aware of the intention of the *group undertaking* to issue the *capital instrument*. When giving notice, a *firm* must:

- (1) provide details of the amount of capital to be raised through the intended issue and whether the capital is intended to be issued to external investors or within its *group*;
- (2) identify the stage of the *capital resources table* the *capital instrument* is intended to fall within;
- (3) include confirmation from a *senior manager* of the *firm* responsible for authorising the inclusion of the issue within *capital resources* or *consolidated capital resources* that the *capital instrument* complies with the *rules* applicable to instruments included in the stage of the *capital resources table* identified in (2); and
- (4) provide details of any features of the *capital instrument* which are novel, unusual or different from a *capital instrument* of a similar nature previously issued by the *firm* or widely available in the market or not specifically contemplated by *GENPRU 2.2*.

This rule does not apply to a *firm* if a *group undertaking* intends to issue a *capital instrument* listed in *BIPRU 8.6.1ER*.

8.6.1C R A *firm* must provide a further notification to the *FSA* in writing including all the information required in *BIPRU 8.6.1BR(1)* to (4) as soon as it becomes aware of any changes that are proposed to the intended date of issue, amount of issue, type of investors, stage of capital or any other feature of the *capital instrument* previously notified to the *FSA*.

- 8.6.1D R If a group undertaking proposes to establish a debt securities program for the issue of capital instruments which the firm intends to include within its capital resources or the consolidated capital resources of its UK consolidation group or non-EEA sub-group, it must:
- (1) notify the FSA of the establishment of the program; and
  - (2) provide the information required by BIPRU 8.6.1BR(1) to (4);
- as soon as it becomes aware of the proposed establishment. The FSA must be notified of any changes, in accordance with BIPRU 8.6.1CR.
- 8.6.1E R The capital instruments to which BIPRU 8.6.1BR does not apply are:
- (1) ordinary shares issued by a group undertaking which:
    - (a) are the most deeply subordinated capital instrument issued by that group undertaking;
    - (b) meet the criteria set out in GENPRU 2.2.83R(2) and (3) and GENPRU 2.2.83AR; and
    - (c) are the same as ordinary shares previously issued by that group undertaking;
  - (2) debt instruments issued from a debt securities program established by a group undertaking, provided the program was notified to the FSA prior to its first drawdown, in accordance with BIPRU 8.6.1DR; and
  - (3) capital instruments which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to capital instruments previously issued by a group undertaking for inclusion in the firm's capital resources or consolidated capital resources of its UK consolidation group or non-EEA sub-group.
- 8.6.1F R A firm must notify the FSA in writing, no later than the date of issue, of the intention of a group undertaking to issue a capital instrument listed in BIPRU 8.6.1ER which the firm intends to include within its capital resources or the consolidated capital resources of its UK consolidation group or non-EEA sub-group. When giving notice a firm must:
- (1) provide the information set out at BIPRU 8.6.1BR(1) to (3); and
  - (2) confirm that the terms of the capital instrument have not changed since the previous issue of that type of capital instrument by that group undertaking.

...

## Sch 2 Notification and reporting requirements

...

Handbook reference	Matter to be notified	Contents of notification	Trigger events	Time allowed
...				
<i>BIPRU</i> 8.5.9R	...			
<u><i>BIPRU</i></u> <u>8.6.1BR</u>	<u>Intention of a group undertaking to issue a capital instrument for inclusion in capital resources or consolidated capital resources</u>	<u>Fact of intention and details of intended amount, issue date, type of investor, stage of capital, features of instrument and confirmation of compliance with rules</u>	<u>Intention to issue</u>	<u>As soon as proposed issue becomes known to firm</u>
<u><i>BIPRU</i></u> <u>8.6.1CR</u>	<u>Proposed changes to details of the issue of a capital instrument notified under <i>BIPRU</i> 8.6.1BR</u>	<u>Proposed change and all information required under <i>BIPRU</i> 8.6.1BR(1) to (4)</u>	<u>Intention to change any details of the issue previously notified to the FSA</u>	<u>As soon as the changes are proposed</u>
<u><i>BIPRU</i></u> <u>8.6.1DR</u>	<u>Proposed establishment of a debt securities program by a group undertaking</u>	<u>All information required under <i>BIPRU</i> 8.6.1BR(1) to (4)</u>	<u>Intention to establish</u>	<u>As soon as proposed establishment becomes known to firm</u>
<u><i>BIPRU</i></u> <u>8.6.1FR</u>	<u>Issue of capital instruments by a group undertaking under <i>BIPRU</i> 8.6.1ER</u>	<u>All information required under <i>BIPRU</i> 8.6.1BR(1) to (3) and confirmation no changes have been made to</u>	<u>Intention to issue</u>	<u>No later than the date of issue</u>



		<u>the terms of the instrument from a previous similar issue</u>		
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## Annex D

## Amendments to the Prudential sourcebook for Insurers (INSPRU)

In this Annex, underlining indicates new text.

## 6.1 Application

...

Calculation of GCR

...

6.1.43 R ...

Notification of issuance of capital instruments

6.1.43A R This section applies to a firm if another member of its group intends to issue a capital instrument on or after 1 March 2012 for inclusion in the group capital resources of the firm or its ultimate EEA insurance parent undertaking.

6.1.43B R A firm must notify the FSA in writing of the intention of another member of its group which is not a firm to issue a capital instrument which it intends to include within its group capital resources, or the group capital resources of its ultimate EEA insurance parent undertaking, as soon as it becomes aware of the intention of the group undertaking. When giving notice, a firm must:

- (1) provide details of the amount of capital to be raised through the intended issue and whether the capital is intended to be issued to external investors or within its group;
- (2) identify the stage of the capital resources table the capital instrument is intended to fall within;
- (3) include confirmation from a senior manager of the firm responsible for authorising the inclusion of the issue within group capital resources that the capital instrument complies with the rules applicable to instruments included in the stage of the capital resources table identified in (2); and
- (4) provide details of any features of the capital instrument which are novel, unusual or different from a capital instrument of a similar nature previously issued by the firm or widely available in the market or not specifically contemplated by GENPRU 2.2.

This rule does not apply to a firm if a group undertaking intends to issue a capital instrument listed in INSPRU 6.1.43ER.

- 6.1.43C R A firm must provide a further notification to the FSA in writing including all the information required in INSPRU 6.1.43BR(1) to (4) as soon as any changes are proposed to the intended date of issue, amount of issue, type of investors, stage of capital or any other feature of the capital instrument to that previously notified to the FSA.
- 6.1.43D R If a group undertaking proposes to establish a debt securities program for the issue of capital instruments which the firm intends to include within its group capital resources or the group capital resources of its ultimate EEA insurance parent undertaking, it must:
- (1) notify the FSA of the establishment of the program; and
  - (2) provide the information required by INSPRU 6.1.43BR(1) to (4)  
as soon as it becomes aware of the proposed establishment. The FSA must be notified of any changes, in accordance with INSPRU 6.1.43CR.
- 6.1.43E R The capital instruments to which INSPRU 6.1.43BR does not apply are:
- (1) ordinary shares issued by a group undertaking which
    - (a) are the most deeply subordinated capital instrument issued by that group undertaking;
    - (b) meet the criteria set out in GENPRU 2.2.83R(2) and (3); and
    - (c) are the same as ordinary shares previously issued by that group undertaking;
  - (2) debt instruments issued from a debt securities program established by a group undertaking, provided that program was notified to the FSA prior to its first draw down in accordance with INSPRU 6.1.43DR; and
  - (3) capital instruments which are not materially different in terms of their characteristics and eligibility for inclusion in a particular tier of capital to capital instruments previously issued by that group undertaking and included in the group capital resources of the firm or the group capital resources of its ultimate EEA insurance parent undertaking.
- 6.1.43F R A firm must notify the FSA in writing, no later than the date of issue, of the intention of a group undertaking to issue a capital instrument listed in INSPRU 6.1.43ER which the firm intends to include within its group capital resources or the group capital resources of its ultimate EEA insurance parent undertaking. When giving notice a firm must
- (1) provide the information set out at INSPRU 6.1.43BR(1) to (3); and
  - (2) confirm that the terms of the capital instrument have not changed

since the previous issue of that type of *capital instrument* by that *group undertaking*.

...

## Sch 2 Notification and reporting requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger events	Time allowed
...				
<i>INSPRU</i> 3.1.65R	...			
<u><i>INSPRU</i> 6.1.43BR</u>	<u>Intention of a <i>group undertaking</i> to issue a <i>capital instrument</i> for inclusion in <i>group capital resources</i></u>	<u>Fact of intention and details of intended amount, issue date, type of investor, stage of capital, features of instrument and confirmation of compliance with <i>rules</i></u>	<u>Intention to issue</u>	<u>As soon as proposed issue becomes known to <i>firm</i></u>
<u><i>INSPRU</i> 6.1.43CR</u>	<u>Proposed changes to details of the issue of a <i>capital instrument</i> notified under <i>INSPRU</i> 6.1.43BR</u>	<u>Proposed change and all information required under <i>INSPRU</i> 6.1.43BR(1) to (4)</u>	<u>Intention to change any details of the issue previously notified to the <i>FSA</i></u>	<u>As soon as the changes are proposed</u>
<u><i>INSPRU</i> 6.1.43DR</u>	<u>Proposed establishment of a debt securities program by a <i>group undertaking</i></u>	<u>All information required by <i>INSPRU</i> 6.1.43BR(1) to (4)</u>	<u>Intention to establish</u>	<u>As soon as proposed establishment becomes known to <i>firm</i></u>
<u><i>INSPRU</i> 6.1.43FR</u>	<u>Issue of <i>capital instruments</i> by a <i>group undertaking</i> under <i>INSPRU</i> 6.1.43ER</u>	<u>All information required under <i>INSPRU</i> 6.1.43BR(1) to (3) and confirmation that no changes have been made</u>	<u>Intention to issue</u>	<u>No later than date of issue</u>

		<u>to the terms of the instrument since the previous issue of a similar instrument</u>		
--	--	--	--	--

**SUPERVISION MANUAL (RETAIL MEDIATION ACTIVITIES RETURN)  
(AMENDMENT NO 4) INSTRUMENT 2011**

**Purpose**

- A. The purpose of this instrument is to postpone the date on which certain amendments to the Handbook made by the Supervision Manual (Retail Mediation Activities Return) (Amendment No 2) Instrument 2010 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);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- C. The rule-making provisions listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- D. This instrument comes into force on 3 November 2011.

**Amendments to instruments**

- E. The Supervision Manual (Retail Mediation Activities Return) (Amendment No 2) Instrument 2010 (FSA 2010/69), which amends Section 16, Annexes 18A and 18B of the Supervision manual (SUP), comes into force on 31 December 2013 instead of 31 December 2011.

**Citation**

- F. This instrument may be cited as the Capital Resources Requirements for Personal Investment Firms (Amendment No 4) Instrument 2011.

By order of the Board  
2 November 2011

**DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO 4)  
INSTRUMENT 2011**

**Powers exercised by the Financial Ombudsman Service Limited**

- A. The Financial Ombudsman Service Limited makes the rules in the Annex to this instrument for licensees relating to the Consumer Credit Jurisdiction and for VJ participants relating to the Voluntary Jurisdiction in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 226A (Consumer credit jurisdiction); and
  - (2) section 227 (Voluntary jurisdiction).
- B. The making of these rules by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

**Powers exercised by the Financial Services Authority**

- C. The Financial Services Authority makes the rules in the Annex to this instrument for firms relating to the Compulsory Jurisdiction in the exercise of the following powers and related provisions in the Act:
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 226 (Compulsory jurisdiction).
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- E. This instrument comes into force on 1 January 2012.

**Amendments to the Handbook**

- F. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

**Citation**

- G. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No 4) Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited  
19 October 2011

By order of the Board of the Financial Services Authority  
2 November 2011

**Annex**

**Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

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

- 2.7.6 R To be an *eligible complainant* a person must also have a *complaint* which arises from matters relevant to one or more of the following relationships with the *respondent*:
- ...
- (12) the complainant is a *person*:
- (a) from whom the *respondent* has sought to recover payment under a *regulated consumer credit agreement* or *regulated consumer hire agreement* (whether or not the respondent is a party to the agreement) ~~in carrying on debt collecting as defined by section 145(7) of the Consumer Credit Act (1974) (as amended);~~ or
- ...
- ...

**TP 1 Transitional provisions**

(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>28A</u>	<u>The amendments to DISP 2.7.6R(12) effected by the Dispute Resolution: Complaints (Amendment No 4) Instrument 2011</u>	<u>R</u>	<u>The amendments referred to in column (2) do not affect who is an <i>eligible complainant</i> for the purpose of DISP 2.7.6R (12)(a) in respect of complaints that relate to acts or omissions that occurred before 1 January 2012.</u>	<u>From 1 January 2012</u>	<u>1 January 2012</u>
...					



**CAPITAL REQUIREMENTS DIRECTIVE (HANDBOOK AMENDMENTS NO 4)  
INSTRUMENT 2011**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 31 December 2011.

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
General Prudential sourcebook (GENPRU)	Annex B
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex C
Supervision manual (SUP)	Annex D

**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 Capital Requirements Directive (Handbook Amendments No 4) Instrument 2011.

By order of the Board  
2 November 2011

## 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>all price risk measure</i>	(in <i>BIPRU</i> 7.10 (Use of a Value at Risk Model)) has the meaning in <i>BIPRU</i> 7.10.116AR (Capital calculations for VaR models), which is, in relation to a <i>business day</i> , the <i>all price risk measure</i> required under the provisions in <i>BIPRU</i> 7.10 about <i>specific risk</i> for the <i>correlation trading portfolio</i> .
<i>correlation trading portfolio</i>	(in <i>BIPRU</i> 7) a portfolio consisting of <i>securitisation positions</i> and nth-to-default credit derivatives that meet the criteria set out at <i>BIPRU</i> 7.2.42AR, or other <i>positions</i> which may be included in accordance with <i>BIPRU</i> 7.2.42BR.
<i>resecuritisation position</i>	in <i>BIPRU</i> 7 and 9, an <i>exposure</i> to a <i>resecuritisation</i> .
	[ <b>Note:</b> <i>BCD</i> , Article 4(40b)]
<i>stressed VaR</i>	The stressed VaR measure in respect of <i>positions</i> coming within the scope of the <i>VaR model permission</i> , calculated in accordance with the <i>VaR model</i> , <i>BIPRU</i> 7.10 (Use of a Value at Risk Model) and any methodology set out in the <i>VaR model permission</i> based on a stressed historical period.

Amend the following as shown.

<del><i>credit default swap PRR method</i></del>	<del>the ordinary credit default swap PRR method or the securitisation credit default swap PRR method.</del>
<del><i>clean hypothetical profit and loss figure</i></del>	(in <i>BIPRU</i> 7.10 (Use of a value at risk model) and in relation to a <i>business day</i> ) the <del><i>clean</i></del> <i>hypothetical profit and loss figure</i> that would have occurred for that <i>business day</i> if the portfolio on which the <i>VaR number</i> for that <i>business day</i> is based remained unchanged, as more fully defined in <i>BIPRU</i> 7.10.111R (Backtesting: Hypothetical profit and loss).
<del><i>incremental default risk charge</i></del>	(in <i>BIPRU</i> 7.10 (Use of a value at risk model)) has the meaning in <i>BIPRU</i> 7.10.116R (Capital calculations for <del><i>VaR models</i></del> <u><i>VaR models</i></u> ), which is in summary, in relation to a <del><i>business day</i></del> <u><i>business day</i></u> , the incremental <del><i>default</i></del> risk charge required under the provisions in <i>BIPRU</i> 7.10 about <i>specific risk</i> , in respect of the previous <i>business day's</i> close-of-business <i>positions</i> with respect to which those

provisions apply.

~~ordinary credit  
default swap PRR  
method~~

~~the method for calculating the *specific risk* portion of the *interest rate PRR* for credit default swaps that are not *securitisation positions* set out in *BIPRU 7.11.24R* to *BIPRU 7.11.37R*.~~

PRA

Position Risk Adjustment; a percentage applied to a *position* as part of the process of calculating the PRR in relation to that *position* as set out in the tables in *BIPRU 7.2.44R* (Specific risk PRAs), *BIPRU 7.2.57R* (General market risk PRAs), *BIPRU 7.3.30R* (Simplified equity method PRAs), *BIPRU 7.3.34R* (PRAs for specific risk under the standard equity method) and *BIPRU 7.6.8R* (The appropriate PRA) and also as set out in ~~*BIPRU 7.2.46R* to *7.2.47R*~~ *7.2.48AR* to *7.2.48LR*.

~~clean profit and  
loss figure~~

(in *BIPRU 7.10* (Use of a value at risk model) and in relation to a *business day*) a *firm's* actual profit or loss for that day in respect of the trading activities within the scope of the *firm's VaR model permission*, adjusted by stripping out specified items, as more fully defined in *BIPRU 7.10.100R* (Backtesting: Calculating the clean profit and loss).

~~qualifying equity~~

~~a *share* that satisfies the conditions in *BIPRU 7.3.35R* (Definition of a qualifying equity).~~

~~resecuritisation~~

~~(in accordance with point 49 of Part 4 of Annex IX of the *Banking Consolidation Directive (Ratings based method)*) *securitisation of securitisation exposures* (securitisation having the meaning in paragraph (2) of the definition of securitisation for these purposes) in *BIPRU 7* and *9*, a *securitisation* where the risk associated with an underlying pool of *exposures* is *tranch*ed and at least one of the underlying *exposures* is a *securitisation position*.~~

**[Note: *BCD*, Article 4(40a)]**

~~securitisation credit  
default swap PRR  
method~~

~~the method for calculating the *specific risk* portion of the *interest rate PRR* for credit default swaps that are *securitisation positions* set out in *BIPRU 7.11.39R* to *BIPRU 7.11.53R*.~~

## Annex B

## Amendments to the General Prudential sourcebook (GENPRU)

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

- 1.3.3 G (1) In the case of a *BIPRU firm*, this section implements Article 74 of the *Banking Consolidation Directive*, ~~Article~~ Articles 64(4) and 64(5) of the *Banking Consolidation Directive* (Own funds) and Article 33 and Part B of Annex VII of the *Capital Adequacy Directive*.
- ...
- ...
- 1.3.13 R (1) Except to the extent that *GENPRU*, *BIPRU* or *INSPRU* provide for another method of valuation, *GENPRU* 1.3.14R to *GENPRU* 1.3.34R (Marking to market, Marking to model, Independent price verification, ~~Adjustments~~ Valuation adjustments or, in the case of an insurer or a UK ISPV, valuation adjustments or reserves) apply:
- ...
- ...
- (3) Systems and controls under (2) must include at least the following elements:
- (a) documented policies and procedures for the process of valuation, including clearly defined responsibilities of the various areas involved in the determination of the valuation, sources of market information and review of their appropriateness, frequency of independent valuation, timing of closing prices, procedures for adjusting valuations, month-end and ad-hoc verification procedures, and, in the case of a *BIPRU firm*, guidelines for the use of unobservable inputs reflecting the *firm's* assumptions of what market participants would use in pricing the *position*; and
- ...
- ...
- 1.3.16 R (1) ...
- (2) When calculating the current *exposure* value of a credit risk *exposure* for *counterparty credit risk* purposes:

...

- (b) where the difference between the more prudent side of bid/offer and the mid-market price is material, the *firm* must consider making adjustments or, in the case of an insurer or a UK ISPV, making adjustments or establishing reserves.

General requirements: Marking to model

- 1.3.17 R Where marking to market is not possible, a *firm* must (in the case of a BIPRU firm, conservatively) use mark to model in order to measure the value of the investments and positions to which this *rule* applies under *GENPRU* 1.3.13R and *GENPRU* 1.3.38R to *GENPRU* 1.3.41R. Marking to model is any valuation which has to be benchmarked, extrapolated or otherwise calculated from a market input. *GENPRU* 1.3.18R to *GENPRU* 1.3.25R apply when marking to model.

...

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

- 1.3.29 R The recognition of any gains or losses arising from valuations subject to *GENPRU* 1.3.13R and *GENPRU* 1.3.38R to *GENPRU* 1.3.41R must be recognised for the purpose of calculating *capital resources* in accordance with *GENPRU* 1.3.14R to *GENPRU* 1.3.34R (Marking to market, Marking to model, Independent price verification, Adjustments Valuation adjustments or, in the case of an insurer or a UK ISPV, valuation adjustments or reserves). However, if *GENPRU*, *BIPRU* or *INSRU* provide for another treatment of such gains or losses, that other treatment must be applied.
- 1.3.30 R A *firm* must establish and maintain procedures for considering valuation adjustments or, in the case of an insurer or a UK ISPV, valuation adjustments or reserves. These procedures must be compliant with the requirements set out in *GENPRU* 1.3.33R.

...

- 1.3.32 R A *firm* must consider the need for making adjustments or, in the case of an insurer or a UK ISPV, establishing reserves for less liquid positions and, on an ongoing basis, review their continued appropriateness in accordance with the requirements set out in *GENPRU* 1.3.33R. Less liquid positions could arise from both markets events and institution-related situations e.g. concentration positions and/or stale positions.
- 1.3.33 R (1) ...
- (2) A *firm* must consider the following adjustments or, in the case of an insurer or a UK ISPV, adjustments or reserves: unearned

credit spreads, close-out costs, operational risks, early termination, investing and funding costs, future administrative costs and, where appropriate, model risk.

- (3) (a) In the case of a BIPRU firm, a firm must establish and maintain procedures for calculating adjustments to the current valuation of less liquid positions. Those adjustments must, where necessary, be in addition to any changes to the value of the position required for financial reporting purposes and must be designed to reflect the illiquidity of the position.
- (b) A firm must consider several factors when determining whether a valuation adjustment or, in the case of an insurer or a UK ISPV, valuation adjustment or reserve is necessary for less liquid positions. These factors include the amount of time it would take to hedge out the position/risks within the position; the average and volatility of bid/offer spreads; the availability of market quotes (number and identity of market makers); the average and volatility of trading volumes; market concentrations; the ageing of positions; the extent to which valuation relies on marking to model and the impact of other model risks.
- (4) With regard to complex products including, but not limited to, securitisation exposures and nth-to-default credit derivatives, a BIPRU firm must explicitly consider the need for valuation adjustments for model risk arising from using a valuation which may be incorrect or the risk from using unobservable calibration parameters in the valuation model.

- 1.3.34 R If the result of establishing making adjustments or, in the case of an insurer or a UK ISPV, making adjustments or establishing reserves under GENPRU 1.3.29R to GENPRU 1.3.33R is a valuation which differs from the fair value determined in accordance with GENPRU 1.3.4R, a firm must reconcile the two valuations.

...

Trading book and other fair-valued positions, and revaluations

...

- 1.3.39 R ~~Trading~~ Both trading book positions and other fair-valued positions are subject to prudent valuation rules as specified in GENPRU 1.3.14R to GENPRU 1.3.34R (Marking to market, Marking to model, Independent price verification, ~~Adjustments~~ Valuation adjustments or, in the case of an insurer or a UK ISPV, valuation adjustments or reserves). In accordance with those rules, a firm must ensure that the value applied to each of its trading book positions and other fair-valued positions

appropriately reflects the current market value. This value must contain an appropriate degree of certainty having regard to the dynamic nature of *trading book* positions, the demands of prudential soundness and the mode of operation and purpose of capital requirements in respect of *trading book* positions and other fair-valued positions.

...

- 1.3.41 R (1) For the purposes of *GENPRU* and *INSPRU*, an *insurer* or a *UK ISPV* must apply *GENPRU* 1.3.14R to *GENPRU* 1.3.34R (Marking to market, Marking to model, Independent price verification, ~~Adjustments~~ Valuation adjustments or, in the case of an *insurer* or a *UK ISPV*, valuation adjustments or reserves) to account for:

...

...

...

- 2.2.237 R A *BIPRU* firm calculating *risk weighted exposure amounts* under the *IRB approach* or the *standardised approach* to credit risk must deduct from its *capital resources* the ~~exposure amount of securitisation positions which receive a risk weight of 1250% under BIPRU 9 (Securitisation), unless the firm includes the securitisation positions in its calculation of risk weighted exposure amounts (see BIPRU 9.10 (Reduction in risk-weighted exposure amounts))~~ following:

- (1) the exposure amount of *securitisation positions* which receive a *risk weight* of 1250% under *BIPRU* 9 (Securitisation), unless the *firm* includes the *securitisation positions* in its calculation of *risk weighted exposure amounts* (see *BIPRU* 9.10 (Reduction in risk-weighted exposure amounts)); and
- (2) the exposure amount of *securitisation positions* in the *trading book* that would receive a *risk weight* of 1250% if they were in the *firm's non-trading book*.

## Annex C

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

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

Exposures to regional governments or local authorities: General

- 3.4.10 R Without prejudice to *BIPRU* 3.4.15R to *BIPRU* 3.4.19R:
- (1) a firm must *risk weight exposures* to regional governments and local authorities in accordance with *BIPRU* 3.4.11R to *BIPRU* 3.4.14R and *BIPRU* 3.4.19AR; and

...

...

- 3.4.19A R Without prejudice to *BIPRU* 3.4.17R to *BIPRU* 3.4.19R, an *exposure* to a regional government or local authority of an *EEA State* denominated and funded in the domestic currency of that regional government or local authority must be assigned a risk weight of 20%.

[**Note:** *BCD* Annex VI Part 2(b)]

...

Deriving the net position in the correlation trading portfolio

- 7.2.42A R A correlation trading portfolio may only consist of *securitisation positions* and *nth-to-default credit derivatives* that meet the following criteria:
- (1) the *positions* are neither *resecuritisation positions*, nor *options* on a *securitisation position*, nor any other derivatives of *securitisation exposures* that do not provide a pro-rata share in the proceeds of a *securitisation tranche*;
- (2) all reference instruments are either *single-name instruments*, including *single-name credit derivatives*, for which a liquid two-way market exists, or commonly traded indices based on reference entities which meet this criterion;
- (3) the *positions* do not fall under the exposure classes outlined in *BIPRU* 3.2.9R(8) (retail claims or contingent retail claims) and *BIPRU* 3.2.9R(9) (claims or contingent claims secured on real estate property); and



- (4) the *positions* do not reference a claim on a *special purpose vehicle*.
- 7.2.42B R *Positions* which are not *securitisation positions* or *nth-to-default credit derivatives* may be included in the *correlation trading portfolio* only if they hedge other such *positions* in this portfolio and a liquid two-way market exists for the relevant *position* or its reference entities.
- 7.2.42C R For the purposes of *BIPRU 7.2.42AR(2)* and *BIPRU 7.2.42BR*, a two-way market may be deemed to exist only where there are independent, bona fide offers to buy and sell, so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one *business day* and settled at that price within a relatively short time conforming to trade custom.
- 7.2.42D R A *firm* must calculate both the net long and the net short *positions* in the *correlation trading portfolio* by applying *BIPRU 7.2.36R* and *BIPRU 7.2.37R* or, where applicable, *BIPRU 7.11.13R* to *BIPRU 7.11.17R*.

## Specific risk calculation

- 7.2.43 R (1) A *firm* must calculate the *specific risk* portion of the *interest rate PRR* for each debt *security* by multiplying the market value of the individual net *position* (ignoring the sign) by the *appropriate PRA* from the table in *BIPRU 7.2.44R* or as specified by *BIPRU 7.2.45R* – ~~*BIPRU 7.2.47R*~~ *7.2.48LR* or by ~~*BIPRU 7.11.13R*~~ – *BIPRU 7.11.17R*.
- ...
- (3) For the purpose of (1), a *firm* may cap the product of multiplying the individual net *position* by the *appropriate PRA* at the maximum possible default-risk-related loss. For a short *position* in a credit derivative, a *firm* may calculate the maximum possible default-risk-related loss as a change in value due to the underlying names immediately becoming default-risk-free.
- ...
- 7.2.46A G *BIPRU 7.2.43R* includes both actual and notional *positions*. However, notional *positions* in a *zero-specific-risk security* do not attract *specific risk*. For example:
- (1) *interest-rate swaps, foreign currency swaps, FRAs, interest-rate futures, foreign-currency forwards, foreign-currency futures, and the cash leg of repurchase agreements and reverse repurchase agreements* create notional *positions* which will not attract *specific risk*; while

- (2) futures, forwards and swaps which are based on the price (or yield) of one or more debt *securities* will create at least one notional *position* that attracts *specific risk*.

Specific risk: securitisations and resecuritisations

- 7.2.47 R ~~A *securitisation exposures* that would be subject to a deduction treatment under the treatment set out in *GENPRU 2.2*. (Capital resources) or *risk weighted* at 1250% as set out in *BIPRU 9* (Securitisation) is subject to a capital charge that is no less than that set out under those treatments. Unrated liquidity facilities are subject to a capital charge that is no less than that set out in *BIPRU 9*. [deleted]~~
- 7.2.47A G ~~*Originators, investors and sponsors* of *securitisations* in the *trading book* will have to meet the requirements of *BIPRU 9.3.1AR*, *BIPRU 9.3.15R* to *BIPRU 9.3.20R* and *BIPRU 9.15*. [deleted]~~
- 7.2.47B G Subject to ~~*BIPRU 7.2.47CG*, *BIPRU 9.15.9R* and *BIPRU 9.15.10R*~~, where the investor, ~~*originator*~~ or ~~*sponsor*~~ of a ~~*securitisation*~~ fails to meet any of the requirements in ~~*BIPRU 9.3.18R* to *BIPRU 9.3.20R*~~ (Disclosure requirements) and ~~*BIPRU 9.15.11R* to *BIPRU 9.15.16R*~~ (investor due diligence requirements) in any material respect by reason of its negligence or omission, the ~~*FSA*~~ will use its powers under section 45 (Variation etc. on the Authority's own initiative) of the ~~*Act*~~ to impose an additional capital charge of no less than 250% (capped at 1250%) of the ~~*PRR*~~ that would otherwise apply to the relevant ~~*securitisation positions*~~ under the ~~*rules*~~ in ~~*BIPRU 7.2*~~. The additional capital charge imposed will be progressively increased with each relevant, subsequent infringement of the requirements in ~~*BIPRU 9.3.18R* to *BIPRU 9.3.20R* and *BIPRU 9.15.11R* to *BIPRU 9.15.16R*~~. [deleted]
- 7.2.47C G ~~When calculating the additional capital charge it will impose under *BIPRU 7.2.47BG*, the *FSA* will take into account the exemption of certain *securitisations* from the scope of *BIPRU 9.15.3R* under *BIPRU 9.15.9R* and *BIPRU 9.15.10R* and, if those exemptions are relevant, reduce the capital charge it would otherwise impose. [deleted]~~
- 7.2.48 G ~~*BIPRU 7.2.43R* includes both actual and notional *positions*. However, notional *positions* in *zero specific risk security* do not attract *specific risk*. For example:~~
- (1) ~~interest rate *swaps*, *foreign currency swaps*, *FRAs*, interest rate *futures*, *foreign currency forwards*, *foreign currency futures*, and the cash leg of *repurchase agreements* and *reverse repurchase agreements* create notional *positions* which will not attract *specific risk*; whilst~~
- (2) ~~*futures, forwards and swaps* which are based on the price (or yield) of one or more debt *securities* will create at least one notional *position* that attracts *specific risk*. [deleted]~~

- 7.2.48A R (1) Subject to (3), a firm must calculate the specific risk portion of the interest rate PRR for each securitisation and resecuritisation position by multiplying the market value of the individual net position (ignoring the sign) by the appropriate PRA from the table in BIPRU 7.2.48DR or BIPRU 7.2.48ER, or in accordance with BIPRU 7.2.48FR, as applicable.
- (2) In calculating the specific risk capital charge of an individual net securitisation or resecuritisation position, a firm may cap the product of the weight and the individual net position at the maximum possible default-risk-related loss. For a short position, that limit may be calculated as a change in value due to the underlying names immediately becoming default-risk-free.
- (3) For a transitional period ending on 31 December 2013, where a firm holds securitisation and resecuritisation positions, other than positions included in the correlation trading portfolio, it must calculate:
- (a) the total specific risk capital charges that would apply just to the net long positions; and
- (b) the total specific risk capital charges that would apply just to the net short positions.

The total specific risk capital charge for securitisation and resecuritisation positions will be the higher of (3)(a) and (3)(b).

7.2.48B R The firm must report to the FSA the total sum of its weighted net long and net short securitisation and resecuritisation positions, broken down by types of underlying assets.

7.2.48C R When calculating the PRR of a protection seller in securitisation and resecuritisation credit derivatives, a firm must apply BIPRU 7.11.3R.

7.2.48D R Table: specific risk PRAs – standardised approach

<u>Credit quality step</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4 (only for credit assessments other than short-term credit assessments)</u>	<u>All other credit quality steps</u>
<u>Securitisations</u>	<u>1.6%</u>	<u>4%</u>	<u>8%</u>	<u>28%</u>	<u>100%</u>
<u>Resecuritisations</u>	<u>3.2%</u>	<u>8%</u>	<u>18%</u>	<u>52%</u>	<u>100%</u>

A firm may only apply the PRAs in this table where it would have to calculate a risk weighted exposure amount in accordance with the standardised approach to securitisation and resecuritisation positions if such positions were in its non-trading book under BIPRU 9. The appropriate PRA is calculated as 8% of the risk weight that would apply to the position under the standardised approach in BIPRU 9.11.2R, subject to the requirements of BIPRU 9.9 to BIPRU 9.11, where appropriate.

7.2.48E R Table: specific risk PRAs – IRB approach

<u>Credit Quality Step</u>		<u>Securitisation positions</u>			<u>Resecuritisation positions</u>	
<u>Credit assessments other than short term</u>	<u>Short-term credit assessments</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
<u>1</u>	<u>1</u>	<u>0.56%</u>	<u>0.96%</u>	<u>1.6%</u>	<u>1.6%</u>	<u>2.4%</u>
<u>2</u>		<u>0.64%</u>	<u>1.20%</u>	<u>2%</u>	<u>2%</u>	<u>3.2%</u>
<u>3</u>		<u>0.8%</u>	<u>1.44%</u>		<u>2.8%</u>	<u>4%</u>
<u>4</u>	<u>2</u>	<u>0.96%</u>	<u>1.6%</u>		<u>3.2%</u>	<u>5.2%</u>
<u>5</u>		<u>1.60%</u>	<u>2.8%</u>	<u>2.8%</u>	<u>4.8%</u>	<u>8%</u>
<u>6</u>		<u>2.8%</u>	<u>4%</u>		<u>8%</u>	<u>12%</u>
<u>7</u>	<u>3</u>	<u>4.8%</u>	<u>6%</u>		<u>12%</u>	<u>18%</u>
<u>8</u>		<u>8%</u>			<u>16%</u>	<u>28%</u>
<u>9</u>		<u>20%</u>			<u>24%</u>	<u>40%</u>
<u>10</u>		<u>34%</u>			<u>40%</u>	<u>52%</u>
<u>11</u>		<u>52%</u>			<u>60%</u>	<u>68%</u>
<u>all other unrated</u>		<u>100%</u>				

A firm may only apply the PRAs in this table where it would have to calculate a risk weighted exposure amount in accordance with the IRB approach to securitisation and resecuritisation positions if such positions were in its non-trading book under BIPRU 9. The appropriate PRA is calculated as 8% of the risk weight that would apply to the position under the IRB approach in BIPRU 9.12.11R, subject to the requirements in BIPRU 9.12 where appropriate.

7.2.48F R (1) A firm may use the supervisory formula method to calculate the

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appropriate PRA for specific risk where:

- (a) the firm is permitted to apply the supervisory formula method to the same position if it was held in its non-trading book in accordance with BIPRU 9.12; or
- (b) otherwise, the firm is expressly permitted by its VaR model permission to apply the supervisory formula method to calculate the appropriate PRA for specific risk.
- (2) The appropriate PRA under the supervisory formula method must be calculated by multiplying the risk weight calculated according to BIPRU 9.12.21R by 8%.
- (3) Where relevant, estimates of PDs and LGDs as inputs to the supervisory formula method must be determined in accordance with BIPRU 4.
- (4) Where expressly permitted by its VaR model permission, a firm may use the approach outlined in BIPRU 7.10.55AR to BIPRU 7.10.55SR (Incremental Risk Charge) to determine PDs and LGDs as inputs to the supervisory formula method.
- 7.2.48G    R    Where a securitisation position in the trading book is subject to an increased risk weight in accordance with BIPRU 9.15, the appropriate PRA must be calculated as 8% of the risk weight that would apply to the position in accordance with BIPRU 9.15.
- 7.2.48H    G    Originators, investors and sponsors of securitisations in the trading book will have to meet the requirements of BIPRU 9.3.1AR, BIPRU 9.3.15R to BIPRU 9.3.20R and BIPRU 9.15.
- 7.2.48I    G    (1)    Subject to BIPRU 7.2.48JG, BIPRU 9.15.9R and BIPRU 9.15.10R, where the investor, originator or sponsor of a securitisation fails to meet any of the requirements in BIPRU 9.3.18R to BIPRU 9.3.20R (Disclosure requirements) and BIPRU 9.15.11R to BIPRU 9.15.16R (investor due diligence requirements) in any material respect by reason of its negligence or omission, the FSA will use its powers under section 45 (Variation etc. on the Authority's own initiative) of the Act to impose an additional capital charge in accordance with BIPRU 7.2.48GR. The additional capital charge imposed will be progressively increased with each relevant, subsequent infringement of the requirements in BIPRU 9.3.18R to BIPRU 9.3.20R and BIPRU 9.15.11R to BIPRU 9.15.16AR, up to a maximum of 1250% risk weight.

(2) Subject to BIPRU 9.3.22G, BIPRU 9.15.9R and BIPRU 9.15.10R, where a credit institution fails to meet in any material respect the requirements in BIPRU 9.15.16AR (Group level requirements), the FSA may consider using its powers under section 45 (Variation etc on the Authority's own initiative) of the Act in the manner described in (1). In order to calculate the risk weights that would apply to the credit institution, the FSA may treat the securitisation investments of the subsidiary undertaking as if they were securitisation positions held directly by the credit institution.

7.2.48J     G     When calculating the additional capital charge it will impose under BIPRU 7.2.48GR, the FSA will take into account the exemption of certain securitisations from the scope of BIPRU 9.15.3R under BIPRU 9.15.9R and BIPRU 9.15.10R and, if those exemptions are relevant, it will reduce the capital charge it would otherwise impose.

7.2.48K     R     A securitisation exposure in the trading book that would be subject to deduction in accordance with GENPRU 2.2. (Capital resources) or to a 1250% risk weight in accordance with BIPRU 9 (Securitisation) is subject to a capital charge that is no less than that set out under those provisions, capped at the maximum possible default-risk-related loss. Unrated liquidity facilities are subject to a capital charge that is no less than that set out in BIPRU 9.

Specific risk: correlation trading portfolio

7.2.48L     R     (1)     Where a firm holds a position in the correlation trading portfolio, it must calculate:

(a)     The total specific risk capital charges that would apply just to the net long positions of the correlation trading portfolio; and

(b)     The total specific risk capital charges that would apply just to the net short positions of the correlation trading portfolio.

(2)     The higher of (1)(a) and (1)(b) will be the specific risk capital charge for the correlation trading portfolio.

(3)     In calculating the specific risk capital charge of an individual net position in the correlation trading portfolio, a firm may cap the product of multiplying the individual net position by the appropriate PRA at the maximum possible default-risk-related loss. For a short position, a firm may calculate the maximum possible default-risk-related loss as a change in value due to the underlying names immediately becoming default-risk-free.

...

7.3.30 R Table: simplified equity method PRAs

This table belongs to *BIPRU 7.3.29R*

Instrument	<i>PRA</i>
Single <i>equities</i>	<del>12%</del> <u>16%</u>
<i>Qualifying equity indices</i> <del>indices</del> (see <i>BIPRU 7.3.38R</i> )	8%
All other <i>equity</i> indices or baskets	<del>12%</del> <u>16%</u>
If it is necessary to distinguish between the <i>specific risk PRA</i> and the <i>general market risk PRA</i> , the <i>specific risk PRA</i> for the first and third rows is <del>4</del> <u>8</u> % and that for the second row is 0%. The rest of the <i>PRA</i> in the second column is the <i>general market risk PRA</i> .	

...

7.3.34 R Table: PRAs for specific risk under the standard equity method

This table belongs to *BIPRU 7.3.33R*

Instrument	<i>PRA</i>
<i>Qualifying equities</i>	<u>2%</u>
<i>Qualifying equity indices</i> <del>indices</del> (see <i>BIPRU 7.3.38R</i> )	0%
All <del>other</del> <i>equities</i> , <u>and other</u> <i>equity</i> indices or <del>equities</del> <u>equity</u> baskets.	<del>4%</del> <u>8%</u>

Definition of a qualifying equity

7.3.35 R *A qualifying equity* is one that satisfies the following conditions:

- (1) it belongs to a country portfolio that satisfies the following conditions:
  - (a) no individual *position* exceeds 10% of the portfolio's gross value; and
  - (b) the sum of *positions* (ignoring the sign) which individually represent between 5% and 10% of the portfolio's gross value, does not exceed 50% of the portfolio's gross value;
- (2) it is not of an issuer that has issued only traded debt *securities* that currently attracts an 8% or 12% *PRA* in the table in *BIPRU 7.2.44R* (Specific risk *PRA*) or that attracts a lower requirement only because they are guaranteed or secured; and

- (3) ~~it is a constituent of an index in the table in *BIPRU 7.3.39R*.  
[deleted]~~
- 7.3.36 G (1) ~~The following example illustrates *BIPRU 7.3.35R(1)*.~~
- (2) ~~A country portfolio has a gross value of £100 and is made up of *positions* in 29 different *equities* (some are long *positions*, others are short *positions*). Not all the *equities* are constituents of an index used to create the FT All-World Index (this criterion only becomes relevant once a *firm* has determined whether the country portfolio meets the test in *BIPRU 7.3.35R(1)*).~~
- (3) ~~Six *positions* exceed the 5% threshold. The following diagram shows the composition of the portfolio.  
[Diagram deleted]~~
- (4) ~~Part (a): the portfolio meets the first part of the test because no individual *position* is worth more than 10% of the portfolio's value.~~
- (5) ~~Part (b): the portfolio fails the second part of the test because the sum (ignoring the sign) of the six relevant *positions* is £52; this exceeds 50% of the portfolio's value. [deleted]~~
- 7.3.37 G (1) ~~A country portfolio can be split into two sub-portfolios if this enables one sub-portfolio to meet the requirements in *BIPRU 7.3.35R(1)*. Individual *positions* may be sub-divided between sub-portfolios.~~
- (2) ~~Continuing the example above, one of the largest *positions* is taken out of the portfolio and put into a new portfolio. The new portfolio fails the two tests, but the amended portfolio meets both tests:~~
- (a) ~~Part (a): no single remaining *position* exceeds £9.10.~~
- (b) ~~Part (b): the sum of the five relevant *positions* is £43, this is less than 50% of the new portfolio's value of £91. [deleted]  
[Diagram deleted]~~
- ...
- 7.10.27A R *Stressed VaR* must be calculated at least weekly, using a 99% one-tailed confidence limit.
- ...
- 7.10.30A R The *stressed VaR* measure must be based on inputs calibrated to historical data from a continuous twelve-month period of significant financial stress



relevant to the firm's portfolio. The choice of that historical period will be subject to the FSA's approval and will form part of a firm's VaR model permission.

- 7.10.30B R A firm must review the selection of the stressed VaR historical observation period at least annually.
- ...
- 7.10.35 G The minimum updating frequency for the current VaR measure that can be specified in a *VaR model permission* is ~~quarterly~~ monthly.
- ...
- 7.10.39A R A firm must incorporate risk factors that are included in its pricing model in its VaR model. A firm's VaR model must capture nonlinearities for options and other products, as well as correlation risk and basis risk. Where proxies for risk factors are used they must show a good track record for the actual position held. In addition, BIPRU 7.10.40R to BIPRU 7.10.44R apply for individual risk types.
- 7.10.39B R A firm with a VaR model permission must justify to the FSA any omissions of risk factors from its VaR model, if they are included in its pricing model.
- ...
- 7.10.46 R ...
- (7) In addition to the other requirements in *BIPRU 7.10*, a firm must have an approach in place to capture, in the calculation of its capital requirements, the ~~default risk~~ incremental risk charge of its *trading book positions* that is incremental to the default and migration risk captured by the *VaR measures*, as specified in ~~this rule, BIPRU 7.10.48R, BIPRU 7.10.49R~~ BIPRU 7.10.55AR to BIPRU 7.10.55SR and *BIPRU 7.10.107R* (Backtesting: Specific risk backtesting).
- (8) ~~A firm must be able to demonstrate that the approach referred to in (7) meets soundness standards comparable to the approach set out in BIPRU 4 (The IRB approach), under the assumption of a constant level of risk, and adjusted where appropriate to reflect the impact of liquidity, concentrations, hedging and optionality.~~  
[deleted]
- ...
- 7.10.48 R (1) ~~Where a firm is subject to event risk that is not reached in its VaR measure, because it is beyond the 10-day holding period and 99 percent confidence interval (low probability and high severity events), the firm must ensure that the impact of such~~

events is factored into its internal capital assessment. [deleted]

(2) ...

...

- 7.10.50 R ~~To avoid double counting capital requirements under BIPRU 7.10.46R(7) a firm may, when calculating its incremental default charge, take into account the extent to which default risk has already been incorporated into the VaR calculation, especially for risk positions that could and would be closed within 10 business days in the event of adverse market conditions or other indications of deterioration in the credit environment. Where a firm captures its incremental default risk through a surcharge, it must have in place methodologies for validating the measure. [deleted]~~
- 7.10.51 R ~~A firm that does not capture the incremental default risk through an internally developed approach must calculate the surcharge through an approach consistent with either the standardised approach to credit risk or the IRB approach. [deleted]~~
- 7.10.52 R ~~With respect to securitisation exposures that would be subject to a deduction treatment in the calculation of its capital resources or risk weighted at 1250% as set out in BIPRU 9, these positions (cash or synthetic) are subject to a capital charge that is no less than set forth under that treatment. A firm that is a dealer in these exposures may apply a different treatment where it could demonstrate to the FSA, in addition to trading intent, that a liquid two-way market exists for the securitisation exposures or, in the case of synthetic securitisation that rely solely on credit derivatives, for the securitisation exposures themselves or all their constituent risk components. For the purposes of this rule a two-way market is deemed to exist where there are independent good faith offers to buy and sell so that a price reasonably related to the last sales price or current good faith competitive bid and offer quotations can be determined within one day and settled at such a price within a relatively short time conforming to trade custom. For a firm to apply a different treatment, it must have sufficient market data to ensure that it fully captures the concentrated default risk of these exposures in its internal approach for measuring the incremental default risk in accordance with the VaR specific risk minimum requirements. [deleted]~~

...

#### Incremental risk charge: Scope and parameters

- 7.10.55A R A firm must demonstrate that its incremental risk charge meets soundness standards comparable to those under the IRB approach, assuming a constant level of risk and adjusted, where appropriate, to reflect the impact of liquidity, concentrations, hedging and optionality.
- 7.10.55B R The incremental risk charge must cover all positions which are subject to a capital charge for interest-rate specific risk in accordance with the

firm's VaR model permission, except securitisation positions and nth-to-default credit derivatives. Where permitted by its VaR model permission, a firm may choose consistently to include all listed equity positions and derivatives positions based on listed equities for which that inclusion is consistent with how the firm internally measures and manages risk, but the approach must reflect the impact of correlations between default and migration events, and it must not reflect the impact of diversification between default and migration events and other market risk factors.

- 7.10.55C R The firm's approach to capture the incremental risk charge must measure losses due to default and internal or external ratings migration at the 99.9% confidence interval over a capital horizon of one year.
- 7.10.55D R The firm's correlation assumptions must be supported by the analysis of objective data in a conceptually sound framework. The approach to capture the incremental risk charge must appropriately reflect issuer concentrations. Concentrations that can arise within and across product classes under stressed conditions must also be reflected.
- 7.10.55E R The firm's approach must be based on the assumption of a constant level of risk over the one-year capital horizon, implying that given individual trading book positions or sets of positions that have experienced default or migration over their liquidity horizon are re-balanced at the end of their liquidity horizon to attain the initial level of risk. Alternatively, a firm may choose consistently to use a one-year constant position assumption.

#### Incremental risk charge: Liquidity horizons

- 7.10.55F R (1) The firm's liquidity horizons for calculating incremental risk charge must be set according to the time required to sell the position or to hedge all material and relevant price risks in a stressed market, having particular regard to the size of the position.
- (2) Liquidity horizons must reflect actual practice and experience during periods of both systematic and idiosyncratic stresses. The liquidity horizon must be measured under conservative assumptions and must be sufficiently long that the act of selling or hedging, in itself, would not materially affect the price at which the selling or hedging would be executed.
- 7.10.55G R The determination of the appropriate liquidity horizon for a position or set of positions is subject to a floor of three months. The determination of the appropriate liquidity horizon for a position or set of positions must take into account a firm's internal policies relating to valuation adjustments and the management of stale positions.
- 7.10.55H R When a firm determines liquidity horizons for sets of positions rather than for individual positions, the criteria for defining sets of positions must be defined in a way that meaningfully reflects differences in liquidity. The

liquidity horizons must be greater for *positions* that are concentrated, reflecting the longer period needed to liquidate those *positions*.

- 7.10.55I R The liquidity horizon for a *securitisation* warehouse must reflect the time to build, sell and securitise the assets, or to hedge the material risk factors, under stressed market conditions.

Incremental risk charge: Hedges

- 7.10.55J R (1) Hedges may be incorporated into the calculation of a *firm's incremental risk charge*. *Positions* may be netted only when long and short *positions* refer to the same financial instrument.
- (2) Hedging or diversification effects associated with long and short *positions* involving different instruments or different securities of the same obligor, as well as long and short *positions* in different *issuers*, may only be recognised by explicitly modelling gross long and short *positions* in the different instruments.
- (3) A *firm* must reflect the impact of material risks that could occur during the interval between the hedge's maturity and the liquidity horizon, as well as the potential for significant basis risks in hedging strategies by product, seniority in the capital structure, internal or external rating, maturity, vintage and other differences in the instruments. A *firm* must reflect a hedge only to the extent that it can be maintained even as the obligor approaches a credit or other event.
- 7.10.55K R For *trading book positions* that are hedged via dynamic hedging strategies, a rebalancing of the hedge within the liquidity horizon of the hedged position may be recognised only if the *firm*:

- (1) chooses to model rebalancing of the hedge consistently over the relevant set of *trading book positions*;
- (2) demonstrates that the inclusion of rebalancing results in a better risk measurement;
- (3) demonstrates that the markets for the instruments serving as hedges are liquid enough to allow for this rebalancing even during periods of stress; and
- (4) reflects in the capital charge any residual risks resulting from dynamic hedging strategies.

Incremental risk charge: Nonlinear positions and model risk

- 7.10.55L R (1) The *incremental risk charge* must reflect the nonlinear impact of *options*, structured credit derivatives and other *positions* with material nonlinear behaviour with respect to price changes.

- (2) The *firm* must also consider the amount of model risk inherent in the valuation and estimation of price risks associated with those products.

7.10.55M R The *incremental risk charge* must be based on objective and up-to-date data.

Incremental risk charge: Validation

7.10.55N R A *firm* must validate its approach to *incremental risk charge*. In particular, a *firm* must:

- (1) validate that its modelling approach for correlations and price changes is appropriate for its portfolio, including the choice and weights of its systematic risk factors;
- (2) perform a variety of stress tests (not limited to the range of events experienced historically), including sensitivity analysis and scenario analysis, to assess the qualitative and quantitative reasonableness of the approach, with particular regard to the treatment of concentrations; and
- (3) apply appropriate quantitative validation including relevant internal modelling benchmarks.

7.10.55O R A *firm's* approach for *incremental risk charge* must be consistent with the *firm's* internal risk management methodologies for identifying, measuring, and managing trading risks.

Incremental risk charge: Documentation and frequency of calculation

7.10.55P R A *firm* must document its approach for the *incremental risk charge* clearly, setting out its correlation and other modelling assumptions.

7.10.55Q R A *firm* must calculate its *incremental risk charge* at least weekly.

Incremental risk charge: Internal approaches based on different parameters

7.10.55R R A *firm* may use an approach for *incremental risk charge* that does not comply with all the requirements in *BIPRU* 7.10.55AR to *BIPRU* 7.10.55PR, only if:

- (1) such an approach is consistent with the *firm's* internal methodologies for identifying, measuring, and managing risks; and
- (2) the *firm* can demonstrate that its approach results in a capital requirement that is at least as high as it would be if based on an approach in full compliance with the requirements in *BIPRU* 7.10.55AR to *BIPRU* 7.10.55PR.

7.10.55S G The FSA will review at least annually any approach taken by the firm under BIPRU 7.10.55RR.

All price risk measure: General requirements

7.10.55T R As part of its VaR model permission, the FSA may authorise a firm to use the all price risk measure to calculate an additional capital charge in relation to positions in its correlation trading portfolio if it meets the following minimum standards:

- (1) it adequately captures all price risks at a 99.9% confidence interval over a capital horizon of one year under the assumption of a constant level of risk, and adjusted, where appropriate, to reflect the impact of liquidity, concentrations, hedging and optionality;
- (2) it adequately captures the following risks:
  - (a) the cumulative risk arising from multiple defaults, including the ordering of defaults, in tranches products;
  - (b) credit spread risk, including the gamma and cross-gamma effects;
  - (c) volatility of implied correlations, including the cross effect between spreads and correlations;
  - (d) basis risk, including both:
    - (i) the basis between the spread of an index and those of its constituent single names; and
    - (ii) the basis between the implied correlation of an index and that of bespoke portfolios;
  - (e) recovery-rate volatility, as it relates to the propensity for recovery rates to affect tranche prices; and
  - (f) to the extent that the all price risk measure incorporates benefits from dynamic hedging, the risk of hedge slippage and the potential costs of rebalancing those hedges.

7.10.55U R The amount of the capital charge for the correlation trading portfolio calculated in accordance with the all price risk measure must not be less than 8% of the capital charge that would result from applying BIPRU 7.2.48LR to all positions in the correlation trading portfolio subject to the all price risk measure.

7.10.55V R A firm may include in its all price risk measure positions that are jointly

managed with *positions* in the *correlation trading portfolio* and would otherwise be included in the *incremental risk charge*. In that case, the *firm* must exclude these *positions* from the calculation of its *incremental risk charge*.

7.10.55W R A *firm* must have sufficient market data to ensure that it fully captures the salient risks of the *positions* in its *all price risk measure* in accordance with the standards set out in *BIPRU 7.10.55TR*.

7.10.55X R A *firm* must demonstrate through backtesting or other appropriate means that its *all price risk measure* can appropriately explain the historical price variation of these *positions*. A *firm* must be able to demonstrate to the *FSA* that it can identify the *positions* within its *correlation trading portfolio*, in relation to which it is authorised to use the *all price risk measure*, separately from those other *positions* in relation to which it is not authorised to do so.

7.10.55Y R A *firm* must calculate the capital charge under the *all price risk measure* at least weekly.

All price risk measure: Stress testing

7.10.55Z R (1) For *positions* within its *correlation trading portfolio* in relation to which a *firm* may use the *all price risk measure*, a *firm* must regularly apply a set of specific, predetermined stress scenarios. These stress scenarios must examine the effects of stress to default rates, recovery rates, credit spreads, and correlations on the profit and loss of the *correlation trading portfolio*.

(2) A *firm* must apply the stress scenarios in (1) at least weekly and report the results to the *FSA* in accordance with *BIPRU 7.10.129R*.

7.10.55Z R If the results of the stress tests carried out in accordance with *BIPRU A* 7.10.55ZR indicate a material shortfall in the amount of capital required under the *all price risk measure*, a *firm* must notify the *FSA* of this circumstance by no later than two *business days* after the *business day* on which the material shortfall occurred.

7.10.55Z G The *FSA* may use its powers under section 45 (Variation etc. on the B Authority's own initiative) of the *Act* to impose on the *firm* a capital add-on to cover the material shortfall reported under *BIPRU 7.10.55ZAR*.

7.10.55Z G The *all price risk measure* is based on the *incremental risk charge*. C Therefore, when applying the *all price risk measure*, a *firm* should have regard to the requirements in *BIPRU 7.10.55AR* to *BIPRU 7.10.55RR*.

...

7.10.90A R A *firm* must also carry out reverse stress tests.

...

- 7.10.93 G Backtesting conducted only at a whole portfolio level using a single measure of profit and loss has limited power to distinguish an accurate *VaR model* from an inaccurate one. Backtesting should therefore be regarded as an additional safeguard rather than a primary validation tool. Such testing does however form the basis of the *FSA's plus factor* system. The test has been chosen as the basis of the backtesting regime because of its simplicity. A *firm* will therefore be expected to complement this backtesting with more granular backtesting analysis and involving more than one measure of profit and loss (i.e. both a ~~*clean*~~ *profit and loss figure* and a ~~*clean*~~ *hypothetical profit and loss figure*).
- 7.10.94 R A *firm* must have the capacity to analyse and compare its ~~*clean*~~ *profit and loss figures* and ~~*clean*~~ *hypothetical profit and loss figures* to the *VaR measure*, both at the level of the whole portfolio covered by the *VaR model permission* and at the level of individual books that contain material amounts of risk.
- 7.10.94A R At a minimum, backtesting of hypothetical profit and loss figures must be used for regulatory backtesting and also to calculate plus factors.
- 7.10.95 G ~~Clean profit and loss backtesting should be used for regulatory backtesting and used to calculate plus factors.~~ Hypothetical profit and loss backtesting Backtesting of hypothetical profit and loss figures is also used for model validation and for reporting to the *FSA*.

#### Backtesting: Basic testing requirements

- 7.10.96 R ~~A~~ At a minimum, a firm must, on each *business day*, compare each of its 250 most recent *business days'* ~~*clean profit and loss figures*~~ *hypothetical profit and loss figures* (ending with the *business day* preceding the *business day* in question) with the corresponding one-day *VaR measures*.

...

#### Backtesting: Calculating the ~~*clean*~~ profit and loss

- 7.10.99 G The ultimate purpose of backtesting is to assess whether capital is sufficient to absorb actual losses. ~~Therefore backtesting should be performed using a measure of actual daily profit and loss.~~ Actual daily profit and loss means the day's profit and loss arising from trading activities within the scope of the *VaR model permission*. This measure should, however, be 'cleaned' using *BIPRU 7.10.100R* inclusion in profit and loss of non-modelled factors.
- 7.10.100 R The ~~*clean*~~ *profit and loss figure* for a particular *business day* is the *firm's* actual profit or loss for that day in respect of the trading activities within the scope of the *firm's VaR model permission*, adjusted by stripping out:
- (1) fees and commissions;



- (2) brokerage;
  - (3) additions to and releases from reserves which are not directly related to *market risk* (e.g. administration reserves); and
  - (4) any inception profit exceeding an amount specified for this purpose in the *firm's VaR model permission* (where inception profit is defined as any profit arising immediately on entering into a new transaction).
- 7.10.101 G The definition of ~~*clean profit and loss figure*~~ may be amended or replaced in an individual *VaR model permission* if the *firm* can demonstrate to the FSA that the alternative method meets the spirit and purpose of the provisions in BIPRU 7.10 about the ~~*clean profit and loss figure*~~.
- 7.10.102 G The FSA will review as part of a *firm's VaR model permission* application the processes and documentation relating to the derivation of profit and loss used for backtesting. A *firm's* documentation should clearly set out the basis for cleaning profit and loss. To the extent that certain profit and loss elements are not updated every day (for example certain reserve calculations) the documentation should clearly set out how such elements are included in the ~~clean~~ profit and loss series.

Backtesting: Definition of backtesting exception

- 7.10.103 R A *backtesting exception* is deemed to have occurred for any *business day* if the ~~*clean profit and loss figure*~~ *hypothetical profit and loss figure* for that *business day* shows a loss, which in absolute magnitude exceeds the *one-day VaR measure* for that *business day*. The only exception is if that *business day* is identified in the *firm's VaR model permission* as giving rise to an excluded *backtesting exception*.

...

Backtesting: Hypothetical profit and loss

- 7.10.111 R A *firm* must ~~also~~ perform backtesting against a ~~*clean hypothetical profit and loss figure*~~ *hypothetical profit and loss figure* with respect to each *business day*. A ~~*clean hypothetical profit and loss figure*~~ *hypothetical profit and loss figure* for a *business day* means the ~~*clean profit and loss figure*~~ *hypothetical profit and loss figure* that would have occurred for that *business day* if the portfolio on which the *VaR number* for that *business day* is based remained unchanged.
- 7.10.112 G (1) ~~A *clean hypothetical profit and loss figure*~~ *hypothetical profit and loss figure* is based on the day's change in the value of the same portfolio that was used to generate the value-at-risk forecast.
- (2) ~~Backtesting under BIPRU 7.10.111R, although carried out with respect to each *business day*, need not be carried out each day. A *firm* need only carry it out sufficiently frequently to comply~~

with its reporting requirements under *BIPRU 7.10.129R*. An exception arising out of such backtesting need not be reported to the *FSA* under *BIPRU 7.10.104R*. [deleted]

- (3) The *firm* may also need to calculate a ~~*clean hypothetical profit and loss figure*~~ *hypothetical profit and loss figure* in order to produce profit attribution reports and to analyse the cause of *backtesting exceptions*.

7.10.112 A G The definition of *hypothetical profit and loss figure* may be amended or replaced in an individual *VaR model permission* if the *firm* can demonstrate to the *FSA* that the alternative method meets the spirit and purpose of the provisions in *BIPRU 7.10* about the *hypothetical profit and loss figure*.

#### Capital calculations: General

- 7.10.113 R The *model PRR* is, for any *business day* (the “relevant” *business day*), calculated in accordance with the following formula:
- (1) ...
- (2) (in the case of a *VaR model permission* that covers *specific risk*) the ~~*incremental default risk charge*~~ for the relevant *business day* higher of:
- (a) the *incremental risk charge* for the relevant *business day*; and
- (b) the average of the twelve-week *incremental risk charge*; and
- (3) the higher of:
- (a) the latest *stressed VaR number*; and
- (b) the average of the *firm’s* daily *stressed VaR numbers* for the 60 *business days* ending with the relevant *business day*, multiplied by the *multiplication factor* applied to the *stressed VaR* measure for the relevant *business day*; and
- (4) (in the case of a *VaR model permission* that covers *all price risk measure*) the higher of:
- (a) the *all price risk measure* for the relevant *business day*; and
- (b) the average of the twelve-week *all price risk measure*.

...

7.10.116 R The ~~incremental default risk charge~~ *incremental risk charge* for any *business day* means the ~~incremental default risk charge~~ *incremental risk charge* required under the provisions in *BIPRU 7.10* about *specific risk*, in respect of the previous *business day*'s close-of-business *positions* with respect to which those provisions apply.

7.10.116 R The *all price risk measure* for any *business day* means the *all price risk measure* required under the provisions in *BIPRU 7.10* about *specific risk* for the *correlation trading portfolio*.

7.10.117 G The following equation expresses *BIPRU 7.10.113R* mathematically:  
 [Editor's Note: The existing formula is deleted and is replaced by the following, which is not shown underlined.]

$$PRR_{VaR} = \text{Max} \left\{ VaR_t, f \times \frac{1}{60} \sum_{i=0}^{59} VaR_{t-i} \right\} + \text{Max} \left\{ SVaR_t, s \times \frac{1}{y} \sum_{i=0}^{y-1} SVaR_{t-i} \right\} + \text{Max} \left\{ IRC_t, \frac{1}{z} \sum_{i=0}^{z-1} IRC_{t-i} \right\} + \text{Max} \left\{ APR_t, \frac{1}{w} \sum_{i=0}^{w-1} APR_{t-i} \right\}$$

...

- (4) *f* is the multiplication factor for *VaR*; ~~and~~
- (5) ~~*IDRC* is the *incremental default risk charge* (if applicable)~~  
*SVaR<sub>t</sub>* represents the latest *stressed VaR* figure;
- (6) *SVaR<sub>t-i</sub>* represents the *stressed VaR* calculated for *i business days* earlier;
- (7) *s* is the *multiplication factor for stressed VaR*;
- (8) *y* is the number of times the *stressed VaR* was calculated in the last 60 *business days*;
- (9) *IRC<sub>t</sub>* represents the latest *incremental risk charge*;
- (10) *IRC<sub>t-i</sub>* represents the *incremental risk charge* calculated for *i business days* earlier;
- (11) *z* is the number of times the *incremental risk charge* was calculated in the last 12 weeks;
- (12) *APR<sub>t</sub>* represents the latest *all price risk measure*;
- (13) *APR<sub>t-i</sub>* represents the *all price risk measure* calculated for *i business days* earlier; and
- (14) *w* is the number of times the *all price risk measure* was calculated in the last 12 weeks.

Capital calculations: Multiplication factors

7.10.118 R The multiplication factor, for *VaR* and *stressed VaR*, for any *business day* is the sum of the *minimum multiplication factor* and the *plus factor*

for that day.

7.10.119 R The *minimum multiplication factor, for VaR and stressed VaR*, is three or any higher amount the *VaR model permission* defines it as.

7.10.120 G The *minimum multiplication factor, for VaR and stressed VaR*, will never be less than three. If the *FSA* does set the *minimum multiplication factor, for VaR and stressed VaR*, above three the *VaR model permission* will have a table that sets ~~outs~~ out the reasons for that add on and specify how much of the add on is attributable to each reason (see *BIPRU 7.10.121R*). If there are weaknesses in the *VaR model* that may otherwise be considered a breach of the minimum standards referred to in *BIPRU 7.10.42R* the *FSA* may apply such an add on to act as a mitigant for those weaknesses.

7.10.121 R Something that would otherwise be a breach of the minimum standards ~~to~~ in *BIPRU 7.10.26R – BIPRU 7.10.53R* is not a breach to the extent that that thing is identified in the *firm's VaR permission* as a reason for an increase in the *minimum multiplication factor, for VaR and stressed VaR*, above 3.

...

7.10.124 R The table in *BIPRU 7.10.125R* sets out the *plus factors* to be added to the *minimum multiplication factor, for VaR and stressed VaR*, for any *business day*. It is based on the number of *backtesting exceptions* that occurred during the backtesting period as referred to in *BIPRU 7.10.96R* (Backtesting: Basic Backtesting requirements) ending three *business days* preceding the *business day* for which the *model PRR* is being calculated.

...

7.10.129 R A *firm* must, no later than the number of *business days* after the end of each quarter specified in the *VaR model permission* for this purpose, submit, in respect of that quarter, a report to the *FSA* about the operation of the *VaR model*, the systems and controls relating to it and any changes to the *VaR model* and those systems and controls. Each report must outline as a minimum the following information in respect of that quarter:

...

(3) a summary of backtesting performance against ~~clean~~ *profit and loss figures (if calculated)* and ~~clean~~ *hypothetical profit and loss figures*, which must be provided in electronic format as stipulated by the *VaR model permission*;

...

(9) an up-to-date list of products covered by the *VaR model permission* showing all changes made since the *VaR model*

*permission* was granted; ~~and~~

(10) where applicable (nil returns are not required), details of:

...

(f) the *VaR model* not accurately capturing risks (as referred to in *BIPRU 7.10.53R*) and any steps taken under *BIPRU 7.10.53R*; and

(11) the results of the stress tests on the firm's correlation trading portfolio under *BIPRU 7.10.55ZR*, including a comparison to the current capital charge.

7.10.130 R A *firm* must provide to, and discuss with, the *FSA* details of any significant planned changes to the *VaR model* before those changes are implemented. These details must include information about the nature of the change and an estimate of the impact on *VaR numbers* and the *incremental ~~default~~ risk charge*.

...

7.10.136 R (1) ...

(2) ~~If~~ Subject to *BIPRU 7.10.136AR*, if, where the *standard market risk PRR rules* apply, a *position* is subject to a *PRR charge* and the *firm's VaR model permission* says that it covers the risks to which that *PRR charge* relates, the *firm* must, for those risks, calculate the *PRR* for that *position* under the *VaR model approach* rather than under the *standard market risk PRR rules*.

...

7.10.136 R A *firm* must calculate the market risk capital requirement for securitisation positions and positions in the correlation trading portfolio in accordance with the standard market risk PRR rules, with the exception of those positions subject to the all price risk measure.

A

...

7.11.3 R (1) When calculating the *PRR* of the *protection seller*, unless specified differently by other *rules* and subject to (2), the notional amount of the credit derivative contract must be used. For the purpose of calculating the *specific risk PRR charge*, other than for total return swaps, the maturity of the credit derivative contract is applicable instead of the maturity of the obligation.

(2) When calculating the *PRR* of the *protection seller*, a *firm* may choose to replace the notional value of the credit derivative by the notional value adjusted for changes in the market value of

the credit derivative since trade inception.

...

- 7.11.11 R If ~~a first or second asset to default~~ an nth-to-default derivative is externally rated and meets the conditions for a *qualifying debt security*, then the *protection seller* need only calculate one *specific risk* charge reflecting the rating of the derivative. The *specific risk* charge must be based on the *securitisation PRAs* in *BIPRU 7.2* as applicable.

...

Deriving the net position in each debt security: Credit derivatives

- 7.11.12C R A firm must calculate both the net long and the net short positions in credit derivatives by applying *BIPRU 7.2.36R* and *BIPRU 7.2.37R* and, where applicable, *BIPRU 7.2.42AR* to *BIPRU 7.2.42CR* or *BIPRU 7.11.13R* to *BIPRU 7.11.17R*.

Recognition of hedging provided by credit derivatives ~~against cash positions~~

- 7.11.13 R (1) ...
- (2) ...
- (3) ~~*BIPRU 7.11.13 R*—*BIPRU 7.11.17 R* are subject to the requirements of the *credit default swap PRR methods*. [deleted]~~

...

Special treatment of credit default swaps: Provisions applicable to all methods  
Specific risk calculation

...

- 7.11.18 R ~~*BIPRU 7.11.18R*—*BIPRU 7.11.58R* set out the calculation of the *specific risk* portion of the *interest rate PRR* for credit default swaps. [deleted]~~

- 7.11.19 R ~~The *specific risk* portion of the *interest rate PRR* is calculated separately for:~~

- (1) ~~credit default swaps (other than those in (2));~~
- (2) ~~credit default swaps that are also *securitisation positions*;~~
- (3) ~~other *positions*;~~

~~that are subject to the *interest rate PRR*. [deleted]~~

- 7.11.20 R The *specific risk* portion of the *interest rate PRR* for ~~*positions* falling into *BIPRU 7.11.19R(1)* and *BIPRU 7.11.19R(2)*~~ credit derivatives in the *trading book* must be calculated in accordance with the *credit default swap PRR methods* rather than in accordance with *BIPRU 7.2* (*Interest*

~~rate PRR) BIPRU 7.2.43R to BIPRU 7.2.46AG (Specific risk calculation), BIPRU 7.2.48AR to BIPRU 7.2.48KR (Specific risk: securitisations and re-securitisations), BIPRU 7.2.48LR (Specific risk: Correlation trading portfolio), BIPRU 7.2.49R to BIPRU 7.2.51G (Definition of a qualifying debt security) and the other provisions of BIPRU 7.11, as applicable. However a *firm* may apply BIPRU 7.11.13R- BIPRU 7.11.17R before applying the *credit default swap PRR methods*. If it does so the *firm* must apply the *credit default swap PRR methods* to the remaining position in credit default swaps.~~

Delete 7.11.21R to 7.11.58R. The deleted text is not shown.

Amend the following as shown.

7.11.61 G ~~BIPRU 7.11.62G - BIPRU 7.11.64G~~ 7.11.63G cover risks relating to credit derivatives that may not be captured in this section. This *guidance* is of particular relevance to the *overall financial adequacy rule*, the *overall Pillar 2 rule* and the *general stress and scenario testing rule*.

...

7.11.64 G ~~If a *firm* uses models in its valuation process, it should consider whether the default capital requirements under the *credit default swap PRR methods* adequately cover the default losses that the *firm's* model estimates it will be exposed to.~~ [deleted]

...

9.1.9 G *BIPRU 9* deals with:

...

(3) the requirements that investors, *originators* and *sponsors* of *securitisations* in the *trading book* will have to meet (*BIPRU 9.3.1AR*, *BIPRU 9.3.15R to BIPRU 9.3.20R*, *BIPRU 9.6.1AR* and *BIPRU 9.15*).

...

9.3.2 G ~~[deleted]~~ A *credit institution* should have regard to the Committee of European Banking Supervisors' Guidelines to Article 122a of the *Banking Consolidation Directive* when considering its obligations under *BIPRU 9.3.15R to BIPRU 9.3.20R* and *BIPRU 9.15*. The Guidelines can be found at <http://www.eba.europa.eu/Publications/Standards-Guidelines.aspx>.

...

## Origination criteria

- 9.3.15 R A *credit institution*, whether acting as *sponsor* or *originator*, must apply the same sound and well-defined criteria used for credit-granting in respect of exposures held on their *trading* and *non-trading book* under SYSC 7.1.9R to exposures to be securitised. The criteria applied must include the processes for approving and, where relevant, amending, renewing and re-financing credits.
- ...
- ...
- 9.6.1 R An *originator* which, in respect of a securitisation in the *non-trading book*, has made use of BIPRU 9.3.1R in the calculation of *risk weighted exposure amounts*, or a *sponsor*, must not, with a view to reducing potential or actual losses to investors, provide support to the *securitisation* beyond its contractual obligations.
- [Note: BCD Article 101(1)]
- 9.6.1A R An *originator* which has sold instruments in its *trading book* to an *SSPE* and no longer holds *market risk capital requirements* for these instruments, or a *sponsor*, must not, with a view to reducing potential or actual losses to investors, provide support to the *securitisation* beyond its contractual obligations.
- [Note: BCD Article 101(1)]
- 9.6.2 R If an *originator* or *sponsor* fails to comply with BIPRU 9.6.1R or BIPRU 9.6.1AR in respect of a *securitisation*, it must:
- (1) hold capital against all of the *securitised exposures* associated with the *securitisation* transaction as if they had not been *securitised*; and
  - (2) disclose publicly:
    - (a) that it has provided non-contractual support; and
    - (b) the regulatory capital impact of doing so.
- ...
- ...
- 9.7.2 R (1) A *firm* ~~may~~ must not use the credit assessment of an *eligible ECAI* to determine the *risk weight* of a *securitisation position* in accordance with BIPRU 9.9 unless it complies with the principles of credibility and transparency as elaborated in (2) to (46).



...

- (5) The credit assessment must not be based, or partly based, on unfunded support provided by the *firm* itself.
- (6) In the case of a credit assessment referred to in (5), the *firm* must consider the relevant position as if it were not rated and must apply the relevant treatment of unrated positions as set out in *BIPRU* 9.11 and *BIPRU* 9.12.

[**Note:** *BCD*, Article 97(5) and Annex IX, Part 3, Point 1]

- 9.7.2A G The requirements in *BIPRU* 9.7.2R(5) and (6) apply to situations where a *firm* holds *securitisation positions* which receive a lower *risk weight* by virtue of unfunded credit protection provided by the *firm* itself acting in a different capacity in the *securitisation* transaction. The assessment of whether a *firm* is providing unfunded support to its *securitisation positions* should take into account the economic substance of that support in the context of the overall transaction and any circumstances in which the *firm* could become exposed to a higher credit risk in the absence of that support.

...

- 9.7.4 G Where *BIPRU* 9.7.2R(5) applies to *securitisation positions* in an *ABCP programme*, the *firm* may be granted a *waiver* which allows it to use the *risk weight* assigned to a *liquidity facility* in order to calculate the *risk weighted exposure amount* for the positions in the *ABCP programme*, provided that the *liquidity facility* ranks *pari passu* with the positions in the *ABCP programme* so that they form overlapping positions and 100% of the commercial paper issued by the *ABCP programme* is covered by *liquidity facilities*. For the purposes of this provision, “overlapping positions” means that the positions represent, wholly or partially, an *exposure* to the same risk such that, to the extent of the overlap, there is a single *exposure*.

[**Note:** *BCD*, Annex IX, Part 4, Point 5]

...

- 9.9.8 R (1) Where a *firm* has two or more overlapping positions in a *securitisation* the *firm* must, to the extent the positions overlap, include in its calculation of *risk weighted exposure amounts* only the position, or portion of a position, producing the higher *risk weighted exposure amounts*. The *firm* may also recognise such an overlap between capital charges for *specific risk* in relation to *positions* in the *trading book* and capital charges for positions in the *non-trading book*, provided that the *firm* is able to calculate and compare the capital charges for the relevant *positions*.

...

- 9.9.10 G Where BIPRU 9.7.2R(5) applies to securitisation positions in an ABCP programme, the firm may be granted a waiver in the terms described in BIPRU 9.7.4G.

[**Note:** *BCD*, Annex IX, Part 4, Point 5]

...

**9.11 Calculation of risk-weighted exposure amounts under the standardised approach to securitisations**

- 9.11.1 R Subject to *BIPRU 9.11.5R*, the *risk weighted exposure amount* of a ~~rated~~ rated securitisation position or resecuritisation position must be calculated by applying to the *exposure* value the *risk weight* associated with the *credit quality step* with which the credit assessment has been determined to be associated, as prescribed in *BIPRU 9.11.2R* ~~or BIPRU 9.11.3R~~.

[**Note:** *BCD*, Annex IX, Part 4, point 6]

- 9.11.2 R ~~Table Positions other than ones with short-term credit assessments~~

This table belongs to *BIPRU 9.11.1R*

<i>Credit Quality step</i>	1	2	3	4 ( <u>only for credit assessments other than short-term credit assessments</u> )	<del>5 and below</del> <u>All other credit quality steps</u>
<del><i>Risk weight</i></del> <u><i>Securitisation positions</i></u>	20%	50%	100%	350%	1250%
<u><i>Resecuritisation positions</i></u>	<u>40%</u>	<u>100%</u>	<u>225%</u>	<u>650%</u>	<u>1250%</u>

...

[**Note:** For mapping of the *credit quality step* to the credit assessments of *eligible ECAIs*, refer to:

[www.fsa.gov.uk/pubs/international/ecais\\_securitisation.pdf](http://www.fsa.gov.uk/pubs/international/ecais_securitisation.pdf)]

[**Note:** *BCD*, Annex IX, Part 4, point 6, Table 1]

- 9.11.3 R ~~Table: Positions with short-term credit assessments~~

This table belongs to *BIPRU 9.11.1R*

<i>Credit quality step</i>	1	2	3	All other credit assessments
<i>Risk weight</i>	20%	50%	100%	1250%

[~~Note: For mapping of the credit quality step to the credit assessments of eligible ECAs, refer to: [http://www.fsa.gov.uk/pubs/international/ecais\\_securitisation.pdf](http://www.fsa.gov.uk/pubs/international/ecais_securitisation.pdf)~~] [deleted]

...

**9.12 Calculation of risk-weighted exposure amounts under the IRB approach**

...

Ratings based method

...

9.12.10 R Under the ratings based method, the risk weighted exposure amount of a ~~rated~~ rated securitisation position or resecuritisation position must be calculated by applying to the exposure value the risk weight associated with the credit quality step with which the credit assessment is associated as prescribed in BIPRU 9.12.11R and ~~BIPRU 9.12.12R~~ multiplied by 1.06.

[Note: BCD, Annex IX, Part 4, point 46]

9.12.11 R Table: ~~Positions other than ones with short term credit assessments~~

This table belongs to BIPRU 9.12.10R

Credit Quality Step (CQS)		Risk weight <u>Securitisation</u> <u>positions</u>			<u>Resecuritisation</u> <u>positions</u>	
<u>Credit assessments other than short term</u>	<u>Short-term credit assessments</u>	A	B	C	<u>D</u>	<u>E</u>
CQS1	<u>1</u>	7%	12%	20%	<u>20%</u>	<u>30%</u>
CQS 2		8%	15%	25%	<u>25%</u>	<u>40%</u>
CQS 3		10%	18%	35%	<u>35%</u>	<u>50%</u>
CQS 4	<u>2</u>	12%	20%		<u>40%</u>	<u>65%</u>
CQS 5		20%	35%		<u>60%</u>	<u>100%</u>

CQS 6		35%	50%	<u>100%</u>	<u>150%</u>
CQS 7	<u>3</u>	60%	75%	<u>150%</u>	<u>225%</u>
CQS 8		100%		<u>200%</u>	<u>350%</u>
CQS 9		250%		<u>300%</u>	<u>500%</u>
CQS 10		425%		<u>500%</u>	<u>650%</u>
CQS 11		650%		<u>750%</u>	<u>850%</u>
<u>Below CQS 11 all other, unrated</u>		1250%			

[**Note:** For mapping of the *credit quality step* to the credit assessments of eligible *ECAIs*, refer to:  
[www.fsa.gov.uk/pubs/international/ecais\\_securitisation.pdf](http://www.fsa.gov.uk/pubs/international/ecais_securitisation.pdf) ]

[**Note:** *BCD*, Annex IX, Part 4, point 46]

9.12.12 R Table: Positions with short-term credit assessments  
This table belongs to *BIPRU 9.12.10R*

Credit Quality Step (CQS)	Risk weight		
	A	B	C
CQS 1	7%	12%	20%
CQS 2	12%	20%	35%
CQS 3	60%	75%	75%
All other credit assessments	1250%	1250%	1250%

[**Note:** For mapping of the *credit quality step* to the credit assessments of eligible *ECAIs*, refer to:  
[http://www.fsa.gov.uk/pubs/international/ecais\\_securitisation.pdf](http://www.fsa.gov.uk/pubs/international/ecais_securitisation.pdf) ] [deleted]

9.12.13 R Subject to *BIPRU 9.12.17R*, the *risk weights* in column A of each table in *BIPRU 9.12.11R* and *BIPRU 9.12.12R* must be applied where the position is in the most senior *tranche* of a *securitisation*. For the purposes of *BIPRU 9.12.10R*:

(1) the weightings in column C of *BIPRU 9.12.11R* must be applied where the *securitisation position* is not a *resecuritisation position* and where the effective number of *exposures* securitised is less than six;

- (2) for the remainder of the *securitisation positions* that are not *resecuritisation positions*, the weightings in column B must be applied unless the position is in the most senior *tranche* of a *securitisation*, in which case the weightings in column A must be applied; and
- (3) for *resecuritisation positions*, the weightings in column E must be applied unless the *resecuritisation position* is in the most senior *tranche* of the *resecuritisation* and none of the underlying *exposures* were themselves *resecuritisation exposures*, in which case column D must be applied.

[**Note:** BCD, Annex IX, Part 4, point 47(part)]

...

- 9.12.17 R The *risk weights* in column C of each table in *BIPRU 9.12.11R* and *BIPRU 9.12.12R* must be applied where the position is in a *securitisation* where the effective number of *exposures securitised* is less than six. In calculating the effective number of *exposures securitised*, multiple *exposures* to one obligor must be treated as one *exposure*. The effective number of *exposures* is calculated as:

$$N = ((\sum_j (EAD_j))^2) / (\sum_j (EAD_j^2))$$

where  $EAD_j$  represents the sum of the *exposure* values of all *exposures* to the  $j$ th obligor. If the portfolio share associated with the largest *exposure*,  $C_1$ , is available, the *firm* may compute  $N$  as  $1/C_1$ .

[**Note:** BCD, Annex IX, Part 4, point 49(part)]

- 9.12.18 R ~~In the case of *resecuritisation*, the *firm* must look at the number of *securitisation exposures* in the pool and not the number of underlying *exposures* in the original pools from which the underlying *securitisation exposures* stem. If the portfolio share associated with the largest *exposure*,  $C_1$ , is available, the *firm* may compute  $N$  as  $1/C_1$ .~~

~~[**Note:** BCD Annex IX Part 4 point 49 (part)] [deleted]~~

- 9.12.19 R ~~The *risk weight* in Column B in the tables *BIPRU 9.12.11R* and *BIPRU 9.12.12R* must be applied to all other positions.~~

~~[**Note:** BCD Annex IX Part 4 point 50] [deleted]~~

...

#### Supervisory formula method

- 9.12.21 R Subject to any *permission* of the type described in *BIPRU 9.12.28G*, under the *supervisory formula method*, the *risk weight* for a *securitisation position* must be ~~the greater of 7% or the *risk weight* to be applied in accordance with *BIPRU 9.12.22R*.~~ However, the *risk weight* must be no less than 20% for *resecuritisation positions* and no less than

7% for all other securitisation positions.

[Note: BCD, Annex IX, Part 4, point 52]

9.12.22 R (1) Subject to any *permission* of the type described in *BIPRU* 9.12.28G, the *risk weight* to be applied to the *exposure* amount must be:

...

...

(19) N is the effective number of *exposures* calculated in accordance with *BIPRU* 9.12.17R – *BIPRU* 9.12.18R. In the case of *resecuritisations*, the *firm* must look at the number of *securitisation exposures* in the pool and not the number of *underlying exposures* in original pools from which the *underlying securitisation exposures* stem.

...

[Note: BCD, Annex IX, Part 4, point 53 (part)]

...

Application

9.15.1 R Subject to *BIPRU* 9.15.1AR, *BIPRU* 9.15 applies to:

- (1) new *securitisations* issued on or after 1 January 2011; and
- (2) from 31 December 2014, to existing *securitisations* where new underlying ~~exposures~~ *exposures* are added or substituted after that date.

[Note: BCD, Article 122a, paragraph 8]

9.15.1A R *BIPRU* 9.15.16AR and *BIPRU* 9.15.16BR only apply to:

- (1) new *securitisations* issued on or after 31 December 2011; and
- (2) from 31 December 2014, to existing *securitisations* where new underlying *exposures* are added or substituted after that date.

9.15.1B G *A credit institution* should have regard to the Committee of European Banking Supervisors' Guidelines to Article 122a of the *Banking Consolidation Directive* when considering its obligations under *BIPRU* 9.3.15R to *BIPRU* 9.3.20R and *BIPRU* 9.15. The Guidelines can be found at <http://www.eba.europa.eu/Publications/Standards-Guidelines.aspx>.

...

9.15.6 R Multiple applications of the retention of net economic interest requirements for any given *securitisation* are ~~prohibited~~ not required.

...

Group level requirements

- 9.15.16A R Subject to *BIPRU 9.15.16BR*, a *credit institution* must ensure that any *undertaking* in relation to which the *credit institution* is a *parent undertaking*:
- (1) becomes exposed to the credit risk of a *securitisation* only where the *originator*, *sponsor* or original lender in the *securitisation* has explicitly disclosed to the *undertaking* that it will retain, on an *ongoing basis*, a material net economic interest which, in any event, must not be less than 5%, as set out in *BIPRU 9.15.3R* to *BIPRU 9.15.10R*;
  - (2) complies before investing in a *securitisation*, and continues to comply thereafter, with the investor due diligence requirements set out in *BIPRU 9.15.11R* to *BIPRU 9.15.13R*; and
  - (3) complies in relation to its investments in *securitisations* with the monitoring requirements set out in *BIPRU 9.15.14R* to *BIPRU 9.15.16R*.
- 9.15.16B R The requirements in *BIPRU 9.15.16AR* do not apply in respect of *subsidiaries* of a *credit institution* which are *insurance undertakings*, *reinsurance undertakings* or *UCITS management companies*.
- 9.15.16C G The purpose of *BIPRU 9.15.16AR* is to ensure that a *credit institution* meets the requirements in *BIPRU 9.15* at *group* level in relation to its *subsidiary undertakings*. In order to comply with this rule, a *credit institution* should be able to demonstrate to the *FSA* that it has put in place adequate *group* policies and procedures which its *subsidiary undertakings* must follow in order to materially meet the requirements for investors set out in *BIPRU 9.15*, and that it regularly monitors compliance with those policies.
- 9.15.16D G Where a *credit institution* applies to the *FSA* for a waiver of *BIPRU 9.15.16AR* in relation to its non-*EEA subsidiary undertakings*, the *FSA* may have regard in its assessment of the waiver tests under section 148 of the *Act* as to whether those *undertakings* are themselves subject to requirements in their jurisdiction similar to those set out in *BIPRU 9.15* and the extent to which complying with such requirements and *BIPRU 9.15.16AR* would be unduly burdensome, including circumstances where it could create a substantial conflict for the *credit institution*.
- 9.15.16E G Without prejudice to *BIPRU 9.15.16AR*, when assessing group risk in accordance with *GENPRU 1.2.30R* a *credit institution* should have regard to the potential risks arising from *securitisation* investment

activities carried out by other undertakings within its group, such as affiliated companies and undertakings in which the credit institution has a participating interest. Where these undertakings are not subject to similar requirements as those set out in BIPRU 9.15, the FSA may seek to address the potential risks arising from this situation for example by imposing a specific capital add-on in the credit institution's ICG.

#### Consequences of failure to meet requirements

- 9.15.17 G (1) Subject to *BIPRU 9.3.22G, BIPRU 9.15.9R to BIPRU 9.15.10R and BIPRU 9.15.18G*, where a *credit institution* fails to meet any of the requirements in *BIPRU 9.3.18G to BIPRU 9.3.20R* (disclosure requirements), and *BIPRU 9.15.11R to BIPRU 9.15.16R* (investor due diligence requirements) in any material respect by reason of its negligence or omission, the *FSA* will use its powers under section 45 (Variation etc on the Authority's own initiative) of the *Act* to impose an additional *risk weight* of no less than 250% (capped at 1250%) of the risk weight that would otherwise apply to the relevant *securitisation positions* under *BIPRU 9.11 to BIPRU 9.14*. The additional *risk weight* imposed will be progressively increased with each relevant, subsequent infringement of the requirements in *BIPRU 9.3.18R to BIPRU 9.3.20R and BIPRU 9.15.11R to BIPRU 9.15.16R*.

[Note: BCD, Article 122a, paragraph 5]

- (2) Subject to *BIPRU 9.3.22G, BIPRU 9.15.9R to BIPRU 9.15.10R and BIPRU 9.15.18G*, where a *credit institution* fails to meet in any material respect the requirements in *BIPRU 9.15.16AR* (Group level requirements), the *FSA* may consider using its powers under section 45 (Variation etc on the Authority's own initiative) of the *Act* in the manner described in (1). In order to calculate the *risk weights* that would apply to the *credit institution*, the *FSA* may treat the *securitisation investments* of the *subsidiary undertaking* as if they were *securitisation positions* held directly by the *credit institution*.

...

#### Disclosure policy

- 11.3.3 R (1) A *firm* must adopt a formal policy to comply with the disclosure requirements laid down in *BIPRU 11.3.1R and BIPRU 11.3.2R* and have policies for assessing the appropriateness of its disclosures, including their verification and frequency.
- (2) A *firm* must also have policies for assessing whether its disclosures convey its risk profile comprehensively to market participants. Where those disclosures do not convey its risk



profile comprehensively to market participants, a firm must publicly disclose the information necessary in addition to that required according to BIPRU 11.3.3R(1). However, a firm may omit one or more items of information if those items are not, in the light of the criterion specified in BIPRU 11.4.1R, regarded as material, or if those items are, in the light of the criteria specified in BIPRU 11.4.2R and BIPRU 11.4.3R, regarded as proprietary or confidential.

[Note: BCD Article 145(3)]

...

Disclosure: Market risk

- 11.5.12 R A firm must disclose its *capital resources requirements* separately for each risk referred to in (1), ~~and~~ (2) and (3):
- (1) in respect of its *trading-book* business, its:
    - (a) *interest rate PRR*;
    - (b) *equity PRR*;
    - (c) *option PRR*;
    - (d) *collective investment schemes PRR*;
    - (e) *counterparty risk capital component*; and
    - (f) *concentration risk capital component*; and
  - (2) in respect of all its business activities, its:
    - (a) *commodity PRR*; and
    - (b) *foreign currency PRR*; and
  - (3) its specific interest-rate risk of securitisation positions.

