

HANDBOOK ADMINISTRATION (NO 8) INSTRUMENT 2008**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 rules);
 - (b) section 84 (Matters which may be dealt with by prospectus rules);
 - (c) section 88 (Sponsors);
 - (d) section 96 (Obligations of issuers of listed securities);
 - (e) section 96A (Disclosure of information requirements);
 - (f) section 101 (Listing rules: general provisions);
 - (g) section 138 (General rule-making powers)
 - (h) section 145 (Financial promotion rules);
 - (i) section 150(2) (Actions for damages);
 - (j) section 156 (General supplementary powers);
 - (k) section 157(1) (Guidance);
 - (l) section 226 (Compulsory jurisdiction);
 - (m) section 340 (Appointment);
 - (n) paragraph 1 (General) of Schedule 7 (The Authority as Competent Authority for Part VI); and
 - (o) paragraph 13 (Authority’s procedural rules) 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 Handbook as amended by this instrument.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex C (GEN) comes into force on 25 January 2008;
 - (2) Part 2 of Annex G (COBS) and Annex K (DISP) come into force on 6 March 2008;
 - (3) Annex D (FEES) comes into force on 1 April 2008;
 - (4) the remainder of the instrument comes into force on 6 February 2008.

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
Threshold Conditions (COND)	Annex B
General Provisions (GEN)	Annex C
Fees manual (FEES)	Annex D
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex E
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Insurance: Conduct of Business sourcebook (ICOBS)	Annex H
Training and Competence sourcebook (TC)	Annex I
Supervision manual (SUP)	Annex J
Dispute Resolution: Complaints sourcebook (DISP)	Annex K
Electronic Money sourcebook (ELM)	Annex L
Professional Firms sourcebook (PROF)	Annex M
Listing Rules sourcebook (LR)	Annex N
Prospectus Rules sourcebook (PR)	Annex O
Perimeter Guidance manual (PERG)	Annex P

Notes

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

Citation

- F. This instrument may be cited as the Handbook Administration (No 8) Instrument 2008.

By order of the Board
24 January 2008

Annex A

Amendments to the Glossary of definitions

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

Add the following new definition in the appropriate alphabetical position (the text is not underlined):

- capital resources gearing rules*
- (1) (in relation to an *insurer*) *GENPRU 2.2.29R, GENPRU 2.2.30R and GENPRU 2.2.32R to GENPRU 2.2.41R.*
 - (2) (in relation to a *bank or building society*) *GENPRU 2.2.29R, GENPRU 2.2.30R, GENPRU 2.2.46R and GENPRU 2.2.49R.*
 - (3) (in relation to a *BIPRU investment firm*) *GENPRU 2.2.30R, GENPRU 2.2.46R and GENPRU 2.2.49R and GENPRU 2.2.50R.*

Amend the following definitions as shown:

appropriate personal pension ~~a personal pension policy, a personal pension deposit or a personal pension contract~~ under which contributions are made to a *personal pension scheme* or a stakeholder pension scheme which is an appropriate scheme under section 7(4) of the Pension Schemes Act 1993 or section 3(4) of the Pension Schemes (Northern Ireland) Act 1993.

class ...

- (3) (in ~~COB~~ COBS) a particular category or type of *packaged product*.

...

- (5) (in FEES) one of the broad classes to which *FSCS* allocates levies as described in *FEES 6.5.7R*.

close out (in *COLL*, and CIS ~~and COB~~) enter into a further transaction under which the obligation to deliver or receive which arises or may, at the option of the other party to the transaction, arise under the original transaction is offset by an equivalent and opposite obligation or right to receive or deliver.

collateral ...

- (2) (in ~~COB~~ COBS and *CASS*) any of the following:

...

	...
<i>complaints reporting rules</i>	DISP 4.6 <u>1.10.</u>
<i>inception</i>	in relation to <i>permitted links</i> , refers to the time when the liability of the <i>insurer</i> under a <i>linked long-term</i> contract of insurance commenced, and for this purpose, a contract providing continuous cover is deemed to commence on each anniversary date of the contract.
<i>listed</i>	<p>(1) (except in <i>LR</i>, and <i>INSPRU</i> <u>and</u> <i>IPRU(INS)</i>) included in an <i>official list</i>.</p> <p>(2) (in <i>INSPRU</i> <u>and</u> <i>IPRU(INS)</i>):</p> <p>(a) included in an <i>official list</i>; or</p> <p>(b) in respect of which facilities for <i>dealing</i> on a <i>regulated market</i> have been granted.</p>
	...
<i>local</i>	<p>(1) (except in <i>BIPRU</i> 1.1 (Application and purpose)) a <i>firm</i> which is a member of a <i>futures</i> and <i>options</i> exchange and whose <i>permission</i> includes a <i>requirement</i> that:</p> <p>(a) the <i>firm</i> will not conduct <i>designated investment business</i> other than:</p> <p>...</p> <p>(iii) making a price to other members of the same <i>futures</i> and <i>options</i> exchange; and <u>or</u></p> <p>(iv) <u><i>dealing for its own account in financial futures and options or other derivatives in the capacity of a customer; and</i></u></p> <p>(b) the performance of the <i>firm's</i> contracts must be guaranteed by and must be the responsibility of one or more of the clearing members of the same <i>futures</i> and <i>options</i> exchange.</p>
	...
<i>management expenses levy</i>	a levy imposed by the <i>FSCS</i> on <i>participant firms</i> to meet the <i>management expenses</i> and which is made up of one or more of a base cost levy and a <i>specific costs levy</i> , each <i>participant firm's</i> share being calculated in accordance with <i>FEES</i> 6.4.17R <u>6.4.</u>
<i>Money Laundering</i>	the Money Laundering Regulations 2003 <u>2007</u> (SI 2003/3075

<i>Regulations</i>	<u>2007/2157</u>).
<i>non-independent research</i>	<p>a <i>research recommendation</i> which:</p> <p>(a) relates to <i>financial instruments</i> (<u>as specified in Section C of Annex 1 of MiFID, whether or not they are admitted to trading on a regulated market</u>); and</p> <p>(b) does not constitute <i>investment research</i>.</p> <p>[Note: article 24(2) of the <i>MiFID implementing Directive</i>]</p>
<i>range of packaged products, range</i>	(in relation to a <i>firm</i>) the range of packaged products on which the <i>firm</i> gives <i>advice on investments</i> to <i>private customers</i> <u><i>retail clients</i></u> (see COB 5.1.6AR <u>COBS 6.3</u>) or if appropriate the list of packaged products in which the <i>firm</i> deals.
<i>regulated market</i>	<p>(1) a multilateral system operated and/or managed by a <i>market operator</i>, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in <i>financial instruments</i> – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the <i>financial instruments</i> admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III of <i>MiFID</i>.</p> <p>[Note: article 4(1)(14) of <i>MiFID</i>]</p> <p>(2) <u>(in addition, in <i>INSPRU</i> and <i>IPRU(INS)</i> only) a market situated outside the <i>EEA States</i> which is characterised by the fact that:</u></p> <p>(a) <u>it meets comparable requirements to those set out in (1); and</u></p> <p>(b) <u>the <i>financial instruments</i> dealt in are of a quality comparable to those in a regulated market in the <i>United Kingdom</i>.</u></p>
<i>umbrella</i>	(in <i>COLL</i> , <i>CIS</i> and COB <u>COBS</u>); a <i>collective investment scheme</i> under which the contributions of the <i>participants</i> in the <i>scheme</i> and the profits or income out of which payments are to be made to them are pooled separately in relation to separate parts of the <i>scheme property</i> .

Annex B

Amendments to the Threshold Conditions (COND)

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

2.1.1	⌀	<u>UK</u>	...
2.2.1	⌀	<u>UK</u>	...
2.2A.1	⌀	<u>UK</u>	...
2.3.1	⌀	<u>UK</u>	...
2.4.1	⌀	<u>UK</u>	...
2.5.1	⌀	<u>UK</u>	...
2.6.1	⌀	<u>UK</u>	...

Annex C

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 25 January 2008

Sch 4 Powers exercised

Sch 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 *GEN*:

Section 59 (Approval for particular arrangements)

Section 73A (Part 6 Rules)

Section 84 (Matters which may be dealt with by prospectus rules)

Section 88(3) (Sponsors)

Section 89A- 89G (Transparency rules)

Section 89O (Corporate governance rules)

Section 96 (Obligations of issuers of listed securities)

Section 96A (Disclosure of information requirements)

Section 101 (Listing rules: general provisions)

Section 118(8) (Market abuse)

...

Section 226 (Compulsory jurisdiction)

Section 226A(7) (Consumer Credit Jurisdiction)

Section 229 (Awards)

...

Section 295(3) (Notification: overseas investment exchanges and overseas clearing houses)

Section 300B (Duty to notify proposal to make regulatory provision)

Section 322 (Rules applicable to former underwriting members)

...

Section 340 (Appointment)

Section 341 (Access to books etc)

Paragraph 17 of Schedule 1 (The Financial Services Authority: Fees)

...

Paragraph 20 of Schedule 3 (EEA Passport Rights: Services)

Paragraph 1 of Schedule 7 (The Authority as Competent Authority for Part VI)

Paragraph 7(3) of Schedule 17 (The Ombudsman Scheme: Annual reports)

...

Part 2: Comes into force on 6 February 2008

2.2.15 G ... ~~COB 1.8 (Application to electronic media) contains further guidance in respect of electronic communication with or for customers.~~ ...

Annex D

Amendments to the Fees manual (FEES)

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

Comes into force on 1 April 2008

6.1.7 G In order to allocate a share of the amount to be funded by an individual *participant firm*, the funding arrangements are split into five *classes*: the deposit ~~sub-scheme class~~ class; the life and pensions ~~sub-scheme class~~ class; the investment ~~sub-scheme class~~ class; the home finance ~~sub-scheme class~~ class and the general insurance ~~sub-scheme class~~ class. The business carried on by a *participant firm* determines into which ~~sub-scheme class~~ class, or ~~sub-schemes classes~~ classes, it falls.

6.1.15 G ... For funding purposes, these costs are allocated by the *FSCS*, and met by *participant firms*, in the same way as *specific costs* up to relevant *levy limits* and then in accordance with the allocation provisions in *FEES* ~~6.5.6R~~ 6.5.2R.

Limits on compensation costs levies on ~~sub-schemes~~ sub-classes and classes

6.3.5 R ...

6 Annex 3 R Financial Services Compensation Scheme – classes and sub-classes

...

...	
Sub-class C2	...
Legal basis for activity in sub-class C2	<p>Any of the following:</p> <p>...</p> <ul style="list-style-type: none"> • giving <u>providing</u> <i>basic advice on a stakeholder product</i>;. <p>...</p> <p>in relation to any of the following:</p> <ul style="list-style-type: none"> • long-term <u>long-term</u> <i>insurance contracts</i> (including <i>pure protection contracts</i>); <p>...</p>
...	

Sub-class D2	
Legal basis for activity in sub-class D2	<p>Any of the following activities in relation to <i>designated investment business</i>:</p> <p>...</p> <ul style="list-style-type: none"> • giving <u>providing</u> basic advice on a stakeholder product; • <i>safeguarding and administering</i> of assets <u>investments</u>; <p>...</p>
...	

Annex E

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

II ADEQUACY OF ASSETS

...

- 4.12 (1) ...
- (2) ...
- (3) ~~deleted~~ A friendly society which has entered into a linked long-term contract must also secure that its liabilities under the contract in respect of linked benefits which are not covered by contracts of reinsurance are covered by assets of a description contained in COBS 21.3.1R.
- (4) ~~deleted~~ In (3), “linked long-term contract” does not include a pension fund management contract unless it is combined with a contract of insurance covering either conservation of capital or payment of a minimum interest.

Chapter 7 DEFINITIONS

Part I Definitions

7.1 ...

liability valuation rules ...

linked assets means, in relation to a friendly society, long-term insurance business assets of the friendly society which are, for the time being, identified in the records of the friendly society as being assets by reference to the value of which property linked benefits are to be determined;

linked benefits, ...

Annex F

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

Chapter 11

DEFINITIONS

...

<i>internal linked fund</i>	...
<i>linked assets</i>	<u>in relation to an insurer, long-term insurance business assets of the insurer which are, for the time being, identified in the records of the insurer as being assets by reference to the value of which property linked benefits are to be determined, and non-linked assets is construed accordingly</u>
<i>long-term policy holder</i>	...

APPENDIX 9.1 (rules 9.12 and 9.13)

Calculation of general insurance capital requirement – premiums amount and brought forward amount

Form 11

...

		This financial year 1	Previous year 2
...			
Brought forward amount (See instruction 4) (12.43 x 51.1 / 51.2 or, if less, 12.43.2)	53		
...			

Instructions for completion of Form 16

1. ...
- 1a. Unrealised gains and losses on investments (other than for investments in the long term fund) must be included in their entirety at lines 15 and 18, even if a different accounting treatment is adopted in the *Companies Act* accounts. Unrealised gains and losses must be measured by reference to the value included for the investment at line ~~40~~ 102 on Form 13, i.e. the *Companies Act* accounts value.

...

APPENDIX 9.4 (rule 9.31)

ABSTRACT OF VALUATION REPORT

...

Discretionary charges and benefits

3. (1) ...

...

(10) Wherever ~~units~~ *units* of the type referred to in paragraph 5 of Part I of ~~Appendix 3.2~~ in *permitted scheme interests* are held in an *internal linked fund*, or where *property linked benefits* are linked to such ~~units~~ *units*, the rate of discount, commission or other allowance made to the *insurer* on the purchase, sale or holding of ~~units~~ *units* and the extent to which the ~~policy holder~~ *policyholder* benefits from such discount, commission or other allowance.

...

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

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

Part 1: Comes into force on 6 February 2008

1 Annex 1: Application (see COBS 1.1.2R)

...		
	Part 3: Guidance	
1.	The main extensions and restrictions to the general application rule	
1.1	G	The <i>general application rule</i> is modified in Parts 1 and 2 of Annex 1 and in certain chapters of the <i>Handbook</i> . The modification may be an extension of this <i>rule</i> . For example, <i>COBS 4</i> (Communications to <u>Communicating with clients, including financial promotions</u>) and <i>COBS 5</i> (Financial promotion) have <u>has</u> extended the application of the rule.
...		
5.	Consolidated Life Directive: effect on territorial scope	
5.1	G	The <i>Consolidated Life Directive's</i> scope covers <i>long-term insurers</i> authorised under that Directive conducting <i>long-term insurance business</i> . The <i>rules</i> in this sourcebook within the Directive's scope are the cancellation rules <u>rules</u> (<i>COBS 15</i>) and those <i>rules</i> requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>insurance contract</i> <u><i>contract of insurance</i></u> . The Directive specifies minimum information and cancellation requirements and permits <i>EEA States</i> to adopt additional information requirements that are necessary for a proper understanding by the <i>policyholder</i> <u><i>policyholder</i></u> of the essential elements of the commitment.
5.2	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be determined by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other rules <u>rules</u> , in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the <i>Consolidated Life Directive</i>)
...		

8.	Investor Compensation Directive		
8.1	G	(1)	The <i>Investor Compensation Directive</i> generally requires <i>MiFID investment firms</i> to belong to a compensation scheme established in accordance with the Directive. The <i>rules</i> in this sourcebook that implement the Directive are those (i) requiring <i>MiFID investment firms</i> , including their branches, to make available specified information about the compensation scheme to which they belong and specifying the language in which such information must be provided (<i>COBS 6.1.146R</i>) and (ii) restricting mention of the compensation scheme in advertising to factual references (<i>COBS 4.2.5G</i>).
		...	
...			

2.3.1 R A *firm* must not pay or accept any fee or commission, or provide or receive any non-monetary benefit, in relation to *designated investment business* or, in the case of its *MiFID or equivalent third country business*, another *ancillary* service, carried on for a *client* other than:

...

(2) a fee, commission or non-monetary benefit paid or provided to or by a third party or a *person* acting on behalf of a third party, if:

...

(b) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, is clearly disclosed to the *client*, in a manner that is comprehensive, accurate and understandable, before the provision of the service;

...

(iii) this requirement does not apply to a *firm* giving *basic advice*; and

(c) in relation to *MiFID or equivalent third country business*, the payment of the fee or commission, or the provision of the non-monetary benefit is designed to enhance the quality of the service to the *client*; or

...

- 2.4.2 G This section is not relevant to the question of who is the *firm's* counterparty for prudential purposes and it does not affect any obligation a *firm* may owe to any other *person* under the general law.
- 3.5.2A R In relation to *MiFID or equivalent third country business* a local authority or a public authority is not likely to be a regional government for the purposes of ~~COBS 3.2.5R(4)~~ 3.5.2R(4). In the *FSA's* opinion, a local authority may be a *per se professional client* for those purposes if it meets the test for large undertakings in ~~COBS 3.2.5R(2)~~ 3.5.2R(2).
- 4.5.6 R ...
- (2) In this *rule*, in relation to *MiFID or equivalent third country business*, *ancillary services* are to be regarded as *relevant business*.
- ...
- 4.6.1 R (1) Subject to (2) and (3), this section applies to a *firm* in relation to:
- (a) the provision of information in relation to its ~~*designated investment business*~~ *MiFID or equivalent third country business*; ~~and~~
- (b) the *communication* or *approval* of a *financial promotion*;
- where such information or *financial promotion* is addressed to, or disseminated in such a way that it is likely to be received by, a *retail client*.
- ...
- 4.6.4 G If a *financial promotion* includes information referring to the past performance of a *packaged product* that is not a *financial instrument*, a *firm* will comply with the *rule* on appropriate performance information (*COBS* 4.6.2R(2)) if the *financial promotion* includes, in the case of a *scheme*, *unit-linked life policy*, *unit-linked personal pension scheme* or *unit-linked stakeholder pension scheme* (other than a *unitised with-profits life policy* or *stakeholder pension scheme*) past performance information calculated and presented in accordance with the table in *COBS* 4.6.4AG.
- 4.6.9 R (1) A *firm* that *communicates* to a *client* a *projection* for a *packaged product* which is not a *financial instrument* must ensure that the projection complies with the *projections rules* in *COBS* 13.4, *COBS* 13.5 and *COBS* 13 Annex 2, ~~which is not a *financial instrument*~~.
- ...
- 4.7.1 R ...

- (5) In this *rule*, in relation to *MiFID or equivalent third country business*, *ancillary services* are to be regarded as *relevant business*.
- 4.9.1 R ...
- (3) This section does not apply to a communication by a *firm* other than in relation to its *MiFID or equivalent third country business*:
- ...
- (e) to the extent that ~~if~~ it relates to a *deposit*;
- 4.9.4 R A *firm* ~~must not~~ may only *communicate* or *approve a financial promotion* to enter into a *life policy* with a *person* who is ~~not~~:
- ...
- 21.3.1 R An *insurer* must not contract to provide benefits under *linked long-term* contracts of insurance that are determined:
- (1) wholly or partly, or directly or indirectly, by reference to fluctuations in any index other than an *approved index*;
- (2) wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than any of the following:
- (a) *approved securities*;
- (b) *listed securities*;
- (c) *permitted unlisted securities*;
- (d) *permitted land and property*;
- (e) *permitted loans*;
- (f) *permitted deposits*;
- (g) *permitted scheme interests*;
- (h) ~~income from (a) to (g) above;~~ [deleted]
- (i) *cash*;
- (j) *permitted units*;
- (k) *permitted stock lending*; and

- (1) *permitted derivatives contracts.*

Add the following Schedules to COBS. The text is all new and is not underlined.

Sch 1 Record keeping requirements

COBS Sch 1.1 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.

COBS Sch 1.2 G

It is not a complete statement of those requirements and should not be relied on as if it were.

COBS Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>COBS</i> 2.3.17R(1)	Fee, commission or non-monetary benefit under <i>COBS</i> 2.3.1R(2)(a)(ii)	Each fee, commission or non-monetary benefit given	When benefit is given	5 years from date of benefit
<i>COBS</i> 2.3.17R(2)	Reasonable indirect benefits	Each benefit given to another <i>firm</i> in accordance with <i>COBS</i> 2.3.14G	When benefit is given	5 years from date of benefit
<i>COBS</i> 3.8.2R(1)	Standard form notice to <i>clients</i> and agreements under <i>COBS</i> 3	Each standard form notice and agreement	When standard form is first used	Relevant period from when the <i>firm</i> ceases to carry on business with <i>clients</i> under that standard form (see <i>COBS</i> 3.8.2R(3))

COBS 3.8.2 R(2)	<i>Client</i> categorisation	<i>Client</i> categorisation and supporting information, evidence of dispatch to <i>client</i> of any notice (the notice itself where this differs from standard form) and a copy of any agreement entered into	From time of categorisation	Relevant period from when the <i>firm</i> ceases to carry on business with or for that <i>client</i> (see COBS 3.8.2R(3))
COBS 4.11.1R(1)	<i>Financial promotion</i>	A <i>financial promotion</i> communicated or approved (subject to exemptions)	When <i>communicated</i> or <i>approved</i>	See COBS 4.11.1R(3)
COBS 4.11.1R(2)	Telemarketing scripts	Copy of any script used	Date script used	See COBS 4.11.1R(3)
COBS 4.11.2G	Compliance of <i>financial promotions</i>	<i>Firms</i> encouraged to consider recording why a <i>financial promotion</i> is considered compliant.	Date of assessment of compliance	
COBS 6.2.12R	Information about the <i>firm</i> , services and information: <i>packaged products</i>	<i>Scope and range of packaged products</i>	<i>Firm's scope and range</i> – from date on which superseded by more up-to-date record <i>Client-specific records</i> – from date of communication of <i>personal recommendation</i> .	5 years 5 years

COBS 6.3.11R	<i>Menu</i>	Copy of each <i>menu</i>	From date on which it was updated or replaced	5 years
COBS 8.1.4R	<i>Client agreements</i>	Documents setting out rights and obligations of the <i>firm</i> and the <i>client</i>	From date of agreement	From whichever is the longer of 5 years or the duration of the relationship with the <i>client</i> . Records relating to a <i>pension</i> <i>transfer</i> , <i>pension opt-out</i> or <i>FSAVC</i> must be retained indefinitely
COBS 9.2.9R	Recommendations on <i>friendly society life</i> <i>policies</i> .	Why the recommendation is considered suitable	Date of recommendation.	5 years.
COBS 9.5.1G	Suitability	<i>Client</i> information for <i>suitability report</i> and <i>suitability</i> <i>report</i>	From date of <i>suitability report</i>	See COBS 9.5.2R.
COBS 9.6.19R	<i>Basic advice</i>	Decision to give <i>basic advice</i> , <i>range</i> used and <i>basic advice</i> summary prepared for <i>retail client</i>	Date on which <i>basic advice</i> given	5 years
COBS 9.6.20R	<i>Scope of basic advice</i> (<i>stakeholder</i> <i>products</i>)	<i>Scope of basic</i> <i>advice</i> and its <i>range</i> (or <i>ranges</i>) of <i>stakeholder</i> <i>products</i>	Date on which the <i>scope</i> and <i>range</i> becomes relevant	5 years from the date replaced by more up-to-date record
COBS 10.7.1G	Appropriateness	<i>Client</i> information obtained in making assessment of	Date of assessment	5 years

		appropriateness and the appropriateness assessment		
<i>COBS</i> 11.3.2 R	Client orders	Orders executed for <i>clients</i>	See <i>COBS</i> 11.5	5 years
<i>COBS</i> 11.5.1EU	<i>Client</i> orders and decisions to deal in <i>portfolio management</i>	Orders received from <i>clients</i> and decisions taken – details in <i>COBS</i> 11.5.1EU	See <i>COBS</i> 11.5.1EU	5 years
<i>COBS</i> 11.5.2EU	<i>Client</i> orders	Execution of orders	See <i>COBS</i> 11.5.1EU	5 years
<i>COBS</i> 11.5.3EU	<i>Client</i> orders	Transmission details (see <i>COBS</i> 11.5.3EU)	Date of transmission	5 years
<i>COBS</i> 11.6.19R	Prior and periodic disclosure	Prior and periodic disclosure on use of dealing commission	From date of disclosure to <i>customers</i>	5 years
<i>COBS</i> 11.7.4R	Personal account dealing	Notifications by outsourcing provider and authorisation or prohibition.	Date of notification or decision.	5 years
<i>COBS</i> 12.4.6R	<i>Research recommendations</i>	Basis of substantiation of <i>research recommendation</i>	Date of recommendation	5 years
<i>COBS</i> 15.3.4R	Cancellation: exercise of right	Exercise of the right to cancel or withdraw	Date of exercise	As specified in <i>COBS</i> 15.3.4R(1), (2) and (3)
<i>COBS</i> 16.2.7R	Confirmation to <i>clients</i>	Copy of a confirmation	From date of despatch to <i>client</i>	<i>MiFID</i> or equivalent third country business – 5 years Other business – 3 years

<i>COBS</i> 16.3.11R	<i>Periodic statements</i>	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	<i>MiFID or equivalent third country business</i> – 5 years Other business – 3 years
<i>COBS</i> 16.6.6R	Life insurance contracts	Information to be provided during the terms of the contract	When information is given	5 years after information given
<i>COBS</i> 18.5.14R	Collective investment scheme operators	<i>Periodic statement</i> to be provided to <i>participants</i>	When provided	3 years
<i>COBS</i> 19.1.5R	Execution only pension transfer or opt out	That no <i>personal recommendation</i> was given to the <i>client</i>	Date of transaction	5 years
<i>COBS</i> 19.2.3R	Promotion of personal pension scheme	Why the promotion was justified	When promoted	5 years
<i>COBS</i> 20.3.1R	<i>PPFMs</i>	Each version of the <i>PPFM</i>	Date on which the <i>PPFM</i> is relevant	5 years
<i>COBS</i> TP1.8R	<i>Client</i> categorisation transitional	Categorisation or re-categorisation under TP1	Date of categorisation/ re-categorisation	See <i>COBS</i> 3.8.2R(2)
<i>COBS</i> TP 2.4E	<i>Investment research</i> transitional	Election to comply with <i>COBS</i> 12.2 - 12.3 sooner than 1 May 2008	Date of decision and date from which election is to be effective	5 years
<i>COBS</i> TP 2.8C	Specialist regimes	Election to comply with <i>COBS</i> 18 sooner than 1 May 2008	Date of decision and date from which election is to be effective	5 years

Sch 2 Notification requirements

Sch 2.1 G

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
<i>COBS</i> 20.2.45R	Appointment of <i>policyholder advocate</i> .	The terms on which the <i>firm</i> proposes to appoint a <i>policyholder advocate</i> .	Proposal to appoint <i>policyholder advocate</i> .	As soon as reasonably practicable
<i>COBS</i> 21.2.8 R	Breach of <i>COBS</i> 21.2	Any failure to meet the requirements of <i>COBS</i> 21.2	Breach of <i>COBS</i> 21.2	As soon as the <i>firm</i> becomes aware of the failure

Sch 3 Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in *COBS*.

Sch 4 Powers exercised

Sch 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 *COBS*:

	Section 138 (General rule-making power);
	Section 139 (4) (Miscellaneous ancillary matters);
	Section 145 (Financial promotion rules);
	Section 147 (Control of information rules);
	Section 149 (Evidential provisions);

	Section 156 (General supplementary powers);
	Section 238(5) (Restrictions on promotion);
The following powers in the <i>Act</i> have been exercised by the <i>FSA</i> to give the <i>guidance</i> in <i>COBS</i> :	
	Section 157(1) (Guidance)

Sch 5 Rights of actions for damages

Sch 5.1 G

The table below sets out the *rules* in *COBS* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G

If a "Yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4 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>COBS</i> with the status letter "E"			No	No	No	
Any <i>rule</i> in <i>COBS</i> which prohibits an <i>authorised person</i> from seeking to make provision excluding or restricting any duty or liability			Yes	No	Yes	Any other person
Any <i>rule</i> in <i>COBS</i> which is directed at ensuring that transactions in <i>designated investments</i> are not effected with the benefit of unpublished information that, if made public, would be likely to affect the price of that designated investment			Yes	No	Yes	Any other person
The <i>fair, clear and not misleading rule</i>			Yes	In part (Note 1)	No	
All other <i>rules</i> in <i>COBS</i>			Yes	No	No	

Notes

1. *COBS* 4.2.6R provides that if, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it complies with the *fair, clear and not misleading rule*, a contravention of that *rule* does not give rise to a right of action under section 150 of the *Act*.

Sch 6 Rules that can be waived

Sch 6.1 G

As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its rules.

Part 2: Comes into force on 6 March 2008

- 4.7.6 R (1) A firm must not communicate or approve a direct offer financial promotion:
- (a) relating to a warrant or derivative;
 - (b) to or for communication to a retail client; and
 - (c) where the firm will not itself be required to comply with the rules on appropriateness (see COBS 10);
- unless the firm has adequate evidence that the condition in (2) is satisfied.
- (2) The condition is that the person who will arrange or deal in relation to the derivative or warrant will comply with the rules on appropriateness or equivalent requirements for any application or order that the person is aware, or ought reasonably to be aware, is in response to the direct offer financial promotion.

Annex H

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

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

1 Annex 1: Application (see ICOBS 1.1.2R)

...		
Part 4: Guidance		
...		
5.	Consolidated Life Directive: effect on territorial scope	
...		
5.4	G	... The territorial scope of other <i>rules</i> , in particular <i>rules on financial promotion</i> <u><i>the financial promotion rules</i></u> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the ‘general good’. (See articles 33, 35, 36 and 47 of the <i>Consolidated Life Directive</i>)

Annex I

Amendments to the Training and Competence sourcebook (TC)

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

TC Appendix 1 R

Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3		
Activity	Products/Sectors	Is there an appropriate examination requirement?
<i>Designated investment business carried on for a retail client</i>		
Providing basic advice	...	...
Advising	2. <i>Securities which are not stakeholder pension schemes or broker funds</i>	Yes
	3. <i>Derivatives</i>	<u>Yes</u>
	4. <i>Packaged products which are not broker funds</i>	<u>Yes</u>
	5. <i>Friendly Society life policies where the employee is not reasonably expected to receive a remuneration of greater than £1000 a year in respect of such sales</i>	<u>No</u>
	6. <i>Friendly Society tax-exempt policies</i>	<u>Yes</u>
	7. <i>Long-term care insurance contracts</i>	<u>Yes</u>
	8. <i>Investments in the course of corporate finance business</i>	<u>Yes</u>
	9. <i>Advising on syndicate participation at Lloyd's</i>	<u>Yes</u>
Undertaking the activity in column 2	10. <i>Broker fund adviser</i>	Yes
	11. <i>Pension transfer specialist</i>	<u>Yes</u>
Advising and dealing	12. <i>Securities which are not stakeholder pension schemes or broker funds</i>	Yes
	13. <i>Derivatives</i>	<u>Yes</u>
Managing	14. <i>Investments</i>	Yes
Overseeing on a day-to-day basis	15. <i>Operating a collective investment scheme or undertaking the activities of a trustee or depositary of a collective investment scheme</i>	Yes
	16. <i>Safeguarding and administering investments or holding client money</i>	<u>Yes</u>

	17. <i>Administrative functions in relation to managing investments</i>	<u>Yes</u>
	18. <i>Administrative functions in relation to effecting or carrying out contracts of insurance, which are life policies</i>	<u>Yes</u>
	19. <i>Administrative functions in relation to the operation of stakeholder pension schemes</i>	<u>Yes</u>
<i>Regulated mortgage activity and reversion activity carried on for a customer</i>		
Advising	20. <i>Regulated mortgage contracts for a non-business purpose</i>	Yes
	21. <i>Equity release transactions</i>	<u>Yes</u>
Designing scripted questions for non-advised sales	...	...
...		

Annex J

Amendments to the Supervision manual (SUP)

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

3.1.2	R	Applicable sections (see SUP 3.1.1 R)			
		(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor	
	
		(7)	<i>Investment management firm, (other than an 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) 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 3A)</i>	<i>SUP 3.1 - SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
		(7A)	<i>Investment management firm (other than an 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 non-directive custody chapter, non-directive client money chapter, MiFID custody chapter or MiFID client money chapter apply</i>	<i>SUP 3.1 - SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
		(7C)	<i>BIPRU investment firm or exempt CAD firm <u>UK MiFID investment firm</u>, which has an auditor appointed under or as a result of a statutory provision other than in the Act (Note 3B)</i>	<i>SUP 3.1 - 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8, SUP 3.10</i>
		(7D)	<i>Sole trader or partnership that is a <u>UK MiFID investment firm (other than an exempt CAD firm)</u> (Note</i>	<i>SUP 3.1 - SUP 3.7</i>	<i>SUP 3.1, SUP 3.2, SUP 3.8,</i>

			3BC)		SUP 3.10
	
		...			
		Note 3A = If the <i>firm</i> has elected to comply with the <i>MiFID custody chapter</i> or the <i>MiFID client money chapter</i> also in respect of its <i>non-MiFID business</i> then SUP 3.10 will apply to the whole of the business within the scope of the <i>MiFID custody chapter</i> or the <i>MiFID client money chapter</i> .			
		<u>Note 3B = UK MiFID investment firms include exempt CAD firms. An exempt CAD firm that has opted into MiFID can benefit from the audit exemption for small companies in the Companies Act legislation if it meets the relevant criteria in that legislation and fulfils the conditions of regulation 4C(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007. If a firm does so benefit then SUP 3 will not apply to it. For further details about exempt CAD firms, see PERG 13, Q58.</u>			
		Note 3BC = A sole trader or a partnership that is a UK MiFID investment firm to which the <i>MiFID custody chapter</i> or <i>MiFID client money chapter</i> apply must have its annual accounts audited.			
		...			

- 7.2.3 G The FSA may also use its powers under section 45 for enforcement purposes. ~~ENF 3~~ EG 8 sets out in detail the FSA's powers under section 45 and the circumstances under which the FSA may vary a firm's permission in this way, whether for enforcement purposes or as part of its day to day supervision of firms. ...
- 7.2.4 G ... There are similar but more limited powers under Part XIII of the Act in relation to the permission of an incoming EEA firm or incoming Treaty firm under Schedules 3 or 4 to the Act (see ~~ENF 4~~ EG 8.26 to EG 8.27).
- 7.2.5 G If the FSA exercises its powers under section 45 of the Act, it will do so by issuing a supervisory notice. The procedure that will be followed is set out in ~~DEC 3~~ DEPP 2 and a flowchart is provided in ~~DEC 3 Annex 2~~.
- 7.2.6 G A firm has a right of referral to the Financial Services and Markets Tribunal (see ~~DEC 5~~) in respect of the exercise by the FSA of its powers to vary, on its own initiative, the firm's Part IV permission.
- 10.2.1 G The immediate purpose of SUP 10.3 to SUP 10.10 is to specify, under section 59 of the Act, descriptions of the ~~22~~ 16 controlled functions which are listed in SUP 10.4.5R.
- 12.2.14 G (1) ...

(2) If a firm appoints an *appointed representative* who is an individual in (1), that *appointed representative* will also be a *representative*. The individual may need to be approved to perform the *customer function*, (see SUP 12.6.8G and SUP 12.6.9G). In these circumstances, in addition to complying with the requirements of SUP 12 and other regulatory requirements, the firm should ensure that the *rules for representatives in ~~COB 5 (Advising and selling)~~ COBS 6 (Information about the firm, its services and remuneration)* are complied with.

- 12.5.6 G (1) If the *appointed representative* is appointed to *give advice on investments to retail clients concerning packaged products*, the firm should also satisfy itself that:
- (a) the contract requires compliance with the *rules in ~~COB 5.1 (Advising of packaged products)~~ COBS 6 (Information about the firm, its services and remuneration)*. ; and
 - (b) ~~if the firm is a provider firm, the contract prevents the appointed representative from giving advice on investments to a retail client concerning the purchase of a packaged product which is not issued by the firm or by another member of its marketing group or is not an adopted packaged product (see COB 5.1.8 R).~~

...

SUP 12 Annex 3R Appointed representative appointment form

11 Will the appointed representative undertake designated investment business ~~insurance~~
mediation? *

If question 11 is answered "yes", you must complete the 3 fields immediately below:

Name of main contact for FSA register	Title	<input type="text"/>
	Forename(s)	<input type="text"/>
	Surname	<input type="text"/>

Yes No

12 Will the appointed representative undertake home finance activities? *

13 Is the application in respect of:*

(1) an appointed representative who will carry on insurance mediation activities?

If question 13(1) is answered "yes", you must complete the 3 fields immediately below:

Name of main contact for FSA register

Title

Forename(s)

Surname

or

(2) a tied agent?

Replace SUP 16.12.7R with the following (the text is not underlined):

16.12.17 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.16R.

Data item	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
Annual accounts				80 <i>business days</i>
Annual reconciliation				80 <i>business days</i>
Annual accounts of the <i>mixed-activity holding company</i>				7 months
Solvency statement				3 months
FSA001		20 <i>business days</i>	30 <i>business days</i> (note 2); 45 <i>business days</i> (note 3)	
FSA002		20 <i>business days</i>	30 <i>business days</i> (note 2); 45 <i>business days</i> (note 3)	
FSA003	15 <i>business days</i>	20 <i>business days</i>	30 <i>business days</i> (note 2); 45 <i>business days</i> (note 3)	
FSA004		20 <i>business days</i>	30 <i>business days</i> (note 2); 45 <i>business days</i> (note 3)	
FSA005		20 <i>business days</i>	30 <i>business days</i> (note 2);	

			45 <i>business days</i> (note 3)	
FSA006		20 <i>business days</i>		
FSA007				2 months
FSA008		20 <i>business days</i> (note 2); 45 <i>business days</i> (note 3)		
FSA016			30 <i>business days</i>	
FSA018		45 <i>business days</i>		
FSA019				2 months
FSA028			30 <i>business days</i>	
FSA029		20 <i>business days</i>		80 <i>business days</i>
FSA030		20 <i>business days</i>		80 <i>business days</i>
FSA031		20 <i>business days</i>		
FSA032		20 <i>business days</i>		
FSA033		20 <i>business days</i>		80 <i>business days</i>
FSA034		20 <i>business days</i>		80 <i>business days</i>
FSA035		20 <i>business days</i>		80 <i>business days</i>
FSA036		20 <i>business days</i>		80 <i>business days</i>
FSA038			30 <i>business days</i>	
FSA039			30 <i>business days</i>	
FSA040		15 <i>business days</i>		
FSA041				30 <i>business days</i>
FSA042		20 <i>business days</i>		
FSA045		20 <i>business days</i>	30 <i>business days</i> (note 2); 45 <i>business days</i> (note 3)	
FSA046			30 <i>business days</i> (note 2); 45 <i>business days</i> (note 3)	
Section A RMAR		30 <i>business days</i>	30 <i>business days</i>	
Section B RMAR		30 <i>business days</i>	30 <i>business days</i>	
Section C RMAR		30 <i>business days</i>	30 <i>business days</i>	
Section D1 and D2 RMAR		30 <i>business days</i>	30 <i>business days</i>	
Section F RMAR			30 <i>business days</i>	

Note 1	[deleted]
Note 2	For unconsolidated and solo-consolidated reports.
Note 3	For <i>UK consolidation group</i> reports.

Amend the following text as shown.

App 1.8.2G Note 2

...	
Activities from which the most substantial part of the firm's gross income, including commissions, from regulated activities is derived	Firm's prudential category
<ul style="list-style-type: none"> (i) <i>Managing investments</i> other than for private customers <u>retail clients</u> or if the assets managed are primarily <i>derivatives</i>; (ii) <i>OPS activity</i>; (iii) acting as the <i>manager</i> or <i>trustee</i> of an <i>AUT</i>; (iv) acting as the <i>ACD</i> or <i>depository</i> of an <i>ICVC</i>; (v) establishing, operating or winding up a collective investment scheme <u>establishing, operating or winding up a collective investment scheme</u> other than an <i>AUT</i> or <i>ICVC</i>; and (va) <u>establishing, operating or winding up a personal pension scheme;</u> <u>and</u> (vi) <i>safeguarding and administering investments.</i> 	<i>Investment management firm</i>
...	

Annex K

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, striking through indicates deleted text.

Comes into force on 6 March 2008

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:

...

(4) indicates it will regard the *complaint* as closed if it does not receive a reply within eight weeks ~~of the complainant's receipt of the response;~~

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.

Annex L

Amendments to the Electronic Money sourcebook (ELM)

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

- 6.3.10 G The *redemption right* applies against the issuer of *e-money*. Issuer means the same thing as it does for the purpose of article 74A of the *Regulated Activities Order* (Electronic money). There is *guidance* on the meaning of issuer under that article in *PERG 3* (~~The~~ Guidance on the scope of the regulated activity of issuing e-money).
- 8.3.3 G *PERG 3.4* gives *guidance* on the restrictions on financial promotion in section 21 of the *Act* (Restrictions on financial promotion) in relation to *e-money*.

Annex M

Amendments to the Professional Firms sourcebook (PROF)

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

5 Non-mainstream regulated activities

5.3 Reference to other sourcebooks and manuals

Conduct of business sourcebook

5.3.2 G *COBS* 18.11 provides that *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except for:

...

(3) *COBS* 8.1.3 R (Client agreements), except for the requirement to provide information on conflicts of interest; and

(4) *COBS* 5.2 (E-commerce).

...

Annex N

Amendments to the Listing Rules sourcebook (LR)

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

- 12.4.7 R Unless *LR 12.4.8R* applies, a *company* with *listed securities* convertible into, or exchangeable for, or carrying a right to subscribe for *equity shares* of the *class* proposed to be purchased must (prior to entering into any agreement to purchase such *shares*):
- (1) convene a separate meeting of the holders of those *securities*: and
 - (2) obtain their approval for the proposed purchase of *equity shares* by ~~an extraordinary~~ a special resolution.

LR TR 1

[In the following schedule of transitional provisions, row 5 is renumbered 1A and moved to the first part of the schedule. A new row 1B is inserted in the same part. This part is named “General Transitional Provisions”. Amendments are made to the remainder of the schedule as shown.]

LR TR 1 Transitional Provisions: ~~for Sponsors~~ General and Venture Capital Trusts

...

General Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	Amendments to LR set out in Annex B ...	...	...	...	...
5 <u>1A</u>	LR provisions referring to Companies Acts ...	...	...	...	...
<u>1B</u>	<u>LR 12.4.7R(2)</u>	<u>R</u>	<u>A company may obtain the approval required by LR 12.4.7R(2) by extraordinary resolution (rather than a special resolution) if there is a reference to an extraordinary resolution in</u>	<u>From 6 February 2008 until further notice</u>	<u>1 July 2005</u>

			<u>the company's memorandum and articles which requires or permits it and which continues to have effect by virtue of article 9 and paragraph 23 of Schedule 3 of The Companies Act 2006 (Commencement No.3, Consequential Amendments, Transitional Provisions and Savings) Order 2007.</u>		
--	--	--	---	--	--

Transitional provisions for venture capital trusts

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
2
3
4

~~General 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
----------------	---	----------------	---	---	--

Annex O

Amendments to the Prospectus Rules sourcebook (PR)

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

Supplementary prospectus to be submitted as soon as practicable

- 3.4.3 R In the event that a requirement for a supplement is triggered, then as soon as practicable after the new factor, mistake or inaccuracy arises or is noted, a ~~A~~ person referred to in section 87G(2) of the Act must submit a *supplementary prospectus* referred to in that section to the FSA for approval ~~as soon as practicable after the new factor, mistake or inaccuracy arises or is noted.~~

App 3.1.1 EU ...

ANNEX I

Minimum Disclosure Requirements for the Share Registration Document (schedule)

...	
20.1	<p>Historical Financial Information</p> <p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. <u>If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter.</u> Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter. ...</p>
...	

ANNEX IV

Minimum Disclosure Requirements for the Debt and Derivative Securities Registration Document (schedule)

(Debt and derivative securities with a denomination per unit of less than EUR 50,000)

...	
13.1	<p>Historical Financial Information</p> <p>Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. <u>If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter.</u> Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member States national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. ...</p>
...	

ANNEX VII

Minimum Disclosure Requirements for Asset Backed Securities Registration Document (schedule)

...	
8.2	<p>Historical Financial Information</p> <p>Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or shorter period that the issuer has been in operation) and the audit report in respect of each year. <u>If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter.</u> Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member</p>

	<p>State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. ...</p>
8.2 bis	<p>This paragraph may be used only for issues of asset-backed securities having a denomination per unit of at least EUR 50,000.</p> <p>Where, since the date of incorporation or establishment, an issuer has commenced operations and financial statements have been made up, the registration document must contain audited historical financial information covering the latest 2 financial years (or shorter period that the issuer has been in operation) and the audit report in respect of each year. <u>If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter.</u></p> <p>Such financial information must be prepared according to Regulation (EC) No 1606/2002 or, if not applicable, to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. ...</p>
...	

ANNEX IX

Minimum Disclosure Requirements for the Debt and Derivative securities Registration Document (schedule)

(Debt and derivative securities with a denomination per unit of at least EUR 50,000)

...	
11.1	<p>Historical Financial Information</p> <p>Audited historical financial information covering the latest 2 financial years (or shorter period that the issuer has been in operation), and the audit report in respect of each year. <u>If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter.</u> Such financial information must be prepared according to</p>

	Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. ...
...	

ANNEX X

Minimum Disclosure Requirements for the Depository Receipts issued over shares (schedule)

...

...	
20.1	<p>Historical Financial Information</p> <p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. <u>If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter.</u> Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter. ...</p>
20.1 bis	<p>This paragraph may be used only for issues of depository receipts having a denomination per unit of at least EUR 50,000.</p> <p>Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. <u>If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter.</u> Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State's national accounting standards for issuers from the Community. If the issuer has changed its accounting reference</p>

	<p>date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. ...</p>
...	

ANNEX XI

Minimum Disclosure Requirements for the Bank's Registration Document (schedule)

...	
11.1	<p><u>Historical Financial Information</u></p> <p>Audited historical financial information covering the latest 2 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. <u>If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter.</u> Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 24 months, or the entire period for which the issuer has been in operation, whichever is the shorter. ...</p>
...	

Annex P

Amendments to the Perimeter Guidance manual (PERG)

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

- 2.2.3 G ...
- (9) If not, do I benefit from the few provisions of the Act that *authorise* me without a *permission* under Part IV of the Act (see ~~PERG 2.9.10G~~ 2.10.10G (Members of Lloyd's))?
- 8.21.20 G Article ~~71~~ 70 applies to a *non-real time financial promotion* included in:
- (1) *listing particulars*; or
 - (2) *supplementary listing particulars*; or
 - (3) a prospectus or supplementary prospectus approved in line with *Prospectus Rules* or by the competent authority of another EEA State (provided the requirements of section 87H of the Act are met) – including part of such a prospectus or supplementary prospectus; and or
 - (4) any other document required or permitted to be published by *listing rules* or *Prospectus Rules*.

Article 70 also applies to a non-real time financial promotion comprising the final terms of an offer or the final offer price or amount of securities which will be offered to the public and that complies with articles 5(4), 8(1) and 14(2) of the Prospectus Directive.

The comments in *PERG* 8.21.14G about when something is required or permitted to be published apply also to (4).

**REGULATORY REFORM (FINANCIAL SERVICES AND MARKETS ACT 2000)
ORDER 2007 (CONSEQUENTIAL HANDBOOK AMENDMENTS)
INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers in or under the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 Rules);
 - (2) section 88(3) (Sponsors);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 101 (Listing rules: general provisions);
 - (5) section 138 (General rule-making power);
 - (6) section 157(1) (Guidance);
 - (7) section 395 (The Authority's procedures); and
 - (8) paragraphs 1 (General) and 4 (Rules) 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 6 February 2008.

Amendments to the Handbook

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

(1)	(2)
General Provisions (GEN)	Annex A
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C
Credit Unions sourcebook (CRED)	Annex D
Listing Rules sourcebook (LR)	Annex E

Citation

- E. This instrument may be cited as the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (Consequential Handbook Amendments) Instrument 2008

By order of the Board
24 January 2008

Annex A

Amendments to the General Provisions (GEN)

In this Annex, striking through indicates deleted text.

- 2.2.19 G In principle, it is possible to view a change of partners in a partnership, or a change in the membership of the unincorporated association, as the formation of a new partnership or association. *GEN 2.2.18R* reflects section 32 of the *Act* (Partnerships and unincorporated associations), which provides for the continuing *authorisation* of partnerships and unincorporated associations following a change in partners or members if certain conditions are satisfied. ~~In particular, this continuity does not apply if a *limited liability partnership* or individual sole trader succeeds to the business of a dissolved partnership; *authorisation* of the *limited liability partnership* or sole trader would need to be applied for.~~ *GEN 2.2.18R* ensures a similar effect to section 32 in relation to the status of the partnership or unincorporated associations as a '*firm*' or '*authorised person*' for the purposes of the Handbook.

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text. In some cases where text is being deleted, the text deleted is not shown struck through but the word “[deleted]” appears.

- 8.1.1 R This chapter applies to every:
- (1) firm or person who is subject to FSA rules that wishes to apply for, consent to, or has been given a modification of or waiver of the *FSA’s rules*;
 - (2) *person*, as respects a particular *AUT* or *ICVC*, who wishes to apply for, ~~or~~ consent to, or has been given a modification of or waiver of the rules in *COLL* ~~or, as the case may be, CIS~~.
- 8.1.1A G This chapter is relevant to an applicant for a *Part IV permission*, as if that applicant were a *firm*. Where the chapter refers to usual supervisory contact, the applicant should read this as being the usual contact in ~~Corporate Authorisation~~ the Permissions Department. Further, this chapter is relevant to a person who is subject to rules made by the FSA and where the chapter refers to a firm, this includes that person.
- 8.2.1 G Under section 148 of the *Act* (Modification or waiver of rules), the *FSA* may, on the application or with the consent of a *firm*, direct that ~~certain~~ its rules (see ~~SUP 8.2.6G to SUP 8.2.8G~~):
- ...
- 8.2.6 G ~~The rules which the FSA can waive are listed in section 148(1) and 250(1) of the Act and regulation 7 of the OEIC Regulations, and are set out in SUP 8.2.7G.~~ [deleted]
- 8.2.7 G [deleted]
- 8.2.8 G ~~Schedule 6 identifies those rules that can and cannot be waived.~~ [deleted]
- 21.1.1 G *SUP 21 Annex 1* sets out a form of *waiver* that the *FSA* will be minded to give to *energy market participants* in the exercise of its statutory discretion under section 148 of the *Act* to grant a *waiver* of ~~certain~~ its rules.
- SUP Sch 6 Rules that can be waived
[deleted]

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

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

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

Section of the Act	Description	Handbook reference	Decision maker
...
78(10)/(11)(a)	when the <i>FSA</i> has suspended, <u>on its own initiative</u> , the listing of securities <i>securities</i> and is proposing/deciding to refuse an application by an <i>issuer</i> for cancellation of the suspension	<i>LR 5</i>	<i>Executive procedures</i>
<u>78A(4)/(5)</u>	<u>When the <i>FSA</i> is proposing or deciding to refuse an application by the <i>issuer</i> of the <i>securities</i> for the discontinuance or suspension of the listing of the <i>securities</i></u>	<u><i>LR 5</i></u>	<u><i>Executive procedures</i></u>
<u>78A(7)/(8)(a)</u>	<u>When the <i>FSA</i> has suspended the listing of <i>securities</i> on the application of the <i>issuer</i> of the <i>securities</i> and is proposing or deciding to refuse an application by the <i>issuer</i> for the cancellation of the suspension</u>	<u><i>LR 5</i></u>	<u><i>Executive procedures</i></u>
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 <i>sponsor</i>	<i>LR 8</i>	<i>RDC</i>

Annex D

Amendments to the Credit Unions sourcebook (CRED)

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

14.7.3 G The *FSA* may, on the application or with the consent of a *credit union*, direct that ~~certain~~ its rules:

...

14.7.4 G ~~*SUP 8.2.7G* includes a table of the types of *rules* which may be *waived* and *Schedule 6* identifies those *rules* in *CRED* that can be *waived*.~~ [deleted]

Annex E

Amendments to the Listing Rules sourcebook (LR)

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

Decision-making procedures for suspension, cancellation etc

- 5.5.1 G The decision-making procedures that the *FSA* will follow when it cancels, suspends or refuses a request by an *issuer* to *suspend, cancel or restore listing* are set out in *DEPP* (the Decision Procedure and Penalty manual).
- 8.7.22 R A request by a *sponsor* for its approval as a *sponsor* to be cancelled must be in writing and must include:
- ...
- (3) the date on which the *sponsor* requests the cancellation to take effect, ~~after having taken into account *LR* 8.7.24G (2);~~
- ...
- 8.7.24 G (1) ~~The decision-making procedures that the *FSA* will follow when it cancels a *sponsor's* approval at the *sponsor's* request are set out in *DEPP*. [deleted]~~
- (2) ~~Under the statutory notice procedure set out in *DEPP* a request for cancellation of approval will take a minimum of 8 weeks to take effect. [deleted]~~

**GENERAL PRUDENTIAL SOURCEBOOK (CAPITAL RESOURCES
AMENDMENT) INSTRUMENT 2008**

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 25 January 2008.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the General Prudential Sourcebook (Capital Resources Amendment) Instrument 2008.

By order of the Board
24 January 2008

Annex

Amendments to the General Prudential sourcebook (GENPRU)

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

...

2.2.67A G The purpose of *GENPRU 2.2.64R(4)* is to ensure that a *firm* retains flexibility over the payment of *coupons* and can preserve cash in times of financial stress. However, a *firm* may include, as part of the capital instrument terms, a right to make payments of a *coupon* mandatory if an item of capital becomes ineligible to form part of its *capital resources* (e.g. through a change in the relevant *rules*) and the *firm* has notified the *FSA* that the instrument is ineligible.

...

2.2.129 R The *SPV* referred to in *GENPRU 2.2.124R(2)(a)* must fund its subscription for the capital issued by the *firm* by the issue of capital that satisfies the following conditions:

(1) ...

(2) its terms must include an obligation on the *firm*, when the *capital resources* of the *firm* fall below, or are likely to fall below, its *capital resources requirement*, to substitute for the instrument issued by the *SPV* a *tier one instrument* issued by that *firm* that:

(a) is not an *innovative tier one instrument*; or

(b) is an *innovative tier one instrument* provided that:

(i) it is only being classified as such because it is or may become subject to a *step-up*, and

(ii) the terms of the original instrument issued by the *SPV* included a *step-up*;

~~when the *capital resources* of the *firm* fall below, or are likely to fall below, its *capital resources requirement*;~~

...

2.2.131 R In relation to the obligation to substitute described in *GENPRU 2.2.129R(2)*, a *firm* must take all reasonable steps to ensure that it has at all times authorised and unissued *tier one instruments* that are not *innovative tier one instruments* or that are *innovative tier one instruments* only because they are or may become subject to a *step-up* (and the authority to issue them) sufficient to discharge its obligation to substitute.

2.2.131A G GENPRU 2.2.129R(2) and GENPRU 2.2.131R allow a firm to replace the capital issued by the SPV with a tier one instrument that is not an innovative tier one instrument or that is an innovative tier one instrument provided that:

- (1) it is only being classified as such because it is or may become subject to a step-up, and
- (2) the terms of the original instrument issued by the SPV included a step-up.

In all other respects, the innovative tier one instrument issued by the firm must meet the conditions to be an item of tier one capital capable of inclusion in Stage B or higher in the capital resources table.

2.2.134 G The purpose of *GENPRU 2.2.133R* is to deal with a capital-raising under which the capital raised by a special purpose vehicle is passed through a number of *undertakings* before it is invested in the *firm*. If the *capital resources* of the *firm* fall below, or are likely to fall below, its *capital resources requirement* the *firm* should replace the capital issued by that first special purpose vehicle with a *tier one instrument* directly issued by the *firm* itself ~~that is not an innovative tier one instrument~~ which complies with *GENPRU 2.2.129R(2)*.

- 2.2.179 G
- (1) The purpose of *GENPRU 2.2.177R(2)* is to ensure that a *firm* which issues an item of capital with a *coupon* retains flexibility over the payments of such *coupon* and can preserve cash in times of financial stress. However, a *firm* may include, as part of the capital instrument terms, a right to make payments of a *coupon* mandatory if an item of capital becomes ineligible to form part of its *capital resources* (for example, through a change in the relevant *rules*) and the *firm* has notified the *FSA* that the instrument is ineligible.
 - (2) For the purpose of *GENPRU 2.2.177R(2)*, *GENPRU 2.2.68G* (Dividend pushers) applies equally in relation to the inclusion of an instrument in *upper tier two capital resources*.

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND
INVESTMENT FIRMS (LIFETIME MORTGAGES) INSTRUMENT 2008**

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 2008.

Amendments to the Handbook

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Lifetime Mortgages) Instrument 2008.

By order of the Board
28 February 2008

Annex

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

In this Annex, underlining indicates new text.

Exposures secured by mortgages on residential property

...

3.4.56A R (1) A firm must not treat a lifetime mortgage as an exposure fully and completely secured on residential property for the purposes of BIPRU 3.4.56R unless the amount of the exposure is calculated according to the following formula:

$$\text{exposure amount} = \frac{P(1+i)^T}{(1+d)^T}$$

where:

- (a) P is the current outstanding balance on the lifetime mortgage;
- (b) i is the interest rate charged on the lifetime mortgage, which for the purposes of this calculation must not be lower than the discount rate referred to in (c);
- (c) d is the discount rate which is the risk-free rate as represented by the yield on 10-year UK government bonds; and
- (d) T is the projected number of years to maturity of the exposure.

(2) Notwithstanding (1)(c), a firm may calculate an annual average discount rate provided there is no obvious bias in its calculation and it is consistent in its approach.

3.4.56B G (1) This paragraph provides guidance on BIPRU 3.4.56AR.

(2) For the purposes of BIPRU 3.4.56AR(2), a firm may use the FTSE UK gilt 10-year yield index which the Council of Mortgage Lenders makes available to its members.

(3) If a firm offers a variable interest rate on a lifetime mortgage, it should calculate an average interest rate in a way which is consistent with the calculation of the discount rate.

(4) To determine the projected number of years to maturity of the exposure, a firm may use the standard mortality tables published by the Institute of Actuaries or the Faculty of Actuaries. For internal

risk management purposes, the *firm* should use factual data or seek actuarial advice to determine how the information in these tables may be adjusted to take account of regional and other relevant variations.

...

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(UCITS ELIGIBLE ASSETS DIRECTIVE AND OTHER AMENDMENTS)
INSTRUMENT 2008**

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); and
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex B comes into force on 6 March 2008;
 - (2) the remainder of this instrument comes into force on 23 July 2008.

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 (UCITS Eligible Assets Directive and Other Amendments) Instrument 2008.

By order of the Board
28 February 2008

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>approved money-market instrument</i>	(in accordance with <i>COLL</i> 5.2.7FR) a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.
<i>CESR's UCITS eligible assets guidelines</i>	The Committee of European Securities Regulators' guidelines concerning eligible assets for investment by undertakings for collective investment in transferable securities (CESR/07-044). These are available at http://www.fsa.gov.uk/pages/Library/Other_publications/EU/eu_docs/index.shtml
<i>efficient portfolio management</i>	(in <i>COLL</i> and in accordance with article 11 of the <i>UCITS eligible assets Directive</i>) techniques and instruments which relate to <i>transferable securities</i> and <i>approved money-market instruments</i> and which fulfil the following criteria: (a) they are economically appropriate in that they are realised in a cost effective way; (b) they are entered into for one or more of the following specific aims: (i) reduction of risk; (ii) reduction of cost; (iii) generation of additional capital or income for the <i>scheme</i> with a risk level which is consistent with the risk profile of the <i>scheme</i> and the risk diversification rules laid down in <i>COLL</i> .
<i>UCITS eligible assets Directive</i>	Commission Directive 2007/16/EC implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions.

Amend the following definition as shown.

- qualifying money market fund*
- (1) (in *COLL* and *CASS 7*) a *collective investment scheme* authorised under the *UCITS Directive* or which is subject to supervision and, if applicable, authorised by an authority under the national law of an *EEA State*, and which satisfies the following conditions:
- (a) ...
- (b) it must, with a view to achieving that primary investment objective, invest exclusively in high quality money market instruments with a maturity or residual maturity of no more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days. It may also achieve this objective by investing on an ancillary basis in deposits with credit institutions;
- (c) ...
- ...

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Part 1: Changes which come into force on 6 March 2008

COLL TP 1

Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Hand-book provision: coming into force
...					
14	<u>Amendments to <i>COLL</i> made by the Collective Investment Schemes Sourcebook (UCITS Eligible Assets Directive and Other Amendments) Instrument 2008</u>	R	<p>(1) <u>The <i>authorised fund manager</i> of an <i>authorised fund</i> may elect for early compliance with the instrument, in which case <i>COLL</i> applies as if it had been amended by the instrument.</u></p> <p>(2) <u>An election is irrevocable and does not take effect until the <i>authorised fund manager</i> notifies the <i>depository</i> and the <i>FSA</i> in writing of the date it takes effect.</u></p> <p>(3) <u>The <i>authorised fund manager</i> must make a</u></p>	<p><u>From 6 March 2008 until 23 July 2008</u></p> <p><u>From 6 March 2008 until 23 July 2008</u></p> <p><u>From 6 March 2008</u></p>	<p><u>23 July 2008 except for this part of the instrument which comes into force on 6 March 2008</u></p>

record of the election and retain it for a period of six years from the date it takes effect. until 6 years from the date the relevant election took effect

...

Schedule 1

Record keeping requirements

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>COLL</i> Transitional Provision 3	Election or revocation to comply with <i>CIS</i>	Details	At election or revocation	6 years
<u><i>COLL</i> Transitional Provision 14</u>	<u>Election for early compliance with the instrument</u>	<u>Details</u>	<u>At election</u>	<u>6 years</u>

...

Schedule 2

Notification requirements

...

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>COLL</i> Transitional Provision 3	Election or revocation to comply with <i>CIS</i>	Details and the date from which it is to take effect	At election or revocation	Immediate
<u><i>COLL</i> Transitional Provision 14</u>	<u>Election for early compliance with the instrument</u>	<u>Details and the date from which it is to take effect</u>	<u>At election</u>	<u>Immediate</u>

Part 2: Changes which come into force on 23 July 2008

4.2.5 R Table: contents of the prospectus

...

...	
Investment objectives and policy	
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :
	...
	(m) where <i>derivatives</i> transactions may be used in a <i>scheme</i> , a prominent statement as to whether these transactions are for the purposes of <i>efficient portfolio management (including hedging)</i> or meeting the investment objectives or both and...
	...
...	

5.2.2 R Table of application

This table belongs to *COLL 5.2.1R*.

Rule	<i>ICVC</i>	<i>ACD</i>	<i>Manager of an AUT</i>	<i>Depository of an ICVC</i>	<i>Trustee of an AUT</i>
...					
5.2.10R(3)	...	...	...	...	...
<u>5.2.10AR to 5.2.10EG</u>		<u>x</u>	<u>x</u>		
...					
5.2.23R(2) to (4)	x	x	x	x	x
5.2.23R(3)	x	x	x	x	x
...					

5.2.2A G In addition to the parts of *CESR's UCITS eligible assets guidelines* specifically referred to in this section, the *authorised fund manager* of a *UCITS scheme* should have regard to the other parts of those guidelines when applying the *rules* in this section. *CESR's UCITS eligible assets guidelines* are available at http://www.fsa.gov.uk/pages/Library/Other_publications/EU/eu_docs/index.shtml.

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:

- (1) *transferable securities*;
- (2) *approved money-market instruments*;
- (3) *units in collective investment schemes*;
- (4) *derivatives* and forward transactions;
- (5) *deposits*; and
- (6) (for an *ICVC*) movable and immovable property that is necessary for the direct pursuit of the *ICVC's* business;

in accordance with the *rules* in this section.

[Note: articles 19(1) (in conjunction with other *rules* in this section) and (2)(c) of the *UCITS Directive*]

...

Investment in transferable securities

5.2.7A R (1) *A UCITS scheme* may invest in a *transferable security* only to the extent that the *transferable security* fulfils the following criteria:

- (a) the potential loss which the *UCITS scheme* may incur with respect to holding the *transferable security* is limited to the amount paid for it;
- (b) its liquidity does not compromise the ability of the *authorised fund manager* to comply with its obligation to *redeem units* at the request of any qualifying *unitholder* (see *COLL 6.2.16R(3)*);
- (c) reliable valuation is available for it as follows:
 - (i) in the case of a *transferable security* admitted to or dealt in on an *eligible* market, where there are accurate, reliable and regular prices which are either market prices

or prices made available by valuation systems independent from issuers;

(ii) in the case of a transferable security not admitted to or dealt in on an eligible market, where there is a valuation on a periodic basis which is derived from information from the issuer of the transferable security or from competent investment research;

(d) appropriate information is available for it as follows:

(i) in the case of a transferable security admitted to or dealt in on an eligible market, where there is regular, accurate and comprehensive information available to the market on the transferable security or, where relevant, on the portfolio of the transferable security;

(ii) in the case of a transferable security not admitted to or dealt in on an eligible market, where there is regular and accurate information available to the authorised fund manager on the transferable security or, where relevant, on the portfolio of the transferable security;

(e) it is negotiable; and

(f) its risks are adequately captured by the risk management process of the authorised fund manager.

(2) Unless there is information available to the authorised fund manager that would lead to a different determination, a transferable security which is admitted to or dealt in on an eligible market shall be presumed:

(a) not to compromise the ability of the authorised fund manager to comply with its obligation to redeem units at the request of any qualifying unitholder; and

(b) to be negotiable.

[**Note:** article 2(1) of the *UCITS eligible assets Directive*]

5.2.7B **G** Where the authorised fund manager considers that the liquidity or negotiability of a transferable security might compromise the ability of the authorised fund manager to comply with its obligation to redeem units at the request of any qualifying unitholder, it should assess the liquidity risk in accordance with CESR's UCITS eligible assets guidelines with respect to article 2(1) of the UCITS eligible assets Directive.

Closed end funds constituting transferable securities

5.2.7C **R** A unit in a closed end fund shall be taken to be a transferable security for the purposes of investment by a UCITS scheme, provided it fulfils the criteria for

transferable securities set out in COLL 5.2.7AR, and either:

- (1) where the closed end fund is constituted as an investment company or a unit trust:
 - (a) it is subject to corporate governance mechanisms applied to companies; and
 - (b) where another person carries out asset management activity on its behalf, that person is subject to national regulation for the purpose of investor protection; or
- (2) where the closed end fund is constituted under the law of contract:
 - (a) it is subject to corporate governance mechanisms equivalent to those applied to companies; and
 - (b) it is managed by a person who is subject to national regulation for the purpose of investor protection.

[Note: articles 2(2)(a) and (b) of the *UCITS eligible assets Directive*]

- 5.2.7D G (1) An authorised fund manager should not invest the scheme property of a UCITS scheme in units of a closed end fund for the purpose of circumventing the investment limits set down in this section.
- (2) When required to assess whether the corporate governance mechanisms of a closed end fund in contractual form are equivalent to those applied to companies, the authorised fund manager should consider whether the contract on which the closed end fund is based provides its investors with rights to:
- (a) vote on the essential decisions of the closed end fund (including appointment and removal of asset management company, amendment to the contract which set up the closed end fund, modification of investment policy, merger, liquidation); and
 - (b) control the investment policy of the closed end fund through appropriate mechanisms.
- (3) The assets of the closed end fund in contractual form should be separate and distinct from those of the asset manager and the closed end fund should be subject to liquidation rules that adequately protect its investors.

[Note: CESR's *UCITS eligible assets guidelines* with respect to articles 2(2) and 2(2)(b)(ii) of the *UCITS eligible assets Directive*]

Transferable securities linked to other assets

- 5.2.7E R (1) A UCITS scheme may invest in any other investment which shall be taken to be a transferable security for the purposes of investment by a

UCITS scheme provided the investment:

- (a) fulfils the criteria for transferable securities set out in COLL 5.2.7AR; and
 - (b) is backed by or linked to the performance of other assets, which may differ from those in which a UCITS scheme can invest.
- (2) Where an investment in (1) contains an embedded derivative component (see COLL 5.2.19R(3A)), the requirements of this section with respect to derivatives and forwards will apply to that component.

[Note: articles 2(2)(c) and 2(3) of the UCITS eligible assets Directive]

Approved money-market instruments

5.2.7F R An approved money-market instrument is a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.

[Note: article 1(9) of the UCITS Directive]

5.2.7G R A money-market instrument shall be regarded as normally dealt in on the money market if it:

- (1) has a maturity at issuance of up to and including 397 days;
- (2) has a residual maturity of up to and including 397 days;
- (3) undergoes regular yield adjustments in line with money market conditions at least every 397 days; or
- (4) has a risk profile, including credit and interest rate risks, corresponding to that of an instrument which has a maturity as set out in (1) or (2) or is subject to yield adjustments as set out in (3).

[Note: article 3(2) of the UCITS eligible assets Directive]

5.2.7H R (1) A money-market instrument shall be regarded as liquid if it can be sold at limited cost in an adequately short time frame, taking into account the obligation of the authorised fund manager to redeem units at the request of any qualifying unitholder (see COLL 6.2.16R(3)).

(2) A money-market instrument shall be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available:

- (a) enabling the authorised fund manager to calculate a net asset value in accordance with the value at which the instrument

held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and

- (b) based either on market data or on valuation models including systems based on amortised costs.
- (3) A money-market instrument that is normally dealt in on the money market and is admitted to or dealt in on an eligible market shall be presumed to be liquid and have a value which can be accurately determined at any time unless there is information available to the authorised fund manager that would lead to a different determination.

[**Note:** article 4 of the *UCITS eligible assets Directive*]

Guidance on assessing liquidity and quality of money-market instruments

- 5.2.7I G (1) The authorised fund manager should assess the liquidity of a money-market instrument in accordance with CESR's UCITS eligible assets guidelines with respect to article 4(1) of the UCITS eligible assets Directive.
- (2) Where an approved money-market instrument forms part of the scheme property of a qualifying 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*]

UCITS schemes: ~~general~~ Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market

- 5.2.8 R (1) ~~The scheme property of a UCITS scheme must, except where otherwise provided in the rules in this chapter, consist only of any or all of:~~
- (a) ~~transferable securities;~~
 - (b) ~~units in collective investment schemes permitted under COLL 5.2.13 R (Investment in collective investment schemes);~~
 - (c) ~~approved money-market instruments permitted under COLL 5.2.18R (Investment in money market instruments);~~
 - (d) ~~derivatives and forward transactions permitted under COLL 5.2.20R (Permitted transactions (derivatives and forwards));~~
and
 - (e) ~~deposits permitted under COLL 5.2.26R (Investment in~~

deposits). [deleted]

- (2) For an *ICVC* the *scheme property* may also include movable and immovable property that is necessary for the direct pursuit of the *ICVC's* business. [deleted]
- (3) *Transferable securities* and ~~money-market instruments~~ approved money-market instruments held within a *UCITS* scheme must be;
- ..
- (d) for a ~~money-market instrument~~ an approved money-market instrument not admitted to or *dealt in on an eligible market*, within ~~*COLL 5.2.18R(2)*~~ *5.2.10AR(1)*; or
- (e) recently issued transferable securities, provided that:
- (i) the terms of issue include an undertaking that application will be made to be admitted to an eligible market; and
- (ii) such admission is secured within a year of issue.
- (4) ~~Not more than 10% in value of the scheme property of a UCITS scheme is to consist of transferable securities which do not fall within (3) or of money-market instruments, which do not fall within COLL 5.2.18R(2). However, a UCITS scheme may invest no more than 10% of the scheme property in transferable securities and approved money-market instruments other than those referred to in (3).~~

[Note: article 19(1)(a)-(d) and (h) and 2(a) of the UCITS Directive and article 3(1) of the UCITS eligible assets Directive]

...

Money-market instruments with a regulated issuer

- 5.2.10A R (1) (In addition to instruments admitted to or dealt in on an eligible market) a UCITS scheme may invest in an approved money-market instrument provided it fulfils the following requirements:
- (a) the issue or the issuer is regulated for the purpose of protecting investors and savings; and
- (b) the instrument is issued or guaranteed in accordance with COLL 5.2.10BR.

[Note: article 19(1)(h), first to third indents of the UCITS Directive]

- (2) The issue or the issuer of a money-market instrument, other than one dealt in on an eligible market, shall be regarded as regulated for the

purpose of protecting investors and savings if:

- (a) the instrument is an *approved money-market instrument*;
- (b) appropriate information is available for the instrument (including information which allows an appropriate assessment of the credit risks related to investment in it), in accordance with *COLL 5.2.10CR*; and
- (c) the instrument is freely transferable.

[Note: article 5(1) of the *UCITS eligible assets Directive*]

Issuers and guarantors of money-market instruments

- 5.2.10B R (1) *A UCITS scheme may invest in an approved money-market instrument if it is:*
- (a) issued or guaranteed by any 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;
 - (ii) a regional or local authority of an *EEA State*;
 - (iii) the European Central Bank or a central bank of an *EEA State*;
 - (iv) the European Union or the European Investment Bank;
 - (v) a non-*EEA State* or, in the case of a federal state, one of the members making up the federation;
 - (vi) a public international body to which one or more *EEA States* belong; or
 - (b) issued by a body, any *securities* of which are dealt in on an *eligible market*; or
 - (c) issued or guaranteed by an establishment which is:
 - (i) subject to prudential supervision in accordance with criteria defined by Community law; or
 - (ii) subject to and complies with prudential rules considered by the *FSA* to be at least as stringent as those laid down by Community law.
- (2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and

fulfils one or more of the following criteria:

- (a) it is located in the *European Economic Area*;
- (b) it is located in an *OECD* country belonging to the Group of Ten;
- (c) it has at least investment grade rating;
- (d) on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by Community law.

[Note: article 6 of the *UCITS eligible assets Directive*]

Appropriate information for money-market instruments

5.2.10C R (1) In the case of an *approved money-market instrument* within *COLL 5.2.10BR(1)(b)* or issued by a body of the type referred to in *COLL 5.2.10EG*; or which is issued by an authority within *COLL 5.2.10BR(1)(a)(ii)* or a public international body within *COLL 5.2.10BR(1)(a)(vi)* but is not guaranteed by a central authority within *COLL 5.2.10BR (1)(a)(i)*, the following information must be available:

- (a) information on both the issue or the issuance programme, and the legal and financial situation of the issuer prior to the issue of the instrument, verified by appropriately qualified third parties not subject to instructions from the issuer;
- (b) updates of that information on a regular basis and whenever a significant event occurs; and
- (c) available and reliable statistics on the issue or the issuance programme.

(2) In the case of an *approved money-market instrument* issued or guaranteed by an establishment within *COLL 5.2.10BR(1)(c)*, the following information must be available:

- (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the instrument;
- (b) updates of that information on a regular basis and whenever a significant event occurs; and
- (c) available and reliable statistics on the issue or the issuance programme, or other data enabling an appropriate assessment of the credit risks related to investment in those instruments.

- (3) In the case of an *approved money-market instrument*:
- (a) within *COLL 5.2.10BR(1)(a)(i), (iv) or (v)*; or
 - (b) which is issued by an authority within *COLL 5.2.10BR(1)(a)(ii)* or a public international body within *COLL 5.2.10BR(1)(a)(vi)* and is guaranteed by a central authority within *COLL 5.2.10BR(1)(a)(i)*;

information must be available on the issue or the issuance programme, or on the legal and financial situation of the issuer prior to the issue of the instrument.

[Note: articles 5(2), (3) and (4) of the *UCITS eligible assets Directive*]

- 5.2.10D G (1) The appropriately qualified third parties referred to in *COLL 5.2.10CR(1)(a)* should specialise in the verification of legal or financial documentation and be composed of persons meeting professional standards of integrity.
- (2) The regular updates of information referred to in *COLL 5.2.10CR(1)(b)* and (2)(b) should normally occur on at least an annual basis.

[Note: *CESR's UCITS eligible assets guidelines* with respect to articles 5(2)(b) and (c) of the *UCITS eligible assets Directive*]

Other money-market instruments with a regulated issuer

- 5.2.10E G (1) In addition to instruments admitted to or *dealt in on an eligible market*, a *UCITS scheme* may also with the express consent of the *FSA* (which takes the form of a *waiver* under section 148 of the *Act* as applied by section 250 of the *Act* or regulation 7 of the *OEIC Regulations*) invest in an *approved money-market instrument* provided:
- (a) the issue or issuer is itself regulated for the purpose of protecting investors and savings in accordance with *COLL 5.2.10AR(2)*;
 - (b) investment in that instrument is subject to investor protection equivalent to that provided by instruments which satisfy the requirements of *COLL 5.2.10BR(1)(a),(b) or (c)*; and
 - (c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with *Directive 78/660/EEC*, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking

liquidity line.

- (2) A securitisation vehicle is a structure, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.
- (3) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by Community law or an establishment which is subject to and complies with prudential rules considered by the FSA (in accordance with COLL 5.2.10BR(2)) to be at least as stringent as those laid down by Community law.

[Note: article 19(1)(h), fourth indent of the UCITS Directive and article 7 of the UCITS eligible assets Directive]

5.2.11 R ...

- (4) Not more than 5% in value of the *scheme property* is to consist of *transferable securities* or ~~money-market instruments~~ approved money-market instruments issued by any single body.
- (5) The limit of 5% in (4) is raised to 10% in respect of up to 40% in value of the *scheme property*. Covered bonds need not be taken into account for the purpose of applying the limit of 40%.
- (5A) The limit of 5% in (4) is raised to 25% in value of the *scheme property* in respect of *covered bonds*, provided that when a *UCITS scheme* invests more than 5% in *covered bonds* issued by a single body, the total value of *covered bonds* held must not exceed 80% in value of the *scheme property*.

...

- (8) Not more than 20% in value of the *scheme property* is to consist of *transferable securities* and ~~money-market instruments~~ approved money-market instruments issued by the same group (as referred to in (2)).

...

- (10) In applying the limits in (3),(4),(5), (6) and (7), and subject to (5A), not more than 20% in value of the *scheme property* is to consist of any combination of two or more of the following:
- (a) *transferable securities (including covered bonds)* or ~~money-market instruments~~ approved money-market instruments issued by; or
- (b) ...

...

[**Note:** article 22 of the *UCITS Directive*]

...

5.2.12 R ...

- (6) Notwithstanding COLL 5.2.11R(1) and subject to (2) and (3), in applying the 20% limit in COLL 5.2.11R(10) with respect to a single body, government and public securities issued by that body shall be taken into account.

...

Investment in ~~warrants and~~ nil and partly paid securities

5.2.17 R (1) ~~Where a UCITS scheme invests in a warrant, the exposure created by the exercise of the right conferred by that warrant must not exceed the limits in COLL 5.2.11R (Spread: general) and COLL 5.2.12R (Spread: government and public securities). [deleted]~~

- (2) ~~A transferable security or a money market instrument~~ an approved money-market instrument on which any sum is unpaid...

...

Investment in money market instruments

5.2.18 R ~~A UCITS scheme may invest in money market instruments which are normally dealt in on the money market, are liquid and whose value can be accurately determined at any time, provided the money market instrument is:~~

- (1) ~~within COLL 5.2.8R(3) (UCITS schemes: general); or~~
- (2) ~~a money market instrument issued or guaranteed by:~~
- (a) ~~a central, regional or local authority or central bank of an EEA State, the European Central Bank, the European Union or the European Investment Bank, a non EEA State or, in the case of a federal state, by one of the members making up the federation, or by a public international body to which one or more EEA States belong; or~~
- (b) ~~an establishment subject to prudential supervision in accordance with criteria defined by Community law or an establishment which is subject to and complies with prudential rules considered by the FSA to be at least as stringent as those laid down by Community law; or~~
- (3) ~~issued by a body, any securities of which are dealt in on an eligible market. [deleted]~~

Derivatives: general

5.2.19 R ...

(3) Where a *transferable security* or ~~money-market instrument~~ approved money-market instrument embeds a *derivative*, this must be taken into account for the purposes of complying with this section.

(3A) (a) A transferable security or an approved money-market instrument will embed a derivative if it contains a component which fulfils the following criteria:

(i) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security or approved money-market instrument which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index or other variable, and therefore vary in a way similar to a stand-alone derivative;

(ii) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and

(iii) it has a significant impact on the risk profile and pricing of the transferable security or approved money-market instrument.

(b) A transferable security or an approved money-market instrument does not embed a derivative where it contains a component which is contractually transferable independently of the transferable security or the approved money-market instrument. That component shall be deemed to be a separate instrument.

[**Note:** article 10 of the *UCITS eligible assets Directive*]

...

Guidance on transferable securities and money-market instruments embedding derivatives

5.2.19A G (1) Collateralised debt obligations (CDOs) or asset-backed securities using derivatives, with or without an active management, will generally not be considered as embedding a derivative except if:

(a) they are leveraged, i.e. the CDOs or asset-backed securities are not limited recourse vehicles and the investors' loss can be higher than their initial investment; or

- (b) they are not sufficiently diversified.
- (2) Where a transferable security or approved money-market instrument embedding a derivative is structured as an alternative to an OTC derivative, the requirements set out in COLL 5.2.23R with respect to transactions in OTC derivatives will apply. This will be the case for tailor-made hybrid instruments, such as a single tranche CDO structured to meet the specific need of a scheme, which should be considered as embedding a derivative. Such a product offers an alternative to the use of an OTC derivative, for the same purpose of achieving a diversified exposure with a pre-set credit risk level to a portfolio of entities.
- (3) The following list of transferable securities and approved money-market instruments, which is illustrative and non-exhaustive, could be assumed to embed a derivative:
- (a) credit linked notes;
 - (b) transferable securities or approved money-market instruments whose performance is linked to the performance of a bond index;
 - (c) transferable securities or approved money-market instruments whose performance is linked to the performance of a basket of shares, with or without active management;
 - (d) transferable securities or approved money-market instruments with a fully guaranteed nominal value whose performance is linked to the performance of a basket of shares, with or without active management;
 - (e) convertible bonds; and
 - (f) exchangeable bonds.
- (4) Schemes cannot use transferable securities or approved money-market instruments which embed a derivative to circumvent the rules in this section.
- (5) Transferable securities and approved money-market instruments which embed a derivative are subject to the rules applicable to derivatives as required by this section. It is the authorised fund manager's responsibility to check that these requirements are complied with. The nature, frequency and scope of checks performed will depend on the characteristics of the embedded derivatives and on their impact on the scheme, taking into account its stated investment objective and risk profile.

[Note: CESR's UCITS eligible assets guidelines with respect to article 10 of the UCITS eligible assets Directive]

5.2.20 R ...

- (2) The underlying of a transaction in a *derivative* must consist of any one or more of the following to which the *scheme* is *dedicated*:
- (a) *transferable securities* permitted under COLL 5.2.8R(3)(a) to (c) and (e);
 - (b) ~~money-market instruments~~ approved money-market instruments permitted under ~~COLL 5.2.18R~~ 8R(3)(a) to (d) (~~Investment in money-market instruments~~);
 - ...
 - (f) financial indices which satisfy the criteria set out in COLL 5.2.20AR;
 - ...
 - (i) ...

[Note: article 8(1)(a) of the *UCITS eligible assets Directive*]

...

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

...

(7) A derivative includes an instrument which fulfils the following criteria:

- (a) it allows the transfer of the credit risk of the underlying independently from the other risks associated with that underlying;
- (b) it does not result in the delivery or the transfer of assets other than those referred to in COLL 5.2.6AR (UCITS schemes: permitted types of scheme property) including cash;
- (c) in the case of an *OTC derivative*, it complies with the requirements in COLL 5.2.23R (OTC transactions in derivatives);
- (d) its risks are adequately captured by the risk management process of the *authorised fund manager*, and by its internal

control mechanisms in the case of risks of asymmetry of information between the authorised fund manager and the counterparty to the derivative, resulting from potential access of the counterparty to non-public information on persons whose assets are used as the underlying by that derivative.

[**Note:** article 8(2) of the *UCITS eligible assets Directive*]

(8) A UCITS scheme may not undertake transactions in derivatives on commodities.

[**Note:** article 8(5) of the *UCITS eligible assets Directive*]

Financial indices underlying derivatives

- 5.2.20A R (1) The financial indices referred to in COLL 5.2.20R(2)(f) are those which satisfy the following criteria:
- (a) the index is sufficiently diversified;
 - (b) the index represents an adequate benchmark for the market to which it refers; and
 - (c) the index is published in an appropriate manner.
- (2) A financial index is sufficiently diversified if:
- (a) it is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
 - (b) where it is composed of assets in which a UCITS scheme is permitted to invest, its composition is at least diversified in accordance with the requirements with respect to spread and concentration set out in this section; and
 - (c) where it is composed of assets in which a UCITS scheme cannot invest, it is diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.
- (3) A financial index represents an adequate benchmark for the market to which it refers if:
- (a) it measures the performance of a representative group of underlyings in a relevant and appropriate way;
 - (b) it is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers, following criteria which are publicly available; and
 - (c) the underlyings are sufficiently liquid, allowing users to

replicate it if necessary.

- (4) A financial index is published in an appropriate manner if:
- (a) its publication process relies on sound procedures to collect prices, and calculate and subsequently publish the index value, including pricing procedures for components where a market price is not available; and
 - (b) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.
- (5) Where the composition of underlyings of a transaction in a *derivative* does not satisfy the requirements for a financial index, the underlyings for that transaction shall where they satisfy the requirements with respect to other underlyings pursuant to *COLL 5.2.20R(2)*, be regarded as a combination of those underlyings.

[Note: article 9 of the *UCITS eligible assets Directive*]

Guidance on financial indices underlying derivatives

- 5.2.20B G (1) An index based on *derivatives on commodities* or an index on property may be regarded as a financial index of the type referred to in *COLL 5.2.20R(2)(f)* provided it satisfies the criteria for financial indices set out in *COLL 5.2.20AR*.
- (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* and spread set out in *COLL 5.2.11R*.
- (3) (a) In order to avoid undue concentration, where *derivatives on an index* composed of assets in which a *UCITS scheme* cannot invest are used to track or gain high exposure to the index, the index should be at least diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.
- (b) If *derivatives on that index* are used for risk-diversification purposes, provided that the exposure of the *UCITS scheme* to that index complies with the 5%, 10% and 40% ratios required by *COLL 5.2.11R(4)* and (5), there is no need to look at the underlying components of that index to ensure that it is sufficiently diversified.

[Note: *CESR's UCITS eligible assets guidelines* with respect to

article 9 of the UCITS eligible assets Directive]

- (4) When assessing whether a hedge fund index satisfies the requirements for a financial index set out in this section, firms should consider The Committee of European Securities Regulators' guidelines on the classification of hedge fund indices as financial indices (CESR/07-434). Those guidelines are available at http://www.fsa.gov.uk/pages/Library/Other_publications/EU/eu_docs/index.shtml.

...

5.2.23 R A transaction in an *OTC derivative* under COLL 5.2.20R(1)(b) must be:

...

- (2) on approved terms; the terms of the transaction in *derivatives* are approved only if, before the transaction is entered into, the *depository* is satisfied that the counterparty has agreed with the *ICVC* or the *authorised fund manager*:
- (a) to provide, at least daily and at any other time at the request of the *ICVC* or *authorised fund manager*, a reliable and verifiable valuation in respect of that transaction corresponding to its fair value (being the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction) and which does not rely only on market quotations by the counterparty at least daily and at any other time at the request of the *ICVC* or *authorised fund manager*; and
- (b) that it or an alternative counterparty will, at the request of the *ICVC* or *authorised fund manager*, enter into a further transaction to *sell*, liquidate or *close out* that transaction at any time, at a fair value arrived at under the reliable market value basis or pricing model or other reliable basis agreed under (3); ~~and~~
- (3) capable of reliable valuation; a transaction in *derivatives* is capable of reliable valuation only if the *authorised fund manager* having taken reasonable care determines that, throughout the life of the *derivative* (if the transaction is entered into), it will be able to value the *investment* concerned with reasonable accuracy:
- (a) on the basis of ~~the pricing model which has been agreed between the *authorised fund manager* and the *depository*; an up-to-date market value which the *authorised fund manager* and the *depository* have agreed is reliable; or~~
- (b) ~~on some other reliable basis reflecting an up-to-date market value which has been so agreed. if the value referred to in (a)~~

is not available, on the basis of a pricing model which the authorised fund manager and the depositary have agreed uses an adequate recognised methodology; and

- (4) subject to verifiable valuation; a transaction in derivatives is subject to verifiable valuation only if, throughout the life of the derivative (if the transaction is entered into) verification of the valuation is carried out by:
- (a) an appropriate third party which is independent from the counterparty of the derivative, at an adequate frequency and in such a way that the authorised fund manager is able to check it; or
 - (b) a department within the authorised fund manager which is independent from the department in charge of managing the scheme property and which is adequately equipped for such a purpose.

[Note: articles 8(1)(b), 8(3) and 8(4) of the UCITS eligible assets Directive]

Risk management: ~~derivatives~~

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 ~~derivatives and forwards~~ positions and their contribution to the overall risk profile of the scheme.

...

5.2.25 G ...

(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.

[Note: CESR's UCITS eligible assets guidelines with respect to article 8(2)(d) of the UCITS eligible assets Directive]

...

5.2.29 R A UCITS scheme:

...

(4) must not acquire more than 10% of the ~~money-market instruments~~ approved money-market instruments issued by any single body; and

...

...

5.2.31 R (1) Notwithstanding COLL 5.2.11R (Spread: general), Aa UCITS scheme may invest up to 20% in value of the *scheme property* in *shares* and *debentures* which are issued by the same body where the investment policy of that *scheme* as stated in the most recently published *prospectus* is to replicate the composition of a relevant index which satisfies the criteria specified in COLL 5.2.33R (Relevant indices).

(1A) Replication of the composition of a relevant index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments permitted for the purpose of *efficient portfolio management*.

[Note: article 12(1) of the *UCITS eligible assets Directive*]

...

...

Index replication

5.2.32 G (1) Where the 20% limit (see COLL 5.2.31R(1)) is raised (subject to the maximum of 35% permitted by COLL 5.2.31R(2)), the *authorised fund manager* should provide appropriate information in the *simplified prospectus*, in order to explain the *authorised fund manager's* assessment of why this increase is justified by exceptional market conditions.

[Note: *CESR's UCITS eligible assets guidelines* with respect to Article 12(2) of the *UCITS eligible assets Directive*]

(2) In the case of a *UCITS scheme* replicating an index under COLL 5.2.31R (Schemes replicating an index) the *scheme property* need not consist of the exact composition and weighting of the underlying in the relevant index ~~where deviation from this is expedient for reasons of poor liquidity or excessive cost to the *scheme* in trading in an underlying investment~~ in cases where the *scheme's* investment objective is to achieve a result consistent with the replication of an index rather than an exact replication.

Relevant indices

5.2.33 R (1) The indices referred to in COLL 5.2.31R are those which satisfy the following criteria:

~~(1)~~(a) the composition is sufficiently diversified;

~~(2)~~(b) the index ~~is a representative~~ represents an adequate benchmark for the market to which it refers; and

~~(3)~~(c) the index is published in an appropriate manner.

- (2) The composition of an index is sufficiently diversified if its components adhere to the spread and concentration requirements in this section.
- (3) An index represents an adequate benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) An index is published in an appropriate manner if:
 - (a) it is accessible to the public;
 - (b) the index provider is independent from the index-replicating UCITS scheme; this does not preclude index providers and the UCITS scheme from forming part of the same group, provided that effective arrangements for the management of conflicts of interest are in place.

[**Note:** articles 12(2),(3) and (4) of the *UCITS eligible assets Directive*]

...

- 5.4.2 G (1) This section covers techniques relating to transferable securities and approved money-market instruments which are used for the purpose of efficient portfolio management. It permits the generation ...

...

- 5.4.9 G Where a scheme generates leverage through the reinvestment of collateral, this should be taken into account in the calculation of the scheme's global exposure.

[**Note:** *CESR's UCITS eligible assets guidelines* with respect to article 11 of the *UCITS eligible assets Directive* (part)]

...

- 5.6.5 R *Transferable securities* and money-market instruments held within a *non-UCITS retail scheme* must:
- (1) (a) be admitted to or *dealt* in on an *eligible* market within *COLL 5.2.10R* (Eligible markets: requirements); or
 - (b) be recently issued *transferable securities* which satisfy the requirements for investment by a UCITS scheme set out in *COLL 5.2.8R(3)(e)*; or
 - (c) be approved money-market instruments not admitted to or dealt in on an eligible market which satisfy the requirements for investment by a UCITS scheme set out in *COLL 5.2.10AR(1)*; or

- (2) subject to a limit of 20% in value of the *scheme property* be:
 - (a) *transferable securities* which are not ~~approved securities~~ within (1); or
 - (b) ...

...

5.6.7 R ...

- (3A) The limit of 10% in (3) is raised to 25% in value of the *scheme property* in respect of *covered bonds*.

...

Investment in ~~warrants and~~ nil and partly paid securities

5.6.9 R A *non-UCITS retail scheme* must not invest in ~~warrants, and~~ nil and partly paid *securities* unless the investment complies with the conditions in *COLL 5.2.17R* (Investment in ~~warrants and~~ nil and partly paid securities).

...

- 5.6.13 R (1) A transaction in a *derivative* must be within *COLL 5.2.20R(1)* (Permitted transactions (derivatives and forwards)) and:
- (a) the underlying must be within *COLL 5.6.4R(5)* (Investment powers: general) or *COLL 5.2.20R(2)(f)* to (i); and
 - (b) the exposure to the underlying must not exceed the limits in *COLL 5.6.7R* (Spread: general) ~~and~~ *COLL 5.6.8R* (Spread: government and public securities) and *COLL 5.6.5R(2)*.

...

Risk management: ~~derivatives and forwards~~

5.6.16 R An *authorised fund manager* must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk associated with a *non-UCITS retail scheme's derivatives and forwards* positions and their contribution to the overall risk profile of the *scheme*.

Risk management process

5.6.17 G ...

- (5) The risk management process should enable the analysis required by *COLL 5.6.16R* (Risk management: ~~derivatives and forwards~~) ...

...

- 5.6.23A G (1) Replication of the composition of an index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments for the purpose of *efficient portfolio management*.
- (2) The composition of an index is sufficiently diversified if its components adhere to the spread requirements in this section.
- (3) An index is a representative benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.
- (4) An index is published in an appropriate manner if:
- (a) it is accessible to the public;
- (b) the index provider is independent from the index-replicating *scheme*; this does not preclude index providers and the *scheme* from forming part of the same *group*, provided that effective arrangements for the management of conflicts of interest are in place.

...

6.3.6 G ...

Valuation and pricing		
1	...	
	(2)	...
	(2A)	<i>Schemes investing in money marked instruments <u>approved money-market instruments</u> should value such instruments on an amortised cost basis on condition that the scheme is a qualifying money market fund;</i>
		(a) <u>the <i>approved money-market instrument</i> has a residual maturity of less than three months and has no specific sensitivity to market parameters, including credit risk;</u> or
		(b) <u>the <i>scheme</i> is a <i>qualifying money market fund</i>.</u>
[Note: CESR's UCITS eligible assets guidelines with respect to article 4(2) of the UCITS eligible assets Directive]		
	...	
2	The pricing controls of the authorised fund manager	

		...
	(2)	The controls referred to in (1) should ensure that:
		...
	(i)	... ; and
	(j)	... ; <u>and</u>
	(k)	<u>the valuation of OTC derivatives is accurate and up to date and in compliance with the methods agreed with the depositary.</u>
		...
3		The depositary's review of the authorised fund manager's systems and controls
	(1)	... These checks also apply where an <i>authorised fund manager</i> has delegated all or some of its <i>pricing</i> functions to a third party <u>one or more third parties</u> .
		...
	(5)	... (and in particular the prices of <i>OTC derivatives</i> , unapproved <i>securities</i> and...
		...
...		

...

- 6.6.15 R (1) ...
- (2) The *authorised fund manager* of a *scheme* and the *directors* of an *ICVC* have the power to retain the services of anyone to assist 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) ...
- (ii) ...
- (iii) ~~any other person who is not both:~~
- (A) ~~authorised or registered for the *managing of investments*; and~~

~~(B) subject to prudential supervision; unless there is an agreement in place between the FSA and the overseas regulator of the delegate ensuring adequate co-operation;~~

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;

...

...

6.6.16 G ...

(3) For the purpose of COLL 6.6.15R(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) of the UCITS Directive with the relevant overseas regulator.

**CONDUCT OF BUSINESS SOURCEBOOK (RECORDING OF TELEPHONE
CONVERSATIONS AND ELECTRONIC COMMUNICATIONS)
INSTRUMENT 2008**

Powers exercised

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

Commencement

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

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 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 (Recording of Telephone Conversations and Electronic Communications) Instrument 2008.

By order of the Board
28 February 2008

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.

8 Outsourcing

8.1 General outsourcing requirements

...

8.1.5 R Without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:

- (1) ...
- (2) the purchase of standardised services, including market information services and the provision of price feeds;

[Note: article 13(2) of the *MiFID implementing Directive*]

- (3) the recording and retention of relevant telephone conversations or electronic communications subject to COBS 11.8.

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.

Insert the following new section after COBS 11.7. The text is all new and is not underlined.

11.8 Recording telephone conversations and electronic communications

Application - Who?

- 11.8.1 R This section applies to a *firm*:
- (1) which carries out any of the following activities:
 - (a) receiving *client* orders;
 - (b) executing *client* orders;
 - (c) arranging for *client* orders to be executed;
 - (d) carrying out transactions on behalf of the *firm*, or another person in the *firm's* group, and which are part of the *firm's* trading activities or the trading activities of another person in the *firm's* group;
 - (e) executing orders that result from decisions by the *firm* to deal on behalf of its *client*;
 - (f) placing orders with other entities for execution that result from decisions by the *firm* to deal on behalf of its *client*;
 - (2) to the extent that the activities referred to in (1) relate to:
 - (a) *qualifying investments* admitted to trading on a *prescribed market*;
 - (b) *qualifying investments* in respect of which a request for admission to trading on such a market has been made;
 - (c) investments which are *related investments* in relation to such *qualifying investments*.
- 11.8.2 R This section does not apply to the carrying on of the following activities:
- (1) activities carried on between operators, or between operators and depositories, of the same *collective investment scheme* (when acting in that capacity);

- (2) *corporate finance business*;
- (3) corporate treasury functions.

11.8.3 R This section does not apply to the following *firms* or *persons*:

- (1) a *service company*;
- (2) a *non-directive friendly society*;
- (3) a *non-directive insurer*;
- (4) a *UCITS qualifier*.

Application - Where?

11.8.4 R This section applies only with respect to a *firm's* activities carried on from an establishment maintained by the *firm* in the *United Kingdom*.

Recording telephone conversations, etc

11.8.5 R A *firm* must take reasonable steps to record relevant telephone conversations, and keep a copy of relevant electronic communications, made with, sent from or received on equipment:

- (1) provided by the *firm* to an employee or contractor; or
- (2) the use of which by an employee or contractor has been sanctioned or permitted by the *firm*;

to enable that employee or contractor to carry out any of the activities referred to in *COBS* 11.8.1R.

11.8.6 R The obligation in *COBS* 11.8.5R does not apply to:

- (1) telephone conversations and electronic communications (except emails) made with, sent from or received on a mobile telephone or other mobile handheld electronic communication device; or
- (2) a *discretionary investment manager*, in respect of telephone conversations or electronic communications made with, sent to or received from a *firm* which the *discretionary investment manager* reasonably believes is subject to the recording obligation in *COBS* 11.8.5R in respect of that conversation or communication; or
- (3) a *discretionary investment manager*, in respect of telephone conversations or electronic communications made with, sent to or received from a *person* who is not subject to the recording obligation in *COBS* 11.8.5R, provided that such telephone conversations or electronic communications are made with, sent to or received from such *persons* on an infrequent basis, and represent a small proportion of the total telephone conversations and electronic communications

made, sent or received by the *discretionary investment manager* to which *COBS* 11.8.5R apply.

- 11.8.7 G Electronic communications includes communications made by way of facsimile, email and instant messaging devices.
- 11.8.8 R For the purposes of *COBS* 11.8.5R, a relevant conversation or communication is any one of the following:
- (1) a conversation or communication between an employee or contractor of the *firm* with a *client*, or when acting on behalf of a *client*, with another *person*, which concludes an agreement by the *firm* to carry out the activities referred to in *COBS* 11.8.1R as principal or as agent;
 - (2) a conversation or communication between an employee or contractor of the *firm* with a *professional client* or an *eligible counterparty*, or when acting on behalf of a *professional client* or an *eligible counterparty*, with another *person*, which is carried on with a view to the conclusion of an agreement referred to in (1) above, and whether or not it is part of the same conversation or communication as in (1).
- 11.8.9 G (1) *COBS* 11.8.8R(2) includes conversations and communications relating to specific transactions which are intended to lead to the conclusion of an agreement by the *firm* to deal with or on behalf of the *client* as principal or agent, even if those conversations or communications do not lead to the conclusion of such an agreement. It does not include conversations or communications which are not intended to lead to the conclusion of such an agreement, such as general conversations or communications about market conditions.
- (2) The *FSA* would not usually expect the obligation in *COBS* 11.8.5R to include conversations or communications made by investment analysts, retail financial advisers, and persons carrying on back office functions, as such persons will not normally make relevant conversations or communications when acting in those capacities.

Retention of records

- 11.8.10 R A *firm* must take reasonable steps to retain all records made by it under *COBS* 11.8.5R:
- (1) for a period of at least 6 *months* from the date the record was created;
 - (2) in a medium that allows the storage of the information in a way accessible for future reference by the *FSA*, and so that the following conditions are met:
 - (a) the *FSA* must be able to access the records readily;
 - (b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and

amendments, to be easily ascertained;

- (c) it must not be possible for the records to be otherwise manipulated or altered.

Amend the following, as shown.

18.2 Energy market and oil market activity

...

Energy market activity and oil market activity – non-MiFID business

18.2.3 R

...

COBS	Description
...	...
5.2	E-commerce
<u>11.8</u>	<u>Recording telephone conversations and electronic communications</u>
...	...

...

18.3 Corporate finance business

18.3.1 R Corporate finance business - MiFID business

...

COBS	Description
...	...
11.6	Use of dealing commission
<u>11.8</u>	<u>Recording telephone conversations and electronic communications</u>
...	...

...

18.5 Operators of collective investment schemes

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
...		
11.6	Use of dealing commission	
<u>11.8</u>	<u>Recording telephone conversations and electronic communications</u>	
...		

Sch 1 Record keeping requirements

...

COBS Sch 1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>COBS</i> 11.7.4.R	...	...	...	...
<u><i>COBS</i> 11.8.5R</u>	<u>Telephone conversations and electronic communications subject to the taping obligation (see <i>COBS</i> 11.8.5R)</u>	<u>Telephone conversations and electronic communications recorded under <i>COBS</i> 11.8.5R</u>	<u>When the conversation or electronic communication is made, sent or received</u>	<u>6 months</u>

<i>COBS</i> 12.4.6R	...	...	...	...
...				

REGULATED COVERED BONDS SOURCEBOOK INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) section 138 (General rule-making power) of the Financial Services and Markets Act 2000 (“the Act”); and
 - (2) the following powers and related provisions in the Regulated Covered Bond Regulations 2008 (“the Regulations”):
 - (a) Regulation 8 (Applications for registration);
 - (b) Regulation 9 (Applications for admission to the register of issuers);
 - (c) Regulation 42 (Guidance);
 - (d) Regulations 18, 20, 24 and 25 (notification requirements);
 - (e) Regulation 36 (financial penalties policy statement); and
 - (f) Regulation 46 and paragraph 5 of Schedule 1 (fees).
- B. The rule-making power listed in A(1) is specified for the purpose of section 153(2) of the Act.

Commencement

- C. This instrument comes into force on 6 March 2008.

Amendments to the Handbook

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

Making the Regulated Covered Bonds sourcebook (RCB)

- E. The Financial Services Authority makes the rules, gives the guidance and makes the directions in Annex B to this instrument.

Citation

- F. This instrument may be cited as the Regulated Covered Bonds Sourcebook Instrument 2008.
- G. The sourcebook in Annex B to this instrument (including its Schedules) may be cited as the Regulated Covered Bonds sourcebook (or RCB).

By order of the Board
6 March 2008

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>asset</i>	(in <i>RCB</i>) (as defined in Regulation 1(2) of the <i>RCB Regulations</i>) any property, right, entitlement or interest.
<i>asset pool</i>	(in <i>RCB</i>) (as defined in Regulation 1(2) of the <i>RCB Regulations</i>) an asset pool within the meaning of Regulation 3 of the <i>RCB Regulations</i> .
<i>over collateralisation</i>	(in <i>RCB</i>) (as defined in Regulation 3(3) of the <i>RCB Regulations</i>) the provision of additional <i>assets</i> that assist the payment from the <i>relevant asset pool</i> of claims attaching to a <i>regulated covered bond</i> in the event of the failure of the <i>issuer</i> .
<i>owner</i>	(in <i>RCB</i>) (as defined in Regulation 4 of the <i>RCB Regulations</i>) an owner which owns an <i>asset pool</i> and issues a guarantee to pay from that <i>asset pool</i> claims attaching to a <i>regulated covered bond</i> in the event of a failure of the <i>issuer</i> of that bond.
<i>programme</i>	(in <i>RCB</i>) (as defined in Regulation 1(2) of the <i>RCB Regulations</i>) issues, or series of issues, of <i>covered bonds</i> which have substantially similar terms and are subject to a framework contract or contracts.
<i>RCB</i>	the Regulated Covered Bond sourcebook.
<i>RCB Regulations</i>	the Regulated Covered Bonds Regulations 2008 (SI 2008/346).
<i>regulated covered bond</i>	(in <i>RCB</i>) (as defined in Regulation 1(2) of the <i>RCB Regulations</i>) a <i>covered bond</i> or <i>programme</i> of <i>covered bonds</i> , as the case may be, which is admitted to the register of <i>regulated covered bonds</i> maintained under Regulation 7(1)(b) of the <i>RCB Regulations</i> .
<i>registration date</i>	(in <i>RCB</i>) the date of the <i>FSA's</i> decision to register a <i>regulated covered bond</i> .

relevant asset pool (in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) in relation to a *regulated covered bond* the *asset pool* from which the claims attaching to that bond are guaranteed to be paid by the *owner* of that pool in the event of the failure of the *issuer*.

Amend the following definitions as shown.

covered bond (1) ...
(2) ...
(3) (in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) 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.

issuer (1) ...
(2) ...
(3) ...
(4) ...
(5) (in *RCB*) (as defined in Regulation 1(2) of the *RCB Regulations*) a person which issues a *covered bond*.

Annex B

Regulated Covered Bond sourcebook (RCB)

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

1 Introduction

1.1 Introduction to sourcebook

Application

- 1.1.1 G This sourcebook applies to *issuers* and *owners* in relation to *regulated covered bonds*.

Purpose

- 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) of the *UCITS Directive*.

- 1.1.3 G This sourcebook should be read together with the *RCB Regulations*.

Other relevant provisions

- 1.1.4 G This section refers to some of the other parts of the *FSA's Handbook* which may be relevant to *regulated covered bonds*.
- 1.1.5 G Investors in *regulated covered bonds* may be able to take advantage of different regulatory treatments depending on what type of investor they are.
- 1.1.6 G *BIPRU firms* which have *exposures* to *covered bonds* which meet the requirements set out in *BIPRU 3.4.106R* to *BIPRU 3.4.109R* may benefit from reduced *risk weights* as set out in *BIPRU 3.4.110R*.
- 1.1.7 G An *insurer* (which is not a *non-directive friendly society*, *incoming EEA firm* or an *incoming Treaty firm*) may benefit from increased counterparty limits under *INSPRU 2.1.22R(3)(b)*.
- 1.1.8 G *UCITS schemes* and *non-UCITS retail schemes* may benefit from less onerous spread requirements and increased investment limits under *COLL 5.2.11R* and *COLL 5.6.7R*.
- 1.1.9 G (1) *Issuers* which are subject to an obligation to publish a prospectus under the *Prospectus Directive* are required by Article 3 of the *PD Regulation* to disclose risk factors. These requirements are

set out in *PR 2.3.1EU* and *PR App 3.1.1EU*.

- (2) In complying with these obligations, *issuers* should consider disclosing the risk that actions by a regulatory authority in relation to the *issuer* may adversely affect the ability of the *issuer* to meet its obligations to investors or the ability of the *owner* to meet its guarantee obligations to investors. An example of such action may include restricting the *issuer's* ability to transfer further *assets* to the *asset pool*.

2 Applications for registration

2.1 Application and purpose of chapter

Application

- 2.1.1 G This chapter applies to *issuers*.

Purpose

- 2.1.2 G This chapter sets out the requirements that an *issuer* must follow to apply for registration as a *regulated covered bond issuer* and for registration of a *regulated covered bond* under Regulations 8(a) and 8(b) of the *RCB Regulations* (applications to the *FSA* for registration).

2.2 Applying for registration

Form, manner and verification of application

- 2.2.1 D The *issuer* must apply for registration using the form at *RCB 2 Ann1D* (application for registration).
- 2.2.2 G *RCB 3.6.5D* sets out the methods the *issuer* may use to send the form to the *FSA*.
- 2.2.3 D Until the application has been determined by the *FSA*, the issuer must inform the *FSA* of any significant change to the information given in the application immediately it becomes aware of that change.
- 2.2.4 G The form and content of the application documentation is a matter for direction by the *FSA*, which will determine what additional information and documentation may be required on a case-by-case basis.
- 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*).

- 2.2.6 D The *issuer* must ensure that 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:
- (1) the information provided in the application is correct and complete; and
 - (2) the arrangements relating to the *covered bond* or *programme* will comply with the requirements in the *RCB Regulations* and in *RCB*.
- 2.2.7 G The *FSA* expects the *issuer* to be able to justify any reliance it places on advice or reports which are not reasonably contemporaneous with the confirmation the *senior manager* gives in relation to compliance with the requirements of the *RCB Regulations* and *RCB*.
- 2.2.8 D The *issuer* must ensure that the *senior manager*, who verifies the application for registration under this section, gives their consent to the *FSA* displaying their confirmation of compliance with the relevant requirements on the *FSA's* website.

2.3 Determination of registration

- 2.3.1 G To enable the *FSA* to be satisfied that the *issuer* and the proposed owner will comply with requirements imposed on the *issuer* or *owner*, as the case may be, by or under the *RCB Regulations*, the applicant should use the application form to provide relevant details of the proposed *covered bond* or *programme* and demonstrate how each of the requirements will be complied with.
- 2.3.2 G
- (1) The *FSA's* application form covers both *issuer* registration and *covered bond* registration as the *FSA* will not normally consider applications for *issuer* registration in isolation from the application for registration of the *covered bond*.
 - (2) An *issuer* which has been admitted to the register of *issuers* should use the same form to apply for registration of subsequent *covered bonds* or *programmes*.
 - (3) The *issuer* does not need to apply for registration of individual issuances from a *programme* which has already been registered, but does need to notify the *FSA* of the issuance under *RCB 3.4.1D*.
- 2.3.3 G In relation to registration of an *issuer* of *regulated covered bonds*, the *FSA* will need to be satisfied that the *issuer's* compliance with the requirements of the *regulatory system* has been adequate and does not give rise to any material cause for concern over the *issuer's* ability to issue *regulated*

covered bonds in compliance with the *RCB Regulations*.

- 2.3.4 G To demonstrate that the *issuer* and the proposed owner will comply with Regulation 17, and Regulations 23 and 24 of the *RCB Regulations* (capability of the *asset pool* to cover claims), the *issuer* should set out what it considers to be the risks of the regulation not being complied with and show how those risks have been adequately mitigated by reference to the tests and provisions set out in the *covered bond* or *programme* documentation.

Asset pool of sufficient quality

- 2.3.5 G Regulations 17(2)(d) (requirements on *issuer* relating to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) require the *issuer* of a *regulated covered bond* and the *owner* of the *relevant asset pool* to make arrangements so that the *asset pool* is of sufficient quality to give investors confidence that in the event of the failure of the *issuer* there will be a low risk of default in the timely payment by the *owner* of claims attaching to a *regulated covered bond*.

- 2.3.6 G The *FSA* will:
- (1) expect the *issuer* to demonstrate that it has in place appropriate systems, controls, procedures and policies, including in relation to risk management, underwriting, arrears and valuation;
 - (2) expect the *issuer* to demonstrate that the cash-flows generated by the *assets* would be sufficient to meet the payments due in a timely manner including under conditions of economic stress and in the event of the failure of the *issuer*;
 - (3) take account of any *over-collateralisation* used to mitigate these risks to achieve the desired outcome so that, for example, potential credit losses and mismatches are offset; and
 - (4) not only consider the probability of default in timely payment of claims, but also the loss in the event of a default. This will include consideration of recovery assumptions, timing and costs.

- 2.3.7 G The risk factors which the *FSA* will take into account in assessing the *issuer's* and *owner's* compliance with Regulations 17(2)(d) (general requirements on *issuer* in relation to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) will include credit risk of the *assets*, concentration risk, market risk and counterparty risk.

Credit risk

- 2.3.8 G (1) The credit risk of an *asset* is the risk of loss if another party fails to perform its obligations or fails to perform them in a timely fashion.
- (2) Where, for example, the *asset pool* includes residential mortgages

the relevant factors which the *FSA* may consider include:

- (a) whether the *asset pool* contains (or could contain) loans made to individuals who have been made bankrupt or have had court judgments made against them;
 - (b) the extent to which the *asset pool* contains (or could contain) loans made to individuals whose earnings have been self-certified rather than independently verified;
 - (c) whether the *asset pool* contains (or could contain) loans which have a higher credit risk in terms of individuals' willingness or ability to pay (for example, because they have high loan-to-value ratios, low debt service ratios or high income multipliers);
 - (d) the quantity and duration of mortgages which are in arrears;
 - (e) the length of time the loan has been in place; and
 - (f) the purpose and terms of the mortgage (for example, owner occupied, buy-to-let, interest only, repayment, fixed rate, variable rate or endowment).
- (3) Where, for example, the *asset pool* includes commercial mortgages, the relevant factors the *FSA* may consider in addition to any of the relevant residential mortgage factors described above, include:
- (a) the type of property to which the mortgage relates (for example whether it is office, retail, industrial);
 - (b) the terms of the loans (including size, interest rate, maturity, options, representations and warranties); and
 - (c) occupation levels, rental income and terms of rental agreements of the property secured.

Concentration risk

- 2.3.9 G Concentration risk is the risk of loss from exposures being limited in number or variety. The relevant factors the *FSA* may consider include:
- (1) the level of granularity of the *asset pool* (i.e. what is the number and size distribution of *assets* in the pool);
 - (2) whether the borrowers or collateral is unduly concentrated in a particular industry, sector, or geographical region.

Market risk

- 2.3.10 G Market risk is the risk that arises from fluctuations in the values of, or income from, *assets* or in interest or exchange rates. The relevant factors the *FSA* may consider include whether the hedging agreements (defined in Regulation 1(2) of the *RCB Regulations* as agreements entered into or *assets* held as protection against possible financial loss) adequately protect against any adverse mismatched cash-flows due to changes in market variables.

Counterparty risk

- 2.3.11 G Counterparty risk is the risk that the counterparty to a transaction could default before the final settlement of the transactions cash flows. The relevant factors the *FSA* may consider include whether the:
- (1) counterparty has an appropriate credit rating;
 - (2) counterparty can unilaterally terminate the hedging agreement, and if so under what circumstances;
 - (3) contractual arrangements contain appropriate termination procedures (for example, what provisions apply in the event of default or in respect of the calculation of termination payments); and
 - (4) contractual arrangements provide adequately for what is to happen in the event of *issuer* default.

Assessment of risk factors

- 2.3.12 G (1) The *FSA* will assess each risk factor separately and then assess any inter-dependencies and correlations to form a judgment on the quality of the *asset pool* as a whole. For example, an *asset pool* which is of high credit quality and so low risk due to a combination of factors such as owner occupation, low income multiples, full valuation methodologies, and a strong payments track record, may permit another factor such as high loan-to-value ratios, that would otherwise be considered as inconsistent with high quality, to be included.
- (2) The more that an *asset pool* consists of loans involving risks such as high loan-to-value ratios, self-certification, borrowers with poor credit profiles, and low borrower affordability, the less likely it is, without other mitigating factors, to be of sufficiently high quality to meet the requirements in Regulations 17(2)(d) (general requirements on *issuer* in relation to the *asset pool*) and 23(2) (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations*.

Covered bonds collateralised by real estate

- 2.3.13 G In assessing whether the *asset pool* is of sufficient quality, the *FSA* will have regard to the requirements about legal certainty referred to in *BIPRU* 3.4.64R, the requirements about monitoring of property values in *BIPRU* 3.4.66R and the valuation rules in *BIPRU* 3.4.77R to *BIPRU* 3.4.80R.

Rectifying non-compliance

- 2.3.14 G The *FSA* expects the *issuer* to demonstrate that there are provisions in the *covered bond* or *programme* that adequately deal with:
- (1) the identification and rectification of any breach of Regulations 17(2) (general requirements on *issuer* in relation to the *asset pool*) and 24 (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations*;
 - (2) the appointment of replacements for parties, for example servicers, cash managers or paying agents; and
 - (3) the orderly winding-up of the *asset pool* in the event that breaches of Regulations 17(2) and 24 are not rectified in a timely way.

Representation of bond investors' views and interests

- 2.3.15 G The *FSA* expects the *issuer* to demonstrate, as part of showing that Regulations 17 (general requirements on *issuer* in relation to the *asset pool*) and 24 (requirements on *owner* relating to the *asset pool*) of the *RCB Regulations* will be complied with, that there are provisions in the *covered bond* or *programme* which enable the views and interests of investors in the *regulated covered bond* to be taken account of in an appropriate and timely way by a suitably qualified, adequately resourced, third party who acts independently, such as a bond trustee.

Third party advice and reports

- 2.3.16 D The *issuer* must obtain written advice and reports regarding the compliance of the *issuer* and the relevant *covered bond* or *programme* with the requirements in the *RCB Regulations* and *RCB* from suitable independent third party advisers, such as lawyers and accountants, before making an application.

Legal advice

- 2.3.17 G (1) The *FSA* expects legal advice to deal adequately with at least the following matters in relation to the actual or proposed arrangements:
- (a) whether the transfer of the *assets* to the owner would be upheld in the event of liquidation or administration, or similar collective insolvency proceedings, of the *issuer* or the transferor (if different from the *issuer*);
 - (b) the risk of the transfer of an *asset* to the owner being re-characterised as the creation of a security interest;
 - (c) the risk of an *asset* transferred to the owner being clawed back under insolvency law provisions (such as rules against preferences, or transactions at an undervalue);

- (d) whether the contractual arrangements limit eligible property to the items listed in Regulation 2(1) of the *RCB Regulations* (meaning of eligible property);
- (e) whether the contractual arrangements limit the situation of eligible property to locations permitted under Regulation 2(2) of the *RCB Regulations* (situation of eligible property);
- (f) whether the contractual arrangements limit the asset pool to items listed in Regulation 3 of the *RCB Regulations* (composition of asset pool);
- (g) if security is granted over the *asset pool* by the *owner*, the enforceability of that security and any relevant legal limitations;
- (h) whether the *owner* meets the requirements set out in Regulation 4 of the *RCB Regulations* (meaning of owner);
- (i) whether the *owner* is a company or limited liability partnership which has its registered office in the *United Kingdom* and whether the contractual arrangements support an analysis that the owner's "centre of main interests" (defined in Regulation 1(2) of the *RCB Regulations* as having the same meaning as in Article 3(1) of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings) is also situated in the *United Kingdom*;
- (j) whether the contractual arrangements are consistent with the obligation of the *issuer* to lend sums derived from the issue of a *regulated covered bond* to the *owner* of the *relevant asset pool* under Regulation 16 of the *RCB Regulations* (sums derived from the issue of *regulated covered bonds*);
- (k) whether the contractual arrangements provide that if the *owner* is wound up, the *asset pool* will be used to reimburse the claims of investors in *regulated covered bonds* under the priority set out in Regulation 27 of the *RCB Regulations* (priority in a winding-up of an *owner*);
- (l) whether the contractual arrangements provide for the appointment of a person who will enable the views and interests of investors in the *regulated covered bond* to be taken account of in an appropriate and timely way as explained in *RCB 2.3.15G*;
- (m) whether the contractual arrangements provide for the identification and rectification of breaches of Regulation 17 of the *RCB Regulations* (general requirements on *issuer* relating to the *asset pool*) and Regulations 23 and 24 of the *RCB Regulations* (requirements relating to the *asset pool*).

and the orderly winding-up of the *asset pool* in the event that the breaches cannot be rectified; and

- (n) the enforceability of the contractual arrangements.
- (2) Where *assets* are situated outside England and Wales, the *FSA* expects the *issuer* to obtain advice on whether the law of those jurisdictions impacts on the enforceability of security and the availability of those *assets*. Relevant issues to consider may include true sale, perfection of security, priority and recognition of insolvency proceedings, and foreclosure rights.

