

Quarterly Consultation

No 33

Consultation Paper

CP21/27

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How to respond

The Financial Conduct Authority invites comments on this Consultation Paper.

Comments should reach us by 27 September for Chapter 2; 4 October for Chapter 3; 11 October for Chapters 4, 5, 6, 7, 8 and 9.

Comments may be sent by electronic submission using the form on the FCA's website at fca.org.uk/cp21-27-response-form.

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If you are responding in writing to several chapters, please send your comments to Meghan Beller in the Handbook Team, who will pass your responses on as appropriate.

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1 Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	An amendment to how legal expenses insurance is reported under our value measures reporting	3 weeks
3	To move application forms from the Handbook	1 month
4	To amend the Handbook to reflect branding changes made by the Money and Pensions Service	5 weeks
5	To amend references in the Handbook due to the cessation of LIBOR	5 weeks
6	Consequential changes to the Prospectus Regulation Rules and Listing Rules to align with changes to prospectus regime guidance	5 weeks
7	Alterations to the question and guidance notes (SUP 16 Annex 1B) for form FIN-A (Annual Report and Accounts form)	5 weeks
8	To amend the TD ESEF Regulation on corporate reporting in machine-readable electronic format, which relates to our rules in DTR 4.1, to allow issuers to use a wider range of taxonomies when preparing annual financial reports for the financial years starting on or after 1 January 2021 and 2022	5 weeks
9	Changes to PERG to take account of the increased scope of participants permitted to bid on the UK emission trading scheme auction platform – notably, certain third country firms	5 weeks

2 General insurance value measures reporting

Introduction

- 2.1** In September 2020, we published our policy statement (PS) on general insurance (GI) value measures reporting and publication (PS20/9). The value measures product governance rules came into force on 1 January 2021. The value measures reporting and publication rules took effect from 1 July 2021.
- 2.2** These rules are intended to help address poor product value in a range of ways. By publishing value measures data, we expect it will help to shine a light on product value and thus incentivise improvements. The reported data will also provide a valuable tool to help with the supervision of firms. In addition, under our product governance rules, firms must take value measures data into account when considering whether their products offer fair value to customers.
- 2.3** Following the publication of our PS, we have received feedback from firms about the product reporting categories for legal expenses insurance. Firms recommended that the data for legal expenses insurance be split between 'Before the Event' (BTE) legal expenses insurance and 'After the Event' (ATE) legal expenses insurance, noting that these types of insurance are significantly different in nature.
- 2.4** BTE legal expenses insurance is often sold as part of or alongside products (eg, home and motor) to cover for legal expenses. ATE legal expenses insurance is typically sold after an event has taken place or court case has begun to cover costs awarded against claimants or potentially other costs.

Summary of proposals

Reporting of legal expenses insurance

- 2.5** While both ATE and BTE products cover legal expenses, we understand that they have significantly different claims profiles. For example, ATE legal expenses are more niche products and, where claims are made, there is typically a high probability of them being accepted. For BTE legal expenses, firms will assess whether claims have a reasonable prospect of success (potentially above 50%) before taking claims forward. This can result in significantly lower claims acceptance rates. Given these differences, there are advantages to collecting value measures data on each product separately.

- 2.6** We propose to change the reporting categories for legal expenses insurance to split out ATE and BTE as follows:

Current reporting categories	Proposed reporting categories
Legal expenses – home (all business)	BTE legal expenses – home (all business)
Legal expenses – motor (all business)	BTE legal expenses – motor (all business)
Legal expenses – other (all business)	BTE legal expenses – other (all business)
	ATE legal expenses – all business

- 2.7** The proposed change will improve the quality of the data we receive from firms and make the published data more comparable between firms.

- 2.8** We propose that for the first value measures reporting period (1 July 2021 to 31 December 2021) there should be a transitional arrangement so that firms can report legal expenses data on either the existing reporting categories or the proposed new reporting categories. For reporting periods from 1 January 2022 onwards, we propose that firms must report on the new reporting categories.