[Note: BCD Annex XII Part 2 point 9]

Disclosure: Use of VaR model for calculation of market risk capital requirement

- 11.5.13 R The following information must be disclosed by a firm which calculates its *market risk capital requirement* using a *VaR model*:
- (1) for each sub-portfolio covered:
    - (a) the characteristics of the models used;
    - (b) a description of stress testing applied to the sub-

portfolio;

- (c) a description of the approaches used for backtesting and validating the accuracy and consistency of the internal models and modelling process;
  - (d) ~~the highest, the lowest and the mean of the daily *value-at-risk* measures over the reporting period and the *value-at-risk* measure as per the end of the period;~~ for the capital charges calculated according to the *incremental risk charge* and the *all price risk measure* separately, the methodologies used and the risks measured through the use of an internal model, including a description of the approach used by the *firm* to determine liquidity horizons, the methodologies used to achieve a capital assessment that is consistent with the required soundness standard and the approaches used in the validation of the model;
  - (e) ~~a comparison of the daily end-of-day *value-at-risk* measures to the one-day changes of the portfolio's value by the end of the subsequent *business day* together with an analysis of any important overshooting during the reporting period;~~
- (2) the scope of the *firm's VaR model permission*; ~~and~~
  - (3) a description of the extent and methodologies for compliance with the requirements set out in *GENPRU* 1.3.13R(2) and *GENPRU* 1.3.13R(3) and *GENPRU* 1.3.14R to *GENPRU* 1.3.34R<sub>2</sub>;
  - (4) the highest, the lowest and the mean of the following:
    - (a) the daily *VaR measures* over the reporting period and the *VaR measure* as per the period end;
    - (b) the *stressed VaR* measures over the reporting period and the *stressed VaR* measure as per the period end;
    - (c) the capital charge according to the *incremental risk charge* over the reporting period and as per the period end;
    - (d) the capital charge according to the *all price risk measure* over the reporting period and as per the period end;
  - (5) the amount of capital according to the *incremental risk charge* and the amount of capital according to the *all price risk measure* shown separately, together with the weighted average

liquidity horizon for each sub-portfolio covered; and

- (6) a comparison of the daily end-of-day *VaR measures* to the one-day changes of the portfolio's value by the end of the subsequent *business day* together with an analysis of any important overshooting during the reporting period.

[Note: BCD Annex XII Part 2 point 10]

...

#### Disclosures: Securitisation

- 11.5.17 R A firm calculating *risk weighted exposure amounts* in accordance with BIPRU 9 or capital resource requirements according to BIPRU 7.2.48AR to BIPRU 7.2.48KR must disclose the following information, where relevant separately for its *trading book* and *non-trading book*:
- (1) a description of the *firm's* objectives in relation to *securitisation* activity;
  - (1A) the nature of other risks, including *liquidity risk* inherent in securitised assets;
  - (1B) the type of risks in terms of seniority of underlying *securitisation positions* and in terms of assets underlying these latter *securitisation positions* assumed and retained with *resecuritisation* activity;
  - (2) the different roles played by the *firm* in the *securitisation* process;
  - (3) an indication of the extent of the *firm's* involvement in each of them;
  - (3A) a description of the processes in place to monitor changes in the credit and market risk of *securitisation exposures*, including how the behaviour of the underlying assets impacts *securitisation positions* and a description of how those processes differ for *resecuritisation positions*;
  - (3B) a description of the *firm's* policy governing the use of hedging and unfunded protection to mitigate the risks of retained *securitisation* and *resecuritisation positions*, including identification of material hedge counterparties by relevant type of risk exposure;
  - (4) the approaches to calculating *risk weighted exposure amounts* that the *firm* follows for its *securitisation* activities, including the types of *securitisation exposures* to which each approach applies;

- (4A) the types of SSPEs that the firm, as sponsor, uses to securitise third-party exposures, including whether, and in what form, and to what extent, the firm has exposures to these SSPEs, separately for on and off-balance sheet exposures, as well as a list of the entities that the firm manages, or advises, and that invest in either the securitisation positions that the firm has securitised or in SSPEs that the firm sponsors;
- (5) a summary of the firm's accounting policies for securitisation activities, including:
- (a) whether the transactions are treated as sales or financings;
  - (b) the recognition of gains on sales;
  - (c) the methods, key assumptions, inputs and the changes from the previous period for valuing securitisation positions retained interests; and
  - (d) the treatment of synthetic securitisations if this is not covered by other accounting policies;
  - (e) how assets awaiting securitisation are valued and whether they are recorded in the firm's non-trading book or trading book; and
  - (f) policies for recognising liabilities on the balance sheet for arrangements that could require the firm to provide financial support for securitised assets;
- (6) the names of the ECAIs used for securitisations and the types of exposure for which each agency is used;
- (6A) where applicable, a description of the ABCP internal assessment approach as set out in BIPRU 9.12.20R, including the structure of the internal assessment process and relation between internal assessment and external ratings, the use of internal assessment other than for ABCP internal assessment approach capital purposes, the control mechanisms for the internal assessment process (including discussion of independence, accountability, and internal assessment process review), the exposure types to which the internal assessment process is applied and the stress factors used for determining credit enhancement levels, by exposure type;
- (6B) an explanation of significant changes to any of the quantitative disclosures in (8) and (13) to (15) since the last reporting period;
- (7) the total outstanding amount of exposures securitised by the

- firm* and subject to the *securitisation* framework (broken down into *traditional* and *synthetic*), by *exposure* type; [deleted]
- (8) for the *non-trading book* and for *exposures securitised* by the *firm* and subject to the *securitisation* framework, a breakdown by *exposure* type of the amount of impaired and past due *exposures securitised*, and the losses recognised by the *firm* during the current period, broken down by *exposure* type;
- (9) ~~the aggregate amount of *securitisation positions* retained or purchased, broken down by *exposure* type; [deleted]~~
- (10) ~~the aggregate amount of *securitisation positions* retained or purchased:~~
- (a) ~~broken down into a meaningful number of *risk weight* bands; and~~
- (b) ~~with separate disclosure of *positions* that have been *risk weighted* at 1250% or deducted; [deleted]~~
- (11) ~~the aggregate outstanding amount of *securitised revolving exposures* segregated by the *originator's* interest and the investors' interest; and [deleted]~~
- (12) ~~a summary of the *securitisation* activity in the period, including the amount of *exposures securitised* (by *exposure* type), and recognised gain or loss on sale by *exposure* type. [deleted]~~
- (13) separately for the *trading book* and the *non-trading book*, the following information broken down by *exposure* type:
- (a) the total outstanding amount of *exposures securitised* by the *firm*, separately for *traditional securitisations* and *synthetic securitisations*, and *securitisations* for which the *firm* acts only as *sponsor*;
- (b) the aggregate amount of on-balance sheet *securitisation positions* retained or purchased, and off-balance sheet *securitisation exposures*;
- (c) the aggregate amount of assets awaiting *securitisation*;
- (d) for securitised facilities subject to an *early amortisation provision*, the aggregate drawn-down *exposures* attributed to the *originator's* and investors' interests respectively, the aggregate *capital resources requirement* incurred by the *firm* against the *originator's* interest and the aggregate *capital resources requirement* incurred by the *firm* against the investors'

shares of drawn balances and undrawn lines;

- (e) the amount of *securitisation positions* that have been *risk weighted* at 1250% or deducted; and
- (f) a summary of the *securitisation* activity of the current period, including the amount of *exposures securitised* and recognised gain or loss on sale;

(14) separately for the *trading book* and the *non-trading book*, the following information:

- (a) the aggregate amount of *securitisation positions* retained or purchased and the associated *capital resources requirements*, broken down by *securitisation* and *resecuritisation exposures*, and further broken down into a meaningful number of *risk weight* or *capital resources requirement* bands, for each *capital resources requirement* approach used; and
- (b) the aggregate amount of *resecuritisation exposures* retained or purchased, broken down according to the *exposure* before and after hedging or insurance, and the *exposure* to financial guarantors, broken down according to guarantor credit worthiness categories or guarantor name; and

(15) for the *trading book*, the total outstanding *exposures securitised* by the *firm* and subject to a *market risk capital requirement*, broken down into *traditional* and *synthetic*, and by *exposure type*.

[Note: BCD Annex XII Part 2 point 14]

...

- 14.2.6 R In the case of a credit default swap, a *firm* the *exposure* of which arising from the swap represents a long position in the underlying may use a figure of 0% for potential future credit *exposure*, unless the credit default swap is subject to closeout upon the insolvency of the entity the *exposure* of which arising from the swap represents a short position in the underlying, even though the underlying has not defaulted, in which case the potential for future credit *exposure* of the *firm* must be limited to the amount of premia which are not yet paid by the entity to the *firm*.

[Note: CAD Annex II point 7]

...

Treatment of expected loss amounts under the IRB approach

- 14.2.18 R Where a *firm* calculates *risk weighted exposure amounts* for the purposes of *BIPRU* 14 in accordance with the *IRB approach*, then for the purposes of the calculation provided for in *BIPRU* 4.4.79R (~~Double default~~) 4.3.8R, the following will apply:

...

...

### Transitional Provisions

#### TP 4 Pre CRD capital requirements applying on a solo basis during 2007: Banks

...

- 4.36 G Any reference to a *qualifying debt security* ~~or *qualifying equity*~~ in a part of *BIPRU* that applies during 2007 should be interpreted in accordance with *IPRU(BANK)*. However *BIPRU* 7.2.50R (Must not apply *qualifying debt security* treatment to risky assets) also applies.

...

- 4.43 G The ~~definitions~~ definition of *qualifying debt security* ~~and *qualifying equity*~~ in the *Glossary* ~~apply~~ applies if the security or obligor in question comes within the scope of a *firm's IRB permission*.

...

#### TP 6 Pre CRD capital requirements applying on a solo basis during 2007: Investment management firms

...

- 6.24 R Any reference to a *qualifying debt security* in a part of *BIPRU* that applies during 2007 must be interpreted in accordance with the meaning it has when used in section A of Table 5.2.3(5)(b) of chapter 5 of *IPRU(INV)* (Position risk requirement for qualifying debt securities). However *BIPRU* 7.2.50R (Must not apply *qualifying debt security* treatment to risky assets) also applies. ~~Any reference to a *qualifying equity* in a part of *BIPRU* that applies during 2007 must be interpreted in accordance with the definition in the *Glossary* to chapter 10 of *IPRU(INV)*.~~

- 6.25 G The reason for *BIPRU* TP 6.23R and *BIPRU* TP 6.24R is that the calculation of the *specific risk* portion of the *interest rate PRR* under *BIPRU* 7 (Market risk) involves the use of the *standardised approach* to credit risk. The *specific risk rules* therefore need to be adjusted for a *firm* that is not using the *standardised approach* to credit risk in 2007 so as to apply the pre-2007 method of calculating *specific risk*. However chapter 5 does not use the concept of *specific risk*. The nearest equivalent is in chapter 10 of *IPRU(INV)* (*Securities and futures firms*).

~~The definition of *qualifying equity* also depends in part on the *standardised approach* to credit risk.~~

...

- 6.34 R The definition of *qualifying debt security* ~~and *qualifying equity*~~ in the *Glossary* ~~apply~~ applies if the security or obligor in question comes within the scope of a *firm's IRB permission*.

...

**TP 8 Pre CRD capital requirements applying on a solo basis during 2007: Securities and futures firms**

...

- 8.30 R Any reference to a *qualifying debt security* ~~or *qualifying equity*~~ in a part of *BIPRU* that applies during 2007 must be interpreted in accordance with the definition in the *Glossary* to chapter 10 of *IPRU(INV)*. However *BIPRU 7.2.50R* (Must not apply *qualifying debt security* treatment to risky assets) also applies.

- 8.31 G The effect of *BIPRU TP 8.29R* and *BIPRU TP 8.30R* is that a *firm* should apply *rules 43R to 47R* of Appendix 4 of Chapter 10 of *IPRU(INV)* (Specific risk portion of interest rate PRR) instead of *BIPRU 7.2.43R to BIPRU 7.2.49R* (Specific risk portion of interest rate PRR). The reason for this is that the calculation of the *specific risk* portion of the *interest rate PRR* under *BIPRU 7* (Market risk) involves the use of the *standardised approach* to credit risk. The *specific risk rules* therefore need to be adjusted for a *firm* that is not using the *standardised approach* to credit risk in 2007 so as to apply the pre-2007 method of calculating *specific risk*. ~~The definition of *qualifying equity* also depends in part on the *standardised approach* to credit risk.~~

...

- 8.38 R ~~The definitions~~ definition of *qualifying debt security* ~~and *qualifying equity*~~ in the *Glossary* ~~apply~~ applies if the security or obligor in question comes within the scope of a *firm's IRB permission*.

**TP 9 Pre CRD capital requirements applying on a solo basis during 2007 and capital floors: Personal investment firms**

...

- 9.36 R Any reference to a *qualifying debt security* in a part of *BIPRU* that applies during 2007 must be interpreted in accordance with the definition in the *Glossary* to chapter 13 of *IPRU(INV)*. However *BIPRU 7.2.50R* (Must not apply *qualifying debt security* treatment to risky assets) also applies. ~~Any reference to a *qualifying equity* in a part of~~



~~*BIPRU* that applies during 2007 must be interpreted in accordance with the definition in the Glossary to chapter 10 of *IPRU(INV)*.~~

- 9.37 R The reason for *BIPRU* TP 9.35R and *BIPRU* TP 9.36R is that the calculation of the *specific risk* portion of the *interest rate PRR* under *BIPRU* 7 (Market risk) involves the use of the *standardised approach* to credit risk. The *specific risk rules* therefore need to be adjusted for a *firm* that is not using the *standardised approach* to credit risk in 2007 so as to apply the pre-2007 method of calculating *specific risk*. However chapter 13 does not distinguish between *specific risk* and *general market risk*. The nearest equivalent is in chapter 10 of *IPRU(INV)* (*Securities and futures firms*). ~~The definition of *qualifying equity* also depends in part on the *standardised approach* to credit risk.~~

...

- 9.44 R The definition of *qualifying debt security* and ~~*qualifying equity*~~ in the *Glossary* ~~apply~~ applies if the security or obligor in question comes within the scope of a *firm's IRB permission*.

...

**TP 14 Market risk: VaR models**

...

14.4 R A firm may treat:

...

- (2) the *incremental default risk charge* as being replaced by the provisions of that written concession relating to the calculation of capital requirements for *specific risk*.

...

**Sch 2 Notification and reporting requirements**

...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<u>BIPRU 7.2.48B</u>	<u>Total sum of a firm's weighted net long and net short securitisation and resecuritisation positions, broken down by types of underlying assets</u>	<u>Total sum of a firm's weighted net long and net short securitisation and resecuritisation positions, broken down by types of underlying assets</u>	<u>Periodically as set out in SUP 16.12</u>	<u>In accordance with SUP 16.12</u>
...				
<u>BIPRU 7.10.55 ZAR</u>	<u>Material shortfall in the amount of capital required under the all price risk measure identified as a result of performing the stress tests under BIPRU 7.10.55ZR</u>	<u>Information about the stress tests and the material shortfall in capital</u>	<u>Existence of a material shortfall in capital</u>	<u>No later than two business days after the business day on which the material shortfall occurred</u>
...				
<u>BIPRU 7.10.130R</u>	<u>Details of significant planned changes to</u>	<u>Information about the nature of the change and an</u>	<u>Intention to change</u>	<u>Prior to any changes being</u>

	the <i>VaR model</i>	estimate of the impact on <i>VaR numbers</i> and the <i>incremental default risk charge</i>		implemented
--	----------------------	---	--	-------------

...

## Annex D

## Amendments to the Supervision manual (SUP)

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

## 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:

...	
Note 23	Only applicable to <i>firms</i> that hold <i>securitisation positions</i> ; <u>in the trading book and/or</u> are the <i>originator</i> or <i>sponsor</i> of <i>securitisations</i> <del>of trading book exposures</del> <u>held in the trading book.</u>

...

## Regulated Activity Group 3

...

16.12.11 R The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

...	
Note 32	Only applicable to <i>firms</i> that hold <i>securitisation positions</i> ; <u>in the trading book and/or</u> are the <i>originator</i> or <i>sponsor</i> of <i>securitisations</i> <del>of trading book exposures</del> <u>held in the trading book.</u>
...	

...

## Regulated Activity Group 4

...

16.12.15 R The applicable *data items* referred to in SUP 16.12.4R according to type of *firm* are set out in the table below:

...	
Note 29	Only applicable to <i>firms</i> that hold <i>securitisation positions</i> ; <u>in the trading book and/or</u> are the <i>originator</i> or <i>sponsor</i> of <i>securitisations</i> <del>of trading book exposures</del> <u>held in the trading book.</u>
...	

...

Regulated Activity Group 7

...

16.12.22A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

...	
Note 22	Only applicable to <i>firms</i> that hold <i>securitisation positions</i> ; <u>in the trading book</u> and/or are the <i>originator</i> or <i>sponsor</i> of <i>securitisations</i> <del>of trading book exposures</del> <u>held in the trading book</u> .
...	

...

Regulated Activity Group 8

...

16.12.25A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

...	
Note 27	Only applicable to <i>firms</i> that hold <i>securitisation positions</i> ; <u>in the trading book</u> and/or are the <i>originator</i> or <i>sponsor</i> of <i>securitisations</i> <del>of trading book exposures</del> <u>held in the trading book</u> .
...	

...

# SUP 16 Annex 24 Data items for SUP 16.12

...

FSA005

Market risk

Note: In this table numerical references correspond with those shown on the online submission form and are not presented here in strict numerical order.

	A	B	C	D	E	F	G
Interest rate risk	USD	GBP	EUR	CHF	YEN	Other	Total
General interest rate risk							
1 Valuations of longs							
2 Valuation of shorts							
3 PRR (as per handbook)							
Specific interest rate risk							
Amount by risk bucket							Total
4 0.00%							
5 0.25%							
6 1.00%							
7 1.60%							
8 8.00%							
9 12.00%							
10 PRR							
11 <del>Securitisation exposures/unrated liquidity facilities PRR</del>							
66 <u>Net long securitisation (excl. re-securitisation) exposures/unrated liquidity facilities PRR</u>							
67 <u>Net short securitisation (excl. re-securitisation) exposures/unrated liquidity facilities PRR</u>							
68 <u>Net long re-securitisation exposures/unrated liquidity facilities PRR</u>							
69 <u>Net short re-securitisation exposures/unrated liquidity facilities PRR</u>							
12 <u>Ordinary CDS (outside correlation trading portfolio) PRR</u>							
13 <u>Securitisation CDS (outside correlation trading portfolio) PRR</u>							
14 <u>Basic interest rate PRR calculation for equity instruments</u>							
15 <u>Option PRR for interest rate positions</u>							
16 <u>CAD1 PRR for interest rate positions</u>							
17 <u>Other PRR</u>							
70 <u>Correlation trading portfolio - Net long positions PRR</u>							
71 <u>Correlation trading portfolio - Net short positions PRR</u>							
18 Total interest rate PRR							
Equity risk							
General equity risk (or simplified)	USD	GBP	EUR	CHF	YEN	Other	Total
19 Valuations of longs							
20 Valuation of shorts							
21 PRR							

FSA005 continued

	A	B	C	D	E	F	G
	USD	GBP	EUR	CHF	YEN	Other	Total
Specific equity risk by risk bucket							
22 <del>Qualifying equities</del>							
23 Qualifying equity indices							
24 <del>Other equities, indices or equity baskets</del>							
82 <del>All equities, and other equity indices or equity baskets</del>							
63 65 Convertibles adjustment							
25 PRR							
26 Option PRR for equity positions							
27 CAD 1 PRR for equity positions							
28 Other PRR							
29 Total Equity PRR							
<b>Commodity Risk</b>							
	Precious metals	Base metals	softs	energy	other		<b>Total</b>
30 Valuation of longs							
31 Valuation of shorts							
32 Outright PRR							
33 Spread PRR							
34 Carry PRR							
35 Simplified PRR							
36 Total PRR							
37 Option PRR for commodity positions							
38 CAD 1 PRR for commodity positions							
39 Other PRR							
40 Total Commodity PRR							
<b>Foreign currency risk</b>							
General foreign currency risk							
	USD	GBP	EUR	CHF	YEN	Other	Total
41 Total net long positions							
42 Total net short positions							
43 Net gold position							
44 PRR							

FSA005 continued

	A USD	B GBP	C EUR	D CHF	E YEN	F Other	G Total
45							
46							
47							
48							

**Collective investment undertaking risk**

	USD	GBP	EUR	CHF	YEN	Other	Total
49							
50							
51							
52							
53							
54							
55							

**Other PRR**

56							
----	--	--	--	--	--	--	--

**Internal models-based charges**

57	
58	
59	
60	
72	
73	
74	
75	
76	
77	
78	
79	
80	
81	



FSA005 continued

**Add-ons**

		A	B
		Description	Value
63	1		
	2		
	3		
	...		
	n		

64 Total Add-ons

61 Internal models-based PRR

62 GRAND TOTAL PRR

• • •

FSA046  
Securitisation: Non-Trading Book

**General Transaction level information – Where the firm is an originator or sponsor**

	A
1	Location of the most recent Pillar 3 disclosures for securitisation (BIPRU 11.5.17R)
2	Additional capital requirements for significant risk transfer (BIPRU 9.3.1R)
21	Additional capital requirements (BIPRU 9.3.21G and BIPRU 9.15.17G)
22	Reduction in RWAs according to BIPRU 9.10.4R and BIPRU 9.10.6R

**Transaction level information - Where the firm is an originator or sponsor**

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
	Programme Name	Asset class	Originator's Interest	Investors' Interest	Location of Investor Reports	Assets appear on FSA001?	BIPRU 9.3.1R Applied?	Conversion Factor applied?	Exposure value before securitisation	Capital requirement before securitisation	Exposure value after securitisation	Exposure value deducted from capital resources	Capital requirement after securitisation before cap	Capital requirement after securitisation after cap	Retention of net economic interest (% to 2dp)	Method of retention of net economic interest
3																
1																
...																
n																

**Risk positions - standardised exposures**

	A	B	C	D	E	F
	CQS1	CQS2	CQS3	CQS4 (only for credit assessments other than short-term credit assessments)	All other credit assessments	Deductions from capital
4						
5						
6						
7						

	A	B	C	D	E	F	G	H
	CQS1	CQS2	CQS3	CQS4 (only for credit assessments other than short-term credit assessments)	All other credit assessments	Deductions from capital	Concentration ratio (Exposure value)	Concentration ratio (Capital requirement)
31								
32								
33								
34								
35								
36								
37								
38								

FSA046 (cont)  
Securitisation: Non-Trading Book

Risk positions - IRB exposures

		B	C	D	E	F	G	H	I	J	K	L	M	N	P	O
		CQS1 ST CQS1	CQS2	CQS3	CQS4 ST CQS2	CQS5	CQS6	CQS7 ST CQS3	CQS8	CQS9	CQS10	CQS11	Below CQS11 All other credit assessments	Supervisory formula (Exposure Value)	Supervisory formula (Capital Requirement)	Deductions from capital
8	Originator	A														
9		B														
10		C														
23		D														
24		E														
11	Sponsor	A														
12		B														
13		C														
25		D														
26		E														
14	Counterparty credit risk	A														
15		B														
16		C														
27		D														
28		E														
17	All other exposures	A														
18		B														
19		C														
29		D														
30		E														

...

**FSA058**  
**Securitisation: Trading Book**

**General Transaction level information - Where the firm is an originator or sponsor**

1	Location of the most recent Pillar 3 disclosures for securitisation (BIPRU 11.5.17R)	A
21	Additional capital requirements (BIPRU 7.2.47HG-BIPRU 7.2.48IG)	

**Non-correlation trading portfolio securitisations**

**Transaction level information - Where the firm is an originator or sponsor**

	A	B	C	D	E	F	O	P
3	Programme Name	Asset class	Originator's Interest	Investors' Interest	Location of Investor Reports	Assets appear on FSA001?	Retention of net economic interest (% to 2dp)	Method of retention of net economic interest
1								
...								
n								

[Insert the following tables as new Data Elements for Data Item FSA058. The text is not underlined.]

**Risk positions - standardised exposures (net positions)**

	A	B	C	D	E	F	
		CQS1	CQS2	CQS3	CQS4 (only for credit assessments other than short-term credit assessments)	All other credit assessments	Deductions from capital
31	Originator	Securitisation					
32		Resecuritisation					
33	Sponsor	Securitisation					
34		Resecuritisation					
35	Counterparty credit risk	Securitisation					
36		Resecuritisation					
37	All other exposures	Securitisation					
38		Resecuritisation					

**Risk positions - IRB exposures (net positions)**

		B	C	D	E	F	G	H	I	J	K	L	M	N	P	O
		CQS1	CQS2	CQS3	CQS4	CQS5	CQS6	CQS7	CQS8	CQS9	CQS10	CQS11	Below CQS11	Supervisory formula	Supervisory formula	Deductions from
		ST CQS1			ST CQS2			ST CQS3					All other credit assessments	(Exposure Value)	(Capital Requirement)	capital
8	Originator	A														
9		B														
10		C														
23		D														
24		E														
11	Sponsor	A														
12		B														
13		C														
25		D														
26		E														
14	Counterparty credit risk	A														
15		B														
16		C														
27		D														
28		E														
17	All other exposures	A														
18		B														
19		C														
29		D														
30		E														

FSA058 (cont)

Securitisation: Trading Book

Total capital requirement (net long positions plus net short positions) broken down by underlying assets

		A
		Capital requirement
39	Residential mortgages	
40	Commercial mortgages	
41	Credit cards	
42	Leasing	
43	Loans to corporates	
44	Consumer loans	
45	Trade receivables	
46	Securitisations	
47	Other	

**Correlation trading portfolio positions**

Risk positions - standardised exposures (net positions)

	A	B	C	D	E	F
	CQS1	CQS2	CQS3	CQS4 (only for credit assessments other than short-term credit assessments)	All other credit assessments	Deductions from capital
48	Originator					
49	Sponsor					
50	Counterparty credit risk					
51	All other exposures					

Risk positions - IRB exposures (net positions)

		B	C	D	E	F	G	H	I	J	K	L	M	N	P	O
		CQS1	CQS2	CQS3	CQS4	CQS5	CQS6	CQS7	CQS8	CQS9	CQS10	CQS11	Below CQS11	Supervisory formula (Exposure Value)	Supervisory formula (Capital Requirement)	Deductions from capital
		ST CQS1			ST CQS2			ST CQS3					All other credit assessments			
52	Originator	A														
53		B														
54		C														
55	Sponsor	A														
56		B														
57		C														
58	Counterparty credit risk	A														
59		B														
60		C														
61	All other exposures	A														
62		B														
63		C														

.....

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

...

### FSA003 – Capital Adequacy

...

#### 103A Concentration risk capital component

This is the CNCOM. See ~~BIPRU 10.5.14R to BIPRU 10.5.21G~~ BIPRU 10.10A.4G to BIPRU 10.10A.12R for details of how this is calculated.

Figures appearing here should also appear on FSA008 under data element 5R for the same quarterly reporting date.

...

### FSA005 – Market risk

....

#### ~~11~~ ~~Securitisation exposures/unrated liquidity facilities PRR~~

See ~~BIPRU 7.2.47R.~~

[~~CEBS' MKR SA TDI item 3.5, column 9~~]

#### 66 Net long securitisation (excl. re-securitisation) exposures/unrated liquidity facilities PRR

See BIPRU 7.2.48AR to BIPRU 7.2.48KR.

#### 67 Net short securitisation (excl. re-securitisation) exposures/unrated liquidity facilities PRR

See BIPRU 7.2.48AR to BIPRU 7.2.48KR.

#### 68 Net long re-securitisation exposures/unrated liquidity facilities PRR

See BIPRU 7.2.48AR to BIPRU 7.2.48KR.

#### 69 Net short re-securitisation exposures/unrated liquidity facilities PRR

See BIPRU 7.2.48AR to BIPRU 7.2.48KR.

#### 12 Ordinary CDS (outside correlation trading portfolio) PRR

See BIPRU 7.11

[Part of CEBS' MKR SA TDI item 3, columns 6 and 7]

**13 Securitisation CDS (outside correlation trading portfolio) PRR**

See *BIPRU 7.11.35R*

[Part of CEBS' MKR SA TDI item 3, columns 6 and 7]

...

**17 Other PRR for interest rate risk**

Where a 'prudent' uplift is required under *BIPRU 7.2.46R* or PRR arising from other non-standard transactions as required by *BIPRU 7.1.7R* ~~7.1.9R~~ to *BIPRU 7.1.13E* ~~7.1.16E~~ and that is attributable to interest rate risk

**70 Correlation trading portfolio - Net long positions PRR**

See *BIPRU 7.2.42A R* to *BIPRU 7.2.42DR* and *BIPRU 7.2.48LR*.

**71 Correlation trading portfolio - Net short positions PRR**

See *BIPRU 7.2.42A R* to *BIPRU 7.2.42DR* and *BIPRU 7.2.48LR*.

**18 Total interest rate PRR**

This is the sum of the general interest rate, specific interest rate, ~~securitisation~~ *securitisation* exposures/unrated liquidity facilities, *re-securitisation positions / unrated liquidity facilities*, ordinary CDS, ~~securitisation~~ *securitisation* CDS, basic interest rate, options, CAD1, and other PRRs, and *correlation trading portfolio positions*.

This will have the same value as data element 96A in FSA003.

[CEBS' MKR SA TDI column 9 total less item 4 column 9]

**Equity risk**

...

**22 Qualifying equities**

Enter the valuation of the instruments. See *BIPRU 7.3.35R* to *BIPRU 7.3.37G*.  
[CEBS' MKR SA EQU item 2.1, column 6]

**23 Qualifying equity indices**

Enter the valuation of the instruments. See *BIPRU 7.3.38R* to *BIPRU 7.3.39R*.

**24 Other equities**

Enter the valuation of all other equities, equity indices or equities baskets.

[CEBS' MKR SA EQU item 2.2, column 6]

**82 All equities, and other equity indices or equity baskets**

Enter the valuation of all equities, other equity indices or equities baskets. See *BIPRU 7.3.31G* to *BIPRU 7.3.34R*.

...

### **Internal models-based charges**

See *BIPRU* 7.10.

...

### **59 Average of previous 60 days VaR**

This equates to item (3) in *BIPRU* 7.10.117G.

[*CEBS' MKR IM total positions column 1 divided by total positions column 7*]

### **~~60 Incremental default risk charge~~**

~~This is the incremental default risk charge under *BIPRU* 7.10.116R. It also includes the specific risk surcharge under *BIPRU* 7.10.127G.~~

~~[*CEBS' MKR IM total positions columns 3 and 4*]~~

### **72 SVaR Multiplier**

See *BIPRU* 7.10.118R to *BIPRU* 7.10.126G.

### **73 Latest SVaR**

See *BIPRU* 7.10.27AR

### **74 Average of previous 60 days SVaR**

See *BIPRU* 7.10.27AR and *BIPRU* 7.10.117G items (6) and (8).

### **75 Latest Incremental Risk Charge**

See *BIPRU* 7.10.116R

### **76 Average of previous 12 weeks Incremental Risk Charge**

See *BIPRU* 7.10.116R and *BIPRU* 7.10.117G items (10) and (11)

### **77 Latest All Price Risk Measure**

See *BIPRU* 7.10.55TR to *BIPRU* 7.10.55YR and *BIPRU* 7.10.116AR

### **78 Average of previous 12 weeks All Price Risk Measure**



See BIPRU 7.10.55TR to BIPRU 7.10.55YR, BIPRU 7.10.116AR and BIPRU 7.10.117G items (13) and (14)

**79 Standard Rules charge for net long correlation trading portfolio products in APR model**

Firms should report the total standard rules capital charge before multiplying the charge by the APR floor charge (8%). The APR floor charge is reported in data element 81.

See BIPRU 7.10.55UR

**80 Standard Rules charge for net short correlation trading portfolio products in APR model**

Firms should report the total standard rules capital charge before multiplying the charge by the APR floor charge (8%). The APR floor charge is reported in data element 81.

See BIPRU 7.10.55UR

**81 All Price Risk Floor Charge**

See BIPRU 7.10.55UR

**61 Internal models-based PRR**

~~See BIPRU 7.10.113R to BIPRU 7.10.117G.~~

~~This will have the same value as data element 102A on FSA003.~~

~~{CEBS' MKR IM total positions column 5}~~

This is the sum of the VaR capital charge, stressed VaR (SVaR) capital charge, incremental risk charge, all price risks measure and any internal models add-ons. See BIPRU 7.10.113R to BIPRU 7.10.117G.

This will have the same value as data element 102A in FSA003.

...

**64 Total Add-ons**

The total of items 1 to n in 63

## FSA005 – Market risk validations

### Internal validations

Data elements are referenced by row then column.

Validation number	Data element		
1	3G	=	3A + 3B + 3C + 3D + 3E + 3F
2	10G	=	10A + 10B + 10C + 10D + 10E + 10F
3	18G	=	18A + 18B + 18C + 18D + 18E + 18F
4			[deleted – replaced by validation 52]
5			[deleted]
6			[deleted]
7	25G	=	<del>(22G * 2%) + (24G * 4%) + (23G * 2%)</del> [deleted – replaced by validation 56]
8			[deleted]
...			
52	18G	=	<del>3G + 10G + 11G + 12G + 13G + 14G + 15G + 16G + 17G</del> [deleted – replaced by validation 57]
53	64G	=	SUM (63B)
<u>54</u>	<u>81G</u>	<u>≡</u>	<u>Higher of (79G * 8%, 80G * 8%)</u>
<u>55</u>	<u>61G</u>	<u>≡</u>	<u>Higher of (58G, 59G * 57G) + higher of (73G, 74G * 72G) + higher of (75G, 76G) + higher of (77G, 78G, 81G) + 64G</u>
<u>56</u>	<u>25G</u>	<u>≡</u>	<u>(82G * 8%) + (23G*0%) + 65G</u>
<u>57</u>	<u>18G</u>	<u>≡</u>	<u>3G + 10G + 12G + 13G + 14G + 15G + 16G + 17G + higher of (66G + 68G, 67G + 69G) + higher of (70G, 71G)</u>
<u>58</u>	<u>57G</u>	<u>≥</u>	<u>3.00 (if element 57G is reported)</u>
<u>59</u>	<u>72G</u>	<u>≥</u>	<u>3.00 (if element 72G is reported)</u>

## FSA008 – Large Exposures

...

### 5R CNCOM

The amount of CNCOM calculated as set out in ~~BIPRU 10.10.4G to 10.10.10R~~ BIPRU 10.10A.4G to BIPRU 10.10A.10R (or *BIPRU 10.5.16G to 10.5.24G* for those utilising TP 33). It should agree with the amount reported in data element 103A on FSA003 for the same reporting date, except when the firm is a member of a *UK integrated group/core UK group* when there may be some additional CNCOM attributable to the firm.

...

## FSA046 – Securitisation – non-trading book

...

### Risk positions – standardised exposures

All *exposures* that are treated under *BIPRU 9.11* should be shown in this section, broken down by credit quality, ~~and~~ how the *exposure* arose, and whether the position is a securitisation or re-securitisation.

#### Row 4 31 & 32 : Originator

This is for *exposures* where the *firm* originated the underlying assets.

#### Row 5 33 & 34: Sponsor

This is for *exposures* to *Asset backed commercial paper programmes*.

#### Row 6 35 & 36: Counterparty credit risk

This is the *exposure* values generated under *BIPRU 13*.

#### Row 7 37 & 38: All other exposures

This is for any standardised *exposures* not included in ~~data elements 4–6~~ 31 – 38 above.

#### Columns A – E

Positions should be split by credit rating according to *BIPRU 9.11.2R* and *BIPRU 9.11.3R*.

#### Column F

This is for positions deducted from capital at part 1 of stage M of the capital calculations in *GENPRU 2*, Annexes 2R, 3R, 4R, 5R or 6R as appropriate.

#### Column G

Firms should state the exposure value of securitisation positions for which risk weighted exposure amounts are calculated under BIPRU 9.11.6R to BIPRU 9.11.7G.

#### Column H

Firms should state the capital requirement for *securitisation positions* for which *risk weighted exposure amounts* are calculated under *BIPRU 9.11.6R* to *BIPRU 9.11.7G*.

### **Risk positions – IRB exposures**

All *exposures* that are treated under *BIPRU 9.12* should be shown in this section, broken down by credit quality, granularity and how the *exposure* arose.

#### **Rows 8 – 10 & 23 -24: Originator**

This is for *exposures* where the *firm* originated the underlying *exposures*.

#### **Rows 11 – 13 & 25 - 26: Sponsor**

This is for *exposures* to *Asset backed commercial paper programmes*.

#### **Rows 14 – 16 & 27 - 28: Counterparty credit risk**

This is for exposure values generated under *BIPRU 13* where the *exposure* is also a *securitisation* position.

#### **Rows 17 – 19 & 29 - 30: All other exposures**

This covers any IRB *exposures* not included above.

### **Columns B – M**

This should be split by credit rating according to *BIPRU 9.12.11R* and *BIPRU 9.12.12R*.

### **Column N**

*Firms* should state the ~~exposure~~ *exposure* value calculated under *BIPRU 9.12.21R* to *BIPRU 9.12.23R*.

### **Column O**

This is for positions deducted from capital at part 1 of stage M of the capital calculations in *GENPRU 2*, Annexes 2R, 3R, 4R, 5R or 6R as appropriate.

### **Column P**

*Firms* should state the capital requirement calculated under *BIPRU 9.12.21R* to *BIPRU 9.12.23R*.

...

## **FSA058 – Securitisation – trading book**

This data item allows a greater understanding of the prudential risk profile of the *firm*. It also enables the *FSA* to lead debate on credit risk transfer in international discussions.

This data item captures information on the *firm's trading book securitisation positions* which fall under *BIPRU 7.2* where they are acting as *originator*, *sponsor* or *investor*. *Non-trading book securitisations* are captured in FSA046.

The data item has been separated into three sections:

- general trading book securitisation information;

- information on non-correlation trading portfolio securitisations, and
- correlation trading portfolio securitisations.

## Currency

You should report in the currency of your annual audited accounts i.e. in Sterling, Euro, US dollars, Canadian dollars, Swedish Kroner, Swiss Francs or Yen. Figures should be reported in 000s.

## Data elements

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

## Non-correlation trading portfolio securitisations

### Transaction level information - Where the firm is an originator or sponsor

All securitisations, on a cumulative basis, where you have acted as an *originator* or *sponsor* where the assets are held in the *trading book* should be shown in this section, irrespective of whether you meet *BIPRU* 9.3.1R.

...

After the entry for “3P – Method of retention of net economic interest” insert the following new text which is not underlined.

### Risk positions – standardised exposures

All *non-correlation trading portfolio securitisation positions* that are treated under *BIPRU* 7.2.48DR should be shown in this section, broken down by credit quality, how the *exposure* arose, and whether the position is a *securitisation* or *resecuritisation*.

#### Row 31 & 32: Originator

This is for *exposures* where the *firm* originated the underlying assets.

#### Row 33 & 34: Sponsor

This is for *exposures* where the firm acts as a *sponsor*.

#### Row 35 & 36: Counterparty credit risk

This is the *exposure* values generated under *BIPRU* 13.

#### Row 37 & 38: All other exposures

This is for any standardised *exposures* not included in *data elements* 31 – 38 above. For example, a firm that is an investor in *trading book securitisations*.

#### Columns A – E

Positions should be split by credit rating according to *BIPRU* 7.2.48DR.

#### Column F

This is for *positions* deducted from capital at part 1 of stage M of the capital calculations in *GENPRU 2*, Annexes 2R, 3R, 4R, 5R or 6R as appropriate.

### **Risk positions – IRB exposures**

All *exposures* that are treated under *BIPRU 7.2.48ER* should be shown in this section, broken down by credit quality, granularity and how the *exposure* arose.

#### **Rows 8 – 10 & 23 -24: Originator**

This is for *exposures* where the *firm* originated the underlying *exposures*.

#### **Rows 11 – 13 & 25 - 26: Sponsor**

This is for *exposures* where the firm acts as a *sponsor*.

#### **Rows 14 – 16 & 27 - 28: Counterparty credit risk**

This is for exposure values generated under *BIPRU 13* where the *exposure* is also a *securitisation position*.

#### **Rows 17 – 19 & 29 - 30: All other exposures**

This covers any *IRB exposures* not included above. For example, a *firm* that is an investor in *trading book securitisations*.

#### **Columns B – M**

This should be split by credit rating according to *BIPRU 7.2.48ER*.

#### **Column N**

*Firms* should state the exposure value calculated under *BIPRU 7.2.48AR* to *BIPRU 7.2.48CR*.

#### **Column O**

This is for *positions* deducted from capital at part 1 of stage M of the capital calculations in *GENPRU 2*, Annexes 2R, 3R, 4R, 5R or 6R as appropriate.

#### **Column P**

*Firms* should state the capital requirement calculated under *BIPRU 7.2.48FR*.

### **Total capital requirement (net long positions plus net short positions) broken down by underlying assets**

#### **Rows 39 – 47:**

Enter the total capital requirement (net long positions & net short positions) broken down by underlying assets as shown.

### **Correlation trading portfolio positions**

#### **Risk positions – standardised exposures**

All *correlation trading portfolio securitisation positions* that are treated under *BIPRU 7.2.48DR* should be shown in this section, broken down by credit quality and how the *exposure* arose.

**Row 48: Originator**

This is for *exposures* where the *firm* originated the underlying assets.

**Row 49: Sponsor**

This is for *exposures* where the *firm* acts as a sponsor.

**Row 50: Counterparty credit risk**

This is the exposure values generated under *BIPRU 13*.

**Row 51: All other exposures**

This is for any standardised *exposures* not included in *data elements 48 - 50* above. For example, a *firm* that is an investor in *correlation trading portfolio positions*.

**Columns A – E**

*Positions* should be split by credit rating according to *BIPRU 7.2.48DR*.

**Column F**

This is for *positions* deducted from capital at part 1 of stage M of the capital calculations in *GENPRU 2*, Annexes 2R, 3R, 4R, 5R or 6R as appropriate.

**Risk positions – IRB exposures**

All *exposures* that are treated under *BIPRU 7.2.47ER* should be shown in this section, broken down by credit quality, granularity and how the *exposure* arose.

**Rows 52 - 54: Originator**

This is for *exposures* where the *firm* originated the underlying *exposures*.

**Rows 55 - 57: Sponsor**

This is for *exposures* where the *firm* acts as a sponsor.

**Rows 58 - 60: Counterparty credit risk**

This is for exposure values generated under *BIPRU 13* where the *exposure* is also a *securitisation position*.

**Rows 61 - 63: All other exposures**

This covers any *IRB exposures* not included above. For example, a *firm* that is an investor in *correlation trading portfolio positions*.

**Columns B – M**

This should be split by credit rating according to *BIPRU 7.2.48E R*.

**Column N**

*Firms* should state the exposure value calculated under *BIPRU 7.2.48AR* to *BIPRU 7.2.48CR*.

**Column O**

This is for positions deducted from capital at part 1 of stage M of the capital calculations in *GENPRU 2*, Annexes 2R, 3R, 4R, 5R or 6R as appropriate.

**Column P**

*Firms* should state the capital requirement calculated under *BIPRU 7.2.48FR*.



**HANDBOOK ADMINISTRATION (NO 24) INSTRUMENT 2011****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. (1) Part 2 of Annex D (SUP) of this instrument comes into force on 31 December 2013.  
 (2) The remainder of this instrument comes into force on 1 January 2012.

**Amendments to Instruments**

- D. The amendments to Notes 15 to SUP 16.12.11R and SUP 16.12.15R made by the Supervision Manual (Retail Mediation Activities Return) (Amendment No 3) Instrument 2010 (FSA 2010/70) are revoked.

**Amendments to the Handbook**

- E. 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
Prudential sourcebook for Insurers (INSPRU)	Annex B
Market Conduct sourcebook (MAR)	Annex C
Supervision manual (SUP)	Annex D

**Citation**

- F. This instrument may be cited as the Handbook Administration (No 24) Instrument 2011.

By order of the Board  
 8 December 2011

## Annex A

### Amendments to the Glossary of definitions

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

<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>(a) an investment firm (as defined in article <del>1(2)</del> <u>4(1)</u> of <del>the <i>Investment Services Directive</i></del> <u><i>MiFID</i></u>) which is authorised (within the meaning of article <del>3</del> <u>5</u>) by its <i>Home State regulator</i>, <del>which is authorised (within the meaning of article 1) by its <i>Home State regulator</i></del>;</p> <p>...</p>
<i>TD implementing Directive</i>	<p>Commission Directive implementing Directive 2004/109/EC of the European Parliament and of the Council laying down rules for the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (No. <del>2006/xx/EC</del> <u>2007/14/EC</u>);<sup>2</sup></p>

**Annex B****Amendments to the Prudential sourcebook for Insurers (INSPRU)**

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

- 6.1.29 R In *INSPRU* 6.1.28R, the relevant proportion is either:
- (1) the proportion of the total number of issued *shares* in the *regulated related undertaking* held, directly or indirectly, by the *undertaking* in ~~*PRU* 8.3.17R~~ *INSPRU* 6.1.17R; or
- ...

## Annex C

## Amendments to the Market Conduct sourcebook (MAR)

In this Annex, striking through indicates deleted text.

## Schedule 1 Record keeping requirements

1.1 G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
	...				
	<del>MAR 3.5.4</del>	Non Market Price Transactions	<del>Details of steps taken in consideration of NMPTs</del>	<del>On considering the transaction</del>	3 years

## 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 1 January 2012

## 10 Annex 1G Frequently asked questions

	Question	Answer
...		
30	For how long are individuals accountable to the FSA after ceasing to be an <i>approved person</i> ?	A <i>person</i> is guilty of misconduct if, while an <i>approved person</i> , he fails to comply with a <i>Statement of Principle</i> or is knowingly concerned in the contravention by a <i>firm</i> of a requirement in the <i>Act</i> or the <i>Handbook</i> . But the FSA may not bring proceedings after <del>two</del> <u>three</u> years from when it first knew of the misconduct.

...

...

## 14.2 Changes to branch details

...

## Firms passporting under MiFID

14.2.10 G Where an *EEA MiFID investment firm* has established a *branch* in the UK, regulation 4A states that it must not:

- (1) make a change in the requisite details of the *branch*; or
- (2) use, for the first time, any *tier agent* established in the *United Kingdom*; or
- (3) cease to use *tier agents* established in the *United Kingdom*;

unless it has complied with the relevant requirements in regulation 4A(3).

...

14.2.13 G SUP 14.2.10G does not apply to a change occasioned by circumstances beyond the *incoming EEA firm's* control.

### 14.3 Changes to cross border services

...

Firms passporting under the UCITS Directive

- 14.3.2 G Where an *incoming EEA firm* passporting under the *UCITS Directive* is providing *cross border services* into the *United Kingdom*, it must not make a change in the details referred to in regulation 5(4)(1A) unless it has complied with the relevant requirements in regulation 5(3).

...

~~Firms passporting under MiFID~~

- 14.3.3A G ~~The requirement in regulation 5(3A) is that the *incoming EEA firm* has:~~  
~~[deleted]~~

...

Firms passporting under MiFID

- 14.3.4A G Where an *incoming EEA firm* passporting under *MiFID* is providing *cross border services* into the *United Kingdom*, it must not:
- (1) make a change in the details referred to in regulation 5(4) 5A(1)(a);  
or
  - (2) use, for the first time, any *tier agent* to provide services in the *United Kingdom*; or
  - (3) cease to use *tier agents* to provide services in the *United Kingdom*;
- unless it has ~~given at least one month's notice to its *Home State regulator* stating the details of the proposed change~~ complied with the relevant requirements in regulation 5A(3).
- 14.3.4B G The relevant requirements in regulation 5A(3) are that:
- (1) the *incoming EEA firm* has given notice to its *Home State regulator* stating the details of the proposed change; and
  - (2) the period of one *month* beginning with the day on which the *incoming EEA firm* gave that notice has elapsed.
- 14.3.4C G Under regulation 5(4), the *FSA* is required, as soon as practicable after receiving the notice in SUP 14.3.4BG, to inform the *incoming EEA firm* of any consequential changes in the applicable provisions.
- 14.3.4D G SUP 14.3.4AG does not apply to a change occasioned by circumstances beyond the *incoming EEA firm's* control.

...

**Appendix 3      Guidance on passporting issues**

...

**3.9      Mapping of MiFID, Banking Consolidation Directive, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order**

...

**3.9.5      G      Services set out in Annex I to MiFID**

Table 2: <i>MiFID investment services and activities</i>		Part II RAO Investments	Part III RAO Investments
...			
8.	Operation of Multilateral Trading Facilities	Article <del>25B</del> <u>25D</u> (see Note 2)	...
...			
7.	Investment services ...	Article 14, 21, 25, <del>25B</del> <u>25D</u> , 37, 53, 64	...
...			
Note 2. A <i>firm</i> operating an <i>MTF</i> under article <del>25B</del> <u>25D</u> does not need to have a <i>permission</i> covering other <i>regulated activities</i> , unless it performs other <i>regulated activities</i> in addition to <i>operating an MTF</i> .			

**Part 2:      Comes in to force on 31 December 2013**

*Editor's Note: The changes made to Notes 15 to SUP 16.12.11R and 16.12.15R replace those made by the Supervision Manual (Retail Mediation Activities Return) (Amendment No 3) Instrument 2010 (FSA 2010/70). The changes below are shown against the text of the Integrated Regulatory Reporting (Amendment No 12) Instrument 2011 (FSA 2011/59).*

16.12.11    R      The applicable *data items* referred to in SUP 16.12.4R are set out according to *firm* type in the table below:

Description of data item	Firms prudential category and applicable data items (note 1)							
	BIPRU firms (note 17)			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
...								
Note 15	FSA029, FSA030, FSA032 and FSA039 only apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm. Sections A, B, C, D1, <del>D2</del> D6 and F RMAR only apply to a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm. <u>Where a firm submits data items for both RAG 3 and RAG 9, the firm must complete both Sections D1 and D6 RMAR.</u>							
...								

...

16.12.15 R The applicable data items referred to in SUP 16.12.4R according to type of firm are set out in the table below:

Description of data item	Firms prudential category and applicable data items (note 1)							
	BIPRU firms			Firms other than BIPRU firms				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IPRU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...								
...								
Note 15	FSA029, FSA030, FSA032 and FSA039 only apply to a firm subject to IPRU(INV) Chapter 13 which is an exempt CAD firm. Sections A, B, C, D1, <del>D2</del> D6 and F RMAR only apply to a firm subject to IPRU(INV) Chapter 13 which is not an exempt CAD firm.							
...								



**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS  
(FINANCIAL CONGLOMERATES) (AMENDMENT) INSTRUMENT 2011**

**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 31 December 2011.

**Amendments to the Handbook**

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

**Notes**

- E. In the Annex to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Financial Conglomerates) (Amendment) Instrument 2011.

By order of the Board  
8 December 2011

## Annex

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

In this Annex, underlining indicates new text.

## 12 Group risk systems and controls requirements

### 12.1 Application

...

Financial conglomerates

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:

...

(4) adequate procedures for the purpose of ensuring that the systems and controls of the members of the *financial conglomerate* are consistent and that the risks can be measured, monitored and controlled at the level of the *financial conglomerate*; and

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

[Note: article 9(2) of the *Financial Groups Directive*]

**TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS  
AMENDMENTS NO 3) INSTRUMENT 2011**

**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 9 December 2011.

**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 Training and Competence sourcebook (TC) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No 3) Instrument 2011.

By order of the Board  
8 December 2011

## Annex A

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

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

#### 3.1 Systems and Controls

...

- 3.1.10 G If a *firm* requires *employees* who are not subject to ~~an examination~~ a qualification requirement in TC to pass a relevant examination from the list of recommended examinations maintained by the Financial ~~Services~~ Skills ~~Council~~ Partnership, the *FSA* will take that into account when assessing whether the *firm* has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.

...

#### 5.1 Skills, knowledge and expertise

...

- 5.1.5A G If a *firm* requires *employees* who are not subject to ~~an examination~~ a qualification requirement in *TC* to pass a relevant examination from the list of recommended examinations maintained by the Financial ~~Services~~ Skills ~~Council~~ Partnership, the *FSA* will take that into account when assessing whether the *firm* has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.

## Annex B

## 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, personal pension schemes or broker funds</i> ) –Activity number 2 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
SFA Securities Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities and Investment Institute)	c
Fellow or Associate <u>or where the individual has passed all of the following modules CT1, CT2, CT4, CT5, CT6, CT7 and CT8</u>	Faculty or Institute of Actuaries	a
...		

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
...		
Fellow or Associate <u>or where the individual has passed all of the following modules CT1, CT2, CT4, CT5, CT6, CT7 and CT8</u>	Faculty or Institute of Actuaries	a
...		

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 1.1.1R		
Qualification	Qualification Provider	Key
<u>Foundation Degree Award in Financial Services</u>	<u>Blackburn College – University Centre</u>	<u>a</u>
...		
Diploma in Professional Financial Advice	Calibrand/Scottish Qualifications Authority	a
<u>Diploma in Professional Financial Advice (NMBA)</u>	<u>Calibrand/Scottish Qualifications Authority</u>	<u>a</u>

– <u>Alternative Assessment method</u> )		
...		
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	a
...		

<b>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</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
G70 paper of the Advanced Financial Planning Certificate	Chartered Insurance Institute	b c
...		
TSA Registered Representative Examinations	The Securities Association	b c
...		

...

<b>Qualification table for : Advising on <i>Long-term care insurance contracts</i> – Activity number 7 in TC Appendix 1.1.1R</b>		
<b>Qualification</b>	<b>Body Qualification Provider</b>	<b>Key</b>
Certificate in Financial Planning <u>plus the Award in &amp; Long Term Care Insurance</u>	Chartered Insurance Institute	1
...		

...

<b>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</b>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		
Fellow or Associate by examination	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/Institute of Investment Management and Research)	1
...		

<p><b>Qualification table for : <del>Carrying out</del> <u>Overseeing</u> on a day to day basis administrative functions in relation to effecting or carrying out <i>contracts of insurance</i> which are <i>life policies</i>:</b></p> <ul style="list-style-type: none"> <li>- (i) new business administration;</li> <li>- (ii) policy alterations including surrenders and policy loans;</li> <li>- (iii) preparing projections;</li> <li>- (iv) processing claims, including pension payments;</li> <li>- (v) fund switching</li> </ul> <p>Activity number 18 in TC Appendix 1.1.1R</p>		
<b>Qualification</b>	<b>Qualification Provider</b>	<b>Key</b>
...		

## PROFESSIONAL FIRMS (AMENDMENT) INSTRUMENT 2011

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 156 (General supplementary powers);
    - (c) section 157(1) (Guidance);
    - (d) section 213(The compensation scheme); and
    - (e) section 214 (General); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 9 December 2011.

### 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
Compensation sourcebook (COMP)	Annex D
Professional Firms sourcebook (PROF)	Annex E

### Citation

- E. This instrument may be cited as the Professional Firms (Amendment) Instrument 2011.

By order of the Board  
8 December 2011



## Annex A

### Amendments to the Glossary of definitions

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

- participant firm* (1) (except in *FEES* 1 and, *FEES* 6) a *firm* or a *member* other than:
- ...
- (f) an *authorised professional firm* that is subject to the rules of the Law Society (England and Wales) or the Law Society of Scotland and with respect to its regulated activities participates in the relevant society's compensation scheme;
- ...
- professional firm* a *person* which is:
- (a) an individual who is entitled to practise a profession regulated by a *designated professional body* and, in practising it, is subject to its rules, whether or not he is a member of that body; or
- (b) a *person* (not being an individual) which is controlled ~~and~~ or managed by one or more such individuals.

**Annex B****Amendments to the Client Assets sourcebook (CASS)**

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

5.1.3 R An *authorised professional firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland ~~must comply with that, with respect to its *regulated activities*, is~~ subject to the rules of its *designated professional body* as specified in CASS 5.1.4R, in force on 14 January 2005, must comply with those rules and if it does so, it will be deemed to comply with CASS 5.2 to CASS 5.6.

...

7.1.15 R (1) An *authorised professional firm* regulated by the Law Society (of England and Wales), the Law Society of Scotland or the Law Society of Northern Ireland ~~must comply with that, with respect to its *regulated activities*, is~~ subject to the following rules of its *designated professional body*, must comply with those rules and, where relevant paragraph (3), and if it does so, it will be deemed to comply with the *client money rules*.

...

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

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

- 3.10.2 R An auditor of an *authorised professional firm* need not report under this section in relation to that *firm's* compliance with the *client money rules* in the *client money chapter* if:
- (1) that *firm* is regulated by:
    - ~~(1)~~ (a) the Law Society (England and Wales); or
    - ~~(2)~~ (b) the Law Society of Scotland; or
    - ~~(3)~~ (c) the Law Society of Northern Ireland; and
  - (2) that *firm* is subject to the rules of its *designated professional body* as specified in CASS 7.1.15R(2), with respect to its *regulated activities*.

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

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

- 5.2.3     R   Notwithstanding COMP 5.2.1R, where the *relevant person in default*:
- (1)   is an *authorised professional firm* that is subject to the rules of the Law Society (England and Wales) or the Law Society of Scotland; and
  - (2)   with respect to its *regulated activities*, does not participate in the relevant society's compensation scheme;
- a *claim* with respect to that *person* is only a *protected claim* if, when the basis for the *claim* arose, that *person* did not participate in the relevant society's compensation scheme with respect to its *regulated activities*.

## Annex E

## Amendments to the Professional Firms sourcebook (PROF)

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

- 2.1.5 G Section 327(2) provides that an *exempt professional firm* must be a *member* of a profession or be controlled or managed by one or more *members*. The FSA considers that “managed” here should be read with its natural meaning. However, it may not be sufficient for a compliance manager to fulfil the role of manager, unless that individual is also able to exercise significant management functions involving overall oversight of the operation/business of the relevant person.
- ...
- 5.1.4 G A “*non-mainstream regulated activity*” is defined in the *Glossary* as “a *regulated activity* of an *authorised professional firm* in relation to which the conditions in *PROF 5.2.1R* are satisfied”. Conditions (1) to ~~(5)~~(6) of *PROF 5.2.1R* replicate section 327(1)(b)(i), (3), (4), (5) and (6) of the *Act*, as if those conditions applied to an *authorised professional firm*.
- ...
- 5.2.1 R A “*non-mainstream regulated activity*” is a *regulated activity* of an *authorised professional firm* in relation to which the following conditions are satisfied:
- ...
- (4) there must not be in force any direction under section 328 of the *Act* (Directions in relation to the general prohibition) in relation to:
- (a) a class of *person* which would have included the *firm* were it not an *authorised firm*; or
- (b) a description of *regulated activity* which includes the *regulated activity* the *firm* proposes to carry on; ~~and~~
- (5) the *regulated activity* must be an activity which *exempt professional firms* which are *members* of the same *designated professional body* as the *authorised professional firm* are permitted to carry on under rules made by that body as required by section 332(3) of the *Act*; and
- (6) the *authorised professional firm* is subject to the rules referred to in (5).
- 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.

## CREDIT UNIONS NEW SOURCEBOOK INSTRUMENT 2011

### 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);
    - (g) section 226 (Compulsory jurisdiction); and
    - (h) paragraph 13 (Compulsory jurisdiction) of Schedule 17 (The Ombudsman Scheme); 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 8 January 2012.

### Revocation of the Credit Unions sourcebook (CRED)

- D. The provisions of the Credit Unions sourcebook (CRED) are revoked.

### Making the Credit Unions New sourcebook (CREDS)

- E. The Financial Services Authority makes the rules and gives the guidance in the Annex to this instrument.

### Notes

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

### Citation

- G. This instrument may be cited as the Credit Unions New Sourcebook Instrument 2011.

- H. The sourcebook in the Annex to this instrument may be cited as the Credit Unions New sourcebook (or CREDS).

By order of the Board  
8 December 2011



## Annex

### Credit Unions New sourcebook (CREDS)

Insert the following new sourcebook before the Electronic Money sourcebook (ELM) in the block of the Handbook titled “Specialist sourcebooks”.

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

#### Credit Unions New sourcebook

### 1 Introduction

#### 1.1 Application and purpose

##### Application

- 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.
- 1.1.2 G (1) *CREDS* covers only the requirements associated with a *Part IV permission* to *accept deposits*. The Conduct of Business sourcebook (*COBS*) sets out additional requirements for *credit unions* that are *CTF providers* in relation to *cash deposit CTFs*.
- (2) Other *permissions* are covered elsewhere in the *Handbook*. So, for example, a *credit union* seeking a *permission* to undertake a *regulated mortgage activity* would need to comply with the requirements in the Mortgages and Home Finance: Conduct of Business sourcebook (*MCOB*), and a *credit union* seeking a *permission* to undertake *insurance mediation activity* in relation to *non-investment insurance contracts* would need to comply with the requirements in the Insurance: Conduct of Business sourcebook (*ICOBS*).
- (3) The provisions of the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (*MIPRU*) and the Interim Prudential sourcebook for Investment Businesses (*IPRU(INV)*) may also be relevant to a *credit union* whose *Part IV permission* includes *insurance mediation activity* or *mortgage mediation activity* or which is a *CTF provider* with permission to carry on *designated investment business*.
- 1.1.3 G Every *credit union* is either a *version 1 credit union* or a *version 2 credit union*. The *rules* relating to, for example, borrowing, the payment of dividends on shares, capital and lending to members are different depending on whether a

credit union is a *version 1 credit union* or a *version 2 credit union*.

#### Purpose

- 1.1.4 G *CREDS* sets out *rules* and *guidance* that are specific to *credit unions*. *CREDS* 10 refers to other more generally applicable provisions of the *Handbook* that are likely to be relevant to *credit unions* with *Part IV permission to accept deposits*. For details of these provisions, we would expect *credit unions* to access the full text in the *Handbook*.
- 1.1.5 G The status of the provisions in *CREDS* is indicated by icons containing the letters R, G or E. Please refer to chapter six of the Reader's Guide for further explanation about the significance of these icons. The Reader's Guide can be found at [http://www.fsa.gov.uk/pages/Handbook/readers\\_guide.pdf](http://www.fsa.gov.uk/pages/Handbook/readers_guide.pdf)

## 2 Senior management arrangements, systems and controls

### 2.1 Application and purpose

#### Application

- 2.1.1 R This chapter applies to all *credit unions*.

#### Purpose

- 2.1.2 G The purpose of this chapter is to provide *rules* and *guidance* relating to senior management arrangements, systems and controls that are specific to *credit unions* with a *permission to accept deposits*.
- 2.1.3 G This chapter is also intended to remind *credit unions* that the Senior Management Arrangements, Systems and Controls sourcebook (*SYSC*) also contains a number of high level *rules* relating to senior management arrangements, systems and controls designed to have general application to all *firms*, including *credit unions*. *SYSC* 1 and *SYSC* 4 to 10 apply to all *credit unions* in respect of the carrying on of their *regulated activities* and unregulated activities in a *prudential context*. *SYSC* 18 applies to all *credit unions* without restriction. This chapter does not seek to repeat the requirements of *SYSC* that are relevant to *firms* more generally.
- 2.1.4 G The purposes of *SYSC*, which applies to all *credit unions*, are:
- (1) to encourage *directors* and *senior managers* to take appropriate practical responsibility for the arrangements that all *firms* must put in place on matters likely to be of interest to the *FSA* because they impinge on the *FSA's* function under the *Act*;
  - (2) to reinforce *Principle 3*, under which all *firms* must take reasonable care to organise and control their affairs responsibly and effectively

with adequate risk management systems;

- (3) to encourage all *firms* to vest responsibility for effective and responsible organisation in specific *directors* and *senior managers*.

## 2.2 General provisions

### Appropriate systems and controls

- 2.2.1 G SYSC 4.1.1R requires every *firm*, including a *credit union*, to have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.
- 2.2.2 G For *credit unions*, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R should be comprehensive and proportionate to the nature, scale and complexity of the *credit union's* activities. That is the effect of SYSC 4.1.2R and SYSC 4.1.2AG.
- 2.2.3 G A small *version 1 credit union* will not be expected to have the same systems and controls as a large *version 2 credit union*.

### Business plan

- 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*.
- 2.2.5 G *Guidance* on business planning is given in CREDS 2.2.51G to CREDS 2.2.58G.

### Policies and procedures manual

- 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*.
- 2.2.7 G *Guidance* on documentation of policies and procedures is given in CREDS 2.2.59G to CREDS 2.2.61G.

### System of control

- 2.2.8 R A *credit union* must establish, maintain and implement a fully documented system of control.
- 2.2.9 G *Guidance* on the documentation of systems of control is given in CREDS 2.2.20G to CREDS 2.2.23G.

## Internal audit function

- 2.2.10 E (1) A *credit union* must have an internal audit function (this may be either in-house or outsourced to a third party).
- (2) Contravention of (1) may be relied on as tending to establish contravention of SYSC 4.1.1R (see CREDS 2.2.1G).
- 2.2.11 G (1) The term 'internal audit function' in CREDS 2.2.10E refers to the generally understood concept of internal audit within a *firm*, in other words the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).
- (2) *Guidance* on internal audit is given in CREDS 2.2.40G to CREDS 2.2.50G.

## Segregation of duties

- 2.2.12 G A *credit union* should ensure appropriate segregation of duties in order to minimise the risk of *financial crime* or contravention of requirements and standards under the *regulatory system*.
- 2.2.13 G *Guidance* on segregation of duties is given in CREDS 2.2.18G and CREDS 2.2.19G.

## Committee of management

- 2.2.14 G Under section 4(1) of, and Schedule 1 to, the Credit Unions Act 1979, 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*.
- 2.2.15 G In accordance with *Statement of Principle 7* of the *Statements of Principle for Approved Persons*, it is the responsibility of each individual member of the committee of management to understand, and ensure that the *credit union* complies with, the requirements of all the relevant Acts, secondary legislation and *rules*.
- 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.

2.2.17 G The committee of management should meet at least monthly.

#### Organisation

2.2.18 G *CREDS* 2.2.12G states that all *credit unions* should ensure appropriate segregation of duties. Duties should be segregated to prevent one individual from initiating, controlling, and processing a transaction (for example, both the approval and the payment of an invoice).

2.2.19 G Responsibilities of connected *persons* (for example, relatives and other close relationships) should be kept entirely separate. They should not hold key posts at the same time as each other. Where this is unavoidable, a *credit union* should have a written policy for ensuring complete segregation of duties and responsibilities.

#### Documentation of systems of control

2.2.20 G *CREDS* 2.2.8R requires a *credit union's* system of control to be fully documented. The documentation helps the committee of management to assess if systems are maintained and controls are operating effectively. It also helps those reviewing the systems to verify that the controls in place are those that have been authorised, and that they are adequate for their purpose.

2.2.21 G (1) The committee of management should decide what form this documentation should take, but the committee should have in mind the following points.

- (a) Documents should be comprehensive: they should cover all material aspects of the operations of the *credit union*.
  - (b) Documents should be integrated: separate elements of the system should be cross-referred so that the system can be viewed as a whole.
  - (c) Documents should identify risks and the controls established to manage those risks. The controls should be identified and their purpose defined so that their effectiveness can be evaluated.
  - (d) There should be named *persons* or posts for each control function and alternatives in case of absence.
  - (e) Documents should state how the operation of the control is evidenced. Evidence might include signatures, records and registers. Documents should also state for how long that evidence is to be retained, taking account of SYSC 9.1.
  - (f) Documents should be unambiguous. Instructions should be clear and precise, avoiding expressions such as "normally" and "if possible".
  - (g) Documents should be practical and easy to consult and use when operating and reviewing systems.
  - (h) Documents should be up to date. There should be an accurate description of the function that the control is to address. When changes are made to the function, the appropriate systems of control need to be updated and documented at the same time.
- (2) The committee of management should, from time to time, seek confirmation that the systems of control are being complied with.
- 2.2.22 G Documentation should not be restricted to "lower level" controls applied in processing transactions, but should also cover "high level" controls including:
- (1) identifying those powers to be exercised only by the committee of management, and the powers delegated to others;
  - (2) the purpose, composition and reporting lines of sub-committees, and *senior managers* to whom responsibilities are delegated;
  - (3) the specific roles and responsibilities of individual *officers*;
  - (4) the timing, form and purpose of meetings of the committee of management and sub-committees, and the way in which policies and decisions are recorded and their implementation monitored.
- 2.2.23 G The documentation of IT controls should be integrated within the overall documentation of a *credit union's* system of control.

## Accounting records and systems

- 2.2.24 G *SYSC 9.1.1R* requires that a *credit union* takes reasonable care to make and retain adequate records of all matters governed by the *Act*, secondary legislation under the *Act*, or *rules* (including accounting records). These records should be capable of being reproduced in the English language and on paper.
- 2.2.25 G A *credit union* should have appropriate systems in place to fulfil its obligations with respect to adequacy, access, periods of retention, and security of records.
- 2.2.26 G The main reasons why a *credit union* should maintain adequate accounting and other records are:
- (1) to provide the committee of management with adequate financial and other information to enable it to conduct its business in a prudent manner on a day-to-day basis;
  - (2) to safeguard the assets of the *credit union* and the interests of members and *persons* too young to be members;
  - (3) to assist *officers* of the *credit union* to fulfil their regulatory and statutory duties in relation to the preparation of annual accounts;
  - (4) to provide the committee of management with sufficient timely and accurate information to assist them to submit the information required or requested by the *FSA*.
- 2.2.27 G When forming their opinion of whether the accounting and other records are adequate, the committee of management should satisfy itself that they capture and record on a timely basis, and in an orderly fashion, every transaction. The accounting and other records should provide sufficient information in respect of each transaction to explain:
- (1) its nature and purpose;
  - (2) the asset or liability, actual and contingent, which arises (or may arise) from it;
  - (3) the income or expenditure, current and deferred, which arises from it.
- 2.2.28 G The committee of management should satisfy itself that the records are maintained in an integrated and orderly manner to disclose, with reasonable accuracy and promptness, the state of the business at any time.

## The compliance function

- 2.2.29 G (1) Depending on the nature, scale and complexity of its business, it may be appropriate for a *credit union* to have a separate compliance function.

- (2) The organisation and responsibilities of a compliance function should be documented.
- (3) A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the *credit union's* relevant records as well as ultimate recourse to its *governing body*.

2.2.30 G *Guidance* on compliance is located in SYSC 6.1.3R.

[**Note:** As explained in SYSC 1 Annex 1.3.3G, SYSC 6.1.3R is to be read as *guidance* rather than as a *rule*, and as if "should" appeared in that provision instead of "must".]

2.2.31 G Some important compliance issues include:

- (1) insurance against fraud and dishonesty;
- (2) arrangements for the prevention, detection and reporting of *money laundering*;
- (3) establishing and maintaining a satisfactory system of control;
- (4) keeping proper books of account;
- (5) computation and application of profits;
- (6) investment of surplus funds;
- (7) capital requirements;
- (8) liquidity requirements;
- (9) limits on shares and loans;
- (10) maintenance of membership records;
- (11) submission of financial reports to the regulator;
- (12) *approved persons* regime;
- (13) payment of regulatory fees.

#### Management information

2.2.32 G *Guidance* on management information is located in SYSC 7.1.4R.

[**Note:** As explained in SYSC 1 Annex 1.3.3G, SYSC 7.1.4R is to be read as *guidance* rather than as a *rule*, and as if "should" appeared in that provision instead of "must".]



- 2.2.33 G A *credit union* should maintain information systems to enable the committee of management to direct and control the *credit union's* business effectively, and to provide the information required by the *FSA*.
- 2.2.34 G The committee of management should be satisfied that:
- (1) the information available is sufficient for the proper assessment of the potential risks for the *credit union*, and in order to determine its need for capital and liquidity;
  - (2) the information available is sufficiently comprehensive to provide a clear statement of the performance and financial position of the *credit union*;
  - (3) management information reports are prepared with sufficient frequency;
  - (4) sufficient attention is focused on key factors affecting income and expenditure and that appropriate performance indicators are employed;
  - (5) actual performance is compared with planned and previous performance.
- 2.2.35 G In forming a view on whether the management information system is sufficiently comprehensive, the committee of management should consider whether, where relevant, the substance of reports provides a clear statement of:
- (1) the capital position;
  - (2) the liquidity position;
  - (3) profits and losses, assets and liabilities, and flow of funds;
  - (4) loans, arrears, and provisions.
- 2.2.36 G The matters listed in *CREDS* 2.2.35G should be compared against limits, ratios and other parameters set by the committee of management, as well as regulatory requirements.

#### Information for the FSA

- 2.2.37 G *Credit unions* should ensure that quarterly and annual returns required by *SUP* are reviewed at a sufficiently senior level before they are submitted to the *FSA*. The review should check for consistency between different returns, between various tables on the same return, and between information prepared for the committee of management.

#### Personnel

- 2.2.38 G *Guidance* on *employees* and agents is located in *SYSC* 5.1.2G.

- 2.2.39 G A *credit union* should identify present and future staffing requirements (including volunteers and paid staff) and make appropriate plans for their recruitment and training.

#### Internal Audit

- 2.2.40 G *CREDS* 2.2.10E states that a *credit union* should have an internal audit function.
- 2.2.41 G *Guidance* on internal audit and audit committees (otherwise known as the supervisory committee) is located in *SYSC* 6 and *SYSC* 4.1.11G.
- 2.2.42 G Depending upon the scale and nature of the *credit union's* activities, it may be appropriate for the audit committee to delegate the task of monitoring the effectiveness and appropriateness of its systems and controls to an *employee* or other third party.
- 2.2.43 G The purposes of an internal audit are:
- (1) to ensure that the policies and procedures of the *credit union* are followed;
  - (2) to provide the committee of management with a continuous appraisal of the overall effectiveness of the control systems, including proposed changes;
  - (3) to recommend improvements where desirable or necessary;
  - (4) to determine whether the *internal controls* established by the committee of management are being maintained properly and operated as laid down in the policy, and comply with relevant Acts, secondary legislation, *rules*, policies and procedures;
  - (5) to ensure that accounting records are prepared promptly and accurately, and that they are in order;
  - (6) to assess whether financial and operating information supplied to the committee of management is accurate, pertinent, timely, and complete.
- 2.2.44 G The internal audit function (see *CREDS* 2.2.11G) should develop an audit plan, covering all aspects of the *credit union's* business. The audit plan should identify the scope and frequency of work to be carried out in each area. Areas identified as higher risk should be covered more frequently. However, over a set timeframe (likely to be one year) all areas should be covered. Care should be taken to avoid obvious patterns in assessing the different areas of the *credit union's* business, so that the audit plan produces a representative snapshot of the operation and effectiveness of the credit union's internal systems and controls, procedures and policies.
- 2.2.45 G The internal audit work programme should include items such as:

- (1) verification of cash (counting and reconciliation) without prior notification;
- (2) *bank* reconciliation (checking records against *bank* statements);
- (3) verification of passbooks or account statements;
- (4) checking for compliance with policies and procedures;
- (5) checking for compliance with relevant Acts, secondary legislation and *rules*;
- (6) checking minutes and reports of the committee of management and other sub-committees for compliance, and assessing regularity and completeness;
- (7) checking loan applications;
- (8) verification of the *credit union's* assets and *investments*.

2.2.46 G The key elements of a satisfactory system of internal audit include the following:

- (1) Terms of reference. These should be specified with precision and include, amongst other things, scope and objectives of the audit committee and the internal audit function (see *CREDS* 2.2.11G), access to records, powers to obtain information and explanations for *officers*, and reporting requirements. These should be approved by the committee of management.
- (2) Risk analysis. Key risks in each area of the *credit union's* business should be identified. The adequacy of the specific controls put in place to address those risks should be assessed.
- (3) Internal audit plan. This should be developed on the basis of the risk analysis.
- (4) Detailed programmes. These should be based on the internal audit plan, together with the controls and their objectives specified in the control documentation. Each programme should be comprehensive, specifying the frequency with which the various parts of the programme are to be carried out and how the work is to be performed.
- (5) Working papers. These should be maintained to evidence who performed the work, how it was controlled and supervised, and to record the conclusions reached. They should be cross referenced to reports made and action taken.
- (6) System of reporting. Formal reports should be submitted at the completion of each aspect of programmed work, stating the areas covered together with any recommendations and conclusions reached.

- 2.2.47 G The internal audit function (see *CREDS 2.2.11G*) should be independent of all of the functions it inspects.
- 2.2.48 G The committee of management should be satisfied that the status and reporting relationship of the chairman of the audit committee is sufficient to maintain the independence and objectivity of the function.
- 2.2.49 G The qualifications, experience and training of individuals performing the internal audit function (see *CREDS 2.2.11G*) should be adequate in relation to its objectives.
- 2.2.50 G The committee of management should be satisfied that the internal audit function (see *CREDS 2.2.11G*) is being properly carried out. In order to review the overall effectiveness of the internal audit function it should consider the following:
- (1) the adequacy and scope of planning;
  - (2) the adequacy and scope of work performed in relation to the plans and programmes;
  - (3) the regularity and level of reporting on matters arising from the inspections;
  - (4) the disposal of points and recommendations raised, and reasons for the rejection of any major points;
  - (5) a review of the overall effectiveness of the internal audit function.

#### Business planning

- 2.2.51 G *CREDS 2.2.4R* requires that a *credit union* maintains a current business plan.
- 2.2.52 G *Version 2 credit unions* should submit a copy of their business plan to the *FSA*. A *version 2 credit union* making any significant changes to the business plan should provide the *FSA* with a copy of the amended plan as soon as possible after it has been adopted.
- 2.2.53 G *Guidance* on business strategy is located in *SYSC 6.1.2R* and *SYSC 7.1.2R*.
- [**Note:** As explained in *SYSC 1 Annex 1.3.3G*, *SYSC 6.1.2R* and *SYSC 7.1.2R* are to be read as *guidance* rather than as *rules*, and as if "should" appeared in those provisions instead of "must".]
- 2.2.54 G The committee of management should have a satisfactory planning system to provide a framework for growth and development of the *credit union*, and to enable it to identify, measure, manage and control risks of regulatory concern.
- 2.2.55 G The business plan should cover a period of three years from the current financial year, in other words the remainder of the current financial year and the two following financial years.

- 2.2.56 G The planning system should be defined clearly, documented appropriately, and planning related tasks and decision-making responsibilities allocated clearly within the *credit union*.
- 2.2.57 G The conclusions, recommendations, projections and assumptions set out in the business plan should be supported by analysis, based on adequate data, and properly documented for comparison with actuals.
- 2.2.58 G The committee of management should consider the range of possible outcomes in relation to various risks. These risks are increased when a *credit union* provides ancillary services such as issuing and administering means of payment and money transmission, which result, in particular, in higher liquidity and operational risks.

Documentation of policies and procedures

- 2.2.59 G *CREDS 2.2.6R* requires that a *credit union* maintains a manual of its policies and procedures.
- 2.2.60 G *Version 2 credit unions* should submit a copy of their policy and procedures manual to the *FSA*. A *version 2 credit union* making any significant changes to their policies or procedures should provide the *FSA* with a copy of the amended manual as soon as possible after it has been adopted.
- 2.2.61 G The policy and procedures manual should cover all aspects of the *credit union's* operations, including matters such as:
- (1) cash handling and disbursements;
  - (2) collection procedures;
  - (3) lending, including large *exposures* (see *CREDS 7.1* to *CREDS 7.5*);
  - (4) arrears management (see *CREDS 7.2.9G* to *CREDS 7.2.10G*);
  - (5) provisioning (see *CREDS 7.5*);
  - (6) liquidity management (see *CREDS 6*);
  - (7) financial risk management (see *CREDS 3*);
  - (8) *money laundering* prevention (see *SYSC 6.3*);
  - (9) internal audit (see *CREDS 2.2.40G* to *CREDS 2.2.50G*);
  - (10) information technology (see *CREDS 2.2.23G*);
  - (11) business continuity, otherwise known as disaster recovery (see *CREDS 2.2.62G* to *CREDS 2.2.64G*);
  - (12) marketing;

- (13) training;
- (14) connected *persons* and managing conflicts of interest (see *CREDS* 2.2.19G);
- (15) *complaints* handling (see *DISP* 1).

#### Business continuity

- 2.2.62 G *Guidance* on business continuity is located in *SYSC* 4.1.6R to *SYSC* 4.1.8G.
- [**Note:** As explained in *SYSC* 1 Annex 1.3.3G, *SYSC* 4.1.6R is to be read as *guidance* rather than as a *rule*, and as if "should" appeared in that provision instead of "must".]
- 2.2.63 G A *credit union* should put in place contingency arrangements to ensure that it could continue to operate and meet its regulatory requirements in the event of an unforeseen interruption that may otherwise prevent the *credit union* from operating normally (for example, if there was a complete failure of IT systems or if the premises were destroyed by fire).
- 2.2.64 G Business continuity arrangements should be reviewed and tested regularly in order to ensure their effectiveness.

### 3 Investment and borrowing

#### 3.1 Application, purpose and interpretation

##### Application

- 3.1.1 R This chapter applies to all *credit unions*.

##### Purpose

- 3.1.2 G (1) The *rules* and *guidance* contained in this chapter are designed to address risks that can arise from the structure of a *credit union's* balance sheet.
- (2) These risks include the risk that a *credit union's* income is not sufficiently large to cover its funding, operational and other costs, and the risk that a *credit union* may not be able to renew or replace wholesale funding at an affordable rate.

##### Interpretation

- 3.1.3 R For the purposes of this chapter:
- (1) the maturity of a *security* or loan is the last or only date on which it

will be repayable by or under its terms; and

- (2) surplus funds means funds not immediately required for a *credit union's accepting deposits*, lending and ancillary purposes.

## 3.2 Investment

### Types of investment

- 3.2.1 R Subject to the general limitations on its powers contained in the Credit Unions Act 1979 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*:
- (1) *deposits* or loans to a *UK domestic firm* with *Part IV permission to accept deposits*;
  - (2) *deposits* or loans to an institution which is authorised in any other *EEA State* to *accept deposits*;
  - (3) sterling-denominated *securities* issued by the government of any *EEA State*;
  - (4) fixed-interest sterling-denominated *securities* guaranteed by the government of any *EEA State*, provided that any guarantee is unconditional in respect of the payment of both principal and interest on those *securities*.

### Maturity of investments

- 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.
- 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.

### Cash in custody of officers

- 3.2.4 R Surplus funds not invested by a *credit union* in accordance with *CREDS* 3.2.1R to *CREDS* 3.2.3R must be held as cash in the custody of *officers* of the *credit union*.

### Investment conditions no longer satisfied

- 3.2.5 R Where under *CREDS* 3.2.1R to *CREDS* 3.2.3R above, a *firm* or another institution ceases to satisfy the conditions necessary for a *credit union* to invest with it or lend to it, and any funds of a *credit union* are with that *firm* or other institution, the *credit union* must take all practicable steps to call in and

realise that investment or loan within three *months* of that cessation, or, if that is not possible, as soon after the end of that period as possible.

#### Transactions between credit unions

- 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).
- (2) *CREDS 3.2.2R* to *CREDS 3.2.3R* apply to loans between *credit unions*, except for subordinated loans qualifying as capital under *CREDS 5.2.1R(4)*. (See *CREDS 3.2.1R* and *CREDS 5.2.8R(2)*.)
- (3) *CREDS 5.2.1R* to *CREDS 5.2.9G* apply to subordinated loans between *credit unions* qualifying as capital under *CREDS 5.2.1R(4)*.
- (4) *CREDS 7 (Lending)* (which covers loans to members) does not apply to loans between *credit unions* (see *CREDS 7.1.1R*). However, in relation to those loans, *credit unions* should have regard to the principles outlined in *CREDS 7.4.6G* and *CREDS 7.5 (Provisioning)*.
- (5) *CREDS 6.3.4R(2)* applies to loans between *credit unions* in relation to liquidity.
- 3.2.7 G Loans between *credit unions* should only be arranged after careful consideration by both parties. For example:
- (1) the borrower should consider the financial implications of relying on such borrowing in order to lend to members, or to finance share withdrawals; and
- (2) the lender should assess the risk of late and non-repayment arising from the borrower's own liquidity and credit risks, and keep the aggregate of its loans to other *credit unions* to a very modest level.

### 3.3 Borrowing and financial risk management

#### Borrowing

- 3.3.1 R A *credit union* must not borrow from a natural person, except by subordinated loan qualifying as capital under *CREDS 5.2.1R(4)*.
- 3.3.2 G *CREDS 3.3.1R* does not apply to borrowing from a *body corporate*. A loan made to a *credit union* by a *body corporate* can either be a subordinated loan (providing regulatory capital within *CREDS 5.2.1R(1)(c)*) or a senior loan (providing ordinary funding, but not constituting regulatory capital).
- 3.3.3 R The borrowing of a *version 1 credit union* must not exceed, except on a short-term basis, an amount equal to 20% of the *total non-deferred shares* in the *credit union*.



- 3.3.4 E (1) The borrowing of a *version 1 credit union* must not exceed an amount equal to 20% of the *total non-deferred shares* in the *credit union* at the end of more than two consecutive quarters.
- (2) Contravention of *CREDS 3.3.4E(1)* may be relied on as tending to indicate contravention of *CREDS 3.3.3R*.
- 3.3.5 R The borrowing of a *version 2 credit union* must not at any time exceed an amount equal to 50 per cent of the *total non-deferred shares* in the *credit union*.
- 3.3.6 R A *credit union* must not count subordinated debt obtained by the *credit union* and forming part of its capital (see *CREDS 5.2.1R*) towards the borrowing limits under *CREDS 3.3.3R* and *CREDS 3.3.5R*.

#### Financial risk management policy statement

- 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.
- 3.3.8 G This policy should address both interest rate and funding risk. It should cover aggregate limits on holdings of *investments* and borrowings from sources other than members. It should deal with avoidance of funding concentrations (both source and time-band concentrations) and should detail the organisational arrangements, systems and controls in respect of these matters.
- 3.3.9 G A *credit union's* committee of management should review and approve its financial risk management policy at least once a year, and more frequently if necessary, especially in the light of significant changes in business.
- 3.3.10 R A *version 2 credit union* must send to the *FSA* a copy of its financial risk management policy statement as soon as reasonably practicable after it has been approved by the committee of management.

## 4 Shares and deposits

### 4.1 Application and purpose

#### Application

- 4.1.1 R This chapter applies to all *credit unions*.

#### Purpose

- 4.1.2 G The purpose of this chapter is to provide for limits on holdings of shares and deposits, joint accounts, dividends and insurance cover (based on the

aggregate value of shares and deposits).

## 4.2 Shares

### Maximum shareholdings

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

- (1) £ 10,000; or
- (2) 1.5 per cent of the *total non-deferred shares* in the *credit union*.

4.2.2 R Where:

- (1) there is an increase in the percentage of the *total non-deferred shares* in the *credit union* held by a member; and
- (2) this is the result of a reduction in the *total non-deferred shares* in the *credit union* occurring after the time at which that member last acquired shares, or an interest in the shares, of the *credit union*, other than *deferred shares*;

that increase in the percentage of the *total non-deferred shares* in the *credit union* held by that member must be disregarded for the purposes of the limits in *CREDS* 4.2.1R(2) and *CREDS* 4.2.5R.

4.2.3 G *CREDS* 4.2.2R makes it unnecessary for a member to reduce his shareholding merely because of a reduction in the *total non-deferred shares* in the *credit union*.

### Joint accounts

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

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

### Dividends on shares

4.2.6 R A *version 1 credit union* must not:

- (1) pay different dividends on different accounts unless:
  - (a) at the time of the payment of any dividends it has a capital-to-total assets ratio of at least 5%; and

- (b) the payment of any of those dividends does not reduce the capital-to-total assets ratio to below 5%; or
- (2) pay dividends out of interim profits more than once a year.

4.2.7 G A *version 2 credit union* is permitted to:

- (1) pay different dividends on different accounts; and
- (2) pay dividends out of interim profits more than once a year.

### 4.3 Deposits

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 and the rules of the *credit union*; or
  - (b) from *persons* too young to be members under (2); or
  - (c) as loans from *persons* under CREDS 3.3.1R to CREDS 3.3.2G.
- (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 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*.

4.3.2 G *Credit unions* that provide *CTFs* should ensure that under their rules depositors under the age of 18 whose *deposits* are held within a *CTF* continue to be treated as juvenile depositors until the age of 18. This will provide for the fact that *CTF* account holders may not withdraw any money from the *CTF* until they reach the age of 18, in contrast to the position in relation to other *deposits* which become shares and may be withdrawn earlier.

4.3.3 G CREDS 3.3.1R and CREDS 4.3.1R are intended to ensure that the liberalisation of *credit union* borrowing (CREDS 3.3.2G) does not have the unintended effect of undermining the common bond concept by allowing *credit unions* to operate deposit accounts for natural *persons* who do not qualify for membership.

### 4.4 Insurance against fraud or other dishonesty

4.4.1 R A *credit union* must at all times maintain in force a policy of insurance complying with CREDS 4.4.2R.

- 4.4.2 R In order to comply with *CREDS* 4.4.1R, a policy of insurance (subject to the exception in *CREDS* 4.4.3R):
- (1) must insure the *credit union* in respect of every description of loss suffered or liability incurred by reason of the fraud or other dishonesty of any of its officers or employees;
  - (2) must so insure the *credit union* up to the limits set out in *CREDS* 4 Annex 1R in respect of any one claim, except that the liability of the insurer may be restricted to the amounts set out in *CREDS* 4 Annex 1R in respect of the total of the claims made in any one year; and
  - (3) must not provide, in relation to any claim, for any amount greater than one per cent of the limits on any one claim set out in *CREDS* 4 Annex 1R to be met by the *credit union*.
- 4.4.3 R From the losses and liabilities against which a policy complying with *CREDS* 4.4.2R must insure, there must be excepted all loss suffered or liability incurred by a *credit union* other than direct pecuniary loss discovered during the currency of the policy of insurance or within 18 months of the date on which either the policy of insurance lapses, or the duties of the officer or employee concerned are terminated, whichever occurs first.
- 4.4.4 R The “aggregate value” in *CREDS* 4 Annex 1R comprises the shares and *deposits* (including those held in a *CTF*) referred to in *CREDS* 4.3.1R(1)(a) and (b).
- 4.4.5 G The tables in *CREDS* 4 Annex 1R set out the minimum levels of insurance cover required by a *credit union*. It is prudent for a *credit union* to consider whether additional cover:
- (1) is needed for its own particular circumstances; and
  - (2) should be obtained to cater for actual or projected growth in the “aggregate value” (see paragraph 1 of *CREDS* 4 Annex 1R) between “relevant dates” (see paragraph 3 of *CREDS* 4 Annex 1R).

#### 4 Annex 1R Insurance against fraud or other dishonesty (see *CREDS* 4.4.1R)

	<b>Column (1)</b> Aggregate value of share subscriptions and other deposits received and not repaid (the “aggregate value”)	<b>Column (2)</b> Cover required in respect of any one claim	<b>Column (3)</b> Cover required in respect of total claims made in any one year

<b>Row (A)</b>	Less than £10,000	The higher of £500 or 50 per cent of the aggregate value	The higher of £1,000 or 100 per cent of the aggregate value
<b>Row (B)</b>	£10,000 to £100,000	The higher of £5,000 or 20 per cent of the aggregate value	100 per cent of the aggregate value
<b>Row (C)</b>	More than £100,000	The higher of £20,000 or 15 per cent of the aggregate value	The higher of £100,000 or 75 per cent of the aggregate value
<b>Row (D)</b>	More than £1,000,000	£150,000 plus 5 per cent of the aggregate value over £1,000,000, subject to a maximum of £2,000,000	£750,000 plus 5 per cent of the aggregate value over £1,000,000, subject to a maximum of £4,000,000
<p>Notes:</p> <p>(1) In relation to a <i>credit union</i> which, at the relevant date, has accepted and not repaid share subscriptions and other deposits of the aggregate value stipulated in column (1) of the table in this Annex, the limit in respect of any one claim is the amount appearing in the corresponding part of column (2); and the amount in respect of the total of claims made in any one year is the amount appearing in the corresponding part of column (3).</p> <p>(2) For the purposes of this Annex, “the relevant date” is either the date of inception or renewal of the policy of insurance, or such other date as the <i>credit union</i> determines, provided that the relevant date in each year subsequent to the first must be not more than one year after the relevant date in the preceding year.</p>			

## 5 Capital

### 5.1 Application and purpose

#### Application

- 5.1.1 R This chapter applies to all *credit unions* except for *CREDS 5.3*, which applies only to *version 1 credit unions*, and *CREDS 5.4*, which applies only to *version 2 credit unions*.