Accountancy reports

- 2.3.18 G (1) The *FSA* expects the report from the accountants to address at least the following matters:
- (a) that the level of *over collateralisation* meets the limits set out in the *covered bond* arrangements which are designed to ensure compliance with the requirement that the *asset pool* is capable of covering claims attaching to the bond in Regulation 17 (requirements on *issuer* in relation to the *asset pool*) of the *RCB Regulations*; and
 - (b) that appropriate due diligence procedures have been carried out to check whether:
 - (i) the attributes of the *asset pool* correspond accurately to supporting information obtained from other sources (for example, in the case of mortgage pools, that information such as the mortgage amount, value, term, type and location correspond to land registry records, valuation reports and loan agreements);
 - (ii) the attributes of the *asset pool* are appropriately reflected on the records which are maintained in order to comply with the requirements of Regulations 17(2)(a) and 24(1)(a)(i) of the *RCB Regulations* (requirement to keep a record of each *asset* in the *asset pool*) and on the *issuer's* systems; and
 - (iii) the *issuer's* analysis of the *assets* provided to the *FSA* is accurate.

Providing advice and reports to the FSA

- 2.3.19 G The *FSA's* use of its power under Regulation 12 of the *RCB Regulations* (requirement of further information to determine application) may include requiring the *issuer* to provide copies of the advice or reports referred to in *RCB 2.3.16D* to the *FSA*.

Name of issuer and covered bond or programme

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.

'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

'RCB Regulations' refers to 'The Regulated Covered Bonds Regulations 2008' and can be accessed at http://www.opsi.gov.uk/si/si2008/uksi_20080346_en_1

'Connected person' has the meaning given by RCB Regulation 5.

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 You are advised to read the RCB Regulations and the RCB Sourcebook before completing this form.
- 3 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.
- 4 If the answer to a question in this form is in an offering circular or other documentary evidence, you can make a cross-reference to the relevant document as long as the cross-reference is sufficiently specific.
- 5 Your application should include:
 - this form RCB 2 Annex 1D;
 - where applicable the Asset pool notification form RCB 3 Annex 2D;
 - where applicable the Series issuance notification form RCB 3 Annex 3D ;
 - where applicable relevant credit rating reports in relation to the covered bonds for which you are seeking registration; and
 - where applicable offering circulars of the covered bonds for which you are seeking registration.

Sending the form

Send your application form to us by email to rcb@fsa.gov.uk or by post or by hand to the address below:

Covered Bonds Team
Capital Markets Sector
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, bankers 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 bankers draft payable to The Financial Services Authority

Please send the cheque or bankers 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

1

Contact details

Applicant and owner details

- 1.1 Name, address, email and telephone number of the issuer

- 1.2 FSA reference number of the issuer

- 1.3 Owner: Name, address, email and telephone number

- 1.4 Credit rating(s) of issuer and name of the relevant credit rating agency

Third parties' details

- 1.5 Accountant: Name, address, email and telephone number

- 1.6 Lawyer: Name, address, email and telephone number

- 1.7 Bondholder representative: Name, address, email and telephone number

- 1.8 Hedge providers (this should include details of the currency swap provider, interest rate swap provider etc.): Name, address, email and telephone number

- 1.9 Credit ratings of hedge providers (set out details separately of currency swap provider, interest rate swap provider etc.) and name of the relevant credit rating agency

1.10 Cash manager (if different from issuer): Name, address, email and telephone number

1.11 Credit rating(s) of cash manager (if different from issuer) and name of relevant credit rating agency

1.12 Account bank (if different from issuer): Name, address, email and telephone number

1.13 Credit ratings of account bank (if different from issuer) and name of relevant credit rating agency

1.14 Name, address, email and telephone number of any other relevant third parties

2

Issuer and owner eligibility

2.1 Does the issuer hold the 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 in the UK?

Yes No

2.2 Does the owner have its registered office in the UK and its centre of main interest in the UK?

Yes No

2.3 Does the owner comply with the requirements set out in RCB Regulation 4?

Yes No

2.4 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.

2.5. 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

3

Key features of the covered bond or programme

3.1 Name of covered bond or programme.

3.2 Size of covered bond or programme in GBP.

4

Covered bond or programme structure

- 4.1 Provide an outline of the structure of the covered bond or programme including, if appropriate, a structural diagram.**

- 4.2 Provide an outline of the contractual obligations of the issuer, owner and other third parties to the covered bond arrangements (e.g. servicers, cash managers and paying agents).**

- 4.3 Provide an outline of the contractual provisions that provide for the appointment of replacement parties (e.g. servicers, cash managers or paying agents).**

5

Asset pool details

- 5.1 Specify the type and location of assets the owner is allowed to hold under the terms of the covered bond or programme.

- 5.2 Provide evidence of appropriate systems, controls, procedures and policies, including in relation to risk management, underwriting, arrears and valuation in relation to the asset pool.

- 5.3 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).

- 5.4 Specify the minimum level of over-collateralisation as detailed in the legal documentation.

- 5.5 Explain the arrangements in place to ensure that a record of the assets is kept.

- 5.6 Do the assets in the pool comply with RCB Regulations 2 and 3?

Yes No

- 5.7 Explain the arrangements in place to ensure that the key attributes of the asset pool correspond accurately to supporting information obtained from other sources (e.g. in the case of mortgage pools that mortgage amount, value, term, type and location correspond to land registry, valuation reports and loan agreements).

- 5.8 Explain the arrangements in place to ensure that appropriate due diligence procedures have been carried out on the analysis of the assets provided to the FSA in form RCB 3 Annex 2D.

6

Asset Capability

6.1 Explain the 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 pool. The explanation should at least include details of:

- the systems and controls in place to manage the pool of assets; and
- the systems and controls over any tests detailed in the contracts e.g. Asset Coverage Test, Amortisation Test (including responsibility for performing the test, size of sample, frequency of audit etc).

The issuer should demonstrate that the cash-flows generated by the assets are sufficient to meet the payments due in a timely manner including under conditions of economic stress and in the event of the failure of the issuer.

The asset pool should be of sufficient quality to give investors confidence that in the event of failure of the issuer there will be a low risk of default and loss in the event of default in the timely payment by the owner of claims attaching to a regulated covered bond.

The issuer should consider as a minimum the guidance set out in 2.3.6G to 2.3.12G of the RCB Sourcebook.

6.2 Explain the arrangements in place for the identification and rectification of any breach to the asset capability requirement as set out in regulation 17(2) and 24 (1) (a) of the RCB Regulations.

6.3 Explain the arrangements in place in the event that the breaches to the capability requirement as set out in regulation 17(2) and 24 (1) (a) of the RCB Regulations are not rectified in a timely way.

6.4 Provide a detailed description of all material trigger events such as those giving rise to events of default within the contracts (e.g. failure to meet requirements of the Asset Coverage Test, failure to meet the requirements of the Amortisation Test, insolvency of the issuer) and the effect of those triggers on the covered bond; in particular detail any changes to the priority of payments.

6.5 Provide an outline of the contractual arrangements with the counterparties of the hedging agreement. This should include default and termination procedures.

7

Owner systems and controls

- 7.1 Explain the arrangements in place for the maintenance and administration of the asset pool on the insolvency of the issuer as detailed in RCB Regulation 24.**

- 7.2 Explain the arrangements in place to ensure that on the insolvency of the issuer, the owner gives 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 RCB Sourcebook.**

- 7.3 Explain what arrangements are in place as to priority of payment on the winding up of the owner (see RCB regulation 27).**

8

Legal and accountancy report, documentary evidence and other forms

8.1 Confirm that in accordance with RCB Sourcebook 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.

Yes No

8.2 If an asset pool is in place, confirm that you have submitted the asset pool notification form RCB 3 Annex 2 D with this application.

Yes No

8.3 If you have already issued 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.

Yes No

8.4 Where appropriate, confirm that you have submitted with this application:

a. The offering circular and any other relevant supporting documentary evidence

Yes No

b. Any relevant credit rating reports in relation to the covered bond or programme

Yes No

9

Fees

- 9.1 Give details of the payment method used for the application fee (cheque, bank draft or credit transfer) and the date the payment was made.

10

Other relevant information

10.1 Provide any additional information that is relevant to your application.

11

Confirmation of compliance

- 11.1 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 Sourcebook 3.2.5D).

11.2 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 or programme will comply with the requirements of the RCB Regulations and the RCB Sourcebook.

I confirm that in accordance with the RCB Sourcebook 2.3.16D the issuer has obtained written advice and reports regarding the compliance of the issuer and the relevant covered bond or 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 or programme

Signature (if the form is electronically submitted, the signature must be scanned)

Name of signatory

Title of signatory (signatory must be a senior manager as defined in the FSA handbook glossary)

Date

3 Notifications

3.1 Application and Purpose

Application

- 3.1.1 G This chapter applies to *issuers* and *owners*.

Purpose

- 3.1.2 G This chapter sets out the reporting and notifications requirements under Regulations 18, 20, 24 and 25 of the *RCB Regulations*.

3.2 Annual confirmations of compliance

Form of confirmation and use of third party advisers

- 3.2.1 D The *issuer* must send to the *FSA* annual written confirmation of compliance with Regulations 16 (sums derived from the issue of *regulated covered bonds*) and 17 (general requirements on the *issuer* in relation to the *asset pool*) of the *RCB Regulations* in the form set out in *RCB 3 Ann 1D* (annual confirmation of compliance).
- 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 such as accountants and, where appropriate, lawyers.
- 3.2.3 G The *FSA* expects the *issuer* to be able to justify any reliance it places on advice or reports which are not reasonably contemporaneous with the confirmation.
- 3.2.4 G The *FSA* expects reports from accountants to address at least the matters to be checked and due diligence procedures set out in *RCB 2.3.18G*.

Timing of confirmation date

- 3.2.5 D (1) The first confirmation date in relation to the annual confirmation must be the earlier of any date the *issuer* selects, or the date 12 *months* from the *registration date*.
- (2) Subsequent confirmations must be made on the anniversary of the first confirmation date.
- 3.2.6 D The *issuer* must send each confirmation to the *FSA* within one *month* after the relevant confirmation date.

Period covered by confirmation

3.2.7 D The first confirmation must cover compliance during the period from the *registration date* up to the confirmation date referred to in *RCB 3.2.5D(1)*.

3.2.8 D Subsequent confirmations must cover compliance for the period from the last confirmation date to the date of the current confirmation.

Verification of confirmation

3.2.9 D The *issuer* must ensure that 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.

Notifications by the owner

3.2.10 D If the *issuer* is in insolvency, the *owner* must send the *FSA* under *RCB 3.2.1 D*:

(1) a confirmation of compliance within one *month* of the date of insolvency; and

(2) annual confirmations by the same dates as the date the confirmations under *RCB 3.2.5 D* are due.

3.2.11 D (1) The *owner* must ensure that a duly authorised representative signs the confirmation and confirms on the *FSA's* form that the *owner* has obtained the appropriate third party advice or reports required by this section.

(2) The *owner* must obtain appropriate advice in the same manner as set out in *RCB 3.2.2D*.

3.3 Asset pool notifications

Form of notification

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 Ann 2 D* (asset notification form).

3.3.2 D The *issuer* must send the form to the *FSA* within one *month* of the end of each quarter following the *registration date*.

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* 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.

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 Ann 3 D* (series notification form) on or before the date of issuance.

3.5 Other notifications

Notifications of change of owner

- 3.5.1 G Regulation 25 of the *RCB Regulations* (change of *owner*) sets out the procedures which apply where a *regulated covered bond* has been issued and the *owner* of the *relevant asset pool* proposes to transfer ownership to another person.
- 3.5.2 D If an *owner* proposes to transfer the *asset pool* to a new *owner* it must provide the *FSA* as a minimum with the following information in writing at least three *months* before the proposed transfer date:
- (1) name, address and contact details of the proposed new *owner*;
 - (2) proposed transfer date and reasons for the transfer;
 - (3) an explanation of how the proposed new *owner* will comply with the requirements imposed on it by the *RCB Regulations* and *RCB*; and
 - (4) confirmation that the existing *owner* and the proposed new *owner* have obtained appropriate advice in relation to the proposed transfer, and details of such advice.

Notifications of material changes

- 3.5.3 G Regulation 20 of the *RCB Regulations* (material changes to the regulated covered bond) sets out the procedures which apply where an *issuer* proposes to make a material change to the contractual terms of the bond.
- 3.5.4 D If an *issuer* proposes to make a material change to the contractual terms of a *regulated covered bond*, it must inform the *FSA* of the following information to the *FSA* at least 3 months before the proposed date of the change:
- (1) details of the proposed change including proposed date of change and the reasons for it;
 - (2) an assessment of the impact of the change on the ability of the *issuer*

and *owner* to continue to comply with their requirements under the *RCB Regulations* and *RCB*; and

- (3) confirmation that the *issuer* has obtained appropriate advice in relation to the proposed change and details of such advice.

- 3.5.5 G The *FSA* will regard as material any change that may affect the ability of the *issuer* or the *owner* to continue to comply with the requirements made on them under the *RCB Regulations* and *RCB*.

Notifications to the *FSA* if asset pool is not capable or not likely to be capable of covering claims and of other matters

- 3.5.6 D The *issuer* or the *owner*, as the case may be, must notify the *FSA* immediately, in writing by e-mail or hand-delivered letter, if Regulation 18(2), or 24(1)(c) of the *RCB Regulations* (obligation to inform *FSA* if *asset pool* not capable, or not likely to be capable of covering claims) is triggered.

- 3.5.7 D The *issuer* or the *owner*, as the case may be, must notify the *FSA* immediately in writing by e-mail, or hand-delivered letter, if requirements relating to the relevant *regulated covered bond* under the *RCB Regulations* or *RCB* are, or are likely to be, materially breached, or of any other matter which the *FSA* should be made aware of.

- 3.5.8 G The *issuer* or the *owner*, as the case may be, should include details of proposals to rectify the breach at the time they notify, or as soon as practicable after that time.

3.6 Fees and other matters

Administrative fee

- 3.6.1 R If an *issuer* or *owner* does not provide the notifications to the *FSA* required by directions made under this chapter by the date specified, then that *issuer* or *owner* must pay to the *FSA* an administrative fee of £250.

Further information and direction

- 3.6.2 G The *FSA's* exercise of its powers under Part 1 paragraph 3 of the Schedule to the *RCB Regulations* (power to require information) may include requesting information on the reviews undertaken or advice given by accountants and where appropriate lawyers.

- 3.6.3 G The form and content of the notifications in this chapter are a matter for direction by the *FSA* which will determine any additional information and documentation required on a case-by-case basis.

Review of legal advice

- 3.6.4 G The *issuer* or the *owner*, as the case may be, should review legal advice as

necessary. For example, advice should be reviewed if a relevant statutory provision is amended or where a new decision or judgment of a court might have a bearing on the conclusions reached which is material to the *issuer's* or *owner's* compliance with the requirements of the *RCB Regulations* or the *RCB*.

Method of sending forms and information to FSA

- 3.6.5 D Unless otherwise stated, the *issuer* or the *owner*, as the case may be, must send the relevant forms and information to the *FSA's* address marked for the attention of the "Covered Bonds Team, Capital Markets Sector" by any of the following methods:
- (1) post; or
 - (2) leaving it at the *FSA's* address and obtaining a time-stamped receipt; or
 - (3) e-mail to rcb@fsa.gov.uk

Name of issuer (or if applicable of owner) and regulated covered bond

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

'**RCB Regulations**' refers to 'The Regulated Covered Bonds Regulations 2008' and can be accessed at 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 or by post or by hand to the address below:

Covered Bonds Team
Capital Markets Sector
The Financial Services Authority
25 The North Colonnade
Canary Wharf
LONDON
E14 5HS

1

Confirmation of compliance

1.1 Confirmation

I confirm that I am satisfied that the arrangements relating to the regulated covered bonds comply with the requirements of the RCB Regulations and the RCB Sourcebook.

I confirm that in accordance with RCB Sourcebook 3.2.2 D the issuer (or if applicable owner) has obtained written advice or reports from suitable independent third party advisers on compliance with the RCB Regulations and RCB Sourcebook.

I consent to this confirmation being published on the regulated covered bonds register on the FSA's public website.

Issuer name

Period covered by compliance

Name of regulated covered bond

Signature (if the form is electronically submitted, the signature must be scanned)

Name of signatory

Title of signatory (signatory must be a senior manager as defined in the FSA handbook glossary)

Date

Name of issuer (or if applicable of owner) and regulated covered bond

[Redacted area]

Purpose of this form

To send us information on the composition of the asset pool in compliance with RCB Sourcebook 3.3.1 D

Warning

Knowingly or recklessly giving us information which is false or misleading in a material particular, 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 An Issuer and if applicable an owner must send this form to the FSA within one month of the end of each quarter following the date of registration of the covered bond or programme.
- 2 This form may also be completed at the time of application for registration of an issuer or covered bond or programme where an issuer has an asset pool in place.
- 3 The answers required below are single figures or breakdowns. We would expect any breakdown to take the form of a table and display information on number of loans, loan value, and percentage of total loan value. Values of assets should be in GBP.
- 4 If you are unable to provide some of the information required in this form, please explain why.

Sending the form

Send your asset pool notification form to us by email to rcb@fsa.gov.uk or by post or by hand to the address below:

Covered Bonds Team
Capital Markets Sector
The Financial Services Authority
25 The North Colonnade
Canary Wharf
LONDON
E14 5HS

1

Asset pool composition

Current level of over collateralisation

Current balance and breakdown of the assets and liabilities of the owner

For residential mortgages provide the following information

Number of mortgage loans in pool

Average loan size

Weighted average seasoning

Weighted average LTV

Weighted average indexed LTV

Mortgage size breakdown

Geographical analysis breakdown

LTV breakdown

Current arrears breakdown

Debt service ratio breakdown

Ownership status (e.g. buy to let or owner occupied) breakdown

Certification status (e.g. income verified or self-certified) breakdown

Employment status (e.g. employed, self-employed) breakdown

Repayment method (e.g. repayment or interest only) breakdown

Interest payment type (e.g. fixed, variable) breakdown

Borrowers with prior bankruptcy order or individual voluntary agreement breakdown

Borrowers with satisfied court judgments breakdown

Borrowers with unsatisfied court judgments breakdown

Loans withdrawn from asset pool in last reporting period breakdown

Any other relevant information

For other types of loans or assets

Provide us with any relevant figures, breakdowns, or other information. In particular provide us with information which is relevant for the purpose of assessing the quality of the asset pool.

Name , job title and contact detail of the person validating this form



Series issuance notification form

Name of issuer and regulated covered bond

Purpose of this form

To send us written notification of a series of issuance in compliance with RCB Sourcebook 3.4.1 D

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 A regulated issuer must send this form on or before the date of a series issuance.
- 2 This form must also be completed at the time of application for registration of the issuer or of a covered bond or programme where an issuer already has a series issued.

Sending the form

Send your series issuance notification form to us by email to rcb@fsa.gov.uk or by post or by hand to the address below:

Covered Bonds Team
Capital Markets Sector
The Financial Services Authority
25 The North Colonnade
Canary Wharf
LONDON
E14 5HS

1

Series issuance notification

This information will be added to the register of regulated covered bond on the FSA website

Name of issuer

Name of programme

Series number

Issuance size

ISIN number

Issue date

Legal maturity

Coupon

Listing Authority (if applicable)

Rating(s) (if applicable) and name of relevant credit rating agency

Name , job title, and contact details of the person validating this form

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4 Enforcement powers

4.1 Application and purpose

Application

- 4.1.1 G This chapter contains guidance for *issuers*, and *owners* and other persons subject to the *RCB Regulations*.

Purpose

- 4.1.2 G The purpose of this chapter is to give guidance on the *FSA's* approach to the use of its enforcement powers under the *RCB Regulations* and to set out the *FSA's* policy on the imposition and amount of financial penalties.

4.2 Enforcement powers and penalties

The *FSA's* enforcement powers

- 4.2.1 G The *FSA's* approach to the exercise of its enforcement powers will be consistent with its approach in *DEPP* and *EG* so far as appropriate.
- 4.2.2 G The *FSA's* exercise of its powers under the *RCB Regulations* is without prejudice to the use of its powers under the *Act* or under other legislation.
- 4.2.3 G (1) When deciding whether to take enforcement action under Part 7 of the *RCB Regulations*, and what form that enforcement action should take, the *FSA* will consider all relevant factors, including:
- (a) the relevant factors on decisions to take action set out in *DEPP* 6.2.1G;
 - (b) whether any contractual or other arrangements agreed between the parties can be used effectively to address any perceived failure under the *RCB Regulations*; and
 - (c) the interests of investors in the relevant *regulated covered bond*.
- (2) The *FSA* does not normally expect to use its enforcement powers where the *issuer* or the *owner* are in the process of rectifying non-compliance and where they have taken account of the views and interests of investors in the *regulated covered bond*. This is without prejudice to the *FSA's* use of its enforcement powers as a result of its consideration of all relevant factors, as set out in *RCB* 4.2.3G(1).

Financial penalties

- 4.2.4 G The *FSA's* policy on imposing financial penalties (including the amount of any such penalties) under the *RCB Regulations* will be consistent with the policy as set out in *DEPP* and *EG* with appropriate modifications.
- 4.2.5 G When considering whether to impose a financial penalty, the amount of penalty, and whether to impose the penalty on the *issuer* or the *owner*, the *FSA* will have regard, where relevant to:
- (1) the statement on determining the appropriate level of a financial penalty in *DEPP* 6.5;
 - (2) the particular arrangements between the *issuer* and the *owner*;
 - (3) the likely impact of the penalty on the interests of investors in a *regulated covered bond*; and
 - (4) the conduct of the *issuer* or the *owner*.

5 Fees

5.1 Application and purpose

Application

- 5.1.1 R This chapter applies to *issuers* in relation to *regulated covered bonds*.

Purpose

- 5.1.2 G The purpose of this chapter is to prescribe the fees payable under *RCB*.

5.2 Fees to be paid

Introduction

- 5.2.1 G This chapter provides for an initial fee for registration of a *regulated covered bond* and subsequent annual fees.
- 5.2.2 G The registration fee is for the *FSA's* work in dealing with an *issuer's* application for registration of a *regulated covered bond*.
- 5.2.3 G The annual fee is a fee for the *FSA's* ongoing costs in administering the *regulated covered bond* regime. Like the registration fee, it is charged to

issuers in respect of their participation in the regime.

5.2.4 G Fees are not refundable.

Registration Fees

5.2.5 R An *issuer* applying for registration of a *regulated covered bond* must pay the *FSA* a registration fee of £25,000 in full.

Annual Fees

5.2.6 R (1) An *issuer* must pay the *FSA* a fee of £20,000 for each financial year (1 April to 31 March) in which the *issuer* is on the register of *issuers* as at 31 March of the previous financial year.

(2) For the first year in which the *issuer* becomes registered, the *issuer* must pay the fee set out in the applicable row of the table at *RCB* 5.2.7R of the annual fee.

(3) Fees must be paid in full within 30 *days* of the date of the invoice.

5.2.7 R Table of annual fee for first year:

<i>Registration date of issuer</i>	Fee
1 April to 30 June inclusive	£20,000
1 July to 30 September inclusive	£15,000
1 October to 31 December inclusive	£10,000
1 January to 31 March inclusive	£5,000

Method of payment

5.2.8 R The *issuer* must pay the fees payable under this chapter by bankers draft, cheque, or by credit transfer.

Schedule 1

Record keeping requirements

G

1 The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements in this sourcebook.

- 2 Regulation 17(2)(a) (general requirements on *issuer* in relation to the *asset pool*) and Regulation 24(1)(a)(i) (requirements on *owner* in relation to the *asset pool*) require a record to be kept of each asset in the asset pool.
- 3 It is not a complete statement of those requirements and should not be relied on as if it were.
- 4 There are no other record-keeping requirements in RCB.
- 5 Table

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
n/a	n/a	n/a	n/a	n/a

Schedule 2

Notification requirements

G

- 1 The aim of the guidance in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.
- 3 Table

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>RCB 3.2.1 D</i>	Confirmation of compliance by <i>issuer</i> .	<i>Senior manager</i> to confirm compliance with Regulations 16 and 17 of the <i>RCB Regulations</i> . Use Form <i>RCB</i>	The earlier of a date which the <i>issuer</i> selects, or 12 months from the <i>registration date</i> , then annually after that.	One month after the relevant confirmation date.

		2 Ann 1D.		
<i>RCB 3.3.1D and RCB 3.3.3D</i>	Information relating to the <i>asset pool</i>	Information on various attributes of the <i>asset pool</i> . Use Form RCB 3 Ann 2D	End of each quarter following <i>registration date</i> .	One month after the end of the relevant quarter.
<i>RCB 3.2.10D</i>	Confirmation of compliance by <i>owner</i>	<i>Owner</i> to confirm compliance with Regulations 16 and 17 of the <i>RCB Regulations</i> Use Form <i>RCB 2 Ann 1D</i> .	(1) when the issuer goes into insolvency (2) the anniversary date of the date the issuer sent annual confirmations	(1) Within one month of <i>issuer's</i> insolvency. (2) One month after the relevant confirmation date.
<i>RCB 3.4.1D</i>	Covered bond issuance	Information on the covered bond issuance Use Form RCB 3 Ann 3D	Issuance of covered bond from a <i>regulated covered bond</i>	On or before date of issuance
<i>RCB 3.5.2D</i>	Change of <i>owner</i>	At least: (1) name, address and contact details of proposed new <i>owner</i> . (2) proposed transfer date and reasons for transfer (3) explanation of how proposed new <i>owner</i> will comply with requirements in <i>RCB Regulations</i> and in <i>RCB</i> . (4) confirmation	Proposal to change <i>owner</i>	At least 3 <i>months</i> before proposed date of transfer

		that existing <i>owner</i> and proposed new <i>owner</i> have obtained appropriate advice		
<i>RCB 3.5.4D</i>	Material changes being any change that may affect the ability of the <i>issuer</i> or the <i>owner</i> to continue to comply with the requirements made on them under the <i>RCB Regulations</i> and <i>RCB</i>	At least: (1) details of the proposed change including proposed date of change and the reasons for it (2) an assessment of the impact of the change on the ability of the <i>issuer</i> and <i>owner</i> to continue to comply with the requirements in <i>RCB Regulations</i> and in <i>RCB</i> . (3) confirmation that <i>issuer</i> has obtained appropriate advice	Proposal to make material change	At least 3 <i>months</i> before proposed date of change
<i>RCB 3.5.6D</i>	Capability of <i>asset pool</i> to meet bondholder claims	(1) fact that the <i>asset pool</i> is not capable or not likely to be capable of covering claims. (2) proposals to rectify the breach	(1) and (2) As soon as Regulations 18(2) or 24(1)(c) of the <i>RCB Regulations</i> is triggered	(1) Immediately (2) upon notification of breach or as soon as practicable after that time.
<i>RCB 3.5.7D</i>	(1) That the requirements in the <i>RCB</i>	(1) fact of breach or likely breach	Material breach, or likely material breach.	Immediately

	<i>Regulations and RCB</i> are, or are likely to be materially breached, or (2) of any other matter which the FSA should be made aware of.	(2) details of matter	As soon as <i>issuer</i> or <i>owner</i> becomes aware of matter.	
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Schedule 3

Fees and other requirement payments

The provisions relating to fees are set out in *RCB* Chapter 5 and in *RCB* 3.6.1R (administrative fee)

Schedule 4

Powers exercised

G

1

The following powers and related provisions in the *RCB Regulations* have been exercised by the *FSA* to make the rules and directions in *RCB*:

- (1) Regulation 8 and 9 (Applications for Registration);
- (2) Regulation 18, 20, 24 and 25 (Notification requirements);
- (3) Regulation 36 (financial penalties policy statements)
- (4) Regulation 46, Schedule 1 paragraph 5 (Fees).

2

The following power in the *RCB Regulations* has been exercised by the *FSA* to give guidance in *RCB*:

- (1) Regulation 42 (Guidance)

3

The following power under the *Act* has been exercised by the *FSA* to make the rules in *RCB*:

(1) Section 138 (General rule-making power).

Schedule 5

Rights of action for damages

G

Not applicable

Schedule 6

Rules that can be waived

G

Not applicable

**REGULATED COVERED BONDS
(RELATED AMENDMENTS) INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 March 2008.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Insurers (INSPRU) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Regulated Covered Bonds (Related Amendments) Instrument 2008.

By order of the Board
6 March 2008

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

covered bond

- (1) ...
- (2) ...
- (3) ...
- (4) (in accordance with Article 22(4) of the *Third Non-Life Directive* and Article 24(4) of the *Consolidated Life Directive* and for the purposes of *INSPRU 2.1*) a *debenture* that is issued by a *credit institution* which:
 - (a) has its head office in an *EEA State*; and
 - (b) is subject by law to special official supervision designed to protect the holders of the *debenture*; in particular, sums deriving from the issue of the *debenture* must be invested in accordance with the law in assets which, during the whole period of validity of the *debenture*, are capable of covering claims attaching to the *debenture* 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.

Annex B

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

...

- 2.1.22 R (1) ...
- (2) ...
- (3) The limits referred to in (1) and (2) are the following, expressed as a percentage of the *firm's* business amount:
- ...
- (b) for a *counterparty* exposure to an *approved counterparty* or the aggregate exposure arising from the *counterparty* exposures to each member of a group of closely related ~~approved counterparties~~ *approved counterparties*:
- (i) 40% for that part of the exposure arising from covered bonds;
- (~~ii~~) (ii) 5% for that part of the exposure not arising from covered bonds or, if the *counterparty* is an approved credit institution, from short term ~~deposits made with an approved credit institution~~; this limit is increased to 10% if the total of such exposures which are greater than 5% arising from applying a 10% limit, when taken together with any exposures arising from covered bonds which are within the 40% limit in (i), does not exceed 40%;
- (~~iii~~) (iii) 20% or £2 million, if larger, for the whole exposure (but excluding any exposure arising from covered bonds and after deduction of the excess arising from the limit in (b)(~~ii~~) (ii));

...

...

COMPANIES ACT 2006 (TRANSITIONAL PROVISIONS) INSTRUMENT 2008

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 April 2008.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Companies Act 2006 (Transitional Provisions) Instrument 2008

By order of the Board
27 March 2008

Annex

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text.

GEN TP 1.2 Table 2: Transitional Provisions applying across the Handbook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
24.	...	...	...	...	...
25.	References in the <u>Handbook</u> to provisions which have been repealed, in whole or in part, by the <u>Companies Act 2006</u> .	<u>R</u>	<u>Each reference is to be read as a reference to the corresponding provision of the Companies Act 2006 and related provisions taking into account any relevant commencement, transitional or savings provisions made under that Act or related provisions.</u>	<u>From 6 April 2008 until 4 November 2008</u>	<u>various</u>
26.	<u>Paragraph 25</u>	<u>G</u>	<p><u>(1) The purpose of the transitional provision in paragraph 25 is to ensure the effectiveness of provisions which have been, or will be, repealed by the Companies Act 2006 until each cross reference or dependency in the Handbook is reviewed and updated as appropriate.</u></p> <p><u>(2) The references to provisions which have been repealed, in whole or in part, are primarily to the Companies Act 1985, the Companies Act 1989 and the various Companies (Northern Ireland) Orders.</u></p>	<u>From 6 April 2008 until 4 November 2008</u>	<u>various</u>

FEES PROVISIONS (2008/2009) INSTRUMENT 2008

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);
 - (4) section 223 (Management expenses); and
 - (5) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2008.

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 (2008/2009) Instrument 2008.

By order of the Board
27 March 2008

Annex

Amendments to the Fees manual (FEES)

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

- 4.2.7 R A *firm* (other than an ~~ICVC~~ or *UCITS qualifier*) which becomes authorised, or whose *permission* is extended, during the course of the financial year must pay a fee which is calculated by:
- ...
- (2) calculating the amount for each of those tariffs which is the higher of:
- (a) the minimum fee specified for the tariff; and
- (b) the result of applying the tariff to the projected valuation, for its first year (as provided to the *FSA* in the course of the *firm's* application), of the business to which the tariff relates (~~or, where relevant, the number of approved persons immediately after the permission is given~~);
- ...
- 4.3.15 R (1) This *rule* applies if:
- (a) a *firm* (A) acquires all or a part of the business of another *firm* (B), whether by merger, acquisition of goodwill or otherwise, in relation to which a periodic fee would have been payable by B, unless no periodic fee was payable by A in the financial year that the business was acquired from B; or
- (b) A became authorised as a result of B's simple change of legal status (as defined in FEES 3 Annex 1R Part 6).
- ...

...

Activity group	Tariff-base
A.1	<p>MODIFIED ELIGIBLE LIABILITIES</p> <p>For banks:</p> <p>Part 1:</p> <p>Liabilities</p> <p>In sterling: $\pounds 2 + \pounds 3 + \pounds 4 + \pounds 5A + \pounds 5B + \pounds 6B + \pounds 6C + \pounds 6D + \pounds 6E + \pounds 6F + \pounds 6G + \pounds 6H + \pounds 6J + \pounds 7B + \pounds 7C + \pounds 7D + \pounds 7E + \pounds 7F + \pounds 7G + \pounds 7H + \pounds 7J + \pounds 8 + \pounds 10 + 60\% \text{ of } \pounds 11A + \pounds 44$ plus In foreign currency, one-third of: $E2 + E3 + E4 + E5A + E5B + E6B + E6C + E6D + E6E + E6F + E6G + E6H + E6J + E7B + E7C + E7D + E7E + E7F + E7G + E7H + E7J + E8 + E10 + 60\% \text{ of } E11A + E44 + C2 + C3 + C4 + C5A + C5B + C6B + C6C + C6D + C6E + C6F + C6G + C6H + C6J + C7B + C7C + C7D + C7E + C7F + C7G + C7H + C7J + C8 + C10 + 60\% \text{ of } C11A$: less</p> <p>Assets</p> <p>In sterling: $\pounds 21B + 60\% \text{ of } \pounds 22A + \pounds 23D + \pounds 23E + \pounds 23F + \pounds 30A + \pounds 30B + \pounds 31A + \pounds 31B + \pounds 32AA + \pounds 32AA1 + \pounds 32AA2$ plus In foreign currency, one-third of: $E21B + 60\% \text{ of } E22A + E23D + E23E + E23F + E30A + E30B + E31A + E31B + E32AA + E32AA1 + E32AA2 + C21B + 60\% \text{ of } C22A + C23D + C23E + C23F + C30A + C30B + C31A + C31B + C32AA + C32AA1 + C32AA2$</p>
	<p>Part 2: Non-resident office offset</p> <p>The fee base is adjusted by deducting from the amount calculated in accordance with part 1 above, the Non-Resident Office Offset amount obtained by subtracting item <u>£45D plus one-third of both E45D and C45D</u> from <u>the sum of item £45BA, plus one-third of both E45BA and C45BA</u> in the Form BT. The Non-Resident Office Offset amount, if it would otherwise have been a negative number, is zero.</p> <p>Notes:</p> <p>(1) ...</p>

...

FEES 4 Annex 5 R

4 Annex 5 R	Periodic fees for designated professional bodies payable in relation to the period 1 April 2007 <u>2008</u> to 31 March 2008 <u>2009</u>		
	Table. Fees payable by Designated Professional Bodies		
	Name of Designated Professional Body	Amount payable	Due date
	The Law Society of England & Wales	£50,680	30 April 2007
		£90,350	1 September 2007
		<u>£70,515</u>	<u>30 April 2008</u>
		[to be determined]	<u>1 September 2008</u>
	...		

...

FEES 4 Annex 6R

Periodic fees for recognised investment exchanges and recognised clearing houses payable in relation to the period 1 April 2007 <u>2008</u> to 31 March 2008 <u>2009</u>		
...		
Part 1 - Periodic fees for UK recognised bodies		
Name of UK recognised body	Amount payable	Due date
CRESTCo Limited	£229,000	30 April 2007
<u>Euroclear UK & Ireland Limited</u>	<u>£261,000</u>	<u>30 April 2008</u>

ICE Futures <u>Europe</u> Ltd	£148,500	30 April 2007
	<u>£177,000</u>	<u>30 April 2008</u>

LIFFE Administration and Management	£252,500	30 April 2007
	<u>£274,500</u>	<u>30 April 2008</u>

LCH.Cleernet Limited	£290,500	30 April 2007
	<u>£285,500</u>	<u>30 April 2008</u>

The London Metal Exchange Limited	£166,500	30 April 2007
	<u>£173,500</u>	<u>30 April 2008</u>

London Stock Exchange plc	£332,000	30 April 2007
	<u>£349,000</u>	<u>30 April 2008</u>

virt-x <u>SWX Exchange Ltd</u>	£40,000	30 April 2007
	<u>£69,500</u>	<u>30 April 2008</u>

EDX London Ltd	£32,000	30 April 2007
	<u>£52,000</u>	<u>30 April 2008</u>

<u>PLUS Markets Plc</u>	<u>£75,000</u>	<u>30 April 2008</u>
<u>European Central Counterparty Limited</u>	<u>£250,000</u>	<u>30 April 2008</u>
<u>ICE Clear Europe Limited</u>	<u>£250,000</u>	<u>30 April 2008</u>
Any other <i>UK recognised investment exchange</i>	...	...
...		

FEES 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 (£)
...	...
<u>1 April 2008 to 31 March 2009</u>	<u>£30,240,000</u>

FINANCIAL SERVICES COMPENSATION SCHEME (AMENDMENT OF FEES PROVISIONS) INSTRUMENT 2008

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 213 (The compensation scheme).
- 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 amendment comes into force on 1 April 2008.

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 (Amendment of Fees Provisions) Instrument 2008.

By order of the Board
27 March 2008

Annex

Amendments to the Fees manual (FEES)

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

FEES 6 Annex 3R

Financial Services Compensation Scheme – classes and sub-classes

This table belongs to FEES 6.5.7R and FEES TP 2.5.2R

Class A	Deposit
...	...
Class B	General Insurance
...	...
Sub-class B2	General Insurance Intermediation
Legal basis for activity in sub-class B2	Any of the following in respect of <i>general insurance contracts</i> <i>dealing in investments as agent;</i> <i>arranging (bringing about) deals in investments;</i> <i>making arrangements with a view to transactions in investments;</i> <i>assisting in the administration and performance of a contract of insurance;</i> <i>advising on investments;</i> <i>agreeing to carry on a regulated activity which is within any of the above.</i>
Tariff base	Sub-class B1: <i>Relevant net premium income.</i> Sub-class B2: <i>annual eligible income</i> where the annual income is calculated in accordance with that for fee-block A19 in part 2 of FEES 4 Annex 1, <u>excluding annual eligible income for <i>pure protection contracts</i>.</u>

GENERAL PRUDENTIAL SOURCEBOOK (ADEQUACY OF FINANCIAL RESOURCES) (AMENDMENT) INSTRUMENT 2008

Power exercised

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

Commencement

- B. This instrument comes into force on 6 April 2008.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The General Prudential sourcebook (GENPRU) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the General Prudential Sourcebook (Adequacy of Financial Resources) (Amendment) Instrument 2008.

By order of the Board
27 March 2008

Annex A

Amendments to the Glossary of definitions

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

*supervisory review and
evaluation process*

the *FSA's* assessment of the adequacy of certain *firms'*
capital, as more fully described in *BIPRU 2.2.9G* and
*INSPRU ~~7.1.12G~~ 7.1.91G to *INSPRU 7.1.99G.**

Annex B

Amendments to the General Prudential sourcebook (GENPRU)

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

1.2.15 G This section also has *rules* requiring a *firm* to identify and assess risks to its being able to meet its liabilities as they fall due, how it intends to deal with those risks, and the amount and nature of financial resources that the *firm* considers necessary. *GENPRU* 1.2.60R provides that a *firm* should document that assessment. The *FSA* will review that assessment as part of its own assessment of the adequacy of a *firm's* capital under its supervisory review and evaluation process (SREP). When forming a view of any individual capital guidance to be given to the firm, the FSA will also review the ARROW risk assessment and any other issues arising from day-to-day supervision. ~~This review by the FSA forms part of the FSA's ARROW assessment of a firm.~~

...

1.2.73 G (1) ...

(1A) For an insurer, these tests and analyses are in addition to those that may be used for the ICA (see *INSPRU* 7.1.10G and *INSPRU* 7.1.68G). Projections should be made on different bases, including ones which are consistent with the business plan, as well as others using 'realistically adverse' alternative scenarios. In considering the tests and analyses to be used for the purposes of these projections, an insurer should have regard to the matters mentioned below.

(a) As with the ICA, it is for the insurer to identify an appropriate range of adverse circumstances and events. As the projections are being assessed as part of business planning, the FSA would expect stresses and scenarios to be more likely than the extreme conditions covered by an ICA. As a guide, stresses and scenarios with a probability of once in a 25 year period would be useful as a reference when an insurer discusses projections of its financial position with the FSA (see also *GENPRU* 1.2.75G(3)).

(b) Business risk is likely to be a more significant feature in projecting an insurer's financial position than in its ICA (see *GENPRU* 1.2.31R and *GENPRU* 1.2.32G).

(c) The treatment of new business is likely to be different for projecting an insurer's financial position than in its ICA. In the former, this should be based on the firm's business plan,

but flexed to incorporate potential changes in trading conditions and strategy. In the latter, account should be taken of the effects of a closure to new business (see *GENPRU 1.2.27G*, *GENPRU 1.2.73G(3)* and *INSPRU 7.1.16G* to *INSPRU 7.1.19G*).

- (d) Methods that are more approximate than used for an *ICA* may be appropriate for projecting elements of an *insurer's* financial position (e.g. the *with-profits insurance capital component* for *realistic basis life firms*).

...

**PRUDENTIAL SOURCEBOOK FOR INSURERS (AMENDMENT)
INSTRUMENT 2008**

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 April 2008.

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) Instrument 2008.

By order of the Board
27 March 2008

Annex

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

- 3.1.60 G If a *firm* has incurred a *policy* liability which cannot be exactly matched by appropriate assets (for example the Limited Price Index (LPI)), the *firm* should seek to match assets that at least cover the liabilities. For example, an LPI limited to 5% per annum may be matched by an RPI bond or a fixed interest investment matching cash flows increasing at 5% per annum compound. Orders made by the Department for Work and Pensions under section 148 of the Social Security Administration Act 1992, and which are limited to 5% per annum, may also be matched by a fixed interest investment matching cash flows increasing at 5% per annum compound (see also *INSPRU* 3.1.61-AG).
- 3.1.61 G In selecting the appropriate cover, the *firm* should ensure that both credit risk, and the risk that the value or yield in the assets will not, in all circumstances, match fluctuations in the relevant index, are within acceptable limits. *Rules* and *guidance* relating to credit risk are set out in *INSPRU* 2.1.
- 3.1.61-A G Where liabilities are linked to orders made under section 148 of the Social Security Administration Act 1992, *firms* are required by *COBS* 21.3.5R to notify their supervisors before effecting any such business and to explain how the risks associated with this business will be safely managed. This requirement does not apply in respect of liabilities for which a limited revaluation premium has been paid to the Department for Work and Pensions so that the liability for revaluation, while still linked to section 148 orders, is limited to 5%. The risks may be mitigated by holding assets to cover an alternative index which is reasonably expected to at least cover the section 148 order (e.g. RPI plus a margin) over the duration of the link. The *firm's* exposure to an order under section 148 exceeding this index should be appropriately limited by putting a cap on the liabilities linked to the order so that risks are within acceptable limits.
- ...
- 7.1.9 G ...
- 7.1.9A G This section sets out in greater detail the approach to be taken by a *firm* when carrying out the assessment of capital described in the preceding paragraph. This is the assessment referred to as an

individual capital assessment. The rules in GENPRU 1.2 also (see GENPRU 1.2.30R(1)(c)) require a firm to identify and assess risks to its being able to meet its CRR in the future. This is a separate requirement from that to carry out an ICA, and guidance on this requirement is provided in GENPRU 1.2. In particular, firms should note that there is no requirement that the level of capital required as identified by the ICA should be equal to, or exceed, the CRR.

7.1.9B G The requirements and guidance in this section are drafted so as to apply to a firm on a solo basis. As noted in GENPRU 1.2.17G, however, in some cases the requirements in GENPRU 1.2 apply on a consolidated basis. In these cases, a firm should read and apply this section making appropriate adjustments to reflect the application of the GENPRU 1.2 requirements on a consolidated basis.

...

7.1.15 R Where a firm is carrying out an assessment in accordance with GENPRU 1.2 of the adequacy of its overall financial resources to cover the risk in the overall financial adequacy rule, that is, the risk of its being unable to meet its liabilities as they fall due ~~in accordance with GENPRU 1.2,~~ the assessment of the adequacy of the firm's capital resources must:

...

**PRUDENTIAL SOURCEBOOK FOR MORTGAGE AND HOME FINANCE FIRMS,
AND INSURANCE INTERMEDIARIES (USE OF INTERMEDIARIES)
INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 April 2008.

Amendments to the Handbook

- D. The Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (Use of Intermediaries) Instrument 2008.

By order of the Board
27 March 2008

Annex

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.

Use of intermediaries

- 5.2.1 R A *firm* must not use, or propose to use, the services of another person consisting of:
- (1) *insurance mediation*; or
 - (2) *insurance mediation activity*; or
 - (3) *home finance mediation activity*;
- unless ~~two conditions are~~ MIPRU 5.2.2R is satisfied.
- 5.2.1A G The FSA regards a *firm* as ‘using’ the services of, in particular, its immediate counterparty (typically the intermediary that passed the business to the *firm*) and of all other *persons* who have been granted the right or authority directly by the *firm* to effect a *contract of insurance* or *enter into a home finance transaction*.
- 5.2.2 R ~~For the purposes of MIPRU 5.2.1R, The first condition is that the~~ the person, in relation to the activity must:
- (1) ~~has~~ have *permission*; or
 - (2) ~~is~~ be an *exempt person*; or
 - (3) ~~is~~ be an *exempt professional firm*; or
 - (4) ~~is~~ be registered in another *EEA State* for the purposes of the *Insurance Mediation Directive*; or
 - (5) in relation to *insurance mediation activity*, ~~is not~~ be carrying this activity on in the *EEA*; or
 - (6) in relation to *home finance mediation activity*, ~~is not~~ be carrying this activity on in the *United Kingdom*.
- ...
- 5.2.4 R ~~The second condition is that the *firm* takes all reasonable steps to ensure that the person that it uses in relation to the activity, is not, directly or indirectly, carrying out the activity as a consequence of the activities of another person~~

which:

- (1) ~~contravene section 19 of the Act (The general prohibition); or~~
- (2) ~~in the case of activities provided from an establishment in an EEA State, contravene the Insurance Mediation Directive registration requirements.~~

~~[Note: Article 3(6) of the Insurance Mediation Directive] [deleted]~~

- 5.2.5 R ~~In order to comply with the second condition, a firm may rely on a confirmation provided by the other person in writing if:~~
- (1) ~~the confirmation is provided by a person that satisfies the first condition;~~
 - (2) ~~the firm checked that this is the case; and~~
 - (3) ~~the firm is not aware that the confirmation is inaccurate and has no grounds for reasonably being aware that the confirmation is inaccurate.~~
~~[deleted]~~

**INTERIM PRUDENTIAL SOURCEBOOK FOR INSURERS
(MARINE MUTUALS REPORTING) (AMENDMENT) INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 340 (Appointment).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 April 2008 and applies to all FSA returns of marine mutuals for financial years ending on or after 20 February 2008 which are not submitted to the FSA before 6 April 2008.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Interim Prudential Sourcebook for Insurers (Marine Mutuals Reporting) (Amendment) Instrument 2008.

By order of the Board
27 March 2008

Annex

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

VOLUME 2

Appendices to the Rules

APPENDIX 9.8 (rule 9.36A)

...

Part III

Auditor's reports

5. Every *marine mutual* must procure an auditor's report, pursuant to *SUP*, stating whether, in the auditors' opinion:
 - (a) the Forms, information and statements required (except for the additional information required by rules 9.30, 9.32A and 9.36B and the directors' certificate prepared in accordance with Part II of this Appendix) have been properly prepared in accordance with the *Accounts and Statements Rules*; and
 - (b) ...

...

Instructions for completion of Form M3

...

3. The aggregate value of those investments which are:

...

(d) reversionary interests or remainders in property other than land or buildings, must be stated by way of a supplementary note (~~code 1301~~), together with a description of such investments.

...

8. Lines 99-102 must be completed in accordance with the *insurance account rules* or *international accounting standards* as applicable to the *insurer* for the purpose of its external financial reporting if the *insurer* is required to produce such accounts. Otherwise these lines must be left blank. Details of amounts in line 101 must be disclosed in a supplementary note (~~code 1318~~). For years ending on or before 30 December 2008, the previous year figure for line 93 must be left blank and that for line 101 must equal line 100 from the previous *return*.

PERMITTED LINKS (AMENDMENT NO 2) INSTRUMENT 2008

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);
 - (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 April 2008.

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 2) Instrument 2008.

By order of the Board
27 March 2008

Annex A

Amendments to the Glossary of definitions

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

approved index in relation to *permitted links*:

...

(c) ... ~~or~~

(d) the average earnings index when used for the purposes of orders made under section 148 of the Social Security Administration Act 1992 by the Department for Work and Pensions.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

21.1.2 R The *rules* in this section do not apply to:

...

- (4) ~~contracts to manage the investments of pension funds that are not combined with *contracts of insurance* covering either conservation of capital or payment of a minimum interest, provided always that benefits under those contracts must not be determined wholly or partly by reference to the value of, or income from, or fluctuations in the value of, *derivative* contracts other than *permitted derivatives contracts*; [deleted]~~

...

- 21.3.5 R (1) Except in the case specified in (2), a *firm* which proposes to undertake *linked long-term insurance business*, which is linked to the average earnings index and used for the purposes of orders made by the Department for Work and Pensions under section 148 of the Social Security Administration Act 1992, must notify the *FSA* in writing of its intention to do so in good time before effecting any such business for the first time, or if there is a material change in the volume of such business, and explain how the risks associated with this business will be safely managed.
- (2) These requirements do not apply in respect of liabilities for which a limited revaluation premium has been paid to the Department for Work and Pensions so that the liability for revaluation, while still linked to orders made under section 148 of the Social Security Administration Act 1992, is limited to 5%.

INTEGRATED REGULATORY REPORTING (REMOVAL OF ANNUAL FINANCIAL RETURNS AND RECONCILIATIONS) INSTRUMENT 2008

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

Commencement

- C. This instrument comes into force on 1 April 2008.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex B
Prudential sourcebook for UCITS firms (UPRU)	Annex C
Supervision manual (SUP)	Annex D

Citation

- E. This instrument may be cited as the Integrated Regulatory Reporting (Removal of Annual Financial Returns and Reconciliations) Instrument 2008.

By order of the Board
27 March 2008

Annex A

Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

annual financial return ~~(in UPRU) means the return referred to in SUP.~~

Annex B

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

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

5.2.4 Annual Expenditure

5.2.4(1) R *Annual expenditure* is:

- (a) ~~the amount described as total expenditure in the most recent *annual financial return*~~ the sum of the amounts described as total expenditure in the four *quarterly financial returns* up to (and including) that prepared at the *firm's* most recent *accounting reference date*, less the following items (if they are included within such expenditure):

...

...

- (c) where a *firm* has not prepared ~~an *annual financial return* or four *annual accounts*~~ *quarterly financial returns* since the commencement of its *permitted business*, an amount based on forecast expenditure included in ~~the~~ its budget for the first twelve months' trading, as submitted with its application for membership.

- 5.2.4(2) G A *firm's financial resources requirement* will be recalculated annually when its ~~*annual financial return*~~ *fourth quarterly financial return* is prepared. The *firm* must maintain *financial resources* sufficient to meet its new *financial resources requirement* from the date on which the ~~*annual financial return*~~ *fourth quarterly financial return* is prepared and no later than 80 business days after the *firm's accounting reference date*. The *expenditure based requirement* applicable at the *accounting reference date* ~~to which the *annual financial return* is prepared~~ will be ~~that based on the previous year's figures~~ *four quarterly financial returns* prepared up to and on that date. This will usually be the same as that used in the fourth quarter's *quarterly financial return* prepared to the same *accounting reference date*.

...

APPENDIX 1 (INTERPRETATION)

...

Term	Meaning
------	---------

...

<i>annual financial return</i>	means the return referred to in the Supervision Manual.
--------------------------------	--

<i>financial return</i>	means annual financial return , quarterly financial return or monthly financial return as the case may be.
-------------------------	---

Annex C

Amendments to the Prudential sourcebook for UCITS firms (UPRU)

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

Annual fixed expenditure

2.1.3 R For the purposes of this sourcebook, a *firm's* annual fixed expenditure is:

- (1) ~~the amount described as total expenditure in the most recent *annual financial return*~~ the sum of the amounts described as total expenditure in the four *quarterly financial returns* up to (and including) that prepared at the *firm's* most recent *accounting reference date*, less the following items (if they are included within that expenditure):

...

...

- (3) where a *firm* has not prepared ~~an *annual financial return* or *annual accounts*~~ four *quarterly financial returns* since the commencement of its *permitted business*, an amount based on forecast expenditure included in the budget for the first twelve months' trading, as submitted with its application for authorisation.

2.1.4 G A *firm's financial resources requirement* will be recalculated annually when its ~~*annual financial return*~~ *fourth quarterly financial return* is prepared. The *firm* should maintain *financial resources* sufficient to meet its new *financial resources requirement* from the date on which the ~~*annual financial return*~~ *fourth quarterly financial return* is prepared (and no later than 80 business days after the *accounting reference date*). The ~~annual fixed expenditure~~ expenditure based requirement applicable at the *accounting reference date* ~~to which the *annual financial return* is prepared~~ will be that based on the ~~previous year's figures~~ four *quarterly financial returns* prepared up to and on that date. ~~This will usually be the same as that used in the fourth quarter's *quarterly financial return* prepared to the same *accounting reference date*.~~

Annex D

Amendments to the Supervision manual (SUP)

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

SUP 16.7

16.7.21B R.

Table financial reports required from UK Insurance Special Purpose Vehicles

Report	Frequency	Due date
<u>Annual audited financial statements report and accounts</u>	Annually	3 months after the <i>firm's accounting reference date</i>

16.7.25 R

Reports required from a securities and futures firm which is a category A or B firm or a broad scope firm (see SUP 16.7.24R)

Report	Return	Frequency	Due date
Audited annual financial statements <u>Annual report and accounts</u> (Note 5A)		Annually	3 months after the <i>firm's accounting reference date</i>
Annual reporting statement		Annually	3 months after the <i>firm's accounting reference date</i>
Annual reconciliation (Note 1)		Annually	3 months after the <i>firm's accounting reference date</i>
Audited accounts of any subsidiary, unless the <i>rules</i> in this chapter require that subsidiary to submit accounts to the FSA (Note 5A)		Annually	3 months after the <i>firm's accounting reference date</i>
...	
<p>Note 1 = Every year a firm must submit: (a) a reconciliation and explanation of any differences between amounts shown in the balance sheet in the audited annual financial statements and the annual reporting statement; and (b) a reconciliation and explanation of any differences between the annual reporting</p>			

statement and the monthly reporting statement prepared as at the same date. [deleted]
...

16.7.27 R

Reports from a securities and futures firm which is a category C or D firm or an arranger or venture capital firm (see SUP 16.7.26R)

Report	Return	Frequency	Due Date
Audited annual financial statements		Annually	3 months after the <i>firm's accounting reference date</i>
Annual reporting statement		Annually	3 months after the <i>firm's accounting reference date</i>
Annual reconciliation (Note 1)		Annually	3 months after the <i>firm's accounting reference date</i>
...	
<p>Note 1 = Every year a <i>firm</i> must submit:</p> <p>(a) a reconciliation and explanation of any differences between amounts shown in the balance sheet in the audited annual financial statements and the annual reporting statement; and</p> <p>(b) a reconciliation and explanation of any differences between the annual reporting statement and the monthly reporting statement prepared as at the same date. [deleted]</p>			
...			

16.7.29 R

Reports from a securities and futures firm which is an adviser, local or a traded options market maker (see SUP 16.7.28R)

Report	Return	Frequency	Due date
...	
Audited annual financial statements <u>Annual report and accounts</u> (<i>partnerships and bodies corporate only</i>)		Annually	3 <u>2</u> months after the <i>firm's accounting reference date</i>
Audited accounts of any <i>subsidiary</i> unless the <i>rules</i> in this chapter		Annually	3 months after the <i>firm's accounting</i>

require that <i>subsidiary</i> to submit accounts to the <i>FSA</i>			<i>reference date</i>
...	

16.7.33 R (1) Any report in *SUP* 16.7.23R to *SUP* 16.7.30R submitted to the *FSA* by a *securities and futures firm* must be signed by two authorised signatories satisfying the requirements of *SUP* 16.7.33R(2), except for:

- (a) ~~the audited accounts of a subsidiary of the *firm* and the *firm's* audited annual financial statements; [deleted]~~
- (aa) reports in accordance with *SUP* 16 Annex 18AR or *SUP* 16 Annex 19AR; ~~and~~
- (b) other reports where the *firm* is a *sole trader*, when only one authorised signatory is required; and
- (c) reports submitted in accordance with (3), (5) and (6).

...

(3) A *firm* must use the FiRSt 5.0 software package made available to *firms* by the *FSA* (and previously by the *SFA*) to submit the following reports:

- (a) ~~annual reporting statement; [deleted]~~
- (b) monthly reporting statement;
- (c) quarterly reporting statement; and
- (d) consolidated reporting statement.

...

...

16.7.36 R Reports from an investment management firm (see *SUP* 16.7.35R)

Report	Return	Frequency	Due date
Annual Financial Return (Note 1)		Annually	4 months after the <i>firm's</i> accounting reference date

...	
<p>Note 1: The Annual Financial Return and the annual report and accounts of a <i>firm</i> must together give a true and fair view of the state of affairs of the <i>firm</i> (or in the case of a <i>sole trader</i>, of his regulated activities) and of the <i>firm's</i> profit or loss.</p>			
...			
<p>Note 6 : <i>Investment management firms</i> that are <i>CAD investment firms</i> must add the required information to their large exposure reporting in the Annual Financial Return <i>quarterly financial returns</i> prepared at the <i>firms' accounting reference date</i>. For the purposes of this reporting requirement, a <i>transaction</i> will be presumed to be significant if its amount exceeds 5% of the total amount of capital adequacy requirements at the level of the <i>group</i>.</p>			
...			

16.7.58 R Reports from a members' adviser (see SUP 16.7.57R)

Report	Return (Note 1)	Frequency	Due date
...	
Annual reporting statement		Annually	3 months after the <i>firm's accounting reference date</i>
Annual reconciliation		Annually	3 months after the <i>firm's accounting reference date</i>
Audited accounts of any subsidiary, unless the rules in this chapter require those subsidiaries to submit accounts to the FSA		Annually	3 months after the <i>firm's accounting reference date</i>
...	

16.7.68 R Financial reports from a UCITS management company (see SUP 16.7.67R)

Report	Return	Frequency	Due date
...			

Note 3: A *firm* must therefore prepare four Quarterly Financial Returns each year. ~~One Quarterly Financial Return must be prepared to the same date as the Annual Financial Return (but submitted earlier).~~ Quarterly Financial Returns are not cumulative, and must relate only to the period concerned. A *firm* may need to prepare more frequent accounts, including financial resources statements, for its own internal use to ensure that it complies at all times with the *rules* in *UPRU* (for a *UCITS firm*) or *BIPRU* (for a *UCITS investment firm*).

...

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	<i>Firm's</i> prudential category and applicable data items (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>
...
Annual reconciliation				No standard format (note 18)	No standard format		No standard format (note 13)	
...	...							

16.12.12 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.4R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	<i>BIPRU 730k firm</i>	<i>BIPRU 125k firm and UCITS investment firm</i>	<i>BIPRU 50k firm</i>	<i>Consolidated BIPRU investment firm</i>	<i>Firm other than BIPRU firms</i>
...
Annual reconciliation					Annually
...		
FSA029					Quarterly and annually (note 1)
FSA030					Quarterly and annually (note 1)
FSA031					Quarterly
FSA032					Quarterly
FSA033					Quarterly and annually (note 1)
FSA034					Quarterly and annually (note 1)
FSA035					Quarterly and annually (note 1)
FSA036					Quarterly and annually (note 1)

FSA037					Quarterly and annually (note 1)
...
Note 1	The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms subject to the small firms audit exemption</i>) be audited before it is submitted. [deleted]				
...	...				

16.12.13 R The applicable due dates for submission referred to in *SUP* 16.12.6R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.12R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...
Annual reconciliation				80 business days
...

16.12.15 R The applicable *data items* referred to in *SUP* 16.12.4R according to type of *firm* are set out in the table below:

Description of data item	<i>Firms prudential category and applicable data items (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K and UCITS investment firms	50K	IPRU (INV) Chapter 3	IPRU (INV) Chapter 5	IRPU (INV) Chapter 9	IPRU (INV) Chapter 13	UPRU
...	...							
Annual				No	No		No	

reconciliation				standard format	standard format		standard format (note 13)	
...
...								
Note 16	The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms</i> subject to the small firms audit exemption) be audited before it is submitted. [deleted]							
...	...							

16.12.16 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's* *accounting reference date*, unless indicated otherwise.

Date item	Firm's prudential category				
	<i>BIPRU</i> 730K firm	<i>BIPRU</i> 125K firm	<i>BIPRU</i> 50K firm	Consolidated <i>BIPRU</i> investment firm	<i>Firm</i> other than <i>BIPRU</i> firm
...
Annual reconciliation					Annually
...
FSA029					Quarterly and annually (note 1)
FSA030					Quarterly and annually (note 1)
...
FSA033					Quarterly and annually (note 1)
FSA034					Quarterly

					and annually (note 1)
FSA035					Quarterly and annually (note 1)
FSA036					Quarterly and annually (note 1)
...
Note 1	The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms</i> subject to the small firms audit exemption) be audited before it is submitted. [deleted]				
...	...				

16.12.17 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.16R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...
Annual reconciliation				80 business days
...
...	...			

16.12.19A R The applicable ~~data items~~ *data items* referred to in SUP 16.12.4R are set out according to type of ~~firm~~ *firm* in the table below:

Description of data item	<i>Firm's</i> prudential category and applicable data item (note 1)				
	<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>

...
Annual reconciliation	No standard format	No standard format		No standard format (note 2)	
...
...	...				

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.

...	...
FSA029	Quarterly and annually (note 1)
FSA030	Quarterly and annually (note 1)
...	
FSA033	Quarterly and annually (note 1)
FSA034	Quarterly and annually (note 1)
FSA035	Quarterly and annually (note 1)
FSA036	Quarterly and annually (note 1)
...	...
Note 1	The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms</i> subject to the small firms audit exemption) be audited before it is submitted. [deleted]
...	...

16.12.21 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.20R.

<i>Data item</i>	Quarterly submission	Half yearly submission	Annual submission
------------------	----------------------	------------------------	-------------------

...
Annual reconciliation			80 business days
...
...	...		

16.12.25A R The applicable *data items* referred to in SUP 16.12.4R are set out according to type of *firm* in the table below:

Description of data item	<i>Firm's</i> prudential category and applicable data items (note 1)							
	<i>BIPRU firms</i> (note 17)			<i>Firms other than BIPRU firms</i>				
	730K	125K	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>
...
Annual reconciliation				No standard format	No standard format		No standard format (note 13)	
...
...	...							

16.12.26 R The applicable reporting frequencies for *data items* referred to in SUP 16.12.25AR are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's* *accounting reference date*, unless indicated otherwise.

	<i>BIPRU</i> 730K firm	<i>BIPRU</i> 125K firm	<i>BIPRU</i> 50K firm	Consolidated <i>BIPRU</i> investment firm	<i>Firm other</i> than <i>BIPRU</i> firm
...
Annual reconciliation					Annually
...
FSA029					Quarterly and annually (note 1)

FSA030					Quarterly and annually (note 1)
...
FSA033					Quarterly and annually (note 1)
FSA034					Quarterly and annually (note 1)
FSA035					Quarterly and annually (note 1)
FSA036					Quarterly and annually (note 1)
...
Note 1	The annual <i>data item</i> to be submitted is additional to the fourth quarterly return to be submitted. The information to be submitted in the annual <i>data item</i> must (except for <i>exempt CAD firms</i> or <i>firms subject to the small firms audit exemption</i>) be audited before it is submitted. [deleted]				
...	...				

16.12.27 R The applicable due dates for submission referred to in SUP 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in SUP 16.12.26R.

<i>Data item</i>	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
...
Annual reconciliation				80 <i>business days</i>

...
...	...			

SUP 16 TP 1.2 Row 12Q

(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)	SUP 16.12.11R, SUP 16.12.14R, SUP 16.12.19 R, SUP 16.12.25 R	R	(1)	A <i>securities and futures firm</i> that is:	1 January 2008 to 30 August 2008	1 January 2008
			(a)	not a <i>BIPRU firm</i> , an <i>exempt CAD firm</i> or an <i>exempt BIPRU commodity firm</i> must submit the annual reporting statement, the annual reconciliation and the quarterly reporting statement in the manner and to the timescales set out in SUP 16.7.27R, and SUP 16.7.31R to SUP 16.7.34G;		
...						
		(2)	except in the case of an <i>investment management firm</i> that is not a <i>BIPRU firm</i> , is not an <i>exempt CAD firm</i> and is authorised by the <i>FSA</i> after 5 April 2007, an <i>investment management firm</i> that is:			
		(a)	neither a <i>BIPRU firm</i> nor an <i>exempt CAD firm</i> must submit the annual reporting statement and the quarterly financial return in the manner and to the timescales set out in SUP 16.7.36R to SUP 16.7.38R;			
...						
		(3)	A <i>UCITS firm</i> :			
		(a)	other than an <i>exempt CAD firm</i> must submit the			

(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
				Annual Financial Return and the Quarterly Financial Return in the manner and to the timescales set out in <i>SUP</i> 16.7.68R and <i>SUP</i> 16.7.69R;		
				...		

DISPUTE RESOLUTION: COMPLAINTS (SIMPLIFICATION (NO 2) AND OTHER AMENDMENTS) INSTRUMENT 2008

Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes:

- (1) the rules and guidance in Annexes A and B to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
- (2) the standard terms and guidance in Annexes A and 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) section 230 (Costs);
- (e) paragraph 8 (Guidance) of Schedule 1;
- (f) paragraph 14 (The scheme operator's rules) of Schedule 17;
- (g) paragraph 16B (Consumer credit jurisdiction) of Schedule 17; and
- (h) 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 powers and related provisions in or under:

- (1) the following sections of the Act:
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 226 (Compulsory jurisdiction);
 - (e) section 229 (Awards);
 - (f) paragraph 13 (Authority's procedural rules) of Schedule 17;
- (2) article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Ombudsman Scheme and Complaints Scheme) Order 2001 (SI 2001/2326);

- (3) article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454); and
 - (4) the other powers referred to in Schedule 4 of the General Provisions.
- D. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the rules and standard terms made by the Financial Ombudsman Service Limited.

Commencement

- F. Part 2 of Annex B to this instrument comes into force on 6 July 2008. The remainder of this Instrument comes into force on 6 April 2008.

Amendments to the Dispute Resolution: the Complaints sourcebook

- G. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Other 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).

Glossary of definitions	Annex A
Fees manual	Annex C
Credit Unions sourcebook	Annex D
Professional Firms sourcebook	Annex E

Citation

- I. This instrument may be cited as the Dispute Resolution: Complaints (Simplification (No 2) and other Amendments) Instrument 2008.

By order of the Board of the Financial Ombudsman Service Limited

5 March 2008

By order of the Board of the Financial Services Authority

27 March 2008

Annex A

Amendments to the Glossary of definitions

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

...

chargeable case any ~~complaint~~ complaint referred to the *Financial Ombudsman Service*, except where:

- (a) the *Ombudsman* considers it apparent from the ~~complaint~~ complaint, when it is received, and from any *final response* which has been issued by the *firm* or *licensee*, that the ~~complaint~~ complaint should not proceed because:
 - (i) the complainant is not an *eligible complainant* in accordance with *DISP* 2; or
 - (ii) the ~~complaint~~ complaint does not fall within the jurisdiction of the *Financial Ombudsman Service* (as described in *DISP* 2); or
 - (iii) the *Ombudsman* considers that the ~~complaint~~ complaint should be dismissed without consideration of its merits under *DISP* 3.3 (Dismissal of complaints without consideration of the merits and test cases); or
- (b) the *Ombudsman* considers, at any stage, that the ~~complaint~~ complaint should be dismissed under *DISP* 3.3.4~~R~~(2) on the grounds that it is frivolous or vexatious.

...

complaint (1) ...

...

(4) (in *DISP*) reference to a *complaint* includes:

- (a) under all jurisdictions, part of a *complaint*; and
- (b) under the *Compulsory Jurisdiction*, all or part of a *relevant complaint*.

...

eligible complainant a person eligible to have a ~~complaint~~ complaint considered under the *Financial Ombudsman Service*, as defined in *DISP* 2.4 (~~Who can refer a complaint to the Financial Ombudsman Service~~) 2.7 (Is the complainant eligible?).

...

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);
- (2) (in *DISP 2* and *3*) includes, in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant existing complaints* and *relevant new complaints*.
- (3) (in *DISP 2* and *3*) includes, in accordance with the *Mortgage and General Insurance Complaints Transitional Order*, former *firms* subject to the *Compulsory Jurisdiction* in relation to *relevant transitional complaints*.
- (4) (in *DISP 2* and *3*) includes, as a result of the *insurance market direction* given in *DISP 2.1.7D* under section 316 of the *Act* (*Direction by Authority*), *members of the Society of Lloyd's*.

...

relevant business

- (1) (in *DISP* and *FEES*) that part of a *firm's* business which it conducts with private individuals and which is subject to the jurisdiction of the *Financial Ombudsman Service* as provided for in *DISP 2.6* (~~To which activities do the rules apply?~~) *2.3* (*To which activities does the Compulsory Jurisdiction apply?*), *DISP 2.4* (*To which activities does the Consumer Credit Jurisdiction apply?*) and *DISP 2.5* (*To which activities does the Voluntary Jurisdiction apply?*), measured by reference to the appropriate tariff-base for each *industry block*.

...

...

respondent

- (1) (in *DISP*) a *firm* (except a *UCITS qualifier*), *licensee* or *VJ participant* covered by the ~~compulsory jurisdiction~~ *Compulsory Jurisdiction*, ~~consumer credit jurisdiction~~ *Consumer Credit Jurisdiction* or ~~voluntary jurisdiction~~ *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.

(3) (in DISP 2 and 3) includes, in accordance with the *Ombudsman Transitional Order*, an *unauthorised person* subject to the *Compulsory Jurisdiction* in relation to *relevant existing complaints* and *relevant new complaints*.

(4) (in DISP 2 and 3) includes, in accordance with the *Mortgage and General Insurance Complaints Transitional Order*, a former *firm* subject to the *Compulsory Jurisdiction* in relation to *relevant transitional complaints*.

...

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

Part 1

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

...

- 1.1.5 R This chapter does not apply to:
- (1) a ~~UCITS~~ qualifier; [deleted]

...

1.8 Complaints time barring rule

- 1.8.1 R If a *respondent* receives a *complaint* which is outside the time limits for referral to the *Financial Ombudsman Service* (see *DISP 2.3 2.8*) it may reject the *complaint* without considering the merits, but must explain this to the complainant in a *final response* in accordance with *DISP 1.6.2R* and indicate that the *Ombudsman* may waive the time limits in exceptional circumstances.

...

Part 2

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

...

Complainant's written acceptance

- 1.6.4 R *DISP* 1.6.2R does not apply if the complainant has already indicated in writing acceptance of a response by the *respondent*, provided that the response:
- (1) ~~informs~~ informed the complainant how to pursue his *complaint* with the *respondent* if he remains dissatisfied; and
 - (2) referred to the ultimate availability of the *Financial Ombudsman Service* if he remains dissatisfied with the *respondent's* response.

...

- 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, 1.6.4R and 1.6.5R) should be set out prominently within the text of those responses.

...

DISP TP 1

Transitional provisions

1.1 Transitional Provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	...				
...					
<u>20</u>	<u><i>DISP</i> 1.6.4R</u>	<u>R</u>	<u>Where a complainant indicates after 6 July 2008 their acceptance of a response sent by the <i>respondent</i> under</u>	<u>From 6 July 2008 to 6 September 2008</u>	<u>6 July 2008</u>

			<u>DISP 1.6.4R before 6 July 2008 then that response need not have referred to the ultimate availability of the <i>Financial Ombudsman Service</i>.</u>		
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Part 3

The introduction to *DISP*, and *DISP 2*, *DISP 3* and *DISP 4* are deleted and replaced with the following text. All the text is new and is not underlined.

Introduction

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

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the *FSA* and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the *FSA*. Schedule 4 specifies the sections of the *Act* under which the rules in this sourcebook are made.

The powers to make rules (or set *standard terms*) relating to *firms*, *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.

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*.

Chapters 2 - 4: The Financial Ombudsman Service

Chapters 2, 3 and 4 set out how the *Financial Ombudsman Service* (operated by *FOS Ltd*) considers unresolved *complaints*.

Chapter 2 sets out the scope of the *Financial Ombudsman Service*'s three jurisdictions:

- the *Compulsory Jurisdiction*;
- the *Consumer Credit Jurisdiction*; and
- the *Voluntary Jurisdiction*.

The scope of the three jurisdictions is defined by: the type of activity to which the *complaint* relates; the place where the activity took place; the eligibility of the complainant; and the time limits for referring a *complaint* to the *Financial Ombudsman Service*.

Chapter 3 sets out the procedures of the *Financial Ombudsman Service*, including consideration and determination of *complaints* and how the *Financial Ombudsman Service* deals with information received.

Chapter 4 sets out the terms under which *VJ participants* participate in the *Voluntary Jurisdiction*.

Appendix 1: FSA's guidance on handling mortgage-endowment complaints

This appendix contains the *FSA's guidance to firms* on handling *complaints* relating to mortgage endowments.

Financial Ombudsman Service fees

The rules on fees charged in respect of the *Financial Ombudsman Service* are in Chapter 5 of the Fees manual.

2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

- 2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* three jurisdictions:
- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities* and covers:
 - (a) certain *complaints* against *firms* (and businesses which were *firms* at the time of the events complained about); and
 - (b) *relevant complaints* against former members of *former schemes* under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*;
 - (2) the *Consumer Credit Jurisdiction* covers certain *complaints* against *licensees* (and businesses which were *licensees* at the time of the events complained about); and
 - (3) the *Voluntary Jurisdiction* covers certain *complaints* against *VJ participants*, including in relation to events before they joined the *Voluntary Jurisdiction*.
- 2.1.2 G *Relevant complaints* covered by the *Compulsory Jurisdiction* comprise:
- (1) *relevant existing complaints* referred to a *former scheme* before *commencement* and inherited by the *Financial Ombudsman Service* under the *Ombudsman Transitional Order*;
 - (2) *relevant new complaints* about events before *commencement* but referred to the *Financial Ombudsman Service* after *commencement* under the *Ombudsman Transitional Order*; and
 - (3) *relevant transitional complaints* referred to the *Financial Ombudsman Service* after the *relevant commencement date* under the *Mortgage and General Insurance Complaints Transitional Order*.
- 2.1.3 G The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Interpretation

- 2.1.4 G In this chapter, carrying on an activity includes:
- (1) offering, providing or failing to provide a service in relation to an activity;
 - (2) administering or failing to administer a service in relation to an activity; and
 - (3) the manner in which a *respondent* has administered its business, provided that the business is an activity subject to the *Financial Ombudsman Service's* jurisdiction.
- 2.1.5 G In this chapter, ancillary banking services include, for example, the provision and operation of cash machines, foreign currency exchange, safe deposit boxes and account aggregation services (services where details of accounts held with different financial service providers can be accessed by a single password).

Application

- 2.1.6 R This chapter applies to the *Ombudsman* and to *respondents*.
- 2.1.7 D Part XVI of the *Act* (The Ombudsman Scheme), particularly section 226 (Compulsory Jurisdiction), applies to *members* of the *Society of Lloyd's* in respect of the *regulated activities* of *effecting* or *carrying out contracts of insurance* written at Lloyd's.

2.2 Which complaints can be dealt with under the Financial Ombudsman Service?

- 2.2.1 G The scope of the *Financial Ombudsman Service's* three jurisdictions depends on:
- (1) the type of activity to which the *complaint* relates (see *DISP 2.3*, *DISP 2.4* and *DISP 2.5*);
 - (2) the place where the activity to which the *complaint* relates was carried on (see *DISP 2.6*);
 - (3) whether the complainant is eligible (see *DISP 2.7*); and
 - (4) whether the *complaint* was referred to the *Financial Ombudsman Service* in time (see *DISP 2.8*).

2.3 To which activities does the Compulsory Jurisdiction apply?

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

- (1) *regulated activities*;
- (2) *consumer credit activities*;
- (3) lending *money* secured by a charge on land;
- (4) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
- (5) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
- (6) providing ancillary banking services;

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

2.3.2 G The *Ombudsman* can also consider under the *Compulsory Jurisdiction*:

- (1) as a result of the *Ombudsman Transitional Order*, a *relevant existing complaint* or a *relevant new complaint* that relates to an act or omission by a *firm* or an *unauthorised person* which was subject to a *former scheme* immediately before *commencement*; or
- (2) as a result of the *Mortgage and General Insurance Complaints Transitional Order*, a *relevant transitional complaint* that relates to an act or omission by a *firm* (or an *unauthorised person* that ceased to be a *firm* after the *relevant commencement date*) which was subject to a *former scheme* at the time of the act or omission;

provided that:

- (3) the act or omission occurred in the carrying on by that *firm* or *unauthorised person* of an activity to which that *former scheme* applied; and
- (4) the complainant is eligible and wishes to have the *complaint* dealt with by the *Ombudsman*.

2.3.3 G *Complaints* about acts or omissions by a *firm* include *complaints* about acts or omissions in respect of activities for which the *firm* is responsible (including business of any *appointed representative* for which the *firm* has accepted responsibility).

2.3.4 R A *complaint* about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction* of the *Financial Ombudsman Service*

if it relates solely to a *non-mainstream regulated activity* and can be handled by a *designated professional body*.

2.4 To which activities does the Consumer Credit Jurisdiction apply?

- 2.4.1 R The *Ombudsman* can consider a *complaint* under the *Consumer Credit Jurisdiction* if:
- (1) it is not covered by the *Compulsory Jurisdiction*; and
 - (2) it relates to an act or omission by a *licensee* in carrying on:
 - (a) one or more *consumer credit activities*; or
 - (b) any ancillary activities, including advice, carried on by the *licensee* in connection with them.

2.5 To which activities does the Voluntary Jurisdiction apply?

- 2.5.1 R The *Ombudsman* can consider a *complaint* under the *Voluntary Jurisdiction* if:
- (1) it is not covered by the *Compulsory Jurisdiction* or the *Consumer Credit Jurisdiction*; and
 - (2) it relates to an act or omission by a *VJ participant* in carrying on one or more of the following activities:
 - (a) an activity carried on after 28 April 1988 which:
 - (i) was not a *regulated activity* at the time of the act or omission, but
 - (ii) was a *regulated activity* when the *VJ participant* joined the *Voluntary Jurisdiction* (or became an *authorised person*, if later);
 - (b) a financial services activity carried on after *commencement* by a *VJ participant* which was covered in respect of that activity by a *former scheme* immediately before the *commencement day*;
 - (c) activities which (at 1 July 2007) 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 Ann 1G*);
 - (d) activities which would be *consumer credit activities* if they were carried on from an establishment in the *United*

Kingdom;

- (e) lending *money* secured by a charge on land;
- (f) lending *money* (excluding *restricted credit* where that is not a *consumer credit activity*);
- (g) paying *money* by a *plastic card* (excluding a *store card* where that is not a *consumer credit activity*);
- (h) providing ancillary banking services;
- (i) acting as an intermediary for a loan secured by a charge over land;
- (j) acting as an intermediary for *general insurance business* or *long-term insurance business*;
- (k) National Savings and Investments' business;

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

- 2.5.2 G The scope of the *Voluntary Jurisdiction* is wider than that of the *Compulsory Jurisdiction*, and so some activities are referred to in both jurisdictions.
- 2.5.3 G *DISP 2.5.1R(2)(a)* is for those that are subject to the *Compulsory Jurisdiction* for *regulated activities* but are not covered by the *Ombudsman Transitional Order* or the *Mortgage and General Insurance Complaints Transitional Order*. It enables the *Financial Ombudsman Scheme* to cover *complaints* about earlier events relating to those activities before they became *regulated activities*.
- 2.5.4 G *DISP 2.5.1R(2)(b)* is for those that were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* immediately before *commencement*. It enables the *Financial Ombudsman Scheme* to cover *complaints* that arise out of acts or omissions occurring after *commencement* for any activities which are not covered by the *Compulsory Jurisdiction* but that would have been covered by the relevant *former scheme*.
- 2.5.5 R The *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, and whether the act or omission occurred before or after *commencement*, either:
 - (1) if the *complaint* could have been dealt with under a *former scheme*; or
 - (2) under the agreement by the *VJ participant* in the *Standard Terms*.

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R The *Compulsory Jurisdiction* covers only *complaints* about the activities of a *firm* (including its *appointed representatives*) carried on from an establishment in the *United Kingdom*.

2.6.2 G This:

- (1) includes *incoming EEA firms* 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*.

Consumer Credit Jurisdiction

2.6.3 R The *Consumer Credit Jurisdiction* covers only *complaints* about the activities of a *licensee* carried on from an establishment in the *United Kingdom*.

Voluntary Jurisdiction

2.6.4 R The *Voluntary Jurisdiction* covers only *complaints* about the activities of a *VJ participant* carried on from an establishment:

- (1) in the *United Kingdom*; or
- (2) elsewhere in the *EEA* if the following conditions are met:
 - (a) the activity is directed wholly or partly at the *United Kingdom* (or part of it);
 - (b) contracts governing the activity are (or, in the case of a potential customer, would have been) made under the law of England and Wales, Scotland or Northern Ireland; and
 - (c) the *VJ participant* has notified appropriate regulators in its *Home State* of its intention to participate in the *Voluntary Jurisdiction*.

Location of the complainant

2.6.5 G A *complaint* can be dealt with under the *Financial Ombudsman Service* whether or not the complainant lives or is based in the *United Kingdom*.

2.7 Is the complainant eligible?

- 2.7.1 R A *complaint* may only be dealt with under the *Financial Ombudsman Service* if it is brought by or on behalf of an *eligible complainant*.
- 2.7.2 R A *complaint* may be brought on behalf of an *eligible complainant* (or a deceased *person* who would have been an *eligible complainant*) by a *person* authorised by the *eligible complainant* or authorised by law. It is immaterial whether the *person* authorised to act on behalf of an *eligible complainant* is himself an *eligible complainant*.

Eligible complainants

- 2.7.3 R An *eligible complainant* must be a *person* that is:
- (1) a private individual;
 - (2) a business, which has a group annual turnover of less than £1 million at the time the complainant refers the *complaint* to the *respondent*;
 - (3) a charity which has an annual income of less than £1 million at the time the complainant refers the *complaint* to the *respondent*; or
 - (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the *complaint* to the *respondent*.
- 2.7.4 G A business includes a *sole trader*, a *company*, an unincorporated body and a *partnership* carrying on any trade or profession. A subsidiary of a corporate group will be eligible only where the corporate group as a whole meets the turnover test.
- 2.7.5 G If a *respondent* is in doubt about the eligibility of a business, charity or trust, it should treat the complainant as if it were eligible. If the *complaint* is referred to the *Financial Ombudsman Service*, the *Ombudsman* will determine eligibility by reference to appropriate evidence, such as audited accounts or VAT returns.
- 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 of the *respondent*;
 - (2) the complainant is (or was) a potential customer of the *respondent*;
 - (3) the complainant is the holder, or the beneficial owner, of *units* in a *collective investment scheme* and the *respondent* is the *operator* or *depository* of the *scheme*;

- (4) the complainant is a beneficiary of, or has a beneficial interest in, a *personal pension scheme* or *stakeholder pension scheme*;
- (5) the complainant is a *person* for whose benefit a *contract of insurance* was taken out or was intended to be taken out with or through the *respondent*;
- (6) the complainant is a *person* on whom the legal right to benefit from a claim against the *respondent* under a *contract of insurance* has been devolved by contract, assignment, subrogation or legislation (save the European Community (Rights against Insurers) Regulations 2002);
- (7) the complainant relied in the course of his business on a cheque guarantee card issued by the *respondent*;
- (8) the complainant is the true owner or the *person* entitled to immediate possession of a cheque or other bill of exchange, or of the funds it represents, collected by the *respondent* for someone else's account;
- (9) the complainant is the recipient of a banker's reference given by the *respondent*;
- (10) the complainant gave the *respondent* a guarantee or security for:
 - (a) a mortgage;
 - (b) a loan;
 - (c) an actual or prospective *regulated consumer credit agreement*;
 - (d) an actual or prospective *regulated consumer hire agreement*; or
 - (e) any linked transaction as defined in the Consumer Credit Act 1974 (as amended);
- (11) the complainant is a *person* about whom information relevant to his financial standing is or was held by the *respondent* in operating a credit reference agency as defined by section 145(8) of the Consumer Credit Act 1974 (as amended);
- (12) the complainant is a *person* from whom the *respondent* has sought to recover payment under a *regulated consumer credit agreement* or *regulated consumer hire agreement* in carrying on debt-collecting as defined by section 145 (7) of the Consumer Credit Act (1974) (as amended); or
- (13) the complainant is a beneficiary under a trust or estate of which

the *respondent* is trustee or personal representative.

2.7.7 G *DISP* 2.7.6R(5) and (6) include, for example, employees covered by a group permanent health policy taken out by an employer, which provides in the insurance contract that the policy was taken out for the benefit of the employee.

2.7.8 G In the *Compulsory Jurisdiction*, under the *Ombudsman Transitional Order* and the *Mortgages and General Insurance Complaints Transitional Order*, where a complainant:

- (1) wishes to have a *relevant new complaint* or a *relevant transitional complaint* dealt with by the *Ombudsman*; and
- (2) is not otherwise eligible; but
- (3) would have been entitled to refer an equivalent *complaint* to the *former scheme* in question immediately before the relevant transitional order came into effect;

if the *Ombudsman* considers it appropriate, he may treat the complainant as an *eligible complainant*.

Exceptions

2.7.9 R The following are not *eligible complainants*:

- (1) (in all jurisdictions) a *firm*, *licensee* or *VJ participant* whose *complaint* relates in any way to an activity which:
 - (a) the *firm* itself has *permission* to carry on; 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) (in the *Compulsory Jurisdiction*) a complainant, other than a trustee of a *pension scheme* trust, who was:
 - (a) a *professional client*; or
 - (b) an *eligible counterparty*;

in relation to the *firm* and activity in question at the time of the act or omission which is the subject of the *complaint*; and

- (3) (in the *Consumer Credit Jurisdiction*):
 - (a) a body corporate;
 - (b) a *partnership* consisting of more than three persons;

- (c) a *partnership* all of whose members are bodies corporate; or
- (d) an unincorporated body which consists entirely of bodies corporate.

2.7.10 G In the *Compulsory Jurisdiction*, in relation to *relevant new complaints* under the *Ombudsman Transitional Order* and *relevant transitional complaints* under the *Mortgages and General Insurance Complaints Transitional Order*:

- (1) where the *former scheme* in question is the *Insurance Ombudsman Scheme*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) the *relevant new complaint* does not concern aspects of a policy relating to a business or trade carried on by him;
- (2) where the *former scheme* in question is the *GISC facility*, a complainant is not to be treated as an *eligible complainant* unless:
 - (a) he is an individual; and
 - (b) he is acting otherwise than solely for the purposes of his business; and
- (3) where the *former scheme* in question is the *MCAS scheme*, a complainant is not to be treated as an *eligible complainant* if:
 - (a) the *relevant transitional complaint* does not relate to a breach of the Mortgage Code published by the Council of Mortgage Lenders;
 - (b) the *complaint* concerns physical injury, illness, nervous shock or their consequences; or
 - (c) the complainant is claiming a sum of money that exceeds £100,000.

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*.

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
- (2) more than:
 - (a) six years after the event complained of; or (if later)
 - (b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received;

unless:

- (3) in the view of the *Ombudsman*, the failure to comply with the time limits was as a result of exceptional circumstances; or
- (4) the *Ombudsman* is required to do so by the *Ombudsman Transitional Order*; or
- (5) the *respondent* has not objected to the *Ombudsman* considering the *complaint*.

2.8.3 G The six-month time limit is only triggered by a response which is a *final response*. A *final response* must tell the complainant about the six-month time limit that the complainant has to refer a *complaint* to the *Financial Ombudsman Service*.

2.8.4 G An example of exceptional circumstances might be where the complainant has been or is incapacitated.

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
- (2) the *complaint* concerns a contract or policy which is the subject of a review directly or indirectly under:
 - (a) the terms of the Statement of Policy on 'Pension transfers and Opt-outs' issued by the *FSA* on 25 October 1994; or

- (b) the terms of the policy statement for the review of specific categories of *FSAVC* business issued by the *FSA* on 28 February 2000.

Mortgage endowment complaints

- 2.8.6 G If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage, the receipt by the complainant of a letter which states that there is a risk (rather than a high risk) that the *policy* would not, at maturity, produce a sum large enough to repay the target amount is not, itself, sufficient to cause the three year time period in *DISP* 2.8.2R(2) to start to run.
- 2.8.7 R (1) If a *complaint* relates to the sale of an endowment *policy* for the purpose of achieving capital repayment of a mortgage and the complainant receives a letter from a *firm* or a *VJ participant* warning that there is a high risk that the *policy* will not, at maturity, produce a sum large enough to repay the target amount then, subject to (2), (3), (4) and (5):
- (a) time for referring a *complaint* to the *Financial Ombudsman Service* starts to run from the date the complainant receives the letter; and
 - (b) ends three years from that date (“the final date”).
- (2) Paragraph (1)(b) applies only if the complainant also receives within the three year period mentioned in (1)(b) and at least six months before the final date an explanation that the complainant’s time to refer such a *complaint* would expire at the final date.
- (3) If an explanation is given but is sent outside the period referred to in (2), time for referring a *complaint* will run until a date specified in such an explanation which must not be less than six months after the date on which the notice is sent.
- (4) A complainant will be taken to have complied with the time limits in (1) to (3) above if in any case he refers the *complaint* to the *firm* or *VJ participant* within those limits and has a written acknowledgement or some other record of the *complaint* having been received.
- (5) Paragraph (1) does not apply if the *Ombudsman* is of the opinion that, in the circumstances of the case, it is appropriate for *DISP* 2.8.2R(2) to apply.

DISP 2 Ann 1G

Regulated activities at 1 July 2007

The activities which (at 1 July 2007) were *regulated activities* 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*:

- (1) *accepting deposits* (article 5);
- (2) *issuing electronic money* (article 9B);
- (3) *effecting contracts of insurance* (article 10(1));
- (4) *carrying out contracts of insurance* (article 10(2));
- (5) *dealing in investments as principal* (article 14);
- (6) *dealing in investments as agent* (article 21);
- (7) *arranging (bringing about) deals in investments* (article 25(1));
- (8) *making arrangements with a view to transactions in investments* (article 25(2));
- (9) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));
- (10) *making arrangements with a view to regulated mortgage contracts* (article 25A(2));
- (11) *arranging (bringing about) a home reversion plan* (article 25B(1));
- (12) *making arrangements with a view to a home reversion plan* (article 25B(2));
- (13) *arranging (bringing about) a home purchase plan* (article 25C(1));
- (14) *making arrangements with a view to a home purchase plan* (article 25C(2));
- (15) *managing investments* (article 37);
- (16) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (17) *safeguarding and administering investments* (article 40);
- (18) *sending dematerialised instructions* (article 45(1));
- (19) *causing dematerialised instructions to be sent* (article 45(2));
- (20) *establishing, operating or winding up a collective investment scheme* (article 51(1)(a));
- (21) *acting as trustee of an authorised unit trust scheme* (article 51(1)(b));
- (22) *acting as the depositary or sole director of an open-ended investment company* (article 51(1)(c));
- (23) *establishing, operating or winding up a stakeholder pension scheme* (article 52(a));
- (24) *providing basic advice on a stakeholder product* (article 52B);
- (25) *establishing, operating or winding up a personal pension scheme* (article 52(b));
- (26) *advising on investments* (article 53);
- (27) *advising on regulated mortgage contracts* (article 53A);
- (28) *advising on a home reversion plan* (article 53B);

- (29) *advising on a home purchase plan* (article 53C);
- (30) *advising on syndicate participation at Lloyd's* (article 56);
- (31) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's* (article 57);
- (32) *arranging deals in contracts of insurance written at Lloyd's* (article 58);
- (33) *entering into a regulated mortgage contract* (article 61(1));
- (34) *administering a regulated mortgage contract* (article 61(2));
- (35) *entering into a home reversion plan* (article 63B(1));
- (36) *administering a home reversion plan* (article 63B(2));
- (37) *entering into a home purchase plan* (article 63F(1));
- (38) *administering a home purchase plan* (article 63F(2));
- (39) *entering as provider into a funeral plan contract* (article 59);
- (40) *agreeing to carry on a regulated activity* (article 64);

which is carried on by way of business and relates to a *specified investment* applicable to that activity or, in the case of (20), (21), (22) and (23), is carried on in relation to property of any kind.

3 Complaint handling procedures of the Financial Ombudsman Service

3.1 Purpose, interpretation and application

Purpose

- 3.1.1 G The purpose of this chapter is to set out:
- (1) the procedures of the *Financial Ombudsman Service* for investigating and determining *complaints*;
 - (2) the basis on which the *Ombudsman* makes decisions; and
 - (3) the awards which the *Ombudsman* can make.

Interpretation

- 3.1.2 R In this chapter, ‘out of jurisdiction’ means outside the *Compulsory Jurisdiction*, the *Consumer Credit Jurisdiction* and the *Voluntary Jurisdiction* in accordance with *DISP 2*.
- 3.1.3 R Where the *respondent* is a *partnership* (or former *partnership*), it is sufficient for the *Ombudsman* to communicate with one partner (or former partner).
- 3.1.4 G The *Ombudsman Transitional Order* requires the *Financial Ombudsman Service* to complete the handling of *relevant existing complaints*, in a significant number of respects, in accordance with the requirements of the relevant *former scheme* rather than in accordance with the requirements of this chapter.

Application

- 3.1.5 R This chapter applies to the *Ombudsman* and to *respondents*.

3.2 Jurisdiction

- 3.2.1 R The *Ombudsman* will have regard to whether a *complaint* is out of jurisdiction.
- 3.2.2 R Unless the *respondent* has already had eight weeks to consider the *complaint* or issued a *final response*, the *Ombudsman* will refer the *complaint* to the *respondent*.
- 3.2.3 R Where the *respondent* alleges that the *complaint* is out of jurisdiction, the *Ombudsman* will give both parties an opportunity to make representations before he decides.
- 3.2.4 R Where the *Ombudsman* considers that the *complaint* may be out of

jurisdiction, he will give the complainant an opportunity to make representations before he decides.

3.2.5 R Where the *Ombudsman* then decides that the *complaint* is out of jurisdiction, he will give reasons for that decision to the complainant and inform the *respondent*.

3.2.6 R Where the *Ombudsman* then decides that the *complaint* is not out of jurisdiction, he will inform the complainant and give reasons for that decision to the *respondent*.

3.3 Dismissal without consideration of the merits and test cases

3.3.1 R Where the *Ombudsman* considers that the *complaint* may be one which should be dismissed without consideration of the merits, he will give the complainant an opportunity to make representations before he decides.

3.3.2 R Where the *Ombudsman* then decides that the *complaint* should be dismissed without consideration of the merits, he will give reasons to the complainant for that decision and inform the *respondent*.

3.3.3 G Under the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order*, where the *Ombudsman* is dealing with a *relevant complaint*, he must take into account whether an equivalent complaint would have been dismissed without consideration of its merits under the *former scheme* in question, as it had effect immediately before the relevant transitional order came into effect.

Grounds for dismissal

3.3.4 R The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:

- (1) the complainant has not suffered (or is unlikely to suffer) financial loss, material distress or material inconvenience; or
- (2) the *complaint* is frivolous or vexatious; or
- (3) the *complaint* clearly does not have any reasonable prospect of success; or
- (4) the *respondent* has already made an offer of compensation (or a goodwill payment) which is:
 - (a) fair and reasonable in relation to the circumstances alleged by the complainant; and
 - (b) still open for acceptance; or

- (5) the *respondent* has reviewed the subject matter of the *complaint* in accordance with:
- (a) the regulatory standards for the review of such transactions prevailing at the time of the review; or
 - (b) the terms of a scheme order under section 404 of the *Act* (Schemes for reviewing past business); or
 - (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
- (6) the subject matter of the *complaint* has previously been considered or excluded under the *Financial Ombudsman Service*, or a *former scheme* (unless material new evidence which the *Ombudsman* considers likely to affect the outcome has subsequently become available to the complainant); or
- (7) the subject matter of the *complaint* has been dealt with, or is being dealt with, by a comparable independent complaints scheme or dispute-resolution process; or
- (8) the subject matter of the *complaint* has been the subject of court proceedings where there has been a decision on the merits; or
- (9) the subject matter of the *complaint* is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) in order that the matter may be considered under the *Financial Ombudsman Service*; or
- (10) it would be more suitable for the subject matter of the *complaint* to be dealt with by a court, arbitration or another complaints scheme; or
- (11) it is a *complaint* about the legitimate exercise of a *respondent's* commercial judgment; or
- (12) it is a *complaint* about employment matters from an employee or employees of a *respondent*; or
- (13) it is a *complaint* about investment performance; or
- (14) it is a *complaint* about a *respondent's* decision when exercising a discretion under a will or private trust; or

- (15) it is a *complaint* about a *respondent's* failure to consult beneficiaries before exercising a discretion under a will or private trust, where there is no legal obligation to consult; or
- (16) it is a *complaint* which:
 - (a) involves (or might involve) more than one *eligible complainant*; and
 - (b) has been referred without the consent of the other complainant or complainants;

and the *Ombudsman* considers that it would be inappropriate to deal with the *complaint* without that consent; or
- (17) there are other compelling reasons why it is inappropriate for the *complaint* to be dealt with under the *Financial Ombudsman Service*.

Test cases

- 3.3.5 R The *Ombudsman* may dismiss a *complaint* without considering its merits, so that a court may consider it as a test case, if:
 - (1) before he has made a determination, he has received in writing from the *respondent*:
 - (a) a detailed statement of how and why, in the *respondent's* opinion, the *complaint* raises an important or novel point of law with significant consequences; and
 - (b) an undertaking in favour of the complainant that, if the complainant or the *respondent* commences court proceedings against the other in respect of the *complaint* in any court in the *United Kingdom* within six *months* of the *complaint* being dismissed, the *respondent* will: pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis) in connection with the proceedings at first instance and any subsequent appeal proceedings brought by the *respondent*; and make interim payments on account of such costs if and to the extent that it appears reasonable to do so; and
 - (2) the *Ombudsman* considers that the *complaint*:
 - (a) raises an important or novel point of law, which has important consequences; and
 - (b) would more suitably be dealt with by a court as a test case.
- 3.3.6 G Factors the *Ombudsman* may take into account in considering whether to dismiss a *complaint* so that it may be the subject of a test case in court

include (but are not limited to):

- (1) whether the point of law is central to the outcome of the dispute;
- (2) how important or novel the point of law is in the context of the dispute;
- (3) the significance of the consequences of the dispute for the business of the *respondent* (or *respondents* in that sector) or for its (or their) customers;
- (4) the amount at stake in the dispute;
- (5) the remedies that a court could impose;
- (6) any representations made by the *respondent* or the complainant; and
- (7) the stage already reached in consideration of the dispute.

3.4 Referring a complaint to another complaints scheme

- 3.4.1 R The *Ombudsman* may refer a *complaint* to another complaints scheme where:
- (1) he considers that it would be more suitable for the matter to be determined by that scheme; and
 - (2) the complainant consents to the referral.

3.5 Resolution of complaints by the Ombudsman

- 3.5.1 R The *Ombudsman* will attempt to resolve *complaints* at the earliest possible stage and by whatever means appear to him to be most appropriate, including mediation or investigation.
- 3.5.2 G The *Ombudsman* may inform the complainant that it might be appropriate to complain against some other *respondent*.
- 3.5.3 G Where two or more *complaints* from one complainant relate to connected circumstances, the *Ombudsman* may investigate them together, but will issue separate provisional assessments and determinations in respect of each *respondent*.
- 3.5.4 R If the *Ombudsman* decides that an investigation is necessary, he will then:
- (1) ensure both parties have been given an opportunity of making

representations;

- (2) send both parties a provisional assessment, setting out his reasons and a time limit within which either party must respond; and
- (3) if either party indicates disagreement with the provisional assessment within that time limit, proceed to determination.

Hearings

3.5.5 R If the *Ombudsman* considers that the *complaint* can be fairly determined without convening a hearing, he will determine the *complaint*. If not, he will invite the parties to take part in a hearing. A hearing may be held by any means which the *Ombudsman* considers appropriate in the circumstances, including by telephone. No hearing will be held after the *Ombudsman* has determined the *complaint*.

3.5.6 R A party who wishes to request a hearing must do so in writing, setting out:

- (1) the issues he wishes to raise; and
- (2) (if appropriate) any reasons why he considers the hearing should be in private;

so that the *Ombudsman* may consider whether:

- (3) the issues are material;
- (4) a hearing should take place; and
- (5) any hearing should be held in public or private.

3.5.7 G In deciding whether there should be a hearing and, if so, whether it should be in public or private, the *Ombudsman* will have regard to the provisions of the European Convention on Human Rights.

Evidence

3.5.8 R The *Ombudsman* may give directions as to:

- (1) the issues on which evidence is required;
- (2) the extent to which evidence should be oral or written; and
- (3) the way in which evidence should be presented.

3.5.9 R The *Ombudsman* may:

- (1) exclude evidence that would otherwise be admissible in a court or include evidence that would not be admissible in a court;

- (2) accept information in confidence (so that only an edited version, summary or description is disclosed to the other party) where he considers it appropriate;
- (3) reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested; and
- (4) dismiss a *complaint* if a complainant fails to supply requested information.

3.5.10 G Evidence which the *Ombudsman* may accept in confidence includes confidential evidence about third parties and security information.

3.5.11 G The *Ombudsman* has the power to require a party to provide evidence. Failure to comply with the request can be dealt with by the court.

3.5.12 G The *Ombudsman* may take into account evidence from third parties, including (but not limited to) the *FSA*, other regulators, experts in industry matters and experts in consumer matters.

Procedural time limits

3.5.13 R The *Ombudsman* may fix (and extend) time limits for any aspect of the consideration of a *complaint* by the *Financial Ombudsman Service*.

3.5.14 R If a *respondent* fails to comply with a time limit, the *Ombudsman* may:

- (1) proceed with consideration of the *complaint*; and
- (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

3.5.15 R If a complainant fails to comply with a time limit, the *Ombudsman* may:

- (1) proceed with consideration of the *complaint*; or
- (2) dismiss the *complaint*.

3.6 Determination by the Ombudsman

Fair and reasonable

3.6.1 R The *Ombudsman* will determine a *complaint* by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

3.6.2 G Section 228 of the *Act* sets the ‘fair and reasonable’ test for the *Compulsory Jurisdiction* and the *Consumer Credit Jurisdiction* and *DISP* 3.6.1R extends it to the *Voluntary Jurisdiction*.

- 3.6.3 G Where a complainant makes *complaints* against more than one *respondent* in respect of connected circumstances, the *Ombudsman* may determine that the *respondents* must contribute towards the overall award in the proportion that the *Ombudsman* considers appropriate.
- 3.6.4 R In considering what is fair and reasonable in all the circumstances of the case, the *Ombudsman* will take into account:
- (1) relevant:
 - (a) law and regulations;
 - (b) regulators' rules, guidance and standards;
 - (c) codes of practice; and
 - (2) (where appropriate) what he considers to have been good industry practice at the relevant time.
- 3.6.5 G Where the *Ombudsman* is determining what is fair and reasonable in all the circumstances of a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* require him to take into account what determination the *former Ombudsman* might have been expected to reach in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant transitional order came into effect.

The Ombudsman's determination

- 3.6.6 R When the Ombudsman has determined a *complaint*:
- (1) the *Ombudsman* will give both parties a signed written statement of the determination, giving the reasons for it;
 - (2) the statement will require the complainant to notify the *Ombudsman* in writing, before the date specified in the statement, whether he accepts or rejects the determination;
 - (3) if the complainant notifies the *Ombudsman* that he accepts the determination within that time limit, it is final and binding on both parties;
 - (4) if the complainant does not notify the *Ombudsman* that he accepts the determination within that time limit, the complainant will be treated as having rejected the determination, and neither party will be bound by it; and
 - (5) the *Ombudsman* will notify the *respondent* of the outcome.

3.7 Awards by the Ombudsman

- 3.7.1 R Where a *complaint* is determined in favour of the complainant, the *Ombudsman's* determination may include one or more of the following:
- (1) a money award against the *respondent*; or
 - (2) an interest award against the *respondent*; or
 - (3) a costs award against the *respondent*; or
 - (4) a direction to the *respondent*.

Money awards

- 3.7.2 R A money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:
- (1) financial loss (including consequential or prospective loss); or
 - (2) pain and suffering; or
 - (3) damage to reputation; or
 - (4) distress or inconvenience;

whether or not a court would award compensation.

- 3.7.3 G Where the *Ombudsman* is determining what amount (if any) constitutes fair compensation as a money award in relation to a *relevant new complaint* or a *relevant transitional complaint*, the *Ombudsman Transitional Order* and the *Mortgage and General Insurance Complaints Transitional Order* require him to take into account what amount (if any) might have been expected to be awarded by way of compensation in relation to an equivalent complaint dealt with under the *former scheme* in question immediately before the relevant transitional order came into effect.

- 3.7.4 R The maximum money award which the *Ombudsman* may make is £100,000.

- 3.7.5 G For the purpose of calculating the maximum money award, the following are excluded:

- (1) any interest awarded on the amount payable under a money award;
- (2) any costs awarded; and
- (3) any interest awarded on costs.

- 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.

3.7.7 R The *Ombudsman* will maintain a register of each money award.

Interest awards

3.7.8 R An 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.

Costs awards

3.7.9 R A costs award may:

- (1) be such amount as the *Ombudsman* considers to be fair, to cover some or all of the costs which were reasonably incurred by the complainant in respect of the *complaint*; and
- (2) include interest on that amount at a rate and as from a date specified in the award.

3.7.10 G In most cases complainants should not need to have professional advisers to bring *complaints* to the *Financial Ombudsman Service*, so awards of costs are unlikely to be common.

Directions

3.7.11 R A direction may require the 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).

Complying with awards and settlements

3.7.12 R A *respondent* must comply promptly with:

- (1) any award or direction made by the *Ombudsman*; and
- (2) any settlement which it agrees at an earlier stage of the procedures.

3.7.13 G Under the *Act*, a complainant can enforce through the courts a money award registered by the *Ombudsman* or a direction made by the *Ombudsman*.

3.8 Dealing with information

3.8.1 R In dealing with information received in relation to the consideration of a *complaint*, the *Financial Ombudsman Service* will have regard to the parties' rights of privacy.

- 3.8.2B R This does not prevent the *Ombudsman* disclosing information:
- (1) to the extent that he is required or authorised to do so by law; or
 - (2) to the parties to the *complaint*; or
 - (3) in his determination; or
 - (4) at a hearing in connection with the *complaint*.

3.8.3 R So long as he has regard to the parties' rights of privacy, the *Ombudsman* may disclose information to the *FSA* or any other body exercising regulatory or statutory functions for the purpose of assisting that body or the *Financial Ombudsman Service* to discharge its functions.

3.9 Delegation of the Ombudsman's powers

3.9.1A R The *Ombudsman* may designate members of the staff of *FOS Ltd* to exercise any of the powers of the *Ombudsman* relating to the consideration of a *complaint* apart from the powers to:

- (1) determine a *complaint*; or
- (2) authorise the disclosure of information to the *FSA* or any other body exercising regulatory or statutory functions.

3.9.2 G In *DISP 2* to *DISP 4* any reference to "the *Ombudsman*" includes a reference to any member of the staff of *FOS Ltd* to whom the exercise of any of the powers of the *Ombudsman* has been delegated.

4 Standard terms

4.1 Purpose and application

Purpose

- 4.1.1 G The purpose of this chapter is to set out how *complaints* against *VJ participants* are dealt with under the *Voluntary Jurisdiction*.

Application

- 4.1.2 G These *standard terms* apply to any business which has agreed to be a *VJ participant*.

4.2 Standard terms

- 4.2.1 R A *VJ participant* is subject to these *standard terms*, which may be amended or supplemented by the *Financial Ombudsman Service* with the approval of the *FSA*.

- 4.2.2 R By agreeing to participate, a *VJ participant* also agrees that the *Voluntary Jurisdiction* covers an act or omission that occurred before the *VJ participant* was participating in the *Voluntary Jurisdiction*, whether the act or omission occurred before or after *commencement*.

Application of DISP 1 to DISP 3

- 4.2.3 R The following rules and guidance apply to *VJ participants* as part of the *standard terms*, except where the context requires otherwise:

- (1) *DISP 1* (Treating complaints fairly), except:
 - (a) *DISP 1.5* (Complaints record rule);
 - (b) *DISP 1.6* (Complaints reporting rules); and
 - (c) *DISP 1.7* (Lloyd's);
- (2) *DISP 2* (Jurisdiction of the Financial Ombudsman Service), except:
 - (a) *DISP 2.3* (Compulsory Jurisdiction); and
 - (b) *DISP 2.4* (Consumer Credit Jurisdiction); and
- (3) *DISP 3* (Complaints-handling procedures of the Financial Ombudsman Service).

Determinations and awards

- 4.2.4 R The *Ombudsman* has the same powers to make determinations and awards under the *Voluntary Jurisdiction* as he has under the *Compulsory Jurisdiction* (see *DISP 3.7 (Awards by the Ombudsman)*).
- 4.2.5 R If the complainant accepts the *Ombudsman*'s determination within the time limit specified by the *Ombudsman*, the determination will be binding on the *VJ Participant* and may be enforced in court by the complainant.
- 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*':
- (1) *FEES 2.2.1R* (late payment) but substituting '*FOS Ltd*' for 'the *FSA*';
 - (2) *FEES 2.3.1R* and *2.3.2R* (remission of fees);
 - (3) *FEES 4.2.6R(1)(b)* (periodic fees);
 - (4) *FEES 5.3.6R* (general levy) but substituting:
 - (a) '*Voluntary Jurisdiction*' for '*Compulsory Jurisdiction*'; and
 - (b) '*FOS Ltd*' for 'the *FSA*';
 - (5) *FEES 5.3.8R* (calculation of general levy) but substituting 'part 4' for 'part 2';
 - (6) *FEES 5.4.1R* (information) but substituting:
 - (a) '*FOS Ltd*' for 'the *FSA*'; and
 - (b) 'part 4' for 'part 2';
 - (7) *FEES 5.5.1R* (standard case fee) but substituting 'part 4' for 'part 3';
 - (8) *FEES 5.5.6R* (special case fee);
 - (9) *FEES 5.5.15R* (case fee exemption);
 - (10) *FEES 5.7.1R, 5.7.2R to 5.7.4R* (payment) but substituting, in *FEES 5.7.1R*, '*FOS Ltd*' for 'the *FSA*';
 - (11) *FEES 5.8.1R* (joining the Financial Ombudsman Service); and
 - (12) *FEES 5 Annex 1R* (fees payable).

Withdrawal from participation

- 4.2.7 R A *VJ participant* may not withdraw from the *Voluntary Jurisdiction* unless:

- (1) the *VJ participant* has submitted to *FOS Ltd* a written plan for:
 - (a) notifying its existing customers of its intention to withdraw; and
 - (b) handling *complaints* against it before its withdrawal;
- (2) the *VJ participant* has paid the general levy for the year in which it withdraws and any other fees payable; and
- (3) *FOS Ltd* has approved in writing both the *VJ Participant's* plan and the date of withdrawal (which must be at least six months from the date of the approval of the plan).

Exemption from liability

4.2.8 R None of the following is to be liable in damages for anything done or omitted to be done in the discharge (or purported discharge) of any functions in connection with the *Voluntary Jurisdiction*:

- (1) *FOS Ltd*;
- (2) any member of its governing body;
- (3) any member of its staff;
- (4) any person acting as an *Ombudsman* for the purposes of the *Financial Ombudsman Service*;

except where:

- (5) the act or omission is shown to have been in bad faith; or
- (6) it would prevent an award of damages being made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

Part 4

1. Appendix 1 to *DISP* (Relevant Existing Complaints) is deleted.
2. Appendix 2 to *DISP* (Handling Mortgage Endowment Complaints) becomes Appendix 1 to *DISP* and is renumbered accordingly.
3. References in the Handbook to provisions in Appendix 2 to *DISP* are replaced with references to the corresponding provisions in Appendix 1 to *DISP*.

Part 5

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

(Note: Other changes to DISP transitional provisions are set out in Part 2.)

Transitional Provisions
Dispute Resolution: Complaints

DISP TP 1
Transitional provisions
1.1 Transitional Provisions table

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	...				
...					
1B	<u>DISP 2.4.3</u> <u>2.7.9</u>	R	In relation to a <i>complaint</i> concerning an act or omission before 1 November 2007, in DISP 2.4.3R(1)(a) <u>2.7.9R(2)</u> substitute "an <i>intermediate customer or market counterparty</i> " for "(a) a <i>professional client</i> ; or (b) <i>eligible counterparty</i> ".	From 1 November 2007	1 November 2007
...					
4	DISP App 1	R	Firms are subject to DISP App 1 in relation to relevant existing complaints.	From commencement	Commencement
5	DISP App 1	G	The Ombudsman Transitional Order makes special provision for the	From commencement	Commencement

			<p>handling by <i>FOS Ltd</i> of "<i>relevant existing complaints</i>" (that is, complaints which the former schemes have partly completed at commencement). The arrangements for handling these complaints are set out in <i>DISP App 1</i>. (The handling of complaints which <i>firms</i> have partly completed at commencement is described at <i>DISP 1.4.6 R</i>.)</p>		
6	<i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i>	R	<p><i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i> In references to a "<i>firm</i>" or "<i>firms</i>" include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to <i>relevant complaints</i> in accordance with the <i>Ombudsman Transitional Order</i>.</p>	From commencement	Commencement
7	<i>DISP 2, DISP 3 and FEES 5 and DISP App 1</i>	G	<p>Under the <i>Ombudsman Transitional Order</i>, a <i>relevant complaint</i> is subject to the <i>Compulsory Jurisdiction</i> whether or not it is about a <i>firm</i> or an <i>unauthorised person</i>. <i>Unauthorised persons</i> are not subject to <i>DISP 1</i>, but references to "<i>firm</i>" in <i>DISP 2, DISP 3, and FEES 5</i></p>	From commencement	Commencement

			and DISP App 1 include <i>unauthorised persons</i> subject to the <i>Compulsory Jurisdiction</i> in relation to relevant complaints <i>relevant complaints</i> , where applicable.		
7A	DISP 2.3.6R <u>2.8.7R</u>	R	Nothing in <i>DISP</i> 2.3.6R <u>2.8.7R</u> affects the position of a complaint <i>complaint</i> which, on 31 May 2004, could not have been considered by the <i>Ombudsman</i> under <i>DISP</i> 2.3.1R(1)(e) <u>2.8.2R(2)</u> ; or <i>DISP</i> 2.3.6R(1)(b) <u>2.8.7R(1)(b)</u> as it then stood (as <i>DISP</i> 2.3.6R(1)(b) <u>2.3.6R(1)(b)</u>).	From 1 June 2004	Amended with effect from 1 June 2004
7B	DISP 2.3.6R <u>2.8.7R</u>	R	In the case of a complainant falling within <i>DISP</i> 2.3.6R <u>2.8.7R</u> , (and whose time for referring a complaint <i>complaint</i> under the rules as they stood before amendment <i>DISP</i> 2.3.6R as it stood on <u>5 April 2008</u> has not expired), time will expire in accordance with the amended rule <i>DISP</i> <u>2.8.7R</u> save that if the final date would otherwise be before 30 November 2004 an explanation of the final date will be in conformity with <i>DISP</i> 2.3.6R(2) <u>2.8.7R(2)</u> , provided	From 1 June 2004	Amended with effect from 1 June 2004

			it stipulates a final date which is not less than two months from the date on which the explanation is likely to be received by the complainant.		
8	DISP 1 DISP 2 DISP 3 DISP 4 and FEES 5 and DISP App 1	R	In relation to <i>relevant complaints</i> , references in <i>DISP 1, DISP 2, DISP 3, DISP 4, and FEES 5 and DISP App 1</i> to an " <i>eligible complainant</i> " include a person who is to be treated as an <i>eligible complainant</i> in accordance with the <i>Ombudsman Transitional Order</i> and references to a complaint <i>complaint</i> shall be construed accordingly.	From commencement	<i>Commencement</i>
...					

1.2 Table Fee tariffs for industry blocks

Industry Block	Tariff Base
1 Deposit acceptors	Number of accounts relevant to the activities in DISP 2.6.1 <u>2.3.1R</u>
...	

...

Schedule 4 Powers Exercised DISP Sch 4.1

1	The following powers and related provisions in the <i>Act</i> and in the <i>Ombudsman Transitional Order</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>DISP</i> :
---	--

	(1)	Section 138 (General rule-making power)
	(2)	Section 156 (General supplementary powers)
	(3)	Section 226 (Compulsory Jurisdiction)
	(4)	Section 229 (Awards)
	(4A)	Section 234 (Funding)
	(4B)	Section 316(1) (Direction by Authority)
	(5)	Schedule 17 paragraph 13 (FSA's procedural rules)
	(6)	Article 15 (Record-keeping and reporting requirements relating to relevant complaints) of the Ombudsman Transitional Order
	(7)	Section 226A(7) (Consumer Credit Jurisdiction)
	(8)	Section 229 (Awards)
	(9)	Schedule 17 paragraph 16B, D
2	...	
	(1)	...
3	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FOS Ltd</i> to make the rules in <i>DISP</i> :	
	(1)	Section 227 (Voluntary Jurisdiction)
	(1A)	Section 226A (Consumer Credit Jurisdiction)
	<u>(1B)</u>	<u>Section 229 (Awards)</u>
	(2)	Section 230 (Costs)
	(3)	Schedule 17 paragraph 8 (Guidance)
	(4)	Schedule 17 paragraph 14 (The scheme's rules)
	(5)	Schedule 17 paragraph 15 (Fees)
	(5A)	Schedule 17 paragraph 16B (Consumer Credit Jurisdiction)
	(6)	Schedule 17 paragraph 18 (Terms of reference to the scheme)

DISP Sch 4.2

<p>Table: The powers to make rules relating to the new ombudsman scheme are shared between the <i>FSA</i> and the Financial Ombudsman Service (<i>FOS Ltd</i>). <i>FOS Ltd</i>'s rules are subject to <i>FSA</i> consent or approval. The rules made exclusively by <i>FOS Ltd</i> are:</p>	
<i>DISP 1</i>	...
<i>DISP 2</i>	2.6.9R 2.6.11R 2.6.8 A-BR <u>2.4.1R</u> <u>2.5.1R</u> <u>2.5.5R</u> <u>2.6.3R</u> <u>2.6.4R</u> <u>2.7.9R(3)</u>
<i>DISP 3</i>	3.2.5R 3.2.7R 3.2.8R 3.2.9R 3.2.11R 3.2.12R 3.2.13R 3.3.1R 3.4.1R 3.5.1R 3.5.2R 3.6.1R 3.6.2R 3.6.3R 3.7.1R 3.8.1R(2) 3.8.3R 3.9.10R 3.9.12R 3.9.15R

	3-10.1R <u>All the rules in this chapter, except for <i>DISP 3.7.4R</i> (which is made by the <i>FSA</i>) and <i>DISP 3.7.12R</i> (which is made by the <i>FSA</i> and the <i>FOS Ltd</i>).</u>
...	

Annex C

Amendments to the Fees manual (FEES)

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

...