Other proposed amendments

- 2.9** The list of products covered by the value measures reporting requirements (Supervision manual (SUP) 16 Annex 48R) includes 2 products which were omitted from the reporting form itself. These were key cover and motor pothole insurance. We are amending the reporting form to make clear that firms must report data on these products.

Q2.1: Do you agree with our proposed changes?

Cost benefit analysis

- 2.10** We have engaged with a number of firms about our proposed changes. These firms supported our proposed approach to legal expenses insurance and confirmed that the costs would be of minimal significance. We are therefore not required to do a cost benefit analysis.

- 2.11** However, as our proposed approach will provide more helpful data, with costs of minimal significance, we expect our proposals will be net beneficial.

Impact on mutual societies

- 2.12** Section 138K(2) of the Financial Services and Markets Act 2000 (FSMA) requires us to prepare a statement setting out our opinion on whether proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons.

- 2.13** We are satisfied that the proposed amendments do not impact on mutual societies to a greater extent than on other authorised firms, with the impact primarily affecting insurers of legal expenses insurance.

Compatibility statement

- 2.14** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 2.15** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments advance our operational objectives of securing an appropriate degree of consumer protection and promoting effective competition in the interests of consumers. We are satisfied that any burdens or restrictions are proportionate to the expected benefits.

Equality and diversity

- 2.16** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment). We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

3 Moving application forms from the Handbook

Introduction

- 3.1** We have more than 200 data capture forms that allow firms and individuals to apply to the Financial Conduct Authority (FCA) for regulatory transactions and/or to provide notifications – these make up our Authorisation forms. The content of these forms is either prescribed in legislation and set out in specific rules or are under the FCA's power to make under a Direction and may be set out in guidance.
- 3.2** A subset of our Authorisation forms are set out in the Handbook. This subset includes all Authorisation forms made by rules and some that are made through Direction. Usually, we have consulted on changes to all Authorisation forms within our Handbook; however, we are not legally obliged to consult in respect of forms that have been made through Direction. We have not usually consulted on changes to forms that are not in the Handbook.
- 3.3** Where we have consulted on changes to our Authorisation forms in the past and received minimal feedback.
- 3.4** This chapter proposes:
- to not consult on any future amendments to the forms that are currently in the Handbook and made through Direction
 - to remove Authorisation forms that are made through Direction from the Handbook - these will link to the latest version of the form on the FCA website
 - to seek views on whether, longer term and in line with statutory requirements, we should not consult on any form amendments and should remove all our Authorisation forms from the Handbook
- 3.5** These proposed changes will be of interest to applicants seeking:
- to apply to cancel
 - to apply for a variation of permission
 - to apply for a waiver
 - to apply for approved persons
 - to apply for a publication, radio broadcast or newspaper certificate
- 3.6** The list of forms affected by this proposal can be found in the first list of forms below in the 'Summary of proposals'.

Summary of proposals

- 3.7** We propose to remove the consultation process to amend Handbook forms in the future. The consultation process can take a significant amount of time and resource, and while we do this to gather feedback in respect of proposed policy changes or when

issuing guidance, we are not always able to change/remove forms from the Handbook at pace.