## Purpose

- 5.1.2 G This chapter amplifies *Principle 4*, under which a *firm* must maintain adequate financial resources, and the *threshold condition* that a *firm's* resources must be adequate in relation to the *regulated activities* that it carries on (see *COND 2.4*).
- 5.1.3 G The purpose of setting capital requirements is to ensure that a *credit union* has an appropriate level of capital available to absorb unexpected losses.
- 5.1.4 G The capital and net worth requirements set out in this chapter represent the minimum requirements that a *credit union* must comply with. A *credit union* should decide for itself the amount of capital that it needs to hold over and above these minimum standards proportionate to its scale of operations and its risk profile.
- 5.1.5 G The *FSA* may require a *credit union* to hold minimum amounts of capital greater than those set out in this chapter where it considers that particular circumstances make that appropriate.
- 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 *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.

## 5.2 Components of capital

- 5.2.1 R (1) The following are included in the meaning of 'capital' for the purposes of this chapter:
- (a) audited reserves;
  - (b) interim net profits;
  - (c) *deferred shares*;
  - (d) subordinated debt meeting the requirements set out at (4);
  - (e) initial capital; and
  - (f) revaluation reserves, arising from the differences between book values and the current market values of property fixed assets which:
    - (i) meet the requirements in (6) to (7); and
    - (ii) are subject to the limit in (8).

- (2) Audited reserves are audited accumulated profits or losses, or both, retained by a *credit union* after payment of tax, dividends and interest on *deposits*. Reserves also include other realised gains and gifts of capital, for example from a sponsoring organisation. *Deferred shares* are included in the meaning of 'capital' but must not be counted twice in the calculation of capital. Where a *credit union's* audited reserves include sums, equal to the amount paid on *deferred shares* subscribed for in full, and transferred to the reserves in accordance with section 7(6) of the Credit Unions Act 1979, that amount must not also be counted separately under (1)(c).
- (3) Interim net profits are interim profits net of tax and anticipated dividends.
- (4) To be included in the calculation of capital, subordinated debt must meet the following conditions:
  - (a) the maturity of the loan must be more than five years from the date on which the loan is made;
  - (b) the subordination provisions provide that the claims of the subordinated creditors rank behind those of all unsubordinated creditors including the *credit union's* shareholders;
  - (c) to the fullest extent possible, creditors waive their rights to set off amounts they owe the *credit union* against subordinated amounts owed to them by the *credit union*;
  - (d) the only events of default are non-payment of any interest or principal under the debt agreement or the winding-up of the *credit union*;
  - (e) the remedies available to the subordinated creditor in the event of default in respect of the subordinated debt are limited to petitioning for the winding up of the *credit union* or proving for and claiming in the liquidation of the *credit union*;
  - (f) the subordinated debt must not become due and payable before its stated final maturity date except on an event of default complying with (d);
  - (g) the terms of the subordinated debt must be set out in a written agreement or instrument that contains terms that provide for the above conditions;
  - (h) the debt must be unsecured and fully paid up.
- (5) Initial capital is a *credit union's* capital at the time it is given *Part*

*IV permission to accept deposits*, but this does not apply in cases where the *credit union* is treated as having such a *permission on credit unions day*. Initial capital consists of a *credit union's* assets less its liabilities. For this purpose, liabilities do not include the items set out in (1)(a) to (c).

- (6) To be included in the calculation of capital, revaluation reserves must meet the following conditions:
- (a) the *credit union* must apply the revaluation method to all of its property fixed assets and not selectively;
  - (b) the values must result from regular professional valuations of each property;
  - (c) if professional valuations are not carried out annually, there must be:
    - (i) a rolling programme such that no professional valuation of a property is more than five years old;
    - (ii) in the intervening year(s) in which a property is not professionally valued, an interpolation of value by the Board which takes into account any decline in property values disclosed by valuations of other properties in that year;
  - (d) any increase of revaluation reserve must be supported by a professional valuation.
- (7) Subject to the conditions in (6), and the limit in (8), the amount of revaluation reserve used for the calculation of capital must be:
- (a) the amount standing to the credit of any such reserve in the balance sheet in the most recent annual return to have been sent to the *FSA* under *SUP* 16.7.62R or *SUP* 16.12.5R (see *CREDS* 8.2.3G); or
  - (b) the amount of any such reserve in the accounting records of the *credit union*, for the time being, whichever is the lesser amount.
- (8) The amount of revaluation reserve included in the calculation of capital must not represent more than 25 per cent of the total of capital resources in (1)(a) to (e).

5.2.2 G The effect of *CREDS* 5.2.1R(4)(a) is that the shortest permissible period for a subordinated loan qualifying as capital under *CREDS* 5.2.1R(4)(a) is five years and one day.



- 5.2.3 G Subordinated debt is due and payable only in accordance with *CREDS* 5.2.1R(4). However, this *rule* does not prevent the debt from being issued on terms which permit the *credit union*, in accordance with a board resolution, to repay the debt. The decision to repay the debt should be genuinely at the instance of the *credit union's* board. The *credit union* should satisfy itself that the remaining capital would be adequate for the *credit union's* present and future foreseeable needs. The *credit union* should notify the *FSA* at least one *month* in advance of its intention to repay the debt (thereby giving the *FSA* the opportunity to raise objections to the proposed repayment). If repayment is proposed within the first five years, and the *FSA* considers that the remaining capital may not be adequate, then the *FSA* is likely to consider exercising its *own-initiative powers* to ensure that the *credit union* continues to satisfy the *threshold conditions*.
- 5.2.4 G The effect of *CREDS* 5.2.1R(8) is that no more than 25 per cent of a *credit union's* regulatory capital may consist of amounts deriving from the revaluation of property, however large the amount standing to the credit of the *credit union's* revaluation reserve.
- 5.2.5 R Negative reserves and any interim net losses must be deducted from capital.
- 5.2.6 R The amount of any subordinated loan counting towards a *credit union's* regulatory capital must, over its final four years to maturity, be written down by 20% of the amount of the loan per year (see Table at *CREDS* 5.2.7R.)
- 5.2.7 R Writing down subordinated loans over final four years

This table belongs to *CREDS* 5.2.6R

Years to maturity	Amount of loan counting towards capital
More than 4	100%
Less than and including 4 but more than 3	80%
Less than and including 3 but more than 2	60%
Less than and including 2 but more than 1	40%
Less than and including 1	20%

- 5.2.8 R (1) When a *credit union* makes a subordinated loan to another *credit union* qualifying as capital under *CREDS* 5.2.1R(4)(a), the full amount of the loan (not the amount counting towards the borrower's capital under *CREDS* 5.2.7R) must be deducted from the lender's capital.

(2) A subordinated loan within *CREDS* 5.2.1R(4)(a) is not an investment under *CREDS* 3.2.1R.

5.2.9 G The effect of *CREDS* 5.2.8R is that the maturity limits in *CREDS* 3.2.2R and *CREDS* 3.2.3R do not apply to subordinated loans made by a *credit union*.

### 5.3 Version 1 credit unions

#### Requirement to maintain capital assets ratio

5.3.1 R A *version 1 credit union* must at all times maintain a capital-to-total assets ratio of at least 3%.

[**Note:** a transitional provision applies to this *rule*: see *CREDS* TP 1.1.]

#### Building reserves

5.3.2 R A *version 1 credit union* must establish and maintain a general reserve.

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).

5.3.4 R For the purposes of *CREDS* 5.3.3R 'profits' means the profits resulting from the operations of a *credit union* in the year of account in question after deduction of all operating expenses (including payment of interest) and after making provision for the depreciation of assets, for tax liabilities and for bad and doubtful debts, but before the payment of any dividend.

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.

#### Minimum initial capital

5.3.6 R A *credit union* must have adequate initial capital taking into account the nature, scale and complexity of its business and expected early expenses.

5.3.7 E (1) A *version 1 credit union* should have initial capital of at least £10,000.

(2) Contravention of (1) may be relied on as tending to establish contravention of *CREDS* 5.3.6R.

5.3.8 G For the meaning of 'initial capital' see *CREDS* 5.2.1R(5).

5.3.9 G It should be noted that the requirement in *CREDS* 5.3.6R does not affect a *credit union's* obligations to meet the other capital requirements that apply

to it. The ability of a *credit union* to comply on a continuing basis with the other capital requirements that apply to it will be a central factor for consideration in any application for *authorisation*.

#### Capital requirement for certain version 1 credit unions

- 5.3.10 R (1) A *version 1 credit union* must not lend to a member more than £7,500 in excess of the *attached shares* held by that member, unless it has a capital-to-total assets ratio of at least 5%.
- (2) A *credit union* which is owed by a member a total amount greater than £7,500 in excess of the *attached shares* held by that member must maintain at all times, while such an amount is outstanding, a capital-to-total assets ratio of at least 5%.
- 5.3.11 G *CREDS* 5.3.10R(2) does not have the effect of invalidating existing loans if the capital-to-assets ratio falls below 5%.
- 5.3.12 G *CREDS* 7.5.1R and *CREDS* 7.5.2R mean that bad and doubtful debts must be taken into account in establishing the capital-to-assets ratio.

#### Capital requirements for large version 1 credit unions

- 5.3.13 R A *version 1 credit union* with total assets of more than £5 million or a total number of members of more than 5,000, or both, must maintain at all times a capital-to-total assets ratio of at least 5%.
- 5.3.14 G *CREDS* 7.5.1R and *CREDS* 7.5.2R mean that bad and doubtful debts must be taken into account in establishing the capital-to-assets ratio.
- 5.3.15 R (1) A *version 1 credit union* with total assets of more than £10 million or a total number of members of more than 10,000, or both, must maintain at all times a risk-adjusted capital-to-total assets ratio of at least 8%.
- (2) 'Risk-adjusted capital' has the same meaning as in *CREDS* 5.4.1R and *CREDS* 5.4.2R (Risk-adjusted capital requirements for *version 2 credit unions*).

## 5.4 Version 2 credit unions

- 5.4.1 R (1) A *version 2 credit union* must maintain at all times a risk-adjusted capital-to-total assets ratio of at least 8%.
- (2) Risk-adjusted capital is calculated as follows: Capital + (provisions - balance of the *net liability* of borrowers where their loans are 12 *months* or more in arrears - 35% of the *net liability* of borrowers where their loans are 3 to 12 *months* in arrears).
- 5.4.2 R In calculating risk-adjusted capital:

- (1) the maximum net figure for provisions (after deduction of the stipulated amounts for loans in arrears) that can be included is 1% of total assets;
- (2) 'provisions' includes specific provisions and general provisions; and
- (3) mortgage loans and provisions in respect of mortgage loans must not be included in calculating the loan balances to be deducted from, and the provisions to be added to, the amount of capital.

#### Minimum initial capital

- 5.4.3 R A *credit union* must have adequate initial capital taking into account the nature, scale and complexity of its business and expected early expenses.
- 5.4.4 E (1) A *version 2 credit union* should have initial capital of at least £50,000.
- (2) Contravention of (1) may be relied on as tending to establish contravention of *CREDS* 5.4.3R.
- 5.4.5 G For the meaning of 'initial capital' see *CREDS* 5.2.1R(5).
- 5.4.6 G It should be noted that the requirement in *CREDS* 5.4.3R does not affect a *credit union's* obligations to meet the other capital requirements that apply to it. The ability of a *credit union* to comply on a continuing basis with the other capital requirements that apply to it will be a central factor for consideration in any application for *authorisation*.

## 6 Liquidity

### 6.1 Application and purpose

#### Application

- 6.1.1 R This chapter applies to all *credit unions*.

#### Purpose

- 6.1.2 G This chapter amplifies *Principle 4*, under which a *credit union* must maintain adequate financial resources, and the *threshold condition* for *permission* that a *credit union's* resources must be adequate in relation to the *regulated activities* that it carries on (see *COND* 2.4).
- 6.1.3 G A central feature of *credit union* business is maturity transformation, in other words taking short-term *deposits* (in the form of share accounts) from members and making comparatively long-term loans. It is important,

in order to maintain confidence and protect members, that a *credit union* has adequate liquid assets (liquidity) to enable it to fulfil members' withdrawal requests within expected timeframes.

## 6.2 General requirements

### Liquid assets

- 6.2.1 R A *credit union* must hold liquid assets of an amount and composition that is prudent and appropriate to the scale and nature of its business, having regard to material risks, including the risk of a sudden adverse cash flow, with a view to enabling it to meet its objectives.
- 6.2.2 G The liquid assets held by a *credit union* should be sufficient to meet its day-to-day business needs and to provide an appropriate cushion in the event of pressure arising from unexpected events.
- 6.2.3 G The responsibility for ensuring that a *credit union* can meet its obligations as they fall due rests with the *credit union's* management.

### Liquid management policy statement

- 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.
- 6.2.5 R A *version 2 credit union* must send to the FSA a copy of its liquidity management policy statement as soon as reasonably practicable after it has been approved by the committee of management.
- 6.2.6 G A *credit union* should be able to satisfy the FSA on a continuing basis that it has a prudent liquidity management policy and adequate management systems in place to ensure that the policy is adhered to.
- 6.2.7 G The liquidity management policy statement of a *credit union* should set out the *credit union's* objectives for liquidity, the limits within which liquidity should be maintained, and the types of liquid assets which the *credit union* should hold.
- 6.2.8 G A *credit union's* committee of management should review and approve its liquidity management policy statement at least once a year, and more frequently if necessary, especially in the light of significant changes in business.
- 6.2.9 G Where a *version 2 credit union* has borrowed wholesale funds, the maturity of such funds and the risk of their not being able to be refinanced should be taken into account in the formulation of the *credit union's* liquidity management policy statement.

- 6.2.10 G When a *credit union* provides ancillary services such as issuing and administering means of payment and money transmission, it should take into account the potentially greater volatility of its funds when deciding what amount and composition of liquid assets is necessary to comply with *CREDS* 6.2.1R.

### 6.3 Minimum liquidity requirements

- 6.3.1 R A *credit union* must at all times hold liquid assets of a value equal to at least 5% of its *total relevant liabilities*.
- 6.3.2 R A *credit union* must further hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the *credit union's* liquid assets below 10% of its *total relevant liabilities*.
- [**Note:** a transitional provision applies to this *rule*: see *CREDS* TP 1.2.]
- 6.3.3 G The liquidity requirements set out in *CREDS* 6.3.1R and *CREDS* 6.3.2 R are minimum requirements and are subject to the overarching requirement of *CREDS* 6.2.1R.
- 6.3.4 R (1) For the purposes of *CREDS* 6.3.1R and *CREDS* 6.3.2R, only those assets will count as liquid which can be realised for cash at short notice, and within at most eight *days*.
- (2) Amounts loaned by one *credit union* to another must not be counted as liquid by the lender.
- 6.3.5 R For the purposes of calculating the ratio of a *credit union's* liquid assets to its *total relevant liabilities* (in *CREDS* 6.3.1R and *CREDS* 6.3.2R), assets must be valued at the amount for which they could be realised within eight *days*.
- 6.3.6 E (1) For the purposes of calculating the ratio of a *credit union's* liquid assets to its *total relevant liabilities* (in *CREDS* 6.3.1R and *CREDS* 6.3.2R), the *securities* referred to in *CREDS* 3.2.1R to *CREDS* 3.2.3R must be valued on the basis that they could be realised at market value minus the following discounts (whether or not this is the case in fact):
- (a) maturity less than 1 year – zero;
- (b) maturity 1 to 5 years – 5%.
- (2) Compliance with *CREDS* 6.3.6E(1) may be relied on as tending to establish compliance with *CREDS* 6.3.5R (the 8-*day* realisation-value rule).
- 6.3.7 G An asset maturing on a non-business *day* should be regarded as maturing

on the succeeding *business day*.

- 6.3.8 G For the purposes of clarity, funds serving liquidity purposes may be invested in the manner set out in *CREDS* 3.2.1R provided that the resulting assets satisfy the relevant requirements of this chapter.
- 6.3.9 G Where a *credit union* buys or holds property as premises from which to conduct its business, the *credit union* should not count those premises as liquid assets for the purposes of *CREDS* 6.3.4R.

## 7 Lending to members

### 7.1 Application, purpose and interpretation

#### Application

- 7.1.1 R This chapter applies to all *credit unions*.

#### Purpose

- 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. *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*.
- (2) This chapter is not relevant to loans between *credit unions*, except as indicated in *CREDS* 3.2.6G(4).

#### Interpretation

- 7.1.3 G The *rules* and *guidance* in this chapter are in addition to the provisions of section 11 of the Credit Unions Act 1979 in relation to loans made by *credit unions*. Under these provisions:
- (1) a *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*;
  - (2) a *credit union* may not make a loan to a member of the *credit union* holding only *deferred shares*.
- 7.1.4 G “Corporate member” has the same meaning as in section 5A of the Credit Unions Act 1979.

## 7.2 General requirements concerning lending policy

- 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*.
- 7.2.2 R A *version 2 credit union* must provide the *FSA* with a copy of its lending policy statement as soon as reasonably practicable after it has been approved by the committee of management.
- 7.2.3 G A principal purpose of *credit unions'* business is the accumulation of members' savings to provide a fund out of which loans are provided for the benefit of the members. *Credit unions* may often in practice have less scope to minimise credit risk through the exercise of discretion than some other lenders. It is therefore important that a *credit union* has a carefully considered and effective lending policy statement.
- 7.2.4 G *CREDS 2.2.6R* requires a *credit union* to maintain a manual of its policies and procedures. This should include the policy and procedure for making loans.
- 7.2.5 G The *credit union's* committee of management should review and approve its lending policy at least once a year, and more frequently if necessary (for example if there is an escalating arrears problem), especially in the light of significant changes in business.
- 7.2.6 G The lending policy should consider the conditions for and amounts of loans to members, individual mandates, and the handling of loan applications.
- 7.2.7 R (1) A *credit union* must not make a loan to:
- (a) one of its officers or *approved persons* on terms more favourable than those available to other members of the *credit union* unless:
    - (i) that person is a paid employee (other than a *director*) of the *credit union*; and
    - (ii) the registered rules of the *credit union* provide



explicitly for the making of loans to paid employees on such terms;

- (b) a relative of, or any person otherwise connected with, 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*.
- (2) "Relative" has the same meaning as in section 31 of the Credit Unions Act 1979.
- 7.2.8 G (1) To prevent conflicts of interest, a *credit union* should have clear arrangements for dealing with loans to the persons specified in *CREDS 7.2.7R*.
- (2) In relation to staff, the prohibition in *CREDS 7.2.7R* applies only to those who are officers or *approved persons*.
- (3) "Connected" in *CREDS 7.2.7R* includes any close business or personal relationship.
- 7.2.9 G A *credit union* should have a documented arrears management policy, setting out the procedures and process for dealing with borrowers who fall into arrears. This should be reviewed regularly and promptly in the light of experience.
- 7.2.10 G A *credit union* should have a clear, robust and effective approach to handling arrears and be able to satisfy the *FSA* on a continuing basis that it has adequate management and control systems in place to monitor arrears.
- 7.2.11 G A *credit union* should ensure that loan assets are valued correctly in their accounts. A provisioning policy relating to problem loans and arrears cases should be clearly defined and documented covering the circumstances in which provisions are to be made.
- 7.2.12 G (1) A *credit union* may make a loan to a member for a business purpose. However, this does not mean that a *credit union* may make a loan to a member who merely intends to transmit that loan to another body that will actually carry out the purpose.
- (2) A *credit union* should not make loans to members who are acting together to achieve an aggregate loan that exceeds the limits in *CREDS 7.3*.
- 7.3 Lending limits**
- 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.

- 7.3.2 R The outstanding balance of a loan by a *version 1 credit union* to a member must not at any time be more than £15,000 in excess of the *attached shares* held by that member, but this rule is subject to the additional requirement in *CREDS 5.3.10R(1)*.
- 7.3.3 G The effect of *CREDS 5.3.10R(1)* is to prevent a *version 1 credit union* from lending more than £7,500 in excess of the *attached shares* held by that member unless it has a capital-to-total assets ratio of at least 5%.
- 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.
- 7.3.5 G A *credit union* should not attempt to evade the limits in *CREDS 7.3.1R* and *CREDS 7.3.4R* by making loans in the expectation that they will not be fully repaid by the end of the period, but will be automatically extended or rescheduled.
- 7.3.6 R The outstanding balance of a loan by a *version 2 credit union* to a member must not at any time be more than:
- (1) £15,000 in excess of the *attached shares* held by that member; or
  - (2) an amount equivalent to 1.5% of *total non-deferred shares* in the *credit union* in excess of the *attached shares* held by that member;
- whichever is the greater.
- 7.3.7 G The lending limit requirements set out above are maxima. A *credit union* should have adequate systems for recording and controlling all potential *exposures*. The capital requirements for *version 1 credit unions* and *version 2 credit unions* in respect of lending are set out in *CREDS 5.3* and *CREDS 5.4*, including the *FSA's* requirements in respect of calculating risk-adjusted capital.
- 7.3.8 R A *credit union* with *permission* for *entering into a regulated mortgage contract* must not enter into such a contract for a term of more than 25 years.

## 7.4 Large exposures

- 7.4.1 R For the purposes of this section, a large *exposure* is defined as an individual *net liability* to the *credit union* which meets both of the following criteria:
- (1) it is at least £7,500;
  - (2) it is at least 10% of the value of the *credit union's* total capital.

- 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.
- 7.4.3 R A *credit union* must not permit the aggregate total of all large *exposures* to exceed 300% of capital unless the *credit union* notifies the *FSA* in advance.
- 7.4.4 G For the purposes of large *exposures* the maximum *net liability* of a *credit union* with assets of £500,000 and 8% capital would be £10,000, subject to *CREDS* 7.4.2R and *CREDS* 7.3.6R.
- 7.4.5 G For a *credit union* with assets of £1million and 10% capital the maximum *net liability* would be £25,000.
- 7.4.6 G Excessive *exposure* (large loans to an individual borrower and in aggregate) by a *credit union* can create a concentration of risk on the balance sheet and increase a *credit union's* vulnerability to bad debt. This can lead to a strain on capital and solvency. While this risk cannot be eliminated, it can be contained by limits and controlling the extent to which *credit unions* commit themselves to large *exposures*. Therefore the large *exposure* limits set the maximum sum that may be loaned to any one member as a percentage of reserves to prevent concentration. All *credit unions* should set and document their own large *exposure* policy limits to avoid concentration of risk.
- 7.4.7 G It is the committee of management's responsibility to monitor large *exposures*. The large *exposures* limits policy should be reviewed on an annual basis (or more frequently where required).

## 7.5 Provisioning

- 7.5.1 R A *credit union* must make adequate provision for bad and doubtful debt.
- 7.5.2 R A *credit union* must make specific provision in its accounts for bad and doubtful debts of at least the amounts set out below:
- (1) 35% of the *net liability* to the *credit union* of borrowers where the amount is more than three *months* in arrears; and
  - (2) 100% of the *net liability* to the *credit union* of borrowers where the amount is more than 12 *months* in arrears.
- 7.5.3 G In addition to the requirements of *CREDS* 7.5.2R, a *credit union* should consider making the following specific provisions in its accounts for bad and doubtful debts:
- (1) 60% of the *net liability* to the *credit union* of borrowers where the amount is more than six *months* in arrears; and

- (2) 80% of the *net liability* to the *credit union* of borrowers where the amount is more than nine *months* in arrears.
- 7.5.4 E (1) A *credit union* should maintain a general provision for bad and doubtful debts of at least 2% of the *net liability* to the *credit union* of borrowers not covered by the specific provisions in *CREDS 7.5.2R*.
- (2) Contravention of (1) may be relied on as tending to establish contravention of *CREDS 7.5.1R*.
- 7.5.5 G In order to comply with the requirements of *CREDS 7.5.1R* to *CREDS 7.5.4E* a *credit union* should review its provisioning requirements frequently. The *FSA* recommends that this is done at least quarterly.
- 7.5.6 G A *credit union* should make it its business to know its *customers* and, in conjunction with its auditor, make a judgment on the degree of risk of non-payment attached to loans that are in arrears. Provisioning should reflect that judgment.
- 7.5.7 G Where a delinquent loan is rescheduled and the arrears capitalised, the loan should be regarded as remaining impaired until there is sufficient evidence that it is performing on the rescheduled terms. In the meantime, any provision made in relation to that loan should be maintained, not released.
- 7.5.8 G (1) *CREDS 7.5.2R* requires a *credit union* to maintain minimum levels of specific provision. However, a *credit union* that only maintains the minimum levels does not necessarily comply with *CREDS 7.5.1R*. This will depend on the assessment and judgment referred to in *CREDS 7.5.6G*.
- (2) (a) Failure to maintain a general provision of the level indicated in *CREDS 7.5.4E* creates a presumption that the *credit union* is not complying with *CREDS 7.5.1R*, though that presumption can be rebutted by the *credit union*: for example, it may be able to demonstrate that the occurrence of impaired loans that are either below the threshold for specific provision (that is, they are less than three *months* in arrears) or are unidentified at the time, is very low.
- (b) If, on the other hand, a *credit union* does maintain the indicative level in *CREDS 7.5.4E*, that does not necessarily mean that it complies with *CREDS 7.5.1R*.
- 7.5.9 G If a *credit union* needs to make higher provisions, beyond the levels in *CREDS 7.5.2R* and *CREDS 7.5.4E*, in order to meet *CREDS 7.5.1R*, then it should do so.

## 8 Supervision

### 8.1 Application and purpose

#### Application

8.1.1 G This section applies to all *credit unions*.

#### Purpose

8.1.2 G The purpose of this section is to provide additional *rules* and *guidance* relating to reporting requirements that are specific to *credit unions*. *Credit unions* also need to comply with the relevant provisions of *SUP* relating to reporting, including *SUP* 16.3 and *SUP* 16.12.

### 8.2 Reporting requirements

#### Quarterly return

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)R.

[**Note:** a transitional provision applies in respect of the form to be used at *SUP* 16 Annex 14(1)G (see *CREDS* TP 1.4).]

8.2.2 G This table belongs to *CREDS* 8.2.1G

Content of report	Form	Frequency	Due date
Key financial data	CQ	Quarterly	One <i>month</i> after quarter end

#### Annual return

8.2.3 G *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)R.

[**Note:** transitional provisions apply to the requirement in *SUP* 16.12.5R (see *CREDS* TP 1.3) and in respect of the form to be used at *SUP* 16 Annex 14(2)G (see *CREDS* TP 1.4).]

8.2.4 G This table belongs to *CREDS* 8.2.3G

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Content of report	Form	Frequency	Due date
Extended financial data	CY	Annually	Six months after financial year end

- 8.2.5 G The form may be updated from time to time. *Credit unions* should use the form in force at the end of the financial year on which they are reporting.

#### Accounts and audit

- 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.
- (2) The accounts must:
- (a) be made up for the period beginning with the date of the *credit union's* registration or with the date to which the *credit union's* last annual accounts were made up, whichever is the later, and ending on the *credit union's* most recent financial year end; and
- (b) accompany the annual return submitted to the *FSA* under *SUP* 16.12.5R (see *CREDS* 8.2.3G), unless they have been submitted already.
- 8.2.7 R Every *credit union* must supply free of charge, to every member or person interested in the funds of the *credit union* who applies for it, a copy of the latest audited accounts of the *credit union* sent to the *FSA* under *CREDS* 8.2.6R.

#### Financial penalties for late submission of reports

- 8.2.8 G (1) Financial penalties may be imposed for the late submission of:
- (a) the quarterly and annual returns referred to in *SUP* 16.12.5R; and
- (b) the audited accounts referred to in *CREDS* 8.2.6R.
- (2) Details of the *FSA's* policy and procedures on financial penalties are given in *DEPP*.

### 8.3 Approved persons

- 8.3.1 G The purpose of this section is to set out further *guidance* relating to the *approved persons* regime that is specific to *credit unions*. *Credit unions* should also read Chapter 10 of the Supervision manual (*SUP*) concerning *approved persons*.

## Introduction

- 8.3.2 G The effect of section 59 of the *Act* and *SUP* 10 is that a *credit union* must apply to the *FSA* for the approval of one or more individuals to perform the functions which are known as *controlled functions*. *Controlled functions* fall within two groups:
- (1) The *significant influence functions* describe the roles performed by the *governing body* and *senior managers* of the *firm* who exert a significant influence over the *regulated activities* of the *firm*.
  - (2) The *customer functions* describe the roles of individuals who deal with *customers* or with the property of *customers*. These *customer functions* do not extend to activities in relation to accepting *deposits* or general insurance and therefore will not be relevant to *credit unions* with *permission for accepting deposits* only.

## Controlled functions

- 8.3.3 G The complete list of all *controlled functions* is located in *SUP* 10.4.5R. *Guidance* on those *controlled functions* most likely to be relevant to *credit unions* is provided below.
- 8.3.4 G *SUP* 10.6: the *governing functions*:
- (1) *SUP* 10.6.4R: the *director function*. This is the function of acting in the capacity of a *director* of a *credit union*.
  - (2) *SUP* 10.6.8R: the *non-executive director function*. It is unusual for a *credit union* to appoint *non-executive directors* as such. But this function would include membership of a *credit union's* supervisory committee and any other committee which scrutinises the approach of executive management, the *credit union's* performance, and its standards of conduct.
  - (3) *SUP* 10.6.11R: the *chief executive function*. Acting in the capacity of *chief executive*, whether or not using that title. This role includes anyone having the responsibility, alone or jointly with one or more others, under the immediate authority of the committee of management, for the conduct of the whole of the business.
- 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.
  - (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.*

- 8.3.6 G *SUP 10.8: the systems and controls function.* This is the function of acting as an employee with responsibility for reporting to the committee of management in relation to:
- (1) the *credit union's* financial affairs; or
  - (2) setting and controlling its risk exposure; or
  - (3) adherence to internal systems and controls, procedures and policies.
- 8.3.7 G Where an *employee* performs the *systems and controls function* the *FSA* would expect the *credit union* to ensure that the *employee* had sufficient expertise and authority to perform that function effectively, for example by occupying the role of a *director* or *senior manager*.
- 8.3.8 G *SUP 10.9: the significant management functions:* This *controlled function* will only apply to the *credit union* if the function is not being performed by a member of the committee of management and the *credit union* has followed the *guidance* in *SUP 10.9.3G*.

## **9 Complaints reporting rules for credit unions**

### **9.1 Application and purpose**

#### Application

- 9.1.1 R This chapter applies to all *credit unions*.

#### Purpose

- 9.1.2 G This chapter sets out *rules* and *guidance* for *credit unions* on completing reports concerning *complaints* received from *eligible complainants*. It replaces *DISP 1.10* (Complaints reporting rules) and *DISP 1.10A* (Complaints data publication rules), which do not apply to *credit unions* (*DISP 1.1.5AR*).
- 9.1.3 G The other elements of *DISP 1* (*DISP 1.2* (Consumer awareness rules), *DISP 1.3* (Complaints handling rules), *DISP 1.4* to *1.8* (Complaints resolution rules etc.) and *DISP 1.9* (Complaints record rule)) apply to *credit unions*.
- 9.1.4 G *DISP 2* to *DISP 4* (which cover jurisdiction and procedures of the *Financial Ombudsman Service*) and *FEES 5* (which covers funding of the *Financial Ombudsman Service*) apply to *credit unions*.



## 9.2 Reporting

- 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:
- (1) the total number of *complaints* received by the *credit union*;
  - (2) the number of *complaints* closed by the *credit union*:
    - (a) within eight weeks of receipt; and
    - (b) more than eight weeks after receipt;
  - (3) the total number of *complaints*:
    - (a) upheld by the *credit union* in the reporting period;
    - (b) outstanding at the start of the reporting period; and
  - (4) the total amount of redress paid in respect of *complaints* during the reporting period.
- 9.2.2 R A *credit union* must not include in the report a *complaint* that has been forwarded in its entirety to another *respondent* under DISP 1.7 (the complaints forwarding rules).
- 9.2.3 G Where a *credit union* has forwarded to another *respondent* only part of a *complaint* or where two *respondents* may be jointly responsible for a *complaint*, then the *complaint* should be reported by both *firms*.
- 9.2.4 R CREDS 9.2.1R does not apply to a *complaint* that is resolved by close of business on the *business day* following its receipt.
- 9.2.5 G For the purposes of CREDS 9.2.4R:
- (1) a *complaint* received on any day other than a *business day*, or after close of business on a *business day*, may be treated as received on the next *business day*; and
  - (2) a *complaint* is resolved where the complainant has indicated acceptance of a response from the *credit union*, with neither the response nor acceptance having to be in writing.
- 9.2.6 G For the purpose of CREDS 9.2.1R, and upon completing the return, the *credit union* should note that:
- (1) where a *complaint* could fall into more than one category, the *complaint* should be recorded against the category that the *credit union* considers to form the main part of the *complaint*;

- (2) where a *complaint* has been upheld under *CREDS* 9.2.1R(3)(a), a *credit union* should report any *complaints* to which it has given a *final response* which accepts the *complaint* and, where appropriate, offers redress, even if the redress offered is disputed by the complainant. Where a *complaint* is upheld in part, or where the *credit union* does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, the *credit union* should treat the *complaint* as upheld for reporting purposes. Where a *credit union* rejects a *complaint*, yet chooses to make an ex-gratia payment to the complainant, the *complaint* should be recorded as rejected;
- (3) where a *credit union* reports on the amount of redress paid under *CREDS* 9.2.1R(4), redress should be interpreted to include any amount paid, or cost borne, by the *credit union*, where a cash value can be readily identified, and should include:
- (a) amounts paid for distress and inconvenience;
  - (b) a free transfer out to another provider which transfer would normally be paid for;
  - (c) ex-gratia payments and goodwill gestures;
  - (d) interest on delayed settlements
  - (e) waiver of an excess on an insurance policy; and
  - (f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred;
- (4) where a *credit union* reports on the amount of redress paid under *CREDS* 9.2.1R(4), such redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a *credit union* had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

- 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.
- 9.2.8 G Financial penalties may be imposed for the late submission of the complaints report required by *CREDS* 9.2.1R.
- 9.2.9 R For the purposes of making reports under *CREDS* 9.2.1R, a closed

*complaint* is a *complaint*:

- (1) where the *credit union* has sent a *final response*; or
- (2) where the complainant has positively indicated acceptance of the *credit union's* earlier response; or
- (3) where the complainant has failed to revert to the *credit union* within eight weeks of the *credit union's* most recent letter.

- 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 of the *FSA*.
- 9.2.11 G *SUP* 16.3.14R applies to the *credit unions'* complaints returns.
- 9.2.12 R For the purpose of inclusion in the public record maintained by the *FSA*, a *credit union* must provide the *FSA*, at the time of its *authorisation*, with details of a single contact within the *credit union* for complainants, and in its quarterly return must notify the *FSA* of any subsequent change.
- 9.2.13 G The contact point in *CREDS* 9.2.1R and *CREDS* 9.2.12R can be by name or job title and may include, for example, a telephone number.

## 9 Annex 1R Credit union complaints return

(for FSA use only)

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# Credit union complaints return

FSA Handbook Reference: CREDS 9 Annex 1R  
This is the report referred to in CREDS 9.2.1R

Please read the notes on completion before completing this return

### Firm details and reporting period

### Section 1

1.01	FSA firm reference number																		
1.02	Name of <i>credit union</i>																		
			mm		yyyy			mm		yyyy									
1.03	Reporting period	From				To													

### Nil return declaration

### Section 2

**SECTIONS 1 AND 6 MUST STILL BE COMPLETED.**

2.01	We wish to declare a Nil Return (Tick the box if applicable)	Nil return	<input type="checkbox"/>
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### Complaints outstanding

### Section 3

3.01	Number of complaints outstanding as at reporting period start date	
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### Complaints opened during reporting period

### Section 4

Product/service grouping	Product/service	Advising, selling and arranging	Terms and disputed sums/charges	General admin/customer service	Arrears related	Other
Banking	Current accounts					
	Credit cards					
	Unregulated loans					
	Savings (inc. Cash ISA) and other banking					
Home finance	Equity release products					
	Impaired credit mortgages					
	Other regulated home finance products					
	Other unregulated home finance products					
General insurance and pure protection	Payment protection insurance					
	Other general insurance					
	Critical illness					
	Income protection					
	Other pure protection					
Decumulation, life and pensions	Personal pensions and FSAVCs					
	Investment linked annuities					
	Income drawdown products					
	Endowments					
	Other decumulation, life and pensions					
Investments	Investment bonds					
	PEPs/ISAs (exc. cash ISAs)					
	Unit trusts/OEICs					
	Investment trusts					
	Structured products					
	Other investment products/funds					
	Investment management/services (inc. platforms)					

**Complaints closed during reporting period**

**Section 5**

Product/service grouping	Number of complaints closed within 8 weeks	Number of complaints closed after more than 8 weeks	Number of complaints upheld by the <i>credit union</i> in the period	Total amount of redress paid to consumers in the period
Banking				
Home finance				
General insurance and pure protection				
Decumulation, life and pensions				
Investments				

## Declaration and signature

## Section 6

Knowingly or recklessly giving the *FSA* information which is false or misleading in a material particular may be a criminal offence (section 398 of the Financial Services and Markets Act 2000) and a breach of regulatory requirements.

In signing this form, the *credit union* acknowledges that the data supplied may be used by the *FSA* in a variety of different ways (including making it publicly available) in support of its principal functions and statutory objectives as provided for under the Financial Services and Markets Act 2000.

**I confirm that I have read the notes and that the information given in this return about complaints received by the *credit union* named at Section 1.02 is accurate and complete to the best of my knowledge and belief.**

6.01	Name of <i>person</i> completing on behalf of the <i>credit union</i>	
6.02	Job title	
6.03	Signature	
6.04	Date	

## Notes on completion of this return

### Completing this return

The return must be completed in black ink and (if in manuscript) in BLOCK LETTERS.

All dates must be provided in numeric form (for example: 29/02/2006 for 29 February 2006).

The *credit union* is responsible for the accuracy of the data and completion of the return.

## Section 2 – Nil Returns

If no *complaints* have been received during the reporting period, and no complaints were outstanding at the beginning of the period, the *credit union* may submit a **NIL RETURN** by ticking the relevant box on the front of the form.

**Sections 1 and 6 must still be completed.**

## Section 4 – Complaints opened during reporting period

Enter the number of *complaints* for each product according to the category of complaint.

**Leave blanks where no *complaints* have been received.**

All *credit unions* provide the products “Savings (inc Cash ISA) and other banking” (members’ shares) and “Unregulated loans” (members’ loans not secured on land), and may receive *complaints* for those products. The corresponding rows in the form have been left shaded to help *credit unions* with completion; all other rows are clear. Some categories of *complaint* (shown in the column headings) may not apply to those products.

Some *credit unions* may also provide other products (for which they may require further permission). If so they should enter the number of *complaints* received for these products in the relevant boxes, even though they are clear.

## Section 5 – Complaints closed during reporting period

Credit unions will usually receive *complaints* relating to the 'Banking' product/service grouping only and this row is shaded to help with completion. As above – some credit unions may also provide other products; if so they should also fill in the appropriate row even though it is not shaded.

## Section 6 – Declaration & signature

The declaration must be signed by an appropriate individual for the *credit union* submitting this return.

**If you have any questions or need help with this return, please approach your usual supervisory contact at the FSA.**

REPORTS SENT BY POST MUST BE ADDRESSED TO:

THE FINANCIAL SERVICES AUTHORITY  
P O BOX 35747  
LONDON E14 5WP  
UNITED KINGDOM

Hand delivered returns should be marked for **the attention of Central Analysis and Reporting Department** and be delivered to 25 The North Colonnade, Canary Wharf, London E14 5HS.

## 10 Application of other parts of the Handbook to Credit unions

### 10.1 Application and purpose

Application

10.1.1 R This chapter applies to all *credit unions*.

## Purpose

- 10.1.2 G This chapter is intended to draw *credit unions*' attention to the application of other key parts of the Handbook to *credit unions* as set out in the table at CREDS 10.1.3G. That table refers only to the parts of the *Handbook* that apply with respect to *Part IV permission to accept deposits*.

## Application of other parts of the Handbook and of Regulatory Guides to Credit Unions

- 10.1.3 G

Module	Relevance to Credit Unions
The Principles for Businesses ( <i>PRIN</i> )	The Principles for Businesses ( <i>PRIN</i> ) set out, in a small number of high-level requirements, the basic obligations of all regulated <i>firms</i> . They provide a general statement of regulatory requirements, and the <i>FSA</i> considers that the <i>Principles</i> are appropriate expressions of the standards of conduct to be expected of all financial <i>firms</i> including <i>credit unions</i> . In applying the <i>Principles</i> to <i>credit unions</i> , the <i>FSA</i> will be mindful of proportionality. In practice, the implications are likely to vary according to the size of the <i>credit union</i> .
Senior Management Arrangements, Systems and Controls ( <i>SYSC</i> )	<i>SYSC</i> 1 and <i>SYSC</i> 4 to 10 apply to all <i>credit unions</i> in respect of the carrying on of their <i>regulated activities</i> and unregulated activities in a <i>prudential context</i> . <i>SYSC</i> 18 applies to all <i>credit unions</i> without restriction.
Threshold Conditions ( <i>COND</i> )	In order to become <i>authorised</i> under the <i>Act</i> all <i>firms</i> must meet the <i>threshold conditions</i> . The <i>threshold conditions</i> must be met on a continuing basis by <i>credit unions</i> . Failure to meet one of the conditions is sufficient grounds for the exercise by the <i>FSA</i> of its powers (see <i>EG</i> ).
Statements of Principle and Code of Practice for Approved Persons ( <i>APER</i> )	The purpose of the <i>Statements of Principle</i> contained in <i>APER</i> 2 is to provide guidance to <i>approved persons</i> in relation to the conduct expected of them in the performance of a <i>controlled function</i> . The <i>Code of Practice for Approved Persons</i> sets out descriptions of conduct which, in the opinion of the <i>FSA</i> , do not comply with a <i>Statement of Principle</i> and, in the case of <i>Statement of Principle</i> 3, conduct which tends to show compliance within that statement.
The Fit and Proper test for Approved	The purpose of <i>FIT</i> is to set out and describe the criteria that the <i>FSA</i> will consider when assessing the fitness and propriety of a person in respect of whom an application is



Persons ( <i>FIT</i> )	being made for approval to undertake a <i>controlled function</i> under the approved persons regime. The criteria are also relevant in assessing the continuing fitness and propriety of persons who have already been approved.
General Provisions ( <i>GEN</i> )	<i>GEN</i> contains <i>rules</i> and <i>guidance</i> on general matters, including interpreting the <i>Handbook</i> , statutory status disclosure, the <i>FSA</i> logo and insurance against financial penalties.
Fees manual ( <i>FEES</i> )	This manual sets out the fees applying to <i>credit unions</i> .
Conduct of Business sourcebook ( <i>COBS</i> )	A <i>credit union</i> which acts as a <i>CTF provider</i> or provides a <i>cash-deposit ISA</i> will need to be aware of the relevant requirements in <i>COBS</i> . <i>COBS</i> 4.6 (Past, simulated past and future performance), <i>COBS</i> 4.7.1R (Direct offer financial promotions), <i>COBS</i> 4.10 (Systems and controls and approving and communicating financial promotions), <i>COBS</i> 13 (Preparing product information) and <i>COBS</i> 14 (Providing product information to clients) apply with respect to <i>accepting deposits</i> as set out in those provisions, <i>COBS</i> 4.1 and <i>BCOBS</i> .
Banking: Conduct of Business sourcebook ( <i>BCOBS</i> )	<i>BCOBS</i> sets out <i>rules</i> and <i>guidance</i> for <i>credit unions</i> on how they should conduct their business with their <i>customers</i> . In particular there are <i>rules</i> and <i>guidance</i> relating to communications with banking customers and <i>financial promotions</i> ( <i>BCOBS</i> 2), distance communications ( <i>BCOBS</i> 3), information to be communicated to banking customers ( <i>BCOBS</i> 4), post sale requirements ( <i>BCOBS</i> 5), and cancellation ( <i>BCOBS</i> 6). <i>BCOBS</i> 5.1.13R (Value dating) does not apply to <i>credit unions</i> . The <i>rules</i> in <i>BCOBS</i> 3.1 that relate to <i>distance contracts</i> for <i>accepting deposits</i> are likely to have limited application to a <i>credit union</i> . This is because the <i>Distance Marketing Directive</i> only applies where there is “an organised distance sales or service-provision scheme run by the supplier” (Article 2(a)). If, therefore, the <i>credit union</i> normally operates face to face and has not set up facilities to enable <i>customers</i> to deal with it at a distance, such as facilities for a <i>customer</i> to deal with it purely by post, telephone, fax or the Internet, the provisions will not be relevant.
Supervision manual ( <i>SUP</i> )	The following provisions of <i>SUP</i> are relevant to <i>credit unions</i> : <i>SUP</i> 1 (The FSA’s approach to supervision), <i>SUP</i> 2 (Information gathering by the FSA on its own initiative), <i>SUP</i> 3.1 to <i>SUP</i> 3.8 (Auditors), <i>SUP</i> 5 (Skilled persons), <i>SUP</i> 6 (Applications to vary or cancel Part IV

	<p>permission), <i>SUP 7</i> (Individual requirements), <i>SUP 8</i> (Waiver and modification of rules), <i>SUP 9</i> (Individual guidance), <i>SUP 10</i> (Approved persons), <i>SUP 11</i> (Controllers and Close links), <i>SUP 15</i> (Notifications to the FSA) and <i>SUP 16</i> (Reporting Requirements).</p> <p><i>Credit unions</i> are reminded that they are subject to the requirements of the <i>Act</i> and <i>SUP 11</i> on <i>controllers</i> and <i>close links</i>, and are bound to notify the <i>FSA</i> of changes. It may be unlikely, in practice, that <i>credit unions</i> will develop such relationships. It is possible, however, that a <i>person</i> may acquire control of a credit union within the meaning of the <i>Act</i> by reason of holding the prescribed proportion of <i>deferred shares</i> in the <i>credit union</i>.</p> <p>In relation to <i>SUP 16</i>, <i>credit unions</i> are exempted from the requirement to submit annual reports of <i>controllers</i> and <i>close links</i>.</p>
Decision, Procedure and Penalties manual ( <i>DEPP</i> )	<p><i>DEPP</i> is relevant to <i>credit unions</i> because it sets out:</p> <p>(1) the <i>FSA</i>'s decision-making procedure for giving <i>statutory notices</i>. These are <i>warning notices</i>, <i>decision notices</i> and <i>supervisory notices</i> (<i>DEPP 1.2</i> to <i>DEPP 5</i>); and</p> <p>(2) the <i>FSA</i>'s policy with respect to the imposition and amount of penalties under the <i>Act</i> (see <i>DEPP 6</i>).</p>
Dispute Resolution: Complaints ( <i>DISP</i> )	<i>DISP</i> sets out <i>rules</i> and <i>guidance</i> in relation to treating complainants fairly and the <i>Financial Ombudsman Service</i> .
Compensation ( <i>COMP</i> )	<i>COMP</i> sets out <i>rules</i> relating to the scheme for compensating consumers when authorised <i>firms</i> are unable, or likely to be unable, to satisfy claims against them.
Complaints against the FSA ( <i>COAF</i> )	This relates to complaints against the <i>FSA</i> .
The Enforcement Guide ( <i>EG</i> )	The Enforcement Guide ( <i>EG</i> ) describes the <i>FSA</i> 's approach to exercising the main enforcement powers given to it by the <i>Act</i> and by regulation 12 of the <i>Unfair Terms Regulations</i> .
Financial crime: a guide for firms ( <i>FC</i> )	<i>FC</i> provides <i>guidance</i> on steps that a <i>firm</i> can take to reduce the risk that it might be used to further <i>financial crime</i> .

## Appendix 1 Key Definitions

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

### App 1.1

<i>attached shares</i>	<p>means any shares in the <i>credit union</i> (other than any <i>deferred shares</i>):</p> <ul style="list-style-type: none"> <li>(a) the withdrawal of which is not permitted by section 7 (5) of the Credit Unions Act 1979; or</li> <li>(b) the withdrawal of which is not permitted by the terms of a loan made to a member; or</li> <li>(c) the withdrawal of which is not permitted without seeking and obtaining the permission of the committee of management of the <i>credit union</i>.</li> </ul> <p>Paragraph (c) of this definition is relevant only where the <i>credit union</i> 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.</p>
<i>complaint</i>	<p>any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, which:</p> <ul style="list-style-type: none"> <li>(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and</li> <li>(b) relates to an activity of that <i>respondent</i>, or of any other <i>respondent</i> with whom that <i>respondent</i> has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the <i>Financial Ombudsman Service</i>.</li> </ul>
<i>CREDS</i>	the Credit Unions New sourcebook.
<i>deferred shares</i>	in relation to a <i>credit union</i> , means any shares of a class defined as deferred shares by section 31A of the Credit Unions Act 1979.
<i>final response</i>	<p>(in <i>CREDS</i> 9) a written response from a <i>respondent</i> which:</p> <ul style="list-style-type: none"> <li>(a) accepts the <i>complaint</i>, and, where appropriate, offers redress or remedial action; or</li> <li>(b) offers redress or remedial action without accepting the <i>complaint</i>; or</li> </ul>

(c) rejects the *complaint* and gives reasons for doing so;

and which informs the complainant that, if he remains dissatisfied with the *firm's* response, he may now refer his complaint to the *Financial Ombudsman Service* and must do so within six months.

...

<i>net liability</i>	means the outstanding balance of any loan made to the borrower and any interest or charges on that loan that are due but unpaid, less any <i>attached shares</i> held by the borrower.
<i>total non-deferred shares</i>	means the total of members' share balances in a <i>credit union</i> shown in the most recent annual return to have been sent to the <i>FSA</i> under <i>SUP</i> 16.12.5R (see <i>CREDS</i> 8.2.3G), excluding any <i>deferred shares</i> in the <i>credit union</i> .
<i>total relevant liabilities</i>	means the sum of: <ul style="list-style-type: none"> <li>(a) <i>unattached shares</i> in the <i>credit union</i>, and <i>deposits</i> by persons too young to be members of the <i>credit union</i>; and</li> <li>(b) liabilities (other than liabilities for shares) with an original or remaining maturity of less than three <i>months</i> (including overdrafts and instalments of loans).</li> </ul>
<i>unattached shares</i>	means the total shares in the <i>credit union</i> other than any <i>attached shares</i> or <i>deferred shares</i> .

## TP 1 Transitional Provisions

(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	CREDS 5.3.1R	R	<p>A <i>version 1 credit union</i> need not comply with CREDS 5.3.1R until midnight on 30 September 2014. CRED 8.3.1R, as it was in force on 31 December 2011, will apply from the beginning of this transitional period until midnight on 30 September 2012. From midnight on that day until midnight on 30 September 2013, the <i>version 1 credit union</i> must at all times maintain a capital-to-total assets ratio of at least 1%. From midnight on 30 September 2013 until the end of this transitional period at midnight on 30 September 2014, the <i>version 1 credit union</i> must at all times maintain a capital-to-total assets ratio of at least 2%.</p>	From midnight on 30 September 2012 to midnight on 30 September 2014	8 January 2012
2	CREDS 6.3.2R	R	<p>A <i>version 2 credit union</i> need not comply with CREDS 6.3.2R until midnight on 30 September 2014. From midnight on 30 September 2012 until midnight on 30 September 2013, the <i>version 2 credit union</i> must hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the <i>credit union's</i> liquid assets below 6% of its <i>total relevant liabilities</i>. From midnight on 30 September 2013, until the end of this transitional period at midnight on 30 September</p>	From midnight on 30 September 2012 to midnight on 30 September 2014	8 January 2012

			2014, the <i>version 2 credit union</i> must hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the <i>credit union's</i> liquid assets below 8% of its <i>total relevant liabilities</i> .		
3	SUP 16.12.7R	R	The change in the applicable due date for the submission by a <i>credit union</i> of an annual return under SUP 16.12.5R from 7 months to 6 months does not apply to an annual return in respect of the financial year ending on or before 31 July 2012.	31 July 2012	8 January 2012
4	SUP 16 Annex 14R	R	SUP 16 Annex 14R, as it was in force on 31 December 2011, continues to apply to: <ul style="list-style-type: none"> <li>(i) quarterly returns for <i>credit unions</i> in respect of the quarter ending on or before 31 December 2011, and</li> <li>(ii) annual returns in respect of the financial year ending on or before 7 January 2012</li> </ul>	8 January 2012	8 January 2012

**Schedule 1 Record keeping requirements**

1.1 G There are no requirements relating to record keeping in *CREDS*.

**Schedule 2 Notification requirements**

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 requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

2.2 G

<b>Handbook reference</b>	<b>Matter to be notified</b>	<b>Contents of notification</b>	<b>Trigger event</b>	<b>Time allowed</b>
<i>CREDS</i> 2.2.4R  <i>CREDS</i> 2.2.52G	Business plan	Copy of business plan	Upon request  <i>Version 2 credit unions</i> should submit after adoption and / or amendment	As soon as reasonably practical
<i>CREDS</i> 2.2.6R  <i>CREDS</i> 2.2.60G	Policies and procedures manual	Copy of policies and procedures manual. Wide range of detail as specified as guidance in <i>CREDS 2</i>	Upon request  <i>Version 2 credit unions</i> should submit after adoption and / or amendment	As soon as reasonably practical
<i>CREDS</i> 3.3.10R	Financial risk Management Policy	Statement of financial risk management policy	<i>Version 2 credit unions</i> must submit after adoption and / or amendment	As soon as reasonably practicable
<i>CREDS</i> 5.2.3G	General notification	Any proposed repayment of subordinated debt	As soon as <i>credit union</i> aware	At least one <i>month</i> in advance of proposed repayment

<i>CREDS</i> 6.2.5R	Liquidity	Liquidity Management Policy Statement	<i>Version 2 credit unions</i> must submit after adoption and/or amendment	As soon as reasonably practical
<i>CREDS</i> 7.2.1R to <i>CREDS</i> 7.2.2R	Lending policy	Current lending policy statement	<i>Version 2 credit unions</i> must submit after adoption and/or amendment	As soon as reasonably practical
<i>CREDS</i> 7.4.6G	Large <i>exposures</i>	Limits on large <i>exposures</i> to avoid concentration of risk	Upon request	As soon as reasonably practical
<i>CREDS</i> 8.2.1G	Quarterly return	Key financial data	Quarter end	1 <i>month</i> after quarter end
<i>CREDS</i> 8.2.3G	Annual return	Extended financial data	Financial year end	6 <i>months</i> after financial year end
<i>CREDS</i> 8.2.6R	Audited accounts	Revenue account and balance sheet	Financial year end	Until submission of annual return
<i>CREDS</i> 9.2.1R	Complaints report	Analysis of complaints	31 March each year	1 <i>month</i> after period end

### Schedule 3 Fees and other required payments

3.1 G There are no requirements for fees or other payments in *CREDS*.

The table below summarises the fee requirements for *credit unions* detailed elsewhere.

3.2 G

Description of fee	Reference
<i>FSA rules</i> relating to <i>authorisation</i> fees	<i>FEES</i> 3
Schedule of <i>authorisation</i> fees payable	<i>FEES</i> 3 Annex 1R



<i>FSA fees rules</i> relating to the periodic fee	<i>FEES 4</i>
Schedule of periodic fees payable	<i>FEES 4 Annex 2R Part 1</i>
<i>FOS funding rules</i>	<i>FEES 5</i>
<i>FSCS funding rules</i>	<i>FEES 6</i>

#### Schedule 4 Powers exercised

4.1 G The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the rules in *CREDS*:

	Section 138 (General rule-making power)
	Section 149 (Evidential provisions)
	Section 156 (General supplementary powers)
	Section 213 (The compensation scheme)
	Section 214 (General)
	Section 226 (Compulsory jurisdiction)
	Paragraph 13 (Compulsory jurisdiction) of Schedule 17 (The Ombudsman Scheme)

4.2 G The following powers in or under the *Act* have been exercised by the *FSA* to give the *guidance* in *CREDS*:

	Section 157(1) (Guidance).
--	----------------------------

#### Schedule 5 Rights of actions for damages

5.1 G The table below sets out the *rules* in *CREDS* 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.

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). 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.

The column headed "For other person?" indicates whether the *rule* is actionable

by a *person* other than a *private person* (or his fiduciary or representative). If so, an indication of the type of *person* by whom the *rule* is actionable is given.

5.2 G			Right of action under section 150		
Chapter / Appendix	Section / Annex	Paragraph	For private person?	Removed?	For other person?
All <i>rules</i> in <i>CREDS</i> with the status letter 'E'.			No	No	No
All <i>rules</i> in <i>CREDS</i> that require a <i>credit union</i> to have or maintain financial resources.			No	No	No
All other <i>rules</i> in <i>CREDS</i> .			Yes	No	No

#### Schedule 6 Rules that can be waived

6.1 G The *rules* made in *CREDS* can be waived by the *FSA* under section 148 (Modification or waiver of rules) of the *Act*.

*CREDS* includes *guidance* on *rules* made in other parts of the *Handbook*. Reference should be made to those parts of the *Handbook* concerning *waiver* of those *rules*.

**CREDIT UNIONS NEW SOURCEBOOK (CONSEQUENTIAL AMENDMENTS)  
INSTRUMENT 2011**

**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);
    - (g) section 226 (Compulsory jurisdiction); and
    - (h) paragraph 13 (Compulsory jurisdiction) of Schedule 17 (The Ombudsman Service); 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. (1) Subject to (2), this instrument comes into force on 8 January 2012.  
 (2) Part 2 of Annex A to this instrument comes into force on 1 October 2014.

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex B
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex C
Supervision manual (SUP)	Annex D
Decision Procedure and Penalties manual (DEPP)	Annex E
Dispute Resolution: Complaints sourcebook (DISP)	Annex F
Compensation sourcebook (COMP)	Annex G

**Notes**

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

**Citation**

- F. This instrument may be cited as the Credit Unions New Sourcebook (Consequential Amendments) Instrument 2011.

By order of the Board  
8 December 2011

## 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.

**Part 1: Comes into force on 8 January 2012.**

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

- (a) the withdrawal of which is not permitted by section 7(5) of the Credit Unions Act 1979; or
- (b) 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 (c) 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.

*CREDS* the Credit Unions New sourcebook.

*net liability* (in *CREDS*) means the outstanding balance of any loan made to the borrower and any interest on that loan that is due but unpaid, less any *attached shares* held by the borrower.

*total non-deferred shares* (in *CREDS*) means the total of members' share balances in a *credit union* shown in the most recent annual return to have been sent to the *FSA* under *SUP* 16.7.62R or *SUP* 16.12.5R (see *CREDS* 8.2.3G), excluding any *deferred shares* in the *credit union*.

*total relevant liabilities* (in *CREDS*) means the sum of:

- (a) *unattached shares* in the *credit union*, and *deposits* by persons too young to be members of the *credit union*; and
- (b) liabilities (other than liabilities for shares) with an original or remaining maturity of less than three *months* (including overdrafts and instalments of loans).

*unattached shares* (in *CREDS*) means the total shares in the *credit union* other than any *attached shares* or *deferred shares*.

Amend the following definitions as shown:

*complaint* ...

(2) (in *DISP*, except *DISP* 1.1 and the *complaints handling rules* and the *complaints record rule* in relation to *MiFID business*, and in *CREDS* 9) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, which:

...

*deferred share* (1) (other than in *CREDS* and *COMP*) in relation to a *building society*, a deferred share as defined in the Building Societies (Deferred Shares) Order 1991.

(2) (in *CREDS* and *COMP* 5.3.1R(2)(ca)) means any share of a class defined as a deferred share by section 31A of the Credit Unions Act 1979.

*final response* (1) (in ~~*CRED*~~ *CREDS* 9) a written response from the *firm* which:

(a) accepts the complaint, and, where appropriate, offers redress; or

(b) offers redress without accepting the complaint; or

(c) rejects the complaint and gives reasons for doing so;

and which informs the complainant that, if he remains dissatisfied with the *firm's* response, he may now refer his complaint to the *Financial Ombudsman Service* and must do so within six months.

...

*own funds* ...

(3) (in *IPRU(INV)* 8) capital, as defined in ~~*CRED* 8.2.1R~~ *CREDS* 5.2.1R.

*respondent*

...

- (1) (in *DISP* and *CREDS 9*) a firm (except a *UCITS* qualifier), payment service provider, electronic money issuer, licensee or VJ participant covered by the Compulsory Jurisdiction, Consumer Credit Jurisdiction or Voluntary Jurisdiction of the Financial Ombudsman Service.

...

**Part 2: Comes into force on 1 October 2014**

*CREC*

~~the Credit Unions sourcebook.~~

## 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.

#### 4.1 Application and purpose

...

Application: credit unions

4.1.8 R This chapter does not apply to:

- (1) a ‘small *credit union*’, that is one with:
  - (a) assets of £5 million or less; and
  - (b) a total number of members of 5,000 or less (see ~~CRED~~ 8.3.14R CREDS 5.3.13R); or

...



## Annex C

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

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

- 8 Requirements on credit unions which are CTF providers**
- 8.1 Application, general and professional indemnity insurance requirements
- ...
- 8.1.2 R A *credit union* to which this chapter applies must:
- (1) have and maintain at all times financial resources of the kinds and amounts specified in, and calculated in accordance with, the *rules* of this chapter, in ~~CRE<sup>D</sup>~~ CRE<sup>D</sup>S and, where applicable, in *MIPRU* 4 (Capital Resources); and
- ...
- 8.1.3 G The *rules* in this chapter should be read with the *rules* relating to capital in ~~CRE<sup>D</sup>~~ CRE<sup>D</sup>S and, where applicable, *MIPRU*.
- ...
- 8.2 Capital requirements
- 8.2.1 R ‘Capital’ in this chapter has the meaning described in ~~CRE<sup>D</sup> 8.2.1R~~ CRE<sup>D</sup>S 5.2.1R.
- 8.2.2 R A *version 1 credit union* with total assets of more than £5 million or a total number of members of more than 5,000, or both, or a *version 2 credit union*, which acts as a *CTF provider* and whose *permissions* include *regulated activities* relating to *accepting deposits* and *making arrangements with a view to transactions in investments* other than *contracts of insurance* or *rights to or interests in a life policy* must maintain at all times capital which is equal to the higher of:
- (1) £10,000; and
- (2) the capital requirements for the *credit union* under ~~CRE<sup>D</sup>~~ CRE<sup>D</sup>S.
- 8.2.3 R A *version 1 credit union* with total assets of more than £5 million or a total number of members of more than 5,000, or both, or a *version 2 credit union*, which acts as a *CTF provider* which *makes arrangements with a view to transactions in investments* including *contracts of insurance* or *rights to or interests in a life policy* must maintain at all times capital which is equal to the highest of:

- (1) £10,000;
  - (2) the capital requirements for the *credit union* under ~~CRED~~ CREDS;  
and
- ...

## Annex D

## Amendments to the Supervision manual (SUP)

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

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

...		
<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...	...	...
<del>CRED</del> <u>CREDS</u>	Does not apply.	Does not apply.
...		

...

## 16.12 Integrated Regulatory Reporting

...

- 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 (see <del>CRED</del> 14 Annex 1G). <del>CRED</del> 14.10.10R(2)(a) <u>CREDS</u> 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.

...	
-----	--

- 16.12.7 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
...						
CY						7 <u>6</u> months
...						

...

Insert the following new text at the end of SUP 16 Annex 14(1)R (Quarterly Return (CQ)), after the section headed “Large version 1 and version 2 credit unions”. The text is not underlined.

## SUPPLEMENTARY ANALYSIS OF THE QUARTERLY RETURN

### 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	_____	13A
<i>(transferred from 1a on CQ)</i>		
Individuals	_____	13B
Bodies corporate	_____	13C
Partnerships	_____	13D
Unincorporated associations	_____	13E

#### Corporate non-deferred shares

Non-deferred shares	_____	14A
<i>(transferred from 11B above)</i>		
Individual non-deferred shares	_____	14B
Body corporate non-deferred shares	_____	14C
Partnership non-deferred shares	_____	14D
Unincorporated association non-deferred shares	_____	14E

#### Corporate deferred shares

Deferred shares	_____	15A
<i>(transferred from 11C above)</i>		
Individual deferred shares	_____	15B
Body corporate deferred shares	_____	15C
Partnership deferred shares	_____	15D
Unincorporated deferred shares	_____	15E

#### Corporate loans

Total loans to members	_____	16A
<i>(transferred from 1B on CQ)</i>		
Individual loans	_____	16B
Body corporate loans	_____	16C
Partnership loans	_____	16D
Unincorporated association loans	_____	16E

Insert the following new text at the end of SUP 16 Annex 14(2)R (Annual Return (CY)) after the “Auditor’s statement”. The text is not underlined.

## SUPPLEMENTARY ANALYSIS OF THE ANNUAL RETURN

### Interest bearing shares

#### Interest-bearing shares

	£	
Members' share balances <i>(transferred from 2T on CY)</i>	_____	33A
Interest-bearing shares	_____	33B
Dividend-bearing shares	_____	33C

#### Interest expenditure

Expenditure – Other <i>(transferred from 4P on CY)</i>	_____	34A
Interest expenditure	_____	34B
Non-interest expenditure	_____	34C

### Deferred shares

#### Deferred shares

Members' share balances <i>(transferred from 2T on CY)</i>	_____	35A
Non-deferred shares	_____	35B
Deferred shares	_____	35C

#### Reserves - total

General reserve – Closing balance <i>(transferred from 10G on CY)</i>	_____	36A
Other reserve – Closing balance <i>(transferred from 11G on CY)</i>	_____	36B
Revaluation reserve – non-capital element	_____	36C
Deferred share reserve	_____	36D
Reserves	_____	36E

#### Reserves - percentage

Total assets <i>(transferred from 1P on CY)</i>	_____	36F
Reserves as % of total assets	_____	36G

### Corporate membership

**Corporate members**

Total members	_____	37A
<i>(transferred from 12D on CY)</i>		
Individuals	_____	37B
Bodies corporate	_____	37C
Partnerships	_____	37D
Unincorporated associations	_____	37E

**Corporate non-deferred shares**

	<b>£</b>	
Non-deferred shares	_____	38A
<i>(transferred from 35B above)</i>		
Individual non-deferred shares	_____	38B
Body corporate non-deferred shares	_____	38C
Partnership non-deferred shares	_____	38D
Unincorporated association non-deferred shares	_____	38E

**Corporate deferred shares**

Deferred shares	_____	39A
<i>(transferred from 35C above)</i>		
Individual deferred shares	_____	39B
Body corporate deferred shares	_____	39C
Partnership deferred shares	_____	39D
Unincorporated deferred shares	_____	39E

**Corporate loans**

Due from members for loans - Secured	_____	40A
<i>(transferred from 1E on CY)</i>		
Due from members for loans - Unsecured	_____	40B
<i>(transferred from 1F on CY)</i>		
Total loans outstanding	_____	40C
Individual loans	_____	40D
Body corporate loans	_____	40E
Partnership loans	_____	40F
Unincorporated association loans	_____	40G

**Non-qualifying membership****Non-qualifying member percentage**

Limit on the number of non-qualifying members (where stated in the rules of the credit union)	_____	41A
--	-------	-----

Amend SUP 16 Annex 15(1)G (Notes on completing the Quarterly Return (CQ) for credit unions) as shown:

## General information

...

Please read ~~CRED~~ *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 (~~See CRED 44.10.4G~~) **within one calendar month** after the quarter to which it relates. Failure to do so is a breach of your regulatory requirements, as laid down in *CREDS*, and may result in your *credit union* being subject to FSA sanctions.

...

"~~CRED~~" "*CREDS*" means the Credit Unions New sourcebook.

...

## Membership and complaints contact

page 2 of CQ

### Membership

Indicate in the appropriate boxes the number of ~~persons~~ 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 of 16 at which he may lawfully become a member of the *credit union*, under the *credit union's* rules), who can save up to ~~£5,000~~ £10,000 or 1.5 per cent of the assets of the *credit union*, which ever is the greater. [A qualifying member is a person who fulfils the membership qualification requirements: a non-qualifying member is a person who no longer fulfils the membership qualification requirements, having once done so.]

"**Juvenile depositor**" refers to a depositor ~~under the age of 16~~ (who is a person too young to be a member of the *credit union* (under the *credit union's* rules)), who can save up to a maximum of ~~£5,000~~ £10,000, but cannot take out a loan from the *credit union*.

### Complainants contact point

Tick "Yes or No" as appropriate

~~CRED 17.6.9R~~ CREDS 9.2.11R states that a *credit union* must inform the FSA of any changes to the single contact point within the *credit union* for complainants. If there have been any changes to your complainants contact point since your last submission to the FSA you will need to provide the new details in the boxes provided

## Signature

page 2 of CQ

### Signature

The Quarterly Return (CQ) states that the signatory must be an *approved person*. The signatory should not be an officer on the Supervisory Committee or an officer approved for the *non-executive director function*. This means that the person signing the Quarterly Return (CQ) will hold an approved function on the committee of management or that of the *chief executive function*. The criteria for *approved persons* are set out in ~~CRED Chapter 4~~ CREDS 2 (Senior management



arrangements, systems and controls) and Chapter 6 (The Approved persons regime) CREDS 8.3 (Approved persons).

## Share capital

page 3 of CQ

1A	<b>Total shares</b>	<p>The total amount of money held by your <i>credit union</i>, at the quarter end, relating to shares paid in by <del>adult</del> members.</p> <p>This figure should take account of all changes made during the quarter.</p>
----	---------------------	---

## Loans to members

page 3 of CQ

1B	Total loans to members	<p>The total amount outstanding at the quarter-end on all loans to <del>adult</del> members (irrespective of when such loans were made). It will include any loans written off during the period.</p>
----	------------------------	---

...

### Provision for doubtful debts

**Please note:** ~~CREG 10.5.4G~~ CREDS 7.5.5G states that in order to comply with ~~CREG~~ CREDS "it will be necessary for a *credit union* to a *credit union* should review its provisioning requirements frequently (that is, at least monthly)". The FSA recommends that this is done at least quarterly.

...

1F	Specific	<p>Provision for doubtful debt – specific, refers to the provisions that your <i>credit union</i> has <b>actually</b> made to cover loans in arrears as laid down in <del>CREG</del> <u>CREDS</u>. <del>CREG (10.5.2R)</del> states that your <i>credit union</i> should make the following specific provisions:</p> <ul style="list-style-type: none"> <li>• <del>35% on all net liabilities on loans which are over 3 months and up to 12 months in arrears.</del></li> <li>• <del>100% provision on all net liabilities on loans which are over 12 months in arrears</del></li> </ul> <p><u>CREDS 7.5.2R</u> states that a <i>credit union</i> must make specific provision in its accounts for bad and doubtful debts of at least the amounts set out below:</p> <ul style="list-style-type: none"> <li>• <u>35% of the net liability to the <i>credit union</i> of borrowers where the amount is more than three <i>months</i> in arrears; and</u></li> <li>• <u>100% of the net liability to the <i>credit union</i> of borrowers where the amount is more than 12 <i>months</i> in arrears.</u></li> </ul> <p>The net liability on a loan is calculated as follows:</p> <p><b><u>(Total Balance of loan + outstanding interest) – Shares attached shares</u></b></p> <p>Where a member's shares exceed the net liabilities on the loan, there is no liability and it can be excluded from provisioning.</p>
----	----------	--

1G General

Provision for doubtful debt – general, refers to the provisions that your *credit union* has **actually** made to cover potential doubtful debts, in the future. As laid down in ~~CRED~~ CREDS, these are loans which:

- are currently not in arrears; or
- are up to and including 3 months in arrears.

Your *credit union* should make a 2% provision for the net liabilities of all these loans – all loans which are not covered by the specific provisions above at (1F).

The net liability on a loan is calculated as follows:

**(Total loan + outstanding interest) – Shares attached shareholding**

...

## Credit union liabilities

page 3 of CQ

Chapter 7 3 (~~Investments~~ Investment and borrowing) of ~~CRED~~ CREDS sets out the criteria for *credit unions*.

~~CRED 7.3.3R~~ CREDS 3.3.3R states that “the ~~borrowings~~ borrowing of a *version 1 credit union* must not exceed, except on a short-term basis, an amount equal to 20% of the shareholding total non-deferred shares in the *credit union*”. ~~Short-term is defined as not more than “the end of two consecutive quarters” (CRED 7.3.4E).~~

CREDS 3.3.4E provides that, if the borrowing of a *version 1 credit union* exceeds this amount at the end of more than two consecutive quarters, this may be relied on as tending to indicate contravention of CREDS 3.3.3R.

...

3B Total expenditure

The total expenditure by your *credit union* during the financial year to date (YTD). We advise *credit unions* to make provision here for known expenses such as audit fees and other known fees payable by the *credit union* for the financial year. The purpose of this is to offset any fluctuation in your *credit union's* solvency/capital position, especially in the first quarter of the *credit union* financial year when many expenses fall due.

- Provisions for anticipated tax and dividends are required by ~~CRED 8.2.1R~~ CREDS 5.2.1R. Tax is usually payable on any interest received on *bank* accounts or investments (unless it clearly stipulates that the investment is exempt from taxation).
- Provisioning will be made pro rata on a monthly or quarterly basis.

If you have any questions regarding the tax your *credit union* will need to pay you should consult your local Inland Revenue office.

...

## Credit union capital

page 3 of CQ

~~CRED~~ CREDS states that the following is to be included in

calculating Capital:

- audited reserves;
- interim net profits;
- subordinated debts; and
- initial capital.

Please refer to ~~CRED 8.2.1R~~ CREDS 5.2.1R.

**Please note:** "Negative reserves and any interim net losses must be deducted from capital" (~~CRED 8.2.2R~~ CREDS 5.2.5R). "When a *credit union* makes a subordinated loan to another *credit union* qualifying as capital under ~~CRED 8.2.1R(4)~~ CREDS 5.2.1R(4)(a), the full amount of the loan (not the amount counting towards the borrower's capital under ~~CRED 8.2.4R~~ CREDS 5.2.7R) must be deducted from the lender's capital" (~~CRED 8.2.5R(1)~~ CREDS 5.2.8R(1)).

5A	Audited reserves – general	<p>Amount held by your <i>credit union</i> in general reserve, as laid down at <del>CRED 8.3.5R</del> <u>CREDS 5.3.2R</u>.</p> <p>...</p>
5B	Audited reserves - other	<p>Money that your <i>credit union</i> has set aside out of net profits (in accordance with <del>CRED 8.3.5R</del> <u>CREDS 5.3.2R</u>) - for example, a "revenue reserve" for unforeseen circumstances.</p> <p>This will include initial capital which has not yet been spent.</p> <p><b>Please note:</b></p> <p><u>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).</u></p> <p><u>If money is held in a deferred share reserve, it should not be included within other reserves, but reported separately in the supplementary analysis to the quarterly return.</u></p> <p>Please refer to Chapter 8 5 of <del>CRED</del> <u>CREDS</u>. This figure will be negative if your <i>credit union</i> 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 <i>credit union</i> other than a general reserve.</p>
...		
5D	Subordinated debt	<p>Subordinated debts in <b>5D</b> are loans where the lender has agreed to the terms set out on <del>CRED 8.2.1R</del> <u>CREDS 5.2.1R</u>. They are loans to the <i>credit union</i> where the lender has agreed to rank behind everyone else, if the <i>credit union</i> fails, in terms of recovering their money. The loans should have an original term of over five years.</p> <p>Whereas your <i>credit union</i> is permitted to raise subordinated debt from a variety of sources, it cannot automatically include subordinated debts when calculating the capital ratio. To be included in the calculation of capital, subordinated debt has to meet the rules laid down in <del>CRED 8.2.1R</del> <u>CREDS 5.2.1R</u>. You will need to refer to this when calculating subordinated debt. Some of</p>

the main conditions are listed below:

...

Provided the subordinated debt meets the rules laid down in Chapter 8 5 (Capital requirements) of ~~CRED~~ CREDS, the following formula will need to be used in writing down your *credit union's* subordinated debt:

...

**Information for version 1 credit unions**

...

Whilst the Quarterly Return (CQ) asks your *credit union* for total capital (which includes reserves, interim net profit/ (loss), subordinated debts and initial capital) you will need to be aware that all *version 1 credit unions* "must at all times maintain a ~~positive amount of capital~~ a capital-to-total assets ratio of at least 3%", (~~CRED 8.3.1R~~ CREDS 5.3.1R) in other words "a positive net worth". This means that "bad and doubtful debts must be taken into account in establishing ~~whether a credit union is maintaining a positive amount of capital~~ the capital-to-assets ratio", (~~CRED 8.3.4G~~ CREDS 5.3.12G ).

...

**Actual provision for doubtful debt - specific**

These are the provisions that your credit union has **actually** made to cover loans in arrears as laid down in ~~CRED~~ CREDS. It is the same figure that appears at **1F** on the Quarterly Return (CQ).

...

**Actual provision for doubtful debt - general**

These are the provision for doubtful debt that your ~~credit union~~ *credit union* has **actually** made to cover potential doubtful debts, in the future, as laid down in ~~CRED~~ CREDS. It is the same figure that appears at **1G** on the Quarterly Return (CQ).

...

**How is total net worth calculated?**

From the above we have established how to work out how much money your *credit union* should be setting aside to adequately cover doubtful debts. ~~CRED 8.3.4G~~ CREDS 5.3.12G states that "bad and doubtful debts must be taken into account" when determining the *credit union's* total net worth.

...

On this example, your *credit union* would satisfy the requirements of ~~CRED~~ CREDS, since the *credit union* has a "positive net worth".

...

**Arrears analysis**

6A-C

Net liabilities

The total amount outstanding on all loans (inclusive of interest owing) in arrears for each time period (i.e. if a loan is in arrears, the figure used should be the total net liabilities owed by the

member, including interest - not just the sum of the repayments that have been missed). The formula used is as follows:

**Loan balance + interest owing – attached share balance = Net liability**

The table below is an example on how to work out net liability:

#### Loans 3-12 months in arrears

Loan No.	Loan balance	Interest owing	Share Attached share balance	Net liability
1	£390	£10	£200	£200
2	£580	£20	£500	£100
3	£4,050	£150	£2,200	£2,000
4	£720	£30	£1,000	£0
5	£115	£10	£50	£75
<b>Total</b>	<b>£5,855</b>	<b>£220</b>	<b>£3,950</b>	<b>£2,375</b>

...

## Liquidity ratio

page 4 of CQ

7A Cash and bank balance ...

**Please note** that this relates to money relating to adult members and juvenile depositors. ~~Following recent changes, credit~~ *Credit unions* no longer have to keep the *deposits* of juveniles separate from the shares of adult members. Grants that constitute part of the *bank* balance should be excluded from liquid assets, unless there are adequate funds in long-term investment to cover the amount of the grant used for this purpose.

7B Investments (less than 8 days to maturity)

~~CRED 9.3.8R~~ CREDS 6.3.8R states that only investments that could be realised within eight days can be included in calculating your *credit union's* liquidity ratio. It is therefore important that your committee of management takes a long-term view of the *credit union* business before investing surplus funds. Your *credit union* will need to be aware of redemption penalties or other losses you may incur for the early realisation of such funds. In short, most investments can be converted into cash but at a cost.

...

**IMPORTANT NOTICE: Version 1 credit unions should not hold investments with a maturity date of over 12 months (~~CRED 7.2.2R~~ CREDS 3.2.2R).**

...

~~CRED 9.3.9E(1)~~ CREDS 6.3.6E(1) reads: provides that "For for the purpose of calculating a *credit union's* liquidity ratio, the *securities* referred to in ~~CRED 7.2.2R – 7.2.3R~~ CREDS 3.2.1R to 3.2.3R should be valued on the basis that they could be realised

at par, minus the following discounts:

...

7C Unused committed facilities

...

This relates to a *credit union* that has secured committed facilities from an institution authorised to accept *deposits* within the EEA. Normally this will be the *bank* with which your *credit union* holds its current account. Any unused committed facilities can be entered into this box. If your *credit union* does not have any committed facilities this box should be filled by a "nil". We would like to draw your attention to ~~CRED (7.3.3R)~~ CREDS 3.3.3R. It states that "the ~~borrowings~~ borrowing of a *version 1 credit union* must not exceed, except on a short-term basis, an amount equal to 20% of the ~~shareholding~~ total non-deferred shares in the *credit union*". ~~Short-term is defined as not more than "the end of two consecutive quarters" (CRED 7.3.4E).~~

CREDS 3.3.4E provides that, if the borrowing of a version 1 credit union exceeds this amount at the end of more than two consecutive quarters, this may be relied on as tending to indicate contravention of CREDS 3.3.3R.

...

7D Unused overdrafts

This relates to a *credit union* which has an authorised overdraft arrangement with an institution authorised to accept *deposits* within the EEA. Normally this will be the *bank* with which your *credit union* holds its current account. Any surplus overdrafts which has not been used can be entered into this box. If your *credit union* does not have an authorised overdraft facility this box should be filled by a "nil". Again, we would like to draw your attention to ~~CRED (7.3.3R)~~ CREDS 3.3.3R. It states that "the ~~borrowings~~ borrowing of a *version 1 credit union* must not exceed, except on a short-term basis, an amount equal to 20% of the ~~shareholding~~ total non-deferred shares in the *credit union*". ~~Short-term is defined as not more than "the end of two consecutive quarters" (CRED 7.3.4E).~~

CREDS 3.3.4E provides that, if the borrowing of a version 1 credit union exceeds this amount at the end of more than two consecutive quarters, this may be relied on as tending to indicate contravention of CREDS 3.3.3R.

...

7F Unattached shares/juvenile deposits

~~Total value of adult shares, which are not attached to a loan, and the total value of juvenile deposits held by your credit union.~~

~~Because juvenile depositors cannot have loans, all juvenile deposits will be unattached.~~

~~To assist you in working out the unattached shares for your credit union, we would like to draw your attention to the following three different classifications — which are for illustration purposes only. These are:~~

~~All members who have not got a loan and are not acting as guarantor for a loan;~~

~~Example:~~

Member number  
 Share balance  
 Loan balance + interest owing  
 Unattached shares

101

£750

£0

£750

102

£1,201

£0

£1,201

103

£254

£0

£254

104

£1,500

£0

£1,500

Totals

£3,705

£0

£3,705

All members with loans, but not part of a guarantor agreement;

Example:

Member number  
 Share balance  
 Loan balance + interest owing  
 Unattached shares

005

£600

£750

£nil

006

£1,470

£1,201

£269

007

£522

£254

£268

008

£900

£1,500

£nil

Totals

£3,492

£3,705

£537

All guarantors

Example:

~~Member 200 received a loan on the condition that Member 300 acted as guarantor for the loan. At the quarter end both accounts read as follows:~~

~~Member number~~

~~Share balance~~

~~Loan balance + interest owing~~

~~Net liability~~

~~Unattached shares~~

200

£600



£750  
 £150  
 nil  
  
 300  
 £1,470  
 £1,204  
 nil  
 £269

~~The net liability for the loan of member 200 equals £150 and therefore member 200 has no unattached shares.~~

~~Member 300 has no net liability, but £269 in unattached shares. Since there is a charge on these shares to the value of the net liabilities of the loan of member 200, the total unattached shares for both members is as follows:~~

a  
 Unattached shares of member 300  
 £269

b  
 Net liability of member 200  
 £150

Combined unattached shares (a – b)  
 £119

~~Your credit union will need to closely monitor guaranteed loans when working out unattached shares.~~

Total value of unattached shares and the total value of juvenile deposits held by your credit union.

“unattached shares” means the total shares in the credit union other than attached shares and deferred shares.

“attached shares” are shares that act as security for a loan, and shares that cannot be withdrawn under the terms of the loan.

...

---

...

---

8A	Largest net exposure	To work out your <i>credit union's</i> largest net <i>exposure</i> 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**.

Say, for example your *credit union's* total capital is £40,000. We know from the above that only net liabilities over 10% of Capital are subject to the large *exposures* rule. Ten percent of £40,000 is £4,000.

However, we further know from the above that only net liabilities over £7,500 are subject to the large *exposures* rule. Below we see all net *exposures* over 10% of total capital and those that do and do not qualify:

Example:

Member share	Share <u>Attached share balance</u>	Loan balance + interest owing	Net Liabilities	Is it a large <i>exposure</i> ?
...	...	...	...	...

- 8B As % of capital An individual large exposure should not exceed **25%** of your credit union's capital (~~CRED 10.4.2R~~ CREDS 7.4.2R).  
To determine this percentage, your *credit union* will need to use the following calculation:  
...

- 8C Aggregate total of large net exposures This figure relates to the sum total of all net liabilities subject to the large *exposures* rule as defined in **8A** above.  
Taking the example at **8A** above, this figure will be **£35,285** (see below).

Member number	Share <u>Attached share balance</u>	Loan balance + interest owing	Net liabilities
...	...	...	...

- 8D As % of capital CRED 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:  
...

## Large version 1 and version 2 credit unions

### page 4 of CQ

Risk adjusted capital ratio	<p>A risk adjusted capital ratio is a requirement for larger <i>version 1 credit unions</i> and <i>version 2 credit unions</i> under <del>CRED</del> <u>CREDS</u>.</p> <p><del>CRED 8.3.16R</del> <u>CREDS 5.3.15R</u> states "A <i>version 1 credit union</i> with total assets of more than £10 million and/or a total number of members of more than 10,000, <u>or both</u>, must maintain at all times a capital-to-total assets ratio of at least 8%"</p>
...	
9B Net provisions or 1% of total assets – whichever is the lower	<p>Capital should be risk-adjusted for <i>version 2 credit unions</i> and large <i>version 1 credit unions</i> (<del>CRED 8.4.1R</del> <u>CREDS 5.4.1R</u> and <del>CRED 8.3.16R</del> <u>CREDS 5.3.15R</u>). The maximum net figure for provisions that may be included in calculating risk-adjusted capital is 1% of total assets (<del>CRED 8.4.2R</del> <u>CREDS 5.4.2R</u>).</p> <p>...</p>

Insert the following new text at the end of SUP 16 Annex 15(1)G (Notes on completing the Quarterly Return (CQ) for credit unions). The text is not underlined.

## 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.

### Interest-bearing shares

#### Interest-bearing shares

10A	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 <b>1A</b> on CQ for analysis. In the following sections, this amount should be broken down into interest-bearing and dividend-bearing shares so that: <b>10A = 10B + 10C</b>
10B	Interest-bearing shares	The total amount of money held by the <i>credit union</i> in respect of shares that are interest-bearing.
10C	Dividend-bearing shares	The total amount of money held by the <i>credit union</i> in respect of shares that are dividend-bearing.

## 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 <b>1A</b> 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: <b>11A = 11B + 11C</b>
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 to <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 <b>5A</b> 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 <b>5B</b> on CQ.
12C	Revaluation reserves – non-capital element	The amount of revaluation reserve that is not included in <b>5B</b> of CQ and <b>12B</b> (because it does not count towards a <i>credit union's</i> capital under <i>CREDS</i> 5.2.1R). See the note to <b>5B</b> on CQ.

12D	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.
12E	Reserves	The total amount of money held by the <i>credit union</i> in reserves (including deferred share reserves) at the end of the financial year, so that:  <b>12E = 12A + 12B + 12C + 12D</b>

### Reserves - percentage

12F	Total assets	The amount entered here should be transferred from <b>4A</b> on CQ.
12G	Reserves as % of total assets	To determine this ratio your <i>credit union</i> will use the following formula:  $\frac{\text{Reserves (12E)}}{\text{Total assets (12F)}} \times 100$

### Corporate membership

#### Corporate members

13A	Number of members at the end of the quarter	Total number of members of the <i>credit union</i> .  The amount entered here should be transferred from <b>1a</b> on CQ for analysis. In the following sections, this amount should be broken down into different categories of member so that:  <b>13A = 13B + 13C + 13D + 13E</b>
13B	Individuals	The number of members of the <i>credit union</i> that are individuals.
13C	Bodies corporate	The number of members of the <i>credit union</i> that are <i>bodies corporate</i> .

13D	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.
13E	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

14A	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 <b>11B</b> above.
		In the following sections, this amount should be broken down into non-deferred shares held by different categories of member so that: <b>14A = 14B + 14C + 14D + 14E</b>
14B	Individual non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by individuals.
14C	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.
14D	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.
14E	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

15A	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 <b>11C</b> .
		In the following sections, this amount should be broken down into <i>deferred shares</i> held by different categories of member so that: <b>15A = 15B + 15C + 15D + 15E</b>
15B	Individual deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by individuals.
15C	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> .
15D	Partnership deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> 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.
15E	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.  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

16A	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 <b>1B</b> on CQ for analysis.  In the following sections, this amount should be broken down into loans to different categories of member so that: <b>16A = 16B + 16C + 16D + 16E</b>
16B	Individual loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to individuals.
16C	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> .

16D	Partnership loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to partnerships.
		Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
16E	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.
		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.

Amend SUP 16 Annex 15(2)G Notes on completing the Annual Return (CY) for credit unions as shown:

### General information

The Annual Return (CY) should be completed by all *credit unions* in Great Britain at the end of their financial year. The form may be updated from time to time. *Credit unions* should use the form in force at the end of the financial year on which they are reporting. It should be completed using the accruals-based accounting method.

Please read ~~CRED~~ CREDS in conjunction with these reporting instructions.

Send the fully completed Annual Return (CY) (including a completed auditor's statement) to the Financial Services Authority in accordance with SUP 16.3.6R – SUP 16.3.13R (~~see CRED 14.10.4G~~) by the date stated in the *credit union's* rules (which should be within 7 months of the financial year ending on or before 31 July 2012 and within 6 months of any subsequent financial year end). Failure to do so is a breach of your regulatory requirements, as laid down in ~~CRED~~ CREDS, and may result in your *credit union* being subject to FSA sanctions.

A copy of the audited annual accounts of the *credit union* (and the auditor's report on those accounts) should also be submitted (see ~~CRED 14.10.10R(1)~~ CREDS 8.2.6R).

...

~~“CRED”~~ “CREDS” means the Credit Unions Sourcebook New sourcebook.

...

### Accounting Policies

...

#### Provision for doubtful debts

This is made in accordance with the rules and guidance set out in ~~CRED 10.5.3E~~ CREDS 7.5.4E.

...

### Front page



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...

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	<b>Financial year end</b>	Insert the date of the <i>credit union's</i> financial year end (See <i>SUP 16.7.63BR</i> and <i>CRED 14.10.10R(2)(a)</i> <u><i>CREDS 8.2.6R(2)(a)</i></u> ).
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...

A1	<b>Membership</b>	<p>Indicate in the appropriate boxes the number of members that the <i>credit union</i> currently has in each category of membership.</p> <p>A "non-qualifying" member is someone who no longer fulfils the membership <u>qualification requirements</u>, having once done so e.g. he or she no longer lives in the common bond area. <del>Ne more than 10% of the total membership of the <i>credit union</i> should be "non-qualifying".</del></p> <p>A "juvenile depositor" is a person who is too young to be a member <del>– someone under the age of 16 – who can save up to a maximum of £5,000, of the <i>credit union</i> (under the <i>credit union's</i> rules), who can save up to a maximum of £10,000, but cannot take out a loan from the <i>credit union</i>.</del></p>
	<b>Audited accounts</b>	Delete "Yes or No" as appropriate. Audited annual accounts are required by the Friendly and Industrial and Provident Societies Act 1968. <del><i>CRED 14.10.9G</i> and <i>CRED 14 Ann 1G</i> give guidance about the statutory accounts.</del> Attach a copy of the accounts before returning the Annual Return (CY). See <i>CRED 14.10.10R</i> <u><i>CREDS 8.2.6R</i></u> .