- 5.4.4 G A firm should not provide a statement of *relevant business* if it deals only with *eligible complainants* who are not private individuals. *Relevant business* is defined in the *Glossary* as business done with private individuals only. So *FEES* 5.4.1R does not apply in relation to business done with other types of *eligible complainant* described in *DISP* ~~2.4.3R(1)(b), (c) and (d)~~ 2.7.3R(2), (3) and (4); the funding of *FOS Ltd* in relation to that business is by special case fee only (see *FEES* 5.5.6R).

...

- 5.5.6 R A firm must pay to *FOS Ltd* a special case fee, as specified in part 3 of *FEES* 5 Annex 1R in respect of each *chargeable case* relating to that firm closed by the *Financial Ombudsman Service* which was referred to the *Financial Ombudsman Service* by *eligible complainants* who fall within *DISP* ~~2.4.3 R(1)(b), (c) and (d)~~ 2.7.3R(2), (3) and (4).

...

FEES 5 Annex 1R

Annual Fees Payable in Relation to 2007/08

...

Part 2: Fee tariffs for general levy and supplementary levy

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>home finance providers</i> and <i>administrators</i> (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in <i>DISP</i> 2.6.1R <u>2.3.1R</u>	£0.0009 per relevant account, subject to a minimum levy of £100
...		

Part 4: VJ participants

Table: Fee tariffs and case fees for VJ participants

Voluntary jurisdiction – general levy tariff and case fee table					
industry block and business activity		tariff base	tariff rate	Minimum Levy <u>minimum</u> levy	<u>standard</u> <u>case fee</u> <u>and special</u> case fee*
...

Annex D

Amendments to the Credit Unions sourcebook (CRED)

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

17.2.2 G An *eligible complainant* is a *person* who would be eligible to refer a complaint to the *Financial Ombudsman Service*. The term is defined for all *firms* in ~~DISP 2.4~~ 2.7, but *guidance* for *credit unions* is provided at CRED 17.3 below.

...

17.3.1 G The definition of *eligible complainant* in ~~DISP 2.4~~ 2.7 applies for the purposes of this chapter.

...

17.4.2 G ~~DISP-2.6~~ 2.3 (To which activities does the Compulsory Jurisdiction apply?) sets out the activities which come under the Compulsory Jurisdiction ~~jurisdiction~~ of the *Financial Ombudsman Service*, as follows:

- (1) *regulated activities*;
- (2) *lending money* secured by a charge on land;
- (3) *lending money* (~~other than~~ excluding restricted credit where that is not a consumer credit activity);
- (4) *paying money* by a *plastic card* (~~other than~~ excluding a store card where that is not a consumer credit activity);
- (5) ~~the provision of~~ providing ancillary banking services;
- (6) *consumer credit activities*;

~~or activities ancillary to them (see DISP 2.6.2R)~~ or any ancillary activities, including advice, carried on by the firm in connection with them.

...

Annex E

Amendments to the Professional Firms sourcebook (PROF)

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

...

Dispute resolution: Complaints sourcebook

- 5.3.6 G *DISP* 1.1.1R(3) provides that *DISP* 1 (Treating complainants fairly) only applies to an *authorised professional firm* in so far as its mainstream regulated activities are concerned. *DISP* ~~2.6.7R~~ 2.3.4R further provides that a ~~complaint~~ complaint about an *authorised professional firm* cannot be handled under the *Compulsory Jurisdiction* of the *Financial Ombudsman Service* if it relates solely to *non-mainstream regulated activity* and can be handled by a *designated professional body*. This is because such a ~~complaint~~ complaint will be handled by the relevant professional body.

...

HANDBOOK ADMINISTRATION (NO 9) INSTRUMENT 2008**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 powers)
 - (b) section 139 (Miscellaneous ancillary matters);
 - (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);
 - (h) section 247 (Trust scheme rules);
 - (i) section 248 (Scheme particulars rules); and
 - (j) paragraph 13 (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme);
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228);
 - (3) the following powers and related provisions in the Regulated Covered Bonds Regulations 2008:
 - (a) regulation 8 (Applications for registration); and
 - (b) regulation 9 (Applications for admission to the register of issuers); and
 - (4) 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 2008.

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
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex B
Conduct of Business sourcebook (COBS)	Annex C
Insurance: Conduct of Business sourcebook (ICOBS)	Annex D

Client Assets sourcebook (CASS)	Annex E
Supervision manual (SUP)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G
Collective Investment Schemes sourcebook (COLL)	Annex H
Regulated Covered Bonds sourcebook (RCB)	Annex I
Perimeter Guidance manual (PERG)	Annex J

Notes

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

Citation

- F. This instrument may be cited as the Handbook Administration (No 9) Instrument 2008.

By order of the Board
24 April 2008

Annex A

Amendments to the Glossary of definitions

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

<i>complaints record rules</i>	<i>DISP 1.9.</i>
<i>ICD claim</i>	<p>a <i>claim</i>:</p> <p>(a) against a <i>MiFID investment firm</i> (including a <i>credit institution</i> which is a <i>MiFID investment firm</i>), whether established in the <i>United Kingdom</i> or in another <i>EEA State</i>; and</p> <p>(b) in relation to:</p> <p>(i) <u>any investment services and activities other than the making of a personal recommendation;</u></p> <p>(ii) <u>the ancillary service of safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;</u></p> <p>(iii) <u>the firm's inability to repay money owed to or belonging to investors and held on their behalf or the firm's inability to return to investors any instruments belonging to them and held, administered or managed on their behalf, in each case, in connection with the investment service of the making of a personal recommendation relating to a financial instrument in accordance with the legal and contractual conditions applicable.</u></p> <p><u>[Note: Article 2(2) of the <i>Investor Compensation Directive</i>]</u></p>
<i>intermediate holding vehicle</i>	a <i>company</i> , trust or partnership but not a <i>collective investment scheme</i> , whose purpose is to enable the holding of <u>overseas</u> immovables on behalf of a <i>non-UCITS retail scheme</i> or a <i>qualified investor scheme</i> .
<i>permitted scheme interests</i>	<p>(a) ...</p> <p>(b) in respect of a firm's business with <i>linked policyholders</i> other than those described in (a), any of the following:</p> <p>...</p> <p>(iii) a UCITS scheme <u>scheme falling within the <i>UCITS Directive</i></u>;</p> <p>...</p>

Annex B

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

1 Application

...

1.1A The rules in Chapters 1, 2, 3 (with the exception of rule 3.1(7)), ~~rules rule 4.20 to 4.23~~, rule 5.1A, Chapters 7, and 8 and ~~Appendix 3~~ also apply to a *directive friendly society* which has permission under the Act to effect or carry out contracts of insurance.

...

8 Transitional Provisions

...

Table 1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional Provision: Dates in force	(6) Handbook provision: coming into force
1	<i>IPRU(FSOC)</i> 4.12, 4.20, 4.21, 4.22, 4.23 , Appendix 4 paragraph 15	R	For the period given in column 5, a <i>non-directive incorporated friendly society</i> need not comply with a <i>rule</i> listed in column 2	From 31 December 2004 to 30 December 2005	31 December 2004
...					

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

6 Annex 2 Combined initial disclosure document described in *COBS* 6.3, *ICOBS* 4.5, *MCOB* 4.4.1R(1) and *MCOB* 4.10.2R(1)

...

4 What will you have to pay us for our services?

...

[Home Finance Products] [Note 13]

[1] [Mortgages] [Equity Release Products] [Note 13]

...

You will receive a key ~~features~~ facts illustration when considering a particular [lifetime] [mortgage] [home reversion plan] [equity release product], which will tell you about any fees relating to it. **[Note 13]**

...

ICOBS
Sch 5.4

<u>Rule</u>	<u>Right of action under section 150</u>			
	<u>For private person?</u>	<u>Removed?</u>	<u>For other person?</u>	
<u>All rules in ICOBS with the status letter "E"</u>	<u>No</u>	<u>No</u>	<u>No</u>	
<u>Any rule in ICOBS which prohibits an authorised person from seeking to make provision excluding or restricting any duty or liability</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>Any other person</u>
<u>ICOBS 8.2.9 R</u>	<u>Yes</u>	<u>No</u>	<u>Yes</u>	<u>Any other person</u>
<u>All other rules in ICOBS</u>	<u>Yes</u>	<u>No</u>	<u>No</u>	

ICOBS Sch 6 Rules that can be waived

(to follow)

ICOBS
Sch 6.1

G As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its rules. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

Annex E

Amendments to the Client Assets sourcebook (CASS)

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

- 2.5.11 G The *stock lending* requirements in ~~COB 4 Annex 2(18)~~ CASS 2.5.4R(2) also apply to *safe custody investments* held collectively on behalf of a *firm's customers* in any *custody* or settlement system. If the *custody* or settlement system operates an 'automatic' *stock lending* programme, the *firm* should maintain a separate account or be able to demonstrate that it maintains adequate systems to differentiate between the *safe custody investments* of those *customers* who have not consented to *stock lending activity* through that programme from the *designated investments* of those that have consented.
- ...
- 4.1.28 R Only the *client money rules* listed in ~~COB 9.3.29~~ CASS 4.1.29R apply to a *trustee firm* in respect of *client money* held in the course of that trustee business.
- 4.1.29 R This table belongs to ~~COB 9.3.28~~ CASS 4.1.28R
- ...
- ...
- 4.4.25 R *Money* held in each *designated client fund account* with the *failed bank* must be treated as pooled with any other *designated client fund accounts* of the *firm* which contain part of the same designated fund and:
- ...
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the daily *client money* calculation in accordance with ~~COB 9.3.99 to COB 9.3.119~~ CASS 4.3.66R to CASS 4.3.85R.

Annex F

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new 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>GEN</i>	<p><i>GEN</i> applies (<i>GEN</i> 1.1, <i>GEN</i> 2.1, <i>GEN</i> 3.1, <i>GEN</i> 4.1, <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However, (a) <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> (<i>GEN</i> 4.1.1R(3)), and (b) <i>GEN</i> 6 only applies to business that can be regulated under section 138 of the <i>Act</i> (General rule-making power). It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by a European Community instrument.</p> <p><i>GEN</i> 4 does not apply in relation to <i>MiFID</i> or equivalent <i>third country business</i> (see <i>GEN</i> 4.1.1R).</p>	<p><i>GEN</i> 4 does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>- (see <i>GEN</i> 4.1.1R).</p> <p><u>The general licence to use or reproduce the FSA logo in <i>GEN</i> 5 Annex 1G does not apply (see 3.1(1) of <i>GEN</i> 5 Annex 1G).</u></p> <p>Otherwise, as column 2.</p>
...

Annex G

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Annex 1 R COMPLAINTS RETURN (DISP 1 Ann 1R)

...

NOTES ON THE COMPLETION OF THIS RETURN

...

Private individual complaint returns

...

*DISP ~~2.4.3R~~ 2.7.3R provides further definition of an *eligible complainant*.*

...

... Small business complaint returns

This section relates to records of *complaints* subject to *DISP* 1.6 – *DISP* 1.10 received from *eligible complainants* as defined in *DISP* ~~2.4.3R~~ 2.7.3R other than private individuals. ...

...

...

2.1.7 D Part XVI of the *Act* (The Ombudsman Scheme), particularly section 226 (Compulsory ~~Jurisdiction~~ jurisdiction), applies to *members* of the *Society of Lloyd's* ~~of Lloyd's~~ of Lloyd's in respect of the *regulated activities* of *effecting* or *carrying out contracts of insurance* written at Lloyd's.

...

2.5.4 G *DISP* 2.5.1R(2)(b) is for those that were members of one of the *former schemes* replaced by the *Financial Ombudsman Service* immediately before *commencement*. It enables the *Financial Ombudsman ~~Scheme~~ Service* to cover *complaints* that arise out of acts or omissions occurring after *commencement* for any activities which are not covered by the *Compulsory Jurisdiction* but that would have been covered by the relevant *former scheme*.

...

4.2.3 R The following rules and guidance apply to *VJ participants* as part of the

standard terms, except where the context requires otherwise:

(1) *DISP* 1 (Treating ~~complaints~~ complainants fairly), except:

- (a) *DISP* ~~1.5~~ 1.9 (Complaints record rule);
- (b) *DISP* ~~1.6~~ 1.10 (Complaints reporting rules); and
- (c) *DISP* ~~1.7~~ 1.11 (Lloyd's);

...

(3) *DISP* 3 (~~Complaints-handling~~ Complaint handling procedures of the Financial Ombudsman Service).

...

DISP 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
...					
7B	<i>DISP</i> 2.8.7R	R	In the case of a complainant falling within <i>DISP</i> 2.8.7R, (and whose time for referring a <i>complaint</i> under <i>DISP</i> 2.3.6R <u>as it stood on 5 April 2008</u> the <u>rules as they stood before 1 June 2004</u> has not expired), time will expire in accordance with <i>DISP</i> 2.8.7R save that if the final date would otherwise be before 30 November 2004 an explanation of the final date will be in conformity with <i>DISP</i> 2.8.7R(2), provided it stipulates a final date which is not less than two months from the date on which the explanation is likely to be received by the complainant.	From 1 June 2004	Amended with effect from 1 June 2004

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

Annex H

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Table: contents of the instrument constituting the scheme

- 3.2.6 R This table belongs to *COLL* 3.2.4R (Matters which must be included in the instrument constituting the scheme)

...	
	Investment in <u>overseas</u> property through an intermediate holding vehicle
28	If investment in an <u>overseas</u> immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> , a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of <u>overseas</u> immovables by the <i>scheme</i> .

...

Table: contents of the prospectus

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

...	
	Investment in <u>overseas</u> property through an intermediate holding vehicle
26A	If investment in an <u>overseas</u> immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> , a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of <u>overseas</u> immovables by the <i>scheme</i> .
...	

...

Investment in overseas property through an intermediate holding vehicle

- 5.6.18A R (1) An overseas immovable may be held by a *scheme* through an *intermediate holding vehicle* whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are

adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this chapter as if it were a direct investment in ~~the~~ that immovable.

(2) ...

...

Table: contents of the instrument constituting the scheme

8.2.6 R This table belongs to *COLL 8.2.5R*

...	
10A	Investment in <u>overseas</u> property through an intermediate holding vehicle
	If investment in an <u>overseas</u> immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> , a statement that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> will be to enable the holding of <u>overseas</u> immovables by the <i>scheme</i> .
...	

...

Table: contents of qualified investor scheme prospectus

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

...	
18A	Investment in <u>overseas</u> property through an intermediate holding vehicle
	If investment in an <u>overseas</u> immovable is to be made through an <i>intermediate holding vehicle</i> or a series of <i>intermediate holding vehicles</i> a statement disclosing the existence of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> and confirming that the purpose of that <i>intermediate holding vehicle</i> or series of <i>intermediate holding vehicles</i> is to enable the holding of <u>overseas</u> immovables by the <i>scheme</i> .
...	

Investment in overseas property through an intermediate holding vehicle

8.4.11A R (1) An overseas immovable may be held by a *scheme* through an

intermediate holding vehicle whose purpose is to enable the holding of immovables by the *scheme* or a series of such *intermediate holding vehicles*, provided that the interests of *unitholders* are adequately protected. Any investment in an *intermediate holding vehicle* for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in ~~the~~ that immovable.

(2) ...

Annex I

Amendments to the Regulated Covered Bonds sourcebook (RCB)

In this Annex, underlining indicates new text.

- 2 Annex 1 D Application for the admission to the register of issuers and register of regulated covered bonds
- ...
- 2 Issuer and owner eligibility
- 2.1 Does the issuer hold the 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
- ...

Annex J

Amendments to the Perimeter Guidance manual (PERG)

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

- 1.5.1 G General *guidance* on the perimeter is also contained in various *FSA* documents (mainly fact sheets and frequently asked questions) that are available on the *FSA* website at www.fsa.gov.uk. These documents, and the URL on which they may be accessed, include:
- (1) ~~*guidance about the position under the Insurance Mediation Directive and the Regulated Activities Order of group risk managers and co-participants in a joint enterprise*~~
http://www.fsa.gov.uk/Pages/Doing/small_firms/insurance/library/archive/risk.shtm; ~~[deleted]~~
 - (2) ~~*guidance about the scope of the exclusion in article 72B of the Regulated Activities Order (Activities carried on by a provider of relevant goods or services) as it applies to services related to travel*~~
http://www.fsa.gov.uk/pages/Doing/small_firms/insurance/faq/travel.shtml; ~~[deleted]~~
- ...
- ...
- 8.9.3 G An *unauthorised person* may wish to pass on a *financial promotion* made to him by an *authorised person*. In this case, the fact that the *financial promotion* was made to him by an *authorised person* will not be enough for the restriction in section 21 not to apply to him. The *authorised person* must also both have *approved* its content and have done so for the purpose of section 21 of the *Act*. If an *authorised person* wishes to ensure that an *unauthorised person* can *communicate a financial promotion* made by the *authorised person* to third parties, it may *approve* its own *financial promotion* for the purposes of section 21 of the *Act* (see ~~COB 3.12.1G(3)~~ COBS 4.10.3G(2)).
- ...
- 8.14.28A G The second exemption in article 50A disapplies the restriction in section 21 of the *Act* from ~~*non-real-time financial promotions or solicited real time*~~ any financial promotions which are made to a *person* who the communicator believes on reasonable grounds to be a self-certified sophisticated investor and which relate to one or more of the *specified investments* in *PERG* 8.14.21G(1) to (3) (Certified high net worth individuals (article 54 48)).

...

8.36.6 G Table Application of Exemptions to Forms of Promotions

Financial Promotion Order		Applies to		
Article No	Title and PERG 8 reference (where applicable)	Unsolicited real time	Solicited real time	Non-real time (solicited or unsolicited)
...				
50A	Self-certified sophisticated investors (8.14.28AG)	*	*	*
...				

...

13 Guidance on the scope of the Markets in Financial Instruments Directive and the recast Capital Adequacy Directive

Insert the following text after PERG 13.5. The text is all new and is not underlined

13.5A Child trust funds and MiFID

Q53A. Is a child trust fund (a CTF) a financial instrument?

No. A CTF account itself is not a *financial instrument*. The funds contributed to a CTF may be invested in financial instruments. However, in the FSA’s view, the link between the underlying investment and the rights and interests acquired by the CTF account holder is too remote for the account holder to be considered as having acquired the underlying investment itself. So, the provision of services to a CTF account holder (such as in relation to the establishment of the account and the making of further contributions) will not be an *investment service*.

Q53B. Will the operator of a CTF be carrying on investment services or activities?

Possibly, but it is likely that he will be exempt from the scope of MiFID. Where the CTF is invested wholly or partly in *financial instruments*, the operator may be providing an *investment service* when he executes the transaction or arranges to transfer funds to a new financial instrument (such as a security or collective investment scheme unit). However, in the FSA’s opinion, the exemption in article 2(1) (c) of MiFID (see Q39) should be available to CTF operators such that these activities will effectively be outside the scope of MiFID.

The key question in applying this exemption is whether the investment services are incidental to the other activities involved in operating a CTF when viewed on a global basis. In the FSA’s view, this is likely to be the case as most CTFs do

not involve active trading, such as day trading, by the account holder and, as a result, involve little or no ongoing investment service within the scope of MiFID.

An issue arises as to whether a focus on deal-based charges as the main source of remuneration (instead of charges related to the administration of the CTF itself) might indicate that trading is not incidental. In this respect, the FSA would expect firms designing an account in this way to follow the principle of treating their customers fairly. For example, firms may want to explain to potential account holders the possible impact of frequent switching if this incurs costs and erodes capital. More generally, where active trading is likely to have a detrimental effect on capital value, it may well be that this would be viewed as more than an incidental activity such that the exemption would not apply.

It is necessary to balance investment services against all the activities that are not investment services that have taken place or will take place in the CTF accounts that the firm operates over their full term. The FSA would not expect firms to have to investigate each CTF on a trade-by-trade basis. The exemption may still apply even if particular accounts experience higher levels of dealing activity.

Q53C. Is a person who provides services relating to investments that underlie the CTF within the scope of MiFID?

Possibly. Firms which provide *investment services* to the CTF operator in relation to financial instruments held within the CTF account (such as executing trades) will be within the scope of MiFID unless an exemption applies to them.

Q53D. Does the same analysis apply to other types of schemes where financial instruments may be held for the benefit of investors such as an ISA or a pension scheme?

This depends on the nature of the scheme in question. CTFs have very particular product features. Other types of schemes such as ISA accounts may simply be tax efficient ways to hold the beneficial interest in financial instruments which may, at the behest of the account holder, be transferred into his direct ownership. So, the beneficial interest that an investor acquires in a share, bond or collective investment scheme unit held under an ISA will be a financial instrument for the purposes of MiFID. And the operation of an ISA will essentially be an investment service such that the exemption in article 2.1(c) of MiFID will not be relevant. Pension schemes, on the other hand, bear a closer similarity to CTFs in that they will have particular product features and the underlying investments are held for the purpose of providing or determining the value of the member's cash benefits. Generally speaking, a member of a pension scheme can only transfer the value of his benefits and not transfer the underlying investments into his direct ownership. For this reason, as explained in *PERG 10.4A*, the FSA does not consider that a member of a pension scheme acquires a financial instrument purely as a result of having a financial instrument held for his benefit under the trusts of an occupational or personal pension scheme.

**INTEGRATED REGULATORY REPORTING (AMENDMENT NO 4)
INSTRUMENT 2008**

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 Financial Services and Markets Act 2000.

Commencement

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

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Integrated Regulatory Reporting (Amendment No 4) Instrument 2008.

By order of the Board
24 April 2008

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

...

Applicable data items

16.12.5 R The applicable *data items* and forms or reports referred to in SUP 16.12.4R are set out according to firm type in the table below:

Description of data item	Prudential category of <i>firm</i> and applicable data items (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>	Electronic money institutions	<i>Credit union</i>
...							
Maturity analysis of assets and deposits	FSA044 (note 11)	FSA044 (note 11)	<u>FSA044 (note 11)</u>	<u>FSA044 (note 11)</u>			
...							
...							
Note 11	Members of a <i>UK consolidation group</i> should only submit this <i>data item</i> at the <i>UK consolidation group</i> level. <i>Firms'</i> attention is drawn to SUP 16.3.25G regarding a single submission for all <i>firms</i> in the <i>group</i> .						
...							

16.12.6 R The applicable reporting frequencies for submission of *data items* and periods referred to in SUP 16.12.5R are set out in the table below according to firm type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

	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> basis by <i>UK banks and building societies</i>	Other members of RAG 1
...				
FSA044	Quarterly		Half yearly	<u>Quarterly</u>
...				

SUP 16 Ann 25G

...

FSA044 – Maturity analysis of assets and deposits

This data item captures the funding profile, by sector and maturity, of ~~*UK banks and building societies*~~, to monitor mismatches.

...

LISTING RULES SOURCEBOOK (AMENDMENT NO 2) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 rules);
 - (2) section 79 (Listing particulars and other documents);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 101 (Listing rules: general provisions);
 - (5) section 157(1) (Guidance); and
 - (6) schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

- B. This instrument comes into force on 6 May 2008.

Amendments to the Handbook

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

Citation

- D. This instrument may be cited as the Listing Rules Sourcebook (Amendment No 2) Instrument 2008.

By order of the Board
24 April 2008

Annex

Amendment to the Listing Rules sourcebook (LR)

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

Certificates representing securities of an investment entity.

- 18.2.10A R Certificates representing *equity securities* of an *investment entity* (wherever incorporated or established) will be *admitted to listing* only if the *equity securities* they represent are already *listed* or are the subject of an application for *listing* at the same time.

**COMPANIES ACT 2006 (CONSEQUENTIAL HANDBOOK AMENDMENTS)
INSTRUMENT 2008**

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 power); 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 6 June 2008.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
General Prudential sourcebook (GENPRU)	Annex C
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex D
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex E
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex F
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex G
Interim Prudential sourcebook for Investment Business (IPRU(INV))	Annex H
Supervision manual (SUP)	Annex I
Credit Unions sourcebook (CRED)	Annex J
Electronic Money sourcebook (ELM)	Annex K

Citation

- E. This instrument may be cited as the Companies Act 2006 (Consequential Handbook Amendments) Instrument 2008.

By order of the Board
22 May 2008

Annex A

Amendments to the Glossary of definitions

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

- accounting reference date*
- (1) (except in *COLL* and *CIS*):
- (a) (in relation to a *company* incorporated in the *United Kingdom* under the Companies Acts) the accounting reference date of that *company* determined in accordance with section ~~224~~ 391 of the Companies Act ~~1985~~ 2006;
- ...
- ...
- Annual Accounts*
- ...
- (2) (in *UPRU*) accounts prepared to comply with:
- (a) the Companies Acts 1985 to 1989, and their equivalent in Northern Ireland, where these provisions are applicable;
or
- (b) the Companies Act 2006; or
- (c) other statutory obligations.
- annual report and accounts*
- (a) (in relation to a *company* incorporated in the *United Kingdom*) an annual report and annual accounts as those terms are defined in:
- (i) ~~sections 261(2) and section~~ section 262(1) of the Companies Act 1985, together with an auditor's report prepared in relation to those accounts under section 235 of the ~~Companies Act 1985~~ same Act where these provisions are applicable; or
- (ii) section 471 of the Companies Act 2006 together with an auditor's report prepared in relation to those accounts under sections 495 to 497 of the same Act;
- (b) (in relation to any other body) any similar or analogous *documents* which it is required to prepare whether by its constitution or by the law under which it is established.

connected person

...

(5) (in *DTR* and *LR* in relation to a *person discharging managerial responsibilities* within an *issuer*) (as defined in section 96B(2) of the *Act*):

(a) a “connected person” within the meaning of ~~section 346~~ sections 252, 253 and 254 of the Companies Act ~~1985~~ 2006 (reading ~~that section~~ these sections as if any reference to a director of a company were a reference to a *person discharging managerial responsibilities* within an *issuer*);

...

controlled undertaking

any subsidiary undertaking within the meaning of the *Act* other than one falling within section ~~258(4)(b)~~ 1162(4)(b) of the Companies Act ~~1985~~ 2006 or section 420(2)(b) of the *Act*;

group

(1) ... A and any *person* who is:

(a) a *parent undertaking* of A;

...

(d) a *parent undertaking* of a *subsidiary undertaking* of A;

...

(g) if A or an *undertaking* in (a) or (d) is an *incorporated friendly society*, a *body corporate* of which that *friendly society* has joint control (as defined in section 13(9)(c) or (cc) of the Friendly Societies Act 1992); in this definition:

(i) “participating interest” has the same meaning as in:

(A) Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986; ~~but, where these provisions are applicable; or~~

(B) paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or

(C) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409);

In (A), (B) and (C), the meaning also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were an *undertaking*;

(ii) ...

...

holding company (as defined in section ~~736(1)~~ 1159(1) of the Companies Act ~~1985~~ 2006 (“*subsidiary*”, “*holding company*” and “*wholly owned subsidiary*”) (Meaning of “subsidiary” etc) (in relation to another *body corporate* (“S”)) a *body corporate* which:

...

insurance accounts rules Schedule 9A to the Companies Act 1985 (Form and content of accounts of insurance companies) and Schedule 9A to the Companies Act (Northern Ireland) Order 1986 where these provisions are applicable, otherwise Schedule 3 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410).

parent undertaking (1) (in accordance with section 420 of the *Act* (Parent and subsidiary undertaking) and section ~~258~~ 1162 of the Companies Act ~~1985~~ 2006 (Parent and subsidiary undertakings)):

...

in relation to (ii) and (iv); the *undertaking* will be treated as a member of S if any of its *subsidiary undertakings* is a member of S, or if any shares in S are held by a *person* acting on behalf of the *undertaking* or any of its *subsidiary undertakings*; the provisions of Schedule ~~10A~~ 7 to the Companies Act ~~1985~~ 2006 (Parent and subsidiary undertakings: supplementary provisions) explain the expressions used in and supplement paragraphs (i) to (vi);

...

...

participation (for the purposes of *ELM*, *UPRU* and *GENPRU* and for the purposes of *BIPRU* and *INSPRU* as they apply on a consolidated basis):

(a) a participating interest ~~as~~ may be defined in according to:

- (i) section 260 of the Companies Act 1985 where applicable; or
- (ii) paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or
- (iii) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409); or

...

subsidiary

- (1) (except in relation to *MiFID business*) (as defined in section ~~736~~ 1159(1) of the Companies Act ~~1985~~ 2006 (“~~Subsidiary~~”, “~~holding company~~” and “~~wholly owned subsidiary~~”) (Meaning of “subsidiary”, etc) (in relation to another *body corporate* (“H”)) a *body corporate* of which H is a *holding company*.

...

undertaking

(as defined in section ~~259~~ 1161(1) of the Companies Act ~~1985~~ 2006 (Meaning of “undertaking” and related expressions)):

- (a) a *body corporate* or *partnership*; or
- (b) an unincorporated association carrying on a trade or business, with or without a view to profit.

Annex B

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text.

GEN TP 1.2 Table 2: Transitional Provisions applying across the Handbook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
24.	...	...	...	...	...
25.	References in the <i>Handbook</i> <u>(except those in <i>LR</i>, <i>PR</i> and <i>DTR</i>)</u> to <u>Companies Act 1985</u> provisions which have been repealed, in whole or in part, by the Companies Act 2006.	R	Each reference is to be read as a reference to the corresponding provision of the Companies Act 2006 and related provisions taking into account any relevant commencement, transitional or savings provisions made under that Act or related provisions.	From 6 April 2008 until 4 November 2008	various
...					

Annex C

Amendments to the General Prudential sourcebook (GENPRU)

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

- 1.3.4 R Subject to *GENPRU* 1.3.9R to *GENPRU* 1.3.10R and *GENPRU* 1.3.36R, except where a *rule* in *GENPRU*, *BIPRU* or *INSPRU* provides for a different method of recognition or valuation, whenever a *rule* in *GENPRU*, *BIPRU* or *INSPRU* refers to an asset, liability, *exposure*, equity or income statement item, a *firm* must, for the purpose of that *rule*, recognise the asset, liability, *exposure*, equity or income statement item and measure its value in accordance with whichever of the following are applicable:

...

(5) *international accounting standards*; ~~and~~

(6) the Companies Act 1985-; and

(7) the Companies Act 2006;

as applicable to the *firm* for the purpose of its external financial reporting (or as would be applicable if the *firm* was a company with its head office in the *United Kingdom*).

Annex D

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

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

BIPRU TP 12 Operational risk transitionals: small trading book

...			
		Calculation of number of employees	
12.5	R	In calculating the average number of its relevant employees a <i>firm</i> must:	
		...	
		(5)	take into account the methodology for calculating an average number of employees referred to in section 247(6) <u>382(6)</u> of the Companies Act 1985 <u>2006</u> .
...			

Annex E

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.

4.4.2 R Table: Items which are eligible to contribute to the capital resources of a firm

	Item	Additional explanation
	...	
Note		
1		Reserves must be audited and interim net profits, general and collective provisions must be verified by the <i>firm's</i> external auditor unless the <i>firm</i> is exempt from the provisions of Part VII of the Companies Act 1985 (<u>section 249A (Exemptions from audit)</u>) or, where applicable, Part 16 of the Companies Act 2006 (<u>section 477 (Small companies: Conditions for exemption from audit)</u>) relating to the audit of accounts (section 249A (Exemptions from audit)).

Annex F

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

Chapter 7

Definitions

group has the meaning given in section 262(1) of the Companies Act 1985 where applicable, otherwise section 474(1) of the Companies Act 2006;

...

subsidiary undertaking ~~is construed in accordance with~~ has the meaning given in section 258 1162 of the Companies Act 1985 2006 and ~~Article 266 of the Companies (Northern Ireland) Order 1986;~~

Annex G

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

- 9.35 (2) For the purposes of the *Accounts and Statements Rules* -
- (a) section 237(1), (2) and (3) and section 389A(1) of the ~~*Companies Act*~~ Companies Act 1985 and article 245(1), (2) and (3) and article 397A(1) of the *1986 Order* where applicable, otherwise sections 498(1), (2) and (3) and 499(1) of the Companies Act 2006 apply as if -
- (i) the references to the *profit and loss account* ~~contained in the definition of~~ 'individual accounts' in section 226(1) of ~~that~~ the Companies Act 1985 and article 234(1) of that Order, and section 394 of the Companies Act 2006 respectively, included references to the revenue account; and
- ...
- (b) section 389A(3) of the ~~*Companies Act*~~ Companies Act 1985 and article 397A(3) and (4) of the *1986 Order*, where they are applicable, otherwise section 500(1) of the Companies Act 2006 apply as if the references in them to a 'parent company' were references to the *insurer*.

...

9.36 ...

- (3) For the purposes of (1)(a) to (d) -

...

- (b) a person is deemed to be **interested** in *shares* or debentures if he is interested in them according to the rules set out in ~~Part I of~~ Schedule ~~13~~ 1 to the ~~*Companies Act*~~ Companies Act 2006 with the addition, in paragraph ~~11~~ 6(4) of that ~~Part of that~~ Schedule, of a reference to a scheme under section 25 of the Charities Act (Northern Ireland) 1964; and

...

...

Chapter 11 Definitions

Companies Act	the Companies Act 1985
<i>group</i>	has the meaning given in section 262 of the Companies Act 1985 <u>Companies Act 1985 where applicable, otherwise section 474(1) of the Companies Act 2006</u>
<i>subsidiary undertaking</i>	is construed in accordance with <u>has the meaning given in</u> section 258 1162 of the Companies Act <u>Companies Act 2006</u> or Article 266 of the 1986 Order <u>Companies Act 2006</u>

APPENDIX 9.1 (rules 9.12 and 9.13)

BALANCE SHEET AND PROFIT AND LOSS ACCOUNT Instructions for completion of Form 3

...

7. Amounts at lines 11-13 should be taken from the *firm's* stand-alone accounts prepared under the ~~Companies Act~~ Acts 1985 or 2006, as appropriate, or (for *firms* not preparing accounts under the ~~Companies Act~~ legislation) equivalent overseas legislation or the applicable UK legislation.
8. The entry at line 15.2 must be the FFA taken from the *firm's* stand-alone accounts prepared under the ~~Companies Act~~ Acts 1985 or 2006, as appropriate, or (for *firms* not preparing accounts under the ~~Companies Act~~ legislation) equivalent overseas legislation or the applicable *United Kingdom* legislation. The entry at line 15 column 1 must be blank.

...

66. A reconciliation of net *admissible assets* to *total capital resources* after deductions (line 79) must be provided as a supplementary note (code 0301). The reconciliation must contain the following items:

...

- (iv) Any other items, each such item to be separately specified. An explanation of each such item is to be provided together with, if applicable, the reference to where

the item is included elsewhere in the *return* or in the *firm's* stand-alone accounts prepared under the Companies ~~Act~~ Acts 1985 or 2006, as appropriate, or (for *firms* not preparing accounts under the Companies Act legislation) equivalent overseas legislation or the applicable *United Kingdom* legislation). [These items would be added to or deducted from net *admissible assets* in the reconciliation as appropriate.]

...

Instructions for completion of Form 13

...

4. In lines 11 to 86 -

- (a) for the purpose of classifying (but not valuing) assets, headings and descriptions used above, wherever they also occur in the balance sheet format in Schedule 9A to the ~~Companies Act~~ Companies Act 1985 or where applicable, Schedule 3 to the Large and Medium Sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410), must have the same meaning as in ~~that Schedule~~ those Schedules,

...

APPENDIX 9.3 (rules 9.14 and 9.23)

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

...

Instructions for completion of Form 40

...

10. The entry at line 11 must exclude any change in the provision for unearned premiums, even though it may be included in statutory (e.g. ~~Companies Act~~ Companies Acts 1985 to 2006) accounts.

...

APPENDIX 9.11

REPORTING FORMS

...

Instructions for completion of Form 13

...

3. In lines 11 to 86:

- (a) for the purpose of classifying (but not valuing) assets, headings and descriptions used above, wherever they also occur in the balance sheet format in Schedule 9A to the Companies Act 1985, where applicable, otherwise Schedule 3 to the Large and Medium Sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410), (as if that schedule applied to Lloyd's and as if the Corporation was a company) must have the same meaning as in ~~that schedule~~ those schedules;

Annex H

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

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

- 3-60(3) R Rule 3-61 and rules 3-63 to 3-182 do not apply to a *corporate finance advisory firm* which must instead comply with the following two capital requirements at all times:
- ...
- (b) net current assets (~~as calculated for the purposes of producing a balance sheet in accordance with Format 1 of the Balance Sheet Format of Schedule 4 to the Companies Act 1985~~) must exceed £10,000.
- 3-60(3A) R (a) Net current assets for the purposes of rule 3-60(3)R(b) shall be as calculated for the purposes of producing a balance sheet in accordance with the following provisions, as applicable:
- (i) Format 1 of the Balance Sheet Format of Schedule 4 to the Companies Act 1985; or
- (ii) Schedule 1 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409); or
- (iii) Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410).
- ...
- 3-60(4) R Rules 3-61 to 3-182 do not apply to an *adviser* or *local /traded options market maker* which must instead comply with the following capital requirements at all times:
- ...
- (b) in the case of an *adviser*, net current assets (~~as calculated for the purposes of producing a balance sheet in accordance with Format 1 of the Balance Sheet Format of Schedule 4 to the Companies Act 1985~~) must be positive; and
- ...
- 3-60(4A) R (a) Net current assets for the purposes of rule 3-60(4)R(b) shall be as calculated for the purposes of producing a balance sheet in

accordance with the following provisions as applicable:

- (i) Format 1 of the Balance Sheet Format of Schedule 4 to the Companies Act 1985; or
- (ii) Schedule 1 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409); or
- (iii) Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410).

...

3-60(5) R Rule 3-61 and rules 3-63 to 3-182 do not apply to a *derivative fund manager* which must instead comply with the following two capital requirements at all times:

...

- (b) net current assets (~~as calculated for the purposes of producing a balance sheet in accordance with Format 1 of the Balance Sheet Format of Schedule 4 to the Companies Act 1985~~), excluding investment in any pooled fund or which it manages, must exceed £10,000.

3-60(5A) R (a) Net current assets for the purposes of rule 3-60(5)R(b) shall be as calculated for the purposes of producing a balance sheet in accordance with the following provisions as applicable:

- (i) Format 1 of the Balance Sheet Format of Schedule 4 to the Companies Act 1985;
- (ii) Schedule 1 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409); or
- (iii) Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410).

APPENDIX 1- GLOSSARY OF TERMS FOR CHAPTER 3

...

annual financial statements means ~~statements drawn up in accordance with Schedule 4 to the Companies Act 1985 or, where applicable, international accounting standards as at the firm's annual accounting reference date;~~

means statements drawn up in accordance with whichever of the following is applicable at the firm's annual accounting reference date:

- (i) Schedule 4 to the Companies Act 1985;
- (ii) Schedule 1 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409);
- (iii) Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410); or
- (iv) international accounting standards.

connected person has the same meaning as given in ~~section~~ sections 346 252, 253 and 254 of the Companies Act ~~1985~~ 2006 and a person described therein as being connected with a *director* will similarly be deemed to be connected with a *partner* of the *firm*;

...

TABLE 5.2.2(1) CALCULATION OF OWN FUNDS AND LIQUID CAPITAL

...

PART II

DETAILED REQUIREMENTS

2A Reserves ...

Note 2

Reserves must be audited unless the *firm* is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)), or where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts. (~~section 249A (Exemptions from audit)~~).

...

**8 Net
Trading
Book profits
(Item 14)**

...

Note

Non-trading book interim profits may only be included in Tier 1 of the calculation if they have been independently verified by the *firm's* external auditors, unless the *firm* is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)), or where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts (~~section 249A (Exemptions from audit)~~).

...

A *firm* wishing to include interim profits in Tier 1 capital in a *financial return* should submit to *the FSA* with the *financial return* a verification report signed by its external auditor which states whether the interim results are fairly stated, unless the *firm* is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)), or where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts (~~section 249A (Exemptions from audit)~~).

APPENDIX 1- GLOSSARY OF TERMS FOR CHAPTER 5

...

*accounting
reference
date*

means:

- (a) the date to which a *firm's* accounts are prepared in order to comply with the ~~Companies Act~~ relevant Companies Act legislation. ~~in~~ In the case of a *firm* not subject to the ~~Companies Act~~ Companies Act legislation, the equivalent date selected by the *firm*; and
- (b) in the case of an *OPS firm* which is not subject to ~~the Companies Act~~ the relevant Companies Act legislation, the date to which the accounts of the *OPS* in respect of which the *firm* acts are prepared.

...

*annual
accounts*

means accounts prepared to comply with ~~the Companies Act~~ relevant Companies Act legislation and their equivalent in Northern Ireland or other statutory obligations.

...

*Companies
Act*

means ~~the Companies Acts 1985 to 1989 and their equivalent in Northern Ireland~~.

...

parent means any parent undertaking as defined in section ~~258~~ 1162 of the Companies Act ~~1985~~ 2006 and any undertaking which effectively exercises a dominant influence over another undertaking.

....

13.10.2 R ...

This table forms part of *rule* 13.10.2

OWN FUNDS

Companies

Sole Traders: Partnerships

...

Note 1

Retained profits must be audited and interim profits must be verified by the *firm's* external auditor, unless the *firm* is exempt from the provisions of Part VII of the Companies Act 1985 (section 249A (Exemptions from audit)), or where applicable, Part 16 of the Companies Act 2006 (section 477 (Small companies: Conditions for exemption from audit)) relating to the audit of accounts (~~section 249A (Exemptions from audit)~~).

...

APPENDIX 14(1) INTERPRETATION

Glossary of defined terms for Chapter 14

...

parent any parent undertaking as defined in section ~~258~~ 1162 of the Companies Act ~~1985~~ 2006 and any undertaking which effectively exercises a dominant influence over another undertaking.

subsidiary as in section ~~736~~ 1159(1) of the Companies Act ~~1985~~ 2006.

Annex I

Amendments to the Supervision manual (SUP)

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

- 3.3.3 G (1) *SUP* 3.3.2R applies to every *firm* to which this section applies. That includes a *firm* which is under an obligation to appoint an auditor under an enactment other than the *Act*, such as the Companies Act 1985 or the Companies Act 2006, as appropriate. Such a *firm* is expected to wish to have a single auditor who is appointed to fulfil both obligations. *SUP* 3.3.2R is made under section 138 of the *Act* (General rule-making power), in relation to such *firms*, and under section 340(1) (Appointment) in relation to other *firms*.
- ...
- ...
- 3.4.2 R Before a *firm*, to which *SUP* 3.3.2R applies, appoints an auditor, it must take reasonable steps to ensure that the auditor has the required skill, resources and experience to perform his functions under the *regulatory system* and that the auditor:
- (1) is eligible for appointment as an auditor under Part II of the Companies Act 1989 or Part III of the Companies (Northern Ireland) Order 1990 (Eligibility for appointment) where applicable, otherwise Chapters 1, 2 and 6 of Part 42 of the Companies Act 2006 respectively; or
- ...
- ...
- 3.5.1 G If an auditor is to carry out his duties properly, he needs to be independent of the *firm* he is auditing, so that he is not subject to conflicts of interest. Many *firms* are also subject to requirements under the Companies Act 1989, or the Companies Act 2006, the Building Societies Act 1986 or the Friendly Societies Act 1992 on auditor's independence.
- ...
- 3.5.5 G *Firms* are reminded that the Building Societies Act 1986 and Friendly Societies Act 1992 provide that an auditor who is ineligible under section 27 of the Companies Act 1989 where applicable, otherwise sections 1214 and 1215 of the Companies Act 2006 for appointment as auditor of a company (which is a subsidiary undertaking of a *building society* or a subsidiary of a *friendly society*) is ineligible for appointment as auditor to the *building society* or *friendly society* concerned.

...

- 3.6.4 G Section 389A of the Companies Act 1985 where applicable, otherwise sections 499 and 500 of the Companies Act 2006, section 79 of the Building Societies Act 1986 and section 75 of the Friendly Societies Act 1992 give similar rights to auditors of companies, *building societies* and *friendly societies* respectively.

...

- 3.8.8 G *SUP 3.6.1R* requires a *firm* to cooperate with its auditor. *SUP 3.6.3G* refers to the rights to information which an auditor is granted by the *Act*. *SUP 3.6.4G* refers to similar rights granted by the Companies Act 1985 or where applicable, the Companies Act 2006, the Building Societies Act 1986 and the Friendly Societies Act 1992.

...

SUP 12 Annex 2 Guidance on information firms should take reasonable steps to obtain to verify and to assess the fitness and propriety of an appointed representative (other than an introducer appointed representative). See SUP 12.4.4 G (1).

...		
The appointed representative's professional reputation	(a)	Disciplinary proceedings
	(i)	...
	(iii)	whether the appointed representative has ever been the subject of a formal investigation under the powers in the Companies Act Acts <u>Acts</u> 1985 to 2006; and
		...

SUP 16 Annex 18BG

Notes for completion of the Retail Mediation Activities Return ('RMAR')

...

Defined terms

...

4. Terms referred to in the RMAR and these notes, where defined by the Companies ~~Act~~ Acts 1985 or 2006, as appropriate, or other relevant accounting provisions, bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

...

Accounting Principles

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

(a) Unless a rule requires otherwise, amounts to be reported within the *firm's* balance sheet and profit and loss account should be determined in accordance with:

- (i) the requirements of all relevant statutory provisions (e.g. Companies ~~Act~~ Acts 1985 to 2006, and secondary legislation made under the these Acts) as appropriate;

...

SUP 16 Annex 25G

...

FSA029 – Balance Sheet

...

Defined Terms

Terms referred to in these notes where defined by the Companies ~~Act~~ Acts 1985 and 2006, as appropriate, or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies ~~Act~~ Acts 1985 and 2006 as appropriate) or IFRS.

...

FSA030 – Income Statement

...

Defined Terms

Terms referred to in these notes where defined by the Companies Act Acts 1985 and 2006, as appropriate, or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act Acts 1985 and 2006 as appropriate) or IFRS.

...

FSA031 - Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

...

Defined Terms

Terms referred to in these notes where defined by the Companies Act Acts 1985 and 2006, as appropriate, or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act Acts 1985 and 2006 as appropriate) or IFRS.

...

FSA032 - Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

...

Defined Terms

Terms referred to in these notes where defined by the Companies Act Acts 1985 and 2006, as appropriate, or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act Acts 1985 and 2006 as appropriate) or IFRS.

...

FSA033 - Capital Adequacy (for firms subject to IPRU(INV) Chapter 3)

...

Defined Terms

Terms referred to in these notes where defined by the Companies Act Acts 1985 and 2006, as appropriate, or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act Acts 1985 and 2006 as appropriate) or IFRS.

...

FSA034 - Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 not subject to exemption in IPRU(INV) 5.2.3(2)R)

...

Defined Terms

Terms referred to in these notes where defined by the Companies Act Acts 1985 and 2006, as appropriate, or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act Acts 1985 and 2006 as appropriate) or IFRS.

...

FSA035 - Capital Adequacy (for firms subject to IPRU(INV) Chapter 5 and to the exemption in IPRU(INV) 5.2.3(2)R)

...

Defined Terms

Terms referred to in these notes where defined by the Companies Act Acts 1985 and 2006, as appropriate, or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act Acts 1985 and 2006 as appropriate) or IFRS.

...

FSA036 - Capital Adequacy (for UCITS firms)

...

Defined Terms

Terms referred to in these notes where defined by the Companies Act Acts 1985 and 2006, as appropriate, or the provisions of the firm's accounting framework (usually UK GAAP or IFRS) bear that meaning for these purposes. The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

- The data item should comply with the principles and requirements of the firm's accounting framework, which will generally be UK GAAP (including relevant provisions of the Companies Act Acts 1985 and 2006 as appropriate) or IFRS.

Annex J

Amendments to the Credit Unions sourcebook (CRED)

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

CRED 13 Annex 1C Qualifications approved by the FSA (and the Registry of Friendly Societies)

D ...

2 ...

(2) “Participating interest” has the same meaning as in:

(i) Part VII of the Companies Act 1985 or Part VIII of the Companies (Northern Ireland) Order 1986~~;~~ where these provisions apply; or

(ii) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 (SI 2008/409).

In (i) and (ii) above, the meaning ~~but~~ also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were taken to be an undertaking.

...

CRED 14 Annex 1 Accounts and audit - Friendly and Industrial and Provident Societies Act 1968

...	
Qualified auditors	
8	Section 7 of the Friendly and Industrial and Provident Societies Act 1968 provides that no person is a qualified auditor unless he is eligible for appointment as a company auditor under section 25 of the Companies Act 1989, that is to say a person who is registered with one of the five supervisory bodies recognised under the Companies Act 1989 <u>or the Companies Act 2006, as appropriate:</u>
	...
...	

Annex K

Amendments to the Electronic Money sourcebook (ELM)

In this Annex, underlining indicates new text.

- 7.5.1 R A firm's EEA group risk own funds are calculated as follows:
- (1) the own funds of members of the EEA consolidated group are consolidated using the principles that apply to preparing consolidated accounts under the Companies Act 1985 where applicable, otherwise the Companies Act 2006, and in accordance with accounting principles generally accepted in the *United Kingdom*;

...

- 7.5.2 R A firm's EEA group risk own funds requirement is calculated by way of consolidation using the principles that apply to preparing consolidated accounts under the Companies Act 1985 where applicable, otherwise the Companies Act 2006 as follows:

...

PERIODIC FEES (2008/2009) AND OTHER FEES INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 72 (The competent authority);
 - (2) section 74 (The official list);
 - (3) section 99(1) (Fees);
 - (4) section 101 (Listing rules: general provisions);
 - (5) section 138 (General rule making power);
 - (6) section 156 (General supplementary powers);
 - (7) section 157(1) and (4) (Guidance);
 - (8) section 234 (Industry funding);
 - (9) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (10) paragraph 1 (General), 4 (Rules), and 7 (Fees) of Schedule 7 (The Authority as Competent Authority for Part VI).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. (1) Part 1 of the Annex to this instrument comes into force on 4 April 2008.
- (2) The rest of this instrument comes into force on 1 June 2008.

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 Periodic Fees (2008/2009) and Other Fees Instrument 2008.

By order of the Board
22 May 2008

Annex

Amendment to the Fees manual (FEES)

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

Part 1: Comes into force on 4 April 2008

3.2.7R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...
<p><u>(s) In the case of an insurance business transfer scheme, a transferor.</u></p> <p><u>Note – for the purpose of this paragraph an insurance business transfer scheme consists of a single transferor and a single transferee. Where however such a scheme is part of a single larger scheme, that larger scheme is treated as a single insurance business transfer scheme. If an insurance business transfer scheme includes more than one transferor in accordance with this paragraph, the transferors are liable to pay the fee under column (2) jointly.</u></p>	<p><u>Either (1) or (2) as set out below:</u></p> <p><u>(1) In the case of an insurance business transfer scheme involving long term insurance business, £18,500; or</u></p> <p><u>(2) in the case of an insurance business transfer scheme not involving long term insurance business, £10,000.</u></p>	<p><u>On or before any application is made to the FSA for the appointment of a person as an independent expert.</u></p>

Part 2: Comes into force on 1 June 2008

1.1 Application and Purpose

1.1.1 G *FEES* applies to all *persons* required to pay a fee or levy under a provision of the *Handbook*. The purpose of this chapter is to set out to whom the *rules* and *guidance* in *FEES* apply. *FEES* 2 (General Provisions) contains general provisions which may apply to any type of fee payer. *FEES* 3 (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example various application fees (including those in relation to authorisation, *variation of Part IV permission, listing and guidance in relation to the Basel Capital Accord*) and fees relating to certain notifications and document vetting requests.

Application

1.1.2 R This manual applies in the following way:

(1) *FEES* 1, 2 and 3 apply to:

...

(o) every *firm* applying for or being concerned in an application for permission to use an *advanced prudential calculation approach* or *guidance* on the availability of such a permission ~~a waiver or concession in connection with future rules implementing the revised Basel Capital Accord (including any future proposed amendments to those approaches).~~

...

3.2.7.R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...		
(o) Either In connection with <i>rules</i> (or future <i>rules</i>) implementing the <i>Capital Requirements Regulations 2006</i> (including any amendments): (i) a <i>firm</i> applying to the <i>FSA</i> for a <i>waiver</i> or <i>concession</i> (or <i>guidance</i> on the availability of either) <u>permission to use one of the <i>advanced prudential calculation approaches</i> listed in <i>FEES</i> 3 Annex 6R (or <i>guidance</i> on its availability), including any future proposed amendments to those</u>	If the <i>firm</i> is applying to the <i>FSA</i> : (1) unless <u>Unless</u> (2) applies, <i>FEES</i> 3 Annex 6R; (2) (a) unless <u>Unless</u> (b) applies a <i>firm</i> submitting a second application for a <i>waiver</i> or <i>concession</i> <u>the permission or <i>guidance</i></u> described in column (1) within 12 months of the first application (where the fee was	...

<p>approaches or (in the case of any application being made for such permission to the FSA as EEA consolidated supervisor under the <i>Capital Requirements Regulations 2006</i>) any firm making such an application ; or (ii) in the case of an application to a firm's EEA parent applying to its Home State regulator other than the FSA for the use of the Internal Ratings Based approach and the Home State regulator requesting the FSA's assistance in accordance with the <i>Capital Requirements Regulations 2006</i>, any firm to which the FSA would have to apply any decision to permit the use of that approach.</p>	<p>paid in accordance with (1) must pay 50% of the fee applicable to it under FEES 3 Annex 6R, but only in respect of that second application (b) No fee is payable by a firm in relation to a successful application for a waiver or a concession <u>permission</u> based on a minded to grant decision in respect of the same matter following a complete application for <i>guidance</i> in accordance with prescribed submission requirements. (c) No fee is payable by a firm applying to its Home State regulator where the Home State regulator has requested the assistance of the FSA <u>as described in paragraph (o)(ii) of column 1 and the firm falls within Group 4 of</u> except in the cases specified in Part 1 of FEES 3 Annex 6R.</p>	
<p>...</p>		

FEES 3 Annex 6R Fees payable for a ~~waiver (or concession)~~ permission or guidance on the ~~its~~ availability of either in connection with ~~rules implementing the~~ Basel Capital Accord

Part 1

Fees payable other than for ~~applications for a waiver (or concession) or guidance on the availability of either~~ to allow a firm to use in relation to the counterparty credit risk internal model method.

- (1) Paragraphs (2) and (3) deal with an application made to the *FSA* rather than a request for assistance under the *Capital Requirements Regulations 2006*.
- (2) For *firms* falling into a group (Group 1) in which there are five or more significant overseas entities to which the application relates and the application is ~~are applying for guidance on the availability of a waiver or concession in connection with future rules implementing the revised Basel Capital Accord (including any amendments), permission to use one of the advanced prudential calculation approaches listed in Tables 1 or 2 or~~ guidance on the availability of such a permission the fees in Table 1 are applicable.
- (3) For all other *firms* the fees in Table 2 are applicable.
- (4) Where a request for assistance regarding an Advanced or Foundation IRB application under the *Capital Requirements Regulations 2006* has been made to the *FSA* as detailed in *FEES 3.2.7R (o)*, the fees in Table 1 and Table 2 are applicable if any firm referred to in *FEES 3.2.7R(o)(ii)* meets the following conditions:
- (i) ~~the firm is a subsidiary of the applicant in the United Kingdom~~ it is a UK domestic firm and has permission to accept deposits; and
 - (ii) ~~the firm does not fall within Group 4 of~~ as defined in Table 2.
- (5) If however the application or request is in relation to the use of the advanced IRB approach and the *FSA* (in the case of (2) or (3)) or the relevant Home State regulator (in the case of (4)) has already granted permission for the use of the foundation IRB approach at the time of the application then Table 3 applies.

Table 1				
Application group	Description of group	Application fee 2007/08 <u>2008/09</u>		
		Advanced IRB (£'000)	Foundation IRB (£'000)	AMA (£'000)

Group 1	Five or more significant overseas entities applying for guidance on the availability of a waiver or concession in connection with future rules implementing the revised Basel Capital Accord (including any amendments) as described in more detail in the definition of Group 1 in the introduction to Part 1 of this Annex	257 268	222 232	174 181
---------	---	--------------------	--------------------	--------------------

For all other *firms* the fees in Table 2 are applicable

Application group	Description of group		Application fee 2007/08 <u>2008/09</u>		
	Modified eligible liabilities (£m)	Number of traders as at 31 December 2006 <u>2007</u>	Advanced IRB (£'000)	Foundation IRB (£'000)	AMA (£'000)
Group 2	>40,000	>200	222 232	190 198	140 146
Group 3	>5,000 - 40,000	26 - 200	90 94	69 72	49 51
Group 4	0 - 5,000	0 - 25	40 42	29 30	23 24

(1)	Advanced and Foundation IRB applications are applications for guidance regarding the Internal Ratings Based approach for credit risk. AMA applications are applications for guidance regarding the Advanced Measurement Approach for operational risk. [Deleted]
(2)	For the purposes of Table 2, a <i>firm's</i> A.1 or A.10 tariff data for the relevant period will be used to provide the value of modified eligible liabilities or number of traders.

Table 3 (Advanced IRB approach where the FSA or Home State regulator has already given permission to use the foundation IRB approach)

<u>Application group</u>	<u>Advanced IRB Application fee 2008/09</u> (£)
<u>Group 1</u>	<u>67,000</u>
<u>Group 2</u>	<u>58,000</u>
<u>Group 3</u>	<u>23,500</u>
<u>Group 4</u>	<u>10,500</u>
<u>The four application groups have the same meaning as they do in Tables 1 and 2.</u>	

Part 2
Fees payable for applications for a waiver (or concession) or guidance on the availability of either to allow a firm to use <u>in relation to</u> the counterparty credit risk internal model method.
£52,000 <u>£54,000</u>

...

4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...
All non-listed <i>issuers</i> (in <i>DTR</i>) of <i>shares</i> , depository receipts and securitised derivatives <u>securitised derivatives</u> .	<i>FEES</i> 4 Annex 8R	Within 30 <i>days</i> of the date of the invoice	Non-listed <i>issuer</i> (in <i>DTR</i>) becomes subject to <i>disclosure rules</i> and <i>transparency rules</i>
<u>All firms reporting</u>	<u>FEES 4</u>	<u>Within 30 days</u>	<u>Not applicable</u>

<u>transactions in securitised derivatives to the FSA in accordance with SUP 17, and market operators who provide facilities for trading in securitised derivatives.</u>	<u>Annex 9R</u>	<u>of the date of the invoice</u>	
--	-----------------	-----------------------------------	--

...

FEES 4 Annex 2R Fee tariff rates, permitted deductions and EEA/Treaty firm modifications for the period from 1 April ~~2007~~ 2008 to 31 March ~~2008~~ 2009

Part 1

This table shows the tariff rates applicable to each fee block

(1)	For each activity group specified in the table below, the fee is the total of the sums payable for each of the tariff bands applicable to the <i>firm's</i> business, calculated as follows:	
	(a)	the relevant minimum fee; plus
	(b)	an additional fee calculated by multiplying the <i>firm's</i> tariff base by the appropriate rates applying to each tranche of the tariff base, as indicated.
(2)	A <i>firm</i> may apply the relevant tariff bases and rates to non-UK business, as well as to its UK business, if:	
	(a)	it has reasonable grounds for believing that the costs of identifying the <i>firm's</i> UK business separately from its non-UK business in the way described in Part 2 of FEES 4 Annex 1R are disproportionate to the difference in fees payable; and
	(b)	it notifies the FSA in writing at the same time as it provides the information concerned under FEES 4.4 (Information on which fees are calculated), or, if earlier, at the time it pays the fees concerned.
(3)	For a <i>firm</i> which has not complied with FEES 4.4.2R (Information on which fees are calculated) for this period:	
	(a)	the fee is calculated using (where relevant) the valuation or valuations of business applicable to the previous period, multiplied by the factor of 1.10;

	(b)	an additional administrative fee of £250 is payable; and
	(c)	the minimum total fee (including the administrative fee in (b)) is £400 <u>£430</u> .
Activity group	Fee payable	
A.1	Minimum fee (£)	155 <u>160</u>
	£ million of Modified Eligible Liabilities (MELs)	Fee (£/£m or part £m of MELs)
	0 - 0.5	0
	>0.5 - 2	additional flat fee of £370 <u>£380</u>
	>2 - 10	additional flat fee of £520 <u>£530</u>
	>10 - 200	26.78 <u>24.72</u>
	>200 - 2,000	26.75 <u>24.69</u>
	>2,000 - 10,000	26.67 <u>24.61</u>
	>10,000 - 20,000	26.48 <u>24.43</u>
	>20,000	26.29 <u>24.26</u>
	For a <i>firm</i> in A.1 which has a limitation on its <i>permission</i> to the effect that it may <i>accept deposits</i> from <i>wholesale depositors</i> only, the fee is calculated as above less 30%.	
A.2	Minimum fee (£)	460 <u>525</u>
	No. of Home Finance transactions	Fee (£/transaction)
	0 - 50	0
	51 - 500	4.41 <u>4.92</u>
	501 - 1,000	1.77 <u>1.98</u>
	1,001 - 50,000	1.33 <u>1.48</u>
	50,001 - 500,000	0.46 <u>0.51</u>
	>500,000	0.10 <u>0.11</u>
A.3	Gross premium income (GPI)	
	Minimum fee (£)	420 <u>430</u>

	£ million of GPI	Fee (£/£m or part £m of GPI)
	0 - 0.5	0
	>0.5 - 2	1,954.24 <u>2,134.95</u>
	>2 - 5	1,815.84 <u>1,983.75</u>
	>5 - 20	1,703.33 <u>1,860.84</u>
	>20 - 75	542.24 <u>592.39</u>
	>75 - 150	475.35 <u>519.31</u>
	>150	67.00 <u>73.20</u>
	PLUS	
	Gross technical liabilities (GTL)	
	Minimum fee (£)	0
	£ million of GTL	Fee (£/£m or part £m of GTL)
	0 - 1	0
	>1 - 5	48.17 <u>51.03</u>
	>5 - 50	44.64 <u>47.30</u>
	>50 - 100	41.43 <u>43.89</u>
	>100 - 1,000	13.05 <u>13.83</u>
	>1,000	5.23 <u>5.54</u>
	For <i>UK ISPV's</i> the tariff rates are not relevant and a flat fee of £420 <u>£430</u> is payable in respect of the period 1 April 2007 <u>2008</u> to 31 March 2008 <u>2009</u> .	
A.4	Adjusted annual gross premium income (AGPI)	
	Minimum fee (£)	210 <u>215</u>
	£ million of AGPI	Fee (£/£m or part £m of AGPI)
	0 - 1	0
	>1 - 50	655.12 <u>637.87</u>
	>50 - 1,000	610.75 <u>594.67</u>
	>1,000 - 2,000	419.24 <u>408.20</u>

	>2,000	287.84 <u>280.26</u>
	PLUS	
	Mathematical reserves (MR)	
	Minimum fee (£)	210 <u>215</u>
	£ million of MR	Fee (£/£m or part £m of MR)
	0 - 1	0
	>1 - 10	38.13 <u>33.55</u>
	>10 - 100	34.90 <u>30.71</u>
	>100 - 1,000	23.63 <u>20.79</u>
	>1,000 - 5,000	16.62 <u>14.63</u>
	>5,000 - 15,000	12.92 <u>11.36</u>
	>15,000	10.04 <u>8.83</u>
	For <i>UK ISPV's</i> the tariff rates are not relevant and a flat fee of £420 <u>£430</u> is payable in respect of the period 1 January 2007 <u>1 April 2008</u> to 31 March 2007 <u>2009</u> to be invoiced with the fee for the financial period 2007/8.	
A.5	Minimum fee (£)	565 <u>580</u>
	£ million of Active Capacity (AC)	Fee (£/£m or part £m of AC)
	0 - 50	0
	>50 - 150	105.16 <u>114.91</u>
	>150 - 250	88.50 <u>96.71</u>
	>250	25.96 <u>28.37</u>
A.6	Flat Fee (£)	1,183,123 <u>1,284,725</u>

A.7	For class 1(C), (2) and (3) <i>firms</i> :	
	Minimum fee (£)	1,180 <u>1,210</u>
	£ million of Funds under Management (FuM)	Fee (£/£m or part £m of FuM)
	0 - 10	0
	>10 - 100	51.44 <u>50.28</u>
	>100 - 2,500	16.54 <u>16.17</u>
	>2,500 - 10,000	9.21 <u>9.00</u>
	>10,000	1.04 <u>1.02</u>
	For class 1(B) <i>firms</i> : the fee calculated as for class 1(C) <i>firms</i> above, less 15%. For class 1(A) <i>firms</i> : the fee calculated as for class 1(C) <i>firms</i> above, less 50%.	
A.8	This activity group does not apply for this period.	
A.9	Minimum fee (£)	1,845 <u>1,890</u>
	£ million of Gross Income (GI)	Fee (£/£m or part £m of GI)
	0 - 1	0
	>1 - 5	977.18 <u>842.83</u>
	>5 - 15	960.65 <u>828.57</u>
	>15 - 40	951.13 <u>820.36</u>
	>40	938.17 <u>809.18</u>
A.10	Minimum fee (£)	2,255 <u>2,310</u>
	No. of traders	Fee (£/trader)
	0 - 2	0
	3 - 5	2,520.00 <u>2,564.00</u>
	6 - 10	1,821.00 <u>1,852.00</u>
	11 - 50	1,683.00 <u>1,712.00</u>
	51 - 200	1,457.00 <u>1,482.00</u>

	>200	1,176.00 <u>1,196.00</u>
A.11	This activity group does not apply for this period.	
A.12	Minimum fee (£)	1,760 <u>1,960</u>
	No. of persons	Fee (£/person)
	0 - 1	0
	2 - 4	1,092.00 <u>1,125.00</u>
	5 - 10	553.00 <u>570.00</u>
	11 - 25	406.00 <u>418.00</u>
	26 - 150	221.00
	151 - 1,500	167.00
	>1,500	112.00
	For a <i>professional firm</i> in A.12 the fee is calculated as above less 10%.	
A.13	For class (2) <i>firms</i> :	
	Minimum fee (£)	1,650 <u>1,850</u>
	No. of persons	Fee (£/person)
	0 - 1	0
	2 - 4	967.00 <u>1,002.00</u>
	5 - 10	944.00 <u>978.00</u>
	11 - 25	906.00 <u>939.00</u>
	26 - 500	835.00
	501 - 4,000	767.00
	>4,000	724.00
For class (1) <i>firms</i> : £1,650 <u>£1,850</u> For a <i>professional firm</i> in A.13 the fee is calculated as above less 10%.		
A.14	Minimum fee (£)	1,300.00 <u>1,335.00</u>
	No. of persons	Fee (£/person)
	0 - 1	0

	2	1,280.00 <u>1,258.00</u>
	3 - 4	1,215.00 <u>1,194.00</u>
	5 - 10	1,117.00 <u>1,098.00</u>
	11 - 100	1,060.00 <u>1,042.00</u>
	101 - 200	742.00 <u>729.00</u>
	>200	446.00 <u>438.00</u>
A.15	This activity group does not apply for this period.	
A.16	∅ <u>This activity group does not apply for this period.</u>	
A.17	This activity group does not apply for this period.	
A.18	Minimum fee (£)	650 <u>745</u>
	£ thousands of Annual Income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	0 - 100	0
	>100 - 1,000	4.58 <u>5.18</u>
	>1,000 - 5,000	3.83 <u>4.33</u>
	>5,000 - 10,000	3.06 <u>3.46</u>
	>10,000 - 20,000	2.30 <u>2.60</u>
	>20,000	1.93 <u>2.18</u>
A.19	Minimum fee (£)	410 <u>450</u>
	£ thousands of Annual Income (AI)	Fee (£/£ thousand or part £ thousand of AI)
	0 - 100	0
	>100 - 1,000	3.88 <u>4.31</u>
	>1,000 - 5,000	3.39 <u>3.77</u>
	>5,000 - 15,000	2.45 <u>2.60</u>
	>15,000 - 100,000	0.98 <u>1.04</u>
	>100,000	0.40 <u>0.42</u>
B. Market operators	£20,000	

B. Service Companies	Bloomberg LP	£35,000 <u>£37,000</u>
	EMX Co Ltd	£25,000 <u>£27,000</u>
	LIFFE Services Ltd	£25,000 <u>£27,000</u>
	Plus Markets plc	£90,000
	OMGEO Ltd	£25,000 <u>£27,000</u>
	Reuters Ltd	£35,000 <u>£37,000</u>
	Swapswire Ltd	£25,000 <u>£27,000</u>
	Thomson Financial Ltd	£25,000 <u>£27,000</u>

Part 2

This table shows the permitted deductions that apply:

Activity group	Nature of deduction	Amount of deduction
A.1	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.2	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.3	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.4	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.5	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.6	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.7	Financial penalties received	5.6% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.9	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.10	Financial penalties received	8.7% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.12	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.13	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)

A.14	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.18	Financial penalties received	4.9% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)
A.19	Financial penalties received	5.4% <u>1.4%</u> of the fee payable by the <i>firm</i> for the activity group (see Part 1)

Part 3 of this table has not been amended.

...

FEES 4 Annex 4R Annex 4 Periodic fees in relation to collective investment schemes payable for the period 1 April ~~2007~~ 2008 to 31 March ~~2008~~ 2009

Part 1 - Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
<i>ICVC, AUT, Section 264 of the Act or Section 270 of the Act</i>	640	1-2	1	640 <u>670</u>
		3-6	2.5	1,600 <u>1,675</u>
		7-15	5	3,200 <u>3,350</u>
		16-50	11	7,040 <u>7,370</u>
		>50	22	14,080 <u>14,740</u>
Section 272 of the Act	2,620	1-2	1	2,620 <u>2,730</u>
		3-6	2.5	6,550 <u>6,825</u>
		7-15	5	13,100 <u>13,650</u>
		16-50	11	28,820 <u>30,030</u>
		>50	22	57,640 <u>60,060</u>

Fees are charged according to the number of funds or sub-funds operated by a *firm* as at 31 March ~~2007~~ 2008. Where a new *collective investment scheme* becomes authorised during a year, fees are charged according to the number of funds or sub-funds operated by a *firm* as at the date of authorisation. Where more than one fund or sub-fund is operated the

number of funds (not including the umbrella or parent fund) produces a 'fund factor' in accordance with the table above which is then applied to a basic fee to produce one total fee per operator. Fund factors are applied per operator rather than per scheme so that the fees relate to the number of funds rather than the number of schemes. This means that, for example, an authorised fund manager of three schemes pays the same as an operator or authorised fund manager of one scheme with three sub-funds (as only the sub-funds are counted).

Schemes set up under section 264 of the Act are charged according to the number of funds or sub-funds which a firm is operating and *marketing* into the UK as at 31 March immediately before the start of the period to which the fee applies. For example, for ~~2007/08~~ 2008/09 fees a reference to 31 March means 31 March ~~2007~~ 2008.

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

Table. Fees payable by Designated Professional Bodies

Name of Designated Professional Body	Amount payable	Due date
The Law Society of England & Wales	£70,515	30 April 2008
	{to be determined} £31,455	1 September 2008
The Law Society of Scotland	£18,630 £15,890	1 July 2007 <u>2008</u>
The Law Society of Northern Ireland	£16,150 £14,220	1 July 2007 <u>2008</u>
The Institute of Actuaries	£10,250 £10,160	1 July 2007 <u>2008</u>
The Institute of Chartered Accountants in England and Wales	£45,940 £33,720	1 July 2007 <u>2008</u>
The Institute of Chartered Accountants of Scotland	£13,070 £12,030	1 July 2007 <u>2008</u>
The Institute of Chartered Accountants in Ireland	£11,430 £10,940	1 July 2007 <u>2008</u>
The Association of Chartered Certified	£25,820 £19,600	1 July 2007 <u>2008</u>

Accountants		
The Council for Licensed Conveyancers		£12,700 £11,720
Royal Institution of Chartered Surveyors		£16,560 £15,010
Notes		
(1)	The <i>FSA register</i> includes details of <i>exempt professional firms</i> carrying out <i>insurance mediation activity</i> .	

...

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

In this Annex:
- the term <i>recognised body</i> includes a body which was a recognised investment exchange or a recognised clearing house recognised under the Financial Services Act 1986 and which is a <i>recognised body</i> as a result of Regulation 9 of the <i>Recognition Requirements Regulations</i> ; and
- the term recognition order includes a recognition order made by the <i>FSA</i> under section 37 or section 39 of the Financial Services Act 1986 or a recognition order made by the Treasury under section 40 of the Financial Services Act 1986.

Part 1 - Periodic fees for UK recognised bodies

Name of UK recognised body	Amount payable	Due date
Euroclear UK& Ireland Limited	£261,000	30 April 2008
	£293,000 £228,000	1 September 2007 2008
ICE Futures Europe	£177,000	30 April 2008

	£205,500 <u>£208,000</u>	1 September 2007 <u>2008</u>
LIFFE Administration and Management	£274,500	30 April 2008
	£296,500 <u>£325,500</u>	1 September 2007 <u>2008</u>
LCH.Clearnet Limited	£285,500	30 April 2008
	£280,500 <u>£276,500</u>	1 September 2007 <u>2008</u>
The London Metal Exchange Limited	£173,500	30 April 2008
	£180,500 <u>£195,500</u>	1 September 2007 <u>2008</u>
London Stock Exchange plc	£349,000	30 April 2008
	£366,000 <u>£190,000</u>	1 September 2007 <u>2008</u>
SWX Exchange Ltd	£69,500	30 April 2008
	£99,000 <u>£84,500</u>	1 September 2007 <u>2008</u>
EDX London Ltd	£52,000	30 April 2008
	£72,000 <u>£44,000</u>	1 September 2007 <u>2008</u>
NYMEX Europe Limited	£67,500	30 April 2007
	£20,500	1 September 2007
PLUS Markets Plc	£75,000	30 April 2008
	<u>£79,000</u>	<u>1 September 2008</u>
European Central Counterparty Limited	£250,000	30 April 2008
ICE Clear Europe Limited	£250,000	30 April 2008

Any other <i>UK recognised investment exchange</i> recognised as such by a <i>recognition order</i> made in the period	£150,000	30 days after the date on which the <i>recognition order</i> is made
Any other <i>UK recognised clearing house</i> recognised as such by a <i>recognition order</i> made in the period	£250,000	30 days after the date on which the <i>recognition order</i> is made

Part 2 - Periodic fees for overseas recognised bodies

Name of overseas recognised body	Amount payable	Due date
Cantor Financial Futures Exchange	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>
Chicago Mercantile Exchange Inc (CME)	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>
Chicago Board of Trade	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>
EUREX (Zurich)	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>
National Association of Securities and Dealers Automated Quotations (NASDAQ)	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>
NQLX LLC	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>
New York Mercantile Exchange Inc.	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>
The Swiss Stock Exchange	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>
Sydney Futures Exchange Limited	£20,000 <u>£25,000</u>	1 July 2007 <u>2008</u>

Warenterminbörse Hannover	£20,000	1 July 2007
US Futures Exchange LLC	£20,000 £25,000	1 July 2007 <u>2008</u>
<u>ICE Futures US Inc</u>	£25,000	1 July <u>2008</u>
<u>RMX Risk Management Exchange AG</u>	£25,000	1 July <u>2008</u>
SIS x-clear AG	£50,000 £55,000	1 July 2007 <u>2008</u>
Eurex Clearing AG	£50,000 £55,000	1 July 2007 <u>2008</u>
<u>ICE Clear US Inc</u>	£55,000	1 July <u>2008</u>
<u>CME Clearing</u>	£55,000	1 July <u>2008</u>
Any other <i>overseas investment exchange</i> recognised as such by a <i>recognition order</i> made in the period	£20,000 <u>£25,000</u>	30 days after the date on which the <i>recognition order</i> is made
Any other <i>overseas clearing house</i> recognised as such by a <i>recognition order</i> made in the period	£50,000 <u>£55,000</u>	30 days after the date on which the <i>recognition order</i> is made

FEES 4 Annex 7R Annex 7, Periodic fees in relation to the Listing Rules for the period 1 April ~~2007~~ 2008 to 31 March ~~2008~~ 2009

Fee type	Fee amount
Annual fees for the period 1 April 2007 <u>2008</u> to 31 March 2008 <u>2009</u>	
Annual Issuer Fees - all <i>listed issuers of shares, depositary receipts and securitised derivatives</i> . This fee represents the total annual fee for a <i>listed issuer</i> - no additional annual fee is	(1) For all <i>issuers of securitised derivatives, depositary receipts and global depositary receipts</i> the fees payable are set out in Table 1. (2) For all other <i>issuers</i> , fees to be determined according to market capitalisation <u>are</u> as set out in Table 2. The fee is calculated as follows: (a) the relevant minimum fee; plus

<p>due under the <i>disclosure rules</i> and <i>transparency rules</i>.</p>	<p>(b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche. Where <i>issuers</i> have more than one type of <i>share</i> in issue, the highest market capitalisation of all of its securities in issue is used.</p> <p>(3) Notwithstanding (2), <i>overseas issuers</i> with a <i>listing</i> of <i>equity securities</i> which is not a <i>primary listing</i> will only pay 80% of the fee otherwise payable under (2).</p>
<p>Annual fees are charged in annual cycles beginning on 1 April of a year and ending on 31 March of the following year. For fees purposes <i>issuers</i> should take into account only equity ordinary <i>shares</i>, including those issued by suspended <i>issuers</i>.</p>	

Table 1

Annual fees for issuers of *securitised derivatives*, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers of securitised derivatives</i>	£3,340 <u>£3,425</u>
Issuers of depositary receipts and global depositary receipts	£4,008 <u>£4,110</u>

Table 2

Tiered annual fees for all other issuers

Fee payable	
Minimum fee (£)	3,340 <u>3,425</u>
£ million of Market Capitalisation	Fee (£/£m or part £m of Market Capitalisation)
0 – 100	0
>100 – 250	14.57 <u>15.06600</u>
>250 – 1,000	5.828 <u>6.02600</u>
>1,000 – 5,000	1.9388 <u>2.00500</u>

>5,000 – 25,000	0.0364 <u>0.03770</u>
>25,000	0.0098 <u>0.01008</u>

FEES 4 Annex 8R

Periodic fees in relation to the disclosure rules and transparency rules for the period 1 April ~~2007~~ 2008 to 31 March ~~2008~~ 2009

Annual fees for the period 1 April 2007 <u>2008</u> to 31 March 2008 <u>2009</u>	
All non-listed <i>issuers</i> of <i>shares</i> , depositary receipts and securitised derivatives. Annual fees for listed <i>issuers</i> in respect of <i>Disclosure Rules</i> and <i>Transparency Rules</i> obligations are incorporated in the annual fee for listed <i>issuers</i> under the Listing Rules.	(1) For all non-listed <i>issuers</i> of securitised derivatives, depositary receipts and global depositary receipts the fees payable are set out in Table 1.
	(2) For all other non-listed <i>issuers</i> , fees to be determined according to market capitalisation as set out in Table 2. The fee is calculated as follows:
	(a) the relevant minimum fee; plus (b) the cumulative total of the sums payable for each of the bands calculated by multiplying each relevant tranche of the <i>firm's</i> market capitalisation by the rate indicated for that tranche.
Fees from other fee schedules contained in other sections of the sourcebook may be applicable to a single submission.	

Table 1

Annual fees for non-listed issuers of securitised derivatives, depositary receipts and global depositary receipts

Issuer	Fee amount
<i>Issuers of securitised derivatives</i>	£2,672 <u>£2,740</u>
<i>Issuers of depositary receipts and global depositary receipts</i>	£3,206 <u>£3,288</u>

Table 2

Fee payable	
Minimum fee (£)	2,672 <u>2,740</u>

£ million of Market Capitalisation	Fee (£/£m or part £m of Market Capitalisation)
0 – 100	0
>100 – 250	1.656 <u>12.0528</u>
>250 – 1,000	4.6624 <u>4.8208</u>
>1,000 – 5,000	1.551 <u>1.6040</u>
>5,000 – 25,000	0.0291 <u>0.0302</u>
>25.000	0.0078 <u>0.0081</u>

Insert the following new annex after FEES 4 Annex 8R. The text is not underlined.

FEES 4 Annex 9R Periodic fees in respect of *securitised derivatives* for the period from 1 April 2008 to 31 March 2009

Part 1

This table shows the fee amount applicable to *firms* and *market operators* in respect of certain *securitised derivatives*.

For the purposes of this Annex “relevant contracts” are all transactions entered into by *firms* in *securitised derivatives* entered into on or settled through *LIFFE* or Eurex Clearing AG, and the “relevant period” is 1 January 2007 to 31 December 2007 inclusive.

The fee shown in the table below for *firms* (but not for *market operators*) will be subject to a deduction of 1.4%, as if that fee were a periodic fee charged under *FEES 4.3.3R*, and the deduction were a deduction set out in Part 2 of *FEES 4 Annex 2R*.

Fee amount for <i>firms</i>	
Number of relevant contracts entered into by the <i>firm</i> during the relevant period	Fee amount
0 - 100	£0
101 – 1,000	£150
1,001 – 100,000	£700
100,001 – 1,000,000	£1,900
1,000,001 - 5,000,000	£4,800

5,000,001 - 20,000,000	£8,800
>20,000,000	£13,400
Fee amount for <i>market operators</i>	
<i>Market operators</i> providing facilities for trading in <i>securitised derivatives</i> that do not identify those <i>securitised derivatives</i> using an International Securities Identity Number	£10,000

Amend the following as shown.

FEES 5 Annex 1R Annual Fees Payable in Relation to ~~2007/08~~ 2008/09

Introduction: annual budget

1. The *annual budget* for ~~2007/08~~ 2008/09 approved by the *FSA* is ~~£57.3m~~ £62.6m.

Part 1: General levy and supplementary levy

2. The total amount expected to be raised through the *general levy* in ~~2007/08~~ 2008/09 will be ~~£18.3m~~ £17.2m (net of ~~£1.2m~~ £1.8m to be raised from consumer credit firms).

Part 2: Fee tariffs for general levy and supplementary levy

3. No *establishment costs* will be raised in ~~2007/08~~ 2008/09 by the *supplementary levy*.

Industry block	Tariff base	General levy payable by firm
1-Deposit acceptors, <i>mortgage lenders</i> and <i>administrators</i> <i>home finance providers</i> and <i>home finance administrators</i> (excluding <i>firms</i> in block 14)	Number of accounts relevant to the activities in <i>DISP</i> 2.3.1R <u>2.6.1R</u>	£0.009 <u>£0.023</u> per relevant account, subject to a minimum levy of £100
2-Insurers – general (excluding <i>firms</i> in	Relevant annual gross premium	£0.065 <u>£0.0126</u> per £1,000 of relevant annual gross

blocks 13 & 15)	income	premium income, subject to a minimum levy of £100
3-The <i>Society</i> (of Lloyd's)	Not applicable	£28,000 to be allocated by the <i>Society</i>
4-Insurers – life (excluding <i>firms</i> in block 15)	Relevant adjusted annual gross premium income	£0.12 <u>£0.049</u> per £1,000 of relevant adjusted annual gross premium income, subject to a minimum levy of £100
5-Fund managers (including those holding <i>client money/assets</i> and not holding <i>client money/assets</i>)	Relevant funds under management	£0.0005 per £1,000 of relevant funds under management, subject to a minimum levy of £100 <u>Levy of £200</u>
6-Operators, trustees and depositaries of collective investment schemes and operators of personal pension schemes or stakeholder pension schemes	Flat fee	Levy of £50
7-Dealers as principal	Flat fee	Levy of £50
8-Advisory arrangers, dealers or brokers holding and controlling <i>client money</i> and/or assets	Number of relevant <i>persons</i> approved to perform the <i>customer function</i> (CF30), but excluding those <i>persons</i> solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions	£150 <u>£80</u> per relevant <i>approved person</i> subject to a minimum levy of £150 <u>£80</u>

	relating to these.	
9-Advisory <i>arrangers</i> , dealers or brokers not holding and controlling <i>client money</i> and/or assets	Number of relevant <i>persons</i> approved to perform the <i>customer function</i> (CF30), but excluding those <i>persons</i> solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions relating to these.	£45 <u>£40</u> per relevant <i>approved person</i> subject to a minimum levy of £50 <u>£40</u>
10-Corporate finance business	Flat fee	Levy of £50
11-	N/A for 2007/08 <u>2008/09</u>	
12-	N/A for 2007/08 <u>2008/09</u>	
13-Cash plan health providers	Flat fee	Levy of £50
14- <i>Credit unions</i>	Flat fee	Levy of £50
15- <i>Friendly societies</i> whose tax-exempt business represents 95% or more of their total relevant business	Flat fee	Levy of £50
16- Mortgage lenders, advisers and arrangers <i>Home finance providers, advisers and arrangers</i> (excluding <i>firms</i> in blocks 13, 14 & 15)	Flat fee	Levy of £50 <u>£60</u>
17-General insurance mediation (excluding <i>firms</i> in blocks 13,	Flat fee	Levy of £50 <u>£60</u>

14 and 15)		
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4. [Not used]

5. The *industry blocks* in the table are based on the equivalent activity groups set out in Part 1 of *FEES 4 Annex 1R*.

6. Where the tariff base in the table is defined in similar terms as that for the equivalent activity group in Part 2 of *FEES 4 Annex 1R*, it must be calculated in the same way as that tariff base – taking into account only the *firm's relevant business*.

CONNECTED TRAVEL INSURANCE INSTRUMENT 2008**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 213 (The compensation scheme); and
 - (f) paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

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

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex C
Insurance: Conduct of Business sourcebook (ICOBS)	Annex D
Supervision manual (SUP)	Annex E
Perimeter Guidance manual (PERG)	Annex F

Citation

E. This instrument may be cited as the Connected Travel Insurance Instrument 2008.

By order of the Board
22 May 2008

Annex A

Amendments to the Glossary of definitions

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

- connected contract* a *non-investment insurance contract* which:
- (a) is not a contract of long-term insurance (as defined by article 3 of the *Regulated Activities Order*);
 - (b) has a total duration (including *renewals*) of five years or less;
 - (c) has an annual *premium* (or the equivalent of annual *premium*) of €500 or less;
 - (d) covers the risk of:
 - (i) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or
 - (ii) damage to, or loss of, baggage and other risks linked to the travel booked with the provider (“travel risks”) in circumstances where:
 - (A) the travel booked with the provider relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his private capacity) or a small business; or
 - (B) the travel booked with the provider is only the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation;
 - (e) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract);
 - (f) is complementary to the non-motor goods being supplied or service being provided by the provider; and
 - (g) is of such a nature that the only information that a person requires in order to carry on one of the *insurance mediation activities* is the cover provided by the contract.

In this definition:

- (h) the transfer of possession of an aircraft, vehicle or vessel under an agreement for hire which is not:

- (i) a hire-purchase agreement within the meaning of section 189(1) of the Consumer Credit Act 1974; or
- (ii) any other agreement which contemplates that the property in those goods will also pass at some time in the future;

is the provision of a service related to travel, not a supply of goods;

- (i) “small business” means a sole trader, *body corporate*, *partnership* or an unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where the small business is a member of a group within the meaning of section 262(1) of the Companies Act 1985 (and after the repeal of that section, within the meaning of section 474(1) of the Companies Act 2006), reference to its turnover means the combined turnover of the group);
- (j) “turnover” means the amounts derived from the provision of goods and services falling within the business’s ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.

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

<i>connected travel insurance contract</i>	a <i>non-investment insurance contract</i> which covers the risk of damage to, or loss of, baggage and other risks linked to the travel booked with the provider but does not otherwise meet the conditions in paragraph (d)(ii) of the definition of <i>connected contract</i> .
<i>connected travel insurance intermediary</i>	an <i>insurance intermediary</i> whose <i>permission</i> includes a <i>requirement</i> that it must not conduct any <i>regulated activity</i> other than <i>insurance mediation activity</i> in relation to a <i>connected travel insurance contract</i> .

Annex B

Amendments to the Fees manual (FEES)

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

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

...

Part 2

...

Activity group	Tariff-base
...	...
A.19	<p>ANNUAL INCOME (a) the net amount retained by the <i>firm</i> of all brokerages, fees, commissions and other related income (eg administration charges, overrides, profit shares) due to the <i>firm</i> in respect of or in relation to <i>insurance mediation activity</i> (or activities which would have been <i>insurance mediation activity</i> if they had been carried out after 13 January 2005 <u>or, in relation to <i>connected travel insurance contracts</i>, from 1 January 2009</u>) in relation to <i>general insurance contracts</i> or <i>pure protection contracts</i>;</p> <p>Plus ...</p> <p>Notes on annual income: (1) For 2004/05 and 2005/06 <i>firms</i> have supplied this data on their 'HSF1' or 'variation of permission' application form.</p> <p>...</p> <p>(4) Reference to a “<i>firm</i>” above also includes reference to any <i>person</i>, <u>including a <i>connected travel insurance intermediary</i></u>, who carried out activities which would be <i>insurance mediation activity</i> (in respect of <i>general insurance contracts</i> or <i>pure protection contracts</i>) if they had been carried out after 13 January 2005 <u>or, in relation to <i>connected travel insurance contracts</i>, from 1 January 2009.</u></p>

Annex C

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.

- 2.3.1 R A *firm* (other than a *connected travel insurance intermediary*) must establish on reasonable grounds that:
- (1) a reasonable proportion of the *persons* within its management structure who are responsible for *insurance mediation activity*; and
 - (2) all other *persons* directly involved in its *insurance mediation activity*;
- demonstrate the knowledge and ability necessary for the performance of their duties; and ...

Annex D

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

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

Status disclosure exemption: connected travel insurance

- 4.1.5 R ~~{not used}~~ In relation to a *connected travel insurance contract*, a *firm* need only provide the procedures allowing *customers* and other interested parties to register *complaints* about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court *complaint* and redress procedures available for the settlement of disputes between the *firm* and its *customers*.

Scope of service

- 4.1.6 R (1) Prior to the conclusion of an initial *contract of insurance* (other than a *connected travel insurance contract*) and, if necessary, on its amendment or *renewal*, a *firm* must tell the *customer* whether:
- (a) it gives advice on the basis of a fair analysis of the market; or
 - (b) it is under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings*; or
 - (c) it is not under a contractual obligation to conduct *insurance mediation* business exclusively with one or more *insurance undertakings* and does not give advice on the basis of a fair analysis of the market.

...

...

5.2 Statement of demands and needs

Application: who? what?

- 5.2.1 R This section applies to:
- (1) an *insurance intermediary* in relation to any *policy* (other than a *connected travel insurance contract*); and

...

...

TP 1 Transitional Provisions

...

Series of events

- 6 R If, for a *connected travel insurance intermediary*, the application of any provision in this sourcebook is dependent on the occurrence of a series of events, the provision applies with respect to the events that occur on or after 1 January 2009.

Annex E

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

TP 1.5

- 1 R (1) A firm may, in the written contract with its *introducer appointed representative*, extend the scope of appointment to include:
- (a) receiving and forwarding to an *insurer or insurance intermediary* an application by a *customer* for a *connected travel insurance contract* together with any associated documentation; and
- (b) receiving *client money* from a *customer* in respect of a *connected travel insurance contract*, and holding that *client money*.
- (2) The extension of the scope of the appointment must apply only where the receipt of an application or of *client money* results from documentation given to a *customer*, where the deadline for submission of this documentation to the publishers for publishing was on or before 15 November 2008.
- (3) This *rule* applies until 31 December 2009.

Annex F

Amendments to the Perimeter Guidance manual

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

Insurance mediation activities

2.9.19 G The exclusions in this group apply to certain *regulated activities* involving certain *contracts of insurance*. The exclusions and the *regulated activities* to which they apply are as follows.

- (1) The first exclusion of this kind relates to certain activities carried on by a provider of non-motor goods or services related to travel in connection with *general insurance contracts* only. The contracts must be for five years duration or less and have an annual premium of no more than €500. The contract must cover breakdown or loss of or damage to non-motor goods supplied by the provider or loss of or damage to baggage and other risks linked to certain travel services booked with the provider. The travel services must be the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation, or must relate to attendance at an event organised or managed by the provider. Where the travel services relate to an event, the exclusion does not apply if the party seeking insurance is an individual (acting in his private capacity) or a small business. A small business is a sole trader, body corporate, partnership or unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where it is a member of a group, the combined turnover of the group is used). Turnover means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on those amounts. There must not be any liability risk cover other than where this is ancillary to the main risk covered in a travel policy). The insurance must be complementary to the goods or services being supplied by the provider in the course of his carrying on a business or profession not otherwise consisting of *regulated activities*, and the policy must be in standard form. ...

...

...

Activities carried on by a provider of relevant goods or services

5.11.13 G Article 72B (see also *PERG 5.3.7G* (Connected contracts of insurance)) may be of relevance to *persons* who supply non-motor goods or provide services related to travel in the course of carrying on a profession or business which does not otherwise consist of carrying on *regulated activities*. ... In broad

terms, a 'connected contract of insurance' is a *contract of insurance* which:

...

- (2) has a total duration (including rights to ~~renewal~~ *renewal*) of five years or less;
- (3) has an annual ~~premium~~ *premium* (or the equivalent of annual ~~premium~~ *premium*) of €500 or less;
- (4) covers ~~the risk of~~:
 - (a) the risk of breakdown, loss of, or damage to, non-motor goods supplied by the provider; or
 - (b) damage to, or loss of, baggage and other risks linked to the travel booked with the provider ('travel risks');

...

- 5.11.13A G (1) There are two types of travel risks covered by PERG 5.11.13G(4)(b). The first type covers damage to, or loss of, baggage and other risks linked to the travel booked with the provider where that travel relates to attendance at an event organised or managed by that provider and the party seeking insurance is not an individual (acting in his private capacity) or a small business.
- (2) "Small business" means a sole trader, body corporate, partnership or unincorporated association which had a turnover in the last financial year of less than £1,000,000. But if the small business is a member of a group within the meaning of section 262(1) of the Companies Act 1985 (and after the repeal of that section, within the meaning of section 474(1) of the Companies Act 2006), reference to its turnover means the combined turnover of the group. Turnover means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amounts so derived.
- (3) The second type of travel risk is damage to, or loss of, baggage and other risks linked to the hire from the insurance provider of an aircraft, vehicle or vessel which does not provide sleeping accommodation.
- (4) PERG 5.11.13G(4)(a) does not apply to the hire of an aircraft, vehicle or vessel but does cover hire purchase and similar agreements.

- 5.11.14 G In the *FSA's* view, the liability risks referred to in *PERG 5.11.13G(5)* cover risks in relation to liabilities that the *policyholder* might have to others (that is, third party claims). ... travel *policies* which provide cover in respect of the *policyholder's* personal liability while travelling may fall within the

exclusion by virtue of *PERG* 5.11.13G(5), where sold as part of a package by event organisers ~~travel agents and other providers of services related to travel~~.

...

Passporting

- 5.12.13 G The effect of the *IMD* is that any *EEA*-based insurance intermediaries doing business within the Directive's scope must first be registered in their home *EEA State* before carrying on *insurance mediation* in that *EEA State* or other *EEA States*. ...

Registered *EEA*-based insurance intermediaries wishing to establish branches in the *United Kingdom* or provide services on a cross-border basis into the *United Kingdom* can do so by notifying their *Home State regulator* which in turn notifies the *FSA*. This enables the intermediary to acquire passporting rights for business within the Directive's scope (so excluding *insurance mediation activities relating to connected contracts or connected travel insurance contracts*) under Schedule 3 to the *Act* (*EEA passporting rights*) (see Schedule 3(13) and (14) of the *Act* as amended by the *Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003*). ...

MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 9) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 119 (The code);
 - (2) section 138 (General rule-making power);
 - (3) section 149 (Evidential provisions); 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 June 2008.

Amendments to the Handbook

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

Citation

- F. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 9) Instrument 2008.

By order of the Board
22 May 2008

Annex A

Amendment to the Glossary of definitions

In this Annex, striking through indicates deleted text.

*metal market
aberrations regime* ~~The practices set out in the London Metal Exchange's document "Market Aberrations: The Way Forward" published in October 1998 which govern the behaviour expected of long position holders, as clarified and explained by Schedule 1 to the Memorandum from the Executive Director, Regulation and Compliance, London Metal Exchange, to All Members of the London Metal Exchange dated 15 December 2005.~~

Annex B

Amendments to the Market Conduct sourcebook (MAR)

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

~~Descriptions of behaviour that do not amount to market abuse (manipulating transactions): accepted market practices~~

1.6.14 E ~~The following are accepted by the FSA as *accepted market practices* for the purposes of *market abuse (manipulating transactions)*:~~

(1) ~~The *metal market aberrations regime* (see MAR 1 Annex 2 G).~~
[deleted]

...

~~Descriptions of behaviour that does not amount to market abuse (distortion)~~

1.9.3 C ~~*Behaviour that complies with the requirements imposed on long position holders in the *metal market aberrations regime* will not amount to *market abuse (distortion)*.*~~ [deleted]

...

1 Annex 2 G Accepted Market Practices

Part 1 ...

Part 2 [deleted]

[Part 2 of this Annex (Accepted Market Practices: Market aberrations on the London Metal Exchange) is deleted in its entirety. The deleted text is not shown.]

**COMPLAINTS AGAINST THE FSA SCHEME
(AMENDMENT NO 5) INSTRUMENT 2008**

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 157(1) (Guidance); and
 - (2) paragraph 7 (Arrangements for the investigation of complaints) of Schedule 1 (The Financial Services Authority).

Commencement

- B. This instrument comes into force on 6 June 2008.

Amendments to the Handbook

- C. The Complaints against the FSA sourcebook (COAF) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Complaints against the FSA Scheme (Amendment No 5) Instrument 2008.

By order of the Board
22 May 2008

Annex

Amendments to the Complaints against the FSA sourcebook (COAF)

In this Annex, underlining indicates new text.

- 1.2.2 G (1) The *complaints scheme* applies in relation to complaints made about the way in which the *FSA* has carried out, or failed to carry out, its functions under the *Act*.
- (2) For the avoidance of doubt, this also includes functions conferred on the *FSA* under certain other pieces of legislation, including those which are regarded as being functions under the *Act*, and hence subject to the *complaints scheme*. Where a function under another piece of legislation is subject to the *complaints scheme*, the relevant piece of legislation will usually specify this by providing that the function is to be regarded for the purposes of Schedule 1 to the *Act* (which contains the *complaints scheme* provisions) as conferred on the *FSA* under the *Act*.
- (3) The *FSA* is also applying the main elements of the *complaints scheme* in respect of complaints against the *FSA* arising in connection with the exercise of its functions under previous legislation and in respect of complaints made against *PIA*, *IMRO* and *SFA*. Those arrangements are set out in the *transitional complaints scheme*.

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(ELECTRONIC COMMUNICATIONS) INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. (1) Subject to (2), this instrument comes into force on 6 June 2008.
- (2) The amendments in the Annexes to this instrument come into force when and if the applications of section 53(1)(c) of the Law of Property Act 1925, section 1(2)(a) (ii) of the Requirements of Writing (Scotland) Act 1995, section VI of the Statute of Frauds (Ireland) 1695 are modified and the Open-Ended Investment Companies Regulations 2001 are amended in a manner consistent with those amendments.

Amendments to the Handbook

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

Citation

- F. This instrument may be cited as the Collective Investment Schemes Sourcebook (Electronic Communications) Instrument 2008.

By order of the Board
22 May 2008

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position.

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

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

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

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

...

4.4.13 R ...

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

...

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

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

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK
(PROPERTY AUTHORISED INVESTMENT FUNDS) INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 June 2008.

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 (Property Authorised Investment Funds) Instrument 2008.

By order of the Board
22 May 2008

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position.

<i>property authorised investment fund</i>	an <i>open-ended investment company</i> to which Part 4A of the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964) applies.
--	---

Annex B

Amendments to the Collective Investment Schemes sourcebook (COLL)

In this Annex, underlining indicates new text.

Table: contents of the instrument constituting the scheme

3.2.6 R ...

...			
7A	...		
		<u>Property Authorised Investment Funds</u>	
<u>7B</u>	<u>For a <i>property authorised investment fund</i>, a statement that:</u>		
	(1)	<u>it is a <i>property authorised investment fund</i>;</u>	
	(2)	<u>no <i>body corporate</i> may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and</u>	
	(3)	<u>in the event that the <i>authorised fund manager</i> reasonably considers that a <i>body corporate</i> holds more than 10% of the net asset value of the fund, the <i>authorised fund manager</i> is entitled to delay any redemption or cancellation of <i>units</i> in accordance with 18 if the <i>authorised fund manager</i> reasonably considers such action to be:</u>	
		(a)	<u>necessary in order to enable an orderly reduction of the holding to below 10%; and</u>
		(b)	<u>in the interests of the <i>unitholders</i> as a whole.</u>
...			

...

Table: contents of the prospectus

4.2.5 R ...

...	
22	...
<u>Property Authorised Investment Funds</u>	

22A	For a <i>property authorised investment fund</i> , a statement that:		
	(1)	<u>it is a <i>property authorised investment fund</i>;</u>	
	(2)	<u>no <i>body corporate</i> may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and</u>	
	(3)	<u>in the event that the <i>authorised fund manager</i> reasonably considers that a <i>body corporate</i> holds more than 10% of the net asset value of the fund, the <i>authorised fund manager</i> is entitled to delay any redemption or cancellation of <i>units</i> if the <i>authorised fund manager</i> reasonably considers such action to be:</u>	
		(a)	<u>necessary in order to enable an orderly reduction of the holding to below 10%; and</u>
		(b)	<u>in the interests of the <i>unitholders</i> as a whole.</u>
...			

...

Property Authorised Investment Funds

- 6.2.23 R (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the “maximum allowable”).
- (2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:
- (a) notify the *body corporate* of that event;
- (b) not pay any income distribution to the *body corporate*; and
- (c) redeem or cancel the *body corporate*’s holding down to the maximum allowable within a reasonable time-frame.
- (3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.
- 6.2.24 G Reasonable steps to monitor the maximum allowable include:
- (1) regularly reviewing the *register*; and

- (2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.

...

Table: contents of the instrument constituting the scheme

8.2.6 R ...

1	...		
<u>Property Authorised Investment Funds</u>			
1A	For a <i>property authorised investment fund</i> , a statement that:		
	(1)	<u>it is a <i>property authorised investment fund</i>;</u>	
	(2)	<u>no <i>body corporate</i> may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and</u>	
	(3)	<u>in the event that the <i>authorised fund manager</i> reasonably considers that a <i>body corporate</i> holds more than 10% of the net asset value of the fund, the <i>authorised fund manager</i> is entitled to delay any redemption or cancellation of <i>units</i> in accordance with 6A if the <i>authorised fund manager</i> reasonably considers such action to be:</u>	
		(a)	<u>necessary in order to enable an orderly reduction of the holding to below 10%; and</u>
		(b)	<u>in the interests of the <i>unitholders</i> as a whole.</u>
...			
6	...		
<u>Redemption or cancellation of units on breach of law or rules</u>			
6A	<u>A statement that where any holding of <i>units</i> by a <i>unitholder</i> is (or is reasonably considered by the <i>authorised fund manager</i> to be) an infringement of any law, governmental regulation or rule, those <i>units</i> must be redeemed or cancelled.</u>		
...			

...

Table: contents of qualified investor scheme prospectus

8.3.4 R ...

...			
15	...		
<u>15A</u>	<u>Property Authorised Investment Funds</u>		
	<u>For a <i>property authorised investment fund</i>, a statement that:</u>		
	<u>(1)</u>	<u>it is a <i>property authorised investment fund</i>;</u>	
	<u>(2)</u>	<u>no <i>body corporate</i> may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and</u>	
	<u>(3)</u>	<u>in the event that the <i>authorised fund manager</i> reasonably considers that a <i>body corporate</i> holds more than 10% of the net asset value of the fund, the <i>authorised fund manager</i> is entitled to delay any redemption or cancellation of <i>units</i> if the <i>authorised fund manager</i> reasonably considers such action to be:</u>	
		<u>(a)</u>	<u>necessary in order to enable an orderly reduction of the holding to below 10%; and</u>
		<u>(b)</u>	<u>in the interests of the <i>unitholders</i> as a whole.</u>
...			

...

Property Authorised Investment Funds

- 8.5.12A R (1) The *authorised fund manager* of a *property authorised investment fund* must take reasonable steps to ensure that no *body corporate* holds more than 10% of the net asset value of that fund (the “maximum allowable”).
- (2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:
- (a) notify the *body corporate* of that event;
 - (b) not pay any income distribution to the *body corporate*; and

(c) redeem or cancel the *body corporate*'s holding down to the maximum allowable within a reasonable time-frame.

(3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.

8.5.12B G Reasonable steps to monitor the maximum allowable include:

(1) regularly reviewing the *register*; and

(2) taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.

**PERIODIC FEES (UNAUTHORISED MUTUAL SOCIETIES REGISTRATION)
(2008/2009) INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance); and
 - (4) paragraph 17 (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 2008.

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) (2008/2009) Instrument 2008.

By order of the Board
22 May 2008

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 ~~2007~~ 2008 TO 31 MARCH ~~2008~~ 2009

Part 1

Periodic fee payable by Registered Societies (on 30 June ~~2007~~ 2008)

This fee is not payable by a *credit union*.

Transaction	Total assets (£'000s)	Amount payable (£)
Periodic Fee	0 to 50	50 <u>55</u>
	> 50 to 100	95 <u>105</u>
	> 100 to 250	155 <u>170</u>
	> 250 to 1,000	210 <u>225</u>
	> 1,000	395 <u>415</u>

Part 2

Methods of payment of periodic fees

A periodic fee must be paid using either direct debit, credit transfer (BACS/CHAPS), cheque, switch or by credit card (Visa/Mastercard only). Any payment by permitted credit card must include an additional 2% of the sum paid.

SHORT SELLING INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 119 (The code);
 - (2) section 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 20 June 2008 and applies in relation to any position held on or after that date.

Amendments to the Handbook

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

Citation

- F. This instrument may be cited as the Short Selling Instrument 2008.

By order of the Board
12 June 2008

Annex A

Amendment to the Glossary of definitions

In this Annex, underlining indicates new text.

disclosable short position a short position which represents an economic interest of one quarter of one per cent of the issued capital of a *company*.

In calculating whether a holder has a *disclosable short position*, the holder should take into account any form of economic interest it has in the shares of the *issuer*, excluding any interest which he holds as a *market maker* in that capacity.

....

rights issue period the period that commences on the date a *company* announces a rights issue and which ends on the date that the *shares* issued under the rights issue are admitted to trading on a *prescribed market*.

Annex B

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text.

Descriptions of behaviour that amount to market abuse (misleading behaviour) under section 118(8)(a) or market abuse (distortion) under section 118(8)(b)

1.9.2 E ...

1.9.2A E Failure by a person to give adequate disclosure that he has reached or exceeded a *disclosable short position* where:

(1) that position relates, directly or indirectly, to *securities* which are the subject of a *rights issue*; and

(2) the *disclosable short position* is reached or exceeded during a *rights issue period*;

is *behaviour* which, in the opinion of the *FSA*, is *market abuse (misleading behaviour)*.

1.9.2B R For the purposes of MAR 1.9.2AE, “adequate disclosure” means disclosure made on a *RIS* by no later than 3.30pm on the *business day* following the date on which the *disclosable short position* is reached or exceeded. The disclosure must include the name of the person who has the *disclosable short position*, the *disclosable short position* and the name of the *issuer* of the *qualifying instruments*.

**GENERAL PRUDENTIAL SOURCEBOOK (CAPITAL ADEQUACY
CALCULATIONS FOR FINANCIAL CONGLOMERATES) (AMENDMENT)
INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 July 2008.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the General Prudential Sourcebook (Capital Adequacy Calculations for Financial Conglomerates) (Amendment) Instrument 2008.

By order of the Board
26 June 2008

Annex

Amendments to the General Prudential sourcebook (GENPRU)

In this Annex, underlining indicates new text.

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

...

2 Table: PART 2: Method 2 of Annex I of the Financial Groups Directive (Deduction and aggregation Method)

Capital resources	2.1	<p>The <i>conglomerate capital resources</i> of a <i>financial conglomerate</i> calculated in accordance with this Part are equal to the sum of the following amounts (so far as they qualify under paragraph 2.3) for each member of the <i>overall financial sector</i>:</p> <p>(1) (for the <i>person</i> at the head of the <i>financial conglomerate</i>) its <i>solo capital resources</i>;</p> <p>(2) (for any other member):</p> <p>(a) its <i>solo capital resources</i>; less</p> <p>(b) the book value of the <i>financial conglomerate's</i> investment in that member, <u>to the extent not already deducted in the calculation of the <i>solo capital resources</i> for:</u></p> <p><u>(i) the <i>person</i> at the head of the <i>financial conglomerate</i>; or</u></p> <p><u>(ii) any other member.</u></p>
-------------------	-----	--

...

...

**DISCLOSURE RULES AND TRANSPARENCY RULES SOURCEBOOK
(CORPORATE GOVERNANCE RULES) INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 rules);
 - (2) section 89O (Corporate governance rules);
 - (3) section 96 (Obligations of issues 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 VI).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 29 June 2008.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex C

Notes

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

Citation

- F. This instrument may be cited as the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008.

By order of the Board
26 June 2008

- (c) in chapters 4, 5, 6 and 67 of *DTR* a convertible share.

...

statutory auditor

a statutory auditor as that term is defined in section 1210 of the Companies Act 2006.

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

9.2.6A G A *listed company*, whose *securities* are admitted to trading on a *regulated market*, should consider its obligations under *DTR 4* (Periodic financial reporting), *DTR 5* (Vote holder and issuer notification rules), ~~and *DTR 6*~~ (*Access to information*) and *DTR 7* (*Corporate governance*).

...

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:

...

(5) a statement of how the *listed company* has applied the ~~principles~~ Main Principles set out in Section 1 of the *Combined Code*, in a manner that would enable shareholders to evaluate how the principles have been applied.

...

Annex C

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

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

Insert the following new chapter after DTR 1A. The text is not underlined.

1B Introduction (Corporate governance)

1B.1 Application and purpose (Corporate governance)

Purpose: Audit committees

- 1B.1.1 G The purpose of the requirements in *DTR 7.1* is to implement parts of the *Audit Directive* which require *issuers* that are required to appoint a *statutory auditor* to appoint an audit committee or have a body performing equivalent functions.

Application: Audit committees

- 1B.1.2 R Except as set out in *DTR 1B.1.3R*, *DTR 7.1* applies to an *issuer*:
- (1) whose *transferable securities* are *admitted to trading*; and
 - (2) which is required to appoint a *statutory auditor*.

Exemptions

- 1B.1.3 R *DTR 7.1* does not apply to:
- (1) any *issuer* which is a *subsidiary undertaking* of a *parent undertaking* where the *parent undertaking* is subject to *DTR 7.1*, or to requirements implementing Article 41 of the *Audit Directive* in any other *EEA State*;

[Note: Article 41.6(a) of the *Audit Directive*]
 - (2) any *issuer* the sole business of which is to act as the issuer of *asset-backed securities* provided the entity makes a statement available to the public setting out the reasons for which it considers it is not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee;

[Note: Article 41.6(c) of the *Audit Directive*]
 - (3) a *credit institution* whose *shares* are not *admitted to trading* and which has, in a continuous or repeated manner, issued only *debt securities* provided that:

- (a) the total nominal amount of all such *debt securities* remains below 100,000,000 Euros; and
- (b) the *credit institution* has not been subject to a requirement to publish a prospectus in accordance with section 85 of the *Act*.

[**Note:** Article 41.6(d) of the *Audit Directive*]

Purpose: Corporate governance statements

- 1B.1.4 G The purpose of the requirements in *DTR 7.2* is to implement parts of the *Fourth Company Law Directive* and the *Seventh Company Law Directive* (including those Directives as applied to banking and insurance companies) which require companies to publish a corporate governance statement.

Application: Corporate governance statements

- 1B.1.5 R Except as set out in *DTR 1B.1.6R*, *DTR 7.2* applies to an *issuer*:
- (1) whose *transferable securities* are *admitted to trading*; and
 - (2) which is a company within the meaning of section 1(1) of the Companies Act 2006.

Exemption

- 1B.1.6 R The *rules* in *DTR 7.2.2R*, *7.2.3R* and *7.2.7R* do not apply to an *issuer* which has not issued *shares* which are *admitted to trading* unless it has issued *shares* which are traded on an *MTF*.

[**Note:** Article 46a(3) of the *Fourth Company Law Directive*]

1B.2 Modifying rules and consulting the FSA

- 1B.2.1 R The *rules* and *guidance* provisions in *DTR 1A.2* are deemed to apply to *corporate governance rules* as they apply to *transparency rules*.

Amend the following as shown.

Auditing of financial statements

- 4.1.7 R ...
- (3) ...

[**Note:** article 4(4) of the *TD*]

- (4) An issuer which is a UK-traded non-EEA company within the

meaning of section 1241 of the Companies Act 2006 must ensure that the *person* who provides the audit report is:

- (a) on the register of third country auditors kept for the purposes of regulation 34 of the Statutory Auditors and Third Country Audit Regulations 2007 (SI 2007/3494); or
- (b) eligible for appointment as a *statutory auditor* under section 1212 of the Companies Act 2006; or
- (c) an EEA auditor within the meaning of section 1261 of the Companies Act 2006.

[Note: Article 45(4) of the *Audit Directive*]

Insert the following new chapter after DTR 6. The text is not underlined.

7 Corporate governance

7.1 Audit committees

Audit committees and their functions

- 7.1.1 R An *issuer* must have a body which is responsible for performing the functions set out in *DTR 7.1.3R*. At least one member of that body must be independent and at least one member must have competence in accounting and/or auditing.
- 7.1.2 G The requirements for independence and competence in accounting and/or auditing may be satisfied by the same member or by different members of the relevant body.
- 7.1.3 R An *issuer* must ensure that, as a minimum, the relevant body must:
 - (1) monitor the financial reporting process;
 - (2) monitor the effectiveness of the *issuer's* internal control, internal audit where applicable, and risk management systems;
 - (3) monitor the statutory audit of the annual and consolidated accounts;
 - (4) review and monitor the independence of the *statutory auditor*, and in particular the provision of additional services to the *issuer*.
- 7.1.4 R An *issuer* must base any proposal to appoint a *statutory auditor* on a recommendation made by the relevant body.

[Note: Article 41.3 of the *Audit Directive*]
- 7.1.5 R The *issuer* must make a statement available to the public disclosing which body carries out the functions required by *DTR 7.1.3R* and how it is

composed.

[**Note:** Article 41.5 (part) of the *Audit Directive*]

- 7.1.6 G An *issuer* may include the statement required by *DTR 7.1.5R* in any statement it is required to make under *DTR 7.2* (Corporate governance statements).
- 7.1.7 G In the *FSA's* view, compliance with provisions A.1.2, C.3.1, C.3.2 and C.3.3 of the *Combined Code* will result in compliance with *DTR 7.1.1R* to *7.1.5R*.

7.2 Corporate governance statements

- 7.2.1 R An *issuer* to which this section applies must include a corporate governance statement in its directors' report. That statement must be included as a specific section of the directors' report and must contain at least the information set out in *DTR 7.2.2R* to *7.2.7R* and, where applicable, *DTR 7.2.10R*.
- 7.2.2 R The corporate governance statement must contain a reference to:
- (1) the corporate governance code to which the *issuer* is subject; and/or
 - (2) the corporate governance code which the *issuer* may have voluntarily decided to apply; and/or
 - (3) all relevant information about the corporate governance practices applied beyond the requirements under national law.

[**Note:** Article 46a(1)(a) first paragraph of the *Fourth Company Law Directive*]

- 7.2.3 R
- (1) An *issuer* which is complying with *DTR 7.2.2R* (1) or (2) must:
 - (a) state in its directors' report where the relevant corporate governance code is publicly available; and
 - (b) to the extent that it departs from that corporate governance code, explain which parts of the corporate governance code it departs from and the reasons for doing so.
 - (2) Where *DTR 7.2.2R*(3) applies, the issuer must make its corporate governance practices publicly available and state in its directors' report where they can be found.
 - (3) If an issuer has decided not to apply any provisions of a corporate governance code referred to under *DTR 7.2.2R*(1) and (2), it must explain its reasons for that decision.

[**Note:** Article 46a(1)(a) second paragraph and Article 46a(1)(b) of the *Fourth Company Law Directive*]

7.2.4 G A *listed company* which complies with LR 9.8.6R(6) (the comply or explain rule in relation to the *Combined Code*) will satisfy the requirements of DTR 7.2.2R and 7.2.3R.

7.2.5 R The corporate governance statement must contain a description of the main features of the *issuer's* internal control and risk management systems in relation to the financial reporting process.

[**Note:** Article 46a(1)(c) of the *Fourth Company Law Directive*]

7.2.6 R The corporate governance statement must contain the information required by paragraph 13(2)(c), (d), (f), (h) and (i) of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) (information about share capital required under Directive 2004/25/EC (the Takeover Directive)) where the *issuer* is subject to the requirements of that paragraph.

[**Note:** Article 46a(1)(d) of the *Fourth Company Law Directive*]

7.2.7 R The corporate governance statement must contain a description of the composition and operation of the *issuer's* administrative, management and supervisory bodies and their committees.

[**Note:** Article 46a(1)(f) of the *Fourth Company Law Directive*]

7.2.8 G In the *FSA's* view, the information specified in provisions A.1.1, A.1.2, A.4.6, B.2.1 and C.3.3 of the *Combined Code* will satisfy the requirements of DTR 7.2.7R.

7.2.9 R An *issuer* may elect that, instead of including its corporate governance statement in its directors' report, the information required by DTR 7.2.1R to DTR 7.2.7R may be set out:

- (1) in a separate report published together with and in the same manner as its annual report. In the event of a separate report, the corporate governance statement must contain either the information required by DTR 7.2.6R or a reference to the directors' report where that information is made available; or
- (2) by means of a reference in its directors' report to where such document is publicly available on the *issuer's* website.

[**Note:** Article 46a(2) first and second sentence of the *Fourth Company Law Directive*]

7.2.10 R Subject to *DTR 7.2.11R*, an *issuer* which is required to prepare a group directors' report within the meaning of section 415(2) of the Companies Act 2006 must include in that report a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts. In the event that the *issuer* presents its own annual report and its consolidated annual report as a single report, this information must be included in the corporate governance statement required by *DTR 7.2.1R*.

[**Note:** Article 36(2)(f) of the *Seventh Company Law Directive*]

7.2.11 R An *issuer* that elects to include its corporate governance statement in a separate report as permitted by *DTR 7.2.9R(1)* must provide the information required by *DTR 7.2.10R* in that report.

TP 1 Disclosure and transparency rules

Sourcebook - Transitional Provisions

(1)	(2) Material to which the Transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
<u>5A</u>	<u><i>DTR 4.1.7R(4)</i></u>	R	<p><u><i>DTR 4.1.7R(4)</i> shall have effect as follows:</u></p> <p><u><i>An issuer whose financial year begins before 29 June 2008 must comply with DTR 4.1.7R(4) as of the beginning of its next financial year.</i></u></p>	<u>From 29 June 2008</u>	<u>29 June 2008</u>
...					
<u>14</u>	<u>All of <i>DTR</i> chapter 7</u>	R	<p><u><i>DTR 7</i> shall have effect as follows:</u></p> <p><u><i>An issuer whose financial year begins before 29 June 2008 must comply with DTR 7 as of the beginning of its next financial year.</i></u></p>	<u>From 29 June 2008</u>	<u>29 June 2008</u>

HANDBOOK ADMINISTRATION (NO 10) INSTRUMENT 2008**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 rules);
 - (b) section 96 (Obligations of issuers of listed securities);
 - (c) section 101 (Listing Rules: general provisions);
 - (d) section 138 (General rule-making powers);
 - (e) section 139 (Miscellaneous ancillary matters);
 - (f) section 156 (General supplementary powers);
 - (g) section 157(1) (Guidance);
 - (h) section 213 (The compensation scheme);
 - (i) section 214 (General);
 - (j) section 226 (Compulsory jurisdiction);
 - (k) section 234 (Industry funding);
 - (l) section 247 (Trust scheme rules);
 - (m) section 248 (Scheme particulars rules);
 - (n) Schedule 7 (The Authority as Competent Authority for Part VI); and
 - (o) paragraph 13 (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme);
 - (2) regulation 6 (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and
 - (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C.
- (1) Part 1 of Annex A (Glossary) and Annex C (FEES) to this instrument come into force on 25 July 2008.
 - (2) Part 3 of Annex A (Glossary) and Part 2 of Annex E (COBS) come into force on 6 September 2008.
 - (3) The remainder of this instrument comes into force on 6 August 2008.