- 3.8** The proposed change will ensure that, where we identify key issues that have the potential to drive harm in the financial services market, we can quickly adapt the data and information that we collect at the gateway and adjust our approach as consumer choices, markets, services and products evolve, and align with our operational objectives.
- 3.9** The current process to consult before making any changes to Handbook forms impacts our ability to act quickly and proactively. This leads to a lack of transparency with applicants, as firms and individuals are not aware of all of the information or questions that we may ask as part of our application process. This also means additional time and cost for the FCA and the industry, as applications are delayed as we collect additional information that has not been provided but is required to enable us to make our decision.
- 3.10** We propose to no longer consult on future amendments and move the following forms from the Handbook:
- Variation of Permission Form and Notes – Applications for Insurance Business, Banking, Electronic Money, Lloyd’s Market and Funeral Plan Providers (SUP 6 Annex 5D)
 - Variation of Permission Form and Notes – Investment Business (SUP 6 Annex 5D)
 - Variation of Permission Form and Notes – Home Finance Mediation and General Insurance Distribution Activities (SUP 6 Annex 5D)
 - Variation of Permission Form and Notes – Consumer Credit Activities (SUP 6 Annex 5D)
 - Variation of Permission Form and Notes – Claims Management (SUP 6 Annex 5D)
 - Cancellation of Part 4A Permission Form (SUP 6 Annex 6D)
 - Waiver Application Form (SUP 8 Annex 2D)
 - Long Form A – Dual regulated firms (including EEA and third country firms) – Application to perform controlled functions including senior management functions (SUP 10C Annex 3D)
 - Long Form A – UK and Overseas Firms (not Incoming EEA) for MiFID authorisation applications – Application to perform senior management functions (SUP 10C Annex 3D)
 - Long Form A – Solo-regulated firms (including EEA and third country) – Application to perform controlled functions including senior management functions (SUP 10C Annex 3D)
 - Short Form A – Dual-regulated firms (including EEA and third country firms) – Application to perform controlled functions including senior management functions (SUP 10C Annex 3D)
 - Short Form A – Solo-regulated firms (including EEA and third country) – Application to perform controlled functions including senior management functions (SUP 10C Annex 3D)
 - Form E – Internal transfer of a person performing a controlled function for dual regulated firms (SUP 10C Annex 7D)
 - Form E – Internal transfer of a person performing a controlled function for solo-regulated firms (including EEA and third country)
 - Form I – Application to add, vary or remove a conditional approval for the performance of a senior management function (SUP 10C Annex 8D)

- MIFID members of the management body and key function holders – Article 4 Information Form (SMR) (SUP 10C Annex 11D)
- Certification – Form A – Application for a periodical publication certificate (PERG 7)
- Certification – Form B – Application for a TV or radio service certificate (PERG 7)
- Certification – Form C – Application for news or information service certificate (PERG 7)

3.11 We expect firms to continue to use Connect to submit their applications and notifications, in the same way they do now. These forms will be available for reference on our FCA.org.uk website, outside of the Handbook.

3.12 We are intending to consult on Authorisation forms that are made by, or incorporated into, rules in due course and will be engaging with appropriate stakeholders. In the meantime, we would welcome any stakeholder views on our proposal to no longer consult on future amendments and consider how these forms could be removed from the Handbook while still being made available on our website. This will require primary legislation, as the Financial Services and Markets Act 2000 (FSMA) currently requires us to consult when amending rules. This would include the following forms:

- Form B – Notice to withdraw an application to perform controlled functions including senior management functions (SUP 10C Annex 4R)
- Form C – Notice of ceasing to perform controlled functions including senior management functions (SUP 10C Annex 5R)
- Form D Notification – Changes to personal information / application details and conduct breaches / disciplinary action related to conduct (SUP 10C Annex 6R)
- Form F – Changes in notified persons (SUP 16 Annex 2R)
- Add an appointed representative or tied agent form (SUP 12 Annex 3R)
- Appointed representative or tied agent – change details (SUP 12 Annex 4R)
- Appointed Representative – Termination (SUP 12 Annex 5R)
- Notification to amend firm details (SUP 15 Annex 3R)
- Directory persons report (SUP 16 Annex 47AR)
- Form J – Notification of Significant Changes in Responsibilities or a Person Performing a Senior Management Function (SUP 10C Annex 9D)
- Statement of Responsibilities – Dual – regulated firms (SUP 10C Annex 10D)
- Statement of Responsibilities – Solo – regulated firms (SUP 10C Annex 10D)

Q3.1: Do you have any comments on the proposal to remove the consultation process for amending forms made by Direction?