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...

A10	<b>Amount of cover</b>	<p>The amount of cover actually provided should be available from the bonding certificate or insurance policy.</p> <p><b>Table showing the amount of cover required (<i>CRED 7A.1.10R</i> <u><i>CREDS 4 Annex 1R</i></u>)</b></p> <p>...</p>
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...

	<b>Current assets</b>	
1B	Investments – <i>Banks and Building Societies</i>	<p>The total of money held in a <i>bank</i> or <i>building society</i> investment account: this will be separate from the current account that the <i>credit union</i> holds and will usually pay more interest on the monies held.</p> <p><i>Credit unions</i> may only invest this money in <i>deposits</i> or loans to:</p> <p>(1) a <i>UK domestic firm</i> with <i>Part IV permission</i> to accept <i>deposits</i>;</p> <p>(2) an institution which is authorised in any other <i>EEA State</i> to accept <i>deposits</i> (See <del><i>CRED 7.2.1R</i></del> <u><i>CREDS 3.2.1R</i></u>)</p>

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1C	Investments – securities	<p>The total of money held in <i>securities</i>.</p> <p>A <i>credit union</i> may only invest this money in: sterling-denominated <i>securities</i> issued by the government of any EEA State; (2) and fixed-interest sterling-denominated <i>securities</i> guaranteed by the government of any <i>EEA State</i> (See <del>CRED 7.2.1R</del> <u>CREDS 3.2.1R</u>).</p> <p>A <i>version 1 credit union's investments</i> should not have a maturity date exceeding 12 months from the date the <i>investment</i> was made. (<del>CRED 7.2.2R</del> <u>CREDS 3.2.2R</u>).</p> <p>A <i>version 2 credit union's investments</i> should not have a maturity date exceeding five years from the date the <i>investment</i> was made. (<del>CRED 7.2.3R</del> <u>CREDS 3.2.3R</u>).</p> <p>Further information can be found in <del>CRED</del> <u>CREDS</u> Chapter 7 <u>3</u> (Investment and borrowing).</p>
...		
1G	General provision	<p><del>CRED 10.5.3E</del> <u>CREDS 7.5.4E</u> sets out that <i>credit unions</i> should maintain a general provision for bad and doubtful debts of at least 2% of net liabilities not already covered by specific provisioning on loan arrears (<b>1H</b>). General provisions are provisions that your <i>credit union</i> has made to cover potential doubtful debts in the future. These are loans currently not in arrears or loans that are in arrears up to three months.</p>
1H	Specific provision	<p><del>CRED 10.5.2R</del> <u>CREDS 7.5.2R</u> states that a <i>credit union</i> must make specific provision in its accounts of at least:</p> <p>(1) 35% of the net liability to the <i>credit union</i> of borrowers where the amount is more than three months in arrears.</p> <p>(2) 100% of the net liability to the <i>credit union</i> of borrowers where the amount is more than 12 months in arrears.</p> <p>Net liability on a loan can be calculated as follows:</p> <p><b>(Total Balance of loan + outstanding interest) – attached shares</b></p> <p>Where a member's <u>attached</u> shares exceed the amount held in loan there is no risk to the <i>credit union</i> and no provision needs to be made.</p> <p>...</p>
...		
...	<b>Loans</b>	
...		
2C	<i>Bank loan</i>	<p>The figure for the amount outstanding on any loan that the <i>credit union</i> may have received from a <i>bank</i>.</p> <p>A <i>version 1 credit union</i> may not borrow more than 20% of the total shareholding (see box 13d) of the <i>credit union</i> except on a short-term basis. Subordinated debt does not form part of the later calculation. (See <del>CRED 7.3.3R</del> <u>7.3.6R</u> <u>CREDS 3.3.3R</u> to <u>3.3.6R</u> for more information.)</p>

...

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**Credit union capital and reserves**


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2N General reserves Amount held by the *credit union* in general reserve (See ~~CRED 8.3.5R~~ CREDS 5.3.2R.)

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...

2P Other reserves Money that the *credit union* has set aside out of profits e.g. a revenue reserve to provide for unforeseen circumstances. Other reserves are entirely voluntary and do not have to be held by the *credit union*.

**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 money is held in a *deferred share* reserve, it should not be included within other reserves, but reported separately in the supplementary analysis to the annual return.

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2Q-R Subordinated debt Subordinated debts in **2Q-R** are loans where the lender has agreed to the terms set out on ~~CRED 8.2.1R~~ CREDS 5.2.1R. They are loans to the *credit union* where the lender has agreed to rank behind everyone else, if the *credit union* fails, in terms of recovering their money. The loans should have an original term of over five years.

Whereas your *credit union* is permitted to raise subordinated debt from a variety of sources, it cannot automatically include subordinated debts when calculating the capital ratio. To be included in the calculation of capital, subordinated debt should meet the rules laid down in ~~CRED 8.2.1R(4)~~ CREDS 5.2.1R(4). You will need to refer to this when calculating subordinated debt. Some of the main conditions are listed below:

...

To meet the subordinated debt rules laid down in Chapter 8 5 (Capital requirements) of ~~CRED~~ CREDS, the following formula should be used in writing down your *credit union's* subordinated debt (see ~~CRED 8.2.4R~~ CREDS 5.2.7R):

...

...

2T Members' share balances Total amount of money held by the *credit union* in respect of shares paid in by ~~adult~~ members.

---

...

8B Transfer to general reserve This transfer should be compliant with ~~CRED 8.3.6R – 8.3.8R~~ CREDS 5.3.3R to 5.3.5R. For a *version 1 credit union* if the *credit union's* general reserve is less than 10% of total assets, the *credit union* should transfer at least 20% of surplus to general reserve. *Credit unions* may also make a voluntary transfer to general reserve and that should also be shown.

...

9D	Rate of dividend	The percentage of dividend paid on members' accounts. <del>Credit unions cannot pay more than 8% dividend to members in any one financial year even if several dividends are paid. If different rates are paid on different types of accounts these different rates should be shown.</del>
----	------------------	--

...

13F	Value of unattached shares	<del>Total value of adult shares and juvenile deposits, which are not attached to a loan. This includes all shares;</del>
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~~that are not attached to any loan;~~

~~Example:~~

<del>Member number</del>	<del>Share balance</del>	<del>Loan balance + interest owing</del>	<del>Unattached shares</del>
<del>101</del>	<del>£750</del>	<del>£0</del>	<del>£750</del>
<del>102</del>	<del>£1,201</del>	<del>£0</del>	<del>£1,201</del>
<del>103</del>	<del>£254</del>	<del>£0</del>	<del>£254</del>
<del>104</del>	<del>£1,500</del>	<del>£0</del>	<del>£1,500</del>
<del>Totals</del>	<del>£3,705</del>	<del>£0</del>	<del>£3,705</del>

~~which exceed a member's loan balance;~~

~~Example:~~

<del>Member number</del>	<del>Share balance</del>	<del>Loan balance + interest owing</del>	<del>Unattached shares</del>
<del>001</del>	<del>£600</del>	<del>£750</del>	<del>£nil</del>
<del>002</del>	<del>£1,470</del>	<del>£1,201</del>	<del>£269</del>
<del>003</del>	<del>£522</del>	<del>£254</del>	<del>£268</del>
<del>004</del>	<del>£900</del>	<del>£1,500</del>	<del>£nil</del>
<del>Totals</del>	<del>£3,492</del>	<del>£3,705</del>	<del>£537</del>

~~which are not used to guarantee a loan;~~

~~Example:~~

~~Member 200 received a loan on the condition that Member 300 acted as guarantor for the loan. At the quarter end both accounts read as follows:~~

<del>Member number</del>	<del>Share balance</del>	<del>Loan balance + interest owing</del>	<del>Unattached shares</del>
<del>200</del>	<del>£600</del>	<del>£750</del>	<del>(£150)</del>
<del>300</del>	<del>£1,470</del>	<del>£1,201</del>	<del>£269</del>

~~The net liability for the loan of member 200 equals £150. Member 300 has £269 in unattached shares. To work out the unattached shares of both members we should complete the following formula:~~

~~Unattached shares of member 300 — £269  
 Net liability of member 200 ——— (£150)  
 Combined unattached shares ——— £119~~

~~Your credit union will need to monitor closely guaranteed loans when working out unattached shares.~~

Total value of *unattached shares* and the total value of juvenile deposits held by your *credit union*.

“*unattached shares*” means the total in the *credit union* other than *attached shares* and *deferred shares*.

“*attached shares*” are shares that act as security for a loan, and shares that cannot be withdrawn under the terms of the loan.

**Loans to Members**

...

14H Total net liabilities The total amount of outstanding on loans (inclusive of interest owing). Net liabilities can be calculated by using the following formula:  
**Loan balance + interest owing – attached share balance = Net liabilities**

...

Net liabilities The total amount outstanding on all loans (inclusive of interest owing) in arrears for each time period (i.e. if a loan is in arrears, the figure used should be the total net liabilities owed by the member, including interest – not just the sum of the repayments that have been missed). The formula used is as follows:  
**Loan balance + interest owing – attached share balance = Net liability**

The table below is an example on how to work out net liability:

Loans 3-12 months in arrears				
Loan No.	Loan balance	Interest owing	Share <u>Attached</u> share balance	Net liability
...	...	...	...	...

...

...		
16E	Balance at end of year	The total general provision at the end of the year. Please note that <del>CRED 10.5.3E</del> <u>CREDS 7.5.4R</u> states that a <i>credit union</i> should have a general bad debt provision of 2% of total net liabilities on all loans not covered by the specific bad debt provisioning. This figure is the sum total of boxes <b>16A+16B-16C-16D</b> and should be the same as box <b>1G</b> on the balance sheet.
...		
16K	Balance at end of year	The total amount in the specific general reserve at the end of the financial year. To comply with <del>CRED 10.5.2R</del> <u>CREDS 7.5.2R</u> , all net liabilities on loans over 12 months in arrears should be fully provided for and all loans between 3-12 months should be provided for on a 35% of net liabilities basis. This figure is the sum total of boxes <b>16F+16G-16H-16J</b> and should be the same as box <b>1H</b> on the balance sheet.
...		
	<b>Subordinated Debt</b>	Subordinated debts are any loans where the lender has agreed to the terms as set out in <del>CRED 8.2.1R</del> <u>CREDS 5.2.1R</u> . These terms include agreeing to rank behind other creditors including the <i>credit union's</i> members in the event of the <i>credit union</i> failing.  ...
...		
	<b>Committed facilities</b>	A committed facility is a committed line of credit, other than an overdraft, from a bank. These are funds immediately available from a bank and constitute a loan.  This relates to a <i>credit union</i> that has secured committed facilities from an institution authorised to accept <i>deposits</i> within the EEA. Normally this will be the bank with which your <i>credit union</i> holds its current account. Any unused committed facilities can be entered into this box. If your <i>credit union</i> does not have any committed facilities, enter "nil" in this box. We would like to draw your attention to <del>CRED (7.3.3R)</del> <u>CREDS 3.3.3R</u> . It states that "the <del>borrowings</del> <u>borrowing</u> of a <i>version 1 credit union</i> must not exceed, except on a short term basis, an amount equal to 20% of the <del>shareholding</del> <u>total non-deferred shares</u> in the <i>credit union</i> ". <del>Short term is defined as not more than "the end of two consecutive quarters"</del> ( <del>CRED 7.3.4E</del> ).  <u>CREDS 3.3.4E</u> provides that, if the borrowing of a <i>version 1 credit union</i> exceeds this amount at the end of more than two consecutive quarters, this may be relied on as tending to indicate contravention of <u>CREDS 3.3.3R</u> .  ...
...		

29B	Investments (less than eight days to maturity)	<p><del>CRED 9.3.8R</del> <u>CREDS 6.3.5R</u> states that only investments that could be realised within eight days can be included in calculating your <i>credit union's</i> liquidity ratio. It is therefore important that your committee of management takes a long-term view of the <i>credit union</i> business before investing surplus funds in long term investments. Your <i>credit union</i> will need to be aware of redemption penalties or other losses you may incur for the early realisation of such funds. Most funds can be converted into cash but at a cost.</p> <p>...</p> <p><b><u>Version 1 credit unions should not hold any investments with a maturity date of over 12 months (CRED 7.2.2R CREDS 3.2.2R).</u></b></p> <p>...</p> <p><del>CRED 9.3.9E(1)</del> <u>CREDS 6.3.6E(1)</u> reads: provides that "For for the purpose of calculating a <i>credit union's</i> liquidity ratio, the <i>securities</i> referred to in <del>CRED 7.2.2R – 7.2.3R</del> <u>CREDS 3.2.1R to 3.2.3R</u> should be valued on the basis that they could be realised at par, minus the following discounts:</p> <p>...</p>
29C	Unused committed facilities	<p>This relates to a <i>credit union</i> that has secured committed facilities from an institution authorised to accept <i>deposits</i> within the EEA. Normally this will be the <i>bank</i> or <i>building society with</i> which your <i>credit union</i> holds its current account. Any unused committed facilities may be entered into this box. If your <i>credit union</i> does not have any committed facilities, enter "nil" in this box. Please note that to comply with <del>CRED 7.3.4E</del> <u>CREDS 3.3.4E</u>, the total borrowings of a <i>version 1 credit union</i> should not exceed 20% of the total adult shareholdings at the end of two consecutive quarters.</p> <p>...</p>
29D	Unused overdrafts	<p>This relates to a <i>credit union</i> which has authorised overdrafts arrangement with an institution authorised to accept <i>deposits</i> within the EEA. Normally this will be the <i>bank</i> or <i>building society with whom</i> <del>which</del> your <i>credit union</i> holds its current account. Any surplus overdrafts which have not been used may be entered into this box. If your <i>credit union</i> does not have an authorised overdraft facility, enter "nil" in this box. Please note that as laid down in <del>CRED 7.3.4E</del> <u>CREDS 3.3.4E</u> the total borrowings of a <i>version 1 credit union</i> may not exceed 20% of the total adult shareholdings at the end of two consecutive quarters.</p> <p>...</p>
...		

30C	Other liabilities / borrowings	<p>These are all liabilities, excluding <i>unattached shares</i> and authorised overdrafts (which are already covered in the relevant liabilities being calculated here). Included in these calculations are such things as:</p> <ul style="list-style-type: none"> <li>• loans from other <i>credit unions</i></li> <li>• loans from <i>banks</i></li> <li>• subordinated debt</li> <li>• committed facilities</li> </ul> <p>Chapter seven (<del>Investments and borrowing</del>) of <u>CRED 7</u> (<u>Lending to members</u>) of <u>CREDS</u> sets out the sources of borrowing available to <i>credit unions</i>.</p>
...		
30E	<b>Liquidity ratio</b>	<p>...</p> <p>Please note that your liquidity level should not fall below <del>5% at any time and that version 1 credit unions should ensure that on no two consecutive quarter ends is the level of the credit union's liquid assets below 10% of its total relevant liabilities</del> <u>the level set out in CREDS 6.3.1R, CREDS 6.3.2R and CREDS TP 1.</u></p>
...		
31A	Largest net exposure	<p>To work out your <i>credit union's</i> largest net exposure you will need to determine:</p> <ol style="list-style-type: none"> <li>1. the net exposure on each loan and find the largest figure. The formula for this is: <b>(loan balance + interest owing) – attached share balance</b></li> <li>2. what is the total capital of your <i>credit union</i>? This is defined at <b>2S</b>.</li> </ol> <p>...</p>
...		
31B	As % of capital	<p>An individual large exposure should not exceed <b>25%</b> of your <i>credit union's</i> capital (<del>CRED 10.4.2R</del> <u>CREDS 7.4.2R</u>).</p> <p>...</p>
...		
31D	As % of capital	<p><del>CRED</del> <u>CREDS</u> states that the aggregate total of large net exposures must not exceed 500% of the total capital of the <i>credit union</i>, 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:</p> <p>...</p>
...		



<b>Risk adjusted capital ratio</b>	A risk adjusted capital ratio is a requirement for larger <i>version 1 and version 2 credit unions</i> under <del>CRED</del> <u>CREDS</u> . <del>CRED 8.3.16R</del> <u>CREDS 5.3.15R</u> states "A <i>version 1 credit union</i> with total assets of more than £10 million or a total number of members of more than 10,000, or both, must maintain at all times a risk-adjusted capital-to-total assets ratio of at least 8%".
------------------------------------	---

...

32B	Net excess provision or 1% of total assets whichever is the lower	Capital should be risk-adjusted for <i>version 2 credit unions</i> and large <i>version 1 credit unions</i> ( <del>CRED 8.4.1R</del> <u>CREDS 5.4.1R</u> and <del>CRED 8.3.16R</del> <u>CREDS 5.3.15R</u> ). The maximum net figure for provisions that may be included in calculating risk-adjusted capital is 1% of total assets ( <del>CRED 8.4.2R</del> <u>CREDS 5.4.2R</u> ).
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...

...

## Committee of Management

Please complete the relevant details for all *credit union* officers here. The details required are their full name, address, post held at the *credit union* (this should include what committee they sit on), whether they are an *approved person*, their approved person function, and their year of birth.

Whilst a brief list of the main controlled functions are given below, *credit unions* will need to refer to ~~CRED Chapter 4~~ CREDS Chapter 2 (Senior management arrangements, Systems and Controls) and ~~SUP 10 Chapter 6 of (The Approved persons regime) of CRED~~. Please note that only the controlled function number needs to be inserted; for example if you are on the *credit union's* committee of management the number would be CF1.

...

Insert the following new text at the end of SUP 16 Annex 15 (2)G (Notes on completing the Annual Return (CY) for credit unions) after the section headed "Committee of Management". The text is not underlined.

## 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.

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,

## Interest-bearing shares

### Interest-bearing shares

33A	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 <b>2T</b> on CY for analysis. In the following sections, this amount should be broken down into interest-bearing and dividend-bearing shares so that: <b>33A = 33B + 33C</b>
33B	Interest-bearing shares	The total amount of money held by the <i>credit union</i> in respect of shares that are interest-bearing.
33C	Dividend-bearing shares	The total amount of money held by the <i>credit union</i> in respect of shares that are dividend-bearing.

### Interest expenditure

34A	Expenditure – Other	The <i>credit union's</i> expenditure that is not covered in the listed categories of expenditure at 4A-4N on the CY.
		The amount entered here should be transferred from <b>4P</b> on CY for analysis. In the following sections, this amount should be broken down into interest expenditure and non-interest expenditure so that: <b>34A = 34B + 34C.</b>
34B	Interest expenditure	The total amount of expenditure – other that is interest payable by the <i>credit union</i> on interest-bearing shares.
34C	Non-interest expenditure	The total amount of expenditure – other that is not interest payable by the <i>credit union</i> on interest-bearing shares.

## 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.
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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 *deferred shares* 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 <b>10G</b> on CY.
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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 <b>11G</b> on CY.
-----	---------------------------------	---

36C	Revaluation reserves – non-capital element	The amount of revaluation reserve that is not included in <b>11G</b> on CY and <b>36B</b> (because it does not count towards a <i>credit union's</i> capital under <i>CREDS</i> 5.2.1R). See the note to <b>2P</b> on CY.
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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.
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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:
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**36E = 36A + 36B + 36C + 36D**

### Reserves - percentage

36F	Total assets	The amount entered here should be transferred from <b>1P</b> on CQY
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36G	Reserves as % of total assets	To determine this ratio your <i>credit union</i> will use the following formula: Reserves (36E) X 100 Total assets (36F) 1
-----	-------------------------------	---

## Corporate membership

### Corporate members

37A	Total members	Total number of members of the <i>credit union</i> at the end of the financial year.  The amount entered here should be transferred from <b>12D</b> on CY for analysis. In the following sections, this amount should be broken down into different categories of member so that:  <b>37A = 37B + 37C + 37D + 37E</b>
37B	Individual members	The number of members of the <i>credit union</i> at the end of the financial year that are individuals.
37C	Body corporate members	The number of members of the <i>credit union</i> at the end of the financial year that are <i>bodies corporate</i> .
37D	Partnership members	The number of members of the <i>credit union</i> at the end of the financial year 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.
37E	Unincorporated association members	The number of members of the <i>credit union</i> at the end of the financial year 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

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 <b>35B</b> above.  In the following sections, this amount should be broken down into non-deferred shares held by different categories of member so that:  <b>38A = 38B + 38C + 38D + 38E</b>
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38B	Individual non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by individuals.
38C	Body corporate non-deferred shares	The total amount held by the <i>credit union</i> in respect of non-deferred shares held by <i>bodies corporate</i> .
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.
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

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 <b>35C</b> .  In the following sections, this amount should be broken down into <i>deferred shares</i> held by different categories of member so that:  <b>39A = 39B + 39C + 39D + 39E</b>
39B	Individual deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> held by individuals.
39C	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> .
39D	Partnership deferred shares	The total amount held by the <i>credit union</i> in respect of <i>deferred shares</i> 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.
39E	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.  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

40A	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.  The amount entered here should be transferred from <b>1E</b> on CY for analysis.
40B	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.  The amount entered here should be transferred from <b>1F</b> on CY for analysis.
40C	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:  <b>40C = 40A + 40B</b>  In the following sections, this amount should be broken down into loans to different categories of member so that:  <b>40C = 40D + 40E + 40F + 40G</b>
40D	Individual loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to individuals.
40E	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> .
40F	Partnership loans	The total amount outstanding to the <i>credit union</i> at the end of the financial year on loans to partnerships.  Partnerships are represented by individuals who are members of a <i>credit union</i> in their capacity as partners in a partnership.
40G	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.  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.

### Non-qualifying membership

41A	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.  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.
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Amend the following as shown.

**App 1.3 Prudential categories and sub-categories**

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

<i>Prudential categories</i> (Note 1)	<b>Applicable prudential requirements (Note 2)</b>	<b>Prudential sub-categories</b>
...	...	...
<i>Credit union</i>	<del><i>CRED 7, 8, 9 and 10</i></del> <u><i>CREDS 3</i></u> <u><i>5, 6 and 7</i></u>	<i>Version 1 credit union</i> <i>Version 2 credit union</i>
...		
Note 2 = Only the requirements in the Prudential sourcebooks, and <del><i>CRED</i></del> <u><i>CREDS</i></u> are listed in the column. Requirements in other parts of the <i>Handbook</i> will also apply.		

## 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>	<del><i>CRED 15</i></del> <del>Annex 1G</del>	<i>RDC</i>



## Annex F

## 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

...

- 1.1.5 R This chapter does not apply to:
- (1) [deleted]
  - (2) ~~a credit union~~; and [deleted]
  - (3) an *authorised professional firm* in respect of expressions of dissatisfaction about its *non-mainstream regulated activities*
- 1.1.5A R The *complaints reporting rules* and the *complaints data publication rules* do not apply to a *credit union*.
- 1.1.6 G ~~Analogous obligations relevant to *credit unions* are set out in *CRED 17*. *CREDS 9* sets out *rules* for *credit unions* in relation to reporting *complaints*.~~
- 1.1.6A G In relation to a *credit union*, the nature, scale and complexity of the *credit union's* business should be taken into account when deciding the appropriate procedures to put in place for dealing with *complaints*.

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

In this Annex, underlining indicates new text and striking through indicates deleted 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
- (b) a secured *deposit*; or
- (c) a *deferred share* issued by a *building society*; or
- (cA) a *deferred share* issued by a *credit union*; or
- (d) ...

**REGULATED COVERED BOND SOURCEBOOK (AMENDMENT NO 2)  
INSTRUMENT 2011**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in:
- (1) 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 Regulated Covered Bond Regulations 2008 (SI 2008/346):
    - (a) Regulation 8 (Applications for registration);
    - (b) Regulation 9 (Applications for admission to the register of issuers);
    - (c) Regulation 18 (Notification requirements); and
    - (d) Regulation 42 (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 Regulated Covered Bond sourcebook (RCB) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Regulated Covered Bond Sourcebook (Amendment No 2) Instrument 2011.

By order of the Board  
8 December 2011

## Annex A

### Amendments to the Glossary of definitions

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

*asset pool monitor* a *person* appointed under regulation 17A of the *RCB Regulations*.

## Annex B

### Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

## 2 Applications for registration

...

### 2.2 Applying for registration

Form, manner and verification of application

...

2.2.5 G The *FSA* will not treat the application as having been received until it receives the registration fee (see *RCB* 5.2.5R) and all relevant documentation requested by the *FSA* before its on-site review of the application.

2.2.6 D The *issuer* must ensure that a *director* or a *senior manager* of the *issuer* verifies the application by confirming on the *FSA's* form that the *issuer* has obtained the appropriate third party advice or reports as required by *RCB* 2.3.16D and is satisfied that:

...

...

### 2.3 Determination of registration

...

2.3.8 G (1) ...

(2) Where, for example, the *asset pool* includes residential mortgages the relevant factors which the *FSA* may consider include:

...

(f) the purpose and terms of the mortgage (for example, owner occupied, buy-to-let, interest only, repayment, fixed rate, variable rate, off-set or endowment).

...

...

2.3.18 G (1) The *FSA* expects the report from the accountants to address at least the following matters:

...

(b) that appropriate due diligence procedures (which should include an analysis of a representative statistical sample at a 99% confidence level of the *assets in the asset pool*) have been carried out to check whether:

...

...

#### Liquid assets

2.3.20 G *Assets* which would be eligible for inclusion in a liquidity buffer under *BIPRU 12.7* can be liquid assets for the purposes of limb (a) of the definition of liquid assets in Regulation 1(2) of the *RCB Regulations*. The *FSA* will also expect that liquid assets which consist of deposits should be held in the same currency or currencies as the *regulated covered bonds* issued by the *issuer*.

## **2 Annex 1D Application for the admission to the register of issuers and register of regulated covered bonds**

The form in RCB 2 Annex 1D is deleted and replaced with the form below. The new text is not underlined

[link to new application for the admission to the register of issuers and register of regulated covered bonds form]

## **2 Annex 1D**

### **Application for admission to the register of issuers and register of regulated covered bonds**

To be submitted by prospective issuers as part of their application for admittance to the Regulated Covered Bond Register.

#### **Terms in this form**

In this form we use the following terms:

'**Connected person**' has the meaning given by RCB Regulation 5.

'**Covered bond**' means a bond in relation to which the claims attaching to that bond are guaranteed to be paid by an owner from an asset pool it owns.

'**Credit rating**' in relation to a particular entity means the rating of that entity's senior, unsecured, unguaranteed, unsubordinated debt.

'**FSA**', '**we**', '**us**' and '**our**' refers to the Financial Services Authority.

'**Issuer**' means a person which issues a covered bond.

'**Owner**' means a person which owns an asset pool and issues a guarantee to pay from that asset pool claims attaching to a regulated covered bond in the event of a failure of the issuer of that bond.

'**RCB sourcebook**' is the Regulated Covered Bonds sourcebook which is part of the FSA Handbook and can be accessed at [www.fsa.gov.uk/Pages/handbook](http://www.fsa.gov.uk/Pages/handbook). References to specific provisions in this sourcebook are prefaced by 'RCB'.

'**RCB Regulations**' refers to 'The Regulated Covered Bonds Regulations 2008' as amended from time to time and can be accessed at [http://www.opsi.gov.uk/si/si2008/uksi\\_20080346\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20080346_en_1)

'**Transaction documents**' should include documents listed in RCB sourcebook 3.5.15G.

#### **Purpose of this form**

To demonstrate the ability of the issuer and the covered bond or programme to comply with the RCB Regulations and RCB sourcebook.

We may, after considering the information in this form and supporting documentary evidence, decide to grant an application for an issuer or a covered bond or a programme to be added to the register of issuers or register of regulated covered bonds. The registration is made under the RCB Regulations.

### **Warning**

Knowingly or recklessly giving us false or misleading information may be a criminal offence (regulation 38 of the RCB Regulations and section 398 of the Financial Services and Markets Act 2000).

### **Filling in the form**

- 1 The FSA will not normally consider applications for issuer registration in isolation from the application for registration of a covered bond or programme.
- 2 The FSA will not treat the application as having been received until it receives the registration fee (see RCB 5.2.5R) and all relevant documentation requested by the FSA before its on-site review of the application (see RCB 2.2.5G).
- 3 You are advised to read the RCB Regulations and the RCB sourcebook before completing this form.
- 4 If you leave a question blank, do not sign the declaration or do not attach the required documentary evidence without telling us why, we may have to treat the application as incomplete. This will increase the time it takes us to deal with your application.
- 5 Your application should include in electronic format:
  - this form RCB 2 Annex 1D;
  - where applicable, the Asset Pool Notification form RCB 3 Annex 2D;
  - where applicable, the Asset & Liability Profile RCB 3 Annex 3D;
  - where applicable, the New Issuance Indicative Terms form RCB 3 Annex 4D;
  - where applicable, Loan-level Data RCB 3 Annex 7AD;
  - programme transaction documents, legal opinions and offering circular of the covered bond programme for which you are seeking registration;
  - a copy of the accountant's report on the cover pool assets;
  - any internal reports regarding the covered bond programme (the two most recent reports);
  - the most recent Internal Audit and Compliance reports covering any aspects of the covered bond programme, details on the frequency of such reviews and the date of the next scheduled reviews;
  - the results of any stress testing and scenario analysis undertaken on the asset pool;
  - the board sign-off authorising the covered bond programme and related papers;
  - incorporation documents for all internal committees where the covered bond programme is managed including a structural chart detailing where each forum fits within the issuer's governance structure, and the three most recent committee submissions, management information and minutes from each forum;
  - an organisational chart including the individuals that are involved in the management of the programme and a description of their role and responsibilities;
  - a copy of the issuer's lending policies, underwriting procedures and most recent periodical retail mortgage credit review; and



- where applicable, all credit rating agency publications in relation to the covered bond programme for which you are seeking registration.

### **Sending the form**

Send your application form to us by email to [rcb@fsa.gov.uk](mailto:rcb@fsa.gov.uk). It is our preference for all correspondence to be submitted electronically. If this is not possible your application form may also be submitted by post or by hand to the address below:

Covered Bonds Team  
 Capital Markets  
 The Financial Services Authority  
 25 The North Colonnade  
 Canary Wharf  
 London  
 E14 5HS

### **Fees**

We will not treat the application as having been received until we receive the registration fee.

Details on the Fees are available in Chapter 5 of the RCB sourcebook.

The payment methods available are credit transfer, banker's draft and cheque.

Credit transfer (BACS,  
 CHAPS)

The FSA bank details are:

Account Name : FSA Collection account  
 Bank Name : Lloyds Bank  
 Account number : 00828179  
 Sort code : 30-00-02

Please reference your payment with your firm reference number (FRN) and fee description (covered bond registration)

Cheque or bankers draft

Please make the cheque or banker's draft payable to The Financial Services Authority

Please send the cheque or banker's draft with your firm reference number (FRN) and fee description (covered bond registration) to:

Covered Bonds Team  
 Capital Markets Sector  
 The Financial Services Authority  
 25 The North Colonnade  
 Canary Wharf  
 London  
 E14 5HS

**2 Annex 1D: Application Form**

Questions	Responses
Issuer: name, address, contact name, e-mail and telephone number	
FSA reference number of the issuer	
Owner: name, address, contact name, e-mail and telephone number	
Credit rating(s) of issuer and name of the relevant credit rating agency	
Accountant: name, address, contact name, e-mail and telephone number	
Legal counsel: name, address, contact name, e-mail and telephone number	
Bondholder representative: name, address, contact name, e-mail and telephone number	
Credit ratings of derivative providers (indicating nature of derivative, e.g. currency swap, interest rate swap) and name(s) of the relevant credit rating agency	
Cash manager (if different from issuer): name, address, contact name, e-mail and telephone number	
Credit rating(s) of cash manager (if different from issuer) and name of relevant credit rating agency	
Account bank (if different from issuer): name, address, contact name, e-mail and telephone number	
Credit ratings of account bank (if different from issuer) and name of relevant credit rating agency	
Role, name, address, contact name, e-mail and telephone number of any other relevant third parties	
Does the issuer hold permission under Part 4 of the Financial Services and Markets Act 2000 to carry on the regulated activity of 'accepting deposits' and have its registered office (or, if the issuer is a building society, its principal office) in the UK?	Yes/No
Does the owner have its registered office in the UK and its centre of main interest in the UK?	Yes/No
Does the owner comply with the requirements set out in RCB regulation 4?	Yes/No
If the covered bond or programme has arrangements in place that include the use of a	

'connected person', provide details of who the person is and their relationship with the issuer.	
If the covered bond or programme has arrangements in place that includes the use of a 'connected person', does the connected person comply with the requirements set out in RCB regulation 5?	Yes/No/NA
Name of covered bond programme	
Please indicate whether you wish to apply for a single asset or mixed asset designation, as set out in RCB regulation 2 and the type or variety of eligible assets as defined under regulation 2 in the cover pool.	
<p>Asset percentage:</p> <ol style="list-style-type: none"> <li>1. specified in the programme documentation of the covered bond programme;</li> <li>2. specified by rating agencies;</li> <li>3. the asset percentage which the issuer proposes to run the programme with</li> </ol>	
Provide an outline of the structure of the covered bond programme (including, if appropriate, a structural diagram).	
Provide an outline of the contractual obligations of the issuer, owner, hedging counterparties and other third parties, e.g. servicers, cash managers and paying agents, to the covered bond arrangements.	
Provide details of the circumstances that would require the replacement of hedging counterparties and third parties, e.g. servicers, cash managers or paying agents, and outline the contractual provisions that provide for the appointment of replacement parties. Please include details of the effect on the covered bonds or programme if no replacement party is found. Indicate the relevant sign-off and committee structure and timeframe needed to implement these processes, and any preparation that has been done to test these arrangements. Please make particular reference to swaps and servicing arrangements.	
Provide an outline of the contractual arrangements of the owner, hedging counterparties and other third parties, e.g. servicers, cash managers and paying agents, if the issuer defaults. Please indicate how the cash flows will operate immediately following the default of an issuer.	

Please outline why you are applying for RCB status, and indicate how RCB issuance fits in the context of your overall funding strategy.	
Please provide six scenarios for proposed issuance: size, currency, tenor, fixed/floating-rate, price (if floating include the reference index), whether the bonds would be pass-through, soft- or hard-bullet maturity, FX swap rate, covered bond swap margin, covered bond swap payment frequency, interest rate swap payment frequency (payer and receiver leg), interest rate swap margin, interest rate receiver index.	
Do the assets in the pool comply with RCB regulations 2 and 3?	Yes/No
Reference the section in the offering circular that describes the eligibility criteria and representation and warranties (if there is no offering circular for the programme, provide a description of the eligibility criteria and representation and warranties in this section).	
Set out in plain English which criteria you are currently using and are intending to use going forward for including loans in the asset pool. This is likely to reflect the arrangements you have in place with the credit rating agencies. For example, with respect to residential mortgages, this should include but not be restricted to: the type of property, location of property, valuation type, seasoning, maximum loan size, loan term, income verification, owner occupancy, loan to value, level of arrears.	
For covered bonds collateralised by real estate, provide information on how you have had regard to the requirements of BIPRU 3.4.64R (legal certainty), BIPRU 3.4.66R (monitoring of property values) and BIPRU 3.4.77R to BIPRU 3.4.80R (valuation).	
Provide evidence that there is appropriate governance and oversight of the Programme. This should include information on senior management oversight including Board involvement and escalation procedures. Please detail the role of ALCO/key strategic and working-level covered bond oversight committee. Please provide their terms of reference, membership lists, along with MI packs and minutes from the most recent two meetings on date of application. In addition, please provide the two most recent copies of any internal reports regarding the covered bond programme or supporting systems.	

<p>How do you monitor performance of the asset pool (e.g. arrears, indexed LTVs)? Please provide examples of this MI, and indicate how it is validated and where it is considered.</p>	
<p>What is the decision making process with regard to transferring assets into/from the asset pool? Please indicate triggers (e.g. arrears level), committees where these are considered and associated management actions. Your response should also include the frequency and volume with which you anticipate transferring assets in and out of the asset pool.</p>	
<p>What is the operational process for transferring assets in and out of the asset pool?</p>	
<p>How are your records updated to reflect changes to composition of the asset pool and who is informed of these changes?</p>	
<p>Explain the internal arrangements in place to ensure the points below. Your response should indicate how this information is validated, where it is reviewed and sign-off/controls.</p> <ul style="list-style-type: none"> <li>• Accurate record of the assets is kept on your information systems</li> <li>• Attributes of the loans correspond to the supporting documentation</li> <li>• Accuracy of data being provided to the FSA in RCB 3 Annex 2D</li> </ul>	
<p>What role does your compliance function (or equivalent) have over the programme?</p>	
<p>Explain how you ensure that the assets in the asset pool are of high quality. This could include a summary of your lending and underwriting criteria.</p>	
<p>Under the RCB Regulations, the issuer is obliged to ensure there are arrangements in place to ensure that the assets are capable of covering all claims attached to the covered bonds during the whole life of the bond. Capability includes paying the amounts due under the bonds and sums required for the maintenance, administration and winding up of the cover pool.</p> <p>Demonstrate how you determine that the cash flows generated by the assets are sufficient to meet the payments due in a timely manner under conditions of economic stress in the event of the failure of the issuer.</p> <p>You should consider at a minimum the guidance set out in RCB 2.3.6G to 2.3.12G when designing your stress testing.</p>	

<p>In addition we would like an indication on:</p> <ul style="list-style-type: none"> <li>• why the stresses being applied are appropriate;</li> <li>• who reviews this information; and</li> <li>• how the results are being used to determine compliance with the capability requirement.</li> </ul> <p>In particular specify whether, based on the results of the stress testing, you determine a level of overcollateralisation that you consider adequate to meet the capability requirement.</p>	
<p>Describe the tests (e.g. Asset Coverage Test, Interest Rate Shortfall Test), if any, that are performed on the asset pool under the covered bond programme documentation. In addition, explain:</p> <ul style="list-style-type: none"> <li>• who performs these tests;</li> <li>• who reviews the results;</li> <li>• how is this information used;</li> <li>• how would a breach of any of these tests be escalated;</li> <li>• what are the contractual implications of a breach of any of these tests; and</li> <li>• what are the contractual implications of a breach not being addressed in a timely manner.</li> </ul>	
<p>Describe the tests that would be performed on the asset pool under the covered bonds programme documentation in the event of issuer default (e.g. Amortisation Test, Yield Shortfall Test).</p>	
<p>Provide a summary of the ratings trigger events and their effect under the programme and outline your contingency plan for dealing with each of these events.</p>	
<p>Indicate the value of assets (in GBP) available for transfer into the cover pool at the time of completing this form, under the eligibility criteria and representations and warranties set out above.</p>	
<p>With reference to your business plan, describe how you will ensure there will be sufficient assets available on the balance sheet for maintaining the cover pool going forward.</p>	
<p>Set out the events that will result in an issuer event of default. Please include definitions of all references.</p>	

<p>In the event of issuer default, what are the arrangements for the security trustee to maintain and administer the asset pool and to give the FSA information on the composition of the asset pool and any other notifications and confirmation required under the RCB Regulations and Chapter 3 of the RCB sourcebook. Please indicate the relevant sign-off and committee structure and timeframe needed to implement these processes and any preparation that has been done to test these arrangements.</p>	
<p>Explain what arrangements are in place as to priority of payment on the winding-up of the owner (see RCB regulation 27). Please indicate the relevant sign-off and committee structure and timeframe needed to implement these processes and any preparation that has been done to test these arrangements.</p>	
<p>Confirm that in accordance with RCB 2.3.16D you have obtained written legal advice and accountancy reports on compliance with the RCB Regulations and RCB sourcebook. We expect this to adequately deal with at least the issues set out in RCB 2.3.17G and RCB 2.3.18G.</p>	Yes/No
<p>If an asset pool is in place, confirm that you have submitted the asset pool notification form RCB 3 Annex 2D with this application.</p>	Yes/No
<p>If you have already issued covered bonds under the programme for which you are seeking registration, confirm that you have submitted the relevant series issuance notification forms RCB 3 Annex 3D to give us information about the covered bonds with this application.</p>	Yes/No
<p>Confirm that you have submitted with this application:</p> <ul style="list-style-type: none"> <li>• RCB 3 Annex 2D, if applicable;</li> <li>• RCB 3 Annex 3D; if applicable;</li> <li>• RCB 3 Annex 7AD;</li> <li>• accountants' reports;</li> <li>• all programme documentation, including the offering circular, legal opinions and bond documentation of all bonds in issue;</li> <li>• board papers authorising the establishment of a covered bond programme, including details of authority delegated to management;</li> <li>• the two most recent compliance and internal audit reports covering any aspects of the covered bond programme</li> </ul>	

<p>and details on the frequency of such reviews and the date of the next scheduled review;</p> <ul style="list-style-type: none"> <li>• an organisational chart indicating key committees up to Board level for the covered bond programme, flow of MI, delegated authority and controls;</li> <li>• an organisational chart indicating the individuals that are involved in the management of the programme and a description of their role and responsibilities;</li> <li>• the two most recent retail mortgage credit performance MI;</li> <li>• the stress testing undertaken to demonstrate that cash flows generated by the assets are sufficient to meet the payments due in a timely manner under conditions of economic stress in the event of the failure of the issuer;</li> <li>• the most recent investor report;</li> <li>• any relevant credit rating reports in relation to the covered bond programme;</li> </ul>	
<p>Give details of the payment method used for the application fee (cheque, banker's draft or credit transfer) and the date the payment was made.</p>	
<p>Provide any additional information that is relevant to your application.</p>	
<p>Provide the date selected for the first confirmation of compliance with RCB regulation 16 and 17 if you want this to be earlier than 12 months following the date of the decision to admit the covered bond or programme to the register (see RCB 3.2.5D).</p>	



## Senior Management Confirmation

I confirm that the information supplied in this form is complete and correct to the best of my knowledge at the time of application.

I undertake to tell the FSA immediately of any material changes to the information provided before receiving the FSA's decision on the application.

I confirm I am satisfied that the arrangements relating to the covered bond programme will comply with the requirements of the RCB Regulations and the RCB sourcebook.

I confirm that in accordance with the RCB 2.3.16D the issuer has obtained written advice and reports regarding the compliance of the issuer and the relevant covered bond programme with the RCB Regulations and the RCB sourcebook from suitable independent third-party advisers.

I consent to this confirmation (section 11.2) being published on the Regulated Covered Bonds Register on the FSA's public website.

Issuer name

Name of covered bond programme

Signature (if the form is electronically submitted, the signature must be scanned)

Name of signatory

Title of signatory (signatory must be a director or senior manager)

Date

Amend the following as shown.

### 3 Notifications

#### 3.1 Application and purpose

Application

3.1.1 G This chapter applies to *issuers*, *asset pool monitors* and *owners*.

Purpose

3.1.2 G This chapter sets out the reporting and notifications requirements under Regulations 17A, 18, 20, 24 and 25 of the *RCB Regulations*.

#### 3.2 Annual confirmations of compliance and asset pool monitor

Form of confirmation and use of third party advisors and asset pool monitor's report

...

3.2.2 D Before providing the confirmation required by this section, the *issuer* must

obtain and consider written advice or reports from suitable independent third party advisers parties such as accountants the asset pool monitor and, where appropriate, lawyers.

...

3.2.4 G The FSA expects the asset pool monitor's report ~~reports from accountants~~ to address at least the matters to be checked and due diligence procedures set out in RCB 2.3.18G. The FSA may also specify additional matters that the asset pool monitor's report should address in relation to a particular issuer.

3.2.4A G The FSA's use of its power under Regulation 18 of the RCB Regulations may include requiring the issuer to provide to the FSA copies of the advice or reports referred to in RCB 3.2.2D.

3.2.4B D The issuer must provide a copy of the asset pool monitor's report to the FSA when it sends the confirmation required by this section to the FSA.

...

#### Verification of confirmation

3.2.9 D The issuer must ensure that a director or a senior manager signs the annual confirmation and confirms on the FSA's form that the issuer has obtained the appropriate third party advice or reports required by this section.

3.2.9A G Where possible, the director or senior manager who signs the annual confirmation should be the same director or senior manager who has verified the application for registration under RCB 2.2.6D. If the director or senior manager is different to the director or senior manager who verified the application for registration, the issuer should notify the FSA at least one month before sending the confirmation to the FSA.

#### Notifications by the owner

...

3.2.11 D (1) ...  
(2) The owner must obtain appropriate advice in the same manner as set out in RCB 3.2.2D and must provide a copy of the asset pool monitor's report to the FSA as set out in RCB 3.2.4BD.

#### Review by asset pool monitor

3.2.12 G In addition to requiring the asset pool monitor to prepare an annual report, Regulation 17A of the RCB Regulations requires that the asset pool monitor must inspect the compliance of the issuer or owner (as the case may be) with the requirements in Regulations 16, 17 or 24 of the RCB Regulations once every 12 months.

3.2.13 G The FSA expects the inspection by the asset pool monitor of the compliance

of the issuer or owner (as the case may be) with the relevant requirements in the RCB Regulations to address at least the matters to be checked and due diligence procedures set out in RCB 2.3.18G. The FSA expects that the inspection will be conducted on an agreed-upon-procedures basis.

- 3.2.14 G As required under Regulation 17A of the RCB Regulations, if it appears to the asset pool monitor that the issuer or owner (as the case may be) has failed to comply with the requirements set out in Regulations 17 or 24 of the RCB Regulations, or has not provided all relevant information or explanations, the asset pool monitor must report that to the FSA in writing as soon as possible.

#### Change of asset pool monitor

- 3.2.15 G If the asset pool monitor is changed, the issuer (or owner, as the case may be) should notify the FSA when the new asset pool monitor is appointed, giving the name of the new asset pool monitor and details of the reason for the change.

### **3.3 Asset pool notifications**

#### Form of notification notifications

- 3.3.1 D The issuer must send to the FSA, information relating to the asset pool, in the form set out in RCB 3 Annex 2D (asset notification form), and information relating to the regulated covered bonds issued under the programme, in the form set out in RCB 3 Annex 3D (asset and liability profile form).
- 3.3.2 D The issuer must send the ~~form~~ asset notification form to the FSA each month following the registration date, and the asset and liability profile form to the FSA within one month of the end of each quarter following the registration date.
- 3.3.2A D The issuer must send to the FSA loan-by-loan level data relating to the asset pool in the form set out in RCB 3 Annex 7AD within one month of the end of each quarter following any issuance of regulated covered bonds after 1 January 2013. Guidance on how to complete this form is set out in RCB 3 Annex 7BG.

#### Notifications by the owner

- 3.3.3 D If the issuer is in insolvency, the owner must send to the FSA the ~~asset pool~~ notifications set out at RCB 3.3.1D and RCB 3.3.2AD by the same dates as the dates the notifications under those directions are due.

#### Due diligence

- 3.3.4 G The issuer or the owner, as the case may be, should carry out, or make arrangements to carry out, appropriate due diligence to check that the

analysis in the *asset pool* information provided to the *FSA* is correct.

#### Addition or removal of assets from the asset pool

- 3.3.5 D If the issuer or the owner (as the case may be) proposes to add or remove assets to or from the asset pool which change the level of over collateralisation by 5% or more, it must notify the FSA using the form set out in RCB 3 Annex 2D (asset notification form) at least 5 business days prior to the proposed transfer, giving expected details of the size and composition of the transfer.

### **3.4 Covered Bond issuance notifications**

- 3.4.1 D The issuer must inform the FSA of the information relating to bond issuances from a regulated covered bond in the form set out in ~~RCB 3 Annex 3D (series notification form)~~ RCB 3 Annex 4D (indicative terms form) at least 3 business days ~~on or~~ before the date of issuance.

- 3.4.2 D On the date of issuance, the issuer must send to the FSA:
- (1) the information in the form set out in RCB 3 Annex 5D (issuance form);
  - (2) the information in the form set out in RCB 3 Annex 3D (asset and liability profile form); and
  - (3) the final terms of the regulated covered bonds or equivalent issuance documents setting out the terms of the regulated covered bonds and signed copies of swap documents.

### **3.5 Other notifications**

...

#### Notification of cancellation

- 3.5.9 D The issuer must notify the FSA if it proposes to cancel in full or in part a regulated covered bond or programme at least 3 business days before the cancellation will take effect.

- 3.5.10 D The issuer must send to the FSA the information in the form set out in RCB 3 Annex 6D and an updated asset and liability profile form (RCB 3 Annex 3D) on the date of cancellation of the regulated covered bond or programme.

#### Publication of asset pool information and transaction documents

- 3.5.11 D The issuer must publish the asset notification form sent to the FSA under



### 3 Annex 1D

## Annual confirmation of compliance with the RCB Regulations and the RCB sourcebook

#### Terms in this form

In this form we use the following terms:

**'Covered Bond'** means a bond in relation to which the claims attaching to that bond are guaranteed to be paid by an owner from an asset pool it owns.

**'FSA', 'we', 'us' and 'our'** refers to the Financial Services Authority.

**'RCB sourcebook'** is the Regulated Covered Bonds sourcebook which is part of the FSA Handbook and can be accessed at [www.fsa.gov.uk/Pages/handbook](http://www.fsa.gov.uk/Pages/handbook). References to specific provisions in this sourcebook are prefaced by 'RCB'.

**'RCB Regulations'** refers to 'The Regulated Covered Bonds Regulations 2008' as amended from time to time and can be accessed at [http://www.opsi.gov.uk/si/si2008/uksi\\_20080346\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20080346_en_1)

#### Purpose of this form

To send us written annual confirmation of compliance with RCB regulation 16 (Sums derived from the issue of regulated covered bonds) and RCB regulation 17 (General requirements on the issuer in relation to the asset pool).

#### Warning

Knowingly or recklessly giving us false or misleading information may be a criminal offence (regulation 38 of the RCB Regulations and section 398 of the Financial Services and Markets Act 2000).

#### Sending the form

Send your annual confirmation to us by email to [rcb@fsa.gov.uk](mailto:rcb@fsa.gov.uk). It is our preference for all correspondence to be submitted electronically. If this is not possible your annual confirmation may also be submitted by post or by hand to the address below.

Covered Bonds Team  
Capital Markets  
The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
LONDON  
E14 5HS

**3 Annex 1D: Annual confirmation of compliance with the RCB Regulations and RCB sourcebook**

I confirm I am satisfied that the arrangements relating to the covered bond programme comply with the requirements of the RCB Regulations and the RCB sourcebook.

I confirm that in accordance with the RCB 3.2.2D the issuer (or if applicable owner) has obtained written advice or reports from suitable independent third parties, such as the asset pool monitor, on compliance with the RCB Regulations and the RCB sourcebook.

I consent to this confirmation being published on the Regulated Covered Bonds Register on the FSA's public website.

Issuer name

Name of covered bond programme

Period covered by compliance

Signature (if the form is electronically submitted, the signature must be scanned)

Name of signatory

Title of signatory (signatory must be a director or senior manager)

Date

**3 Annex 2D Asset pool notification form**

The form in RCB 3 Annex 2D is deleted and replaced with the form below. The new text is not underlined

[link to new asset pool notification form]

# RCB 3 Annex 2D: Asset Pool Notification Form

**Completing the form**

Please complete all fields in blue.

Unless specified otherwise, please report data as of the *End Date of reporting period*.

This Asset Notification Form must be submitted each month and published by the issuer on a secure, password-protected website.

This form must also be sent at least five business days prior to any proposed assets transfer (giving details of the size and composition of the transfer) when such transfer changes the level of over collateralisation by 5% or more.

**Warning**

Knowingly or recklessly giving us false or misleading information may be a criminal offence (Regulation 38 of the RCB Regulations and section 398 of the Financial Services and Markets Act 2000).

**Sending the form**

Send this form to us by email to rcb@fsa.gov.uk. It is our preference for all correspondence to be submitted electronically. If this is not possible your form may also be submitted by post or by hand to the address below.

Covered Bonds Team  
Capital Markets  
The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

**Administration**

Name of issuer	
Name of RCB programme	
Name, job title and contact details of person validating this form	
Date of form submission	
Start Date of reporting period	
End Date of reporting period	
Web links - prospectus, transaction documents, loan-level data	

**Counterparties, Ratings**

	Counterparty/ies	Fitch		Moody's		S&P		DBRS	
		Rating trigger	Current rating	Rating trigger	Current rating	Rating trigger	Current rating	Rating trigger	Current rating
Covered bonds									
Issuer									
Seller(s)									
Cash manager									
Account bank									
Stand-by account bank									
Servicer(s)									
Stand-by servicer(s)									
Swap provider(s) on cover pool									
Stand-by swap provider(s) on cover pool									
Swap notional amount(s) (GBP)									
Swap notional maturity/ies									
LLP receive rate/margin									
LLP pay rate/margin									
Collateral posting amount(s) (GBP)									

**Accounts, Ledgers**

	Value as of End Date of reporting period	Value as of Start Date of reporting period	Targeted Value
Revenue receipts (please disclose all parts of waterfall)			
Principal receipts (please disclose all parts of waterfall)			
Reserve ledger			
Revenue ledger			
Principal ledger			
Pre-maturity liquidity ledger			



**Asset Coverage Test**

	Value	Description (please edit if different)
A		Adjusted current balance
B		Principal collections not yet applied
C		Qualifying additional collateral
D		Substitute assets
E		Proceeds of sold mortgage loans
V		Set-off offset loans
W		Personal secured loans
X		Flexible draw capacity
Y		Set-off
Z		Negative carry
Total	£ -	
Method used for calculating component 'A'		
Asset percentage (%)		
Maximum asset percentage from Fitch (%)		
Maximum asset percentage from Moody's (%)		
Maximum asset percentage from S&P (%)		
Maximum asset percentage from DBRS (%)		
Credit support as derived from ACT (GBP)		
Credit support as derived from ACT (%)		

**Programme-Level Characteristics**

Programme currency	
Programme size	
Covered bonds principal amount outstanding (GBP, non-GBP series converted at swap FX rate)	
Covered bonds principal amount outstanding (GBP, non-GBP series converted at current spot rate)	
Cover pool balance (GBP)	
GIC account balance (GBP)	
Any additional collateral (please specify)	
Any additional collateral (GBP)	
Aggregate balance of off-set mortgages (GBP)	
Aggregate deposits attaching to the cover pool (GBP)	
Aggregate deposits attaching specifically to the off-set mortgages (GBP)	
Nominal level of overcollateralisation (GBP)	
Nominal level of overcollateralisation (%)	
Number of loans in cover pool	
Average loan balance (GBP)	
Weighted average non-indexed LTV (%)	
Weighted average indexed LTV (%)	
Weighted average seasoning (months)	
Weighted average remaining term (months)	
Weighted average interest rate (%)	
Standard Variable Rate(s) (%)	
Constant Pre-Payment Rate (% , current month)	
Constant Pre-Payment Rate (% , quarterly average)	
Principal Payment Rate (% , current month)	
Principal Payment Rate (% , quarterly average)	
Constant Default Rate (% , current month)	
Constant Default Rate (% , quarterly average)	
Fitch Discontinuity Factor (%)	
Moody's Timely Payment Indicator	
Moody's Collateral Score (%)	

**Mortgage collections**

Mortgage collections (scheduled - interest)	
Mortgage collections (scheduled - principal)	
Mortgage collections (unscheduled - interest)	
Mortgage collections (unscheduled - principal)	

**Loan Redemptions & Replenishments Since Previous Reporting Date**

	Number	% of total number	Amount (GBP)	% of total amount
Loan redemptions since previous reporting date				
Loans bought back by seller(s)				
of which are non-performing loans				
of which have breached R&Ws				
Loans sold into the cover pool				

**Product Rate Type and Reversionary Profiles**

	Number	% of total number	Amount (GBP)	% of total amount	Weighted average				
					Current rate	Remaining teaser period (month)	Current margin	Reversionary margin	Initial rate
Fixed at origination, reverting to SVR									
Fixed at origination, reverting to Libor									
Fixed at origination, reverting to tracker									
Fixed for life									
Tracker at origination, reverting to SVR									
Tracker at origination, reverting to Libor									
Tracker for life									
SVR, including discount to SVR									
Libor									
Total	0		£ -		0.00%		0		0.00%

**Stratifications**

Arrears breakdown	Number	% of total number	Amount (GBP)	% of total amount
Current				
0-1 month in arrears				
1-2 months in arrears				
2-3 months in arrears				
3-6 months in arrears				
6-12 months in arrears				
12+ months in arrears				
Total	0		£ -	

Current non-indexed LTV	Number	% of total number	Amount (GBP)	% of total amount
0-50%				
50-55%				
55-60%				
60-65%				
65-70%				
70-75%				
75-80%				
80-85%				
85-90%				
90-95%				
95-100%				
100-105%				
105-110%				
110-125%				
125%+				
Total	0		£ -	

Current indexed LTV	Number	% of total number	Amount (GBP)	% of total amount
0-50%				
50-55%				
55-60%				
60-65%				
65-70%				
70-75%				
75-80%				
80-85%				
85-90%				
90-95%				
95-100%				
100-105%				
105-110%				
110-125%				
125%+				
Total	0		£ -	

Current outstanding balance of loan	Number	% of total number	Amount (GBP)	% of total amount
0-5,000				
5,000-10,000				
10,000-25,000				
25,000-50,000				
50,000-75,000				
75,000-100,000				
100,000-150,000				
150,000-200,000				
200,000-250,000				
250,000-300,000				
300,000-350,000				
350,000-400,000				
400,000-450,000				
450,000-500,000				
500,000-600,000				
600,000-700,000				
700,000-800,000				
800,000-900,000				
900,000-1,000,000				
1,000,000 +				
Total	0		£ -	

<b>Regional distribution</b>	Number	% of total number	Amount (GBP)	% of total amount
East Anglia				
East Midlands				
London				
North				
North West				
Northern Ireland				
Outer Metro				
South East				
South West				
Scotland				
Wales				
West Midlands				
Yorkshire				
Other				
<b>Total</b>	0		£ -	

<b>Repayment type</b>	Number	% of total number	Amount (GBP)	% of total amount
Capital repayment				
Part-and-part				
Interest-only				
Offset				
<b>Total</b>	0		£ -	

<b>Seasoning</b>	Number	% of total number	Amount (GBP)	% of total amount
0-12 months				
12-24 months				
24-36 months				
36-48 months				
48-60 months				
60-72 months				
72-84 months				
84-96 months				
96-108 months				
108-120 months				
120-150 months				
150-180 months				
180+ months				
<b>Total</b>	0		£ -	

<b>Interest payment type</b>	Number	% of total number	Amount (GBP)	% of total amount
Fixed				
SVR				
Tracker				
Other (please specify)				
<b>Total</b>	0		£ -	

<b>Loan purpose type</b>	Number	% of total number	Amount (GBP)	% of total amount
Owner-occupied				
Buy-to-let				
Second home				
<b>Total</b>	0		£ -	



**3 Annex 3D ~~Series issuance notification form~~ Asset and liability profile form**

This annex consists only of one or more forms. Forms are to be found through the following address:

~~Series issuance notification form~~ Asset and liability profile form

The form in RCB 3 Annex 3D is deleted and replaced with the form below. The inserted text is not underlined

[link to asset and liability profile form]



After RCB 3 Annex 3D insert the following new annexes. The text is not underlined.

**3 Annex 4D Indicative terms form**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Indicative terms form*

[Link to new indicative terms form]



# RCB 3 Annex 4D: New Issuance Indicative Terms Form

## **Completing the form**

Please complete all fields in **blue** as much as possible. Incomplete fields may be queried by the RCB team where necessary.

This New Issuance Indicative Terms Form **must be submitted at least three business days before the date of any issuance of regulated covered bonds.**

## **Warning**

Knowingly or recklessly giving us false or misleading information may be a criminal offence (Regulation 38 of the RCB Regulations and section 398 of the Financial Services and Markets Act 2000).

## **Sending the form**

Send this form to us by email to [rcb@fsa.gov.uk](mailto:rcb@fsa.gov.uk). It is our preference for all correspondence to be submitted electronically. If this is not possible your form may also be submitted by post or by hand to Covered Bonds Team

Capital Markets  
The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

## Bond Details

Issuer			
Programme Name			
Series Number			
Currency			
Bond Amount			
ISIN Number			
Issuance Date			
Scheduled Maturity Date			
Final Maturity Date			
Coupon			
Listing Authority			
Rating (Fitch)			
Rating (Moody's)			
Rating (S&P)			
Rate Type			
Fixed Rate (%)			
Floating Margin (%)			
Reference Index			
Coupon Frequency (Months)			
Extendible Maturity Period (Months)			

## Covered Bond Swap Details

Covered Bond Swap in Place? (Yes/No)			
Notional (GBP)			
Currency Swap Rate (FX:GBP1)			
LLP Payer Leg Interest Rate (% Margin over GBP Libor)			

LLP Payer Leg Reference Index			
LLP Payer Leg Payment Frequency (Months)			
LLP Receiver Leg Interest Rate (%)			
LLP Receiver Leg Reference Index			
LLP Receiver Leg Payment Frequency (Months)			

Interest Rate Swap Details

Changes to Interest Rate Swap? (Yes/No)			
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Cover Pool Details

Aggregate Mortgages Balance at Issuance (GBP)			
GIC Account Balance at Issuance (GBP)			

### **3 Annex 5D Issuance form**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Issuance form*

[Link to issuance form]

# RCB 3 Annex 5D: New Issuance Form

FSA 2011/73

## Completing the form

Please complete all fields in blue.

This New Issuance Form **must be submitted on the date of any issuance of regulated covered bonds alongside the final terms of the covered bonds being issued and signed copies of swap documents.**

## Warning

Knowingly or recklessly giving us false or misleading information may be a criminal offence (Regulation 38 of the RCB Regulations and section 398 of the Financial Services and Markets Act 2000).

## Sending the form

Send this form to us by email to [rcb@fsa.gov.uk](mailto:rcb@fsa.gov.uk). It is our preference for all correspondence to be submitted electronically. If this is not possible your form may also be submitted by post or by hand to the address below.

Covered Bonds Team  
Capital Markets  
The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

## Bond Details

Issuer			
Programme Name			
Series Number			
Currency			
Bond Amount			
ISIN Number			
Issuance Date			
Scheduled Maturity Date			
Final Maturity Date			
Coupon			
Listing Authority			
Rating (Fitch)			
Rating (Moody's)			
Rating (S&P)			
Rate Type			
Fixed Rate (%)			
Floating Margin (%)			
Reference Index			
Coupon Frequency (Months)			
Extendible Maturity Period (Months)			

## Covered Bond Swap Details

Covered Bond Swap in Place? (Yes/No)			
Notional (GBP)			
Currency Swap Rate (FX:GBP1)			
LLP Payer Leg Interest Rate (% Margin over GBP Libor)			
LLP Payer Leg Reference Index			
LLP Payer Leg Payment Frequency (Months)			
LLP Receiver Leg Interest Rate (%)			
LLP Receiver Leg Reference Index			
LLP Receiver Leg Payment Frequency (Months)			

## Interest Rate Swap Details

Changes to Interest Rate Swap? (Yes/No)			
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## Cover Pool Details

Aggregate Mortgages Balance at Issuance (GBP)			
GIC Account Balance at Issuance (GBP)			

### **3 Annex 6D Cancellation form**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Cancellation form*

[Link to cancellation form]

# RCB 3 Annex 6D: Bond Cancellation Form

FSA 2011/73

## Completing the form

Please complete all fields in [blue](#).

This Bond Cancellation Form **must be submitted on the date of any cancellation (in full or in part) of regulated covered bonds.**

## Warning

Knowingly or recklessly giving us false or misleading information may be a criminal offence (Regulation 38 of the RCB Regulations and section 398 of the Financial Services and Markets Act 2000).

## Sending the form

Send this form to us by email to [rcb@fsa.gov.uk](mailto:rcb@fsa.gov.uk). It is our preference for all correspondence to be submitted electronically. If this is not possible your form may also be submitted by post or by hand to the address below.

Covered Bonds Team  
Capital Markets  
The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

## Bond Details

Issuer			
Programme Name			
Series Number			
Currency			
Bond Amount Pre-Cancellation			
Bond Amount Post-Cancellation			
ISIN Number			
Issuance Date			
Scheduled Maturity Date			
Final Maturity Date			
Coupon			
Listing Authority			
Rating (Fitch)			
Rating (Moody's)			
Rating (S&P)			
Rate Type			
Fixed Rate (%)			
Floating Margin (%)			
Reference Index			
Coupon Frequency (Months)			
Extendible Maturity Period (Months)			

## Covered Bond Swap Details

Covered Bond Swap in Place? (Yes/No)			
Notional Pre-Cancellation (GBP)			
Notional Post-Cancellation (GBP)			
Currency Swap Rate (FX:GBP1)			
LLP Payer Leg Interest Rate (% Margin over GBP Libor)			
LLP Payer Leg Reference Index			
LLP Payer Leg Payment Frequency (Months)			
LLP Receiver Leg Interest Rate (%)			
LLP Receiver Leg Reference Index			
LLP Receiver Leg Payment Frequency (Months)			

## Interest Rate Swap Details

Changes to Interest Rate Swap? (Yes/No)			
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## Cover Pool Details

Aggregate Mortgages Balance at Issuance (GBP)			
GIC Account Balance at Issuance (GBP)			

### **3 Annex 7AD Loan level disclosure form**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Loan level disclosure form*

[Link to loan level disclosure form]

## **RCB 3 Annex 7AD: Loan-level Data Form**

### **Completing the form**

Please complete all fields in **blue** on a '*comply or explain basis*' with details of all underlying mortgages assigned to the transaction.

Where fields are not completed, issuers must publish an explanation in the supplementary notes.

Issuers should adhere with the guidance provided in RCB 3 Annex 7DG in completing this form.

Where fields are tagged as 'dynamic', related data should be as of the most recent pool cut-off date.

Where fields are tagged as 'static', related data is expected to be recorded as at origination. If updated information is available on the static fields, these fields should be updated.

Data on redeemed and repurchased mortgages should be included for one reporting period following redemption.

Data for fields AR217-AR234 should be provided within 3 months of the loan origination date.

Data should be presented on an aggregated basis.

This Loan-Level Data Form **must be submitted each quarter and published by the issuer on a secure, password-protected website.**

### **Warning**

Knowingly or recklessly giving us false or misleading information may be a criminal offence (Regulation 38 of the RCB Regulations and section 398 of the Financial Services and Markets Act 2000).

### **Sending the form**

Send this form to us by email to [rcb@fsa.gov.uk](mailto:rcb@fsa.gov.uk). It is our preference for all correspondence to be submitted electronically. If this is not possible your form may also be submitted by post or by hand to the address below.

Covered Bonds Team

Capital Markets

The Financial Services Authority

25 The North Colonnade

Canary Wharf

London

E14 5HS



















































### **3 Annex 7BG Guidance on loan level disclosure form**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Guidance on loan level disclosure form*

[Link to loan level disclosure guidance form]

**RCB 3 Annex 7BG: Guidance on completing RCB 3 Annex 7AD**

**Completing RCB 3 Annex 7AD**  
 RCB 3 Annex 7AD should be completed on a 'copy or explain basis' with details of all underlying mortgages assigned to the transaction.  
 Where fields are not completed, issuers must publish an explanation in the supplementary notes. Issuers should adhere with the guidance provided in the table below.  
 Where fields are tagged as 'dynamic', related data should be as of the most recent pool cut-off date. Where fields are tagged as 'static', related data is expected to be recorded as at origination. If updated information is available on the static fields, these fields should be updated.  
 Data on redeemed and repurchased mortgages should be included for one reporting period following redemption.  
 Data for fields AR217-AR234 should be provided within 3 months of the loan origination date.  
 Data should be presented on an aggregated basis.

Field Number	Priority	TAG	Field Name	Category	Data Type	Field Definition & Criteria	Additional Guidance	Data Type / Format	Maximum Length	Sample	Jurisdictions
AR1	Mandatory	dynamic	Pool Cut-off Date	Core	Date	Pool or Portfolio cut-off date. All dates take DD-MM-YYYY format.		DD-MM-YYYY	10	01/01/2010	All
AR2	Mandatory	static	Pool Identifier	Core	Text/Numeric	Pool or Portfolio Identifier / name of transaction.	An identifier for each portfolio of loans sold into the transaction	Text/Numeric	50	POOLID	All
AR3	Mandatory	static	Loan Identifier	Core	Text/Numeric	Unique Identifier (ID) for each loan. The loan ID should not change through the life of the transaction. If the original loan ID cannot be maintained in this field enter the original ID followed by the new ID, comma delimited.	Loan identifiers should be consistent across portfolios of the same originator in the event loans are moved between portfolios	Text/Numeric	50	LOANNAMEID	All
AR4	Mandatory	static	Regulated Loan	Core	Y / N / ND	Indication if the loan is regulated (Y) or not. This is to indicate a loan regulated by the consumer credit act in the UK or equivalent in continental Europe.	Only loans regulated by the Consumer Credit Act in the UK should be designated as "Y"	Y / N / ND	2	Y	UK Only
AR5	Mandatory	static	Originator	Core	Text	Lender that advanced the original loan.		Text	50	ORIGINATORNAMEID	All
AR6	Mandatory	static	Servicer Identifier	Core	Text/Numeric	Unique identifier per servicer to flag which entity is servicing the loan.	If multiple servicers are being used, clarification should be provided in the reporting glossary	Text/Numeric	50	SERVICERID	All
AR7	Mandatory	static	Borrower Identifier	Core	Text/Numeric	Unique Identifier (ID) per borrower (not showing the real name) - to enable borrowers with multiple loans in the pool to be identified (e.g. further advances / second liens are shown as separate entries). Should not change over the life of the transaction. <b>More than one borrower per loan is not permitted.</b>		Text/Numeric	50	BORROWERID	All
AR8	Mandatory	static	Property Identifier	Core	Text/Numeric	Unique identifier per property to enable properties with multiple loans in the pool to be identified (e.g. further advances / second liens are shown as separate entries).		Text/Numeric	50	PROPERTYID	All
AR9			Blank	Core							
AR10			Blank	Core							
AR11			Blank	Core							
AR12			Blank	Core							
AR13			Blank	Core							
AR14			Blank	Core							
AR15			Blank	Borrower Information							
AR16	Mandatory	static	Foreign National	Borrower Information	Y / N / ND	Indicating whether the borrower is a national of the country in which the property and mortgage loan resides.		Y / N / ND	2	Y	All
AR17	Mandatory	static	Borrower Credit Quality	Borrower Information	Text	Originator's own definition of borrower credit quality Free text using originator own terms N/A - No Data	Consistent terminology (e.g. prime, sub-prime, etc.) should be used by each issuer with definitions / explanations provided in the reporting glossary	Text	25	Sub-Prime	All
AR18	Mandatory	static	Borrower Year of Birth	Borrower Information	Date	Borrower year of birth. YYYY format	Refers to the primary borrower	YYYY	4	2010	All
AR19	Mandatory	static	Number of Debtors	Borrower Information	Numeric	Number of borrowers to the loan	This template provides space for information on up to 2 borrowers to a loan. To the extent that there are more borrowers than this, further information should be provided on AR20, AR26-27, AR169-AR210 and AR221-AR234 and AR236	99	2	2	All
AR20	Mandatory	static	Second Applicant Year of Birth	Borrower Information	Date	Second applicant year of birth. YYYY format.	Consistent with field AR18, only the year of birth of the secondary borrower should be completed	YYYY	4	2010	All
AR21	Mandatory	static	Borrower's Employment Status	Borrower Information	List	Employment status of the primary applicant: Employed or full loan is guaranteed (1) Employed with partial support (company subsidy) (2) Protected life-time employment (Civil/government servant) (3) Unemployed (4) Self-employed (5) No employment, borrower is legal entity (6) Student (7) Pensioner (8) Other (9) No Data (NF)	In relation to the primary borrower	List	2	1	All
AR22	Mandatory	static	First-time Buyer	Borrower Information	Y / N / ND	First-time buyer flag	Relates to primary borrower. To the extent this designation is made on a loan, not borrower basis, please note this in the glossary	Y / N / ND	2	Y	All
AR23	Mandatory	static	Right to Buy	Borrower Information	Y / N / ND	Right to Buy (RTB) flag		Y / N / ND	2	Y	UK Only
AR24	Mandatory	static	Right to Buy Price	Borrower Information	Numeric	Purchase price of RTB property	If the loan is classified on the lender's system as a right-to-buy	£111.99	14	2000000.00	UK Only
AR25	Mandatory	static	Class of Borrower	Borrower Information	Text	Class of borrower based on credit scoring or other classification	List of class definitions used to be explained in the reporting glossary	Text	50	SUBPRIME	All
AR26	Mandatory	static	Primary Income	Borrower Information	Numeric	Primary borrower underwritten gross annual income (not rent)	Where there is more than one borrower but only joint income is recorded, the joint income should be entered as the 'Primary Income' (AR26) and 'Secondary Income' (AR28) should be zero.	£(11.99)	14	2000000.00	All
AR27	Mandatory	static	Income Verification for Primary Income	Borrower Information	List	Income verification for primary income: Self-certified no checks (1) Self-certified with affordability confirmation (2) Verified (3) Non-Verified Income (4) Other (5) No Data (NF)		List	2	1	All
AR28	Mandatory	static	Secondary Income	Borrower Information	Numeric	Secondary borrower underwritten gross annual income (not rent - if single borrower then 0). When there are more than two borrowers indicate total annual combined income	Where there is more than one borrower but only joint income is recorded, the joint income should be entered as the 'Primary Income' (AR26) and 'Secondary Income' (AR28) should be zero.	£(11.99)	14	2000000.00	All
AR29	Mandatory	static	Income Verification for Secondary Income	Borrower Information	List	Income verification for secondary income: Self-certified no checks (1) Self-certified with affordability confirmation (2) Verified (3) Non-Verified Income (4) Other (5) No Data (NF)		List	2	1	All
AR30			Blank	Borrower Information							
AR31	Mandatory	static	Number of County Court Judgements or equivalent - Satisfied	Borrower Information	Numeric	Number of County Court Judgements (CCJs) or equivalent in particular jurisdiction (typically a default or court proceedings flag in continental Europe) - recorded against the primary borrower that were satisfied (the balance cleared) at time of underwriting	Relates to primary borrower only. Either field AR31 or AR32 can be provided, if both are not available	Numeric	3	10	UK only
AR32	Mandatory	static	Value of County Court Judgements or equivalent - Satisfied	Borrower Information	Numeric	Total value of CCJs or equivalent recorded against the primary borrower that were satisfied at time of underwriting	Relates to primary borrower only. Either field AR31 or AR32 can be provided, if both are not available	£(11.99)	14	2000000.00	UK only
AR33	Mandatory	static	Number of County Court Judgements or equivalent - Unsatisfied	Borrower Information	Numeric	Number of CCJs or equivalent recorded against the primary borrower that were unsatisfied at time of underwriting	Relates to primary borrower only. Either field AR33 or AR34 can be provided, if both are not available	Numeric	3	10	UK only
AR34	Mandatory	static	Value of County Court Judgements or equivalent - Unsatisfied	Borrower Information	Numeric	Total value of CCJs or equivalent recorded against the primary borrower that were unsatisfied at time of underwriting	Relates to primary borrower only. Either field AR33 or AR34 can be provided, if both are not available	£(11.99)	14	2000000.00	UK only
AR35	Mandatory	static	Last County Court Judgements or equivalent - Date	Borrower Information	Date / ND	Date last CCJ or equivalent was registered against the primary borrower regardless of satisfied or not	Relates to primary borrower only	DD-MM-YYYY / ND	10	01-01-10	UK only
AR36	Mandatory	dynamic	Bankruptcy or Individual Voluntary Arrangement Flag	Borrower Information	Y / N / ND	Flag to identify if borrower has been bankrupt or had an Individual Voluntary Arrangement (IVA) or equivalent.	Relates to primary borrower only	Y / N / ND	2	Y	All except Italy and Spain



AR37	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Credit Type	Borrower Information	List	Credit type according to the coding of Bureau Krediet Registratie (BKR) (Netherlands only) AK - Loans which have to pay back in a predefined period RK - Loans with a maximum credit amount SR - Loan with the aim to re-arrange previous credits WK - Credit maximum with respect to goods ordered with mail-order companies HY - mortgage loans TC - telecom credits RD - Other credit ND - No Data	Relates to primary borrower only	List	2	AK	Holland only	
AR38	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Registration Date	Borrower Information	Date	Registration date of the BKR	Relates to primary borrower only	DD-MM-YYYY	10	01-01-10	Holland only	
AR39	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Arrears Code	Borrower Information	List	Arrears code according to the coding of Bureau Krediet Registratie (BKR) (Netherlands only) A - arrears A1 - arrears repaid A1 - settlement reached A2 - remaining outstanding is surmised A3 - an amount in Euro 250 is depreciated A4 - person disappeared ND - No Data	Relates to primary borrower only	List	2	AH	Holland only	
AR40	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Credit Amount	Borrower Information	Numeric	Amount of the credit (Netherlands only)	Relates to primary borrower only	Numeric	14	2000000.00	Holland only	
AR41	Mandatory	static	Bureau Krediet Registratie 1 to 10 - is Coding Cured?	Borrower Information	Y / N / ND	Is the coding with BKR cured? (Netherlands only)	Relates to primary borrower only	Y / N / ND	2	Y	Holland only	
AR42	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Number of Months Since Cured	Borrower Information	Numeric	If the coding is cured, number of months since it is cured (Netherlands only)	Relates to primary borrower only	Numeric	2	12	Holland only	
AR43	Mandatory	dynamic	Bureau Score Provider	Borrower Information	List	Who has provided the score. For continental Europe give name of provider: Callcredit (1) Experian (2) Equifax (3) Schufa (4) Bureau Krediet Registratie (BKR) (5) Internal Score (6) Other (7) No Data (ND)	Relates to primary borrower only	List	2	1	All	
AR44	Mandatory	dynamic	Bureau Score Type	Borrower Information	List	Type of scorecard provided: Generation 8 BRF AAM - DCM (Experian) (1) Generation 8 BRF CBS - DCM (Experian) (2) Generation 7 Mortgage PD Score - DCM (Experian) (3) FSC108 - Risk Navigator (Equifax) (4) RNI5F02 - Risk Navigator (Equifax) (5) RNI5F02 - Risk Navigator (Equifax) (6) Internal Scorecard (7) Other (8) No Data (ND)	Relates to primary borrower only	List	2	1	All	
AR45	Mandatory	dynamic	Bureau Score Date	Borrower Information	Date	The date of the bureau score for this borrower	Relates to primary borrower only. Should be the date on which the most recent score was provided	DD-MM-YYYY	10	01-01-10	All	
AR46	Mandatory	dynamic	Bureau Score Value	Borrower Information	Text/Numeric	Borrower's score: >0 Regular Score 999 CAS for mortgage not available 998 Notice of Correction or Notice of Dispute 0 Bankruptcy Restriction Order or Bankruptcy Restriction Undertaking ND - No Data	Relates to primary borrower only. Should be the most recent score provided	Text/Numeric	3	999	All	
AR47	Mandatory	static	Prior Repossessions	Borrower Information	Y / N / ND	Indicator of prior repossessions resulting from a borrower defaulting on a previous mortgage loan	Relates to primary borrower only	Y / N / ND	2	Y	All	
AR48	Mandatory	static	Previous Mortgage Arrears 0-6 Months	Borrower Information	Numeric / ND	Number of payments missed on previous mortgage in the prior 0-6 months (information as at underwriting). If no data available specify No Data (ND)	Relates to primary borrower only	Numeric	2	7	All	
AR49	Mandatory	static	Previous Mortgage Arrears 6+ Months	Borrower Information	Numeric / ND	Number of payments missed on previous mortgage in the prior months, greater or equal than 6 months (information as at underwriting). If no data available specify No Data (ND)	Relates to primary borrower only	Numeric	2	7	All	
AR50			Blank	Borrower Information								
AR51			Blank	Borrower Information								
AR52			Blank	Borrower Information								
AR53			Blank	Borrower Information								
AR54			Blank	Borrower Information								
AR55	Mandatory	static	Loan Origination Date	Loan Characteristics	Date	Date of original loan advance	Quarter of origination should be used	QQ-YYYY	7	Q1-2010	All	
AR56	Mandatory	dynamic	Date of Loan Maturity	Loan Characteristics	Date	The date of loan maturity		QQ-YYYY	10	01-01-10	All	
AR57	Mandatory	static	Account Status Date	Loan Characteristics	Date	Date which account came into securitized portfolio (important for replenishable pools) Origination channel: arranging bank or division for the loan	The date on which the loan was sold into the portfolio	DD-MM-YYYY	10	01-01-10	All	
AR58	Mandatory	static	Origination Channel / Arranging Bank or Division	Loan Characteristics	Text	Office / branch network (1) Central / Direct (2) Broker (3) Internet (4) Packager (5) No Data (ND)		Text	2	1	All	
AR59	Mandatory	static	Purpose	Loan Characteristics	List	Loan purpose. Permission answers: Purchase (1) Re-mortgage (2) Renovation (3) Equity release (4) Construction (5) Debt consolidation (6) Other (7) Re-mortgage with Equity Release (8) Re-mortgage on Different Terms (9) Combination Mortgage (10) Investment Mortgage (11) Right to Buy (12) Government Sponsored Loan (13) SCR1 (14) Besson (15) Perisad (16) DOM (Defiscalisation M6ropole) (17) Other (18) No Data (ND)	If the loan purpose could be classified in more than one category (e.g. an investment mortgage could be a re-mortgage or a debt consolidation) the issuer may choose the field considered most relevant to the loan or add to the list and provide clarification in the reporting glossary	List	2	1	All	
AR60	Mandatory	static	Shared Ownership	Loan Characteristics	List	Shared ownership flag: Not Shared Ownership (1) Central Government Scheme (2) Local Government Scheme (3) Housing Associations (4) Building Developers (5) Other (6) No Data (ND)		List	2	1	All except Spain	
AR61	Mandatory	static	Loan Term	Loan Characteristics	Numeric	Original contractual term (number of months)		Numeric	3	1	All	
AR62	Mandatory	static	Principal Grace Period	Loan Characteristics	Numeric	Period, in months, from the origination date of the loan during which only interest and no principal is payable. After this period the loan switches to both interest and principal payments. If no data available specify No Data (ND)			2	12	12	All
AR63	Mandatory	static	Amount Guaranteed	Loan Characteristics	Numeric	If no data available specify No Data (ND)		B(1)99	14	2000000.00	All	
AR64	Mandatory	static	Subsidy	Loan Characteristics	Y/N	If the loan repayment is subsidised by an external party? If no data available specify No Data (ND)		Y/N	1	Y	All	

Code	Mandatory	Dynamic	Field Name	Loan Characteristics	Data Type	Description	Reporting Requirements	Frequency	Start Date	End Date	Value	Notes
AR65	Mandatory	static	Loan Currency Denomination	Loan Characteristics	Text/Numeric	Loan currency denomination: EUR (1) GBP (2) USD (3) ANG (4) BGN (5) CYP (6) CZK (7) DKK (8) EEK (9) HUF (10) LTL (11) LVL (12) MTL (13) PLN (14) RON (15) SEK (16) No Data (ND)	List	2		1	All	
AR66	Mandatory	static	Original Balance	Loan Characteristics	Numeric	Original loan balance (inclusive of fees)	To the extent original balance does not include fees this would be considered acceptable, though the reporting glossary should make this clear.	9(11).99	14		20000000.00	All
AR67	Mandatory	dynamic	Current Balance	Loan Characteristics	Numeric	Amount of loan outstanding as of pool cut off date. This should include any amounts that are secured by the mortgage and will be classified as principal in the transaction. For example if fees have been added to the loan balance and are part of the principal in the transaction these should be added. Excluding any interest arrears or penalty amounts.	To the extent original balance does not include fees this would be considered acceptable, though the reporting glossary should make this clear.	9(11).99	14		20000000.00	All
AR68	Mandatory	static	Fractioned / Subrogated Loans	Loan Characteristics	Text / ND	Mortgage loans first taken out by the real estate developer and then "split" into new individual owners. If no data available specify No Data (ND)	Text					All
AR69	Mandatory	static	Repayment Method	Loan Characteristics	List	Type of principal repayment: Interest Only (1) Repayment (2) Endowment (3) Pension (4) ISA/PEP (5) Index-Linked (6) Part & Part (7) Savings Mortgage (8) Other (9) No Data (ND)	If the repayment method could be classified in more than one category the issuer should choose the field considered most relevant to the loan or add to the list and provide clarification of the additional classifications in the reporting glossary	List	2	1	All	
AR70	Mandatory	static	Payment Frequency	Loan Characteristics	List	Frequency of payments due, i.e. number of months between payments. Monthly (1) Quarterly (2) Semi annually (3) Annual (4) Bullet (5) Other (6) No Data (ND)	List	2	1	All		
AR71	Mandatory	dynamic	Payment Due	Loan Characteristics	Numeric	Periodic contractual payment due (the payment due if there are no other payment arrangements in force)	9(8).99	11			29038.99	All
AR72	Mandatory	static	Payment Type	Loan Characteristics	List	Principal payment type: Annuity (1) Linear (2) Increasing instalments (3) Fixed instalments (changing maturity) with structural protection (4) Fixed instalments (changing maturity) without structural protection (5) Bullet (6) Bullet + Savings deposit (7) Bullet + Life insurance (8) Bullet + Investment portfolio (9) Bi-annual (10) Tri-annual (11) Offset mortgage (12) Other (13) No Data (ND)	List	2	1	All		
AR73			Blank	Loan Characteristics								
AR74	Mandatory	static	Type of Guarantee Provider	Loan Characteristics	List	Indicate guarantee provider, if applicable: No Guarantor (1) Individual - Family Relation (2) Individual - Other (3) Government (4) Bank (5) Insurance Product (6) Nationale Hypotheek Garantie (NHG) Guarantee Scheme (Netherlands) (7) Fonds de Garantie de l'Accession Sociale (FGAS) (8) Caution (France) (9) Other (10) No Data (ND)	List	2	1	All		
AR75	Mandatory	static	Guarantee Provider	Loan Characteristics	Text	Name of guarantee provider	Text	100			NAMEPROVIDER	All
AR76	Mandatory	static	Income Guarantor	Loan Characteristics	Numeric	Income of guarantor of borrower (e.g. income of parents if co-signed)	9(11).99	14			20000000.00	All
AR77	Mandatory	dynamic	Subsidy Received	Loan Characteristics	Numeric	Amount of subsidy received from government by borrower	Any subsidy provided by a third party should be included in this field, with details of the party providing the subsidy contained in the reporting glossary	9(8).99	11		29038.99	All
AR78	Mandatory	static	Mortgage Indemnity Guarantee Provider	Loan Characteristics	Text	Name of Mortgage Indemnity Guarantee (MIG) provider if applicable	Mandatory where applicable (i.e. if the underlying mortgage benefits from a MIG and that benefit is sold into the transaction)	Text	100		NAMEMIG	All except Italy and Spain
AR79	Mandatory	static	Mortgage Indemnity Guarantee Attachment Point	Loan Characteristics	Numeric	MIG attachment point - LTV percentage above which losses are insured	Mandatory where applicable (i.e. if the underlying mortgage benefits from a MIG and that benefit is sold into the transaction)	Numeric	3		20	All except Italy and Spain
AR80	Mandatory	dynamic	Prior Balances	Loan Characteristics	Numeric	Total balances ranking prior to this loan (including those held with other lenders)	9(11).99	14			20000000.00	All
AR81	Mandatory	dynamic	Other Prior Balances	Loan Characteristics	Numeric	Total balance ranking prior to this loan held with other lenders (sub-set of Prior Balances)	9(11).99	14			20000000.00	All
AR82	Mandatory	dynamic	Par Passu Loans	Loan Characteristics	Numeric	Total value of loans ranking par passu with loan (not included in this pool)	9(11).99	14			20000000.00	All
AR83	Mandatory	dynamic	Subordinated Claims	Loan Characteristics	Numeric	Total value of loans with claims subordinated to this loan (not in this pool)	9(11).99	14			20000000.00	All
AR84	Mandatory	static	Lien	Loan Characteristics	List	Seniority on liquidation of property: 1st Lien (1) 2nd Lien (2) 3rd Lien (3) Other (4) No Data (ND)	List	2	1	All		
AR85	Mandatory	dynamic	Retained Amount	Loan Characteristics	Numeric	Amount the issuer will be obliged to fund to the borrower at a later date, for example construction deposit	9(8).99	11			29038.99	All except Italy
AR86	Mandatory	dynamic	Retained Amount Date	Loan Characteristics	Date	Date when the retained amount is to be drawn by, if available until the maturity date, enter the maturity date here.	DD-MM-YYYY	10			01-01-10	All except Italy
AR87	Mandatory	dynamic	Maximum Balance	Loan Characteristics	Numeric	For loans with flexible re-draw facilities - the maximum loan amount that could potentially be outstanding	Use AR90	9(11).99	14		20000000.00	All except Italy
AR88	Mandatory	dynamic	Further Loan Advance	Loan Characteristics	Numeric	Total value of further advances made on loan. If several further advances have been made list all advances (if available), comma delimited.	9(11).99	14			20000000.00	All except Italy
AR89	Mandatory	dynamic	Further Loan Advance Date	Loan Characteristics	Date	Date last further advance was made. If several further advances have been made list all advance dates (if available), comma delimited.	DD-MM-YYYY / ND	10			01-01-10	All except Italy
AR90	Mandatory	static	Flexible Loan Amount	Loan Characteristics	Numeric	Current obligated amount (scheduled/unscheduled repayments) which can be drawn under the flexible loan by the borrower. Please provide details on the definition of the flexible loan amount. If loan is not flexible enter 0.	Indicate the total amount which the borrower is entitled to draw on the loan without any additional review, underwriting or credit checks (i.e., the loan limit). This may be a dynamic field	9(8).99	11		29038.99	All except Italy
AR91	Mandatory	static	Further Advances	Loan Characteristics	Y / N / ND	Possibility to have further advances i.e. advances above the original loan balance	This should reference the possibility to take further advances on the loan without any additional review, underwriting or credit checks	Y / N / ND	2		Y	All except Italy
AR92	Mandatory	static	Length of Payment Holiday	Loan Characteristics	Text/Numeric	The length of any payment holidays allowed, in months. If payment holidays not allowed enter 0	This should be completed where the loan terms permit a payment holiday (excluding payment holidays that are funded by overpayments on flexible loans and non-payment arrears concessions) and should represent the maximum number of months such payment holidays are permitted.	Text/Numeric	2	2	All	
AR93	Mandatory	dynamic	Subsidy Period	Loan Characteristics	Numeric	Number of months until end of subsidy period	Numeric	2		12	All	
AR94	Mandatory	static	Mortgage Inscription	Loan Characteristics	Numeric	Actual amount of mortgage inscription for the loan	9(11).99	14			20000000.00	All
AR95	Mandatory	static	Mortgage Mandate	Loan Characteristics	Numeric	Amount of mortgage mandate that can be converted into a proper mortgage at a later stage	9(11).99	14			20000000.00	All except UK
AR96	Mandatory	dynamic	Deed of Postponement?	Loan Characteristics	Y / N / ND	If the loan is Right-to-Buy, whether a Deed of Postponement has been issued	A 'Y' would indicate that appropriate steps have been taken to ensure the lender's priority over the total loan amount	Y / N / ND	2		Y	UK only
AR97	Mandatory	dynamic	Pre-payment Amount	Loan Characteristics	Numeric	Last pre-payment amount	Pre-payments definitions should be provided in the reporting glossary	9(8).99	11		29038.99	All
AR98	Mandatory	dynamic	Pre-payment Date	Loan Characteristics	Date	Last pre-payment date	DD-MM-YYYY / ND	10			01-01-10	All
AR99	Mandatory	dynamic	Pre-payment Penalties	Loan Characteristics	Numeric	Cumulative amount of pre-payment penalties paid to date	9(11).99	14			20000000.00	All except Italy