Revocation of the Collective Investment Schemes Sourcebook (Electronic Communications) Instrument 2008

- D. The Collective Investment Schemes Sourcebook (Electronic Communications) Instrument 2008 (FSA 2008/27) is revoked in its entirety.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Fees manual (FEES)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Insurance: Conduct of Business sourcebook (ICOBS)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G
Compensation sourcebook (COMP)	Annex H
Listing Rules sourcebook (LR)	Annex I

Notes

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

Citation

- G. This instrument may be cited as the Handbook Administration (No 10) Instrument 2008.

By order of the Board
24 July 2008

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 25 July 2008

connected person ...

- (5) (in *DTR* and *LR* in relation to a *person discharging managerial responsibilities* within an *issuer*) (as defined in section 96B(2) of the *Act*):
 - (a) a “connected person” within the meaning of ~~sections 252, 253 and 254~~ section 346 of the Companies Act ~~2006~~ 1985 (reading ~~those sections~~ that section as if any reference to a director of a company were a reference to a *person discharging managerial responsibilities* within an *issuer*);

...

Part 2: Comes into force on 6 August 2008

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

home finance administration any of the *regulated activities* of:

- (a) *administering a regulated mortgage contract*;
- (b) *administering a home purchase plan*;
- (c) *administering a home reversion plan*; or
- (d) *agreeing to carry on a regulated activity* in (a) to (c).

home financing any *home finance providing activity*.

Amend the following definitions as shown.

Combined Code (in *LR* and *DTR*) in relation to an *issuer*:

- (1) in respect of a reporting period commencing on or after ~~1 November 2006~~ 29 June 2008, the Combined Code on Corporate Governance

published in June ~~2006~~ 2008 by the Financial Reporting Council; or

- (2) in respect of a reporting period commencing before ~~1 November 2006~~ 29 June 2008, the Combined Code on Corporate Governance published in ~~July 2003~~ June 2006 by the Financial Reporting Council.

consumer

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

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

- (2) (in relation to the FSA's power to make general *rules* (section 138 of the *Act* (General rule-making power))) the approval requirements for *controllers* (section 186 of the *Act* (Objection to acquisition of control)), the publication of notices (section 391 of the *Act* (Publication)) and the exercise of *Treaty rights* (Schedule 4 to the *Act* (Treaty rights))) (as defined in section 138(7) of the *Act* (General rule-making power)) a *person*:

- (a) who uses, has used, or is or may be contemplating using, any of the services provided by:
- (i) an *authorised person* in carrying on *regulated activities*; or
 - (ii) a *person* acting as an *appointed representative*, or where applicable, a *tied agent*; or
- (b) who has rights or interests which are derived from, or are otherwise attributable to the use of, any such services by another *person*; or
- (c) who has rights or interests which may be adversely affected by the use of any such services by a *person* acting on his behalf or in a fiduciary capacity in relation to him; or
- (d) (in relation to the FSA's power to make general *rules*) a *person* within the extended definition of consumer in article 3 of the Financial Services and Markets Act 2000 (Consequential and Transitional Provisions) (Miscellaneous) Order 2001 (SI 2001/1821) (Application of definition of "consumer" to users of regulated services before commencement);
- (e) (in relation to the FSA's power to make general *rules*) a *person* within the extended definition of consumer in article 4 of the Financial Services and Markets Act 2000 (Consequential Amendments and Transitional Provisions) (Credit Unions) Order 2002 (SI 2002/1501) (Application of definition of "consumer" to customers of credit unions before

commencement);

for the purposes of this definition:

- (A) if an *authorised person* is carrying on a *regulated activity* in his capacity as a trustee, the *persons* who are, have been or may be beneficiaries of the trust are to be treated as *persons* who use, have used or are or may be contemplating using services provided by the *authorised person* in his carrying on of that activity;
 - (B) a *person* who deals with an *authorised person* in the course of the *authorised person's* carrying on of a *regulated activity* is to be treated as using services provided by the *authorised person* in carrying on those activities.
- (3) (in relation to the protection of consumers objective (section 5 of the *Act* (The protection of consumers)) and independent inquiries (section 14 of the *Act* (Cases in which the Treasury may arrange independent inquiries))) (as defined in sections 5(3) and 14(5) of the *Act*) a *person*:
- (a) within (~~1~~2); or
 - (b) who, in relation to *regulated activities* carried on otherwise than by an *authorised person*, would be a consumer within (~~1~~2) if the activities were carried on by an *authorised person*.
- (4) (in relation to the establishment and maintenance of the *Consumer Panel* (section 10 of the *Act* (The Consumer Panel))) (as defined in section 10(7) of the *Act*) a *person* within (~~2~~3) other than an *authorised person*.

investment research

research or other information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several *financial instruments* or the issuers of *financial instruments*, including any opinion as to the present or ~~future~~ future value or price of such instruments, intended for *distribution channels* or for the public, and in relation to which the following conditions are met:

...

Part 3: Comes into force on 6 September 2008

Amend the following definition as shown.

distance contract any contract concerning financial services concluded between a ~~firm~~ supplier and a *consumer* under an organised distance sales or service

provision scheme run by the ~~firm~~ 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 ~~firm~~ supplier or intermediary and the *consumer*, 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.

A contract is not a distance contract if:

- (a) making, ~~or~~ performing or marketing it does not constitute or form part of a *regulated activity*;
- (b) it is entered into on a strictly occasional basis outside a commercial structure dedicated to the conclusion of distance contracts; or
- (c) a *consumer*, and an intermediary acting for a product provider, are simultaneously physically present at some stage before the conclusion of the contract.

...

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.

2.1.6 G Table Frequently asked questions about allocation of functions in SYSC 2.1.3R

This table belongs to SYSC 2.1.5G

	Question	Answer
...		
15	What about incoming <u>electronic commerce activities carried on from an establishment in another EEA State with or for a person in the United Kingdom?</u>	ECO 1.1.6R has the effect that SYSC does not apply to an <i>incoming ECA provider</i> acting as such.

Annex C

Amendments to the Fees manual (FEES)

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

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

...

Industry block	Tariff base	General levy payable by firm
...
2-Insurers – general (excluding <i>firms</i> in blocks 13 & 15)	Relevant annual gross premium income	£0.0126 <u>£0.126</u> per £1,000 of relevant annual gross premium income, subject to a minimum levy of £100
...

Annex D

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

In this Annex, striking through indicates deleted text.

4.1 Application and Purpose

Application

4.1.1 R This chapter applies to a *firm* with *Part IV permission* to carry on any of the following activities, unless an exemption in this section applies:

...

(3) ~~*entering into a home finance transaction (that is, home financing);*~~

(4) ~~*administering a home finance transaction (that is, home finance administration).*~~

Annex E

Amendments to the Conduct of Business sourcebook (COBS)

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

Part 1: Comes into force on 6 August 2008

1 Annex 1 Application

...		
Part 3: Guidance		
...		
9.	UCITS Directive: effect on territorial scope	
...		
9.2	G	Accordingly, the territorial scope of this sourcebook is modified so that:
	(1)	the <i>rules</i> relating to the distribution of a <i>simplified prospectus</i> apply to the management company (<i>operator</i>) of a UCITS whose <i>Home State</i> is the <i>United Kingdom</i> when marketing in other <i>EEA States</i> ;
	(2)	those <i>rules</i> do not apply to a management company of a UCITS whose <i>Home State</i> is another <i>EEA State</i> when marketing in the <i>United Kingdom</i> ; other <i>rules</i> , such as the <i>financial promotion rules</i> and the information gathering and suitability rules (see <i>COBS 9 Suitability</i> (including basic advice)) apply without modification of this territorial scope, <u>but subject to section 266 of the Act.</u>
...		

...

- 3.2.2 G (1) A *corporate finance contact* or a *venture capital contact* is not a *client* under the first limb of the general definition. This is because a *firm* does not provide a service to such a contact. However, it will be a *client* under the third limb of the general definition for the purposes of the *financial promotion rules* if the *firm communicates* or *approves* a *financial promotion* that is or is likely to be *communicated* to such a contact.
- (2) Communicating or approving a financial promotion that is or is likely to be communicated to such a contact is not MiFID or

equivalent third country business. In such circumstances, the “non-MiFID” client categorisations are relevant and, in categorising elective professional clients, the “quantitative test” will not need to be satisfied.

...

4.1.6 G Approving a financial promotion without communicating it (which includes causing it to be communicated) is not MiFID or equivalent third country business. Communicating a financial promotion to a person other than a client or potential client, such as a corporate finance contact or a venture capital contact, who is not a client within the meaning of COBS 3.2.1R(1), (2) or (4) in respect of the MiFID or equivalent third country business to which the financial promotion relates, is also not MiFID or equivalent third country business. Further guidance on what amounts to MiFID business may be found in PERG 13.

...

13 Annex 3 Charges

This annex belongs to COBS 13.4.1R (Contents of a key features illustration)

...

2.2 The effect of charges table:

...

(3) must be completed in accordance with the following notes:

R	
...	
4	This column is optional. If it is retained, it must show the total actual 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 from this figure <u>from</u> 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).
...	

...

- 14.2.17 R 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) if the *client* gives explicit consent to receiving only limited information, provide the abbreviated distance marketing disclosure information (*COBS 6 5 Annex 2R*) orally to the *client*;
 - (2) if the 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 6 5 Annex 1G R G*) orally to the client;
 - (3) in the case of (1) or (2), send the *documents* or information to the *client* in a *durable medium* immediately after the contract is concluded.

...

16.6 ~~Life insurance contracts – communications~~ Communications to clients – life insurance, long term care insurance and income withdrawals

...

Part 2: Comes into force on 6 September 2008

5.1 The distance marketing disclosure rules

Application

- 5.1.-1 R (1) This section applies to a *firm* that carries on any distance marketing activity from an establishment in the ~~UK~~ United Kingdom, with or for a *consumer* in the *United Kingdom* or another *EEA State*.
- (2) If a *firm* is an intermediary rather than the supplier under the *distance contract*, references to '*firm*' in *COBS 5 Annex 1R* and *Annex 2R* are to be interpreted as referring to the supplier except for references to '*firm*' in *COBS 5 Annex 1R (2), (4) and (18)*.

The distance marketing disclosure rules

5.1.1 R ...

...

18.5.2 R ...

Table: Application of the conduct of business rules

Application of the conduct of business rules

Chapter, section or rule	Description	Modifications
...		
<u>5.1</u>	<u>Distance communications</u>	
...		

Annex F

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

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

TP 1 Transitional Provisions

...

~~Sourcebook implementation period~~

3 R ~~A *firm* need not comply with any provision of this sourcebook to the extent that it complies with the corresponding provision of *ICOB* (if any) as it applied on 5 January 2008. This *rule* applies until 5 July 2008. [Expired]~~

4 G ~~*Firms* should consider what kind of records should be made of their reliance on the sourcebook implementation period transitional provision, in particular where they rely on the transitional provision for only some of their *insurance mediation activities*, or the extent of reliance changes during the implementation period. [Expired]~~

~~Pure protection contracts: record of election~~

5 R ~~A *firm* is not required to make, and retain a record of, an election to comply with the Conduct of Business sourcebook (see *ICOBS* 1 Ann 1, Part 2, 3.1R(3)). This *rule* applies until 5 June 2008. [Expired]~~

Annex G

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text.

Schedule 4 G Powers exercised

...

DISP Sch
4.2

G

Table: The powers to make rules relating to the new ombudsman scheme are shared between the *FSA* and the Financial Ombudsman Service (FOS Ltd). FOS Ltd's rules are subject to *FSA* consent or approval. The rules made exclusively by *FOS Ltd* are:

...	
FEES 5 <u>Annex 1</u>	part 3
	part 4

...

Annex H

Amendments to the Compensation sourcebook (COMP)

In this Annex, underlining indicates new text.

- 14.1.6 G If there is no cover provided by the *incoming EEA firm's Home State* or the scope and/or level of cover is less than that provided by the *compensation scheme*, this chapter enables the *firm* to obtain cover or 'top-up' cover from the *compensation scheme* for its *passport activities* carried on from a *UK branch*, up to the *compensation scheme's* limits (set out in *COMP 10*). This reflects section 214(5) of the *Act (General)* and regulation 3 of the *Electing Participants Regulations* (Persons who may elect to participate). If the *firm* 'tops up' and then becomes insolvent, the *Home State* compensation scheme will pay compensation up to the limit and scope of the *Home State* compensation scheme, with the *FSCS* paying compensation for the additional amount in accordance with the provisions in this sourcebook (*COMP 12.4.1R* and *COMP 12.4.4R*).
- 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:
- ...
- (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*.

Annex I

Amendments to the Listing Rules sourcebook (LR)

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

The reproduced definition in LR Appendix 1 is amended as follows:

Combined Code in relation to an *issuer*:

- (1) in respect of a reporting period commencing on or after ~~1 November 2006~~ 29 June 2008, the Combined Code on Corporate Governance published in June ~~2006~~ 2008 by the Financial Reporting Council; or
- (2) in respect of a reporting period commencing before ~~1 November 2006~~ 29 June 2008, the Combined Code on Corporate Governance published in ~~July 2003~~ June 2006 by the Financial Reporting Council.

**GLOSSARY AMENDMENT (BIOFUELS AND BIOMASS)
INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 August 2008.

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 (Biofuels and Biomass) Instrument 2008.

By order of the Board
24 July 2008

Annex

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>biofuel</i>	liquid or gaseous fuel produced from <i>biomass</i> .
<i>biofuel collective investment scheme</i>	a <i>collective investment scheme</i> , the property of which consists only of property which is <i>biofuel</i> or a <i>biofuel investment</i> or cash awaiting investment.
<i>biofuel investment</i>	any of the following: <ul style="list-style-type: none">(a) a <i>unit</i> in a <i>biofuel collective investment scheme</i>;(b) an <i>option</i> to acquire or dispose of a <i>biofuel investment</i>;(c) a <i>future</i> where the <i>commodity</i> in question is <i>biofuel</i>;(d) a <i>contract for differences</i> where the property in question is <i>biofuel</i> or a <i>biofuel investment</i> or the index or other factor in question is linked to or otherwise dependent upon fluctuations in the value or price of <i>biofuel</i> or any <i>biofuel investments</i>;(e) <i>rights to or interests in investments</i> in (a) to (d).
<i>biomass</i>	the biodegradable fraction of products, waste and residues from agricultural (including vegetal and animal substances), forestry and related industries, as well as the biodegradable fraction of industrial and municipal waste.
<i>biomass investment</i>	any of the following: <ul style="list-style-type: none">(a) a <i>unit</i> in a <i>biomass collective investment scheme</i>;(b) an <i>option</i> to acquire or dispose of a <i>biomass investment</i>;(c) a <i>future</i> where the <i>commodity</i> in question is <i>biomass</i>;(d) a <i>contract for differences</i> where the property in question is <i>biomass</i> or a <i>biomass investment</i> or the index or other factor in question is linked to or otherwise dependent upon fluctuations in the value or price of <i>biomass</i> or any <i>biomass investments</i>;

(e) *rights to or interests in investments* in (a) to (d).

biomass collective investment scheme a *collective investment scheme*, the property of which consists only of property which is *biomass* or a *biomass investment* or cash awaiting investment.

Amend the following definitions as shown.

energy *coal, electricity, natural gas* (or any by-product or form of any of them) ~~or~~ *oil or biofuel*.

energy market activity (a) any *regulated activity* in relation to an *energy investment* or to *energy*, or in relation to a *biomass investment* or *biomass* that is ancillary to activities related to *energy investments* or *energy*, which:

...

...

oil market activity (a) any *regulated activity* in relation to an ~~*oil investment*~~ *investment* or to *oil*, or in relation to a *biofuel investment*, *biofuel*, a *biomass investment* or *biomass* that is ancillary to activities related to *oil investments* or *oil*, which:

...

...

DISCLOSURE DOCUMENTS (AMENDMENT) INSTRUMENT 2008**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 6 August 2008.

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
Conduct of Business sourcebook (COBS)	Annex C
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex D

Notes

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

Citation

- F. This instrument may be cited as the Disclosure Documents (Amendment) Instrument 2008.

By order of the Board
24 July 2008

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.

services and costs disclosure document information about the *scope of advice* or *scope of basic advice* and the nature and costs of the services offered by a *firm* as described in *COBS 6.3.7G*, which contains the keyfacts logo, headings and text described in *COBS 6 Annex 1G*.

Amend the following definitions as shown.

initial disclosure document information about the *scope of advice* ~~or *scope of basic advice*~~ and the nature of the services offered by a *firm* in relation to:

- (a) ~~*packaged products* as described in *COBS 6.3.7G* which contains the keyfacts logo, headings and text described in *COBS 6 Annex 1G G*;~~
- (b) ~~*stakeholder products* as described in *COBS 9.6.9R (Disclosure at first contact)* which contains the keyfacts logo, headings and text described in *COBS 6 Annex 1G G*;~~
- (ea) a *regulated mortgage contract* other than a *lifetime mortgage* as required by *MCOB 4.4.1R(1)* and set out in *MCOB 4 Annex 1*;
- (db) an *equity release transaction* as required by *MCOB 4.4.1R(1)* and set out in *MCOB 8 Annex 1R*;
- (ec) a *home purchase plan* as required by *MCOB 4.10.2R* and set out in *MCOB 4 Annex 1R*; or
- (fd) a *non-investment insurance contract* in accordance with *ICOBS 4.5.1G* and set out in *ICOBS 4 Annex 1G*.

Delete the following definition.

~~*menu* a statement maintained by a *firm* in accordance with *COBS 6.3.*~~

Annex B

Amendments to the General Provisions (GEN)

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

GEN 5 Annex 1 Licence for use of the FSA and keyfacts logos by authorised firms and appointed representatives or tied agents

G

...			
Permission to use the keyfacts logo			
3A.1	A <i>firm</i> , its <i>appointed representatives</i> and <i>tied agents</i> are permitted to use the keyfacts logo as and when it is required or permitted to be used by the <i>rules</i> .		
3A.2	The following are examples of places where the <i>rules</i> require or permit the keyfacts logo to be used:		
	(1)	In COBS 6.3 ₂	
		(a)	in an initial a <i>services and costs disclosure document</i> or <i>combined initial disclosure document (COBS 6.3)</i> ; and
		(b)	in a menu (COBS 6.3) .
	...		
...			

Annex C

Amendments to the Conduct of Business sourcebook (COBS)

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

2.2 Information disclosure before providing services

Application

- 2.2.-1 R (1) This section applies in relation to *MiFID* or equivalent third country business.
- (2) This section applies in relation to other *designated investment business* carried on for a *retail client*:
- (a) in relation to a *derivative*, a *warrant* or *stock lending activity*, but as regards the matters in *COBS 2.2.1R(1)(b)* only; and
- (b) in relation to a *packaged product*, but as regards the matters in *COBS 2.2.1R(1)(a)* and (d) only.

[Note: Article 19(3) of *MiFID*]

Information disclosure before providing services

- 2.2.1 R (1) A *firm* must provide appropriate information in a comprehensible form to a *client* about:
- (a) the *firm* and its services;
- (b) *designated investments* and proposed investment strategies; including appropriate guidance on and warnings of the risks associated with investments in those *designated investments* or in respect of particular investment strategies;
- (c) execution venues; and
- (d) costs and associated charges;
- so that the *client* is reasonably able to understand the nature and risks of the service and of the specific type of *designated investment* that is being offered and, consequently, to take investment decisions on an informed basis.
- (2) That information may be provided in a standardised format.

- (3) ~~This rule applies in relation to MiFID or equivalent third country business.~~ [deleted]
- (4) ~~The requirement to provide information about designated investments and proposed investment strategies also applies to a firm in relation to designated investment business other than MiFID or equivalent third country business carried on for a retail client in relation to a derivative, a warrant or stock lending activity.~~ [deleted]

[Note: Article 19(3) of MiFID]

...

6.2 Describing the breadth of a firm's personal recommendations

...

Selling products from the scope and range

- 6.2.11 G In accordance with the *client's best interests rule* and the *fair, clear and not misleading rule*, a firm should not describe its services to a *retail client* as being based on a particular *scope of advice* and *range* unless its business processes are designed to ensure that:

...

- (6) it does not extend the *scope* or *range* in a way that materially alters its remuneration arrangements ~~and~~ unless it provides to the *client* a new and appropriate information on inducements, costs and charges (a firm may do this by providing a further ~~menu~~ services and costs disclosure document or combined initial disclosure document).

...

6.3 Disclosing information about services, fees and commission - packaged products

Application

...

- 6.3.2 R This section does not apply to a firm giving *basic advice* where the firm follows ~~with~~ the *basic advice rules* in COBS 9.6.

Disclosure to retail clients in good time

- 6.3.3 G (1) The rules referred to in (4) ~~and (5)~~ are derived from the *Single Market directives* and the *Distance Marketing Directive*. In the FSA's opinion, a firm ~~will~~ may comply with them ~~if it ensures~~ by ensuring that in good time before:

- (a) a *retail client* is bound by an agreement for the provision of a *personal recommendation on packaged products*; or
- (b) the *firm* performs an act preparatory to the provision of a *personal recommendation*;
- (c) (in relation to the amendment of a *life policy* for that *retail client*), it gives a *personal recommendation* in relation to *packaged products*;

its *representative* provides the *client* with ~~an *initial disclosure document*~~ a *services and costs disclosure document* or *combined initial disclosure document* ~~and a *menu*~~.

- (2) A *firm* should consider the extent to which it is appropriate to provide ~~an *initial disclosure document*~~ a *services and costs disclosure document* or a ~~*menu*~~ *combined initial disclosure document* if the appropriate information has been given to the *client* on a previous occasion and the information is still accurate and appropriate for the *client*.
- (3) A *firm* should provide the information required by this section in a *durable medium*.
- (4) For the purposes of (1), provision of ~~the *menu*~~ a *services and costs disclosure document* or *combined initial disclosure document* will comply with:
 - (a) ~~(other than in relation to a *personal pension deposit*, *SIPP* or a *personal pension product*)~~ the elements of the *rule* on summary disclosure of fees, commissions and non-monetary benefits (*COBS* 2.3.1R(2)(b), as qualified by *COBS* 2.3.2R) that relate to disclosure of fees and commissions and, where included, non-monetary benefits;
 - (b) the *rule* on information about costs and charges (*COBS* 6.1.9R) but only if the hourly rates indicated in the ~~*menu*~~ *services and costs disclosure document* or *combined initial disclosure document* are actual hourly rates rather than indicative hourly rates;
 - (c) the *rule* on information disclosure before providing services (*COBS* 2.2.1R(1)(a) and (d));
 - (d) the items of distance marketing information, set out in paragraphs (1), (2), (4), (5), (19) and (20) of *COBS* 5 Annex 1R;
 - (e) paragraphs (1) (so far as it relates to the *firm*'s name and address), (4) and (6) of the *rule* on disclosure of information about a *firm* and its services (*COBS* 6.1.4R);
 - (f) the investor compensation scheme *rule* in *COBS* 6.1.16R(1)

and (2); and

(g) the rule on information to be provided by an insurance intermediary (COBS 7.2.1R(1) and (2)).

(5) ~~For the purposes of (1), provision of the initial disclosure document or, where applicable combined initial disclosure document, will comply with:~~

(a) ~~the rule on information disclosure before providing services (COBS 2.2.1R(1)(a));~~

(b) ~~the items of distance marketing information, set out in paragraphs (1), (2), (4), (5), (19) and (20) of COBS 5 Annex 1R;~~

(c) ~~paragraphs (1) (so far as it relates to the firm's name and address), (4) and (6) of the rule on disclosure of information about a firm and its services (COBS 6.1.4 R);~~

(d) ~~the investor compensation scheme rule in COBS 6.1.16R (1) and (2); and~~

(e) ~~the rule on information to be provided by an insurance intermediary (COBS 7.2.1R(1) and (2)). [deleted]~~

6.3.4 R For the purposes of GEN 5, a firm may not use the keyfacts logo in relation to any document that is designed to comply with rules in COBS 5, 6.1 or COBS 7 unless it is ~~an initial disclosure document~~ a services and costs disclosure document, or a combined initial disclosure document ~~or menu~~ produced in accordance with the templates and Notes in the annexes to this chapter.

6.3.5 G Each of the ~~initial disclosure document~~ services and costs disclosure document, and combined initial disclosure document ~~and menu~~ that a firm provides to a client should be documents which the firm reasonably considers will be, or are likely to be, appropriate for the client having regard to the type of service which the firm may provide or business which the firm may conduct.

6.3.6 G (1) A firm will satisfy the requirements as to timing in the rules referred to in COBS 6.3.3G(4) ~~and (5)~~ if its representative provides information to the client on first making contact with the client.

(2) ~~The menu is unlikely to be fair, clear and not misleading if a firm uses it for a service other than personal recommendations.~~
[deleted]

Initial disclosure document Services and costs disclosure document and combined initial disclosure document

- 6.3.7 G (1) ~~An initial disclosure document~~ A services and costs disclosure document is a document that contains the keyfacts logo, headings and text in the order shown in *COBS 6 Annex 1G* and in accordance with the Notes.
- (2) A combined initial disclosure document is a document that contains the keyfacts logo, headings and text in the order shown in *COBS 6 Annex 2* and in accordance with the Notes.

6.3.8 G A firm may include ~~at the end of an initial disclosure document,~~ in a services and costs disclosure document or a combined initial disclosure document, information ~~the firm is~~ required by *COBS* or by the rule on disclosing a tied agent's capacity (*SUP 12.6.13R*) and which is not in the template for the ~~initial disclosure document~~ services and costs disclosure document or combined initial disclosure document, if the information would be sufficiently prominent. For example, a firm may wish to use ~~the those~~ initial disclosure document documents to satisfy:

- (1) the parts of the rule on information about the firm and its services (*COBS 6.1.4 R*);
- (2) the rule on costs and associated charges (*COBS 6.1.9R*);
- (3) the items of distance marketing information described in paragraphs (6), (8), (10) and (11) of COBS 5 Annex 1R;

that would not otherwise be satisfied by providing the ~~initial disclosure document~~ services and costs disclosure document or combined initial disclosure document.

6.3.9 G Firms can obtain from the FSA website <http://www.fsa.gov.uk> a specimen of the ~~initial disclosure document~~ services and costs disclosure document and the combined initial disclosure document. A firm may produce its ~~initial disclosure document~~ services and costs disclosure document or combined initial disclosure document by using its own house style and brand. Electronic tools to help firms to construct their own ~~initial disclosure documents~~ versions of these documents and menus are available from the FSA website.

Menu

- 6.3.10 G (1) ~~A menu is a document that contain the keyfacts logo, heading and text in the order shown in COBS 6 Annex 3G and in accordance with the Notes.~~
- (2) ~~In order to be able to provide an accurate menu, a firm should maintain as many versions of the menu as are appropriate to the different bases on which it may conduct business with retail~~

- clients*. ~~[deleted]~~
- 6.3.11 R (1) ~~A firm must keep its menus up to date and keep a record of each menu for a period of five years from the date on which it was updated or replaced.~~
- (2) ~~A firm must maintain a record of each particular menu which it provides to a retail client (other than when given merely in response to a request). [deleted]~~
- 6.3.12 G ~~A firm may add text at the end of the menu that is designed to comply with the disclosure duties in:~~
- (1) ~~the rule on disclosure of fees, commissions and non-monetary benefits (COBS 2.3.1R(2)) to the extent the menu does not include that information in relation to the relevant product;~~
- (2) ~~the rule on costs and associated charges (COBS 6.1.9R);~~
- (3) ~~the items of distance marketing information described in paragraphs (6), (8), (10) and (11) of COBS 5 Annex 1R. [deleted]~~
- 6.3.13 G ~~If a firm is asked to provide a menu by a person with whom the firm has had no prior contact it may provide the menu which is appropriate for its typical or most prevalent client type and the business it conducts with them. [deleted]~~
- 6.3.14 G ~~A firm would be unlikely to comply with the client's best interests rule and the fair, clear and not misleading rule, if:~~
- (a) ~~the menu services and costs disclosure document or the combined initial disclosure document that it provided initially did not reflect relevant expected commission arrangements; or~~
- (b) ~~the firm arranged to retain any commission which exceeded the amount or rate disclosed without first providing further appropriate inducements information and obtaining the client's prior informed consent to the proposed alteration in a durable medium.~~
- 6.3.15 G ~~Long-term care and whole-of-life policies, for which the example given in the menu refers to the age of the policyholder, are deemed to have a term equal to the difference between the age of the policyholder (at the time that the policy is taken out) and the age of 85. [deleted]~~
- 6.3.16 G ~~If a firm decides to provide a retail client with a personal recommendation on a type of packaged product which falls within a product group specified in Notes 14 or 19 to COBS 6 Annex 3G in relation to which the menu previously given to the client does not contain the information described in the menu, it should issue a new and appropriate menu to that client. [deleted]~~

Provision of information on request

- 6.3.17 G A *firm* should take reasonable steps to ensure that its *representative* ~~provide~~ provides a copy of the appropriate *range* of *packaged products* to a *client* on the *client's* request.

~~Ongoing disclosure~~

- 6.3.18 G (1) ~~In accordance with the *client's best interests rule* and the *fair, clear and not misleading rule*, a *firm* which has started to provide a *retail client* with services in relation to *packaged products* following the provision of information on inducements required under COBS 2.3.1R or a *menu* should not (at least until the completion of those services) arrange to retain any *commission* which exceeds the maximum amount or rate disclosed without first providing further appropriate inducements information or *menu* and obtaining the *client's* prior informed consent to the proposed alteration in a *durable medium*.~~
- (2) (a) Paragraph (1) does not apply if, in relation to a *life policy* or a *pension contract*:
- (i) ~~the maximum amounts or rates already disclosed to the *client* only apply to products of the example term or age of *client* given in the *menu* or other payment information or to products with shorter terms; and~~
 - (ii) ~~the *firm* arranges a product for a term longer than the example term (or longer than the term deemed for the example age given) and the increase in the *commission* which the *firm* arranges to retain over the maximum already disclosed is not more than an amount that is directly proportional to the increase in the duration of the term of the product (or to the term deemed from the age of *client*).~~
- (b) ~~If requested by a *client*, a *firm* should explain the basis of the higher maximum *commission* or *fees* charged in accordance with (1). [deleted]~~

Telephone sales

- 6.3.19 G In cases where *firms* make initial contact with a *client* on the telephone a *firm* may, in addition, have to take into account and comply with the requirements in this sourcebook applicable to the conclusion of ~~distance~~ contracts *distance contracts* (see COBS 5).
- 6.3.20 G (1) In accordance with the *rule* on information disclosure before providing services (COBS 2.2.1R), if a *firm's* initial contact with a *retail client* with a view to providing a *personal recommendation* on *packaged products* is by telephone then the following information

should be provided before proceeding further:

- (a) ...
- (b) whether the *firm* offers *packaged ~~product~~ products* from the whole market or from a limited number of *companies* or from a single *company* or a single group of *companies*;

...

- (2) If a *firm's* initial contact with a *retail client* is by telephone in circumstances in which the *firm* would otherwise provide ~~an *initial disclosure document*~~ a *services and costs disclosure document*, a *menu* or a *combined initial disclosure document*, ~~or both~~, it should consider sending the *client* the *document* as soon as is reasonably practicable following the conclusion of the call.

...

Delete COBS 6 Annex 1G and replace it with the following. The text is not underlined.

COBS 6 Annex 1G: Services and costs disclosure document described in COBS 6.3.7G(1)

Firms should omit the notes and square brackets which appear in the following specimen.



about our services and costs [Note 1]



[Note 2]]

[Note 3]

[123 Any Street

Some Town

ST21 7QB]

1. The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. This document is designed by the FSA to be given to consumers considering buying certain financial products. You need to read this important document. It explains the service you are being offered and how you will pay for it.

2. Whose products do we offer? [Note 4] [Note 7]

We offer products from the whole market. [Note 5] [We offer our own product(s); you can ask us for a list but our recommendation will be made following an analysis of the whole market.] [Note 6]

We [can] [Note 8] only offer products from a limited number of companies. [These include our own product(s) but our recommendation will be made following an analysis of our entire range of products.] [Note 9]

Ask us for a list of the companies whose products we offer. [Note 11]

We [can] [Note 8] only offer [a] product[s] from [a single group of companies] [name of single company]. [Note 10(1)] [Note 12]

[or] [Note 10(2)]

We only offer our own products.

[free text [Note 13]]

3. Which service will we provide you with? [Note 4]

We will advise and make a recommendation for you after we have assessed your needs.

You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

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;
 - offer advice on whether a non-stakeholder product may be more suitable.
- [Note 5]

[free text [Note 14]]

4. What will you have to pay us for our services? [Note 14A]

[non-advised sales [Note 14B]]

[You will pay for our services on the basis of [Note 15][Note16]. We will discuss your payment options with you and answer any questions you have. We will not charge you until we have agreed with you how we are to be paid.]

[Paying by fee [Note 17]]

[free text [Notes 18-19]]

[Paying by commission (through product charges) [Note 17]]

[free text [Notes 20-22]]

[Paying by a combination of fee and commission (through product charges) [Note 17]]

[free text [Notes 23-24]]

[Other benefits we may receive [Note 25]]

[free text [Note 25]]

5. Who regulates us? [Note 26]

[ABC Financial Services] [123 Any Street, Some Town, ST21 7QB] [Note 27] [Note 28] is authorised and regulated by the Financial Services Authority. Our FSA Register number is []. [Note 29]

Our permitted business is []. [Note 30]

[or] [Note 31]

[Name of *appointed representative or tied agent*] [Note 2] is [an appointed representative or a tied agent] of [name of *firm*] [address of *firm*] [Note 27] [Note 28] which is authorised and regulated by the Financial Services Authority. [Name of *firm's*] FSA Register number is [].

[Name of *firm's*] permitted business is [] [Note 30] [Name of *appointed representative or tied agent*] is regulated in [an EEA state or the United Kingdom] [Note 29]

You can check this on the FSA's Register by visiting the FSA's website www.fsa.gov.uk/register or by contacting the FSA on 0845 606 1234. [Note 29]

6. Loans and ownership [Note 32]

[[XXX plc] owns [YY]% of our share capital.]

[[XXX plc] provides us with loan finance of [YY] per year.]

[[XXX] (or we) have [YY]% of the voting rights in [ZZZ].] [Note 32][Note 33][Note 34][Note 35]

7. What to do if you have a complaint [Note 26]

If you wish to register a complaint, please contact us:

...in writing Write to [ABC Financial Services], [Complaints Department, 123 Any Street, Some Town, ST21 7QB].

... by phone Telephone [0121 100 1234]. [Note 36]

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. [Note 37]

8. Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 26] [Note 38] [Note 39]

We are covered by the FSCS. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Most types of investment business are covered for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000.

Further information about compensation scheme arrangements is available from the FSCS.

The following notes do not form part of the *services and costs disclosure document*.

Note 1 – permission to use the keyfacts logo: the *Financial Services Authority* has developed a common keyfacts logo to be used on significant pieces of information directed to *clients*. The keyfacts logo and the text ‘about our services and costs’ may only be used and positioned as shown in the *services and costs disclosure document* (see *COBS 6.3.4R*). The logo may be re-sized and re-coloured. It may only be used if it is reasonably prominent and its proportions are not distorted. A specimen of the keyfacts logo can be obtained from the *FSA* website http://www.fsa.gov.uk/pubs/other/keyfacts_logo.

Note 2 – insert the *firm’s* or *appointed representative’s* or *tied agent’s* name (either the name under which it is *authorised* or the name under which it trades). A corporate logo or logos may be included. If an individual who is employed or engaged by an *appointed representative* or *tied agent* provides the information, the individual should not put his or her own name on the *services and costs disclosure document*.

Note 3 – insert the head office or if more appropriate the principal place of business from which the *firm*, *appointed representative* or *tied agent* expects to conduct business (this can include a *branch*) with *clients*. (An *appointed representative* or *tied agent* should include its own name and address rather than those of the *authorised firm*)

Section 2: Whose products do we offer?

Note 4 – the *firm* should select, for example by ticking, one box which is appropriate for the service which it expects to provide to the *clients*. This needs to be done only in relation to the service it is offering to a particular *client*.

Note 5 – if a *firm* indicates that it will be providing *basic advice* on *stakeholder products* then the first box in section 2 should not be ticked as the *firm* will not be doing so on the basis of *personal recommendations* from the whole market.

Note 6 – a *firm* should only include these words if it offers whole of market advice and it owns or operates products that fall within the relevant market (e.g. a *SIPP*). *Firms* that are conducting cross border business and holding themselves out as whole of market, should include such free text as is necessary to explain in a way that meets the *fair, clear and not misleading rule* and the *clients best interest rule*, what whole of market means in that context.

Note 7 – if the *services and costs disclosure document* is provided by an *appointed representative* or *tied agent*, the service described should be that offered by the *appointed representative* or *tied agent*.

Note 8 – insert “can” if the *firm’s* range of products is determined by any contractual obligation. This does not apply where a *product provider, insurer, lender* or company is selling its own products.

Note 9 – a *firm* should only include these words if it offers limited range advice and it owns or operates products that fall within the relevant range (e.g. a *SIPP*).

Note 10 – if the *firm* selects this box, it will be offering the products of one provider to the *client*. It should therefore follow the format specified in (1) below except when offering its own products, in which case it should follow (2) instead. If the *firm* does not select this box, then the text should follow that set out in Note 12 below.

- (1) Insert the name of the provider. For example: “We can only offer products from [name of *product provider*]”. If the provider has only one product, the *firm* should amend the text to the singular – for example: “We can only offer a pension from [name of lender]”.

- (2) If the *firm* is a *product provider* offering only its own products, or is part of a *product provider* offering only the products sold under that part's trading name, it should use this alternative text.

Note 11 – this sentence is required only where a *firm* selects this service option. The list of products will be the range of *packaged 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 12 – if the *firm* does not select this box, it should alter the wording to say “a single group of companies”. For example: “We only offer the products from a single group of companies” should replace the text in the specimen *services and costs disclosure document*.

Note 13 – the explanation of whose products the *firm* offers under this section should be fair, clear and not misleading. A *firm* should therefore enter, as free text, such further explanation as is needed of any additional factors that it considers to be relevant.

Section 3: Which service will we provide you with?

Note 14 – a *firm* may include here a list of its services or the products on which advice is offered, but if it chooses to do so the list should be *fair, clear and not misleading* and consist of only a factual description in summary form.

For example

“We offer a full financial planning service or alternatively can provide specific advice on:

- savings and investment,
- protecting yourself and/or loved ones in the event of death, serious illness or disability,
- retirement planning.”

Section 4: What will you have to pay us for our services?

Note 14A - any reference in this section to “commission” means *commission* and *commission equivalent*.

Note 14B - *firms* that are not proposing to give *personal recommendations on packaged*

products can amend this section accordingly. Those *firms* need not provide information regarding payment options but should provide at this section at least a statement explaining that the *client* will be told how much the *firm* will be paid before the *firm* carries out any business for the *client* and honour that undertaking. For example, “We will tell you how we get paid and the amount before we carry out any business for you.”

Note 15 - *firms* should disclose all of the payment options that they will offer to the *client*, from the alternatives of *fee*, commission and/or a combination of both *fee* and commission.

Note 16 - *firms* holding themselves out as independent in accordance with COBS 6.2.15R are reminded that they are required to offer the *fee* option.

Note 17 - *firms* should include the headings: “**Paying by fee**”, “**Paying by commission (through product charges)**” and “**Paying by a combination of fee and commission (through product charges)**” that are relevant to the actual payment options being offered. In addition, in accordance with the reference notes, a *firm* should provide an explanation in its own words relating to each option offered.

Additional text to be included under the heading “Paying by fee”

Note 18 - the text for describing a *firm’s fee* charging arrangements is not prescribed, but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of *fees*, including any specific provision as to the timing for the payment of *fees*, the circumstances when *fees* will or will not be payable, (including where relevant payment of any “contingent” *fee*) and the arrangements for any commission paid in addition to *fees*.

For example

“Whether you buy a product or not, you will pay us a fee for our advice and services, which will become payable on completion of our work. If we also receive commission from the product provider when you buy a product, we will pass on the full value of that commission to you in one or more ways. For example, we could reduce our fee; or reduce your product charges; or increase your investment amount; or refund the commission to you.”

Example alternative text for the contingent *fee* – “If you buy a financial product, you will pay us a fee for our advice and services but if you do not buy a financial product, you will not have to pay us anything.”

Note 19 - a *firm* should provide numerical statements of the amount or rate of its *fees* and these should be expressed in pounds sterling or another appropriate currency, where relevant. A *firm* may describe actual hourly rates where possible or typical hourly rates. If a *firm* describes typical rates it should undertake to provide the actual rate in writing before providing services (and honour

that undertaking).

For example:

“Hourly Rate

We will confirm the rate we will charge in writing before beginning work. Our typical charges are:

Principal/Director/Partner £[XX-YY] per hour

Financial adviser £[XX-YY] per hour

Administration £[XX] per hour

We will tell you if you have to pay VAT.”

“Lump sum

We will confirm what we will charge you in writing before beginning work. Our typical charges are:

Investments up to £[XX : YY]

Investments above £[XX : ZZ]

We will tell you if you have to pay VAT.”

“Reviews

We will confirm what we will charge you in writing before beginning work. Our typical charges are:

Initial review : £[XX]

Annual review : £[YY]

We will tell you if you have to pay VAT.”

“We may charge from £[XX] to advise and arrange a personal pension for you. We will confirm what we will charge you in writing before beginning work.”

“We will confirm the rate we will charge in writing before beginning work and we will tell you if you have to pay VAT. You may ask us for an estimate of how much in total we might charge. You may also ask us not to exceed a given amount without checking with you first.”

Additional text to be included under the heading “Paying by commission (through product charges)”.

Note 20 - the text for describing a *firm's* commission payment arrangements is not prescribed, but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of commission.

For example

“If you buy a financial product, we will normally receive commission on the sale from the product provider. Although you pay nothing to us up front, that does not mean our service is free. You still pay us indirectly through product charges. Product charges pay for the product provider’s own costs and any commission. These charges reduce the amount left for investment. If you buy direct, the product charges could be the same as when buying through an adviser, or they could be higher or lower.”

Note 21 - the *firm* should provide details of typical commission that might be received by the *firm* that reflect its actual business, together with an undertaking (which the *firm* should honour) to confirm the actual commission that will be received from any investments before the investment is completed. For example, a *firm* that does not have a significant weighting of business in any one area may provide examples showing commission for lump sum investments, whole life and pensions, whereas a pensions specialist may want to illustrate commission based purely on pensions.

For example:

“The amount of commission we receive will vary depending on the amount you invest and (sometimes) how long you invest or your age.”

For example:

- “If you invest £[XX] in an individual savings account (ISA) we would receive commission of [Y]% of the amount invested (£[ZZ]) and [AA]% of the value of the fund (roughly £[BB] every year).
- If you pay £[XX] a month into a personal pension (with a term of 25 years) then we would receive commission of £[YY].
- If you pay £[XX] towards a whole life policy then we would receive £[YY].

We will tell you how much the commission will be before you complete an investment, but you may ask for this information earlier.”

Note 22 - *firms* should indicate whether the commission includes payment for any ongoing service such as a periodic or ongoing review.

Additional text to be included under the heading “Paying by a combination of fee and commission (through product charges)”

Note 23 - the text for describing a *firm's* arrangements for paying by a combination of *fee* and commission is not prescribed, but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of *fees*, including any specific provision as to the timing for the payment of *fees*, the circumstances as to when *fees* will or will not be payable, (including where relevant payment of any “contingent” *fee*) and the arrangements for any commission paid in addition to *fees*, together with an undertaking (which the *firm* should honour) to confirm the actual commission that will be received from any investments before the investment is completed.

For example:

“We will charge you a combination of fee and commission. The fee will not exceed the rates shown in this document. We will agree the rate we will charge before beginning work and we will tell you if you have to pay VAT. The fee will become payable on completion of our work. You may ask us for an estimate of how much in total we might charge. You may also ask us not to exceed a given amount without checking with you first. We will tell you how much the commission will be before you complete an investment, but you may ask for this information earlier.”

“We charge a consultation fee of up to £[X], and, if you buy a financial product, we will also retain commission within the amounts set out in the section headed “**Paying by commission (through product charges)**”.”

“We will charge you a combination of fees and commission. The actual amounts will depend on the service provided to you, but will be in line with the arrangements set out in the sections headed “**Paying by fee**” and “**Paying by commission (through product charges)**”.

“We charge an annual fee as described in the fee information set out above. If we arrange for you to purchase a financial product, then we will also retain commission which will be in line with the arrangements set out in the section headed “**Paying by commission (through product charges)**”.”

Note 24 - if *firms* offer a combination of fee and commission they can either:

- (a) provide the detailed information relating to fees and commission, in which case *firms* should ensure that the information is provided in accordance with the guidance at the relevant Notes; or
- (b) include an appropriate statement that refers the reader to the information provided under the headings of “**Paying by fee**” and “**Paying by commission (through product charges)**”.

Note 25 - in order to comply with COBS 2.3.1R as qualified by 2.3.2R, *firms* receiving non-monetary benefits may wish to disclose such benefits in summary form here, under

the heading “**Other benefits we may receive**”. If a *firm* does so, it should provide the undertaking described in COBS 2.3.2R(1) (to provide further details on request) in writing, in this section and honour that undertaking. However, it is not the purpose of this section to provide significant or extensive explanation of non-monetary benefits such that it distracts from the wider purpose of the document.

For example:

“We advise on a range of products from a variety of firms; some of these firms provide us with annual training, which allows us to offer you a better service. This year we expect to receive in total [XX] hours worth of training from XYZ, ABC and DEF firms, predominantly from ABC. Some of the cost of this training may be passed to you as part of the total charges you pay should you chose a product provided by XYZ, ABC or DEF. Further information regarding these arrangements is available on request.”

“ABC firm provides us with a specialised software CD-ROM and accompanying [XX] hours worth of training per annum. We use this software in processing your details when you apply for an investment product. Some of the cost of this software may be passed on to you as part of the total charges you pay ABC firm. Further information regarding this arrangement is available on request.”

Section 5: Who regulates us?

Note 26 – the *firm* may omit this section for services relating to *packaged products* if the *firm* has, on first contact with the *client*, provided the *client* with its *client* agreement which contains that information. If this section is omitted, the other sections of the *services and costs disclosure document* should be renumbered accordingly.

Note 27 – if the *firm*'s address on the *FSA Register* differs from that given on the *services and costs disclosure document* under Note 3, the address on the *FSA Register* should be given in this section. If the address is the same as that given under Note 3 it should be repeated in this section.

Note 28 – where the *authorised firm* trades under a different name from that under which it is *authorised*, it should include the name under which it is *authorised* and listed in the *FSA Register*. It may also include its trading name(s) if it wishes.

Note 29 - an *incoming EEA firm* will need to modify this section if it chooses to use the *services and costs disclosure document* (see GEN 4 Ann 1R(2)). A *tied agent* that is regulated in an *EEA State* other than the *United Kingdom* will similarly need to modify this section.

Note 30 – insert a short, plain language description of the business for which the *firm* has a *permission* which relates to the service it is providing.

Note 31 – where the information is provided by an *appointed representative* or *tied agent*, the *appointed representative* or *tied agent* should use this text instead. The *appointed representative* or *tied agent* should give details of the *authorised firm(s)* that is its *principal(s)* for each type of service that it is providing to a particular *client*.

Section 6: Loans and ownership

Note 32 – omit this section where there are no relevant loan or ownership arrangements under the following notes. If this section is omitted the other sections of the *services and costs disclosure document* should be renumbered accordingly. Where the information is provided by an *appointed representative* or *tied agent*, it should cover loans made to or by that *appointed representative* or *tied agent*, or holdings in or held by that *appointed representative* or *tied agent*, as appropriate.

Note 33 – insert, in the *firm's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of the *firm* which is held by a provider or *operator* of a *packaged product* or by the parent of the provider or *operator*.

Note 34 – insert, in the *firm's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of a provider or *operator* of a *packaged product* which is held by the *firm*.

Note 35 – insert, in the *firm's* own words, a short description of any *credit* provided to the *firm* by a *product provider* (other than *commission* due to the *firm* in accordance with an indemnity claw-back arrangement) or by any *undertaking* in the *immediate group* of the *product provider* where the amount of the *credit* exceeds 10 per cent of the share and loan capital of the *firm*.

Section 7: What to do if you have a complaint

Note 36 – if different to the address in Note 3, give the address and telephone number which is to be used by *client* wishing to complain.

Note 37 – if the *firm* is carrying on an activity from an establishment which is outside the *United Kingdom* it should make clear that the *Financial Ombudsman Service* will not be available. The *firm* may refer to any similar complaints scheme that may be applicable.

Section 8: Are we covered by the Financial Services Compensation Scheme (FSCS)?

Note 38 – when an *incoming EEA firm* provides the *services and costs disclosure*

document, it should modify this section as appropriate.

Note 39 - when a *firm* which is not a *participant firm* provides the *services and costs disclosure document*, it should answer this question 'No' and should state the amount of cover provided (if any) and from whom further information about the compensation arrangements may be obtained.

Replace COBS 6 Annex 2 with the following. The text is not underlined.

COBS 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)

This specimen covers services in relation to *packaged products, non-investment insurance contracts and home finance transactions* (including *equity release transactions*).

If the *firm* is not providing services in relation to all products, the parts of the *combined initial disclosure document* that are not relevant should be omitted.

Firms should omit the notes and square brackets that appear in the following *combined initial disclosure document*. The completed *combined initial disclosure document* should contain the keyfacts logo, headings and text in the order shown and in accordance with the notes. Subject to this, a *firm* may use its own house style and brand.



about our services and costs

[Note 1]



[Note 2]

[Note 3]

[123 Any Street

Some Town

ST21 7QB]

1 The Financial Services Authority (FSA)

The FSA is the independent watchdog that regulates financial services. This document is designed by the FSA to be given to consumers considering buying certain financial products. You need to read this important document. It explains the service you are being offered and how you will pay for it.

2 Whose products do we offer? [Note 4][Note 6]

Investment

[We offer products from the whole market.] [Note 5] [We offer our own product(s); you can ask us for a list, but our recommendation will be made following an analysis of the whole market.] [Note 8]

We [can] [Note 7] only offer products from a limited number of companies. [These include our own product(s) but our recommendation will be made following an analysis of our entire range of products.] [Note 9]

Ask us for a list of the companies whose products we offer. [Note 15]

We [can] [Note 7] only offer [a] product[s] from [a single group of companies] [name of single company]. [Note 11(1)] [Note 16]

[or] [Note 11(2)]

We only offer our own products.

[free text **[Note 17]**]

Insurance

- We offer products from a range of insurers [for] [list the types of *non-investment insurance contracts*].

- We [can] **[Note 7]** only offer products from a limited number of insurers [for] [list the types of *non-investment insurance contracts*].
Ask us for a list of the insurers we offer insurance from. **[Note 15]**

- We [can] **[Note 7]** only offer [a] product[s] from [a single insurer] [name of single *insurance undertaking*] [for] [list the types of *non-investment insurance contracts*]. **[Note 10] [Note 11(1)] [Note 16]**

[or] **[Note 11(2)]**

We only offer our own products for [list the types of *non-investment insurance contracts*].

Home Finance Products [Note 13]

[Compliance with Islamic law [Note 18]

Our services are regularly checked by [name(s) of scholar(s)] to ensure compliance with Islamic law. Ask us if you want further information about the role of our scholar(s).]

[1] [Lifetime] [Mortgages] [Equity Release Products] [and home reversion schemes] [Note 13]

- We offer [lifetime] [mortgages] [home reversion plans] [equity release products] from the whole market.

- We [can] **[Note 7]** only offer [lifetime] [mortgages] [home reversion plans] [equity release products] from a limited number of [lenders / companies].
Ask us for a list of the [lenders / companies] we offer [lifetime] [mortgages] [home

reversion plans] [equity release products] from. [Note 14]

- We [can] [Note 7] only offer [a limited range of the] [a] [lifetime] [mortgage] [s] [home reversion plan] [s] [equity release products] from [a single lender / company] [name of single lender / company]. [Note 11(1) and (3)][Note 16]

[or]

We only offer our own [lifetime] [mortgages] [home reversions plan] [equity release products]. [Note 11(2)]

- We do not offer [lifetime mortgages] [home reversion plans]. [Note 12]

[2] [Islamic Home Purchase Plans] [Note 19] [Note 13]

- We offer Islamic home purchase plans from the whole market.

- We [can] [Note 7] only offer Islamic home purchase plans from a limited number of providers.

Ask us for a list of the providers we offer Islamic home purchase plans from. [Note 14]

- We [can] [Note 7] only offer [a limited range of the] [a] Islamic home purchase plan [s] from [a single provider] [name of single provider]. [Note 11(1) and (3)][Note 16]
- [or]

We only offer our own Islamic home purchase plans. [Note 11(2)]

3 Which service will we provide you with? [Note 4]

Investment

- We will advise and make a recommendation for you after we have assessed your needs.

You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

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;
 - offer advice on whether a non-stakeholder product may be more suitable
- [Note 5]**

[free text **[Note 20]**]

Insurance

We will advise and make a recommendation for you after we have assessed your needs [for] [list the types of *non-investment insurance contracts*].

You will not receive advice or a recommendation from us [for] [list the types of *non-investment insurance contracts*]. 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.

[Home Finance Products] [Note 13]

[1] [Mortgages] [Equity Release Products] [Note 13]

We will advise and make a recommendation for you on [lifetime mortgages] [home reversions] [equity release products] after we have assessed your needs.

You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of [lifetime mortgages] [home reversions] [equity release products] that we will provide details on. You will then need to make your own choice about how to proceed.

[2] [Islamic Home Purchase Plans] [Note 13]

- We will advise and make a recommendation for you after we have assessed your needs.
- You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed.

4 What will you have to pay us for our services? [Note 20A]

Investment

[non-advised sales [Note 20B]]

[You will pay for our services on the basis of [Note 21][Note 22]. We will discuss your payment options with you and answer any questions you have. We will not charge you until we have agreed with you how we are to be paid.]

[Paying by fee [Note 23]]

[free text [Notes 24-25]]

[Paying by commission (through product charges) [Note 23]]

[free text [Notes 26-28]]

[Paying by a combination of fee and commission (through product charges)[Note 23]]

[free text [Notes 29-30]]

[Other benefits we may receive [Note 31]]

[free text [Note 31]]

Insurance [Note 32]

- A fee [of £ []] [for] [list the types of services provided for *non-investment insurance contracts*].
- No fee [for] [list the types of services provided for *non-investment insurance contracts*].

You will receive a quotation which will tell you about any other fees relating to any particular insurance policy.

[Home Finance Products] [Note 13]

[1] [Mortgages] [Equity Release Products] [Note 13]

- No fee. [We will be paid by commission from the [lender/company that buys your home].] [Note 33]
- A fee of £[] payable at the outset and £[] payable when you apply for a [lifetime] [mortgage] [home reversion plan] [equity release product]. [We will also be paid commission from the [lender/company that buys your home.]]. [Note 33] [Note 34]

You will receive a *key facts illustration* when considering a particular [lifetime] [mortgage] [home reversion plan] [equity release product], which will tell you about any fees relating to it. [Note 13]

Refund of fees [Note 32] [Note 13]

If we charge you a fee, and your [lifetime] [mortgage] [home reversion plan] does not go ahead, you will receive: [Note 35]

- A full refund [if the [lender/company] rejects your application]. [Note 36]
- A refund of £ [] [if your application falls through]. [Note 36] [Note 37]
- No refund [if you decide not to proceed]. [Note 36]

[2] [Islamic Home Purchase Plans] [Note 13]

- No fee. [We will be paid by commission from the provider.] [Note 33]

- A fee of £[] payable at the outset and £[] payable when you apply for an Islamic home purchase plan. [We will also be paid commission from the provider]. [Note 18]

Refund of fees [Note 35]

If we charge you a fee, and your Islamic home purchase plan does not go ahead, you will receive: [Note 32]

- A full refund [if the provider] rejects your application]. [Note 36]
- A refund of £ [] [if your application falls through]. [Note 36] [Note 37]
- No refund [if you decide not to proceed]. [Note 36]

5 Who regulates us? [Note 39]

[ABC Financial Services] [123 Any Street, Some Town, ST21 7QB] [Note 40] [Note 41] is authorised and regulated by the Financial Services Authority. Our FSA Register number is []. [Note 42]

Our permitted business is []. [Note 43]

[or] [Note 44]

[Name of *appointed representative or tied agent*] [Note 2] is [an appointed representative or a tied agent] of [name of *firm*] [address of *firm*] [Note 40] [Note 41] which is authorised and regulated by the Financial Services Authority. [Name of *firm's*] FSA Register number is [].

[Name of *firm's*] permitted business is [] [Note 43] [Name of *appointed representative or tied agent*] is regulated in [an EEA state or the United Kingdom] [Note 42]

You can check this on the FSA's Register by visiting the FSA's website www.fsa.gov.uk/register or by contacting the FSA on 0845 606 1234. [Note 42]

6 Loans and ownership [Note 45]

[[XXX plc] owns [YY]% of our share capital]

[[XXX plc] provides us with loan finance of £[YY] per year.]

[[XXX] (or we) have [YY]% of the voting rights in [ZZZ].] [Note 45][Note 46]

[Note 47][Note 48][Note 49][Note 50]

7 What to do if you have a complaint [Note 39]

If you wish to register a complaint, please contact us:

...in writing Write to [ABC Financial Services], [Complaints Department, 123 Any Street, Some Town, ST21 7QB].

... by phone Telephone [0121 100 1234]. [Note 41]

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. [Note 52] [Note 53] [Note 54]

8 Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 39] [Note 55] [Note 56]

We are covered by the FSCS. You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Investment

Most types of investment business are covered for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000.

Insurance

Insurance advising and arranging is covered for 100% of the first £2,000 and 90% of the

remainder of the claim, without any upper limit.

[or] [Note 57] [Note 58]

For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit.

[Mortgages] [and] [and Home Purchase Plans] [Equity Release Products] [Note 13]

[Mortgage], [and] [Home purchase] [and] [Equity release] advising and arranging is covered for 100% of the first £30,000 and 90% of the next £20,000 so the maximum compensation is £48,000.

Further information about compensation scheme arrangements is available from the FSCS.

[Note 59] Message from the Financial Services Authority

Think carefully about this information before deciding whether you want to go ahead.

If you are at all unsure about which equity release product is right for you, you should ask your adviser to make a recommendation.

[Note 60] Think carefully about the product and services you need. [We can only offer services in relation to Islamic home purchase plans and cannot provide advice on standard mortgages.] [If you want [information][or][advice] on standard mortgages, please ask.]

The following notes do not form part of the *combined initial disclosure document*.

Note 1 – permission to use the keyfacts logo: the *Financial Services Authority* has developed a common keyfacts logo to be used on significant pieces of information directed to *clients*. The keyfacts logo and the text ‘about our services and costs’ may only be used and positioned as shown in the *combined initial disclosure document* (see *COBS 6.3.4R*). The logo may be re-sized and re-coloured. It may only be used if it is reasonably prominent and its proportions are not distorted. A specimen of the keyfacts logo can be obtained from the *FSA* website http://www.fsa.gov.uk/pubs/other/keyfacts_logo.

Note 2 – insert the *firm’s*, *appointed representative’s* or *tied agent’s* name (either the name under which it is *authorised* or the name under which it trades). A corporate logo or logos may be included. If an individual who is employed or engaged by an *appointed representative* or *tied agent* provides the information, the individual should not put his or her own name on the *combined initial disclosure document*.

Note 3 – insert the head office or if more appropriate the principal place of business from which the *firm*, *appointed representative* or *tied agent* expects to conduct business (this can include a *branch*) with *clients*. (An *appointed representative* or *tied agent* should not include the name and address of the *authorised firm* instead of its own.)

Section 2: Whose products do we offer? And Section 3: Which services will we provide you with?

Note 4 – a *firm* should describe the services that it expects to provide to, the particular *client*. For services in relation to:

- *packaged products* – the *firm* should select, for example by ticking, one box.
- *non-investment insurance contracts* – the *firm* should select more than one box if the scope of the service or the type of service it provides varies by type of contract (e.g. if it deals with a single *insurance undertaking* for motor insurance and a range of *insurance undertakings* for household insurance). If more than one box is selected, the *firm* should specify which box relates to which type of *non-investment insurance contract*, by adding text to the *combined initial disclosure document*. *Firms* should not omit the boxes not selected.
- *equity release transactions* – the *firm* should select a maximum of two boxes within this section. *Firms* should not omit the boxes not selected.

Note 5 – if a *firm* indicates that it will give *basic advice* then the first box in section 2 should not be ticked as the *firm* will not be doing so on the basis of *personal recommendations* from the whole market.

Note 6 – if the *combined initial disclosure document* is provided by an *appointed representative* or *tied agent*, the service described should be that offered by the *appointed representative* or *tied agent*.

Note 7 – insert “can” if the *firm*’s range of products is determined by any contractual obligation. This does not apply where a *product provider*, *insurer*, *lender*, *home purchase provider* or *home reversion provider* is selling its own products.

Note 8 – a *firm* should only include these words if it offers whole of market *personal recommendations* and it owns or operates products that fall within the relevant market (e.g. a *SIPP*). *Firms* that are conducting cross border business and holding themselves out as whole of market, should include such free text as is necessary to explain in a way that meets the *fair, clear and not misleading rule* and the *clients best interest rule*, what whole of market means in that context.

Note 9 – a *firm* should only include these words if it offers limited range *personal recommendations* and it owns or operates products that fall within the relevant range (e.g.

a SIPP).

Note 10 – if the *insurance intermediary* or *insurer* deals with a different *insurance undertaking* for different types of *non-investment insurance contracts*, it should identify all the *insurance undertakings* and specify the type of contract to which they relate on the *combined initial disclosure document*. This only needs to be done in relation to the service it is offering a particular *client*. For example, “we can only offer products from ABC Insurance for motor insurance and ABC Insurance for household insurance”.

Note 11 – if the *firm* selects this box, it will be offering the products of one provider for a particular product type. It should therefore follow the format specified in (1) below except when offering its own products, in which case it should follow (2) instead. In the case of *non-investment insurance contracts*, where the *firm* is providing a service in relation to different types of insurance, this box covers the situation where it is offering a particular type of insurance from a single *insurance undertaking*.

- (1) Insert the name of the provider, namely the *product provider* for *packaged products*, the *insurance undertaking(s)* for *non-investment insurance contracts*, the *lender* for *regulated mortgage contracts* and *regulated lifetime mortgage contracts* and the *home reversion provider* for *home reversion plans*. For example: “We can only offer products from [name of *product provider*]”. For *non-investment insurance contracts* the type of insurance offered should also be included. For example: “We only offer ABC’s household insurance and ABC’s motor insurance.” If the provider has only one product, the *firm* should amend the text to the singular – for example: “We can only offer a mortgage from [name of *lender*]”. If the *firm* does not offer all of the *home finance transactions* generally available from that provider, it should insert the words “a limited range of” as shown in the specimen.
- (2) If the *firm* is a *product provider* offering only its own products, or is part of a *product provider* offering only the products sold under that part’s trading name, it should use this alternative text.
- (3) If the *firm* offers *home reversion plans* from only one *reversion provider*, and *lifetime mortgages* from only one *lender*, which is different from the *reversion provider*, then the *firm* should identify the *lender* and the *reversion provider* and specify the type of *equity release transaction* to which they relate. For example, “We can only offer lifetime mortgages from ABC Mortgages Ltd and home reversion plans from ABC Reversions Ltd.”

Note 12 – if the *firm* does not give *personal recommendations* advise or give personalised information on both types of *equity release transactions*, then it should indicate to the *client* the sector that the *firm* does not cover. However, if the *firm*’s scope of service does not include *equity release transactions*, the last box (“We do not offer [lifetime mortgages] [home reversion plans]”), should be omitted.

Note 13 – in describing the services and products provided, *firms* should omit the text in brackets that do not apply and ensure that they describe accurately their activities with respect of the services and products that they offer, as follows:

- (1) Headings and sub-headings:
 - a. If the *firm* offers both *regulated mortgage contracts* and *home purchase plans*, it should include the heading “Home Finance Products” in the *combined initial disclosure document* and describe the *regulated mortgage contracts* and *home purchase plans* that it offers under two separate sub-headings. The sub-headings (“Mortgages” and “Home Purchase Plans”) should be numbered accordingly. If the *firm* only offers one of these two products, then the heading “Home Finance Products” should be omitted and the heading will read “Mortgages” or “Home Purchase Plans”, as appropriate.
 - b. If the *firm* offers *equity release transactions*, then the heading “Home Finance Products” should be omitted and the heading will read “Equity Release Products” (even if the *firm* offers *equity release transactions* from only one sector).

- (2) Describing the products:
 - a. If a *firm* gives *personal recommendations* or gives personalised information on lifetime mortgages, it should change “mortgage” to “lifetime mortgage”
 - b. If a *firm* gives *personal recommendations* or gives personalised information on home reversion plans, it should use the text in brackets relating to home reversion plans.
 - c. If the *firm* gives *personal recommendations* or gives personalised information on products from both equity release market sectors, then it should use the term ‘equity release products’ when referring to them collectively.

(3) Describing the provider: If a *firm* gives *personal recommendations* or gives personalised information on *home purchase plans* or *home reversion plans*, it should change “mortgage” to “product” and “lender” to “company” or “provider”, as appropriate.

Note 14 – for services provided in relation to *home finance transactions*, this sentence is required only where a *firm* selects this service option. It may also be omitted if a *firm* chooses to list all of the *lenders*, *home purchase providers* and *home reversion providers* it offers *home finance transactions* from in the previous line, so long as the *firm* offers all of the products generally available from each.

Note 15 – this sentence is required only where a *firm* selects this service option. For services provided in relation to *packaged products*, the list of products will be the range of *packaged 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 16 – if the *firm* does not select this box, it should alter the wording to say “a single group of companies” for *packaged products*, “a single insurer” for *non-investment insurance contracts*, “a single lender” for *regulated mortgage contracts* or *lifetime mortgages* and “a single company” (or “a single provider”) for *home purchase plans* and *home reversion plans*. For example: “We only offer the products from a single group of companies” should replace the text in the specimen *combined initial disclosure document*.

Note 17 - the explanation of whose products the *firm* offers under this section should be fair, clear and not misleading. A *firm* should therefore enter, as free text, such further explanation as is needed of any additional factors that it considers to be relevant.

Section 2: Subsection on “Compliance with Islamic law” or other beliefs

Note 18 – This subsection is optional unless the *firm* holds itself, its *regulated mortgage contract* or *home purchase plan* products or services out as compliant with Islamic law in the *combined initial disclosure document*. If a *firm* includes this section it should describe it as Section 2 and renumber subsequent sections accordingly.

A *firm* that wishes to hold itself, its *regulated mortgage contract* or *home purchase plan* products or services out as compliant with religious or philosophical beliefs other than Islamic law in the *combined initial disclosure document* may also use the subsection in accordance with this note and modify the wording in the section to the extent appropriate.

Note 19 – A *firm* that carries on *home purchase activities* may omit the word “Islamic” from “Islamic home purchase plan(s)” if one or more *home purchase plans* within its scope of service is not held out as compliant with Islamic law. If “Islamic” is omitted, it should be omitted consistently throughout the document. However, a *firm* may omit the word “Islamic” in sections 5 and 8 without having to omit it throughout the document. A *firm* that wishes to hold itself, its products or services out as compliant with religious or philosophical belief other than Islamic law in the *combined disclosure document* may make appropriate amendments to references to “Islamic” and “Islamic law”.

Note 20 - a *firm* may include here a list of its services or the products on which advice is offered but if it chooses to do so the list should be fair, clear and not misleading and consist of only a factual description in summary form.

For example:

“We offer a full financial planning service or alternatively can provide specific advice on:

- savings and investment,
- protecting yourself and/or loved ones in the event of death, serious illness or disability,
- retirement planning.”

Section 4: What will you have to pay us for our services?

Note 20A - any reference in this section to “commission” means *commission* and *commission equivalent*.

Note 20B – *firms* that are not proposing to give *personal recommendations* on *packaged products* can amend this section accordingly. Those *firms* need not provide information regarding payment options but should provide at this section at least a statement explaining that the *client* will be told how much the *firm* will be paid before the *firm* carries out any business for the *client* and honour that undertaking. For example, “We will tell you how we get paid and the amount before we carry out any business for you.”

Note 21 - *firms* should disclose all of the payment options that they will offer to the client, from the alternatives of *fee*, *commission* and/or a combination of both *fee* and *commission*.

Note 22 - *firms* holding themselves out as independent in accordance with COBS 6.2.15R are reminded that they are required to offer the *fee* option.

Note 23 - *firms* should include the headings: “**Paying by fee**”, “**Paying by commission (through product charges)**” and “**Paying by a combination of fee and commission (through product charges)**”. In addition, in accordance with the reference notes, a *firm* should provide an explanation in its own words relating to each option offered.

Additional text to be included under the heading “Paying by fee”

Note 24 - the text for describing a *firm’s fee* charging arrangements is not prescribed, but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of *fees*, including any specific provision as to the timing for the payment of *fees*, the circumstances when *fees* will or will not be payable, (including where relevant payment of any “contingent” *fee*) and the arrangements for any *commission* paid in addition to *fees*.

For example:

“Whether you buy a product or not, you will pay us a fee for our advice and services, which will become payable on completion of our work. If we also receive commission from the product provider when you buy a product, we will pass on the full value of that commission to you in one or more ways. For example, we could reduce our fee; or reduce your product charges; or increase your investment amount; or refund the commission to you.”

Example alternative text for the contingent fee – “If you buy a financial product, you will pay us a fee for our advice and services but if you do not buy a financial product, you will not have to pay us anything.”

Note 25 - a *firm* should provide numerical statements of the amount or rate of its *fees* and these should be expressed in pounds sterling or another appropriate currency, where relevant. A *firm* may describe actual hourly rates where possible or typical hourly rates. If a *firm* describes typical rates it should undertake to provide the actual rate in writing before providing services (and honour that undertaking).

For example:

“Hourly Rate

We will confirm the rate we will charge in writing before beginning work. Our typical charges are:

Principal/Director/Partner £[XX-YY] per hour

Financial adviser £[XX-YY] per hour

Administration £[XX] per hour

We will tell you if you have to pay VAT.”

“Lump sum

We will confirm what we will charge you in writing before beginning work. Our typical charges are:

Investments up to £[XX : YY]

Investments above £[XX : ZZ]

We will tell you if you have to pay VAT.”

“Reviews

We will confirm what we will charge you in writing before beginning work. Our typical charges are:

Initial review : £[XX]

Annual review : £[YY]

We will tell you if you have to pay VAT.”

“We may charge from £[XX] to advise and arrange a personal pension for you. We will confirm what we will charge you in writing before beginning work.”

“We will confirm the rate we will charge in writing before beginning work and we will tell you if you have to pay VAT. You may ask us for an estimate of how much in total we might charge. You may also ask us not to exceed a given amount without checking with you first.”

Additional text to be included under the heading “Paying by commission (through product charges)”

Note 26 - the text for describing a *firm’s* commission payment arrangements is not prescribed, but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of commission.

For example:

“If you buy a financial product, we will normally receive commission on the sale from the product provider. Although you pay nothing to us up front, that does not mean our service is free. You still pay us indirectly through product charges. Product charges pay for the product provider’s own costs and any commission. These charges reduce the amount left for investment. If you buy direct, the product charges could be the same as when buying through an adviser, or they could be higher or lower.”

Note 27 - the *firm* should provide details of typical commission that might be received by the *firm* that reflect its actual business, together with an undertaking (which the *firm* should honour) to confirm the actual commission that will be received from any investments before the investment is completed. For example, a *firm* that does not have a significant weighting of business in any one area may provide examples showing commission for lump sum investments, whole life and pensions, whereas a pensions specialist may want to illustrate commission based purely on pensions.

For example:

“The amount of commission we receive will vary depending on the amount you invest and (sometimes) how long you invest or your age.”

For example,

- “If you invest £[XX] in an individual savings account (ISA) we would receive commission of [Y]% of the amount invested (£[ZZ]) and [AA]% of the value of the fund (roughly

£[BB] every year).

- If you pay £[XX] a month into a personal pension (with a term of 25 years) then we would receive commission of £[YY].
- If you pay £[XX] towards a whole life policy then we would receive £[YY].

We will tell you how much the commission will be before you complete an investment, but you may ask for this information earlier.”

Note 28 - *firms* should indicate whether the commission includes payment for any ongoing service such as a periodic or ongoing review.

Additional text to be included under the heading “Paying by a combination of fee and commission (through product charges)”

Note 29 - the text for describing a *firm’s* arrangements for paying by a combination of *fee* and commission is not prescribed, but should be clear and in plain language. This should commence with an explanation of the arrangements relating to the payment of *fees*, including any specific provision as to the timing for the payment of *fees*, the circumstances as to when *fees* will or will not be payable, (including where relevant payment of any “contingent” *fee*) and the arrangements for any commission paid in addition to *fees*, together with an undertaking (which the *firm* should honour) to confirm the actual commission that will be received from any investments before the investment is completed.

For example:

“We will charge you a combination of fee and commission. The fee will not exceed the rates shown in this document. We will agree the rate we will charge before beginning work and we will tell you if you have to pay VAT. The fee will become payable on completion of our work. You may ask us for an estimate of how much in total we might charge. You may also ask us not to exceed a given amount without checking with you first. We will tell you how much the commission will be before you complete an investment, but you may ask for this information earlier.”

“We charge a consultation fee of up to £[X], and, if you buy a financial product, we will also retain commission within the amounts set out in the section headed “**Paying by commission (through product charges)**”.”

“We will charge you a combination of fees and commission. The actual amounts will depend on the service provided to you, but will be in line with the arrangements set out in the sections headed “**Paying by fee**” and “**Paying by commission (through product charges)**”.”

“We charge an annual fee as described in the fee information set out above. If we

arrange for you to purchase a financial product, then we will also retain commission which will be in line with the arrangements set out in the section headed “**Paying by commission (through product charges)**”.”

Note 30 - if *firms* offer a combination of *fee* and commission they can either:

(a) provide the detailed information relating to *fees* and commission, in which case *firms* should ensure that the information is provided in accordance with the guidance at the relevant Notes; or

(b) include an appropriate statement that refers the reader to the information provided under the headings of “**Paying by fee**” and “**Paying by commission (through product charges)**”.

Note 31 - in order to comply with *COBS* 2.3.1R as qualified by *COBS* 2.3.2R, *firms* receiving non-monetary benefits may wish to disclose such benefits in summary form here, under the heading “**Other benefits we may receive**”. If a *firm* does so, it should provide the undertaking described in *COBS* 2.3.2R(1) (to provide further details on request) in writing, in this section (and honour that undertaking). However, it is not the purpose of this section to provide significant or extensive explanation of non-monetary benefits such that it distracts from the wider purpose of the document.

For example:

“We advise on a range of products from a variety of firms; some of these firms provide us with annual training, which allows us to offer you a better service. This year we expect to receive in total [XX] hours worth of training from XYZ, ABC and DEF firms, predominantly from ABC. Some of the cost of this training may be passed to you as part of the total charges you pay should you chose a product provided by XYZ, ABC or DEF. Further information regarding these arrangements is available on request.”

“ABC firm provides us with a specialised software CD-ROM and accompanying [XX] hours worth of training per annum. We use this software in processing your details when you apply for an investment product. Some of the cost of this software may be passed on to you as part of the total charges you pay ABC firm. Further information regarding this arrangement is available on request.”

Note 32 – if the *customer* will be charged a *fee* for *insurance mediation activities* in connection with *non-investment insurance contracts*, insert a plain language description of what each *fee* is for and when each *fee* is payable. This should include any *fees* for *advising on* or *arranging a non-investment insurance contract* and any *fees* over the life of the contract, for example, for mid-term adjustments. If a *firm* does not charge a *fee* the text in the first box should be abbreviated to ‘A fee’. If the *firm* is offering more than one type of service in connection with *non-investment insurance contracts*, the *firm* may aggregate the *fees* over all the services provided, and (if that is the case) identify the services for which there is no *fee*.

Note 33 – if the *firm* receives commission instead of, or in addition to, *fees* from the *client* for services relating to *home finance transactions*, it should insert a plain language explanation of this (see specimen for a plain language example). If the *firm* will pay over to the *client* any commission the *firm* receives, it may refer to that fact here.

Note 34 – insert a plain language description of when any *fees* are payable for services relating to *home finance transactions*. This description could include, for example, a cash amount, a percentage of the loan or reversion amount or the amount per hour, as appropriate. However, where a cash amount is not disclosed, one or more examples of the cash amount should be included. If a *firm* offers more than one pricing option in relation to *equity release transactions*, it should specify the pricing policy for each of them. For example, “A fee of £[XX] payable at the outset and £[YY] when you apply for a lifetime mortgage and £[ZZ] when you apply for a home reversion plan”. If a *firm* does not charge a *fee*, the text for the second box should be abbreviated to ‘A fee’.

Note 35 – omit this part of the *combined initial disclosure document* on ‘Refund of fees’ if the *firm* has indicated that there will be “No fee” for services in relation to *home finance transactions* or that any *fee* will be payable only if the product completes.

Note 36 – *firms* may select as many boxes as appropriate.

Note 37 – insert a short, plain language description of the circumstances in which the *fee* for services in relation to *home finance transactions* is refundable or not refundable as described. If the refund policy is different depending on the *equity release transaction* in question, the *firm* should specify the refund policy for each of them. For example, “A refund of £[XX] if your lifetime mortgage application falls through and a refund of £[YY] if your home reversion plan application falls through.”

Note 38 – a *firm* may delete this line if it does not offer a partial refund for services in relation to *home finance transactions* in any circumstances.

Section 5: Who regulates us?

Note 39 – the *firm* may omit this section for services relating to *packaged products* if the *firm* has, on first contact with the *client*, provided the *client* with its *client agreement* which contains that information. This section may be omitted for services relating to *non-investment insurance contracts* if the information covered by this section is not required by *ICOBS* or is required by *ICOBS* but is provided to the *customer* by some other means. This section may be omitted for services relating to *home finance transactions* in accordance with *MCOB* 4.4.1R(3). If this section is omitted, the other sections of the *combined initial disclosure document* should be renumbered accordingly.

Note 40 – if the *firm's* address on the *FSA Register* differs from that given on the *combined initial disclosure document* under Note 5, the address on the *FSA Register* should be given in this section. If the address is the same as that given under Note 5 it should be repeated in this section.

Note 41 – where the *authorised firm* trades under a different name from that under which it is *authorised*, it should include the name under which it is *authorised* and listed in the *FSA Register*. It may also include its trading name(s) if it wishes.

Note 42 – an *incoming EEA firm* will need to modify this section if it chooses to use this *combined initial disclosure document* (see *GEN 4 Ann 1R(2)*). A *tied agent* that is regulated in an *EEA State* other than the *United Kingdom* will similarly need to modify this section.

Note 43 – insert a short, plain language description of the business for which the *firm* has a *permission* which relates to the service it is providing.

Note 44 – where the information is provided by an *appointed representative* or *tied agent*, the *appointed representative* or *tied agent* should use this text instead. The *appointed representative* or *tied agent* should give details of the *authorised firm(s)* that is its *principal(s)* for each type of service that it is providing to a particular *client*.

Section 6: Loans and ownership

Note 45 – omit this section where there are no relevant loan or ownership arrangements under the following notes or if the *firm* is an *insurer* selling its own *non-investment insurance contracts*. If this section is omitted the other sections of the *combined initial disclosure document* should be renumbered accordingly. If the *firm* is not providing services in relation to *packaged products*, the heading of this section should be changed to 'Ownership'. Where the information is provided by an *appointed representative* or *tied agent*, it should cover loans made to or by that *appointed representative* or *tied agent* or holdings in, or held by, that *appointed representative* or *tied agent* as appropriate.

Notes 46, 47 and 48 apply only to a *firm* making a *personal recommendation, dealing in, or arranging* in relation to *packaged products*.

Note 46 – insert, in the *firm's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of the *firm* which is held by a provider or *operator* of a *packaged product* or by the parent of the provider or *operator*.

Note 47 – insert, in the *firm's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of a provider or *operator*

of a *packaged product* which is held by the *firm*.

Note 48 – insert, in the *firm's* own words, a short description of any *credit* provided to the *firm* by a *product provider* (other than *commission* due to the *firm* in accordance with an indemnity claw-back arrangement) or by any *undertaking* in the *immediate group* of the *product provider* where the amount of the *credit* exceeds 10 per cent of the share and loan capital of the *firm*.

Notes 49 and 50 apply to an *insurance intermediary* providing services in relation to *non-investment insurance contracts*.

Note 49 – insert, in the *insurance intermediary's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of the *insurance intermediary* which is held by an *insurance undertaking* or by the parent of an *insurance undertaking*.

Note 50 – insert, in the *insurance intermediary's* own words, a short description of any direct or indirect holding of more than 10 per cent in the capital or voting power of an *insurance undertaking* which is held by the *insurance intermediary*.

Section 7: What to do if you have a complaint

Note 51 – if different to the address in Note 3, give the address and telephone number which is to be used by *clients* wishing to complain.

Note 52 – this text may be omitted for *non-investment insurance contracts* if the *insurance intermediary* or *insurer* is aware that a *commercial customer* would not be an *eligible complainant*.

Note 53 – if the *combined initial disclosure document* is provided by an *authorised professional firm* which is exclusively carrying on *non-mainstream regulated activities*, the *authorised professional firm* should delete this sentence and refer to the alternative complaints handling arrangements.

Note 54 – if the *firm* is carrying on an activity from an establishment which is outside the *United Kingdom* it should make clear that the *Financial Ombudsman Service* will not be available. The *firm* may refer to any similar complaints scheme that may be applicable.

Section 8: Are we covered by the Financial Services Compensation Scheme (FSCS)?

Note 55 – when an *incoming EEA firm* provides the *combined initial disclosure document*, it

should modify this section as appropriate.

Note 56- when a *firm* which is not a *participant firm* provides the *combined initial disclosure document*, it should answer this question ‘No’ and should state the amount of cover provided (if any) and from whom further information about the compensation arrangements may be obtained.

Note 57 – where the *insurance intermediary* or *insurer* provides a service in relation to a compulsory class of insurance, such as *employers’ liability insurance*, it should use this alternative text.

Note 58 – where the *insurance intermediary* or *insurer* provides a service in relation to a contract which covers both a compulsory class of insurance and a class of insurance which is not compulsory, it should indicate the level of compensation that applies to each class.

Home finance products warning

Note 59 – this warning box should be added when the *firm* sells *lifetime mortgages* or home reversion plans or both.

Note 60 – a *firm* should only include this paragraph if the services to which the *combined initial disclosure document* relates include *home purchase activities*. If the *firm* does not carry on *regulated mortgage activities*, it should include the second sentence and delete the third. If the *firm* carries on *regulated mortgage activities* as well as *home purchase activities* it should omit the second sentence and include the third.

The text of the following Annexes is deleted in full. The deleted text is not shown.

~~COBS 6 Annex 3G (Menu described in COBS 6.3) [deleted]~~

~~COBS 6 Annex 4G Identifying and describing the maximum rate of commission (or equivalent), the market average and the Example [deleted]~~

~~COBS 6 Annex 5G Calculation of a maximum rate of commission [deleted]~~

Amend the following as shown.

7.2 Information to be provided by the insurance intermediary

...

Interface with the ~~initial~~ services and costs disclosure document

7.2.2 G A firm will satisfy elements of the requirement immediately above if it provides ~~an initial disclosure document~~ a services and costs disclosure document or a combined initial disclosure document to a client (see COBS 6.3).

7.2.2A R A firm may provide an ~~initial disclosure document~~ to a client who buys a non-advised life policy [deleted]

7.2.2B G A firm may provide a services and costs disclosure document or a combined disclosure document to a client who buys a non-advised life policy.

...

9.6 Special rules for giving basic advice on a stakeholder product

...

9.6.6 G (1) A firm may give a retail client the basic advice initial disclosure information (COBS 9 Annex 1R) as part of an:

(a) ~~initial disclosure document~~ a services and costs disclosure document; or

- (b) a *combined initial disclosure document* if it has reasonable grounds to believe that it will provide services relating to a *stakeholder product* and a *non-investment insurance contract*, a *regulated mortgage contract*, an *equity release transaction* or a *home purchase plan*.
- (2) If a *firm* provides ~~an *initial disclosure document*~~ a *services and costs disclosure document* or combined initial disclosure document to a *retail client* it will comply with the requirements under:
 - (a) *COBS 2.2.1R(1)(a)* and (d);
 - (b) *COBS 9.6.5R(1)* and *COBS 9 Annex 1R*;
 - (c) the items of distance marketing information set out in paragraphs (1), (2), (4), (5) (19) and (20) of *COBS 5 Annex 1R*; and
 - (d) any duties that apply to it under the *rule* on information to be provided by the insurance intermediary (*COBS 7.2.1R(1)* and (2)).

9.6.7 R For the purposes of *GEN 5*, a *firm* may not use the keyfacts logo in relation to any *document* that is designed to comply with *rules* in *COBS 9.6* or *COBS 7* unless it is ~~an *initial disclosure document*~~ a *services and costs disclosure document*, or a *combined initial disclosure document* ~~or *menu*~~ produced in accordance with the templates and notes in the annexes to *COBS 6*.

...

**COBS
TP2**

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 A	<i>COBS 6.3</i> (Disclosing information about services, fees and commission—packaged	R	(1) A <i>firm</i> may use the keyfacts logo on an <i>initial disclosure document</i>, a <i>combined initial disclosure document</i> or a fees and commissions statement that complied with the <i>rules</i> in <i>COB 4.3</i> in effect on 31	From 1 November 2007 until 1 May 2008	1 November 2007

	products)		October 2007. (2) In this transitional <i>rule</i> , “fees and commissions statement” has the meaning given by the Handbook glossary on 31 October 2007.		
2.2 A	COBS 6.3 (Disclosing information about services, fees and commission – packaged products)	G	Under GEN 5.1.5R and COBS 6.3.4R , a <i>firm</i> may not use the keyfacts logo on a <i>document</i> designed to comply with disclosure requirements in <i>COBS</i> unless it is an <i>initial disclosure document</i> , a <i>combined initial disclosure document</i> or a menu prepared in accordance with COBS 6.3. TP 2.2A R allows a <i>firm</i> to use existing stocks of the equivalent <i>documents</i> produced under <i>COB</i> for a transitional period.	From 1 November 2007 until 1 May 2008	1 November 2007
2.2 B	<u>COBS 6.3 (Disclosing information about services, fees and commission - packaged products)</u>	R	A <i>firm</i> may use the <u>keyfacts logo on an <i>initial disclosure document</i>, a <i>combined initial disclosure document</i> or <i>menu</i> that complied with the <i>rules</i> in <u>COBS 6.3 in effect on 5 August 2008.</u></u>	<u>From 6 August 2008 until 31 August 2009</u>	<u>6 August 2008</u>
2.2 C	<u>COBS 6.3 (Disclosing information about services, fees and commission - packaged products)</u>	G	Under <u>GEN 5.1.5 R and COBS 6.3.4 R</u> , a <i>firm</i> may not use the keyfacts logo on a <i>document</i> designed to comply with disclosure requirements in <i>COBS</i> unless it is a <i>services and costs disclosure document</i> or a <i>combined initial disclosure document</i> prepared in accordance with <u>COBS 6.3 and the relevant COBS 6 annexes.</u> TP 2.2B R allows a <i>firm</i> to	<u>From 6 August 2008 until 31 August 2009.</u>	<u>6 August 2008</u>

			<u>use the equivalent documents produced under the COBS rules in effect at 5 August 2008 for a transitional period.</u>		
...					

Annex D

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

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

MCOB TP 1.1 Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force
...					
<u>11</u>	<u>MCOB 4.4.1R</u> , <u>MCOB 4.4.7R</u> and <u>MCOB 4.10.2R</u>	<u>R</u>	A firm may use a <u>combined initial disclosure document prepared in accordance with the rules in COBS 6.3 and COBS 6 Annex 2 in effect at 5 August 2008.</u>	From <u>6 August 2008</u> until <u>31 August 2009</u>	<u>6 August 2008</u>

**CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT)
INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 1 November 2008.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Amendment) Instrument 2008.

By order of the Board
24 July 2008

Annex

Amendment to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

Disapplication of best execution to CIS operators purchasing or selling own units

- 11.1.7 R The section on best execution (COBS 11.2) does not apply to a *firm* when, acting in the capacity of *operator of a regulated collective investment scheme*, it purchases or sells *units* in that *scheme*.

**SUPERVISION MANUAL (CONTROLLED FUNCTIONS) (AMENDMENT)
INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers);
 - (d) section 157(1) (Guidance);
 - (e) section 59 (Approval for particular arrangements); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 August 2008.

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 (SYSC)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Supervision Manual (Controlled Functions) (Amendment) Instrument 2008.

By order of the Board
24 July 2008

Annex A

Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

~~EEA investment business
oversight function~~

~~controlled function CF9 in the table of controlled functions,
described more fully in SUP 10.7.6R.~~

Annex B

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

In this Annex, striking through indicates deleted text.

2.1.6 G

	Question	Answer
1	Does an individual to whom a function is allocated under SYSC 2.1.3R need to be an <i>approved person</i> ?	An individual to whom a function is allocated under SYSC 2.1.3R will be performing the <i>apportionment and oversight function</i> (CF 8, see SUP 10.7.1R) and an application must be made to the FSA for approval of the individual before the function is performed under section 59 of the Act (Approval for particular arrangements). There are exceptions from this in SUP 10.1 (Approved persons - Application). In particular, an incoming EEA firm is referred to the EEA investment business oversight function (CF 9, see SUP 10.7.6 R).
...		

Annex C

Amendments to the Supervision manual (SUP)

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

10.1.13 R Only the following *controlled functions* apply to an *incoming EEA firm* with respect to its *passport activities* carried on from a *branch* in the *United Kingdom*:

(1) ~~the *EEA investment business oversight function*; [deleted]~~

(2) ~~the *compliance oversight function*; [deleted]~~

...

10.1.13A R ~~If the only *regulated activities* carried on by an *incoming EEA firm* in the *United Kingdom* are *MiFID business*, only SUP 10.1.13R (3), (4) and (6) apply to that *firm*. [deleted]~~

10.1.13B G ~~If an *incoming EEA firm* carries on *designated investment business* which consists of *MiFID business* only, the *EEA investment business oversight function* and the *compliance oversight function* will not apply to that *firm*. [deleted]~~

10.1.13C G ~~If an *incoming EEA firm* carries on *designated investment business* which consists of both *MiFID business* and other regulated activities, the *EEA investment business oversight function* and the *compliance oversight function* (SUP 10.1.13R(1) and SUP 10.1.13 R(2)) will apply to that *firm*, but only in relation to that part of the business which is not *MiFID business*. [deleted]~~

10.1.14 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *controlled functions* apply:

(1) ~~the *required functions*, other than the *apportionment and oversight function* and the *compliance oversight function*;~~

...

...

10.4.5	R	Controlled functions		
		Type	CF	Description of controlled function
		<i>Governing functions*</i>	1	<i>Director function</i>
			...	
		<i>Required functions*</i>	8	...
			9	<i>EEA investment business oversight function</i> [deleted]
...				

10.7.6 R The ~~*EEA investment business oversight function*~~ is the function of acting in the capacity of an individual who is responsible, in accordance with SYSC 2.1.3R(2), for overseeing the establishment and maintenance of systems and controls in relation to ~~*designated investment business*~~ carried on from a ~~*branch in the United Kingdom of an incoming EEA firm.*~~ [deleted]

10.7.7 G ~~Where an overseas individual has not delegated this function to a *senior manager* in the *United Kingdom*, he is likely to be performing this *controlled function*. However, the *FSA* anticipates that any individual carrying out this function will normally be located in the *United Kingdom*. He may be the local *chief executive* or one or more of the individuals approved to perform the *significant management (designated investment business) function*. If the local *chief executive* (or other individual) is approved for this function, this does not mean that all his responsibilities are the concern of the *FSA*. *SUP* 10.1.9 R preserves the principle of *Home State* prudential regulation whenever it applies and in respect of each *controlled function*.~~ [deleted]

...

10.9.1 R *SUP* 10.9 applies only to a *firm* which, ~~under SYSC 2.1.1R,~~ apportsions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit.

...

10.9.3 G However, the scale, nature and complexity of the *firm's* business may be such that a *firm* apportsions ~~under SYSC 2.1.1R~~ a significant responsibility to an individual who is not approved to perform the *governing functions*, *required functions* or, where appropriate, the *systems and controls function*.

If so, the *firm* should consider whether the functions of that individual fall within the *significant management function*. For the purposes of the description of the *significant management functions*, the following additional factors about the *firm* should be considered:

...

**COMPENSATION SOURCEBOOK (PROTECTED CONTRACTS OF INSURANCE)
(SCOPE AMENDMENT NO 3) INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 213 (The compensation scheme); and
 - (5) section 214 (General).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 25 July 2008.

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 (Protected Contracts of Insurance) (Scope Amendment No 3) Instrument 2008.

By order of the Board
24 July 2008

Annex

Amendments to the Compensation sourcebook (COMP)

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

- 5.4.2 R A *contract of insurance* issued after *commencement* which:
- (1) relates to a protected risk or commitment as described in *COMP* 5.4.3R;
 - (2) is issued by the *relevant person* through an establishment in:
 - (a) the *United Kingdom*; or
 - (b) another *EEA State*; or
 - (c) the Channel Islands or the Isle of Man;
- ...
- is a *protected contract of insurance*.
- 5.4.3 R A risk or commitment is a protected risk or commitment for the purpose of *COMP* 5.4.2R(1) if:
- (1) in the case of a *contract of insurance* falling within *COMP* 5.4.2R(2)(a), it is situated in an *EEA State*, the Channel Islands or the Isle of Man;
 - (2) in the case of a *contract of insurance* falling within *COMP* 5.4.2R(2)(b), it is situated in ~~the *United Kingdom*~~ an *EEA State* except that where the *relevant person* is a *firm* which is not a *UK firm* issuing a *contract of insurance* through an establishment in an *EEA State* (other than the *United Kingdom*), the risk or commitment must be situated in the *United Kingdom*;
- ...

FSA LOGO LICENCE (AMENDMENT) INSTRUMENT 2008

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 as follows:
- (1) Part 1 of the Annex comes into force on 31 October 2008;
 - (2) Part 2 of the Annex comes into force on 1 October 2009.

Amendments to the Handbook

- C. The General Provisions (GEN) are amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the FSA Logo Licence (Amendment) Instrument 2008.

By order of the Guidance Committee
20 August 2008

Annex

Amendments to the General Provisions (GEN)

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

Part 1: Changes which come into force on 31 October 2008

GEN 5 The FSA logo and the keyfacts logo

...

Annex 1 G Licence for use of the FSA and keyfacts logos by authorised firms and appointed representatives or tied agents

...	
Permission to use the FSA logo	
3.1	A <u>UK domestic firm</u> , its <i>appointed representatives</i> and <i>tied agents</i> are permitted to use the <i>FSA</i> logo:
(1)	as part of a statement by that <i>person</i> , in a letter or electronic equivalent, that the <i>firm</i> is authorised or that it is <u>and</u> regulated by the <i>FSA</i> , but only in connection with a regulated activity carried on from an establishment in the United Kingdom ; or
(2)	if required to do so by the <i>FSA</i> .
<u>3.1A</u>	<u>Until 30 September 2009, any other <i>firm</i> is permitted to use the <i>FSA</i> logo in connection with a <i>regulated activity</i>, other than that of <i>accepting deposits</i>, carried on from an establishment in the <i>United Kingdom</i>.</u>
...	

Part 2: Changes which come into force on 1 October 2009

GEN 5 The FSA logo and the keyfacts logo

...

Annex 1 G Licence for use of the FSA and keyfacts logos ~~by authorised firms and appointed representatives or tied agents~~

...	
Permission to use the FSA logo	
...	
3.1A	Until 30 September 2009, any other <i>firm</i> is permitted to use the <i>FSA</i> logo in connection with a <i>regulated activity</i>, other than that of <i>accepting deposits</i>, carried on from an establishment in the <i>United Kingdom</i>. [deleted]
...	

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(EXTENSION OF COMMON PLATFORM PROVISIONS) INSTRUMENT 2008**

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 141 (Insurance business rules);
 - (c) section 145 (Financial promotion rules);
 - (d) section 145 (Money laundering rules);
 - (e) section 147 (Control of information rules);
 - (f) section 150(2) (Actions for damages);
 - (g) section 156 (General supplementary powers); and
 - (h) 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 2009.

Amendments to the Handbook and related material

- 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)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex A
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex B
The Fit and Proper test for Approved Persons (FIT)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Interim Prudential sourcebook for Building Societies (IPRU(BSOC))	Annex E
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Insurance: Conduct of Business sourcebook (ICOBS)	Annex H
Supervision manual (SUP)	Annex I
Collective Investment Schemes sourcebook (COLL)	Annex J
Credit Unions sourcebook (CRED)	Annex K

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

Notes

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

Citation

- G. This instrument may be cited as the Senior Management Arrangements Systems and Controls (Extension of Common Platform Provisions) Instrument 2008.

By order of the Board
25 September 2008

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, unless otherwise stated.

SYSC 1.1 is moved to become Part 1 of SYSC 1 Annex 1 and is amended as shown there.

Delete SYSC 1.1. The deleted text is not shown.

Insert the following new section.

1.1A Application

1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

<u>Type of firm</u>	<u>Applicable chapters</u>
<u>Insurer</u>	<u>Chapters 2, 3, 11 to 18</u>
<u>Managing agent</u>	<u>Chapters 2, 3, 11, 12, 18</u>
<u>Society</u>	<u>Chapters 2, 3, 12, 18</u>
<u>Every other firm</u>	<u>Chapters 4 to 12, 18</u>

Amend SYSC 1.2 as shown.

1.2 Purpose

1.2.1 G The purposes of SYSC are:

- (1) to encourage *firms' directors* and *senior managers* to take appropriate practical responsibility for their *firms'* arrangements on matters likely to be of interest to the *FSA* because they impinge on the *FSA's* functions under the *Act*;
- (2) to increase certainty by amplifying *Principle 3*, under which a *firm* must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems;
- (3) to encourage *firms* to vest responsibility for effective and responsible organisation in specific *directors* and *senior managers*; and

- (4) to create a common platform of organisational and systems and controls requirements for all firms ~~subject to the CRD and/or MiFID;~~ and.
- (5) ~~to set out high level organisational and systems and controls requirements for insurers.~~ [deleted]

SYSC 1.3 is moved to become Part 2 of SYSC 1 Annex 1 and is amended as shown there.

Delete SYSC 1.3. The text is not shown.

Insert the following new Annex at the end of SYSC 1. The text of this Annex 1 is made up of text taken from SYSC 1.1 and 1.3. The underlining and striking through shown below indicate the changes made to the text of SYSC 1.1 and 1.3 as a result of its inclusion in SYSC 1 Annex 1.

SYSC 1 Annex 1: Detailed application of SYSC

**1.1 Application of SYSC 2 and SYSC 3 to an insurer, a managing agent and the
Part 1 Society of Lloyd's**

~~Purpose of this section~~

~~1.1.2 G [deleted]~~

~~1.1.4 G [deleted]~~

Who?

1.1.1 R SYSC 2 and SYSC 3 only apply to an insurer, a managing agent and the
Society of Lloyd's every firm except that:

- (1) for an *incoming EEA firm* or an *incoming Treaty firm*:
 - (a) SYSC 2.1.1R and SYSC 2.1.2G do not apply;
 - (b) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*; and
 - (c) SYSC 3 applies, but only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*;
- (2) for an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*, SYSC 2 and SYSC 3 do not apply;

- ~~(2A)~~ for an *incoming Treaty firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*, SYSC 3.2.6AR to SYSC 3.2.6JG do not apply;
- ~~(3)~~
- ~~(3)~~ for a *sole trader*;
- ~~(4)~~
- (a) SYSC 2 does not apply as long as he does not employ applies but only if he employs any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements);
- (b) SYSC 3.2.6IR does not apply if he has no *employees*; and
- ~~(4)~~ for a *UCITS qualifier*;
- (a) SYSC 2.1.1R and SYSC 2.1.2G do not apply;
- (b) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only with respect to the activities in SYSC 1.1.4R;
- (c) SYSC 3 applies, but only with respect to the activities in SYSC 1.1.4R;
- ~~(5)~~ for an *authorised professional firm* when carrying on *non-mainstream regulated activities*, SYSC 3.2.6AR to SYSC 3.2.6JG do not apply;
- ~~(6)~~ for a *common platform firm*, SYSC 2 and 3 do not apply; and
- ~~(7)~~ SYSC 2 and SYSC 3 do not apply to an *incoming ECA provider* acting as such.
- ~~(5)~~

- 4.1.2 G (1) Question 12 in SYSC 2.1.6G contains guidance on SYSC 1 Annex 1.1.1R(1)(b) and (c).
- (2) SYSC 1 Annex ~~1.1.7R~~ 1.1.8R and SYSC 1.1.10R further restricts the territorial application of SYSC 2 and SYSC 3 for an *incoming EEA firm*; or an incoming Treaty firm ~~or UCITS qualifier~~.
- (3) SYSC 1 Annex 1.1.1R~~(4)~~(3) puts an incoming EEA firm on an equal footing with unauthorised *overseas persons* who utilise the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*.
- (4) Further *guidance* on which matters are reserved to a *firm's Home State regulator* can be found at SUP 13A Annex 2G.

What?

- 4.1.3 R SYSC 2 and SYSC 3 apply with respect to the carrying on of:

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
- (3) *ancillary activities* in relation to *designated investment business*, *home finance activity* and *insurance mediation activity*;

except that SYSC 3.2.6AR to SYSC 3.2.6JG do not apply as described in SYSC ~~1.1.3AR~~ 1 Annex 1.1.4R.

1.1.3A R SYSC 3.2.6AR to SYSC 3.2.6JG do not apply:
1.4

- (1) with respect to the activities described in SYSC 1 Annex 1.1.3R(2) and (3); or
- (2) in relation to the following *regulated activities*:
 - (a) *general insurance business*;
 - (b) *insurance mediation activity* in relation to a *general insurance contract* or *pure protection contract*;
 - (c) *long-term insurance business* which is outside the *Consolidated Life Directive* (unless it is otherwise one of the *regulated activities* specified in this rule);
 - (d) business relating to contracts which are within the *Regulated Activities Order* only because they fall within paragraph (e) of the definition of “contract of insurance” in article 3 of that Order;
 - (e)
 - (i) arranging, by the ~~*Society of Lloyd’s*~~, of deals in *general insurance contracts* written at Lloyd’s; and
 - (ii) *managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s*;
 - (f) ~~*mortgage mediation activity and administering a regulated mortgage contract*~~;
 - (gf) *home purchase finance mediation activity and administering a home purchase plan finance transaction*; and
 - (hg) *reversion activity*.

1.1.4 R SYSC 2 and SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also apply with
1.5 respect to the *communication* and *approval* of *financial promotions* which:

- (1) if *communicated* by an *unauthorised person* without *approval* would contravene section 21(1) of the *Act* (Restrictions on financial promotion); and
- (2) may be *communicated* by a *firm* without contravening section 238(1) of the *Act* (Restrictions on promotion of collective investment schemes).

~~4.1.5~~
1.6 R SYSC 2 and SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also:

- (1) apply with respect to the carrying on of *unregulated activities* in a *prudential context*; and
- (2) take into account any activity of other members of a *group* of which the *firm* is a member.

~~4.1.6~~
1.7 G SYSC ~~4.1.5R(2)~~ 1 Annex 1.1.6R(2) does not mean that inadequacy of a *group* member's systems and controls will automatically lead to a *firm* contravening, for example, SYSC 3.1.1R. Rather, the potential impact of a *group* member's activities, including its systems and controls, and any systems and controls that operate on a *group* basis, will be relevant in determining the appropriateness of the *firm's* own systems and controls.

Where?

~~4.1.7~~
1.8 R SYSC 2 and SYSC 3 apply with respect to activities carried on from an establishment maintained by the *firm* (or its *appointed representative* or, where applicable, its *tied agent*) in the *United Kingdom* unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case SYSC 2 and SYSC 3 apply with that wider scope in relation to the activity described in that *rule*.

~~4.1.8~~ G ~~An example of the type of rule referred to in SYSC 1.1.7R with a different territorial scope is the custody rules in the non-directive custody chapter. These rules apply, for certain UK firms, to activities carried on from branches in other EEA States as well as UK establishments (CASS 1.3.3R (General application where?)). Therefore SYSC 2 and SYSC 3 apply to the custody activities described in the non-directive custody chapter carried on from such a branch by such a UK firm. The UK firm must, for example, take reasonable care to establish systems and controls under SYSC 3.1.1R as are appropriate to those activities carried on from its EEA branches as well as from its UK establishments.~~

~~4.1.9~~ R SYSC 2 and SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also apply in a *prudential context* to a *UK domestic firm* with respect to activities wherever they are carried on.

~~4.1.10~~ R SYSC 3, except SYSC 3.2.6AR to SYSC 3.2.6JG, also applies in a *prudential context* to an *overseas firm* (other than an *incoming EEA firm*, or an incoming Treaty firm ~~or UCITS qualifier~~) with respect to activities wherever

they are carried on.

- 4.1.11 G (1) In considering whether to take regulatory action under SYSC 2 or SYSC 3 in relation to activities carried on outside the *United Kingdom*, the FSA will take into account the standards expected in the market in which the *firm* is operating.
- (2) Most of the *rules* in SYSC 3 are linked to other requirements and standards under the *regulatory system* which have their own territorial limitations so that those SYSC *rules* are similarly limited in scope.

4.1.11A G ~~{deleted}~~

Actions for damages

- 4.1.12 R A contravention of the *rules* in SYSC 2 and SYSC 3 does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

Part 2 Application of the common platform requirements (SYSC 4 to 10)

Who?

- 4.3.1
2.1 R The *common platform requirements* apply to ~~a common platform firm~~ every *firm* apart from an *insurer*, a *managing agent* and the *Society of Lloyd's* unless provided otherwise in a specific *rule*.

2.2 R For an *incoming EEA firm* or an *incoming Treaty firm*:

- (1) the *rule* on responsibility of senior personnel (SYSC 4.3) does not apply;
- (2) the *common platform requirements* apply only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the *firm's Home State regulator*;
- (3) for an *incoming EEA firm* which has *permission only for cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, the *common platform requirements* do not apply;
- (4) for an *incoming Treaty firm* which has *permission only for cross-border services* and which does not carry on *regulated activities* in the *United Kingdom*, the *common platform requirements on financial crime* do not apply.

2.3 R For a *sole trader*:

- (1) SYSC 4.3 and 4.4 do not apply as long as he does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements);
- (2) SYSC 4.1.4R and SYSC 6.3.9R do not apply if he has no employees.
- 2.4 R For a UCITS qualifier:
- (1) the rule on responsibility of senior personnel (SYSC 4.3) does not apply; and
- (2) the common platform requirements apply in relation to the communication and approval of financial promotions only as set out in SYSC 1 Annex 1.2.12R.
- [Note: section 266 of the Act.]
- 2.5 R For an authorised professional firm when carrying on non-mainstream regulated activities, the common platform requirements on financial crime, conflicts of interest and Chinese walls do not apply.
- 2.6 R The common platform requirements do not apply to an incoming ECA provider acting as such.
- 1.3.1B G ~~Whilst the common platform requirements do not generally apply to~~
2.7 ~~incoming EEA firms, EEA MiFID investment firms are reminded in~~
particular that they must comply with the common platform record-keeping requirements in relation to a branch in the *United Kingdom*.
- What?
- 1.3.2 R The common platform organisational requirements apply with respect to the
2.8 carrying on of the following (unless provided otherwise within a specific rule):
- (1) *regulated activities;*
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc);
- (3) *ancillary activities;* and
- (4) in relation to *MiFID business, ancillary services*.
- 1.3.3 G The application of the provisions on the conflicts of interest in SYSC 10 is
2.9 set out in SYSC 10.1.1R and SYSC 10.2.1R.
- 1.3.4 R The provisions on record-keeping in SYSC 9 apply as set out in SYSC ~~1.3.2R~~
2.10 1 Annex 1.2.8R, except that they only apply to the carrying on of *ancillary activities* that are performed in relation to:

- (1) *designated investment business;*
- (2) *home finance activity; and*
- (3) *insurance mediation activity.*

1.3.5
2.11

R The *common platform requirements on financial crime* apply as set out in SYSC ~~1.3.2R~~ 1 Annex 1.2.8R, except that they do not apply:

- (1) with respect to:
 - (a) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and
 - (b) *ancillary activities*; or
- (2) in relation to the following *regulated activities*:
 - (a) *general insurance business*;
 - (b) *insurance mediation activity* in relation to a *general insurance contract* or *pure protection contract*;
 - (c) *long-term insurance business* which is outside the *Consolidated Life Directive* (unless it is otherwise one of the *regulated activities* specified in this rule);
 - (d) business relating to contracts which are within the *Regulated Activities Order* only because they fall within paragraph (e) of the definition of “contract of insurance” in article 3 of that Order;
 - (e)
 - (i) arranging by the *Society of Lloyd’s* of deals in *general insurance contracts* written at Lloyd’s; and
 - (ii) *managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s*; ~~and~~
 - (f) *home finance mediation activity* and *administering a home finance transaction*; and
 - (g) *reversion activity*.

1.3.6
2.12

R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also apply with respect to the *communication and approval of financial promotions* which:

- (1) if *communicated* by an *unauthorised person* without *approval* would contravene section 21(1) of the Act (Restrictions on financial promotion); and

- (2) may be *communicated* by a *firm* without contravening section 238(1) of the *Act* (Restrictions on promotion of collective investment schemes).

1.3.7
2.13

R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also:

- (1) apply with respect to the carrying on of *unregulated activities* in a *prudential context*; and
- (2) take into account any activity of other members of a *group* of which the *firm* is a member.

1.3.8
2.14

G SYSC 1.3.7R(2) ~~1~~ Annex 1.2.13R(2) does not mean that inadequacy of a *group* member's systems and controls will automatically lead to a *firm* contravening any of the *common platform organisational requirements*. Rather, the potential impact of a *group* member's activities, including its systems and controls, and any systems and controls that operate on a *group* basis, will be relevant in determining the appropriateness of the *firm's* own systems and controls.

Where?

1.3.9
2.15

R The *common platform requirements*, except the *common platform record-keeping requirements*, apply to a ~~*common platform*~~ *firm* in relation to activities carried on by it from an establishment in the *United Kingdom*.

1.3.10
2.16

R The *common platform requirements*, except the *common platform requirements on financial crime* and the *common platform record-keeping requirements*, apply to a ~~*common platform*~~ *firm* in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

1.3.10A
2.17

R The *common platform record-keeping requirements* apply to activities carried on by:

- (1) a ~~*common platform firm*~~; ~~or~~
- (2) an ~~*EEA MiFID investment firm*~~;

from an establishment maintained in the *United Kingdom*, unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case the *common platform record-keeping requirements* apply with that wider scope in relation to the activity described in that *rule*.

[**Note:** article 13(9) of *MiFID*]

1.3.11
2.18

R The *common platform organisational requirements*, except the *common platform requirements on financial crime*, also apply in a *prudential context* to a *UK domestic firm* and to an *overseas firm* (other than an *incoming EEA firm* or an *Incoming Treaty firm*) with respect to activities wherever they are carried on.

Actions for damages

- 4.3.12 R A contravention of a *rule* in the *common platform requirements* does not give rise to a right of action by a *private person* under section 150 of the *Act* (and each of those *rules* is specified under section 150(2) of the *Act* as a provision giving rise to no such right of action).

Insert the following new text in SYSC 1 Annex 1, which is not shown underlined:

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

- 3.1 G The *common platform requirements* apply in the following two ways (subject to the provisions in Part 2 of this Annex).
- 3.2 G For a *common platform firm*, they apply in accordance with Column A in the table below.
- 3.3 G For all other *firms* apart from *insurers, managing agents* and the *Society*, they apply in accordance with Column B in the table below. For these *firms*, where a *rule* is shown modified in Column B as ‘Guidance’, it should be read as *guidance* (as if “should” appeared in that rule instead of “must”) and should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm’s business.

Provision	COLUMN A	COLUMN B
SYSC 4	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents</i> and the <i>Society</i>
SYSC 4.1.1R	Rule	Rule
SYSC 4.1.2R	Rule	Guidance
SYSC 4.1.2AG	Not applicable	Guidance
SYSC 4.1.3R	Rule applies only to a <i>BIPRU firm</i>	Not applicable
SYSC 4.1.4R	Rule	(1) and (3) Guidance (2) Rule
SYSC 4.1.4AG	Not applicable	Guidance
SYSC 4.1.5R	Rule applies only to a <i>MiFID investment firm</i>	Not applicable
SYSC 4.1.6R	Rule	Guidance
SYSC 4.1.7R	Rule	Guidance
SYSC 4.1.7AG	Not applicable	Guidance
SYSC 4.1.8G	Guidance	Guidance
SYSC 4.1.9R	Rule	Not applicable

SYSC 4.1.10R	Rule	Guidance – except reference to SYSC 4.1.9R which does not apply to these <i>firms</i>
SYSC 4.1.10AG	Not applicable	Guidance
SYSC 4.1.11G	Guidance	Guidance
SYSC 4.2.1R	Rule	<ul style="list-style-type: none"> • UK branch of <i>non-EEA bank</i> – rule applies. • Other <i>firms</i> – Guidance
SYSC 4.2.1AG	Not applicable	<ul style="list-style-type: none"> • Guidance
SYSC 4.2.2R	Rule	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • UK branch of a <i>non-EEA bank</i> – Guidance • Other <i>firms</i> – these provisions do not apply
SYSC 4.2.6R	Rule	<ul style="list-style-type: none"> • 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	Rule (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYSC 4.3.2R	Rule	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYSC 4.3.2AG	Not applicable	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYSC 4.3.3G	Guidance	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)

SYSC 4.4.1R	Not applicable	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) an <i>oil market participant</i> ; (3) a <i>service company</i> ; (4) an <i>energy market participant</i> ; (5) a wholly-owned subsidiary of: <ul style="list-style-type: none"> ○ a local authority ○ a registered social landlord; (6) 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> ; (7) an <i>incoming Treaty firm</i> , an <i>incoming EEA firm</i> and a <i>UCITS qualifier</i> , (but only SYSC 4.4.5 R(2) applies for these <i>firms</i>); and (8) a <i>sole trader</i>
SYSC 4.4.2G	Not applicable	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.3R	Not applicable	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.4G	Not applicable	Guidance only applying to the <i>firms</i> specified in SYSC 4.4.1R
SYSC 4.4.5R	Not applicable	Rule only applying to the <i>firms</i> specified in SYSC 4.4.1R

Provision	COLUMN A	COLUMN B
SYSC 5	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 5.1.1R	Rule	Rule
SYSC 5.1.2G	Guidance	Guidance
SYSC 5.1.3G	Guidance	Guidance

SYSC 5.1.4G	Guidance	Guidance
SYSC 5.1.4AG	Guidance	Guidance
SYSC 5.1.5G	Guidance	Guidance
SYSC 5.1.5AG	Guidance	Guidance
SYSC 5.1.6R	Rule	Guidance
SYSC 5.1.7R	Rule	Guidance
SYSC 5.1.7AG	Not applicable	Guidance
SYSC 5.1.8G	Guidance	Guidance
SYSC 5.1.9G	Guidance	Guidance
SYSC 5.1.10G	Guidance	Guidance
SYSC 5.1.11G	Guidance	Guidance
SYSC 5.1.12R	Rule	Guidance
SYSC 5.1.12AG	Not applicable	Guidance
SYSC 5.1.13R	Rule	Rule
SYSC 5.1.14R	Rule	Guidance
SYSC 5.1.15G	Not applicable	Guidance

Provision	COLUMN A	COLUMN B
SYSC 6	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 6.1.1R	Rule	Rule
SYSC 6.1.2R	Rule	Guidance
SYSC 6.1.2AG	Not applicable	Guidance
SYSC 6.1.3R	Rule	<ul style="list-style-type: none"> • 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	Guidance

SYSC 6.1.4R	Rule	(1) (3) and (4) Guidance (2) <ul style="list-style-type: none"> • Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for retail clients or professional clients. • Guidance for all other <i>firms</i>.
SYSC 6.1.5R	Rule	<ul style="list-style-type: none"> • Guidance • “<i>investment services and activities</i>” shall be read as “<i>financial services and activities</i>”
SYSC 6.1.6G	Not applicable	Guidance
SYSC 6.2.1R	Rule	Guidance
SYSC 6.2.1AG	Not applicable	Guidance
SYSC 6.2.2G	Guidance	Guidance
SYSC 6.3.1R	Rule	Rule
SYSC 6.3.2G	Guidance	Guidance
SYSC 6.3.3R	Rule	Rule
SYSC 6.3.4G	Guidance	Guidance
SYSC 6.3.5G	Guidance	Guidance
SYSC 6.3.6G	Guidance	Guidance
SYSC 6.3.7G	Guidance	Guidance
SYSC 6.3.8R	Rule	Rule
SYSC 6.3.9R	Rule	Rule
SYSC 6.3.10G	Guidance	Guidance

Provision	COLUMN A	COLUMN B
SYSC 7	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 7.1.1G	Guidance	Guidance
SYSC 7.1.2 R	Rule	Guidance
SYSC 7.1.2AG	Not applicable	Guidance
SYSC 7.1.3R	Rule	Guidance
SYSC 7.1.4R	Rule	Guidance
SYSC 7.1.4AG	Not applicable	Guidance
SYSC 7.1.5R	Rule	Guidance
SYSC 7.1.6R	Rule	Guidance
SYSC 7.1.7R	Rule	Guidance
SYSC 7.1.7AG	Not applicable	Guidance
SYSC 7.1.8G(1), (2)	(1) Guidance applies only to a <i>BIPRU firm</i> (2) Guidance	(1) Not applicable (2) Guidance
SYSC 7.1.9R	Rule applies only to a <i>BIPRU firm</i>	Not applicable

SYSC 7.1.10R	Rule applies only to a <i>BIPRU firm</i>	Not applicable
SYSC 7.1.11R	Rule applies only to a <i>BIPRU firm</i>	Not applicable
SYSC 7.1.12G	Guidance applies only to a <i>BIPRU firm</i>	Not applicable
SYSC 7.1.13R – 7.1.16R	Rule applies only to a <i>BIPRU firm</i>	Not applicable

Provision	COLUMN A	COLUMN B
SYSC 8	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 8.1.1R	Rule	Guidance
SYSC 8.1.1AG	Not applicable	Guidance
SYSC 8.1.2G	Guidance	Guidance
SYSC 8.1.3G	Guidance	Guidance
SYSC 8.1.4R	Rule	Guidance
SYSC 8.1.5R	Rule	Guidance
SYSC 8.1.5AG	Not applicable	Guidance
SYSC 8.1.6R	Rule	Rule
SYSC 8.1.7R	Rule	Guidance
SYSC 8.1.8R	Rule	Guidance
SYSC 8.1.9R	Rule	Guidance
SYSC 8.1.10R	Rule	Guidance
SYSC 8.1.11R	Rule	Guidance
SYSC 8.1.11AG	Not applicable	Guidance
SYSC 8.1.12G	Guidance	Guidance
SYSC 8.2	<i>MiFID investment firms</i> only	Not applicable
SYSC 8.3	<i>MiFID investment firms</i> only	Not applicable

Provision	COLUMN A	COLUMN B
SYSC 9	Application to a <i>common platform firm</i>	Application to all other <i>firms</i> apart from <i>insurers, managing agents and the Society</i>
SYSC 9.1.1R	Rule	Rule
SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	Not applicable
SYSC 9.1.3R	Rule applies only in relation to <i>MiFID business</i>	Not applicable
SYSC 9.1.4G	Guidance	Guidance
SYSC 9.1.5G	Guidance	Guidance
SYSC 9.1.6G	Guidance	Guidance
SYSC 9.1.7G	Guidance applies only in relation to <i>MiFID business</i>	Not applicable

Provision SYSC 10	Column A Application to a <i>common platform firm</i>	Column B Application to all other <i>firms apart from insurers, managing agents and the Society</i>
SYSC 10.1.1R	Rule	Rule
SYSC 10.1.2G	Guidance	Guidance
SYSC 10.1.3R	Rule	Rule
SYSC 10.1.4R	Rule	Guidance – but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.4AG	Not applicable	Guidance
SYSC 10.1.5G	Guidance	Guidance
SYSC 10.1.6R	Rule	Guidance – but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.6AG	Not applicable	Guidance
SYSC 10.1.7R	Rule	Rule
SYSC 10.1.8R	Rule	Rule
SYSC 10.1.8AR	Rule	Rule
SYSC 10.1.9G	Guidance	Guidance
SYSC 10.1.10R	Rule	Guidance – but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.11R	Rule	Guidance – but applies as a <i>rule</i> in relation to the production or arrangement of production of <i>investment research</i> in accordance with <i>COBS 12.2</i> , or the production or dissemination of <i>non-independent research</i> in accordance with <i>COBS 12.3</i>
SYSC 10.1.11AG	Not applicable	Guidance

SYSC 10.1.12G – SYSC 10.1.15G	Guidance	Guidance
SYSC 10.1.16R	Not applicable	Rule
SYSC 10.2.1R	Rule	Rule
SYSC 10.2.2R	Rule	Rule
SYSC 10.2.3G	Guidance	Guidance
SYSC 10.2.4R	Rule	Rule
SYSC 10.2.5G	Guidance	Guidance

Amend SYSC 2 as shown.