Q3.2: Do you have any comments on the proposal to move forms made by Direction from the Handbook?

Q3.3: Do you have any views on whether Authorisation forms made through rules should not be consulted on in the future and moved from the Handbook?

Cost benefit analysis

- 3.13** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. However, section 138L of FSMA says that we do not need to provide a CBA where we consider that there will be no increase in costs, or the increases will be of minimal significance. Having assessed the changes proposed in this chapter and having considered previous estimates of similar reporting changes, we believe this exemption applies to the proposals in this chapter.
- 3.14** We expect this change to have no cost implications for firms as it does not change the data that we need to assess an application, simply the location of those application forms on our systems. We expect some benefits to arise from efficiency in holding these in one location, but it would impractical to quantify the impact of those benefits as they would have minimal cost associated.

Impact on mutual societies

- 3.15** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. The proposed changes are not expected to have a significantly different impact on mutual societies.

Compatibility statement

- 3.16** Section 1B of FSMA requires us, when discharging our general functions, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more our operational objectives.
- 3.17** These proposals are intended to increase the effectiveness of our forms to allow us to consider applications more efficiently.
- 3.18** Under the Legislative and Regulatory Reform Act 2006, the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles (but not when exercising other legislative functions like making rules).
- 3.19** The main principles relevant to the current proposals are transparency (including providing clear information and guidance), providing firms with simple and straightforward ways to engage with us and let us hear their views, accountability, consistency, proportionality and targeting action where needed and based on risk.
- 3.20** As explained earlier, the main aim of this change is to ensure that the information that will be required of an applicant is apparent from the forms made available publicly on our website and that delays in updating the forms do not mean that we have to obtain the information we routinely ask from applicants by individual follow-up questions. That should mean that firms know in advance of an application what information we are likely to require. That should in turn give applicants more time to prepare and should speed up the application process while still enabling us to address emerging risks quickly.

Equality and diversity

- 3.21** We have considered the equality and diversity issues that may arise from the proposed amendments. We have not identified any adverse impact that the proposals in this chapter would have on any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment). We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

4 Amendments to the Handbook to reflect branding changes by the Money and Pensions Service

Introduction

- 4.1** The Money and Pensions Service (MaPS) – previously called the Single Financial Guidance Body – came into operation on 1 January 2019 and took on the responsibilities of the Money Advice Service (MAS), The Pensions Advisory Service (TPAS) and Pension Wise (referred to in this chapter as the 'legacy brands').
- 4.2** MaPS is an arm's-length body sponsored by the Department of Work and Pensions (DWP) and is responsible for providing money and pensions guidance in the UK and debt advice in England.
- 4.3** On 18 March 2021, MaPS announced its intention to consolidate the legacy brands into 1 new consumer-facing brand called 'MoneyHelper'. MaPS will remain as the corporate brand and Pension Wise will continue as a named service from MoneyHelper.
- 4.4** As a result of these changes, we need to make minor, consequential amendments to our Handbook to replace references to the legacy brands with references to the new MoneyHelper brand.
- 4.5** We summarise our proposed changes below. The text of our proposed changes can be found in Appendix 3.

Summary of proposals

- 4.6** We have reviewed the Handbook for references to the legacy brands and propose to make the following minor amendments:
- Update all rules and guidance which require firms to signpost consumers to MaPS, MAS or TPAS information or services with references to MoneyHelper. This includes, for example, rules requiring mortgages and pensions providers to signpost customers to MAS factsheets and rules requiring debt management firms to make customers aware of MAS in their first communication with the customer.
 - Update all references to website links and contact details for the legacy brands as appropriate.
- 4.7** We also want to take this opportunity to propose some associated minor changes:
- Update rules and guidance by replacing reference to the 'drawdown comparator' with 'investment pathways comparison tool'.