AR100	Mandatory	dynamic	Cumulative Pre-payments	Loan Characteristics	Numeric	Cumulative amount of pre-payments to date	Pre-payments definitions should be provided in the reporting glossary	8(11)99	14	2000000.00	All
AR101	Mandatory	dynamic	Amount of pre-payments allowed per year	Loan Characteristics	Numeric	Percentage amount of pre-payments allowed under the product per year. This is for mortgages that allow a certain threshold of pre-payments (i.e. 10%) before charges are incurred		9(8)99	13	29038.99	All except Franco and Italy
AR102			Blank	Loan Characteristics							
AR103			Blank	Loan Characteristics							
AR104			Blank	Loan Characteristics							
AR105			Blank	Loan Characteristics							
AR106			Blank	Loan Characteristics							
AR107	Mandatory	static	Interest Rate Type	Interest Rate	List	Interest rate type: Floating rate loan (for life) (1) Floating rate loan linked to Libor, Euribor, BoE reverting to the Bank's standard variable rate (SVR), ECB reverting to Bank's SVR (2) Fixed rate loan (for life) (3) Fixed with future periodic resets (4) Fixed rate loan with compulsory future switch to floating (5) Capped (6) Discount (7) Other (8) No Data (ND)	Issuers should provide the applicable current rate	List	2	1	All
AR108	Mandatory	dynamic	Current Interest Rate Index	Interest Rate	List	Current interest rate index (the reference rate on which the mortgage interest rate is set): 1 month LIBOR (1) 1 month EURIBOR (2) 3 month LIBOR (3) 3 month EURIBOR (4) 6 month LIBOR (5) 6 month EURIBOR (6) 12 month LIBOR (7) 12 month EURIBOR (8) BoE Base Rate (9) ECB Base Rate (10) Standard Variable Rate (11) Other (12) No Data (ND)		List	2	6	All
AR109	Mandatory	dynamic	Current Interest Rate	Interest Rate	Numeric	Current interest rate (%)		9(4)9(8)	13	1.2345	All
AR110	Mandatory	dynamic	Current Interest Rate Margin	Interest Rate	Numeric	Current interest rate margin (for fixed rate loans this is the same as the current interest rate, for floating rate loans this is the margin over (or under if input as a positive) the index rate)		9(4)9(8)	13	0.03125	All
AR111	Mandatory	dynamic	Interest Rate Reset Interval	Interest Rate	Numeric	The interval in months at which the interest rate is adjusted (for floating loans)		Numeric	2	24	All
AR112	Mandatory	static	Interest Cap Rate	Interest Rate	Numeric	Interest rate cap (%)	If the interest rate cap is linked to a floating rate (e.g. BCE + 4%) then the current cap (i.e. taking into account the index) should be provided	9(4)9(8)	13	0.03125	All
AR113	Mandatory	dynamic	Interest Revision Date 1	Interest Rate	Date / ND	Date interest rate next changes (e.g. discount margin changes, fixed period ends, loan re-fixed etc. this is not the next LIBOR reset date)		DD-MM-YYYY / ND	10	01-01-10	All
AR114	Mandatory	dynamic	Revision Margin 2	Interest Rate	Numeric	The margin for the loan at the 2nd revision date		9(4)9(8)	13	0.03125	All
AR115	Mandatory	dynamic	Interest Revision Date 2	Interest Rate	Date / ND	Date of 2nd interest rate change		DD-MM-YYYY / ND	10	01-01-10	All
AR116	Mandatory	dynamic	Revision Margin 3	Interest Rate	Numeric	The margin for the loan at the 3rd revision date		9(4)9(8)	13	0.03125	All
AR117	Mandatory	dynamic	Interest Revision Date 3	Interest Rate	Date / ND	Date of 3rd interest rate change		DD-MM-YYYY / ND	10	01-01-10	All
AR118	Mandatory	dynamic	Revised Interest Rate Index	Interest Rate	List	Next interest rate index. Using codes as per field AR108		List	2	1	All
AR119	Mandatory	dynamic	Revised Interest Rate Margin	Interest Rate	Numeric	Next interest rate margin		9(4)9(8)	13	0.03125	All
AR120	Mandatory	static	Final Margin	Interest Rate	Numeric	The margin for the loan at the final step date		Numeric	10	01-01-10	All
AR121	Mandatory	static	Final Step Date	Interest Rate	Date	The date of the final margin adjustment		DD-MM-YYYY	10	01-01-10	All
AR122	Mandatory	static	Restructuring Arrangement	Interest Rate	Y / N / ND	Has the loan been restructured?	A restructuring would include any change to the terms of the loan since it was added to the portfolio. This would include, for example, a maturity extension, a change to the required minimum monthly payments which is not the result of interest rate changes, a change to the repayment basis of the loan, arrears capitalisations etc. Details of the types of restructuring should be provided in the reporting glossary	Y / N / ND	2	Y	All
AR123			Blank	Interest Rate							
AR124			Blank	Interest Rate							
AR125			Blank	Interest Rate							
AR126			Blank	Interest Rate							
AR127			Blank	Interest Rate							
AR128	Mandatory	static	Geographic Region	Property & Collateral	List	The region description of where the property is located. See 'List' page for relevant choices	This should be the Nomenclature of Territorial Units for Statistics (NUTS) 1 classification	List	4	DK1	All
AR129			Blank	Property & Collateral							
AR130	Mandatory	static	Occupancy Type	Property & Collateral	List	Type of property occupancy: Owner-occupied (1) Partially owner-occupied (A property which is partly rented) (2) Non-owner-occupied/buy-to-let (3) Holiday/second home (4) No Data (ND)		List	2	1	All
AR131	Mandatory	static	Property Type	Property & Collateral	List	Property type: Residential (House, detached or semi-detached) (1) Residential (Flat/Apartment) (2) Residential (Bangalow) (3) Residential (Terraced House) (4) Multifamily house (properties with more than four units securing one loan) with recourse to the borrower (5) Multifamily house without recourse to the borrower (6) Partially commercial use (property is used as a residence as well as for commercial use where less than 50% of its value derived from commercial use, e.g. doctor's surgery and house) (7) Commercial/business use with recourse to the borrower (8) Commercial/business use without recourse to the borrower (9) Land Only (10) Other (11) No Data (ND)		List	2	1	All
AR132	Mandatory	static	New Property	Property & Collateral	List	New property specifications: New build (1) Existing building (2) Other (3) No Data (ND)		List	2	1	All
AR133			Blank	Property & Collateral							
AR134	Mandatory	static	Property Rating	Property & Collateral	Text / ND	Internal rating of property or credit scoring of property		Numeric	6	999	All
AR135	Mandatory	static	Original Loan to Value	Property & Collateral	Numeric	Originator's original undrawn Loan To Value ratio (LTV). For 2nd lien loans this should be the combined or total LTV		Numeric	3	20	All
AR136	Mandatory	static	Valuation Amount	Property & Collateral	Numeric	Property value as of date of latest loan advance prior to a securitisation. Valuation amounts should be in the same currency as the loan. (field AR65).	AR137-AR138 should relate to the valuation amount provided at AR136. Such valuation can be either as at origination or as at the most recent advance date. Details of what is being computed should be detailed in the glossary	9(11)99	14	2000000.00	All
AR137	Mandatory	static	Original Valuation Type	Property & Collateral	List	Valuation type at origination: Full, internal and external inspection (1) Full, only external inspection (2) Drive-by (3) AVM (flag as AVM only if this type of valuation has been used for origination purposes) (4) Indexed (5) Desktop (6) Managing Agent / Estate Agent (7) Tax Authority (8) Other (9) No Data (ND)		List	2	1	All
AR138	Mandatory	static	Valuation Date	Property & Collateral	Date	Date of latest property valuation at time of latest loan advance prior to a securitisation.		DD-MM-YYYY	10	01-01-10	All
AR139	Mandatory	static	Confidence Interval for Original Automated Valuation Model Valuation Provider of Original	Property & Collateral	Numeric	Confidence interval for original valuation if valuation method is Automated Valuation Model (AVM)		Numeric			All
AR140	Mandatory	static	Automated Valuation Model Valuation	Property & Collateral	Text / ND	Name of Automated Valuation Model (AVM) provider if original valuation method is AVM		Text	100	NAMEVALUER	All
AR141	Mandatory	dynamic	Current Loan to Value	Property & Collateral	Numeric	Originator's current Loan to Value ratio (LTV). For 2nd lien loans this should be the combined or total LTV		9(3)99	6	70.00	All
AR142			Blank	Property & Collateral							
AR143	Mandatory	dynamic	Current Valuation Amount	Property & Collateral	Numeric	Most recent valuation amount (if e.g. at repossession there were multiple valuations, this should reflect the lowest). If no update, specify as No Data (ND). Valuation amounts should be in the same currency as the loan (field AR66)		9(11)99	14	2000000.00	All

AR144	Mandatory	dynamic	Current Valuation Type	Property & Collateral	List	Valuation type at origination: Full, internal and external inspection (1) Full, only external inspection (2) Drive-by (3) AVM (flag as AVM only if this type of valuation has been used for origination purposes) (4) Indexed (5) Desktop (6) Managing Agent / Estate Agent (7) Tax Authority (8) Other (9) No Data (ND)	The latest valuation type applicable to the valuation provided in field AR143 should be provided	List	2	3	All
AR145	Mandatory	dynamic	Current Valuation Date	Property & Collateral	Date	The date of most recent valuation		DD-MM-YYYY	10	01-01-10	All
AR146	Mandatory	dynamic	Confidence Interval for Current Automated Valuation Model Valuation	Property & Collateral	Numeric	List the Automated Valuation Model (AVM) supplier's confidence value for the most recent valuation		Numeric			All
AR147	Mandatory	dynamic	Provider of Current Automated Valuation Model Valuation	Property & Collateral	Text	Name of Automated Valuation Model (AVM) provider if current valuation method is AVM		Text	50	VALUATIONNAME	All
AR148	Mandatory	dynamic	Property Value at Time of Latest Loan Advance	Property & Collateral	Numeric	Property value at the time of the last advance. Valuation amounts should be in the same currency as the loan fees (AVM)		9(11).99	14	20000000.00	All except Italy
AR149	Mandatory	static	Indexed Foreclosure Value	Property & Collateral	Numeric / ND	Indexed foreclosure value of the property, including indexation. If no data available state No Data (ND)	Name of index used should be detailed in the glossary	9(11).99	14	20000000.00	All
AR150	Mandatory	static	Ipoteca	Property & Collateral	Numeric / ND	The process used for the property. If no data available state No Data (ND)		9(11).99	14	20000000.00	All except UK
AR151	Mandatory	static	Date of Sale	Property & Collateral	Date	The date of sale of the foreclosed property		DD-MM-YYYY	10	01-01-10	All
AR152	Mandatory	static	Additional Collateral	Property & Collateral	List	Type of additional collateral: Savings Balance (1) Life Insurances (2) Investments (3) Pledged Properties (4) Other (5) No Data (ND)		List	2	1	All
AR153	Mandatory	static	Additional Collateral Provider	Property & Collateral	Text	Provider of additional collateral (i.e. bank or insurance company)		Text	100	NAMEPROVIDER	All
AR154	Mandatory	static	Gross Annual Rental Income	Property & Collateral	Numeric	Gross Annual Rental Income for Buy To Let (BTL) properties	Only mandatory for Buy-to-let mortgages	9(11).99	14	20000000.00	All
AR155	Mandatory	static	Number of Buy to Let Properties	Property & Collateral	Numeric	Total number of properties in portfolio, including those mortgaged with other lenders (BTL loans only)	Only mandatory for Buy-to-let mortgages, to the extent captured	Numeric	3	2	All
AR156	Mandatory	static	Debt Service Coverage Ratio	Property & Collateral	Text/Numeric	For Buy to Lets the Debt Service Coverage Ratio (DSCR) - Monthly Gross Rental Income divided by the Mortgage Payment	Only mandatory for Buy-to-let mortgages	9(11).99	14	20000000.00	All
AR157	Mandatory	dynamic	Additional Collateral Value	Property & Collateral	Numeric	Value of additional collateral		9(11).99	14	20000000.00	All
AR158	Mandatory	dynamic	Real Estate Owned	Property & Collateral	Y / N / ND	Is the property owned by the Structure / Fund		Y / N / ND	2	Y	Spain only
AR159	Mandatory	static	Is Property Transferability Limited	Property & Collateral	Y / N / ND	For Officially-sponsored Housing (Spanish initials, Vivienda de Protección Oficial (VPO) loans, whether the property transferability is limited		Y / N / ND	2	Y	Spain only
AR160	Mandatory	dynamic	Time Until Declassification	Property & Collateral	Numeric	For Spanish Vivienda de Protección Oficial (VPO) loans, time (in months) until property will be declassified as VPO property.		Numeric	2	24	Spain only
AR161			Blank	Property & Collateral							
AR162			Blank	Property & Collateral							
AR163			Blank	Property & Collateral							
AR164			Blank	Property & Collateral							
AR165			Blank	Property & Collateral							
AR166	Mandatory	dynamic	Account Status	Performance	List	Current status of account: Performing (1) Arrears (2) Default or Foreclosure (3) Reinstated (4) Repurchased by Seller (5) Other (6) No Data (ND)		Numeric	2	2	All
AR167	Mandatory	dynamic	Date Last Current	Performance	Date	If the borrower is in arrears, the date they were last current		DD-MM-YYYY	10	01-01-10	All
AR168	Mandatory	dynamic	Date Last in Arrears	Performance	Date / ND	Case the borrower was last in arrears, if the borrower is current the date they were last in arrears. If no data available specify No Data (ND)		DD-MM-YYYY	10	01-01-10	All
AR169	Mandatory	dynamic	Arrears Balance	Performance	Numeric	Current balance of arrears. Arrears defined as: Total payments due to date LESS Total payments received to date LESS any amounts capitalised. This should not include any fees applied to the account	Issuers should provide the definition of 'arrears' in the reporting glossary	9(8).99	11	29038.99	All
AR170	Mandatory	dynamic	Number Months in Arrears	Performance	Numeric	Number of months the loan is in arrears (at pool out off date) according to the definition of the issuer		Numeric	3	20	All
AR171	Mandatory	dynamic	Arrears 1 Month Ago	Performance	Numeric	Arrears balance (defined as per 'arrears balance') for the previous month		9(8).99	11	29038.99	All
AR172	Mandatory	dynamic	Arrears 2 Months Ago	Performance	Numeric	Arrears balance (defined as per 'arrears balance') two months ago		9(8).99	11	29038.99	All
AR173	Mandatory	dynamic	Performance Arrangement	Performance	Date	The date when the borrower had an arrangement put in place to reduce the balance of any arrears whilst maintaining their current payment.	A performance arrangement would be considered as any change to the terms of the loan as detailed in AR122	DD-MM-YYYY	10	01-01-10	All
AR174	Mandatory	dynamic	Litigation	Performance	Y / N / ND	Flag to indicate litigation proceedings underway (if account has recovered and is no longer being actively litigated this should be re-set to N)		Y / N / ND	2	Y	All except Holland
AR175	Mandatory	dynamic	Redemption Date	Performance	Date	Date on which account redeemed	The Bank will require information on redeemed mortgages continues to be reported for one reporting period. If accounts are removed from the assigned portfolio on redemption, issuers may wish to remove them from reporting after this period	DD-MM-YYYY	10	01-01-10	All
AR176	Mandatory	dynamic	Months in Arrears Prior	Performance	Numeric	Number of months in arrears at month end prior to redemption. This is to capture the arrears amount prior to the mortgage redemption		Numeric	3	20	All
AR177	Mandatory	dynamic	Default or Foreclosure	Performance	Numeric	Total default amount before the application of sale proceeds and recoveries		9(8).99	11	29038.99	All
AR178	Mandatory	dynamic	Date of Default	Performance	Numeric	The date of default or foreclosure		DD-MM-YYYY	10	01-01-10	All
AR179	Mandatory	dynamic	Sale Price	Performance	Numeric	Price achieved on sale of property in case of foreclosure		9(11).99	14	20000000.00	All
AR180	Mandatory	dynamic	Loss on Sale	Performance	Numeric	Total loss net of fees, accrued interest etc. after application of sale proceeds (excluding prepayment charge if subordinate to principal recoveries). Show any gain on sale as a negative number	Gain on sale only applicable to the extent transaction benefits from such gain.	9(11).99	14	20000000.00	All
AR181	Mandatory	dynamic	Cumulative Recoveries	Performance	Numeric	Cumulative recoveries - only relevant for cases with losses	Recoveries payable to issuer should be reported here	9(11).99	14	20000000.00	All
AR182	Mandatory	dynamic	Professional Negligence Recoveries	Performance	Numeric	Any amounts received in settlement or as a result of professional negligence claims against surveyors, solicitors etc. net of any fees / costs		9(8).99	11	29038.99	All
AR183	Mandatory	dynamic	Loan flagged as Contencioso	Performance	Y / N / ND	Flag to identify if borrower has entered 'Contencioso' status. Applicable only in Spain		Y / N / ND	2	Y	Spain only
AR184			Blank	Performance							
AR185			Blank	Performance							
AR186			Blank	Performance							
AR187			Blank	Performance							
AR188			Blank	Performance							
AR189	Mandatory	static	Second Borrower's Employment Status	Borrower Information	List	Employment status of the primary applicant: Employed or full loan is guaranteed (1) Employed with partial support (company subsidy) (2) Protected life-time employment (Civil/government servant) (3) Unemployed (4) Self-employed (5) No employment, borrower is legal entity (6) Student (7) Pensioner (8) Other (9) No Data (ND)	In relation to the secondary borrower and latest available information	List	2	1	All
AR190	Mandatory	static	Class of Second Borrower	Borrower Information	Text	Class of borrower based on credit scoring or other classification	Relevant to secondary borrower only. List of class definitions used to be explained in the reporting glossary	Text	50	SUBPRIME	All
AR191			Blank	Borrower Information							
AR192	Mandatory	static	Number of County Court Judgements or equivalent - Satisfied (Second Borrower)	Borrower Information	Numeric	Number of County Court Judgements (CCJs) or equivalent in particular jurisdiction (typically a default or court proceedings flag in continental Europe) - recorded against the primary borrower that were satisfied (the balance cleared) at time of underwriting	Relevant to secondary borrower only. Either field AR192 or AR193 can be provided if both are not available	Numeric	3	10	UK only
AR193	Mandatory	static	Value of County Court Judgements or equivalent - Satisfied (Second Borrower)	Borrower Information	Numeric	Total value of CCJs or equivalent recorded against the primary borrower that were satisfied at time of underwriting	Relevant to secondary borrower only. Either field AR192 or AR193 can be provided if both are not available	9(11).99	14	20000000.00	UK only
AR194	Mandatory	static	Number of County Court Judgements or equivalent - Unsatisfied (Second Borrower)	Borrower Information	Numeric	Number of CCJs or equivalent recorded against the primary borrower that were unsatisfied at time of underwriting	Relevant to secondary borrower only. Either field AR194 or AR195 can be provided if both are not available	Numeric	3	10	UK only

AR195	Mandatory	static	Value of County Court Judgements or equivalent - Unsatisfied (Second Borrower)	Borrower information	Numeric	Total value of CCJs or equivalent recorded against the primary borrower that were unsatisfied at time of underwriting	Relevant to secondary borrower only. Either field AR194 & AR195 can be provided if both are not available	B(11)99	14	2000000.00	UK only
AR196	Mandatory	static	Last County Court Judgements or equivalent - Date (Second Borrower)	Borrower information	Date / ND	Date last CCJ or equivalent was registered against the primary borrower regardless of satisfied or not	Relevant to secondary borrower only	DD-MM-YYYY / ND	10	01-01-10	UK only
AR197	Mandatory	dynamic	Bankrupt or Individual Voluntary Arrangement Flag (Second Borrower)	Borrower information	Y / N / ND	Flag to identify if borrower has been bankrupt or had an Individual Voluntary Arrangement (IVA) or equivalent.	Relevant to secondary borrower only	Y / N / ND	2	Y	All except Italy and Spain
AR198	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Credit Type (Second Borrower)	Borrower information	List	Credit type according to the coding of Bureau Krediet Registratie (BKR) (Netherlands only) AK - Loans which have to pay back in a predefined period RR - Loans with a maximum credit amount SR - Loan with the aim to re-arrange previous credits VK - Credit maximum with respect to goods ordered with mail-order companies HY - mortgage loans TC - telecom credits RO - Other credit ND - No Data	Relevant to secondary borrower only	List	2	AK	Holland only
AR199	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Registration Date (Second Borrower)	Borrower information	Date	Registration date of the BKR	Relevant to secondary borrower only	DD-MM-YYYY	10	01-01-10	Holland only
AR200	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Arrears Code (Second Borrower)	Borrower information	List	Arrears code according to the coding of Bureau Krediet Registratie (BKR) (Netherlands only) A - arrears AH - arrears repaid A1 - settlement reached A2 - remaining outstanding is summoned A3 - an amount > Euro 250 is depreciated A4 - person disappeared ND - No Data	Relevant to secondary borrower only	List	2	AH	Holland only
AR201	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Credit Amount (Second Borrower)	Borrower information	Numeric	Amount of the credit (Netherlands only)	Relevant to secondary borrower only	Numeric	14	2000000.00	Holland only
AR202	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Is Coding Cured? (Second Borrower)	Borrower information	Y / N / ND	Is the coding with BKR cured? (Netherlands only)	Relevant to secondary borrower only	Y / N / ND	2	Y	Holland only
AR203	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Number of Months Since Cured (Second Borrower)	Borrower information	Numeric	If the coding is cured, number of months since it is cured (Netherlands only)	Relevant to secondary borrower only	Numeric	2	12	Holland only
AR204	Mandatory	dynamic	Bureau Score Provider (Second Borrower)	Borrower information	List	Who has provided the score. For continental Europe give name of provider: Calcredit (1) Experian (2) Equifax (3) Schufa (4) Bureau Krediet Registratie (BKR) (5) Internal Score (6) Other (7) No Data (ND)	Relevant to secondary borrower only	List	2	1	All
AR205	Mandatory	dynamic	Bureau Score Type (Second Borrower)	Borrower information	List	Type of scorecard provided: Generation 8 B&F AAM - DCM (Experian) (1) Generation 8 B&F CRS - DCM (Experian) (2) Generation 7 Mortgage PD Score - DCM (Experian) (3) FSC109 - Risk Navigator (Equifax) (4) RN1LF02 - Risk Navigator (Equifax) (5) RN1SF02 - Risk Navigator (Equifax) (6) Internal Scorecard (7) Other (8) No Data (ND)	Relevant to secondary borrower only	List	2	1	All
AR206	Mandatory	dynamic	Bureau Score Date (Second Borrower)	Borrower information	Date	The date of the bureau score for this borrower	Relevant to secondary borrower only	DD-MM-YYYY	10	01-01-10	All
AR207	Mandatory	dynamic	Bureau Score Value (Second Borrower)	Borrower information	Text/Numeric	Borrower's score 90 Regular Score 999 CAIS for mortgage not available 998 Notice of Correction or Notice of Dispute 9 Bankruptcy Restriction Order or Bankruptcy Restriction Undertaking ND - No Data	Relevant to secondary borrower only	Text/Numeric	3	999	All
AR208	Mandatory	static	Prior Repossessions (Second Borrower)	Borrower information	Y / N / ND	Indicator of prior repossessions resulting from a borrower defaulting on a previous mortgage loan	Applicable to secondary borrower only	Y / N / ND	2	Y	All
AR209	Mandatory	static	Previous Mortgage Arrears 0-6 Months (Second Borrower)	Borrower information	Numeric / ND	Number of payments missed on previous mortgage in the prior 0-6 months (information as at underwriting) If no data available specify No Data (ND)	Applicable to secondary borrower only	Numeric	2	7	All
AR210	Mandatory	static	Previous Mortgage Arrears 6+ Months (Second Borrower)	Borrower information	Numeric / ND	Number of payments missed on previous mortgage in the prior months, greater or equal than 6 months (information as at underwriting) If no data available specify No Data (ND)	Applicable to secondary borrower only	Numeric	2	7	All
AR211	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Credit Type (Primary Borrower - At Origination)	Borrower information (At Origination)	List	Credit type according to the coding of Bureau Krediet Registratie (BKR) (Netherlands only) AK - Loans which have to pay back in a predefined period RR - Loans with a maximum credit amount SR - Loan with the aim to re-arrange previous credits VK - Credit maximum with respect to goods ordered with mail-order companies HY - mortgage loans TC - telecom credits RO - Other credit ND - No Data	Applicable to secondary borrower only	List	2	AK	Holland only
AR212			Blank	Borrower information (At Origination)							
AR213	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Arrears Code (Primary Borrower - At Origination)	Borrower information (At Origination)	List	Arrears code according to the coding of Bureau Krediet Registratie (BKR) (Netherlands only) A - arrears AH - arrears repaid A1 - settlement reached A2 - remaining outstanding is summoned A3 - an amount > Euro 250 is depreciated A4 - person disappeared ND - No Data	Applicable to secondary borrower only	List	2	AH	Holland only
AR214	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Credit Amount (Primary Borrower - At Origination)	Borrower information (At Origination)	Numeric	Amount of the credit (Netherlands only)	Applicable to secondary borrower only	Numeric	14	2000000.00	Holland only
AR215	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Is Coding Cured? (Primary Borrower - At Origination)	Borrower information (At Origination)	Y / N / ND	Is the coding with BKR cured? (Netherlands only)	Applicable to secondary borrower only	Y / N / ND	2	Y	Holland only
AR216	Mandatory	static	Bureau Krediet Registratie 1 to 10 - Number of Months Since Cured (Primary Borrower - At Origination)	Borrower information (At Origination)	Numeric	If the coding is cured, number of months since it is cured (Netherlands only)	Applicable to secondary borrower only	Numeric	2	12	Holland only
AR217	Mandatory	static	Bureau Score Provider (Primary Borrower - At Origination)	Borrower information (At Origination)	List	Who has provided the score. For continental Europe give name of provider: Calcredit (1) Experian (2) Equifax (3) Schufa (4) Bureau Krediet Registratie (BKR) (5) Internal Score (6) Other (7) No Data (ND)	Applicable to secondary borrower only	List	2	1	All
AR218	Mandatory	static	Bureau Score Type (Primary Borrower - At Origination)	Borrower information (At Origination)	List	Type of scorecard provided: Generation 8 B&F AAM - DCM (Experian) (1) Generation 8 B&F CRS - DCM (Experian) (2) Generation 7 Mortgage PD Score - DCM (Experian) (3) FSC109 - Risk Navigator (Equifax) (4) RN1LF02 - Risk Navigator (Equifax) (5) RN1SF02 - Risk Navigator (Equifax) (6) Internal Scorecard (7) Other (8) No Data (ND)	Applicable to secondary borrower only	List	2	1	All



## Schedule 2 Notification requirements

G (1) ...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>RCB 3.3.1D</i> and <i>RCB 3.3.3D</i>	Information relating to the <i>asset pool</i> and <u>information relating to the regulated covered bonds issued under the programme</u>	Information on various attributes of the <i>asset pool</i> and <u>issued regulated covered bonds</u> . Use <del>Form</del> <u>Forms RCB 3 Ann 2D and RCB 3 Ann 3D</u> .	<del>End of each quarter</del> <u>Monthly (in relation to the information in Form RCB 3 Ann 2D) or quarterly (in relation to the information in Form RCB 3 Ann 3D) following registration date.</u>	One month after the end of the relevant <u>month or quarter</u> .
<i>RCB 3.2.10D</i>	...			
<u><i>RCB 3.3.2AD</i></u>	<u>Information about loans relating to the asset pool</u>	<u>Loan-by-loan level data relating to the asset pool. Use Form RCB 3 Ann 7AD.</u>	<u>End of each quarter following registration date following any issuance of regulated covered bonds after 1 January 2013.</u>	<u>One month after the end of the relevant quarter.</u>
<u><i>RCB 3.3.5D</i></u>	<u>Addition or removal of assets to or from the asset pool</u>	<u>Details of the size and composition of the transfer. Use Form RCB 3 Ann 2D.</u>	<u>Addition or removal of assets from the asset pool which change the over-collateralisation level by 5% or more.</u>	<u>5 business days before the proposed transfer.</u>
<i>RCB 3.4.1 D</i>	Covered bond	Information on	Issuance of	<del>On or</del> <u>3 business</u>

	issuance	the covered bond issuance. Use Form <i>RCB 3 Ann 3 4D</i> .	<del>covered bond</del> from a <i>regulated covered bond</i>	<i>days</i> before date of issuance
<u><i>RCB 3.4.2D</i></u>	<u>Covered bond issuance</u>	<u>Information on the covered bond issuance. Use Form <i>RCB 3 Ann 5D</i>, <i>RCB 3 Ann 3D</i> and the final terms of the <i>regulated covered bonds</i> and signed copies of swap documents.</u>	<u>Issuance of a <i>regulated covered bond</i></u>	<u>On date of issuance</u>
...				
<u><i>RCB 3.5.9D</i></u>	<u>Cancellation</u>	<u>Notice of cancellation of a <i>regulated covered bond</i> or <i>programme</i></u>	<u>Proposal to cancel a <i>regulated covered bond</i> or <i>programme</i> in part or in full.</u>	<u>3 <i>business days</i> before cancellation will take effect.</u>
<u><i>RCB 3.5.10D</i></u>	<u>Cancellation</u>	<u>Information on the cancellation of a <i>regulated covered bond</i> or <i>programme</i> and updated asset and liability profile form. Use Forms <i>RCB 3 Ann 6D</i> and <i>RCB 3 Ann 3D</i>.</u>	<u>Cancellation of a <i>regulated covered bond</i> or <i>programme</i>.</u>	<u>On date of cancellation of the a <i>regulated covered bond</i> or <i>programme</i>.</u>



**PERIMETER GUIDANCE (AMENDMENT NO 3) INSTRUMENT 2011**

**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 9 December 2011.

**Amendments to the Perimeter Guidance manual**

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

**Citation**

- D. This instrument may be cited as the Perimeter Guidance (Amendment No 3) Instrument 2011.

By order of the Board  
8 December 2011

## Annex

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 2.3 The business element

...

- 2.3.2 G There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177), the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476), ~~and~~ the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2005 (SI 2005/922) and the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (SI 2011/2304). The result is that the business element differs depending on the activity in question. This in part reflects certain differences in the nature of the activities:

...

(3) ...

(3A) A person who enters into a regulated sale and rent back agreement as SRB agreement provider is to be regarded as carrying on that activity by way of business except where that person is a related party in relation to the SRB agreement seller.

...

#### 14.4A Activities relating to regulated sale and rent back agreements

...

##### **Q37C. When will I be carrying on the activity of entering into a regulated sale and rent back agreement?**

This will occur when you enter into the agreement at the outset as the agreement provider even if you do so only once. It can also occur at a later stage if all or part of the rights or obligations of the agreement provider are transferred to you or if you acquire all or part of the interest in land bought by the agreement provider (where you become an 'agreement transferee') ...

...

## 14.5 The 'by-way-of-business' test

### Q38. How do I know if I am carrying on regulated activities by way of business?

A *person* will only need to be an ~~authorised person~~ *authorised person* or ~~exempt person~~ *exempt person* if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated activities)). ~~There are, in fact, three different forms of business test applied to the home finance transactions (see Q38A).~~

Whether or not any particular *person* will meet the requirement that he carries on a *regulated activity* by way of business and so needs to be an *authorisation authorised person* or *exemption exempt person* will invariably depend on that *person's* individual circumstances. Generally speaking, a number of factors need to be taken into account in determining whether the test is met. These include:

- the degree of continuity;
- the existence of a commercial element;
- the scale of the activity;
- the proportion which the activity bears to other activities carried on by the same person but which are not regulated; and
- the nature of the particular regulated activity that is carried on.

However, there are in fact four different forms of business test that are applied to the home finance transactions (see Q38A). For example, the ordinary business test is significantly widened in scope in relation to entering into a regulated sale and rent back agreement (see Q38B).

...

### Q38A. What are the ~~three~~ four different forms of business test referred to in Q38?

They are:

(1) the 'by way of business' test in section 22 of the *Act* applies unchanged in relation to the activity of *entering into a home finance transaction* other than entering into a regulated sale and rent back agreement;

(1A) in the case of entering into a regulated sale and rent back agreement, the effect of article 5 of the Business Order is that an SRB agreement provider is to be regarded as acting 'by way of business' unless that person is a related party in relation to the SRB agreement seller;

(2) ...

### Q38B. How does the business test in the Business Order differ from the business test in section 22 of the Act?

The 'by way of business' test in article 5 of the Business Order is wider than the

'by way of business' test in section 22 of the Act because, for example, it does not require any degree of continuity; entering into just one *regulated sale and rent back agreement* is enough.

~~The~~ On the other hand, the 'carrying on the business' test in articles 3B to 3D of the *Business Order* is a narrower test than that of carrying on *regulated activities* 'by way of business' in section 22 of the Act as it requires the *regulated activities* to represent the carrying on of a business in their own right.

**Q38C. Can you give me some examples of where the business test is unlikely to be satisfied?**

Examples are:

(1) when an individual enters into a ~~one-off sale and rent back agreement~~ *regulated sale and rent back agreement* as ~~agreement provider~~ *SRB agreement provider* ~~for an agreement seller who is a friend or member of his family where that individual is a *related party* in relation to the *SRB agreement seller*~~ whether at market rates or not; and

(2) ...

**Q38D. Will I meet the business test if I only enter into one home purchase plan, or home reversion plan ~~or regulated sale and rent back agreement~~ a year?**

Yes, you might meet the business test. Whether or not you do will depend largely on the facts. The following issues may be helpful to bear in mind:

...

With this in mind, if you intend on entering into just one ~~sale and rent back agreement, home reversion plan~~ *home reversion plan* or ~~home purchase plan~~ *home purchase plan* each year this may be enough to meet the 'by way of business' test if the scale of this activity is likely to be significant in relation to your other activities.

**Q38E. Will I meet the business test if I only enter into one sale and rent back agreement?**

Yes, provided you are an *SRB agreement provider* that is not a *related party* in relation to the *SRB agreement seller*.

This is because of an amendment to the *Business Order* made by the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (SI 2011/2304) which came into force on 16 September 2011. This Order also provides that the amendment will cease to have effect on 1 January 2015. The Treasury is required to review the operation and effect of the amendment and to publish a report before the end of 2012. Following the review, the Treasury will decide whether the amendment should be allowed to expire, be revoked early, or be maintained in force with or without amendments. A further instrument would be needed to maintain the amendment in force or to revoke the amendment early.

## FINANCIAL CRIME GUIDE INSTRUMENT 2011

### **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 9 December 2011.

### **New Regulatory Guide**

- C. The Financial Services Authority makes 'Financial Crime: a guide for firms' to form a Regulatory Guide in accordance with Annex A to this instrument. The Regulatory Guide does not form part of the Handbook.

### **Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex B to this instrument.
- E. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex C to this instrument.

### **Citation**

- F. This instrument may be cited as the Financial Crime Guide Instrument 2011.

By order of the Board  
8 December 2011

**Annex A**

***Financial crime:  
a guide for firms***

*Part 1: A firm's guide to preventing financial  
crime*

## Contents

	<a href="#"><u>About the Guide</u></a>	5
<b>1</b>	<b>Introduction</b>	6
<b>2</b>	<b>Financial crime systems and controls</b>	10
	Box 2.1 Governance	
	Box 2.2 Structure	
	Box 2.3 Risk assessment	
	Box 2.4 Policies and procedures	
	Box 2.5 Staff recruitment, vetting, training and awareness	
	Box 2.6 Quality of oversight	
<b>3</b>	<b>Money laundering and terrorist financing</b>	17
	Box 3.1 Governance	
	Box 3.2 The Money Laundering Reporting Officer (MLRO)	
	Box 3.3 Risk assessment	
	Box 3.4 Customer due diligence (CDD) checks	
	Box 3.5 Ongoing monitoring	
	Box 3.6 Handling higher-risk situations	
	Box 3.7 Handling higher-risk situations - enhanced due diligence (EDD)	
	Box 3.8 Handling higher-risk situations - enhanced ongoing monitoring	
	Box 3.9 Liaison with law enforcement	
	Box 3.10 Record keeping and reliance on others	
	Box 3.11 Countering the finance of terrorism	
	Box 3.12 Customer payments	
	Box 3.13 Case study - poor AML controls	
	Box 3.14 Case studies - wire transfer failures	
<b>4</b>	<b>Fraud</b>	35
	Box 4.1 Preventing losses from fraud	
	Box 4.2 Mortgage fraud - lenders	
	Box 4.3 Mortgage fraud - intermediaries	
	Box 4.4 Enforcement action against mortgage brokers	
	Box 4.5 Investment fraud	
<b>5</b>	<b>Data security</b>	41
	Box 5.1 Governance	
	Box 5.2 Five fallacies of data loss and identity fraud	
	Box 5.3 Controls	
	Box 5.4 Case study - protecting customers' accounts from criminals	
	Box 5.5 Case study - data security failings	
<b>6</b>	<b>Bribery and corruption</b>	47
	Box 6.1 Governance	
	Box 6.2 Risk assessment	
	Box 6.3 Policies and procedures	
	Box 6.4 Dealing with third parties	

	Box 6.5	Case study - corruption risk	
	Box 6.6	Case study - inadequate anti-bribery and corruption systems and controls	
<b>7</b>	<b>Sanctions and asset freezes</b>		<b>54</b>
	Box 7.1	Governance	
	Box 7.2	Risk assessment	
	Box 7.3	Screening customers against sanctions lists	
	Box 7.4	Matches and escalation	
	Box 7.5	Weapons proliferation	
	Box 7.6	Case study - deficient sanctions systems and controls	
	<b>Annex 1: Common terms</b>		<b>62</b>



**About the Guide:**

- **This Guide consolidates FSA guidance on financial crime. It does not contain rules and its contents are not binding.**
- **It provides guidance to firms on steps they can take to reduce their financial crime risk.**
- **The Guide aims to enhance understanding of FSA expectations and help firms to assess the adequacy of their financial crime systems and controls and remedy deficiencies.**
- **It is designed to help firms adopt a more effective, risk-based and outcomes-focused approach to mitigating financial crime risk.**
- **The Guide does not include guidance on all the financial crime risks a firm may face. The self-assessment questions and good and poor practice we use in the Guide are not exhaustive.**
- **The good practice examples present ways, but not the only ways, in which firms might comply with applicable rules and requirements.**
- **Similarly, there are many practices we would consider poor that we have not identified as such in the Guide. Some poor practices may be poor enough to breach applicable requirements.**
- **The Guide is not the only source of guidance on financial crime. Firms are reminded that other bodies produce guidance that may also be relevant and useful.**
- **Guidance in the Guide should be applied in a risk-based, proportionate way. This includes taking into account the size, nature and complexity of a firm when deciding whether a certain example of good or poor practice is appropriate to its business.**
- **This Guide is not a checklist of things that all firms must do or not do to reduce their financial crime risk, and should not be used as such by firms or FSA supervisors.**

## 1 Introduction

- 1.1 This Guide provides practical assistance and information for firms of all sizes and across all FSA-supervised sectors on actions they can take to counter the risk that they might be used to further financial crime. Its contents are drawn primarily from FSA thematic reviews, with some additional material included to reflect other aspects of our financial crime remit. The Guide does not cover market misconduct, detailed rules and guidance on which are contained in the Market Conduct (MAR) sourcebook.
- 1.2 Effective systems and controls can help firms to detect, prevent and deter financial crime. Part 1 provides guidance on financial crime systems and controls, both generally and in relation to specific risks such as money laundering, bribery and corruption and fraud. Annexed to Part 1 is a list of common and useful terms. The Annex is provided for reference purposes only and is not a list of 'defined terms'. The Guide does not use the Handbook Glossary of definitions unless otherwise indicated.
- 1.3 Part 2 provides summaries of, and links to, FSA thematic reviews of various financial crime risks and sets out the full examples of good and poor practice that were included with the reviews' findings.
- 1.4 We will keep the Guide under review and will continue to update it to reflect the findings of future thematic reviews, enforcement actions and other FSA publications and to cover emerging risks and concerns.
- 1.5 The material in the Guide does not form part of the Handbook, but it does contain guidance on Handbook rules and principles, particularly:
- SYSC 3.2.6R and SYSC 6.1.1R, which require firms to establish and maintain effective systems and controls to prevent the risk that they might be used to further financial crime;
  - Principles 1 (integrity), 2 (skill, care and diligence), 3 (management and control) and 11 (relations with regulators) of our Principles for Businesses, which are set out in PRIN 2.1.1R;
  - the Statements of Principle for Approved Persons set out in APER 2.1.2P; and
  - in relation to guidance on money laundering, the rules in SYSC 3.2.6AR to SYSC 3.2.6JG and SYSC 6.3 (Financial crime).

Where the Guide refers to guidance in relation to SYSC requirements, this may also be relevant to compliance with the corresponding Principle in our Principles for Businesses and corresponding requirements in the Payment Services Regulations 2009 and the Electronic Money Regulations 2011.

- 1.6 Direct references in Part 1 to requirements set out in our rules or other legal provisions include a cross reference to the relevant provision.
- 1.7 The Guide contains 'general guidance' as defined in section 158 of the Financial Services and Markets Act 2000 (FSMA). The guidance is not binding and we will not presume that a firm's departure from our guidance indicates that it has breached our rules.

- 1.8 Our focus, when supervising firms, is on whether they are complying with our rules and their other legal obligations. Firms can comply with their financial crime obligations in ways other than following the good practice set out in this Guide. But we expect firms to be aware of what we say where it applies to them and to consider applicable guidance when establishing, implementing and maintaining their anti-financial crime systems and controls. More information about FSA guidance and its status can be found in our [Reader's Guide: an introduction to the Handbook](#), p.24; paragraph 6.2.1G (4) of the Decision Procedures and Penalties (DEPP) manual of the Handbook and paragraphs [2.22 - 2.27](#) of our Enforcement Guide (EG).
- 1.9 The Guide also contains guidance on how firms can meet the requirements of the Money Laundering Regulations 2007 and the EU Wire Transfer Regulation. This guidance is not 'relevant guidance' as described in Regulations 42(3) or 45(2) of the Money Laundering Regulations, or Regulation 14 of the Transfer of Funds (Information on the Payer) Regulations 2007 (which gives the FSA powers and responsibilities to supervise firms' compliance with the EU Wire Transfer Regulation). This means that a decision maker is not **required** to consider whether a person followed the guidance when it is deciding whether that person has breached these regulations, although they may choose to do so.
- 1.10 The Joint Money Laundering Steering Group's (JMLSG) guidance for the UK financial sector on the prevention of money laundering and combating terrorist financing is 'relevant guidance' under these regulations. As confirmed in DEPP 6.2.3G, EG 12.2 and EG 19.82 the FSA will continue to have regard to whether firms have followed the relevant provisions of JMLSG's guidance when deciding whether conduct amounts to a breach of relevant requirements.
- 1.11 The Guide is not a standalone document; it does not attempt to set out all applicable requirements and should be read in conjunction with existing laws, rules and guidance on financial crime. If there is a discrepancy between the Guide and any applicable legal requirements, the provisions of the relevant requirement prevail. If firms have any doubt about a legal or other provision or their responsibilities under FSMA or other relevant legislation or requirements, they should seek appropriate professional advice.

### How to use this Guide

- 1.12 Throughout the Guide, material is set out as follows:

**Who should read this chapter?** This box indicates the **types of firm** to which the material applies. A reference to 'all firms' in the body of the chapter means all firms to which the chapter is applied at the start of the chapter.

**Content:** This box lists the sections in each chapter.

- 1.13 Each section discusses how firms tackle a different type of financial crime. Sections open with a short passage giving context to what follows. We use the word 'must' to indicate a legal obligation under applicable legislation or a regulatory requirement in the FSA's Handbook.

1.14 Firms should apply the guidance in a risk-based, proportionate way taking into account such factors as the nature, size and complexity of the firm. For example:

- We say in Box 2.1 (Governance) that senior management should actively engage in a firm’s approach to addressing financial crime risk. The level of seniority and degree of engagement that is appropriate will differ based on a variety of factors, including the management structure of the firm and the seriousness of the risk.
- We ask in Box 3.5 (Ongoing monitoring) how a firm monitors transactions to spot potential money laundering. While we expect that a *global retail bank* that carries out a large number of customer transactions would need to include automated systems in its processes if it is to monitor effectively, a *small firm* with low transaction volumes could do so manually.
- We say in Box 4.1 (General – preventing losses from fraud) that it is good practice for firms to engage with relevant cross-industry efforts to combat fraud. A *national retail bank* is likely to have a greater exposure to fraud, and therefore to have more information to contribute to such efforts, than a *small local building society*, and we would expect this to be reflected in their levels of engagement.

**Box 1.1: Financial crime: a guide for firms**

The Guide looks at key aspects of firms’ efforts to counter different types of crime. It is aimed at firms big and small; material will not necessarily apply to all situations. If guidance is specific to certain types of firm, this is indicated by *italics*.

Self-assessment questions:

- These questions will help you to consider whether your firm’s approach is **appropriate**. (Text in brackets expands on this.)
- The FSA may follow **similar lines of inquiry** when discussing financial crime issues with firms.
- The questions **draw attention** to some of the key points firms should consider when deciding how to address a financial crime issue or comply with a financial crime requirement.

Examples of good practice

- This box provides **illustrative** examples of **good practices**.
- Good practice examples are drawn from **conduct we have seen** in firms during thematic work in relation to financial crime.
- We would draw comfort from seeing **evidence** that these practices take place.
- Note that **if these practices are**

Examples of poor practice

- This box provides **illustrative** examples of **poor practices**.
- Poor practice examples are also drawn from **conduct we have seen** during thematic work.
- Some show a lack of commitment, others fall short of our expectations; some, as indicated in the text, may breach regulatory requirements or be

Boxes like this list obligations directly referred to in the text.

<p><b>lacking</b> it may not be a problem. The FSA would consider whether a firm has taken other measures to meet its obligations.</p>	<p><b>criminal offences.</b></p> <ul style="list-style-type: none"> <li>• These do not identify all cases where conduct may give rise to regulatory breaches or criminal offences.</li> </ul>
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**Box 1.2: Case studies and other information**

Most sections contain case studies outlining occasions when a person's conduct fell short of the FSA's expectations, and enforcement action followed; or information on topics relevant to the section.

1.15 Where to find out more:

- Most sections close with some sources of further information.
- This includes cross-references to relevant guidance in Part 2 of the Guide.
- It also includes links to external websites and materials. Although the external links are included to assist readers of the Guide, we are not responsible for the content of these, as we neither produce nor maintain them.

## 2 Financial crime systems and controls

**Who should read this chapter?** This chapter applies to **all firms** subject to the financial crime rules in **SYSC 3.2.6R** or **SYSC 6.1.1R**. It also applies to **e-money institutions** and **payment institutions** within our supervisory scope.

The **Annex 1 financial institutions** which we supervise for compliance with their obligations under the Money Laundering Regulations 2007 are not subject to the financial crime rules in SYSC. But the guidance in this chapter applies to them as it can assist them to comply with their obligations under the Regulations.

**Content:** This chapter contains sections on:

- |  |         |
|--|---------|
| • Governance   | Box 2.1 |
| • Structure  | Box 2.2 |
| • Risk assessment                                    | Box 2.3 |
| • Policies and procedures                            | Box 2.4 |
| • Staff recruitment, vetting, training and awareness | Box 2.5 |
| • Quality of oversight                               | Box 2.6 |

- 2.1 All firms must take steps to defend themselves against **financial crime**, but a variety of approaches is possible. This chapter provides guidance on themes that should form the basis of managing financial crime risk. The general topics outlined here are also relevant in the context of the specific financial crime risks detailed in subsequent chapters.

SYSC 6.1.1R  
SYSC 3.2.6R

### Box 2.1: Governance

We expect **senior management** to take **clear responsibility** for managing financial crime risks, which should be treated in the same manner as other risks faced by the business. There should be evidence that senior management are **actively engaged** in the firm's approach to addressing the risks.

Self-assessment questions:

- When did senior management, including the board or appropriate sub-committees, **last consider** financial crime issues? What action followed discussions?
- How are senior management kept **up to date** on financial crime issues? (This may include receiving reports on the firm's performance in this area as well as ad hoc briefings on individual cases or emerging threats.)
- Is there evidence that **issues have been escalated** where warranted?
- What **drives** the firm's financial crime efforts? What outcomes does it seek to achieve?

Examples of good practice	Examples of poor practice
<ul style="list-style-type: none"> <li>• Senior management <b>set the right tone</b> and demonstrate leadership on financial crime issues.</li> <li>• A firm takes <b>active steps</b> to prevent criminals taking advantage of its services.</li> <li>• A firm has a <b>strategy</b> for self-improvement on financial crime.</li> <li>• There are clear criteria for <b>escalating</b> financial crime issues.</li> </ul>	<ul style="list-style-type: none"> <li>• There is little evidence of senior staff <b>involvement</b> and <b>challenge</b> in practice.</li> <li>• A firm concentrates on <b>narrow compliance</b> with <b>minimum regulatory standards</b> and has little engagement with the issues.</li> <li>• Financial crime issues are dealt with on a purely <b>reactive</b> basis.</li> <li>• There is <b>no meaningful record</b> or evidence of senior management considering financial crime risks.</li> </ul>

### Box 2.2: Structure

Firms' **organisational structures** to combat financial crime may differ. Some large firms will have a single unit that coordinates efforts and which may report to the head of risk, the head of compliance or directly to the CEO. Other firms may spread responsibilities more widely. There is no one 'right answer' but the firm's structure should promote coordination and information sharing across the business.

Self-assessment questions:

- Who has ultimate **responsibility** for financial crime matters, particularly: a) anti-money laundering; b) fraud prevention; c) data security; d) countering terrorist financing; e) anti-bribery and corruption and f) financial sanctions?
- Do staff have **appropriate seniority** and **experience**, along with clear reporting lines?
- Does the structure promote a **coordinated approach** and **accountability**?
- Are the firm's financial crime teams **adequately resourced** to carry out their functions effectively? What are the annual budgets for dealing with financial crime, and are they **proportionate** to the risks?
- In *smaller firms*: do those with financial crime responsibilities have **other roles**? (It is reasonable for staff to have more than one role, but consider whether they are spread too thinly and whether this may give rise to conflicts of interest.)

Examples of good practice	Examples of poor practice
<ul style="list-style-type: none"> <li>• Financial crime risks are addressed in a <b>coordinated</b> manner across the business and information is shared readily.</li> </ul>	<ul style="list-style-type: none"> <li>• The firm makes no effort to understand or address <b>gaps</b> in its financial crime defences.</li> <li>• Financial crime officers are</li> </ul>

<ul style="list-style-type: none"> <li>• Management responsible for financial crime are <b>sufficiently senior</b> as well as being credible, independent, and experienced.</li> <li>• A firm has considered how counter-fraud and anti-money laundering efforts can <b>complement</b> each other.</li> <li>• The firm bolsters insufficient in-house knowledge or resource with <b>external expertise</b>, for example in relation to assessing financial crime risk or monitoring compliance with standards.</li> </ul>	<p>relatively <b>junior</b> and lack access to senior management. They are often <b>overruled</b> without documented justification.</p> <ul style="list-style-type: none"> <li>• Financial crime departments are <b>under-resourced</b> and senior management are reluctant to address this.</li> </ul>
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### Box 2.3: Risk assessment

A **thorough understanding** of its **financial crime risks** is key if a firm is to apply proportionate systems and controls.

Self-assessment questions:

- What are the main financial crime **risks** to the business?
- How does your firm seek to **understand** the financial crime risks it faces?
- When did the firm last **update** its **risk assessment**?
- How do you **identify new or emerging** financial crime risks?
- Is there evidence that risk is **considered and recorded** systematically, assessments are **updated** and **sign-off** is appropriate?
- Who **challenges** risk assessments and how? Is this process sufficiently rigorous and well-documented?
- How do **procedures** on the ground adapt to emerging risks? (For example, how quickly are policy manuals updated and procedures amended?)

Examples of good practice

- The firm's risk assessment is **comprehensive**.
- Risk assessment is a **continuous** process based on the best information available from internal and external sources.
- The firm assesses where risks are greater and **concentrates its resources** accordingly.

Examples of poor practice

- Risk assessment is a **one-off** exercise.
- Efforts to understand risk are **piecemeal** and lack coordination.
- Risk assessments are **incomplete**.
- The firm targets financial crimes that affect the bottom line (e.g. fraud against the firm) but **neglects** those where third parties



<ul style="list-style-type: none"> <li>• The firm actively considers the <b>impact of crime</b> on customers.</li> <li>• The firm considers financial crime risk when <b>designing new products and services</b>.</li> </ul>	<p>suffer (e.g. fraud against customers).</p>
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**Box 2.4: Policies and procedures**

A firm must have in place up-to-date policies and procedures appropriate to its business. These should be **readily accessible, effective and understood** by all relevant staff.

SYSC 3.2.6R  
SYSC 6.1.1R

Self-assessment questions:

- How often are your firm’s policies and procedures **reviewed**, and at what level of **seniority**?
- How does it **mitigate** the financial crime risks it identifies?
- What steps does the firm take to ensure that relevant policies and procedures **reflect new risks** or **external events**? How quickly are any necessary changes made?
- What steps does the firm take to ensure that staff **understand** its policies and procedures?
- For *larger groups*, how does your firm ensure that policies and procedures are **disseminated** and **applied** throughout the business?

<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• There is <b>clear documentation</b> of a firm’s approach to complying with its legal (including regulatory) requirements in relation to financial crime.</li> <li>• Policies and procedures are <b>regularly reviewed</b> and <b>updated</b>.</li> <li>• <b>Internal audit</b> or another independent party monitors the effectiveness of policies, procedures, systems and controls.</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• A firm has <b>no written policies and procedures</b>.</li> <li>• The firm <b>does not tailor</b> externally produced policies and procedures to suit its business.</li> <li>• The firm takes <b>inadequate steps</b> to <b>communicate</b> policies and procedures to relevant staff.</li> <li>• The firm <b>fails to review</b> policies and procedures in light of events.</li> <li>• The firm <b>fails to check</b> whether policies and procedures are applied consistently and effectively.</li> <li>• A firm has not considered whether its policies and procedures are consistent with its obligations under legislation that forbids <b>discrimination</b>.</li> </ul>
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**Box 2.5: Staff recruitment, vetting, training and awareness**

Firms must employ staff with the skills, knowledge and expertise to carry out their functions effectively. They should review employees' competence and take appropriate action to ensure they remain competent for their role. Vetting and training should be appropriate to employees' roles.

Self-assessment questions:

- What is your approach to **vetting** staff? Do vetting and management of different staff reflect the financial crime risks to which they are exposed?
- How does your firm ensure that its employees are **aware of financial crime risks** and of their **obligations** in relation to those risks?
- Do staff have access to training on an **appropriate range** of financial crime risks?
- How does the firm ensure that training is of **consistent quality** and is **kept up to date**?
- Is training **tailored** to particular roles?
- How do you assess the **effectiveness** of your training on topics related to financial crime?
- Is training material relevant and up to date? When was it **last reviewed**?

## Examples of good practice

- Staff in higher-risk roles are subject to **more thorough vetting**.
- **Tailored** training is in place to ensure staff knowledge is adequate and up to date.
- New staff in **customer-facing** positions receive financial crime training tailored to their role before being able to interact with customers.
- Training has a strong **practical** dimension (e.g. case studies) and some form of testing.
- The firm satisfies itself that staff **understand** their responsibilities (e.g. computerised training contains a test).
- **Whistleblowing** procedures are clear and accessible, and respect staff confidentiality.

## Examples of poor practice

- Staff are **not competent** to carry out preventative functions effectively, exposing the firm to financial crime risk.
- Staff vetting is a **one-off** exercise.
- Training dwells unduly on **legislation and regulations** rather than practical examples.
- Training material is **not kept up to date**.
- The firm **fails to identify** training needs.
- There are no **training logs** or tracking of employees' training history.
- Training **content** lacks management sign-off.
- Training does not cover **whistleblowing** and **escalation** procedures.

### Box 2.6: Quality of oversight

A firm's efforts to combat financial crime should be subject to **challenge**. We expect senior management to ensure that policies and procedures are appropriate and followed.

Self-assessment questions:

- How does your firm ensure that its approach to reviewing the effectiveness of financial crime systems controls is **comprehensive**?
- What are the **findings** of recent internal audits and compliance reviews on topics related to financial crime?
- How has the firm progressed **remedial measures**?

Examples of good practice

- **Internal audit and compliance** routinely test the firm's defences against financial crime, including specific financial crime threats.
- Decisions on allocation of compliance and audit resource are **risk-based**.
- Management **engage constructively** with processes of oversight and challenge.
- *Smaller firms* seek **external help** if needed.

Examples of poor practice

- Compliance unit and audit teams **lack experience** in financial crime matters.
- Audit findings and compliance conclusions are **not shared** between business units. Lessons are not spread more widely.

2.2 Part 2 of the Guide contains the following additional guidance on **governance**:

- Box 6.1 (Governance), from our thematic review *Data security in Financial Services*
- Box 8.1 (Senior management responsibility) from our thematic review *Financial services firms' approach to UK financial sanctions*
- Box 9.1 (Governance and management information) from our thematic review *Anti-bribery and corruption in commercial insurance broking*
- Box 11.1 (Governance, culture and information sharing) from our thematic review *Mortgage fraud against lenders*

2.3 Part 2 contains the following additional guidance on **risk assessment**:

- Box 8.2 (Risk assessment) from our thematic review *Financial services firms' approach to UK financial sanctions*
- Box 9.2 (Risk assessment and responses to significant bribery and corruption events) from our thematic review *Anti-bribery and corruption in commercial insurance broking*
- Box 10.7 (Responsibilities and risk assessments) from our thematic review *The Small Firms Financial Crime Review*

- Box 12.2 (High risk customers and PEPs - Risk assessment) and Box 12.5 (Correspondent banking - Risk assessment of respondent banks) from our thematic review *Banks' management of high money-laundering risk situations*
- 2.4 Part 2 contains the following additional guidance on **policies and procedures**:
- Box 8.3 (Policies and procedures) from our thematic review *Financial services firms' approach to UK financial sanctions*
  - Box 10.1 (Regulatory/Legal obligations) from our thematic review *The Small Firms Financial Crime Review*
  - Box 12.1 (High risk customers and PEPs - AML policies and procedures) from our thematic review *Banks' management of high money-laundering risk situations*
- 2.5 Part 2 contains the following additional guidance on **staff recruitment, vetting, training and awareness**:
- Box 6.2 (Training and awareness) and Box 6.3 (Staff recruitment and vetting) from our thematic review *Data security in Financial Services*
  - Box 8.4 (Staff training and awareness) from our thematic review *Financial services firms' approach to UK financial sanctions*
  - Box 9.5 (Staff recruitment and vetting) and Box 9.6 (Training and awareness) from our thematic review *Anti-bribery and corruption in commercial insurance broking*
  - Box 10.6 (Training) from our thematic review *The Small Firms Financial Crime Review*
  - Box 11.6 (Staff recruitment and vetting) and Box 11.8 (Staff training and awareness) from our thematic review *Mortgage fraud against lenders*
- 2.6 Part 2 contains the following additional guidance on **quality of oversight**:
- Box 6.15 (Internal audit and compliance monitoring) from our thematic review *Data security in Financial Services*
  - Box 9.9 (The role of compliance and internal audit) from our thematic review *Anti-bribery and corruption in commercial insurance broking*
  - Box 11.5 (Compliance and internal audit) from our thematic review *Mortgage fraud against lenders*
- 2.7 For firms' obligations in relation to whistleblowers see:
- the Public Interest Disclosure Act 1998:  
<http://www.legislation.gov.uk/ukpga/1998/23/contents>

### 3 Money laundering and terrorist financing

**Who should read this chapter?** This section applies to **all firms** who are subject to the money laundering provisions in **SYSC 3.2.6A – J** or **SYSC 6.3**. It also applies to **Annex I financial institutions** and **e-money institutions** for whom we are the supervisory authority under the **Money Laundering Regulations 2007** (referred to in this chapter as ‘the ML Regulations’).

This guidance does not apply to **payment institutions**, which are supervised for compliance with the ML Regulations by Her Majesty’s Revenue and Customs. 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.

This guidance is less relevant for those who have more limited anti-money laundering (AML) responsibilities, such as mortgage brokers, general insurers and general insurance intermediaries. But it may still be of use, for example, to assist them in establishing and maintaining systems and controls to reduce the risk that they may be used to handle the proceeds from crime; and to meet the requirements of the Proceeds of Crime Act 2002 to which they are subject.

Box 3.2 (The Money Laundering Reporting Officer (MLRO)) applies only to firms who are subject to the money laundering provisions in **SYSC 3.2.6A – J** or **SYSC 6.3**, except it does not apply to **sole traders who have no employees**.

Box 3.12 (Customer payments) applies to **banks** subject to **SYSC 6.3**.

**Content:** This chapter contains sections on:

- Governance Box 3.1
- The Money Laundering Reporting Officer (MLRO) Box 3.2
- Risk assessment Box 3.3
- Customer due diligence (CDD) checks Box 3.4
- Ongoing monitoring Box 3.5
- Handling higher-risk situations Box 3.6
- Handling higher-risk situations - enhanced due diligence (EDD) Box 3.7
- Handling higher-risk situations - enhanced ongoing monitoring Box 3.8
- Liaison with law enforcement Box 3.9
- Record keeping and reliance on others Box 3.10
- Countering the finance of terrorism Box 3.11
- Customer payments Box 3.12

• Case study - poor AML controls	Box 3.13
• Case studies - wire transfer failures	Box 3.14

- 3.1 The guidance in this chapter relates both to our interpretation of requirements of the ML Regulations and to the financial crime and money laundering provisions of SYSC 3.2.6R - 3.2.6JG, SYSC 6.1.1R and SYSC 6.3.
- 3.2 The Joint Money Laundering Steering Group (JMLSG) produces detailed guidance for firms in the UK financial sector on how to comply with their legal and regulatory obligations related to money laundering and terrorist financing. The Guide is not intended to replace, compete or conflict with the JMLSG’s guidance, which should remain a key resource for firms.
- 3.3 When considering a firm’s systems and controls against money laundering and terrorist financing, we will consider whether the firm has followed relevant provisions of the JMLSG’s guidance.

**Box 3.1: Governance**

The guidance in [Box 2.1](#) on governance in relation to financial crime also applies to money laundering.

We expect **senior management** to take responsibility for the firm’s anti-money laundering (AML) measures. This includes knowing about the money laundering risks to which the firm is exposed and ensuring that steps are taken to mitigate those risks effectively.

Self-assessment questions:

- Who has **overall responsibility** for establishing and maintaining effective AML controls? Are they sufficiently senior?
- What are the **reporting lines**?
- Do senior management receive **informative, objective information** that is sufficient to enable them to meet their AML obligations?
- How regularly do senior management commission **reports** from the **MLRO**? (This should be at least annually.) What do they do with the reports they receive? What **follow-up** is there on any recommendations the MLRO makes?
- How are senior management involved in **approving relationships** with high risk customers, including politically exposed persons (PEPs)?

<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• <b>Reward structures</b> take account of any failings related to AML compliance.</li> <li>• Decisions on accepting or maintaining high money-laundering risk relationships are reviewed and challenged <b>independently</b> of the business</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• There is <b>little evidence</b> that AML is <b>taken seriously</b> by senior management. It is seen as a <b>legal or regulatory necessity</b> rather than a matter of true concern for the business.</li> <li>• Senior management attach greater importance to the risk that a</li> </ul>
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<p>relationship and escalated to senior management or committees.</p> <ul style="list-style-type: none"> <li>Documentation provided to senior management to inform decisions about entering or maintaining a business relationship provides an <b>accurate picture</b> of the risk to which the firm would be exposed if the business relationship were established or maintained.</li> </ul>	<p>customer might be involved in a <b>public scandal</b>, than to the risk that the customer might be corrupt or otherwise engaged in financial crime.</p> <ul style="list-style-type: none"> <li>The board <b>never considers</b> MLRO reports.</li> <li>A <i>UK branch or subsidiary</i> uses group policies which <b>do not comply fully</b> with UK AML legislation and regulatory requirements</li> </ul>
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**Box 3.2: The Money Laundering Reporting Officer (MLRO)**

This section applies to firms who are subject to the money laundering provisions in **SYSC 3.2.6A – J** or **SYSC 6.3**, except it does not apply to sole traders who have no employees.

Firms to which this section applies must appoint an individual as MLRO. The MLRO is responsible for oversight of the firm’s compliance with its anti-money laundering obligations and should act as a focal point for the firm’s AML activity.

SYSC 3.2.6IR  
SYSC 6.3.9R

Self-assessment question:

- Does the MLRO have sufficient **resources, experience, access** and **seniority** to carry out their role effectively?
- Do the firm’s staff, including its senior management, **consult the MLRO** on matters relating to money-laundering?
- Does the MLRO **escalate** relevant matters to senior management and, where appropriate, the board?
- What **awareness** and **oversight** does the MLRO have of the **highest risk relationships**?

<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>The <b>MLRO</b> is independent, knowledgeable, robust and well-resourced, and poses effective challenge to the business where warranted.</li> <li>The MLRO has, and makes appropriate use of, a <b>direct reporting line</b> to executive management or the board.</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>The MLRO <b>lacks credibility</b> and <b>authority</b>, whether because of <b>inexperience</b> or <b>lack of seniority</b>.</li> <li>The MLRO <b>does not understand</b> the policies they are supposed to oversee or the rationale behind them.</li> <li>The MLRO of a firm which is a</li> </ul>
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	<p><i>member of a group</i> has <b>not considered</b> whether group policy adequately addresses UK AML obligations.</p> <ul style="list-style-type: none"> <li>The MLRO is <b>unable to retrieve information</b> about the firm’s high-risk customers on request and without delay and <b>plays no role</b> in monitoring such relationships.</li> </ul>
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<b>Box 3.3: Risk assessment</b>	
<p>The guidance in <a href="#">Box 2.3</a> on risk assessment in relation to financial crime also applies to AML.</p> <p>The assessment of money-laundering risk is at the core of the firm’s AML effort and is essential to the development of effective AML policies and procedures.</p> <p>Firms must therefore put in place systems and controls to identify, assess, monitor and manage money-laundering risk. These systems and controls must be comprehensive and proportionate to the nature, scale and complexity of a firm’s activities. Firms must regularly review their risk assessment to ensure it remains current.</p> <p>Self-assessment questions:</p> <ul style="list-style-type: none"> <li>Which parts of the business present <b>greater risks</b> of money laundering? (Has your firm identified the risks associated with different types of customer or beneficial owner, product, business line, geographical location and delivery channel (e.g. internet, telephone, branches)? Has it assessed the extent to which these risks are likely to be an issue for the firm?)</li> <li>How does the risk assessment <b>inform</b> your day-to-day operations? (For example, is there evidence that it informs the level of customer due diligence you apply or your decisions about accepting or maintaining relationships?)</li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>There is evidence that the firm’s risk assessment <b>informs</b> the <b>design</b> of anti-money laundering controls.</li> <li>The firm has identified <b>good sources of information</b> on money-laundering risks, such as FATF mutual evaluations and typology reports, SOCA alerts, press reports, court judgements, reports by non-governmental</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>An inappropriate <b>risk classification system</b> makes it almost impossible for a relationship to be classified as ‘high risk’.</li> <li>Higher-risk countries are allocated low-risk scores to <b>avoid enhanced due diligence</b> measures.</li> <li>Relationship managers are able to</li> </ul>

ML Reg 20  
SYSC 3.2.6AR  
SYSC 6.3.1R

ML Reg 20;  
SYSC 3.2.6CR  
SYSC 6.3.3R



<p>organisations and commercial due diligence providers.</p> <ul style="list-style-type: none"> <li>• Consideration of money-laundering risk associated with <b>individual business relationships</b> takes account of factors such as: <ul style="list-style-type: none"> <li>• company structures;</li> <li>• political connections;</li> <li>• country risk;</li> <li>• the customer's or beneficial owner's reputation;</li> <li>• source of wealth;</li> <li>• source of funds;</li> <li>• expected account activity;</li> <li>• sector risk; and</li> <li>• involvement in public contracts.</li> </ul> </li> <li>• The firm identifies where there is a risk that a relationship manager might become <b>too close</b> to customers to identify and take an objective view of the money-laundering risk. It manages that risk effectively.</li> </ul>	<p><b>override customer risk scores</b> without sufficient evidence to support their decision.</p> <ul style="list-style-type: none"> <li>• Risk assessments on money laundering are unduly influenced by the <b>potential profitability</b> of new or existing relationships.</li> <li>• The firm <b>cannot evidence</b> why customers are rated as high, medium or low risk.</li> <li>• A <i>UK branch or subsidiary</i> relies on <b>group risk assessments</b> without assessing their compliance with UK AML requirements.</li> </ul>
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#### **Box 3.4: Customer due diligence (CDD) checks**

Firms must **identify** their customers and, where applicable, their beneficial owners, and then **verify** their identities. Firms must also understand the **purpose** and **intended nature** of the customer's relationship with the firm and collect information about the customer and, where relevant, beneficial owner. This should be sufficient to obtain a complete picture of the risk associated with the business relationship and provide a meaningful basis for subsequent monitoring.

In situations where the money-laundering risk associated with the business relationship is increased, for example, where the customer is a PEP, banks must carry out additional, enhanced due diligence (EDD). [Box 3.7](#) below considers enhanced due diligence.

Where a firm cannot apply customer due diligence measures, including where a firm cannot be satisfied that it knows who the beneficial owner is, it must not enter into, or continue, the business relationship.

Self-assessment questions:

ML Regs 5, 6 and 7

ML Reg 14

ML Reg 11

- Does your firm apply **customer due diligence** procedures in a risk-sensitive way?
- Do your CDD processes provide you with a **comprehensive understanding** of the risk associated with individual business relationships?
- How does the firm **identify** the customer's **beneficial owner(s)**? Are you satisfied that your firm takes risk-based and adequate steps to verify the beneficial owner's identity in all cases? Do you understand the rationale for beneficial owners using complex corporate structures?
- Are procedures **sufficiently flexible** to cope with customers who cannot provide more common forms of identification (ID)?

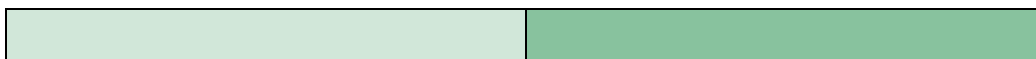
Examples of good practice	Examples of poor practice
<ul style="list-style-type: none"> <li>• A firm which uses e.g. <b>electronic verification checks</b> or <b>PEPs databases</b> understands their capabilities and limitations.</li> <li>• The firm can cater for <b>customers who lack common forms of ID</b> (such as the socially excluded, those in care, etc).</li> <li>• The firm understands and documents the <b>ownership and control structures</b> (including the reasons for any complex or opaque corporate structures) of customers and their beneficial owners.</li> <li>• The firm obtains information about the purpose and nature of the business relationship sufficient to be satisfied that it <b>understands</b> the <b>associated money-laundering risk</b>.</li> <li>• Staff who approve new or ongoing business relationships satisfy themselves that the firm has obtained <b>adequate CDD</b> information before doing so.</li> </ul>	<ul style="list-style-type: none"> <li>• Procedures are <b>not risk-based</b>: the firm applies the same CDD measures to products and customers of varying risk.</li> <li>• The firm has <b>no method for tracking</b> whether checks on customers are complete.</li> <li>• The firm allows <b>language difficulties</b> or <b>customer objections</b> to get in the way of proper questioning to obtain necessary CDD information.</li> <li>• Staff do <b>less CDD</b> because a customer is referred by senior executives or influential people.</li> <li>• The firm has <b>no procedures</b> for dealing with situations requiring enhanced due diligence. <b>This breaches the ML Regulations.</b></li> <li>• The firm fails to consider <b>both</b>:               <ul style="list-style-type: none"> <li>• any individuals who ultimately control more than 25% of shares or voting rights of; <b>and</b></li> <li>• any individuals who exercise control over the management over</li> </ul>               a corporate customer when identifying and verifying the customer's beneficial owners. <b>This breaches the ML Regulations.</b> </li> </ul>

ML Reg 14

ML Reg 6(1)(a)

ML Reg 6(1)(b)

ML Reg 7



### Box 3.5: Ongoing monitoring

A firm must conduct ongoing monitoring of its business relationships on a risk-sensitive basis. Ongoing monitoring means **scrutinising transactions** to ensure that they are consistent with what the firm knows about the customer, and taking steps to ensure that the firm’s knowledge about the business relationship remains current. As part of this, firms must keep the documents, data and information obtained in the CDD context (including information about the purpose and intended nature of the business relationship) up to date. It must apply CDD measures where it doubts the truth or adequacy of previously obtained documents, data or information (see [Box 3.4](#)).

Where the risk associated with the business relationship is increased, firms must carry out enhanced ongoing monitoring of the business relationship. [Box 3.8](#) provides guidance on enhanced ongoing monitoring.

Self-assessment questions:

- How are transactions **monitored** to spot potential money laundering? Are you satisfied that your monitoring (whether automatic, manual or both) is adequate and effective considering such factors as the size, nature and complexity of your business?
- Does the firm **challenge** unusual activity and explanations provided by the customer where appropriate?
- How are **unusual transactions** reviewed? (Many alerts will be false alarms, particularly when generated by automated systems. How does your firm decide whether behaviour really is suspicious?)
- How do you feed the **findings from monitoring** back into the customer’s risk profile?

ML Reg 8(1)

MLR 8(2)(b)

ML Reg 7(1)(d)

ML Reg 14

Examples of good practice	Examples of poor practice
<ul style="list-style-type: none"> <li>• <i>A large retail firm</i> complements its other efforts to spot potential money laundering by using an <b>automated system</b> to monitor transactions.</li> <li>• Where a firm uses automated transaction monitoring systems, it understands their <b>capabilities</b> and <b>limitations</b>.</li> <li>• <i>Small firms</i> are able to apply credible <b>manual procedures</b> to scrutinise customers’ behaviour.</li> <li>• The ‘<b>rules</b>’ underpinning monitoring systems are understood by the relevant staff and updated to reflect new</li> </ul>	<ul style="list-style-type: none"> <li>• The firm fails to take adequate measures to understand the risk associated with the business relationship and is therefore <b>unable to conduct meaningful monitoring</b>.</li> <li>• The MLRO can provide <b>little evidence</b> that <b>unusual transactions</b> are brought to their attention.</li> <li>• Staff <b>always accept a customer’s explanation</b> for unusual transactions at face value and do not probe further.</li> <li>• The firm does not take risk-sensitive measures to ensure</li> </ul>

<p>trends.</p> <ul style="list-style-type: none"> <li>• The firm uses <b>monitoring results</b> to review whether CDD remains adequate.</li> <li>• The firm takes advantage of <b>customer contact</b> as an opportunity to update due diligence information.</li> <li>• <b>Customer-facing staff</b> are engaged with, but do not control, the ongoing monitoring of relationships.</li> <li>• The firm updates CDD information and reassesses the risk associated with the business relationship where monitoring indicates <b>material changes</b> to a customer’s profile.</li> </ul>	<p>CDD information is <b>up to date</b>. <b>This is a breach of the ML Regulations.</b></p> <ul style="list-style-type: none"> <li>•</li> </ul>
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ML Reg 8(2)(b)

**Box 3.6: Handling higher-risk situations**

The law requires that firms’ anti-money laundering policies and procedures are sensitive to risks. This means that in higher-risk situations, firms must apply enhanced due diligence and ongoing monitoring. **Situations that present a higher money-laundering risk** might include, but are not restricted to: customers linked to higher-risk countries or business sectors; or who have unnecessarily complex or opaque beneficial ownership structures; and transactions which are unusual, lack an obvious economic or lawful purpose, are complex or large or might lend themselves to anonymity.

ML Reg 20

ML Reg 14

**The ML Regulations also set out three scenarios in which specific enhanced due diligence measures have to be applied:**

- **Non-face-to-face CDD:** this is where the customer has not been physically present for identification purposes, perhaps because business is conducted by telephone or on the internet.
- **Correspondent banking:** where a correspondent bank is outside the EEA, the *UK bank* should thoroughly understand its correspondent’s business, reputation, and the quality of its defences against money laundering and terrorist financing. Senior management must give approval to each new correspondent banking relationship.
- **Politically exposed persons (PEPs):** a PEP is a person entrusted with a prominent public function in a foreign state, an EU institution or an international body; their immediate family members; and known close associates. A senior manager at an appropriate level of authority must approve the initiation of a business relationship with a PEP. This includes approving the continuance of a relationship with an existing customer who becomes a PEP after the relationship has begun.

ML Reg 14(2)

ML Reg 14(3)

ML Reg 14(4)

The extent of enhanced due diligence measures that a firm undertakes can be determined on a risk-sensitive basis. The firm must be able to demonstrate that the extent of the enhanced due diligence measures it applies is commensurate with the money-laundering and terrorist financing risks.

ML Reg 7(3)(b)

**Box 3.7: Handling higher-risk situations - enhanced due diligence (EDD)**

Firms must apply EDD measures in situations that present a higher risk of money laundering.

ML Reg 14

EDD should give firms a greater understanding of the customer and their associated risk than standard due diligence. It should provide more certainty that the customer and/or beneficial owner is who they say they are and that the purposes of the business relationship are legitimate; as well as increasing opportunities to identify and deal with concerns that they are not. [Box 3.3](#) considers risk assessment.

Self-assessment questions:

- How does EDD differ from standard CDD? How are issues that are flagged during the due diligence process **followed up** and **resolved**? Is this adequately documented?
- How is EDD information **gathered, analysed, used** and **stored**?
- What involvement do senior management or committees have in **approving high-risk customers**? What information do they receive to inform any decision-making in which they are involved?

Examples of good practice

- The MLRO (and their team) have **adequate oversight** of all high-risk relationships.
- The firm establishes the legitimacy of, and documents, the **source of wealth** and **source of funds** used in high-risk business relationships.
- Where money laundering risk is very high, the firm obtains **independent** internal or external **intelligence reports**.
- When assessing EDD, the firm **complements staff knowledge** of the customer or beneficial owner with more objective information.
- The firm is able to provide evidence that relevant information staff have about customers or beneficial owners is **documented and challenged** during the CDD

Examples of poor practice

- Senior management **do not give approval** for taking on high-risk customers. **If the customer is a PEP or a non-EEA correspondent bank, this breaches the ML Regulations.**
- The firm fails to consider whether a customer's **political connections** mean that they are high risk despite falling outside the ML Regulations' definition of a PEP.
- The firm **does not distinguish** between the customer's source of funds and their source of wealth.
- The firm relies entirely on a **single source** of information for its enhanced due diligence.
- A firm relies on intra-group introductions where **overseas standards are not UK-**

ML Reg 14(4)(a);  
ML Reg 14(3)(d)

<p>process.</p> <ul style="list-style-type: none"> <li>• A <i>member of a group</i> satisfies itself that it is appropriate to rely on due diligence performed by <b>other entities</b> in the same group.</li> <li>• The firm proactively <b>follows up gaps in, and updates,</b> CDD of higher risk customers.</li> <li>• A <i>correspondent bank</i> seeks to <b>identify PEPs</b> associated with their respondents.</li> <li>• A <i>correspondent bank</i> takes a view on the strength of the <b>AML regime</b> in a respondent bank’s home country, drawing on discussions with the respondent, overseas regulators and other relevant bodies.</li> <li>• A <i>correspondent bank</i> gathers information about <b>respondent banks’ procedures</b> for sanctions screening, PEP identification and management, account monitoring and suspicious activity reporting.</li> </ul>	<p><b>equivalent</b> or where due diligence data is <b>inaccessible</b> because of legal constraints.</p> <ul style="list-style-type: none"> <li>• The firm considers the <b>credit risk</b> posed by the customer, but not the <b>money-laundering risk.</b></li> <li>• The firm <b>disregards</b> allegations of the customer’s or beneficial owner’s <b>criminal activity</b> from reputable sources repeated over a sustained period of time.</li> <li>• The firm ignores adverse allegations simply because customers hold a UK <b>investment visa.</b></li> <li>• A firm grants <b>waivers</b> from establishing source of funds, source of wealth or other due diligence without good reason.</li> <li>• A <i>correspondent bank</i> conducts inadequate due diligence on <b>parents and affiliates</b> of respondents.</li> <li>• A <i>correspondent bank</i> <b>relies exclusively</b> on the Wolfsberg Group AML questionnaire.</li> </ul>
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**Box 3.8: Handling higher-risk situations – enhanced ongoing monitoring**

Firms must enhance their ongoing monitoring in higher-risk situations.

Self-assessment questions:

- How does your firm **monitor** its high-risk business relationships? How does enhanced ongoing monitoring differ from ongoing monitoring of other business relationships?
- Are reviews carried out **independently** of relationship managers?
- What **information** do you store in the files of high-risk customers? Is it **useful**? (Does it include risk assessment, verification evidence, expected account activity, profile of customer or business relationship and, where applicable, information about the ultimate beneficial owner?)

ML Reg 14

<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• Key AML staff have a <b>good understanding</b> of, and <b>easy access</b> to, information about a bank’s highest risk customers.</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• The firm treats annual reviews as a <b>tick-box exercise</b> and copies information from previous reviews without thought.</li> </ul>
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<ul style="list-style-type: none"> <li>• New higher-risk clients are more closely monitored to confirm or amend <b>expected account activity</b>.</li> <li>• <b>Alert thresholds</b> on automated monitoring systems are lower for PEPs and other higher-risk customers. Exceptions are <b>escalated</b> to more senior staff.</li> <li>• Decisions across a group on whether to keep or exit high-risk relationships are <b>consistent</b> and in line with the firm's overall risk appetite or assessment.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>A firm in a group</i> relies on others in the group to carry out monitoring <b>without understanding</b> what they did and what they found.</li> <li>• There is <b>insufficient challenge</b> to explanations from relationship managers and customers about unusual transactions.</li> <li>• The firm <b>focuses too much on reputational or business issues</b> when deciding whether to exit relationships with a high money-laundering risk.</li> <li>• The firm makes no enquiries when accounts are used for purposes <b>inconsistent with expected activity</b> (e.g. personal accounts being used for business).</li> </ul>
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### Box 3.9: Liaison with law enforcement

Firms must have a **nominated officer**. The nominated officer has a legal obligation to **report any knowledge or suspicions** of money laundering to the Serious Organised Crime Agency (SOCA) through a 'Suspicious Activity Report', also known as a 'SAR'. (See the Annex 1 list of common terms for more information about nominated officers and Suspicious Activity Reports.)

Staff must report their concerns and may do so to the firm's nominated officer, who must then consider whether a report to SOCA is necessary based on all the information at their disposal. Law enforcement agencies may seek information from the firm about a customer, often through the use of Production Orders (see Annex 1: Common terms).

Self-assessment questions:

- Is it clear who is **responsible** for different types of liaison with the authorities?
- How does the **decision-making** process related to **SARs** work in the firm?
- Are **procedures** clear to staff?
- Do staff report suspicions to the **nominated officer**? If not, does the nominated officer take steps to identify why reports are not being made? How does the nominated officer deal with reports received?
- What evidence is there of the rationale **underpinning decisions** about whether a SAR is justified?
- Is there a documented process for responding to **Production Orders**, with clear timetables?

ML Reg 20(2)(d)
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s.331 POCA
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s.330 POCA
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ML Reg 20(2)(d)(iii)
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Examples of good practice	Examples of poor practice
<ul style="list-style-type: none"> <li>• All staff <b>understand procedures for escalating suspicions</b> and follow them as required.</li> <li>• The firm’s <b>SARs</b> set out a clear narrative of events and include detail that law enforcement authorities can use (e.g. names, addresses, passport numbers, phone numbers, email addresses).</li> <li>• SARs set out the reasons for suspicion in <b>plain English</b>. They include some context on any previous related SARs rather than just a cross-reference.</li> <li>• There is a clear process for <b>documenting</b> decisions.</li> <li>• A firm’s processes for dealing with suspicions reported to it by <b>third party administrators</b> are clear and effective.</li> </ul>	<ul style="list-style-type: none"> <li>• The nominated officer <b>passes all internal reports</b> to SOCA without considering whether they truly are suspicious. These ‘defensive’ reports are likely to be of little value.</li> <li>• The nominated officer <b>dismisses concerns</b> escalated by staff without reasons being documented.</li> <li>• The firm <b>does not train</b> staff to make internal reports, thereby exposing them to personal legal liability and increasing the risk that suspicious activity goes unreported.</li> <li>• The nominated officer <b>turns a blind eye</b> where a SAR might harm the business. <b>This could be a criminal offence.</b></li> <li>• A firm provides extraneous and irrelevant detail in response to a <b>Production Order</b>.</li> </ul>

s.331 POCA

<b>Box 3.10: Record keeping and reliance on others</b>	
<p>Firms must keep copies or references to the evidence of the customer’s identity for <b>five years</b> after the business relationship ends; and transactional documents for five years from the completion of the transaction. Where a firm is <b>relied on by others</b> to do due diligence checks, it must keep its records of those checks for five years from the date it was relied on. Firms must keep records sufficient to demonstrate to us that their CDD measures are appropriate in view of the risk of money laundering and terrorist financing.</p> <p>Self-assessment questions:</p> <ul style="list-style-type: none"> <li>• Can your firm retrieve records <b>promptly</b> in response to a Production Order?</li> <li>• If the firm <b>relies on others</b> to carry out AML checks (see ‘Reliance’ in Annex 1), is this within the limits permitted by the ML Regulations? How does it satisfy itself that it can rely on these firms?</li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• Records of customer ID and transaction data can be <b>retrieved quickly and without delay</b>.</li> <li>• Where the firm routinely relies on</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• The firm keeps customer records and related information in a way that <b>restricts the firm’s access</b> to these records</li> </ul>

ML Reg 19

ML Reg 19(4)

ML Reg 7(3)(b)



<p>checks done by a third party (for example, a fund provider relies on an IFA’s checks), it <b>requests sample documents</b> to test their reliability.</p>	<p>or their timely sharing with authorities.</p> <ul style="list-style-type: none"> <li>• A firm cannot access CDD and related records for which it has relied on a third party. <b>This breaches the ML Regulations.</b></li> <li>• Significant proportions of CDD records <b>cannot be retrieved</b> in good time.</li> <li>• The firm has not considered whether a <b>third party</b> consents to being relied upon.</li> <li>• There are <b>gaps</b> in customer records, which cannot be explained.</li> </ul>
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ML Reg19(6)

<p><b>Box 3.11: Countering the finance of terrorism</b></p>	
<p>Firms have an important role to play in providing information that can assist the authorities with counter-terrorism investigations. Many of the controls firms have in place in relation to terrorism will overlap with their anti-money laundering measures, covering, for example, risk assessment, customer due diligence checks, transaction monitoring, escalation of suspicions and liaison with the authorities.</p>	
<p>Self-assessment questions:</p>	
<ul style="list-style-type: none"> <li>• How have <b>risks</b> associated with terrorist finance been assessed? Did assessments consider, for example, risks associated with the customer base, geographical locations, product types, distribution channels, etc.?</li> <li>• Is it clear who is responsible for <b>liaison with the authorities</b> on matters related to countering the finance of terrorism? (See <a href="#">Box 3.9</a>)</li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• The firm has and uses an effective <b>process</b> for liaison with the authorities.</li> <li>• A firm identifies <b>sources of information</b> on terrorist financing risks: e.g. press reports, SOCA alerts, Financial Action Task Force typologies, court judgements, etc.</li> <li>• This information informs the design of <b>transaction monitoring systems</b>.</li> <li>• Suspicions raised within the firm</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• Financial crime <b>training</b> does not mention terrorist financing.</li> <li>• <i>A firm doing cross-border business</i> has not assessed terrorism-related risks in <b>countries</b> in which it has a presence or does business.</li> <li>• A firm has not considered if its approach to <b>customer due diligence</b> is able to capture information relevant to the risks of terrorist finance.</li> </ul>

inform its own <b>typologies</b> .	
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<p><b>Box 3.12: Customer payments</b></p> <p>This section applies to <i>banks</i> subject to SYSC 6.3.</p> <p>Interbank payments can be abused by criminals. International policymakers have taken steps intended to increase the transparency of interbank payments, allowing law enforcement agencies to more easily trace payments related to, for example, drug trafficking or terrorism<sup>1</sup>.</p> <p>Self-assessment questions:</p> <ul style="list-style-type: none"> <li>• How does your firm ensure that customer payment instructions contain <b>complete payer information</b>? (For example, does it have appropriate procedures in place for checking payments it has received?)</li> <li>• Does the firm review its <b>respondent banks</b>' track record on providing payer data and using appropriate SWIFT messages for cover payments?</li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• Although <b>not required by EU Regulation 1781/2006 on information on the payer accompanying transfers of funds (the Wire Transfer Regulation)</b>, we have seen the following good practices: <ul style="list-style-type: none"> <li>• Following processing, <i>banks</i> conduct <b>risk-based sampling</b> for inward payments to identify inadequate payer information.</li> <li>• An intermediary <i>bank</i> chases up <b>missing</b> information.</li> <li>• A <i>bank</i> sends <b>dummy</b> messages to test the effectiveness of filters.</li> <li>• A <i>bank</i> is aware of guidance from the <b>Basel Committee</b> and the <b>Wolfsberg Group</b> on the use of cover payments,</li> </ul> </li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• A <i>bank</i> fails to make use of the correct <b>SWIFT message type</b> for cover payments.</li> <li>• Compliance with regulations related to international customer payments has not been reviewed by the firm's <b>internal audit</b> or <b>compliance</b> departments.</li> </ul> <p><b>The following practices breach the Wire Transfer Regulation:</b></p> <ul style="list-style-type: none"> <li>• International customer payment instructions sent by the payer's <i>bank</i> <b>lack meaningful payer information</b>.</li> <li>• An <i>intermediary bank</i> <b>strips</b> payer information from payment instructions before passing the payment on.</li> <li>• The <i>payee bank</i> does not check any <b>incoming payments</b> to see if they include complete and</li> </ul>

Art.5 EU Reg 1781/2006

Art.12 EU Reg 1781/2006

Art.8 EU Reg 1781/2006

<sup>1</sup> The Wire Transfer Regulation requires banks to attach information about their customers (such as names and addresses, or, if a payment moves within the EU, a unique identifier like an account number) to payment messages. Banks are also required to check this information is present on inbound payments, and chase missing data. The FSA has a legal responsibility to supervise banks' compliance with these requirements. Concerns have also been raised about interbank transfers known as "cover payments" (see Annex 1: Common terms) that can be abused to disguise funds' origins. To address these concerns, the SWIFT payment messaging system now allows originator and beneficiary information to accompany these payments.

<p>and has considered how this should apply to its own operations.</p> <ul style="list-style-type: none"> <li>• The quality of payer information in payment instructions from <b>respondent banks</b> is taken into account in the <i>bank's</i> ongoing review of correspondent banking relationships.</li> <li>• The firm actively engages in <b>peer discussions</b> about taking appropriate action against banks which persistently fail to provide complete payer information.</li> </ul>	<p>meaningful data about the ultimate transferor of the funds.</p>
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### Box 3.13: Case study – poor AML controls

We fined Alpari (UK) Ltd, an online provider of foreign exchange services, £140,000 in May 2010 for poor anti-money laundering controls.

- Alpari failed to carry out satisfactory customer due diligence procedures at the account opening stage and failed to monitor accounts adequately.
- These failings were particularly serious given that the firm did business over the internet and had customers from higher-risk jurisdictions.
- The firm failed to ensure that resources in its compliance and anti-money laundering areas kept pace with the firm's significant growth.

Alpari's former money laundering reporting officer was also fined £14,000 for failing to fulfil his duties.

See our press release for more information:

[www.fsa.gov.uk/pages/Library/Communication/PR/2010/077.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/077.shtml)

### Box 3.14: Case studies – wire transfer failures

A UK bank that falls short of our expectations when using payment messages does not just risk FSA enforcement action or prosecution; it can also face criminal sanctions abroad.