2.1.6 G Frequently asked questions about allocation of functions in SYSC 2.1.3R

This table belongs to SYSC 2.1.5G

	Question	Answer
	...	
11	How does the requirement to allocate the functions in SYSC 2.1.3R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i> , <i>incoming Treaty firm</i> or <i>UCITS qualifier</i> ?	<p>The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 2.1.4R, but:</p> <p>(1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities carried on from a <i>UK</i> establishment with certain exceptions (see SYSC 4.1.7R-1 Annex 1.1.7R). Note that SYSC 4.1.10R-1 Annex 1.1.10R does not extend the territorial scope of SYSC 2 for an <i>overseas firm</i>.</p> <p>...</p>
12	How does the requirement to allocate the functions in SYSC 2.1.3R apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> ?	<p>SYSC 4.1.1R(2)-1 Annex 1.1.1R and SYSC 4.1.7R-1 Annex 1.1.8R restrict the application of SYSC 2.1.3R for such a <i>firm</i>. Accordingly:</p> <p>...</p>
...		

Amend SYSC 4 as shown (unamended paragraphs are included to assist readers).

4.1 General requirements

- 4.1.1 R A ~~common platform~~ firm must 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.

[**Note:** article 22(1) of the *Banking Consolidation Directive*, article 13(5) second paragraph of *MiFID*]

- 4.1.2 R ~~The~~ For a *common platform firm*, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R must be comprehensive and proportionate to the nature, scale and complexity of the *common platform firm's* activities and must take into account the specific technical criteria described in SYSC 4.1.7R, SYSC 5.1.7R and SYSC 7.

[**Note:** article 22(2) of the *Banking Consolidation Directive*]

- 4.1.2A G Other firms should take account of the comprehensiveness and proportionality rule (SYSC 4.1.2R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 4.1.3 R A *BIPRU firm* must ensure that its internal control mechanisms and administrative and accounting procedures permit the verification of its compliance with *rules* adopted in accordance with the *Capital Adequacy Directive* at all times.

[**Note:** article 35(1) final sentence of the *Capital Adequacy Directive*]

- 4.1.4 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)) 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) 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*.

[**Note:** articles 5(1) final paragraph, 5(1)(a), 5(1)(c) and 5(1)(e) of the *MiFID implementing Directive*]

4.1.4A G A *firm* that is not a *common platform firm* should take into account the decision-making procedures and effective internal reporting rules (SYSC 4.1.4R(1) and (3)) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

4.1.5 R A *MiFID investment firm* 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*]

Business continuity

4.1.6 R A *common platform firm* must take reasonable steps to ensure continuity and regularity in the performance of its *regulated activities*. To this end the *common platform firm* must employ appropriate and proportionate systems, resources and procedures.

[**Note:** article 13(4) of *MiFID*]

4.1.7 R A *common platform firm* 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, where that is not possible, the timely recovery of such data and functions and the timely resumption of its *regulated activities*.

[**Note:** article 5(3) of the *MiFID implementing Directive* and annex V paragraph 13 of the *Banking Consolidation Directive*]

4.1.7A G Other *firms* should take account of the business continuity rules (SYSC 4.1.6R and 4.1.7R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

4.1.8 G The matters dealt with in a business continuity policy should include:

- (1) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;
- (2) the recovery priorities for the *firm’s* operations;
- (3) communication arrangements for internal and external concerned

- parties (including the *FSA*, *clients* and the press);
- (4) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
 - (5) processes to validate the integrity of information affected by the disruption; and
 - (6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with SYSC 4.1.10R.

Accounting policies

- 4.1.9 R A *common platform firm* 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*]

Regular monitoring

- 4.1.10 R A *common platform firm* 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*]

- 4.1.10A G Other firms should take account of the regular monitoring rule (SYSC 4.1.10R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R, but ignoring the cross-reference to SYSC 4.1.5R and 4.1.9R.

Audit committee

- 4.1.11 G Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to form an audit committee. An audit committee could typically examine management’s process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the *regulatory system*, oversee the functioning of the internal audit function (if applicable) and provide an interface between management and external auditors. It should have an appropriate number of *non-executive directors* and it should have formal terms of reference.

4.2 Persons who effectively direct the business

- 4.2.1 R The *senior personnel* of a *common platform firm* 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* and article 11(1) second paragraph of the *Banking Consolidation Directive*]
- 4.2.1A G Other *firms* should take account of the senior personnel rule (SYSC 4.2.1R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- 4.2.2 R A *common platform firm* 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* and article 11(1) first paragraph of the *Banking Consolidation Directive*]
- 4.2.3 G In the case of a *body corporate*, the persons referred to in SYSC 4.2.2R should either be executive *directors* or persons granted executive powers by, and reporting immediately to, the *governing body*. In the case of a *partnership*, they should be active *partners*.
- 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* and the *UK branch of a non-EEA bank*. Where such a *common platform firm* nominates just two individuals to direct its business, the *FSA* will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which strategy is being implemented through day-to-day policy.
- 4.2.5 G Where there are more than two individuals directing the business of a *common platform firm* 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. However, at least two individuals should be involved in all such decisions. Both individuals’ judgement should be engaged so that major errors leading to difficulties for the *firm* are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing *director* or otherwise, is particularly dominant in such a *firm* this will raise doubts about whether SYSC 4.2.2R is met.

4.2.6 R If a *common platform firm* (other than a *credit institution*) or the *UK branch of a non-EEA bank* is:

- (1) a natural person; or
- (2) a legal person managed by a single natural person;

it must have alternative arrangements in place which ensure sound and prudent management of the *firm*.

[**Note:** article 9(4) second paragraph of *MiFID*]

4.3 Responsibility of senior personnel

4.3.1 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)), when allocating functions internally, must ensure that *senior personnel* and, where appropriate, the *supervisory function*, are responsible for ensuring that the *firm* complies with its obligations under the *regulatory system*. In particular, *senior personnel* and, where appropriate, the *supervisory function* must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the *firm's* obligations under the *regulatory system* and take appropriate measures to address any deficiencies.

[**Note:** article 9(1) of the *MiFID 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)), must ensure that:

- (1) ~~that~~ its *senior personnel* receive on a frequent basis, and at least annually, written reports on the matters covered by SYSC 6.1.2R to SYSC 6.1.5R, SYSC 6.2.1R and SYSC 7.1.2R, SYSC 7.1.3R and SYSC 7.1.5R to SYSC 7.1.7R, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and
- (2) the *supervisory function*, if any, ~~must receive~~ receives on a regular basis written reports on the same matters.

[**Note:** article 9(2) and article 9(3) of the *MiFID implementing Directive*]

4.3.2A G Other *firms* should take account of the written reports rule (SYSC 4.3.2R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

4.3.3 G The *supervisory function* does not include a general meeting of the

shareholders of a ~~common-platform~~ firm, or equivalent bodies, but could involve, for example, a separate supervisory board within a two-tier board structure or the establishment of a non-executive committee of a single-tier board structure.

4.3.4 G [deleted]

Insert the following new section after SYSC 4.3. The text is not shown underlined.

4.4 Apportionment of responsibilities

Application

- 4.4.1 R This section applies to:
- (1) an *authorised professional firm* in respect of its *non-mainstream regulated activities* unless the *firm* is also conducting other *regulated activities* and has appointed *approved persons* to perform the *governing functions* with equivalent responsibilities for the *firm's non-mainstream regulated activities* and other *regulated activities*;
 - (2) an *oil market participant*;
 - (3) a *service company*;
 - (4) an *energy market participant*;
 - (5) a wholly-owned subsidiary of:
 - (a) a local authority; or
 - (b) a registered social landlord;
 - (6) a *firm* with *permission* to carry on *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity*;
 - (7) an *incoming Treaty firm*, an *incoming EEA firm* or a *UCITS qualifier* (but only SYSC 4.4.5R(2) applies for these *firms*); and
 - (8) a *sole trader*, but only if he employs any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements).

- 4.4.2 G This section does not apply to a *common platform firm*.

Maintaining a clear and appropriate apportionment

- 4.4.3 R A *firm* must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its *directors* and *senior managers* in such a way that:
- (1) it is clear who has which of those responsibilities; and
 - (2) the business and affairs of the *firm* can be adequately monitored and controlled by the *directors*, relevant *senior managers* and *governing body* of the *firm*.

4.4.4 G The role undertaken by a *non-executive director* will vary from one *firm* to another. Where a *non-executive director* is an *approved person*, for example where the *firm* is a *body corporate*, his responsibility and therefore liability will be limited by the role that he undertakes. Provided that he has personally taken due care in his role, a *non-executive director* would not be held disciplinarily liable either for the failings of the *firm* or for those of individuals within the *firm*. The *non-executive director* function, for the purposes of the *approved persons* regime is described in SUP 10.

Allocating functions of apportionment and oversight

4.4.5 R A *firm* must appropriately allocate to one or more individuals, in accordance with the following table, the functions of:

- (1) dealing with the apportionment of responsibilities under SYSC 4.4.3R; and
- (2) overseeing the establishment and maintenance of systems and controls under SYSC 4.1.1R.

1: Firm type	2: Allocation of both functions must be to the following individual, if any (see Note):	3: Allocation to one or more individuals selected from this column is compulsory if there is no allocation to an individual in column 2, but is otherwise optional and additional:
(1) A <i>firm</i> which is a <i>body corporate</i> and is a member of a <i>group</i> , other than a <i>firm</i> in row (2)	(1) the <i>firm's chief executive</i> (and all of them jointly, if more than one); or	the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i>
	(2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of: (a) the <i>group</i> ; or (b) a <i>group</i> division within which some or all of the <i>firm's regulated activities</i> fall	
(2) An <i>incoming EEA firm</i> or <i>incoming Treaty</i>	(not applicable)	the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and

<i>firm</i> (note: only the functions in SYSC 4.4.5R(2) must be allocated)		(2) <i>senior managers</i>
(3) Any other <i>firm</i>	the <i>firm's chief executive</i> (and all of them jointly, if more than one)	the <i>firm's</i> and its <i>group's</i> : (1) <i>directors</i> ; and (2) <i>senior managers</i>
Note: Column 2 does not require the involvement of the <i>chief executive</i> or other executive <i>director</i> or <i>senior manager</i> in an aspect of corporate governance if that would be contrary to generally accepted principles of good corporate governance.		

4.4.6 G Frequently asked questions about allocation of functions in SYSC 4.4.5R

Question		Answer
1	Does an individual to whom a function is allocated under SYSC 4.4.5R need to be an <i>approved person</i> ?	An individual to whom a function is allocated under SYSC 4.4.5R will be performing the <i>apportionment and oversight function</i> (CF 8, see SUP 10.7.1R) and an application must be made to the FSA for approval of the individual before the function is performed under section 59 of the Act (Approval for particular arrangements). There are exceptions from this in SUP 10.1 (Approved persons - Application).
2	If the allocation is to more than one individual, can they perform the functions, or aspects of the functions, separately?	If the functions are allocated to joint <i>chief executives</i> under SYSC 4.4.5R, column 2, they are expected to act jointly. If the functions are allocated to an individual under SYSC 4.4.5R, column 2, in addition to individuals under SYSC 4.4.5R, column 3, the former may normally be expected to perform a leading role in relation to the functions that reflects his position. Otherwise, yes.
3	What is meant by “appropriately allocate” in this context?	The allocation of functions should be compatible with delivering compliance with <i>Principle 3</i> , SYSC 4.4.3R and SYSC 4.1.1R. The FSA considers that allocation to one or two individuals is likely to be appropriate for most <i>firms</i> .

4	If a committee of management governs a <i>firm</i> or <i>group</i> , can the functions be allocated to every member of that committee?	Yes, as long as the allocation remains appropriate (see Question 3). If the <i>firm</i> also has an individual as <i>chief executive</i> , then the functions must be allocated to that individual as well under SYSC 4.4.5R, column 2 (see Question 7).
5	Does the definition of <i>chief executive</i> include the possessor of equivalent responsibilities with another title, such as a managing <i>director</i> or managing <i>partner</i> ?	Yes.
6	Is it possible for a <i>firm</i> to have more than one individual as its <i>chief executive</i> ?	Although unusual, some <i>firms</i> may wish the responsibility of a <i>chief executive</i> to be held jointly by more than one individual. In that case, each of them will be a <i>chief executive</i> and the functions must be allocated to all of them under SYSC 4.4.5R, column 2 (see also Questions 2 and 7).
7	If a <i>firm</i> has an individual as <i>chief executive</i> , must the functions be allocated to that individual?	<p>Normally, yes, under SYSC 4.4.5R, column 2.</p> <p>But if the <i>firm</i> is a <i>body corporate</i> and a member of a <i>group</i>, the functions may, instead of being allocated to the <i>firm's chief executive</i>, be allocated to a <i>director</i> or <i>senior manager</i> from the <i>group</i> responsible for the overall management of the <i>group</i> or of a relevant <i>group</i> division, so long as this is appropriate (see Question 3). Such individuals will nevertheless require approval by the <i>FSA</i> (see Question 1).</p> <p>If the <i>firm</i> chooses to allocate the functions to a <i>director</i> or <i>senior manager</i> responsible for the overall management of a relevant <i>group</i> division, the <i>FSA</i> would expect that individual to be of a seniority equivalent to or greater than a <i>chief executive</i> of the <i>firm</i> for the allocation to be appropriate.</p> <p>See also Question 14.</p>
8	If a <i>firm</i> has a <i>chief executive</i> , can the functions be allocated to other individuals in	Yes. SYSC 4.4.5R, column 3, permits a <i>firm</i> to allocate the functions, additionally, to the <i>firm's</i> (or where applicable the <i>group's</i>) <i>directors</i> and <i>senior managers</i> as long as this is

	addition to the <i>chief executive</i> ?	appropriate (see Question 3).
9	What if a <i>firm</i> does not have a <i>chief executive</i> ?	<p>Normally, the functions must be allocated to one or more individuals selected from the <i>firm's</i> (or where applicable the <i>group's</i>) <i>directors</i> and <i>senior managers</i> under SYSC 4.4.5R, column 3.</p> <p>But if the <i>firm</i>:</p> <p>(1) is a <i>body corporate</i> and a member of a <i>group</i>; and</p> <p>(2) the <i>group</i> has a <i>director</i> or <i>senior manager</i> responsible for the overall management of the <i>group</i> or of a relevant <i>group</i> division;</p> <p>then the functions must be allocated to that individual (together, optionally, with individuals from column 3 if appropriate) under SYSC 4.4.5R, column 2.</p>
10	What do you mean by “ <i>group</i> division within which some or all of the <i>firm's regulated activities</i> fall”?	<p>A “division” in this context should be interpreted by reference to geographical operations, product lines or any other method by which the <i>group's</i> business is divided.</p> <p>If the <i>firm's regulated activities</i> fall within more than one division and the <i>firm</i> does not wish to allocate the functions to its <i>chief executive</i>, the allocation must, under SYSC 4.4.5R, be to:</p> <p>(1) a <i>director</i> or <i>senior manager</i> responsible for the overall management of the <i>group</i>; or</p> <p>(2) a <i>director</i> or <i>senior manager</i> responsible for the overall management of one of those divisions;</p> <p>together, optionally, with individuals from column 3 if appropriate. (See also Questions 7 and 9.)</p>
11	How does the requirement to allocate the functions in SYSC 4.4.5R apply to an <i>overseas firm</i> which is not an <i>incoming EEA firm</i> , <i>incoming Treaty firm</i> or	<p>The <i>firm</i> must appropriately allocate those functions to one or more individuals, in accordance with SYSC 4.4.5R, but:</p> <p>(1) The responsibilities that must be apportioned and the systems and controls that must be overseen are those relating to activities</p>

	<p><i>UCITS qualifier?</i></p>	<p>carried on from a <i>UK</i> establishment with certain exceptions (see <i>SYSC 1 Annex 1.1.8R</i>). Note that <i>SYSC 1 Annex 1.1.10R</i> does not extend the territorial scope of <i>SYSC 4.4</i> for an <i>overseas firm</i>.</p> <p>(2) The <i>chief executive</i> of an <i>overseas firm</i> is the <i>person</i> responsible for the conduct of the <i>firm's</i> business within the <i>United Kingdom</i> (see the definition of “<i>chief executive</i>”). This might, for example, be the manager of the <i>firm's UK</i> establishment, or it might be the <i>chief executive</i> of the <i>firm</i> as a whole, if he has that responsibility.</p> <p>The <i>apportionment and oversight function</i> applies to such a <i>firm</i>, unless it falls within a particular exception from the <i>approved persons</i> regime (see Question 1).</p>
12	<p>How does the requirement to allocate the functions in <i>SYSC 4.4.5R</i> apply to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i>?</p>	<p><i>SYSC 1 Annex 1.1.1R(2)</i> and <i>SYSC 1 Annex 1.1.8R</i> restrict the application of <i>SYSC 4.4.5R</i> for such a <i>firm</i>. Accordingly:</p> <p>(1) Such a <i>firm</i> is not required to allocate the function of dealing with apportionment in <i>SYSC 4.4.5R(1)</i>.</p> <p>(2) Such a <i>firm</i> is required to allocate the function of oversight in <i>SYSC 4.4.5R(2)</i>. However, the systems and controls that must be overseen are those relating to matters which the <i>FSA</i>, as <i>Host State regulator</i>, is entitled to regulate (there is <i>guidance</i> on this in <i>SUP 13A Annex 2G</i>). Those are primarily, but not exclusively, the systems and controls relating to the conduct of the <i>firm's</i> activities carried on from its <i>UK branch</i>.</p> <p>(3) Such a <i>firm</i> need not allocate the function of oversight to its <i>chief executive</i>; it must allocate it to one or more <i>directors</i> and <i>senior managers</i> of the <i>firm</i> or the <i>firm's group</i> under <i>SYSC 4.4.5R</i>, row (2).</p> <p>(4) An <i>incoming EEA firm</i> which has provision only for <i>cross border services</i> is not required to allocate either function if it does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>; for example if they fall within the overseas persons exclusions in article 72 of the <i>Regulated</i></p>

		<p><i>Activities Order.</i></p> <p>See also Questions 1 and 15.</p>
13	<p>What about a <i>firm</i> that is a <i>partnership</i> or a <i>limited liability partnership</i>?</p>	<p>The <i>FSA</i> envisages that most if not all <i>partners</i> or members will be either <i>directors</i> or <i>senior managers</i>, but this will depend on the constitution of the <i>partnership</i> (particularly in the case of a limited <i>partnership</i>) or <i>limited liability partnership</i>. A <i>partnership</i> or <i>limited liability partnership</i> may also have a <i>chief executive</i> (see Question 5). A <i>limited liability partnership</i> is a <i>body corporate</i> and, if a member of a <i>group</i>, will fall within <i>SYSC</i> 4.4.5R, row (1) or (2).</p>
14	<p>What if generally accepted principles of good corporate governance recommend that the <i>chief executive</i> should not be involved in an aspect of corporate governance?</p>	<p>The Note to <i>SYSC</i> 4.4.5R provides that the <i>chief executive</i> or other executive director or <i>senior manager</i> need not be involved in such circumstances. For example, the Combined Code developed by the Committee on Corporate Governance recommends that the board of a listed company should establish an audit committee of non-executive directors to be responsible for oversight of the audit. That aspect of the oversight function may therefore be allocated to the members of such a committee without involving the <i>chief executive</i>. Such individuals may require approval by the <i>FSA</i> in relation to that function (see Question 1).</p>
15	<p>What about <i>incoming electronic commerce activities</i> carried on from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i>?</p>	<p><i>SYSC</i> does not apply to an <i>incoming ECA provider</i> acting as such.</p>

Amend SYSC 5 as shown (unamended paragraphs are included to assist readers).

5.1 Skills, knowledge and expertise

5.1.1 R A ~~common platform~~ 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*]

5.1.2 G A firm's systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it. This includes assessing an individual's honesty and competence. This assessment should normally be made at the point of recruitment. An individual's honesty need not normally be revisited unless something happens to make a fresh look appropriate.

5.1.3 G Any assessment of an individual's suitability should take into account the level of responsibility that the individual will assume within the firm. The nature of this assessment will generally differ depending upon whether it takes place at the start of the individual's recruitment, at the end of the probationary period (if there is one) or subsequently.

5.1.4 G The Training and Competence sourcebook (*TC*) contains additional *rules* and *guidance* relating to specified retail activities undertaken by a firm.

5.1.4A G Firms which are carrying on activities that are not subject to *TC* may nevertheless wish to take *TC* into account in complying with the training and competence requirements in *SYSC*.

5.1.5 G The requirements on firms with respect to *approved persons* are in Part V of the *Act* (Performance of regulated activities) and *SUP* 10.

5.1.5A G If a firm requires *employees* who are not subject to an examination requirement in *TC* to pass a relevant examination from the list of recommended examinations maintained by the Financial Services Skills Council, 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*.

Segregation of functions

5.1.6 R A common platform firm 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 functions soundly, honestly and professionally.

[**Note:** article 5(1)(g) of the *MiFID implementing Directive*]

5.1.7 R The *senior personnel* of a common platform firm must define arrangements concerning the segregation of duties within the firm and the prevention of conflicts of interest.

[**Note:** annex V paragraph 1 of the *Banking Consolidation Directive*]

- 5.1.7A G Other *firms* should take account of the segregation of functions rules (SYSC 5.1.6R and 5.1.7R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- 5.1.8 G The effective segregation of duties is an important element in the *internal controls* of a *firm* in the *prudential context*. In particular, it helps to ensure that no one individual is completely free to commit a *firm’s* assets or incur liabilities on its behalf. Segregation can also help to ensure that a *firm’s governing body* receives objective and accurate information on financial performance, the risks faced by the *firm* and the adequacy of its systems.
- 5.1.9 G A ~~*common platform*~~ *firm* should normally ensure that no single individual has unrestricted authority to do all of the following:
- (1) initiate a transaction;
 - (2) bind the *firm*;
 - (3) make payments; and
 - (4) account for it.
- 5.1.10 G Where a ~~*common platform*~~ *firm* is unable to ensure the complete segregation of duties (for example, because it has a limited number of staff), it should ensure that there are adequate compensating controls in place (for example, frequent review of an area by relevant *senior managers*).
- 5.1.11 G Where a *common platform firm* outsources its internal audit function, it should take reasonable steps to ensure that every individual involved in the performance of this service is independent from the individuals who perform its external audit. This should not prevent services from being undertaken by a *firm’s* external auditors provided that:
- (1) the work is carried out under the supervision and management of the *firm’s* own internal staff; and
 - (2) potential conflicts of interest between the provision of external audit services and the provision of internal audit are properly managed.

Awareness of procedures

- 5.1.12 R A *common platform firm* 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)(d) of the *MiFID implementing Directive*]

- 5.1.12A G Other *firms* should take account of the *rule concerning awareness of procedures* (SYSC 5.1.12R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex

1.3.3R.

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*]

- 5.1.14 R A *common platform firm* 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*]

- 5.1.15 G Other *firms* should take account of the *rule* requiring monitoring and evaluation of the adequacy and effectiveness of systems (SYSC 5.1.14R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

Amend SYSC 6 as shown (unamended paragraphs are included to assist readers).

6.1 Compliance

- 6.1.1 R A ~~*common platform 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 applicable, *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*]

- 6.1.2 R A *common platform firm* must, taking ~~in to~~ into account the nature, scale and complexity of its business, and the nature and range of *investment 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*.

[**Note:** article 6(1) of the *MiFID implementing Directive*]

- 6.1.2A G Other firms should take account of the adequate policies and procedures rule (SYSC 6.1.2R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- 6.1.3 R A *common platform firm* 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;
 - (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*]
- 6.1.3A G (1) Other firms should take account of the compliance function rule (SYSC 6.1.3R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- (2) Notwithstanding SYSC 6.1.3R, as it applies under (1), depending on the nature, scale and complexity of its business, it may be appropriate for a firm to have a separate compliance function. Where a firm has a separate compliance function the firm should also take into account SYSC 6.1.3R and 6.1.4R as guidance.
- 6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a *common platform firm* 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 functions 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*]
- 6.1.4A R (1) A firm which is not a common platform firm and which carries on designated investment business with or for retail clients or

professional clients must allocate to a *director* or *senior manager* the function of:

- (a) having responsibility for oversight of the *firm's* compliance; and
- (b) reporting to the *governing body* in respect of that responsibility.

(2) In SYSC 6.1.4AR(1) “compliance” means compliance with the rules in:

- (a) COBS (Conduct of Business sourcebook);
- (b) COLL (Collective Investment Schemes sourcebook) and CIS (Collective Investment Schemes sourcebook) (where appropriate); and
- (c) CASS (Client Assets sourcebook).

6.1.5 R A *common platform firm* 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*]

6.1.6 G Other *firms* should take account of the proportionality rule (SYSC 6.1.5R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

6.2 Internal audit

6.2.1 R A *common platform firm* 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* 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:

- (1) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the *firm's* systems, internal control mechanisms and arrangements;
- (2) to issue recommendations based on the result of work carried out in accordance with (1);
- (3) to verify compliance with those recommendations;

- (4) to report in relation to internal audit matters in accordance with SYSC 4.3.2R.

[**Note:** article 8 of the *MiFID implementing Directive*]

- 6.2.1A G Other firms should take account of the internal audit rule (SYSC 6.2.1R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.
- 6.2.2 G The term ‘internal audit function’ in SYSC 6.2.1R (and SYSC 4.1.11G) refers to the generally understood concept of internal audit within a *common platform firm*, that is, 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).
- 6.3 Financial crime**
- 6.3.1 R A *common platform firm* must ensure the policies and procedures established under SYSC 6.1.1R include systems and controls that:
- (1) enable it to identify, assess, monitor and manage *money laundering* risk; and
 - (2) are comprehensive and proportionate to the nature, scale and complexity of its activities.
- 6.3.2 G “*Money laundering* risk” is the risk that a firm may be used to further *money laundering*. Failure by a firm to manage this risk effectively will increase the risk to society of crime and terrorism.
- 6.3.3 R A *common platform firm* must carry out a regular assessment of the adequacy of these systems and controls to ensure that ~~it continues~~ they continue to comply with SYSC 6.3.1R.
- 6.3.4 G A *common platform firm* may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the Money Laundering Regulations. SYSC 6.1.1R and SYSC 6.3.1R to SYSC 6.3.10G are not relevant for the purposes of regulation 3(3) of the Money Laundering Regulations, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.
- 6.3.5 G The FSA, when considering whether a breach of its rules on systems and controls against *money laundering* has occurred, will have regard to whether a *common platform firm* has followed relevant provisions in the guidance for the *United Kingdom* financial sector issued by the Joint Money Laundering Steering Group.
- 6.3.6 G In identifying its *money laundering* risk and in establishing the nature of

these systems and controls, a ~~common platform~~ firm should consider a range of factors, including:

- (1) its customer, product and activity profiles;
- (2) its distribution channels;
- (3) the complexity and volume of its transactions;
- (4) its processes and systems; and
- (5) its operating environment.

6.3.7 G A ~~common platform~~ firm should ensure that the systems and controls include:

- (1) appropriate training for its employees in relation to *money laundering*;
- (2) appropriate provision of information to its *governing body* and senior management, including a report at least annually by that *firm's money laundering reporting officer (MLRO)* on the operation and effectiveness of those systems and controls;
- (3) appropriate documentation of its risk management policies and risk profile in relation to *money laundering*, including documentation of its application of those policies (see SYSC 9);
- (4) appropriate measures to ensure that *money laundering* risk is taken into account in its day-to-day operation, including in relation to:
 - (a) the development of new products;
 - (b) the taking-on of new customers; and
 - (c) changes in its business profile; and
- (5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to its services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

6.3.8 R A ~~common platform~~ firm must allocate to a *director* or *senior manager* (who may also be the *money laundering reporting officer*) overall responsibility within the *firm* for the establishment and maintenance of effective anti-*money laundering* systems and controls.

The money laundering reporting officer

6.3.9 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 purposes)) must:

- (1) appoint an individual as *MLRO*, with responsibility for oversight of its compliance with the *FSA's rules* on systems and controls against *money laundering*; and
 - (2) ensure that its *MLRO* has a level of authority and independence within the *firm* and access to resources and information sufficient to enable him to carry out that responsibility.
- 6.3.10 G The job of the *MLRO* within a *firm* is to act as the focal point for all activity within the *firm* relating to *anti-money laundering*. The *FSA* expects that a *firm's MLRO* will be based in the *United Kingdom*.

Amend SYSC 7 as shown (unamended paragraphs are included to assist readers).

7.1 Risk control

7.1.1 G SYSC 4.1.1R requires a ~~*common platform firm*~~ *firm* to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to.

7.1.2 R A *common platform firm* must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the *firm's* activities, processes and systems, and where appropriate, set the level of risk tolerated by the *firm*.

[**Note:** article 7(1)(a) of the *MiFID implementing Directive*, article 13(5) second paragraph of *MiFID*]

7.1.2A G Other *firms* should take account of the risk management policies and procedures rule (SYSC 7.1.2R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

7.1.3 R A *common platform firm* must adopt effective arrangements, processes and mechanisms to manage the risk relating to the *firm's* activities, processes and systems, in light of that level of risk tolerance.

[**Note:** article 7(1)(b) of the *MiFID implementing Directive*]

7.1.4 R The *senior personnel* of a *common platform firm* must approve and periodically review the strategies and policies for taking up, managing, monitoring and mitigating the risks the *firm* is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.

[**Note:** annex V paragraph 2 of the *Banking Consolidation Directive*]

7.1.4A G Other *firms* should take account of the risk management rules (SYSC 7.1.3R and SYSC 7.1.4R) as if they were *guidance* (and as if “should” appeared in

those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 7.1.5 R A *common platform firm* must monitor the following:
- (1) the adequacy and effectiveness of the *firm’s* risk management policies and procedures;
 - (2) the level of compliance by the *firm* and its *relevant persons* with the arrangements, processes and mechanisms adopted in accordance with SYSC 7.1.3R;
 - (3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the *relevant persons* to comply with such arrangements or processes and mechanisms or follow such policies and procedures.

[**Note:** article 7(1)(c) of the *MiFID implementing Directive*]

- 7.1.6 R A *common platform firm* must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the *investment services and activities* undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:
- (1) implementation of the policies and procedures referred to in SYSC 7.1.2R to SYSC 7.1.5R; and
 - (2) provision of reports and advice to *senior personnel* in accordance with SYSC 4.3.2R.

[**Note:** *MiFID implementing Directive* Article 7(2) first paragraph]

- 7.1.7 R Where a *common platform firm* is not required under SYSC 7.1.6R to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with SYSC 7.1.2R to SYSC 7.1.5R satisfy the requirements of those *rules* and are consistently effective.

[**Note:** article 7(2) second paragraph of the *MiFID implementing Directive*]

- 7.1.7A G Other firms should take account of the risk management rules (SYSC 7.1.5R to 7.1.7R) as if they were guidance (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 7.1.8 G (1) SYSC 4.1.3G requires a *BIPRU firm* to ensure that its internal control mechanisms and administrative and accounting procedures permit the verification of its compliance with *rules* adopted in accordance with the *Capital Adequacy Directive* at all times. In complying with this obligation, a *BIPRU firm* should document the organisation and responsibilities of its risk management function and it should document its risk management framework setting out how the risks

in the business are identified, measured, monitored and controlled.

- (2) The term ‘risk management function’ in SYSC 7.1.6R and SYSC 7.1.7R refers to the generally understood concept of risk assessment within a ~~common platform~~ firm, that is, the function of setting and controlling risk exposure. The risk management function is not a *controlled function* itself, but is part of the *systems and controls function* (CF28).

Credit and counterparty risk

- 7.1.9 R A *BIPRU firm* must base credit-granting on sound and well-defined criteria and clearly establish the process for approving, amending, renewing, and re-financing credits.

[**Note:** annex V paragraph 3 of the *Banking Consolidation Directive*]

- 7.1.10 R A *BIPRU firm* must operate through effective systems the ongoing administration and monitoring of its various credit risk-bearing portfolios and exposures, including for identifying and managing problem credits and for making adequate value adjustments and provisions.

[**Note:** annex V paragraph 4 of the *Banking Consolidation Directive*]

- 7.1.11 R A *BIPRU firm* must adequately diversify credit portfolios given its target market and overall credit strategy.

[**Note:** annex V paragraph 5 of the *Banking Consolidation Directive*]

- 7.1.12 G The documentation maintained by a *BIPRU firm* under SYSC 4.1.3R should include its policy for credit risk, including its risk appetite and provisioning policy and should describe how it measures, monitors and controls that risk. This should include descriptions of the systems used to ensure that the policy is correctly implemented.

Residual risk

- 7.1.13 R A *BIPRU firm* must address and control by means of written policies and procedures the risk that recognised credit risk mitigation techniques used by it prove less effective than expected.

[**Note:** annex V paragraph 6 of the *Banking Consolidation Directive*]

Market risk

- 7.1.14 R A *BIPRU firm* must implement policies and processes for the measurement and management of all material sources and effects of market risks.

[**Note:** annex V paragraph 10 of the *Banking Consolidation Directive*]

Interest rate risk

- 7.1.15 R A *BIPRU* firm must implement systems to evaluate and manage the risk arising from potential changes in interest rates as they affect a *BIPRU firm's* non-trading activities.

[**Note:** annex V paragraph 11 of the *Banking Consolidation Directive*]

Operational risk

- 7.1.16 R A *BIPRU firm* must implement policies and processes to evaluate and manage the exposure to operational risk, including to low-frequency high severity events. Without prejudice to the definition of *operational risk*, *BIPRU firms* must articulate what constitutes operational risk for the purposes of those policies and procedures.

[**Note:** annex V paragraph 12 of the *Banking Consolidation Directive*]

Amend SYSC 8 as shown (unamended paragraphs are included to assist readers).

8.1 General outsourcing requirements

- 8.1.1 R A *common platform firm* must:
- (1) when relying on a third party for the performance of operational functions which are critical for the performance of *regulated activities, listed activities* or *ancillary services* (in this chapter “relevant services and activities”) on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk;
 - (2) not undertake the *outsourcing* of important operational functions in such a way as to impair materially:
 - (a) the quality of its internal control; and
 - (b) the ability of the *FSA* to monitor the *firm's* compliance with all obligations under the *regulatory system* and, if different, of a *competent authority* to monitor the *firm's* compliance with all obligations under *MiFID*.

[**Note:** article 13(5) first paragraph of *MiFID*]

- 8.1.1A G Other firms should take account of the outsourcing rule (SYSC 8.1.1R) as if it were guidance (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 8.1.2 G The application of SYSC 8.1 to relevant services and activities (see SYSC 8.1.1R(1)) is limited by SYSC ~~4.3~~ 1 Annex 1 (Part 2) (Application of the common platform requirements).

8.1.3 G SYSC 4.1.1R requires a ~~common-platform~~ firm to have effective processes to identify, manage, monitor and report risks and internal control mechanisms. Except in relation to those functions described in SYSC 8.1.5R, where a firm relies on a third party for the performance of operational functions which are not critical or important for the performance of relevant services and activities (see SYSC 8.1.1R(1)) on a continuous and satisfactory basis, it should take into account, in a manner that is proportionate given the nature, scale and complexity of the *outsourcing*, the *rules* in this section in complying with that requirement.

8.1.4 R For the purposes of this chapter an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a *common platform firm* with the conditions and obligations of its *authorisation* or its other obligations under the *regulatory system*, or its financial performance, or the soundness or the continuity of its relevant services and activities.

[**Note:** article 13(1) of the *MiFID implementing Directive*]

8.1.5 R Without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:

- (1) the provision to the *firm* of advisory services, and other services which do not form part of the relevant services and activities of the *firm*, including the provision of legal advice to the *firm*, the training of personnel of the *firm*, billing services and the security of the *firm's* premises and personnel;
- (2) the purchase of standardised services, including market information services and the provision of price feeds.

[**Note:** article 13(2) of the *MiFID implementing Directive*]

8.1.5A G Other firms should take account of the critical functions rules (SYSC 8.1.4R and SYSC 8.1.5R) as if they were guidance (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

8.1.6 R If a ~~common-platform~~ firm *outsources* critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the *regulatory system* and must comply, in particular, with the following conditions:

- (1) the *outsourcing* must not result in the delegation by *senior personnel* of their responsibility;
- (2) the relationship and obligations of the *firm* towards its *clients* under the *regulatory system* must not be altered;
- (3) the conditions with which the *firm* must comply in order to be *authorised*, and to remain so, must not be undermined;

- (4) none of the other conditions subject to which the *firm's* *authorisation* was granted must be removed or modified.

[**Note:** article 14(1) of the *MiFID implementing Directive*]

- 8.1.7 R A *common platform firm* must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the *outsourcing* to a service provider of critical or important operational functions or of any relevant services and activities.

[**Note:** article 14(2) first paragraph of the *MiFID implementing Directive*]

- 8.1.8 R A *common platform firm* must in particular take the necessary steps to ensure that the following conditions are satisfied:
- (1) the service provider must have the ability, capacity, and any *authorisation* required by law to perform the *outsourced* functions, services or activities reliably and professionally;
 - (2) the service provider must carry out the *outsourced* services effectively, and to this end the *firm* must establish methods for assessing the standard of performance of the service provider;
 - (3) the service provider must properly supervise the carrying out of the *outsourced* functions, and adequately manage the risks associated with the *outsourcing*;
 - (4) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;
 - (5) the *firm* must retain the necessary expertise to supervise the *outsourced* functions effectively and manage the risks associated with the *outsourcing* and must supervise those functions and manage those risks;
 - (6) the service provider must disclose to the *firm* any development that may have a material impact on its ability to carry out the *outsourced* functions effectively and in compliance with applicable laws and regulatory requirements;
 - (7) the *firm* must be able to terminate the arrangement for the *outsourcing* where necessary without detriment to the continuity and quality of its provision of services to *clients*;
 - (8) the service provider must co-operate with the *FSA* and any other relevant *competent authority* in connection with the *outsourced* activities;
 - (9) the *firm*, its auditors, the *FSA* and any other relevant *competent authority* must have effective access to data related to the *outsourced*

activities, as well as to the business premises of the service provider; and the *FSA* and any other relevant *competent authority* must be able to exercise those rights of access;

- (10) the service provider must protect any confidential information relating to the *firm* and its *clients*;
- (11) the *firm* and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary having regard to the function, service or activity that has been *outsourced*.

[**Note:** article 14(2) second paragraph of the *MiFID implementing Directive*]

- 8.1.9 R A *common platform firm* must ensure that the respective rights and obligations of the *firm* and of the service provider are clearly allocated and set out in a written agreement.

[**Note:** article 14(3) of the *MiFID implementing Directive*]

- 8.1.10 R If a *common platform firm* and the service provider are members of the same *group*, the *firm* may, for the purpose of complying with SYSC 8.1.7R to SYSC 8.1.11R and SYSC 8.2 and SYSC 8.3, take into account the extent to which the *common platform firm controls* the service provider or has the ability to influence its actions.

[**Note:** article 14(4) of the *MiFID implementing Directive*]

- 8.1.11 R A *common platform firm* must make available on request to the *FSA* and any other relevant *competent authority* all information necessary to enable the *FSA* and any other relevant *competent authority* to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *regulatory system*.

[**Note:** article 14(5) of the *MiFID implementing Directive*]

- 8.1.11A G Other *firms* should take account of the outsourcing of important operational functions rules (SYSC 8.1.7R to SYSC 8.1.11R) as if they were *guidance* (and as if “should” appeared in those rules instead of “must”) as explained in SYSC 1 Annex 1.3.3R.

- 8.1.12 G As SUP 15.3.8G explains, a ~~*common platform firm*~~ *firm* should notify the *FSA* when it intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities on a continuous and satisfactory basis.

[**Note:** recital 20 of the *MiFID implementing Directive*]

8.2 Outsourcing of portfolio management for retail clients to a non-EEA State

- 8.2.1 R (1) In addition to the requirements set out in the *MiFID outsourcing rules*, when a *MiFID investment firm* outsources the *investment service of portfolio management to retail clients* to a service provider located in a *non-EEA state*, it must ensure that the following conditions are satisfied:
- (a) the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;
 - (b) there must be an appropriate cooperation agreement between the *FSA* and the supervisor in the *non-EEA state*;

(in this chapter the “conditions”).

[**Note:** article 15(1) of the *MiFID implementing Directive*]

- (2) In addition to complying with the *common platform outsourcing rules*, if one or both of the conditions are not satisfied, a *MiFID investment firm* may enter into such an *outsourcing* only if it gives prior notification in writing to the *FSA* containing adequate details of the proposed *outsourcing* and the *FSA* does not object to that arrangement within a reasonable time following receipt of that notification.

[**Note:** article 15(2) and (4) of the *MiFID implementing Directive*]

- (3) For the purposes of this *rule* a “reasonable time” is within one month of receipt of a notification. However, the *FSA* may seek further information from the *MiFID investment firm* in relation to the *outsourcing* proposal if this is necessary to enable the *FSA* to make a decision. Any effect this may have on the *FSA*’s response time will be notified to the *MiFID investment firm* and that revised response time will constitute a reasonable time for the purposes of this *rule*.

8.2.2 [intentionally blank]

8.2.3 G The conditions do not apply if the *outsourcing* only concerns ancillary activities connected with *portfolio management*, for example IT processes or execution only activities.

8.2.4 G If a *firm* has received no notice of objection or no request for further information from the *FSA* within one month of the *FSA* receiving the notification, it may *outsource* the *portfolio management* on the basis set out in the notification.

8.2.5 G The *FSA* would use its powers under section 45 of the *Act* to vary a *firm*’s *permission* if it objected to such a notification.

Notification requirements: timing of notification

- 8.2.6 G A *firm* should only make an *outsourcing* proposal notification to the *FSA* after it has carried out due diligence on the service provider and has had regard to the guidance set out in *SYSC* 8.3. The *FSA* will expect a firm to only submit an *outsourcing* proposal notification in respect of a service provider that the *firm* has determined is suitable to carry on the *outsourcing* activity.

Notification requirements: content

- 8.2.7 G The *guidance* set out in *SYSC* 8.3 includes information on what the *FSA* will expect a firm to check before the submission of a notification.
- 8.2.8 G A notification under this section should include:
- (1) details on which of the conditions is not met;
 - (2) if applicable, details and evidence of the service provider's authorisation or regulation including the regulator's contact details;
 - (3) the *firm's* proposals for meeting its obligations under this chapter on an ongoing basis;
 - (4) why the *firm* wishes to *outsource* to the service provider;
 - (5) a draft of the *outsourcing* agreement between the service provider and the *firm*;
 - (6) the proposed start date of the *outsourcing*; and
 - (7) confirmation that the *firm* has had regard to the *guidance* in *SYSC* 8.3, or if it has not, why not.

Notification requirements - additional guidance

- 8.2.9 G Where the *FSA* has not objected to the *outsourcing* agreement, the *firm* should have regard to its obligations under *SUP* 15 which include making the *FSA* aware of any matters which could affect the *firm's* ability to provide adequate services to its *customers* or could result in serious detriment to its *customers* or where there has been material change in the information previously provided to the *FSA* in relation to the *outsourcing*.

8.3 Guidance on outsourcing portfolio management for retail clients to a non-EEA State

- 8.3.1 G This *guidance* is relevant regardless of whether a *firm* *outsources portfolio management* directly or indirectly via a third party. However, *firms* should note that they may notify a secondary or indirect *outsourcing* in the same

notification as the direct *outsourcing*.

- 8.3.2 G This *guidance* sets out examples of the type of actions that a firm proposing to *outsource* should have undertaken when assessing the suitability of the service provider and its ability to carry on the outsourced activity.

[**Note:** article 15(3) of the *MiFID implementing Directive*]

- 8.3.3 G If a *firm* can demonstrate that it has taken the following guidance into account and has satisfactorily concluded that it would be able to continue to satisfy the common platform *outsourcing* rules and provide adequate protection for consumers despite not satisfying the conditions, the FSA would not be likely to object to that *outsourcing*.

- 8.3.4 G If the *outsourcing* allows the service provider to sub-contract any of the services to be provided under the *outsourcing*, any such sub-contracting shall not affect the service provider's responsibilities under the *outsourcing* agreement.

- 8.3.5 G The *outsourcing* agreement should entitle the *firm* to terminate the *outsourcing* if the service provider undergoes a change of control or becomes insolvent, goes into liquidation or receivership (or equivalent in its home state) or is in persistent material default under the agreement.

- 8.3.6 G The following should be taken into account where the service provider is not authorised or registered in its home country and/or not subject to prudential supervision.

- (1) The *firm* should examine, and be able to demonstrate, to what extent the service provider may be subject to any form of voluntary regulation, including self-regulation in its home state.
- (2) The *firm* should be able to satisfy the *FSA* that the service provider is committed for the term of the *outsourcing* agreement to devoting sufficient, competent resources to providing the service.
- (3) In addition to the requirement to ensure that a service provider discloses any developments that may have a material impact on its ability to carry out the *outsourcing* (*SYSC* 8.1.8R(6)), where the conditions are not met the developments to be disclosed should include, but are not limited to:
 - (a) any adverse effect that any laws or regulations introduced in the service provider's home country may have on its carrying on the *outsourced* activity; and
 - (b) any changes to its capital reserve levels or its prudential risks.
- (4) The *firm* should satisfy itself that the service provider is able to meet its liabilities as they fall due and that it has positive net assets.

- (5) The *firm* should require that the service provider prepares annual reports and accounts which:
 - (a) are in accordance with the service provider's national law which, in all material respects, is the same as or equivalent to the *international accounting standards*;
 - (b) have been independently audited and reported on in accordance with the service provider's national law which is the same as or equivalent to international auditing standards.
- (6) The *firm* should receive copies of each set of the audited annual report and accounts of the service provider. If the service provider expects or knows its auditor will qualify his report on the audited report and accounts, or add an explanatory paragraph, the service provider should be required to notify the *firm* without delay.
- (7) The *firm* should satisfy itself, and be able to demonstrate, that it has in place appropriate procedures to ensure that it is fully aware of the service provider's controls for protecting confidential information.
- (8) In addition to the requirement at SYSC 8.1.8R(10) that the service provider must protect any confidential information relating to the *firm* or its *clients*, the *outsourcing* agreement should require the service provider to notify the *firm* immediately if there is a breach of confidentiality.
- (9) The *outsourcing* agreement should be governed by the law and subject to the jurisdiction of an *EEA state*.

8.3.7 G The following should be taken into account by a *firm* where there is no cooperation agreement between the *FSA* and the supervisory authority of the service provider or there is no supervisory authority of the service provider.

- (1) The *outsourcing* agreement should ensure the *firm* can provide the *FSA* with any information relating to the *outsourced* activity the *FSA* may require in order to carry out effective supervision. The *firm* should therefore assess the extent to which the service provider's regulator and/or local laws and regulations may restrict access to information about the *outsourced* activity. Any such restriction should be described in the notification to be sent to the *FSA*.
- (2) The *outsourcing* agreement should require the service provider to provide the *firm's* offices in the ~~UK~~ *United Kingdom* with all requested information required to meet the *firm's* regulatory obligations. The *FSA* should be given an enforceable right under the agreement to obtain such information from the *firm* and to require the service provider to provide the information directly.

Amend SYSC 9 as shown (unamended paragraphs are included to assist readers).

9.1 General rules on record-keeping

9.1.-1 R [deleted]

9.1.-2 R [deleted]

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* 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*]

9.1.2 R A *common platform firm* must retain all records kept by it under this chapter in relation to its *MiFID business* for a period of at least five years.

[**Note:** article 51 (1) of the *MiFID implementing Directive*]

9.1.3 R In relation to its *MiFID business*, a *common platform firm* must retain records in a medium that allows the storage of information in a way accessible for future reference by the *FSA* or any other relevant *competent authority* under *MiFID*, and so that the following conditions are met:

- (1) the *FSA* or any other relevant *competent authority* under *MiFID* must be able to access them readily and to reconstitute each key stage of the processing of each transaction;
- (2) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments, to be easily ascertained;
- (3) it must not be possible for the records otherwise to be manipulated or altered.

[**Note:** article 51(2) of the *MiFID implementing Directive*]

Guidance on record-keeping

9.1.4 G Subject to any other record-keeping *rule* in the *Handbook*, the records required under the *Handbook* should be capable of being reproduced in the English language on paper. Where a *firm* is required to retain a record of a communication that was not made in the English language, it may retain it in that language. However, it should be able to provide a translation on request. If a *firm's* records relate to business carried on from an establishment in a country or territory outside the *United Kingdom*, an

official language of that country or territory may be used instead of the English language.

- 9.1.5 G In relation to the retention of records for non-*MiFID business*, a *firm* should have appropriate systems and controls in place with respect to the adequacy of, access to, and the security of its records so that the *firm* may fulfil its regulatory and statutory obligations. With respect to retention periods, the general principle is that records should be retained for as long as is relevant for the purposes for which they are made.
- 9.1.6 G Schedule 1 to each module of the *Handbook* sets out a list summarising the record-keeping requirements of that module.
- [**Note:** article 51(3) of *MiFID implementing Directive*]
- 9.1.7 G The Committee of European Securities Regulators (CESR) has issued recommendations on the list of minimum records under Article 51(3) of the *MiFID implementing Directive*. This can be found at: http://www.fsa.gov.uk/pubs/other/CESR_Minimum_List_Recommendations.pdf.

Amend SYSC 10 as shown (unamended paragraphs are included to assist readers).

10.1 Conflicts of interest

Application

- 10.1.1 R This section applies to a ~~*common platform*~~ *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*).

Requirements only apply if a service is provided

- 10.1.2 G The requirements in this section only apply where a service is provided by a ~~*common platform*~~ *firm*. The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

[**Note:** Recital 25 of *MiFID implementing Directive*]

Identifying conflicts

- 10.1.3 R A ~~*common platform*~~ *firm* must take all reasonable steps to identify conflicts of interest between:
- (1) the *firm*, including its managers, employees, *appointed representatives* (or, where applicable, *tied agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the

firm; or

- (2) one *client* of the *firm* and another *client*;

that arise or may arise in the course of the *firm* providing any service referred to in SYSC 10.1.1R.

[**Note:** Article 18(1) of *MiFID*]

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* 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*:
- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
 - (2) has an interest in the outcome of a service provided to the *client* or of a transaction carried out on behalf of the *client*, which is distinct from the *client*'s interest in that outcome;
 - (3) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interests of the *client*;
 - (4) carries on the same business as the *client*; or
 - (5) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service.

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.

[**Note:** Article 21 of *MiFID implementing Directive*]

- 10.1.4A G Other *firms* should take account of the *rule* on the types of conflicts (see SYSC 10.1.4R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”) as explained in SYSC 1 Annex 1.3.3R, except when they produce or arrange the production of *investment research* in accordance with COBS 12.2, or produce or disseminate *non-independent research* in accordance with COBS 12.3 (see SYSC 10.1.16R).

- 10.1.5 G The circumstances which should be treated as giving rise to a conflict of interest should cover cases where there is a conflict between the interests of the *firm* or certain *persons* connected to the *firm* or the *firm*'s *group* and the duty the *firm* owes to a *client*; or between the differing interests of two or more of its *clients*, to whom the *firm* owes in each case a duty. It is not

enough that the *firm* may gain a benefit if there is not also a possible disadvantage to a *client*, or that one *client* to whom the *firm* owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such *client*.

[**Note:** Recital 24 of *MiFID implementing Directive*]

Record of conflicts

- 10.1.6 R A *common platform firm* must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of the *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*]

- 10.1.6A G Other *firms* should take account of the *rule* on records of conflicts (see SYSC 10.1.6R) as if it were *guidance* (and as if “should” appeared in that rule instead of “must”, as explained in SYSC 1 Annex 1.3.3R), except when they produce or arrange the production of *investment research* in accordance with COBS 12.2, or produce or disseminate *non-independent research* in accordance with COBS 12.3 (see SYSC 10.1.16R).

Managing conflicts

- 10.1.7 R A *common platform firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in SYSC 10.1.3R from constituting or giving rise to a material risk of damage to the interests of its *clients*.

[**Note:** Article 13(3) of *MiFID*]

Disclosure of conflicts

- 10.1.8 R (1) If arrangements made by a *common platform firm* under SYSC 10.1.7R to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the general nature and/or sources of conflicts of interest to the *client* before undertaking business for the *client*.
- (2) The disclosure must:
- (a) be made in a *durable medium*; and
 - (b) include sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the service in the context of which the conflict of interest arises.

[**Note:** Article 18(2) of *MiFID* and Article 22(4) of *MiFID implementing Directive*]

10.1.8A R The obligation in SYSC 10.1.8R(2)(a) does not apply to a firm when carrying on insurance mediation activity.

10.1.9 G ~~Common platform firms~~ Firms should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their *group's* activities under a comprehensive *conflicts of interest policy*. In particular, the disclosure of conflicts of interest by a *firm* should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under SYSC 10.1.7R. While disclosure of specific conflicts of interest is required by SYSC 10.1.8R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

[**Note:** Recital 27 of *MiFID implementing Directive*]

Conflicts policy

- 10.1.10 R (1) A *common platform firm* must establish, implement and maintain an effective conflicts of interest policy that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (2) Where the *common platform firm* 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*]

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*, 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
- (b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (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* and of the *group* to which it belongs, and to the materiality of the risk of damage to the interests of *clients*; and

- (b) include such of the following as are necessary and appropriate for the *common platform firm* to ensure the requisite degree of independence:
 - (i) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;
 - (ii) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
 - (iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities;
 - (v) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate services or activities where such involvement may impair the proper management of conflicts of interest.
- (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* 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*]

10.1.11A G Other *firms* should take account of the *rules* relating to *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R) as if they were *guidance*

(and as if “should” appeared in those rules instead of “must”, as explained in SYSC 1 Annex 1.3.3R), except when they produce or arrange the production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R).

- 10.1.12 G In drawing up a *conflicts of interest policy* which identifies circumstances which constitute or may give rise to a conflict of interest, a ~~common platform~~ firm should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the firm or a person directly or indirectly linked by *control* to the firm performs a combination of two or more of those activities.

[Note: Recital 26 of MiFID implementing Directive]

Corporate finance

- 10.1.13 G This section is relevant to the management of a *securities* offering by a ~~common platform~~ any firm.
- 10.1.14 G A ~~common platform~~ firm will wish to note that when carrying on a mandate to manage an offering of *securities*, the firm’s duty for that business is to its corporate finance *client* (in many cases, the corporate issuer or seller of the relevant *securities*), but that its responsibilities to provide services to its investment *clients* are unchanged.
- 10.1.15 G Measures that a ~~common platform~~ firm might wish to consider in drawing up its *conflicts of interest policy* in relation to the management of an offering of *securities* include:
- (1) at an early stage agreeing with its corporate finance *client* relevant aspects of the offering process such as the process the firm proposes to follow in order to determine what recommendations it will make about allocations for the offering; how the target investor group will be identified; how recommendations on allocation and pricing will be prepared; and whether the firm might place *securities* with its investment *clients* or with its own proprietary book, or with an associate, and how conflicts arising might be managed; and
 - (2) agreeing allocation and pricing objectives with the corporate finance *client*; inviting the corporate finance *client* to participate actively in the allocation process; making the initial recommendation for allocation to *retail clients* of the firm as a single block and not on a named basis; having internal arrangements under which senior personnel responsible for providing services to *retail clients* make the initial allocation recommendations for allocation to *retail clients* of the firm; and disclosing to the *issuer* details of the allocations actually made.

[**Note:** The provisions in SYSC 10.1 also implement *BCD* Article 22 and *BCD* Annex V paragraph 1]

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

- 10.1.16 R The *rules* relating to:
- (1) types of conflict (see SYSC 10.1.4R);
 - (2) records of conflicts (see SYSC 10.1.6R); and
 - (3) conflicts of interest policies (see SYSC 10.1.10R and SYSC 10.1.11R);
- also apply to a firm which is not a common platform firm when it produces, or arranges for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public in accordance with COBS 12.2, and when it produces or disseminates non-independent research in accordance with COBS 12.3.

10.2 Chinese walls

Application

- 10.2.1 R This section applies to ~~a common platform~~ any firm.

Control of information

- 10.2.2 R (1) When a ~~common platform~~ *firm* establishes and maintains a *Chinese wall* (that is, an arrangement that requires information held by a *person* in the course of carrying on one part of the business to be withheld from, or not to be used for, *persons* with or for whom it acts in the course of carrying on another part of its business) it may:
- (a) withhold or not use the information held; and
 - (b) for that purpose, permit *persons* employed in the first part of its business to withhold the information held from those employed in that other part of the business;
- but only to the extent that the business of one of those parts involves the carrying on of *regulated activities*, *ancillary activities* or, in the case of *MiFID business*, the provision of *ancillary services*.
- (2) Information may also be withheld or not used by a ~~common platform~~ *firm* when this is required by an established arrangement maintained between different parts of the business (of any kind) in the same *group*. This provision does not affect any requirement to transmit or use information that may arise apart from the *rules* in *COBS*.

- (3) For the purpose of this *rule*, “maintains” includes taking reasonable steps to ensure that the arrangements remain effective and are adequately monitored, and must be interpreted accordingly.
- (4) For the purposes of section 118A(5)(a) of the *Act*, behaviour conforming with paragraph (1) does not amount to market abuse.

Effect of rules

- 10.2.3 G SYSC 10.2.2R is made under section 147 of the *Act* (Control of information rules). It has the following effect:
- (1) acting in conformity with SYSC 10.2.2R(1) provides a defence against proceedings brought under section 397(2) or (3) of the *Act* (Misleading statements and practices) – see sections 397(4) and (5)(c);
 - (2) behaviour in conformity with SYSC 10.2.2R(1) does not amount to *market abuse* (see SYSC 10.2.2R(4)); and
 - (3) acting in conformity with SYSC 10.2.2R(1) provides a defence for a firm against *FSA* enforcement action, or an action for damages under section 150 of the *Act*, based on a breach of a relevant requirement to disclose or use this information.

Attribution of knowledge

- 10.2.4 R When any of the *rules* of *COBS* or *CASS* apply to a *common platform firm* that acts with knowledge, the *firm* will not be taken to act with knowledge for the purposes of that *rule* if none of the relevant individuals involved on behalf of the *firm* acts with that knowledge as a result of arrangements established under SYSC 10.2.2R.
- 10.2.5 G When a *common platform firm* manages a conflict of interest using the arrangements in SYSC 10.2.2R which take the form of a *Chinese wall*, individuals on the other side of the wall will not be regarded as being in possession of knowledge denied to them as a result of the *Chinese wall*.

Amend the following SYSC chapter titles as shown.

- 13 **Operational risk: systems and controls for insurers**
- 14 **Prudential risk management and associated systems and controls for insurers**
- 15 **Credit risk management systems and controls for insurers**
- 16 **Market risk management systems and controls for insurers**

Insert the following new Transitional Provision after TP1. The text is not underlined.

SYSC TP2

Firms other than common platform firms, insurers, managing agents and the Society

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: Coming into force
2.1	SYSC 8.1	R	If a <i>firm</i> other than a <i>common platform firm, insurer, managing agent</i> or the <i>Society</i> has in force on 1 April 2009 <i>outsourcing</i> arrangements which would be covered by SYSC 8.1 it need not amend those contracts to comply with these provisions but should comply with the new rules and guidance in respect of any <i>outsourcing</i> contracts which are entered into, or materially amended, on or after 1 April 2009.	1 April 2009 indefinitely	1 April 2009

Amend SYSC Schedule 5 as shown.

SYSC Sch 5 Rights of action for damages

...

SYSC Sch 5.4G

Chapter/ Appendix	Section/ Annex	Paragraph	Right of action under section 150		
			For private person	Removed?	For other person?
SYSC 2 and SYSC 3			No	Yes SYSC 1.1.12R <u>SYSC 1 Annex 1.1.12R</u>	No
SYSC 4 to SYSC 10			No	Yes SYSC 1.3.12R <u>SYSC 1 Annex 1.2.19R</u>	No
SYSC 11 to SYSC 18			No	Yes SYSC 1.4.2R	No

Annex B

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

3.1.7 G *Statements of Principle 1 to 4 apply to all approved persons. In the Statements of Principle and in the Code of Practice for Approved Persons, a reference to “his controlled function” is a reference to the controlled function to which the approval relates. A person performing a significant influence function is also subject to the additional requirements set out in Statements of Principle 5 to 7 in performing that controlled function. Those responsible under SYSC 2.1.3R or SYSC 4.4.5R (Apportionment of responsibilities) for the firm’s apportionment obligation will be specifically subject to Statement of Principle 5 (and see in particular APER 4.5.6E). In addition, it will be the responsibility of any such approved person to oversee that the firm has appropriate systems and controls under Statement of Principle 7 (and see in particular APER 4.7.3E).*

...

4.5.6 E In the case of an *approved person* who is responsible under SYSC 2.1.3R(1) or SYSC 4.4.5R(1) for dealing with the apportionment of responsibilities under SYSC 2.1.1R or SYSC 4.4.3R, failing to take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among the *firm’s directors* and senior managers falls within APER 4.5.2E.

...

4.7.3 E Failing to take reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems of control to comply with the relevant requirements and standards of the *regulatory system* in respect of its *regulated activities* falls within APER 4.7.2E. In the case of an *approved person* who is responsible, under SYSC 2.1.3R(2) or SYSC 4.4.5R(2), with overseeing the *firm’s* obligation under SYSC 3.1.1R or SYSC 4.1.1R, failing to take reasonable care to oversee the establishment and maintenance of appropriate systems and controls falls within APER 4.7.2E.

...

4.7.9 E In the case of the *money laundering reporting officer*, failing to discharge the responsibilities imposed on him by the *firm* in accordance with SYSC 3.2.6IR or SYSC 6.3.9R falls within APER 4.7.2E.

4.7.10 E In the case of an *approved person* performing a *significant influence function* responsible for compliance under SYSC 3.2.8R, SYSC 6.1.4R or

SYSC 6.1.4AR, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within *APER 4.7.2E* (see *APER 4.7.14G*).

Annex C

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

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

- 2.2.1 G In determining a *person's* competence and capability, the *FSA* will have regard to matters including but not limited to:
- ...
- (2) whether the *person* has demonstrated by experience and training that the *person* is ~~able~~ suitable, or will be ~~able~~ suitable if approved, to perform the *controlled function*.

Annex D

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

In this Annex, underlining indicates new text.

2.3.5 G *Firms* are reminded that *Principle 3* requires *firms* to take reasonable care to organise and control their affairs responsibly and effectively. *Principle 3* is amplified by the *rule* which requires *firms* to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1R and SYSC 4.1.1R). A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (SYSC 3.2.13G and SYSC 5.1.2G). This includes the assessment of an individual's honesty and competence. In addition, the *competent employees rule* (SYSC 3.1.6R and SYSC 5.1.1R) sets out a high-level competence requirement which every *firm* should follow.

...

5.1.3 G This chapter supports the more general duties in *Principles 2* and *3*, and the relevant *rule* in the Senior Management Arrangements, Systems and Controls sourcebook (see SYSC 3.1.1R and SYSC 4.1.1R).

Annex E

Amendments to the Interim Prudential sourcebook for Building Societies (IPRU(BSOC))

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

- 4.1.1A G As part of the implementation of the Capital Adequacy Directive (CAD), the Banking Consolidation Directive (BCD) and the Markets in Financial Instruments Directive (MiFID), provisions relating to a firm's organisational and risk systems and controls have been introduced in *SYSC 4*, *SYSC 5*, *SYSC 6*, and *SYSC 7*. ~~Whilst some of the material in *SYSC* applies to all societies, some applies only to societies that are subject to MiFID.~~ The guidance in this chapter generally explains the application of the high level requirements in *SYSC 4*, *SYSC 5*, *SYSC 6*, and *SYSC 7* (even if there may not be a specific cross reference) in the context of financial risk management.

Annex F

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

In this Annex, striking through indicates deleted text.

1.2.3A	R	The record-keeping requirements listed in the table at <i>IPRU(INV)</i> 1.2.3BR do not apply to common platform firms.	
1.2.3B	R	Table: List of <i>IPRU(INV)</i> record-keeping requirements that do not apply to common platform firms.	
		IPRU(INV)	Provision
		Chapter 3	3-10(1)R to 3-10(3)R 3-12(1)R to 3-12(2)R 3-13(1)R to 3-13(5)R
		Chapter 5	5.3.1(1)R to 5.3.1(6)R
		Chapter 13	13.1.10R to 13.1.17R

...

3-6 G The financial and non-financial resources rules for an *exempt CAD firm* are set out in *IPRU(INV)* chapter 9. As such, rules 3-61 to 3-182 do not apply to an *exempt CAD firm* unless it carries on any *regulated activity* other than *MiFID business* (see *IPRU(INV)* 9.2.3R).

3-10 **Keeping of records**

Records to be up-to-date

3-10(1) R A *firm* must keep accounting records in accordance with rules 3-10 to 3-13 on a continual basis so that at all times records are up-to-date or able to be brought up-to-date within a reasonable time.

Adequacy of records

- 3-10(2) R A *firm* must keep accounting records in such a manner that they are sufficient to show and explain the *firm's* transactions and commitments (whether effected on its own behalf or on behalf of others) and in particular so that these records:
- (a) disclose with reasonable accuracy the financial position of the *firm* at any point in time within the previous six years when the *firm* was a member of the *FSA* or a predecessor regulator;
 - (b) demonstrate whether or not the *firm* is or was at that time complying with its *financial resources requirement*; and
 - (c) enable the *firm* to prepare within a reasonable time any *financial reporting statement* as at the close of business of any date within the previous six years when the *firm* was regulated by the *FSA* or a predecessor regulator, and such that the statement complies with the requirements of the rules of the *FSA*.

Content of records

- 3-10(3) A *firm* must ensure that its accounting records shall as a minimum contain:
- (a) entries from day to day of all sums of money received and expended by the *firm* whether on its behalf or on behalf of others, and the matters in respect of which the receipt and expenditure takes place;
 - (b) a record of all income and expenditure of the *firm* explaining its nature;
 - (c) a record of all assets and liabilities of the *firm* including any commitments or *contingent liabilities*;
 - (d) entries from day to day of all purchases and sales of *investments* by the *firm* distinguishing those which are made by the *firm* on its own account and those which are made by or on behalf of others;
 - (e) entries from day to day of the receipt and dispatch of *documents of title* which are in the possession or control of the *firm*; and
 - (f) a record of all *investments* or *documents of title* in the possession or control of the *firm* showing the physical location, the beneficial owner, the purpose for which they are held and whether they are subject to any charge.

- G The *FSA* does not consider it possible to prepare an exhaustive and prescriptive list of record keeping requirements applicable to all *firms*. The detailed requirements will vary according to the manner in which the business is structured, organised and managed; its size; and the nature, volume and complexity of its transactions and commitments. The overriding principle, however, is that the records and systems must be adequate to fulfil the general requirements set out in rule 3-10.

3-11 **Reconciliation of firm's balances**

Reconciliation

- 3-11(1) R (b) ~~A firm must reconcile all balances and positions with exchanges, approved exchanges, clearing houses and intermediate brokers as recorded by the firm to the balance or position on a statement or circularisation obtained by the firm from the exchange etc and must correct any differences by agreement with the exchange etc on a timely basis.~~
- (c) ~~A firm must perform reconciliations under (b) above as frequently as is appropriate for the volume of transactions on the accounts and in any event not less than once every five weeks.~~
- (d) ~~A firm must reconcile all balances and securities positions with each eligible counterparty which is a member of an exchange or approved exchange as recorded by the firm to the balance or position on a statement or circularisation obtained by the firm from the eligible counterparty except to the extent that the balances and securities positions due to and from the eligible counterparty have been agreed by other means, and must correct any differences by agreement with the eligible counterparty on a timely basis.*~~
- (e) ~~A firm must perform reconciliations under (d) above as frequently as is appropriate for the volume of transactions on the accounts and in any event not less than once every year.~~

Circularisation

- 3-11(2) ~~A firm must circularise or request statements from banks, building societies, exchanges, approved exchanges, clearing houses, intermediate brokers and market counterparties which are members of exchanges or approved exchanges in good time in order to be able to comply with (1) above.~~

Response to requests

* For guidance notes on the reconciliation of a firm's balances with market counterparties see, **Appendix**

3-11(3) ~~A firm must use its best endeavours to respond within one month of receipt to any circularisation from another firm requesting confirmation of outstanding balances.~~

3-12 **Risk management and internal control**

Exposure limits

3-12(1) R ~~A firm must ensure that its accounting and other records contain details of exposure limits for trading positions, and for commitments under its ACP, which are appropriate to the type, nature and volume of business undertaken and that the information contained in the records is capable of being summarised in such a way as to enable actual exposures to be measured readily and regularly against these limits.~~

Management information

3-12(2) R ~~A firm must maintain its records in a manner such that they disclose, or are capable of disclosing, in a prompt and appropriate fashion, the financial and business information which will enable the firm's management to:~~

- ~~(a) identify, quantify, control and manage the firm's risk exposures;~~
- ~~(b) make timely and informed decisions;~~
- ~~(c) monitor the performance of all aspects of the firm's business on an up-to-date basis;~~
- ~~(d) monitor the quality of the firm's assets; and~~
- ~~(e) safeguard the assets of the firm, including assets for which the firm is responsible belonging to customers and other persons.~~

3-13 **Nature, accessibility and retention of records**

Nature of records

3-13(1) R (a) ~~A firm may keep a record in a form other than a document or copy of a document provided that the record can be reproduced in hard printed form.~~

(b) ~~Where all the records relating to a counterparty are not kept together, a firm must ensure that each location where documents relating to that counterparty are retained contains an indication that other records relating to that counterparty exist and how access to them can be obtained.~~

- (c) ~~A firm may accept and rely on records supplied by a third party so long as those records are capable of being and are reconciled with records held by the firm.~~
- (d) ~~A firm's records must generally be in English but may be in another language if the firm has facilities for producing a translation of the record into English within a reasonable time of any request for production of such a translation being made by the FSA or the firm's auditor or reporting accountant.~~

Audit trail

- 3-13(3) ~~A firm must record the information required by rules 3-10 to 3-13 in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the firm, in particular in such manner as to enable early identification of aggregates and of the particular items which have contributed to those aggregates.~~

Prompt access

- 3-13(3) R ~~A firm must ensure that all records are arranged, filed and indexed so as to permit prompt access to any particular record.~~

Retention of records

- 3-13(4) R (a) ~~A firm must keep all records required by rules 3-10 to 3-13 as well as any working papers necessary to show the preparation of any reporting statement or any other periodic return to the FSA.~~
- (b) ~~A firm must keep these records and working papers for a period of six years after the date on which they are first made or prepared.~~
- (c) ~~During the most recent of those years, a firm must keep these records and working papers either at a place where the firm carries on business or in such a manner that they can be produced at such a place within 24 hours of their being requested and after the first year in such a manner that they can be produced at a place of business of the firm within 48 hours.~~

Security of records

- 3-13(5) R ~~A firm must maintain adequate procedures for the maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the firm or others so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction.~~

...

5.3.1

Records

Recording requirements

- 5.3.1(1) R ~~A firm must ensure that it maintains adequate accounting records and must prepare and submit such reports as are required by the FSA in a timely manner. A firm's records must:~~
- ~~(1) be up to date and must disclose, with reasonable accuracy, at any time, the firm's financial position at that time;~~
 - ~~(2) enable the firm to demonstrate its continuing compliance with its financial resources requirements; and~~
 - ~~(3) provide the information:~~
 - ~~(a) which the firm needs to prepare such financial statements and periodical reports as may be required by the FSA; and~~
 - ~~(b) which the firm's auditor (where the FSA requires one to be appointed) needs to form an opinion on any statements of the firm on which the auditor is required to report.~~
- 5.3.1(2) G ~~Where a firm appoints a third party to maintain the firm's accounting records, these records remain the responsibility and property of the firm, which must ensure that they are maintained in accordance with the rules.~~
- ~~Firm's own transactions~~
- 5.3.1(3) R ~~A firm must ensure that proper accounting records are kept in English to show and explain the firm's own account transactions, distinguishing between trading book and non trading book transactions.~~
- ~~Customers' accounting records~~
- 5.3.1(4) R ~~A firm must ensure that proper accounting records are kept in English which:~~
- ~~(1) record all purchases and sales of customers' assets effected by the firm;~~
 - ~~(2) record all receipts and payments of money belonging to customers which arise from transactions effected by the firm;~~
 - ~~(3) in relation to client money; have regard to the requirements of the Client Money Rules;~~
 - ~~(4) disclose the assets and liabilities of a firm's customers individually and collectively, to the extent that they are managed by the firm;~~
 - ~~(5) record all customers' assets (including customer investments) in the possession of the firm or of another person who is holding such assets for, or to the order of, the firm, showing the location of the assets, their beneficial owner and the extent to which they are subject to any charge of which the firm has been notified.~~

5.3.1(5) G ~~The requirement to maintain adequate records of movements and holdings of *client money* and any interest paid on *client money* balances, are set out in CASS 4.1 to 4.3 (with respect of *designated investment business* that is not *MiFID* business) and in CASS 7.1 to 7.8 (with respect of *MiFID* business).~~

~~Retention of accounting records~~

5.3.1(6) R ~~The accounting records required by rule 5.3.1(1) to (4) must be maintained for a minimum period of six years. During the first two of these years they must be kept either at a place where the *firm* carries on business or in such a manner that they can be produced at such a place within 24 hours of their being requested.~~

...

~~Record Keeping Requirements~~

13.1.10 R ~~A *firm* must take reasonable steps to ensure that it:~~

~~(1) keeps records which are sufficient to show at any time that it has complied with the requirements of this chapter; and~~

~~(2) establish procedures and controls to ensure that those records are made promptly and accurately and, where appropriate, brought up-to-date at regular and frequent intervals.~~

13.1.11 G ~~When establishing record keeping systems *firms* are expected to bear in mind the advantage of records which will enable them to demonstrate easily their compliance with the *rules* and the effectiveness of their own procedures and controls.~~

13.1.12 R ~~A *firm* must ensure that its records are kept up-to-date and:~~

~~(1) show with reasonable accuracy at any time the *firm's* financial position at that time;~~

~~(2) enable the *firm* to demonstrate its continuing compliance with the applicable financial resource requirements; and:~~

~~(3) provide the information needed to enable~~

~~(a) the *firm* to prepare the financial statements and reports required by or under the *rules*; and~~

~~(b) any auditor required to report on the *firm's* financial statement to form an opinion on them in accordance with the relevant requirements.~~

13.1.13 G ~~Records should be capable of presenting a clear picture of the *firm's* financial viability.~~

- 13.1.14 R (1) A *firm* may hold its records in any form but it must
- (a) keep them in English and up to date, and
 - (b) be able to produce them promptly at its business premises on paper at the *FSA's* request.
- (2) If a *firm* retains records away from the place or places at which it conducts business, it must notify the *FSA* in accordance with the provisions of *SUP 15* of the address and telephone number of the place or places at which they are kept.
- (3) The *firm* must keep its records in such a way that
- (a) any particular record is promptly accessible, and
 - (b) any particular transaction is clearly shown, easily traceable through the *firm's* accounting records and sufficiently explained.
- (4) If the *firm* does not keep all records relating to financial resource requirements in one place, the *firm* must ensure that there is a clear indication that this is the case and provide accessible and adequate means of tracing all relevant records.

Reliance on Third Parties

- 13.1.15 R A *firm* may rely on records provided by a third party provided that the *firm* reconciles those records with its own.

Security

- 13.1.16 R A *firm* must take reasonable steps to protect its records at all times against loss, unauthorised access, alteration or destruction.

Retention of Records

- 13.1.17 R A *firm* must retain any record required by the *rules* or the rules of a *previous regulator* for a period of six years after the time the record is made.

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

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

9.5.1 G ~~For its *MiFID business*, a A firm to which SYSC 9 applies is required to keep orderly records of its business and internal organisation (see SYSC 9, General rules on record-keeping). ~~For other business, a firm is~~ Other firms are required to take reasonable care to establish and maintain such systems and controls as are appropriate to ~~its~~ their business (see SYSC 3, Systems and controls). The records may be expected to reflect the different effect of the *rules* in this chapter depending on whether the *client* is a *retail client* or a *professional client*: for example, in respect of the information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.~~

...

10.7.1 G ~~For its *MiFID business*, a A firm is required to keep orderly records of its business and internal organisation, including all services and transactions undertaken by it (see SYSC 9, General rules on record-keeping). ~~For other business, a firm is required to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (see SYSC 3, Systems and controls).~~ The records may be expected to include the *client* information a *firm* obtains to assess appropriateness and should be adequate to indicate what the assessment was.~~

...

Governance arrangements for with-profits business

20.3.2 G In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (*SYSC 3.2.6R* or *SYSC 6.1.1R*), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records any applicable *PPFM*. These arrangements should:

...

...

COBS 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
...					
2.8D	COBS 18	G	<p>If a <i>firm</i> carrying out the activities set out in TP 2.8AR decides to comply with COBS before 1 May 2008 the following provisions of COB will continue to apply to it in accordance with transitional rules TP 2.12R and TP 2.13R if the <i>firm</i> is not a <i>common platform firm</i>:</p> <p>(1) COB 2.4 (Chinese walls);</p> <p>(2) COB 5.10 (Corporate finance business issues);</p> <p>and</p> <p>(3) COB 7.1 (Conflicts of interest and material interest). [deleted]</p>	From 1 November 2007 to 30 April 2008	1 November 2007
...					
2.12	COBS	R	<p>COB 2.4 (Chinese walls) and COB 7.1 (Conflicts of interest) as they were in force on 31 October 2007 continue to apply to <i>designated investment business</i> carried on by a <i>firm</i> which is not a <i>common platform firm</i>. [deleted]</p>	From 1 November 2007 indefinitely	1 November 2007
2.13	COBS	R	<p>COB 5.10 (Corporate finance business issues) as</p>	From 1 November 2007	1 November 2007

			it was in force on 31 October 2007 continues to apply to <i>corporate finance business</i> carried on by a <i>firm</i> which is not a <i>common platform firm</i> . <u>[deleted]</u>	indefinitely	
--	--	--	---	--------------	--

Annex H

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

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

8.3 Insurance intermediaries (and insurers handling claims on another insurer's policy)

...

Conflicts of interest

- 8.3.3 G (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly. *SYSC 10* also requires an *insurance intermediary* to take all reasonable steps to identify conflicts of interest, and maintain and operate effective organisational and administrative arrangements to prevent conflicts of interest from constituting or giving rise to a material risk of damage to its *clients*.
- (2) ~~Generally, this means that a *firm* handling a claim should not put itself in a position where its own interest or its duty to anyone for whom it acts, conflicts with its duty to a *customer*. If it does so, it should have the *customer's* prior informed consent. [deleted]~~
- (3) If a *firm* acts for a *customer* in arranging a policy, it is likely to be the *customer's* agent (and that of any other *policyholders*). If the *firm* intends to be the *insurance undertaking's* agent in relation to claims, it needs to consider the risk of becoming unable to act without breaching its duty to either the *insurance undertaking* or the *customer* making the *claim*. It should also inform the *customer* of its intention.
- (4) ~~A *firm* should consider whether it is possible to manage such a conflict through disclosure and consent. A *firm* should in particular consider whether declining to act would be the most reasonable step where it is not possible to manage a conflict.~~ As, for example, where these are unlikely to be sufficient is where the *firm* knows both that its *customer* will accept a low settlement to obtain a quick payment, and that the *insurance undertaking* is willing to settle for a higher amount.

Annex I

Amendments to the Supervision manual (SUP)

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

Members of a profession

- 10.1.18 R (1) This chapter, except in respect of the *required functions*, does not apply to an *authorised professional firm* in respect of its *non-mainstream regulated activities*, subject to (2).
- (2) Where the *authorised professional firm* has appointed *approved persons* to perform the *governing functions* with equivalent responsibilities for the firm's *non-mainstream regulated activities* and other *regulated activities*, for the firm's *non-mainstream regulated activities* this chapter applies with respect to the *governing functions* and the *required functions* (other than the *apportionment and oversight function*) only.

What the governing functions include

- 10.6.2 R Each of the *governing functions* (other than the *non-executive director function*) includes where apportioned under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R:
- (1) the *systems and controls function*; and
- (2) the *significant management function*.

...

- 10.6.19 G Any apportionment referred to in SUP 10.6.17R(3)(b) will have taken place under SYSC 2.1.1R or SYSC 4.3.1R and SYSC 4.4.3R. The FSA may ask to see details of the apportionment but will not require, as a matter of course, a copy of the material which records this (see SYSC 2.2).

...

Apportionment and oversight function (CF8)

- 10.7.1 R The *apportionment and oversight function* is the function of acting in the capacity of a *director* or *senior manager* responsible for either or both of the apportionment function and the oversight function set out in SYSC 2.1.3R or SYSC 4.4.5R.

...

- 10.7.13A G A *firm's* obligations in respect of its *money laundering reporting officer* are set out elsewhere in the *Handbook* (see SYSC 3.2.6IR and SYSC 6.3.9R and for their scope, see the application provisions in ~~SYSC 1.1 and SYSC 1.3~~ SYSC 1 Annex 1).

...

Application

- 10.9.1 R SUP 10.9 applies only to a *firm* which, under SYSC 2.1.1R or SYSC 4.4.3R, apportions a significant responsibility, within the description of the *significant management function*, to a *senior manager* of a significant business unit.

...

- 10.9.3 G However, the scale, nature and complexity of the *firm's* business may be such that a *firm* apportions, under SYSC 2.1.1R or SYSC 4.4.3R, a significant responsibility to an individual who is not approved to perform the *governing functions, required functions* or, where appropriate, the *systems and controls function*. If so, the *firm* should consider whether the functions of that individual fall within the *significant management function*. For the purposes of the description of the *significant management functions*, the following additional factors about the *firm* should be considered:

- (1) the size and significance of the *firm's* business in the *United Kingdom*; for example, a *firm* carrying on *designated investment business* may have a large number of *approved persons* (for example, in excess of 100 individuals); or a *firm* carrying on *general insurance business* may have gross written *premiums* in excess of £100mn;
- (2) the number of *regulated activities* carried on, or proposed to be carried on, by the *firm* and (if relevant) other members of the *group*;
- (3) its *group* structure (if it is a member of a *group*);
- (4) its management structure (for example matrix management); and
- (5) the size and significance of its international operations, if any.

...

Appointment of an appointed representative (other than an introducer appointed representative)

- 12.4.2 R Before a *firm* appoints a *person* as an *appointed representative* (other than an *introducer appointed representative*) and on a continuing basis, it must establish on reasonable grounds that:

- (1) the appointment does not prevent the *firm* from satisfying and

continuing to satisfy the *threshold conditions*;

- (2) the *person*:
 - (a) is solvent;
 - (b) is otherwise suitable to act for the *firm* in that capacity; and
 - (c) has no *close links* which would be likely to prevent the effective supervision of the *person* by the *firm*;
- (3) the *firm* has adequate:
 - (a) controls over the *person's regulated activities* for which the *firm* has responsibility (see SYSC 3.1 or SYSC 4.1); and
 - (b) resources to monitor and enforce compliance by the *person* with the relevant requirements applying to the *regulated activities* for which the *firm* is responsible and with which the *person* is required to comply under its contract with the *firm* (see SUP 12.5.3G(2)); and
- (4) the *firm* is ready and organised to comply with the other applicable requirements contained or referred to in this chapter.

...

12.6.11 G A *firm* should take reasonable care to ensure that:

- (1) it has satisfied SYSC 3 ~~or 5~~ or SYSC 4 to 9 and TC in respect of the relevant staff of the *appointed representative*; and
- (2) its *appointed representative* has adequate arrangements in respect of training and competence, which meet the requirements in SYSC and TC.

...

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

1. The table below summarises the application of the *Handbook* to an *incoming EEA firm*. Where the table indicates that a particular module of the *Handbook* may apply, its application in relation to any particular activity is dependent on the detailed application provisions in that module. The table does not apply to *incoming ECA providers*. These should refer to COBS 1 Annex 1 Part 3 section 7 for *guidance* on how COBS applies to them.

2. In some cases, the application of the *Handbook* depends on whether responsibility for a matter is reserved under a European Community instrument to the *incoming EEA firm's Home State regulator*. *Guidance* on the

reservation of responsibility is contained in SUP 13A Annex 2G (Matters reserved to a Home State regulator). *Guidance* on the territorial application of *MiFID* is contained in PERG 13.6 and 13.7 and SUP 13A Annex 2G.

3. For an *incoming EEA firm* which has *permission* for *cross-border services* only, many parts of the *Handbook* apply only if the *firm* carries on *regulated activities* in the *United Kingdom*. Those parts of the *Handbook* will therefore not apply if the *firm* confines its activities to those within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*, or which would not be regarded as carried on in the *United Kingdom*. Further *guidance* may be found in PERG 2.4 (Link between activities and the *United Kingdom*) and PERG 2.9.15G to PERG 2.9.17G (Overseas persons).

(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>PRIN</i>	...	
<i>SYSC</i>	<u><i>SYSC 1 and SYSC 1 Annex 1 (Application of SYSC 2 and SYSC 3)</i></u> contains <u>contain</u> application provisions only. <i>SYSC 2 and SYSC 3</i> apply <u>only to an insurer, a managing agent and the Society</u> as set out in <u><i>SYSC 1.1.1R(1) 1 Annex 1.1.1 R</i></u> , which include the following exceptions:	<i>SYSC 2 and 1 to SYSC 3</i> do not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> (<u><i>SYSC 1.1.1R(2) 1 Annex 1.1.1 R</i></u>).

	<p>(1) SYSC 2.1.1 R(1) and SYSC 2.1.2G do not apply;</p> <p>(2) SYSC 2.1.3R to SYSC 2.2.3G apply, but only in relation to allocation of the function in SYSC 2.1.3R(2) and only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the <i>firm's Home State regulator</i>; and</p> <p>(3) SYSC 3 applies, but only in so far as responsibility for the matter in question is not reserved by a European Community instrument to the <i>firm's Home State regulator</i>.</p> <p>SYSC 1.1.7R (Where?) further restricts the territorial application of SYSC 1 to SYSC 3 for an <i>incoming EEA firm</i>. Further <i>guidance</i> is contained in SYSC 2.1.6G, Question 12.</p> <p>SYSC 18 applies to the extent that the Public Interest Disclosure Act 1998 applies to the <i>firm</i>.</p> <p>The <i>common platform requirements</i> in SYSC 4 - 10 apply as set out in SYSC 1.3.1R and SYSC 1.3.1BG <u>Part 2 of SYSC 1 Annex 1 (Application of the common platform requirement)</u>.</p>	<p>SYSC 2 and 4 to SYSC 3 have limited application for activities which are not carried on from a <i>UK establishment</i> (see SYSC 1.1.7 R <u>1 Annex 1.1.1R (2A)</u>). Otherwise, see column (2). The <i>common platform requirements</i> in SYSC 4 - SYSC 10 apply as set out in SYSC 1.3.1 R and SYSC 1.3.1BG <u>1 Annex 1.2.2R</u>. SYSC 9 does not apply. SYSC 11 - SYSC 17 do not apply. SYSC 18 SYSC 18 applies.</p>
--	--	---

	<p>SYSC 1.3.1BG states that whilst the common platform requirements do not generally apply to incoming EEA firms, SYSC 1 Annex 1.2.7 G 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.</p> <p>SYSC 9 applies to activities carried on from an establishment in the <i>United Kingdom</i>, unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> (SYSC 1.3.10AR 1 Annex 1.2.17 R).</p>	
	<p>SYSC 11 applies to an <i>incoming EEA firm</i> which:</p> <ul style="list-style-type: none"> (1) is a <i>full BCD credit institution</i>; and (2) has a <i>branch</i> in the <i>United Kingdom</i> (SYSC 11.1.1R(3)). <p>SYSC 12 does not apply (SYSC 12.1.3R).</p> <p>SYSC 13 does not apply (SYSC 13.1.1G).</p> <p>SYSC 14 does not apply (SYSC 14.1.1R).</p> <p>SYSC 15 does not apply (SYSC 15.1.1G).</p>	

	<p>SYSC 16 does not apply (SYSC 16.1.1G).</p> <p>SYSC 17 does not apply (SYSC 17.1.1G).</p> <p>SYSC 18 applies.</p>	
...		

13A Annex 2G Matters reserved to a Home State regulator

...	
Application of SYSC 2 and SYSC 3	
4.	<p>SYSC 2 and SYSC 3 do not apply to a UK MiFID investment firm. They only apply to an EEA MiFID investment firm on a limited basis. This is explained more fully in PERG 13.7 Q. 70 (systems and controls) only apply to an insurer, a managing agent and the Society. See paragraph 8 below for a discussion of how the <i>common platform requirements</i> apply to an EEA MiFID investment firm. SYSC 2.1.1R and SYSC 2.1.2G do not apply for a relevant <i>incoming Treaty firm</i>. The FSA considers that it is entitled, in the interests of the general good, to impose the requirements in SYSC 2.1.3R to SYSC 2.2.3G (in relation to the allocation of the function in SYSC 2.1.3R(2)) and SYSC 3 on an <i>incoming EEA firm</i> and an <i>incoming Treaty firm</i>; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the <i>firm's Home State regulator</i>.</p>
5.	<p>Should the FSA become aware of anything relating to an <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> (whether or not relevant to a matter for which responsibility is reserved to the <i>Home State regulator</i>), the FSA may disclose it to the <i>Home State regulator</i> in accordance with any applicable directive and the applicable restrictions in Part XXIII of the Act (Public Record, Disclosure of Information and Co-operation).</p>
6.	<p>This Annex represents the FSA's views, but a <i>firm</i> is also advised to consult the relevant European Community instrument and, where necessary, seek legal advice. The views of the European Commission in the banking and insurance sectors are contained in two Commission Interpretative Communications (Nos. 97/C209/04 and C(1999)5046).</p>
7.	<p>Examples of how the FSA considers that SYSC 3 will apply in practice to an incoming EEA firm are as follows:</p>

	(1)	The Prudential Standards part of the <i>Handbook</i> (with the exception of <i>INSPRU</i> 1.5.33R on the payment of financial penalties and the Interim Prudential sourcebook (insurers) (<i>IPRU(INS)</i>) (rules 3.6 and 3.7) do not apply to an <i>insurer</i> which is an <i>incoming EEA firm</i> . Similarly, <i>SYSC</i> 3 does not require such a <i>firm</i> :
		(a) to establish systems and controls in relation to financial resources (<i>SYSC</i> 3.1.1R); or
		(b) to establish systems and controls for compliance with that Prudential Standards part of the <i>Handbook</i> (<i>SYSC</i> 3.2.6R); or
		(c) to make and retain records in relation to financial resources (<i>SYSC</i> 3.2.20R).
	(2)	The Conduct of Business sourcebook (<i>COBS</i>) applies to an <i>incoming EEA firm</i> . Similarly, <i>SYSC</i> 3 does require such a <i>firm</i> :
		(a) to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of <i>COBS</i> (<i>SYSC</i> 3.1.1R);
		(b) to establish systems and controls for compliance with the applicable sections of <i>COBS</i> (<i>SYSC</i> 3.2.6R); and
		(c) to make and retain records in relation to those aspects of the conduct of its business (<i>SYSC</i> 3.2.20R). [deleted]
See also Question 12 in <i>SYSC</i> 2.1.6G for guidance on the application of <i>SYSC</i> 2.1.3R(2)		
Application of the common platform requirements in <i>SYSC</i> to <u><i>EEA MiFID investment firms</i></u>		
8.	Whilst the <i>common platform requirements</i> (located in <i>SYSC</i> 4 - <i>SYSC</i> 10) do not generally apply to <i>incoming EEA firms</i> , <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> .	
Requirements under MiFID		
9.	Article 31(1) of <i>MiFID</i> prohibits Member States from imposing additional requirements on a <i>MiFID investment firm</i> in relation to matters covered by <i>MiFID</i> if the <i>firm</i> is providing services on a cross-border basis. Such firms will be supervised by their Home	

	State regulator.	
10.	Article 32 of <i>MiFID</i> requires the <i>FSA</i> as the <i>Host State regulator</i> to apply certain obligations to an <i>incoming EEA firm</i> with an establishment in the <i>UK</i> . In summary, these are Articles:	
	(1)	19 (conduct of business obligations);
	(2)	21 (execution of orders on terms most favourable to the client);
	(3)	22 (client order handling);
	(4)	25 (upholding the integrity of markets, reporting transactions and maintaining records);
	(5)	27 (making public firm quotes); and
	(6)	28 (post-trade disclosure).
	The remaining obligations under <i>MiFID</i> are reserved to the Home State regulator.	
11.	<i>MiFID</i> is more highly harmonising than other <i>Single Market Directives</i> . Article 4 of the <i>MiFID implementing Directive</i> permits Member States to impose additional requirements only where certain tests are met. The <i>FSA</i> has made certain requirements that fall within the scope of Article 4. These requirements apply to an <i>EEA MiFID investment firm</i> with an establishment in the <i>United Kingdom</i> as they apply to a <i>UK MiFID investment firm</i> .	
12.	Further <i>guidance</i> on the territorial application of the <i>Handbook</i> can be found at <i>PERG</i> 13.6 and 13.7.	
13.	<u>Examples of how SYSC 3 and/or the common platform provisions apply in practice.</u>	
	(1)	<u>The Prudential Standards part of the <i>Handbook</i> (with the exception of <i>INSPRU</i> 1.5.33R on the payment of financial penalties and the Interim Prudential sourcebook (insurers) (<i>IPRU(INS)</i>) (rules 3.6 and 3.7) do not apply to an <i>insurer</i> which is an <i>incoming EEA firm</i>. Similarly, <i>SYSC</i> 3 does not require such a <i>firm</i>:</u>
	(a)	<u>to establish systems and controls in relation to financial resources (<i>SYSC</i> 3.1.1R); or</u>
	(b)	<u>to establish systems and controls for compliance with that Prudential Standards part of the <i>Handbook</i> (<i>SYSC</i> 3.2.6R); or</u>
	(c)	<u>to make and retain records in relation to financial resources (<i>SYSC</i> 3.2.20R and <i>SYSC</i></u>

			9.1.1R to 9.1.4G).
	(2)	<u>The Conduct of Business sourcebook (COBS) applies to an incoming EEA firm. Similarly, SYSC 3 and SYSC 4-10 do require such a firm:</u>	
		(a)	<u>to establish systems and controls in relation to those aspects of the conduct of its business covered by applicable sections of COBS (SYSC 3.1.1R and SYSC 4.1.1R);</u>
		(b)	<u>to establish systems and controls for compliance with the applicable sections of COBS (SYSC 3.2.6R and SYSC 6.1.1R); and</u>
		(c)	<u>to make and retain records in relation to those aspects of the conduct of its business (SYSC 3.2.20R and SYSC 9.1.1R to 9.1.4G).</u>
<u>See also Question 12 in SYSC 2.1.6G for guidance on the application of SYSC 2.1.3R(2)</u>			

Annex J

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Risk management process

5.2.25 G ...

- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by ~~SYSC 3.1 (Systems and controls)~~ 4.1 (General requirements).

...

...

Risk management process

5.6.17 G ...

- (4) An *authorised fund manager* should take reasonable care to establish and maintain such systems and controls as are appropriate to its ~~sw~~ business as required by ~~3.1 (Systems and controls)~~. SYSC 4.1 (General requirements).

...

...

Delegation: guidance

- 6.6.16 G (1) ~~SYSC 3.2 (Areas covered by systems and controls)~~ 4.1 (General requirements and SYSC 8 (outsourcing)) contains *guidance* relating to delegation, including external delegation. ~~SYSC 3.2.4G(1) 8.1.6R~~ states that a *firm cannot contract out of its regulatory obligations remains fully responsible for disclosing all of its obligations under the regulatory system even if it outsources crucial or important operational functions.*

...

...

Delegation and responsibility for regulatory obligations

- 8.5.6 G SYSC 3.2.8 contains *guidance* relating to delegation including external delegation, and SYSC 3.2.4G(1) 8.1.6R states that a *firm cannot contract out of its regulatory obligations* remains fully responsible for discharging all of its obligations under the *regulatory system* if it outsources crucial or important operational functions or any relevant services and activities.

Annex K

Amendments to the Credit Union sourcebook (CRED)

In this Annex, underlining indicates new text and striking through indicates deleted text. (Some unamended paragraphs are included to assist readers.)

- 4.1.3 G ~~SYSC 1 to SYSC 3~~ 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.
- ...
- 4.1.7 G ~~SYSC 3.1.2G(3) states that detailed requirements regarding systems and controls relevant to particular types of firm may be covered elsewhere in the Handbook. This chapter includes all such~~ summarises all the specific requirements for systems and controls relevant to credit unions.
- 4.1.8 G SYSC 18 reminds *firms* of the provisions of the Public Interest Disclosure Act 1998 and encourages them to consider adopting appropriate internal whistleblowing procedures. This applies equally to *credit unions* but is not the subject of further *guidance* in this chapter.

4.2 Apportionment of responsibilities

- 4.2.1 G Under ~~SYSC 2.1.1R~~ 4.3.1R every *firm* is required to take reasonable care to maintain an appropriate apportionment of significant responsibilities among its *directors* and *senior managers*, so that it is clear who has those responsibilities and so the *firm* can be governed adequately.
- 4.2.2 G In order to comply with the requirements, a *credit union* will need to be clear who is responsible for which significant matters within the *credit union*.
- 4.2.3 G Among the significant responsibilities to be apportioned will be responsibility for:
- (1) finance;
 - (2) lending;
 - (3) arrears control;
 - (4) *money laundering* reporting;
 - (5) complaints handling.
- 4.2.4 G ~~SYSC 2.1.3R requires that the actual task of apportioning significant~~

responsibilities to different people must itself be allocated by the *credit union* to one or more individuals to carry out. The task of overseeing the establishment and maintenance of the *credit union's* systems and controls would normally be allocated to the same individual or individuals. However, it would be possible to allocate the overseeing function to different individuals as long as this was appropriate. [deleted]

- 4.2.5 G Together these tasks are known as the *apportionment and oversight function*. [deleted]
- 4.2.6 G An individual to whom a function is allocated under SYSC 2.1.3R will be performing the *apportionment and oversight function* (see CRED 6.3.8G) and an application must be made to the FSA for approval of the individual before the function is performed (see CRED 13.7). [deleted]
- 4.2.7 G CRED 2.1.4 requires that the *apportionment and oversight function* must be allocated to the *credit union's chief executive* where there is one. 'Chief executive' in this context means an *employee* who alone, or jointly with others, is responsible under the immediate authority of the committee of management for the conduct of the whole business of the *credit union*. In smaller *credit unions*, this would include any *manager* or *person* who is entrusted with the whole of the day to day running of the *credit union* even if the title 'chief executive' is not used. [deleted]
- 4.2.8 G The *apportionment and oversight function* may be allocated to one or more members of the *credit union's* committee of management in addition to the *chief executive*, or where there is no *chief executive* (see also CRED 4.3.17G). [deleted]
- 4.2.9 G The allocation of the *apportionment and oversight function* to one or two individuals is likely to be appropriate for most *firms*, including many *credit unions*. However, it would be possible to allocate the function to every member of the *credit union's* committee of management as long as that allocation remained appropriate. [deleted]
- 4.2.10 G If the allocation is to more than one *person* they may perform the *apportionment and oversight function*, or aspects of the function, separately. So, for example, one individual may have specific responsibility for the apportionment of responsibilities, whilst somebody else may have specific responsibility for overseeing the establishment and maintenance of the *credit union's* systems of control. [deleted]
- 4.2.11 G Under SYSC 2.2.1R, all *credit unions* are required to maintain a record of the arrangements they have made to satisfy the requirements to apportion significant responsibilities and allocate the *apportionment and oversight function*. Where responsibilities have been allocated to more than one *person*, the record will need to show clearly how those responsibilities are shared or divided. These records must be retained for six years after being replaced by a more up to date record. [deleted]
- 4.2.12 G Most *credit unions* should be able to comply with the requirements of SYSC

~~2.2.1R by means of records they already keep for their own purposes (for example, job descriptions, organisation charts, committee constitutions and terms of reference). [deleted]~~

4.3 Systems and Controls

General

- 4.3.1 G ~~SYSC 3.1.1R~~ 4.1.1R requires that every *firm*, including a *credit union*, takes reasonable care to establish and maintain such systems and controls as are appropriate to its business.
- 4.3.2 G ~~SYSC 3.1.1R~~ 4.1.1R is a high level *rule* which allows *firms* to put in place the systems and controls that are appropriate and effective for their particular circumstances. What is appropriate for a particular *credit union* will depend upon such matters as the nature, scale, and complexity of its business, the volume and size of its *transactions*, and the level of risk associated with its operations.
- 4.3.3 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*.
- 4.3.4 G ~~SYSC 3.2~~ 4.1 deals with the areas to be covered by systems and controls. *Guidance* on how this applies to *credit unions* is provided below.
- ...
- 4.3.11 E (1) A *credit union* should have an internal audit function (this may be either in house or outsourced to a third party).
- (2) Contravention of ~~CRED 4.3.11E(1)~~ may be relied on as tending to establish contravention of ~~SYSC 3.1.1R~~ 4.1.1R (see *CRED* 4.3.1G).
- 4.3.12 G The term ‘internal audit function’ in *CRED* 4.3.11E refers to the generally understood concept of internal audit within a *firm*, that is, 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). *Guidance* on internal audit is given in *CRED* 4.3.50 G to *CRED* 4.3.60G.
- 4.3.13 E (1) ~~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) ~~Contravention of CRED 4.3.13E(1) may be relied on as tending to establish contravention of SYSC 3.1.3G. [deleted]~~
- 4.3.13A 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.

- 4.3.14 G *Guidance* on segregation of duties is given in *CRED* 4.3.26G = and *CRED* 4.3.27G.

Committee of management

- 4.3.15 G Under 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 having regard to the activities carried on by the *credit union*.

- 4.3.16 G *CRED* 6.2 provides additional guidance for *credit unions* on the Statements of Principle for *Approved Persons* (see also *APER* 2.1.2P). In accordance with *Statement of Principle* 7, 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*.

- 4.3.17 G 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* 3.1.1R~~ 4.1.1R (see *CRED* 4.3.1G and *CRED* 4.3.2G). Accordingly, the committee of management has overall responsibility for the following matters:

...

...

Organisation

- 4.3.19 G ~~*Guidance on Provisions relating to organisational arrangements is*~~ are located in ~~*SYSC* 3.2.2G~~ *SYSC* 3.2.5G 4.

- 4.3.20 G A *credit union* should have clearly defined organisational arrangements and procedures. These arrangements and procedures should be properly documented.

- 4.3.21 G Those *credit unions* that do not have a permanent place of business or permanent full-time staff should take particular care to ensure that their organisational arrangements are robust and clear.

- 4.3.22 G The delegation of functions and tasks should take place within an appropriate framework. This should distinguish between those decisions reserved for the committee of management and those delegated to sub-committees, volunteers or *employees*.

- 4.3.23 G There should be arrangements to supervise delegation. This should include establishing appropriate reporting mechanisms and procedures for monitoring.

- 4.3.24 G Reporting lines should be clear and appropriate having regard to the nature, scale, and complexity of the *credit union* and its business.
- 4.3.25 G ~~SYSC 3.2.4G~~ 8.1 specifically covers the issue of outsourcing. *Guidance* relevant to delegation within a *credit union* is also relevant to external delegation (“outsourcing”). A *credit union* cannot contract out its regulatory obligations, and remains ultimately responsible for any activities or functions that are outsourced. A *credit union* should therefore take reasonable care to supervise any outsourced activities, and obtain sufficient information to be able to assess the impact of outsourcing on its systems and controls.

...

Accounting records and systems

- 4.3.32 G ~~SYSC 3.2.20R~~ 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 must be capable of being reproduced in the English language and on paper.

...

Systems and controls in relation to compliance and financial crime

- 4.3.37 G ~~SYSC 3.2.6R~~ 6.1.1R requires all *credit unions* to take reasonable care to establish and maintain effective systems and controls for compliance with all regulatory requirements (in other words, the relevant Acts, secondary legislation, and *rules*) and for countering the risk of *financial crime*.
- 4.3.37A G ~~SYSC 3.2.6AR~~ 6.1.1R and ~~SYSC 6.3.1R~~ requires require a *credit union* to ensure that these systems and controls:
- (1) enable it to identify, assess, monitor and manage *money laundering* risk; and
 - (2) are comprehensive and proportionate to the nature, scale and complexity of that *credit union's* activities.
- 4.3.37B G ‘*Money laundering* risk’ is the risk that a *credit union* may be used to further *money laundering*. Failure by a *credit union* to manage this risk effectively will increase the risk to society of crime and terrorism.
- 4.3.37C G ~~SYSC 3.2.6CR~~ 6.3.3R requires a *credit union* to carry out regular assessments of the adequacy of these systems and controls to ensure that they continue to meet this requirement.
- 4.3.37D G A *credit union* may also have separate obligations to comply with relevant legal requirements, including the Terrorism Act 2000, the Proceeds of Crime Act 2002 and the *Money Laundering Regulations*. ~~SYSC 3.2.6R to~~

~~3.2.6JG~~ 6.1.1R and SYSC 6.3.1R to SYSC 6.3.10G are not relevant guidance for the purposes of regulation 3(3) of the *Money Laundering Regulations*, section 330(8) of the Proceeds of Crime Act 2002 or section 21A(6) of the Terrorism Act 2000.

...

- 4.3.37G G A *credit union* should ensure that these systems and controls include:
- (1) appropriate training for that *credit union's* employees in relation to *money laundering*;
 - (2) appropriate provision of information to that *credit union's* governing body and senior management, including a report at least annually by that *credit union's* *money laundering reporting officer* on the operation and effectiveness of those systems and controls;
 - (3) appropriate documentation of that *credit union's* risk management policies and risk profile in relation to *money laundering*, including documentation of that *credit union's* application of those policies (see ~~SYSC 3.2.20R~~ to ~~SYSC 3.2.22G~~ 9);
 - (4) appropriate measures to ensure that *money laundering* risk is taken into account in the day-to-day operation of that *credit union*, including in relation to:
 - (a) the development of new products;
 - (b) the taking-on of new customers; and
 - (c) changes in its business profile; and
 - (5) appropriate measures to ensure that procedures for identification of new customers do not unreasonably deny access to that *credit union's* services to potential customers who cannot reasonably be expected to produce detailed evidence of identity.

- 4.3.37H G ~~SYSC 3.2.6HR~~ 6.1.1R and ~~SYSC 6.3.8R~~ requires require a *credit union* to allocate to a *director* or *senior manager* (who may also be the *money laundering reporting officer*) overall responsibility within the *credit union* for the establishment and maintenance of effective anti-*money laundering* systems and controls.

The money laundering reporting officer

- 4.3.37I G ~~SYSC 3.2.6IR~~ 6.1.1R and ~~SYSC 6.3.9R~~ requires require a *credit union* to:
- (1) appoint a *money laundering reporting officer*, who shall be responsible for oversight of that *credit union's* compliance with the *FSA's* rules on systems and controls against *money laundering*; and
 - (2) ensure that its *money laundering reporting officer* has a level of

authority and independence within that *credit union* and access to resources and information sufficient to enable him to carry out that responsibility.

- 4.3.37J G The job of the *money laundering reporting officer* within a *credit union* is to act as the focal point for all activity within that *credit union* relating to anti-*money laundering*. The *FSA* expects that a *credit union's money laundering reporting officer* will be based in the *United Kingdom*.

The compliance function

- 4.3.37K G Depending on the nature, scale and complexity of its business, it may be appropriate for a *credit union* to have a separate compliance function. The organisation and responsibilities of a compliance function should be documented. 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*.

- 4.3.38 G ~~Guidance on compliance is located in SYSC 3.2.8R—SYSC 3.2.9G~~ 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”.]

- 4.3.39 G ~~SYSC 3.2.8R is unlikely to be relevant to a credit union as it is relevant only to firms carrying on designated investment business. [deleted]~~

- 4.3.40 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

- 4.3.41 G *Guidance* on management information is located in *SYSC 3.2.11G* ~~*SYSC 3.2.12G*~~ 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”.]

...

Personnel

- 4.3.47 G *Guidance* on *employees* and agents is located in *SYSC 3.2.13G* ~~*SYSC 3.2.14G*~~ 5.1.2G.

- 4.3.48 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.

- 4.3.49 G A *credit union* should have appropriate systems and controls in place to satisfy itself as to the suitability of its staff, including the competence and honesty of such staff. Any assessment of suitability should take into account the nature of the position and the level of responsibility that the individual would hold.

Internal Audit

- 4.3.50 G *CRED* 4.3.11E states that a *credit union* should have an internal audit function (see also *CRED* 4.3.12G).

- 4.3.51 G *Guidance* on internal audit and audit committees (otherwise known as the supervisory committee) is located in *SYSC 6* and *SYSC 3.2.15G* ~~*SYSC 3.2.16G*~~ 4.1.11G.

...

- 4.3.63 G *Guidance* on business strategy is located in *SYSC 3.2.17G* 6.1.2R and 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”.]

...

Business continuity

- 4.3.72 G *Guidance* on business continuity is located in SYSC ~~3.2.19G~~ 4.1.6R to 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”.]

Annex L

Amendments to the Electronic Money sourcebook (ELM)

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

1.5.2 G Application of other parts of the Handbook to ELMIs

High level standards	...	...
	Senior management arrangements, systems and controls (<i>SYSC</i>)	<i>SYSC</i> 1 (Application and purpose), <i>SYSC</i> 2 (Senior management arrangements), <i>SYSC</i> 3 (Systems and controls) <u>4 to 10 (common platform requirements)</u> , <i>SYSC</i> 12.1 (Group risk systems and control requirement) and <i>SYSC</i> 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) apply to every <i>ELMI</i> .
...		

...

2.5.7 G The effect of the *rules* in *SYSC* ~~3~~ 4 is that a *firm* should take reasonable care to establish and maintain systems and controls that ensure that the *firm* will know as soon as reasonably possible if the projections referred to in *ELM* 2.5.4R(1) have proved to be significantly incorrect or if it is reasonably likely that those projections will prove to be significantly incorrect.

...

5.2.5 G The purpose of this chapter is to amplify the requirements of *Principle* 3 for *firms* in specific areas and thus make it more likely that *firms* will have adequate systems and controls. It also increases certainty by providing *guidance* on some of the specific ways in which the *rules* in *SYSC* ~~3~~ 4 to 10 apply in relation to *issuing e-money*. This chapter also helps to establish a *firm's* compliance with *threshold conditions* 4 and 5.

...

5.4.1 G The *guidance* in *ELM* 5.4 is *guidance* on the *rules* in *SYSC* ~~3~~ 4 to 10 as they apply to *issuing e-money*. It is in addition to the *guidance* in *SYSC* itself.

5.4.2 G Under ~~SYSC 3.2.3G and SYSC 3.2.4G~~ 8.1.6R and 8.1.8R, a *firm* should carry out appropriate due diligence on any *person* to whom it outsources any function or task and keep the suitability of that *person* for that task or function under review. A *firm* should monitor the performance by that *person* of the outsourced tasks and functions.

5.4.3 G A *firm* should, to the degree appropriate in the light of the factors listed in ~~SYSC 3.1.2G(1)~~ 4.1.2R:

...

5.4.4 G The risks of ~~regulatory concern~~ referred to in ~~SYSC 3.2.11G~~ 7.1.4R and 7.1.5R relating to *e-money* include the following risks:

...

Annex M

Amendments to the Perimeter Guidance manual (PERG)

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

Exclusion: administration pursuant to agreement with authorised person

- 4.8.7 G Under article 63 of the *Regulated Activities Order*, a *person* who is not an *authorised person* does not *administer a regulated mortgage contract* if he administers the contract under an agreement with a *firm* with *permission* to *administer a regulated mortgage contract*. A *firm* with *permission* to *administer a regulated mortgage contract* may thus outsource or delegate the administration function to an unauthorised third party. A *firm* that proposes to do this should however note, as set out in ~~SYSC 3.2.4G(1)~~, 8.1.6R and 8.1.8R, that the *FSA* will continue to hold it responsible for the way in which the administration is carried on.

...

13.7 ...

Q70. How are the high level standards, like the Principles, affected by MiFID?

The position is summarised in the table below.

	Subject matter	References	Summary
1	The Principles	PRIN 3.1.6R (Who?)	A firm is not subject to the Principles to the extent that it would be contrary to MiFID (and the other Single Market Directives).
2		PRIN 4.1.2G (Where?)	The territorial scope of some Principles has been extended and others narrowed according to the type of firm.

3	Systems and controls	<p>SYSC 1.1.1R(6) and SYSC 1.3.9R to SYSC 1.3.11R</p> <p>SYSC 1.1.1R (1)(a), SYSC 1.1.7R and SYSC 1.3.10AR</p> <p><u>SYSC 1 Annex 1.2.15R to 1.2.18R</u></p>	<p>A UK MiFID investment firm is a common platform firm. It is subject to the common platform requirements in SYSC 4 to SYSC 10 and is not subject to the requirements in SYSC 2 and SYSC 3. The common platform requirements generally apply in relation to activities conducted from an establishment in the United Kingdom or another EEA State. However, this is subject to some modification, for example in relation to requirements on record keeping and financial crime. Most of the common platform requirements also apply in a prudential context to the activities of a UK MiFID investment firm from an establishment outside the EEA.</p> <p>An EEA MiFID investment firm is not a common platform firm and is therefore not subject to the common platform requirements. However, it is subject to the common platform record keeping requirements. Some provisions in SYSC 2 and SYSC 3 <u>9</u> will apply to the UK establishment of an EEA MiFID investment firm but only in respect of matters that are not reserved to the Home State regulator. This is particularly relevant to the provisions on systems and controls concerning financial crime and money laundering in SYSC 3 <u>6.3</u>.</p>
...			

Q71. What is the position in relation to record keeping in branches?

The effect of article 13(9) of MiFID is also to shift the default position (of regulation by the Home State) to regulation by the Host State for the record-keeping requirements imposed on a branch (see ~~SYSC 1.3.10AR~~ 1 Annex 1.2.17R).

...

**COMPANIES ACT 2006 (CONSEQUENTIAL HANDBOOK AMENDMENTS NO 2)
INSTRUMENT 2008**

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 power); 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 2008.

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
Interim Prudential sourcebook for Investment Business (IPRU(INV))	Annex B
Credit Unions sourcebook (CRED)	Annex C

Citation

- E. This instrument may be cited as the Companies Act 2006 (Consequential Handbook Amendments No 2) Instrument 2008.

By order of the Board
25 September 2008

Annex A

Amendments to the Glossary of definitions

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

- group*
- (1) ... A and any *person* who is:
- (a) a *parent undertaking* of A;
 - ...
 - (d) a *parent undertaking* of a *subsidiary undertaking* of A;
 - ...
 - (g) if A or an *undertaking* in (a) or (d) is an *incorporated friendly society*, a *body corporate* of which that *friendly society* has joint control (as defined in section 13(9)(c) or (cc) of the Friendly Societies Act 1992); in this definition:
 - (i) “participating interest” has the same meaning as in:
 - ...
 - (C) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008 (SI 2008/409) where applicable; or
 - (D) paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or
 - (E) paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable;
- In (A), ~~(B)~~ and ~~(C)~~ to (E), the meaning also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were an *undertaking*.
- ...
- large company*
- a *body corporate* which does not qualify as a small company under section 247 of the Companies Act 1985, or section 382 of the Companies Act 2006 as applicable.
- ...

Annex B

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

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

FIRMS TO WHICH RULES 3-61 TO 3-182 APPLY

3-60(3A) R (a) Net current assets for the purposes of rule 3-60(3)R(b) shall be as calculated for the purposes of producing a balance sheet in accordance with the following provisions, as applicable:

(i) ...

(iii) Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410);~~or~~

(iv) Schedule 1 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912); or

(v) Schedule 1 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913).

...

3-60(4A) R (a) Net current assets for the purposes of rule 3-60(4)R(b) shall be as calculated for the purposes of producing a balance sheet in accordance with the following provisions as applicable:

(i) ...

(iii) Schedule 1 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410);~~or~~

(iv) Schedule 1 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912); or

(v) Schedule 1 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913).

...

3-60(5A) R (a) Net current assets for the purposes of rule 3-60(5)R(b) shall be as calculated for the purposes of producing a balance sheet in accordance with the following provisions as applicable:

(i) ...

- (iii) Schedule 1 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409);or
- (iii) Schedule 1 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912); or
- (iv) Schedule 1 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913).

...

APPENDIX 1- GLOSSARY OF TERMS FOR IPRU(INV) 3

...

*annual
financial
statements*

means statements drawn up in accordance with whichever of the following is applicable at the *firm's annual accounting reference date*:

- (i) ...
- (iv) ~~*international accounting standards.*~~ Schedule 1 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912); or
- (v) Schedule 1 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913); or
- (vi) *international accounting standards.*

Annex C

Amendments to the Credit Unions sourcebook (CRED)

CRED 13 Annex 1C Qualifications approved by the FSA (and the Registry of Friendly Societies)

D ...

2 ...

(2) “Participating interest” has the same meaning as in:

(i) ...

(ii) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409); where applicable; or

(iii) paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or

(iv) paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable; or

(v) paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913).

In (i) ~~and (ii)~~ to (v) above, the meaning also includes an interest held by an individual which would be a participating interest for the purposes of those provisions if he were taken to be an undertaking.

STATUS DISCLOSURE AND FSA LOGO INSTRUMENT 2008

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) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 31 October 2008.

Amendments to the Handbook

- D. The General Provisions (GEN) are amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Status Disclosure and FSA Logo Instrument 2008.

By order of the Board
25 September 2008

Annex A

Amendments to the General Provisions (GEN)

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

4 Statutory status disclosure

4.1 Application ~~and purpose~~

Who? What?

- 4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*, except that:

...

- (5) ~~this chapter does not apply only~~ GEN 4.5 (Statements about authorisation and regulation by the FSA) applies in relation to *MiFID or equivalent third country business* and only where that *MiFID or equivalent third country business* is not business falling within paragraph 2 (Transactions between an MTF operator and its users), 3 (Transactions concluded on an MTF) or 4 (Transactions concluded on a regulated market) of Part 1 of *COBS 1 Annex 1 business or the equivalent business of a third country investment firm*.

Where?

...

- 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*, it only applies to business conducted within the territory of the *United Kingdom*.

4.2 Purpose

- 4.2.1 G The purpose of this chapter is to build upon ~~amplify~~ *Principle 7* (Communication with clients), which requires a *firm* to pay due regard to the information needs of its *clients*. This chapter requires the provision of appropriate minimum information about the identity of the regulator that authorised a *firm*. It also governs the way in which a *firm* may describe its regulation by the FSA ~~a *firm's* regulator in a way which is as consistent as practicable across the whole range of activities regulated by the FSA~~. This assists in the achievement of the *regulatory objectives* of consumer

protection, public awareness and market confidence.

4.2.1A G PRIN 1.1.3G, states that in applying the *Principles* with respect to *accepting deposits* and *issuing electronic money*, the *FSA* will proceed only in a *prudential context*. That limitation does not apply to this chapter.

...

4.3 Letter disclosure

...

4.3.1A G Where a letter covers both activities to which this ~~chapter~~ section applies and activities to which this ~~chapter~~ section does not apply, the *firm* should comply with the *rules* in this chapter in relation to the business to which it applies. An example would be where a letter covers business for which the *FSA* is the *competent authority* under the *Insurance Mediation Directive* and under *MiFID*.

...

4.5 **Statements about authorisation and regulation by the FSA**

Application

4.5.1 R This section applies to a *firm*:

(1) communicating with a *customer*; or

(2) communicating or approving a *financial promotion* other than:

(a) a *financial promotion* that would benefit from an exemption in the *Financial Promotion Order* if it were *communicated* by an *unauthorised person*;

(b) a promotion of an *unregulated collective investment scheme* that would breach section 238(1) of the *Act* if made by an *authorised person* (*firms may not communicate or approve such promotions*).