- Amend our guidance in the Consumer Credit sourcebook (CONC) 8.5.2G to include reference to the Standard Financial Statement (SFS) to better align with our Tailored Support Guidance. The SFS is a tool developed by MaPS which sets out a methodology that can be used to assess an individual's expenditure and debts in a consistent way. This proposed change recognises that lenders and debt advisers could use the SFS or could continue to use equivalent approaches, such as the Common Financial Statement currently referred to in CONC 8.5.2G, as a means of building a holistic understanding of a customer's financial position, including their other debts.

4.8 We will, separate to this consultation, update references to legacy brands in published guidance which sits outside our Handbook – for example, in:

- Finalised Guidance 21/3: Advising on pension transfers
- Finalised Guidance: Mortgages and Coronavirus: Tailored Support Guidance
- Finalised Guidance: Consumer credit and Coronavirus: Tailored Support Guidance
- Guidance published jointly with the Pensions Regulator: Guide for Employers and Trustees on providing support with financial matters without needing to be subject to regulation

Implementation

4.9 MaPS began its roll-out of the new MoneyHelper brand in June 2021 and has put in place automatic redirects so that anyone trying to access information from the websites of the legacy brands is taken to the relevant MoneyHelper pages. This is because MaPS expects stakeholders will need up to 12 months to update their communications and run-down existing stocks of legacy branded printed materials as part of their business-as-usual cycles.

4.10 Firms will have different lead-in times for making these changes and we believe that giving firms a total of up to 12 months (from when we make our final rules) to implement the changes we are consulting on should be sufficient. In the interim period, firms could continue to refer to either the legacy brand or to the new brand (noting that some firms will have implemented a change before 12 months, while others may need the full 12-month period).

Q4.1: Do you agree with our proposals to update references to MaPS legacy brands to MoneyHelper and give firms 12 months from the final rules being made to make the changes?

Cost benefit analysis

4.11 Section 138L(2)(a) of the Financial Services and Markets Act (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. However, section 138L(3) of FSMA says that section 138L(2)(a) does not apply where we consider that there will be no increase in cost, or the increase will be of minimal significance.

4.12 Our proposed changes are as a result of the MaPS rebranding exercise; any costs incurred by firms are consequential to that decision. Additionally:

- The intention to consolidate the legacy brands into 1 new consumer-facing brand called MoneyHelper was announced by MaPS prior to the publication of this paper. We therefore expect that firms will have already considered and, where relevant, put in place change programmes to review and amend their web and printed communications accordingly, including amending signposts to the legacy brands not required by our Handbook.
- It is feasible that our proposed changes may therefore form part of existing plans or change programmes put in place by firms, rather than requiring firms to create new ones.
- We intend to give firms up to 12 months to implement the changes we are proposing which should enable them to make these changes as part of their business-as-usual cycles.

4.13 For these reasons, we expect firms to incur minimal or no additional costs as a result of these proposals; as such, we have not conducted a CBA, as per the exemption under section 138L(3) of FSMA.

Impact on mutual societies

4.14 Section 138K(2) of FSMA requires us to state whether, in our opinion, our changes have a significantly different impact on authorised persons that are mutual societies, compared with other authorised persons. We are satisfied that the proposed changes will not have a significantly different impact on mutual societies compared with other authorised persons.

Compatibility statement

4.15 When consulting on proposed changes to our Handbook, we are required by section 138I(2) of FSMA to explain why we believe that making those changes is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA. We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.

4.16 We are satisfied that our proposed changes are compatible with our objectives and regulatory principles. They make the Handbook consistent with the changes introduced by MaPS and support the FCA and MaPS's aim of helping consumers more easily find and access free and impartial money, pensions and debt support. As a result, they advance our operational objectives of securing an appropriate degree of consumer protection, promoting market integrity and helping to promote effective competition in the interests of consumers.