In January 2009, Lloyds TSB agreed to pay US\$350m to US authorities after Lloyds offices in Britain and Dubai were discovered to be deliberately removing customer names and addresses from US wire transfers connected to countries or persons on US sanctions lists. The US Department of Justice concluded that Lloyds TSB staff removed this information to ensure payments would pass undetected through automatic filters at American financial institutions. See its press release:

[www.usdoj.gov/opa/pr/2009/January/09-crm-023.html](http://www.usdoj.gov/opa/pr/2009/January/09-crm-023.html).

In August 2010, Barclays Bank PLC agreed to pay US\$298m to US authorities after it was found to have implemented practices designed to evade US sanctions for the benefit of sanctioned countries and persons,

including by stripping information from payment messages that would have alerted US financial institutions about the true origins of the funds. The bank self-reported the breaches, which took place over a decade-long period from as early as the mid-1990s to September 2006. See the US Department of Justice's press release: [www.justice.gov/opa/pr/2010/August/10-crm-933.html](http://www.justice.gov/opa/pr/2010/August/10-crm-933.html).

#### 3.4 Part 2 of the Guide contains the following additional AML guidance:

- Chapter 4 summarises the findings of, and consolidates good and poor practice from, our thematic review of *Automated Anti-Money Laundering Transaction Monitoring Systems*
- Chapter 5 summarises the findings of, and consolidates good and poor practice from, our *Review of firms' implementation of a risk-based approach to anti-money laundering (AML)*
- Chapter 10 summarises the findings of the *Small Firms Financial Crime Review*. It contains guidance directed at *small firms* on:
  - Regulatory/Legal obligations (Box 10.1)
  - Account opening procedures (Box 10.2)
  - Monitoring activity (Box 10.3)
  - Suspicious activity reporting (Box 10.4)
  - Records (Box 10.5)
  - Responsibilities and risk assessments (Box 10.7)
- Chapter 12 summarises the findings of our thematic review of *Banks' management of high money-laundering risk situations*. It includes guidance on:
  - High risk customers and PEPs - AML policies and procedures (Box 12.1)
  - High risk customers and PEPs - Risk assessment (Box 12.2)
  - High risk customers and PEPs - Customer take-on (Box 12.3)
  - High risk customers and PEPs - Enhanced monitoring of high risk relationships (Box 12.4)
  - Correspondent banking - Risk assessment of respondent banks (Box 12.5)
  - Correspondent banking - Customer take-on (Box 12.6)
  - Correspondent banking - Ongoing monitoring of respondent accounts (Box 12.7)
  - Wire transfers - Paying banks (Box 12.8)
  - Wire transfers - Intermediary banks (Box 12.9)
  - Wire transfers - Beneficiary banks (Box 12.10)
  - Wire transfers - Implementation of SWIFT MT202COV (Box 12.11)

Part 2 also summarises the findings of the following thematic reviews:

- Chapter 3: *Review of private banks' anti-money laundering systems and controls*
- Chapter 7: *Review of financial crime controls in offshore centres*

3.5 To find out more on **anti money laundering**, see:

- The Money Laundering Regulations 2007:  
[www.legislation.gov.uk/uksi/2007/2157/contents/made](http://www.legislation.gov.uk/uksi/2007/2157/contents/made)
- SOCA's website, which contains information on how to report suspicions of money laundering:  
[www.soca.gov.uk](http://www.soca.gov.uk)
- The JMLSG's guidance on measures firms can take to meet their anti-money laundering obligations, which is available from its website:  
[www.jmlsg.org.uk](http://www.jmlsg.org.uk)
- Our AML self-assessment fact sheet for financial advisers:  
[www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/aml\\_tool.pdf](http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/aml_tool.pdf)
- Our one-minute guide on AML for smaller firms:  
[www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/info\\_gathering/anti\\_money.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/info_gathering/anti_money.shtml)

3.6 To find out more on **countering terrorist finance**, see:

- Material relevant to terrorist financing that can be found throughout the JMLSG guidance:  
[www.jmlsg.org.uk](http://www.jmlsg.org.uk)
- FATF's February 2008 report on terrorist financing:  
[www.fatf-gafi.org/dataoecd/28/43/40285899.pdf](http://www.fatf-gafi.org/dataoecd/28/43/40285899.pdf)

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](http://www.jmlsg.org.uk/download/6130)
- The Basel Committee's May 2009 paper on due diligence for cover payment messages:  
[www.bis.org/publ/bcbs154.pdf](http://www.bis.org/publ/bcbs154.pdf)
- The Wolfsberg Group's April 2007 statement on payment message standards:  
[www.wolfsberg-principles.com/pdf/](http://www.wolfsberg-principles.com/pdf/)
- The Wire Transfer Regulation (EU Regulation 1781/2006 on information on the payer accompanying transfers of funds):  
[eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1781:en:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1781:en:NOT)
- Transfer of Funds (Information on the Payer) Regulations 2007:  
[www.legislation.gov.uk/uksi/2007/3298/contents/made](http://www.legislation.gov.uk/uksi/2007/3298/contents/made)



## 4 Fraud

**Who should read this chapter?** This chapter applies to **all firms** subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R and to **e-money institutions** and **payment institutions** within our supervisory scope, with the following exceptions:

- section 4.2 applies only to **mortgage lenders** within our supervisory scope;
- section 4.3 applies to **mortgage intermediaries** only; and
- section 4.5 applies to **retail deposit takers** only.

**Content:** This chapter contains sections on:

- |   |         |
|---|---------|
| • Preventing losses from fraud                | Box 4.1 |
| • Mortgage fraud – lenders                    | Box 4.2 |
| • Mortgage fraud – intermediaries             | Box 4.3 |
| • Enforcement action against mortgage brokers | Box 4.4 |
| • Investment fraud                            | Box 4.5 |

4.1 All financial institutions are at risk of being defrauded. The main types of fraud are described in our Annex 1 entry for ‘fraud’.

4.2 The contents of the Guide’s fraud chapter reflect our previous thematic work in this area. This means it does not specifically address such topics as plastic card, cheque or insurance fraud. This is not because the FSA regards fraud prevention as unimportant. Rather it reflects our view that our limited resources are better directed elsewhere, given the strong incentive firms should have to protect themselves from fraud; and the number of other bodies active in fraud prevention. Links to some of these other bodies are provided in [paragraph 4.5](#).

### **Box 4.1: General - preventing losses from fraud**

All firms will wish to protect themselves and their customers from fraud. Management oversight, risk assessment and fraud data will aid this, as will tailored controls on the ground. We expect a firm to consider the full implications of the breadth of fraud risks it faces, which may have wider effects on its reputation, its customers and the markets in which it operates.

The general guidance in [Chapter 2](#) also applies in relation to fraud.

Self-assessment questions:

- What **information** do senior management receive about fraud trends? Are fraud losses accounted for clearly and separately to other losses?
- Does the firm have a clear picture of what parts of the business are **targeted by fraudsters**? Which **products, services and distribution channels** are vulnerable?
- How does the firm respond when reported fraud **increases**?

<ul style="list-style-type: none"> <li>Does the firm's investment in <b>anti-fraud systems</b> reflect fraud trends?</li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>The firm takes a view on what areas of the firm are most <b>vulnerable</b> to fraudsters, and tailors defences accordingly.</li> <li>Controls adapt to <b>new fraud threats</b>.</li> <li>The firm engages with relevant <b>cross-industry efforts</b> to combat fraud (e.g. data-sharing initiatives like CIFAS and the Insurance Fraud Bureau, collaboration to strengthen payment systems, etc.) in relation to both internal and external fraud.</li> <li><b>Fraud response plans</b> and <b>investigation procedures</b> set out how the firm will respond to incidents of fraud.</li> <li><b>Lessons</b> are learnt from incidents of fraud.</li> <li><b>Anti-fraud good practice</b> is shared widely within the firm.</li> <li>To guard against <b>insider fraud</b>, staff in high-risk positions (e.g. finance department, trading floor) are subject to enhanced vetting and closer scrutiny. 'Four eyes' procedures (see Annex 1 for common terms) are in place.</li> <li><b>Enhanced due diligence</b> is performed on higher-risk customers (e.g. commercial customers with limited financial history. See 'long firm fraud' in Annex 1).</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>Senior management appear <b>unaware</b> of fraud incidents and trends. No management information is produced.</li> <li><b>Fraud losses are buried</b> in bad debts or other losses.</li> <li>There is no clear and consistent <b>definition</b> of fraud across the business, so reporting is haphazard.</li> <li>Fraud risks are not explored when <b>new products</b> and <b>delivery channels</b> are developed.</li> <li>Staff <b>lack awareness</b> of what constitutes fraudulent behaviour (e.g. for a salesman to misreport a customer's salary to secure a loan would be fraud).</li> <li><b>Sales incentives</b> act to encourage staff or management to turn a blind eye to potential fraud.</li> <li><i>Banks</i> fail to implement the requirements of the <b>Payment Services Regulations</b> and <b>Banking Conduct of Business rules</b>, leaving customers out of pocket after fraudulent transactions are made.</li> <li><b>Remuneration structures</b> may incentivise behaviour that increases the risk of mortgage fraud.</li> </ul>

#### Box 4.2: Mortgage fraud – lenders

This section applies to *mortgage lenders* within our supervisory scope.

Self-assessment questions:

- Are systems and controls to detect and prevent mortgage fraud **coordinated across the firm**, with resources allocated on the basis of an



<p>assessment of where they can be used to best effect?</p> <ul style="list-style-type: none"> <li>• How does your firm contain the fraud risks posed by corrupt <b>conveyancers, brokers and valuers</b>?</li> <li>• How and when does your firm engage with <b>cross-industry information-sharing</b> exercises?</li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• A firm's underwriting process can <b>identify</b> applications that may present a <b>higher risk</b> of mortgage fraud.</li> <li>• Membership of a <i>lender's</i> <b>panels</b> of brokers, conveyancers and valuers is subject to ongoing review. Dormant third parties are identified.</li> <li>• A <i>lender</i> <b>reviews existing mortgage books</b> to identify and assess mortgage fraud indicators.</li> <li>• A <i>lender</i> verifies that funds are being dispersed <b>in line with instructions</b> before it releases them.</li> <li>• A <i>lender</i> <b>promptly discharges</b> mortgages that have been redeemed and checks whether conveyancers register charges with the <b>Land Registry</b> in good time.</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• A <i>lender</i> fails to report relevant information to the FSA's <b>Information from Lenders (IFL)</b> scheme as per <a href="#">FSA guidance on IFL referrals</a>.</li> <li>• A <i>lender</i> <b>lacks a clear definition</b> of mortgage fraud, undermining data collection and trend analysis.</li> <li>• A <i>lender's</i> panels of conveyancers, brokers and valuers are <b>too large to be manageable</b>.</li> <li>• The lender does no work to identify <b>dormant parties</b>.</li> <li>• A <i>lender</i> relies solely on the FSA Register when <b>vetting brokers</b>.</li> <li>• Underwriters' demanding work targets <b>undermine</b> efforts to contain mortgage fraud.</li> </ul>

#### Box 4.3: Mortgage fraud – intermediaries

This section applies to *mortgage intermediaries*.

Self-assessment questions:

- How does your firm satisfy itself that it is able to **recognise** mortgage fraud?
- When processing applications, does your firm consider whether the information the applicant provides is **consistent**? (For example, is declared income believable compared with stated employment? Is the value of the requested mortgage comparable with what your firm knows about the location of the property to be purchased?)
- What due diligence does your firm undertake on **introducers**?

<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• Asking to see <b>original documentation</b> whether or not</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• Failing to undertake due diligence</li> </ul>
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<p>this is required by lenders.</p> <ul style="list-style-type: none"> <li>Using the FSA's <b>Information from Brokers</b> scheme to report intermediaries it suspects of involvement in mortgage fraud.</li> </ul>	<p>on <b>introducers</b>.</p> <ul style="list-style-type: none"> <li>Accepting all applicant information at <b>face value</b>.</li> <li>Treating due diligence as the <b>lender's responsibility</b></li> </ul>
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#### **Box 4.4: Enforcement action against mortgage brokers**

Since we began regulating mortgage brokers in October 2004, we have banned over 100 mortgage brokers. Breaches have included:

- deliberately submitting to lenders applications containing false or misleading information; and
- failing to have adequate systems and controls in place to deal with the risk of mortgage fraud.

We have referred numerous cases to law enforcement, a number of which have resulted in criminal convictions.

#### **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?**

4.3 Part 2 of the Guide contains the following additional material on fraud:

- Chapter 10 summarises the findings of the *Small Firms Financial Crime Review*. It contains guidance directed at *small firms* on:
  - Monitoring activity (Box 10.3)
  - Responsibilities and risk assessments (Box 10.7)
  - General fraud (Box 10.13)
  - Insurance fraud (Box 10.14)
  - Investment fraud (Box 10.15)
  - Mortgage fraud (Box 10.16)
  - Staff/Internal fraud (Box 10.17)
- Chapter 11 summarises the findings of our thematic review *Mortgage fraud against lenders*. It contains guidance on:
  - Governance, culture and information sharing (Box 11.1)
  - Applications processing and underwriting (Box 11.2)
  - Mortgage fraud prevention, investigations, and recoveries (Box 11.3)
  - Managing relationships with conveyancers, brokers and valuers (Box 11.4)
  - Compliance and internal audit (Box 11.5)
  - Staff recruitment and vetting (Box 11.6)
  - Remuneration structures (Box 11.7)
  - Staff training and awareness (Box 11.8)

Part 2, Chapter 2 summarises our thematic review *Firms' high-level management of fraud risk*.

4.4 To find out more about what FSA is doing about fraud, see:

- Details of the FSA's Information from Lenders scheme:  
[www.fsa.gov.uk/pages/doing/regulated/supervise/mortgage\\_fraud.shtml](http://www.fsa.gov.uk/pages/doing/regulated/supervise/mortgage_fraud.shtml)
- Details of the FSA's Information from Brokers scheme:  
[www.fsa.gov.uk/smallfirms/your\\_firm\\_type/mortgage/fraud/report.shtml](http://www.fsa.gov.uk/smallfirms/your_firm_type/mortgage/fraud/report.shtml)
- Our fact sheet for mortgage brokers on mortgage fraud:  
[www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/mortgage\\_fraud.pdf](http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/mortgage_fraud.pdf)

4.5 The list of other bodies engaged in counter-fraud activities is long, but more information is available from:

- The National Fraud Authority, which works with the counter-fraud community to make fraud more difficult to commit in and against the UK:  
[www.homeoffice.gov.uk/agencies-public-bodies/nfa/](http://www.homeoffice.gov.uk/agencies-public-bodies/nfa/)
- The National Fraud Authority's cross-sector strategy, Fighting Fraud Together. The strategy, which the FSA endorses, aims to reduce fraud:  
[www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/fightrging-fraud-tog/fighting-fraud-together](http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/fightrging-fraud-tog/fighting-fraud-together)
- Action Fraud, which is the UK's national fraud reporting centre:  
[www.actionfraud.org.uk/](http://www.actionfraud.org.uk/)
- The City of London Police, which has 'lead authority' status in the UK for the investigation of economic crime, including fraud:  
[www.cityoflondon.police.uk/CityPolice/Departments/ECD/Fraud/](http://www.cityoflondon.police.uk/CityPolice/Departments/ECD/Fraud/)
- The Fraud Advisory Panel, which acts as an independent voice and supporter of the counter fraud community:  
<http://www.fraudadvisorypanel.org/>

## 5 Data security

**Who should read this chapter?** This chapter applies to **all firms** subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R and to **e-money institutions** and **payment institutions** within our supervisory scope.

**Content:** This chapter contains sections on:

- Governance Box 5.1
- Five fallacies of data loss and identity fraud Box 5.2
- Controls Box 5.3
- Case study - protecting customers' accounts from criminals Box 5.4
- Case study - data security failings Box 5.5

5.1 Customers routinely entrust financial firms with important personal data; if this falls into criminal hands, fraudsters can attempt to undertake financial transactions in the customer's name. Firms must take special care of their customers' personal data, and comply with the data protection principles set out in Schedule 1 to the Data Protection Act 1998. The Information Commissioner's Office provides guidance on the Data Protection Act and the responsibilities it imposes on data controllers and processors.

s.4 and Sch 1  
Data Protection  
Act 1998

### Box 5.1: Governance

The guidance in [Box 2.1](#) on governance in relation to financial crime also applies to data security.

Firms should be alert to the financial crime risks associated with holding customer data and have written data security policies and procedures which are proportionate, accurate, up to date and relevant to the day-to-day work of staff.

Self-assessment questions:

- How is **responsibility** for data security apportioned?
- Has the firm ever **lost customer data**? If so, what remedial actions did it take? Did it contact customers? Did it review its systems?
- How does the firm monitor that **suppliers of outsourced services** treat customer data appropriately?
- Are data security standards set in **outsourcing** agreements, with suppliers' performance subject to monitoring?

#### Examples of good practice

- There is a clear **figurehead** championing the issue of data security.
- Work, including by internal audit and compliance, is **coordinated** across the firm, with compliance,

#### Examples of poor practice

- The firm does not **contact customers** after their data is lost or compromised.
- Data security is treated as an **IT** or **privacy issue**, without also recognising the financial crime

<p>audit, HR, security and IT all playing a role.</p> <ul style="list-style-type: none"> <li>• A firm's <b>plans to respond to data loss incidents</b> are clear and include notifying customers affected by data loss and offering advice to those customers about protective measures.</li> <li>• A firm <b>monitors accounts</b> following a data loss to spot unusual transactions.</li> <li>• The firm looks at <b>outsourcers'</b> data security practices before doing business, and monitors compliance.</li> </ul>	<p>risk.</p> <ul style="list-style-type: none"> <li>• A <b>'blame culture'</b> discourages staff from reporting data losses.</li> <li>• The firm is unsure how its <b>third parties</b>, such as suppliers, protect customer data.</li> </ul>
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#### Box 5.2: Five fallacies of data loss and identity fraud

1. **'The customer data we hold is too limited or too piecemeal to be of value to fraudsters.'** This is misconceived: skilled fraudsters can supplement a small core of data by accessing several different public sources and use impersonation to encourage victims to reveal more. Ultimately, they build up enough information to pose successfully as their victim.
2. **'Only individuals with a high net worth are attractive targets for identity fraudsters.'** In fact, people of all ages, in all occupations and in all income groups are vulnerable if their data is lost.
3. **'Only large firms with millions of customers are likely to be targeted.'** Wrong. Even a small firm's customer database might be sold and re-sold for a substantial sum.
4. **'The threat to data security is external.'** This is not always the case. Insiders have more opportunity to steal customer data and may do so either to commit fraud themselves, or to pass it on to organised criminals.
5. **'No customer has ever notified us that their identity has been stolen, so our firm must be impervious to data breaches.'** The truth may be closer to the opposite: firms that successfully detect data loss do so because they have effective risk-management systems. Firms with weak controls or monitoring are likely to be oblivious to any loss. Furthermore, when fraud does occur, a victim rarely has the means to identify where their data was lost because data is held in so many places.

#### Box 5.3: Controls

We expect firms to put in place systems and controls to minimise the risk that their operation and information assets might be exploited by thieves and fraudsters. Internal procedures such as IT controls and physical security

measures should be designed to protect against **unauthorised access** to customer data.

Firms should note that we support the Information Commissioner's position that it is not appropriate for customer data to be taken off-site on laptops or other portable devices that are not encrypted.

Self-assessment questions:

- Is your firm's customer data taken **off-site**, whether by staff (sales people, those working from home) or third parties (suppliers, consultants, IT contractors etc)?
- If so, what **levels of security** exist? (For example, does the firm require automatic encryption of laptops that leave the premises, or measures to ensure no sensitive data is taken off-site? If customer data is transferred electronically, does the firm use secure internet links?)
- How does the firm **keep track** of its digital assets?
- How does it **dispose** of documents, computers, and imaging equipment such as photocopiers that retain records of copies? Are accredited suppliers used to, for example, destroy documents and hard disks? How does the firm satisfy itself that data is disposed of competently?
- How is **access** to the premises and sensitive areas of the business **controlled**?
- When are **staff access rights** reviewed? (It is good practice to review them at least on recruitment, when staff change roles, and when they leave the firm.)
- Is there enhanced **vetting** of staff with access to lots of data?
- How are staff made aware of **data security risks**?

#### Examples of good practice

- **Access** to sensitive areas (call centres, server rooms, filing rooms) is restricted.
- The firm has **individual user accounts** for all systems containing customer data.
- The firm conducts risk-based, **proactive monitoring** to ensure employees' access to customer data is for a genuine business reason.
- IT equipment is disposed of responsibly, e.g. by using a contractor **accredited** by the British Security Industry Association.
- Customer data in electronic form

#### Examples of poor practice

- Staff and third-party suppliers can access **data they do not need** for their role.
- Files are not **locked away**.
- Password standards are not robust and individuals **share passwords**.
- The firm **fails to monitor** superusers or other staff with access to large amounts of customer data.
- Computers are disposed of or transferred to new users without data being **wiped**.
- Staff working **remotely** do not dispose of customer data securely.
- Staff handling large volumes of

<p>(e.g. on USB sticks, CDs, hard disks etc) is always <b>encrypted</b> when taken offsite.</p> <ul style="list-style-type: none"> <li>The firm understands what checks are done by <b>employment agencies</b> it uses.</li> </ul>	<p>data also have access to <b>internet email</b>.</p> <ul style="list-style-type: none"> <li>Managers assume staff understand data security risks and <b>provide no training</b>.</li> <li><b>Unencrypted</b> electronic data is distributed by post or courier.</li> </ul>
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#### **Box 5.4: Case study - protecting customers' accounts from criminals**

In December 2007, we fined Norwich Union Life £1.26m for failings in its anti-fraud systems and controls.

- Callers to Norwich Union Life call centres were able to satisfy the firm's caller identification procedures by providing public information to impersonate customers.
- Callers obtained access to customer information, including policy numbers and bank details and, using this information, were able to request amendments to Norwich Union Life records, including changing the addresses and bank account details recorded for those customers.
- The frauds were committed through a series of calls, often carried out in quick succession.
- Callers subsequently requested the surrender of customers' policies.
- Over the course of 2006, 74 policies totalling £3.3m were fraudulently surrendered.
- The firm failed to address issues highlighted by the frauds in an appropriate and timely manner even after they were identified by its own compliance department.
- Norwich Union Life's procedures were insufficiently clear as to who was responsible for the management of its response to these actual and attempted frauds. As a result, the firm did not give appropriate priority to the financial crime risks when considering those risks against competing priorities such as customer service.

For more, see our press release:

[www.fsa.gov.uk/pages/Library/Communication/PR/2007/130.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2007/130.shtml)

#### **Box 5.5: Case study - data security failings**

In August 2010, we fined Zurich Insurance plc, UK branch £2,275,000 following the loss of 46,000 policyholders' personal details.

- The firm failed to take reasonable care to ensure that it had effective systems and controls to manage the risks relating to the security of confidential customer information arising out of its outsourcing arrangement with another Zurich company in South Africa.



- It failed to carry out adequate due diligence on the data security procedures used by the South African company and its subcontractors.
- It relied on group policies without considering whether this was sufficient and did not determine for itself whether appropriate data security policies had been adequately implemented by the South African company.
- The firm failed to put in place proper reporting lines. While various members of senior management had responsibility for data security issues, there was no single data security manager with overall responsibility.
- The firm did not discover that the South African entity had lost an unencrypted back-up tape until a year after it happened.

Our press release has more details:

[www.fsa.gov.uk/pages/Library/Communication/PR/2010/134.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/134.shtml)

## 5.2 Part 2 of the Guide contains the following additional material on data security:

- Chapter 6 summarises the findings of our thematic review of *Data security in Financial Services* and includes guidance on:
  - Governance (Box 6.1)
  - Training and awareness (Box 6.2)
  - Staff recruitment and vetting (Box 6.3)
  - Controls – access rights (Box 6.4)
  - Controls – passwords and user accounts (Box 6.5)
  - Controls – monitoring access to customer data (Box 6.6)
  - Controls – data back-up (Box 6.7)
  - Controls – access to the internet and email (Box 6.8)
  - Controls – key-logging devices (Box 6.9)
  - Controls – laptop (Box 6.10)
  - Controls – portable media including USB devices and CDs (Box 6.11)
  - Physical security (Box 6.12)
  - Disposal of customer data (Box 6.13)
  - Managing third-party suppliers (Box 6.14)
  - Internal audit and compliance monitoring (Box 6.15)
- Chapter 10 summarises the findings of the *Small Firms Financial Crime Review*, and contains guidance directed at *small firms* on:
  - Records (Box 10.5)
  - Responsibilities and risk assessments (Box 10.7)
  - Access to systems (Box 10.8)
  - Outsourcing (Box 10.9)

- Physical controls (Box 10.10)
- Data disposal (Box 10.11)
- Data compromise incidents (Box 10.12)

5.3 To find out more, see:

- The website of the Information Commissioner's Office:  
[www.ico.gov.uk](http://www.ico.gov.uk)
- A one-minute guide for small firms on data security:  
[www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/info\\_gathering/data\\_security.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/info_gathering/data_security.shtml)

## 6 Bribery and corruption

**Who should read this chapter?** This chapter applies to **all firms** subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R and to **e-money institutions** and **payment institutions** within our supervisory scope.

**Content:** This chapter contains sections on:

- |  |         |
|--|---------|
| • Governance   | Box 6.1 |
| • Risk assessment  | Box 6.2 |
| • Policies and procedures  | Box 6.3 |
| • Dealing with third parties   | Box 6.4 |
| • Case study - corruption risk   | Box 6.5 |
| • Case study - inadequate anti-bribery and corruption systems and controls | Box 6.6 |

6.1 Bribery, whether committed in the UK or abroad, is a criminal offence under the Bribery Act 2010, which consolidates and replaces previous anti-bribery and corruption legislation. The Act introduces a new offence for commercial organisations of failing to prevent bribery. It is a defence for firms charged with this offence to show that they had adequate bribery-prevention procedures in place. The Ministry of Justice has published guidance on adequate anti-bribery procedures.

6.2 The FSA does not enforce or give guidance on the Bribery Act. But:

- firms which are subject to our rules SYSC 3.2.6R and SYSC 6.1.1R are under a separate, regulatory obligation to establish and maintain effective systems and controls to mitigate financial crime risk; and
- e-money institutions and payment institutions must satisfy us that they have robust governance, effective risk procedures and adequate internal control mechanisms.

SYSC 3.2.6R;  
SYSC 6.1.1R

E-Money Reg 6;  
Payment Service  
Reg 6

Financial crime risk includes the risk of corruption as well as bribery, and so is wider than the Bribery Act's scope. And we may take action against a firm with deficient anti-bribery and corruption systems and controls regardless of whether or not bribery or corruption has taken place. Principle 1 of our Principles for Business also requires authorised firms to conduct their business with integrity.

PRIN 2.1.1R:  
Principle 1

6.3 So while we do not prosecute breaches of the Bribery Act, we have a strong interest in the anti-corruption systems and controls of firms we supervise, which is distinct from the Bribery Act's provisions. Firms should take this into account when considering the adequacy of their anti-bribery and corruption systems and controls.

### Box 6.1: Governance

The guidance in [Box 2.1](#) on governance in relation to financial crime also applies to bribery and corruption.

A firm's senior management should take steps to ensure 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.

Self-assessment questions:

- What **role** do senior management play in the firm's anti-bribery and corruption effort? Do they approve and periodically review the strategies and policies for managing, monitoring and mitigating this risk? What steps do they take to ensure staff are aware of their interest in this area?
- Can your firm's board and senior management **demonstrate** a good understanding of the bribery and corruption risks faced by the firm, the materiality to its business and how to apply a risk-based approach to anti-bribery and corruption?
- How are **integrity** and **compliance** with relevant anti-corruption legislation considered when discussing **business opportunities**?
- What **information** do senior management receive in relation to bribery and corruption, and how frequently? Is it sufficient for senior management effectively to fulfil their functions in relation to anti-bribery and corruption?

Examples of good practice

- The firm is **committed** to carrying out business fairly, honestly and openly.
- Responsibility for anti-bribery and corruption systems and controls is **clearly documented** and apportioned to a single senior manager with appropriate terms of reference who reports ultimately to the board.
- Anti-bribery systems and controls are **subject to audit**.
- Management information submitted to the board ensures they are **adequately informed** of internal and external developments relevant to bribery and corruption and respond to these swiftly and effectively.

Examples of poor practice

- There is a **lack of awareness** of, or engagement in, anti-bribery and corruption at senior management or board level.
- An 'ask no questions' culture sees management turn a **blind eye** to how new business is generated.
- **Little or no management information** is sent to the board about higher-risk third-party relationships or payments.

### Box 6.2: Risk assessment

The guidance in [Box 2.3](#) on risk assessment in relation to financial crime also applies to bribery and corruption.

We expect firms to identify, assess and regularly review and update their bribery and corruption risks. Corruption risk is the risk of a firm, or anyone

<p>acting on the firm’s behalf, engaging in corruption.</p> <p>Self-assessment questions:</p> <ul style="list-style-type: none"> <li>• How do you <b>define</b> bribery and corruption? Does it cover corrupt behaviour not captured by the Bribery Act definition?</li> <li>• Where is your firm <b>exposed</b> to bribery and corruption risk? (Have you considered risk associated with the products and services you offer, the customers and jurisdictions with which you do business, your exposure to public officials and public office holders and your own business practices, for example your approach to providing corporate hospitality, charitable and political donations and your use of third parties?)</li> <li>• Has the risk of <b>staff</b> or <b>third parties</b> acting on the firm’s behalf <b>offering</b> or <b>receiving bribes</b> or other corrupt advantage been assessed across the business?</li> <li>• Could <b>remuneration structures</b> increase the risk of bribery and corruption?</li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• Corruption risks are assessed in <b>all jurisdictions</b> where the firm operates and across all business channels.</li> <li>• The firm assesses and manages the risk of <b>remuneration structures</b> rewarding staff for taking unacceptable corruption and bribery risks to generate business.</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• Compliance departments are <b>ill equipped</b> to identify and assess corruption risk.</li> <li>• For fear of harming the business, the firm classifies as <b>low risk</b> a jurisdiction generally associated with <b>high risk</b>.</li> </ul>

**Box 6.3: Policies and procedures**

The guidance in [Box 2.4](#) on policies and procedures in relation to financial crime also applies to bribery and corruption.

Firms’ policies and procedures to reduce their financial crime risk must cover corruption and bribery. Self-assessment questions:

- How do you satisfy yourself that your anti-bribery and corruption policies and procedures are applied **effectively**?
- How do your firm’s policies and procedures help it to **identify** whether someone acting on behalf of the firm is corrupt?
- How does your firm **react** to suspicions or allegations of bribery or corruption involving people with whom the firm is connected?

SYSC 3.2.6R  
SYSC 6.1.1R

<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• The firm <b>clearly sets out</b> behaviour expected of those acting on its behalf.</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• The firm <b>does not assess</b> the extent to which staff comply with its anti-corruption policies and</li> </ul>
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<ul style="list-style-type: none"> <li>• There are <b>unambiguous consequences</b> for breaches of the firm's anti-corruption policy.</li> <li>• Risk-based, appropriate additional monitoring and due diligence are undertaken for jurisdictions, sectors and business relationships identified as <b>higher risk</b>.</li> </ul>	<p>procedures.</p> <ul style="list-style-type: none"> <li>• The firm's anti-corruption policies and procedures are <b>out of date</b>.</li> <li>• A firm relies on passages in the staff code of conduct that prohibit improper payments, but has no other <b>controls</b>.</li> <li>• The firm <b>does not respond</b> to internal or external events that may highlight weaknesses in its anti-corruption systems and controls.</li> </ul>
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#### Box 6.4: Dealing with third parties

We expect firms to take adequate and risk-sensitive measures to address the risk that a third party acting on behalf of the firm may engage in corruption.

Self-assessment questions:

- Do your firm's policies and procedures **clearly define** 'third party'?
- Do you **know** your third party?
- What is your firm's policy on **selecting** third parties? How do you check whether it is being followed?
- To what extent are third-party relationships **monitored** and **reviewed**?
- Is the **extent** of due diligence on third parties determined on a risk-sensitive basis? Do you seek to identify any bribery and corruption issues as part of your due diligence work, e.g. negative allegations against the third party or any political connections? Is due diligence applied consistently when establishing and reviewing third-party relationships?
- Is the due diligence information kept **up to date**? How?

<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• Where a firm uses third parties to generate business, these relationships are subject to <b>thorough due diligence</b> and management oversight.</li> <li>• The firm reviews in sufficient detail its relationships with third parties on a regular basis to confirm that it is still necessary and appropriate to <b>continue with the relationship</b>.</li> <li>• Third parties are <b>paid directly</b> for their work.</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• <i>A firm using intermediaries</i> fails to satisfy itself that those businesses have <b>adequate controls</b> to detect and prevent where staff have used bribery to generate business.</li> <li>• The firm fails to establish and record an <b>adequate commercial rationale</b> to support its payments to overseas third parties. For example, why it is necessary to use a third party to win business and what services would the third</li> </ul>
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<ul style="list-style-type: none"> <li>• The firm <b>reviews and monitors payments</b> to third parties. It records the purpose of third-party payments.</li> <li>• There are higher or extra levels of due diligence and approval for <b>high-risk third-party relationships</b>.</li> <li>• There is appropriate <b>scrutiny</b> of and <b>approval</b> for relationships with third parties that introduce business to the firm.</li> <li>• The firm's compliance function has <b>oversight</b> of all third-party relationships and monitors this list to identify risk indicators, for example a third party's political or public service connections.</li> </ul>	<p>party provide to the firm?</p> <ul style="list-style-type: none"> <li>• The firm is <b>unable to produce a list</b> of approved third parties, associated due diligence and details of payments made to them.</li> <li>• The firm does not discourage the giving or receipt of <b>cash gifts</b>.</li> <li>• There is <b>no checking</b> of compliance's operational role in approving new third-party relationships and accounts.</li> <li>• A firm <b>assumes</b> that long-standing third-party relationships present no bribery or corruption risk.</li> <li>• A firm relies exclusively on <b>informal</b> means to assess the bribery and corruption risks associated with third parties, such as staff's personal knowledge of the relationship with the overseas third parties.</li> </ul>
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#### **Box 6.5: Case study – corruption risk**

In January 2009, Aon Limited, an insurance intermediary based in the UK, was fined £5.25m for failures in its anti-bribery systems and controls.

The firm made suspicious payments totalling \$7m to overseas firms and individuals who helped generate business in higher-risk jurisdictions. Weak controls surrounding these payments to third parties meant the firm failed to question their nature and purpose when it ought to have been reasonably obvious to it that there was a significant corruption risk.

- Aon Limited failed properly to assess the risks involved in its dealings with overseas third parties and implement effective controls to mitigate those risks.
- Its payment procedures did not require adequate levels of due diligence to be carried out.
- Its authorisation process did not take into account the higher levels of risk to which certain parts of its business were exposed in the countries in which they operated.
- After establishment, neither relationships nor payments were routinely reviewed or monitored.
- Aon Limited did not provide relevant staff with sufficient guidance or training on the bribery and corruption risks involved in dealings with

overseas third parties.

- It failed to ensure that the committees it appointed to oversee these risks received relevant management information or routinely assessed whether bribery and corruption risks were being managed effectively.

See our press release:

[www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/004.shtml)

#### **Box 6.6: Case study – inadequate anti-bribery and corruption systems and controls**

In July 2011, we fined Willis Limited, an insurance intermediary, £6.9m for failing to take appropriate steps to ensure that payments made to overseas third parties were not used for corrupt purposes. Between January 2005 and December 2009, Willis Limited made payments totalling £27m to overseas third parties who helped win and retain business from overseas clients, particularly in high risk jurisdictions.

Willis had introduced anti-bribery and corruption policies in 2008, reviewed how its new policies were operating in practice and revised its guidance as a result in May 2009. But it should have taken additional steps to ensure they were adequately implemented.

- Willis failed to ensure that it established and recorded an adequate commercial rationale to support its payments to overseas third parties.
- It did not ensure that adequate due diligence was carried out on overseas third parties to evaluate the risk involved in doing business with them.
- It failed to review in sufficient detail its relationships with overseas third parties on a regular review to confirm whether it was necessary and appropriate to continue with the relationship.
- It did not adequately monitor its staff to ensure that each time it engaged an overseas third party an adequate commercial rationale had been recorded and that sufficient due diligence had been carried out.

This fine was the largest yet levied by the FSA for failures related to financial crime. See our press release:

[www.fsa.gov.uk/pages/Library/Communication/PR/2011/066.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2011/066.shtml).

#### 6.4 Part 2 of the Guide contains the following additional material on bribery and corruption:

- Chapter 9 summarises the findings of our thematic review *Anti-bribery and corruption in commercial insurance broking* and includes guidance on:
  - Governance and management information (Box 9.1)
  - Risk assessment and responses to significant bribery and corruption events (Box 9.2)
  - Due diligence on third-party relationships (Box 9.3)



- Payment controls (Box 9.4)
- Staff recruitment and vetting (Box 9.5)
- Training and awareness (Box 9.6)
- Risk arising from remuneration structures (Box 9.7)
- Incident reporting (Box 9.8)
- The role of compliance and internal audit (Box 9.9)

6.5 To find out more, see:

- The Bribery Act 2010:  
[www.legislation.gov.uk/ukpga/2010/23/contents](http://www.legislation.gov.uk/ukpga/2010/23/contents)
- The Ministry of Justice's guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing:  
[www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf](http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf) (full version)  
[www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-quick-start-guide.pdf](http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-quick-start-guide.pdf) (quick-start guide)
- Our one-minute guide for smaller firms on anti-bribery and corruption:  
[http://www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/insurance\\_intermed/anti\\_bribery.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/insurance_intermed/anti_bribery.shtml)

## 7 Sanctions and asset freezes

**Who should read this chapter?** All firms are required to comply with the UK's financial sanctions regime. The FSA's role is to ensure that the firms it supervises have adequate systems and controls to do so. As such, this chapter applies to **all firms** subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R. It also applies to **e-money institutions** and **payment institutions** within our supervisory scope

Firms' systems and controls should also address, where relevant, the risks they face from weapons proliferators, although these risks will be very low for the majority of FSA-supervised firms. **Box 7.5**, which looks at weapons proliferation, applies to **banks carrying out trade finance business** and those engaged in other activities, such as **project finance** and **insurance**, for whom the risks are greatest.

Sanctions against Iran<sup>2</sup> will impose requirements on **all firms conducting business linked to that country**.

**Content:** This chapter contains sections on:

- |   |         |
|---|---------|
| • Governance  | Box 7.1 |
| • Risk assessment                                       | Box 7.2 |
| • Screening customers against sanctions lists           | Box 7.3 |
| • Matches and escalation                                | Box 7.4 |
| • Weapons proliferation                                 | Box 7.5 |
| • Case study – deficient sanctions systems and controls | Box 7.6 |

- 7.1 The UK's financial sanctions regime, which freezes the UK assets of certain individuals and entities, is one aspect of the government's wider approach to economic sanctions. Other elements include export controls (see the Annex 1 list of common terms) and measures to prevent the proliferation of weapons of mass destruction.
- 7.2 The UK **financial sanctions** regime lists individuals and entities that are subject to financial sanctions. These can be based in the UK, elsewhere in the EU or the rest of the world. In general terms, the law requires firms not to provide funds or, in the case of the Terrorism Order,<sup>3</sup> financial services, to those on the list, unless a licence is obtained from the Treasury's dedicated Asset Freezing Unit<sup>4</sup>. The Treasury maintains a [Consolidated List](#) of financial sanctions targets

<sup>2</sup> Current sanctions against Iran stem from concerns over its proliferation activity. As well as imposing asset freezes, they prevent firms we regulate from, among other things, dealing with Iranian banks, establishing subsidiaries in Iran, buying Iranian bonds, making loans to Iranian oil companies, and insuring Iranian organisations (but not individuals). Fund transfers involving Iran over €10,000 in value need to be notified to the Treasury, or, in some cases, submitted to them for approval.

<sup>3</sup> [The Terrorism \(United Nations Measures\) Order 2009 \(SI 2009/1747\)](#)

<sup>4</sup> General licences are in place to allow individuals subject to financial sanctions to access basic financial services, for example to insure themselves, and to allow insurers to provide services for short periods following a claim (e.g. a hire car after a motor accident). The Treasury must be informed promptly.

designated by the United Nations, the European Union and the United Kingdom, which is available from its website. If firms become aware of a breach, they must notify the Asset Freezing Unit in accordance with the relevant provisions.

- 7.3 Alongside financial sanctions, the government imposes **controls on certain types of trade**. As part of this, the export of goods and services for use in nuclear, radiological, chemical or biological weapons programmes is subject to strict controls. Proliferators seek to gain access to this technology illegally: aiding them is an offence<sup>5</sup>.

#### Box 7.1: Governance

The guidance in [Box 2.1](#) on governance in relation to financial crime also applies to sanctions.

Senior management should be sufficiently aware of the firm's obligations regarding financial sanctions to enable them to discharge their functions effectively.

Self-assessment questions:

- Has your firm **clearly allocated** responsibility for adherence to the sanctions regime? To whom?
- How does the firm **monitor performance**? (For example, statistical or narrative reports on matches or breaches.)

Examples of good practice

- An individual of **sufficient authority** is responsible for overseeing the firm's adherence to the sanctions regime.
- It is clear **at what stage customers are screened** in different situations (e.g. when customers are passed from agents or other companies in the group).
- There is **appropriate escalation** of actual target matches and breaches of UK sanctions. Notifications are timely.

Examples of poor practice

- The firm believes payments to sanctioned individuals and entities are **permitted** when the sums are small. Without a licence from the Asset Freezing Unit, this could be a **criminal offence**.
- No **internal audit** resource is allocated to monitoring sanctions compliance.
- Some business units in a *large organisation* think they are **exempt**.

The offence will depend on the sanctions provisions breached.

#### Box 7.2: Risk assessment

The guidance in [Box 2.3](#) on risk assessment in relation to financial crime also applies to sanctions.

A firm should consider which areas of its business are most likely to provide services or resources to individuals or entities on the Consolidated List.

<sup>5</sup> Aiding proliferators is an offence under the [Anti-Terrorism, Crime and Security Act 2001](#). Note that the Treasury can also use powers under the [Counter Terrorism Act 2008](#) (see Annex 1) to direct financial firms to, say, cease business with certain customers involved in proliferation activity.

<p>Self-assessment questions:</p> <ul style="list-style-type: none"> <li>• Does your firm have a <b>clear view</b> on where within the firm breaches are most likely to occur? (This may cover different business lines, sales channels, customer types, geographical locations, etc.)</li> <li>• How is the risk assessment <b>kept up to date</b>, particularly after the firm enters a new jurisdiction or introduces a new product?</li> </ul>	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• <i>A firm with international operations, or that deals in currencies other than sterling, understands the requirements of relevant <b>local financial sanctions regimes</b>.</i></li> <li>• <i>A small firm is <b>aware</b> of the sanctions regime and where it is most vulnerable, even if risk assessment is only informal.</i></li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• There is <b>no process</b> for updating the risk assessment.</li> <li>• The firm assumes financial sanctions <b>only apply to money transfers</b> and so has not assessed its risks.</li> </ul>

### Box 7.3: Screening customers against sanctions lists

A firm should have effective, up-to-date screening systems appropriate to the nature, size and risk of its business. Although screening itself is not a legal requirement, screening new customers and payments against the Consolidated List, and screening existing customers when new names are added to the list, helps to ensure that firms will not breach the sanctions regime. (Some firms may, for a variety of reasons, continue to retain customers who are listed under UK sanctions: this is permitted if the Asset Freezing Unit has granted a licence.)

Self-assessment questions:

- When are customers screened against **lists**, whether the Consolidated List, internal watchlists maintained by the firm, or lists from commercial providers? (Screening should take place at the time of customer take-on. Good reasons are needed to justify the risk posed by retrospective screening, such as the existence of general licences.)
- If a customer was **referred** to the firm, how does the firm ensure the person is not listed? (Does the firm screen the customer against the list itself, or does it seek assurances from the referring party?)
- How does the firm become **aware of changes** to the Consolidated List? (Are there manual or automated systems? Are customer lists rescreened after each update is issued?)

<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• The firm has considered what <b>mixture</b> of manual and automated screening is most</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• The firm assumes that an intermediary has screened a customer, but <b>does not check</b></li> </ul>
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<p>appropriate.</p> <ul style="list-style-type: none"> <li>• There are quality control checks over <b>manual screening</b>.</li> <li>• Where a firm uses automated systems these can make <b>'fuzzy matches'</b> (e.g. able to identify similar or variant spellings of names, name reversal, digit rotation, character manipulation, etc.).</li> <li>• The firm screens customers' <b>directors</b> and known <b>beneficial owners</b> on a risk-sensitive basis.</li> <li>• Where the firm maintains an account for a listed individual, the status of this account is <b>clearly flagged</b> to staff.</li> <li>• A firm only places faith in <b>other firms' screening</b> (such as outsourcers or intermediaries) after taking steps to satisfy themselves this is appropriate.</li> </ul>	<p>this.</p> <ul style="list-style-type: none"> <li>• Where a firm uses automated systems, it does not understand how to <b>calibrate</b> them and does not check whether the number of hits is unexpectedly high or low.</li> <li>• An <i>insurance company</i> <b>only screens when claims are made</b> on a policy.</li> <li>• Screening of customer databases is a <b>one-off</b> exercise.</li> <li>• Updating from the Consolidated List is <b>haphazard</b>. Some business units use out-of-date lists.</li> <li>• The firm has <b>no means</b> of monitoring payment instructions.</li> </ul>
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#### **Box 7.4: Matches and escalation**

When a customer's name matches a person on the Consolidated List it will often be a 'false positive' (e.g. a customer has the same or similar name but is not the same person). Firms should have procedures for identifying where name matches are real and for freezing assets where this is appropriate.

Self-assessment questions:

- What steps does your firm take to identify whether a **name match is real?** (For example, does the firm look at a range of identifier information such as name, date of birth, address or other customer data?)
- Is there a **clear procedure** if there is a breach? (This might cover, for example, alerting senior management, the Treasury and the FSA, and giving consideration to a Suspicious Activity Report.)

Examples of good practice	Examples of poor practice
<ul style="list-style-type: none"> <li>• Sufficient resources are available to identify ‘<b>false positives</b>’.</li> <li>• After a breach, as well as meeting its formal obligation to notify the <b>Asset Freezing Unit</b>, the firm considers whether it should report the breach to the <b>FSA</b>.<sup>6</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The firm <b>does not report a breach</b> of the financial sanctions regime to the Asset Freezing Unit: <b>this could be a criminal offence</b>.</li> <li>• An account is <b>not frozen</b> when a match with the Consolidated List is identified. If, as a consequence, funds held, owned or controlled by a designated person are dealt with or made available to the designated person, <b>this could be a criminal offence</b>.</li> <li>• A <b>lack of resources</b> prevents a firm from <b>adequately analysing</b> matches.</li> <li>• <b>No audit trail</b> of decisions where potential target matches are judged to be false positives.</li> </ul>

The offence will depend on the sanctions provisions breached.

The offence will depend on the sanctions provisions breached.

### Box 7.5: Weapons proliferation

Alongside financial sanctions, the government imposes controls on certain types of trade in order to achieve foreign policy objectives. The export of goods and services for use in nuclear, radiological, chemical or biological weapons programmes is subject to strict controls. Firms’ systems and controls should address the proliferation risks they face.

Self-assessment questions:

- Does your firm finance **trade with high-risk countries**? If so, is **enhanced due diligence** carried out on counterparties and goods? Where doubt remains, is evidence sought from **exporters** that the trade is legitimate?
- Does your firm have **customers from high-risk countries**, or with a history of dealing with individuals and entities from such places? If so, has the firm reviewed how the sanctions situation could affect such counterparties, and discussed with them how they may be affected by relevant regulations?
- What **other business** takes place with high-risk jurisdictions, and what measures are in place to contain the risks of transactions being related to

<sup>6</sup> Chapter [15.3](#) of the Supervision manual (SUP) of the FSA Handbook contains general notification requirements. Firms are required to tell us, for example, about significant rule breaches (see SUP 15.3.11R(1)). Firms should therefore consider whether the breach is the result of any matter within the scope of SUP 15.3, for example a significant failure in their financial crime systems and controls.

proliferation?	
<p>Examples of good practice</p> <ul style="list-style-type: none"> <li>• A <i>bank</i> has identified if its customers export goods to high-risk jurisdictions, and subjects transactions to <b>enhanced scrutiny</b> by identifying, for example, whether goods may be subject to export restrictions, or end-users may be of concern.</li> <li>• Where <b>doubt exists</b>, the <i>bank</i> asks the customer to <b>demonstrate</b> that appropriate assurances have been gained from relevant government authorities.</li> <li>• The firm has considered <b>how to respond</b> if the government takes action under the Counter-Terrorism Act 2008 against one of its customers.</li> </ul>	<p>Examples of poor practice</p> <ul style="list-style-type: none"> <li>• The firm <b>assumes</b> customers selling goods to countries of concern will have checked the exports are legitimate, and <b>does not ask for evidence</b> of this from customers.</li> <li>• An <i>insurer</i> has not identified whether <a href="#">EU Regulation 961/2010</a> affects its relationship with its customers.</li> <li>• A firm knows that its customers deal with individuals and entities from high-risk jurisdictions but <b>does not communicate with those customers</b> about relevant regulations in place and how they affect them.</li> </ul>

#### Box 7.6: Case study – deficient sanctions systems and controls

In August 2010, we fined Royal Bank of Scotland (RBS) £5.6m for deficiencies in its systems and controls to prevent breaches of UK financial sanctions.

- RBS failed adequately to screen its customers – and the payments they made and received – against the sanctions list, thereby running the risk that it could have facilitated payments to or from sanctioned people and organisations.
- The bank did not, for example, screen cross-border payments made by its customers in sterling or euros.
- It also failed to ensure its ‘fuzzy matching’ software remained effective, and, in many cases, did not screen the names of directors and beneficial owners of customer companies.

The failings led the FSA to conclude that RBS had breached the Money Laundering Regulations 2007, and our penalty was imposed under that legislation – a first for the FSA.

For more information see our press release:

[www.fsa.gov.uk/pages/Library/Communication/PR/2010/130.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/130.shtml)

- 7.4 Part 2 of the Guide contains the following additional material on sanctions and assets freezes:

- Chapter 8 summarises the findings of our thematic review *Financial services firms' approach to UK financial sanctions* and includes guidance on:
  - Senior management responsibility (Box 8.1)
  - Risk assessment (Box 8.2)
  - Policies and procedures (Box 8.3)
  - Staff training and awareness (Box 8.4)
  - Screening during client take-on (Box 8.5)
  - Ongoing screening (Box 8.6)
  - Treatment of potential target matches (Box 8.7)

7.5 To find out more on **financial sanctions**, see:

- The website of the Treasury's Asset Freezing Unit:  
[www.hm-treasury.gov.uk/fin\\_sanctions\\_afu.htm](http://www.hm-treasury.gov.uk/fin_sanctions_afu.htm)
- The Treasury also provides information on general licences:  
[www.hm-treasury.gov.uk/fin\\_sanctions\\_general\\_licences.htm](http://www.hm-treasury.gov.uk/fin_sanctions_general_licences.htm)
- 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](http://www.jmlsg.org.uk/download/6130)
- Our fact sheet on financial sanctions aimed at small firms:  
[www.fsa.gov.uk/smallfirms/resources/pdfs/Sanctions.pdf](http://www.fsa.gov.uk/smallfirms/resources/pdfs/Sanctions.pdf)

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](http://www.jmlsg.org.uk/download/6130)
- The website of the UK's **Export Control Organisation**, which contains much useful information, including lists of equipment requiring a licence to be exported to any destination, because they are either military items or 'dual use' (see the Annex 1 list of common terms). For Iran, the website also lists goods that require a licence for that destination, and provides guidance on end users of concern. See:  
[www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&r.l2=1084228483&topicId=1084302974](http://www.businesslink.gov.uk/bdotg/action/layer?r.s=tl&r.l1=1079717544&r.lc=en&r.l2=1084228483&topicId=1084302974)
- The **BIS Iran List**, which shows, among other things, entities in Iran who have had export licenses declined:  
[www.bis.gov.uk/policies/export-control-organisation/eco-notice-exporters](http://www.bis.gov.uk/policies/export-control-organisation/eco-notice-exporters)
- SOCA's website, which contains guidelines on how to report suspicions related to weapons proliferation:  
[www.soca.gov.uk/about-soca/library/doc\\_download/297-guidelines-for-counter-proliferation-financing-reporting.doc](http://www.soca.gov.uk/about-soca/library/doc_download/297-guidelines-for-counter-proliferation-financing-reporting.doc)



- EU Regulation 961/2010, which sets out restrictive measures against Iran:  
<http://tinyurl.com/961-2011>
- The FATF website. In June 2008, **FATF** launched a 'Proliferation Financing Report' that includes case studies of past proliferation cases, including some involving UK banks. This was followed up with a report in February 2010:

[www.fatf-gafi.org/dataoecd/14/21/41146580.pdf](http://www.fatf-gafi.org/dataoecd/14/21/41146580.pdf)

[www.fatf-gafi.org/dataoecd/32/40/45049911.pdf](http://www.fatf-gafi.org/dataoecd/32/40/45049911.pdf).

## Annex 1: Common terms

This annex provides a list of common and useful terms related to financial crime. It also includes references to some key legal provisions. It is for reference purposes and is not a list of ‘defined terms’ used in the Guide. This annex does not provide guidance on rules or amend corresponding references in the FSA Handbook’s Glossary of definitions.

Term	Meaning
advance fee fraud	A fraud where people are persuaded to hand over money, typically characterised as a ‘fee’, in the expectation that they will then be able to gain access to a much larger sum which does not actually exist.
AFU	See ‘Asset Freezing Unit’.
AML	Anti-money laundering. See ‘money laundering’.
Annex I financial institution	<p>The Money Laundering Regulations 2007 give the FSA responsibility for supervising the anti-money laundering controls of ‘Annex I financial institutions’ (a reference to Annex I to the Banking Consolidation Directive). In practice, this includes businesses that offer finance leases, commercial lenders and providers of safe deposit boxes.</p> <p>Where a firm we authorise offers such services, we are responsible for overseeing whether these activities are performed in a manner that complies with the requirements of the Money Laundering Regulations 2007. Authorised firms are not formally required to inform us that they perform these activities, although some may choose to do so for the sake of transparency.</p> <p>Where these businesses are not authorised by us, we are responsible for supervising their AML activities. For more information on this, see our website:  <a href="http://www.fsa.gov.uk/pages/About/What/financial_crime/money_laundering/3mld/registered/index.shtml">www.fsa.gov.uk/pages/About/What/financial_crime/money_laundering/3mld/registered/index.shtml</a></p>
asset freezing	See ‘financial sanctions regime’.
Asset Freezing Unit (AFU)	The Asset Freezing Unit of the Treasury is responsible for the implementation and administration of the UK sanctions regime. See: <a href="http://www.hm-treasury.gov.uk/fin_sanctions_afu.htm">www.hm-treasury.gov.uk/fin_sanctions_afu.htm</a> for more.
Banking Consolidation Directive (BCD)	<a href="#">Directive 2006/48/EC</a> , which sets out (in its Annex I) the list of activities subject to mutual recognition which, in turn, help define the scope of the Third Money Laundering Directive.
beneficial owner	The natural person who ultimately owns the customer or exercises management control over it. An entity may have more than one beneficial owner. ‘Beneficial owner’ is defined in Regulation 6 of the Money Laundering Regulations 2007.
boiler room	An unauthorised firm that defrauds the public by using hard-sell tactics, usually over the telephone, to sell shares as an investment opportunity while knowing that the shares are worthless or fictional.

	<a href="http://www.fsa.gov.uk/Pages/consumerinformation/scamsandswindles/index.shtml">www.fsa.gov.uk/Pages/consumerinformation/scamsandswindles/index.shtml</a>
bribery	Bribery is the offering or acceptance of an undue advantage in exchange for the improper performance of a function or activity. Statutory offences of bribery are set out more fully in the Bribery Act 2010.
Bribery Act 2010	The <a href="#">Bribery Act</a> came into force in July 2011. It outlaws offering and receiving bribes, at home and abroad, and creates a corporate offence of failing to prevent bribery. The Ministry of Justice has issued guidance about procedures that firms can put in place to prevent bribery: <a href="http://www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf">www.justice.gov.uk/downloads/guidance/making-reviewing-law/bribery-act-2010-guidance.pdf</a> .
CDD	See 'customer due diligence'.
CIFAS	CIFAS is the UK's fraud prevention service with over 250 members across the financial industry and other sectors. See CIFAS's website for more information: <a href="http://www.cifas.org.uk">www.cifas.org.uk</a> .
consent	If a firm is concerned that it may be assisting in the laundering of funds it can file a Suspicious Activity Report and apply to SOCA for consent to continue the transaction. The Proceeds of Crime Act 2002 gives SOCA seven working days to respond. SOCA will either agree that the transaction can go ahead or it will refuse consent. In the latter case SOCA has 31 calendar days in which to take further action: for example, to seek a court order to restrain the assets in question.
Consolidated List	The Treasury maintains a Consolidated List of financial sanctions targets designated by the United Nations, the European Union and the United Kingdom. It is available from the Treasury's website: <a href="http://www.hm-treasury.gov.uk/fin_sanctions_index">www.hm-treasury.gov.uk/fin_sanctions_index</a>
corruption	Corruption is the abuse of public or private office to obtain an undue advantage. Corruption includes bribery.
Counter-Terrorism Act 2008	The Treasury has powers under Schedule 7 to the Counter-Terrorism Act 2008 to require financial firms to take specified actions in relation to a country of concern, or counterparties based in that country. Use of this power can be triggered if a) the risk of money laundering or terrorist financing activities is identified in a country, or b) the government believes a country has a nuclear, chemical, radiological or biological weapons programme that threatens the UK. The directions can require enhanced due diligence and ongoing monitoring, the systematic reporting of transactions, or the cessation of business. This offers the government flexibility that was not available in the traditional financial sanctions regime. We are responsible for monitoring authorised firms' and certain financial institutions' compliance with these directions.
cover payment	Where payments between customers of two banks in different countries and currencies require settlement by means of matching inter-bank payments, those matching payments are known as 'cover payments'. International policymakers have expressed concern that

	cover payments can be abused to hide the origins of flows of funds. In response to this, changes to the SWIFT payment messaging system now allow originator and beneficiary information to accompany cover payments.
CPS	See 'Crown Prosecution Service'
Crown Prosecution Service (CPS)	The Crown Prosecution Service prosecutes crime, money laundering and terrorism offences in England and Wales. The Procurator Fiscal and Public Prosecution Service of Northern Ireland play similar roles in Scotland and Northern Ireland respectively. See the CPS website for more information: <a href="http://www.cps.gov.uk">www.cps.gov.uk</a> .
CTF	Combating terrorist financing/countering the finance of terrorism.
customer due diligence (CDD)	'Customer due diligence' describes measures firms have to take to identify, and verify the identity of, customers and their beneficial owners. Customer due diligence also includes measures to obtain information on the purpose and intended nature of the business relationship. See Regulation 7 of the Money Laundering Regulations 2007. 'Customer due diligence' and 'Know Your Customer' (KYC) are sometimes used interchangeably.
dual use goods	Items that can have legitimate commercial uses, while also having applications in programmes to develop weapons of mass destruction. Examples include alloys that are constructed to tolerances and thresholds sufficiently high for them to be suitable for use in nuclear reactors. Many such goods are listed in EU regulations which also restrict their unlicensed export.
Data Protection Act 1998 (DPA)	The <a href="#">DPA</a> imposes legal obligations on those who handle individuals' personal information. Authorised firms are required to take appropriate security measures against the loss, destruction or damage of personal data. Firms also retain responsibility when data is passed to a third party for processing.
economic sanctions	Restrictions on trade or financial flows imposed by the government in order to achieve foreign policy goals. See: 'financial sanctions regime', 'trade sanctions', and 'proliferation finance'.
EEA firms	Firms from the European Economic Area (EEA) that passport into the UK are generally authorised persons. Generally speaking, EEA firms who carry on relevant business from a UK branch will be subject to the Money Laundering Regulations 2007 and the financial crime-related requirements in the FSA Handbook. However, an EEA firm that only provides services on a cross-border basis (and so does not have a UK branch) will not be subject to the Money Laundering Regulations 2007, unless it carries on its business through representatives who are temporarily located in the UK.
Egmont Group	A forum for financial intelligence units from across the world. See the Egmont Group's website for more information: <a href="http://www.egmontgroup.org">www.egmontgroup.org</a> .
embargos	See 'trade sanctions'.

e-money	The E-money Regulations 2011 <a href="#">[SI 2011/99]</a> define electronic money as electronically (including magnetically) stored monetary value, represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making payment transactions, and which is accepted by a person other than the electronic money issuer. The E-money Regulations specify who can issue e-money; this includes credit institutions and e-money institutions.
e-money institutions (EMIs)	E-money institutions are a specific category of financial institutions authorised or registered to issue e-money under the Electronic Money Regulations 2011, rather than FSMA. The FSA's financial crime Handbook provisions do not apply to e-money institutions, but the FSA supervises e-money institutions for compliance with their obligations under the Money Laundering Regulations 2007. They must also satisfy us that they have robust governance, effective risk procedures and adequate internal control mechanisms. This incorporates their financial crime systems and controls.  For more information, see our e-money approach document: <a href="http://www.fsa.gov.uk/pubs/international/approach_emoney.pdf">http://www.fsa.gov.uk/pubs/international/approach_emoney.pdf</a> .
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).
equivalent jurisdiction	A jurisdiction (other than an EEA state) whose law contains equivalent provisions to those contained in the Third Money Laundering Directive. The JMLSG has prepared guidance for firms on how to identify which jurisdictions are equivalent. Equivalent jurisdictions are significant because a firm is able to apply 'simplified due diligence' to financial institutions from these places. Firms can also rely on the customer due diligence checks undertaken by certain introducers from these jurisdictions (see 'reliance').
export controls	UK exporters must obtain a licence from the government before exporting certain types of goods, primarily those with military applications. Exporting these goods without a licence is prohibited by the Export Control Order 2008 <a href="#">[SI 2008/3231]</a> . If a financial firm authorised by us were to finance or insure these illegal exports, it would arguably have been used to further financial crime.
FATF	See 'Financial Action Task Force'.
FATF Recommendations	Forty Recommendations issued by the FATF on the structural, supervisory and operational procedures that countries should have in place to combat money laundering.  The Forty Recommendations can be downloaded from the FATF's website: <a href="http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF">www.fatf-gafi.org/dataoecd/7/40/34849567.PDF</a>
FATF Special Recommendations	Nine Recommendations on the prevention of terrorist financing.  The Nine Special Recommendations can be downloaded from FATF's website: <a href="http://www.fatf-gafi.org/dataoecd/8/17/34849466.pdf">www.fatf-gafi.org/dataoecd/8/17/34849466.pdf</a>
FATF-style	Regional international bodies such as Moneyval and the Asia-Pacific

regional bodies	Group which have a similar form and functions to those of the FATF. The FATF seeks to work closely with such bodies.
FI	See 'Financial Investigator'.
Financial Action Task Force (FATF)	An intergovernmental body that develops and promotes anti-money laundering and counter terrorist financing standards worldwide. Further information is available on its website: <a href="http://www.fatf-gafi.org">www.fatf-gafi.org</a>
financial crime	Financial crime is any crime involving money. More formally, the Financial Services and Markets Act 2000 defines financial crime 'to include any offence involving (a) fraud or dishonesty; (b) misconduct in, or misuse of information relating to, a financial market; or (c) handling the proceeds of crime'. The use of the term 'to include' means financial crime can be interpreted widely to include, for example, corruption or funding terrorism.
financial intelligence unit (FIU)	The IMF uses the following definition: 'a central national agency responsible for receiving, analyzing, and transmitting disclosures on suspicious transactions to the competent authorities.' SOCA has this role in the UK.
Financial Investigator (FI)	Financial Investigators are accredited people able under the relevant legislation to investigate financial offences and recover the proceeds of crime.
financial sanctions regime	This prohibits firms from providing funds and other economic resources (and, in the case of designated terrorists, financial services) to individuals and entities on a Consolidated List maintained by the Asset Freezing Unit of the Treasury. The Asset Freezing Unit is responsible for ensuring compliance with the UK's financial sanctions regime; our role is to ensure firms have appropriate systems and controls to enable compliance.
Financial Services and Markets Act 2000 (FSMA)	The <a href="#">Financial Services and Markets Act 2000</a> sets out the objectives, duties and powers of the Financial Services Authority.
Financial Services Authority (FSA)	The Financial Services Authority has statutory objectives under FSMA that include the reduction of financial crime. We have supervisory responsibilities under the Money Laundering Regulations 2007 for authorised firms and businesses such as leasing companies and providers of safe deposit boxes. We also have functions under other legislation such as the Transfer of Funds (Information on the Payer) Regulations 2007, in relation to the EU Wire Transfer Regulation, and schedule 7 to the Counter-Terrorism Act 2008.
FIU	See 'financial intelligence unit'.
four-eyes procedures	Procedures that require the oversight of two people, to lessen the risk of fraudulent behaviour, financial mismanagement or incompetence going unchecked.
fraud (types of)	Fraud can affect firms and their customers in many ways. The following are examples of fraud:

	<ul style="list-style-type: none"> <li>• a firm is defrauded by customers (e.g. mortgage fraud);</li> <li>• a firm is defrauded by employees or contractors ('insiders') (e.g. a staff member steals from his employer and amends records to cover-up the theft);</li> <li>• a firm's customers are defrauded by an insider (e.g. a staff member steals customers' money);</li> <li>• a firm's customers are defrauded after a third party misleads the firm (e.g. criminals evade security measures to gain access to a customer's account);</li> <li>• a firm's customers are defrauded by a third party because of the firm's actions (e.g. the firm loses sensitive personal data allowing the customer's identity to be stolen);</li> <li>• a customer is defrauded, with a firm executing payments connected to this fraud on the customer's instruction (e.g. a customer asks his bank to transfer funds to what turns out to be a share sale scam).</li> </ul> <p>See also: 'advance fee fraud', 'boiler room', 'long firm fraud', and 'Missing Trader Inter-Community fraud'.</p>
Fraud Act 2006	The <a href="#">Fraud Act 2006</a> sets out a series of fraud offences such as fraud by false representation, fraud by failing to disclose information and fraud by abuse of position.
FSA	See 'Financial Services Authority'.
FSMA	See 'Financial Services and Markets Act 2000'.
FSRB	See 'FATF-style regional bodies'.
fuzzy matching	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 JMLSG's guidance: <a href="http://www.jmlsg.org/download/6130">www.jmlsg.org/download/6130</a> .
high-value dealer	A firm trading in goods (e.g. cars, jewellery and antiques) that accepts cash of €15,000 or more in payment (whether in one go or in several payments that appear to be linked). HMRC is the supervisory authority for high value dealers. A full definition is set out in Regulation 3(12) of the Money Laundering Regulations 2007.
HM Revenue and Customs (HMRC)	HM Revenue and Customs (HMRC) has supervisory responsibilities under the Money Laundering Regulations 2007. It oversees money service businesses, dealers in high value goods and trust or company service providers, amongst others. See HMRC's website for more information: <a href="http://www.hmrc.gov.uk/index.htm">www.hmrc.gov.uk/index.htm</a> .

HMRC	See 'HM Revenue and Customs'.
HMT	See 'Treasury'.
ICO	See 'Information Commissioner's Office'.
ID	Identification (or Identity Documents).
identification	The JMLSG's definition is: 'ascertaining the name of, and other relevant information about, a customer or beneficial owner'.
IFB	Insurance Fraud Bureau.
Information Commissioner's Office (ICO)	The Information Commissioner's Office is tasked with protecting the public's personal information. See the ICO's website for further information: <a href="http://www.ico.gov.uk">www.ico.gov.uk</a> .
Information From Lenders (IFL)	The Information From Lenders scheme enables mortgage lenders to inform the FSA of suspected fraud by mortgage brokers. Details are here: <a href="http://www.fsa.gov.uk/pages/doing/regulated/supervise/mortgage_fraud.shtml">www.fsa.gov.uk/pages/doing/regulated/supervise/mortgage_fraud.shtml</a>
insider fraud	Fraud against a firm committed by an employee or group of employees. This can range from junior staff to senior management, directors, etc. Insiders seeking to defraud their employer may work alone, or with others outside the firm, including organised criminals.
Institute of Chartered Accountants in England and Wales (ICAEW)	The Institute of Chartered Accountants in England and Wales has supervisory responsibility for its members under the Money Laundering Regulations 2007, as do other professional bodies for accountants and book-keepers. See the ICAEW's website for further information: <a href="http://www.icaew.com">www.icaew.com</a> .
integration	See 'placement, layering, integration'.
JMLSG	See 'Joint Money Laundering Steering Group'.
Joint Money Laundering Steering Group (JMLSG)	This industry body is made up of financial sector trade bodies. It produces guidance on compliance with legal and regulatory requirements related to money laundering. See the JMLSG's website for more information: <a href="http://www.jmlsg.org.uk">www.jmlsg.org.uk</a> .
Know Your Customer (KYC)	This term is often used as a synonym for 'customer due diligence' checks. The term can also refer to suitability checks related to the regulated sales of financial products. The Money Laundering Regulations 2007 refer to 'customer due diligence' and not to KYC.
KYC	See 'Know Your Customer'.
layering	See 'placement, layering, integration'.
long firm fraud	A fraud where an apparently legitimate company is established and, over a period of time, builds up a good credit record with wholesalers, paying promptly for modest transactions. Correspondence from bankers may be used by them as evidence of good standing. The company then places a large order, takes delivery, but disappears without paying. This type of fraud is not limited to



	wholesalers of physical goods: financial firms have been victim to variants of this scam.
Missing Trader Inter-Community (MTIC) fraud	This fraud exploits the EU system for rebating Value Added Tax payments in situations where goods have moved across borders within the EU. National authorities are misled into giving rebates to import-export companies that are not entitled to them.
MLRO	See 'Money Laundering Reporting Officer'.
money laundering	The process by which the proceeds of crime are converted into assets which appear to have a legitimate origin, so that they can be retained permanently, or recycled to fund further crime.
Money Laundering Directive	See 'Third Money Laundering Directive'.
Money Laundering Regulations 2007	<p>The Money Laundering Regulations 2007 [<a href="#">SI 2007/2157</a>] transpose the requirements of the Third Money Laundering Directive into UK law. The Regulations require firms to take specified steps to detect and prevent both money laundering and terrorist financing.</p> <p>The Regulations identify the firms we supervise and impose on us a duty to take measures to secure those firms' compliance with the Regulations' requirements.</p>
Money Laundering Reporting Officer (MLRO)	<p>The MLRO is responsible for ensuring that measures to combat money laundering within the firm are effective. The MLRO is also usually the 'nominated officer' under the Proceeds of Crime Act (POCA).</p> <p>The MLRO is a 'controlled function' under the FSA's Approved Persons Regime.</p>
money service business (MSB)	<p>An undertaking that by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or which cashes cheques which are made payable to customers. (See Regulation 2(1) of the Money Laundering Regulations 2007.)</p> <p>Firms that are authorised by the FSA must inform us if they provide MSB services. For more information about this, see: <a href="http://www.fsa.gov.uk/pages/About/What/financial_crime/money_laundering/3mld/authorised/index.shtml">www.fsa.gov.uk/pages/About/What/financial_crime/money_laundering/3mld/authorised/index.shtml</a></p> <p>HM Revenue and Customs supervises the AML controls of money service businesses that are not authorised under FSMA. More information about registration with HMRC can be found on its website: <a href="http://www.hmrc.gov.uk/mlr">www.hmrc.gov.uk/mlr</a></p>

mortgage brokers, general insurers and general insurance intermediaries	<p>Mortgage brokers, general insurers (including managing agents and the Society of Lloyd's) and general insurance intermediaries are subject to the high-level regulatory requirement to counter financial crime set out in SYSC 3.2.6R. However, they are not subject to the Money Laundering Regulations 2007 or the provisions of the FSA Handbook that specifically relate to money laundering (SYSC 3.2.6AR – SYSC 3.2.6JG).</p> <p>Firms offering these services alongside other products that are subject to the Money Laundering Regulations (such as banking and stock broking services) can therefore apply different customer due diligence checks in both situations. But in practice, many will choose to apply a consistent approach for the sake of operational convenience.</p>
MSB	See 'money service business'.
MTIC	See 'Missing Trader Inter-Community Fraud'.
National Fraud Authority (NFA)	The National Fraud Authority is responsible for devising and implementing a national fraud strategy. See the NFA's website for more information: <a href="http://www.homeoffice.gov.uk/agencies-public-bodies/nfa">www.homeoffice.gov.uk/agencies-public-bodies/nfa</a> .
NCCT	See 'non-cooperative countries or territories'.
NFA	See 'National Fraud Authority'.
nominated officer	A person in a firm nominated to receive disclosures from others within the firm who know or suspect that a person is engaged in money laundering or terrorist financing. See section 330 of POCA, Part 3 of the Terrorism Act 2000, and Regulation 20(2)(d) of the Money Laundering Regulations 2007.
non-cooperative countries and territories	FATF can designate certain countries and territories as being non-cooperative. This indicates severe weaknesses in anti-money laundering arrangements in those jurisdictions. An up-to-date statement can be found on the FATF website. The JMLSG has prepared guidance for firms on how to judge the risks of conducting business in different countries.
occasional transaction	Any transaction (carried out other than as part of a business relationship) amounting to €15,000 or more, whether the transaction is carried out in a single operation or several operations which appear to be linked. (See Regulation 2(1) of the Money Laundering Regulations 2007.)
Office of Fair Trading (OFT)	The Office of Fair Trading has responsibilities under the Money Laundering Regulations 2007 to supervise many lenders and estate agents.
OFT	See 'Office of Fair Trading'.
ongoing monitoring	The Money Laundering Regulations 2007 require ongoing monitoring of business relationships. This means that the transactions performed by a customer, and other aspects of their behaviour, are

	scrutinised throughout the course of their relationship with the firm. The intention is to spot where a customer's actions are inconsistent with what might be expected of a customer of that type, given what is known about their business, risk profile etc. Where the risk associated with the business relationship is increased, firms must enhance their ongoing monitoring on a risk-sensitive basis. Firms must also update the information they hold on customers for anti-money laundering purposes.
payment institutions	A 'payment institution' is a UK firm which is required under the Payment Services Regulations 2009 <a href="#">[SI 2009/209]</a> to be authorised or registered in order to provide payment services in the UK. This term is not used to describe payment service providers that are already authorised by us because they carry out regulated activities (such as banks and e-money institutions) or that are exempt under the Payment Services Regulations (such as credit unions). For more information, see our publication <a href="#">The FSA's role under the Payment Services Regulations</a> .
PEP	See 'politically exposed person'.
placement, layering, integration	The three stages in a common model of money laundering. In the placement stage, money generated from criminal activity (e.g. funds from the illegal import of narcotics) is first introduced to the financial system. The layering phase sees the launderer entering into a series of transactions (e.g. buying, and then cancelling, an insurance policy) designed to conceal the illicit origins of the funds. Once the funds are so far removed from their criminal source that it is not feasible for the authorities to trace their origins, the integration stage allows the funds to be treated as ostensibly 'clean' money.
POCA	See 'Proceeds of Crime Act 2002'.
politically exposed person (PEP)	A person entrusted with a prominent public function in a foreign state, an EU institution or an international body; their immediate family members; and known close associates. PEPs are associated with an increased money laundering risk as their position makes them vulnerable to corruption. A formal definition is set out in Regulation 14(5) and Schedule 2 to the Money Laundering Regulations 2007.  Business relationships with PEPs must be subject to greater scrutiny. (See also Regulation 14(4) of the Money Laundering Regulations 2007.)
Proceeds of Crime Act 2002 (POCA)	<a href="#">POCA</a> criminalises all forms of money laundering and creates other offences such as failing to report a suspicion of money laundering and 'tipping off'.
Production Order	The Proceeds of Crime Act 2002 allows Financial Investigators to use production orders to obtain information from financial firms about an individual's financial affairs.
proliferation finance	Funding the proliferation of weapons of mass destruction in contravention of international law.

recognised investment exchanges, and recognised clearing houses	<p>To be recognised by the FSA, exchanges and clearing houses must, among other things, adopt appropriate measures to:</p> <ul style="list-style-type: none"> <li>• reduce the extent to which their facilities can be used for a purpose connected with market abuse or financial crime,</li> <li>• monitor the incidence of market abuse or financial crime, and facilitate its detection.</li> </ul> <p>Measures should include the monitoring of transactions. This is set out in the Recognised Investment Exchanges and Recognised Clearing Houses (REC) module of the FSA Handbook, which contains our guidance on our interpretation of the recognition requirements. It also explains the factors we may consider when assessing a recognised body's compliance with the requirements. The guidance in <a href="#">REC 2.10.4G</a> provides that the Money Laundering Regulations 2007, among other laws, apply to recognised bodies.</p>
reliance	<p>The Money Laundering Regulations 2007 allow a firm to rely on customer due diligence checks performed by others. However, there are many limitations on how this can be done. First, the relying firm remains liable for any failure to apply these checks. Second, the firm being relied upon must give its consent. Third, the law sets out exactly what kinds of firms may be relied upon. See Regulation 17 of the Money Laundering Regulations 2007 and the JMLSG guidance for more detail.</p>
safe deposit boxes	<p>The FSA is responsible for supervising anti-money laundering controls of safe custody services; this includes the provision of safe deposit boxes.</p>
sanctions	<p>See 'financial sanctions regime'.</p>
SAR	<p>See 'Suspicious Activity Report'.</p>
Senior Management Arrangements, Systems and Controls sourcebook	<p>See 'SYSC'.</p>
Serious Organised Crime Agency (SOCA):	<p>Created in 2006, SOCA brought together various agencies including the National Crime Squad, National Criminal Intelligence Service and HMRC's investigative branches. As the UK's financial intelligence unit it receives suspicious activity reports about money laundering and terrorist financing. See SOCA's website for more information: <a href="http://www.soca.gov.uk">www.soca.gov.uk</a>.</p>
simplified due diligence (SDD)	<p>The Money Laundering Regulations 2007 allow firms, in certain specific situations that present a low money-laundering risk, not to apply customer due diligence measures to their customers and, where applicable, their beneficial owners. See Regulation 13 of the Money Laundering Regulations 2007 for more detail.</p> <p>Applying simplified due diligence does not exempt the firm from the</p>

	need for ongoing monitoring of the customer relationship, and a firm will have to obtain sufficient information to have a meaningful basis for monitoring. Firms also need to report any suspicious transactions. Also, in practice, firms may have other reasons to satisfy themselves that a customer is who they purport to be: for example, in order to control fraud or credit losses.
SOCA	See 'Serious Organised Crime Agency'.
Solicitors Regulation Authority (SRA)	The Solicitors Regulation Authority has supervisory responsibility for solicitors under the Money Laundering Regulations 2007. The Bar Council and other professional bodies for the legal sector perform a similar role for their members. See <a href="http://www.sra.org.uk">www.sra.org.uk</a> for more information.
Special Recommendations	See 'FATF Special Recommendations'.
source of funds and source of wealth	As part of their customer due diligence and monitoring obligations, firms should establish that the source of wealth and source of funds involved in a business relationship or occasional transaction is legitimate. They are required to do so when the customer is a PEP. 'Source of wealth' describes how a customer acquired their total wealth, while 'source of funds' refers to the origin of the funds involved in the business relationship or occasional transaction.
SRA	See 'Solicitors Regulation Authority'.
STR	See 'Suspicious Transaction Report'.
Suspicious Activity Report (SAR)	A report made to SOCA about suspicions of money laundering or terrorist financing. This is commonly known as a 'SAR'. See also 'Suspicious Transaction Report'.
Suspicious Transaction Report (STR)	When applied to money laundering reporting, the term 'Suspicious Transaction Report' is used commonly outside the UK in place of 'Suspicious Activity Report'. Both terms have substantially the same meaning. In the UK, the term 'Suspicious Transaction Report' (STR) tends to be used in connection with market abuse reporting.
SWIFT	SWIFT (the Society for Worldwide Interbank Financial Telecommunication) provides the international system used by banks to send the messages that effect interbank payments.
SYSC	SYSC is the Senior Management Arrangements, Systems and Controls sourcebook of the FSA's Handbook. It sets out the responsibilities of directors and senior management. SYSC includes rules and guidance about firms' anti-financial crime systems and controls. These impose obligations to establish and maintain effective systems and controls for countering the risk that the firm might be used to further financial crime' (see SYSC 6.1.1R, or for insurers, managing agents and Lloyd's, SYSC 3.2.6R).  SYSC 6.3 contains anti-money laundering specific rules and guidance. These provisions are also set out in SYSC 3.2.6AR to

	SYSC 3.2.6JG as they apply to certain insurers, managing agents and Lloyd's. These money-laundering specific provisions of SYSC do not apply to mortgage brokers, general insurers and general insurance intermediaries.
terrorist finance	The provision of funds or other assets to support a terrorist ideology, a terrorist infrastructure or individual operations. It applies to domestic and international terrorism.
TF	Terrorist financing (also 'CTF').
Third Money Laundering Directive (3MLD)	The Third Money Laundering Directive ( <a href="#">2005/60/EC</a> ), adopted in 2005, translated the FATF's Recommendations into EC legislation. The UK has implemented this Directive chiefly through the Money Laundering Regulations 2007.
tipping off	<p>The offence of tipping off is committed where a person discloses that:</p> <ul style="list-style-type: none"> <li>▪ any person has made a report under the Proceeds of Crime Act 2002 to the Police, HM Revenue and Customs or SOCA concerning money laundering, where that disclosure is likely to prejudice any investigation into the report; or</li> <li>▪ an investigation into allegations that an offence of money laundering has been committed, is being contemplated or is being carried out.</li> </ul> <p>See section 333A of the Proceeds of Crime Act 2002. A similar offence exists in relation to terrorism (including terrorism financing) by virtue of section 21D of the Terrorism Act 2000.</p>
trade sanctions	Government restrictions on the import or export of certain goods and services, often to or from specific countries, to advance foreign policy objectives. See 'economic sanctions'.
Transfer of Funds (Information on the Payer) Regulations 2007	The Transfer of Funds (Information on the Payer) Regulations 2007 [ <a href="#">SI 2007/3298</a> ] allow the FSA to place penalties on banks that fail to include data about the payer in payment instructions, as is required by the EU Wire Transfer Regulation. See also 'Wire Transfer Regulation'.
The Treasury	The Treasury is the UK government's AML policy lead. It also implements the UK's financial sanctions regime through its Asset Freezing Unit.
trust or company service provision	<p>A formal legal definition of 'trust or company service provider' is given in Regulation 3(10) of the Money Laundering Regulations 2007. A simple definition might be 'an enterprise whose business creates, or enables the creation of, trusts and companies on behalf of others for a fee'. International standard setters have judged that such services can be abused by those seeking to set up corporate entities designed to disguise the true origins of illicit funds.</p> <p>The firms we authorise must inform us if they provide trust or company services. For more information about this, see: <a href="http://www.fsa.gov.uk/pages/About/What/financial_crime/money_launders">www.fsa.gov.uk/pages/About/What/financial_crime/money_launders</a></p>

	<p><a href="http://ng/3mld/authorised/index.shtml">ng/3mld/authorised/index.shtml</a></p> <p>Trust or company service providers that are not authorised by us have their anti-money laundering controls supervised by HM Revenue and Customs. More information can be found at its website: <a href="http://www.hmrc.gov.uk/mlr">www.hmrc.gov.uk/mlr</a></p>
verification	<p>Making sure the customer or beneficial owner is who they claim to be. The Money Laundering Regulations 2007 require the customer's identity to be identified on the basis of reliable and independent information, and the beneficial owner's in a way that the firm is satisfied that it knows who the beneficial owner is. See Regulation 5 of the Money Laundering Regulations 2007.</p>
Wire Transfer Regulation	<p>This <a href="#">EU Regulation</a> 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>
Wolfsberg Group	<p>An association of global banks, including UK institutions, which aims to 'develop financial services industry standards, and related products, for Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies'. See its website for more: <a href="http://www.wolfsberg-principles.com">www.wolfsberg-principles.com</a></p>

***Financial crime:  
a guide for firms***

*Part 2: Financial crime thematic reviews*



## Contents

<b>1</b>	<b>Introduction</b>	79
<b>2</b>	<b>Firms' high-level management of fraud risk (2006)</b>	80
<b>3</b>	<b>Review of private banks' anti-money laundering systems and controls (2007)</b>	81
<b>4</b>	<b>Automated Anti-Money Laundering Transaction Monitoring Systems (2007)</b>	82
	Box 4.1 Statement of good practice	
<b>5</b>	<b>Review of firms' implementation of a risk-based approach to anti-money laundering (AML) (2008)</b>	85
	Box 5.1 Firms' implementation of a risk-based approach to AML	
<b>6</b>	<b>Data security in Financial Services (2008)</b>	89
	Box 6.1 Governance	
	Box 6.2 Training and awareness	
	Box 6.3 Staff recruitment and vetting	
	Box 6.4 Controls - access rights	
	Box 6.5 Controls - passwords and user accounts	
	Box 6.6 Controls - monitoring access to customer data	
	Box 6.7 Controls - data back-up	
	Box 6.8 Controls - access to the internet and email	
	Box 6.9 Controls - key-logging devices	
	Box 6.10 Controls - laptop	
	Box 6.11 Controls - portable media including USB devices and CDs	
	Box 6.12 Physical security	
	Box 6.13 Disposal of customer data	
	Box 6.14 Managing third-party suppliers	
	Box 6.15 Internal audit and compliance monitoring	
<b>7</b>	<b>Review of financial crime controls in offshore centres (2008)</b>	102
<b>8</b>	<b>Financial services firms' approach to UK financial sanctions (2009)</b>	103
	Box 8.1 Senior management responsibility	
	Box 8.2 Risk assessment	
	Box 8.3 Policies and procedures	
	Box 8.4 Staff training and awareness	
	Box 8.5 Screening during client take-on	
	Box 8.6 Ongoing screening	
	Box 8.7 Treatment of potential target matches	
<b>9</b>	<b>Anti-bribery and corruption in commercial insurance broking (2010)</b>	109
	Box 9.1 Governance and management information	
	Box 9.2 Risk assessment and responses to significant bribery and corruption events	

	Box 9.3	Due diligence on third-party relationships	
	Box 9.4	Payment controls	
	Box 9.5	Staff recruitment and vetting	
	Box 9.6	Training and awareness	
	Box 9.7	Risk arising from remuneration structures	
	Box 9.8	Incident reporting	
	Box 9.9	The role of compliance and internal audit	
<b>10</b>	<b>The Small Firms Financial Crime Review (2010)</b>		<b>118</b>
	Box 10.1	Regulatory/Legal obligations	
	Box 10.2	Account opening procedures	
	Box 10.3	Monitoring activity	
	Box 10.4	Suspicious activity reporting	
	Box 10.5	Records	
	Box 10.6	Training	
	Box 10.7	Responsibilities and risk assessments	
	Box 10.8	Access to systems	
	Box 10.9	Outsourcing	
	Box 10.10	Physical controls	
	Box 10.11	Data disposal	
	Box 10.12	Data compromise incidents	
	Box 10.13	General fraud	
	Box 10.14	Insurance fraud	
	Box 10.15	Investment fraud	
	Box 10.16	Mortgage fraud	
	Box 10.17	Staff/Internal fraud	
<b>11</b>	<b>Mortgage fraud against lenders (2011)</b>		<b>130</b>
	Box 11.1	Governance, culture and information sharing	
	Box 11.2	Applications processing and underwriting	
	Box 11.3	Mortgage fraud prevention, investigations and recoveries	
	Box 11.4	Managing relationships with conveyancers, brokers and valuers	
	Box 11.5	Compliance and internal audit	
	Box 11.6	Staff recruitment and vetting	
	Box 11.7	Remuneration structures	
	Box 11.8	Staff training and awareness	
<b>12</b>	<b>Banks' management of high money-laundering risk situations (2011)</b>		<b>136</b>
	Box 12.1	High risk customers and PEPs - AML policies and procedures	
	Box 12.2	High risk customers and PEPs - Risk assessment	
	Box 12.3	High risk customers and PEPs - Customer take-on	
	Box 12.4	High risk customers and PEPs - Enhanced monitoring of high risk relationships	
	Box 12.5	Correspondent banking - Risk assessment of respondent banks	
	Box 12.6	Correspondent banking - Customer take-on	
	Box 12.7	Correspondent banking - Ongoing monitoring of respondent accounts	
	Box 12.8	Wire transfers - Paying banks	
	Box 12.9	Wire transfers - Intermediary banks	
	Box 12.10	Wire transfers - Beneficiary banks	
	Box 12.11	Wire transfers - Implementation of SWIFT MT202COV	

## 1 Introduction

- 1.1 Part 2 of *Financial crime: a guide for firms* contains summaries of, and links to, FSA thematic reviews of various financial crime risks. It includes the consolidated examples of good and poor practice that were included with the reviews' findings. Each chapter includes a statement about those to whom it is most relevant and, where good and poor practice is included, to whom that guidance applies. We have suggested where material may be of interest and use to a broader range of firms, but we will only take guidance as applying to those types of firms to whom we have directly applied it. Each chapter also includes cross references to relevant chapters in Part 1.
- 1.2 The statements of our expectations and the examples of good and poor practice in the body of Part 2 have the same status as in Part 1: they are "general guidance" as defined by section 158 of the Financial Services and Markets Act 2000. The guidance in Part 2 is not binding and imposes no requirements on firms. Please refer to Chapter 1 of Part 1 for more information about guidance in the Guide.
- 1.3 As with Part 1, Part 2 contains guidance on Handbook rules and principles, particularly:
- SYSC 3.2.6R and SYSC 6.1.1R, which require firms to establish and maintain effective systems and controls to prevent the risk that they might be used to further financial crime;
  - Principles 1 (integrity), 2 (skill, care and diligence), 3 (management and control) and 11 (relations with regulators) of our Principles for Businesses, which are set out in PRIN 2.1.1R;
  - the Statements of Principle for Approved Persons set out in APER 2.1.2P; and
  - in relation to guidance on money laundering, the rules in SYSC 3.2.6AR to SYSC 3.2.6JG and SYSC 6.3 (Financial crime).

Chapters 4, 5, and 12 also contain guidance on how firms can meet the requirements of the Money Laundering Regulations 2007; Chapter 12 also contains guidance on the EU Wire Transfer Regulation<sup>7</sup>.

- 1.4 Not all thematic reviews contain consolidated examples of good and poor practice. All reports do, however, discuss what we found about the practices in place at the firms we visited. This information is not guidance, but firms interested in comparing themselves against their peers' systems and controls and policies and procedures in the areas covered by the reviews can find more information on this in the original reports.

*[Editor's note: changes from the original published thematic reports are indicated by underlining (for additions) and striking through (for deletions).]*

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<sup>7</sup> [EU Regulation 1781/2006](#) on information on the payer. See Part 1 Annex 1 of common terms for more information.

## 2 Firms' high-level management of fraud risk (2006)

**Who should read this chapter?** This chapter is relevant to **all firms** subject to the financial crime rules in SYSC 3.2.6R and SYSC 6.1.1R and to **e-money institutions** and **payment institutions** within our supervisory scope.

- 2.1 In February 2006 we reviewed a sample of 16 firms (predominantly larger financial services groups) to assess how firms' senior management were managing fraud risk.
- 2.2 The findings of the review reflected our overall expectation that firms' senior management should be proactive in taking responsibility for identifying and assessing fraud risk and the adequacy of existing controls, and ensure that, if necessary, appropriate additional controls are put in place. We expect a firm to consider the full implications of the fraud risks it faces, which may have wider effects on its reputation, its customers and the markets in which it operates.
- 2.3 The report emphasised that fraud is more than just a financial crime issue for firms; it is also a reputational one for the industry as a whole. The report concluded that while there had been some improvement in the management of fraud there was still more that firms could be doing to ensure fraud risk was managed effectively.
- 2.4 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 4 (Fraud) of Part 1 of this Guide.