4.5.2 G GEN 4.5.1R(1) does not apply to a *firm* when communicating with an *eligible counterparty*. However, misleading statements by a *firm* in such a communication may involve a breach of *Principle 7* (*Communications with clients*) or section 397 (*Misleading statements and practices*) of the *Act*, as well as giving rise to private law actions for misrepresentation.

The duty

4.5.3 R A *firm* must not indicate or imply that it is authorised by the *FSA* in respect of business for which it is not so authorised.

4.5.4 R A *firm* must not indicate or imply that it is regulated or otherwise supervised

by the *FSA* in respect of business for which it is not regulated by the *FSA*.

- 4.5.5 G SUP 13A Annex 1 provides guidance on the application of the Handbook to an incoming EEA firm.
- 4.5.6 G (1) Neither an incoming EEA firm nor an incoming Treaty firm is authorised by the FSA when acting as such.
- (2) It is likely to be misleading for a firm that is not authorised by the FSA to state or imply that it is so authorised. It is also likely to be misleading for a firm to state or imply that a client will have recourse to the Financial Ombudsman Service or the FSCS where this is not the case.
- (3) As well as potentially breaching the requirements in this section, misleading statements by a firm may involve a breach of Principle 7 (Communications with clients) or section 397 (Misleading statements and practices) of the Act, as well as giving rise to private law actions for misrepresentation.

4 Annex 1R Statutory status disclosure

	Type of firm	Required disclosure (Note 5)
...		
(2)	<i>Incoming firm without a top-up permission</i>	<p>(a) “Authorised by [name of <i>Home State regulator</i>] and regulated by the Financial Services Authority for the conduct of UK business”</p> <p>or</p> <p>(b) “Authorised by [name of <i>Home State regulator</i>] and subject to limited regulation by the Financial Services Authority. Details about the extent of our regulation by the Financial Services Authority are available from us on request”</p> <p>(Notes 1, 2, <u>2a</u> and 3)</p>
(3)	<i>Incoming firm with a top-up permission</i>	<p>“Authorised by [name of <i>Home State regulator</i>] and <u>authorised and subject to limited regulation by the Financial Services Authority. Details about the extent of our authorisation and regulation by the Financial Services Authority are available from us on request</u> and by the Financial Services Authority; regulated by the Financial Services Authority for the conduct of UK business” (Notes 1, 2 and 3)</p>

...		
...		
<p><u>Note 2a = An <i>incoming firm</i> without a <i>top-up permission</i> may make either disclosure (a) or disclosure (b) unless it otherwise indicates or implies to the <i>customer</i> that it is regulated or supervised by the <i>FSA</i>, in which case it must make disclosure (b).</u></p>		
<p>Note 3 = <u>An <i>incoming firm</i> may state the type of business that it conducts, for For example, that it is regulated by the Financial Services Authority for the conduct of investment business in the UK. If a <i>firm</i> offers to make details about the extent of its authorisation or regulation by the <i>FSA</i> available on request and a <i>customer</i> requests such details, it must provide those details in a way that is clear, fair and not misleading.</u></p>		
...		
<p>Note 5 = Any <i>firm</i> listed in this table is permitted to add words to the relevant required disclosure statement but only if the <i>firm</i> has taken reasonable steps to satisfy itself that the presentation of its statutory status will, as a consequence, remain fair, clear and not misleading <u>and be likely to be understood by the average member of the group to whom it is directed or by whom it is likely to be received.</u> For example, an authorised <i>professional firm</i> may wish to make it clear that it is also regulated by its professional body.</p>		
...		

5 The FSA logo and the keyfacts logo

...

The FSA logo

- 5.1.8 R A *firm* must not use the FSA logo (and must take all reasonable steps to ensure that its *representatives* do not use the FSA logo) in any communication with a *client* other than in accordance with the general licence in GEN 5 Annex 1G or any individual licence granted by the *FSA* to the *firm* or its *representatives*.

TP 1 Transitional provisions

...

1.3 (3) Transitional Provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
11	<u>GEN 4.5</u>	<u>R</u>	<p>(1) <u>A firm is not required to comply with GEN 4.5.</u></p> <p>(2) <u>In relation to the regulated activity of accepting deposits, an incoming EEA firm may not rely on this transitional rule and must comply with GEN 4.5.</u></p>	<p><u>From 31 October 2008 to 30 September 2009.</u></p>	<p><u>31 October 2008.</u></p>
12	<u>GEN 4 Annex 1 R</u>	<u>R</u>	<p>(1) <u>A firm may comply with GEN 4 Annex 1 R as in force on 30 October 2008.</u></p> <p>(2) <u>In relation to the regulated activity of accepting deposits, an incoming EEA firm may not rely on this transitional rule and must comply with GEN 4.5.</u></p>	<p><u>From 31 October 2008 to 30 September 2009.</u></p>	<p><u>31 October 2008.</u></p>

Annex B

Amendments to the Supervision manual (SUP)

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

13A Qualifying for authorisation under the Act

...

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
...		
GEN	<p><i>GEN</i> applies (<i>GEN</i> 1.1, <i>GEN</i> 2.1, <i>GEN</i> 3.1, <i>GEN</i> 4.1, <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However, (a) <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> (<i>GEN</i> 4.1.1 R (3)), and (b) <i>GEN</i> 6 only applies to business that can be regulated under section 138 of the Act (General rule-making power). It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by a European Community instrument.</p> <p><u>Only <i>GEN</i> 4.5 does not apply applies</u> in relation to <i>MiFID</i> or <i>equivalent third country business</i> (see <i>GEN</i> 4.1.1 R).</p>	<p><i>GEN</i> 4 does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i>. (see <i>GEN</i> 4.1.1 R)</p> <p>Otherwise, as column (2).</p>
...		

PERIODIC FEES (SOLVENCY 2) INSTRUMENT 2008

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 October 2008.

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 Periodic Fees (Solvency 2) Instrument 2008.

By order of the Board
25 September 2008

Annex

Amendment to the Fees manual (FEES)

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

...

Time of payment

4.3.6 R ...

(5) Paragraphs (1) and (2) do not apply to any Solvency 2 fee (as defined in Part 1 of FEES 4 Annex 2R) and such fee is not taken into account for the purposes of the split in (1). Instead any Solvency 2 fee is payable on the date specified in (1)(a) or (2) (depending on which applies to the rest of its periodic fee) or any earlier date required by (3) or (4).

...

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

Part 1

This table shows the tariff rates applicable to each fee block

...	
Activity Group	Fee payable
...	
A.3	Gross premium income (GPI)
	...
	PLUS
	Gross technical liabilities (GTL)
	...

	>1,000	5.54
	<u>PLUS</u>	
	<u>Solvency 2 Special Project Fee (the “Solvency 2 fee”)</u>	
	<u>Minimum fee (£)</u>	<u>0</u>
	<u>There is only a single tariff band.</u>	<u>The fee is calculated in accordance with Part 4 of this Annex. The percentage for this fee block (by which periodic fees are multiplied as described in Part 4) is 3.2%.</u>
	...	
A.4	Adjusted annual gross premium income (AGPI)	
	...	
	<u>PLUS</u>	
	Mathematical reserves (MR)	
	...	
	>15,000	8.83
	<u>PLUS</u>	
	<u>Solvency 2 Special Project Fee (Solvency 2 fee)</u>	
	<u>Minimum fee (£)</u>	<u>0</u>
	<u>There is only a single tariff band.</u>	<u>The fee is calculated in accordance with Part 4 of this Annex. The percentage for this fee block (by which periodic fees are multiplied as described in Part 4) is 1.41%.</u>
	...	
...		

Part 2

This table shows the permitted deductions that apply:

Activity group	Nature of deduction	Amount of deduction
...		
A.3	Financial penalties received	1.4% of the fee payable by the <i>firm</i> for the activity group (see Part 1). <u>The deduction does not apply to any Solvency 2 fee (as defined in Part 1).</u>
A.4	Financial penalties received	1.4% of the fee payable by the <i>firm</i> for the activity group (see Part 1). <u>The deduction does not apply to any Solvency 2 fee (as defined in Part 1).</u>
...		

...

Part 4	
<u>This table shows the calculation of the Solvency 2 fee for <i>firms</i> falling into fee block A3 or A4</u>	
(1)	<u>The Solvency 2 fee forms part of the periodic fee payable under fee block A3 and A4 (the “insurance fee blocks”).</u>
(2)	<u>The Solvency 2 fee is only payable by a <i>firm</i> if:</u>
	(a) <u>it was in one or both of the insurance fee blocks at the start of the financial year 2008/9;</u>
	(b) <u>FEES 4.3.13R (Firms Applying to Cancel or Vary Permission Before Start of Period) does not apply with respect to the fee block in (a); and</u>
	(c) <u>it has not notified the FSA before the start of the financial year 2008/9 that it intends to migrate out of the United Kingdom for regulatory purposes before the proposed Solvency II Directive is implemented.</u>
(3)	<u>The Solvency 2 fee is payable by the top ten <i>firms</i> in the list of <i>firms</i> that fall into (2). A <i>firm</i>'s ranking in this list is measured by reference to the amount of the periodic fees payable by it under FEES 4.3 in respect of the financial year 2007/8 with respect to the insurance fee blocks.</u>

(4)	<u>The fee for a particular insurance fee block is calculated by multiplying the periodic fee payable by the <i>firm</i> with respect to that fee block (ignoring the Solvency 2 fee) by the percentage specified in Part 1.</u>
(5)	<u>The total Solvency 2 fee payable by a <i>firm</i> (taking into account amounts payable under both insurance fee blocks) is capped at £50,000.</u>
(6)	<u>For the purpose of (3) <i>firms</i> falling into (2) that are in the same group at the start of the financial year 2008/9 must be treated as a single <i>firm</i>, so that the total number of <i>firms</i> liable to pay the Solvency 2 fee may be greater than 10.</u>
(7)	<u>Where (6) applies, the Solvency 2 fee payable by the <i>firms</i> in the group concerned for a particular insurance fee block is calculated by multiplying the total amount of the periodic fees payable by those <i>firms</i> with respect to that fee block (ignoring the Solvency 2 fee) by the percentage specified in Part 1. All those <i>firms</i> are liable jointly and severally to pay the Solvency 2 fee. No <i>incoming EEA firm</i> or <i>incoming Treaty firm</i> that has established a <i>branch</i> in the UK is liable to pay any such joint fee.</u>
(8)	<u>Where (7) applies, (5) is applied to the group as a whole so that the total joint Solvency 2 fee payable by the group is capped at £50,000.</u>
(9)	<u>The definition of a <i>group</i> is restricted for the purpose of calculating the Solvency 2 fee to <i>parent undertakings</i> and their <i>subsidiary undertakings</i>.</u>
(10)	<u>In calculating the fee to which the percentage in (4) or (7) is applied, no account is taken of any change in the fee that takes place after the Solvency 2 fee has been billed.</u>
(11)	<u>The Solvency 2 fee is not reduced under the table in FEES 4.2.6R (Modifications for persons becoming subject to periodic fees during the course of a financial year). Instead the fee to which the percentage in (4) or (7) is applied takes account of any reduction under that table. The same applies for the reductions in Part 3 of this Annex (Modifications to fee tariffs that apply to incoming EEA firms and incoming Treaty firms).</u>

**SELF-INVESTED PERSONAL PENSIONS (CONTRACTING OUT)
INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 1 October 2008.

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 Self-Invested Personal Pensions (Contracting Out) Instrument 2008.

By order of the Board
25 September 2008

Annex

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

- 13.4.4 R There is no requirement to include a *projection* in a *key features illustration*:
- (1) for a single *premium life policy* bought as a pure investment product, a product with benefits that do not depend on future investment returns or any other product if it is reasonable to believe that a *retail client* will not need one to be able to make an informed decision about whether to invest; or
 - (2) if the product is:
 - (a) a *SIPP* from which no *income withdrawals* are being taken (but if the *SIPP* is being used to contract out of the State Second Pension, the *key features illustration* must include a *projection* for an *appropriate personal pension* and a *contracting-out comparison*, for those benefits); or
 - (b) a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*).

...

- 14.2.1 R A *firm* that sells:
- (1) ...
 - (3A) the variation of a *SIPP* to a *retail client*, to contract out of the State Second Pension, must provide the *client* with a *projection* for an *appropriate personal pension* and a *contracting-out comparison* for those benefits together with such additional information as is necessary for the *client* to understand the consequences of the variation;

...

**CLIENT ASSETS SOURCEBOOK (COMMON PLATFORM PROVISIONS)
INSTRUMENT 2008**

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 January 2009.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Client Assets sourcebook (CASS)	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 Client Assets Sourcebook (Common Platform Provisions) Instrument 2008.

By order of the Board
25 September 2008

Annex A

Amendments to the Glossary of definitions

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

<u>applicable asset</u>	(a)	<u>in relation to MiFID business, a financial instrument; or</u>
	(b)	<u>in relation to safeguarding and administering investments that is not MiFID business, a designated investment.</u>
client bank account	(1)	(other than in CASS 7 and <u>CASS 7A</u> and principally in CASS 4 and CASS 5):
	(a)	an account at a bank which:
	(i)	holds the <i>money</i> of one or more <i>clients</i> ;
	(ii)	is in the name of the <i>firm</i> ;
	(iii)	includes in its title an appropriate description to distinguish the <i>money</i> in the account from the <i>firm's money</i> ; and
	(iv)	is a current or a deposit account; or
	(b)	a money market deposit of <i>client money</i> which is identified as being <i>client money</i> .
	(2)	(in CASS 7 <u>and CASS 7A</u>)
	(a)	an account at a bank which:
	(i)	holds the money of one or more <i>clients</i> ;
	(ii)	is in the name of the <i>firm</i> ; and
	(iii)	is a current or a deposit account; or
	(b)	a money market deposit account of <i>client money</i> which is identified as being <i>client money</i> .
client money	(1)	(in CASS 2 and CASS 4, and, in so far as it relates to matters covered by CASS 2 or CASS 4, COBS) subject to the <i>client money rules</i>, money of any currency which, in the course of carrying on <i>designated investment business</i> that is not <i>MiFID business</i>, a <i>firm</i>

~~holds in respect of any *investment agreement* entered into, or to be entered into, with or for a *client*, or which a *firm* treats as *client money* in accordance with the *client money rules*. [deleted]~~

(2) (in CASS 5) subject to the *client money rules*, money of any currency which, in the course of carrying on *insurance mediation activity*, a *firm* holds on behalf of a *client* or which a *firm* treats as *client money* in accordance with the *client money rules*.

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

(a) that a *firm* receives or holds for, or on behalf of, a *client* in the course of, or in connection with, its *MiFID business*; and/or

(b) which, in the course of carrying on *designated investment business* that is not *MiFID business*, a *firm* holds in respect of any *investment agreement* entered into, or to be entered into, with or for a *client*, or which a *firm* treats as *client money* in accordance with the *client money rules*.

(3) (in MIPRU):

(a) in relation to an *insurance intermediary* when acting as such, money which is *client money* in (2);

(b) in relation to a *home finance intermediary* when acting as such, money of any currency which in the course of carrying on *home finance mediation activity*, the *firm* holds on behalf of a *client*, either in a bank account or in the form of cash.

(4) (4) (in UPRU) *client money* for the purposes of the *client money rules*.

~~*client money*~~ CASS 7.
~~*chapter*~~

~~*client money*~~ CASS 7.9.
~~(*MiFID*~~
~~*business*)~~
~~*distribution*~~
~~*rules*~~

~~*Client client*~~ CASS 4.4 CASS 7A.
~~*money*~~
~~*distribution*~~

- (2) (in CASS 5) an event that occurs in the circumstances described in CASS 5.6.5R (Failure of the authorised firm: primary pooling event).
- (3) (in CASS 7 and CASS 7A) an event that occurs in the circumstances described in ~~CASS 7.9.4R~~ 7A.2.2R (Failure of the authorised firm: primary pooling event).

safe custody
asset

- (a) in relation to MiFID business, a financial instrument; or
- (b) in relation to safeguarding and administering investments that is not MiFID business, a safe custody investment.

secondary
pooling event

- (1) ~~(in CASS 4) an event that occurs in the circumstances described in CASS 4.4.14R (Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events).~~ [deleted]
- (2) (in CASS 5) an event that occurs in the circumstances described in CASS 5.6.14R (Failure of a bank, other broker or settlement agent: secondary pooling events).
- (3) (in CASS 7 and CASS 7A) an event that occurs in the circumstances described in ~~CASS 7.9.14R~~ 7A.3.1R (Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events).

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

- 6.1.7 R (1) A firm that holds *designated investments* or *client money* for a *retail client* subject to the ~~*MiFID*~~ *custody chapter* or the ~~*MiFID*~~ *client money chapter* ~~and any *third country investment firm* that holds *designated investments* or *client money* for a *retail client*~~ must provide that *client* with the following information:

...

...

- 6.1.8 G Paragraphs (1), (3) and (4) of ~~*COBS*~~ 6.1.7R apply in relation to ~~*MiFID*~~ *or equivalent *third country business** and also to ~~*firms*~~ that have elected to comply with the ~~*custody rules*~~ in the ~~*MiFID custody chapter*~~ or the ~~*client money rules*~~ in the ~~*MiFID client money chapter*~~. [deleted]

Annex C

Amendments to the Client Assets sourcebook (CASS)

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

General application: what?

- 1.2.7 G ...
- (3) The ~~non-directive custody chapter~~ and the ~~non-directive client money chapter~~ apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of ~~designated investment business other than MiFID business~~ and/or designated investment business.
- ...
- (5) ~~The MiFID custody chapter and the MiFID client money chapter apply in relation to regulated activities, conducted by firms, which fall within the definition of:~~
- (a) ~~MiFID business; and~~
- (b) ~~designated investment business other than MiFID business, where the firm has, in accordance with those rules, opted to comply with the provisions of those rules with respect of this business. [deleted]~~
- ...

Application for retail clients, professional clients and eligible counterparties

- 1.2.8 G ...
- (2) ~~In CASS, except in the insurance client money chapter, MiFID custody chapter and MiFID client money chapter, the term customer refers to retail clients and professional clients, but not eligible counterparties. Where relevant, each of the provisions of CASS makes clear whether it applies to activities carried on with or for retail clients or professional clients, or both. [deleted]~~
- ...
- (4) Each provision in the *MiFID custody chapter* and the *MiFID client money chapter* makes it clear whether it applies to activities carried

on ~~or~~ for *retail clients*, *professional clients* or both. There is no further modification of the *rules* in these chapters in relation to activities carried on for *eligible counterparties*. Such *clients* are treated in the same way as other *professional clients* for the purposes of these *rules*.

...

Investments and money held under different regimes

1.2.10 R ~~Where a firm is subject to both the *non-directive custody chapter* and the *MiFID custody chapter*, it must ensure segregation between *designated investments* held under each chapter, including that *designated investments* held under different chapters with the same third party, are held in different, separately designated, accounts. [deleted]~~

1.2.11 R Where a firm is subject to ~~more than one of the~~ *non-directive client money chapter*; and the *insurance client money chapter* ~~and the *MiFID client money chapter*~~, it must ensure segregation between money held under each chapter, including that money held under different chapters is held, in different, separately designated, *client bank accounts* or *client transaction accounts*.

...

1.2.13 G ~~A firm may opt to hold under a single chapter *designated investments* that would otherwise be held under different chapters (see CASS 6.1.17R). A firm may also opt to hold under a single chapter *money* that would otherwise be held under different chapters (see CASS 4.1.1AR, CASS 5.1.1R(3) and CASS 7.1.3R (4)).~~

...

Stock lending activity with or for ~~customers~~ clients

- 1.4.2 G (1) The ~~*non-directive custody chapter*~~ and the ~~*non-directive client money chapter*~~ apply in respect of any *stock lending activity* that is ~~not *MiFID business*~~ undertaken with or for a ~~*customer*~~ *client* by a firm. ~~If the *stock lending activity* involves *MiFID business* or if the firm has opted to comply with the *MiFID custody chapter* or the *MiFID client money chapter* with respect to its non-*MiFID business*, then the *MiFID custody chapter* and the *MiFID client money chapter* apply.~~
- (2) The *collateral rules* apply, where relevant, in respect of *stock lending activity*, ~~whether or not the activity amounts to *MiFID business*.~~

Corporate finance business

- 1.4.3 G (1) The ~~non-directive custody chapter~~ and the ~~non-directive client money chapter~~ apply in respect of *corporate finance business* that is ~~not MiFID business~~ undertaken by a firm. If the ~~corporate finance business~~ involves *MiFID business* or if the firm has opted to comply with the ~~MiFID custody chapter~~ or the ~~MiFID client money chapter~~ with respect to its ~~non-MiFID business~~, then the *MiFID custody chapter* and the *MiFID client money chapter* apply.
- (2) The *collateral rules* apply, where relevant, in respect of *corporate finance business*, whether or not the activity amounts to *MiFID business*.

Oil market activity and energy market activity

- 1.4.4 G (1) The ~~non-directive custody chapter~~ and the ~~non-directive client money chapter~~ apply in respect of *oil market activity* and other *energy market activity* that is ~~not MiFID business~~ undertaken by a firm. If the ~~energy market activity (including oil market activity)~~ involves *MiFID business* or if the firm has opted to comply with the ~~MiFID custody chapter~~ or the ~~MiFID client money chapter~~ with respect to its ~~non-MiFID business~~, then the *MiFID custody chapter* and the *MiFID client money chapter* apply.
- (2) The *collateral rules* apply, where relevant, in respect of *energy market activity*, whether or not the activity amounts to *MiFID business*.

...

Depositories

- 1.4.6 R The ~~non-directive client money chapter~~ and the ~~MiFID client money chapter~~ ~~do~~ does not apply to a *depository* when acting as such.

...

- 1.4.8 R (1) Other than the mandate rules, CASS does not apply to a *trustee firm* which is not a *depository*, or the trustee of a *personal pension scheme* or *stakeholder pension scheme*, unless MiFID applies to it, in which case the custody chapter and the client money chapter do apply except for the MiFID custody chapter, the MiFID client money chapter and the mandate rules.
- (2) In the *MiFID custody chapter*, the *MiFID client money chapter* and the *mandate rules*, ‘*client*’ means ‘*trustee*’, ‘*trust*’, ‘*trust instrument*’

or 'beneficiary', as appropriate.

...

CASS 2 is deleted in its entirety. The text of the deleted chapter is not shown.

...

CASS 4 is deleted in its entirety. The text of the deleted chapter is not shown.

...

6 Custody ~~:MiFID business rules~~

6.1 Application

6.1.1 R This chapter (the *custody rules*) applies to a firm:

(1) ~~a *MiFID investment firm*: [deleted]~~

(a) ~~when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*; or [deleted]~~

(b) ~~that opts to comply with the *custody rules* under this chapter in accordance with CASS 6.1.17R(1), (Opt in to the MiFID custody rules); and [deleted]~~

(1A) when it holds *financial instruments* belonging to a *client* in the course of its *MiFID business*; and/or

(1B) when it is *safeguarding and administering investments*, in the course of business that is not *MiFID business*.

(2) ~~a *third country investment firm* that opts to comply with the *custody rules* under this chapter in accordance with CASS 6.1.17R(2) (Opt in to the MiFID client money rules). [deleted]~~

6.1.1A G The *regulated activity of safeguarding and administering investments* covers both the *safeguarding and administration of assets (without arranging)* and *arranging the safeguarding and administration of assets*, when those assets are either *safe custody investments* or *custody assets*. A *safe custody investment* is, in summary, a *designated investment* which a *firm* receives or holds on behalf of a *client*. *Custody assets* include *designated investments*, and any other assets that the *firm* holds or may hold in the same portfolio as a *designated investment* held for or on behalf of the *client*.

6.1.1B R Firms to which the custody rules apply by virtue of CASS 6.1.1R(1B) must also apply the custody rules to those custody assets which are not safe custody investments in a manner appropriate to the nature and value of those custody assets.

6.1.1C G In accordance with article 42 of the Regulated Activities Order, a firm (“I”) will not be arranging safeguarding and administration of assets if it introduces a client to another firm whose permitted activities include the safeguarding and administration of investments, or to an exempt person acting as such, with a view to that other firm or exempt person:

(1) providing a safe custody service in the United Kingdom; or

(2) arranging for the provision of a safe custody service in the United Kingdom by another person;

and the other firm, exempt person or other person who is to provide the safe custody service is not in the same group as I, and does not remunerate I.

6.1.2 G Firms are reminded that dividends (actual or payments in lieu), stock lending fees and other payments received for the benefit of a client, and which are due to the clients, should be held in accordance with the ~~MiFID~~ client money chapter where appropriate.

6.1.3 G ~~This chapter does not apply where a firm issues depositary receipts. The custody rules in the non-directive custody chapter provide a specialist regime for the issue of depositary receipts (see CASS 2.1.24R to CASS 2.1.26R). [deleted]~~

...

6.1.5 G For example, this chapter does not apply where a firm borrows ~~financial instruments~~ safe custody assets from a client as principal under a stock lending agreement.

Title transfer collateral arrangements

6.1.6 R The custody rules do not apply where a client transfers full ownership of a ~~financial instrument~~ 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]

...

Affiliated companies – MiFID business

- 6.1.10 G The fact that a *client* is an *affiliated company* in respect of *MiFID business* does not affect the operation of the *custody rules* in relation to that *client*.

Affiliated companies – non-MiFID business

- 6.1.10A G In respect of business which is not *MiFID business*, the *custody rules* do not apply to a *firm* when it safeguards and administers a *designated investment* on behalf of an *affiliated company*, unless:

- (1) the *firm* has been notified that the *designated investment* belongs to a *client* of the *affiliated company*; or
- (2) the *affiliated company* is a *client* dealt with at arm's length.

- 6.1.11 G ~~A *firm* that holds *financial instruments* on behalf of an *affiliated company* in respect of its *non-MiFID business* and opts under CASS 6.1.17 R to comply with this chapter in respect of that *non-MiFID business*, should refer to CASS 2.1.9 R(1) to determine whether the assets falls within the scope of the *custody rules* in the *non-directive custody chapter* and therefore within the scope of the opt-in. [deleted]~~

Delivery versus payment transactions

- 6.1.12 R (1) A *firm* need not treat this chapter as applying in respect of a delivery versus payment transaction through a commercial settlement system if it is intended that the ~~*financial instrument*~~ *safe custody asset* is either to be:
- (a) ...
- (b) ...

unless the delivery or payment by the *firm* does not occur by the close of business on the third *business day* following the date of payment or delivery of the ~~*financial instrument*~~ *safe custody asset* by the *client*.

- (2) Until such a delivery versus payment transaction through a commercial settlement system settles, a *firm* may segregate *money* (in accordance with the ~~*MiFID client money chapter*~~) instead of the *client's financial instruments* *safe custody assets*.

~~Arranging registration and recommendations~~

- 6.1.13 G ~~This chapter does not apply where a *firm* arranges registration of a *financial instrument*. In such circumstances, a *firm* must comply with the relevant *custody rules* in the *non-directive custody chapter* (see CASS 2.1.22R).~~

[deleted]

- 6.1.14 G ~~This chapter does not apply where a firm recommends to a retail client a third party to hold the assets of that client. In such circumstances, a firm must comply with the relevant custody rules in the non-directive custody chapter (see CASS 2.2.19R). [deleted]~~

Temporary handling of financial instruments safe custody assets

- 6.1.15 G The *custody rules* do not apply if a firm temporarily handles a *financial instrument safe custody asset* belonging to a client. A firm should temporarily handle *financial instrument a safe custody asset* for no longer than is reasonably necessary. In most transactions this would be no longer than one *business day*, but it may be longer or shorter depending upon the transaction in question. For example, when a firm executes an order to sell shares which have not been registered on a de-materialised exchange, handling documents for longer periods may be reasonably necessary. However, in the case of *financial instruments safe custody assets* in bearer form, the firm is expected to handle them for less than one *business day*. When a firm temporarily handles *financial instruments safe custody assets*, it is still obliged to comply with *Principle 10* (Clients' assets).
- 6.1.16 G When a firm temporarily handles a *financial instrument safe custody asset*, in order to comply with its obligation to act in accordance with *Principle 10* (Clients' assets), the following are guides to good practice:
- (1) a firm should keep the *financial instrument safe custody asset* secure, record it as belonging to that client, and forward it to the client or in accordance with the client's instructions as soon as practicable after receiving it; and
 - (2) a firm should make and retain a record of the fact that the firm has handled that *financial instrument safe custody asset* and of the details of the client concerned and of any action the firm has taken.

Exemptions which do not apply to MiFID business

- 6.1.16A R The exemptions in CASS 6.1.16BR to 6.1.16DG do not apply to a MiFID investment firm which holds financial instruments belonging to a client in the course of MiFID business.

Operators of regulated collective investment schemes

- 6.1.16B R The custody rules do not apply to a firm when it acts as the operator of a regulated collective investment scheme, in relation to activities carried on for the purpose of, or in connection with, the operation of the scheme.

Personal investment firms

- 6.1.16C R The custody rules do not apply to a personal investment firm when it temporarily holds a designated investment, other than in bearer form, belonging to a client, if the firm:
- (1) keeps it secure, records it as belonging to that client, and forwards it to the client or in accordance with the client's instructions, as soon as practicable after receiving it;
 - (2) retains the designated investment for no longer than the firm has taken reasonable steps to determine is necessary to check for errors and to receive the final document in connection with any series of transactions to which the documents relate; and
 - (3) makes a record, which must then be retained for a period of 5 years after the record is made, of all the designated investments handled in accordance with (1) and (2) together with the details of the clients concerned and of any action the firm has taken.
- 6.1.16D G Administrative convenience alone should not lead a personal investment firm to rely on CASS 6.1.16CR. Personal investment firms should consider what is in the client's interest and not rely on CASS 6.1.16CR as a matter of course.

Trustees and depositaries

- 6.1.16E R The specialist regime in CASS 6.1.16FR to 6.1.16IG does not apply to a MiFID investment firm which holds financial instruments belonging to a client in the course of MiFID business.
- 6.1.16F R When a trustee firm or depositary acts as a custodian for a trust or collective investment scheme and:
- (1) the trust or scheme is established by written instrument; and
 - (2) the trustee firm or depositary has taken reasonable steps to determine that the relevant law and provisions of the trust instrument or scheme constitution will provide protections at least equivalent to the custody rules for the trust property or scheme property;

the trustee firm or depositary need comply only with the custody rules listed in the table below.

<u>Reference</u>	<u>Rule</u>
<u>CASS 6.1.1R to CASS 6.1.9G and</u>	<u>Application</u>

<u>CASS 6.1.15G to CASS 6.1.16C R</u>	
<u>CASS 6.1.16ER to CASS 6.1.16IG</u>	<u>Trustees and depositaries</u>
<u>CASS 6.1.22G to CASS 6.1.24G</u>	<u>General purpose</u>
<u>CASS 6.2.1R and CASS 6.2.2R</u>	<u>Protection of clients' safe custody assets</u>
<u>CASS 6.2.3R and CASS 6.2.6G</u>	<u>Registration and recording</u>
<u>CASS 6.2.7R</u>	<u>Holding</u>
<u>CASS 6.4.1R and CASS 6.4.2G</u>	<u>Use of safe custody assets</u>
<u>CASS 6.5</u>	<u>Records, accounts and reconciliations</u>

6.1.16G G The reasonable steps referred in CASS 6.1.16FR(2) could include obtaining an appropriate legal opinion to that effect.

6.1.16H R When a trustee firm or depositary within CASS 6.1.16FR arranges for, or delegates the provision of safe custody services by or to another person, the trustee firm or depositary must also comply with CASS 6.3.1R (Depositing and arranging assets to be deposited with third parties) in addition to the custody rules listed in the table in CASS 6.1.16FR.

6.1.16I G A trustee firm or depositary that just arranges safeguarding and administration of assets may also take advantage of the exemption in CASS 6.1.16JR (Arrangers).

Arrangers

6.1.16J R Only the custody rules in the table below apply to a firm when arranging safeguarding and administration of assets.

<u>Reference</u>	<u>Rule</u>
<u>CASS 6.1.1R to CASS 6.1.9G and CASS 6.1.15G to CASS 6.1.16BR</u>	<u>Application</u>
<u>CASS 6.1.16JR</u>	<u>Arrangers</u>
<u>CASS 6.1.22G to CASS 6.1.24G</u>	<u>General purpose</u>
<u>CASS 6.3.1R(1A) and CASS 6.3.2G</u>	<u>Arranging for assets to be deposited with third parties</u>

CASS 6.1.16KR	Records
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6.1.16K R When a firm arranges safeguarding and administration of assets, it must ensure that proper records of the custody assets which it arranges for another to hold or receive, on behalf of the client, are made and retained for a period of 5 years after they are made.

Opt in to the MiFID custody rules

6.1.17 R (1) ~~A firm that holds financial instruments to which this chapter applies and assets in respect of which the non-directive custody chapter applies, may elect to comply with the provisions of this chapter in respect of all assets so held and if it does so, this chapter applies as if all such assets were financial instruments that the firm receives and holds in the course of, or in connection with, its MiFID business.~~ [deleted]

(1A) ~~A third country investment firm that holds designated investments belonging to a client in the course of its equivalent business may elect to comply with the provisions of this chapter in respect of the assets it holds to which the non-directive custody chapter applies. If it does so, this chapter applies as if all such assets were assets that the firm receives and holds in the course of, or in connection with, MiFID business.~~ [deleted]

(2) ~~An election under this rule must be in respect of all the activities of the firm when it is safeguarding and administering investments belonging to a client with the exception of arranging safeguarding and administration of assets within the scope of CASS 2.1.21R and CASS 2.1.22R and depositary receipt business within the scope of CASS 2.1.24R to CASS 2.1.26R.~~ [deleted]

(3) ~~A firm must make and retain a written record of the election it makes under this rule, including the date from which the election is to be effective. The firm must make the record on the date it makes the election and must keep it for a period of five years after ceasing to use it.~~ [deleted]

6.1.18 G ~~A firm cannot rely upon this opt in in respect of arranging safeguarding and administration of assets and depositary receipt business as the custody rules in the non-directive custody chapter provide specialised regimes in respect of these types of business which are outside the scope of this chapter.~~ [deleted]

6.1.19 G ~~If a firm has opted to comply with this chapter, the non-directive custody chapter will have no application to the activities to which the election applies.~~ [deleted]

6.1.20 G ~~A firm (other than a third country investment firm) that is only subject to the non-directive custody chapter may not choose to comply with this chapter. [deleted]~~

6.1.20A G ~~The information requirements concerning the safeguarding of financial instruments belonging to a client (see COBS 6.1.7R) apply to a firm that has elected to comply with this chapter with respect of all assets to which the election applies. [deleted]~~

Disposal of financial instruments

6.1.21 R ~~The custody rules cease to have effect in relation to a financial instrument it has been disposed of in accordance with a valid client instruction. [deleted]~~

General purpose

6.1.22 G Principle 10 (Clients' assets) requires a firm to arrange adequate protection for clients' assets when it is responsible for them. As part of these protections, the custody rules require a firm to take appropriate steps to protect *financial instruments safe custody assets* for which it is responsible.

6.1.23 G The rules in this chapter are designed primarily to restrict the commingling of client and the firm's assets and minimise the risk of the client's *financial instruments safe custody assets* being used by the firm without the client's agreement or contrary to the client's wishes, or being treated as the firm's assets in the event of its insolvency.

6.1.24 G The custody rules also, where relevant, implement the provisions of MiFID which regulate the obligations of a firm when it holds *financial instruments* belonging to a client in the course of its MiFID business.

6.2 Holding of client assets

Requirement to protect clients' ~~financial instruments~~ safe custody assets

6.2.1 R A firm must, when holding *financial instruments safe custody assets* belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the firm's insolvency, and to prevent the use of *financial instruments safe custody assets* belonging to a client on the firm's own account except with the client's express consent.

[Note: article 13(7) of MiFID]

Requirement to have adequate organisational arrangements

- 6.2.2 R A *firm* must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of *clients' financial instruments safe custody assets*, or the rights in connection with those *financial instruments safe custody assets*, as a result of the misuse of the *financial instruments safe custody assets*, fraud, poor administration, inadequate record-keeping or negligence.

[**Note:** article 16(1)(f) of the *MiFID implementing Directive*]

Registration and recording of legal title

- 6.2.3 R To the extent practicable, a *firm* must effect appropriate registration or recording of legal title to a *financial instrument safe custody asset* in the name of:

...

- (3) any other third party if:

(a) the *financial instrument safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and

(b) ...

- (4) the *firm* if:

(a) the *financial instrument safe custody asset* is subject to the law or market practice of a jurisdiction outside the *United Kingdom* and the *firm* has taken reasonable steps to determine that it is in the *client's* best interests to register or record it in that way, or that it is not feasible to do otherwise, because of the nature of the applicable law or market practice; and

(b) ...

...

- 6.2.5 R A *firm* may register or record legal title to its own *financial instrument applicable assets* in the same name as that in which legal title to a *financial instrument safe custody asset* is registered or recorded, but only if:

- (1) the *firm's financial instruments applicable assets* are separately identified in the *firm's* records from the *financial instruments safe*

custody assets; or

- (2) the *firm* registers or records a financial instrument safe custody asset in accordance with CASS 6.2.3R(4).

...

- 6.2.7 R A *firm* must ensure that any documents of title to financial instruments applicable assets in *bearer form*, belonging to the *firm* and which it holds in its physical possession, are kept separately from any document of title to a *client's* financial instrument safe custody assets in *bearer form*.

6.3 Depositing assets and arranging for assets to be deposited with third parties

- 6.3.1 R (1) A *firm* may deposit financial instruments safe custody assets held by it on behalf of its *clients* into an account or accounts opened with a third party, but only if it exercises all due skill, care and diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safekeeping of those financial instruments safe custody assets.
- (1A) A firm which arranges the registration of a safe custody investment through a third party must exercise all due skill, care and diligence in the selection and appointment of the third party.
- (2) A *firm* must take the necessary steps to ensure that any *client's* financial instruments safe custody assets deposited with a third party, in accordance with this *rule*, are identifiable separately from the financial instruments applicable assets belonging to the *firm* and from the financial instruments applicable assets belonging to that third party, by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection.
- (3) When a *firm* makes the selection, appointment and conducts the periodic review referred to under this *rule*, it must take into account:
- (a) ...
 - (b) any legal requirements or market practices related to the holding of those financial instruments safe custody assets that could adversely affect *clients'* rights.
- (4) A *firm* must make a record of the grounds upon which it satisfies

itself as to the appropriateness of its selection of a third party as required in this *rule*. The *firm* must make the record on the date it makes the selection and must keep it from the date of such selection until five years after the *firm* ceases to use the third party to hold *financial instruments safe custody assets* belonging to *clients*.

[**Note:** articles 16(1)(d) and 17(1) of the *MiFID implementing Directive*]

6.3.2 G In discharging its obligations under this section, a *firm* should also consider, together with any other relevant matters:

(1) once a *financial instrument safe custody asset* has been lodged by the *firm* with the third party, the third party's performance of its services to the *firm*;

(2) the arrangements that the third party has in place for holding and safeguarding the *financial instrument safe custody asset*;

...

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

(1) that the title of the account indicates that any *financial instrument safe custody asset* credited to it does not belong to the *firm*;

(2) that the third party will hold or record a *financial instrument safe custody asset* belonging to the *firm's client* separately from any *financial instrument applicable asset* belonging to the *firm* or to the third party;

(3) the arrangements for registration or recording of the *financial instrument safe custody asset* if this will not be registered in the *client's* name;

(4) the restrictions over the third party's right to claim a lien, right of retention or sale over any *financial instrument safe custody asset* standing to the credit of the account;

...

(8) the provisions detailing the extent of the third party's liability in the event of the loss of a *financial instrument safe custody asset* caused by the fraud, wilful default or negligence of the third party or an agent appointed by him.

- 6.3.4 R (1) A *firm* must only deposit *financial instruments safe custody assets* with a third party in a jurisdiction which specifically regulates and supervises the safekeeping of *financial instruments safe custody assets* for the account of another person with a third party who is subject to such regulation.
- (2) A *firm* must not deposit *financial instruments safe custody assets* held on behalf of a *client* with a third party in a country that is not an *EEA State* (third country) and which does not regulate the holding and safekeeping of *financial instruments safe custody assets* for the account of another person unless:
- (a) the nature of the *financial instruments safe custody assets* or of the *investment services* connected with those *financial instruments safe custody assets* requires them to be deposited with a third party in that third country; or
 - (b) the *financial instruments safe custody assets* are held on behalf of a *professional client* and the *client* requests the *firm* in writing to deposit them with a third party in that third country.
- (3) ~~In the case of activities a *firm* has opted into this chapter under CASS 6.1.17R(1) and (2) do not apply. However, the *firm* must deposit *financial instruments* belonging to *clients* pursuant to such activities with a *custodian* and must hold any document of title to a *financial instrument* either in the physical possession of the *firm* or: [deleted]~~
- ~~(a) for a *retail client*, with a *custodian*; [deleted]~~
 - ~~(b) for a *professional client*, with one or more of the following: [deleted]~~
 - ~~(i) a *custodian*; [deleted]~~
 - ~~(ii) any *person* whom the *firm* has taken reasonable steps to determine is a *person* whose business includes the provision of appropriate safe custody services; or [deleted]~~
 - ~~(iii) in accordance with the *professional client's* specific written instructions. [deleted]~~

[Note: article 17(2) and (3) of the *MiFID implementing Directive*]

6.4 Use of ~~financial instruments~~ safe custody assets

- 6.4.1 R (1) A *firm* must not enter into arrangements for *securities financing transactions* in respect of ~~financial instruments~~ safe custody assets held by it on behalf of a *client* or otherwise use such ~~financial instruments~~ safe custody assets for its own account or the account of another *client* of the *firm*, unless:
- (a) the *client* has given express prior consent to the use of the ~~financial instruments~~ safe custody assets on specified terms; and
 - (b) the use of that *client's* ~~financial instruments~~ safe custody assets is restricted to the specified terms to which the *client* consents.
- (2) A *firm* must not enter into arrangements for *securities financing transactions* in respect of ~~financial instruments~~ safe custody assets held by it on behalf of a *client* in an omnibus account held by a third party, or otherwise use ~~financial instruments~~ safe custody assets held in such an account for its own account or for the account of another *client* unless, in addition to the conditions set out in (1):
- (a) each *client* whose ~~financial instruments~~ safe custody assets are held together in an omnibus account has given express prior consent in accordance with (1)(a); or
 - (b) the *firm* has in place systems and controls which ensure that only ~~financial instruments~~ safe custody assets belonging to *clients* who have given express prior consent in accordance with the requirements of (1)(a) are used.
- (3) For the purposes of obtaining the express prior consent of a *retail client* under this *rule* the signature of the *retail client* or an equivalent alternative mechanism is required.
- (4) A *firm* which does not undertake *MiFID business* does not need to comply with (1), (2) and (3) until 1 May 2009.

[**Note:** article 19 of the *MiFID implementing Directive*]

- 6.4.2 G *Firms* are reminded of the *client's best interests rule*, which requires the *firm* to act honestly, fairly and professionally in accordance with the best interests of their *clients*. An example of what is generally considered to be such conduct, in the context of *stock lending activities* involving *retail clients* is:
- (1) ...

- (2) the current realisable value of the *financial instrument safe custody asset* and of the *relevant collateral* is monitored daily; and
- (3) the *firm* provides *relevant collateral* to make up the difference where the current realisable value of the collateral falls below that of the *financial instrument safe custody asset*, unless otherwise agreed in writing by the *client*.

6.4.3 R Where a *firm* uses *financial instruments safe custody assets* as permitted in this section, the records of the *firm* must include details of the *client* on whose instructions the use of the *financial instruments safe custody assets* has been effected, as well as the number of *financial instruments safe custody assets* used belonging to each *client* who has given consent, so as to enable the correct allocation of any loss.

[Note: article 19(2) of the *MiFID implementing Directive*]

6.5 Records, accounts and reconciliations

Records and accounts

6.5.1 R A *firm* must keep such records and accounts as necessary to enable it at any time and without delay to distinguish *financial instruments safe custody assets* held for one *client* from *financial instruments safe custody assets* held for any other *client*, and from the *firm's* own *financial instruments applicable assets*.

[Note: article 16(1)(a) of the *MiFID implementing Directive*]

6.5.2 R A *firm* must maintain its records and accounts in a way that ensures their accuracy, and in particular their correspondence to the *financial instruments safe custody assets* held for *clients*.

[Note: article 16(1)(b) of the *MiFID implementing Directive*]

...

Internal reconciliation of ~~financial instruments~~ *safe custody assets* held for clients

6.5.4 G (1) ~~SYSC 4.1.1R requires firms to have robust governance arrangements, such as internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems. In addition, SYSC 6.1.1R requires firms to establish, implement and maintain adequate policies and procedures sufficient to ensure the firm's compliance with its obligations under the regulatory system.~~ Carrying out

internal reconciliations of the *financial instruments safe custody assets* held for each *client* with the *financial instruments safe custody assets* held by the *firm* and third parties is an important step in the discharge of the *firm's* obligations under CASS 6.5.2R, and where relevant, SYSC 4.1.1R and SYSC 6.1.1R.

...

- (3) Reconciliation methods which can be adopted for these purposes include the 'total count method', which requires that all *financial instruments safe custody assets* be counted and reconciled as at the same date.
- (4) If a *firm* chooses to use an alternative reconciliation method (for example the 'rolling stock method') it needs to ensure that:
 - (a) all of a particular *financial instrument safe custody asset* are counted and reconciled as at the same date; and
 - (b) all *financial instruments safe custody assets* are counted and reconciled during a period of six months.

...

Reconciliations with external records

- 6.5.6 R A *firm* must conduct on a regular basis, reconciliations between its internal accounts and records and those of any third parties by whom those *financial instruments safe custody assets* are held.

[Note: article 16(1)(c) of the *MiFID implementing Directive*]

- 6.5.7 G Where a *firm* deposits *financial instruments safe custody assets* belonging to a *client* with a third party, in complying with the requirements of CASS 6.5.6R, the *firm* should seek to ensure that the third party will deliver to the *firm* a statement as at a date or dates specified by the *firm* which details the description and amounts of all the *financial instruments safe custody assets* credited to the account, and that this statement is delivered in adequate time to allow the *firm* to carry out the periodic reconciliations required in CASS 6.5.6R.

Frequency of external reconciliations

- 6.5.8 G A *firm* should perform the reconciliation required by CASS 6.5.6R:
- (1) ...
 - (2) ...

to ensure the accuracy of its internal accounts and records against those of third parties by whom ~~financial instruments~~ safe custody assets are held.

Independence of person conducting reconciliations

- 6.5.9 G Whenever possible, a *firm* should ensure that reconciliations are carried out by a *person* (for example an *employee* of the *firm*) who is independent of the production or maintenance of the records to be reconciled (~~see SYSC 5.1.6R~~).

...

7 Client money : ~~MiFID~~ business rules

7.1 Application and Purpose

Application

- 7.1.1 R This chapter (the *client money rules*) applies to a *firm* that receives money from or holds money for, or on behalf of, a *client* in the course of, or in connection with:
- (1) ~~a *MiFID investment firm*: [deleted]~~
 - (a) ~~that holds *client money*; or [deleted]~~
 - (b) ~~that opts to comply with this chapter in accordance with CASS 7.1.3R(1) (Opt in to the MiFID client money rules); and [deleted]~~
 - (2) ~~a *third country investment firm* that opts to comply with this chapter in accordance with CASS 7.1.3R(2) (Opt in to the MiFID client money rules); [deleted]~~
 - (3) its *MiFID business*; and/or
 - (4) its *designated investment business*, that is not *MiFID business* in respect of any *investment agreement* entered into, or to be entered into, with or for a *client*;

unless otherwise specified in this section.

7.1.2 G ~~CASS 7.2 (Definition of client money) sets out the circumstances in which money is considered *client money* for the purposes of this chapter. [deleted]~~

Opt-in to the ~~MiFID~~ client money rules

7.1.3 R (1) A firm that receives or holds money to which this chapter applies in relation to:

(a) its *MiFID business*; or

(b) its *MiFID business* and its *designated investment business* which is not *MiFID business*;

and holds money in respect of which this chapter applies and money in respect of which the *non-directive client money chapter* or the *insurance client money chapter* CASS 5 applies, may elect to comply with the provisions of this chapter in respect of all such money and if it does so, this chapter applies as if all such money were money that the firm receives and holds in the course of, or in connection with, its *MiFID business*.

(1A) ~~A third country investment firm that receives or holds money from, for or on behalf of a client in the course of, or in connection with, its equivalent business of a third country investment firm may elect to comply with the provisions of this chapter in respect of the money it holds to which the *non-directive client money chapter* or the *insurance client money chapter* applies. If it does so, this chapter applies as if all such money were money that the firm receives and holds in the course of, or in connection with, *MiFID business*. [deleted]~~

(1B) A firm that receives or holds money to which this chapter applies solely in relation to its *designated investment business* which is not *MiFID business* and receives or holds money in respect of which the *insurance client money chapter* applies, may elect to comply with the provisions of this chapter in respect of all such money and if it does so, this chapter applies as if all such money were money that the firm receives and holds in the course of or in connection with its *designated investment business*.

...

7.1.4 G The opt-in to the *client money rules* in this chapter does not apply in respect of money that a firm holds outside of the scope of ~~the *non-directive client money chapter* or the *insurance client money chapter*, such as money falling within the scope of the opt out for *non-IMD designated investment business* (see CASS 4.1.11R).~~

- 7.1.5 G If a *firm* has opted to comply with this chapter, ~~the *non-directive client money chapter* or the *insurance client money chapter*~~ will have no application to the activities to which the election applies.
- 7.1.6 G A *firm* ~~(other than a *third country investment firm*)~~ that is only subject to the ~~*non-directive client money chapter* or the *insurance client money chapter*~~ may not opt to comply with this chapter.
- 7.1.7 G ~~If a *firm* that has agreed with an *insurance undertaking* under the *client money rules* in the *insurance client money chapter* to treat the undertaking's money as *client money*, opts in to this chapter in accordance with this section, the *insurance undertaking's* interest under the trust (or in Scotland agency) will be subordinated to the interests of the *firm's* other *clients*.
[deleted]~~
- 7.1.7A G ~~The information requirements concerning the safeguarding of *client money* (see *COBS* 6.1.7R) apply to a *firm* that has elected to comply with this chapter with respect of all *client money* to which the election applies.
[deleted]~~

Professional client opt-out

- 7.1.7B R *CASS* 7.1.7CG to *CASS* 7.1.7IG do not apply to a *firm* in relation to money held in connection with its *MiFID business* to which this chapter applies or in relation to money for which the *firm* has made an election under *CASS* 7.1.3R(1).

Money that is not client money: 'opt outs' for any business other than *insurance mediation activity*

- 7.1.7C G The 'opt out' provisions provide a *firm* with the option of allowing a *professional client* to choose whether their money is subject to the *client money rules* (unless the *firm* is conducting *insurance mediation activity*).
- 7.1.7D R Subject to *CASS* 7.1.7FR, money is not *client money* when a *firm* (other than a *sole trader*) holds that money on behalf of, or receives it from, a *professional client*, other than in the course of *insurance mediation activity*, and the *firm* has obtained written acknowledgement from the *professional client* that:
- (1) money will not be subject to the protections conferred by the *client money rules*;
 - (2) as a consequence, this money will not be segregated from the money of the *firm* in accordance with the *client money rules* and will be used by the *firm* in the course of its own business; and

- (3) the professional client will rank only as a general creditor of the firm.

‘Opt-outs’ for non-IMD business

- 7.1.7E G For a firm whose business is not governed by the Insurance Mediation Directive, it is possible to ‘opt out’ on a one-way basis. However, in order to maintain a comparable regime to that applying to MiFID business, all ‘MiFID type’ business undertaken outside the scope of MiFID, should comply with the client money rules or be ‘opted out’ on a two-way basis.
- 7.1.7F R Money is not client money if a firm, in respect of designated investment business which is not an investment service or activity, an ancillary service, a listed activity or insurance mediation activity:
- (1) holds it on behalf of or receives it from a professional client who is not an authorised person; and
- (2) has sent a separate written notice to the professional client stating the matters set out in CASS 7.1.7DR(1) to (3).
- 7.1.7G G When a firm undertakes a range of business for a professional client and has separate agreements for each type of business undertaken, the firm may treat client money held on behalf of the client differently for different types of business; for example, a firm may, under CASS 7.1.7DR or CASS 7.1.7FR, elect to segregate client money in connection with securities transactions and not segregate (by complying with CASS 7.1.7DR or CASS 7.1.7FR) money in connection with contingent liability investments for the same client.
- 7.1.7H R When a firm transfers client money to another person, the firm must not enter into an agreement under CASS 7.1.7DR or CASS 7.1.7FR with that other person in relation to that client money or represent to that other person that the money is not client money.
- 7.1.7I G CASS 7.1.7HR prevents a firm, when passing client money to another person under CASS 7.5.2R (transfer of client money to a third party), from making use of the ‘opt out’ provisions under CASS 7.1.7DR or CASS 7.1.7FR.

...

Credit institutions and approved banks

...

- 7.1.11A R (1) This rule applies to a firm which is an approved bank but not a BCD credit institution.

(2) The client money rules do not apply to money held by the approved bank if it is undertaking business which is not MiFID business but only when the money is held in an account with itself, in which case the firm must notify the client in writing that:

(a) money held for that client in an account with the approved bank will be held by the firm as banker and not as trustee (or in Scotland as agent); and

(b) as a result, the money will not be held in accordance with the client money rules.

...

Affiliated companies – MiFID business

7.1.12 G A firm that holds money on behalf of, or receives money from, an affiliated company in respect of MiFID business must treat the affiliated company as any other client of the firm for the purposes of this chapter.

Affiliated companies – non-MiFID business

7.1.12A R A firm that holds money on behalf of, or receives money from, an affiliated company in respect of designated investment business which is not MiFID business must not treat the money as client money unless:

(1) the firm has been notified by the affiliated company that the money belongs to a client of the affiliated company; or

(2) the affiliated company is a client dealt with at arm's length; or

(3) the affiliated company is a manager of an occupational pension scheme or is an overseas company; and

(a) the money is given to the firm in order to carry on designated investment business for or on behalf of the clients of the affiliated company; and

(b) the firm has been notified by the affiliated company that the money is to be treated as client money.

7.1.13 G ~~A firm that holds client money on behalf of, or receives money from, an affiliated company in respect of its non MiFID business and opts under CASS 7.1.3R (1) to comply with this chapter in with respect of that non-MiFID business, should refer to the non-directive client money chapter (see CASS 4.1.18 R (Affiliated companies)) to determine whether that money falls within the scope of the non-directive client money chapter and~~

therefore within the scope of the opt-in. [deleted]

...

Solicitors

- 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 the *MiFID client money (minimum implementing) rules* and also~~ with the following rules of its *designated professional body* and, where relevant paragraph (3), and if it does so, it will be deemed to comply with the *client money rules* ~~in this chapter~~.
- (2) The relevant rules are:
- (a) if the *firm* is regulated by the Law Society (of England and Wales):
 - (i) the Solicitors' Accounts Rules 1998; or
 - (ii) where applicable, the Solicitors Overseas Practice Rules 1990;
 - (b) if the *firm* is regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001; and
 - (c) if the *firm* is regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.
- (3) If the *firm* in (1) is a *MiFID investment firm* that receives or holds *money* for, or on behalf of a *client* in the course of, or in connection with its *MiFID business*, it must also comply with the *MiFID client money (minimum implementing) rules* in relation to that business.

Long term insurers and friendly societies

- 7.1.15A R This chapter does not apply to the *permitted activities of a long-term insurer* or a *friendly society*, unless it is a *MiFID investment firm* that receives *money* from or holds *money* for or on behalf of a *client* in the course of, or in connection with, its *MiFID business*.

Contracts of insurance

- 7.1.15B R This chapter does not apply to *client money* held by a *firm* which:
- (1) receives or holds *client money* in relation to *contracts of insurance*;

but which

(2) in relation to such *client money* elects to act in accordance with the *insurance client money chapter*.

7.1.15C R A firm should make and retain a written record of any election which it makes under CASS 7.1.15BR.

Life assurance business

- 7.1.15D G (1) A firm which receives and holds *client money* in respect of life assurance business in the course of its *designated investment business* that is not *MiFID business* may:
- (a) under CASS 7.1.3R(1B) elect to comply with the *client money chapter* in respect of such *client money* and in doing so avoid the need to comply with the *insurance client money chapter* which would otherwise apply to the *firm* in respect of *client money* received in the course of its *insurance mediation activity*; or
 - (b) under CASS 7.1.15BR, elect to comply with the *insurance client money chapter* in respect of such *client money*.
- (2) These options are available to a *firm* irrespective of whether it also receives and holds *client money* in respect of other parts of its *designated investment business*. A *firm* may not however choose to comply with the *insurance client money chapter* in respect of *client money* which it receives and holds in the course of any part of its *designated investment business* which does not involve an *insurance mediation activity*.

Trustee firms (other than trustees of unit trust schemes)

7.1.15E R A trustee firm which holds *money* in relation to its *designated investment business* which is not *MiFID business* to which this chapter applies, must hold any such *client money* separate from its own *money* at all times.

7.1.15F R Only the *client money rules* listed in the table below apply to a *trustee firm* in connection with *money* that the firm receives, or holds for or on behalf of a client in the course of or in connection with its *designated investment business* which is not *MiFID business*.

<u>Reference</u>	<u>Rule</u>
<u>CASS 7.1.1R to CASS 7.1.6G, and CASS 7.1.8R to CASS 7.1.14R</u>	<u>Application</u>

<u>CASS 7.1.15ER and CASS 7.1.15FR</u>	<u>Trustee firms (other than trustees of unit trust schemes)</u>
<u>CASS 7.1.16G</u>	<u>General principle</u>
<u>CASS 7.7.2R to CASS 7.7.4G</u>	<u>Requirement</u>
<u>CASS 7.4.1R to CASS 7.4.6G</u>	<u>Depositing client money</u>
<u>CASS 7.4.7R to CASS 7.4.13G</u>	<u>A firm's selection of credit institution, bank or money market fund</u>
<u>CASS 7.6.6G to CASS 7.6.16R</u>	<u>Reconciliation of client money balances</u>

General purpose

7.1.16 G (1) ...

(2) The *client money rules* also where relevant implement the provisions of *MiFID* which regulate the obligations of a *firm* when it holds *client money* in the course of its *MiFID* business.

7.2 Definition of client money

7.2.1 R ~~For the purposes of this chapter and the *MiFID custody chapter*, *client money* means any *money* that a *firm* receives from or holds for, or on behalf of, a *client* in the course of, or in connection with, its *MiFID business* unless otherwise specified in this section. [deleted]~~

~~Business in the name of the firm~~

7.2.2 R ~~*Money* is not *client money* where the *firm* carries on business in its own name on behalf of the *client* where that is required by the very nature of the transaction and the *client* is in agreement. [deleted]~~

~~[Note: recital 26 to *MiFID*]~~

...

7.2.8A G The exclusion from the *client money rules* for delivery versus payment transactions under CASS 7.2.8R is an example of an exclusion from the *client money rules* which is permissible by virtue of recital 26 of *MiFID*.

- 7.2.8B **R** Money need not be treated as *client money* in respect of a delivery versus payment transaction, for the purpose of settling a transaction in relation to units in a regulated collective investment scheme, if:
- (1) the *authorised fund manager* receives it from a *client* in relation to the *authorised fund manager's* obligation to issue *units*, in an *AUT* or to arrange for the issue of *units* in an *ICVC*, in accordance with *COLL*, unless the *price* of those *units* has not been determined by the close of business on the next *business day*:
- (a) following the date of the receipt of the *money* from the *client*; or
- (b) if the *money* was received by an *appointed representative* of the *authorised fund manager*, in accordance with *CASS 7.4.24G*, following the date of receipt at the specified business address of the *authorised fund manager*; or
- (2) the *money* is held in the course of redeeming *units* where the proceeds of that redemption are paid to a *client* within the time specified in *COLL*; when an *authorised fund manager* draws a cheque or other payable order within these timeframes the provisions of *CASS 7.2.17R* and *CASS 7.2.9R(2)* will not apply.

...

Qualifying money market funds

- 7.4.3 **G** Where a *firm* deposits *client money* with a *qualifying money market fund*, the units in that fund should be held in accordance with ~~the *MiFID custody chapter*~~ *CASS 6*.

[**Note:** recital 23 to the *MiFID implementing Directive*]

...

Payment of client money into a client bank account

- 7.4.14 **G** Two approaches that a *firm* can adopt in discharging its obligations under the ~~*MiFID*~~ *client money segregation requirements* are:

(1) ...

(2) ...

...

- 7.4.18 **G** Under the alternative approach, a *firm* that receives *client money* should:

(1)

(a) ...

(b) perform a reconciliation of records and accounts required under CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R and SYSC 6.1.1R, adjust the balance held in its *client bank accounts* and then segregate the *money* in the *client bank account* until the calculation is re-performed on the next *business day*; or

...

...

7.4.20 G Pursuant to the ~~MiFID~~ *client money segregation requirements*, a *firm* should ensure that any *money* other than *client money* deposited in a *client bank account* is promptly paid out of that account unless it is a minimum sum required to open the account, or to keep it open.

...

Automated transfers

7.4.22 G Pursuant to the ~~MiFID~~ *client money segregation requirements*, a *firm* operating the normal approach that receives *client money* in the form of an automated transfer should take reasonable steps to ensure that:

...

Mixed remittance

7.4.23 G Pursuant to the ~~MiFID~~ *client money segregation requirements*, a *firm* operating the normal approach that receives a *mixed remittance* (that is part *client money* and part other *money*) should:

...

Appointed representatives, tied agents, field representatives and other agents

7.4.24 G (1) Pursuant to the ~~MiFID~~ *client money segregation requirements*, a *firm* operating the normal approach should establish and maintain procedures to ensure that *client money* received by its *appointed representatives, tied agents, field representatives* or other agents is:

...

...

...

Client entitlements

- 7.4.27 G Pursuant to the ~~MiFID~~ *client money segregation requirements*, a *firm* operating the normal approach that receives outside the *United Kingdom* a *client* entitlement on behalf of a *client* should pay any part of it which is *client money*:

...

- 7.4.28 G Pursuant to the ~~MiFID~~ *client money segregation requirements*, a *firm* operating the normal approach should allocate a *client* entitlement that is *client money* to the individual *client* promptly and, in any case, no later than ten *business days* after notification of receipt.

Money due to a client from a firm

- 7.4.29 G Pursuant to the ~~MiFID~~ *client money segregation requirements*, a *firm* operating the normal approach that is liable to pay *money* to a *client* should promptly, and in any event no later than one *business day* after the *money* is due and payable, pay the *money*:

...

...

- 7.4.33 G A *firm* with a *Part 30 exemption order* undertakes to the *CFTC* that it will refuse to allow any US customer to opt not to have his *money* treated as *client money* if it is held or received in respect of transactions on non-US exchanges, unless that US customer is an “eligible contract participant” as defined in section 1a(12) of the Commodity Exchange Act, 7 U.S.C. In doing so, the *firm* is representing that if available to it, it will not make use of the opt-out arrangements in CASS 7.1.7BR to CASS 7.1.7FR in relation to that business. The ~~MiFID client money chapter does not have the option of allowing the *firm* or the *client* to choose whether *money* belonging to the *client* is subject to the *client money* rules.~~

...

Client entitlements

- 7.6.3 G Pursuant to CASS 7.6.2R, and where relevant SYSC 4.1.1R and SYSC 6.1.1R, a *firm* should take reasonable steps to ensure that is notified promptly of any receipt of *client money* in the form of a *client* entitlement.

...

Internal reconciliations of client money balances

- 7.6.6 G (1) ~~SYSC 4.1.1R requires firms to have robust governance arrangements, such as internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems. In addition, SYSC 6.1.1R requires firms to establish, implement and maintain adequate policies and procedures sufficient to ensure the firm's compliance with its obligations under the regulatory system.~~ Carrying out internal reconciliations of records and accounts of the entitlement of each *client* for whom the *firm* holds *client money* with the records and accounts of the *client money* the *firm* holds in *client bank accounts* and *client transaction accounts* should be one of the steps a *firm* takes to satisfy its obligations under CASS 7.6.2R, and where relevant SYSC 4.1.1R and SYSC 6.1.1R.

...

Records

- 7.6.7 R (1) A *firm* must makes records ... to show and explain that:
- (a) ...
- (b) in the event of a *primary pooling event* or a *secondary pooling event*, the method used is adequate to enable the *firm* to comply with the *client money (MiFID business) distribution rules*.

...

...

Requirement

- 7.7.2 R A *firm* receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:
- (1) for the purposes of and on the terms of the *client money rules* and the *client money (MiFID business) distribution rules*;

...

- 7.7.3 R A trustee firm which is subject to the client money rules by virtue of CASS 7.1.1R(4):

- (1) must receive and hold client money in accordance with the relevant

instrument of trust;

(2) subject to that, receives and holds *client money on trust on the terms* (or in Scotland on the agency terms) specified in CASS 7.7.2R.

7.7.4 G If a trustee firm holds *client money* in accordance with CASS 7.7.3R(2), the firm should follow the provisions in CASS 7.1.15ER and CASS 7.1.15FR.

...

Section 7.9 (Client money and distribution) is deleted in its entirety. The text of the deleted section is not shown.

7 Annex 1 Annex 1G

As explained in CASS 7.6.6G, in complying with its obligations under CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1G (General organisational requirements) and SYSC 6.1.1R (Compliance), a *firm* should carry out internal reconciliations of records and accounts of *client money* the *firm* holds in *client bank accounts* and *client transaction accounts*. This Annex sets out a method of reconciliation that the *FSA* believes is appropriate for these purposes (the *standard method of internal client money reconciliation*).

...

10. Segregation in the context of paragraph 9 can take many forms, including the holding of a *safe custody investment* in a nominee name and the safekeeping of certificates evidencing title in a fire resistant safe. It is not the intention that all the *custody rules* in the ~~*MiFID*~~ *custody chapter* should be applied to *designated investments* held in the course of settlement.

Insert the following new chapter after CASS 7. The text is not underlined.

7A. Client money distribution

7A.1 Application and purpose

Application

- 7A.1.1 R This chapter (the *client money distribution rules*) applies to a *firm* that holds *client money* which is subject to the *client money rules* when a *primary pooling event* or a *secondary pooling event* occurs.

Purpose

- 7A.1.2 G The *client money distribution rules* seek to facilitate the timely return of *client money* to a *client* in the event of the *failure* of a *firm* or third party at which the *firm* holds *client money*.

7A.2 Primary pooling events

Failure of the authorised firm: primary pooling event

- 7A.2.1 G (1) *A firm can hold client money in a general client bank account, a designated client bank account or a designated client fund account.*
- (2) *A firm holds all client money in general client bank accounts for its clients as part of a common pool of money so those particular clients do not have a claim against a specific sum in a specific account; they only have a claim to the client money in general.*
- (3) *A firm holds client money in designated client bank accounts or designated client fund accounts for those clients that requested their client money be part of a specific pool of money, so those particular clients do have a claim against a specific sum in a specific account; they do not have a claim to the client money in general unless a primary pooling event occurs. A primary pooling event triggers a notional pooling of all the client money, in every type of client money account, and the obligation to distribute it.*
- (4) *If the firm becomes insolvent, and there is (for whatever reason) a shortfall in money held for a client compared with that client's entitlements, the available funds will be distributed in accordance with the client money distribution rules.*
- 7A.2.2 R *A primary pooling event occurs:*
- (1) *on the failure of the firm;*
- (2) *on the vesting of assets in a trustee in accordance with an 'assets requirement' imposed under section 48(1)(b) of the Act;*
- (3) *on the coming into force of a requirement for all client money held by the firm; or*
- (4) *when the firm notifies, or is in breach of its duty to notify, the FSA, in accordance with CASS 7.6.16R (Notification requirements), that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a secondary pooling event.*
- 7A.2.3 R *CASS 7A.2.2R(4) does not apply so long as:*
- (1) *the firm is taking steps, in consultation with the FSA, to establish those records; and*
- (2) *there are reasonable grounds to conclude that the records will be*

capable of rectification within a reasonable period.

Pooling and distribution

- 7A.2.4 R If a *primary pooling event* occurs:
- (1) *client money* held in each *client money* account of the *firm* is treated as pooled; and
 - (2) the *firm* must distribute that *client money* in accordance with CASS 7.7.2R, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with CASS 7A.2.5R.
- 7A.2.5 R (1) When, in respect of a *client*, there is a positive individual *client* balance and a negative *client equity balance*, the credit must be offset against the debit reducing the individual *client* balance for that *client*.
- (2) When, in respect of a *client*, there is a negative individual *client* balance and a positive *client equity balance*, the credit must be offset against the debit reducing *client equity balance* for that *client*.
- 7A.2.6 G A *client's* main claim is for the return of *client money* held in a *client bank account*. A *client* may be able to claim for any *shortfall* against *money* held in a *firm's* own account. For that claim, the *client* will be an unsecured creditor of the *firm*.

Client money received after the failure of the firm

- 7A.2.7 R *Client money* received by the *firm* after a *primary pooling event* must not be pooled with *client money* held in any *client money* account operated by the *firm* at the time of the *primary pooling event*. It must be placed in a *client bank account* that has been opened after that event and must be handled in accordance with the *client money rules*, and returned to the relevant *client* without delay, except to the extent that:
- (1) it is *client money* relating to a transaction that has not settled at the time of the *primary pooling event*; or
 - (2) it is *client money* relating to a *client*, for whom the *client money* entitlement, calculated in accordance with CASS 7A.2.5R, shows that *money* is due from the *client* to the *firm* at the time of the *primary pooling event*.
- 7A.2.8 G *Client money* received after the *primary pooling event* relating to an unsettled transaction should be used to settle that transaction. Examples of such transactions include:

- (1) an equity transaction with a trade date before the date of the *primary pooling event* and a settlement date after the date of the *primary pooling event*; or
 - (2) a *contingent liability investment* that is ‘open’ at the time of the *primary pooling event* and is due to settle after the *primary pooling event*.
- 7A.2.9 R If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:
- (1) pay the full sum into the separate *client bank account* opened in accordance with CASS 7A.2.7R; and
 - (2) pay the *money* that is not *client money* out of that *client bank account* into a *firm’s* own bank account within one *business day* of the *day* on which the *firm* would normally expect the remittance to be cleared.
- 7A.2.10 G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.
- 7A.2.11 R If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.

7A.3 Secondary pooling events

Failure of a bank, intermediate broker, settlement agent or OTC counterparty:
secondary pooling events

- 7A.3.1 R A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under CASS 7.4.1R(1) to CASS 7.4.1R(3) (Depositing client money) or CASS 7.5.2R (Transfer of client money to a third party).
- 7A.3.2 R CASS 7A.3.6R to CASS 7A.3.18R do not apply if, on the *failure* of the third party, the *firm* repays to its *clients* or pays into a *client bank account*, at an unaffected bank, an amount equal to the amount of *client money* which would have been held if a *shortfall* had not occurred at that third party.
- 7A.3.3 G When *client money* is transferred to a third party, a *firm* continues to owe fiduciary duties to the *client*. Whether a *firm* is liable for a *shortfall* in *client money* caused by a third party failure will depend on whether it has complied with its duty of care as agent or trustee.

Failure of a bank

- 7A.3.4 G When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with CASS 7A.3.6R. The *firm* would be expected to reflect the *shortfall* that arises at the *failed* bank in its records of the entitlement of *clients* and of *money* held with third parties.
- 7A.3.5 G The *client money distribution rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* at a different bank, should not suffer the loss of the bank that has *failed*.

Failure of a bank: pooling

- 7A.3.6 R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, then:
- (1) in relation to every *general client bank account* of the *firm*, the provisions of CASS 7A.3.8R, CASS 7A.3.13R and CASS 7A.3.14R will apply;
 - (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of CASS 7A.3.10R, CASS 7A.3.13R and CASS 7A.3.14R will apply;
 - (3) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of CASS 7A.3.11R, CASS 7A.3.13R and CASS 7A.3.14R will apply;
 - (4) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts*, is not pooled with any other *client money*; and
 - (5) any *money* held in a *designated client fund account*, no part of which is held by the bank that has *failed*, is not pooled with any other *client money*.
- 7A.3.7 R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* or *designated client fund accounts* are held, then:
- (1) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of CASS 7A.3.10R, CASS 7A.3.13R and CASS 7A.3.14R will apply; and
 - (2) in relation to each *designated client fund account* held by the *firm* with the *failed* bank, the provisions of CASS 7A.3.11R, CASS

7A.3.13R and CASS 7A.3.14R will apply.

- 7A.3.8 R *Money held in each general client bank account and client transaction account of the firm must be treated as pooled and:*
- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or *client transaction account* of the *firm*, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
 - (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) .
- 7A.3.9 G The term “which should have been held” is a reference to the *failed* bank’s *failure* to hold the *client money* at the time of the pooling event.
- 7A.3.10 R For each *client* with a *designated client bank account* held at the *failed* bank:
- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each of the relevant *clients* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
 - (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R

(Compliance).

- 7A.3.11 R *Money held in each designated client fund account with the failed bank must be treated as pooled with any other designated client fund accounts of the firm which contain part of the same designated fund and:*
- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client fund accounts* that has arisen as a result of the *failure*, must be borne by each of the *clients* whose *client money* is held in that designated fund, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, in accordance with (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
 - (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance).
- 7A.3.12 R *A client whose money was held, or which should have been held, in a designated client bank account with a bank that has failed is not entitled to claim in respect of that money against any other client bank account or client transaction account of the firm.*

Client money received after the failure of a bank

- 7A.3.13 R *Client money received by the firm after the failure of a bank, that would otherwise have been paid into a client bank account at that bank:*
- (1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and
 - (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
 - (a) on the written instruction of the *client*, transferred to a bank other than the one that has *failed*; or
 - (b) returned to the *client* as soon as possible.
- 7A.3.14 R *If a firm receives a mixed remittance after the secondary pooling event*

which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:

- (1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and
- (2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the *firm* would normally expect the remittance to be cleared.

7A.3.15 G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.

Failure of an intermediate broker, settlement agent or OTC counterparty: Pooling

7A.3.16 R If a *secondary pooling event* occurs as a result of the *failure* of an *intermediate broker*, *settlement agent* or *OTC counterparty*, then in relation to every *general client bank account* and *client transaction account* of the *firm*, the provisions of CASS 7A.3.17R and CASS 7A.3.18R will apply.

7A.3.17 R *Money* held in each *general client bank account* and *client transaction account* of the *firm* must be treated as pooled and:

- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts* and *client transaction accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in either a *general client bank account* or a *client transaction account* of the *firm*, rateably in accordance with their entitlements;
- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed intermediate broker*, *settlement agent* or *OTC counterparty* until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), for the purposes of reconciliations pursuant to CASS 7.6.2R (Records and accounts), and where relevant SYSC 4.1.1R (General organisational requirements) and SYSC 6.1.1R (Compliance) .

Client money received after the failure of an intermediate broker, settlement agent or OTC counterparty

- 7A.3.18 R *Client money* received by the *firm* after the *failure* of an *intermediate broker, settlement agent* or *OTC* counterparty, that would otherwise have been paid into a *client transaction account* at that *intermediate broker, settlement agent* or *OTC* counterparty:
- (1) must not be transferred to the *failed* third party unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed intermediate broker, settlement agent* or *OTC* counterparty; and
 - (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
 - (a) on the written instruction of the *client*, transferred to a third party other than the one that has *failed*; or
 - (b) returned to the *client* as soon as possible.

Notification to the FSA: failure of a bank, intermediate broker, settlement agent or OTC counterparty

- 7A.3.19 R On the *failure* of a third party with which *money* is held, a *firm* must notify the *FSA*:
- (1) as soon as it becomes aware of the *failure* of any bank, *intermediate broker, settlement agent, OTC* counterparty or other entity with which it has placed, or to which it has passed, *client money*; and
 - (2) as soon as reasonably practical, whether it intends to make good any *shortfall* that has arisen or may arise and of the amounts involved.

...

Sch 1 Record keeping requirements

Sch 1.1 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.

Sch 1.2 G It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.3	G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
		€ASS	A personal	Client details and		3 years

2.1.9R	investment firm that temporarily holds a client's designated investments	any actions taken by the firm		(from the making of the record) [deleted]
CASS 2.3.6 R (1)(e)	Safe custody arrangements for clients ordinarily outside the United Kingdom	The steps taken and result under CASS 2.3.6 R (1)(e)	On determination that client does not wish to execute agreement	3 years [deleted]
CASS 2.6.15R	Client custody assets held or received by or on behalf of a client or which the firm has arranged for another to hold or receive	Full details	On receipt	3 years [deleted]
CASS 2.6.16R	Safe custody investments used for stock lending activities	The identity of safe custody investments available to be lent, and those which have been lent	On receipt	3 years [deleted]
CASS 4.3.11R	Client money	Sufficient records to show and explain firm's transactions and commitments	Maintain current full details	3 years (after records made) [deleted]
CASS 4.4.24R(3)	Client money shortfall	Each client's entitlement to client money shortfall at the failed bank	Maintain up to date records	Until client repaid [deleted]
CASS	Client money	Each client's entitlement to	Maintain up to date	Until client repaid

4.4.25R(3)	shortfall	client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty	records	[deleted]
CASS 4.4.31R(3)	Client money shortfall	Each client's entitlement to client money shortfall at the failed intermediate broker, settlement agent or OTC counterparty	Maintain up to date records	Until client repaid [deleted]
CASS 5.1.1R(4)	Record of election of compliance with CASS 5.8 to CASS 5.8 provisions with <u>specified CASS rules</u>	Record of compliance with CASS 5.8 to CASS 5.8 provisions on <u>client money specified CASS rules</u>	Not specified	Not specified
CASS 5.2.3R(2)	Holding <i>client money</i> as agent	The terms of the agreement	Not specified	Six years
CASS 5.4.4R(2)	Adequacy of systems and controls	Written confirmation of adequate systems and controls from its auditor	Not specified	Not specified
CASS 5.5.84R	<i>Client money</i> calculation	Whether the <i>firm</i> calculates its <i>client money</i> requirements according to CASS 5.5.84 R or CASS 5.5.84 R	Not specified	Not specified
CASS 5.5.84R	Transactions and commitments for <i>client</i>	Explanation of the <i>firm's</i> transactions and commitments for	Not specified	Three years

	<i>money</i>	<i>client money</i>		
CASS 5.8.3R(1)	Client's title to a <i>contract of insurance</i>	Identity of such <i>documents</i> and/or property and dates received and delivered to <i>client</i>	Not specified	Three years
<u>CASS 6.1.16CR(3)</u>	<u>A personal investment firm that temporarily holds a client's designated investments which is not in the course of MiFID business</u>	<u>Client details and any actions taken by the firm</u>		<u>5 years (from the making of the record)</u>
<u>CASS 6.1.16KR</u>	<u>Client custody assets which the firm has arranged for another to hold or receive</u>	<u>Full details</u>	<u>On receipt</u>	<u>5 years</u>
CASS 6.1.17R	Record of election to comply with the <i>MiFID custody chapter</i>	Record of election to comply with the <i>MiFID custody chapter</i> , including the date from which the election is to be effective	Date of the election	5 years (from the date the <i>firm</i> ceases to use the election) [deleted]
CASS 6.3.1R(4)	Appropriateness of a <i>MiFID investment firm's</i> selection of a third party	Grounds upon which a <i>MiFID investment firm</i> satisfies itself as to the appropriateness of the <i>firm's</i> selection of a third party to hold <i>financial</i>	Date of the selection	5 years (from the date the <i>firm</i> ceases to use the third party to hold <i>financial instrument s-safe</i>)

		instruments -safe <u>custody assets</u> belonging to <i>clients</i>		<u>custody</u> <u>assets</u> belonging to <i>clients</i>)
CASS 6.4.3R	Details of <i>clients</i> and financial instruments <u>safe custody assets</u> used for the <i>firm's</i> own account or the account of another <i>client</i> of the <i>firm</i>	Details of the <i>client</i> on whose instructions the use of the financial instruments <u>safe custody assets</u> has been effected and the number of financial instruments <u>safe custody assets</u> used belonging to each <i>client</i>	Maintain up to date records	5 years (from the date the record was made)
CASS 6.5.1R	Financial instruments <u>Safe custody assets</u> held for each <i>client</i> and the <i>firm's</i> own financial instruments <u>applicable assets</u>	All that is necessary to enable the <i>firm</i> to distinguish financial instruments <u>safe custody assets</u> held for one <i>client</i> from financial instruments <u>safe custody assets</u> held for any other <i>client</i> , and from the <i>firm's</i> own financial instruments <u>applicable assets</u>	Maintain up to date records	5 years (from the date the record was made)
CASS 6.5.2R	Financial instruments <u>Safe custody assets</u> held for <i>clients</i>	Accurate records to which ensure the their correspondence between to the financial instruments <u>safe custody assets</u> held for <u>clients</u> each client and	Maintain up to date records	5 years (from the date the record was made)

		the financial instruments held by the firm and third parties		
CASS 7.1.3R(32)	Record of election to comply with the <i>MiFID</i> client money chapter	Record of election to comply with the <i>MiFID</i> client money chapter, including the date from which the election is to be effective	Date of the election	5 years (from the date the firm ceases to use the election)
<u>CASS 7.1.15CR</u>	<u>Record of election in relation to CASS 7.1.15CR</u>	<u>Record of election in relation to CASS 7.1.15CR</u>	<u>Date of election</u>	<u>Not specified</u>
CASS 7.4.10R	Appropriateness of a <i>MiFID</i> investment firm's selection of a third party	Grounds upon which a <i>MiFID</i> investment firm satisfies itself as to the appropriateness of the firm's selection of a third party to hold client money	Date of the selection	5 years (from the firm ceases to use the third party to hold client money)
CASS 7.6.1R	Client money held for each client and the firm's own money	All that is necessary to enable the firm to distinguish client money held for one client from client money held for any other client, and from the firm's own money	Maintain up to date records	5 years (from the date the record was made)
CASS 7.6.2R	Client money held for each client	Accurate records to ensure the correspondence between the records and	Maintain up to date records	5 years (from the date the record was made)

		accounts of the entitlement of each <i>client</i> for whom the <i>firm</i> holds <i>client money</i> with the records and accounts of the <i>client money</i> the <i>firm</i> holds in <i>client bank accounts</i> and <i>client transaction accounts</i>		
CASS 7.6.7R	Internal reconciliation of <i>client money</i> balances	Explanation of method of internal reconciliation of <i>client money</i> balances used by the <i>firm</i> , and if different from the <i>standard method of internal client money reconciliation</i> , an explanation as to how the method used affords equivalent degree of protection to <i>clients</i> , and how it enables the <i>firm</i> to comply with the <i>client money (MiFID business) distribution rules</i>	Date the <i>firm</i> starts using the method	5 years (from the date the <i>firm</i> ceases to use the method)
CASS 7.9.21R(3) <u>7A.3.8R(3)</u>	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank	Maintain up to date records	Until <i>client</i> is repaid
CASS 7.9.23R(3) <u>7A.3.10R(3)</u>	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money</i>	Maintain up to date records	Until <i>client</i> is repaid

		<i>shortfall</i> at the failed bank		
CASS 7.9.24R(3) <u>7A.3.11R(3)</u>	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed bank	Maintain up to date records	Until <i>client</i> is repaid
CASS 7.9.30R(3) <u>7A.3.17R(3)</u>	<i>Client money shortfall</i>	Each <i>client's</i> entitlement to <i>client money shortfall</i> at the failed intermediate broker, <i>settlement agent</i> or OTC counterparty	Maintain up to date records	Until <i>client</i> is repaid
CASS 8.1.5R	Adequate records and internal controls in respect of the <i>firm's</i> use of mandates (see CASS 8.1.5R(1) to CASS 8.1.5R(4))	Up to date list of <i>firm's</i> authorities and any conditions regarding the use of authorities, all transactions entered into, details of procedures and authorities for giving and receiving of instructions under authorities, and important <i>client</i> documents held by the <i>firm</i>	Maintain current full details	Not specified

Sch 2 Notification requirements

Sch 2.1 G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	CASS 2.6.14R(1)	Non-compliance with reconciliation requirements in CASS 2.6.2R, CASS 2.6.4R, CASS	Reason for Non-compliance	Non-compliance	Immediately [deleted]

	2.6.6R, CASS 2.6.8R, CASS 2.6.10R			
CASS 2.6.14R(2)	Non-compliance of reconciliation requirements in CASS 2.6.11 R	Reason for Non-compliance once reconciliation carried out	Non-compliance	Immediately [deleted]
CASS 4.3.64R	Failure of a third party with which money is held—ie: bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money	Full details	When firm becomes aware of the failure of the entity	Immediately [deleted]
CASS 4.3.64R	Failure of a third party with which money is held—ie: bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money	Intentions regarding making good any shortfall that has arisen or may arise, and of the amounts involved	Failure of third party with which money is held	As soon as reasonably practical [deleted]
CASS 4.3.87R	Daily calculation required by CASS 4.3.66R or CASS 4.3.6R	Inability to perform daily calculation	Inability to perform daily calculation	Immediately [deleted]
CASS 4.3.88R	Daily calculation required by CASS 4.3.66R or CASS 4.3.67R	Inability to make good any shortfall identified by daily calculation	Inability to make good any shortfall identified by close of business on the day of	Immediately [deleted]

			calculation	
CASS 4.3.97R	Requirements detailed in CASS 4.3.89R, CASS 4.3.91R, CASS 4.3.92R, CASS 4.3.94R and CASS 4.3.95R.	Inability to comply with any of the requirements	Inability to comply with any of the requirements	As soon as possible [deleted]
CASS 4.3.110R	LME bond arrangements	Issue of an individual letter of credit issued by the firm	Upon issue of an individual letter of credit under an LME bond arrangement	Immediately [deleted]
CASS 4.4.33R (see CASS 4.3.64R)	Failure of a third party with which money is held – i.e. bank, intermediate broker, settlement agent or OTC counterparty or other entity with which it has placed or to which it has passed client money	Full details	When the firm becomes aware of the failure of the entity	Immediately [deleted]
CASS 4.4.33R (see CASS 4.3.64R)	Failure of a third party with which money is held – i.e. bank, intermediate broker, settlement agent or OTC counterparty	Intentions regarding making good any shortfall that has arisen or may arise, and of the amounts involved	Upon first delegation of regulated activity	As soon as reasonably practical [deleted]
CASS 5.5.84R	Failure of bank, broker or settlement agent	Full details including whether it intends to make good any shortfall that may	As soon as the firm becomes aware	Immediately

		have arisen in the amounts involved		
CASS 5.5.84R	Inability to perform the calculation required by CASS 5.5.84R	Inability to perform the calculation	Inability to perform the calculation	Immediately
CASS 5.5.84R	Inability to make good any <i>shortfall</i> identified by CASS 5.5.84R	Inability to make good any <i>shortfall</i> in <i>client money</i>	Inability to make good any <i>shortfall</i>	Immediately
CASS 5.5.84R	Inability to comply with the requirements in CASS 5.5.84R; CASS 5.5.84R; CASS 5.5.84R; CASS 5.5.84R	Inability to comply with the requirements of the <i>rules</i> listed	Inability to comply with the requirements of the <i>rules</i> listed	As soon as reasonably practicable
CASS 6.5.13R(1)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.1R (Records and accounts), CASS 6.5.2R (Records and accounts, including internal reconciliations) or CASS 6.5.6R (Reconciliations with external records)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS 6.5.13R(2)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 6.5.10R (Reconciliation	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to	Non-compliance or inability, in any material respect, to comply with	Without delay

	discrepancies)	comply with the requirements and the reasons for that	the requirements	
<u>CASS 7.4.35R</u>	<u>LME bond arrangements</u>	<u>Issue of an individual letter of credit issued by the <i>firm</i></u>	<u>Upon issue of an individual letter of credit under an LME bond arrangement</u>	<u>Immediately</u>
CASS 7.6.16R(1)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.1R (Records and accounts), CASS 7.6.2R (Records and accounts, including internal reconciliations) or CASS 7.6.9R (Reconciliations with external records)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS 7.6.16R(2)	Non-compliance or inability, in any material respect, to comply with the requirements in CASS 7.6.13R to CASS 7.6.15R (Reconciliation discrepancies)	The fact that the <i>firm</i> has not complied or is unable, in any material respect, to comply with the requirements and the reasons for that	Non-compliance or inability, in any material respect, to comply with the requirements	Without delay
CASS	Failure of a third party with which	Full details	<i>Firm</i> becomes	As soon as the <i>firm</i>

<p>7.9.32R(1) <u>7A.3.19R(1)</u></p>	<p>money is held - i.e.: bank, <i>intermediate broker, settlement agent</i> or OTC counterparty or other entity with which it has placed or to which it has passed <i>client money</i></p>		<p>aware of the <i>failure</i> of the entity</p>	<p>becomes aware</p>
<p>CASS 7.9.32R(2) <u>7A.3.19R(2)</u></p>	<p><i>Failure</i> of a third party with which money is held - i.e.: bank, <i>intermediate broker, settlement agent</i> or OTC counterparty or other entity with which it has placed or to which it has passed <i>client money</i></p>	<p>Intentions regarding making good any <i>shortfall</i> that has arisen or may arise, and of the amounts involved</p>	<p><i>Failure</i> of third party with which <i>client money</i> is held</p>	<p>As soon as reasonably practical</p>

SUPERVISION MANUAL (AMENDMENT NO 14) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 139 (Miscellaneous ancillary matters);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 October 2008.

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 14) Instrument 2008.

By order of the Board
25 September 2008

Annex

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text.

10.13.16 R If a *firm* becomes aware of information which would reasonably be material to the assessment of an *approved person's*, or a *candidate's*, fitness and propriety (see *FIT*), it must inform the *FSA* on Form D, or (if it is more practical to do so and with the prior agreement of the *FSA*) by fax or e-mail, as soon as practicable.

...

10.13.18 R (1) If, in relation to a *firm* which has completed the relevant Form A (*SUP* 10 Annex 4), any of the details in section 3.01 (Arrangements and controlled functions) are to change, the *firm* must notify the *FSA* on Form D, or (if it is more practical to do so and with the prior agreement of the *FSA*) by fax or e-mail.

...

DISPUTE RESOLUTION: COMPLAINTS (AMENDMENT NO 2) INSTRUMENT 2008

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes:
- (1) the rule in the Annex to this instrument for licensees relating to the Consumer Credit Jurisdiction; and
 - (2) the rule in the Annex 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); and
 - (b) section 227 (Voluntary jurisdiction).
- B. The making of this rule 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 rule in the Annex to this instrument for firms relating to the Compulsory Jurisdiction in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Act:
 - (a) section 138 (General rule-making power); and
 - (b) section 226 (Compulsory jurisdiction); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) of the General Provisions of the Handbook.
- D. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the rule in the Annex to this instrument made by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force on 1 October 2008.

Amendments to the Handbook

- G. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

Citation

H. This instrument may be cited as the Dispute Resolution: Complaints (Amendment No 2) Instrument 2008.

By order of the Board of the Financial Ombudsman Service Limited
10 September 2008

By order of the Board of the Financial Services Authority
25 September 2008

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new 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* in carrying on debt-collecting as defined by section 145(7) of the Consumer Credit Act (1974) (as amended); or
- (b) in relation to whom the *respondent* has sought to perform duties, or exercise or enforce rights, on behalf of the creditor or owner, under a *regulated consumer credit agreement* or *regulated consumer hire agreement* in carrying on debt administration as defined by section 145(7A) of the Consumer Credit Act (1974) (as amended);
- ...

**COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (IMMOVABLES
VALUATION) INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 October 2008.

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 (Immovables Valuation) Instrument 2008.

By order of the Board
25 September 2008

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

5.6.20 R ...

(3) The following requirements apply in relation to the functions of the *standing independent valuer*:

...

(f) any valuation by the *standing independent valuer* must be ~~on~~ the basis of an ‘Open Market value’ as defined in Practice Statement 3 in the Royal Institute of Chartered Surveyors’ ~~Appraisal and Valuation Manual (first edition published September 1995)~~ undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (6th edition published January 2008), or in the case of overseas immovables on an appropriate basis, but subject to COLL 6.3 (Valuation and pricing).

...

5.6.20A G In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of COLL 5.6.20R(3)(f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

...

6.3.6 G Table: This table belongs to COLL 6.3.2G(2)(a) and COLL 6.3.3R (Valuation).

Valuation and pricing		
1	The valuation of scheme property	
	...	
	(7A)	<u>Where the <i>authorised fund manager</i>, the <i>depository</i> or the <i>standing independent valuer</i> have reasonable grounds to believe that the most recent valuation of an immovable does not reflect the current value of that immovable, the <i>authorised fund manager</i> should consult and agree with the <i>standing independent valuer</i> a fair and reasonable value for</u>

		<u>the immovable.</u>
...		

...

8.4.13 R ...

(2) The following apply in relation to the functions of the *standing independent valuer*:

...

(f) any valuation by the *standing independent valuer* must be ~~on~~ the basis of an ‘Open Market value’ as defined in the Royal Institute of Chartered Surveyors’ Appraisal and Valuation Standards (Fifth Edition) (“Red Book”) undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (6th edition published January 2008), or in the case of overseas immovables on an appropriate basis, but is subject to any provisions of the *instrument constituting the scheme*.

...

8.4.14 G In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of *COLL 8.4.13R(2)(f)*, the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

...

**FEES (TRANSACTION REPORTING) (AMENDMENT)
INSTRUMENT 2008**

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) 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 6 October 2008.

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 (Transaction Reporting) (Amendment) Instrument 2008.

By order of the Board
25 September 2008

Annex

Amendment to the Fees manual (FEES)

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

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) fee payable	Due date
...		
(r) Providers of reporting or trade matching systems applying for recognition under <i>MiFID</i> as an Approved Reporting Mechanism.	£20,000 <u>100,000</u>	On or before the date the application is made. <u>Having received its application, within 30 days after the FSA has notified the applicant that it is to commence testing of the applicant's systems.</u>
(s) ...		
(t) <u>A firm, a third party acting on a firm's behalf, an operator of a regulated market or an operator of an MTF applying to the FSA to report transaction reports directly to the FSA other than through the FSA's Transaction Reporting System (see FEES 4.2.11R and FEES 4 Annex 3R for the fees payable for firms using the FSA's Transaction Reporting System).</u>	<u>£100,000</u>	<u>Having received its application, within 30 days after the FSA has notified the applicant that it is to commence testing of the applicant's systems.</u>

SHORT SELLING (NO 2) INSTRUMENT 2008

Powers exercised

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

Commencement

- C. This instrument comes into force on 19 September 2008.

Amendments to the Handbook

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

Citation

- F. This instrument may be cited as the Short Selling (No 2) Instrument 2008.

By order of the Board
18 September 2008

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

disclosable short position a net short position which represents an economic interest of one quarter of one per cent or more of the issued capital of a ~~company~~ company.

.....

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

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

UK financial sector company a company that is a:

(a) *UK bank*; or

(b) *UK insurer*; or

(c) *UK incorporated parent undertaking* of a company referred to in (a) or (b).

Annex B

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text.

Short selling in relation to financial sector companies

- 1.9.2C E (1) A person who enters into a transaction that (whether by itself or in conjunction with other transactions) has the effect of:
- (a) creating a net short position in a UK financial sector company; or
 - (b) increasing any net short position in a UK financial sector company that the person had immediately before 19 September 2008;
- is, in the opinion of the FSA, engaging in behaviour that is market abuse (misleading behaviour).
- (2) Paragraph (1) does not apply to a person acting in the capacity of a market maker.
 - (3) Paragraph (1) does not apply to a transaction entered into or an order placed before 19 September 2008.
 - (4) This provision ceases to have effect on 16 January 2009.

Disclosure of pre-existing positions

- 1.9.2D E (1) Failure by a person who has a disclosable short position in a UK financial sector company to provide adequate ongoing disclosure of their position is behaviour which, in the opinion of the FSA, is market abuse (misleading behaviour).
- (2) In paragraph (1), “adequate ongoing disclosure” means disclosure made on a RIS by no later than 3.30pm on the business day following each day on which the disclosable short position is held. The disclosure must include the name of the person who has the position, the amount of the position and the name of the company in relation to which it has that position.
 - (3) The first disclosure required under this provision is by 3.30pm on 23

September 2008 which should relate to positions held on 19 September and 22 September.

(4) This provision ceases to have effect on 16 January 2009.

1.9.2E

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

SHORT SELLING (NO 3) INSTRUMENT 2008

Powers exercised

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

Commencement

- C. This instrument comes into force on 24 September 2008.

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 Short Selling (No 3) Instrument 2008.

By order of the Board
23 September 2008

Annex

Amendment to the Glossary of definitions

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

- disclosable short position* a net short position which represents an economic interest of one quarter of one per cent or more of the issued capital of a company.
- In calculating whether a holder has a *disclosable short position*, the holder should take into account any form of economic interest it has in the shares of the *issuer*, excluding any interest which he holds as a ~~market maker~~ market maker in that capacity.
- UK financial sector company* a company that is a:
- (a) *UK bank*; or
 - (b) *UK insurer*; or
 - (c) *UK incorporated parent undertaking* of a company referred to in (a) or (b) where the main business of the group to which the parent undertaking and the company belong is financial services.

FINANCIAL SERVICES COMPENSATION SCHEME (AMENDMENT OF FEES PROVISIONS (NO 2)) INSTRUMENT 2008

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);
 - (4) section 214 (General);
 - (5) section 223 (Management expenses); and
 - (6) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force if, and at the same time as, an order is made under the Banking (Special Provisions) Act 2008 by virtue of which:
- (1) the shares in Bradford & Bingley plc are transferred to the Treasury Solicitor as nominee of the Treasury; and
 - (2) certain assets and liabilities are, immediately after the first transfer, transferred to another person.

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 (Amendment of Fees Provisions (No 2)) Instrument 2008.

By order of the Board
28 September 2008

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* part way through a *financial year* of the *compensation scheme*:
- (1) it will remain liable for any unpaid levies which the *FSCS* has already made on the *firm*; ~~and~~
 - (2) the *FSCS* may make a levy upon it (which may be before or after the firm has ceased to be a *participant firm*, but must be before it ceases to be an *authorised person*) for the costs which it would have been liable to pay had the *FSCS* made a levy on all *participant firms* at the time of the levy on the *firm*;
 - (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 expected to be incurred arising from the declaration by the *FSA* on 27 September 2008 that Bradford & Bingley plc is *in default*;
 - (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
 - (5) paragraphs (3) and (4) apply notwithstanding any other provision in this chapter.

FEES 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 2008 to 31	<u>£630,240,000 provided that only £30,240,000 may be used</u>

March 2009	<u>to meet <i>management expenses</i> other than the <i>specific costs</i> relating to the declaration by the <i>FSA</i> on 27 September 2008 that Bradford & Bingley plc is <i>in default</i>.</u>
------------	---

COMPENSATION SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 213 (The compensation scheme); and
 - (5) section 214 (General).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- B. This instrument comes into force on 7 October 2008.

Amendments to the Handbook

- C. The Compensation sourcebook (COMP) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Compensation Sourcebook (Amendment No 8) Instrument 2008.

By order of the Board
2 October 2008

Annex

Amendments to the Compensation sourcebook (COMP)

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

- 7.2.1 R The *FSCS*:
- (1) must make any payment of compensation to a claimant, in respect of a *protected deposit*, conditional on the claimant, in so far as able to do so, assigning the whole of his rights; and
 - (2) may make any payment of compensation to a claimant in respect of *any other protected claim* conditional on the claimant assigning the whole or any part of his rights;

against the *relevant person*, or against any third party, or both, to the *FSCS* on such terms as the *FSCS* thinks fit.
- 7.2.2 R ...
- 7.2.3 R (1) ...
- (2) ...
- (3) ~~If the *FSCS* makes recoveries through rights assigned under *COMP 7.2.1R*, it may deduct from any recoveries paid over to the claimant under *COMP 7.2.4R* part or all of its reasonable costs of recovery and of distribution (if any).~~ [deleted]

Specific provisions relating to claims for protected deposits

- 7.2.3A R If the *FSCS*, in relation to a *claim* for a *protected deposit*, takes an assignment of rights from the claimant under *COMP 7.2.1R* and subsequently makes recoveries through those rights, the *FSCS* must:
- (1) retain from those recoveries a sum equal to the “*FSCS* retention sum”; and
 - (2) as soon as reasonably possible after it makes the recoveries, pay to the claimant, or as directed by the claimant, a sum equal to the “top up payment”.
- 7.2.3B R The *FSCS* must calculate “*FSCS* retention sum” and the “top up payment” as follows:
- (1) calculate the “recovery ratio” of:
 - (a) the amount recovered by the *FSCS* through rights assigned under *COMP 7.2.1R* (taking into account any deduction from

that amount the FSCS may make to cover part or all of its reasonable costs of recovery and of distribution, if any); to

(b) the claimant's overall net claim for protected deposits against the relevant person in default less any liability of a Home State deposit guarantee scheme;

(2) subtract the sum paid by the FSCS as compensation and any amount paid or payable by a Home State compensation scheme to the claimant from the total value of the claimant's overall net claim for protected deposits, to give the "compensation shortfall";

(3) apply the recovery ratio to the sum paid by the FSCS as compensation to the claimant, to give the "FSCS retention sum"; and

(4) apply the recovery ratio to the compensation shortfall, to give the "top up payment".

7.2.3C G (1) For example, if the claimant's overall net claim for protected deposits against a relevant person was for £100,000, and the FSCS paid compensation of £50,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £80,000 (after the costs of recovery and of distribution), then:

(a) the recovery ratio would be 80% (£80,000 ÷ £100,000);

(b) the compensation shortfall would be £50,000 (£100,000 - £50,000);

(c) the FSCS retention sum would be £40,000 (80% x £50,000);

(d) the top up payment would be £40,000 (80% of £50,000);

(e) the total payment to the claimant would be £90,000 (£50,000 of compensation plus £40,000 of top up payment); and

(f) the total outlay by the FSCS, net of the FSCS retention sum, would be £10,000 (20% x £50,000).

(2) In the example above, the amount recovered exceeds the amount of compensation. However, COMP 7.2.1AR also applies where the amount recovered is less than the amount of compensation. Therefore, for example, if the claimant's overall net claim for protected deposits against a relevant person was for £100,000, and the FSCS paid compensation of £50,000 and took assignment of all the claimant's rights in relation to that claim, and made recoveries through those rights in the sum of £20,000 (after the costs of recovery and of distribution), then:

(a) the recovery ratio would be 20% (£20,000 ÷ £100,000);

- (b) the compensation shortfall would be £50,000 (£100,000 - £50,000);
- (c) the FSCS retention sum would be £10,000 (20% x £50,000);
- (d) the top up payment would be £10,000 (20% of £50,000);
- (e) the total payment to the claimant would be £60,000 (£50,000 of compensation plus £10,000 of top up payment); and
- (f) the total outlay by the FSCS, net of the FSCS retention sum, would be £40,000 (80% x £50,000).

7.2.3D G In order to prevent a claimant suffering disadvantage arising solely from his prompt acceptance of the FSCS's offer of compensation compared with what might have been the position had he delayed his acceptance, the FSCS shall apply the rule in COMP 12.2.7R(2).

Provisions relating to other classes of protected claim

7.2.3E R If the FSCS makes recoveries through rights assigned under COMP 7.2.1R in relation to a claim that is not for a protected deposit, it may deduct from any recoveries paid over to the claimant under COMP 7.2.4R part or all of its reasonable costs of recovery and of distribution (if any).

7.2.4 R Unless compensation was paid under COMP 9.2.3R or the claim was for a *protected deposit*, if a claimant agrees to assign his rights to the FSCS and the FSCS subsequently makes recoveries through those rights, those recoveries must be paid to the claimant:

...

7.2.5 R Except for a claim for a protected deposit, The the FSCS must endeavour to ensure that a claimant will not suffer disadvantage arising solely from his prompt acceptance of the FSCS's offer of compensation compared with what might have been the position had he delayed his acceptance.

...

10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
<i>Protected deposit</i>	100% of claim	£35,000 <u>£50,000</u>
...		

12.2.7 R ~~In calculating the claimant's overall net claim,~~ The FSCS must take into account any payments to the claimant (including amounts recovered by the FSCS on behalf of the claimant) made by the relevant person or the FSCS or any other person, if that payment is connected with the relevant person's liability to the claimant:

- (1) in calculating the claimant's overall net claim; and
- (2) for a claim for a protected deposit, by reducing the amount of compensation by the FSCS retention sum that the FSCS would have retained if it had made those recoveries itself.

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>17</u>	<u>Amendments introduced by the Compensation Sourcebook (Amendment No 8) Instrument 2008</u>	<u>R</u>	<u>Provisions and definitions arising out of (2) only apply to defaults on or occurring after 7 October 2008</u>	<u>From 7 October 2008 indefinitely</u>	<u>7 October 2008</u>

FINANCIAL SERVICES COMPENSATION SCHEME (AMENDMENT OF FEES PROVISIONS (NO 3)) INSTRUMENT 2008

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);
 - (4) section 214 (General);
 - (5) section 223 (Management expenses); and
 - (6) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority)
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- B. This instrument comes into force on 7 October 2008.

Amendments to the Handbook

- C. The Fees manual (FEES) is amended in accordance with Annex A to this instrument.
- D. The Compensation sourcebook (COMP) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Financial Services Compensation Scheme (Amendment of Fees Provisions (No 3)) Instrument 2008.

By order of the Board
6 October 2008

Annex A

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* part way through a *financial year* of the *compensation scheme*:
- (1) it will remain liable for any unpaid levies which the *FSCS* has already made on the *firm*;
 - (2) the *FSCS* may make a levy upon it (which may be before or after the firm has ceased to be a *participant firm*, but must be before it ceases to be an *authorised person*) for the costs which it would have been liable to pay had the *FSCS* made a levy on all *participant firms* at the time of the levy on the *firm*;
 - (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 expected to be incurred at any time in the future in respect of defaults which have already occurred ~~arising from the declaration by the *FSA* on 27 September 2008 that Bradford & Bingley plc is in default~~;
 - (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
 - (5) paragraphs (3) and (4) apply notwithstanding any other provision in this chapter.

...

FEES 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 2008 to 31 March 2009	£ 30,240,000 1,000,000,000 provided that only £ 30,240,000 600,000,000 may be used to meet <i>management expenses other than the</i> <u>recovered in respect of specific costs</u> relating to the declaration by the FSA on 27 September 2008 that Bradford & Bingley plc is <i>in default</i> <u>only</u> .

Annex B

Amendments to the Compensation sourcebook (COMP)

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

3.2.2 R The *FSCS* may also pay compensation (and any recovery or other amount payable by the *FSCS* to the claimant) to a *person* who makes a *claim* on behalf of another *person* if the *FSCS* is satisfied that the *person* on whose behalf the *claim* is made:

...

...

11.2.1 R If the *FSCS* determines that compensation is payable (or any recovery or other amount is payable by the *FSCS* to the claimant), it must pay it to the claimant, or as directed by the claimant, unless:

...

11.2.2 R Where a claimant has a *protected claim* arising out of the circumstances described in *COMP* 12.4.5R, the *FSCS* must pay any compensation (and any recovery or other amount payable by the *FSCS* to the claimant) to:

...

...

12.6.6 R Where any of the provisions of *COMP* 12.6.1R to *COMP* 12.6.5R apply, the *FSCS* must try to ensure that any ~~compensation~~ amount paid to:

...

HANDBOOK ADMINISTRATION (NO 11) INSTRUMENT 2008

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes the changes to the rule in Annex I to this instrument for:
- (1) licensees relating to the Consumer Credit Jurisdiction; and
 - (2) 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); and
 - (b) section 227 (Voluntary jurisdiction); and
 - (c) paragraph 18 of Schedule 17 (The Ombudsman Scheme).
- B. The making of the changes in Annex I 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:
- (1) the following powers and related provisions in the Act:
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 157(1) (Guidance);
 - (d) section 213 (The compensation scheme);
 - (e) section 214 (General);
 - (f) section 223 (Management expenses);
 - (g) section 226 (Compulsory jurisdiction);
 - (h) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
 - (i) paragraph 13 (Authority’s procedural rules) 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 Handbook.
- D. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.
- E. The Financial Services Authority consents to and approves the changes to the rule in Annex I to this instrument being made by the Financial Ombudsman Service Limited.

Commencement

F. This instrument comes into force on 6 November 2008.

Amendments to the Handbook and related material

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Threshold Conditions (COND)	Annex C
General Provisions (GEN)	Annex D
Fees manual (FEES)	Annex E
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Supervision manual (SUP)	Annex H
Dispute Resolution: Complaints sourcebook (DISP)	Annex I
Compensation sourcebook (COMP)	Annex J

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

Citation

I. This instrument may be cited as the Handbook Administration (No 11) Instrument 2008.

By order of the Board of the Financial Ombudsman Service Limited
27 October 2008

By order of the Board of the Financial Services Authority
29 October 2008

Annex A

Amendments to the Glossary of definitions

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

- administrative functions* (a) (in relation to managing *investments*):
...
(iv) *ISA*, ~~*PEP*~~ or *CTF* administration;
...
...
- collective insurance* (in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph VIII of Part II of Schedule 1 to the *Regulated Activities Order* (Contracts of long-term insurance), of a kind referred to in article ~~1(2)(e)~~ 2(2)(e) of the ~~*First Life Directive*~~ *Consolidated Life Directive* (“the operations carried out by insurance companies such as those referred to in Chapter 1, Title 4 of Book IV of the French “Code des assurances””).
- 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; or
- (b) an electronic money institution within the meaning of the *E-Money Directive*;
- 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 ~~(2)~~ (1)(b) that does not have the right to benefit from the mutual recognition arrangements under *BCD* is excluded; and
- (d) for the purposes of *BIPRU* 10 (Concentration risk requirements):
- (i) a credit institution as defined by (1)(a) to ~~(2)~~ (1)(b) that has been authorised in an *EEA State*; or
- (ii) any private or public undertaking which meets the definition in (1)(a) – ~~(2)~~ (1)(b) and which has

been authorised in a *non-EEA state*.

...

...

<i>full BCD credit institution</i>	a <i>BCD credit institution</i> that falls within paragraph (1)(a) of the definition of <i>credit institution</i> .
<i>full credit institution</i>	a <i>credit institution</i> that falls within paragraph (1)(a) of the definition of <i>credit institution</i> .
<i>group personal equity plan</i>	(as defined in regulation 2 of the Personal Equity Plan Regulations 1989) a general plan: <ul style="list-style-type: none">(a) of which the <i>plan manager</i> is the <i>authorised fund manager</i>, or in the same group as the <i>authorised fund manager</i>, of the <i>authorised fund</i> by reference to <i>units</i> in which the <i>plan register</i> is being, or is proposed to be, maintained; and(b) for the account of which there is no holding of <i>units</i> in a <i>collective investment scheme</i> other than a holding of <i>units</i> in one or more <i>authorised funds</i> managed by (or, in the case of an <i>ICVC</i>, whose <i>ACD</i> is) the <i>plan manager</i> or a <i>body corporate</i> in the same group as the <i>plan manager</i>.
<i>group plan</i>	a group personal equity plan , a <i>group ISA</i> or a <i>group savings plan</i> .
<i>Insurance Directives</i>	the First Life Directive, Second Life Directive, Third Life Directive and Consolidated Life Directive and the <i>First Non-Life Directive, Second Non-Life Directive and Third Non-Life Directive</i> .
<i>money laundering reporting officer</i>	the individual appointed by a <i>firm</i> in accordance with SYSC 3.2.6IR or SYSC 6.3.9R.
<i>packaged product</i>	<ul style="list-style-type: none">(a) a <i>life policy</i>;(b) a <i>unit</i> in a <i>regulated collective investment scheme</i>;(c) an interest in an <i>investment trust savings scheme</i>;(d) a <i>stakeholder pension scheme</i>;(e) a <i>personal pension scheme</i>; whether or not (in the case of (a), (b) or (c)) held within a PEP , an <i>ISA</i> or a <i>CTF</i> and whether or not the packaged product <i>packaged product</i> is also a <i>stakeholder product</i> .
<i>participation</i>	(for the purposes of <i>ELM</i> , <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): <ul style="list-style-type: none">(a) a participating interest may be defined according to:

...

(iii) paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) where applicable; or

(iv) paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or

(v) paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable; or

(b) (otherwise) the direct or indirect ownership of 20% or more of the voting rights or capital of an *undertaking*;

but excluding the interest of a *parent undertaking* in its *subsidiary undertaking*.

OPS firm

(a) (except in *IPRU(INV)*) a *firm* which:

...

(ii) is one of more of the following:

...

(C) a *company* which is:

...

(III) an administering authority subject to the Local Government Superannuation Regulations 1986 Local Government Pension Scheme (Administration) Regulations 2008; or

...

PEP

~~a *personal equity plan*.~~

PEP manager

~~the *plan manager* of a *PEP* in accordance with the Personal Equity Plan Regulations 1989.~~

PEP transfer

~~a transaction resulting from a decision, made with or without advice from a *firm*, by a *customer* who is an individual, to transfer the *investments* (or their value) held in his existing *PEP* in favour of another *PEP* which may or may not be managed by the same *PEP manager*.~~

<i>personal equity plan</i>	a scheme of investment satisfying the conditions prescribed in regulations made by the Treasury under section 333 of the Income and Corporation Taxes Act 1988 (the Personal Equity Plan Regulations 1989).
<i>plan manager</i>	<p>in relation to:</p> <ul style="list-style-type: none"> (a) a group personal equity plan, the PEP manager, [deleted] (b) a group ISA, the ISA manager; (c) a group savings plan, the person primarily responsible for that group savings plan.
<i>regulated collective investment scheme</i>	<ul style="list-style-type: none"> (a) an ICVC; (b) an AUT; or (c) a recognised scheme; <p>whether or not the <i>units</i> are held within a <u>an PEP, ISA, or personal pension scheme</u>.</p>
<i>social insurance</i>	(in relation to a <i>class of contract of insurance</i>) the <i>class of contract of insurance</i> , specified in paragraph IX of Part II of Schedule 1 to the <i>Regulated Activities Order</i> (Contracts of long-term insurance), of a kind referred to in article 1(3) 2(3) of the <i>First Life Directive Consolidated Life Directive</i> (“operations relating to the length of human life which are prescribed by or provided for in <i>social insurance</i> legislation, when they are effected or managed at their own risk by assurance undertakings in accordance with the laws of an <i>EEA State</i> ”).
<i>State of the commitment</i>	<p>(in accordance with paragraph 6(1) of Schedule 12 to the <i>Act</i> (Transfer schemes: certificates)) (in relation to a commitment entered into at any date):</p> <ul style="list-style-type: none"> (a) if the <i>policyholder</i> is an individual, the State in which he had his habitual residence at that date; (b) if the <i>policyholder</i> is not an individual, the State in which the establishment of the <i>policyholder</i> to which the commitment relates was established at that date; <p>in this definition, “commitment” means (in accordance with article 2 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625)) any contract of insurance of a kind referred to in article 1 2 of the <i>First Life Directive Consolidated Life Directive</i>.</p>

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

retail (investment) customer (in relation to a *firm's permission* and the *FSA Register*) a *retail client*.

retail (non-investment insurance) customer (in relation to a *firm's permission* and the *FSA Register*) a *consumer* or a *customer* acting in the capacity of both a *consumer* and a *commercial customer* (see *ICOBS 2.1.3G*).

Annex B

Amendments to the Principles for Businesses (PRIN)

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

Where?

- 4.1.2 G Under *PRIN* 3.3.1R, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable rule which is relevant to an activity has a wider territorial scope. Under *PRIN* 3.1.1R, the territorial application of a number of *Principles* to an *EEA MiFID investment firm*, is narrowed to the extent that responsibility for the matter in question is reserved to the *firm's Home State regulator*. These modifications are relevant to *Principles* 1, 2, 3, 6, 7, 8, 9 and 10. We have added further guidance in *PERG* on the ability of a *Host State* to impose conduct of business requirements (see Q67).

Annex C

Amendments to the Threshold Conditions (COND)

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

- 2.1.2 G Section 40(1) of the *Act* (Application for permission) allows an application to be made to the *FSA* for *Part IV permission* by an individual, a *body corporate*, a *partnership* or an unincorporated association. However, in the case of the *regulated activities* of *accepting deposits* and *effecting or carrying out contracts of insurance*, ~~article 1 of the *Banking Consolidation Directive*, and article 8(1) of the *First Non-Life Directive* and of the *First Life Directive*~~ *Consolidated Life Directive* place further limits on the legal forms a *firm* may take. The *Act* implements the provisions of the directives and extends some of these limits to *firms* that are outside the scope of the directives.

Annex D

Amendments to the General Provisions (GEN)

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

GEN TP 1.2 Table 2: Transitional Provisions applying across the Handbook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
25	References in the <i>Handbook</i> (except those in <i>LR</i> , <i>PR</i> and <i>DTR</i>) to Companies Act 1985 provisions which have been repealed, in whole or in part, by the Companies Act 2006.	R	Each reference is to be read as a reference to the corresponding provision of the Companies Act 2006 and related provisions taking into account any relevant commencement, transitional or savings provisions made under that Act or related provisions.	From 6 April 2008 until 4 <u>1</u> November 2008 <u>2009</u>	various
26	Paragraph 25	G	(1) The purpose of the transitional provision in paragraph 25 is to ensure the effectiveness of provisions which have been, or will be, repealed by the Companies Act 2006 until each cross reference or dependency in the <i>Handbook</i> is reviewed and updated as appropriate.	From 6 April 2008 until 4 <u>1</u> November 2008 <u>2009</u>	various

		(2) The references to provisions which have been repealed, in whole or in part, are primarily to the Companies Act 1985, the Companies Act 1989 and the various Companies (Northern Ireland) Orders.		
--	--	--	--	--

Annex E

Amendments to the Fees manual (FEES)

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

4 Annex 1R

Activity groups, tariff bases and valuation dates applicable

Part 2 ...

Activity group	Tariff-base
...	
A.9	GROSS INCOME ...
	PLUS <ul style="list-style-type: none"> • any additional initial or management charges levied through a product wrapper such as a PEP or an ISA; BUT EXCLUDING box management profits. ...
...	

4 Annex 2R

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

...

Part 4	
This table shows the calculation of the Solvency 2 fee for <i>firms</i> falling into fee block A3 or A4	
...	

(6)	For the purpose of (3) <i>firms</i> falling into (2) that are in the same group at the start of the financial year 2008/9 must be treated as a single <i>firm</i> , so that the total number of <i>firms</i> liable to pay the Solvency 2 fee may be greater than 40 <u>20</u> .
...	

4 Annex 3R Transaction reporting fees

Transaction reporting fees for the period from 1 April ~~2007~~ 2008 to 31 March ~~2008~~ 2009

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

...

...

4 Annex 4 R Periodic fees in relation to collective investment schemes payable for the period 1 April 2008 to 31 March 2009

Part 1 – Periodic fees payable

Scheme type	Basic fee (£)	Total funds/sub-funds aggregate	Fund factor	Fee (£)
<i>ICVC, AUT, Section 264 of the Act or Section 270 of the Act</i>	640 <u>670</u>	1-2	1	670
		3-6	2.5	1,675
		7-15	5	3,350
		16-50	11	7,370
		>50	22	14,740
Section 272 of the <i>Act</i>	2,620 <u>2,730</u>	1-2	1	2,730
		3-6	2.5	6,825
		7-15	5	13,650
		16-50	11	30,030
		>50	22	60,060

...

...

Annex F

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

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

IPRU(INV) 5 APPENDIX 1 (INTERPRETATION)

plan investment means an *investment* included in a ~~PEP~~ or in any *ISA* component.

...

- 13.1 R (1) This chapter applies to a *firm* which is a *personal investment firm*.
- (2) For a *personal investment firm* which is an *exempt CAD firm* the following apply:
- (a) sections 13.1 and 13.1A; and
- (b) if it is not an *opted-in exempt CAD firm*, sections 13.2 to 13.8 or (if prior to 1 November 2007 the firm was subject to sections 13.9 to 13.12) 13.9 to 13.12 (see 13.1A.2); or
- (c) if it is an *opted-in exempt CAD firm*, sections 13.9 to 13.12 (but reading references to *Category B firm* as references to the *firm*).
- (3) Section 13.1 and sections 13.9 to 13.12 apply to a *personal investment firm* which is a *Category B firm*.
- (4) The definitions in the Glossary at Appendix 13(1) apply to this chapter.

...