Equality and diversity

4.17 We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010 (ie, age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation). They should have positive impacts on all consumers as they support the aim of helping people more easily find and access free and impartial money, pensions and debt support.

5 Proposal to amend LIBOR references in the Handbook

Introduction

- 5.1** The Handbook contains a small number of references to the interest rate benchmark London Interbank Offered Rate (LIBOR). Many of these references were written when LIBOR was the primary interest rate benchmark in global financial markets. However, LIBOR is now being wound down. End dates have been announced for all the LIBOR panels and we have encouraged firms to take appropriate action to transition to alternative rates.
- 5.2** As the market continues to move away from LIBOR, these Handbook references will, in many cases, become increasingly obsolete. Therefore, we are proposing Handbook changes to amend references to LIBOR.

Summary of proposals

LIBOR references in IPRU-INV

- 5.3** Chapters 5 and 13 of the Interim Prudential sourcebook for Investment Businesses (IPRU-INV) allow certain firms (investment management firms and personal investment firms, as defined in our Handbook glossary) to count subordinated loans towards their regulatory capital, subject to certain conditions. One condition is that firms use the prescribed subordinated loan agreements contained in IPRU-INV Annex D (see IPRU-INV 5.6.5R and IPRU-INV 13.15.8R).
- 5.4** The forms in chapter 5 specify the maximum rate of interest to be charged in these agreements as 5% above 6m sterling LIBOR. We propose to amend the maximum rate of interest to 5% above the arithmetic mean of the Bank of England Bank Rate for that period. This is because we understand that most firms using these agreements are relatively small, as are the size of such agreements. As such, while the market consensus is to replace sterling LIBOR with the Sterling Overnight Index Average (SONIA), in this proposal, we balanced this fact with firms' need for simplicity and ease of access.
- 5.5** As Bank Rate is typically lower than 6m sterling LIBOR (eg, on average, Bank Rate has been 0.164% lower than 6m sterling LIBOR over the past 5 years), this may lead to a small difference in the maximum rate of interest that can be charged on new agreements going forward, depending on the level of Bank Rate compared to 6m sterling LIBOR when these changes are made. However, given the small difference between the 2 rates, we do not believe that this will materially impact the scope of loans that fall into this part of the prudential regime.

- 5.6** The forms also suggest that firms specify the primary rate of interest to be charged in these agreements by reference to 6m sterling LIBOR + [X] percent. They also allow for the interest to be charged on a fixed-rate basis or without interest. We propose to remove the reference to LIBOR in the context of the primary rate of interest altogether and give counterparties the flexibility to select an appropriate rate themselves, provided that it falls below the maximum interest rate cap. We think this is more consistent with the policy approach to LIBOR transition where there are multiple interest benchmarks to choose from, depending on the borrowers' needs.
- 5.7** We propose that the new forms and interest rate cap should apply to any agreement entered into after 31 December 2021. Agreements entered into on or before 31 December 2021 (ie, 'legacy' agreements) would be subject to the prudential rules in force when the contract was entered into, except that firms would no longer be required to use LIBOR in these existing agreements. If a legacy agreement references LIBOR, it would therefore be the responsibility of the counterparties to remove reliance on these references. Further, the relevant parties would need to agree a fair replacement rate, whether that be for the maximum interest rate applied and/or the primary interest rate, in line with our conduct expectations for LIBOR transition. We provide more information on our conduct expectations for making these adjustments on our [LIBOR Conduct webpage](#). Firms should contact the FCA Supervision Hub if they have any further questions about how to calculate a fair replacement rate for LIBOR or if they want to enter into new agreements between now and year end.
- 5.8** We propose to make the same amendments to the prescribed subordinated loan forms under chapter 13 to be consistent with these changes as set out above for chapter 5.
- 5.9** We are also proposing some other non-material updates to the forms in IPRU-INV Annex D – for example, updating references to the FCA's address and removing forms that will become redundant once the new prudential regime for investment firms takes effect. More information about the impact of the new prudential regime on IPRU-INV is set out in chapter 14 of Consultation Paper 21/7.
- 5.10** A small number of additional references to LIBOR are being deleted in connection with the new prudential regime for investment firms. We have therefore not proposed to amend those references in this consultation.