### Our findings

- 2.5 You can read the findings of the FSA's thematic review here:

[http://www.fsa.gov.uk/pubs/other/fraud\\_risk.pdf](http://www.fsa.gov.uk/pubs/other/fraud_risk.pdf)

### Consolidated examples of good and poor practice

- 2.6 This report did not contain consolidated examples of good and poor practice.

### 3 Review of private banks' anti-money laundering systems and controls (2007)

**Who should read this chapter?** This chapter is relevant to **private banks** (firms which provide banking and investment services in a closely managed relationship to high net-worth clients) and **other firms conducting business with customers, such as PEPs, who might pose a higher risk of money laundering**. It may also be of interest to other firms we supervise under the Money Laundering Regulations 2007.

- 3.1 In July 2007 we undertook a review of the anti-money laundering (AML) systems and controls at several FSA-regulated private banks. The review was conducted in response to a report by our Intelligence team, which had highlighted the high risk of money laundering within private banking.
- 3.2 This sector is particularly susceptible to money laundering and firms are expected to have high-standard AML systems and controls in place in order to mitigate these risks. The review focused on firms' policies and procedures for identifying, assessing, monitoring and managing the risks with a strong focus on high-risk clients and Politically Exposed Persons (PEPs).
- 3.3 The key areas examined in depth were a consideration of senior managements' risk appetite and the level of customer due diligence that took place.
- 3.4 Overall we found that the private banks covered by our review acknowledged the relatively high risk of money laundering within their business activities and recognised the need to develop and implement strong AML systems and controls. The report also emphasised that private banks should obtain and keep up-to-date information on clients.
- 3.5 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 3 (Money laundering and terrorist financing) of Part 1 of this Guide.

#### Our findings

- 3.6 You can read the findings of the FSA's thematic review here:

[http://www.fsa.gov.uk/pubs/other/money\\_laundering/systems.pdf](http://www.fsa.gov.uk/pubs/other/money_laundering/systems.pdf)

#### Consolidated examples of good and poor practice

- 3.7 This report did not contain consolidated examples of good and poor practice.

## 4 Automated Anti-Money Laundering Transaction Monitoring Systems (2007)

**Who should read this chapter?** This chapter is relevant, and its statements of good and poor practice apply, to **all firms** for whom we are the supervisory authority under the Money Laundering Regulations 2007.

The extent to which we expect a firm to use automated anti-money laundering transaction monitoring (AML TM) systems depends on considerations such as the nature and scale of its business activities. There may be firms, particularly, **smaller firms**, that monitor credibly and effectively using manual procedures. This chapter will not apply to such firms where they do not, and are not intending to, use AML TM systems, although it may still be of interest to them.

- 4.1 We wrote a short report on automated Anti-Money Laundering Transaction Monitoring Systems in July 2007. This was in anticipation of the fact that transaction monitoring would become compulsory following the implementation of the Money Laundering Regulations 2007.
- 4.2 The report explains that we did not anticipate that there would be major changes in firms' practice, as the new framework expressed in law what firms were already doing. Instead, it is to be read as feedback on good practice to assist firms in complying with the Money Laundering Regulations 2007.
- 4.3 The report confirms our expectation that senior management should be in a position to monitor the performance of transaction monitoring (TM) systems, particularly at firms that experience operational or performance issues with their systems, to ensure issues are resolved in a timely fashion. Particular examples of good practice include transaction monitoring and profiling; especially ensuring unusual patterns of customer activity are identified.
- 4.4 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 3 (Money laundering and terrorist financing) of Part 1 of this Guide.

### Our findings

- 4.5 You can read the findings of the FSA's thematic review here:

[http://www.fsa.gov.uk/pubs/other/money\\_laundering/aml\\_system.pdf](http://www.fsa.gov.uk/pubs/other/money_laundering/aml_system.pdf)

### Consolidated examples of good and poor practice

- 4.6 This report contained the following examples of good practice:

#### Box 4.1: Statement of good practice

- Depending on the nature and scale of a firm's business activities, automated AML TM

<b>Box 4.1: Statement of good practice</b>
systems may be an important component of an effective overall AML control environment.
<b>Methodologies</b>
<ul style="list-style-type: none"> <li>• TM systems use profiling and/or rules-based monitoring methods.</li> </ul>
<ul style="list-style-type: none"> <li>• Profiling identifies unusual patterns of customer activity by applying statistical modelling techniques. These compare current patterns of activity to historical activity for that customer or peer group.</li> </ul>
<ul style="list-style-type: none"> <li>• Rules-based monitoring compares customer activity to fixed pre-set thresholds or patterns to determine if it is unusual.</li> </ul>
<b>Development and implementation</b>
<ul style="list-style-type: none"> <li>• A clear understanding of what the system will deliver and what constraints will be imposed by the limitations of the available data (including any issues arising from data cleanliness or legacy systems).</li> </ul>
<ul style="list-style-type: none"> <li>• Consideration of whether the vendor has the skills, resources and ability to deliver the promised service and provide adequate ongoing support.</li> </ul>
<ul style="list-style-type: none"> <li>• Maintenance of good working relations with the vendor, e.g. when collaborating to agree detailed system configuration.</li> </ul>
<ul style="list-style-type: none"> <li>• Use of recommended hardware, not necessarily a firm's own standard, to reduce processing problems, or otherwise finding a solution that is a good fit with a firm's existing infrastructure.</li> </ul>
<ul style="list-style-type: none"> <li>• A full understanding of the data being entered into the system and of the business's requirements.</li> </ul>
<ul style="list-style-type: none"> <li>• Regular housekeeping and database maintenance (operational resilience is vital to ensure that queries do not back up).</li> </ul>
<ul style="list-style-type: none"> <li>• Careful consideration of the risks of commissioning a bespoke vendor system, which may be incompatible with future standard product upgrades.</li> </ul>
<ul style="list-style-type: none"> <li>• Continued allocation of sufficient resources to <u>ensuring</u> manual internal suspicion reporting is effective, as TM can supplement, but not replace, human awareness in day-to-day business.</li> </ul>
<b>Effectiveness</b>
<ul style="list-style-type: none"> <li>• Analyse system performance at a sufficiently detailed level, for example on a rule-by-rule basis, to understand the real underlying drivers of the performance results.</li> </ul>
<ul style="list-style-type: none"> <li>• Set systems so they do not generate fewer alerts simply to improve performance statistics. There is a risk of 'artificially' increasing the proportion of alerts that are ultimately reported as suspicious activity reports without generating an improvement in the quality and quantity</li> </ul>

<b>Box 4.1: Statement of good practice</b>
of the alerts being generated.
<ul style="list-style-type: none"> <li>• Deploy analytical tools to identify suspicious activity that is currently not being flagged by existing rules or profile-based monitoring.</li> </ul>
<ul style="list-style-type: none"> <li>• Allocate adequate resources to analysing and assessing system performance, in particular to define how success is measured and produce robust objective data to analyse performance against these measures.</li> </ul>
<ul style="list-style-type: none"> <li>• Consistently monitor from one period to another, rather than on an intermittent basis, to ensure that performance data is not distorted by, for example, ad hoc decisions to run particular rules at different times.</li> </ul>
<ul style="list-style-type: none"> <li>• Measure performance as far as possible against like-for-like comparators, e.g. peers operating in similar markets and using similar profiling and rules.</li> </ul>
<b>Oversight</b>
<ul style="list-style-type: none"> <li>• Senior management should be in a position to monitor the performance of TM systems, particularly at firms that are experiencing operational or performance issues with their systems, so that issues are resolved in a timely fashion.</li> </ul>
<ul style="list-style-type: none"> <li>• Close involvement of the project management process by major business unit stakeholders and IT departments is an important component of successful system implementation.</li> </ul>
<b>Reporting &amp; review</b>
<ul style="list-style-type: none"> <li>• There should be a clear allocation of responsibilities for reviewing, investigating and reporting details of alerts generated by TM systems. Those responsible for this work should have appropriate levels of skill and be subject to effective operational control and quality assurance processes.</li> </ul>



## 5 Review of firms' implementation of a risk-based approach to anti-money laundering (AML) (2008)

**Who should read this chapter?** This chapter is relevant, and its statements of good and poor practice apply, to **all firms** for whom we are the supervisory authority under the **Money Laundering Regulations 2007**.

- 5.1 In March 2008 we conducted a review of firms' implementation of a risk-based approach to anti-money laundering. This followed the move to a more principles-based regulatory strategy from August 2006, when we replaced the detailed rules contained in the Money Laundering sourcebook with high-level rules in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) of our Handbook.
- 5.2 We visited 43 firms in total and gathered additional information from approximately 90 small firms with a survey. The report explored in depth a number of key areas that required improvement, including a review of staff training and the need to ensure staff are aware that it is a constant requirement to ensure AML policies and procedures are up to date and effective.
- 5.3 Due to the wide range of firms we visited, there were a number of different findings. There were many examples of good practice, particularly in the way the larger firms had fully embraced the risk-based approach to AML and senior management's accountability for effective AML. We also recognised that smaller firms, which generally represent lower risk, had fewer resources to devote to money laundering risk assessment and mitigation.
- 5.4 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 3 (Money laundering and terrorist financing) of Part 1 of this Guide.

### Our findings

- 5.5 You can read the findings of the FSA's thematic review here:

[http://www.fsa.gov.uk/pubs/other/jmlsg\\_guidance.pdf](http://www.fsa.gov.uk/pubs/other/jmlsg_guidance.pdf)

### Consolidated examples of good and poor practice

<b>Box 5.1: Firms' implementation of a risk-based approach to AML</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>One large firm's procedures required it to undertake periodic <u>Know your Customer (KYC)/Customer Due Diligence (CDD)</u> reviews of existing clients. The depth of the review is determined by the risk ranking assigned to the client. Clients rated A and B are reviewed every three years; Cs every two years; and Ds and Es are reviewed annually. For lower risk (A-</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>Some firms did not have a robust approach to classifying the money laundering risk associated with their clients. For example, one wholesale small firm classified all its clients as low or medium risk, despite the fact that most of them were based in Eastern Europe, North Africa and the Middle East. Another firm's risk-assessment</li> </ul>

**Box 5.1: Firms' implementation of a risk-based approach to AML**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<p>C) clients, the review may amount to no more than refreshing the client's file to take account of: significant changes in ownership or capitalisation; changes in the client's line of business; addition of a Politically Exposed Person (PEP) to shareholders or senior management; or any negative news on the client's owners or senior managers. For high risk (D or E) clients, visits to the client are necessary to provide an extra layer of comfort. Such visits would typically cover: review of client's client take-on procedures; sample testing of KYC documentation on underlying clients; and, obtaining answers to outstanding queries on, e.g., annual AML certification, transaction queries, and potential PEP or sanctions hits.</p> <ul style="list-style-type: none"> <li>• One building society undertook a comprehensive policy review following the publication of the 2006 JMLSG guidance, in order to identify which parts of the business were affected and what action was needed. It identified eight core business areas, which represented the key operational areas exposed to risk from money laundering. These business areas were ranked in order of risk and formed into workstreams. The local managers from each workstream business area were then trained by the Compliance Policy Team, using a series of presentations and individual workshops, to understand the impact of the risk-based approach, their individual responsibilities and the appropriate customer due diligence policies. These managers were then required to apply this awareness and their existing knowledge of their workstreams' business activities to create documented risk profiles covering customers, products, delivery channels and</li> </ul>	<p>procedures provided that the Compliance Officer or MLRO<sup>9</sup> would determine the risk category for each client and would record the basis of the assessment for each client. However, a file review showed no evidence that risk assessments had actually been carried out.</p> <ul style="list-style-type: none"> <li>• Some small firms had produced inadequate annual MLRO reports, which failed to demonstrate to their governing body and senior management that the firms' AML systems and controls were operating effectively. In one case, the MLRO stated categorically that there had been no perceived deficiencies in the suspicious activity reporting process. However, he was unable even to describe that process to us, so it was highly unlikely that he had ever reviewed the SAR<sup>10</sup> process for possible deficiencies.</li> <li>• In one small firm, the MLRO was clearly not fully engaged in his role. For example, he was unaware that we had removed the Money Laundering sourcebook and he was still using an outdated (2003) edition of the JMLSG Guidance. It was not entirely clear whether this arose from a lack of interest in his MLRO function or from inadequate compliance resources at the firm, which left him with insufficient time to keep up to date with AML matters, or a combination of both.</li> <li>• We found some cases of medium-sized and smaller firms documenting their client take-on procedures but not regularly updating those procedures and not always following them. For example, one firm told us that CDD information on clients was refreshed every time clients</li> </ul>

<sup>9</sup> Money Laundering Reporting Officer. See Part 1 Annex 1 for common terms.

<sup>10</sup> Suspicious Activity Report. See Part 1 Annex 1 for common terms.

**Box 5.1: Firms' implementation of a risk-based approach to AML**

**Examples of good practice:**

- geography. The risk profiles were graded as Red, Amber and Green and customer due diligence and monitoring requirements set at appropriate levels.
- In response to the SYSC changes, one major bank decided to appoint the MLRO's line manager as the designated director with overarching responsibility for AML controls. This director was seen as the obvious choice for the role, given that his portfolio of responsibilities included fraud, risk and money laundering. The bank's decision formally to appoint a Board-level senior manager to this position was viewed as reinforcing the importance of having in place a robust AML control framework. Following his appointment, the director decided that the management information (MI) on AML issues he had hitherto received was too ad hoc and fragmented. So the SYSC/ JMLSG<sup>8</sup> changes proved to be a catalyst for the bank establishing more organised MI and a Group-level Financial Risk Committee to consider relevant issues. (In the past, various Risk Committees had considered such issues.) The new Committee's remit covered fraud, money laundering and sanctions issues; however, its primary focus was AML.
  - One large bank judged that staff AML training and awareness were suitable for the development of a risk-based approach. It saw a need to differentiate between AML requirements in various business units, so that training could be adapted to the needs of the job. So in Retail, training had been re-designed to produce a more balanced package. Accordingly, staff were required to undertake one training module per quarter, with the emphasis on a different area in each module and a test taken every quarter. The aim was to see

**Examples of poor practice:**

- applied for a new product or service. However, a file review showed no evidence that this had been done.
- A number of medium-sized and small firms were unaware that it was illegal for them to deal with individuals or entities named on the Treasury's Financial Sanctions list. As a result, no screening of clients or transactions was being undertaken against that list.
  - One firm said that it did not routinely check the Financial Sanctions list, because it did not deal with the type of client who might appear on the list.
  - Some medium-sized and small firms admitted that staff AML training was an area where improvement was needed. One firm told us that training was delivered as part of an induction programme but not refreshed at regular intervals throughout the employee's career. Another firm said that it provided AML induction training only if a new joiner specifically requested it and no new employee had actually made such a request. The firm's MLRO took the view that most new employees came from the regulated sector, so should already be aware of their AML obligations. Such employees were merely required to sign a form to confirm that they were aware of the firm's AML procedures, but their understanding was never tested.

<sup>8</sup> Joint Money Laundering Steering Group. See Part 1 Annex 1 for common terms

**Box 5.1: Firms' implementation of a risk-based approach to AML****Examples of good practice:**

what impact this constant 'drip feed' of training had on suspicious activity reporting. At the time of our visit, this bank was also in the throes of merging its anti-fraud and AML training. The overall objective was to make it more difficult for criminals to do business with the bank undetected.

**Examples of poor practice:**

## 6 Data security in Financial Services (2008)

**Who should read this chapter?** This chapter is relevant, and its statements of good and poor practice apply, to **all firms** subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R and to **e-money institutions** and **payment institutions** within our supervisory scope.

**Content:** This chapter contains sections on:

• Governance	Box 6.1
• Training and awareness	Box 6.2
• Staff recruitment and vetting	Box 6.3
• Controls - access rights	Box 6.4
• Controls - passwords and user accounts	Box 6.5
• Controls - monitoring access to customer data	Box 6.6
• Controls - data back-up	Box 6.7
• Controls - access to the internet and email	Box 6.8
• Controls - key-logging devices	Box 6.9
• Controls - laptop	Box 6.10
• Controls - portable media including USB devices and CDs	Box 6.11
• Physical security	Box 6.12
• Disposal of customer data	Box 6.13
• Managing third-party suppliers	Box 6.14
• Internal audit and compliance monitoring	Box 6.15

- 6.1 In April 2008 we published the findings of our thematic review on how financial services firms in the UK were addressing the risk that customer data may be lost or stolen and used to commit fraud or other financial crime. We visited 39 firms, including retail and wholesale banks, investment firms, insurance companies, financial advisers and credit unions. We also took into account our experience of data loss incidents dealt with by our Financial Crime Operations Team: during 2007, the team dealt with 56 cases of lost or stolen data from financial services firms.
- 6.2 We found a wide variation between good practices demonstrated by firms that were committed to ensuring data security and weakness in firms that were not taking adequate steps. Overall, we found that data security in financial services firms needed to be improved significantly.
- 6.3 The report concluded that poor data security was a serious, widespread and high-impact risk, and that firms were often failing to consider the wider risks of identity fraud which could occur from cases of significant data loss and the impact of this on consumers. We

found that firms lacked a clear understanding of these risks and were therefore failing properly to inform customers, resulting in a lack of transparency.

- 6.4 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 5 (Data security) of Part 1 of this Guide.

### Our findings

- 6.5 You can read the findings of the FSA's thematic review here:

[http://www.fsa.gov.uk/pubs/other/data\\_security.pdf](http://www.fsa.gov.uk/pubs/other/data_security.pdf)

### Consolidated examples of good and poor practice

<b>Box 6.1: Governance</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Identification of data security as a key specific risk, subject to its own governance, policies and procedures and risk assessment.</li> <li>• A senior manager with overall responsibility for data security, specifically mandated to manage data security risk assessment and communication between the key stakeholders within the firm such as: senior management, information security, Human Resources, financial crime, security, IT, compliance and internal audit.</li> <li>• A specific committee with representation from relevant business areas to assess, monitor and control data security risk, which reports to the firm's Board. As well as ensuring coordinated risk management, this structure sends a clear message to all staff about the importance of data security.</li> <li>• Written data security policies and procedures that are proportionate, accurate and relevant to staff's day-to-day work.</li> <li>• An open and honest culture of communication with pre-determined reporting mechanisms that make it easy for all staff and third parties to report data</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Treating data security as an IT issue and failing to involve other key staff from across the business in the risk assessment process.</li> <li>• No written policies and procedures on data security.</li> <li>• Firms do not understand the need for knowledge-sharing on data security.</li> <li>• Failing to take opportunities to share information with, and learn from, peers and others about data security risk and not recognising the need to do so.</li> <li>• A 'blame culture' that discourages staff from reporting data security concerns and data losses.</li> <li>• Failure to notify customers affected by data loss in case the details are picked up by the media.</li> </ul>

**Box 6.1: Governance****Examples of good practice:**

- security concerns and data loss without fear of blame or recrimination.
- Firms seeking external assistance if they feel they do not have the necessary expertise to complete a data security risk assessment themselves.
  - Firms liaising with peers and others to increase their awareness of data security risk and the implementation of good systems and controls.
  - Detailed plans for reacting to a data loss including when and how to communicate with affected customers.
  - Firms writing to affected customers promptly after a data loss, telling them what has been lost and how it was lost.
  - Firms offering advice on protective measures against identity fraud to consumers affected by data loss and, where appropriate, paying for such services to be put in place.

**Examples of poor practice:**

### Box 6.2: Training and awareness

<b>Box 6.2: Training and awareness</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Innovative training and awareness campaigns that focus on the financial crime risks arising from poor data security, as well as the legal and regulatory requirements to protect customer data.</li> <li>• Clear understanding among staff about why data security is relevant to their work and what they must do to comply with relevant policies and procedures.</li> <li>• Simple, memorable and easily digestible guidance for staff on good data security practice.</li> <li>• Testing of staff understanding of data security policies on induction and once a year after that.</li> <li>• Competitions, posters, screensavers and group discussion to raise interest in the subject.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• No training to communicate policies and procedures.</li> <li>• Managers assuming that employees understand data security risk without any training.</li> <li>• Data security policies which are very lengthy, complicated and difficult to read.</li> <li>• Reliance on staff signing an annual declaration stating that they have read policy documents without any further testing.</li> <li>• Staff being given no incentive to learn about data security.</li> </ul>

### Box 6.3: Staff recruitment and vetting

<b>Box 6.3: Staff recruitment and vetting</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Vetting staff on a risk-based approach, taking into account data security and other fraud risk.</li> <li>• Enhanced vetting – including checks of credit records, criminal records, financial sanctions lists and the CIFAS Staff Fraud Database – for staff in roles with access to large amounts of customer data.</li> <li>• Liaison between HR and Financial Crime to ensure that financial crime risk indicators are considered during the vetting process.</li> <li>• A good understanding of vetting conducted by employment agencies for</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Allowing new recruits to access customer data before vetting has been completed.</li> <li>• Temporary staff receiving less rigorous vetting than permanently employed colleagues carrying out similar roles.</li> <li>• Failing to consider continually whether staff in higher-risk positions are becoming vulnerable to committing fraud or being coerced by criminals.</li> </ul>



**Box 6.3: Staff recruitment and vetting****Examples of good practice:**

- temporary and contract staff.
- Formalised procedures to assess regularly whether staff in higher-risk positions are becoming vulnerable to committing fraud or being coerced by criminals.

**Examples of poor practice:****Box 6.4: Controls - Access rights****Examples of good practice:**

- Specific IT access profiles for each role in the firm, which set out exactly what level of IT access is required for an individual to do their job.
- If a staff member changes roles or responsibilities, all IT access rights are deleted from the system and the user is set up using the same process as if they were a new joiner at the firm. The complexity of this process is significantly reduced if role-based IT access profiles are in place – the old one can simply be replaced with the new.
- A clearly-defined process to notify IT of forthcoming staff departures in order that IT accesses can be permanently disabled or deleted on a timely and accurate basis.
- A regular reconciliation of HR and IT user records to act as a failsafe in the event of a failure in the firm's leavers process.
- Regular reviews of staff IT access rights to ensure that there are no anomalies.
- 'Least privilege' access to call recordings and copies of scanned documents obtained for 'know your customer' purposes.
- Authentication of customers' identities using, for example, touch-tone telephone before a conversation with a call centre adviser takes place. This limits the amount

**Examples of poor practice:**

- Staff having access to customer data that they do not require to do their job.
- User access rights set up on a case-by-case basis with no independent check that they are appropriate.
- Redundant access rights being allowed to remain in force when a member of staff changes roles.
- User accounts being left 'live' or only suspended (i.e. not permanently disabled) when a staff member leaves.
- A lack of independent check of changes effected at any stage in the joiners, movers and leavers process.

<b>Box 6.4: Controls - Access rights</b>	
<p><b>Examples of good practice:</b></p> <p>of personal information and/or passwords contained in call recordings.</p> <ul style="list-style-type: none"> <li>Masking credit card, bank account details and other sensitive data like customer passwords where this would not affect employees' ability to do their job.</li> </ul>	<p><b>Examples of poor practice:</b></p>

<b>Box 6.5: Controls - passwords and user accounts</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>Individual user accounts – requiring passwords – in place for all systems containing customer data.</li> <li>Password standards at least equivalent to those recommended by Get Safe Online – a government-backed campaign group. <u>In July 2011</u> <del>At present</del>, their recommended standard for passwords <del>was</del> is a combination of letters, numbers and keyboard symbols at least <del>seven</del> <u>eight</u> characters in length and changed regularly.</li> <li>Measures to ensure passwords are robust. These might include controls to ensure that passwords can only be set in accordance with policy and the use of password-cracking software on a risk-based approach.</li> <li>'Straight-through processing', but only if complemented by accurate role-based access profiles and strong passwords.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>The same user account and password used by multiple users to access particular systems.</li> <li>Names and dictionary words used as passwords.</li> <li>Systems that allow passwords to be set which do not comply with password policy.</li> <li><u>Individuals share passwords.</u> <del>Password sharing of any kind.</del></li> </ul>

<b>Box 6.6: Controls - monitoring access to customer data</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>Risk-based, proactive monitoring of staff's access to customer data to ensure it is being accessed and/or updated for a</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>Assuming that vetted staff with appropriate access rights will always act appropriately. Staff can breach procedures, for example by looking at account information relating</li> </ul>

### Box 6.6: Controls - monitoring access to customer data

#### Examples of good practice:

- genuine business reason.
- The use of software designed to spot suspicious activity by employees with access to customer data. Such software may not be useful in its ‘off-the-shelf’ format so it is good practice for firms to ensure that it is tailored to their business profile.
- Strict controls over superusers’ access to customer data and independent checks of their work to ensure they have not accessed, manipulated or extracted data that was not required for a particular task.

#### Examples of poor practice:

- to celebrities, be tempted to commit fraud themselves or be bribed or threatened to give customer data to criminals.
- Failure to make regular use of management information about access to customer data.
- Failing to monitor superusers or other employees with access to large amounts of customer data.

### Box 6.7: Controls - data back-up

#### Examples of good practice:

- Firms conducting a proper risk assessment of threats to data security arising from the data back-up process – from the point that back-up tapes are produced, through the transit process to the ultimate place of storage.
- Firms encrypting backed-up data that is held off-site, including while in transit.
- Regular reviews of the level of encryption to ensure it remains appropriate to the current risk environment.
- Back-up data being transferred by secure Internet links.
- Due diligence on third parties that handle backed-up customer data so the firm has a good understanding of how it is secured, exactly who has access to it and how staff with access to it are vetted.
- Staff with responsibility for holding backed-up data off-site being given assistance to do so securely. For example,

#### Examples of poor practice:

- Firms failing to consider data security risk arising from the backing up of customer data.
- A lack of clear and consistent procedures for backing up data, resulting in data being backed up in several different ways at different times. This makes it difficult for firms to keep track of copies of their data.
- Unrestricted access to back-up tapes for large numbers of staff at third party firms.
- Back-up tapes being held insecurely by firm’s employees; for example, being left in their cars or at home on the kitchen table.

**Box 6.7: Controls - data back-up****Examples of good practice:**

- firms could offer to pay for a safe to be installed at the staff member's home.
- Firms conducting spot checks to ensure that data held off-site is ~~held~~ held in accordance with accepted policies and procedures.

**Examples of poor practice:****Box 6.8: Controls - access to the internet and email****Examples of good practice:**

- Giving internet and email access only to staff with a genuine business need.
- Considering the risk of data compromise when monitoring external email traffic, for example by looking for strings of numbers that might be credit card details.
- Where proportionate, using specialist IT software to detect data leakage via email.
- Completely blocking access to all internet content which allows web-based communication. This content includes web-based email, messaging facilities on social networking sites, external instant messaging and 'peer-to-peer' file-sharing software.
- Firms that provide cyber-cafes for staff to use during breaks ensuring that web-based communications are blocked or that data cannot be transferred into the cyber-cafe, either in electronic or paper format.

**Examples of poor practice:**

- Allowing staff who handle customer data to have access to the Internet and email if there is no business reason for this.
- Allowing access to web-based communication internet sites. This content includes web-based email, messaging facilities on social networking sites, external instant messaging and 'peer-to-peer' file-sharing software.

**Box 6.9: Controls - key-logging devices****Examples of good practice:**

- Regular sweeping for key-logging devices in parts of the firm where employees have access to large amounts of, or sensitive,

### Box 6.9: Controls - key-logging devices

#### Examples of good practice:

customer data. (Firms will also wish to conduct sweeps in other sensitive areas. For example, where money can be transferred.)

- Use of software to determine whether unusual or prohibited types of hardware have been attached to employees' computers.
- Raising awareness of the risk of key-logging devices. The vigilance of staff is a useful method of defence.
- Anti-spyware software and firewalls etc in place and kept up to date.

### Box 6.10: Controls - laptop

#### Examples of good practice:

- The encryption of laptops and other portable devices containing customer data.
- Controls that mitigate the risk of employees failing to follow policies and procedures. We have dealt with several cases of lost or stolen laptops ~~in the past year~~ that arose from firms' staff not doing what they should.
- Maintaining an accurate register of laptops issued to staff.
- Regular audits of the contents of laptops to ensure that only staff who are authorised to hold customer data on their laptops are doing so and that this is for genuine business reasons.
- The wiping of shared laptops' hard drives between uses.

#### Examples of poor practice:

- Unencrypted customer data on laptops.
- A poor understanding of which employees have been issued or are using laptops to hold customer data.
- Shared laptops used by staff without being signed out or wiped between uses.

**Box 6.11: Controls - portable media including USB devices and CDs**

<b>Box 6.11: Controls - portable media including USB devices and CDs</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Ensuring that only staff with a genuine business need can download customer data to portable media such as USB devices and CDs.</li> <li>• Ensuring that staff authorised to hold customer data on portable media can only do so if it is encrypted.</li> <li>• Maintaining an accurate register of staff allowed to use USB devices and staff who have been issued USB devices.</li> <li>• The use of software to prevent and/or detect individuals using personal USB devices.</li> <li>• Firms reviewing regularly and on a risk-based approach the copying of customer data to portable media to ensure there is a genuine business reason for it.</li> <li>• The automatic encryption of portable media attached to firms' computers.</li> <li>• Providing lockers for higher-risk staff such as call centre staff and superusers and restricting them from taking personal effects to their desks.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Allowing staff with access to bulk customer data – for example, superusers – to download to unencrypted portable media.</li> <li>• Failing to review regularly threats posed by increasingly sophisticated and quickly evolving personal technology such as mobile phones.</li> </ul>

**Box 6.12: Physical security**

<b>Box 6.12: Physical security</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Appropriately restricted access to areas where large amounts of customer data <u>is</u> accessible, such as server rooms, call centres and filing areas.</li> <li>• Using robust intruder deterrents such as keypad entry doors, alarm systems, grilles or barred windows, and closed circuit television (CCTV).</li> <li>• Robust procedures for logging visitors and ensuring adequate supervision of them</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Allowing staff or other persons with no genuine business need to access areas where customer data is held.</li> <li>• Failure to check electronic records showing who has accessed sensitive areas of the office.</li> <li>• Failure to lock away customer records and files when the office is left unattended.</li> </ul>

**Box 6.12: Physical security****Examples of good practice:**

- while on-site.
- Training and awareness programmes for staff to ensure they are fully aware of more basic risks to customer data arising from poor physical security.
- Employing security guards, cleaners etc directly to ensure an appropriate level of vetting and reduce risks that can arise through third-party suppliers accessing customer data.
- Using electronic swipe card records to spot unusual behaviour or access to high risk areas.
- Keeping filing cabinets locked during the day and leaving the key with a trusted member of staff.
- An enforced clear-desk policy.

**Examples of poor practice:****Box: 6.13: Disposal of customer data****Examples of good practice:**

- Procedures that result in the production of as little paper-based customer data as possible.
- Treating all paper as ‘confidential waste’ to eliminate confusion among employees about which type of bin to use.
- All customer data disposed of by employees securely, for example by using shredders (preferably cross-cut rather than straight-line shredders) or confidential waste bins.
- Checking general waste bins for the

**Examples of poor practice:**

- Poor awareness among staff about how to dispose of customer data securely.
- Slack procedures that present opportunities for fraudsters, for instance when confidential waste is left unguarded on the premises before it is destroyed.
- Staff working remotely failing to dispose of customer data securely.
- Firms failing to provide guidance or assistance to remote workers who need to dispose of an obsolete home computer.
- Firms stockpiling obsolete computers and

**Box 6.13: Disposal of customer data****Examples of good practice:**

- accidental disposal of customer data.
- Using a third party supplier, preferably one with BSIA<sup>11</sup> accreditation, which provides a certificate of secure destruction, to shred or incinerate paper-based customer data. It is important for firms to have a good understanding of the supplier's process for destroying customer data and their employee vetting standards.
  - Providing guidance for travelling or home-based staff on the secure disposal of customer data.
  - Computer hard drives and portable media being properly wiped (using specialist software) or destroyed as soon as they become obsolete.

**Examples of poor practice:**

- other portable media for too long and in insecure environments.
- Firms relying on others to erase or destroy their hard drives and other portable media securely without evidence that this has been done competently.

**Box 6.14: Managing third-party suppliers****Examples of good practice:**

- Conducting due diligence of data security standards at third-party suppliers before contracts are agreed.
- Regular reviews of third-party suppliers' data security systems and controls, with the frequency of review dependent on data security risks identified.
- Ensuring third-party suppliers' vetting standards are adequate by testing the checks performed on a sample of staff with access to customer data.
- Only allowing third-party IT suppliers access to customer databases for specific tasks on a case-by-case basis.
- Third-party suppliers being subject to procedures for reporting data security

**Examples of poor practice:**

- Allowing third-party suppliers to access customer data when no due diligence of data security arrangements has been performed.
- Firms not knowing exactly which third-party staff have access to their customer data.
- Firms not knowing how third-party suppliers' staff have been vetted.
- Allowing third-party staff unsupervised access to areas where customer data is held when they have not been vetted to the same standards as employees.
- Allowing IT suppliers unrestricted or unmonitored access to customer data.

<sup>11</sup> British Security Industry Association



**Box 6.14: Managing third-party suppliers**

<p><b>Examples of good practice:</b></p> <p>breaches within an agreed timeframe.</p> <ul style="list-style-type: none"> <li>• The use of secure internet links to transfer data to third parties.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• A lack of awareness of when/how third-party suppliers can access customer data and failure to monitor such access.</li> <li>• Unencrypted customer data being sent to third parties using unregistered post.</li> </ul>
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**Box 6.15: Internal audit and compliance monitoring**

<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Firms seeking external assistance where they do not have the necessary in-house expertise or resources.</li> <li>• Compliance and internal audit conducting specific reviews of data security which cover all relevant areas of the business including IT, security, HR, training and awareness, governance and third-party suppliers.</li> <li>• Firms using expertise from across the business to help with the more technical aspects of data security audits and compliance monitoring.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Compliance focusing only on compliance with data protection legislation and failing to consider adherence to data security policies and procedures.</li> <li>• Compliance consultants adopting a ‘one size fits all’ approach to different clients’ businesses.</li> </ul>
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## 7 Review of financial crime controls in offshore centres (2008)

**Who should read this chapter?** This chapter is relevant to:

- **all firms** subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R; and
- **e-money institutions** and **payment institutions** within our supervisory scope who have or are considering establishing operations in offshore centres.

- 7.1 In the second half of 2008 we reviewed how financial services firms in the UK were addressing financial crime risks in functions they had moved to offshore centres. The review followed on from our report into data security in financial services (April 2008 – [http://www.fsa.gov.uk/pubs/other/data\\_security.pdf](http://www.fsa.gov.uk/pubs/other/data_security.pdf)).
- 7.2 The main financial crime risks we reviewed were: customer data being lost or stolen and used to facilitate fraud; money laundering; and fraud. The review found that, while there were good data security controls in place across the industry, continued effort was required to ensure controls did not break down and that they remained ‘valid and risk-based’.
- 7.3 The review emphasised the importance of appropriate vetting and training of all staff, particularly with regard to local staff who had financial crime responsibilities. An examination revealed that training in this area was often lacking and not reflective of the needs of, and work done by, members of staff. The report emphasised that senior management should ensure that staff operating in these roles were given proper financial crime training as well as ensuring they possessed the appropriate technical know-how. The review also highlighted that, due to high staff turnover, firms needed appropriate and thorough vetting controls to supplement inadequate local electronic intelligence and search systems.
- 7.4 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 5 (Data security) of Part 1 of this Guide.

### Our findings

- 7.5 You can read the findings of the FSA’s thematic review here:

[http://www.fsa.gov.uk/pages/About/What/financial\\_crime/library/reports/review\\_offshore.shtml](http://www.fsa.gov.uk/pages/About/What/financial_crime/library/reports/review_offshore.shtml)

### Consolidated examples of good and poor practice

- 7.6 This report did not contain consolidated examples of good and poor practice.

## 8 Financial services firms' approach to UK financial sanctions (2009)

**Who should read this chapter?** This chapter is relevant, and its statements of good and poor practice apply, to **all firms** subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R and to **e-money institutions** and **payment institutions** within our supervisory scope.

**Content:** This chapter contains sections on:

- Senior management responsibility Box 8.1
- Risk assessment Box 8.2
- Policies and procedures Box 8.3
- Staff training and awareness Box 8.4
- Screening during client take-on Box 8.5
- Ongoing screening Box 8.6
- Treatment of potential target matches Box 8.7

- 8.1 In April 2009 we published the findings of our thematic review of firms' approach to UK financial sanctions. We received 228 responses to an initial survey from a broad range of firms across the financial services industry, ranging from small firms to major financial groups, both retail and wholesale. Tailored surveys were sent to different types of firms to ensure that the questions were relevant to the nature and scale of the business of each firm. We then selected a sub-sample of 25 firms to visit to substantiate the findings from the surveys.
- 8.2 The review highlighted areas where there was significant scope across the industry for improvement in firms' systems and controls to comply with the UK financial sanctions regime. We found that, while some firms had robust systems in place that were appropriate to their business need, others, including some major firms, lacked integral infrastructure and struggled with inappropriate systems for their business. In small firms in particular, we found a widespread lack of awareness of the UK financial sanctions regime.
- 8.3 The report examined a number of key areas of concern which included an in-depth look at whether senior management were aware of their responsibilities and, if so, were responding in an appropriate manner. We also identified issues over the implementation of policies and procedures, particularly those put in place to ensure that staff were adequately trained, were kept aware of changes in this area, and knew how to respond when sanctions were imposed. We also had concerns about firms' screening of clients, both initially and as an ongoing process.
- 8.4 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 7 (Sanctions and asset freezes) of Part 1 of this Guide.

### Our findings

- 8.5 You can read the findings of the FSA's thematic review here:

[www.fsa.gov.uk/pubs/other/Sanctions\\_final\\_report.pdf](http://www.fsa.gov.uk/pubs/other/Sanctions_final_report.pdf)

## Consolidated examples of good and poor practice

<b>Box 8.1: Senior management responsibility</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• <del>Full senior</del>Senior management <del>and/or Board level</del> involvement in approving and taking responsibility for policies and procedures.</li> <li>• <del>High</del><u>A</u> level of senior management awareness of the firm's obligations regarding financial sanctions <u>sufficient to enable them to discharge their functions effectively</u>.</li> <li>• <u>Appropriate escalation</u> <del>Senior management involvement</del> in cases where a potential target match cannot easily be verified.</li> <li>• Adequate and appropriate resources allocated by senior management.</li> <li>• <u>Appropriate escalation of actual target matches and breaches of UK financial sanctions</u>. <del>Senior management notified of all actual matches and, if it should arise, all breaches of UK financial sanctions in an appropriate and timely manner.</del></li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• No senior management involvement or understanding regarding the firm's obligations under the UK financial sanctions regime, or its systems and controls to comply with it.</li> <li>• No, or insufficient, management oversight of the day-to-day operation of systems and controls.</li> <li>• Failure to include assessments of the financial sanctions systems and controls as a normal part of internal audit programmes.</li> <li>• No senior management involvement in <u>any</u> cases where a potential target match cannot easily be verified.</li> <li>• Senior management <del>not</del><u>never</u> being made aware of a target match <u>or breach of sanctions</u> for an existing customer.</li> <li>• Inadequate or inappropriate resources allocated to financial sanctions compliance with our requirements.</li> </ul>

<b>Box 8.2: Risk assessment</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Conducting a comprehensive risk assessment, based on a good understanding of the financial sanctions regime, covering the risks that may be posed by clients, transactions, services, products and jurisdictions.</li> <li>• Taking into account associated parties, such as directors and beneficial owners.</li> <li>• A formal documented risk assessment with a clearly documented rationale for the</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Not assessing the risks that the firm may face of breaching financial sanctions.</li> <li>• Risk assessments that are based on misconceptions.</li> </ul>

approach.	
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### Box 8.3: Policies and procedures

#### Examples of good practice:

- Documented policies and procedures in place, which clearly set out a firm's approach to complying with its legal and regulatory requirements in this area.
- Group-wide policies for UK financial sanctions screening ~~across the group~~, to ensure that business unit-specific policies and procedures reflect ~~at the very least the minimum~~ standard set out in group policy.
- Effective procedures to screen against the Consolidated List<sup>12</sup>~~Treasury list~~ that are appropriate for the business, covering customers, transactions and services across all products and business lines.
- Clear, simple and well understood escalation procedures to enable staff to raise financial sanctions concerns with management.
- Regular review and update of policies and procedures.
- Regular reviews of the effectiveness of policies, procedures, systems and controls by the firm's internal audit function or another independent party.
- Procedures that include ongoing monitoring/screening of clients.

#### Examples of poor practice:

- No policies or procedures in place for complying with the legal and regulatory requirements of the UK financial sanctions regime.
- Internal audits of procedures carried out by persons with responsibility for oversight of financial sanctions procedures, rather than an independent party.

### Box 8.4: Staff training and awareness

#### Examples of good practice:

- Regularly updated training and awareness programmes that are relevant and

#### Examples of poor practice:

- No training on financial sanctions.
- Relevant staff unaware of the firm's

<sup>12</sup> See Part 1 Annex 1 for descriptions of common terms

<p>appropriate for employees' particular roles.</p> <ul style="list-style-type: none"> <li>• Testing to ensure that employees have a good understanding of financial sanctions risks and procedures.</li> <li>• Ongoing monitoring of employees' work to ensure they understand the financial sanctions procedures and are adhering to them.</li> <li>• Training provided to each business unit covering both the group-wide and business unit-specific policies on financial sanctions.</li> </ul>	<p>policies and procedures to comply with the UK financial sanctions regime.</p> <ul style="list-style-type: none"> <li>• Changes to the financial sanctions policies, procedures, systems and controls are not communicated to relevant staff.</li> </ul>
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### Box 8.5: Screening during client take-on

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>• An effective screening system appropriate to the nature, size and risk of the firm's business.</li> <li>• Screening against the <u>Consolidated List Treasury list</u> at the time of client take-on before providing any services or undertaking any transactions for a customer.</li> <li>• Screening directors and beneficial owners of corporate customers.</li> <li>• Screening third party payees where adequate information is available.</li> <li>• Where the firm's procedures require dual control (e.g. a 'four eyes' check) to be used, having in place an effective process to ensure this happens.</li> <li>• The use of 'fuzzy matching' where automated screening systems are used.</li> <li>• Where a commercially available automated screening system is implemented, making sure that there is a full understanding of the capabilities and limits of the system.</li> </ul>	<ul style="list-style-type: none"> <li>• <del>Screening retrospectively, rather than at the time of client take-on.</del></li> <li>• Screening only on notification of a claim on an insurance policy, rather than during client take-on.</li> <li>• Relying on other FSA-authorized firms and compliance consultants to screen clients against the <u>Consolidated List Treasury list</u> without taking reasonable steps to ensure that they are doing so effectively.</li> <li>• Assuming that AML customer due diligence checks include screening against the <u>Consolidated List Treasury</u>.</li> <li>• Failing to screen UK-based clients on the assumption that there are no UK-based persons or entities on the <u>Consolidated List Treasury list</u> or failure to screen due to any other misconception.</li> <li>• Large global institutions with millions of clients using manual screening, increasing the likelihood of human error and leading to matches being missed.</li> <li>• IT systems that cannot flag potential</li> </ul>

**Box 8.5: Screening during client take-on****Examples of good practice:****Examples of poor practice:**

matches clearly and prominently.

- Firms calibrating their screening rules too narrowly or too widely so that they, for example, match only exact names with the Consolidated List Treasury list or generate large numbers of resource intensive false positives.
- Regarding the implementation of a commercially available sanctions screening system as a panacea, with no further work required by the firm.
- Failing to tailor a commercially available sanctions screening system to the firm's requirements.

**Box 8.6: Ongoing screening****Examples of good practice:****Examples of poor practice:**

- Screening of the entire client base within a reasonable time following updates to the Consolidated List Treasury list.
- Ensuring that customer data used for ongoing screening is up to date and correct.
- Processes that include screening for indirect as well as direct customers and also third party payees, wherever possible.
- Processes that include screening changes to corporate customers' data (e.g. when new directors are appointed or if there are changes to beneficial owners).
- Regular reviews of the calibration and rules of automated systems to ensure they are operating effectively.
- Screening systems calibrated in accordance with the firm's risk appetite, rather than the settings suggested by

- No ongoing screening of customer databases or transactions.
- Failure to screen directors and beneficial owners of corporate customers and/or third party payees where adequate information is available.
- Failure to review the calibration and rules of automated systems, or to set the calibration in accordance with the firm's risk appetite.
- Flags on systems that are dependent on staff looking for them.
- Controls on systems that can be overridden without referral to compliance.

### Box 8.6: Ongoing screening

Examples of good practice:	Examples of poor practice:
<p>external software providers.</p> <ul style="list-style-type: none"> <li>• Systems calibrated to include ‘fuzzy matching’, including name reversal, digit rotation and character manipulation.</li> <li>• Flags on systems prominently and clearly identified.</li> <li>• Controls that require referral to relevant compliance staff prior to dealing with flagged individuals or entities.</li> </ul>	

### Box 8.7: Treatment of potential target matches

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>• Procedures for investigating whether a potential match is an actual target match or a false positive.</li> <li>• Procedures for freezing accounts where an actual target match is identified.</li> <li>• Procedures for notifying the Treasury’s AFU promptly of any confirmed matches.</li> <li>• Procedures for notifying senior management of target matches and cases where the firm cannot determine whether a potential match is the actual target on the <u>Consolidated List Treasury list</u>.</li> <li>• A clear audit trail of the investigation of potential target matches and the decisions and actions taken, such as the rationale for deciding that a potential target match is a false positive.</li> </ul>	<ul style="list-style-type: none"> <li>• No procedures in place for investigating potential matches with the <u>Consolidated List Treasury list</u>.</li> <li>• Discounting actual target matches incorrectly as false positives due to insufficient investigation.</li> <li>• No audit trail of decisions where potential target matches are judged to be false positives.</li> </ul>



## 9 Anti-bribery and corruption in commercial insurance broking (2010)

**Who should read this chapter?** This chapter is relevant, and its statements of good and poor practice apply, to:

- **commercial insurance brokers** and **other firms** who are subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R; and
- **e-money institutions** and **payment institutions** within our supervisory scope

except that **Box 9.3** and **Box 9.4** only apply to those **firms or institutions who use third parties to win business**. It may also be of interest to other firms who are subject to SYSC 3.2.6R and SYSC 6.1.1R.

**Content:** This chapter contains sections on:

- |  |         |
|--|---------|
| • Governance and management information                                      | Box 9.1 |
| • Risk assessment and responses to significant bribery and corruption events | Box 9.2 |
| • Due diligence on third-party relationships                                 | Box 9.3 |
| • Payment controls   | Box 9.4 |
| • Staff recruitment and vetting  | Box 9.5 |
| • Training and awareness   | Box 9.6 |
| • Risk arising from remuneration structures                                  | Box 9.7 |
| • Incident reporting   | Box 9.8 |
| • The role of compliance and internal audit                                  | Box 9.9 |

- 9.1 In May 2010 we published the findings of our review into the way commercial insurance broker firms in the UK addressed the risks of becoming involved in corrupt practices such as bribery. We visited 17 broker firms. Although this report focused on commercial insurance brokers, the findings are relevant in other sectors.
- 9.2 The report examined standards in managing the risk of illicit payments or inducements to, or on behalf of, third parties in order to obtain or retain business.
- 9.3 The report found that many firms' approach towards high-risk business was not of an acceptable standard and that there was a risk that firms were not able to demonstrate that adequate procedures were in place to prevent bribery from occurring.
- 9.4 The report identified a number of common concerns including weak governance and a poor understanding of bribery and corruption risks among senior managers as well as very little or no specific training and weak vetting of staff. We found that there was a general failure to implement a risk-based approach to anti-bribery and corruption and very weak due diligence and monitoring of third-party relationships and payments.
- 9.5 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 6 (Bribery and corruption) of Part 1 of this Guide.

## Our findings

9.6 You can read the findings of the FSA's thematic review here:

[www.fsa.gov.uk/pubs/anti\\_bribery.pdf](http://www.fsa.gov.uk/pubs/anti_bribery.pdf)

## Consolidated examples of good and poor practice

<b>Box 9.1: Governance and management information</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Good Board-level and senior management understanding of the bribery and corruption risks faced by the firm, the materiality to their business and how to apply a risk-based approach to anti-bribery and corruption work.</li> <li>• Swift and effective senior management-led response to significant bribery and corruption events, which highlight potential areas for improvement in systems and controls.</li> <li>• Regular MI to the Board and other relevant senior management forums.</li> <li>• 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.</li> <li>• MI submitted to the Board ensures they are adequately informed of any external developments relevant to bribery and corruption.</li> <li>• Actions taken or proposed in response to issues highlighted by MI are minuted and</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Failing to allocate official responsibility for anti-bribery and corruption to a single senior manager or appropriately formed committee.</li> <li>• A lack of awareness and/or engagement in anti-bribery and corruption at senior management or Board level.</li> <li>• Little or no MI sent to the Board about higher risk third party relationships or payments.</li> <li>• Failing to include details of wider issues, such as new legislation or regulatory developments in MI.</li> <li>• IT systems unable to produce the necessary MI.</li> </ul>

<b>Box 9.1: Governance and management information</b>	
<b>Examples of good practice:</b>  acted on appropriately.	<b>Examples of poor practice:</b>

<b>Box 9.2: Risk assessment and responses to significant bribery and corruption events</b>	
<b>Examples of good practice:</b> <ul style="list-style-type: none"> <li>• Regular assessments of bribery and corruption risks with a specific senior person responsible for ensuring this is done, taking into account the country and class of business involved as well as other relevant factors.</li> <li>• More robust due diligence on and monitoring of higher risk third-party relationships.</li> <li>• Thorough reviews and gap analyses of systems and controls against relevant external events, with strong senior management involvement or sponsorship.</li> <li>• Ensuring review teams have sufficient knowledge of relevant issues and supplementing this with external expertise where necessary.</li> <li>• Establishing clear plans to implement improvements arising from reviews, including updating policies, procedures and staff training.</li> <li>• Adequate and prompt reporting to SOCA<sup>13</sup> and us of any inappropriate payments identified during business practice review.</li> </ul>	<b>Examples of poor practice:</b> <ul style="list-style-type: none"> <li>• Failing to consider the bribery and corruption risks posed by third parties used to win business.</li> <li>• Failing to allocate formal responsibility for anti-bribery and corruption risk assessments.</li> <li>• A ‘one size fits all’ approach to third-party due diligence.</li> <li>• Failing to respond to external events which may draw attention to weaknesses in systems and controls.</li> <li>• Taking too long to implement changes to systems and controls after analysing external events.</li> <li>• Failure to bolster insufficient in-house knowledge or resource with external expertise.</li> <li>• Failure to report inappropriate payments to SOCA and a lack of openness in dealing with us concerning any material issues identified.</li> </ul>

<b>Box 9.3: Due diligence on third-party relationships</b>	
<b>Examples of good practice:</b> <ul style="list-style-type: none"> <li>• Establishing and documenting policies with a clear definition of a ‘third party’</li> </ul>	<b>Examples of poor practice:</b> <ul style="list-style-type: none"> <li>• Failing to carry out or document due</li> </ul>

<sup>13</sup> Serious Organised Crime Agency. See Part 1 Annex 1 for common terms.

### Box 9.3: Due diligence on third-party relationships

#### Examples of good practice:

- and the due diligence required when establishing and reviewing third-party relationships.
- More robust due diligence on third parties which pose the greatest risk of bribery and corruption, including a detailed understanding of the business case for using them.
  - Having a clear understanding of the roles clients, reinsurers, solicitors and loss adjusters play in transactions to ensure they are not carrying out higher risk activities.
  - Taking reasonable steps to verify the information provided by third parties during the due diligence process.
  - Using third party forms which ask relevant questions and clearly state which fields are mandatory.
  - Having third party account opening forms reviewed and approved by compliance, risk or committees involving these areas.
  - Using commercially-available intelligence tools, databases and/or other research techniques such as internet search engines to check third-party declarations about connections to public officials, clients or the assured.
  - Routinely informing all parties involved in the insurance transaction about the involvement of third parties being paid commission.
  - Ensuring current third-party due diligence standards are appropriate when business is acquired that is higher risk than existing business.
  - Considering the level of bribery and corruption risk posed by a third party when

#### Examples of poor practice:

- diligence on third-party relationships.
- Relying heavily on the informal 'market view' of the integrity of third parties as due diligence.
  - Relying on the fact that third-party relationships are longstanding when no due diligence has ever been carried out.
  - Carrying out only very basic identity checks as due diligence on higher risk third parties.
  - Asking third parties to fill in account opening forms which are not relevant to them (e.g. individuals filling in forms aimed at corporate entities).
  - Accepting vague explanations of the business case for using third parties.
  - Approvers of third-party relationships working within the broking department or being too close to it to provide adequate challenge.
  - Accepting instructions from third parties to pay commission to other individuals or entities which have not been subject to due diligence.
  - Assuming that third-party relationships acquired from other firms have been subject to adequate due diligence.
  - Paying high levels of commission to third parties used to obtain or retain higher risk business, especially if their only role is to introduce the business.
  - Receiving bank details from third parties via informal channels such as email, particularly if email addresses are from webmail (e.g. Hotmail) accounts or do not appear to be obviously connected to the third party.

### Box 9.3: Due diligence on third-party relationships

#### Examples of good practice:

- agreeing the level of commission.
- Setting commission limits or guidelines which take into account risk factors related to the role of the third party, the country involved and the class of business.
- Paying commission to third parties on a one-off fee basis where their role is pure introduction.
- Taking reasonable steps to ensure that bank accounts used by third parties to receive payments are, in fact, controlled by the third party for which the payment is meant. For example, broker firms might wish to see the third party's bank statement or have the third party write them a low value cheque.
- Higher or extra levels of approval for high risk third-party relationships.
- Regularly reviewing third-party relationships to identify the nature and risk profile of third-party relationships.
- Maintaining accurate central records of approved third parties, the due diligence conducted on the relationship and evidence of periodic reviews.

#### Examples of poor practice:

- Leaving redundant third-party accounts 'live' on the accounting systems because third-party relationships have not been regularly reviewed.
- Being unable to produce a list of approved third parties, associated due diligence and details of payments made to them.

### Box 9.4: Payment controls

#### Examples of good practice:

- Ensuring adequate due diligence 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 why payments are made.
- Checking third-party payments individually prior to approval, to ensure

#### Examples of poor practice:

- Failing to check whether third parties to whom payments are due have been subject to appropriate due diligence and approval.
- The inability to produce regular third-party payment schedules for review.
- Failing to check thoroughly the nature, reasonableness and appropriateness of

<p>consistency with the business case for that account.</p> <ul style="list-style-type: none"> <li>• Regular and thorough monitoring of third-party payments to check, for example, whether a payment is unusual in the context of previous similar payments.</li> <li>• A healthily sceptical approach to approving third-party payments.</li> <li>• Adequate due diligence on new suppliers being added to the Accounts Payable system.</li> <li>• Clear limits on staff expenditure, which are fully documented, communicated to staff and enforced.</li> <li>• Limiting third-party payments from Accounts Payable to reimbursements of genuine business-related costs or reasonable entertainment.</li> <li>• Ensuring the reasons for third-party payments via Accounts Payable are clearly documented and appropriately approved.</li> <li>• The facility to produce accurate MI to facilitate effective payment monitoring.</li> </ul>	<p>gifts and hospitality.</p> <ul style="list-style-type: none"> <li>• No absolute limits on different types of expenditure, combined with inadequate scrutiny during the approvals process.</li> <li>• The giving or receipt of cash gifts.</li> </ul>
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### Box 9.5: Staff recruitment and vetting

Box 9.5: Staff recruitment and vetting	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Vetting staff on a risk-based approach, taking into account financial crime risk.</li> <li>• Enhanced vetting – including checks of credit records, criminal records, financial sanctions lists, commercially available intelligence databases and the CIFAS Staff Fraud Database – for staff in roles with higher bribery and corruption risk.</li> <li>• A risk-based approach to dealing with adverse information raised by vetting checks, taking into account its seriousness and relevance in the context of the</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Relying entirely on an individual’s market reputation or market gossip as the basis for recruiting staff.</li> <li>• Carrying out enhanced vetting only for senior staff when more junior staff are working in positions where they could be exposed to bribery or corruption issues.</li> <li>• Failing to consider on a continuing basis whether staff in higher risk positions are becoming vulnerable to committing fraud or being coerced by criminals.</li> <li>• Relying on contracts with employment</li> </ul>

<p>individual's role or proposed role.</p> <ul style="list-style-type: none"> <li>• Where employment agencies are used to recruit staff in higher risk positions, having a clear understanding of the checks they carry out on prospective staff.</li> <li>• Conducting periodic checks to ensure that agencies are complying with agreed vetting standards.</li> <li>• A formal process for identifying changes in existing employees' financial soundness which might make them more vulnerable to becoming involved in, or committing, corrupt practices.</li> </ul>	<p>agencies covering staff vetting standards without checking periodically that the agency is adhering to them.</p> <ul style="list-style-type: none"> <li>• Temporary or contract staff receiving less rigorous vetting than permanently employed colleagues carrying out similar roles.</li> </ul>
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**Box 9.6: Training and awareness**

<b>Box 9.6: Training and awareness</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Providing good quality, standard training on anti-bribery and corruption for all staff.</li> <li>• Additional anti-bribery and corruption training for staff in higher risk positions.</li> <li>• Ensuring staff responsible for training others have adequate training themselves.</li> <li>• Ensuring training covers practical examples of risk and how to comply with policies.</li> <li>• Testing staff understanding and using the results to assess individual training needs and the overall quality of the training.</li> <li>• Staff records setting out what training was completed and when.</li> <li>• Providing refresher training and ensuring it is kept up to date.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Failing to provide training on anti-bribery and corruption, especially to staff in higher risk positions.</li> <li>• Training staff on legislative and regulatory requirements but failing to provide practical examples of how to comply with them.</li> <li>• Failing to ensure anti-bribery and corruption policies and procedures are easily accessible to staff.</li> <li>• Neglecting the need for appropriate staff training in the belief that robust payment controls are sufficient to combat anti-bribery and corruption.</li> </ul>

**Box 9.7: Risk arising from remuneration structures**

<b>Box 9.7: Risk arising from remuneration structures</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Assessing whether remuneration structures give rise to increased risk of bribery and</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Bonus structures for staff in higher risk positions which are directly linked (e.g. by</li> </ul>

<p>corruption.</p> <ul style="list-style-type: none"> <li>• Determining individual bonus awards on the basis of several factors, including a good standard of compliance, not just the amount of income generated.</li> <li>• Deferral and clawback provisions for bonuses paid to staff in higher risk positions.</li> </ul>	<p>a formula) solely to the amount of income or profit they produce, particularly when bonuses form a major part, or the majority, of total remuneration.</p>
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### Box 9.8: Incident reporting

<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Clear procedures for whistleblowing and reporting suspicions, and communicating these to staff.</li> <li>• Appointing a senior manager to oversee the whistleblowing process and act as a point of contact if an individual has concerns about their line management.</li> <li>• Respect for the confidentiality of workers who raise concerns.</li> <li>• Internal and external suspicious activity reporting procedures in line with the Joint Money Laundering Steering Group guidance.</li> <li>• Keeping records or copies of internal suspicion reports which are not forwarded as SARs for future reference and possible trend analysis.</li> <li>• Financial crime training covers whistleblowing procedures and how to report suspicious activity.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Failing to report suspicious activity relating to bribery and corruption.</li> <li>• No clear internal procedure for whistleblowing or reporting suspicions.</li> <li>• No alternative reporting routes for staff wishing to make a whistleblowing disclosure about their line management or senior managers.</li> <li>• A lack of training and awareness in relation to whistleblowing the reporting of suspicious activity.</li> </ul>
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### Box 9.9: The role of compliance and internal audit

<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Compliance and internal audit staff receiving specialist training to achieve a very good knowledge of bribery and</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Failing to carry out compliance or internal audit work on anti-bribery and corruption.</li> </ul>
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<p>corruption risks.</p> <ul style="list-style-type: none"> <li>• Effective compliance monitoring and internal audit reviews which challenge not only whether processes to mitigate bribery and corruption have been followed but also the effectiveness of the processes themselves.</li> <li>• Independent checking of compliance's operational role in approving third party relationships and accounts, where relevant.</li> <li>• Routine compliance and/or internal audit checks of higher risk third party payments to ensure there is appropriate supporting documentation and adequate justification to pay.</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance, in effect, signing off their own work, by approving new third party accounts and carrying out compliance monitoring on the same accounts.</li> <li>• Compliance and internal audit not recognising or acting on the need for a risk-based approach.</li> </ul>
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## 10 The Small Firms Financial Crime Review (2010)

**Who should read this chapter?** This chapter is relevant, and its statements of good and poor practice apply, to **small firms** in all sectors who are subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R and small **e-money institutions** and **payment institutions** within our supervisory scope.

**Content:** This chapter contains sections on:

• Regulatory/Legal obligations	Box 10.1
• Account opening procedures	Box 10.2
• Monitoring activity	Box 10.3
• Suspicious activity reporting	Box 10.4
• Records	Box 10.5
• Training	Box 10.6
• Responsibilities and risk assessments	Box 10.7
• Access to systems	Box 10.8
• Outsourcing	Box 10.9
• Physical controls	Box 10.10
• Data disposal	Box 10.11
• Data compromise incidents	Box 10.12
• General fraud	Box 10.13
• Insurance fraud	Box 10.14
• Investment fraud	Box 10.15
• Mortgage fraud	Box 10.16
• Staff/Internal fraud	Box 10.17

- 10.1 In May 2010 we published the findings of our thematic review into the extent to which small firms across the financial services industry addressed financial crime risks in their business. The review conducted visits to 159 small retail and wholesale firms in a variety of financial sectors. It was the first systematic review of financial crime systems and controls in small firms conducted by the FSA.
- 10.2 The review covered three main areas: anti-money laundering and financial sanctions; data security; and fraud controls. The review sought to determine whether firms understood clearly the requirements placed on them by the wide range of legislation and regulations to which they were subject.
- 10.3 We found that firms generally demonstrated a reasonable awareness of their obligations, particularly regarding AML systems and controls. But we found weaknesses across the sector regarding the implementation of systems and controls put in place to reduce firms' broader financial crime risk.

- 10.4 The review emphasised the key role that the small firms sector often plays in acting as the first point of entry for customers to the wider UK financial services industry; and the importance, therefore, of firms having adequate customer due diligence measures in place. The report flagged up concerns relating to weaknesses in firms' enhanced due diligence procedures when dealing with high-risk customers.
- 10.5 We concluded that, despite an increased awareness of the risks posed by financial crime and information supplied by the FSA, small firms were generally weak in their assessment and mitigation of financial crime risks.
- 10.6 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls), Chapter 3 (Money laundering and terrorist financing), Chapter 4 (Fraud), Chapter 5 (Data security) and Chapter 7 (Sanctions and asset freezes) of Part 1 of this Guide.

### Our findings

- 10.7 You can read the findings of the FSA's thematic review here:

[www.fsa.gov.uk/smallfirms/pdf/financial\\_crime\\_report.pdf](http://www.fsa.gov.uk/smallfirms/pdf/financial_crime_report.pdf)

### Consolidated examples of good and poor practice

<b>Box 10.1: Regulatory/Legal obligations</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• A small IFA used policies and procedures which had been prepared by consultants but the MLRO had tailored these to the firm's business. There was also a risk assessment of customers and products included in an MLRO report which was updated regularly.</li> <li>• One general insurance (GI) intermediary had an AML policy in place which was of a very good standard and included many good examples of AML typologies relevant to GI business. Despite the fact that there is no requirement for an MLRO for a business of this type the firm had appointed an individual to carry out an MLRO function as a point of good practice.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• An MLRO at an IFA was not familiar with the JMLSG guidance and had an inadequate knowledge of the firm's financial crime policies and procedures.</li> </ul>

<b>Box 10.2: Account opening procedures</b>	
<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>

### Box 10.2: Account opening procedures

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>A discretionary portfolio manager had procedures that required the verification of the identity of all beneficial owners. The firm checked its customer base against sanctions lists and had considered the risks associated with PEPs. Most new customers were visited by the adviser at home and in these cases the advisers would usually ask for identity verification documents on the second meeting with the customer. Where business was conducted remotely, more (three or four) identity verification documents were required and the source of funds exemption was not used.</li> </ul>	<ul style="list-style-type: none"> <li>An IFA commented that they only dealt with investment customers that were well known to the firm or regulated entities. However, the firm had some high risk customers who were subject to very basic due diligence (e.g.: copy of passport). The firm said that they were concerned about the high reputational impact an AML incident could have on their small, young business. The firm stated that they would deal with PEPs but with appropriate care. However, the firm did not have a rigorous system in place to be able to identify PEPs – this was a concern given the nationality and residence of some underlying customers. The firm appeared to have reasonable awareness of the sanctions requirements of both the Treasury and the United States Office of Foreign Assets Control (OFAC), but there was no evidence in the customer files of any sanctions checking.</li> <li>A venture capital firm had policies in place which required a higher level of due diligence and approval for high-risk customers. However, they had no system in place by which they could identify this type of customer.</li> </ul>

### Box 10.3: Monitoring activity

Examples of good practice:	
<ul style="list-style-type: none"> <li>A credit union used a computer-based monitoring system which had been specially designed for business of this type. The system was able to produce a number of exception reports relating to the union's members, including frequency of transactions and defaulted payments. The exceptions reports were reviewed daily. If there had been no activity on an account for 12 months it was suspended. If the customer was to return and request a</li> </ul>	

**Box 10.3: Monitoring activity****Examples of good practice:**

withdrawal they would be required to prove their identity again.

- A Personal Pension Operator's procedure for higher risk customers included gathering extra source of funds proof at customer take-on. The firm also conducted manual monitoring and produced valuation statements twice a year.
- Within a GI intermediary firm, there was a process where, if a customer made a quick claim after the policy has been taken out, their records were flagged on the firm's monitoring system. This acted as an alert for any possible suspicious claims in the future.

**Box 10.4: Suspicious activity reporting****Examples of poor practice:**

- One MLRO working at an IFA firm commented that he would forward all internal SARs he received to SOCA and would not exercise any judgement himself as to the seriousness of these SARs.
- At an IFA the MLRO did not demonstrate any knowledge of how to report a SAR to SOCA, what to report to SOCA, or how to draft a SAR. The firm's policies and procedures contained a pro forma SAR but this was not a document the MLRO was familiar with.
- An IFA was unaware of the difference between reporting suspicions to SOCA and sanctions requirements, believing that if he identified a person on the Consolidated List ~~Sanctions list~~ he should carry on as normal and just report it as a SAR to SOCA.

### Box 10.5: Records

<b>Box 10.5: Records</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• An advising-only intermediary firm used a web-based system as its database of leads, contact names and addresses. It also stored telephone and meeting notes there which were accessed by staff using individual passwords.</li> <li>• A home finance broker classified customers as A, B or C for record keeping purposes. A's being Active, B's being 'one-off or infrequent business' who he maintained contact with via a regular newsletter and C's being archived customers, <del>the records for which he kept in his loft in the house.</del></li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• A file review at an IFA revealed disorganised files and missing KYC documentation in three of five files reviewed. Files did not always include a checklist. <del>(The firm was advised We expect that KYC information should be kept together in the file so that it was is easily identifiable and auditable.)</del></li> </ul>

### Box 10.6: Training

<b>Box 10.6: Training</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• A GI Intermediary used an on-line training website (costing around £100 per employee per year). The firm believed that the training was good quality and included separate modules on financial crime which were compulsory for staff to complete. Staff were also required to complete refresher training. An audit of all training completed was stored on-line.</li> <li>• An IFA (sole trader) carried out on-line training on various financial crime topics. He also participated in conference call training where a trainer talked trainees through various topics while on-line; this was both time and travel efficient.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• A GI Intermediary explained that the compliance manager carried out regular audits to confirm staff knowledge was sufficient. However, on inspection of the training files it appeared that training was largely limited to product information and customer service and did not sufficiently cover financial crime.</li> <li>• One credit union, apart from on-the-job training for new staff members, had no regular training in place and no method to test staff knowledge of financial crime issues.</li> </ul>

### Box 10.7: Responsibilities and risk assessments

<b>Box 10.7: Responsibilities and risk assessments</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• At an IFA there was a clearly documented policy on data security which staff were</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• At an IFA, a risk assessment had been undertaken by the firm's compliance</li> </ul>

### Box 10.7: Responsibilities and risk assessments

Examples of good practice:	Examples of poor practice:
<p>tested on annually. The policy contained, but was not limited to, details around clear desks, non-sharing of passwords, the discouraging of the over-use of portable media devices, the secure disposal of data, and the logging of customer files removed and returned to the office.</p> <ul style="list-style-type: none"> <li>• An IFA had produced a written data security review of its business which had been prompted by their external consultants and largely followed the small firms' factsheet material on data security, provided by the FSA in April 2008.</li> <li>• In a personal pension operator, there was a full and comprehensive anti-fraud strategy in place and a full risk assessment had been carried <u>out</u> which was regularly reviewed. The firm's financial transactions were normally 'four eyed' as a minimum and there were strict mandates on cheque signatures for Finance Director and Finance Manager.</li> </ul>	<p>consultant but the firm demonstrated no real appreciation of the financial crime risks in its business. The risk assessment was not tailored to the risks inherent in that business.</p> <ul style="list-style-type: none"> <li>• An advising-only intermediary had its policies and procedures drawn up by an external consultant but these had not been tailored to the firm's business. The MLRO was unclear about investigating and reporting suspicious activity to SOCA. The firm's staff had not received formal training in AML or reporting suspicious activity to SOCA.</li> </ul>

### Box 10.8: Access to systems

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>• In a Discretionary Investment Management firm, the Chief Executive ensured that he signed off on all data user profiles ensuring that systems accesses were authorised by him.</li> <li>• A discretionary investment manager conducted five year referencing on new staff, verified personal addresses and obtained character references from acquaintances not selected by the candidate. They also carried out annual credit checks, CRB checks and open source Internet searches on staff. <u>They</u> <u>There</u> were role profiles for each job within the firm and these were reviewed</li> </ul>	<ul style="list-style-type: none"> <li>• In a financial advisory firm there was no minimum length for passwords, (although these had to be alpha/numeric) and the principal of the firm plus one other colleague knew all staff members' passwords.</li> <li>• In an advising-only intermediary, staff set their own systems passwords which had no defined length or complexity and were only changed every six months.</li> </ul>

**Box 10.8: Access to systems****Examples of good practice:**

monthly for accuracy.

- In a venture capital firm they imposed a minimum ten character (alpha/numeric, upper/lower case) password for systems access which had a 45-day enforced change period.

**Examples of poor practice:****Box 10.9: Outsourcing****Examples of good practice:**

- A discretionary investment manager used an external firm for IT support and had conducted its own on-site review of the IT firm's security arrangements. The same firm also insisted on CRB checks for cleaners.
- An IFA had received a request from an introducer to provide names of customers who had bought a certain financial product. The firm refused to provide the data as it considered the request unnecessary and wanted to protect its customer data. It also referred the matter to the Information Commissioner who supported the firm's actions.
- A general insurance intermediary employed office cleaners supplied by an agency that conducts due diligence including CRB checks. Office door codes were regularly changed and always if there was a change in staff.
- In an authorised professional firm, unauthorised data access attempts by staff were monitored by the IT manager and email alerts sent to staff and management when identified.
- In a general insurance intermediary the two directors had recently visited the offsite data storage facility to satisfy

**Examples of poor practice:**

- An authorised professional firm employed the services of third-party cleaners, security staff, and an offsite confidential waste company, but had carried out no due diligence on any of these parties.
- An IFA allowed a third-party IT consultant full access rights to its customer databank. Although the firm had a service agreement in place that allowed full audit rights between the advisor and the IT company to monitor the security arrangements put in place by the IT company, this had not been invoked by the IFA, in contrast to other firms visited where such audits had been undertaken.
- In an authorised professional firm, Internet and Hotmail usage was only monitored if it was for longer than 20 minutes at any one time. There was also no clear-desk policy within the firm.
- In an authorised professional firm there had been two incidents where people had walked into the office and stolen staff wallets and laptops.



### Box 10.9: Outsourcing

#### Examples of good practice:

themselves about the security arrangements at the premises.

#### Examples of poor practice:

### Box 10.10: Physical controls

#### Examples of good practice:

- At an IFA, staff email was monitored and monthly MI was produced, which included a monitoring of where emails had been directed to staff home addresses.
- At an investment advisory firm, staff were prohibited from using the Internet and Hotmail accounts. USB ports had been disabled on hardware and laptops were encrypted.

#### Examples of poor practice:

- In a general insurance intermediary which had poor physical security in terms of shop front access, there were many insecure boxes of historical customer records dotted around the office in no apparent order. The firm had no control record of what was stored in the boxes, saying only that they were no longer needed for the business.

### Box 10.11: Data disposal

#### Examples of good practice:

- An advising and arranging intermediary used a third party company for all paper disposals, using secure locked bins provided by the third party. All paper in the firm was treated as confidential and 'secure paper management' was encouraged throughout the firm, enhanced by a monitored clear-desk policy. The firm was also aware that it needed to consider a process for secure disposal of electronic media as it was due to undergo a systems refit in the near future.
- An IFA treated all customer paperwork as confidential and had onsite shredding facilities. For bulk shredding the firm used a third party who provided bags and tags for labelling sensitive waste for removal, and this was collected and signed for by the third party. The firm's directors had visited the third party's premises and

#### Examples of poor practice:

- In an IFA there was a clear-desk policy that was not enforced and customer data was stored in unlocked cabinets which were situated in a part of the office accessible to all visitors to the firm.

**Box 10.11: Data disposal****Examples of good practice:**

satisfied themselves of their processes. The directors periodically checked office bins for confidential waste being mishandled. PCs which had come to 'end of life' were wiped using reputable software and physically destroyed.

**Examples of poor practice:****Box 10.12: Data compromise incidents****Examples of good practice:**

- A general insurance broker had suffered a succession of break-ins to their offices. No data had been lost or stolen but the firm sought the advice of local police over the incidents and employed additional physical security as a result.

**Examples of poor practice:**

- In a general insurance intermediary, the IT manager said he would take responsibility for any data security incidents although there was no procedures in place for how to handle such occurrences. When asked about data security, the compliance officer was unable to articulate the financial crime risks that lax data security processes posed to the firm and said it would be something he would discuss with his IT manager.

**Box 10.13: General fraud****Examples of good practice:**

- A small product provider had assessed the fraud risk presented by each product and developed appropriate controls to mitigate this risk based on the assessment. This assessment was then set out in the firm's Compliance Manual and was updated when new information became available.
- A credit union did not permit its members to change address details over the telephone. These needed to be submitted in writing/email. The firm also considered ~~considering~~ the feasibility of allocating passwords to their members for accessing their accounts. The union had photographs of all its members which were taken when the account was opened. These were then

**Examples of poor practice:**

- One GI broker ~~customers~~ permitted customers to contact the firm by telephone to inform the firm of any amendments to their personal details (including change of address). To verify the identity of the person they were speaking to, the firm asked security questions. However, all the information that the firm used to verify the customer's identity was available in the public domain.

**Box 10.13: General fraud****Examples of good practice:**

used to verify the identity of the customer should they wish to withdraw money or apply for a loan from the union.

- One discretionary investment manager kept full records of all customer contact including details of any phone calls. When receiving incoming calls from product providers, the firm required the caller to verify where they were calling from and provide a contact telephone number which they were then called back on before any customer details were discussed or instructions taken.
- One general insurance intermediary was a member of a local association whose membership included law enforcement and Law Society representatives. This group met in order to share local intelligence to help improve their firms' defences against financial crime.

**Examples of poor practice:****Box 10.14: Insurance fraud****Examples of good practice:**

- A small general insurer had compiled a handbook which detailed indicators of potential insurance fraud.
- An IFA had undertaken a risk assessment to understand where his business was vulnerable to insurance fraud.
- An IFA had identified where their business may be used to facilitate insurance fraud and implemented more controls in these areas.

**Examples of poor practice:**

- An IFA had a procedure in place to aid in the identification of high risk customers. However, once identified, this firm had no enhanced due diligence procedures in place to deal with such customers.

**Box 10.15: Investment fraud**

<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• An IFA had undertaken a risk assessment for all high net worth customers.</li> <li>• A discretionary investment manager referred higher risk decisions (in respect of a high risk customer/value of funds involved) to a specific senior manager.</li> <li>• A personal pension operator carried out a financial crime risk assessment for newly introduced investment products.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• An IFA had a ‘one size fits all’ approach to identifying the risks associated with customers and investments.</li> </ul>
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#### Box 10.16: Mortgage fraud

<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• The majority of firms conducted customer fact finds. This allowed them to know their customers sufficiently to identify any suspicious behaviour. CDD<sup>14</sup> (including source of funds information) was also obtained early in the application process before the application was completed and submitted to the lender.</li> <li>• A home finance broker would not conduct any remote business – meeting all customers face-to-face.</li> <li>• An IFA had informally assessed the mortgage fraud risks the business faced and was aware of potentially suspicious indicators. The IFA also looked at the fraud risks associated with how the company approached the firm – e.g. the firm felt that a cold call from a customer may pose a greater risk than those which had been referred by longstanding customers.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• An IFA did not undertake any KYC checks, considering this to be the responsibility of the lender.</li> <li>• An IFA did not investigate source of funds. The firm stated this was because ‘a bank would pick it up and report it.’</li> <li>• An IFA did not undertake extra verification of its non face-to-face customers.</li> </ul>
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#### Box 10.17: Staff/Internal fraud

<p><b>Examples of good practice:</b></p>	<p><b>Examples of poor practice:</b></p>
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<sup>14</sup> Customer Due Diligence. See Part 1 Annex 1 for common terms.

**Box 10.17: Staff/Internal fraud****Examples of good practice:**

- An IFA obtained full reference checks (proof of identity, eligibility to work and credit checks) prior to appointment. Original certificates or other original documentation was also requested.
- An IFA ensured that staff vetting is repeated by completing a credit reference check on each member of staff.
- An IFA set a low credit limit for each of its company credit cards. Bills are sent to the firm and each month the holder has to produce receipts to reconcile their claim.
- At one authorised professional firm dual signatory requirements had to be met for all payments made over £5,000.

**Examples of poor practice:**

- One general insurance intermediary did not undertake any background checks before appointing a member of staff or authenticate qualifications or references.
- Company credit card usage was not monitored or reconciled at an IFA. An IFA had the same computer log-on used by all staff in the office no matter what their role.

## 11 Mortgage fraud against lenders (2011)

**Who should read this chapter?** This chapter is relevant, and its statements of good and poor practice apply, to **mortgage lenders** within our supervisory scope. It may also be of interest to other firms who are subject to the financial crime rules in SYSC 3.2.6R or SYSC 6.1.1R.

**Content:** This chapter contains sections on:

- |   |          |
|---|----------|
| • Governance, culture and information sharing                   | Box 11.1 |
| • Applications processing and underwriting                      | Box 11.2 |
| • Mortgage fraud prevention, investigations and recoveries      | Box 11.3 |
| • Managing relationships with conveyancers, brokers and valuers | Box 11.4 |
| • Compliance and internal audit                                 | Box 11.5 |
| • Staff recruitment and vetting                                 | Box 11.6 |
| • Remuneration structures                                       | Box 11.7 |
| • Staff training and awareness                                  | Box 11.8 |

- 11.1 In June 2011 we published the findings of our thematic review into how mortgage lenders in the UK were managing the risks mortgage fraud posed to their businesses. Our project population of 20 banks and building societies was selected to be a representative sample of the mortgage lending market. The firms we visited accounted for 56% of the mortgage market in 2010.
- 11.2 Our review found the industry had made progress coming to terms with the problem of containing mortgage fraud over recent years. Defences were stronger, and the value of cross-industry cooperation was better recognised. However, we found that many in the industry could do better; we were disappointed, for example, that more firms were not actively participating in our Information From Lenders scheme and other industry-wide initiatives to tackle mortgage fraud. Other areas of concern we identified were to do with the adequacy of firms' resources for dealing with mortgage fraud, both in terms of the number and experience of staff; and we identified scope for significant improvement in the way lenders dealt with third parties such as brokers, valuers and conveyancers.
- 11.3 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 4 (Fraud) of Part 1 of this Guide.

### Our findings

- 11.4 You can read the findings of the FSA's thematic review here:

[www.fsa.gov.uk/pubs/other/mortgage\\_fraud.pdf](http://www.fsa.gov.uk/pubs/other/mortgage_fraud.pdf)

### Consolidated examples of good and poor practice

### Box 11.1: Governance, culture and information sharing

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>• A firm's efforts to counter mortgage fraud are coordinated, and based on consideration of where anti-fraud resources can be allocated to best effect.</li> <li>• Senior management engage with mortgage fraud risks and receive sufficient management information about incidents and trends.</li> <li>• A firm engages in cross-industry efforts to exchange information about fraud risks.</li> <li>• A firm engages front-line business areas in anti-mortgage fraud initiatives.</li> </ul>	<ul style="list-style-type: none"> <li>• A firm fails to <del>engage with</del> <u>report relevant information to the FSA's Information From Lenders project scheme as per the FSA's guidance on IFL referrals.</u></li> <li>• A firm fails to define mortgage fraud clearly, undermining efforts to compile statistics related to mortgage fraud trends.</li> <li>• A firm does not allocate responsibility for countering mortgage fraud clearly within the management hierarchy.</li> </ul>

### Box 11.2: Applications processing and underwriting

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>• A firm's underwriting process can identify applications that may, based on a thorough assessment of risk flags relevant to the firm, present a higher risk of mortgage fraud.</li> <li>• Underwriters can contact all parties to the application process (customers, brokers, valuers etc.) to clarify aspects of the application.</li> <li>• The firm verifies that deposit monies for a mortgage transaction are from a legitimate source.</li> <li>• New or inexperienced underwriters receive training about mortgage fraud risks, potential risk indicators, and the firm's approach to tackling the issue.</li> </ul>	<ul style="list-style-type: none"> <li>• A firm's underwriters have a poor understanding of potential fraud indicators, whether through inexperience or poor training.</li> <li>• Underwriters' demanding work targets undermine efforts to contain mortgage fraud.</li> <li>• Communication between the fraud team and mortgage processing staff is weak.</li> <li>• A firm relying on manual underwriting has no checklists to ensure the application process is complete.</li> <li>• A firm requires underwriters to justify all declined applications to brokers.</li> </ul>

### Box 11.3: Mortgage fraud prevention, investigations and recoveries

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>• A firm routinely assesses fraud risks during the development of new mortgage products, with particular focus on fraud when it enters</li> </ul>	<ul style="list-style-type: none"> <li>• A firm's anti-fraud efforts are uncoordinated and under-resourced.</li> </ul>

### Box 11.3: Mortgage fraud prevention, investigations and recoveries

#### Examples of good practice:

- new areas of the mortgage market (such as sub-prime or buy-to-let).
- A firm reviews existing mortgage books to identify fraud indicators.
- Applications that are declined for fraudulent reasons result in a review of pipeline and back book cases where associated fraudulent parties are identified.
- A firm has planned how counter-fraud resources could be increased in response to future growth in lending volumes, including consideration of the implications for training, recruitment and information technology.
- A firm documents the criteria for initiating a fraud investigation.
- Seeking consent from the Serious Organised Crime Agency (SOCA) to accept mortgage payments wherever fraud is identified.

#### Examples of poor practice:

- Fraud investigators lack relevant experience or knowledge of mortgage fraud issues, and have received insufficient training.
- A firm's internal escalation procedures are unclear and leave staff confused about when and how to report their concerns about mortgage fraud.

### Box 11.4: Managing relationships with ~~solicitor-conveyancers~~, brokers and valuers

#### Examples of good practice:

- A firm has identified third parties they will not deal with, drawing on a range of internal and external information.
- A third party reinstated to a panel after termination is subject to fresh due diligence checks.
- A firm checks that ~~solicitor-conveyancers~~ register charges over property with the Land Registry in good time, and chases this up.
- Where a ~~solicitor-conveyancer~~ is changed during the processing of an application, lenders contact both the original and new ~~solicitor-conveyancer~~ to ensure the change is for a legitimate reason.
- A firm checks whether third parties maintain

#### Examples of poor practice:

- A firm's scrutiny of third parties is a one-off exercise; membership of a panel is not subject to ongoing review.
- A firm's panels are too large to be manageable. No work is undertaken to identify dormant third parties.
- A firm solely relies on the FSA Register to check mortgage brokers, while scrutiny of ~~solicitor-conveyancers~~ only involves a check of public material from the Law Society or Solicitors Regulation Authority.
- A firm that uses divisional sales managers to oversee brokers has not considered how to manage conflicts of interest that may arise.



<p>professional indemnity cover.</p> <ul style="list-style-type: none"> <li>• A firm has a risk-sensitive process for subjecting property valuations to independent checks.</li> <li>• A firm can detect brokers ‘gaming’ their systems, for example by submitting applications designed to discover the firm’s lending thresholds, or submitting multiple similar applications known to be within the firm’s lending policy.</li> <li>• A firm verifies that funds are dispersed in line with instructions held, particularly where changes to the Certificate of Title occur just before completion.</li> </ul>	
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<b>Box 11.5: Compliance and internal audit</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• A firm has subjected anti-fraud measures to ‘end-to-end’ scrutiny, to assess whether defences are coordinated, rather than solely reviewing adherence to specific procedures in isolation.</li> <li>• There is a degree of specialist anti-fraud expertise within the compliance and internal audit functions.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• A firm’s management of third party relationships is subject to only cursory oversight by compliance and internal audit.</li> <li>• Compliance and internal audit staff demonstrate a weak understanding of mortgage fraud risks, because of inexperience or deficient training.</li> </ul>

<b>Box 11.6: Staff recruitment and vetting</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• A firm requires staff to disclose conflicts of interest stemming from their relationships with third parties such as brokers or <del>sole</del><u>sole</u> conveyancers.</li> <li>• A firm has considered what enhanced vetting methods should be applied to different roles (e.g. credit checks, criminal record checks, CIFAS staff fraud database, etc).</li> <li>• A firm adopts a risk-sensitive approach to managing adverse information about an employee or new candidate.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• A firm uses recruitment agencies without understanding the checks they perform on candidates, and without checking whether they continue to meet agreed recruitment standards.</li> <li>• Staff vetting is a one-off exercise.</li> <li>• Enhanced vetting techniques are applied only to staff in Approved Persons positions.</li> <li>• A firm’s vetting of temporary or contract staff is less thorough than checks on</li> </ul>

**Box 11.6: Staff recruitment and vetting****Examples of good practice:**

- A firm seeks to identify when a deterioration in employees' financial circumstances may indicate increased vulnerability to becoming involved in fraud.

**Examples of poor practice:**

permanent staff in similar roles.

**Box 11.7: Remuneration structures****Examples of good practice:**

- A firm has considered whether remuneration structures could incentivise behaviour that may increase the risk of mortgage fraud.
- A firm's bonuses related to mortgage sales will take account of subsequent fraud losses, whether through an element of deferral or by 'clawback' arrangements.

**Examples of poor practice:**

- The variable element of a firm's remuneration of mortgage salespeople is solely driven by the volume of sales they achieve, with no adjustment for sales quality or other qualitative factors related to compliance.
- The variable element of salespeople's remuneration is excessive.
- Staff members' objectives fail to reflect any consideration of mortgage fraud prevention.

**Box 11.8: Staff training and awareness****Examples of good practice:**

- A firm's financial crime training delivers clear messages about mortgage fraud across the organisation, with tailored training for staff closest to the issues.
- A firm verifies that staff understand training materials, perhaps with a test.
- Training is updated to reflect new mortgage fraud trends and types.
- Mortgage fraud 'champions' offer guidance or mentoring to staff.

**Examples of poor practice:**

- A firm fails to provide adequate training on mortgage fraud, particularly to staff in higher-risk business areas.
- A firm relies on staff reading up on the topic of mortgage fraud on their own initiative, without providing formal training support.
- A firm fails to ensure mortgage lending policies and procedures are readily accessible to staff.
- A firm fails to define mortgage fraud in training documents or policies and procedures.
- Training fails to ensure all staff are aware of their responsibilities to report

<b>Box 11.8: Staff training and awareness</b>	
<b>Examples of good practice:</b>	<b>Examples of poor practice:</b> suspicions, and the channels they should use.

## 12 Banks' management of high money-laundering risk situations (2011)

**Who should read this chapter?** This chapter is relevant, and its statements of good and poor practice apply, to **banks** we supervise under the Money Laundering Regulations 2007. Boxes 12.1 – 12.4 also apply to other **firms** we supervise under the Money Laundering Regulations **that have customers who present a high money-laundering risk**. It may be of interest to other firms we supervise under the Money Laundering Regulations 2007.

**Content:** This chapter contains sections on:

- High risk customers and PEPs - AML policies and procedures      Box 12.1
- High risk customers and PEPs - Risk assessment                      Box 12.2
- High risk customers and PEPs - Customer take-on                      Box 12.3
- High risk customers and PEPs - Enhanced monitoring of high risk relationships  
Box 12.4
- Correspondent banking - Risk assessment of respondent banks      Box 12.5
- Correspondent banking - Customer take-on                              Box 12.6
- Correspondent banking - Ongoing monitoring of respondent accounts  
Box 12.7
- Wire transfers - Paying banks    Box 12.8
- Wire transfers - Intermediary banks    Box 12.9
- Wire transfers - Beneficiary banks    Box 12.10
- Wire transfers - Implementation of SWIFT MT202COV                  Box 12.11

- 12.1 In June 2011 we published the findings of our thematic review of how banks operating in the UK were managing money-laundering risk in higher-risk situations. We focused in particular on correspondent banking relationships, wire transfer payments and high-risk customers including politically exposed persons (PEPs). We conducted 35 visits to 27 banking groups in the UK that had significant international activity exposing them to the AML risks on which we were focusing.
- 12.2 Our review found no major weaknesses in banks' compliance with the legislation relating to wire transfers. On correspondent banking, there was a wide variance in standards with some banks carrying out good quality AML work, while others, particularly among the smaller banks in our sample, carried out either inadequate due diligence or none at all.
- 12.3 However, our main conclusion was that around three-quarters of banks in our sample, including the majority of major banks, were not always managing high-risk customers and PEP relationships effectively and had to do more to ensure they were not used for money laundering purposes. We identified serious weaknesses in banks' systems and controls, as well as indications that some banks were willing to enter into very high-risk

business relationships without adequate controls when there were potentially large profits to be made. This meant that we found it likely that some banks were handling the proceeds of corruption or other financial crime.

12.4 The contents of this report are reflected in Chapter 2 (Financial crime systems and controls) and Chapter 3 (Money laundering and terrorist financing) of Part 1 of this Guide.

### Our findings

12.5 You can read the findings of the FSA's thematic review here:

[www.fsa.gov.uk/pubs/other/aml\\_final\\_report.pdf](http://www.fsa.gov.uk/pubs/other/aml_final_report.pdf)

### Consolidated examples of good and poor practice

12.6 In addition to the examples of good and poor practice below, Section 6 of the report also included **case studies** illustrating relationships into which banks had entered which caused us particular concern. The case studies can be accessed via the link in the paragraph above.