- 13.1A.2 R The financial resources requirements for a *personal investment firm* which is an *exempt CAD firm* is the higher of:
- (1) the requirement that is applied by section 13.1A; and
- (2) (a) the requirement that is applied by sections 13.2 to 13.8; or
- (b) if it is an *opted-in exempt CAD firm*, (if prior to 1 November 2007 the firm was subject to sections 13.9 to 13.12) the requirement that is applied by those sections 13.9 to 13.12 (but reading references to *Category B firm* as references to the *firm*).

...

APPENDIX 13 (1): Defined terms for Chapter 13

opted-in exempt CAD firm an *exempt CAD firm* which complies with the requirements in regulation 4C (or any successor provision) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (SI 2007/126).

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

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

9.4.1 R A firm must provide a *suitability report* to a *retail client* if the firm makes a *personal recommendation* to the *client* and the *client*:

(1) acquires a holding in, or *sells* all or part of a holding in:

...

(c) an *investment trust* where the relevant *shares* are to be held within an *ISA* ~~or *PEP*~~ which has been promoted as the means for investing in one or more specific *investment trusts*; or

...

...

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
...
Non-life/pensions (advised but not at a distance): a non- <i>distance contract</i> ...		
<ul style="list-style-type: none"> ▪ to buy a <i>unit</i> in a <i>regulated collective investment scheme</i> (including within a <i>wrapper</i> or <i>pension wrapper</i>) ▪ to open or transfer a child trust fund (<i>CTF</i>) ▪ to open or transfer an <i>ISA</i> or <i>PEP</i> ▪ for an <i>Enterprise Investment Scheme</i> 	14 calendar days	<p>These rights arise only following a <i>personal recommendation</i> of the contract (by the <i>firm</i> or any other <i>person</i>).₂</p> <p>For a <i>unit</i> bought when opening or transferring a <i>wrapper</i> or <i>pension wrapper</i>, the 14 calendar day right to cancel applies to the entire arrangement.₂</p> <p>Exemptions may apply (see <i>COBS 15 Annex 1</i>).₂</p>
...		

...

15 Annex 1 Exemptions from the right to cancel

...

Exemptions for ISAs, ~~PEPs~~, CTFs and EISs (non-distance)

1.9 R There is no right to cancel a non-*distance contract*:

...

(3) ~~to transfer a PEP; or~~ [deleted]

(4) ...

provided that:

(5) (for an *EIS*, or *ISA* ~~or PEP~~) the right to cancel is replaced with a seven calendar day, pre-contract right to withdraw the *consumer's* offer; or

(6) the contract relates to an *EIS* or a non-*packaged product ISA*, ~~PEP~~ or *CTF* and is entered into following an explanation that neither a right to cancel nor a right to withdraw will apply given in accordance with the relevant rules on pre-contractual disclosure; or

...

...

Annex H

Amendments to the Supervision manual (SUP)

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

Purpose

- 16.4.4 G A *firm* and its *controllers* are required to notify certain changes in *control* (~~See see~~ *SUP* 11 (Controllers and close links)). The purpose of the *rules* and *guidance* in this section is:
- (1) to ensure that, in addition to such notifications, the *FSA* receives regular and comprehensive information about the identities of all of the *controllers* of a *firm*, which is relevant to a *firm's* continuing to satisfy the *threshold conditions* (see *COND* 2.3) and to the protection of *consumers*;
 - (2) to implement certain requirements relating to annual reporting of *controllers* which must be imposed on *firms* under the *Investment Services Directive*, the *Banking Consolidation Directive*, the ~~*Third Life Directive*~~ *Consolidated Life Directive* and the *Third Non-Life Directive*; and
 - (3) to support the *FSA's* functions under Part XII of the *Act* (Control over authorised persons) (see *SUP* 11 (Controllers and close links)).

Annex I

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

- 2.8.2 R The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:
- ...
- unless:
- (3) in the view of the *Ombudsman*, the failure to comply with the time limits in *DISP 2.8.2R* or *DISP 2.8.7R* was as a result of exceptional circumstances; or
- ...
- (5) the *respondent* has not objected, on the grounds that the time limits in *DISP 2.8.2R* or *DISP 2.8.7R* have been exceeded, to the *Ombudsman* considering the complaint.

Annex J

Amendments to the Compensation sourcebook (COMP)

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

- 3.2.3 G Examples of the circumstances covered by *COMP* 3.2.2R are:
- (1) when personal representatives make a *claim* on behalf of the deceased;
 - (2) when trustees make a *claim* on behalf of beneficiaries (for further provisions relating to *claims* by trustees, see *COMP* 12.6.1R to *COMP* 12.6.7R);
 - (3) when the donee of an enduring power of attorney or a lasting power of attorney makes a *claim* on behalf of the donor of the power;
 - (4) when the ~~Master of the~~ Court of Protection makes a *claim* on behalf of a *person* incapable by reason of mental disorder of managing and administering his property and affairs;
 - (5) when an *eligible claimant* makes a *claim* for compensation but dies before his *claim* is determined.

...

7.2.3 R ...

- (3) [deleted]

...

12.2.7 R ...

- (1) in calculating the claimant's overall net *claim*; and

- (2) ...

Annex K

Amendments to the Perimeter Guidance manual (PERG)

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

13.7 The territorial application of MiFID

Q67. What is the territorial application of MiFID?

...

~~We have added further guidance in PERG on the ability of a Host State to impose conduct of business requirements (see Q67).~~

...

Incoming electronic commerce communications (article 20B)

8.12.38 G Article 20B gives effect to the provisions of the *E-Commerce Directive* by exempting *electronic commerce communications* made from an *establishment* in an *EEA State* other than the *United Kingdom* to an *ECA recipient* in the *United Kingdom*. However, article 20B does not apply to the following communications:

- (1) an advertisement by the *operator* of a UCITS of *units* in that *scheme*;
or
- (2) an invitation or inducement to enter into a *contract of insurance* where:
 - (a) it is made by an undertaking which has received official authorisation in line with article ~~6~~ 4 of the ~~*First Life Directive*~~ *Consolidated Life Directive* or article 6 of the *First Non-life Directive*; and
 - (b) the insurance falls within the scope of any of the *Insurance Directives*; or
- (3) an unsolicited communication made by electronic mail.

For the purposes of (3), a communication is unsolicited unless it is made in response to an express request from its recipient.

**GLOSSARY AMENDMENT (DEFINITION OF PREFERENCE SHARE)
INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 November 2008.

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 Preference Share) Instrument 2008.

By order of the Board
29 October 2008

Annex

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

- preference share*
- (1) (except in GENPRU) a *share* conferring preference as to income or return of capital which is not convertible into an *equity share* and does not form part of the *equity share capital* of a *company*.
 - (2) (in GENPRU) a *share* conferring preference as to income or return of capital which does not form part of the *equity share capital* of a *company*.

FINANCIAL SERVICES COMPENSATION SCHEME (AMENDMENT OF TARIFF MEASURES AND OTHER LEVY RULES) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 213 (The compensation scheme);
 - (5) section 214 (General); and
 - (6) 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 as follows:
- (1) Part 1 of Annex B comes into force on 1 November 2008;
 - (2) Part 2 of Annex B comes into force on 1 January 2009;
 - (3) Part 3 of Annex B comes into force on 1 April 2009; and
 - (4) the remainder of this instrument comes into force on 1 April 2010.

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 Financial Services Compensation Scheme (Amendment of Tariff Measures and Other Levy Rules) Instrument 2008.

By order of the Board
29 October 2008

Annex A

Amendments to the Glossary of definitions

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

*annual eligible
income*

(in *FEES*) (in relation to a *firm* and a *sub-class*) the annual income (as described in ~~Part 2 of *FEES* 4.6 Annex 13R~~) for the *firm*'s last financial year ended in the year to 31 December preceding the date for submission of the information under *FEES* 6.5.13R attributable to ~~the relevant~~ that *sub-class*. A *firm* must calculate *annual eligible income* from such annual income in one of the following ways:

(a) ; or if the *firm* prefers, that amount of that annual income only include such annual income if it is attributable to business conducted with or on behalf for the benefit of *eligible claimants* and is otherwise attributable to compensatable business, but only if the *firm* notifies *FSCS* of the amount in accordance with *FSCS* reporting requirements; or

(b) include all such annual income.

Annex B

Amendments to the Fees manual (FEES)

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

Part 1: Comes into force on 1 November 2008

2.3 Relieving Provisions

Remission of Fees and levies

- 2.3.1 R If it appears to the *FSA*, the *FSCS* (in relation to any *FSCS* levy only) or *FOS Ltd* (in relation to any *FOS* case fee only), that in the exceptional circumstances of a particular case, the payment of any fee, *FSCS* levy or *FOS* levy would be inequitable, the *FSA*, the *FSCS* or *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*, the *FSCS* (in relation to any *FSCS* levy only) or *FOS Ltd* (in relation to any *FOS* case fee only), that in the exceptional circumstances of a particular case to which *FEES* 2.3.1R does not apply, the retention by the *FSA*, the *FSCS* or *FOS Ltd*, as relevant, of a fee, *FSCS* levy or *FOS* levy which has been paid would be inequitable, the *FSA*, the *FSCS* or *FOS Ltd*, may (unless *FEES* 2.3.2BR applies) refund all or part of that fee or levy.
- 2.3.2A G A poor estimate or forecast by a fee or levy payer, when providing information relevant to an applicable tariff base, is unlikely, of itself, to amount to an exceptional circumstance for the purposes of *FEES* 2.3.1R or *FEES* 2.3.2R. By contrast, a mistake of fact or law by a fee or levy payer may give rise to such a claim.
- 2.3.2B R The *FSA* or the *FSCS* may not consider a claim under *FEES* 2.3.1R and/or *FEES* 2.3.2R to reduce, remit or refund any overpaid amounts paid by a fee or levy payer in respect of a particular period, due to a mistake of fact or law by the fee or levy payer, if the claim is made by the fee or levy payer more than 2 years after the beginning of the period to which the overpayment relates.
- 2.3.3 G ~~*FEES* 2.3.1R, *FEES* 2.3.2R and *FEES* 2.3.2BR do not apply to the payment of shares of the *FSCS* levy. [deleted]~~

...

Adjustments to calculation of levy shares

- 6.3.22 R The *FSCS* may adjust the calculation of a *participant firm's* share of any levy to take proper account of:

...

- (5) FEES 2.3 (Relieving Provisions), FEES 6.4.8R (New participant firms), FEES 6.5.9R (New participant firms), FEES 6.3.23R (Remission of levy or additional administrative fee) or FEES 6.6 (Incoming EEA firms); or

...

6.3.22A R The FSCS may not adjust the calculation of a participant firm's share of any levy under FEES 6.3.22R on the grounds that it would be inequitable for that firm to pay that share or part of it or on the grounds that it would be inequitable for the FSCS to retain that share or part of it.

6.3.22B G The reason for FEES 6.3.22AR is that any such claim should be dealt with under FEES 2.3 (Relieving Provisions).

...

~~Exclusion of new and exempt participant firms~~ Membership of several classes or sub-classes

6.5.10 R ...

...

Reporting requirements

6.5.13 R (1) Unless exempt under FEES 6.2.1R, a *participant firm* must provide the *FSCS* by the end of February each year (or, if it has become a *participant firm* part way through the financial year, by the date requested by the *FSA*) with a statement of:

...

- (b) the total amount of business (measured in accordance with the appropriate tariff base or tariff bases) which it conducted, in respect of the most recent valuation period (as specified by FEES 6 Annex 3R (Financial Services Compensation Scheme - classes and sub-classes)) ending before firm's last financial year ended in the year to 31 December preceding the relevant year, or if appropriate to the tariff base, as at 31 December of the year immediately preceding the relevant year in relation to each of those *sub-classes*.

...

- (3) This *rule* does not apply in relation to the home finance provision *sub-class* E1. Therefore any reference in the *Handbook* to information that is or must be supplied under this *rule* must be read, in the case of *sub-class* E1, as if it referred to the corresponding provisions relating to *FSA* periodic fees.

6.5.13A G For example, when the tariff base for a particular *sub-class* is based on a *firm's annual eligible income* the valuation period for that *sub-class* is the *firm's last financial year ending in the year to 31 December preceding the financial year of the FSCS for which the calculation is being made*. In the case of a *firm in sub-class A1 (Deposits)* its valuation period will be 31 December.

...

TP 2 Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2007/8 and in 2008/9

...		
<u>2.7</u>	<u>Transitional provisions for changes to relieving provisions</u>	
<u>2.7.1</u>	<u>R</u>	<u>The amendments made in Part 1 of Annex B to the Financial Services Compensation Scheme (Amendment of Tariff Measures and Other Levy Rules) Instrument 2008 to FEES 2.3 and the addition of FEES 6.3.22AR (and consequential changes) (changes to Relieving Provisions) do not apply to any request made by a levy payer before 1 November 2008.</u>
<u>2.8</u>	<u>Effect of the tariff base changes for the financial year beginning on 1 April 2009 before that date</u>	
<u>2.8.1</u>	<u>R</u>	<u>The amendments made to FEES 6 Annex 3 (Financial Services Compensation Scheme – classes and sub-classes) and FEES TP 2 by Part 3 of Annex B to the Financial Services Compensation Scheme (Amendment of Tariff Measures and Other Levy Rules) Instrument 2008 have effect before 1 April 2009 for the purpose of the supply of information under FEES 6.5.13R in relation to the FSCS's financial year beginning on 1 April 2009.</u>
<u>2.8.2</u>	<u>G</u>	<u>In particular, a firm in sub-classes C2 and D2 should provide the FSCS by 30 November 2008 with the estimated breakdown of business between those two sub-classes required by FEES TP 2.2.</u>

TP 3 Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2010/11

<u>3.1</u>	<u>Effect of the tariff base changes made in 2008 in relation to the financial year 2010/11 before that date</u>	
<u>3.1.1</u>	<u>R</u>	<u>The amendments made to <i>FEES 6</i> and to <i>FEES TP</i> by Part 4 of Annex B to the Financial Services Compensation Scheme (Amendment of Tariff Measures and Other Levy Rules) Instrument 2008 have effect before 1 April 2010 for the purpose of the supply of information under <i>FEES 6.5.13R</i> in relation to the <i>FSCS's</i> financial year beginning on 1 April 2010.</u>

Part 2: Comes into force on 1 January 2009

Firms acquiring businesses from other firms

- 6.3.22C R (1) This rule applies to the calculation of the levies of a firm (A) if:
- (a) either:
 - (i) A acquires all or a part of the business of another firm (B), whether by merger, acquisition of goodwill or otherwise; or
 - (ii) A became authorised as a result of B's simple change of legal status (as defined in FEES 3 Annex 1R Part 6);
 - (b) B is no longer liable to pay a levy; and
 - (c) that acquisition or change takes place after the date to which, or as of which, A's most recent statement of business under FEES 6.5.13R is drawn up so far as concerns the sub-classes covered by B's business.
- (2) A must pay an additional amount equal to the levy that would have been payable by B in relation to the relevant business and relevant sub-classes if the acquisition or change in status had not taken place and B had remained liable to pay levies. The amount is based on the most recent information supplied by B under FEES 6.5.13R. A is included in the sub-classes applicable to the relevant business.
- (3) This rule only applies with respect to those financial years of the FSCS for which A's levies are calculated on the basis of a statement of business under FEES 6.5.13R drawn up to a date, or as of a date, before the acquisition or change in legal status took place.

Part 3: Comes into force on 1 April 2009

6 Annex 3R Financial Services Compensation Scheme – classes and sub-classes

This table belongs to *FEES* 6.5.7R and *FEES* TP 2.5.2R

...

Class D	Investment
...	
Tariff base	<p data-bbox="411 703 1390 813">Sub-class D1: gross <u>net income</u>. <u>Net income is equal to the net amount retained by the firm of all income due to the firm in respect of or in relation to activities falling within sub-class D1.</u></p> <p data-bbox="411 848 1390 958">Gross income in respect of activities falling into fee block A9 must be calculated in accordance with the tariff base provisions for that fee block in <u>FEES 4 Annex 1R.</u></p> <p data-bbox="411 994 1390 1211"><u>For the purposes of calculating net income, net amount retained means all the commission, fees, etc. in respect of activities falling within sub-class D1 that the firm has not rebated to customers or passed on to other firms (for example, where there is a commission chain). Items such as general business expenses (for example employees' salaries and overheads) must not be deducted.</u></p> <p data-bbox="411 1247 1366 1357">In any case the calculation excludes any value attributable to activities which are simultaneously activities in <i>sub-class D2</i> to the extent included there.</p> <p data-bbox="411 1393 1347 1503">Sub-class D2: Number of <i>approved persons</i> or, for firms in contribution <u>group fee block A10</u> as at 31 March 2008, number of traders, as at 31 December, ...</p>

...

6 Annex 4G Guidance on the calculation of tariff bases

This table belongs to *FEES* 6.5.8G

		Calculation of <u>gross net</u> income for firms who carry out discretionary fund management and are in sub-class D1
-1.1	G	<u>The tariff base for sub-class D1 is calculated by taking gross income falling into sub-class D1 and then deducting commission, fees and similar amounts rebated to customers or passed on to other firms (for example, where there is a commission chain). Items such as general business expenses (for example employees' salaries and overheads) should not be deducted.</u>
1.1	G	The calculation of gross income for the purpose of <i>sub-class</i> D1 ...
1.2	G	Gross Net income should exclude:
	(1)	income received or receivable from assets managed on a non-discretionary basis, being assets that the <i>firm</i> has a contractual duty to keep under continuous review but in respect of which prior specific consent of the client must be obtained for proposed transactions, as this activity is covered in <i>sub-class</i> D2 (the investment intermediation <i>sub-class</i>);
	(2)	income that the firm has rebated to customers or passed onto other firms (for instance where there is a commission chain).
1.3	G	A <i>firm</i> should make appropriate arrangements ...

...

TP 2 Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2007/8 and in 2008/9

...

2.2		Split of business between life and pensions intermediation and investment intermediation
2.2.1	R	<i>FEES</i> TP 2.2 deals with the calculation of the tariff base of <i>participant firms</i> in <i>sub-classes</i> C2 (Life and Pensions intermediation) and D2 (Investment intermediation) in relation to the <i>FSCS's</i> financial year <u>years</u> beginning on 1 April 2008 <u>and</u> 1 April 2009 (the applicable financial year).

2.2.2	R	If a <i>participant firm</i> would have fallen within both <i>sub-classes</i> C2 and D2 in the <u>preceding</u> financial year to 31 March 2008 it must provide FSCS, <u>by 30 November of the year preceding the applicable financial year (or, if it has become a <i>participant firm</i> part way through the financial year by the date requested by FSCS), with an estimated breakdown of business carried on in its financial year ended in the <u>calendar year ending on the 31 December 2007 preceding the applicable financial year</u> which would have fallen within <i>sub-classes</i> C2 and D2. <u>However, the <i>firm</i> must shorten the period covered by that breakdown to the extent necessary to ensure that the period it covers ends no later than one <i>Month</i> before the date by which the <i>firm</i> has to supply it. If the <i>firm</i> does not have a <i>permission</i> covering these activities for the whole of the period covered by the breakdown, it must use the projected valuation (as provided to the FSA in the course of the <i>firm's</i> application) of the business to which the tariff relates.</u></u>
...		
2.2.4	R	<i>Firms</i> in contribution group A10 in the financial year to 31 March 2008 will be deemed to have an estimated breakdown of business of one hundred per cent in <i>sub-class</i> D2 and zero per cent in <i>sub-class</i> C2, unless otherwise notified to the FSCS by the date for submission in FEES 6.5.13R. <u>The same applies in relation to the financial year beginning 1 April 2009 in the case of a <i>firm</i> in FSA fee block A10 in the financial year to 31 March 2009.</u>
2.2.4A	G	<u>The deemed allocation of one hundred per cent of business to <i>sub-class</i> D2 and zero per cent in <i>sub-class</i> C2 does not apply to FSA fee blocks A12, A13 or A14.</u>
...		
2.2.7	R	<u>If the split of a <i>firm's</i> business between <i>sub-classes</i> C2 and D2 was calculated under FEES TP 2.2 for the FSCS's financial year beginning on 1 April 2008 the same split applies for the financial year beginning on 1 April 2009. But this does not apply:</u>
	(a)	<u>if the difference between the split for the two financial years would be equal to or greater than ten; or</u>
	(b)	<u>to FEES TP 2.2.4R.</u>
		<u>For these purposes the split for a financial year means the amount of the difference (expressed as a number) between the percentage figures for the two <i>sub-classes</i> for that year calculated under FEES TP 2.2.2R.</u>
...		

Part 4: Comes into force on 1 April 2010

6 Annex 3R Financial Services Compensation Scheme – classes and sub-classes

This table belongs to *FEES* 6.5.7R and *FEES* TP 2.5.2R

...

Class B	General Insurance
...	
Tariff base	<p data-bbox="411 712 1374 898"><u>Sub-class B1: Relevant net premium income and eligible gross technical liabilities. The levy is split into two in the ratio 75:25. The tariff base for the first portion (75%) is calculated by reference to relevant net premium income. The tariff base for the second portion (25%) is based on eligible gross technical liabilities.</u></p> <p data-bbox="411 927 1398 1037"><u>Eligible gross technical liabilities are calculated in accordance with the method for calculating gross technical liabilities in fee block A3 in part 2 of FEES 4 Annex 1R with the following adjustments.</u></p> <p data-bbox="411 1066 1331 1137"><u>(1) Eligible gross technical liabilities are calculated by reference to protected contracts of insurance with eligible claimants.</u></p> <p data-bbox="411 1167 1401 1276"><u>(2) A firm may choose not to apply paragraph (1) and instead include all gross technical liabilities that it would be obliged to take into account for fee block A3 as long as the amount that it would include under (1) is lower.</u></p> <p data-bbox="411 1305 1394 1415"><u>(3) If an incoming EEA firm does not report gross technical liabilities in the way contemplated by this table, the firm's gross technical liabilities are calculated in the same way as they would be for a UK firm.</u></p> <p data-bbox="411 1444 1401 1516"><u>(4) None of the notes for the calculation of fees in fee block A3 in part 2 of FEES 4 Annex 1R apply except for the purposes of (2).</u></p> <p data-bbox="411 1545 1299 1617"><u>(5) A directive friendly society must also calculate eligible gross technical liabilities in accordance with this table.</u></p> <p data-bbox="411 1646 1398 2011"><u>(6) A non-directive friendly society must calculate gross technical liabilities as the amount that it is required to show in FSC 2 - Form 9 line 11 in Appendix 10 of IPRU(FSOC) (assets allocated towards the general insurance business required minimum margin) in relation to the most recent financial year of the firm (as at the applicable reporting date under FEES 6.5.13R) for which the firm is required to have reported that information to the FSA under IPRU(FSOC). A non-directive friendly society must disregard for this purpose such amounts as are not required to be included by reason of a waiver or a written concession carried forward as an amendment to the rule to which it relates under SUP TP.</u></p>

	<p>Sub-class B2: <u>annual eligible income</u> where the annual <u>annual eligible income</u> means annual income adjusted in accordance with this table. <u>Annual</u> income is calculated in accordance with that for fee block A19 in part 2 of FEES 4 Annex 1R, excluding annual eligible income for pure protection contracts. as the sum of (a) and (b):</p> <p>(a) <u>the net amount retained by the firm of all brokerages, fees, commissions and other related income (for example, administration charges, overrides and profit shares) due to the firm in respect of or in relation to sub-class B2 activities, including any income received from an insurer; and</u></p> <p>(b) <u>if the firm is an insurer, in relation to sub-class B2 activities, the amount of premiums receivable on its contracts of insurance multiplied by 0.07, excluding those contracts of insurance which result from sub-class B2 activities carried out by another firm, where a payment has been made by the insurer to that other firm and that payment is of a type that falls under (a).</u></p> <p><u>Notes relating to the calculation of the tariff base for sub-class B2:</u></p> <p>(1) <u>Exclude annual income for pure protection contracts. Only include general insurance contracts.</u></p> <p>(2) <u>The calculation is adjusted in accordance with the definition of annual eligible income.</u></p> <p>(3) <u>Net amount retained means all the commission, fees, etc. in respect of sub-class B2 activities that the firm has not rebated to customers or passed on to other firms (for example, where there is a commission chain). Items such as general business expenses (for example, employees' salaries and overheads) must not be deducted.</u></p> <p>(4) <u>Sub-class B2 activities mean activities that fall within sub-class B2. They also include activities that now fall within sub-class B2 but that were not regulated activities when they were carried out.</u></p> <p>(5) <u>A reference to a firm also includes a reference to any person who carried out activities that would now fall into sub-class B2 but which were not at the time regulated activities.</u></p>
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Class C	Life and Pensions
...	
Tariff base	<p>Sub-class C1: <u>Relevant net premium income</u> and eligible mathematical reserves. The levy is split into two in the ratio 75:25. The tariff base for the first portion (75%) is calculated by reference to <u>relevant net premium income</u>. The tariff base for the second portion (25%) is based on <u>mathematical reserves</u>.</p>

Eligible mathematical reserves are calculated in accordance with the method for calculating mathematical reserves in fee block A4 in part 2 of FEES 4 Annex 1R with the following adjustments.

(1) Eligible mathematical reserves are calculated by reference to protected contracts of insurance with eligible claimants.

(2) A firm may choose not to apply paragraph (1) and instead include all mathematical reserves that it would be obliged to take into account for fee block A4 as long as the amount that it would include under (1) is lower.

(3) If an incoming EEA firm does not report mathematical reserves in the way contemplated by this table, the firm's mathematical reserves are calculated in the same way as they would be for a UK firm.

(4) None of the notes for the calculation of fees in fee block A4 in part 2 of FEES 4 Annex 1R apply except for the purposes of (2).

(5) A directive friendly society must also calculate eligible mathematical reserves in accordance with this table.

(6) A non-directive friendly society must calculate mathematical reserves as the amount that it is required to show in FSC 2 - Form 9 line 23 in Appendix 10 of IPRU(FSOC) (total mathematical reserves after distribution of surplus) in relation to the most recent financial year of the firm (as at the applicable reporting date under FEES 6.5.13R) for which the firm is required to have reported that information to the FSA under IPRU(FSOC). A non-directive friendly society must disregard for this purpose such amounts as are not required to be included by reason of a waiver or a written concession carried forward as an amendment to the rule to which it relates under SUP TP.

(7) The provisions relating to pension fund management business in Part 2 of FEES 4 Annex 1R do not apply. A firm undertaking such business that does not carry out any other activities within sub-class C1 (ignoring any activities that would have a wholly insignificant effect on the calculation of its tariff base for sub-class C1) must use its Long-term insurance capital requirement instead of gross technical liabilities. The Long-term insurance capital requirement means the amount that it is required to show as its Long-term insurance capital requirement in Form 2 Line 31 (Statement of solvency – Long-term insurance business) in relation to the most recent financial year of the firm (as at the applicable reporting date under FEES 6.5.13R) for which the firm is required to have reported that information to the FSA.

(8) The split in the levy between relevant net premium income and eligible mathematical reserves does not apply to a partnership pension society (as defined in Chapter 7 of IPRU(FSOC) (Definitions)). Instead the levy is only calculated by reference to relevant net premium income.

Sub-class C2: Number of *approved persons* as at 31 December, calculated on the same basis as corresponding tariff base provisions for fee blocks A12, 13, and A14 in *FEES 4 Annex 1 R* (even if the *firm's approved persons* are not counted for the purposes of those fee blocks), and multiplied by the *firm's* estimated proportion of business falling within *sub-class C2* provided or deemed as provided in accordance with *FEES 6*. *annual eligible income* where *annual eligible income* means annual income adjusted in accordance with this table. Annual income is calculated as the sum of (a) and (b):

(a) the net amount retained by the *firm* of all brokerages, fees, commissions and other related income (for example, administration charges, overrides and profit shares) due to the *firm* in respect of or in relation to *sub-class C2* activities including any income received from an *insurer*; and;

(b) if the *firm* is a life and pensions *firm*, in relation to *sub-class C2* activities, the amount of *premiums* or commission receivable on its life and pensions contracts multiplied by 0.07, excluding those life and pensions contracts which result from *sub-class C2* activities carried out by another *firm*, where a payment has been made by the life and pensions *firm* to that other *firm* and that payment is of a type that falls under (a).

Notes relating to the calculation of the tariff base for *sub-class C2*:

(1) Life and pensions contracts mean *long-term insurance contracts* (including *pure protection contracts*) and rights under a *stakeholder pension scheme* or a *personal pension scheme*.

(2) Life and pensions *firm* means an *insurer*. It also means a *firm* that provides *stakeholder pension schemes* or *personal pension schemes* if those activities fall into *sub-class D1*.

(3) The calculation is adjusted in accordance with the definition of *annual eligible income*.

(4) Net amount retained means all the commission, fees, etc. in respect of *sub-class C2* activities that the *firm* has not rebated to customers or passed on to other *firms* (for example, where there is a commission chain). Items such as general business expenses (for example, employees' salaries and overheads) must not be deducted.

(5) *Sub-class C2* activities mean activities that fall within *sub-class C2*. They also include activities that now fall within *sub-class C2* but that were not *regulated activities* when they were carried out.

(6) A reference to a *firm* also includes a reference to any *person* who carried out activities that would now fall into *sub-class C2* but which were not at the time *regulated activities*.

Class D	Investment
...	
Tariff base	<p data-bbox="411 353 1406 539"> Sub-class D1: <u>net income</u>. <u>annual eligible income</u> where <u>annual eligible income</u> means annual income adjusted in accordance with this table. <u>Annual income</u> <u>Net income</u> is equal to the net amount retained by the <i>firm</i> of all income due to the <i>firm</i> in respect of or in relation to activities falling within <i>sub-class</i> D1. </p> <p data-bbox="411 573 1406 678"> Gross income in respect of activities falling into fee block A9 must be calculated in accordance with the tariff base provisions for that fee block in <i>FEES 4 Annex 1R</i>. </p> <p data-bbox="411 712 1406 936"> For the purposes of calculating net income, net amount retained means all the commission, fees, etc. in respect of activities falling within <i>sub-class</i> D1 that the <i>firm</i> has not rebated to customers or passed on to other <i>firms</i> (for example, where there is a commission chain). Items such as general business expenses (for example employees' salaries and overheads) must not be deducted. </p> <p data-bbox="411 969 1406 1075"> In any case the calculation excludes any value attributable to activities which are simultaneously activities in <i>sub-class</i> D2 to the extent included there. </p> <p data-bbox="411 1108 1406 1592"> Sub-class D2: Number of <i>approved persons</i> or, for <i>firms</i> in contribution group A10 as at 31 March 2008, number of traders, as at 31 December, calculated on the same basis as corresponding tariff base provisions for fee blocks A12, A13, A10 and A14 in <i>FEES 4 Annex 1R</i>, and multiplied by the <i>firm's</i> estimated proportion of business falling within <i>sub-class</i> D2 (except fee block A10) provided or deemed as provided in accordance with <i>FEES 6</i>. To avoid double counting, when calculating the number of traders <i>FSCS</i> must deduct the number of <i>approved persons</i> who are also traders attributed to the <i>firm</i> for the purposes of <i>FSA</i> fee block A12, A13 or A14. <u>annual eligible income</u> where <u>annual eligible income</u> means annual income adjusted in accordance with this table. Annual income is equal to the net amount retained by the <i>firm</i> of all income due to the <i>firm</i> in respect of or in relation to activities falling within <i>sub-class</i> D2. </p> <p data-bbox="411 1626 1406 1659"> Notes on <u>annual eligible income</u> for <i>sub-classes</i> D1 and D2: </p> <p data-bbox="411 1693 1406 1917"> (1) <u>For the purposes of calculating annual income, net amount retained means all the commission, fees, etc. in respect of activities falling within <i>sub-class</i> D1 or D2, as the case may be, that the <i>firm</i> has not rebated to customers or passed on to other <i>firms</i> (for example, where there is a commission chain). Items such as general business expenses (for example employees' salaries and overheads) must not be deducted.</u> </p> <p data-bbox="411 1951 1406 2018"> (2) <u>The calculation is adjusted in accordance with the definition of <u>annual eligible income</u>.</u> </p>

	(3) <u>Box management profits are excluded from the calculation of annual income.</u>
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...

Notes	
(1)	Any reference in this annex to a <i>specified investment</i> includes a reference to <i>rights to or interests in investments</i> in that <i>specified investment</i> .
(2)	This paragraph deals with a tariff base calculation for a <i>sub-class</i> based on the calculations for corresponding specified fee blocks where this is not possible because there are no corresponding fee blocks. In this case the calculation is based on whichever of the specified fee blocks <i>FSCS</i> may reasonably choose. In calculating <i>annual eligible income</i> a <i>firm</i> must apportion income between different <i>sub-classes</i> and between income that falls within the definition of <i>annual eligible income</i> and income that does not in a reasonable and consistent way and on the basis of clear policies.
(3)	<p>The question of whether a <i>person</i> is an <i>eligible claimant</i> or not or whether a <i>contract of insurance</i> is a <i>protected contract</i> or not or whether business is compensatable business or not must be judged at whichever of the following dates the <i>firm</i> chooses:</p> <p>(a) <u>(for a <i>person</i> who has become a new <i>client</i> during the period by reference to which the <i>firm's</i> tariff base is being calculated) the date on which the <i>person</i> becomes a client;</u></p> <p>(b) <u>(for a <i>person</i> who has ceased to be <i>client</i> during that period) the date on which the <i>person</i> ceases to be a <i>client</i>; or</u></p> <p>(c) <u>(in any other case) the date to which the most recent information supplied by the <i>firm</i> under <i>FEES</i> 6.5.13R is prepared.</u></p>

This table belongs to *FEES* 6.5.8G

		Calculation of net income <u>annual eligible income</u> for firms in <u>sub-class D1</u> who carry out discretionary fund management and are in sub-class D1 <u>FSA fee block A7</u>	
-1.1	G	The tariff base for <i>sub-class</i> D1 is calculated by taking gross income falling into <i>sub-class</i> D1 and then deducting commission, fees and similar amounts rebated to customers or passed on to other firms (for example, where there is a commission chain). Items such as general business expenses (for example employees' salaries and overheads) should not be deducted. <u>The calculation should be further adjusted so as to exclude income that is not attributable to business conducted with or for the benefit of <i>eligible claimants</i>, unless the <i>firm</i> chooses to include such income.</u>	
1.1	G	The calculation of gross income for the purpose of <i>sub-class</i> D1 should be based on the calculation of fees under fee block A9. Gross income for the activity of <i>managing investments</i> is the sum of the following:	
		(1)	the amount of the annual charge on all assets in portfolios which the <i>firm</i> manages on a discretionary basis received or receivable in the latest accounting period (this is calculated as a percentage of funds invested, typically 1% p.a.); plus
		(2)	the front-end or exit charge levied on sales or redemptions of assets in portfolios which the <i>firm</i> manages on a discretionary basis (typically 4-5% of sales/redemptions) in that same accounting period; plus
		(3)	the amount of performance management fees from the management of assets in portfolios which the <i>firm</i> manages on a discretionary basis received or receivable in that same accounting period; plus
		(4)	any other income directly attributable to the management of assets in portfolios which the <i>firm</i> manages on a discretionary basis in that same accounting period, including commission and interest received.
1.2	G	Net income <u>Annual eligible income</u> should exclude income received or receivable from assets managed on a non-discretionary basis, being assets that the <i>firm</i> has a contractual duty to keep under continuous review but in respect of which prior specific consent of the <i>client</i> must be obtained for proposed transactions, as this activity is covered in <i>sub-class</i> D2 (the investment intermediation <i>sub-class</i>).	

1.3	G	A <i>firm</i> should make appropriate arrangements to ensure that income is not double counted in relation to the activities it undertakes (for example, where it operates and manages a <i>personal pension scheme</i> or <i>collective investment scheme</i>).
<u>Corresponding fee blocks</u> Calculation of annual eligible income for firms in sub-class D1 and who carry out activities within FSA fee block A9		
2.1	G	<p>An example of a case covered by Note 2 in <i>FEES 6 Annex 3R</i> (Financial Services Compensation Scheme – classes and sub-classes) is as follows. The tariff base for <i>sub-class C2</i> (Life and Pensions Intermediation) is based on <i>approved persons</i>, calculated on the same basis as the corresponding tariff base provisions for fee blocks A12, 13, and A14. However <i>firms</i> carrying on business originally falling within fee block A19 (e.g. in relation to <i>pure protection contracts</i>) can also fall into <i>sub-class C2</i>. The note means that <i>FSCS</i> may choose whether the calculation is based on the tariff base applicable to A12, A13, or A14.</p> <p><u>The calculation of income in respect of activities falling into <i>sub-class D1</i> and FSA fee block A9 should be based on the tariff base provisions for that fee block (in Part 2 of <i>FEES 4 Annex 1R</i>). It should be adjusted so as to exclude income that is not attributable to business conducted with or for the benefit of <i>eligible claimants</i>, unless the <i>firm</i> chooses to include such income.</u></p>
2.2	G	<u>Although the calculation should be based on the one for fee block A9, the calculation is not the same. FSA fee block A9 is based on gross income. <i>Sub-class D1</i> is based on net income retained.</u>
<u>Calculation of annual eligible income for a firm in sub-class B2 or sub-class C2</u>		
3.1	G	<u>The amount of <i>annual eligible income</i> should include the amount of any trail or renewable commission due to the <i>firm</i>. Trail commission is received as a small percentage of the value of a policy on an ongoing basis. Renewable commission is received from a very small percentage of the value of a policy from ongoing premiums often received once the initial commission period is over.</u>
<u>Difficulties in calculating annual eligible income</u>		
4.1	G	<u>The purpose of Note 2 in the section of notes at the end of <i>FEES 6 Annex 3R</i> (Financial Services Compensation Scheme – classes and sub-classes) is to deal with the practical difficulties of allocating income correctly between different <i>sub-classes</i> and in deciding whether income falls outside <i>FEES 6 Annex 3R</i> altogether. Note 2 requires a <i>firm</i> to carry out the necessary apportionment on a reasonable and consistent basis.</u>
4.2	G	<u>The following provides some <i>guidance</i> as to how <i>firms</i> may approach the allocation of <i>annual eligible income</i>.</u>

4.3	G	<u>Where a firm cannot separate its income on the basis of activities, such as a fund manager which acts on a discretionary and non-discretionary basis for the same client and who only sends out a single invoice, the firm may apportion the income in another way. For instance, a firm may calculate that the business it undertook for a client was split 90% on a discretionary basis and 10% on a non-discretionary basis calculated by reference to funds under management. The firm may split the income accordingly.</u>
4.4	G	<u>A firm may allocate trail or renewable commission on the basis of the type of firm it receives it from. For instance, if it comes from a life provider the firm may consider it as life and pensions mediation income. If it comes from a fund manager the firm may treat it as investment mediation income.</u>
4.5	G	<u>If a firm receives annual eligible income from a platform based business it may report annual eligible income in line with the proportionate split of business that the firm otherwise undertakes. For instance, if a firm receives 70% of its other commission from life and pensions mediation business and 30% from investment mediation business, then it may divide what it receives in relation to the platform business on the same basis.</u>
4.6	G	<u>Unless a firm chooses to include all relevant annual income, annual eligible income excludes business that is not compensatable under the compensation scheme. This can create difficulties because, for example, a person may move between being and not being an eligible claimant over time. The purpose of Note 3 in the section of notes at the end of FEES 6 Annex 3R is to deal with that difficulty by fixing a date for deciding this.</u>
<u>Gross technical liabilities and mathematical reserves for non-directive friendly societies</u>		
5.1	G	<u>The tariff base for a non-directive friendly society carrying out general insurance business is based in part on gross technical liabilities and the tariff base for a non-directive friendly society carrying out life insurance business is based in part on mathematical reserves. These concepts do not directly apply to non-directive friendly societies and so the tariff base calculation uses a corresponding concept.</u>
5.2	G	<u>The figures for gross technical liabilities and mathematical reserves of a non-directive friendly society for the purpose of calculating its tariff base in sub-class B1 (General Insurance Provision) and C1 (Life and Pensions Provision) are based on a valuation. This valuation only has to be made every three years. FEES 6 does not require a non-directive friendly society to update that information every year. Instead the figures from a non-directive friendly society's valuation will be used on a rolling three year basis for the purposes of the levy calculations in FEES 6. The effect of this calculation is therefore to modify the normal basis on which information is supplied under FEES 6.5.13R.</u>

...

TP 3 Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2010/11

...		
<u>3.2</u>		<u>Transitional requirements relating to firms in run off</u>
<u>3.2.1</u>	<u>R</u>	<u>This rule adjusts the calculation of the tariff base for <i>sub-class B1</i> (General insurance providers) and <i>sub-class C1</i> (Life and pensions providers) for the purposes of the <i>FSCS's</i> financial year beginning on 1 April 2010 and for subsequent periods. It applies if the <i>firm</i> is in run-off and has been in run-off since 1 November 2008.</u>
<u>3.2.2</u>	<u>R</u>	<u>The whole of the levy is calculated by reference to <i>relevant net premium income</i> instead of being split 75:25 between <i>relevant net premium income</i> and eligible gross technical liabilities or mathematical reserves.</u>
<u>3.2.3</u>	<u>R</u>	<u>A <i>firm</i> is in run-off for these purposes if it has ceased to effect new <i>contracts of insurance</i>, its <i>permission for effecting contracts of insurance</i> has been cancelled, its exclusive remaining business is administering its remaining insurance liabilities and, if it is required to supply one, it has supplied a run-off plan to the <i>FSA</i> under <i>SUP App 2.8.1R</i>.</u>
<u>3.3</u>		<u>Treatment of pure protection fees in 2010/11</u>
<u>3.3.1</u>	<u>R</u>	<u>This rule adjusts the calculation of the tariff base for <i>sub-class C2</i> (Life and pensions intermediation) for the purposes of the <i>FSCS's</i> financial year beginning on 1 April 2010.</u>
<u>3.3.2</u>	<u>R</u>	<u>If the only activities that a <i>firm</i> carries out in respect of the relevant period that fall into <i>sub-class C2</i> are in relation to <i>pure protection contracts</i> the <i>firm</i> must exclude all income relating to those activities from the calculation of its tariff base for that <i>sub-class</i>.</u>
<u>3.3.3</u>	<u>R</u>	<u>This rule does not apply to a <i>firm</i> if its <i>annual eligible income</i> for the relevant period in relation to <i>pure protection contracts</i> equals or exceeds £75,000.</u>

**PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES
AND INVESTMENT FIRMS (CREDIT DERIVATIVES SPECIFIC RISK)
INSTRUMENT 2008**

Powers exercised

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

Commencement

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

Amendments to the Handbook

- D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Credit Derivatives Specific Risk) Instrument 2008.

By order of the Board
29 October 2008

Annex

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

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

7.11 Credit derivatives in the trading book

...

Ordinary credit default swap PRR method: The valuation change capital charge

...

- 7.11.28 R The valuation change capital charge for a group of credit default swaps created under *BIPRU 7.11.24R* is equal to ~~six~~ three multiplied by the larger of the potential loss produced under *BIPRU 7.11.29R* and the potential loss produced under *BIPRU 7.11.30R*. The total valuation change capital charge for credit default swaps treated under the *ordinary credit default swap PRR method* is equal to the sum of such amounts for all such groups.

...

Ordinary credit default swap PRR method: The default capital charge

- 7.11.36 R The default capital charge for each group of credit default swaps created under *BIPRU 7.11.24R* is equal to ~~four~~ two multiplied by the amount in *BIPRU 7.11.37R*. The total default capital charge for credit default swaps treated under the *ordinary credit default swap PRR method* is equal to the sum of such amounts for each such group.

...

Securitisation credit default swap PRR method: Valuation change capital charge: General

- 7.11.40 R In order to calculate the valuation change capital charge a *firm* must group together each credit default swap that relates to the same *securitisation*. The valuation change capital charge for each such group is equal to ~~six~~ three multiplied by the potential loss amount in *BIPRU 7.11.41R*. The total valuation change capital charge for credit default swaps treated under the *securitisation credit default swap PRR method* is equal to the sum of such amounts for each such group.

...

Securitisation credit default swap PRR method: Default charge

...

- 7.11.51 R If a *position* is long, the default charge for that *position* must be calculated in accordance with the following formula:

$$V \times RW \times AP \times 2$$

...

...

**CONDUCT OF BUSINESS SOURCEBOOK
(RECORD KEEPING FOR INDUCEMENTS) INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force on 6 November 2008.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Record Keeping for Inducements) Instrument 2008.

By order of the Board
29 October 2008

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

Record keeping: inducements

- 2.3.17 R (1) ~~In relation to its MiFID or equivalent third country business, a firm must make a record of each fee, commission or non-monetary benefit given to another firm that meets the criteria set out in COBS 2.3.1R(2)(b)(ii)~~ A firm must make a record of the information disclosed to the client in accordance with COBS 2.3.1R(2)(b) and must keep that record for at least five years from the date on which it was given.
- (2) A firm must also make a record of each benefit given to another firm which does not have to be disclosed to the client in accordance with ~~COBS 2.3.14G~~ COBS 2.3.1R(2)(b)(ii), and must keep that record for at least five years from the date on which it was given.

...

Sch 1 Record keeping requirements

...

Sch 1.3

G	Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
	COBS 2.3.17R(1)	Fee, commission or non-monetary benefit under COBS 2.3.1R(2)(a)(ii) <u>Information disclosed to the client in accordance with COBS 2.3.1R(2)(b)</u>	Each fee, commission or non-monetary benefit given <u>The information disclosed</u>	When benefit is given <u>information is disclosed</u>	5 years from date of benefit information is given
	COBS 2.3.17R(2)	Reasonable indirect benefits <u>Each benefit given to another</u>	Each benefit given to another firm in accordance with COBS	When benefit is given	5 years from date of benefit

	<u>firm which does not have to be disclosed to the client in accordance with COBS 2.3.1R(2)(b)(ii)</u>	<u>2.3.14G</u> <u>Each benefit given</u>		
...				

SHORT SELLING (NO 4) INSTRUMENT 2008

Powers exercised

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

Commencement

- C. This instrument comes into force on 31 October 2008.

Amendments to the Handbook

- D. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Short Selling (No 4) Instrument 2008.

By order of the Board
29 October 2008

Annex

Amendments to the Market Conduct sourcebook (MAR)

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

Disclosure of pre-existing positions

1.9.2D E ...

(2) In paragraph (1), “adequate ongoing disclosure” means disclosure made on a *RIS* by no later than 3.30pm on the *business day* following ~~each~~:

(a) the first day on which the *disclosable short position* is held after 30 October 2008; and

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

The disclosure must include the name of the person who has the position, the amount of the ~~position~~ *disclosable short position* and the name of the company in relation to which it has that position. Where the change in position results in the person no longer holding a *disclosable short position*, there must be disclosure made to that effect.

...

COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (SIMPLIFIED PROSPECTUS) (AMENDMENT) INSTRUMENT 2008

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) section 238(5) (Restrictions on promotion);
 - (e) section 247 (Trust scheme rules); and
 - (f) section 248 (Scheme particular rules);
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook; and
 - (3) regulation 6 of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
- 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 November 2008.

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 (Simplified Prospectus) (Amendment) Instrument 2008.

By order of the Board
29 October 2008

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Charges and reduction in yield

4.6.9 R ...

- (3) Note (5) to paragraph (14) of *COBS* 4.6.8G, and *COBS* 4.6.9R cease to have effect on 30 June ~~2009~~ 2011, unless remade.

...

**COMPENSATION SOURCEBOOK
(ACCELERATED COMPENSATION FOR DEPOSITORS)
INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 213 (The compensation scheme);
 - (5) section 214 (General); and
 - (6) section 215 (Rights of the scheme in relevant person’s insolvency).
- 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 immediately and applies in respect of defaults before, on or after 29 October 2008.

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 (Accelerated Compensation for Depositors) Instrument 2008.

By order of the Board
29 October 2008

Annex

Amendments to the Compensation sourcebook (COMP)

Amend the following text as shown (underlining indicates new text and striking through indicates deleted text):

- 7.2.3A R If the *FSCS*, in relation to a claim for a *protected deposit*, ~~takes an assignment of rights from the claimant under COMP 7.2.1R and subsequently makes recoveries through those rights from the relevant person or any third party in respect of that *protected deposit*~~, the *FSCS* must:

...

After COMP 14 insert the following new chapter. The text is all new and is not underlined.

15 Special situations

15.1 Accelerated compensation for depositors

Purpose

- 15.1.1 G When a *relevant person* is *in default* with claims against it for *protected deposits*, it may be desirable for the *FSCS* to make accelerated payments of compensation, for the protection of consumers and to maintain market confidence.
- 15.1.2 G To facilitate an accelerated payment of compensation, this section provides additional and alternative powers for the *FSCS*. These powers include the ability for the *FSCS* to pay compensation to *eligible claimants* without an application, to provide compensation by a variety of means and subject to conditions including by making a payment directly into an account maintained by another *authorised person*, to administer the payment of compensation on behalf of, or to pay compensation and recover from, another scheme or a government and/or to be subrogated automatically to the claimant's rights against the *relevant person* and/or any third party.

Application

- 15.1.3 R This section applies in respect of compensation for *claims* for *protected deposits*.
- 15.1.4 R Before using any power in this section, the *FSCS* must determine that using that power:
- (1) would be beneficial to the generality of *eligible claimants* with *protected deposits* made with a *relevant person in default* in respect

of whom the power is to be used; and

- (2) is unlikely to result in any additional cost to the *FSCS* which would require the imposition of increased levies on *participant firms*, over and above those required if the power was not exercised, or any additional cost is likely to be justified by the benefits.

15.1.5 R The *FSCS*'s powers in this section may be used:

- (1) separately or in any combination as an alternative and in substitution for the powers and processes elsewhere in this sourcebook;
- (2) in respect of a *relevant person in default* irrespective of when the default occurred;
- (3) in relation to all or any part of a *protected deposit* or class of *protected deposits* made with the *relevant person*; and/or
- (4) (where the *FSCS* uses its powers to administer the payment of compensation on behalf of, or to pay compensation or make a payment on account or an advance and recover from, a Non-UK Scheme or Other Funder (see *COMP* 15.1.14R)) in respect of all or part of any *protected deposit* which is compensatable by and/or recoverable from the Non-UK Scheme or Other Funder, and the *FSCS* may make different provision for those parts of a *protected deposit* (and references to paying compensation shall be treated as referring to making a payment, making a payment on account or making an advance as appropriate).

15.1.6 R The *FSCS* may determine that the exercise of any power in this section is subject to such incidental, consequential or supplemental conditions as the *FSCS* considers appropriate.

Determinations by the *FSCS*

- 15.1.7 R
- (1) Any power conferred on the *FSCS* to make determinations under this section is exercisable in writing.
 - (2) An instrument by which the *FSCS* makes the determination must specify the provision under which it is made, the date and time from which it takes effect and the *relevant person* and *protected deposits*, parts of *protected deposits* and/or classes of *protected deposits* in respect of which it applies.
 - (3) The *FSCS* must take appropriate steps to publish the determination as soon as possible after it is made.
 - (4) Failure to comply with any requirement in this *rule* does not affect the validity of the determination.
 - (5) A determination by the *FSCS* under this section may be amended,

remade or revoked at any time and subject to the same conditions.

Verification of determinations

- 15.1.8 R (1) The production of a copy of a determination purporting to be made by the *FSCS* under this section:
- (a) on which is endorsed a certificate, signed by a member of the *FSCS*'s staff authorised by it for that purpose; and
 - (b) which contains the required statements;
- is evidence (or in Scotland sufficient evidence) of the facts stated in the certificate.
- (2) The required statements are:
- (a) that the determination was made by the *FSCS*; and
 - (b) that the copy is a true copy of the determination.
- (3) A certificate purporting to be signed as mentioned in (1) is to be taken to have been properly signed unless the contrary is shown.
- (4) A *person* who wishes in any legal proceedings to rely on a determination may require the *FSCS* to endorse a copy of the determination with a certificate of the kind mentioned in (1).

Effect of this section on other provisions in this sourcebook etc

- 15.1.9 R Other provisions in this sourcebook and *FEES* 6 are modified to the extent necessary to give full effect to the powers provided for in this section.
- 15.1.10 R Other than as expressly provided for, nothing in this section is to be taken as limiting or modifying the rights or obligations of or powers conferred on the *FSCS* elsewhere in this sourcebook or in *FEES* 6.

Payment of compensation without an application

- 15.1.11 R The *FSCS* may pay compensation to an *eligible claimant* without having received an application and/or an assignment of the whole or any part of the claimant's rights against the *relevant person* and/or any third party (and *COMP* 3.2.1R(1) and *COMP* 7.2.1R are modified accordingly).

Early compensation for term or notice accounts

- 15.1.12 R If a *protected deposit* was not due and payable on or before the date that the *relevant person* was determined to be *in default*, the *FSCS* may nevertheless treat that date as the *quantification date* for that *deposit* and pay compensation on the basis that the principal sum (including any interest attributable up to that date) is due and payable on that date either (as determined by the *FSCS*):

- (1) with the consent of the *eligible claimant* (express or implied, including by conduct); or
- (2) without that consent, but in this case the amount that the *eligible claimant* is entitled to claim from the *FSCS* is the lesser of:
 - (a) the amount which the *FSCS* quantifies as being the value of that *claim* as at the *quantification date*; and
 - (b) the amount that would have been payable at the date the *deposit* was due and payable;

and *COMP 12.3.1R* is modified accordingly.

Form and method of paying compensation

- 15.1.13 R The *FSCS* may pay compensation in any form and by any method (or any combination of them) that it determines is appropriate including, without limitation:
- (1) by paying the compensation (on such terms as the *FSCS* considers appropriate) to an *authorised person* with *permission to accept deposits* which agrees to become liable to the claimant in a like sum;
 - (2) by paying compensation directly into an existing deposit account of (or for the benefit of) the claimant, or as otherwise identified by (or on behalf of) the claimant, with an *authorised person* (but before doing so the *FSCS* must take such steps as it considers appropriate to verify the existence of such an account and to give notice to the claimant of its intention to exercise this power); and/or
 - (3) (where two or more *persons* have a joint beneficial *claim*) by accepting communications from and/or paying compensation to any one of those *persons* where this is in accordance with the terms and conditions for communications and withdrawals of the *protected deposit*.

Payment of compensation to which claimant is entitled from another scheme etc

- 15.1.14 R If the *FSCS* is satisfied that:
- (1) a claimant is or is likely at some future date to become entitled to receive a payment of compensation in respect of his actual, contingent or future rights against a *relevant person in default*:
 - (a) under a scheme which is maintained by an *EEA State* or any other state or *person* comparable to the *compensation scheme* (in this section, a “Non-UK Scheme”); and/or
 - (b) as a result of a guarantee given or arrangements made by the Government of the *United Kingdom*, an *EEA State*, any other

government or any other authority (in this section, an “Other Funder”); and

- (2) the *FSCS* has received prior funding in respect of, or is satisfied that it will be able to recover, the amount of that payment from the Non-UK Scheme or Other Funder;

the *FSCS* may, irrespective of whether or not the *relevant person* is in default under the laws or regulations of any other *EEA State* or any other state or law-country:

- (3) make a payment in respect of all or part of that compensation (whether or not yet due or payable) from the Non-UK Scheme or Other Funder, with or without the Non-UK Scheme or Other Funder’s prior agreement;
- (4) make a payment on account of, or advance to the claimant, the whole or part of the amount in (3) on such terms as the *FSCS* considers appropriate;
- (5) (having been satisfied as to the total amount to be paid or advanced to the claimant) ascertain the proportion of any such payment or advance attributable to the Non-UK Scheme or Other Funder at any time, whether before or after making the payment or advance;
- (6) (to the extent that prior funding has not been provided by the Non-UK Scheme or Other Funder) recover from the Non-UK Scheme or Other Funder the whole or any part of the amount of compensation paid or monies paid on account or advanced in respect of potential compensation which is or is likely to be payable to a claimant by the Non-UK Scheme or Other Funder, in accordance with *COMP* 15.1.17R to *COMP* 15.1.20R; and/or
- (7) take such other steps in connection with such payment or advance by the *FSCS* or to facilitate the payment of compensation that is due or may become due from the Non-UK Scheme or Other Funder as the *FSCS* considers appropriate;

and references to payment of compensation, payment on account or advance to the claimant include taking such action for the claimant’s benefit or on the claimant’s behalf.

15.1.15 R In determining the proportion of any such payment or advance attributable to the *FSCS*, a Non-UK Scheme or Other Funder, the *FSCS* may use any methodology or approach it considers appropriate if (and to the extent that) it considers that the cost of ascertaining the proportion by reference to each claimant would exceed or be disproportionate to the benefit of doing so.

15.1.16 R If the *FSCS* has made a payment or advance attributable to a Non-UK Scheme or Other Funder, and has acquired a right of recovery against the *relevant person* or any third party in respect of that amount, the *FSCS* may

determine that the whole or any part of any recoveries which it makes shall be held by it for the benefit of and/or shared amongst the *FSCS*, that Non-UK Scheme, that Other Funder and/or any other *person* which has provided prior funding in respect of a payment or advance attributable to any such body (and *COMP 7.2.3AR* is modified accordingly).

Rights and obligations against the relevant person and third parties

15.1.17 R The *FSCS* may determine that:

- (1) the payment of compensation by the *FSCS*; and/or
- (2) the following actions by the *FSCS* (under *COMP 15.1.14R*):
 - (a) administering the payment of compensation on behalf of; and/or
 - (b) paying and/or making a payment on account of compensation from;

a Non-UK Scheme or Other Funder;

shall have all or any of the following effects:

- (3) the *FSCS* shall immediately and automatically be subrogated, subject to such conditions as the *FSCS* determines are appropriate, to all or any part (as determined by the *FSCS*) of the rights and claims in the *United Kingdom* and elsewhere of the claimant against the *relevant person* and/or any third party (whether such rights are legal, equitable or of any other nature whatsoever and in whatever capacity the *relevant person* or third party is acting) in respect of or arising out of the *claim* in respect of which the payment of or on account of compensation was made;
- (4) the *FSCS* may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce such rights in its own name or in the name of, and on behalf of, the claimant or in both names against the *relevant person* and/or any third party;
- (5) the subrogated rights and claims conferred on the *FSCS* shall be rights of recovery and claims against the *relevant person* and/or any third party which are equivalent (including as to amount and priority and whether or not the *relevant person* is insolvent) to and not exceed the rights and claims that the claimant would have had; and/or
- (6) such rights and/or obligations (as determined by the *FSCS*) as between the *relevant person* and the claimant arising out of the *protected deposit* in respect of which the payment was made shall be transferred to, and subsist between, another *authorised person* with *permission to accept deposits* and the claimant provided that the

authorised person has consented (but the transferred rights and/or obligations shall be treated as existing between the *relevant person* and the *FSCS* to the extent of any subrogation, transfer or assignment for the purposes of (3) to (5) and *COMP* 15.1.18R).

- 15.1.18 R The *FSCS* may alternatively or additionally make the actions in *COMP* 15.1.17R(1) and (2) conditional on the claimant assigning or transferring the whole or any part of all such rights as he may have against the *relevant person* and/or any third party (including, for the avoidance of any doubt, any Non-UK Scheme or Other Funder) on such terms as the *FSCS* determines are appropriate.
- 15.1.19 R The *FSCS* may determine that the making of an advance by the *FSCS* to the claimant (under *COMP* 15.1.14R(4)) shall have the effect that the *FSCS* may claim and take legal or any other proceedings or steps in the *United Kingdom* or elsewhere to enforce the rights and claims of the claimant referred to in *COMP* 15.1.17R(3) in the name of, and on behalf of, the claimant against the *relevant person* and/or any third party.
- 15.1.20 R (1) The *FSCS* may determine that:
- (a) if the claimant does not assign or transfer his rights under *COMP* 15.1.18R;
 - (b) if it is impractical to obtain such an assignment or transfer; and/or
 - (c) if it is otherwise necessary or desirable in conjunction with the exercise of the *FSCS*'s powers under *COMP* 15.1.17R to *COMP* 15.1.19R;
- that claimant shall be treated as having irrevocably and unconditionally appointed the chairman of the *FSCS* for the time being to be his attorney and agent and on his behalf and in his name or otherwise to do such things and execute such deeds and documents as may be required under such laws of the *United Kingdom*, another *EEA State* or any other state or law-country to create or give effect to such assignment or transfer or otherwise give full effect to those powers.
- (2) The execution of any deed or document under (1) shall be as effective as if made in writing by the claimant or by his agent lawfully authorised in writing or by will.

**FINANCIAL SERVICES COMPENSATION SCHEME
(AMENDMENT OF FEES PROVISIONS (NO 4))
INSTRUMENT 2008**

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); and
 - (3) section 214 (General).
- 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 immediately and applies in respect of defaults before, on or after 29 October 2008.

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 (Amendment of Fees Provisions (No 4)) Instrument 2008.

By order of the Board
29 October 2008

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* part way through a *financial year* of the *compensation scheme*:

...

- (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;

...

**COMPENSATION SOURCEBOOK (BUILDING SOCIETY MERGERS)
INSTRUMENT 2008**

Powers exercised

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

Commencement

- C. This instrument comes into force 27 November 2008.

Amendments to the Handbook

- D. The Compensation sourcebook (COMP) is amended in accordance with the Annex to this instrument.

Notes

- E. In the Annex to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

Citation

- F. This instrument may be cited as the Compensation Sourcebook (Building Society Mergers) Instrument 2008.

By order of the Board
26 November 2008

Annex

Amendments to the Compensation sourcebook (COMP)

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

Building society mergers

- 10.2.10 R (1) This *rule* applies from 1 December 2008 to 30 September 2009.
- (2) In the event of a merger between two *building societies*, there is a separate and additional £50,000 maximum payment limit for a claimant with respect to *claims* for *protected deposits* held under the name of the dissolved *building society* provided the following conditions are satisfied:
- (a) the merger takes effect between 1 December 2008 and 30 September 2009;
 - (b) the successor *building society* has notified the *FSA* before the merger takes effect that it wishes this *rule* to apply;
 - (c) before the merger took effect, the claimant had a *protected deposit* with each of the relevant *building societies*; and
 - (d) the successor *building society* continues to operate the business of the dissolved *building society* under the name of the latter.
- [**Note:** The *FSA* will publish the names of any *building society* and the relevant name to which a separate £50,000 limit applies.]
- (3) A *building society* to which this *rule* applies must make and retain a written record of potential claimants for whom the separate limit applies.

PRUDENTIAL CATEGORIES (AMENDMENT) INSTRUMENT 2008

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. (1) Part 1 of Annex B to this instrument comes into force on 6 December 2008.
(2) The remainder of this instrument comes into force on 6 December 2009.

Amendments to the Handbook

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

Citation

- F. This instrument may be cited as the Prudential Categories (Amendment) Instrument 2008.

By order of the Board
4 December 2008

Annex A

Amendments to the Glossary of definitions

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

- investment management firm* (1) ...
- (c) a *firm*:
- (i) ...
- (ii) for which the most substantial part of its gross income, (including *commissions*) from the ~~*regulated activities*~~ *designated investment business* included in its *Part IV permission* is derived from one or more of the following activities (based, for a *firm* given a *Part IV permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the Act):
- ...
- ...
- personal investment firm* (1) ...
- (c) a *firm*:
- (i) ...
- (ii) for ~~whom~~ which the most substantial part of its gross income, (including *commissions*) from the ~~*regulated activities*~~ *designated investment business* included in its *Part IV permission* is derived from one or more of the following activities (based, for a *firm* given a *Part IV permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the Act):
- (A) *advising on investments* , ~~or~~ *arranging (bringing about) deals in investments* or making arrangements with a view to transactions in investments, in relation to *packaged products*;
- ...

securities
and futures
firm

...

(1) ...

(c) a firm:

(i) ...

(ii) for ~~whom~~ which the most substantial part of its gross income, (including *commissions*) from the ~~regulated activities~~ designated investment business included in its *Part IV permission* is derived from one or more of the following activities (based, for a *firm* given a *Part IV permission* after *commencement*, on the business plan submitted as part of the *firm's* application for *permission* or, for a *firm* authorised under section 25 of the Financial Services Act 1986, on the *firm's* financial year preceding its *authorisation* under the *Act*):

...

(D) dealing (excluding, in the case of a home finance provider, dealing as principal in contractually based investments where this activity is carried out for risk management purposes and would have been excluded under article 16 of the Regulated Activities Order if the firm were an unauthorised person or under article 19 of the Regulated Activities Order), ~~or~~ arranging (bringing about) deals in investments or making arrangements with a view to transactions in investments, in securities or derivatives;

...

Annex B

Amendments to the Supervision manual (SUP)

Part 1: Comes into force on 6 December 2008

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

App 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
...		
<u><i>Home finance administrator</i></u>	<u><i>MIPRU</i></u>	
<u><i>Home finance intermediary</i></u>	<u><i>MIPRU</i></u>	
<u><i>Home finance provider</i></u>	<u><i>MIPRU</i></u>	
...		
<u><i>Insurance intermediary</i></u>	<u><i>MIPRU</i></u>	
...		
<i>Insurer*</i>	<u><i>IPRU(INS)</i></u> or <u><i>IPRU(FSOC)</i></u> , and <u><i>GENPRU</i></u> , <u><i>INSPRU</i></u> and <u><i>MIPRU</i></u>	<i>Long term insurer</i> General insurer <i>Friendly society</i> (see above)
...		

...

Part 2: Comes into force on 6 December 2009`

App 1.8.2 G Note 2

...	
Activities from which the most substantial part of the firm's gross income (including commissions) from regulated activities <u>designated investment business</u> is derived	Firm's prudential category
...	
(i) <i>Advising on investments, or arranging (bringing about) deals in investments, <u>or making arrangements with a view to transactions in investments</u> in relation to packaged products; and</i> ...	<i>Personal investment firm</i>
... (iv) <i>dealing (excluding, in the case of a home finance provider, dealing as principal in <u>contractually based investments</u> where this activity is carried out for risk management purposes and would have been excluded under article 16 of the <i>Regulated Activities Order</i> if the firm were an <u>unauthorised person</u> or under article 19 of the <i>Regulated Activities Order</i>), or arranging (bringing about) deals in investments, <u>or making arrangements with a view to transactions in investments</u> in securities or derivatives;</i> ...	<i>Securities and futures firm</i>
...	

**PRUDENTIAL REQUIREMENTS FOR INSURERS (AMENDMENT NO 3)
INSTRUMENT 2008**

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 141 (Insurance business rules);
 - (c) section 150(2) (Actions for damages);
 - (d) section 156 (General supplementary powers);
 - (e) section 157(1) (Guidance); and
 - (f) section 340 (Appointment); and
 - (2) the other powers and related provisions listed in Schedule 4 to the General Provisions (Powers exercised) of the Handbook.
- B. The rule-making powers 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 2008. The amendments to IPRU(FSOC) and IPRU(INS) apply to all FSA returns for financial years ending on or after 31 December 2008.

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 Insurers (INSPRU)	Annex C
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex D
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex E

Citation

- E. This instrument may be cited as the Prudential Requirements for Insurers (Amendment No 3) Instrument 2008.

By order of the Board
4 December 2008

Annex A

Amendments to the Glossary of definitions

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

<i>approved index</i>	in relation to <i>permitted links</i> : ... (b) a national index of retail prices published by or under the authority of a government of a State belonging to Zone A as defined in the Banking Consolidation Directive <u>Zone A country</u> ; or ...
<i>guarantee fund</i>	(1) (a) ... (b) where the <i>firm</i> is required to calculate a <i>UK MCR</i> or an <i>EEA MCR</i> under INSPRU 1.1 <u>1.5</u> , for the purposes of that section in (1)(a) the reference to the <i>general insurance capital requirement</i> is replaced by <i>UK MCR</i> or <i>EEA MCR</i> , as appropriate, and the reference to the <i>base capital resources requirement</i> is replaced by the amount which is one half of the <i>base capital resources requirement</i> applicable to the <i>firm</i> set out in PRU 2.1.26 R <u>GENPRU 2.1.30R</u> . (2) (a) ... (b) where the <i>firm</i> is required to calculate a <i>UK MCR</i> or an <i>EEA MCR</i> under <i>INSPRU 1.5</i> , for the purposes of that section in (2)(a) the reference to the <i>long-term insurance capital requirement</i> is replaced by <i>UK MCR</i> or <i>EEA MCR</i> , as appropriate, and the reference to the <i>base capital resources requirement</i> is replaced by the amount which is one half of the <i>base capital resources requirement</i> applicable to the <i>firm</i> set out in GENPRU 2.1.29R <u>2.1.30R</u> .
<i>regulated related undertaking</i>	a <i>related undertaking</i> that is any of the following: ... (f) an <i>insurance holding company</i> ; or . (g) an EEA ISPV .

Annex B

Amendments to the General Prudential sourcebook (GENPRU)

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

- 1.3.7 G In the case of an *insurer* or a *UK ISPV*, where assets or liabilities are securitised, *GENPRU* 1.3.4R only permits de-recognition where Financial Reporting ~~Standard 5 Standards~~ (or, where applicable, International Accounting ~~Standard 39 Standards~~) ~~permits permit~~ either de-recognition or the linked presentation. However, the *FSA* will consider granting a *waiver* to permit de-recognition in other circumstances provided that the *firm* can demonstrate that securitisation has effectively transferred risk.

...

- 2.1.30 R This table belongs to *GENPRU* 2.1.29R

<i>Firm category</i>	Amount: Currency equivalent of
...	
<i>Pure reinsurer</i> excluding captive reinsurer	€3.2 million
<i>Captive reinsurer</i>	€1 million

...

- 2.2.33 R Subject to *GENPRU* 2.2.34AR, An *an insurer* carrying on *long-term insurance business* must meet the higher of:

...

- 2.2.34 R Subject to *GENPRU* 2.2.34AR, An *an insurer* carrying on *general insurance business* must meet the higher of:

...

- 2.2.34A R *A pure reinsurer* carrying on both *long-term insurance business* and *general insurance business* must meet the higher of:

(1) $\frac{1}{3}$ of the sum of the *long-term insurance capital requirement* and the *general insurance capital requirement*; and

(2) the *base capital resources requirement*;

with the sum of the items listed at stages A (Core tier one capital), B (Perpetual non-cumulative preference shares), G (Upper tier two capital) and H (Lower tier two capital) in the *capital resources table* less the sum of the items listed at stage E (Deductions from tier one capital) in the *capital*

resources table.

2.2.35 R In ~~GENPRU 2.2.33R₂ and GENPRU 2.2.34R~~ and GENPRU 2.2.34AR:

...

where adjusted stage M means the amount calculated at stage M of the calculation in the *capital resources table* (Total capital after deductions) less the amount of any *innovative tier one capital* that is not treated as *upper tier two capital* for the purpose of ~~GENPRU 2.2.33R₂ or GENPRU 2.2.34R~~ or GENPRU 2.2.34AR, as the case may be.

2.2.36 G The ~~purposes purpose~~ of the requirements in ~~GENPRU 2.2.32R 2.2.33R to GENPRU 2.2.34R 2.2.34AR~~ is are to comply with the ~~Insurance Directives'~~ requirements of the Insurance Directives and the Reinsurance Directive that an insurer must maintain a guarantee fund of higher quality capital resources items and to ensure that at least 50% of the insurer's capital resources needed to meet its MCR provide maximum loss absorbency to protect the insurer from insolvency.

...

2.2.40 G ~~GENPRU 2.2.32R, GENPRU 2.2.37R and GENPRU 2.2.38R~~ give effect to the ~~Insurance Directives'~~ requirements of the Insurance Directives and the Reinsurance Directive that ~~an insurer's tier two capital resources must not exceed its tier one capital resources and that no more than 25% of an insurer's "required solvency margin" should consist of lower tier two capital resources no more than 50% of the amount which is the lesser of the available solvency margin and the required solvency margin should consist of tier two capital resources and that no more than 25% of that amount should consist of lower tier two capital resources.~~

2.2.41 R An *insurer (other than a pure reinsurer)* that carries on both *long-term insurance business* and *general insurance business* must apply the relevant limits in ~~GENPRU 2.2.32R to GENPRU 2.2.38R~~ separately for each type of business.

...

2 Annex 7R Admissible assets in insurance

(1)	(A)	Investments that are, or amounts owed arising from the disposal of:
		...
	(d)	<i>units</i> in:
		(i) <u>UCITS collective investment schemes falling within the UCITS Directive;</u>
		...
		...

...

Annex C

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

- 1.1.33 R For the purposes of *INSPRU* 1.1.30 R:
- ...
- (3) a ~~listed~~ security which is listed is to be treated as held in any country or territory where there is a *regulated market* on which the *security* is dealt; and
- (4) a *security* which is not a ~~listed security~~ is to be treated as held in the country or territory in which the *issuer* has its head office.

...

- 1.1.94 R The following *rules* and *guidance* apply to *managing agents* in accordance with *INSPRU* 8.1.4R:
- (1) ~~*INSPRU* 1.1.13G~~ 1.1.12R to *INSPRU* 1.1.20R (except *INSPRU* 1.1.12R(1));

...

...

- 1.2.25 G (1) A separate prospective valuation for each contract may identify contracts for which the value of future cash inflows under and in respect of the contract exceeds that of outflows. In these circumstances, the *firm* may calculate the *mathematical reserves* for that contract as having a negative value and tre~~at~~ that value is as available to off-set *mathematical reserves* for other contracts which have a positive value when establishing the overall *mathematical reserves*.
- (2) In complying with *INSPRU* 1.1.34R or *INSPRU* 3.1.61AR, as applicable, with respect to the matching of assets and liabilities, *insurers* should consider the suitability for offset of contracts whose *mathematical reserves* are negative against liabilities on other contracts and only offset them if it is prudent to do so. While *INSPRU* 1.2.24R applies at a *firm* level, it may be relevant when assessing the prudence of the offset of contracts whose *mathematical reserves* are negative to consider the fact that contracts with negative *mathematical reserves* written outside a *with-profits fund* are not, for the purpose of *INSPRU* 1.1.27R, permitted to be offset against contracts with positive *mathematical reserves* written within that

~~with-profits fund. However, the Consolidated Life Directive requires that no contract should be valued at less than its guaranteed surrender value (see INSPRU 1.2.62AG). As a result, no contract with a guaranteed surrender value to which the Consolidated Life Directive applies should be valued as if it were an asset. Although the Reinsurance Directive does not require this treatment of contracts with guaranteed surrender values to be applied to pure reinsurers, the FSA's policy is that there should be equal treatment in this respect. INSPRU 1.2.62R makes further provision relating to the mathematical reserves to be established in respect of such contracts. When considering the impact that the amount payable on surrender may have on the valuation of a contract, a firm should have regard to INSPRU 1.2.71R.~~

1.2.25A G In addition, the Consolidated Life Directive requires that no contract should be valued at less than its guaranteed surrender value (see INSPRU 1.2.62AG). As a result, no contract with a guaranteed surrender value to which the Consolidated Life Directive applies should be valued as if it were an asset. Although the Reinsurance Directive does not require this treatment of contracts with guaranteed surrender values to be applied to pure reinsurers, the FSA's policy is that there should be equal treatment in this respect. INSPRU 1.2.62R makes further provision relating to the mathematical reserves to be established in respect of such contracts. When considering the impact that the amount payable on surrender may have on the valuation of a contract, a firm should have regard to INSPRU 1.2.71R.

...

1.3.180 G ...

- (3) A firm should calibrate the model to the current risk-free yield curve. Risk-free yields should be determined after allowing for credit and all other risks arising. ~~Firms~~ firms may have regard to any ~~guidance from the actuarial profession standards and guidance adopted or issued by the Board of Actuarial Standards~~ standards and guidance adopted or issued by the Board of Actuarial Standards on the calculation of the risk-free yield but should not assume a higher yield than suggested by any such standards and guidance.

...

1.5.52 R For the purpose of INSPRU 1.5.48R and INSPRU 1.5.49R:

...

- (3) a ~~listed security~~ which is listed is to be treated as held in any country or territory where there is a *regulated market* in which the *security* is dealt; and
- (4) a *security* which is not a ~~listed security~~ is to be treated as held in the country or territory in which the *issuer* has its head office.

...

2.1.22 R ...

(4) In (3) a *firm's* business amount means the sum of:

(a) the *firm's* total gross *technical provisions* (that is, calculated gross of reinsurance);

...

...

(5B) In (3)(b)(ii) short term *deposit* means a *deposit* which may be withdrawn at the discretion of the lender without penalty or loss of accrued interest by giving notice of withdrawal of one month or less.

...

...

2.1.34 R In *INSPRU* 2.1.22R references to a *counterparty* exposure or an asset exposure do not include such an exposure arising resulting from reinsurance debts arising from reinsurance ceded and the reinsurer's share of technical provisions.

...

3.1.53 R (1) Subject to *INSPRU* 3.1.54R, a *firm* must hold *admissible assets* in each currency of an amount equal to at least 80% of the amount of its liabilities in that currency arising under or in connection with *contracts of insurance* (but excluding, for a *firm* that carries on *general insurance business*, any *non-credit equalisation provision*), except where the amount of those assets does not exceed 7% of the assets in other currencies.

(2) ...

3.1.53A G For the purpose of *INSPRU* 3.1.53R, a *firm* may allocate the total *credit equalisation provisions* to different currencies in proportion to the split by currency of the *technical provisions* for *credit insurance business* established in accordance with *GENPRU* 1.3.4R. Alternatively, another allocation which the *firm* is able to justify as broadly appropriate may be used.

...

3.2.5A G (1) *GENPRU* 2 Annex 7R(3) requires *firms* to consider first whether an asset is a *derivative* or *quasi-derivative* transaction notwithstanding that it is also capable of falling within one or more other categories in *GENPRU* 2 Annex 7R(1). If it is a *derivative* or *quasi-derivative* transaction it is only admissible if it satisfies the conditions for it to be

approved under *INSPRU 3.2.5R*. *Firms* should be able to justify whether or not their assets are *derivatives* or *quasi-derivatives*.

- (2) A quasi-derivative is defined as a contract or asset that has the effect of a derivative contract. Quasi-derivatives may be regarded as those contracts or assets which are not derivatives but which effectively contain an embedded derivative component which significantly impacts the contract's or asset's cash flow and risk profile so as to mirror the economic effect of a derivative. A derivative is defined in the Glossary as a contract for differences, a future or an option and includes a securitised derivative, which is an option or contract for differences that is listed. A securitised derivative may also be a debenture.
- (3) A deposit with interest or other return calculated by reference to an index or other factor is excluded from the definition of contract for differences by article 85(2) of the Regulated Activities Order. However, if the return on the deposit is in the nature of that on a derivative (for example, an option or a future) then the deposit is a quasi-derivative.
- (4) A holding in a fund investing in derivatives may or may not be a quasi-derivative depending on its ongoing investment policy and governance and any investment decisions from time to time which might deviate significantly from the investment policy. It should be treated as a quasi-derivative if its risk profile is such that the value of units in the fund is expected to mirror the value of a derivative.
- (5) The assets in the following list, which is illustrative and not exhaustive, all have features which could lead to their being assumed to be quasi-derivatives:
 - (a) a bond whose redemption proceeds are directly linked to the performance of the FTSE 100 index but with a guaranteed minimum;
 - (b) an investment fund that is managed to give high leverage that mirrors a call option;
 - (c) an investment whose value it is reasonably foreseeable could become negative; and
 - (d) a credit-linked note, that is, a security with an embedded credit default swap.

...

- 3.2.36 R (1) For the purposes of *GENPRU 2 Annex 7R* (Admissible assets in insurance), a *stock lending* transaction (including a *repo* transaction) is approved if: ...

...

6.1.34 R For the purposes of *INSPRU* 6.1, an *individual capital resources requirement* is:

...

(2) in respect of an *EEA insurer* or an *EEA pure reinsurer* (~~other than an *EEA pure reinsurer*~~), the equivalent of the *capital resources requirement* as calculated in accordance with the applicable requirements in its *Home State*;

(3) ~~in respect of an *EEA pure reinsurer*, the equivalent of the *capital resources requirement* as calculated in accordance with the applicable requirements in its *Home State*~~ in respect of an *EEA ISPV*, the solo capital resources requirement that applies to the *ISPV* under the sectoral rules for the insurance sector of the member State of the competent authority that authorised the *ISPV*;

...

(10) ... ; and

(11) ... ; and

(12) ~~in respect of an *EEA ISPV*, the solo capital resources requirement that applies to the *ISPV* under the *sectoral rules for the insurance sector* of the member State of the *competent authority* that authorised the *ISPV*. [deleted]~~

...

6.1.74 R A's assets in excess of the *market risk* and *counterparty* exposure limits are calculated as follows:

(1) Subject to (2), a *firm* must apply the *market risk* and *counterparty* exposure limits in *INSPRU* 2.1.22R(3) to:

(a) where B is an *insurer* (other than a *pure reinsurer*), the *admissible assets* of B;

...

...

...

6.1.76 R In relation to any of its *regulated related undertakings* that is not an *insurer*, A may modify the calculation in *INSPRU* 6.1.74R by:

(1) ...

- (2) aggregating all of the assets of B identified in *INSPRU* 6.1.74R(1)(b)(c) as admissible assets with the *admissible assets* of A in *INSPRU* 6.1.74R(4).

...

Schedule 2

Notification and reporting requirements

...

Handbook Reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>INSPRU</i> <u>7.1.68G</u> <u>7.1.83R</u>
<i>INSPRU</i> <u>7.1.74G</u> <u>7.1.89R</u>
...				

Annex D

Amendments to the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))

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

Chapter 5

PRUDENTIAL REPORTING

...

The FSC1 return

...

Balance sheet

5.6 (1) The balance sheet must consist of Forms 9, ~~9A~~, 13...

...

FSC 2 – FORM 9B

...

I certify that:

(a) (i) ...

(iv) I have had regard to the following ~~Institute of Actuaries and Faculty of Actuaries professional standards and~~ guidance notes adopted or issued by the Board of Actuarial Standards and, in so far as they are relevant to my investigation for the purposes of this certificate, I have complied with them.

(b) ...

FSC 3 – FORM 23B

...

I certify that:

(a) (i) ...

(v) I have had regard to the following ~~Institute of Actuaries and Faculty of Actuaries professional standards and guidance notes~~ adopted or issued by the Board of Actuarial Standards and, in so far as they are relevant to my investigation for the purposes of this certificate, I have complied with them.

(b) ...

Annex E

Amendments to the Interim Prudential sourcebook for Insurers (IPRU(INS))

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

CONTENTS

...

VOLUME TWO

...

Appendix 9.6 Certificates by directors and reports of the auditor ~~and actuary advising the auditor~~ (rules 9.5(1A), 9.34 and 9.35)

...

Chapter 1

APPLICATION RULE

Application

Insurers

1.1 An *insurer* must comply with *IPRU(INS)* unless it is –

(a) a *friendly society*¹; or

(b) ~~subject to rules 3.6 and 3.7 (application of rules to linked long term contracts)~~, an *EEA insurer* or an *EEA pure reinsurer* qualifying for authorisation under Schedules 3 or 4 to the *Act*.

...
¹ A *non-directive friendly society* ...

Chapter 9

FINANCIAL REPORTING

CONTENTS

Part I - Accounts and statements

...

9.7 ~~Right of shareholders and policy holders to receive copies of deposited documents~~

9.8 ~~Documents deposited with the FSA [deleted]~~

9.9 ~~Documents deposited in Northern Ireland [deleted]~~

...

Part VI - Enhanced Capital Adequacy Requirement

...

Chapter 9

FINANCIAL REPORTING

Part I

ACCOUNTS AND STATEMENTS

...

Interpretation

9.2 (1) In rules 9.25 to 9.27, 9.29, 9.30 and 9.32, and in the Appendices relevant to the *Accounts and Statements Rules*, unless the context otherwise requires, words and expressions not defined in *IPRU(INS)* or the *Glossary* which are used in the *insurance accounts rules* have the same meanings as in those rules.

...

Half-yearly balance sheet and report for realistic valuation

9.3A ...

- (4) Rules 9.4, 9.6, 9.10, 9.11, 9.12, 9.33 and 9.34, **Appendices 9.1 and 9.4A** and **Part I of Appendix 9.6** apply to this rule and to any documents required under this rule as if –

...

- (c) an additional investigation were required under rule 9.4(1)(a) in respect of the six-month period covered by this rule;

...

Periodic actuarial investigation of long-term insurer

9.4 (1) ...

- (2) An investigation to which (1) relates must include –

...

- (c) for the investigation in (1)(a), for every *long-term insurer* which is a *realistic basis life firm*, a calculation of the *with-profits insurance capital component*.

...

Deposit of accounts etc. with the FSA

9.6 (1) ...

- (1A) If the due date for deposit of documents required by (1) falls on a day which is not a *business day*, the documents must be submitted no later than the first *business day* after the due date.

(1B) [deleted]

...

Content and form of accounts

9.11 ... Where the *rules* in *IPRU(INS)* require a Form to be submitted, but all entries (including comparatives) would be blank, that Form may be omitted provided that a note coded FF00 (where F is the Form number) is included stating that this is why the Form has been omitted. Where a Form is omitted because of the operation of a *de minimis limit*, a note coded FF00 must be included stating that this is why the Form has been omitted. This note is not needed where a Form is omitted because the *rules* do not require it for a reason other than the operation of a *de minimis limit*.

Balance Sheet

- 9.12 ...
- (8) For each **Form 13** which an *insurer* is required to complete under (5)(a) or (b), the *insurer* must complete **Form 17** in respect of the same *insurance business*, subject to the de minimis requirement set out in instruction 1 to **Form 17**.

...

FSA general insurance business reporting categories falling below de minimis criteria

- 9.20 ...
- (4) An *insurer* may cease to report such business on that Form in that category of business if –
- ...
- (b) the following conditions are met -
- ...
- (iii) the *gross written premiums* in the *financial year in question* and the 'gross undiscounted ~~provision~~ provisions' at the end of that *financial year* for that category of business are each less than 50% of the amounts respectively specified in the 'reporting criteria' for that Form in respect of that category of business.
- (5) ...

Additional information on derivative contracts

- 9.29 (1) Every *insurer* must, in respect of the *financial year in question*, annex to the documents referred to in rules 9.12, 9.13 and 9.14 a statement comprising a brief description of -
- ...
- (d) ~~the extent to which any of the amounts recorded in **Form 13** would be changed if assets which the *insurer* had a right or obligation to acquire or dispose of under 'derivative contracts' outstanding at the end of the *financial year* (being, in the case of *options*, only those *options* which it would have been prudent to assume would be exercised) had been so acquired or disposed of; [deleted]~~
- (e) ~~how different the information provided pursuant to (d) would have been if such *options* as were outstanding at the end of the year had been exercised in such a way as to change the amounts referred to in that sub-paragraph to the maximum extent; [deleted]~~

- (f) ~~how different the information provided pursuant to (d) and (e) would have been if, instead of applying to contracts outstanding at the end of the *financial year*, those rules had applied to ‘*derivative contracts*’ outstanding at such other time during the *financial year* as would have changed the amounts referred to in those rules to the maximum extent; [deleted]~~
- (g) ~~the maximum loss which would be incurred by the *insurer* on the failure by any one other person to fulfil its obligations under ‘*derivative contracts*’ outstanding at the end of the *financial year*, both under existing market conditions and in the event of other foreseeable market conditions, together with an assessment of whether such maximum loss would have been materially different at any other time during the *financial year*; [deleted]~~
- (h) the circumstances surrounding the use of any ‘*derivative contract*’ *derivative or quasi-derivative* held at any time during the financial year which required a 'significant' provision to be made for it under *INSPRU* 3.2.17R, or (where appropriate) did not fall within the definition of a *permitted derivative derivatives contract*; and
- (i) the total value of any fixed consideration received by the *insurer* (whether in cash or otherwise) during the *financial year* in return for granting rights under ~~*derivative contracts*~~ *derivatives and quasi-derivatives* and a summary of contracts under which such rights have been granted.

(1A) ...

(2) In this rule, **derivative contract** includes a contract or asset which has the effect of a *derivative contract* and, for the purposes of (1)(h), such a contract or asset must be treated as requiring a significant provision or falling within the definition of *permitted derivative contract*, as appropriate, if it has the effect of a *derivative contract* which would require a significant provision or fall within that definition. [deleted]

(2A) Subject to (2C), for the purposes of (2), a contract has the effect of a *derivative contract* if it is a contract (other than a *derivative contract*) which provides, whether upon the exercise of a right by the *insurer* or otherwise—

(a) ~~for payment (at any time) of amounts which are determined by fluctuations in—~~

- (i) ~~the value of property of any description;~~
- (ii) ~~an index of the value of property of any description;~~
- (iii) ~~income from property of any description; or~~
- (iv) ~~an index of income from property of any description;~~

- (b) for delivery to or by the *insurer* of an asset other than any office machinery (including computer equipment), furniture, motor vehicles and other equipment; or
- (c) for the conversion of an asset held by the *insurer* or another party to—
- (i) an asset of a different type, or
 - (ii) a different asset of the same type. ~~[deleted]~~
- (2B) Subject to (2C), for the purposes of (2) an asset has the effect of a *derivative contract* if the asset is an asset (other than an *approved security* or a unit, or other beneficial interest, in a scheme falling within the *UCITS Directive*) and the holding of the asset confers contractual rights or imposes contractual obligations to make or accept payment, delivery or conversion as set out in (2A)(a) to (c). ~~[deleted]~~
- (2C) A contract or asset does not have the effect of a *derivative contract* by reason only that—
- (a) it provides for the unconditional delivery of assets, or for the payment for unconditional delivery of assets, such delivery or payment to be made within a period commencing at the date of the contract and extending—
 - (i) in the case of a *listed security* or a *security admitted to trading*, for the usual period for delivery or payment as determined by the rules of the stock exchange or *regulated market* on which the *securities* are *listed* or *admitted to trading*, or facilities for dealing have been granted, or
 - (ii) in any other case, for no more than 20 working days;
 - (b) it is a contract for the conversion of currency in respect of which the conditions set out in (2D) have been satisfied; or
 - (c) it is a *stock lending* transaction which satisfies the conditions of *INSPRU 3.2.36R*. ~~[deleted]~~
- (2D) The conditions referred to in (2C)(b) are that—
- (a) the contract provides—
 - (i) for the conversion into another currency of an amount representing the sale of an asset which has, on the *relevant date*, been sold but not delivered, or
 - (ii) for the purchase of currency for the purpose of settling the purchase of an asset which has, on the *relevant date*, been purchased but not delivered;
 - (b) the conversion is to take place during a period which is—

~~(i) where the contract is in connection with the delivery of a *listed security* or a *security admitted to trading*, a period commencing on the date of the contract and extending for the usual period of settlement as laid down by the rules of the relevant stock exchange or *regulated market*, or~~

~~(ii) where the contract is in connection with the delivery of any other asset, a period commencing on the date of the contract and extending for 20 working days thereafter; and~~

~~(e) the contract is *listed* or has been entered into with an *approved counterparty*. [deleted]~~

(3) For the purposes of this rule, an *insurer* which is a party to—

~~(a) a *contract for differences*; or~~

~~(b) any other contract which is to be, or may be, settled in cash;~~

~~is taken to have a right or obligation to acquire or dispose of the assets underlying the contract. [deleted]~~

...

Additional information on financial reinsurance and financing arrangements: general insurers

9.32A ...

(9) No information need be supplied ... if ... -

...

(b) the *insurer* expects A to remain less than 1% of B for the foreseeable future;

where:

(i) A is the financial effect of on the *insurer's capital resources* as a result of the existence of the contract(s); and

(ii) B is the *insurer's* total gross amount of *technical provisions*.

(10) ...

PART III

STATISTICAL RULES

Insurance statistics: EEA States

...

9.37 ...

- (4) The statements required... If the due date for deposit of documents required by this rule falls on a day which is not a *business day*, the documents must be submitted no later than the first *business day* after the due date.

PART V

GROUP CAPITAL ADEQUACY

...

9.42 ...

- (4) Subject to (4A) and (4B), An an insurer must submit the reports in rule 9.40(1) and in rule 9.40(1A) to the *FSA* no later than 4 months from the end of:
- (a) the *financial year in question*; or
 - (b) the *financial year* of the relevant parent, where the report is provided as at the end of its *financial year* under (1)(a).

The *insurer* must send one printed copy and one electronic copy to the appropriate addresses set out in rule 9.6(2) above. The electronic copy must be sent by email and the title of the email must be:

<firm name> group capital adequacy <dd/mm/yyyy>.

- (4A) Where an *insurer's ultimate EEA insurance parent undertaking* publishes annual consolidated accounts in accordance with accounting standards, policies and legislation applicable to it, the report required by rule 9.40(1A) must be submitted to the *FSA* by no later than the date which is 30 days after publication of those consolidated accounts or the final date of submission required by (4), whichever is the later.
- (4B) If the due date for submission of reports under (4) or (4A) falls on a day which is not a *business day*, the reports must be submitted no later than the first *business day* after that date.

(5) ...

9.42A (1) An *insurer* that ~~report~~ reports under rule 9.40(1) must, subject to rule 9.42B, provide to any person, within 30 days, of the date of request (or, ~~in the case of (c), the date the revised report is provided to the FSA under the rule 9.42(5)~~ the date of submission to the FSA if later):

...

...

9.44 ...

(3) An *insurer* must deposit.....rule 9.6(2) above. If the due date for deposit of documents required by (1) falls on a day which is not a *business day*, the documents must be submitted no later than the first *business day* after the due date.

Chapter 11

DEFINITIONS

PART I

DEFINITIONS

11.1 For the purposes of *IPRU(INS)*, the term or phrase in the first column has the meaning given to it in the second column unless the context otherwise requires:

Term or phrase	Definition
...	
<i>credit default swap</i>	<u>a swap contract in which a buyer makes a series of payments to a seller and, in exchange, receives the right to a payment if a credit instrument issued by a named borrower (the reference entity) goes into default or on the occurrence of a specified credit event, for example bankruptcy or restructuring of the reference entity, during the currency of the contract</u>
<i>initial margin</i>	in respect of a derivative contract or <i>quasi-derivative</i> a contract or asset <u>having the effect of a derivative contract</u> , means assets which, before or at the time the contract is entered into ...
<i>mathematical reserves</i>	the provision made by an insurer to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangements) arising under or in connection with long-term insurance contracts
<i>miscellaneous category</i>	an FSA return <i>general insurance business reporting category</i> to which the <i>category numbers</i> 400 or 700 have been allocated in column 1 of Annex 11.3
<i>swaption</i>	<u>an option granting its owner the right but not the obligation to enter into an underlying swap</u>
<i>total return swap</i>	<u>a financial contract which transfers both the credit risk and market risk of an underlying asset</u>

APPENDIX 9.1 (rules 9.12 and 9.13)

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

...

Presentation of amounts

...

7. Firms should not normally restate comparatives unless restatement is necessary in order to allow the appropriate comparison to be made. Where in any Form an amount which is a comparative (i.e. shown in a "previous year" column) or shown brought forward from a previous year differs from the corresponding amount shown in a "this financial year" column in a return for a previous year or as carried forward from that year, as the case may be, and the difference is not due solely to the use of a different rate to express other currencies in sterling, an explanation of the reason for the difference must be given by way of a supplementary note to that form. (For **Forms 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19** the code for the supplementary note is 0111, 0211, 0311, 1011, 1111, 1211, 1311, 1411, 1511, 1611, ~~1711~~, 1811 and 1911 respectively.)

...

Instructions for completion of Form 1

6. For an insurer other than a pure reinsurer writing both non-life and life business, the guarantee fund requirement at line 21 is calculated by reference to GENPRU 2.2.34R as the higher of line 33 and 1/3 of line 31. For a pure reinsurer writing both non-life and life business, the guarantee fund calculated by reference to GENPRU 2.2.34AR must be allocated between F1.21 and F2.21 in the ratio of the general insurance capital requirement to the sum of the long-term insurance capital requirement and the resilience capital requirement.
9. The base capital resources requirement at line 33 must be taken from GENPRU 2.1.30R. For a branch, this figure should be halved. For a pure reinsurer writing both non-life and life business, the base capital resources requirement must be allocated between F1.33 and F2.33 in the ratio of the general insurance capital requirement to the sum of the long-term insurance capital requirement and the resilience capital requirement.
13. The guarantee fund requirement at line 21 is calculated as the share of the general insurance business of $\frac{1}{3}X + (R - S - U - X)$ by reference to ~~INSPRU 8.3.45R~~ 6.1.45R.
16. The base capital resources requirement at line 33 must be taken from GENPRU 2.1.30R. For a branch this figure should be halved. For a pure reinsurer writing both non-life and life business, the base capital resources requirement must be allocated between F1.33 and F2.33 in the ratio of the general insurance capital requirement to the sum of the long-term insurance capital requirement and the resilience capital requirement.

...

Instructions for completion of Form 2

...

5. For an *insurer* other than a *pure reinsurer* writing both non-life and life business, ~~The~~ the guarantee fund requirement at line 21 is calculated by reference to GENPRU 2.2.33R as the higher of line 33 and 1/3 of line 31. For a *pure reinsurer* writing both non-life and life business, the *guarantee fund* calculated by reference to GENPRU 2.2.34AR must be allocated between F1.21 and F2.21 in the ratio of the *general insurance capital requirement* to the sum of the *long-term insurance capital requirement* and the *resilience capital requirement*.

...

9. The *base capital resources requirement* at line 33 must be taken from GENPRU 2.1.30R. For a *branch*, this figure should be halved. For a *pure reinsurer* writing both non-life and life business, the *base capital resources requirement* must be allocated between F1.33 and F2.33 in the ratio of the *general insurance capital requirement* to the sum of the *long-term insurance capital requirement* and the *resilience capital requirement*.

...

- 17B. The *base capital resources requirement* at line 33 must be taken from GENPRU 2.1.30R. For a *branch*, this figure should be halved. For a *pure reinsurer* writing both non-life and life business, the *base capital resources requirement* must be allocated between F1.33 and F2.33 in the ratio of the *general insurance capital requirement* to the sum of the *long-term insurance capital requirement* and the *resilience capital requirement*.

...

Instructions for completion of Form 3

...

19. The entries at lines 45 and 46 for perpetual cumulative *preference shares*, ~~subordinated debt~~ subordinated debt and *securities* must be the total, unrestricted, amounts that the *firm* can include in *upper tier two capital* in accordance with GENPRU 2.2.159R to 2.2.174R, GENPRU 2.2.177R to 2.2.181R and GENPRU 2.2.270R to 2.2.271R.

...

30. The entry at line 81 is determined as the amount of the *firm's capital resources* available to meet its *guarantee fund* requirement, having regard to GENPRU 2.2.33R, GENPRU 2.2.34R, GENPRU 2.2.34AR and GENPRU 2.2.35R. Unless some *innovative tier one capital* does not meet the conditions for it to be treated as *upper tier two capital* (when an adjustment may be needed), line 81 must be either: ...

...

32. The entry at line 83 is determined as the amount of the *firm's capital resources* available to meet 75% of its *minimum capital requirement*, having regard to GENPRU 2.2.38R and GENPRU 2.2.39R. Unless some *innovative tier one capital* does not meet the conditions for it to be treated as *upper tier ~~one~~ two capital* (when an adjustment may be needed), line 83 must be either:

...

...

43. The entries at lines 45 and 46 for perpetual cumulative *preference shares*, *subordinated debt* and *securities* must be the total, unrestricted, amounts that the *firm* can include in *upper tier two capital* in accordance with GENPRU 2.2.147G, 2.2.176G, 2.2.177R, 2.2.180R, 2.2.181R, 2.2.159R to 2.2.174R, GENPRU 2.2.177R to 2.2.181R and GENPRU 2.2.270R to 2.2.271R.

...

45. The types of capital instrument that a *firm* can include within its *lower tier two capital* are set out at ~~GENPRU 2.2.66G, 2.2.69G, 2.2.159R, 2.2.163R, 2.2.164G~~ GENPRU 2.2.159R to 2.2.174R, GENPRU 2.2.194R to 2.2.196R and GENPRU 2.2.270R to 2.2.271R. These should be split between fixed term *preference shares* and other *tier two instruments* and entered at lines 51 and 52 respectively.

...

Form 17 (apart from the Instructions) is deleted and replaced with the following version. The new text is not underlined.

Form 17

Analysis of derivative contracts

Name of insurer
 Global business/UK branch business/EEA branch business
 Financial year ended
 Category of assets

		Company registration number	GL/UK/CM	day	month	year	units	Category of assets
R17							£000	
Derivative contracts			Value as at the end of this financial year		Notional amount as at the end of this financial year			
			Assets 1	Liabilities 2	Bought / Long 3	Sold / Short 4		
Futures and contracts for differences	Fixed-interest securities	11						
	Interest rates	12						
	Inflation	13						
	Credit index / basket	14						
	Credit single name	15						
	Equity index	16						
	Equity stock	17						
	Land	18						
	Currencies	19						
	Mortality	20						
	Other	21						
In the money options	Swaptions	31						
	Equity index calls	32						
	Equity stock calls	33						
	Equity index puts	34						
	Equity stock puts	35						
Other	36							
Out of the money options	Swaptions	41						
	Equity index calls	42						
	Equity stock calls	43						
	Equity index puts	44						
	Equity stock puts	45						
Other	46							
Total (11 to 46)		51						
Adjustment for variation margin		52						
Total (51 + 52)		53						

THE NOTIONAL AMOUNTS IN COLUMNS 3 AND 4 ARE NOT A MEASURE OF EXPOSURE. Please see instructions 11 and 12 to this Form for the meaning of these figures.

Instructions for completion of Form 17

1. Where the year end total notional amount (line 51.3 + line 51.4) exceeds the lesser of £100m and 5% of assets not held to match linked liabilities (Form 13 line 89.1 – Form 13 line 58.1 – Form 13 line 59.1) for the total *long-term insurance business* assets or the total assets other than *long-term insurance business assets*, Form 17 must be completed in respect of ~~the total *general insurance business assets*~~ and in respect of the total *long-term insurance business assets*, if any, that total category of assets of the *insurer* or branch. Form 17 must also be completed for each fund or group of funds referred to in instruction 1 to Form 13 if Form 17 must be completed in respect of the total *long-term insurance business assets*.
2. The codes specified in instructions 1 to 3 to Form 13 must be used as appropriate.
3. *Derivative contracts* must be analysed according to the description of assets shown in the second column of Form 17 which represents the principal subject of the contract. Credit derivatives include credit default swaps and total return swaps. An option is in the money (and conversely out of the money) if it could be exercised based on market conditions as at the end of the financial year.
4. *Derivative contracts* must be reported as assets in column 1 of Form 17 if their value to the *insurer* (gross of *variation margin*) is positive and as liabilities in column 2 of Form 17 if their value (gross of *variation margin*) to the *insurer* is negative.
5. All amounts included at lines 11 to ~~35~~ 51 columns 1 and 2 of Form 17 in respect of *derivative contracts* must be determined without making any allowance for *variation margin*.
6. Amounts in respect of a *derivative contract* may only be included net of amounts in respect of any other *derivative contract* if –
 - (a) obligations of the *insurer* under the contracts may be set off against each other under generally accepted accounting practice; and
 - (b) such other contract has the effect (in whole or in part) of closing out the obligations of the *insurer* under the first mentioned contract.
7. The effect of any *variation margin* upon amounts included at lines 11 to ~~35~~ 51 of Form 17 and columns 1 and 2 must be shown at line ~~44~~ 52 columns 1 and 2.
8. The entry at 17.~~49~~ 53.1 must be included at 13.44.1.
9. The entry at 17.~~49~~ 53.2 must be included at 14.38.1 or 15.49.1. as appropriate.
10. Rights to recover assets transferred by way of *initial margin* must not be shown on Form 17.
11. In columns 3 and 4, the notional amount is:
 - (a) For interest rate and inflation swaps, the cash amount on which the swap is based.
 - (b) For credit default swaps, the nominal value of the bonds on which the swap is based.
 - (c) For mortality swaps, the market value of the fixed future payments.
 - (d) For swaptions, the nominal amount on which conversion to a fixed interest rate will be applied.
 - (e) For options other than swaptions, the market value of the assets subject to the option.
 - (f) For futures, the market value of the asset that is contracted to be bought / sold.
 - (g) For other contracts for differences, the nominal value of the property, index or other value referenced by the contract.
12. For the purposes of columns 3 and 4, a contract is bought / long (and conversely sold / short) if it is:
 - (a) For currency futures and contracts for differences, a contract where the insurer pays sterling. Currency contracts not involving sterling must be replicated as a contract into sterling and a contract out of sterling. For example, a future to buy a currency other than sterling at a price expressed in another non-sterling currency must be replicated by a long future to buy the first currency with sterling and a short future to sell the second currency for sterling.

- (b) For interest rate and inflation swaps, a contract where the insurer receives a fixed rate in exchange for paying a variable (short term deposit) rate. A swap between a short term deposit rate and inflation must be replicated as a deposit / fixed and a fixed / inflation swap.
- (c) For credit default swaps, a contract where the insurer receives a fixed payment in exchange for taking on credit risk.
- (d) For mortality swaps, a contract where the insurer receives a fixed payment in exchange for taking on mortality risk.
- (e) For options, a contract where the insurer has the option to buy the underlying or has provided the option to a counterparty to sell the underlying.

APPENDIX 9.2 (rules 9.14 to 9.22)

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

...

Instructions for completion of Form 30

...

13. The entry under the column headed 'reporting territory code' must be one of the codes listed in **Appendix 9.2 Paragraph 32**. "WW" must be used for treaty reinsurance. Otherwise the code must be as defined in Appendix 9.2 Paragraph 16(3).

...

APPENDIX 9.3 (rules 9.14 and 9.23)

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

...

Instructions for completion of Form 44

...

7. A supplementary note setting out the name of the fund, the net asset value and the liquidity ratio [Code 4405] must be provided for any fund –
- (a) whose net asset value is greater than £10m, and with respect to which there is a negative liquidity ratio (~~i.e., liabilities of the fund less approved securities, short term deposits and cash held in the fund is a negative amount~~) exceeding ~~5% of the net asset value of the fund~~ 0.05 in magnitude; and
 - (b) whose net asset value is greater than £500,000, and with respect to which there is a negative liquidity ratio exceeding ~~50% of the net asset value of the fund~~ 0.5 in magnitude;
where the liquidity ratio is the sum of approved securities, short term deposits and cash held in the fund less the liabilities of the fund expressed as a ratio of the net asset value of the fund.

...

Instructions for completion of Form 48

...

2. *Collective investment schemes* (in line 13.43) and collective investment pools (in line 13.49) must be allocated in column 1 to line 18 or 28. In column 2 they must be allocated according to the underlying assets, but holdings of a type of asset within a collective investment scheme or pool of less than 5% of the assets for that collective investment scheme or pool may be grouped with the main type of underlying asset for that collective investment scheme or pool. An amount of *collective investment scheme* and collective investment pool assets not exceeding 1% of the total non-linked assets may be reallocated from column 1 to column 2 based on the stated investment objective instead of the actual underlying assets at the valuation date. Any gearing will reduce the amounts shown in “other assets” (which may therefore be negative in column 2).
- ...
4. Where there is an obligation to purchase any of the underlying assets or they are ‘in the money’ at the *relevant date*, *derivative contracts* must be allocated in column 2 as if the underlying asset had been purchased on the *relevant date*. Any assumed purchase of assets in respect of ‘in the money’ derivatives will reduce the amounts shown as “other assets” (which may therefore be negative in column 2).
- ...
16. Column 5 must be expressed as a percentage.

...

Form 56 (apart from the Instructions) is deleted and replaced with the following version. The new text is not underlined.

Long-term insurance business: index linked business

Form 56

Name of insurer
 Total business
 Financial year ended
 Units

		Value of assets	Mean term
		1	2
Analysis of assets			
Approved variable interest securities	11		
Other variable interest securities	12		
Approved fixed interest securities	13		
Other fixed interest securities	14		
Cash and deposits	15		
Equity index derivatives	16		
Inflation swaps	17		
Other assets	18		
Variation margin	19		
Total (11 to 19)	20		
Credit rating of other fixed interest and other variable interest securities			
AAA/Aaa	31		
AA/Aa	32		
A/A	33		
BBB/Baa	34		
BB/Ba	35		
B/B	36		
CCC/Caa	37		
Other (including unrated)	38		
Total other fixed interest and other variable interest securities	39		

Instructions for completion of Form 56

1. ~~Assets and liabilities in column 2 must be listed individually except that where a group of assets of similar type is held which is intended to mirror the performance of an index, a description of the type of assets held may be given. Liabilities must be shown between round brackets and must be fully described. Where index-linked assets (13.58.1) exceed £100m they must be analysed in Form 56. The value of assets in line 20 column 1 must correspond to the value of assets in Form 13.58.1.~~
2. ~~Assets and liabilities for each index link and for each combination of assets and liabilities matching the insurer's liability under any deposit back arrangement must be shown separately. Links to different percentages of an index must be treated as different index links. The mean term in column 2 may be calculated by using the expected yearly cashflows discounted by the internal rate of return, or an alternative actuarial method. Undated stocks must be assumed to be redeemed after 40 years.~~
3. ~~For each index link, the sub-total of values in column 2 (excluding those held in respect of any deposit back arrangement) must match the sum of the appropriate entries in column 7 of Form 54 net of reinsurance ceded. These sub-totals are not shown on Form 56. Where the sum of other variable interest securities (line 12) and other fixed interest securities (line 14) exceeds £100m, these must be analysed in lines 31-39. A supplementary note (code 5601) must be provided stating which rating agency has been used to provide the split by credit rating.~~
4. ~~Assets and liabilities arising from derivative contracts (or contracts or assets which have the effect of a derivative contract) must be shown separately. Amounts must be shown net of variation margin in column 2 and gross of variation margin in column 3. Rights to recover assets transferred by way of initial margin must not be shown on Form 56. Amounts in lines 16 and 17 (column 1) must be shown net of any variation margin.~~
5. ~~Where there is a liability to repay variation margin and there are no arrangements for netting of amounts outstanding or the arrangements would not permit the accounting of such amounts on a net basis in accordance with generally accepted accounting practice, it must be so stated in a supplementary note (code 5601). [deleted]~~
6. ~~Any provision for "reasonably foreseeable adverse variations" must be determined in accordance with INSPRU 3.2.17R(3) and shown in a supplementary note (code 5602). [deleted]~~
7. ~~The insurer must include a supplementary note (code 5603) of any circumstances which make the natural relationships break down (e.g., particular tax treatments). [deleted]~~
8. ~~Where unit liabilities are reinsured and deposited back with the ceding insurer, the amounts deposited back which are either unit liabilities in respect of property linked benefits or investment liabilities in respect of index linked benefits must be treated as though they are unit liabilities. [deleted]~~

APPENDIX 9.4 (rule 9.31)

ABSTRACT OF VALUATION REPORT

...

Valuation basis (other than for special reserves)

...

4. ...

- (4) A table of mortality bases used, showing the product group and the bases used at the end of the *financial year in question* and at the end of the previous *financial year*. If a mortality basis cannot be expressed as a flat percentage of a standard table or as a standard table subject to a flat age rating, then the mortality basis should be shown as 'modified <name of table>'. For assurance where the 'modified table' description is used, rates must be provided for ages 25, 35, 45 and 55. For all annuitant mortality bases covered by this paragraph, the complete expectation of life at age 65 and 75 for annuities in payment and the complete expectation of life at age 65 for current ages 45 and 55 for deferred annuities must be provided. ...

...

APPENDIX 9.6 (rules 9.34 and 9.35)

CERTIFICATES BY DIRECTORS AND REPORT OF THE AUDITORS

...

CONDUCT OF BUSINESS SOURCEBOOK (PRODUCT INFORMATION FOR VARIATION OF PERSONAL PENSION SCHEMES) INSTRUMENT 2008

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 January 2009.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (Product Information for Variation of Personal Pension Schemes) Instrument 2008.

By order of the Board
4 December 2008

Annex

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

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 pensions);

...

**DECISION PROCEDURE AND PENALTIES MANUAL AND ENFORCEMENT
GUIDE (AMENDMENT) INSTRUMENT 2008**

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:
 - (a) section 157(1) (Guidance); and
 - (b) section 395 (The Authority's procedures); and
 - (2) the following provisions in the Regulated Covered Bonds Regulations 2008 (SI 2008/346):
 - (a) regulation 42 (Guidance); and
 - (b) regulation 44 (Warning notices and decision notices).

Commencement

- B. This instrument comes into force on 11 December 2008.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Decision Procedure and Penalties manual (DEPP)	Annex B
Regulated Covered Bonds sourcebook (RCB)	Annex C

Amendments to the Enforcement Guide

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

Citation

- E. This instrument may be cited as the Decision Procedure and Penalties Manual and Enforcement Guide (Amendment) Instrument 2008.

By order of the Board
4 December 2008

Annex A

Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

statutory notice associated decision a decision which is made by the *FSA* and which is associated with a decision to give a *statutory notice*, including a decision:

...

- (c) to refuse access to FSA material;
- ~~(d) as to the information which it is appropriate to publish about the matter to which a *final notice* or an effective *supervisory notice* relates.~~

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

Decisions relating to listing of securities

2.5.9 G *FSA* staff under *executive procedures* will take the following *statutory notice* decisions:

...

(2) the suspension of *listing* on the *FSA*'s own initiative or at the request of the issuer;

(3) ~~the suspension of trading in a *financial instrument*; [deleted]~~

...

(5) the exercise of any of the powers in sections 87K or 87L of the *Act* in respect of a breach of any applicable provision; and

(6) ~~the cancellation of a *person's* approval as a *sponsor* at the *sponsor's* request; and [deleted]~~

(7) ...

...

2.5.15 G A decision to give a *warning notice* or *decision notice* refusing an application for an *authorisation order* declaring a unit trust scheme to be an *AUT* or *ICVC* will be taken by the *RDC* only if the application is by an *authorised fund manager* who is not the *operator* of an existing *AUT* or *ICVC*. Otherwise, the decision to give the *warning notice* or *decision notice* will be taken by *FSA* staff under ~~executive procedures~~ *executive procedures*.

...

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

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

Section of the Act	Description	Handbook reference	Decision maker
...			

88(4)/(6)	when the <i>FSA</i> is proposing or deciding to cancel a <i>person's</i> approval as a <i>sponsor</i> at the <i>sponsor's</i> request		<i>Executive procedures</i>
89(2)/(3)	when the <i>FSA</i> is proposing or deciding to publish a statement censuring a <i>sponsor</i> *		<i>RDC</i>
92(1)/(4)	when the <i>FSA</i> is proposing or deciding to take action against any person under section 91 for breach of Part 6 rules*		<i>RDC</i>
...			
313B(9)	when the <i>FSA</i> 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	<i>REC</i> 4.2.4G <u>4.2D</u>	<i>Executive procedures</i>
...			

Section of the Building Societies Act 1986	Description	Handbook reference	Decision maker
...	
46A(1)(a)/(3)(a)	when the <i>FSA</i> is proposing or deciding to give a direction under section 36(3), (5), (6), (7) or (10) requiring a <i>building society</i> to submit for its approval a restructuring plan or to submit to the society's members the requisite transfer resolutions for a transfer of the society's business to a company or (if such a direction is given) imposing limitations on the issue of shares, acceptance of deposits or making of loans or requiring the society to take certain steps or refrain from certain action or requiring the		<i>RDC</i>

	removal of a director or other officer*		
--	---	--	--

...

Regulated Activities Order	Description	Handbook reference	Decision maker
...

<u>Regulated Covered Bonds Regulations 2008</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 13(4)/(5)(a)</u>	<u>when the FSA is proposing or deciding to refuse an application under regulation 8</u>	<u>RCB 6</u>	<u>Executive procedures</u>
<u>Regulation 20(5)/(6)(a)</u>	<u>when the FSA is proposing or deciding not to approve a material change</u>	<u>RCB 6</u>	<u>Executive procedures</u>
<u>Regulation 25(5)/(6)(a)</u>	<u>when the FSA is proposing or deciding not to approve a change of ownership</u>	<u>RCB 6</u>	<u>Executive procedures</u>
<u>Regulation 32(1)(a)/(2)(a)</u>	<u>before the FSA gives a direction under regulation 30 or when it decides to make the direction</u>	<u>RCB 6</u>	<u>Executive procedures</u>
<u>Regulation 32(1)(b)/(2)(b)</u>	<u>before the FSA removes an issuer from the register of issuers under regulation 31 or when it decides to remove the issuer from the register of issuers*</u>	<u>RCB 6</u>	<u>Executive procedures</u>
<u>Regulation 35(1)/(3)</u>	<u>when the FSA is proposing or deciding to impose a penalty on a person under regulation 34*</u>	<u>RCB 6</u>	<u>RDC</u>

2 Annex 2G	Supervisory notices		
Section of the Act	Description	Handbook reference	Decision maker

53(4)/(7)/(8)(b)	when the <i>FSA</i> is exercising its <i>own-initiative power</i> to vary a firm's <i>Part IV permission</i>	<i>SUP 67</i>	<i>RDC or executive procedures</i> See <i>DEPP 2.5.7G</i>
...			

...

6.2.2A G The factors to which the *FSA* will have regard when deciding whether to impose a penalty under regulation 34 of the *RCB Regulations* are set out in *RCB 4.2.3G*.

...

6.2.28 G ~~*DEPP 6.2.26G* and *DEPP 6.2.27G* do not apply to a person who has no responsibilities under the *Takeover Code*. [deleted]~~

...

6.5.2A G The factors to which the *FSA* will have regard when determining the appropriate level of financial penalty to be imposed under regulation 34 of the *RCB Regulations* are set out in *RCB 4.2.5G*.

Annex C

Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

6 Warning and decision notices

6.1 Application and purpose

Application

- 6.1.1 G This chapter contains guidance for *issuers* and *owners* and other persons subject to the *RCB Regulations*.

Purpose

- 6.1.2 G The purpose of this chapter is to set out the *FSA*'s statement of the procedure which it proposes to follow on giving *warning notices* and *decision notices* in relation to *regulated covered bonds*.

6.2 Policy on decision and warning notices

Decision and warning notices

- 6.2.1 G When making a decision on an application for registration under the *RCB Regulations*, or in relation to material changes to the contractual terms of the *regulated covered bond*, or in relation to a change of *owner*, or when seeking to use direction, revocation or penalty powers, the *RCB Regulations* require the *FSA* to give the subject of the intended action a *warning notice* and a *decision notice*. The recipient of a *warning notice* has the right to make representations to the decision maker, and may refer the decision to give a *decision notice* to the *Tribunal*.
- 6.2.2 G Regulation 44 of the *RCB Regulations* (Warning notices and decision notices) applies Part XXVI of the *Act* (Notices) in respect of notices that we give under the *RCB Regulations*. This means that the provisions of section 393 of the *Act* (Third party rights) and section 394 of the *Act* (Access to Authority material) apply to penalty procedures under the *RCB Regulations* and that, if the matter is not referred to the *Tribunal*, then upon taking the action to which a *decision notice* relates, the *FSA* will issue the subject of the decision notice a *final notice*. The *FSA* is required to publish such details about the matter to which a *final notice* relates as it considers appropriate.

FSA decision maker

- 6.2.3 G *DEPP 2* Annex 1G identifies the relevant decision maker in relation to *warning notices* and *decision notices* issued by the *FSA* under the *RCB Regulations*.
- 6.2.4 G Decisions on applications for registration, in relation to material changes to contractual terms of the *regulated covered bond*, or in relation to a change of owner, or decisions to issue a direction under the *RCB Regulations* or to revoke an *issuer's* registration, will be taken under *executive procedures* following the process set out in *DEPP 4*.
- 6.2.5 G Decisions to impose a financial penalty under regulation 34 of the *RCB Regulations* will be taken by the *RDC* under the procedure set out in *DEPP 3.2* or, where relevant, *DEPP 3.3*.

Annex D

Amendments to the Enforcement Guide (EG)

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

Contents list

...

18. Cancellation of approval as a sponsor

19. Non-FSMA powers

Annex 1: ~~Table of other enforcement powers~~ [deleted]

Annex 2: Guidelines on the investigation of cases of interest or concern to the FSA and other prosecuting and other investigating authorities

...

1. Introduction

1.1 This guide describes the FSA's approach to exercising the main enforcement powers given to it by the Financial Services and Markets Act 2000 (the *Act*) and by regulation 12 of the *Unfair Terms Regulations*. It is broken down into two parts. The first part provides an overview of enforcement policy and process, with chapters about the FSA's approach to enforcement (chapter 2), the use of its main information gathering and investigation powers under the *Act* (chapter 3), the conduct of investigations (chapter 4), settlement (chapter 5) and publicity (chapter 6). The second part contains an explanation of the FSA's policy concerning specific enforcement powers such as its powers to: vary a *firm's Part IV permission* on its own initiative (chapter 8); make *prohibition orders* (chapter 9); ~~and~~ prosecute criminal offences (chapter 12); and powers which the FSA has been given under legislation other than the *Act* (chapter 19).