Q5.1: Do you agree with the proposed changes to LIBOR references in IPRU-INV?

LIBOR references in CASS 5.5 (Segregation and the operation of client money accounts)

- 5.11** Client Assets sourcebook (CASS) 5.5 uses LIBOR as part of an example. Specifically, CASS 5.5 sets out that when a firm outlines its policy on its payment of interest, it need not necessarily disclose the actual rates prevailing at any particular time. The example goes on to state that the firm should disclose the terms – for example, 'LIBOR plus or minus 'x' percentage points'.
- 5.12** Our preference is to take a neutral approach to the rate referenced. This acknowledges that there is more than 1 rate that firms can choose from and the example doesn't become outdated again. Therefore, we are proposing to remove the LIBOR reference

and replace it with 'the relevant reference rate, plus or minus 'x' percentage points'. The full text can be found in Annex C of Appendix 4.

Q5.2: Do you agree with the proposed changes to LIBOR references in CASS?

LIBOR references in PERG 2.6 (Specified investments: a broad outline)

- 5.13** In Perimeter Guidance manual (PERG) 2.6, LIBOR is used as an example of an interest rate index in relation to the definition of a structured deposit to show that a variable rate deposit whose return is linked directly to such index is not a structured deposit. LIBOR was used at the time because it represented a variable rate that was likely to be used for loan agreements and deposits.
- 5.14** We propose to replace LIBOR in this example with 'SONIA (whether or not adjusted)'. SONIA is widely used to determine the floating leg in swap agreements and therefore represents an appropriate alternative rate for this example. The full text can be found in Annex D of Appendix 4.
- 5.15** We propose the same changes in the glossary definition of a structured deposit.

Q5.3: Do you agree with the proposed changes to LIBOR references in PERG?

Q5.4: Do you agree with the proposed changes to LIBOR references in the Handbook glossary?

Cost benefit analysis

- 5.16** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis unless, in accordance with section 138L, we believe that there will be no increase in costs or that the increase will be of minimal significance.
- 5.17** Section 138I also requires us to publish an estimate of costs and benefits unless these cannot be reasonably estimated or it is not reasonably practicable to estimate them.
- 5.18** Changing the reference rate for the maximum rate of interest that can be charged under IPRU-INV subordinated loan agreements should have a limited impact on firms. Since LIBOR is being wound down, the previous definitions in these forms may become unworkable.
- 5.19** We think firms will benefit from having their maximum interest rate calculated by Bank Rate, as this is a more robust rate than LIBOR and it is unlikely to require us to amend this provision again. Moreover, these changes will apply only to new contracts written after 31 December 2021. For legacy agreements, the rules written when the agreement was entered will still apply. It is not practicable to estimate the exact firm population but we expect there are a limited number of new agreements of this type being written. While we expect legacy agreements to be amended to remove reliance on LIBOR, this is an existing expectation through our broader policy and supervisory work on LIBOR transition so does not impose additional costs on firms.

- 5.20** We think that our remaining proposed changes will result in no cost increases as LIBOR is used as an example of an interest rate only (ie, it has no impact on the rule itself).

Impact on mutual societies

- 5.21** The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Compatibility statement

- 5.22** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives. Further, we must have regard to the regulatory principles in section 3B of FSMA. We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 5.23** The proposed changes set out in this chapter are primarily intended to advance the integrity objective and ensure that the relevant markets function well.

Equality and diversity

- 5.24** Having considered the equality and diversity issues that may arise from the proposed amendments in this chapter, we do not think they will adversely impact any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment). However, we welcome comments on any equality and diversity issues respondents believe may arise. We will review our assessment prior to publishing final rules.