<b>Box 12.1: High risk customers and PEPs - AML policies and procedures</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Senior management take money laundering risk seriously and understand what the <u>Money Laundering Regulations</u> are trying to achieve.</li> <li>• Keeping AML policies and procedures up to date to ensure compliance with evolving legal and regulatory obligations.</li> <li>• A clearly articulated definition of a PEP (and any relevant sub-categories) which is well understood by relevant staff.</li> <li>• Considering the risk posed by former PEPs and 'domestic PEPs' on a case-by-case basis.</li> <li>• Ensuring adequate due diligence has been carried out on all customers, even if they have been referred by somebody who is powerful or influential or a senior manager.</li> <li>• Providing good quality training to relevant staff on the risks posed by higher risk customers including PEPs and correspondent banks.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• A lack of commitment to AML risk management among senior management and key AML staff.</li> <li>• Failing to conduct quality assurance work to ensure AML policies and procedures are fit for purpose and working in practice.</li> <li>• Informal, undocumented processes for identifying, classifying and declassifying customers as PEPs.</li> <li>• Failing to carry out enhanced due diligence on customers with political connections who, although they do not meet the legal definition of a PEP, still represent a high risk of money laundering.</li> <li>• Giving waivers from AML policies without good reason.</li> <li>• Considering the reputational risk rather than the AML risk presented by customers.</li> <li>• Using group policies which do not</li> </ul>

### Box 12.1: High risk customers and PEPs - AML policies and procedures

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>• Ensuring RMs<sup>15</sup> and other relevant staff understand how to manage high money laundering risk customers by training them on practical examples of risk and how to mitigate it.</li> <li>• Keeping training material comprehensive and up-to-date, and repeating training where necessary to ensure relevant staff are aware of changes to policy and emerging risks.</li> </ul>	<ul style="list-style-type: none"> <li>• comply fully with UK AML legislation and regulatory requirements.</li> <li>• Using consultants to draw up policies which are then not implemented.</li> <li>• Failing to allocate adequate resources to AML.</li> <li>• Failing to provide training to relevant staff on how to comply with AML policies and procedures for managing high-risk customers.</li> <li>• Failing to ensure policies and procedures are easily accessible to staff.</li> </ul>

### Box 12.2: High risk customers and PEPs - Risk assessment

Examples of good practice:	Examples of poor practice:
<ul style="list-style-type: none"> <li>• Using robust risk assessment systems and controls appropriate to the nature, scale and complexities of the bank's business.</li> <li>• Considering the money-laundering risk presented by customers, taking into account a variety of factors including, but not limited to, company structures; political connections; country risk; the customer's reputation; source of wealth/funds; expected account activity; sector risk; and involvement in public contracts.</li> <li>• Risk assessment policies which reflect the bank's risk assessment procedures and risk appetite.</li> <li>• Clear understanding and awareness of risk assessment policies, procedures, systems and controls among relevant staff.</li> <li>• Quality assurance work to ensure risk assessment policies, procedures, systems</li> </ul>	<ul style="list-style-type: none"> <li>• Allocating higher risk countries with low risk scores to avoid having to conduct EDD.</li> <li>• MLROs who are too stretched or under resourced to carry out their function appropriately.</li> <li>• Failing to risk assess customers until shortly before an FSA visit.</li> <li>• Allowing RMs to override customer risk scores without sufficient evidence to support their decision.</li> <li>• Inappropriate customer classification systems which make it almost impossible for a customer to be classified as high risk.</li> </ul>

<sup>15</sup> Relationship Managers

**Box 12.2: High risk customers and PEPs - Risk assessment**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<p>and controls are working effectively in practice.</p> <ul style="list-style-type: none"> <li>• Appropriately-weighted scores for risk factors which feed in to the overall customer risk assessment.</li> <li>• A clear audit trail to show why customers are rated as high, medium or low risk.</li> </ul>	

**Box 12.3: High risk customers and PEPs - Customer take-on**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<ul style="list-style-type: none"> <li>• Ensuring files contain a customer overview covering risk assessment, documentation, verification, expected account activity, profile of customer or business relationship and ultimate beneficial owner.</li> <li>• <del>Having all new PEP or other high risk relationships checked by the MLRO or the AML team.</del> <u>The MLRO (and their team) have adequate oversight of all high-risk relationships.</u></li> <li>• Clear processes for escalating the approval of high risk and all PEP customer relationships to senior management or committees which consider AML risk and give appropriate challenge to RMs and the business.</li> <li>• Using, where available, local knowledge and open source internet checks to supplement commercially available databases when researching potential high risk customers including PEPs.</li> <li>• Having clear risk-based policies and procedures setting out the EDD required for higher risk and PEP customers, particularly in relation to source of wealth.</li> <li>• Effective challenge of RMs and business units by banks' AML and compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Failing to give due consideration to certain political connections which fall outside the Money Laundering Regulations definition of a PEP (eg wider family) which might mean that certain customers still need to be treated as high risk and subject to enhanced due diligence.</li> <li>• Poor quality, incomplete or inconsistent CDD.</li> <li>• Relying on Group introductions where overseas standards are not UK-equivalent or where CDD is inaccessible due to legal constraints.</li> <li>• Inadequate analysis and challenge of information found in documents gathered for CDD purposes.</li> <li>• Lacking evidence of formal sign-off and approval by senior management of high-risk and PEP customers and failure to document appropriately why the customer was within AML risk appetite.</li> <li>• Failing to record adequately face-to-face meetings that form part of CDD.</li> <li>• Failing to carry out EDD for high risk/PEP customers.</li> <li>• Failing to conduct adequate CDD before</li> </ul>

**Box 12.3: High risk customers and PEPs - Customer take-on**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<p>teams, and senior management.</p> <ul style="list-style-type: none"> <li>• Reward structures for RMs which take into account good AML/compliance practice rather than simply the amount of profit generated.</li> <li>• Clearly establishing and documenting PEP and other high-risk customers' source of wealth.</li> <li>• Where money laundering risk is very high, supplementing CDD with independent intelligence reports and fully exploring and reviewing any credible allegations of criminal conduct by the customer.</li> <li>• Understanding and documenting <del>ownership structures</del> complex or opaque <u>ownership and</u> corporate structures and the reasons for them.</li> <li>• Face-to-face meetings and discussions with high-risk and PEP prospects before accepting them as a customer.</li> <li>• Making clear judgements on money-laundering risk which are not compromised by the potential profitability of new or existing relationships.</li> <li>• Recognising and mitigating the risk arising from RMs becoming too close to customers and conflicts of interest arising from RMs' remuneration structures.</li> </ul>	<p>customer relationships are approved.</p> <ul style="list-style-type: none"> <li>• Over-reliance on undocumented 'staff knowledge' during the CDD process.</li> <li>• Granting waivers from establishing a customer's source of funds, source of wealth and other CDD without good reason.</li> <li>• Discouraging business units from carrying out adequate CDD, for example by charging them for intelligence reports.</li> <li>• Failing to carry out CDD on customers because they were referred by senior managers.</li> <li>• Failing to ensure CDD for high-risk and PEP customers is kept up-to-date in line with current standards.</li> <li>• Allowing 'cultural difficulties' to get in the way of proper questioning to establish required CDD records.</li> <li>• Holding information about customers of their UK operations in foreign countries with banking secrecy laws <u>if, as a result the firm's ability to access or share CDD is restricted.</u></li> <li>• Allowing accounts to be used for purposes inconsistent with the expected activity on the account (e.g. personal accounts being used for business) without enquiry.</li> <li>• Insufficient information on source of wealth with little or no evidence to verify that the wealth is not linked to crime or corruption.</li> <li>• Failing to distinguish between source of funds and source of wealth.</li> <li>• Relying exclusively on commercially-available PEP databases and failure to make use of available open source</li> </ul>



**Box 12.3: High risk customers and PEPs - Customer take-on**

<p><b>Examples of good practice:</b></p>	<p><b>Examples of poor practice:</b></p> <p>information on a risk-based approach.</p> <ul style="list-style-type: none"> <li>• Failing to understand the reasons for complex and opaque offshore company structures.</li> <li>• Failing to ensure papers considered by approval committees present a balanced view of money laundering risk.</li> <li>• No formal procedure for escalating prospective customers to committees and senior management on a risk based approach.</li> <li>• Failing to take account of credible allegations of criminal activity from reputable sources.</li> <li>• Concluding that adverse allegations against customers can be disregarded simply because they hold an investment visa.</li> <li>• Accepting regulatory and/or reputational risk where there is a high risk of money laundering.</li> </ul>
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**Box 12.4: High risk customers and PEPs - Enhanced monitoring of high risk relationships**

<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Transaction monitoring which takes account of up-to-date CDD information including expected activity, source of wealth and source of funds.</li> <li>• Regularly reviewing PEP relationships at a senior level based on a full and balanced assessment of the source of wealth of the PEP.</li> <li>• Monitoring new clients more closely to confirm or amend the expected account activity.</li> <li>• A risk-based framework for assessing the</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Failing to carry out regular reviews of high-risk and PEP customers in order to update CDD.</li> <li>• Reviews carried out by RMs with no independent assessment by money laundering or compliance professionals of the quality or validity of the review.</li> <li>• Failing to disclose suspicious transactions to SOCA.</li> <li>• Failing to seek consent from SOCA on suspicious transactions before processing them.</li> </ul>
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<b>Box 12.4: High risk customers and PEPs - Enhanced monitoring of high risk relationships</b>	
<p><b>Examples of good practice:</b></p> <p>necessary frequency of relationship reviews and the degree of scrutiny required for transaction monitoring.</p> <ul style="list-style-type: none"> <li>• Proactively following up gaps in, and updating, CDD during the course of a relationship.</li> <li>• Ensuring transaction monitoring systems are properly calibrated to identify higher risk transactions and reduce false positives.</li> <li>• Keeping good records and a clear audit trail of internal suspicion reports sent to the MLRO, whether or not they are finally disclosed to SOCA.</li> <li>• A good knowledge among key AML staff of a bank's highest risk/PEP customers.</li> <li>• More senior involvement in resolving alerts raised for transactions on higher risk or PEP customer accounts, including ensuring adequate explanation and, where necessary, corroboration of unusual transactions from RMs and/or customers.</li> <li>• Global consistency when deciding whether to keep or exit relationships with high-risk customers and PEPs.</li> <li>• Assessing RMs' performance on ongoing monitoring and feeding this into their annual performance assessment and pay review.</li> <li>• Lower transaction monitoring alert thresholds for higher risk customers.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Unwarranted delay between identifying suspicious transactions and disclosure to SOCA.</li> <li>• Treating annual reviews as a tick-box exercise and copying information from the previous review.</li> <li>• Annual reviews which fail to assess AML risk and instead focus on business issues such as sales or debt repayment.</li> <li>• Failing to apply enhanced ongoing monitoring techniques to high-risk clients and PEPs.</li> <li>• Failing to update CDD based on actual transactional experience.</li> <li>• Allowing junior or inexperienced staff to play a key role in ongoing monitoring of high-risk and PEP customers.</li> <li>• Failing to apply sufficient challenge to explanations from RMs and customers about unusual transactions.</li> <li>• RMs failing to provide timely responses to alerts raised on transaction monitoring systems.</li> </ul>

<b>Box 12.5: - Correspondent banking - Risk assessment of respondent banks</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>• Regularly assessments of correspondent banking risks taking into account various money laundering risk factors such as the</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>• Failing to consider the money-laundering risks of correspondent relationships.</li> </ul>

**Box 12.5: - Correspondent banking - Risk assessment of respondent banks****Examples of good practice:**

- country (and its AML regime); ownership/management structure (including the possible impact/influence that ultimate beneficial owners with political connections may have); products/operations; transaction volumes; market segments; the quality of the respondent's AML systems and controls and any adverse information known about the respondent.
- More robust monitoring of respondents identified as presenting a higher risk.
  - Risk scores that drive the frequency of relationship reviews.
  - Taking into consideration publicly available information from national government bodies and non-governmental organisations and other credible sources.

**Examples of poor practice:**

- Inadequate or no documented policies and procedures setting out how to deal with respondents.
- Applying a 'one size fits all' approach to due diligence with no assessment of the risks of doing business with respondents located in higher risk countries.
- Failing to prioritise higher risk customers and transactions for review.
- Failing to take into account high-risk business types such as money service businesses and offshore banks.

**Box 12.6: Correspondent banking - Customer take-on****Examples of good practice:**

- Assigning clear responsibility for the CDD process and the gathering of relevant documentation.
- EDD for respondents that present greater risks or where there is less publicly available information about the respondent.
- Gathering enough information to understand client details; ownership and management; products and offerings; transaction volumes and values; client market segments; client reputation; as well as the AML control environment.
- Screening the names of senior managers, owners and controllers of respondent banks to identify PEPs and assessing the risk that identified PEPs pose.

**Examples of poor practice:**

- Inadequate CDD on parent banks and/or group affiliates, particularly if the respondent is based in a high-risk jurisdiction.
- Collecting CDD information but failing to assess the risks.
- Over-relying on the Wolfsberg Group AML questionnaire.
- Failing to follow up on outstanding information that has been requested during the CDD process.
- Failing to follow up on issues identified during the CDD process.
- Relying on parent banks to conduct CDD for a correspondent account and taking no

**Box 12.6: Correspondent banking - Customer take-on**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<ul style="list-style-type: none"> <li>• Independent quality assurance work to ensure that CDD standards are up to required standards consistently across the bank.</li> <li>• Discussing with overseas regulators and other relevant bodies about the AML regime in a respondent's home country.</li> <li>• Identifying risk in particular business areas (eg informal value transfer such as 'hawala', tax evasion, corruption) through discussions with overseas regulators.</li> <li>• Visiting, or otherwise liaising/discussing with, respondent banks to discuss AML issues and gather CDD information.</li> <li>• Gathering information about procedures at respondent firms for sanctions screening and identifying/managing PEPs.</li> <li>• Understanding respondents' processes for monitoring account activity and reporting suspicious activity.</li> <li>• Requesting details of how respondents manage their own correspondent banking relationships.</li> <li>• Senior management/senior committee sign-off for new correspondent banking relationships and reviews of existing ones.</li> </ul>	<p>steps to ensure this has been done.</p> <ul style="list-style-type: none"> <li>• Collecting AML policies etc but making no effort to assess them.</li> <li>• Having no information on file for expected activity volumes and values.</li> <li>• Failing to consider adverse information about the respondent or individuals connected with it.</li> <li>• No senior management involvement in the approval process for new correspondent bank relationships or existing relationships being reviewed.</li> </ul>

**Box 12.7: Correspondent banking - Ongoing monitoring of respondent accounts**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<ul style="list-style-type: none"> <li>• Review periods driven by the risk rating of a particular relationship; with high risk relationships reviewed more frequently.</li> <li>• Obtaining an updated picture of <del>for</del> the purpose of the account and expected</li> </ul>	<ul style="list-style-type: none"> <li>• Copying periodic review forms year after year without challenge from senior management.</li> <li>• Failing to take account of any changes to key staff at respondent banks.</li> </ul>

<b>Box 12.7: Correspondent banking - Ongoing monitoring of respondent accounts</b>	
<p><b>Examples of good practice:</b></p> <p>activity.</p> <ul style="list-style-type: none"> <li>Updating screening of respondents and connected individuals to identify individuals/entities with PEP connections or on relevant sanctions lists.</li> <li>Involving senior management and AML staff in reviews of respondent relationships and consideration of whether to maintain or exit high-risk relationships.</li> <li>Where appropriate, using intelligence reports to help decide whether to maintain or exit a relationship.</li> <li>Carrying out ad-hoc reviews in light of material changes to the risk profile of a customer.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>Carrying out annual reviews of respondent relationships but <u>failing</u> to consider money-laundering risk adequately.</li> <li>Failing to assess new information gathered during ongoing monitoring of a relationship.</li> <li>Failing to consider money laundering alerts generated since the last review.</li> <li>Relying on parent banks to carry out monitoring of respondents without understanding what monitoring has been done or what the monitoring found.</li> <li>Failing to take action when respondents do not provide satisfactory answers to reasonable questions regarding activity on their account.</li> <li>Focusing too much on reputational or business issues when deciding whether to exit relationships with respondents which give rise to high money-laundering risk.</li> </ul>

<b>Box 12.8: Wire transfers - Paying banks</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>Banks' core banking systems ensure that all static data (name, address, account number) held on the ordering customer are automatically inserted in the correct lines of the outgoing MT103 payment instruction and any matching MT202COV.</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>Paying banks take insufficient steps to ensure that all outgoing MT103s contain sufficient beneficiary information to mitigate the risk of customer funds being incorrectly blocked, delayed or rejected.</li> </ul>

<b>Box 12.9: Wire transfers - Intermediary banks</b>	
<p><b>Examples of good practice:</b></p> <ul style="list-style-type: none"> <li>Where practical, intermediary and beneficiary banks delay processing payments until they receive complete and meaningful information on the ordering</li> </ul>	<p><b>Examples of poor practice:</b></p> <ul style="list-style-type: none"> <li>Banks have no procedures in place to detect incoming payments containing meaningless or inadequate payer information, which could allow payments in breach of sanctions to slip through</li> </ul>

**Box 12.9: Wire transfers - Intermediary banks**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<p>customer.</p> <ul style="list-style-type: none"> <li>• Intermediary and beneficiary banks have systems that generate an automatic investigation every time a MT103 appears to contain inadequate payer information.</li> <li>• Following processing, risk-based sampling for inward payments identifies inadequate payer information.</li> <li>• Search for phrases in payment messages such as ‘one of our clients’ or ‘our valued customer’ in all the main languages which may indicate a bank or customer trying to conceal their identity.</li> </ul>	<p>unnoticed.</p>

**Box 12.10: Wire transfers - Beneficiary banks**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<ul style="list-style-type: none"> <li>• Establishing a specialist team to undertake risk-based sampling of incoming customer payments, with subsequent detailed analysis to identify banks initiating cross-border payments containing inadequate or meaningless payer information.</li> <li>• Actively engaging in dialogue with peers about the difficult issue of taking appropriate action against persistently offending banks.</li> </ul>	<ul style="list-style-type: none"> <li>• Insufficient processes to identify payments with incomplete or meaningless payer information.</li> </ul>

**Box 12.11: Wire transfers - Implementation of SWIFT MT202COV**

<b>Examples of good practice:</b>	<b>Examples of poor practice:</b>
<ul style="list-style-type: none"> <li>• Reviewing all correspondent banks’ use of the MT202 and MT202COV.</li> <li>• Introducing the MT202COV as an additional element of the CDD review process including whether the local regulator expects proper use of the new message type.</li> </ul>	<ul style="list-style-type: none"> <li>• Continuing to use the MT202 for all bank-to-bank payments, even if the payment is cover for an underlying customer transaction.</li> </ul>

**Box 12.11: Wire transfers - Implementation of SWIFT MT202COV****Examples of good practice:**

- Always sending an MT103 and matching MT202COV wherever the sending bank has a correspondent relationship and is not in a position to 'self clear' (eg for Euro payments within a scheme of which the bank is a member).
- Searching relevant fields in MT202 messages for the word 'cover' to detect when the MT202COV is not being used as it should be.

**Examples of poor practice:**

**Annex B**

**Amendments to the Glossary of definitions**

Insert the following new definition in the appropriate alphabetical position.

*FC*

Financial crime: a guide for firms



## Annex C

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

In this Annex, underlining indicates new text.

Financial crime guidance

3.2.6K G The FSA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FC (Financial crime: a guide for firms).

...

6.1.1A G The FSA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FC (Financial crime: a guide for firms).

...

Financial crime guidance

6.3.11 G The FSA provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime in FC (Financial crime: a guide for firms).

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (ICVC SUB-FUNDS)  
INSTRUMENT 2011**

**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);
    - (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 listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. The Annexes to this instrument come into force immediately.

**Amendments to the Handbook**

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

**Citation**

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (ICVC Sub-funds) Instrument 2011.

By order of the Board  
21 December 2011

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

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

- foreign law contract* any contract other than a contract:
- (a) governed by the laws of any part of the *United Kingdom*; and
  - (b) whose parties agree to the exclusive jurisdiction of the courts of any part of the *United Kingdom*.

## Annex B

### Amendments to the Collective Investments Schemes sourcebook (COLL)

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

#### 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)

...	
22	...
	<b><u>ICVCs: Umbrella schemes – principle of limited recourse</u></b>
<u>22</u> <u>A</u>	<u>For an ICVC which is an umbrella, a statement that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose.</u>
...	

...

#### 4.2 Pre-sale notifications

...

Table: contents of the prospectus

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

...	
<b>Authorised fund</b>	
2	A description of the <i>authorised fund</i> including:
	(a) its name;
	(b) whether it is an <i>ICVC</i> or an <i>AUT</i> <del>and that</del> ;
	(i) <del><i>unitholders</i> are not liable for the debts of the <i>authorised fund</i>;</del>

	(ii)	for an <i>ICVC</i> , a statement that the <i>sub-funds</i> of a <i>scheme</i> which is an <i>umbrella</i> are not “ring fenced” and in the event of the <i>umbrella</i> being unable to meet liabilities attributable to any particular <i>sub-fund</i> out of the assets attributable to that <i>sub-fund</i> , that the remaining liabilities may have to be met out of the assets attributable to other <i>sub-funds</i> ;
	(ba)	...
	(bb)	a statement that <i>unitholders</i> are not liable for the debts of the <i>authorised fund</i> .
	...	
	(g)	
<b><u>Umbrella ICVCs</u></b>		
<b><u>2A</u></b>	<b><u>For an <i>ICVC</i> which is an <i>umbrella</i>, a statement that:</u></b>	
	(a)	<u>its <i>sub-funds</i> are segregated portfolios of assets and, accordingly, the assets of a <i>sub-fund</i> belong exclusively to that <i>sub-fund</i> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <i>person</i> or body, including the <i>umbrella</i>, or any other <i>sub-fund</i>, and shall not be available for any such purpose; and</u>
	(b)	<u>while the provisions of the <i>OEIC Regulations</i> provide for segregated liability between <i>sub-funds</i>, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under <i>foreign law contracts</i>, it is not yet known how those foreign courts will react to regulations 11A and 11B of the <i>OEIC Regulations</i>.</u>
	...	

...

#### 4.5 Reports and accounts

...

Authorised fund manager’s report

4.5.9 R The matters set out in (1) to (13) must be included in any *authorised fund manager’s* report, except where otherwise indicated:

...

(11) for a report on an *umbrella* prepared in accordance with *COLL*

4.5.7R(2) or *COLL* 4.5.8R(2): 2

- (a) ~~(for an ICVC), a statement to the effect that, as a *sub-fund* is not a legal entity, if the assets attributable to any *sub-fund* were insufficient to meet the liabilities attributable to it, the shortfall might have to be met out of the assets attributable to one or more other *sub-funds* of the ICVC; and~~
- (b) information required by (1) to (10) must be given for each *sub-fund*, if it would vary from that given in respect of the *umbrella* as a whole;

...

- (13) for a report on an individual *sub-fund* of a *scheme* which is an *umbrella* prepared in accordance with *COLL* 4.5.7R(4) or *COLL* 4.5.8R(3): 2

- (a) ~~(for an ICVC) a statement corresponding to that required by (11)(a) making it clear that if the liability relates to another *sub-fund* of the *umbrella*, the shortfall or any part of it might have to be met out of the assets of the *sub-fund* to which the report relates; and~~
- (b) a statement that the latest long report prepared for the *umbrella* as a whole is available on request.

...

## 5.2 General investment powers and limits for UCITS schemes

...

Investment in associated collective investment schemes

- 5.2.15 R (1) A *UCITS scheme* must not invest in or dispose of *units* in another *collective investment scheme* (the second *scheme*) if the second *scheme* is managed or operated by (or, for an *ICVC*, whose *ACD* is) the *authorised fund manager* of the investing *UCITS scheme* or an *associate* of that *authorised fund manager*, unless:
- (1) (a) the *prospectus* of the investing *UCITS scheme* clearly states that the property of that investing *scheme* may include such *units*; and
  - (2) (b) *COLL* 5.2.16R (Investment in other group schemes) is complied with.
- (2) Where a *sub-fund* of a *UCITS scheme* which is an *umbrella* invests

in or disposes of *units* in another *sub-fund* of the same *umbrella* (the second *sub-fund*), the requirement in:

- (a) COLL 5.2.15R(1)(a) is modified as follows – the *prospectus* of the *umbrella* must clearly state that the *scheme property* attributable to the investing or disposing *sub-fund* may include *units* in another *sub-fund* of the same *umbrella*; and
- (b) COLL 5.2.15R(1)(b) is modified as follows – COLL 5.2.16R (Investment in other group schemes) must be complied with, modified such that references to the “UCITS scheme” are taken to be references to the investing or disposing *sub-fund* and references to the “second scheme” are taken to be references to the second *sub-fund*.

#### Investment in other group schemes

- 5.2.16 R (1) ...
- (2) When an investment is made, the amount referred to in (1)(a) is either:
- (a) ...
- (3) When a disposal is made, the amount referred to in (1)(a) is any charge made for the account of the *authorised fund manager* or *operator* of the second *scheme* or an *associate* of any of them in respect of the disposal.

...

...

#### UCITS schemes that are umbrellas

- 5.2.30 R (1) ...
- (2) A *sub-fund* ~~must not~~ 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:
- (a) the second *sub-fund* does not hold *units* in any other *sub-fund* of the same *umbrella*;
  - (b) the conditions in COLL 5.2.15R (Investment in associated collective investment schemes) and COLL 5.2.16R (Investment in other group schemes) are complied with (for the purposes of this rule, COLL 5.2.15R and COLL 5.2.16R are to be read as modified by COLL 5.2.15R(2)); and
  - (c) the investing or disposing *sub-fund* must not be a *feeder*

UCITS to the second sub-fund.

...

## 5.6 Investment powers and borrowing limits for non-UCITS retail schemes

...

Investment in associated collective investment schemes

- 5.6.11 R (1) *Units in a scheme do not fall within COLL 5.6.10R if that scheme is managed or operated by (or, if it is an ICVC, has as its ACD) the authorised fund manager of the investing non-UCITS retail scheme or by an associate of that authorised fund manager, unless:*
- (1) (a) *the prospectus of the investing authorised fund clearly states that the property of that investing fund may include such units; and*
  - (1) (b) *the conditions in COLL 5.2.16R (Investment in other group schemes) are complied with.*
- (2) Where a sub-fund of a non-UCITS retail scheme which is an umbrella invests in or disposes of units in another sub-fund of the same umbrella (the second sub-fund), the requirement in:
- (a) COLL 5.6.11R(1)(a) is modified as follows – the prospectus of the umbrella must clearly state that the scheme property attributable to the investing or disposing sub-fund may include units in another sub-fund of the same umbrella; and
  - (b) COLL 5.6.11R(1)(b) is modified as follows – COLL 5.2.16R (Investment in other group schemes) must be complied with, modified such that references to the “UCITS scheme” are taken to be references to the investing or disposing sub-fund and references to the “second scheme” are taken to be references to the second sub-fund.

...

Non-UCITS retail schemes that are umbrellas

- 5.6.24 R ...
- (2) A sub-fund ~~must not~~ 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:
    - (a) the second sub-fund does not hold units in any other sub-



fund of the same umbrella;

- (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.

...

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

...

Table of application

6.6.2 R This table belongs to COLL 6.6.1R

<i>Rule</i>	<i>ICVC</i>	<i>ACD</i>	<i>Any other directors of an ICVC</i>	<i>Depositary of an ICVC</i>	<i>Manager of an AUT</i>	<i>Trustee of an AUT</i>
...						
<u>6.6.5AR</u>		<u>x</u>				
<u>6.6.5BG</u>		<u>x</u>				
...						

...

6.6.5 R ...

Duties of the ACD of an ICVC: umbrella schemes

6.6.5A R Where reasonable grounds exist for an ACD of an ICVC which is an umbrella to consider that a foreign law contract entered into by the ICVC may have become inconsistent with the principle of limited recourse stated in the instrument of incorporation of the ICVC (see COLL 3.2.6R(22A) (ICVCs: Umbrella schemes – principle of limited recourse)) the ACD must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

6.6.5B G In deciding what steps are appropriate to remedy the inconsistency, the ACD should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or
- (2) causing the ICVC to exit the foreign law contract.

...

### 7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

Explanation of COLL 7.3

- 7.3.1 G (1) ...
- (2) The termination of a sub-fund may be carried out under this section will be subject to the conditions set out in , instead of by the court, provided the sub-fund is solvent and the steps required under regulation 21 of the OEIC Regulations are complied with. Termination can only commence once the proposed alterations to the ICVC's instrument of incorporation and prospectus have been notified to the FSA and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

...

Guidance on winding up or termination

7.3.3 G This table belongs to COLL 7.3.1G(4) (Explanation of COLL 7.3)

...			
Step number	Explanation	When	COLL rule (unless stated otherwise)
...			
8	Request FSA to revoke relevant <u>authorisation order or update its records</u>	On completion of W/U <u>or termination</u>	7.3.7(9)

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

- 7.3.4 R (1) An *ICVC* must not be wound up except:
- (a) under this section; or
  - (b) as an unregistered company under Part V of the Insolvency Act 1986.
- (1A) A *sub-fund* must not:
- (a) be terminated except under this section; or
  - (b) wound up except under Part V of the Insolvency Act 1986 (as modified by regulation 33C of the *OEIC Regulations*) as an unregistered company.
- (2) An *ICVC* must not be wound up or a *sub-fund* terminated under this section if there is a vacancy in the position of *ACD*.
- ...
- (4) ...
- (b) when the period (if any) fixed for the duration of the *ICVC* or the *sub-fund* by the *instrument of incorporation* expires or any event occurs, for which the *instrument of incorporation* provides that the *ICVC* or the *sub-fund* is to be wound up or terminated; or
- ...

## Solvency statement

- 7.3.5 R (1) Before notice is given to the *FSA* under regulation 21 of the *OEIC Regulations* of the proposals referred to in *COLL 7.3.4R(3)*, the *directors* must make a full enquiry into the *ICVC's* or, in the case of termination of a *sub-fund*, the *sub-fund's* affairs, business and property to determine whether the *ICVC* or the *sub-fund* will be able to meet all its liabilities.
- (2) The *ACD* must then, based on the results of this enquiry, prepare a statement either:
- (a) confirming that the *ICVC* or the *sub-fund* will be able to meet all its liabilities within twelve *months* of the date of the statement; or
- ...
- (3) This solvency statement must:
- (a) relate to the *ICVC's* or the *sub-fund's* affairs, business and property at a date no more than 28 *days* before the date on

which notice is given to the *FSA*;

...

...

#### Consequences of commencement of winding up or termination

7.3.6 R ...

- (3) ~~The ACD must as soon as practicable after winding up or termination has commenced:~~
- (a) ~~if~~ If the ACD has not previously notified *unitholders* of the proposal to wind up the *ICVC* or terminate the *sub-fund*, the ACD must, as soon as practicable after winding up or termination has commenced, give written notice of the commencement of the winding up or termination to the *unitholders*; and
- (b) ~~if winding up an *ICVC* that has its head office situated in Northern Ireland, publish notice of the commencement of the winding up in the Belfast Gazette.~~

#### Manner of winding up or termination

7.3.7 R (1) ~~Paragraphs (2) to (9) of this rule apply to winding up an *ICVC* and termination of a *sub-fund*, paragraph (10) only applies to the winding up of an *ICVC* and paragraphs (11) to (15) only apply to the termination of a *sub-fund* of an *ICVC*. [deleted]~~

...

- (9) The *depository* must notify the *FSA* once the winding up of the *ICVC* or the termination of a *sub-fund* (including compliance with *COLL 7.3.8R*) is complete and at the same time the *ACD* or the *depository* must request the *FSA* to revoke the relevant authorisation order (on the winding up of an *ICVC*) or to update its records (on the termination of a *sub-fund* of an *ICVC*).
- (10) Where any sum of *money* stands to the account of the *ICVC* at the date of its dissolution or a *sub-fund* at the date of its termination, the *ACD* must arrange for the *depository* to pay or lodge that sum within one *month* after that date in accordance with regulation 33(4) or (5) of the *OEIC Regulations* (Dissolution in other circumstances).
- (11) ~~Where any sums (including unclaimed distributions) remain standing to the account of the *scheme property* following tender of payment (whether to a creditor or a *unitholder*), the *ACD* must instruct the *depository* to retain the sums (“tendered sums”) in an account (“unclaimed payments account”) separate from any other~~

part of the *scheme property*. ~~[deleted]~~

- (12) The *depository* must, if instructed by the *ACD*, make a payment out of the unclaimed payments account for the purpose of settling a claim for a tendered sum. ~~[deleted]~~
- (13) Any costs and reasonable expenses of the *ACD* for investigating a claim and any costs and expenses incurred by the *depository* in making a payment out of the unclaimed payments account may be reimbursed from the payment. ~~[deleted]~~
- (14) The *person* entitled to any tendered sum is not entitled to any interest in respect of the unclaimed payments account and any interest arising in respect of the unclaimed payments account must be allocated between the continuing *sub-funds* of the *ICVC* in a manner which is fair to the *unitholders* of the *ICVC* generally. ~~[deleted]~~
- (15) Amounts standing to the credit of an unclaimed payments account must be excluded from the value of the *scheme property* and must not be subject to any distribution under this *rule*, but upon a dissolution of the *ICVC* under regulation 33 of the *OEIC Regulations*, the *depository* must cease to hold those amounts as part of that account and they will become subject to the provisions of (10). ~~[deleted]~~

...

#### Duty to ascertain liabilities

- 7.3.9 R (1) The *ACD* must use all reasonable endeavours to ensure that all the liabilities of the *ICVC* or the *sub-fund* are discharged before the completion of the winding up or termination.

...

- (3) If the *ACD* rejects any claim against the *ICVC* or the *sub-fund* in whole or part or against the *ICVC* or the *sub-fund* in respect of a liability in whole or part, the *ACD* must immediately send to the claimant written notice of its reasons for doing so.

...

#### Liabilities of the ACD

- 7.3.11 R (1) Except to the extent that the *ACD* can show that it has complied with *COLL* 7.3.9R (Duty to ascertain liabilities), the *ACD*:
- (a) is personally liable to meet any liability of an *ICVC* or a *sub-fund*, of which it is the *ACD*, wound up or terminated under this section (whether or not the *ICVC* has been dissolved or, in the case of the *sub-fund*, termination has been completed);

and

- (b) ~~must keep the ICVC indemnified against any liability allocated or attributable to a *sub-fund* that has been terminated under these rules~~

that was not discharged before the completion of the winding up or termination.

...

~~Additional provisions applicable to umbrella companies~~

- 7.3.12 R (1) ~~Liabilities of an ICVC which is an *umbrella* attributable, or allocated, to a particular *sub-fund* must be met first out of the *scheme property* attributable or allocated to such *sub-fund*.~~
- (2) ~~If the liabilities to be met out of a particular *sub-fund* of an *umbrella ICVC* are greater than the proceeds of the realisation of the *scheme property* attributable or allocated to that *sub-fund*, the deficit must be met out of the *scheme property* attributable or allocated to the solvent *sub-funds* of that *umbrella ICVC* in which the proceeds of realisation exceed liabilities and divided between those *sub-funds* in a manner that is fair to the *unitholders* in those solvent *sub-funds*.~~
- (3) ~~Paragraph (2) applies in respect of any deficit arising as a result of additional liabilities accruing to a *sub-fund* through the operation of (2).~~
- (4) ~~In calculating the amount of liabilities for the purpose of (2), account must be taken of any payments received or to be received from the ACD under COLL 7.3.11R (Liabilities of the ACD).  
[deleted]~~

Miscellaneous

- 7.3.13 R (1) If:
- (a) ...
- (b) after winding up or termination has commenced, the ACD becomes of the opinion that the ICVC or the *sub-fund* will be unable to meet all its liabilities within twelve *months* of the date of the statement provided under (a) of COLL 7.3.5R(2);
- the *directors* must immediately present a petition or cause the ICVC or *sub-fund* to present a petition for the winding up of the ICVC or *sub-fund* as an unregistered ICVC company under Part V of the Insolvency Act 1986.
- (2) If, after the commencement of a winding up or termination under this chapter and before notice of completion of the winding up or

termination has been sent to the *FSA*, there is a vacancy in the position of *ACD*; ;

- (a) the directors of the *ICVC* must immediately present or cause the *ICVC* or sub-fund to present; or;
- (b) if there are no *directors*, the *depository* must immediately present; ;

a petition for the winding up of the *ICVC* or sub-fund as an unregistered *ICVC* company under Part V of the Insolvency Act 1986.

...

## 8 Qualified investor schemes

...

### 8.2 Constitution

...

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to *COLL* 8.2.5R

...		
<b>2</b>	<b>Constitution</b>	
	...	
	(4)	...
	(4A)	<u>for an <i>ICVC</i> which is an <i>umbrella</i>, a statement that the assets of a <i>sub-fund</i> belong exclusively to that <i>sub-fund</i> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <i>person</i> or body, including the <i>umbrella</i>, or any other <i>sub-fund</i>, and shall not be available for any such purpose;</u>
	...	

...

### 8.3 Investor relations

Table: contents of qualified investor scheme prospectus

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

...			
<b>17</b>	<b>Information on the umbrella</b>		
	In the case of a <i>scheme</i> which is an <i>umbrella</i> , the following information:		
	...		
	(5)	for an <i>ICVC</i> , that:	
		(a)	<del>the <i>its sub-funds</i> are not “ring fenced” and in the event of an <i>umbrella</i> being unable to meet liabilities attributable to any particular <i>sub-fund</i> out of the assets attributable to that <i>sub-fund</i>, the remaining liabilities may have to be met out of the assets attributable to other <i>sub-funds</i>.</del> <u>segregated portfolios of assets and, accordingly, the assets of a <i>sub-fund</i> belong exclusively to that <i>sub-fund</i> and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other <i>person</i> or body, including the <i>umbrella</i>, or any other <i>sub-fund</i>, and shall not be available for any such purpose; and</u>
		(b)	<u>while the provisions of the <i>OEIC Regulations</i> provide for segregated liability between <i>sub-funds</i>, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under <i>foreign law contracts</i>, it is not yet known how those foreign courts will react to regulations 11A and 11B of the <i>OEIC Regulations</i>.</u>
...			

...

## 8.5 Powers and responsibilities

...

8.5.3 R ...

### Duties of the ACD: umbrella schemes

8.5.3A R Where reasonable grounds exist for an ACD of an *ICVC* which is an *umbrella* to consider that a *foreign law contract* entered into by the *ICVC* may have become inconsistent with the principle of limited recourse stated



in the instrument of incorporation of the ICVC (see COLL 8.2.6R(2)(4A)) the ACD must:

- (1) promptly investigate whether there is an inconsistency; and
- (2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

**8.5.3B**     **G**     In deciding what steps are appropriate to remedy the inconsistency, the ACD should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

- (1) where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or
- (2) causing the ICVC to exit the foreign law contract.

...

## TP 1 Transitional Provisions

### COLL TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision date in force	(6) Handbook provision coming into force
...					
24	...				
<u>25</u>	<u>COLL 3 to COLL 8</u>	<u>R</u>	<u>(1) The following chapters and provisions of COLL apply as if the amendments made to those chapters and provisions by the Collective Investment Schemes Sourcebook (ICVC Sub-funds) Instrument 2011 had not been made in respect of an ICVC in the circumstances specified under (2):</u> <u>(a) COLL 3;</u> <u>(b) COLL 4;</u> <u>(c) COLL 5;</u>	<u>From 21 December 2011 to 20 December 2014</u>	<u>21 December 2011</u>

			<p><u>(d) COLL 6;</u></p> <p><u>(e) COLL 7 (except COLL 7.3.3G and COLL 7.3.7R(9));</u> <u>and</u></p> <p><u>(f) COLL 8.</u></p> <p><u>(2) The chapters and provisions referred to in (1) apply as described in respect of an ICVC until the date on which either:</u></p> <p><u>(a) the instrument of incorporation is amended to contain a statement to effect compliance with paragraph 2(ba) of Schedule 2 to the OEIC Regulations; or</u></p> <p><u>(b) an authorisation order is given to an ICVC which contains in its instrument of incorporation the statement to effect compliance with paragraph 2(ba) of Schedule 2 to the OEIC Regulations.</u></p>		
<u>26</u>	<u>COLL 3 to COLL 8</u>	<u>D</u>	<p><u>In respect of an ICVC which is amending its instrument of incorporation under COLL TP 1.1R(25)(2)(a), the FSA must be provided with the notification required by regulation 4(9) of the Open-Ended Investment Companies (Amendment) Regulations 2011 in writing. That notification must consist of a statement confirming that the umbrella does not have any agreements or contracts with a third party the provisions of which are inconsistent with paragraph (1) or (2) of regulation 11A of the OEIC Regulations. The notification must be provided at the same time as providing the notification required by regulation 21 of the OEIC</u></p>	<u>From 21 December 2011 to 20 December 2014</u>	<u>21 December 2011</u>

			<u>Regulations.</u>		
<u>27</u>	<u>COLL 3 to COLL 8</u>	<u>G</u>	<p><u>Prior to amending the instrument of incorporation as set out in COLL TP1.1R(25)(2)(a), regulation 4(9) of the Open-Ended Investment Companies (Amendment) Regulations 2011 requires notification to be provided to the FSA in such form as the FSA may direct. The form in which the FSA directs this notification is to be provided is set out in TP1.1D(26).</u></p>	<p><u>From 21 December 2011 to 20 December 2014</u></p>	<p><u>21 December 2011</u></p>

## RECOGNISED AUCTION PLATFORMS INSTRUMENT 2011

### Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 157(1) (Guidance);
  - (2) section 293(1) (Notification requirements); and
  - (3) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 22 December 2011.

### 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
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex D

### Amendments to material outside the Handbook

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

### Citation

- F. This instrument may be cited as the Recognised Auction Platforms Instrument 2011.

By order of the Board  
21 December 2011

## 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 platform</i>	a platform on which auctions of <i>greenhouse gas emission allowances</i> are held in accordance with the <i>auction regulation</i> .
<i>auction products</i>	<i>greenhouse gas emission allowances</i> which are offered for sale on an <i>auction platform</i> .
<i>auction regulation</i>	Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.
<i>RAP</i>	a <i>recognised auction platform</i> .
<i>RAP recognition requirements</i>	<ol style="list-style-type: none"> <li>(1) (in relation to an <i>RAP</i>) any of the requirements applicable to an <i>RAP</i> under the <i>RAP regulations</i>, the <i>auction regulation</i> or the <i>MiFID Regulation</i>.</li> <li>(2) (in relation to a <i>UK RIE</i> applying for recognition as an <i>RAP</i>) any of the requirements under the <i>RAP regulations</i>, the <i>auction regulation</i> or the <i>MiFID Regulation</i> which, if its application were successful, would apply to it.</li> </ol>
<i>RAP regulations</i>	the Recognised Auction Platforms Regulations 2011 (SI 2011/2699).
<i>recognised auction platform</i>	a <i>recognised investment exchange</i> which is declared by a <i>recognition order</i> for the time being in force to be a <i>recognised auction platform</i> .
<i>recognised body requirements</i>	<ol style="list-style-type: none"> <li>(1) (in relation to an <i>RIE</i> or <i>RCH</i>) the <i>recognition requirements</i>;</li> <li>(2) (in relation to a <i>UK RIE</i>) the <i>MiFID implementing requirements</i>;</li> <li>(3) (in relation to an <i>RAP</i>) the <i>RAP recognition requirements</i>; and</li> <li>(4) (in relation to any of the bodies specified in (1) to (3)) any other obligations imposed by or under the <i>Act</i>.</li> </ol>

Amend the following definitions as shown.

- complaints investigator* (1) (in relation to a *UK RIE*) the independent *person* appointed under arrangements referred to in paragraph 9(3) of the Schedule to the *Recognition Requirements Regulations* to investigate a complaint and to report on the result of his investigation to that *RIE* and to the complainant.
- (2) (in relation to a *UK RCH*) the independent *person* appointed under arrangements referred to in paragraph 23(3) of the Schedule to the *Recognition Requirements Regulations* to investigate a complaint and to report on the result of his investigation to that *RCH* and to the complainant.
- (3) (in relation to an *RAP*) the independent *person* appointed under arrangements referred to in regulations 22 and 23 of the *RAP regulations* to investigate a complaint and to report on the result of his investigation to that *RAP* and to the complainant.
- facilities* (in relation to a *recognised body*) the facilities and services which it provides in the course of carrying on *exempt activities*, and references to the use of the facilities of an *RIE* or *RAP* are to be construed as follows:
- (1) ~~dealings or transactions on an *RIE* or *RAP*; or (2) transactions on an *RIE*~~  
 (a) are ~~(3)~~ references to dealings or transactions which are effected by means of the *RIE's* or *RAP's* facilities; or ~~(4)~~ which are governed by the rules of the *RIE* or *RAP*; and
- (5) references to the use of the facilities of an *RIE* or *RAP* include use which  
 (b) consists of any such dealings or entering into any such transactions.
- greenhouse gas emissions emission 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 ~~someone else~~ another *person*.
- notification rule* (1) ...
- (2) (in relation to a *recognised body*) a *rule* made by the *FSA* under section 293 of the *Act* (Notification requirements) or section 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses):

- (a) requiring a *recognised body* to give the *FSA*:
  - (i) notice of, and specified information regarding, specified events relating to the body;
  - (ii) specified information relating to the body at specified times or in respect of specified periods; and
  - (iii) any other information required to be given by such a *rule*; or
- (b) (in relation to an *RIE* or *RCH*):
  - (i) specifying descriptions of *regulatory provision* in relation to which, or circumstances in which, the duty to notify the *FSA* of such *regulatory provision* in section 300B(1) of the ~~Act~~ *Act* does not apply or providing that the duty to notify applies only to specified descriptions of *regulatory provision* or in specified circumstances; or
  - (e) (ii) making provision as to the form and contents of the notice required under (2)(b)(i), and requiring *recognised bodies* to provide specified information in connection with that notification.

<i>recognised body</i>	an <i>RIE</i> , <u><i>RAP</i></u> or an <i>RCH</i> .
<i>recognition order</i>	(in accordance with section 313 of the <i>Act</i> (Interpretation of Part XVIII)) an order made under section 290 or 292 of the <i>Act</i> which declares an investment exchange or <i>clearing house</i> to be a <i>recognised body</i> <u>or (for <i>RAPs</i>) an order made under regulation 2 of the <i>RAP regulations</i> which declares a <i>UK RIE</i> to be an <u><i>RAP</i></u>.</u>
<i>regulatory function</i>	(as defined in section 291 of the <i>Act</i> (Liability in relation to <i>recognised body's</i> regulatory functions)) any function of a <i>recognised body</i> so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of the <i>Act</i> <u>and (for an <i>RAP</i>) under the <i>RAP recognition requirements</i>.</u>
<i>relevant information</i>	(1) ...  (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> <u>or (in relation to <i>RAPs</i>) information on the terms of <i>auction products</i> and the terms on which they will be auctioned on an <i>RAP</i>.</u>
<i>UK recognised body</i>	a <i>UK RIE</i> , <u><i>RAP</i></u> or <i>UK RCH</i> .

## Annex B

### Amendments to the Fees manual (FEES)

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

#### 3.2 Obligation to pay fees

...

##### 3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(g) Any applicant for recognition as a <i>UK recognised body</i> ; <u>(i) under section 287 or section 288 of the Act; or</u> <u>(ii) under regulation 2(1) of the RAP regulations</u>	<i>FEES 3 Annex 3R, part 1</i>	On or before the date the application is made
...		

...

#### 3 Annex 3R **Application fees payable in connection with Recognised Investment Exchanges, ~~and~~ Recognised Clearing Houses and Recognised Auction Platforms**

Description of applicant	Amount payable	Due date
Part 1 (UK recognised bodies)		
...		
Applicant for recognition as a <i>UK RCH</i>	£100,000	Date the application is made
<u>Applicant for recognition as an RAP (payable in addition to any other application fee due under this part)</u>	<u>£35,000</u>	<u>Date the application is made</u>
Additional fees for a <i>UK RIE</i> or <i>UK RCH</i> applicant who proposes to:		



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

...

**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>UK recognised body</i>	<i>FEES 4 Annex 6R, part 1 for a UK RIE or UK RCH; and</i>  <i>FEES 4 Annex 6R, part 1A for a UK RIE that is also an RAP</i>	(1) Unless (2) applies, by the due dates set out in <i>FEES 4 Annex 6R, part 1 and (in the case of an RAP) part 1A</i>  (2) If the event in column 4 occurs during the course of a financial year, 30 days after the occurrence of that event	<i>Recognition order is made. The modified periodic fee is specified in FEES 4 Annex 6R, Part 1 and (in the case of an RAP) Part 1A.</i>

...

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

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

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

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

Part 1A – Periodic fees for recognised auction platforms

<u>Name of recognised auction platform</u>	<u>Amount payable</u>	<u>Due date</u>
<u>An RAP recognised as such by a recognition order made in the period</u>	£50,000	<u>30 days after the date on which the recognition order is made</u>

## Annex C

### Amendments to the Supervision manual (SUP)

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

#### 13.4 Providing cross border services into another EEA State

...

- 13.4.2D G A *MiFID investment firm* that wishes to obtain a passport for the activity of *operating an MTF* should follow the procedures described in this chapter. A UK *market operator* that operates a *recognised investment exchange*, a *recognised auction platform* (pursuant to the *RAP regulations*, the definition of *regulated market* in the *Act* is read for these purposes as including a *recognised auction platform*) or an *MTF* and wishes to provide *cross border services* into another *EEA State* should follow the procedure described in *REC 4.2B*.

## Annex D

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

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

#### 1 Introduction

##### 1.1 Application

1.1.1 G The *rules and guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *recognised bodies* under Part XVIII of the Act (Recognised Investment Exchanges and Clearing Houses) and (for RAPs) under the RAP regulations.

...

1.1.2 G (1) *Recognised bodies* are *exempt persons* under section 285 of the Act (Exemption for recognised investment exchanges and clearing houses).

(2) *UK recognised bodies* other than RAPs must satisfy *recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations*. *UK RIEs* must also satisfy the *MiFID implementing requirements* in the *MiFID Regulation*. RAPs must satisfy the recognition requirements prescribed by the Treasury in the RAP regulations, under the auction regulation and must also be UK RIEs and so are subject to requirements under the MiFID Regulation. *Overseas recognised bodies* must satisfy *recognition requirements* laid down in section 292 of the Act (Overseas investment exchanges and overseas clearing houses).

(3) *Recognised bodies* must also comply with notification requirements in, and with *notification rules* made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the Act.

1.1.3 G (1) The *recognition requirements* for *UK recognised bodies* and the *MiFID implementing requirements* are set out, with *guidance*, in *REC 2*. The RAP recognition requirements (other than requirements under the auction regulation which are not reproduced in REC) are set out, with guidance, in REC 2A.

...

## 1.2 Purpose, status and quotations

### Purpose

- 1.2.1 G The purpose of the *guidance* (other than in *REC 6A*) in this sourcebook is to give information on the ~~*recognition requirements, other obligations on recognised bodies in or under the Act and the MiFID implementing requirements*~~ *recognised body requirements*. The purpose of the *guidance* in *REC 6A* is to give *EEA market operators* information about their passporting rights in the *United Kingdom*. Explanations of the purposes of the *rules* in this sourcebook are given in the chapters concerned.

### Status

- 1.2.2 G (1) ...
- (2) Where the *guidance* states that the *FSA* may have regard to any factor in assessing or determining whether a ~~*recognition requirement is satisfied, or whether there is compliance with another obligation under the Act, or whether a MiFID implementing requirement*~~ *recognised body requirement* is satisfied, it means that the *FSA* will take that factor into account so far as it is relevant.
- (3) In determining whether a *recognised body* satisfies the ~~*recognition requirements or complies with other obligations in or under the Act, or a UK RIE satisfies the MiFID implementing requirements*~~ *recognised body requirements*, the *FSA* will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the *guidance*.

### Quotations

- 1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations*, the *RAP regulations* and the *Companies Act 1989* and the *MiFID Regulation* and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.

...

## 2 Recognition Requirements

### 2.1 Introduction

- 2.1.1 G This chapter contains the *recognition requirements* for *UK recognised bodies* (other than *RAPs*) and sets out *guidance* on those requirements. This chapter also contains the *MiFID implementing requirements* for *UK RIEs*. (~~The *recognition requirements* for *overseas recognised bodies* are set out in *REC 6*.~~)

- 2.1.1A    G    Guidance on the *RAP recognition requirements* which apply to *RAPs* is set out in *REC 2A (Recognised Auction Platforms)*. *Guidance on the recognition requirements for overseas recognised bodies* is set out in *REC 6 (Overseas Investment Exchanges and Overseas Clearing Houses)*.

After REC 2 insert the following new chapter. The text is not underlined.

## **2A            Recognised Auction Platforms**

### **2A.1        Introduction**

- 2A.1.1    G    This chapter applies to an *RAP* or to a *UK RIE* applying to become an *RAP*. Regulation 2 of the *RAP regulations* provides that an entity must have *UK RIE* status before it can apply for *RAP* status.
- 2A.1.2    G    The *RAP recognition requirements* must be satisfied by an *RAP* applicant for recognition to be granted. These requirements apply both on initial recognition and throughout the period that *RAP* status is held. Therefore, the term *RAP* in the *guidance* should be understood to also refer to an applicant where appropriate and where not otherwise stated.
- 2A.1.3    G    The *RAP regulations* apply modified provisions of the *Act* to an *RAP*. For example, an *RAP* is an *exempt person* in respect of its business as an *auction platform* due to the application of section 285 of the *Act* as modified by the *RAP regulations*. Similarly, section 293 of the *Act* is applied and modified by the *RAP regulations* to provide for *notification rules* and notification requirements in relation to *RAPs*.

### **2A.2        Method of satisfying the *RAP* recognition requirements**

- 2A.2.1    UK    Recognised Auction Platforms Regulations, regulation 13

<p>(1) In considering whether [an <i>RAP</i>] or applicant satisfies the [<i>RAP recognition requirements</i>], the [<i>FSA</i>] may—</p> <p>(a) treat compliance by the [an <i>RAP</i>] or applicant with the [<i>recognition requirements</i> or <i>MiFID implementing requirements</i>] applying to it as a [<i>UK RIE</i>] as conclusive evidence that the [an <i>RAP</i>] or applicant satisfies any equivalent [<i>RAP recognition requirements</i>] applying to it under these [<i>RAP regulations</i>], taking into account any arrangements that would be necessary to meet the [<i>RAP recognition requirements</i>], and</p> <p>(b) take into account all relevant circumstances including the constitution of the <i>person</i> concerned.</p>
<p>(2) Without prejudice to the generality of paragraph (1), [an <i>RAP</i>] or</p>

<p>applicant may satisfy [<i>RAP recognition requirements</i>] by making arrangements for functions to be performed on its behalf by any other <i>person</i>.</p>
<p>(3) Where [an <i>RAP</i>] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by these [<i>RAP regulations</i>] on the [<i>RAP</i>] or applicant to satisfy the [<i>RAP recognition requirements</i>], but it is in addition [an <i>RAP recognition requirement</i>] applying to the [<i>RAP</i>] or applicant that the <i>person</i> who performs (or is to perform) the functions is a fit and proper <i>person</i> who is able and willing to perform them.</p>

- 2A.2.2 G The *FSA* will request information from an *RAP* or *RAP* applicant in order to determine whether it meets the *RAP recognition requirements*.

**2A.3 Guidance on *RAP* recognition requirements**

- 2A.3.1 G In assessing compliance with the *RAP recognition requirements*, the *FSA* will have regard to relevant guidance in *REC 2* on the equivalent requirements set out in the *Recognition Requirement Regulations*. The *FSA* may also take into account compliance by the *RAP* or *RAP* applicant with the *recognition requirements* (see *REC 2A.2.1UK*). The *FSA* will not make a separate assessment of compliance with the *recognition requirements* during the course of examining an application to become an *RAP* or as part of its ongoing supervision of an *RAP*, unless there is a specific reason to do so.
- 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

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
<b><i>REC 2</i> guidance which applies to an <i>RAP</i></b>	<b>Modification to <i>REC 2</i> guidance for an <i>RAP</i></b>	<b>Relevant <i>RAP</i> recognition requirement</b>
<i>REC 2.2.2G</i> to <i>REC 2.2.7G</i> (Relevant circumstances and Outsourcing)		Reg 13
<i>REC 2.3.3G</i> to <i>REC 2.3.9G</i> (Financial		Reg 14

resources)		
<i>REC 2.4.3G to REC 2.4.6G</i> (Suitability)	In addition to the matters set out in <i>REC 2.4.3G to REC 2.4.6G</i> , the <i>FSA</i> will have regard to whether a <i>key individual</i> has been allocated responsibility for overseeing the <i>auction platform</i> of the <i>UK recognised body</i> .	Reg 15
<i>REC 2.5.3G to REC 2.5.20G</i> (Systems and controls and conflicts) and <i>REC 2.5A</i> (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg 16
<i>REC 2.6.26G to REC 2.6.34G</i> (Safeguards for investors)		Reg 17
<i>REC 2.7.3G to 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 regulation</i> .	Reg 20
<i>REC 2.8.3G to REC 2.8.4G</i> (Settlement and clearing services)		Reg 17(2)(d) and 21
<i>REC 2.9.3G to REC 2.9.4G</i> (Transaction recording)		Reg 17(2)(e)
<i>REC 2.10.3G to REC 2.10.4G</i> (Financial crime and market abuse)		Reg 17(2)(g)
<i>REC 2.11.3G to REC 2.11.4G</i> (Custody)	<i>REC 2.11.4G</i> is replaced with the following for an <i>RAP</i> :  Where an <i>RAP</i> arranges for other <i>persons</i> to provide services for the safeguarding and administration services of assets belonging to users of its <i>facilities</i> , it will also need to	Reg 17(2)(h)



	satisfy the <i>RAP recognition requirement</i> in regulation 17(2)(h) of the <i>RAP regulations</i> (see <i>REC 2A.2.1UK</i> ).	
<i>REC 2.12.11G to REC 2.12.12G</i> (Availability of relevant information)	<p><i>REC 2.12.11G to 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 persons engaged in dealing in <i>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>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 <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>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>	Reg 17(2)(c)
<i>REC 2.13.3G to REC 2.13.6G</i> (Promotion and maintenance of standards)		Reg 18
<i>REC 2.14.3G to REC 2.14.6G</i>		Reg 19

(Rules and consultation)		
<i>REC 2.15.3G to REC 2.15.6G</i> (Discipline)		Reg 22
<i>REC 2.16.3G to REC 2.16.4G</i> (Complaints)		Reg 23

Amend the following as shown.

### **3 Notification rules for UK recognised bodies**

#### **3.1 Application and purpose**

Application

3.1.1 R ...

...

3.1.3A G The notification rules in this chapter which apply to an *RAP* are without prejudice to notification rules which apply to a *UK RIE* which operates the *RAP*. However, a *UK RIE* which operates an *RAP* may make a single notification where a notification is required both in its capacity as a *UK RIE* and an *RAP*.

...

#### **3.4 Key individuals and internal organisation**

...

Key individuals

...

3.4.4 R The following information is specified for the purposes of *REC 3.4.2R*:

- (1) where a *person* has been appointed or elected as a *key individual*:
  - (a) that *person's* name;
  - (b) his date of birth;
  - (c) a description of the responsibilities which he will have in the post to which he has been appointed or elected, including for a *UK RIE* which operates an *RAP* where the *person* has

responsibilities both in the UK RIE and RAP, a description of the responsibilities he has in respect of each body; or

...

...

### **3.13 Delegation of relevant functions**

3.13.1 G (1) The purpose of REC 3.13 is to enable the FSA to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as ~~they are permitted to do~~ under regulation 6 of the *Recognition Requirements Regulations* or, in relation to an RAP, under regulation 13 of the RAP regulations. See REC 2.2 and REC 2A.2).

...

3.13.2 R Where a *UK recognised body* makes an offer or agrees to delegate any of its *relevant functions* to another *person*, it must immediately give the FSA notice of that event, and:

...

(2) inform the FSA of the reasons why it is satisfied that it will continue to meet the *recognition requirements* or (for an RAP) RAP recognition requirements following that delegation;

...

...

### **3.14 Products, services and normal hours of operation**

...

Hours of operation

3.14.11 R Where a *UK recognised body* proposes to change its normal hours of operation or (for RAPs) the timing, frequency or duration of its bidding windows, it must give the FSA notice of that proposal, and particulars of, and the reasons for, the actions proposed, at the same time as the proposal is first formally communicated to its *members* or shareholders, or any group or class of them.

### **3.14A Operation of a regulated market or MTF**

...

Operation of a recognised auction platform

- 3.14A.6 G If a UK RIE proposes to operate an RAP, it will need to make a separate application to be recognised as an RAP (see REC 5 (Applications)).

**3.15 Suspension of services**

## Purpose

- 3.15.1 G (1) The purpose of REC 3.15.2R to REC 3.15.5G is to enable the FSA to obtain information where a UK recognised body decides to suspend the provision of its services in relation to particular *investments* or (for an RAP) decides to cancel an auction. Planned changes to the provision of services should be notified to the FSA under REC 3.14.
- (2) ...
- (3) REC 3.15.8R to REC 3.15.9G provide for notification to the FSA where an RAP has to cancel an auction in specified circumstances.

...

Recognised auction platforms - cancellation of auctions

- 3.15.8 R Where an RAP has to cancel an auction in the circumstances set out in articles 7(5) or 7(6) of the auction regulation, it must immediately give the FSA notice of that cancellation.
- 3.15.9 G Under article 7(7) of the auction regulation, an RAP is required to notify the FSA of:
- (1) the methodology used to determine the application of article 7(6) of the auction regulation; and
- (2) modifications to that methodology made between bidding windows.

...

**3.18 Membership**

- 3.18.1 G (1) The purpose of REC 3.18 is to enable the FSA to monitor changes in the types of *member* admitted by UK recognised bodies and to ensure that the FSA has notice of foreign jurisdictions in which the *members* of UK recognised bodies are based. UK recognised bodies may admit *persons* who are not *authorised persons* or *persons* who are not located in the *United Kingdom*, provided that the *recognition*

*requirements* or (for *RAPs*) *RAP recognition requirements* continue to be met.

- (2) *REC 3.18.2R* focuses on the admission of *persons* who are not *authorised persons* (whether or not they are located in the *United Kingdom*) and on whether the specific *recognition requirement* or (for an *RAP*) *RAP recognition requirement* relating to access to *facilities* can still be met. *REC 3.18.3R* focuses on the admission of *members* from outside the *UK* and whether all relevant *recognition requirements* or (for an *RAP*) *RAP recognition requirements* can be met.
- (3) The information required under *REC 3.18* is relevant to the *FSA's* supervision of the *UK recognised body's* obligations in relation to the enforceability of compliance with the *UK recognised body's* rules. It is also relevant to the *FSA's* broader responsibilities concerning market confidence and financial stability and, in particular, its functions in relation to *market abuse* and *financial crime*. It may also be necessary in the case of *members* based outside the *United Kingdom* to examine the implications for the enforceability of *default rules* or collateral and the settlement of transactions, and thus the ability of the ~~*UK recognised body*~~ *UK RIE* or *UK RCH* to continue to meet the *recognition requirements*. It follows that the admission of a *member* from outside the *United Kingdom* who is not an *authorised person* could require notification under both *REC 3.18.2R* and *REC 3.18.3R*, although a single report from the *UK recognised body* covering both notifications would be acceptable to the *FSA*.

- 3.18.2 R Where a *UK recognised body* admits a *member* who is not an *authorised person* of a type of which, immediately before that time, that *UK recognised body* had not admitted to *membership*, it must immediately give the *FSA* notice of that event, and:
- (1) a description of the type of *person* whom it is admitting to *membership*; ~~and~~
  - (2) (in relation to a *UK RIE* or a *UK RCH*) particulars of its reasons for considering that, in admitting that type of *person* to *membership*, it is able to continue to satisfy the *recognition requirement* in paragraph 4(2)(a) or paragraph 19(2)(a) of the Schedule to the *Recognition Requirements Regulations* which applies to it; and
  - (3) (in relation to an *RAP*) particulars of its reasons for considering that, in admitting that type of *person* to *membership*, it is able to continue to satisfy the *RAP recognition requirement* in regulation 20 (*Access to auctions*) which applies to it.

- 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:

- (1) the name of that jurisdiction;
- (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 *auction products*; and
- (3) particulars of its reasons for considering that, in admitting a *member* from that jurisdiction to *membership*, it is able to continue to satisfy the *recognition requirements* or (for an *RAP*) the *RAP recognition requirements* which apply to it.

3.18.4 G A type of *member* means the description of any group of *members* to whom the same generic description could be applied. For example, the description of any group of *members* separately identified or defined in the rules might constitute a type of *member* for the purposes of this section.

...

### 3.19 Investigations

3.19.1 R Where a *UK recognised body* becomes aware that a *person* has been appointed by any *regulatory body* (other than the *FSA* or a *UK recognised body*) to investigate:

- (1) any business transacted by means of its *facilities*, if it is an *RIE* or *RAP*; or
- (2) any aspect of the clearing services which it provides;

it must immediately give the *FSA* notice of that event.

...

### 3.22 Restriction of, or instruction to close out, open positions

...

3.22.2 R Where an *RAP* proposes to impose a maximum bid size or take other remedial measures to mitigate risks of *market abuse, financial crime* or anti-competitive behaviour in accordance with article 57 of the *auction regulation*, the *RAP* must give the *FSA* notice of that event and details of the remedial measures proposed.

### 3.23 Default

3.23.1 R Where a *UK recognised body* decides to put a *member* into default, it must

immediately give notice of that event, and give the following information to the *FSA*, at the same time as that decision is communicated to that *member* or to any other *member* (or group or class of them) of that body:

- (1) the name of the *member* and (where relevant) the class of membership;
- (2) the reasons for that decision; and
- (3) the names of any other exchange, ~~or~~ clearing house or auction platform on which, to the best of that *UK recognised body's* knowledge, that *member* clears business or transacts for, or in respect of, its *clients*;

and as soon as practicable afterwards, give the *FSA* a summary of the *member's* open positions, margin liability, cash and collateral balances in respect of that *member's* accounts (including *client* accounts).

### 3.24 Transfer of ownership

- 3.24.1 R When a *UK RIE* becomes aware of a transfer of ownership of the *UK RIE* which gives rise to a change in the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (in the case of a *UK RIE* that is also an *RAP*) over the management of the *RAP*, whether directly or indirectly, it must immediately notify the *FSA* of that event, and:

...

...

### 3.25 Significant breaches of rules and disorderly trading conditions

- 3.25.1 R A *UK RIE* and an *RAP* must immediately notify the *FSA* of:
- (1) significant breaches of its rules; or
  - (2) disorderly trading conditions on any of its markets or auctions;

...

### 3.26 Proposals to make regulatory provision

- 3.26.1 G Under section 300B(1) of the *Act* (Duty to notify proposal to make regulatory provision), a ~~*UK-recognised body*~~ *UK RIE* or *UK RCH* that proposes to make any *regulatory provision* must give written notice of the proposal to the *FSA* without delay.

...

- 3.26.6 G In determining whether a ~~UK recognised body~~ UK RIE or UK RCH has provided sufficient supporting information, the *FSA* may have regard to the extent to which the information includes:
- ...
- 3.26.7 R A ~~UK recognised body~~ UK RIE or UK RCH must provide such additional information in connection with a notice under section 300B(1) of the *Act* as the *FSA* may reasonably require.
- 3.26.8 G Where a ~~UK recognised body~~ UK RIE or UK RCH wishes to give notice to the *FSA* for the purposes of section 300B(1) of the *Act*, it should in the first instance inform its usual supervisory contact at the *FSA*.
- 3.26.9 G The *FSA* expects that an advanced draft of any consultation document a ~~UK recognised body~~ UK RIE or UK RCH intends to publish in connection with a proposed *regulatory provision* could provide some or all of the information described in *REC 3.26.5R*.

## 4 Supervision

### 4.1 Application and purpose

...

#### Purpose

- 4.1.2 G This chapter sets out the *FSA's* approach to the supervision of *recognised bodies* and contains *guidance* on:
- (1) the arrangements for investigating complaints about *recognised bodies* made under section 299 of the *Act* (Complaints about recognised bodies) (*REC 4.4*);
  - (2) the *FSA's* approach to the exercise of its powers under:
    - (a) (for RIEs and RCHs) section 296 of the Act (FSA's power to give directions) or (for RAPs) regulation 3 of the RAP regulations to give directions to *recognised bodies* (*REC 4.6*);
    - (b) (for RIEs and RCHs) section 297 of the Act (Revoking recognition) or (for RAPs) regulation 4 of the RAP regulations to revoke *recognition orders* (*REC 4.7*);

and the procedure to be followed in those cases and where the *FSA* decides to refuse an application for recognition as a *recognised body* (*REC 4.8*); and



- (3) the *FSA's* approach to, and procedures for, the exercise of its powers under sections 166 and 167 of the Companies Act 1989 to give directions to ~~*UK-recognised bodies*~~ *UK RIEs* or *UK RCHs* in relation to action under their *default rules* (*REC 4.5*).

- 4.1.3 G The *FSA's* general approach to supervision is intended to ensure that:
- (1) the *FSA* has sufficient assurance that *recognised bodies* continue at all times to satisfy the ~~*recognition requirements and other obligations imposed by or under the Act*~~ and ~~*UK RIEs*~~ continue at all times to satisfy the ~~*MiFID implementing requirements*~~ *recognised body requirements*; and
- (2) ...
- ...

## 4.2 The supervisory relationship with UK recognised bodies

- 4.2.1 G The *FSA* expects to have an open, cooperative and constructive relationship with *UK recognised bodies* to enable it to have a broad picture of the *UK recognised body's* activities and its ability to meet the ~~*recognition requirements*~~ *recognised body requirements*. This broad picture is intended to complement the information which the *FSA* will obtain under section 293 of the *Act* (Notification requirements) or under *notification rules* made under that section (see *REC 3*). The *FSA* will usually arrange meetings between the Markets Division and *key individuals* of the *UK recognised body* for this purpose. The frequency and nature of these meetings may vary in accordance with the risk profile of the *UK recognised body*.
- 4.2.2 G *UK recognised bodies* are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the *UK recognised body* operates, they are likely to involve changes to the way it satisfies the ~~*recognition requirements, the MiFID implementing requirements*~~ (in the case of a *UK RIE*) and other obligations ~~in or under the Act~~ *recognised body requirements*.
- 4.2.3 G The *FSA* expects a *UK recognised body* to take its own steps to assure itself that it will continue to satisfy the ~~*recognition requirements, the MiFID implementing requirements*~~ (in the case of a *UK RIE*) and other obligations ~~in or under the Act~~ *recognised body requirements* when considering any changes to its business or operations.
- 4.2.4 G However, the *FSA* also expects that *UK recognised bodies* will keep it informed of all significant developments and of progress with ~~its~~ their plans and operational initiatives, and will provide it with appropriate assurance that the ~~*recognition requirements and the MiFID implementing requirements*~~ (in the case of a *UK RIE*) *recognised body requirements* will continue to be

satisfied.

#### 4.2A Publication of information by UK RIEs and RAPs

4.2A.1 G Under subsections 292A(1) and (2) of the *Act*, a *UK RIE* must as soon as practicable after a *recognition order* is made in respect of it publish such particulars of the ownership of the *UK RIE*, including the identity and scale of interests of the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, as the *FSA* may reasonably require.

4.2A.2 G Under subsections 292A(3) and (4) of the *Act*, a *UK RIE* must as soon as practicable after becoming aware of a transfer of ownership of the *UK RIE* which gives rise to a change of *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, publish such particulars of any such transfer as the *FSA* may reasonably require.

...

#### 4.2B Exercise of passport rights by a UK RIE

4.2B.1 G Under section 312C of the *Act*, if a *UK RIE* wishes to make arrangements in an *EEA State* other than the *UK* to facilitate access to or use of a *regulated market*, ~~or~~ *multilateral trading facility* or *auction platform* operated by it, it must give the *FSA* written notice of its intention to do so. The notice must:

- (1) describe the arrangements; and
- (2) identify the *EEA State* in which the *UK RIE* intends to make them.

...

#### 4.2C Control over a UK RIE

...

4.2C.2 G The *FSA* will approve an acquisition or an increase in control if it is satisfied that the acquisition by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE* (see section 301F(4) of the *Act*). The reference to any financial market is to be read as including a reference to any *auction platform* as a result of the *RAP regulations*.

...

#### 4.2E **Information: compliance of UK RIEs with the MiFID Regulation and Auction Regulation**

- 4.2E.1 G Under section 293A of the *Act*, the *FSA* may require a *UK RIE* to give it such information as it reasonably requires in order to satisfy itself that the *UK RIE* is complying with the *MiFID Regulation*, and (if the *UK RIE* operates an *RAP*) the *auction regulation*.

...

#### 4.4 **Complaints**

Recognised body's arrangements

- 4.4.1 G *Recognised bodies* may receive complaints from time to time from their *members* and other people, both about the conduct of *members* and about the *recognised body* itself. A *UK recognised body* will need to have satisfactory arrangements to investigate these complaints in order to satisfy the relevant *recognition requirements* (see *REC 2.15* and *REC 2.16*) or *RAP recognition requirements* (see *REC 2A.3.2G*).

...

#### 4.6 **The section 296 power to give directions**

- 4.6.1 G Under section 296 of the *Act* (*FSA's* power to give directions) and (for *RAPs*) under regulation 3 of the *RAP regulations*, the *FSA* has the power to give directions to a *recognised body* to take specified steps in order to secure its compliance with the ~~*recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements*~~ *recognised body requirements*. In the case of a *UK RIE* (including one which operates an *RAP*) those steps may include granting the *FSA* access to the *UK RIE's* premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any *regulated activity* by the *UK RIE* for the period specified in the direction.
- 4.6.2 G The *FSA* must also give a direction to a ~~*recognised body*~~ *RIE* or *RCH* if it is directed to do so by the Treasury under section 308 of the *Act* (Directions by the Treasury).
- 4.6.3 G The *FSA* is likely to exercise its power under section 296 of the *Act* or regulation 3 of the *RAP regulations* if it considers that:

- (1) there has been, or was likely to be, a failure to satisfy one or more of

~~the *recognition requirements* or there has been a failure to comply with any other obligation in or under the Act or, in the case of a UK RIE, the *MiFID implementing requirements recognised body requirements* which has serious consequences;~~

- (2) compliance with the direction would ensure that one or more of the *recognition requirements*, or other obligation in or under the Act or, in the case of a UK RIE, the *MiFID implementing requirements*, were *recognised body requirements* is satisfied; and
- (3) the *recognised body* is capable of complying with the direction.

4.6.4 G Under section 298(7) of the Act (Directions and revocation: procedure) and (for RAPs) regulation 5(7) of the RAP regulations, the FSA need not follow the consultation procedure set out in the rest of section 298 (see REC 4.8) or (for RAPs) regulation 5 of the RAP regulations, or may cut short that procedure, if it considers it essential to do so. The FSA is likely to consider it essential to cut short the procedure if, in the absence of immediate action, there would be:

...

...

## 4.7 The section 297 power to revoke recognition

4.7.1 G Under section 297 of the Act (Revoking recognition) and (for RAPs) under regulation 4 of the RAP regulations, the FSA has the power to revoke a *recognition order* relating to a *recognised body*.

...

4.7.2A G Where the FSA makes a revocation order under section 297 of the Act in relation to a UK RIE which is also an RAP, the FSA will also revoke the *recognition order* relating to its status as an RAP.

4.7.3 G The FSA will usually consider revoking a *recognition order* if:

- (1) the *recognised body* is failing or has failed to satisfy one or more of the *recognition requirements* or other obligations in or under the Act or, in the case of a UK RIE, the *MiFID implementing requirements recognised body requirements* and that failure has or will have serious consequences; or
- (2) it would not be possible for the *recognised body* to comply with a direction under section 296 of the Act (FSA's power to give directions) or (for RAPs) regulation 3 of the RAP regulations; or
- (3) for some other reason, it would not be appropriate for the FSA to give a direction under section 296 or (for RAPs) regulation 3 of the RAP

regulations; or;

- (4) in the case of a *UK RIE*, it has not carried on the business of an investment exchange during the 12 *months* beginning with the day on which the *recognition order* took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six *months* ending with the day the *recognition order* is revoked; or
- (5) in the case of an *RAP* in relation to its *RAP recognition order*, it has not carried on the business of an *auction platform* during the 12 *months* beginning with the day on which the *RAP recognition order* took effect in relation to it, or it has not carried on the business of an *auction platform* at any time during the period of six *months* ending with the day the *RAP recognition order* is revoked.

4.7.4 G The *FSA* would be likely to consider the conditions in *REC 4.7.3G(2)* or *REC 4.7.3G(3)* to be triggered in the following circumstances:

- (1) the *recognised body* appears not to have the resources or management to be able to organise its affairs so as to satisfy one or more of the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements recognised body requirements*; or
- (2) the *recognised body* does not appear to be willing to satisfy one or more of the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements recognised body requirements*; or
- (3) the *recognised body* is failing or has failed to comply with a direction made under section 296 of the *Act* or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (4) the *recognised body* has ceased to carry out *regulated activities* in the *United Kingdom*, or has so changed the nature of its business that it no longer satisfies one or more of the *recognition requirements* or, in the case of a *UK RIE*, the *MiFID implementing requirements recognised body requirements* in respect of the *regulated activities* for which *recognised body* status is relevant.

...

## 4.8 The section 298 procedure

4.8.1 G A decision to:

- (1) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations*; or

- (2) make a direction under section 296 (FSA's powers to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision) or (for *RAPs*) regulation 2 of the *RAP regulations*;

is a serious one and section 298 of the *Act* (Directions and revocation: procedure) and (for *RAPs*) regulation 5 of the *RAP regulations* sets set out a procedure (see *REC* 4.8.9G) which the *FSA* will follow unless, in the case of a revocation of a *recognition order*, the *recognised body* concerned has given its consent (see section 297(1) or regulation 4(1) of the *RAP regulations*) or, in a case where the *FSA* proposes to make a direction under section 296 or (for *RAPs*) under regulation 3 of the *RAP regulations*, it considers it is essential not to follow, or to cut short, the procedure (see *REC* 4.6.4G and *REC* 4.8.7G).

...

- 4.8.3 G In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FSA* will have regard to all relevant information and factors including:

...

- (3) the extent to which the failure or likely failure to satisfy one or more of the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements recognised body requirements* may affect the *regulatory objectives*.

...

- 4.8.5 G The procedures laid down in section 298 of the *Act* and (for *RAPs*) regulation 5 of the *RAP regulations* are summarised, with the *FSA's* guidance about the actions it proposes to take in following these procedures, in the table at *REC* 4.8.9G.
- 4.8.6 G Before exercising its powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FSA* will usually discuss its intention, and the basis for this, with the *key individuals* or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.
- 4.8.7 G Under section 298(7) of the *Act* and (for *RAPs*) regulation 5(7) of the *RAP regulations*, the *FSA* need not follow the procedure in section 298 in relation to giving a direction under section 296 of the *Act* or (for *RAPs*) regulation 5 of the *RAP regulations* in relation to giving a direction under regulation 3, when it considers it essential not to do so. *Guidance* on the circumstances in

which the *FSA* will usually act in this way is given in *REC* 4.6.4G.

- 4.8.8 G ~~Under~~ In relation to a *RIE* and *RCH*, under section 290(6) of the *Act*, the *FSA* need not follow the procedure in section 298 in relation to a refusal to make a *recognition order* if (under section 307) the Treasury has not given its approval for the *recognition order* to be made. Further *guidance* is given in *REC* 5 and *REC* 6 (for overseas applications).
- 4.8.9 G [Table] Key steps in the section 298 and (for *RAPs*) regulation 5 procedure
- ...

## 5 Applications for Recognition (UK recognised bodies)

### 5.1 Introduction and legal background

- 5.1.1 G ...
- 5.1.1A G A UK *RIE* may apply to the *FSA* for recognition as an *RAP* under regulation 2 of the *RAP regulations*.
- ...
- 5.1.3 G The Director General of Fair Trading, the Competition Commission and the Treasury also have specific roles in relation to competition issues raised by applications to become a *recognised body* but not in relation to an application by a UK *RIE* to become an *RAP*.
- 5.1.4 G ...
- (3) The Treasury's approval is required under section 307 of the *Act* (Recognition orders: role of the Treasury) before a *recognition order* (other than one relating to an *RAP*) can be made. (See also *REC* 5.2.11G.)
- ...

### 5.2 Application process

- 5.2.1 G An applicant for *recognised body* status needs to demonstrate to the *FSA* that it is able to meet the ~~*recognition requirements*~~ and in the case of a UK *RIE*, the *MiFID* implementing requirements *recognised body requirements* before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the ~~*recognition requirements*~~ and in the case of a UK *RIE*, the *MiFID* implementing requirements *recognised body requirements* at all times. (*Guidance* on the ~~*recognition requirements*~~ *recognised body requirements* applicable to UK *recognised bodies* (and applicants) is given in *REC* 2 and *REC* 2A).

...

- 5.2.3 G An application should:
- (1) be made in accordance with any directions the *FSA* may make under section 287 (Application by an investment exchange), ~~or~~ section 288 (Application by a clearing house) of the *Act* or (for *RAPs*) regulation 2 of the *RAP regulations*;
  - (2) in the case of an application under sections 287 or 288 of the *Act*, be accompanied by the applicant's *regulatory provisions* and, in the case of an application under section 287 of the *Act*, information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see *REC* 5.2.3AG) (the material specifically prescribed in section 287 or section 288);
  - (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the *FSA* that the ~~*recognition requirements* and in the case of a *UK RIE*, the *MiFID implementing requirements*~~ *recognised body requirements* will be met; and

...

...

- 5.2.5A G A *UK RIE* applying for recognition as an *RAP* may wish to consult the *FSA* about the extent to which information which it has already supplied in connection with its status as a *UK RIE* can be used to support an application to be recognised as an *RAP*.
- 5.2.6 G Under section 289 of the *Act* (Applications: supplementary) or (for an *RAP* applicant) regulation 2 of the *RAP regulations*, the *FSA* may require the applicant to provide additional information, and may require the applicant to verify any information in any manner. In view of their likely importance for any application, the *FSA* will normally wish to arrange for its own inspection of an applicant's information technology systems.
- 5.2.6A G In the case of an application to become a *UK RIE* or an *RAP*, under subsection 290(1B) of the *Act* and (for an *RAP* applicant) regulation 2(8) of the *RAP regulations*, the application must be determined by the *FSA* before the end of the period of six *months* beginning with the date on which it receives the completed application.
- 5.2.7 G At any time after making a formal application, the applicant may make amendments to its rules, guidance or any other part of its application submitted to the *FSA*. Any amendments or additional information (except in relation to an *RAP* applicant) are likely to be forwarded by the *FSA* to the Director General of Fair Trading and the Treasury under section 303 of the *Act* (Initial report by Director) (see *REC* 5.1.5G).



...

- 5.2.9 G (1) While the *FSA* is considering ~~the~~ an application under section 287 or 288 of the Act, the Office of Fair Trading will be reviewing the *regulatory provisions* so that the Director General of Fair Trading is able to make the report required by section 303 of the *Act*.
- (2) When the Director General of Fair Trading has issued his report, if the circumstances described in *REC 5.1.4G* apply, the Competition Commission must normally make its own report under section 306 of the *Act*.
- 5.2.10 G ~~Where~~ In relation to an application under section 287 or 288 of the Act, where the *FSA* considers that an applicant satisfies the *recognition requirements* and in the case of an application to become a *UK RIE*, the *MiFID implementing requirements*, and that the Treasury has had an opportunity to consider any reports from the Director General of Fair Trading and the Competition Commission, the *FSA* will then seek the Treasury's approval, under section 307 of the *Act* (Recognition orders: role of the Treasury), to the making of a *recognition order*.
- 5.2.11 G Under section 307 of the *Act*, in relation to an application under section 287 or 288 of the Act, the Treasury will have to follow the advice of the Director General of Fair Trading or the Competition Commission as appropriate unless it considers that there are exceptional circumstances for not doing so. The Treasury will therefore ordinarily give its approval to the making of a *recognition order* if the applicant's *regulatory provisions* are not considered to have a significantly adverse effect on competition or, if they are considered to have that effect, the effect is justified. It will ordinarily refuse its approval if the applicant's *regulatory provisions* are considered to have any significantly adverse effect on competition and that effect is not considered to be justified.
- 5.2.12 G Where the *FSA* considers that it is unlikely to make a *recognition order*, or (in the case of a *UK RIE* or *UK RCH*) to seek the Treasury's approval, it will discuss its concerns with the applicant as early as possible with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application (see *REC 5.2.7G*). If the *FSA* decides that it will not make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) or (in the case of an *RAP*) regulation 5 of the *RAP regulations* and described in more detail in *REC 4.8*.
- 5.2.13 G ~~The~~ In relation to an application under section 287 or 288 of the Act, the *FSA* will notify the applicant if the Treasury does not give its approval under section 307 of the *Act* (Recognition orders: role of the Treasury). Under section 290 (Recognition orders), the *FSA* does not have to follow the section 298 procedure (see *REC 4.8*) in this case and will not normally do so. The Treasury is required in those circumstances to follow a similar procedure under section 310 of the *Act* (Procedure on the exercise of certain powers by the Treasury).

5.2.14 G Table: Information and supporting documentation (see *REC 5.2.4G*).

(1)	Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous <i>documents</i> ) and any agreements between the applicant, its owners or other <i>persons</i> relating to its constitution or governance (if not contained in the information listed in <i>REC 5.2.3AG</i> ). <u>An applicant for <i>RAP</i> status must provide details of the relationship between the governance arrangements in place for the <i>UK RIE</i> and the <i>RAP</i>.</u>
(2)	...
(3)	Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform <u>or (for an <i>RAP</i>) <i>auction platform</i></u> , settlement arrangements, clearing services and <i>custody</i> services which it plans to supply. <u>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>auction products</i> which it operates or plans to operate.</u>
	...
(18)	Details of membership selection criteria, rules and procedures, <u>including (for an <i>RAP</i>) details of how the rules of the <i>UK RIE</i> will change in order to reflect <i>RAP</i> status.</u>
	...

...

## 6A EEA market operators in the United Kingdom

### 6A.1 Exercise of passport rights by EEA market operator

...

6A.1.4 G In accordance with the *RAP regulations*, references in section 312A of the *Act* to specified *regulated market* and market are to be read as including reference to a specified *auction platform* and an *auction platform* as applicable.

### 6A.2 Removal of passport rights from EEA market operator

...

6A.2.7 G In accordance with the *RAP regulations*, references in section 312B of the *Act* to *regulated market* are to be read as including reference to an *auction*

platform and references to *MiFID* are to be read as including reference to the auction regulation.

...

**Schedule 1 Record keeping requirements**

Sch 1.1 G

There are no record keeping requirements as such in *REC*.

*UK recognised bodies* have obligations under the ~~Recognition Requirements Regulations~~ Recognition Requirements Regulations to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their *facilities*. See *REC* 2.9 for guidance (in the case of *RAPs*, see *REC* 2.9 as applied by *REC* 2A.3.2G).

*RAPs* also have separate record keeping obligations under the *auction regulation*.

**Schedule 2 Notification requirements**

Sch 2.1 G

The following table summarises the notification requirements applicable to all *recognised bodies*. The *notification rules* are set out in detail in Notification rules for UK recognised bodies and *REC* 6.7 and, to avoid unnecessary repetition, are not set out in detail here. The *notification rules* for *RAPs* differ in some respects from the *notification rules* for UK *RIEs* (for example, due to requirements contained in the *auction regulation*).

For completeness, summary details of the main notification requirements in the *Act* itself and the Companies Act 1989 are also included in the table. The summary of these statutory provisions here should not be taken to imply that these are obligations imposed by the *FSA* under its powers nor that the following summary supersedes or alters the meaning of these provisions.

*Guidance* on the statutory notification requirements for *overseas recognised bodies* is given in *REC* 6.6.

Sch 2.2 G

<u>Reference to legislation or Handbook reference</u>	Matter to be notified	Contents of notification	Trigger event	Time allowed
<del>UK recognised bodies</del> <u>UK recognised bodies</u>				
The <del>Acts</del> <u>Act</u> 293(5)	Changes to <i>rules</i> and	Details of change	Change to rule or	Without delay

	<i>guidance</i>		<i>guidance</i>	
<u>UK RIEs and UK RCHs</u>				
The Act s300B(1)	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
Companies Act 1989 s157	Proposed changes to <i>default rules</i>	Details of proposed change	Proposal to change <i>default rules</i>	14 days in advance of change
<u>UK recognised investment exchanges UK RIEs</u>				
The Act s293(6)(a)	Changes to arrangements for clearing <i>on-exchange</i> transactions	Details of change	Change to arrangements	Without delay
The Act s293(6)(b)	Changes to criteria determining to whom it will provide clearing services	Details of change	Change to criteria	Without delay
<u>UK recognised clearing houses UK RCHs</u>				
The Act s293(7)(a)	Changes to <i>RIEs</i> for whom clearing services provided	Details of change	Change to <i>RIE</i>	Without delay
The Act s293(7)(b)	Changes to criteria determining to whom (other than <i>RIEs</i> ) it will provide clearing services	Details of change	Change to criteria	Without delay
<u>RAPs</u>				
<u>The Act</u>	<u>Changes to</u>	<u>Details of</u>	<u>Change to</u>	<u>Without</u>

<u>s293(6)(a)</u>	<u>arrangements for clearing transactions effected on the auction platform</u>	<u>change</u>	<u>arrangements</u>	<u>delay</u>
<u>The <i>auction regulation</i> article 7(7)</u>	<u>Either a methodology or a modification to that methodology as specified by the <i>auction regulation</i></u>	<u>See <i>REC</i> 3.15</u>	<u>Event concerned</u>	<u>Without delay</u>
...				
<i>Notification rules for UK recognised bodies (see Notification rules for UK recognised bodies)</i>				
...				
<i>REC</i> 3.14	Products, services and normal hours of operation <u>or (for <i>RAPs</i>) the timing, frequency or duration of its bidding windows</u>	See <i>REC</i> 3.14	See <i>REC</i> 3.14	Immediately
<i>REC</i> 3.15	Suspension of services and inability to operate <u><i>facilities</i> or (for <i>RAPs</i>) the cancellation of an auction</u>	<del>Details of suspension of services, inability to operate facilities and extension of hours of operation in an emergency</del> See <i>REC</i> 3.15	Event concerned	Immediately

...				
REC 3.18	Membership	Information regarding new types of <i>member</i> and reasons for considering <u>the recognition requirements or (for RAPs) the RAP recognition requirement in regulation 20</u> can still be met	Admission of new type of <i>non-<u>authorised person</u> or <u>person</u></i> from new non-UK jurisdiction to membership	Immediately
...				
REC 3.22	Restriction or instruction to close out, open positions <u>or (for RAPs) restriction on maximum bid size or other remedial measures</u>	Details of decision to restrict member's open position or instruction to close out position <u>or (for RAPs) details of the event and remedial measures proposed</u>	Decision to take action <u>or (for RAPs) proposal to take action</u>	Immediately
...				

## Annex E

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 2.10 **Persons carrying on regulated activities who do not need authorisation**

...

Recognised Investment Exchanges, ~~and~~ Recognised Clearing Houses and  
Recognised Auction Platforms

- 2.10.6 G Investment exchanges and *clearing houses* can apply for recognition under Part XVIII of the *Act* (Recognised investment exchanges and clearing houses-). *Auction platforms* can apply for recognition under the *RAP Regulations*. See *REC*.

...

#### 8.12 **Exemptions applying to all controlled activities**

...

Exempt persons (article 16)

- 8.12.12 G This exemption covers two distinct situations. Article 16(1) applies to all *exempt persons* where they make *financial promotions* for the purpose of their exempt activities. These *persons* would include *appointed representatives*, *recognised investment exchanges*, *recognised clearing houses*, *recognised auction platforms* and those who are able to take advantage of the *Exemption Order*. So, it allows *exempt persons* both to promote that they have expertise in certain *controlled activities* and to make *financial promotions* in the course of carrying them on. Article 16(1) does not apply to *unsolicited real time financial promotions*. *Persons* to whom the *general prohibition* does not apply because of Part XX (Provision of financial services by members of the professions) or Part XIX (Lloyd's members and former underwriting members) of the *Act* are not, for the purposes of article 16, *exempt persons* for their Part XX or Part XIX activities.