...

1.6 ~~The FSA has further enforcement powers and information gathering and investigation powers, including those listed in annex 1, which are not discussed in this guide. The FSA will use the powers where it considers this is appropriate in all the circumstances.~~ [deleted]

...

6. Publicity

...

Supervisory notices varying a firm's Part IV permission on the FSA's own initiative (see chapter 8 of this guide)

- 6.11 ~~Where the FSA is using its *own initiative power* to vary a firm's Part IV permission in support of its supervisory function, and the variation does not bring about a fundamental change in the firm's Part IV permission (see DEPP 2.5.8G), the FSA will not normally publish the *supervisory notice* where this would disclose confidential information about the individual firm or would prejudice consumers' interests. However, the FSA will amend the *FSA Register* to reflect a firm's actual Part IV permission following any variation. [deleted]~~
- 6.12 ~~However, publishing~~Publishing the reasons for fundamental 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 ~~imposed~~ which it imposes on firms. But it will use its discretion not to do so if it considers this would best serve the interests of the firm's existing customers 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 *final notices*, *supervisory notices* and related press releases that are published on the FSA's web site will be reviewed 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.
- 6.12A The FSA will amend the *FSA Register* to reflect a firm's actual Part IV permission following any variation.

Directions against ECA providers

- 6.13 This is discussed in ~~chapter 17~~ paragraphs 19.37 and 19.38 of this guide.

...

8 Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms

- 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 vary or cancel the person's *Part IV permission* in order to protect the interests of consumers or potential consumers.

8.1A The powers to vary and cancel a person's *Part IV permission* are exercisable in the same circumstances. However, the statutory procedure for the exercise of each power is different and this may determine how the FSA acts in a given case. Certain types of behaviour which may cause the FSA to cancel permission in one case, may lead it to vary, or vary and cancel, permission in another, depending on the circumstances. The non-exhaustive examples provided below are therefore illustrative but not conclusive of which action the FSA will take in a given case.

The FSA's general approach to exercising the own-initiative power under section 45 of the Act to vary *Varying a firm's Part IV permission on the FSA's own initiative: the FSA's policy*

8.1B When it considers how it should deal with a concern about a *firm*, the FSA will have regard to its *regulatory objectives* and the range of regulatory tools that are available to it. It will also have regard to:

(1) ...

...

8.2 The FSA will proceed on the basis that a *firm* (together with its directors and senior management) is primarily responsible for ensuring the *firm* conducts its business in compliance with the *Act*, the *Principles* and other *rules*. ~~In the context of its enforcement activities, the FSA will take formal action affecting the conduct of a *firm's* commercial business only if that business is being or has been conducted in such a way that the FSA judges it necessary to act in order to secure compliance with those requirements and/or address the consequences of non-compliance. In the context of its supervision activities, the FSA may take formal action in the circumstances described in *SUP 7.3*.~~

8.3 In the course of its supervision and monitoring of a *firm* or as part of an enforcement action, the FSA may make it clear that it expects the *firm* to take certain steps to ensure it continues to meet regulatory requirements. These steps might include the correction of financial, conduct of business or control weaknesses. The FSA envisages that *firms* will normally take these steps without the need for it to use its *own initiative powers*. In the vast majority of cases the FSA will seek to agree with a *firm* those steps the *firm* must take to address the FSA's concerns. However, where the FSA considers it appropriate to do so, it will exercise its formal powers under section 45 of the *Act* to vary a *firm's* permission to ensure such requirements are met. This may include where:

(1) the FSA has serious concerns about a *firm*, or about the way its business is being or has been conducted;

(2) the FSA is concerned that the consequences of a *firm* not taking the desired steps may be serious;

(3) the imposition of a formal statutory requirement reflects the importance the FSA attaches to the need for the firm to address its concerns;

(4) the imposition of a formal statutory requirement may assist the *firm* to take steps which would otherwise be difficult because of legal obligations owed to third parties.

8.3A SUP 7 provides more information about the situations in which the FSA may decide to take formal action in the context of its supervision activities.

8.4 ~~Where the FSA considers that it cannot rely on a *firm* taking effective action, or if the *firm* fails to comply with the FSA's reasonable request for it to take remedial steps, the FSA will consider exercising its formal powers under section 45 of the *Act* to vary a *firm's* permission. This may include instances where the FSA is concerned that the consequences of a *firm* not taking the desired steps may be serious and:~~

(1) ~~the *firm* appears unwilling or unable to take adequate and timely steps to address the FSA's concerns; or~~

(2) ~~the imposition of a formal statutory requirement may assist the *firm* to take steps which would otherwise be difficult because of legal obligations owed to third parties. [deleted]~~

8.5 ~~Circumstances~~Examples of circumstances in which the FSA will consider varying a *firm's* Part IV permission ~~in support of its enforcement function include those where~~ because it has serious concerns about a *firm*, or about the way its business is being or has been conducted ~~include where. Examples of these circumstances are:~~

(1) in relation to the grounds for exercising the power under section 45(1)(a) of the *Act*, the firm appears to be failing, or appears likely to fail, to satisfy the *threshold conditions* relating to one or more, or all, of its *regulated activities*, because for instance:

(a) the *firm's* material and financial resources appear inadequate for the scale or type of *regulated activity* it is carrying on, for example, where it has failed to maintain professional indemnity insurance or where it is unable to meet its liabilities as they have fallen due; or

(b) ...

...

~~Exercising the power to cancel~~ **Cancelling a firm's Part IV permission on the FSA's own initiative under section 45 of the Act: the FSA's policy**

...

8.14 The grounds on which the FSA may exercise its power to cancel an authorised person's permission under section 45 of the *Act* are the same as the grounds for

variation. They are set out in section 45(1) and described in *EG 8.1*. Examples of the types of circumstances in which the FSA may cancel a *firm's Part IV permission* include:

- (1) non-compliance with a *Financial Ombudsman Service* award against the *firm*;
- (2) material non-disclosure in an application for authorisation or approval or material non-notification after authorisation or approval has been granted. The information which is the subject of the non-disclosure or non-notification may also be grounds for cancellation;
- (3) failure to have or maintain ~~professional indemnity insurance, or other~~ adequate financial resources, or a failure to comply with regulatory capital requirements;
- (4) non-submission of, or provision of false information in, regulatory returns, or repeated failure to submit such returns in a timely fashion;
- (5) non-payment of FSA fees or repeated failure to pay FSA fees except under threat of enforcement action;
- (6) failure to provide the FSA with valid contact details or failure to maintain the details provided, such that the FSA is unable to communicate with the *firm*;
- (7) repeated failures to comply with rules or requirements;
- (8) a failure to co-operate with the FSA which is of sufficient seriousness that the FSA ceases to be satisfied that the *firm* is fit and proper, for example failing without reasonable excuse to:
 - (a) comply with the material terms of a formal agreement made with the FSA to conclude or avoid disciplinary or other enforcement action; or
 - (b) provide material information or take remedial action reasonably required by the FSA.

Section 45(2A) of the *Act* sets out further grounds on which the FSA may cancel the permission of *authorised persons* which are *investment firms*.

...

8.20 The FSA views this cooperation and collaboration as essential to effective regulation of the international market in financial services. It will therefore exercise its *own-initiative power* wherever:

- (1) ...
- (2) it is satisfied that the use of the power is appropriate (having regard to the considerations set out at paragraphs 8.1B to 8.5) to enforce effectively the

regulatory requirements imposed under the *Single Market Directives* or other Community obligations.

...

- 8.25 Paragraphs 8.10 and 8.12 set out some ~~example~~ examples of *limitations* and *requirements* the FSA may impose when exercising its section 47 power to vary a firm's *Part IV* permission.

The FSA's policy on exercising its power of intervention against incoming firms under section 196 of the Act

- 8.26 The FSA adopts a similar approach to the exercise of its *power of intervention* under section 196 as it does to its *own-initiative powers* to vary *Part IV* permission, but with suitable modification for the differences in the statutory grounds for exercising the powers. Consequently the factors and considerations set out in paragraphs 8.1B to 8.12 and 8.18 to 8.25 may also be relevant when the FSA is considering regulatory concerns about *incoming firms*.

...

10 Injunctions

...

- 10.1A Decisions about whether to apply to the civil courts for injunctions under the Act will be made by the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the director of Enforcement or, in his or her absence, another member of the FSA's executive of at least director of division level.

- 10.1B An exceptionally urgent case in these circumstances is one where the FSA staff believe that a decision to begin proceedings

- (1) should be taken before it is possible to follow the procedure described in paragraph 10.1A; and
- (2) it is necessary to protect the interests of consumers or potential consumers.

...

11 Restitution and redress

...

- 11.1A Decisions about whether to apply to the civil courts for restitution orders under the Act will be made by the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the

matter will be decided by the director of Enforcement or, in his or her absence, another member of the FSA's executive of at least director of division level.

11.1B An exceptionally urgent case in these circumstances is one where the FSA staff believe that a decision to begin proceedings

(1) should be taken before it is possible to follow the procedure described in paragraph 11.1A; and

(2) it is necessary to protect the interests of consumers or potential consumers.

...

12 Prosecution of Criminal Offences

...

12.2 The FSA's general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate. When it decides whether to bring criminal proceedings in England, Wales or Northern Ireland, or to refer the matter to another prosecuting authority in England, Wales or Northern Ireland (see paragraph 12.11), it will apply the basic principles set out in the Code for Crown Prosecutors.... When considering whether to prosecute a breach of the *Money Laundering Regulations*, the FSA will also have regard to whether the person concerned has followed the *Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group* Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

...

Commencing criminal proceedings

12.4 ...

12.4A Subject to 12.4C, a decision to commence criminal proceedings will be made by the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the director of Enforcement or, in his or her absence, another member of the FSA's executive of at least director of division level.

12.4B An exceptionally urgent case in these circumstances is one where the FSA staff believe that a decision to begin proceedings

(1) should be taken before it is possible to follow the procedure described in paragraph 12.4A; and

(2) it is necessary to protect the interests of consumers or potential consumers.

12.4C Decisions about whether to initiate criminal proceedings under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992, the Credit Unions Act 1979, the

Industrial and Provident Societies Act 1965 and the Friendly and Industrial and Provident Societies Act 1968 may either be taken by the procedure described in paragraph 12.4A above or under *executive procedures*. The less serious the offence or its impact and the less complex the issues raised, the more likely that the FSA will take the decision to prosecute under *executive procedures*.

...

Criminal prosecutions in cases of market abuse

...

- 12.8 The factors which the FSA may consider when deciding whether to commence a criminal prosecution for market misconduct rather than impose a sanction for *market abuse* include, but are not limited to, the following:

...

(12) ...

(12A) where the misconduct in question was carried out by two or more individuals acting together and one of the individuals provides information and gives full assistance in the FSA's prosecution of the other(s), the FSA will take this co-operation into account when deciding whether to prosecute the individual who has assisted the FSA or bring market abuse proceedings against him;

...

Prosecution of Friendly Societies

- 12.12 The FSA's power to prosecute friendly societies is discussed in EG 19.3 to 19.9 and in an article on the FSA web-site entitled 'Prosecuting Friendly Societies'.

13 Insolvency

...

13.3 ...

13.3A Decisions about whether to apply to the civil courts for insolvency orders under the Act will be made by the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the director of Enforcement or, in his or her absence, another member of the FSA's executive of at least director of division level.

13.3B An exceptionally urgent case in these circumstances is one where the FSA staff believe that a decision to begin proceedings

- (1) should be taken before it is possible to follow the procedure described in paragraph 13.3A; and
- (2) it is necessary to protect the interests of consumers or potential consumers.

...

14 Collective Investment Schemes-

...

~~Exercise of the powers in respect of ICVCs: regulations 23 (revocation of authorisation), 25 (directions) and 28 (power to apply to court) of the Open-ended Investment Companies Regulations 2001~~

- 14.6 The factors the FSA may take into account when it decides whether to use one or more of these powers include, but are not limited to, factors which are broadly similar to those in paragraph 14.1 in the context of *AUTs*. However, the relevant conduct will, of course, be that of the *ICVC*, the *director* or *directors* of the *ICVC* and its *depository* (another difference is that the FSA is also able to take disciplinary action against the *ICVC* itself since it will be an *authorised person*). When choosing which powers to use, the FSA will adopt an approach which is broadly similar to that described in paragraphs 14.2 to 14.5. [deleted]

...

- 14.10A Decisions about whether to apply to the civil courts for *collective investment scheme* related orders under the *Act* will be made by the *RDC* Chairman or, in an urgent case and if the Chairman is not available, by an *RDC* Deputy Chairman. In an exceptionally urgent case the matter will be decided by the director of Enforcement or, in his or her absence, another member of the FSA's executive of at least director of division level.

- 14.10B An exceptionally urgent case in these circumstances is one where the FSA staff believe that a decision to begin proceedings

- (1) should be taken before it is possible to follow the procedure described in paragraph 14.10A; and
- (2) it is necessary to protect the interests of consumers or potential consumers.

...

17 ~~Directions against incoming ECA providers [deleted]~~

- 17.1 Under regulation 6 of the *E-Commerce Directive Regulations*, provided certain policy and procedural conditions are met, the FSA may direct that an *incoming ECA*

~~provider may no longer carry on a specified *incoming electronic commerce activity*, or may only carry it on subject to specified requirements.~~

Electronic commerce activity directions: the FSA's policy

~~17.2 The FSA will exercise the power to make an *electronic commerce activity direction* on a case-by-case basis. When deciding whether to make a direction, the FSA will undertake an assessment of whether the circumstances of the particular case meet the policy conditions set out in regulation 6.~~

~~17.3 The FSA envisages that its approach to the use of the direction power will be as follows. On obtaining information concerning possible *financial crime* facilitated through or involving an *incoming ECA provider*, or detriment to United Kingdom markets or UK *ECA recipients* caused by the activities of an *incoming ECA provider*, the FSA would contact the relevant *EEA regulator* of the *incoming ECA provider*. The FSA would expect the relevant *EEA regulator* to consider the matter, investigate it where appropriate and keep the FSA informed about what action, if any, was being taken. The FSA may not need to be involved further if the action by the relevant *EEA regulator* addresses the FSA's concerns.~~

~~17.4 However, there are likely to be circumstances in which the FSA will need to use the *electronic commerce activity direction* power. Examples could include where it was necessary to stop the behaviour complained of, or to make the continued provision of services by the *incoming ECA provider* conditional upon compliance with specified requirements. Overall, the FSA may use the direction power:~~

~~(1) Where:~~

- ~~(a) the behaviour complained of was causing, or had the potential to cause, major detriment to *consumers* in the United Kingdom; or~~
- ~~(b) the *incoming ECA provider's* activities have been used, or have the potential to be used, to facilitate serious *financial crime* or to launder the proceeds of a crime; or~~
- ~~(c) the making of the direction is considered to be necessary for other reasons of public policy relevant to the *regulatory objectives*; and~~

~~(2) Either:~~

- ~~(a) the relevant *EEA regulator* is unable to take action, or has not within a reasonable time taken action which appears to the FSA to be adequate; or~~
- ~~(b) the relevant *EEA regulator* and the FSA agree that, having regard to the circumstances of the particular case, action against the wrong-doing would be taken more effectively by the FSA.~~

~~17.5 The question of whether the FSA decided to prevent or prohibit the *incoming electronic commerce activity*, or to make it subject to certain requirements (for example, compliance with specified rules), will depend on the overall circumstance of the case. A relevant consideration will be whether the FSA is satisfied that its~~

concerns over the *incoming electronic commerce activity* can be adequately addressed through the imposition of a requirement, rather than a complete prohibition on the activity. Set out below is a list of factors the FSA may consider. The list is not exhaustive.

- (1) ~~The extent of any loss, or risk of loss, or other adverse effect on UK ECA recipients: The more serious the loss or potential loss or other adverse effect on them, the more likely it is that the FSA's exercise of its powers to prohibit the activity altogether will be appropriate, to protect the interests of UK ECA recipients.~~
- (2) ~~The extent to which customer assets appear to be at risk.~~
- (3) ~~The risk that the *incoming ECA provider's* activities may be used or have been used to facilitate *financial crime* or to launder the proceeds of a crime: Information available to the FSA, including information supplied by other law enforcement agencies, may suggest that the *incoming ECA provider* is being used for, or is itself involved in, *financial crime*. Where this appears to be the case, a direction that the *incoming electronic commerce activity* should cease may be appropriate.~~
- (4) ~~The risk that the *incoming ECA provider's* activities present to the *financial system* and to confidence in the *financial system*.~~
- (5) ~~The impact that a complete prohibition on the activity would have on UK ECA recipients.~~

17.6 The FSA may consider that a case is urgent, in particular, where:

- (1) ~~the information available to it indicates serious concerns about the *incoming electronic commerce activity* that need to be addressed immediately; and~~
- (2) ~~circumstances indicate that it is appropriate to use the direction power immediately to prohibit the *incoming electronic commerce activity*, or to make the carrying on of the activity subject to specified requirements.~~

17.7 ~~The FSA will consider the full circumstances of the case when deciding whether exercising the direction power without first taking the procedural steps set out in Regulation 6 is an appropriate response to such concerns. The factors the FSA may consider include those listed in paragraph 17.5 (1) to (5) of this guide. There may be other relevant factors.~~

Decision making

17.8 ~~The FSA's decision to make, revoke or vary an *electronic commerce activity direction* will generally be taken by the RDC Chairman. However, this is subject to two exceptions.~~

- (1) ~~In an urgent case and if the Chairman is not available, the decision will be taken by an *RDC* Deputy Chairman and where possible, but subject to the need to act swiftly, one other *RDC* member.~~
- (2) ~~If a provider who has been notified of the FSA's intention to make a direction or to vary a direction on its own initiative makes representations within the period and in the manner required by the FSA, then those representations will be considered by the *RDC*, rather than by the *RDC* Chairman alone. Having taken into account the provider's representations, the *RDC* will then decide whether to make the direction, or to vary the existing direction.~~

17.9 ~~Where a provider must be given the opportunity to make representations to the FSA in relation to a proposed direction or variation of a direction, the *RDC* Chairman will determine in each case the manner and the period within which those representations should be made.~~

Publicity

17.10 ~~Regulation 10(8) of the *ECD Regulations* provides that if the FSA makes a direction, it may publish, in such manner as it considers appropriate, such information about the matter to which the direction relates as it considers appropriate in furtherance of any of the objectives referred to in [paragraph 17.4\(1\)](#) of this guide. However, under regulation 10(9), the FSA may not publish information relating to a direction if publication would, in the FSA's opinion, be unfair to the provider to whom the direction applies or prejudicial to the interests of *consumers*.~~

17.11 ~~When deciding what information, if any, to publish and the appropriate manner of publication, the FSA will consider the full circumstances of each case. The FSA anticipates that it will generally be appropriate to publish relevant details of a direction, in order to protect and inform *consumers*. However, in accordance with the regulation 10(9) prohibition, it will not publish information if it considers that publication would be unfair to the provider or prejudicial to the interests of *consumers*.~~

After EG 18, insert the following new chapter. The text is not underlined.

19 Non-FSMA powers

Introduction

19.1 This chapter describes many of the powers that the FSA has to enforce requirements imposed under legislation other than the *Act*. The chapter is ordered chronologically, ending with the most recent legislation. Where powers under different pieces of legislation are broadly the same, or apply to the same class of person, we have set out the relevant statements of policy in one section to avoid duplication.

- 19.2 Where conduct may amount to a breach of more than one enactment, the FSA may need to consider which enforcement powers to use and whether to use powers from one or more of the Acts. Which power or powers are appropriate will vary according to the circumstances of the case. However, where appropriate, we have tried to adopt procedures in respect of our use of powers under legislation other than the *Act* which are akin to those used under the *Act*. We expect, for example, to provide the subject of an investigation with confirmation of the reasons for the investigation and the legislative provisions under which it is conducted unless notification would be likely to prejudice the investigation or otherwise result in it being frustrated.

Industrial and Provident Societies Act 1965 (IPSA65)

Friendly and Industrial and Provident Societies Act 1968 (FIPSA68)

Friendly Societies Act 1974 (FSA74)

Friendly Societies Act 1992 (FSA92)

- 19.3 The FSA has certain functions in relation to what are described as “registrant-only” mutual societies. These societies are not regulated or supervised under the *Act*. Instead, they are subject to the provisions of IPSA65, FIPSA68, FSA74 and FSA92, which require them to register with the FSA and fulfil certain other obligations, such as the requirement to submit annual returns.
- 19.4 IPSA65, FIPSA68, FSA74 and FSA92 provide the FSA with certain powers to ensure that registrant-only societies meet the requirements imposed on them. These include the power to:
- cancel or suspend the society’s registration (ss.16 and 17 IPSA65, s.91 FSA74);
 - dissolve the society (ss.95 and 95A FSA74);
 - appoint an accountant or actuary to inspect the society’s books (s.47 IPSA65);
 - require the production of documents and provision of information for certain purposes (s.48 IPSA65, s.90 FSA74);
 - appoint inspectors and call special meetings (s.49 IPSA65, s.90 FSA74);
 - present petitions for winding up (s.56 IPSA65; ss.22 and 52 FSA92); and
 - prosecute failures to comply with requirements (s.61 IPSA65, s.18 FIPSA68 s.98 FSA74).
- 19.5 The FSA’s enforcement activities in respect of registrant-only societies focus on prosecuting societies that fail to submit annual returns. As registrant-only societies are not subject to the 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. The power to prosecute registrant-only societies who fail to meet this requirement is therefore an important tool and one which the FSA is committed to using in appropriate cases.

- 19.6 The FSA considers a variety of factors when deciding whether to prosecute a society for failing to submit its annual return. The FSA is more likely to prosecute a society which has previously failed to submit returns, or which poses a greater risk to the FSA's statutory objectives, for example, because of the size of its financial resources or its number of members.
- 19.7 The FSA may also use its power to petition for the society's winding up where it has prosecuted a society but the society continues to fail to submit the outstanding annual returns or defaults on submitting further returns.
- 19.8 The decision whether to initiate criminal and other proceedings under these Acts will be taken in accordance with the procedure described in *EG 12.4C*. Under section 18 IP65, a society may appeal certain decisions of the FSA relating to the refusal, cancellation or suspension of a society's registration to the High Court or, in Scotland, the Court of Session. Refusals to register a branch or to register the amendment of a society's rules and cancellations or suspensions of a society's listing under the Friendly Societies Act 1974 are also appealable in certain circumstances to the High Court or the Court of Session. Distinguishing features of the procedure for giving statutory notices under the FSA92, including available rights of reference to the *Tribunal*, are set out in *DEPP 2.5.18G*.
- 19.9 Further information about the FSA's powers under IP65 and FSA74 can be found on the FSA's website.¹³

Credit Unions Act 1979

- 19.10 The Credit Unions Act enables certain societies in Great Britain to be registered under IP65 and makes provisions in respect of these societies. It gives the FSA certain powers in addition to the powers that it has under the *Act* in respect of those credit unions which are *authorised persons*. The FSA's powers under the Credit Unions Act include the power to:
- require the production of books, accounts and other documents in the exercise of certain functions (section 17);
 - appoint an investigator or to call a special meeting of the credit union (section 18);
 - cancel the registration of the credit union (section 20); and
 - petition the High Court to wind up the credit union in particular circumstances (section 20).
- 19.11 The FSA will use these powers in a manner consistent with its approach to using the same powers under the *Act*. Where the FSA decides to cancel or suspend a credit

¹³ <http://www.fsa.gov.uk/Pages/doing/regulated/law/focus/friendly.shtml>

union's registration under section 20(1) of the Credit Unions Act, the credit union may appeal that decision to the High Court or, in Scotland, the Court of Session.

- 19.12 The Credit Unions Act also extends to credit unions some criminal offences under IP65. The FSA will act in accordance with *EG 12* when prosecuting these offences.

Buildings Societies Act 1986

- 19.13 The Building Societies Act sets out provisions on matters relating, amongst other things, to the constitution and management of building societies. It extends certain of the FSA's enforcement powers under the *Act* so that the FSA may, for example:

- make a prohibition order against the society (section 36A);
- petition the High Court for a winding up order where a society breaches certain requirements, for example, if it contravenes a prohibition order or where it fails to comply with certain directions given to it by the FSA (section 37); and
- exercise the FSA's powers under section 45 of the *Act* to cancel or vary a *Part IV permission* where a society fails to comply with a direction from the FSA to transfer all its engagements or to transfer its business (section 42B).

- 19.14 The FSA will use these powers in a manner consistent with its approach to using them under the *Act*. Distinguishing features of the procedure for giving statutory notices under the Building Societies Act are set out in *DEPP 2.5.18G*. Decisions of the FSA made under the Building Societies Act may not be referred to the *Tribunal*.

Unfair Terms in Consumer Contracts Regulations 1999

- 19.15 The FSA has published a separate regulatory guide, *UNFCOG*, which describes how it will use the general powers under the *Unfair Terms Regulations*, including its powers to obtain undertakings and seek information from firms. In addition, *EG 10* describes how the FSA will use its injunctive powers under these Regulations.

Regulation of Investigatory Powers Act 2000 (RIPA)

- 19.16 RIPA provides methods of surveillance and information gathering to help the FSA in the prevention and detection of crime. RIPA ensures that, where these methods are used, an individual's rights to privacy under Article 8 of the European Convention of Human Rights are considered and protected.

- 19.17 Under RIPA the FSA is able to:

- acquire data relating to communications;

- carry out covert surveillance;
- make use of covert human intelligence sources (CHIS); and
- access electronic data protected by encryption or passwords.

19.18 The FSA is not able to obtain warrants to intercept communications during the course of transmission.

19.19 The FSA is only able to exercise powers available to it under Parts I and II of RIPA where it is necessary for the purpose of preventing or detecting crime. All RIPA authorisations for the acquisition of communications data, the carrying out of directed surveillance and the use of CHIS must be approved by a Head of Department in the Enforcement Division. Authorisation will only be given where the authorising officer believes that the proposed action is necessary and proportionate in the specific circumstances set out in the application. Consideration will be given to any actual or potential infringement of the privacy of individuals who are not the subjects of the investigation or operation (collateral intrusion) and to the steps taken to avoid or minimise any such intrusion. When considering whether the proposed action is necessary and proportionate the following non-exhaustive list of factors is likely to be relevant:

- the seriousness of the offence;
- the amount of material that might be gathered;
- the nature of the material that might be gathered;
- whether there are other less intrusive ways of obtaining the same result;
- whether the proposed activity is likely to satisfy the objective; and
- where surveillance is proposed, the location of the surveillance operation.

Encryption

19.20 Under Part III RIPA the FSA is able to require a person who holds “protected” electronic information (that is, information which is encrypted) to put that information into an intelligible form and, where the person has a key to the encrypted information, to require the person to disclose the key so that the data may be put into an intelligible form. The FSA may impose such a requirement where it is necessary for the purpose of preventing or detecting crime or where it is necessary for the purpose of securing the effective exercise or proper performance by the FSA of its statutory powers or statutory duties. In order to serve a notice under Part III RIPA, the FSA must obtain written permission from an appropriate judicial authority. The FSA does not anticipate using powers under Part III very often as it expects firms and individuals to provide information in intelligible format pursuant to requirements to provide information under the *Act*.

Home Office Codes of Practice

- 19.21 In exercising powers under RIPA the FSA has regard to the relevant RIPA codes of practice. The Codes are available on the Home Office website: security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/.

Complaints and Oversight

- 19.22 RIPA provides for the appointment of Commissioners to oversee the compliance of designated authorities with RIPA requirements, and the establishment of a tribunal with jurisdiction to consider and determine, amongst other things, complaints and referrals about the way in which the FSA and other public bodies use their RIPA powers.

Regulated Activities Order 2001 (RAO)

- 19.23 The RAO sets out those activities which are regulated for the purposes of the *Act*. Part V of the RAO also requires the FSA to maintain a register of all those people who are not authorised by the FSA but who carry on insurance mediation activities. Under article 95 RAO, the FSA has the power to remove from the register an appointed representative who carries on insurance mediation activities if it considers that he is not fit and proper. The FSA will give the person a *warning notice* informing him that it proposes to remove his registration and a *decision notice* if the decision to remove his registration is taken. The decisions to give a *warning notice* or a *decision notice* will be taken by the *RDC* following the procedures set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3. A person who receives a decision notice under article 95 RAO may refer the matter to the *Tribunal*.

The Open-Ended Investment Companies Regulations 2001

- 19.24 The *OEIC Regulations* set out requirements relating to the way in which collective investment may be carried on by open-ended investment companies. Under the *OEIC Regulations*, the FSA has the power, amongst other things, to:
- revoke an open-ended investment company's authorisation in several situations, including where the firm breaches relevant requirements or provides us with false or misleading information (regulation 23);
 - give, vary and revoke certain directions, including that the affairs of the company be wound up (regulations 25 and 28);
 - apply to court for an order that a depositary or director of a company be removed and replaced (regulation 26);
 - appoint one or more competent persons to investigate and report on the affairs of the company and specified others (regulation 30).

- 19.25 Factors that the FSA may take into account when it decides whether to use one or more of these powers include, but are not limited to, factors which are broadly similar to those in *EG* 14.1 in the context of *AUTs*. However, the relevant conduct will be that of the *ICVC*, the *director* or *directors* of the *ICVC* and its *depository*. Another difference is that the FSA is also able to take disciplinary action against the *ICVC* itself since the *ICVC* will be an *authorised person*. When choosing which powers to use, the FSA will adopt an approach which is broadly similar to that described in *EG* 14.2 to 14.5.
- 19.26 The FSA will give a company a *warning notice* if it proposes to revoke the company's authorisation and a *decision notice* if the decision to revoke the company's authorisation is subsequently taken. The decisions to give a *warning notice* or a *decision notice* will be taken by the *RDC* following the procedures set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3. A person who receives a decision notice under the *OEIC Regulations* may refer the matter to the *Tribunal*.
- 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. The procedure which the FSA will follow when exercising its disqualification powers is set out in *EG* 15.

Electronic Commerce Directive (Financial Services and Markets) Regulations 2002

- 19.28 The FSA has powers under regulation 6 of the *ECD Regulations*, provided certain policy and procedural conditions are met, to direct that an *incoming ECA provider* may no longer carry on a specified *incoming electronic commerce activity*, or may only carry it on subject to specified requirements.

Electronic commerce activity directions: the FSA's policy

- 19.29 The FSA will exercise the power to make an *electronic commerce activity direction* on a case-by-case basis. When deciding whether to make a direction, the FSA will undertake an assessment of whether the circumstances of the particular case meet the policy conditions set out in regulation 6.
- 19.30 On obtaining information concerning possible *financial crime* facilitated through or involving an *incoming ECA provider*, or detriment to UK markets or UK *ECA recipients* caused by the activities of an *incoming ECA provider*, the FSA will contact the relevant *EEA regulator* of the *incoming ECA provider*. The FSA would expect the relevant *EEA regulator* to consider the matter, investigate it where appropriate and keep the FSA informed about what action, if any, was being taken. The FSA may not need to be involved further if the action by the relevant *EEA regulator* addresses the FSA's concerns.
- 19.31 However, there are likely to be circumstances in which the FSA will need to use the *electronic commerce activity direction* power. Examples could include where it was necessary to stop the behaviour complained of, or to make the continued provision of

services by the *incoming ECA provider* conditional upon compliance with specified requirements. Overall, the FSA may use the direction power:

- (1) where:
 - (a) the behaviour complained of was causing, or had the potential to cause, major detriment to *consumers* in the United Kingdom; or
 - (b) the *incoming ECA provider's* activities have been used, or have the potential to be used, to facilitate serious *financial crime* or to launder the proceeds of a crime; or
 - (c) the making of the direction is considered to be necessary for other reasons of public policy relevant to the *regulatory objectives*; and
- (2) either:
 - (a) the relevant *EEA regulator* is unable to take action, or has not within a reasonable time taken action which appears to the FSA to be adequate; or
 - (b) the relevant *EEA regulator* and the FSA agree that, having regard to the circumstances of the particular case, action against the wrong-doing would be taken more effectively by the FSA.

19.32 The question of whether the FSA decides to prevent or prohibit the *incoming electronic commerce activity*, or to make it subject to certain requirements (for example, compliance with specified rules), will depend on the overall circumstance of the case. A relevant consideration will be whether the FSA is satisfied that its concerns over the *incoming electronic commerce activity* can be adequately addressed through the imposition of a requirement, rather than a complete prohibition on the activity. Set out below is a list of factors the FSA may consider. The list is not exhaustive.

- (1) The extent of any loss, or risk of loss, or other adverse effect on UK *ECA recipients*: The more serious the loss or potential loss or other adverse effect on them, the more likely it is to be appropriate for the FSA to use its powers to prohibit the activity altogether, to protect the interests of UK *ECA recipients*.
- (2) The extent to which customer assets appear to be at risk.
- (3) The risk that the *incoming ECA provider's* activities may be used or have been used to facilitate *financial crime* or to launder the proceeds of a crime: Information available to the FSA, including information supplied by other law enforcement agencies, may suggest that the *incoming ECA provider* is being used for, or is itself involved in, *financial crime*. Where this appears to be the case, a direction that the *incoming electronic commerce activity* should cease may be appropriate.
- (4) The risk that the *incoming ECA provider's* activities present to the *financial system* and to confidence in the *financial system*.

- (5) The impact that a complete prohibition on the activity would have on UK *ECA recipients*.

19.33 The FSA may consider that a case is urgent, in particular, where:

- (1) the information available to it indicates serious concerns about the *incoming electronic commerce activity* that need to be addressed immediately; and
- (2) circumstances indicate that it is appropriate to use the direction power immediately to prohibit the *incoming electronic commerce activity*, or to make the carrying on of the activity subject to specified requirements.

19.34 The FSA will consider the full circumstances of the case when deciding whether exercising the direction power, without first taking the procedural steps set out in regulation 6, is an appropriate response to such concerns. The factors the FSA may consider include those listed in paragraph 19.32 of this guide. There may be other relevant factors.

Decision making

19.35 The FSA's decision to make, revoke or vary an *electronic commerce activity direction* will generally be taken by the *RDC* Chairman. However, this is subject to two exceptions.

- (1) In an urgent case and if the Chairman is not available, the decision will be taken by an *RDC* Deputy Chairman and where possible, but subject to the need to act swiftly, one other *RDC* member.
- (2) If a provider who has been notified of the FSA's intention to make a direction or to vary a direction on its own initiative makes representations within the period and in the manner required by the FSA, then those representations will be considered by the *RDC*, rather than by the *RDC* Chairman alone. Having taken into account the provider's representations, the *RDC* will then decide whether to make the direction, or to vary the existing direction.

19.36 Where a provider must be given the opportunity to make representations in relation to a proposed direction or variation of a direction, the *RDC* Chairman will determine in each case the manner and the period within which those representations should be made. If the FSA decides to issue a direction or vary it at its own initiative, or if the FSA refuses an application to vary or revoke a direction, the person to whom the direction applies may refer the matter to the *Tribunal*.

Publicity

19.37 Regulation 10(8) of the *ECD Regulations* provides that if the FSA makes a direction, it may publish, in such manner as it considers appropriate, such information about the matter to which the direction relates as it considers appropriate in furtherance of any of the objectives referred to in paragraph 19.31(1) of this guide. However, under regulation 10(9), the FSA may not publish information relating to a direction if publication would, in the FSA's opinion, be unfair to the provider to whom the direction applies or prejudicial to the interests of *consumers*.

19.38 When deciding what information, if any, to publish and the appropriate manner of publication, the FSA will consider the full circumstances of each case. The FSA anticipates that it will generally be appropriate to publish relevant details of a direction, in order to protect and inform *consumers*. However, in accordance with the regulation 10(9) prohibition, it will not publish information if it considers that publication would be unfair to the provider or prejudicial to the interests of *consumers*.

Enterprise Act 2002

19.39 The FSA, together with several other UK authorities, has powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law. Where a breach has been committed, the FSA will liaise with other authorities, particularly the Office of Fair Trading (the OFT), to determine which authority is best placed to take enforcement action. The FSA would generally expect to be the most appropriate authority to deal with breaches by authorised firms in relation to regulated activities.

19.40 The Enterprise Act identifies two main types of breach which trigger the Part 8 enforcement powers. These are referred to as “domestic infringements”, which are breaches of UK law, and “Community infringements” which are breaches of the EU legislation listed in Schedule 13 of the Enterprise Act. In both cases the breach must be regarded as harming the collective interests of consumers.

19.41 The Community legislation falling within the FSA's scope under the Enterprise Act is:

- the Unfair Terms in Consumer Contracts Directive;¹⁴
- the Comparative and Misleading Advertising Directive;¹⁵
- the E-Commerce Directive;¹⁶
- the Distance Marketing Directive;¹⁷ and
- the Unfair Commercial Practices Directive.¹⁸

19.42 The FSA has powers under Part 8 of the Enterprise Act both as a “designated enforcer” in relation to domestic and Community infringements and as a “CPC enforcer” which gives the FSA and other CPC enforcers additional powers in relation to Community infringements so that they can meet their obligations as “competent authorities” under Regulation (EC) No.2006/2004 on co-operation between national authorities responsible for enforcement of consumer protection laws (the CPC Regulation).

¹⁴ Directive 93/13/EEC

¹⁵ Directive 97/55/EC

¹⁶ Directive 2000/31/EC

¹⁷ Directive 2002/65/EC

¹⁸ Directive 2005/29/EC

The FSA's powers as a designated enforcer

19.43 As a designated enforcer, the FSA has the power to apply to the courts for an enforcement order or an interim enforcement order which requires a person who has committed a breach of applicable legislation not to engage in the conduct which constituted the breach. The FSA may also apply for orders where it thinks that a person is likely to commit a Community infringement.

19.44 The FSA has the power under the Enterprise Act to require any person to provide it with information which will enable it to (i) exercise or consider exercising its functions as an enforcer; or (ii) determine whether a person is complying with an enforcement order or an interim enforcement order. If the FSA requires a person to provide it with information, it must give him a notice setting out the information that it requires and confirming for which of purposes (i) and (ii) above the information is required.

19.45 Before the FSA may apply for an enforcement order, it must consult with:

- the OFT; and
- the person against whom the enforcement order would be made.

The period for consultation is 14 days before an application for an enforcement order can be made, or 7 days in the case of an application for an interim enforcement award. The aim of consultation is to ensure that any action taken is necessary and proportionate, and to ensure that businesses are given a reasonable opportunity to put things right before the courts become involved.

19.46 The Enterprise Act also makes provision for enforcers to accept undertakings from a person who has committed a breach. The undertaking confirms that the person will not, amongst other things, commence, continue or repeat the conduct which constituted or would constitute the breach. There is a general expectation that, if a breach of applicable legislation is committed, or if a Community infringement is likely to be committed, enforcers will seek an undertaking from the person in question before applying to court for an enforcement order against him.

19.47 The FSA may take steps to publish the undertakings it receives, and may apply to the court for an enforcement order if a person fails to comply with an undertaking that he has given.

The FSA's powers as a CPC enforcer

19.48 In addition to its powers as a designated enforcer under the Enterprise Act, the FSA also has powers, in its capacity as a "CPC enforcer", to enter premises with or without a warrant. The FSA must give at least two working days' notice of its intention to enter premises without a warrant unless it has not been possible to serve such notice despite all reasonably practicable steps having been taken. If the FSA cannot give a notice in advance, it must produce the notice on the day the premises are entered.

Use of enforcement powers under Enterprise Act

- 19.49 The FSA anticipates that its powers under the *Act* will be adequate to address the majority of breaches which it would also be able to enforce under the Enterprise Act and that there will therefore be limited cases in which it would seek to use its powers as an Enterprise Act enforcer. Where the FSA does use its powers under the Enterprise Act, it will have regard to the enforcement guidelines which are published on the OFT's website.¹⁹
- 19.50 Further information about the FSA's powers under the CPC Regulations is provided at paragraphs 19.66 to 19.70 below.

Proceeds of Crime Act 2002 (POCA)

- 19.51 POCA provides the legislative framework for the confiscation from criminals of the proceeds of their crime. Under POCA, the FSA can apply to the Crown Court for a restraint order when it is investigating or prosecuting criminal cases. A restraint order prevents the person(s) named in the order from dealing with the assets it covers for the duration of the order.
- 19.52 The FSA may apply for such an order where a criminal investigation has been started or where proceedings have started but not concluded; in either case there must be reasonable cause to believe that the defendant has benefited from criminal conduct. In this context, a person benefits from criminal conduct if he obtains property or a pecuniary advantage as a result of or in connection with conduct that would be an offence if it took place in England or Wales, regardless of whether he also obtains it in some other connection. The court is required to exercise its powers with a view to securing that the value of realisable assets is not diminished.
- 19.53 Once an order is made, the applicant or anyone affected by the order can apply to the court for it to be varied or discharged. The court must discharge the order if the condition for granting it is no longer satisfied, that is, if the criminal investigation has not led to criminal proceedings being started within a reasonable time or the criminal proceedings have concluded.
- 19.54 A restraint order may apply to any realisable property held by the specified person whether or not described in the order, or to any such property transferred to him after the order is made. The order may contain exceptions for reasonable living and business expenses, but not for legal expenses relating to the offences from which he is suspected to have benefited for the order to be made.
- 19.55 The order can apply to assets wherever they are held, and anyone breaching the order would be guilty of contempt of court in this country. The FSA may request that the court make ancillary orders requiring the person to disclose his assets and/or to repatriate assets held overseas.

¹⁹ www.of.gov.uk/advice_and_resources/resource_base/legal/enterprise-act/part8/

19.56 POCA also contains various powers of investigation which the FSA may use in specified circumstances. However, where these powers overlap with powers under the *Act*, the FSA will in most cases consider it more appropriate to rely on its investigation powers under the *Act*.

Credit Institutions (Reorganisation and Winding Up) Regulations 2004

19.57 These Regulations implement Directive 2001/24/EC on the reorganisation and winding up of credit institutions. The Regulations only allow winding-up proceedings or reorganisation measures in respect of EEA credit institutions in certain circumstances.

19.58 Under these Regulations, the FSA is required to exercise its powers under section 45 of the *Act* to vary or cancel the UK credit institution's permission to accept deposits or to issue electronic money as soon as reasonably practicable after it is notified of any of the following:

- a decision which approves a voluntary arrangement where it includes a realisation of some or all of the assets of the credit institution with a view to terminating the whole or any part of the business of that credit institution;
- a winding-up order or an administration order in the prescribed circumstances; or
- the appointment of a provisional liquidator or the appointment of a liquidator.

19.59 This power is mandatory rather than discretionary. The FSA will follow its procedure for varying and cancelling *Part IV permission* under the *Act* when exercising its powers under these Regulations.

Financial Services (Distance Marketing) Regulations 2004

19.60 These Regulations give effect to the Distance Marketing Directive.²⁰ Under the Regulations, the FSA can enforce breaches of the Regulations concerning “specified contracts”. Specified contracts are certain contracts for the provision of financial services which are made at a distance and do not require the simultaneous physical presence of the parties to the contract.

19.61 The FSA may apply to the courts for an injunction or interim injunction against a person who appears to it to be responsible for a breach of the Regulations. The FSA must consult with the OFT before exercising this power. The FSA may also accept undertakings from the person who committed the breach that he will comply with the Regulations. The FSA must publish details of any applications it makes for

²⁰ Directive 2002/65/EC

injunctions; the terms of any orders that the court subsequently makes; and the terms of any undertakings given to it or to the court.

19.62 The FSA may also prosecute offences under the Regulations which relate to specified contracts. It will generally be appropriate for the FSA to seek to resolve the breach by obtaining an undertaking before it applies for an injunction or initiates a prosecution. Where a failure by a firm to meet the requirements of the Regulations also amounts to a breach of the FSA's rules, the FSA will consider all the circumstances of the case when deciding whether to take action for a breach of its rules or under the Regulations. This will include, amongst other things, having regard to appropriate factors set out in *DEPP* 6 and the considerations in *EG* 12.

Financial Conglomerates and Other Financial Groups Regulations 2004

19.63 These Regulations implement in part the Financial Conglomerates Directive,²¹ which imposes certain procedural requirements on the FSA as a competent authority under the Directive. These Regulations also make specific provision about the exercise of certain supervisory powers in relation to financial conglomerates.

19.64 The FSA's power to vary a firm's *Part IV permission* under section 45 of the *Act* has been extended under these Regulations. The FSA is able to use this power where it is desirable to do so for the purpose of:

- supervision in accordance with the Financial Conglomerates Directive;
- acting in accordance with specified provisions of the Banking Consolidation Directive; and
- acting in accordance with specified provisions of the Insurance Groups Directive.

19.65 The duty imposed by section 41(2) (The threshold conditions) of the *Act* does not prevent the FSA from exercising its own-initiative power for these purposes. But subject to that, when exercising this power under the Regulations, the FSA will do so in a manner consistent with its approach generally to variation under the *Act*.

The Consumer Protection Co-operation Regulation²²

19.66 The FSA is a competent authority under the CPC Regulation, which aims to encourage and facilitate co-operation between competent authorities across the EU in consumer protection matters. The FSA is a competent authority for the purposes of

²¹ Directive 2002/87/EC

²² Regulation (EC) No.2006/2004 on co-operation between national authorities responsible for enforcement of consumer protection laws.

specified EU consumer protection laws²³ in the context of the regulated activities of authorised firms and of breaches by UK firms concerning “specified contracts” as defined in the Financial Services (Distance Marketing) Regulations 2004 (for which see paragraphs 19.60 to 19.62).

- 19.67 All CPC competent authorities have a minimum set of enforcement and investigatory powers available to them to ensure that across the EU there is a robust toolkit to protect consumers. These are powers to:
- access any relevant document related to the breach;
 - require the supply by any person of relevant information related to the breach;
 - carry out necessary on-site inspections;
 - request in writing that a person cease the breach;
 - obtain from the person responsible for the breach an undertaking to cease the breach; and, where appropriate, to publish the resulting undertaking;
 - require the cessation or prohibition of any breach and where appropriate, to publish resulting decisions; and
 - require the losing defendant to make payments in the event of failure to comply with the decision.
- 19.68 The powers are engaged when a person breaches one of the EU consumer protection laws which are scheduled to the CPC Regulation and the breach is one which harms, or is likely to harm, the collective interests of consumers who live in a member state other than the member state in which the breach was committed; where the person who committed the breach is established; or where evidence or assets relating to the breach are located.
- 19.69 Under the CPC Regulation the FSA can request information from competent authorities in other member states to help it determine whether a relevant breach has taken, or may take, place. The FSA can also request that competent authorities in the relevant member states take action without delay to stop or prohibit the breach. All competent authorities are required to notify their counterparts in relevant member states when they become aware of actual or possible breaches of European consumer protection law.
- 19.70 The FSA may use its powers under the *Act* or under Part 8 of the Enterprise Act (for which, see paragraphs 19.39 to 19.50 above) in order to fulfil its obligations under the CPC Regulation. The FSA will decide on a case-by-case basis which powers will enable it to obtain its desired outcomes in the most effective and efficient way. In the majority of cases this is more likely to be by using its powers under the *Act*.

²³ These are the Unfair Terms in Consumer Contracts Directive; the Comparative and Misleading Advertising Directive; the E-Commerce Directive; the Distance Marketing Directive; and the Unfair Commercial Practices Directive.

Money Laundering Regulations 2007

- 19.71 The FSA has investigation and sanctioning powers in relation to both criminal and civil breaches of the *Money Laundering Regulations*. The *Money Laundering Regulations* impose requirements including, amongst other things, obligations to apply customer due diligence measures and conduct ongoing monitoring of business relationships on designated types of business.
- 19.72 The FSA is responsible for monitoring and enforcing compliance with the Regulations not only by authorised firms who are within the *Money Laundering Regulations*' scope, but also by what the Regulations describe as "Annex I financial institutions". These are businesses which are not otherwise authorised by us but which carry out certain of the activities listed in Annex I of the Banking Consolidation Directive.²⁴ The activities include lending (e.g. forfaiters and trade financiers), financial leasing, and safe custody services. Annex I financial institutions are required to register with the FSA.
- 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 prosecute both authorised firms and Annex I financial institutions;
 - 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); and
 - to impose civil penalties on both authorised firms and Annex I financial institutions under regulation 42 of the *Money Laundering Regulations*.
- 19.74 This means that there will be situations in which the FSA has powers to investigate and take action under both the *Act* and the *Money Laundering Regulations*. The FSA will consider all the circumstances of the case when deciding what action to take and, if it is appropriate to notify the subject about the investigation, will in doing so inform them about the basis upon which the investigation is being conducted and what powers it is using. The FSA will adopt the approach outlined in EG 12 when prosecuting *Money Laundering Regulations* offences. In the majority of cases where both the Regulations and the FSA 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*.
- 19.75 The *Money Laundering Regulations* also provide investigation powers that the FSA can use when investigating whether breaches of the Regulations have taken place. These powers include:

²⁴ Credit financial institutions and money service businesses are also outside the definition of "Annex I financial institution", which is set out in Regulation 22(1).

- the power to require information from, and attendance of, relevant and connected persons (regulation 37); and
- powers of entry and inspection without or under warrant (regulations 38 and 39).

The use of these powers will be limited to those cases in which the FSA expects to take action under the Regulations.

19.76 The FSA will adopt a risk-based approach to its enforcement of the *Money Laundering Regulations*. Failures in anti-money laundering controls will not automatically result in disciplinary sanctions, although enforcement action is more likely where a firm has not taken adequate steps to identify its money laundering risks or put in place appropriate controls to mitigate those risks, and failed to take steps to ensure that controls are being effectively implemented.

19.77 However, the *Money Laundering Regulations* say little about the way in which investigation and sanctioning powers should be used, so the FSA has decided to adopt enforcement and decision making procedures which are broadly akin to those under the *Act*. Key features of the FSA's approach are described below.

The conduct of investigations under the Money Laundering Regulations

19.78 The FSA will notify the subject of the investigation that it has appointed officers to carry out an investigation under the *Money Laundering Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FSA expects to carry out a scoping visit early on in the enforcement process in most cases. The FSA's policy in civil investigations is to use powers to compel information in the same way as it would in the course of an investigation under the *Act*.

19.79 When the FSA proposes or decides to impose a penalty under the *Money Laundering Regulations*, it must give the person on whom the penalty is to be imposed a notice. These notices are akin to *warning notices* and *decision notices* given under the *Act*, although Part XXVI (Notices) of the *Act* does not apply to notices given under the Regulations.

19.80 The *RDC* is the FSA's decision maker for contested cases in which the FSA decides to impose a penalty under the *Money Laundering Regulations*. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The *RDC* will make its decisions following the procedure set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3. Where the FSA imposes a penalty on a person under the *Money Laundering Regulations*, that person may appeal the decision to the *Tribunal*.

19.81 Although the *Money Laundering Regulations* do not require it, the FSA will involve third parties and provide access to Authority material when it gives notices under the Regulations, in a manner consistent with the provisions of sections 393 and 394 of the *Act*. However, there is no formal mechanism under the *Money Laundering Regulations* for third parties to make representations in respect of proposed money laundering actions. If a third party asks to make representations, it will be a matter for

the FSA's decision makers to decide whether this is appropriate and, if so, how best to ensure that these representations are taken into consideration. In general it is expected that decision makers would agree to consider any representations made. Third parties may not refer cases to the *Tribunal* as the *Money Laundering Regulations* give the *Tribunal* no power to hear such referrals.

- 19.82 When imposing or determining the level of a financial penalty under the Regulations, the FSA's policy includes having regard to relevant factors in *DEPP* 6.2.1G and *DEPP* 6.5. The FSA may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirement of the *Money Laundering Regulations* would be met. In deciding whether a person has failed to comply with a requirement of the *Money Laundering Regulations*, the FSA must consider whether he followed any relevant guidance which was issued by a supervisory authority or other appropriate body; approved by the Treasury; and published in a manner approved by the Treasury. The Joint Money Laundering Steering Group Guidance satisfies this requirement.
- 19.83 As with cases under the *Act*, the FSA may settle or mediate appropriate cases involving civil breaches of the *Money Laundering Regulations* to assist it to exercise its functions under the Regulations in the most efficient and economic way. The settlement discount scheme set out in *DEPP* 6.7 applies to penalties imposed under the *Money Laundering Regulations*.
- 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*.

Transfer of Funds (Information on the Payer) Regulations 2007 (The Transfer of Funds Regulations)

- 19.85 The FSA is required, under EU Regulation 1781/2006 (on information on the payer accompanying transfers of funds), to monitor the compliance of payment services providers which are *authorised firms* with the requirements imposed by the Regulation. The Transfer of Funds Regulations set out the FSA's powers to investigate and impose sanctions for breaches of Regulation 1781/2006. The powers are identical to those given under the *Money Laundering Regulations*. The FSA's policy in respect of the use of its powers under the Regulations is the same as the policy it has adopted for the use of *Money Laundering Regulations* powers; the FSA will adopt enforcement procedures broadly akin to those used under the *Act*, with the modifications described in paragraphs 19.78 to 19.84 above.

Regulated Covered Bonds Regulations 2008

- 19.86 The *RCB Regulations* provide a framework for issuing covered bonds in the UK. Covered bonds issued under the *RCB Regulations* are subject to strict quality controls and both bonds and issuers must be registered with the FSA. The *RCB Regulations* give the FSA powers to enforce these Regulations. Where a person has failed, or is likely to fail, to comply with any obligation under the *RCB Regulations*, the FSA may make a direction that the person take steps to ensure compliance with the Regulations or it may make a direction for the winding up of the owner of the asset pool. The FSA may also remove an *issuer* from the register if it fails to comply with the Regulations. In addition, the FSA may apply to court for an order restraining a person from committing a breach of the Regulations or requiring the person to take steps to remedy the breach. The *RCB Regulations* also give the FSA the power to impose a financial penalty on a person for a breach of the Regulations.
- 19.87 The FSA may use the information gathering powers set out in section 165 of the *Act* when monitoring and enforcing compliance with the *RCB Regulations*, and may appoint skilled persons as provided in section 166 of the *Act*.
- 19.88 The FSA's approach to the use of its enforcement powers, and its statement of policy in relation to imposing and determining financial penalties under the *RCB Regulations*, are set out in *RCB 4.2*. The FSA's penalty policy includes having regard to the relevant factors in *DEPP 6.2.1G* and *DEPP 6.5* and such other specific matters as the likely impact of the penalty on the interests of investors in the relevant bonds. The FSA's statement of procedure in relation to giving *warning notices* or *decision notices* under the *RCB Regulations* is set out in *RCB 6*. It confirms that the *RDC* will be the decision maker in relation to the imposition of financial penalties under the *RCB Regulations*, following the procedure outlined in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and that decision notices given under the Regulations may be referred to the *Tribunal*.
- 19.89 The FSA may agree to settle cases in which it proposes to impose a financial penalty under the *RCB Regulations* if the right regulatory outcome can be achieved. The settlement discount scheme set out in *DEPP 6.7* applies to penalties imposed under the *RCB Regulations*. See *DEPP 5* and *EG 5* for further information about the settlement process.

Amend the following, as shown.

Annex 1 – ~~Table of investigation and enforcement powers not discussed in this guide (see paragraph 1.6) [deleted]~~

Legislation	Nature of investigation or enforcement power
Friendly Societies Act 1992	Power to present petitions for the winding up by the court of incorporated friendly societies (section 22)

Friendly Societies Act 1974	Powers to carry out inspections of books and to prosecute friendly societies for failure to submit annual return to the FSA (section 98)
Buildings Societies Act 1986	Functions under the <i>Act</i> for example to investigate a firm's business or suspected breaches by a firm, to vary or cancel a firm's permission, to take disciplinary action against a firm, to apply to court for injunctions
Industrial and Provident Societies Act 1965	Functions under the <i>Act</i> (e.g. Power to cancel registration of society (section 16), Inspection of books (section 47), Production of documents and provision of information for certain purposes (section 48); appointment of inspectors and calling of special meetings (section 49), power of registrar a petition for winding up (section 56) power to prosecute IPS for failure to submit annual return to the FSA (section 61)
Enterprise Act and Enterprise Act 2002 (Part 8)	FSA designated as a designated enforcer and a CPC enforcer under Part 8 of this Act
Proceeds of Crime Act 2002	FSA staff may be designated as an accredited financial investigator for purpose of applying for restraining orders and confiscations investigations (Proceeds of Crime Act 2002 (References to Financial Investigators) Order 2003) s. 42(2)(c), 68(3)(c), 191(2)(e), 216(3)(e), 378(1)(b), 378(2)(d)
Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004	Power to institute proceedings for an offence under these Regulations 2004 (section 16)
Credit Institutions (Reorganisation and Winding Up) Regulations 2004	Power under section 45 of the <i>Act</i> to vary or cancel the UK credit institution's permission under Part IV of the <i>Act</i> to accept deposits or to issue electronic money as the case may be. (Reg 11(3))
Financial Services (Distance Marketing) Regulations 2004	FSA is an enforcement authority, in respect of 'specified contracts' for the purposes of reg. 18, 19, 22 (power to consider any complaint made to it about a breach (s. 18), power to apply for an injunction (including an interim injunction) against any person who appears to be responsible for a breach (s. 19); power to institute proceedings for an offence under these Regulations (s. 22)).
Financial Conglomerates Directive and Other Financial Groups Regulations 2004 Reg. 15	Extension of power to vary <i>Part IV permission</i>
Regulated Activities Order Art. 95	Power directly to de-register insurance intermediaries if not fit and proper

Annex 2 - Guidelines on investigation of cases of interest or concern to the Financial Services Authority and other prosecuting and investigating agencies

Purpose, status and application of the guidelines

1. These guidelines have been agreed by the following bodies (the agencies):

- the Financial Services Authority (the FSA);
- the Serious Fraud Office (the SFO);
- the Department ~~of~~ for Business, Enterprise and Regulatory Reform Trade and Industry (the DTI BERR);
- the Crown Prosecution Service (the CPS);
- the Association of Chief Police Officers in England, Wales and Northern Ireland (ACPO);
- the Crown Office and Procurator Fiscal Service (COPFS);
- the ~~Department of the Director of Public Prosecutions~~ Prosecution Service for Northern Ireland (the ~~DPP(NI) PPS~~);
- the Association of Chief Police Officers in Scotland (ACPO(S)).

...

6. The guidelines are relevant to ACPO and ACPO(S) only in so far as they relate to investigations. Similarly, they are relevant to the CPS, COPFS and the ~~DPP(NI) PPS~~ only in so far as they relate to prosecutions.

...

Indicators for deciding which agency should take action

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.

...

(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 ~~DTI~~ BERR action);
 - winding up proceedings which FSA does not have statutory powers to bring (normally appropriate for ~~DTI~~ BERR action); or
 - criminal proceedings in Scotland.
- Where the conduct in question concerns the abuse of limited liability status under the Companies Acts (normally appropriate for ~~DTI~~ BERR action).
 - Where powers of arrest are likely to be necessary.

...

Deciding to bring proceedings

13. The agencies will consider, as necessary, and keep under review whether an investigation has reached the point where it is appropriate to commence proceedings. Where agencies are deciding whether to institute criminal proceedings, they will have regard to the usual codes or guidance relevant to that decision. For example, agencies other than the ~~DPP(NI) PPS~~ or the Crown Office COPFS will have regard to the Code for Crown Prosecutors (Note: Different guidance applies to the ~~DPP(NI) PPS~~ and the Crown Office COPFS. All criminal proceedings in Scotland are the responsibility of the Lord Advocate. Separate arrangements have been agreed between the FSA and the Crown Office for the prosecution of offences in Scotland arising out of FSA investigations). Where they are considering whether to bring non-criminal proceedings, they will take into account whatever factors they consider relevant (for example, in the case of market abuse proceedings brought by the FSA, these are set out in paragraph 14.4 6.2 of the FSA ~~Enforcement~~ Decision Procedure and Penalties manual).

...

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 power to take the following enforcement action:

- ...
- (~~in England and Wales~~ except in Scotland) prosecute certain offences, including under the Money Laundering Regulations ~~1993~~ 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 which are incidental to those which it has express statutory power to prosecute):
- ...

2. ~~DTI~~ BERR

- 2.1 The Secretary of State for ~~Trade & Industry~~ Business, Enterprise and Regulatory Reform 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 ~~Solicitors Office~~ Legal Services Directorate.
- 2.2 The principal activities of CIB are, however, the investigations into the conduct of companies under the Companies Acts ~~and the Fair Trading Act~~. These are fact-finding investigations but may lead to follow-up action by CIB such as petitioning for the winding up of a company, disqualification of directors of the company or referring the matter to the Solicitors Office for prosecution. CIB may also disclose information to other prosecution or regulatory authorities to enable them to take appropriate action under their own powers and functions. Such disclosure is, however, strictly controlled under a gateway disclosure regime.
- 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 ~~divisions~~ directorates of ~~the DTI~~ BERR or its agencies.

...

5. ~~ACPO and ACPO(S)~~

- 5.1 ACPO represents the police forces of England, Wales, and Northern Ireland. ~~ACPO(S)~~ represents the police forces of Scotland.

6. ~~The Crown Office~~ COPFS

- 6.1 The investigation and prosecution of crime in Scotland is the responsibility of the Lord Advocate, who is the head of the COPFS ~~Procurator Fiscal Service~~, which comprises Procurators Fiscal and their Deputes, who are answerable to the Lord Advocate. The Procurator Fiscal is the sole public prosecutor in Scotland, prosecuting cases reported not only by the police but all regulatory departments and agencies. All prosecutions before a jury, both in the High

Court of Justiciary and in the Sheriff Court, run in the name of the Lord Advocate; all other prosecutions run in the name of the local Procurator Fiscal. The Head Office of the Procurator Fiscal Service is the Crown Office and the Unit within the Crown Office which deals with serious and complex fraud cases and with the investigation of cases of interest or concern to the Financial Services Authority is the National Casework Division Fraud and Specialist Services Unit: the remit of this Unit is directly comparable to that of the Serious Fraud Office.

7. ~~DPP(NI)~~ PPS

- 7.1 The ~~DPP(NI)~~ PPS is responsible for the prosecution of all offences on indictment in Northern Ireland, other than offences prosecuted by the Serious Fraud Office. The ~~DPP(NI)~~ PPS is also responsible for the prosecution of certain summary offences, including offences reported to it by any government department.

COLLECTIVE INVESTMENT SCHEMES SOURCEBOOK (SUSPENSION OF DEALINGS) INSTRUMENT 2008

Powers exercised

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

Commencement

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

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 (Suspension of Dealings) Instrument 2008.

By order of the Board
4 December 2008

Annex

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

7.2 Suspension and restart of dealings

Requirement

- 7.2.1 R (1) The *authorised fund manager* may, with the prior agreement of the *depository*, and must without delay, if the *depository* so requires, temporarily suspend the *issue, cancellation, sale and redemption of units* in an *authorised fund* (referred to in this chapter as “*dealings in units*”), where due to exceptional circumstances it is in the interest of all the *unitholders* in the *authorised fund*.
- (1A) The *authorised fund manager* and the *depository* must ensure that the suspension is only allowed to continue for as long as it is justified having regard to the interests of the *unitholders*.
- ...
- (2A) The *authorised fund manager* must ensure that a notification of the suspension is made to *unitholders* of the *authorised fund* as soon as practicable after suspension commences.
- (2B) In making the notification set out in (2A), the *authorised fund manager* must ensure that it:
- (a) draws *unitholders*’ particular attention to the exceptional circumstance which resulted in the suspension;
 - (b) is clear, fair and not misleading; and
 - (c) informs *unitholders* how to obtain the information detailed in (2C).
- (2C) The *authorised fund manager* must ensure that it publishes (on its website or by other general means) sufficient details to keep *unitholders* appropriately informed about the suspension including, if known, its likely duration.
- (3) During a suspension,;
- (a) none of the obligations in *COLL 6.2 (Dealing)* ~~and *COLL 6.3 (Valuation and pricing)*~~ apply; and
 - (b) the *authorised fund manager* must comply with as much of *COLL 6.3 (Valuation and pricing)* as is practicable in the

light of the suspension.

(4) The suspension of *dealings in units* must cease as soon as practicable after the exceptional circumstances referred to in (1) have ceased ~~and, in any event, within 28 days of the commencement of the suspension.~~

(4A) The authorised fund manager and the depositary must formally review the suspension at least every 28 days and inform the FSA of the results of this review and any change to the information provided in (2).

...

(6) The *authorised fund manager* may agree, during the suspension, to deal in units in which case all deals accepted during, and outstanding prior to, the suspension will be undertaken at a price calculated by reference to at the first valuation point after the restart of *dealings dealing in units*, subject to (8).

...

Guidance

- 7.2.2 G (1) Suspension should be allowed only in exceptional cases where circumstances so require and suspension is justified having regard to the interests of the *unitholders*. Difficulties in realising scheme assets or temporary shortfalls in liquidity may not on their own be sufficient justification for suspension. In such circumstances the *authorised fund manager* and *depositary* would need to be confident that suspension could be demonstrated genuinely to be in the best interests of the *unitholders*. Before an *authorised fund manager* and *depositary* determines that it is the best interests of *unitholders* to suspend *dealing*, it should ensure that any alternative courses of action have been discounted.
- (2) The *authorised fund manager* will need to ensure that any suspension, while maintaining *unitholders*' interests, is temporary, of minimal duration and is consistent with the provisions of the *prospectus* and the *instrument constituting the scheme*.
- (3) During a suspension, the *authorised fund manager* should inform any *person* who requests a *sale or redemption of units* that all *dealings in units* have been suspended and that that *person* has the option to withdraw the request during the period of suspension or have the request executed at the first opportunity after the suspension ends.

...

- 8.6.3 R (1) The *authorised fund manager* may, with the prior agreement of the

depository, and must without delay, if the *depository* so requires, within any parameters which are fair and reasonable in respect of all the *unitholders* in the *scheme* and which are set out in the *prospectus*, temporarily suspend *dealings* in *units* of the *scheme*, a *sub-fund* or a *class*.

...

(3A) The *authorised fund manager* must ensure that a notification of the suspension is made to *unitholders* of the *authorised fund* as soon as practicable after suspension commences.

(3B) The *authorised fund manager* and the *depository* must ensure that the suspension only continues for as long as it is justified having regard to the interests of the *unitholders*.

...

(4) The suspension of *dealings* in *units* must cease ~~within 28 days of its commencement or, if earlier,~~ as soon as (2) no longer applies.

(4A) The *authorised fund manager* and the *depository* must formally review the suspension at least every 28 days and inform the *FSA* of the results of this review and any change to the information provided in (3).

...

Suspension

8.6.4 G Under section 257 of the *Act* (Directions) the *FSA* may at its option extend the suspension of *dealings* in *units* beyond 28 days of the commencement of suspension. [deleted]

LISTING RULES (SPONSORS) (AMENDMENT) INSTRUMENT 2008

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the following sections of the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 rules);
 - (2) section 88(3) (Sponsors);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 101 (Listing rules: general provisions);
 - (5) section 157(1) (Guidance); and
 - (6) Schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

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

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Notes

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

Citation

- F. This instrument may be cited as the Listing Rules (Sponsors) (Amendment) Instrument 2008.

By order of the Board
4 December 2008

Annex A

Amendments to the Glossary of definitions

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

group

...

(4) (in *LR*):

- (a) (except in *LR* 6.1.19R, ~~*LR* 8.3.6R, *LR* 8.3.7G~~ and *LR* 8.7.8R(10)), an *issuer* and its *subsidiary undertakings* (if any); and
- (b) in *LR* 6.1.19R, ~~*LR* 8.3.6R, *LR* 8.3.7G~~ and *LR* 8.7.8R(10), as defined in section 421 of the *Act*.

sponsor service

a service relating to a matter referred to in *LR* 8.2 that a *sponsor* provides or is requested or appointed to provide and that is for the purpose of the *sponsor* complying with *LR* 8.3.1R or *LR* 8.4. This definition includes preparatory work that a *sponsor* may undertake before a decision is taken as to whether or not it will act as *sponsor* for a *company* or in relation to a transaction. But nothing in this definition is to be taken as requiring a *sponsor* to agree to act as a *sponsor* for a *company* or in relation to a transaction.

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

For the convenience of readers the whole of LR 8 is reproduced in this Annex.

8.1 Application

Sponsors and applicants

8.1.1 R A *sponsor* and a *person* which is applying for approval as a *sponsor* must comply with:

(1) LR 8.3 to LR 8.4; and

(2) LR 8.6 to LR 8.7.

Listed companies and applicants

8.1.2 R A *company* with, or applying for, a *primary listing* of its *equity securities* must comply with LR 8.2 (When a sponsor must be appointed or its ~~assistance~~ guidance obtained) and LR 8.5 (Responsibilities of listed companies).

8.2 When a sponsor must be appointed or its ~~assistance~~ guidance obtained

When a sponsor must be appointed

8.2.1 R A *company* with, or applying for, a *primary listing* of its *equity securities* must appoint a *sponsor* on each occasion that it:

(1) makes an application for *admission* of *equity securities* which:

(a) requires the production of a *prospectus* or *equivalent document*; or

(b) is accompanied by a certificate of approval from another competent authority; or

(c) is accompanied by a summary document as required by PR 1.2.3R(8); or

(d) requires the production of *listing particulars* and is referred to in LR 15.3.3R or LR 16.3.4R; or

- (2) is required to produce a *class 1 circular*; or
- (3) is producing a *circular* that proposes a reconstruction or a refinancing which does not constitute a *class 1 transaction*; or
- (4) is producing a *circular* for the proposed purchase of own *shares*:
 - (a) which does not constitute a *class 1 circular*; and
 - (b) is required by *LR 13.7.1R(2)* to include a working capital statement; or
- (5) is required to do so by the *FSA* because it appears to the *FSA* that there is, or there may be, a breach of the *listing rules* or the *disclosure rules* ~~and~~ and *transparency rules* by the *listed company*.

~~When~~ Other transactions where a listed company must obtain a sponsor's assistance guidance

- 8.2.2 R If a *listed company* is proposing to enter into a transaction which due to its size or nature could amount to a *class 1 transaction* or a *reverse takeover* it must obtain the guidance of a *sponsor* to assess the application of the *listing rules* and *disclosure rules* and *transparency rules* ~~LR 10~~.
- 8.2.3 R If a *listed company* is proposing to enter into a transaction which is, or may be, a *related party transaction* it must obtain the guidance of a *sponsor* in order to assess the application of the *listing rules* and *disclosure rules* and *transparency rules* ~~LR 11~~.

8.3 Role of a sponsor: general

Responsibilities of a sponsor

- 8.3.1 R ~~Where a *sponsor* has been appointed under *LR 8.2* by a *listed company* or an *applicant*, a *A sponsor* must in relation to a *sponsor service*:

 - (1) referred to in *LR 8.2.1R*, provide assurance to the *FSA* when required that the responsibilities of the *listed company* or *applicant* under the *listing rules* have been met; and
 - (2) referred to in *LR 8.2.1R*, *LR 8.2.2R* or *LR 8.2.3R*, guide the *listed company* or *applicant* in understanding and meeting its responsibilities under the *listing rules* and *disclosure rules* ~~and~~ and *transparency rules*.~~
- 8.3.2 G ~~A~~ The *sponsor* will be the main point of contact with the *FSA* for any matter referred to in *LR 8.2* ~~where the *sponsor* has been appointed by a *listed company* or *applicant*~~. The *FSA* expects to discuss all issues relating to a transaction and any draft or final document directly with the *sponsor*. However, in appropriate circumstances, the *FSA* will communicate directly with the *listed company* or

applicant.

Principles for sponsors: due care and skill

- 8.3.3 R A *sponsor* must in relation to a *sponsor service* provide:
- (1) ~~any service as set out in LR 8.4; or~~
 - (2) ~~any assurance, guidance or advice to a *listed company* or *applicant* in relation to the application or interpretation of the *listing rules* and *disclosure rules* and *transparency rules*;~~
- act with due care and skill.

Principles for sponsors: duty regarding directors of listed companies

- 8.3.4 R Where, in relation to a *sponsor service*, a *sponsor* gives any guidance or advice to a *listed company* or *applicant* ~~in relation to~~ on the application or interpretation of the *listing rules* or *disclosure rules* ~~and~~ and *transparency rules*, the *sponsor* must take reasonable steps to satisfy itself that the *director* or *directors* of the *listed company* understand ~~the nature and extent of~~ their responsibilities and obligations under the *listing rules* and *disclosure rules* ~~and~~ and *transparency rules*.

Principles for sponsors: relations with the FSA

- 8.3.5 R A *sponsor* must at all times (whether in relation to a *sponsor service* or otherwise):
- (1) deal with the *FSA* in an open and co-operative way; and
 - (2) deal with all enquiries raised by the *FSA* promptly; and
 - (3) ~~disclose to the *FSA* in a timely manner any material information relating to the *sponsor* or to a *listed company* or *applicant* of which it has knowledge which addresses non-compliance with the *listing rules* or *disclosure rules* and *transparency rules*. [deleted]~~
- 8.3.5A R A *sponsor* must in relation to a *sponsor service* disclose to the *FSA* in a timely manner any material information relating to the *sponsor* or to a *listed company* or *applicant* of which it has knowledge which concerns non-compliance with the *listing rules* or *disclosure rules* and *transparency rules*.

Principles for sponsors: independence

- 8.3.6 R (1) ~~A *sponsor* must be independent of the *listed company* or *applicant* where a *sponsor* provides any service, assurance, guidance or advice and in any event must not act if the *sponsor* or another *company* in the *sponsor's* group has:~~
- (a) ~~an interest in, or a holding that is referenced to, 30% or more of the equity shares of the *listed company* or *applicant* or any other~~

~~company in that company's group; or~~

- ~~(b) a significant interest in the debt securities of a listed company or applicant or any other company in that company's group; or~~
 - ~~(c) a business relationship with, or financial interest in the listed company or applicant or any other company in the listed company's group that would give the sponsor or the sponsor's group a material interest in the outcome of the transaction. [deleted]~~
- (2) Any interest that arises as a result of the sponsor's discretionary client holdings is not to be included in the determination of the threshold set out in LR 8.3.6R(1)(a). [deleted]
 - (3) A sponsor will not be independent of a listed company or applicant if a director, partner or employee of the sponsor or another company in the sponsor's group:
 - (a) is involved in the provision of sponsor services; and
 - (b) has a material interest in the listed company or applicant or any other company in that company's group. [deleted]

- 8.3.7 G (1) ~~A sponsor and the sponsor's group should have a sufficient degree of independence from the listed company or applicant and from the transaction so that the role of the sponsor can be discharged in a way that will not:~~
- ~~(a) affect the outcome of the transaction; or~~
 - ~~(b) affect the nature of the advice given to the listed company or applicant; or~~
 - ~~(c) be perceived to have affected either the outcome of the transaction or the nature of the advice given to the listed company or applicant. [deleted]~~
- (2) In cases where a company in, or an employee of, the sponsor's group has an interest or a relationship that may be perceived to cause a conflict it may be possible to demonstrate to the FSA that adequate separation exists in respect of the transaction. [deleted]

Principles for sponsors: identifying and managing conflicts

- 8.3.7A G The purpose of LR 8.3.7BR to LR 8.3.12G is to ensure that conflicts of interest do not adversely affect:
- (1) the ability of a sponsor to perform its functions properly under this chapter; or
 - (2) market confidence in sponsors.

- 8.3.7B R A sponsor must take all reasonable steps to identify conflicts of interest that could adversely affect its ability to perform its functions properly under this chapter.
- 8.3.8 G Conflicts to be identified include circumstances that could create a perception in the market that a sponsor may not be able to perform its functions properly.
- 8.3.9 R A sponsor must take all reasonable steps to put in place and maintain effective organisational and administrative arrangements that ensure conflicts of interest do not adversely affect its ability to perform its functions properly under this chapter.
- 8.3.10 G Disclosure of a conflict of interest will not usually be considered to be an effective organisational or administrative arrangement for the purpose of LR 8.3.9R.
- 8.3.11 R If, in relation to a transaction, a sponsor is not reasonably satisfied that its organisational and administrative arrangements will ensure that a conflict of interest will not adversely affect its ability to perform its functions properly under this chapter, it must decline to provide sponsor services on the transaction.
- 8.3.12 G LR 8.3.11R recognises that there will be some conflicts of interest that cannot be effectively managed. Providing sponsor services in those cases could adversely affect both a sponsor's ability to perform its functions and market confidence in the sponsor regime. If in doubt about whether a conflict can be effectively managed a sponsor should discuss the issue with the FSA before it decides if it can provide a sponsor service.

Principles for sponsors: acting for another sponsor

- 8.3.13 G The requirements in this section apply to a sponsor that acts for another sponsor. The delegating sponsor is not relieved of its obligations under this section or elsewhere in LR 8.

[Note: See LR 8.7.16R to LR 8.7.18R which deal with delegation of functions.]

Principles for sponsors: joint sponsors

- 8.3.14 R If a listed company or applicant appoints more than one sponsor to provide sponsor services in relation to a transaction then:
- (1) the appointment does not relieve either of the appointed sponsors of their obligations under LR 8; and
 - (2) the sponsors are each responsible for complying with the obligations under this section and elsewhere in LR 8 in relation to the transaction.

8.4 Role of a sponsor: transactions

Application for admission: new applicants

- 8.4.1 R ~~LR 8.4.2 R to LR 8.4.6R~~ LR 8.4.4G apply in relation to an application for admission of equity securities if an applicant does not have equity securities already listed and:
- (1) the production of a *prospectus* or *equivalent document* is required; or
 - (2) the application is accompanied by a certificate of approval from another competent authority; or
 - (3) the application is accompanied by a summary document as required by *PR 1.2.3R(8)*.
- 8.4.2 R A *sponsor* must not submit to the *FSA* an application on behalf of an *applicant*, in accordance with *LR 3*, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:
- (1) the *applicant* has satisfied all requirements of the *listing rules* relevant to an application for *admission to listing*;
 - (2) the *applicant* has satisfied all applicable requirements set out in the *prospectus rules* unless the *home Member State* of the *applicant* is not, or will not be, the *United Kingdom*;
 - (3) the *directors* of the *applicant* have established procedures which enable the *applicant* to comply with the *listing rules* and the *disclosure rules* ~~and~~ and transparency rules on an ongoing basis;
 - (4) the *directors* of the *applicant* have established procedures which provide a reasonable basis for them to make proper judgments on an ongoing basis as to the financial position and prospects of the *applicant* and its *group*; and
 - (5) the *directors* of the *applicant* have a reasonable basis on which to make the working capital statement required by *LR 6.1.16R*.

New applicants: procedure

- 8.4.3 R A *sponsor* must:
- (1) submit a completed Sponsor's Declaration on an Application for Listing to the ~~FSA~~ FSA either:
 - (a) on the day the *FSA* is to consider the application for approval of the *prospectus* and prior to the time the *prospectus* is approved; or

- (b) at a time agreed with the *FSA*, if the *FSA* is not approving the *prospectus* or if it is determining whether a document is an *equivalent document*;
- (2) submit a completed a Shareholder Statement or a Pricing Statement, as applicable, to the *FSA* by 9 a.m. on the day the *FSA* is to consider the application;
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering:
 - (a) the application for *listing*; and
 - (b) whether the *admission* of the *equity shares* would be detrimental to investors' interests;

have been disclosed with sufficient prominence in the *prospectus* or *equivalent document* or otherwise in writing to the *FSA*; and

- (4) submit a letter to the *FSA* setting out how the *applicant* satisfies the criteria in *LR 2* (Requirements for listing - all securities), ~~and~~ *LR 6* (Additional requirements for listing for equity securities) and, if applicable, *LR 15* or *LR 16*, no later than when the first draft of the *prospectus* or *listing particulars* is submitted (or, if the *FSA* is not approving a *prospectus* or if it is determining whether a document is an *equivalent document*, at a time to be agreed with the *FSA*).

[**Note:** the Sponsor's Declaration on an Application for Listing, the Shareholder Statement and the Pricing Statement forms can be found on the UKLA section of the *FSA*'s website.]

- 8.4.4 G Depending on the circumstances of the case, a *sponsor* providing services to an *applicant* on an application for *admission to listing* may have to confirm in writing to the *FSA* that the board of the *applicant* has allotted the *equity securities*.

[**Note:** see *LR 3.3.4R*]

~~New applicants: marketing~~

- 8.4.5 R ~~A *sponsor* must:~~
- (1) ~~ensure that no *equity shares* are placed with *connected clients* of the *sponsor* or of any securities house or other intermediary assisting with the offer, unless placed with a market maker or fund manager for the purpose of its business as such; [deleted]~~

- (2) ~~ensure that the results of any marketing, including the basis of allotment where applicable, are notified to a RIS before admission is expected to become effective; and [deleted]~~
- (3) ~~ensure that if, after an offer for sale, offer for subscription, placing or intermediaries offer, any of the listed company's advisers or any intermediary becomes interested in 3% or more of any class of equity shares being marketed (calculated exclusive of treasury shares) the interest is notified to a RIS before admission is expected to become effective. [deleted]~~

- 8.4.6 R (1) For the purposes of *LR 8.4.5R(3)* an adviser or intermediary:
- (a) ~~will usually be regarded as having an interest if any market maker in the group of companies to which the adviser or intermediary belongs holds any equity shares of the applicant; and~~
 - (b) ~~will not have an interest if the holding of the market maker arises solely from holdings of equity shares held on behalf of clients. [deleted]~~
- (2) ~~In assessing the percentage size of the interest, the equity shares being marketed are to be treated as having already been issued. [deleted]~~

Application for admission: further issues

- 8.4.7 R *LR 8.4.8R to LR 8.4.10G* apply in relation to an application for admission of equity securities of an applicant that has equity securities already listed.
- 8.4.8 R A sponsor must not submit to the FSA an application on behalf of an applicant, in accordance with *LR 3* (Listing applications), unless it has come to a reasonable opinion, after having made due and careful enquiry, that:
- (1) the applicant has satisfied all requirements of the listing rules relevant to an application for admission to listing;
 - (2) the applicant has satisfied all applicable requirements set out in the prospectus rules unless the home Member State of the applicant is not, or will not be, the United Kingdom; and
 - (3) the directors of the applicant have a reasonable basis on which to make the working capital statement required by *LR 6.1.16R* or a qualified working capital statement in accordance with *LR 6.1.17G* (as the case may be).

Further issues: procedure

- 8.4.9 R A sponsor must:
- (1) submit a completed Sponsor's Declaration on an Application for Listing

to the *FSA* either:

- (a) on the day the *FSA* is to consider the application for approval of the *prospectus* and prior to the time the *prospectus* is approved; or
 - (b) at a time agreed with the *FSA* if the *FSA* is not approving the *prospectus* or if it is determining whether a document is an *equivalent document*;
- (2) submit a completed Shareholder Statement or a Pricing Statement, as applicable, to the *FSA* by 9 a.m. on the day the *FSA* is to consider the application; and
 - (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering the application for *listing* have been disclosed with sufficient prominence in the *prospectus* or *equivalent document* or otherwise in writing to the *FSA*.

[**Note:** The Sponsor's Declaration on an Application for Listing, the Shareholder Statement and the Pricing Statement forms can be found on the UKLA section of the *FSA*'s website.]

- 8.4.10 G Depending on the circumstances of the case, a *sponsor* providing services to an *applicant* on an application for *admission to listing* may have to confirm in writing to the *FSA* the number of securities to be allotted or admitted.

[**Note:** see *LR* 3.3]

Class 1 circulars, refinancing and purchase of own equity shares

- 8.4.11 R *LR* 8.4.12R to *LR* 8.4.13R apply in relation to transactions involving a *listed company* of *equity shares* with a *primary listing* that:
- (1) is required to produce a *class 1 circular*;
 - (2) is producing a *circular* that proposes a reconstruction or a re-financing which does not constitute a *class 1 transaction*; or
 - (3) is producing a *circular* for the proposed purchase of own *shares*;
 - (a) which does not constitute a *class 1 circular*; and
 - (b) is required by *LR* 13.7.1R(2) to include a working capital statement.
- 8.4.12 R A *sponsor* must not submit to the *FSA*, on behalf of a *listed company*, an application for approval of a *circular* regarding a transaction set out in *LR* 8.4.11R, unless the *sponsor* has come to a reasonable opinion, after having made due and careful enquiry, that:
- (1) the *listed company* has satisfied all requirements of the *listing rules* relevant to the production of a *class 1 circular* or other *circular*;

- (2) the transaction will not have an adverse impact on the *listed company's* ability to comply with the *listing rules* or the *disclosure rules* ~~and~~ and *transparency rules*; and
- (3) the *directors* of the *listed company* have a reasonable basis on which to make the working capital statement required by *LR 9.5.12R*, *LR 13.4.1R* or *LR 13.7.1R*.

Circulars: procedure

8.4.13 R A *sponsor* acting on a transaction falling within *LR 8.4.11R* must:

- (1) submit a completed Sponsor's Declaration for the Production of a Circular to the *FSA* on the day the *circular* is to be approved by the *FSA* and prior to the time the *circular* is approved;
- (2) submit a completed Pricing Statement, if applicable, to the *FSA* by 9 a.m. on the day the *FSA* is to consider the application; and
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the *FSA* in considering the transaction have been disclosed with sufficient prominence in the documentation or otherwise in writing to the *FSA*.

[**Note:** The Sponsor's Declaration for the Production of a Circular and the Pricing Statement forms can be found on the UKLA section of the *FSA's* website.]

8.5 Responsibilities of listed companies

Notifications to FSA

8.5.1 R A *listed company* or *applicant* must ensure that the *FSA* is informed promptly of the name and contact details of a any *sponsor* appointed in accordance with the *listing rules* (either by the *listed company* or *applicant* or by the *sponsor* itself).

- 8.5.2 R
- (1) A *listed company* or *applicant* must notify the *FSA* in writing immediately of the resignation or dismissal of any *sponsor* that it had appointed.
 - (2) In the case of a dismissal, the reasons for the dismissal must be included in the notification.
 - (3) The notification must be copied to the *sponsor*.

Listed company appoints more than one sponsor

8.5.3 R Where a *listed company* or *applicant* appoints more than one *sponsor*, the

company must:

- (1) ensure that one of the *sponsors* that is appointed:
 - (a) takes primary responsibility for contact with the *FSA* in respect of the entire application or transaction; and
 - (b) ~~appoints a suitably experienced *employee*, whose name appears on the list described in LR 8.6.15 R to liaise with the *FSA*; and~~
- (2) inform the *FSA*, in writing, of the name and contact details of the *sponsor* taking responsibility under LR 8.5.3R(1)(a).

8.5.4 R ~~The appointment of more than one *sponsor* does not relieve any of the *sponsors* so appointed of their obligations under the *listing rules*. [deleted]~~

8.5.5 G ~~Where a *listed company* or *applicant* appoints more than one *sponsor* in relation to a transaction, the *FSA* will consider all *sponsors* so appointed as jointly responsible for compliance with the *listing rules*. [deleted]~~

8.6 Criteria for approval as a sponsor

List of sponsors

8.6.1 G The *FSA* will maintain a *list of sponsors* on its website.

Application for approval as a sponsor

8.6.2 R A *person* wanting to provide ~~services as a *sponsor*~~ services, and to be included on the *list of sponsors*, must apply to the *FSA* for approval as a *sponsor* by submitting the following to the Sponsor Supervision Team at the *FSA*'s address:

- (1) a completed Sponsor Firm Application Form; and
- (2) ~~completed Sponsor Employee Application Forms; and [deleted]~~
- (3) the application fee set out in FEES 3.

[**Note:** The Sponsor's Firm Application Form ~~and the Sponsor Employee Application Form~~ can be found on the UKLA section of the *FSA*'s website.]

8.6.3 R A *person* wanting to provide ~~services as a *sponsor*~~ services and be included on the *list of sponsors* must also submit:

- (1) all additional documents, explanations and information as required by the *FSA*; and
- (2) verification of any information in such a manner as the *FSA* may specify.

- 8.6.4 G When considering an application for approval as a *sponsor* the *FSA* may:
- (1) carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators;
 - (2) request that the applicant or its specified representative answer questions and explain any matter the *FSA* considers relevant to the application;
 - (3) take into account any information which it considers appropriate in relation to the application.
 - (4) [deleted]

[**Note:** The decision-making procedures that the *FSA* will follow when it considers whether to refuse an application for approval as a *sponsor* are set out in *DEPP*.]

Criteria for approval as a sponsor

- 8.6.5 R The *FSA* will approve a *person* as a *sponsor* only if it is satisfied that the *person* is:
- (1) is an authorised person or a member of a designated professional body;
 - (2) is competent to perform the services set out in LR 8.2, LR 8.3 and LR 8.4 sponsor services; and
 - (3) has adequate appropriate systems and controls in place to ensure that it can carry out its role as a sponsor in accordance with this chapter.

- 8.6.6 R A *sponsor* must comply, at all times, with the criteria set out in LR 8.6.5 R.

Competence of a sponsor

- 8.6.7 R A *sponsor person* will be competent to provide sponsor services ~~perform the services set out in LR 8.2, LR 8.3 and LR 8.4~~ if it has a broad range of relevant experience and expertise in providing advice to *listed companies* and on the *listing rules*.

- 8.6.8 G ~~In assessing the competence of a sponsor the FSA will have regard to:~~
- (1) ~~the number of suitably experienced employees retained by the sponsor, taking into account the size, number and nature of transactions undertaken and anticipated by the sponsor; [deleted]~~
 - (2) ~~the experience of those employees who are held out to the FSA as being suitably experienced employees; and [deleted]~~
 - (3) ~~the seniority of those suitably experienced employees. [deleted]~~

- 8.6.9 G (1) ~~An employee will generally be accepted as suitably experienced if he or~~

~~she has recent experience providing, in a competent manner, advice and services and fulfilling all responsibilities of a *sponsor* in relation to a transaction when a *sponsor* must be appointed. [deleted]~~

- (2) ~~The *FSA* may consider, in addition to the experience described in paragraph (1), an *employee's* recent experience, acting in a senior capacity, providing advice and services in a competent manner on:~~
- ~~(a) transactions where a *prospectus* is required under the *Prospectus Directive* or an *equivalent document* is produced; and~~
 - ~~(b) transactions which are similar in terms of size and complexity to those transactions set out in LR 8.2.1R. [deleted]~~
- (3) ~~Recent experience would normally be demonstrated if an *employee* has provided advice or services:~~
- ~~(a) at least three times in the preceding 36 months; and~~
 - ~~(b) at least once in the preceding 12 months. [deleted]~~

- 8.6.9A G In assessing whether a *person* is competent to provide, or to continue to provide, *sponsor services*, the *FSA* will generally have regard amongst other things to the *person's*:
- (1) prior relevant experience of providing *sponsor services*;
 - (2) skills, knowledge and expertise necessary for the proper performance of *sponsor services*; and
 - (3) prior corporate finance experience.
- 8.6.9B G In assessing whether a *person* is competent to provide, or to continue to provide, *sponsor services*, the *FSA* may also take into account, where relevant, the quality of any guidance or advice on the *listing rules* or *disclosure rules* and *transparency rules* the *person* has given in circumstances other than in providing *sponsor services*.
- 8.6.10 R ~~A *sponsor* must have a sufficient number of suitably experienced *employees* to provide the services described in LR 8.2, LR 8.3 and LR 8.4 to a competent standard at all times. [deleted]~~
- 8.6.11 G ~~The fewer the number of suitably experienced *employees* that a *sponsor* has, the greater the need that those *employees* do not rely on the same transactions to demonstrate their experience in advising on the *listing rules*, unless each of those *employees* has extensive experience in providing advice on the *listing rules*. [deleted]~~

Systems and controls: general

- 8.6.12 G A *sponsor* will generally be regarded as having adequate appropriate systems and controls if there are:

- (1) clear and effective reporting lines in place (including clear and effective management responsibilities);
- (2) effective systems and controls for the ~~adequate~~ appropriate supervision of ~~employees providing sponsor services performing any of the services set out in LR 8.2, LR 8.3 and LR 8.4;~~
- (3) effective systems and controls to ensure its compliance with all applicable *listing rules* when performing *sponsor services* ~~any of the services set out in LR 8.2, LR 8.3 or LR 8.4;~~
- (4) ~~effective systems and controls for identifying and managing conflicts of interest; and~~ [deleted]
- (5) effective arrangements for ~~making~~ creating, and retaining, for 6 years, adequate records of all matters relating to the provision of ~~any services~~ *sponsor services* to a *listed company* or *applicant*;
- (6) effective systems and controls to ensure that it has appropriate staffing arrangements for the performance of *sponsor services* with due care and skill; and
- (7) effective systems and controls to ensure that employees performing *sponsor services* receive appropriate guidance and training for the performance of those services with due care and skill.

8.6.13 G The nature and extent of the systems and controls which a *sponsor* will need to maintain will depend upon a variety of factors including:

- (1) the nature, scale and complexity of its business;
- (2) the diversity of its operations;
- (3) the volume and size of the transactions it undertakes; ~~and~~
- (4) the volume and size of the transactions it anticipates undertaking in the following year; ~~and~~
- (5) the degree of risk associated with the transactions it undertakes.

Systems and controls: conflicts of interest

8.6.13A G A *sponsor* will generally be regarded as having appropriate systems and controls if it has in place effective policies and procedures:

- (1) to ensure that decisions taken on managing conflicts of interest are taken by appropriately senior staff and on a timely basis;
- (2) to monitor whether arrangements put in place to manage conflicts are effective;

- (3) to ensure that individuals within the *sponsor* are appropriately trained to enable them to identify, escalate and manage conflicts of interest; and
- (4) to ensure that appropriate records are kept of decisions relating to identification and management of conflicts and the basis upon which it has reached those decisions.

8.6.13B G The policies and procedures referred to in LR 8.6.13AG are distinct from the actual organisational and administrative arrangements that a *sponsor* is required to put in place and maintain under LR 8.3.9R to manage specific conflicts.

8.6.14 G ~~To enable it to comply with its obligation to maintain appropriate systems and controls, a *sponsor* should carry out an annual review of them. [deleted]~~

~~Systems and controls: employees~~

8.6.15 R ~~A *sponsor* must keep an up to date list of all suitably experienced *employees* on whom it relies to demonstrate that it satisfies the criteria set out in LR 8.6.5R. [deleted]~~

8.6.16 G ~~A *sponsor* will generally be regarded as having effective systems and controls for the adequate supervision of *employees* if:~~

- (1) ~~All *employees* involved in the provision of any of the services described in LR 8.2, LR 8.3 and LR 8.4 are adequately supervised by a suitably experienced *employee*; [deleted]~~
- (2) ~~all *employees* providing any of the services described in LR 8.2, LR 8.3 and LR 8.4 do not act beyond their proper authority; [deleted]~~
- (3) ~~for each transaction which requires a *sponsor* as set out in LR 8.2, LR 8.3 and LR 8.4, an *employee*, whose name is on the list required by LR 8.6.15R:~~
 - (a) ~~is appointed by the *sponsor* to liaise with the FSA;~~
 - (b) ~~Reviews all the assurances provided to the FSA; and~~
 - (c) ~~signs the Confirmation of Independence, the Sponsor's Declaration and any Listing Application forms that may be required; and [deleted]~~
- (4) ~~for each transaction which requires a *sponsor* as set out in LR 8.2, *employees* who are sufficiently knowledgeable about the transaction are available to answer queries from the FSA on any *business day* between the hours of 8 a.m. and 6 p.m. [deleted]~~

Regular review

8.6.17 R A *sponsor* must carry out a regular review to ensure that:

- (1) it continues to be competent to provide *sponsor services*; and
- (2) it has appropriate systems and controls in place to ensure that it can continue to carry out its role as a *sponsor* in accordance with this chapter.

8.6.18 R A *sponsor* must create, and retain for 6 years, adequate records to demonstrate that it has carried out the regular reviews referred to in LR 8.6.17R setting out the basis upon which it has reached any conclusions about whether it continues to meet the criteria in that rule.

Contact persons

8.6.19 R For each transaction for which it provides *sponsor services*, a *sponsor* must:

- (1) notify the *FSA* as soon as practicable of the name and contact details of the main contact *person* or *persons* in the *sponsor* for that transaction; and
- (2) ensure that the contact *person* or *persons*:
 - (a) have sufficient knowledge about the *listed company* or *applicant* and the proposed transaction to be able to answer queries from the *FSA* about it; and
 - (b) are available to answer queries from the *FSA* on any business day between 8am and 6pm.

8.7 Supervision of sponsors

8.7.1 G The *FSA* expects to have an open, co-operative and constructive relationship with a *sponsor* to enable it to have a broad picture of the *sponsor's* activities and its ability to satisfy the criteria for approval as a *sponsor* as set out in LR 8.6.5R.

Requirement to provide information

- 8.7.1A R
- (1) The *FSA* may by notice in writing given to a *sponsor*, or a *person* applying for approval as a *sponsor*, require it to provide specified documents or specified information to the *FSA*.
 - (2) The *sponsor*, or the *person* applying for approval as a *sponsor*, must as soon as practicable provide to the *FSA* any documents or information that it has been required to provide under (1).
 - (3) This rule applies only to documents or information reasonably required by the *FSA* in connection with the performance of its functions in relation to a *sponsor*, a *person* applying for approval as a *sponsor* or a *company* that has appointed a *sponsor*.

Supervisory tools

- 8.7.2 G The *FSA* uses a variety of tools to monitor whether a *sponsor*:
- (1) continues to satisfy the criteria for approval as a *sponsor* as set out in *LR* 8.6.5R; and
 - (2) remains in compliance with all applicable *listing rules*.
- 8.7.3 G *FSA* staff, after notifying the *sponsor*, may make supervisory visits to a *sponsor* on a periodic and an ad hoc basis.
- 8.7.4 G The *FSA* will give reasonable notice to a *sponsor* of requests for meetings or requests for access to a *sponsor's* documents and records.

Requests from other regulators

- 8.7.5 G The *FSA*, on behalf of other regulators, may request information from a *sponsor* or pass information on to other regulators to enable such regulators to discharge their functions.

Fees

- 8.7.6 R A *sponsor* must pay the annual fee set out in *FEES* 4 in order to remain on the *list of sponsors*.

Annual notifications

- 8.7.7 R A *sponsor* must provide to the *FSA* on an annual basis:
- (1) written confirmation that it continues to satisfy the criteria for approval as a *sponsor* as set out in *LR* 8.6.5R; and
 - (1A) for each of the criteria in that rule, details of the basis upon which it considers that it meets the criteria.
 - (2) ~~an up to date list of employees that are suitably experienced on whom the sponsor can rely to demonstrate that it satisfies the criteria set out in LR 8.6.5 R; [deleted]~~
 - (3) ~~for each employee whose name is on the list maintained by the sponsor under LR 8.6.15 R, details of the transactions on which the employee has acted in the previous 12 months; and [deleted]~~
 - (4) ~~a list of transactions on which the sponsor was appointed as agent under LR 8.7.16 R, if applicable. [deleted]~~

General notifications

- 8.7.8 R A *sponsor* must notify the *FSA* in writing as soon as possible if:

- (1) the *sponsor* ceases to satisfy the criteria for approval as a *sponsor* set out in *LR 8.6.5R*; or
- (2) the *sponsor*, or any of its *employees* ~~whose names are on the list maintained by the *sponsor* under *LR 8.6.15R*~~ who provide *sponsor services*, are:
 - (a) convicted of any offence involving fraud, theft or other dishonesty; or
 - (b) the subject of a bankruptcy proceeding, a receiving order or an administration order; or
- (3) any of its *employees* ~~whose names are on the list maintained by the *sponsor* under *LR 8.6.15R*~~ who provide *sponsor services* are disqualified by a court from acting as a *director* of a *company* or from acting in a management capacity or conducting the affairs of any *company*; or
- (4) the *sponsor*, or any of its *employees* ~~whose names are on the list maintained by the *sponsor* under *LR 8.6.15R*~~ who provide *sponsor services*, are subject to any public criticism, regulatory intervention or disciplinary action:
 - (a) by the *FSA*; or
 - (b) by any *designated professional body*; or
 - (c) by any body that is comparable to the *FSA* or a *designated professional body*; or
 - (d) under any comparable legislation in any jurisdiction outside the *United Kingdom*; or
- (5) the *sponsor* resigns or is dismissed by a *listed company* or *applicant*, giving details of any relevant facts or circumstances;
- (6) the *sponsor* changes its name; or
- (7) ~~the list of *employees* that are suitably experienced to enable the *sponsor* to demonstrate that it satisfies the criteria set out in *LR 8.6.5R* is amended, either because an *employee* is added to or is removed from the list; or~~ [deleted]
- (8) a *listed company* or *applicant* denies the *sponsor* access to documents or information that have been the subject of a reasonable request by the *sponsor*; or
- (9) a review carried out under ~~*LR 8.6.14G*~~ *8.6.17R* reveals any material deficiencies in the *sponsor's* systems and controls; or

- (10) there is a change of control of the *sponsor*, or the *sponsor's group* carries out any restructuring, which results in a re-organisation of the *directors*, partners or *employees* involved in providing services as a *sponsor*.

8.7.9 G General notifications may be made in the first instance by telephone, but must be confirmed promptly in writing.

8.7.10 G Written notifications should be sent to the Sponsor Supervision Team at the *FSA's* address.

~~Transaction notification rules: appointment of FSA liaison~~

8.7.11 R ~~Each time a *sponsor* is appointed to act for a *listed company* or *applicant* as required by the *listing rules* it must inform the *FSA* as soon as possible of the name of the suitably experienced *employee*, whose name appears on the list described in *LR 8.6.15R*, who has been appointed by the *sponsor* to liaise with the *FSA*. [deleted]~~

~~Transaction notification rules: sponsor independence conflicts declaration~~

8.7.12 R (1) Each time a *sponsor* is appointed to act as a *sponsor* as required by the *listing rules* it must complete a ~~Confirmation of Independence Conflicts Declaration~~.

(2) The completed ~~Confirmation of Independence Conflicts Declaration~~ must be submitted to the *FSA* at the same time as any documents in connection with a transaction are first submitted to the *FSA*.

[~~Note: The Confirmation of Independence Conflicts Declaration form can be found on the UKLA section of the *FSA's* website.~~]

8.7.13 R If, after submitting a ~~Confirmation of Independence Conflicts Declaration~~ but prior to the *day* of approval of the *prospectus*, *listing particulars* or *circular*, a *sponsor* becomes aware that it is ~~not independent of the *listed company* or *applicant* or the transaction~~ no longer able to comply with *LR 8.3.9R* or *LR 8.3.11R*, it must notify the *FSA* immediately. ~~The details~~ Details of the lack of independence must be confirmed promptly to the *FSA* in writing.

8.7.14 R On the day of approval of the *prospectus*, *listing particulars* or *circular*:

(1) a written confirmation that there has been no material change to the ~~Confirmation of Independence Conflicts Declaration~~; or

(2) an updated ~~Confirmation of Independence Conflicts Declaration~~ reflecting any and all changes;

must be submitted to the *FSA*.

8.7.15 G The *FSA* will notify the *sponsor* of any concerns it has in relation to the *sponsor's* independence as soon as possible following receipt of the

Confirmation of Independence Conflicts Declaration as set out in *LR 8.7.12R* or *LR 8.7.14R* or other notification regarding the *sponsor's* independence.

Appointment of an agent Performance of functions on behalf of a sponsor

- 8.7.16 R A *sponsor* ~~may~~ must not delegate any of its functions as such, or permit another person to perform those functions, unless that ~~except to another person is~~ is on the list of sponsors.
- 8.7.17 R (1) A *sponsor* that delegates any of its functions ~~under *LR 8.7.16R* or~~ permits another *sponsor* to perform its functions is not relieved of its obligations under the *listing rules*.
- (2) A *sponsor* that performs any function on behalf of ~~has been appointed as an agent by another *sponsor* under *LR 8.7.16R*~~ must comply with the requirements set out in *LR 8.3*.
- 8.7.18 R A *sponsor* must notify the *FSA* in writing as soon as practicable before another *sponsor* performs functions on its behalf of:
- (1) the identity of ~~any delegate appointed under *LR 8.7.16R*~~ that *sponsor*; and
- (2) a detailed description of the ~~scope of any delegation made under *LR 8.7.16R*~~ functions that the *sponsor* is to perform on its behalf.

Discipline of sponsors

- 8.7.19 R If the *FSA* considers that a *sponsor* has breached any provision of the *listing rules* and considers it appropriate to impose a sanction it will publish a statement censuring the *sponsor*.
- 8.7.20 G *EG* sets out the *FSA's* policy on when and how it will use its disciplinary powers, including in relation to a *sponsor*. This includes, at *EG 18*, its approach to cancellation of a *sponsor's* approval on the *FSA's* own initiative.

Cancellation of a sponsor's approval at the sponsor's request

- 8.7.21 G A *sponsor* that intends to request the *FSA* to cancel its approval as a *sponsor* will need to comply with *LR 8.7.22R*.
- 8.7.22 R A request by a *sponsor* for its approval as a *sponsor* to be cancelled must be in writing and must include:
- (1) the *sponsor's* name;
- (2) a clear explanation of the background and reasons for the request;
- (3) the date on which the *sponsor* requests the cancellation to take effect;
- (4) a signed confirmation that the *sponsor* will not participate in any services described in *LR 8.2* as of the date the request is submitted to the

FSA; and

- (5) the name and contact details of the *person* at the *sponsor* with whom the *FSA* should liaise with in relation to the request.

8.7.23 G A *sponsor* may withdraw its request at any time before the cancellation takes effect. The withdrawal request should initially be made by telephone and then confirmed in writing as soon as possible, with an explanation of the reasons for the withdrawal.

8.7.24 G (1) [deleted]

(2) [deleted]

...

16.3.5 G ~~LR 8.4.5R(3) is modified to require the notification of interests of 10% or more for an *open ended investment company*.~~ [deleted]

LR Appendix 1:

- group*
- (1) except in *LR 6.1.19R*, ~~*LR 8.3.6R*~~, ~~*LR 8.3.7G*~~ and *LR 8.7.8R(10)*, an *issuer* and its *subsidiary undertakings* (if any); and
- (2) in *LR 6.1.19R*, ~~*LR 8.3.6R*~~, ~~*LR 8.3.7G*~~ and *LR 8.7.8R(10)*, as defined in section 421 of the *Act*.

sponsor service a service relating to a matter referred to in *LR 8.2* that a *sponsor* provides or is requested or appointed to provide and that is for the purpose of the *sponsor* complying with *LR 8.3.1R* or *LR 8.4*. This definition includes preparatory work that a *sponsor* may undertake before a decision is taken as to whether or not it will act as *sponsor* for a *company* or in relation to a transaction. But nothing in this definition is to be taken as requiring a *sponsor* to agree to act as a *sponsor* for a *company* or in relation to a transaction.

**DISCLOSURE RULES AND TRANSPARENCY RULES SOURCEBOOK
(AMENDMENT) INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 rules);
 - (2) section 96A (Disclosure of information requirements);
 - (3) section 101 (Listing rules: general provisions);
 - (4) section 157(1) (Guidance); and
 - (5) Schedule 7 (The Authority as Competent Authority for Part VI).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 December 2008.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Disclosure Rules and Transparency Rules Sourcebook (Amendment) Instrument 2008.

By order of the Board
4 December 2008

Annex

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

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

(DTR 2.5.1R is unchanged and is included to show context.)

2.5 Delaying disclosure of inside information

Delaying disclosure

2.5.1 R An *issuer* may, under its own responsibility, delay the public disclosure of *inside information*, such as not to prejudice its legitimate interests provided that:

- (1) such omission would not be likely to mislead the public;
- (2) any *person* receiving the information owes the *issuer* a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; and
- (3) the *issuer* is able to ensure the confidentiality of that information. [**Note:** Article 6(2) and (3) *Market Abuse Directive*].

Legitimate interests and when delay will not mislead the public

...

2.5.5 G An *issuer* should not be obliged to disclose impending developments that could be jeopardised by premature disclosure. Whether or not an *issuer* has a legitimate interest which would be prejudiced by the disclosure of certain *inside information* is an assessment which must be made by the *issuer* in the first instance. However, the *FSA* considers that, other than in relation to impending developments or matters described in *DTR 2.5.3R* or *DTR 2.5.5AR*, there are unlikely to be other circumstances where delay would be justified.

2.5.5A R An *issuer* may have a legitimate interest to delay disclosing *inside information* concerning the provision of liquidity support by the Bank of England or by another central bank to it or to a member of the same group as the *issuer*.

**REGULATED COVERED BONDS SOURCEBOOK (AMENDMENT)
INSTRUMENT 2008**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Regulated Covered Bonds Regulations 2008 (SI 2008/346):
- (1) Regulation 8 (Applications for registration);
 - (2) Regulation 9 (Applications for admission to the register of issuers); and
 - (3) Regulation 18 (Notification requirements).

Commencement

- B. This instrument comes into force on 9 December 2008.

Amendments to the Handbook

- C. The Regulated Covered Bonds sourcebook (RCB) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Regulated Covered Bonds Sourcebook (Amendment) Instrument 2008.

By order of the Board
4 December 2008

Annex

Amendments to the Regulated Covered Bonds sourcebook (RCB)

Delete RCB 2 Annex 1D, RCB 3 Annex 1D, RCB 3 Annex 2D and RCB 3 Annex 3D and insert the following new RCB 2 Annex 1D, RCB 3 Annex 1D, RCB 3 Annex 2D and RCB 3 Annex 3D in their place. The inserted text is not underlined.

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.

'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 . References to specific provisions in this sourcebook are prefaced by 'RCB'.

'RCB Regulations' refers to 'The Regulated Covered Bonds Regulations 2008' and can be accessed at http://www.opsi.gov.uk/si/si2008/uksi_20080346_en_1

'Connected person' has the meaning given by RCB Regulation 5.

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 You are advised to read the RCB Regulations and the RCB sourcebook before completing this form.
- 3 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.
- 4 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 Series Issuance Notification form RCB 3 Annex 3D ;
 - where applicable, all relevant credit rating reports in relation to the covered bonds for which you are seeking registration; and
 - where available, offering circulars of the covered bonds for which you are seeking registration;
 - where applicable, copies of any internal reports regarding the covered bond (the two most recent reports). See section 5.1 of this form for further information;
 - where applicable, a copy of the most recent Internal Audit report covering any aspects of the covered bond programme, details on the frequency of such reviews and the date of the next scheduled review;
 - where applicable, the results of any stress testing and scenario analysis undertaken on the asset pool. See section 6.3 for further information
 - an organisational chart including the individuals that are involved in the management of the programme and a description of their role and responsibilities.
- 6 Use the TAB key to move to the next question and press SHIFT TAB to move to the previous question

Sending the form

Send your application 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 application form may also be submitted by post or by hand to the address below:

Covered Bonds Team
Capital Markets Sector
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 (£25,000).

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

1

Contact details

Applicant and owner details

1.1 Issuer: Name, address, contact name, email and telephone number

1.2 FSA reference number of the issuer

1.3 Owner: Name, address, contact name, email and telephone number

1.4 Credit rating(s) of issuer and name of the relevant credit rating agency

Third parties' details

1.5 Accountant: Name, address, contact name, email and telephone number

1.6 Lawyer: Name, address, contact name, email and telephone number

1.7 Bondholder representative: Name, address, contact name, email and telephone number

1.8 Hedge providers: Name, nature of transaction (indicating nature of transaction e.g. currency swap, interest rate swap), contact name, address, email and telephone number

1.9 Credit ratings of hedge providers (indicating nature of transaction e.g. currency swap provider, interest rate swap provider) and name of the relevant credit rating agency

1.10 Cash manager (if different from issuer): Name, address, contact name, email and telephone number

1.11 Credit rating(s) of cash manager (if different from issuer) and name of relevant credit rating agency

1.12 Account bank (if different from issuer): Name, address, contact name, email and telephone number

1.13 Credit ratings of account bank (if different from issuer) and name of relevant credit rating agency

1.14 Role, name, address, contact name, email and telephone number of any other relevant third parties

2

Issuer and owner eligibility

2.1 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

2.2 Does the owner have its registered office in the UK and its centre of main interest in the UK?

Yes No

2.3 Does the owner comply with the requirements set out in RCB Regulation 4?

Yes No

2.4 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.

2.5. 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 N/A

3

Covered bond or programme structure

3.1 Name of covered bond or programme

3.2 Asset percentage specified in the terms and conditions of the covered bonds or programme

3.3 Provide an outline of the structure of the covered bond or programme (including, if appropriate, a structural diagram).

3.4 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.

3.5 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.

3.6 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.

4

Asset pool details

4.1 Do the assets in the pool comply with RCB Regulations 2 and 3?

Yes No

4.2 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).

4.3 Set out in plain English which criteria you are currently using and are intending to use going forward for including loans in the cover 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.

4.4 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).

5

Management of the asset pool

5.1 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. Where applicable, provide the two most recent copies of any internal reports regarding the covered bond.

5.2 How do you monitor performance of the asset pool (e.g. arrears, indexed LTVs)?

5.3 What is the decision making process with regard to transferring assets into/from the pool?

5.4 What is the operational process for transferring assets into/from the pool?

5.5 How are your records updated to reflect changes to composition of the asset pool and who is informed of these changes?

5.6 Explain the internal arrangements in place to ensure the following:

- Accurate record of the assets is kept on your information systems
- Attributes of the loans correspond to the supporting documentation
- Accuracy of data being provided to the FSA in RCB 3 Annex 2 D

5.7 What role does your compliance function (or equivalent) have over the programme?

6

Asset Quality & Capability

- 6.1 Explain how you ensure that the assets in the pool are of high quality. This could include a summary of your lending and underwriting criteria.

- 6.2 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.

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.

You should consider at a minimum the guidance set out in RCB 2.3.6G to 2.3.12G when designing your stress testing.

In addition we would like an indication on:

- Why the stresses being applied are appropriate;
- Who reviews this information;
- How the results are being used to determine compliance with the capability requirement. In particular specify whether, based on the results of the stress testing, you determine a level of over-collateralisation that you consider adequate to meet the capability requirement.

- 6.3 Describe the tests (e.g. Asset Coverage Test, Interest Rate Shortfall Test), if any, that are performed on the asset pool under the contractual terms of the covered bonds or programme.

In addition, explain

- Who performs these tests;
- Who reviews the results;
- How is this information used;
- How would a breach of any of these tests be escalated;
- What are the contractual implications of a breach of any of these tests;
- What are the contractual implications of a breach not being addressed in a timely manner.

- 6.4 Describe the tests that would be performed on the asset pool under the contractual terms of the covered bonds or programme in the event of issuer default (e.g. amortisation test, yield shortfall test).

- 6.5 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.

6.6 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 in Q4.2 above
- Under the criteria set out in Q 4.3 above

6.7 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.

7

Owner systems and controls

- 7.1 In the event of the default of an issuer, 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.**

- 7.2 Explain what arrangements are in place as to priority of payment on the winding up of the owner (see RCB regulation 27).**

8

Legal and accountancy report, documentary evidence and other forms

8.1 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.

Yes No

8.2 If an asset pool is in place, confirm that you have submitted the asset pool notification form RCB 3 Annex 2 D with this application.

Yes No

8.3 If you have already issued 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.

Yes No

8.4 Where appropriate, confirm that you have submitted with this application:

a. The offering circular and any other relevant supporting documentary evidence

Yes No

b. Any relevant credit rating reports in relation to the covered bond or programme

Yes No

c. Copy of any internal reports regarding the covered bond reports (the two most recent reports)

Yes No

d. Copy of the most recent Internal Audit report covering any aspects of the covered bond programme and details on the frequency of such reviews and the date of the next scheduled review.

Yes No

e. An organisational chart including the individuals that are involved in the management of the programme and a description of their role and responsibilities

Yes No

f. Copy of 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.

Yes No

9

Fees

- 9.1 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.

10

Other relevant information

10.1 Provide any additional information that is relevant to your application.

11

Confirmation of compliance

- 11.1 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).

11.2 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 or 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 or 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 or programme

Signature (if the form is electronically submitted, the signature must be scanned)

Name of signatory

Title of signatory (signatory must be a Board Member)

Date

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. References to specific provisions in this sourcebook are prefaced by 'RCB'.

'RCB Regulations' refers to 'The Regulated Covered Bonds Regulations 2008' and can be accessed at 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. 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 Sector
The Financial Services Authority
25 The North Colonnade
Canary Wharf
LONDON
E14 5HS

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Confirmation of compliance

1.1 Confirmation

I confirm that I am satisfied that the arrangements relating to the regulated covered bonds comply with the requirements of the RCB Regulations and the RCB sourcebook.

I confirm that in accordance with RCB 3.2.2D the issuer (or if applicable owner) has obtained written advice or reports from suitable independent third party advisers on compliance with the RCB Regulations and RCB sourcebook.

I consent to this confirmation being published on the regulated covered bonds register on the FSA's public website.

Issuer name

Period covered by compliance

Name of regulated covered bond

Signature (if the form is electronically submitted, the signature must be scanned)

Name of signatory

Title of signatory (signatory must be a Board Member)

Date

Asset pool notification form

Purpose of this form

To send us information on the composition of the asset pool in compliance with RCB sourcebook 3.3.1D

Warning

Knowingly or recklessly giving us information which is false or misleading in a material particular, 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 An Issuer and if applicable an owner must send this form to the FSA within one month of the end of each quarter following the date of registration of the covered bond or programme.
- 2 This form may also be completed at the time of application for registration of an issuer or covered bond or programme where an issuer has an asset pool in place.
- 4 If you are unable to provide some of the information required in this form, please explain why.
- 5 Use the TAB key to move from to the next question and press SHIFT TAB to move to the previous question

Sending the form

Send your asset pool notification 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 asset pool notification may also be submitted by post or by hand to the address below.

Covered Bonds Team
Capital Markets Sector
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

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Asset pool composition

Name of issuer

Name of covered bond or programme

Name, job title and contact detail of the person validating this form

Date of form being submitted

Date of data extracted

Credit ratings of issuer and relevant counterparties (e.g. swap providers)

Asset Coverage Test (ACT) calculations (as published in the investor report)

For residential mortgages complete the following table

Currency of programme	
Size of programme	
Principal amount outstanding of covered bonds (in GBP and converted into the currency of the programme on the date of data extraction)	
Current nominal level of over collateralisationⁱ (in GBP)	
Current nominal level of over collateralisation (% of the aggregate outstanding balance of bonds)ⁱⁱ	
Credit support as derived from ACTⁱⁱⁱ (in GBP)	
Credit support as derived from ACT (% of the aggregate outstanding balance of bonds)^{iv}	
Number of loans in the asset pool	
Average loan size (in GBP)	
Weighted average seasoning (months)	
Weighted average non-indexed LTV (%)	
Weighted average indexed LTV (%)	
Mortgages above £500K (% of aggregate outstanding balance of the asset pool)	
Mortgages above 80% LTV (indexed) (% of aggregate outstanding balance of the asset pool)	
Mortgages above 80% LTV (non-indexed) (% of aggregate outstanding balance of the asset pool)	
Buy to let mortgages (% of aggregate outstanding balance of the asset pool)	
Self-certified mortgages (% of aggregate outstanding balance of the asset pool)	
Fast-track mortgages (% of aggregate outstanding balance of the asset pool)	
Mortgages over 1 month in arrears (% of aggregate outstanding balance of the asset pool)	
Interest-only mortgages (% of aggregate outstanding balance of the asset pool)	
Predominant geographical areas. Specify the proportion of the mortgages in these areas (% of the aggregate outstanding balance of the asset pool)	

For other types of loans or assets

Provide us with any relevant figures, breakdowns, or other information. In particular provide us with information which is relevant for the purpose of assessing the quality of the asset pool.

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- ⁱ Non Adjusted Aggregate Asset less the Aggregate Principal Amount Outstanding of Covered Bonds
 - ⁱⁱ [Non Adjusted Aggregate Asset less the Aggregate Principal Amount Outstanding of Covered Bonds] divided by Aggregate Principal Amount Outstanding of Covered Bonds
 - ⁱⁱⁱ Adjusted Aggregate Asset Amount less Aggregate Principal Amount Outstanding of Covered Bonds
 - ^{iv} [Adjusted Aggregate Asset Amount less Aggregate Principal Amount Outstanding of Covered Bonds] divided by Aggregate Principal Amount Outstanding of Covered Bonds.

RCB 3 Annex 3 D Series Issuance Notification form

Issuer	LLP	Programme Name	Bonds											
			Series number	Currency	Amount	ISIN number	Issue Date	Final maturity	Soft/Hard Bullet	Coupon	Listing Authority	Rating (Fitch)	Rating (Moody's)	Rating (S&P)

Send your series issuance notification 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 series issuance notification form may also be submitted by post or by hand to the address below:

Covered Bonds Team
 Capital Markets Sector
 The Financial Services Authority
 25 The North Colonnade
 Canary Wharf
 London
 E14 5HS