6 Consequential changes to the Prospectus Regulation Rules and Listing Rules to align with changes to prospectus regime guidance

Introduction

- 6.1** In our Primary Markets Bulletin 34 ([PMB 34](#)) and its associated Guidance Consultation ([GC21/1](#)), we consulted on changes to our [Knowledge Base](#) in relation to the prospectus regime.
- 6.2** PMB 34's consultation ran from 24 June to 4 August 2021. It set out our intention:
- to adapt, as FCA guidance, the European Securities and Market Authority's (ESMA) [Guidelines on disclosure requirements under the Prospectus Regulation](#)
 - to augment those guidelines with the measures on specialist issuers in the [ESMA update of the Committee of European Securities Regulators \(CESR\) recommendations](#) (CESR Recommendations) in our Handbook
 - to incorporate into technical notes (TNs) certain explanations from the [Questions and Answers, Prospectuses](#) (PD Q&As) in our Handbook
- 6.3** In PMB 34, we explained our intention to consult in this September 2021 Quarterly Consultation Paper, on:
- removing the CESR Recommendations and the PD Q&As from our Handbook
 - making consequential amendments to the Prospectus Regulation Rules (PRR) sourcebook – in particular, PRR 1.1.5G, PRR 1.1.7G and PRR App 1.1 (Relevant definitions)

Summary of proposals

- 6.4** Subject to the outcome of the PMB 34 consultation, we propose to:
- remove 2 documents from the Handbook [Level 3 Materials](#)
 - make consequential amendments to the PRR to assimilate changes that PMB 34 is making to our TNs
 - make consequential changes to the Listing Rules (LR) sourcebook

Handbook

- 6.5** Our Handbook Level 3 Materials currently includes PDFs of the CESR Recommendations and the PD Q&As. We propose to remove those 2 documents from our Handbook because they will no longer apply as a consequence of the proposals in PMB 34:

- The CESR Recommendations no longer apply when the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market / TN 619.1):
 - adapt as FCA guidance the ESMA Guidelines on disclosure requirements under the Prospectus Regulation, so replacing most of the CESR Recommendations; and
 - carry forward the measures on specialist issuers, so preserving that part of the CESR Recommendations not otherwise replaced by the guidelines.
- the PD Q&As no longer apply when the changes to the procedural note and TNs proposed in PMB 34, and as set out in its associated GC21/1, assimilate the relevant substantive content of the PD Q&As.

Q6.1: Do you agree with our proposal to remove the CESR Recommendations and the PD Q&As from the Handbook?

PRR consequential amendments

- 6.6** PRR 1.1.5G sets out a number of documents which we consider relevant to the prospectus regime. The changes we proposed in PMB 34 prompted us to amend this list in order to better assist the reader, including by providing URLs where appropriate.
- 6.7** We propose, subject to the outcome of the PMB 34 consultation, to remove from PRR 1.1.5G the references to the CESR Recommendations and the PD Q&As because we are proposing to remove these from the Handbook as they will no longer apply, as explained above.
- 6.8** We also intend to remove ESMA Prospectus Opinions which relate to the Prospectus Directive (PD) regime, which was repealed and replaced by the Prospectus Regulation (PR) in July 2019 and no longer applies. Before implementation period completion day (IPCD) (ie, 31 December 2020) we published our general approach to EU non-legislative materials. Due to the repeal of the PD regime, the ESMA Prospectus Opinions were not included in the Handbook Level 3 Materials, which we put in place with effect from IPCD.
- 6.9** We propose to add into PRR 1.1.5G the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market / TN 619.1) because they specifically address disclosure requirements under the PR.
- 6.10** We also intend to:
- move the Guidelines on Alternative Performance Measures from a note in PRR 1.1.5G into the body of PRR 1.1.5G
 - add into PRR 1.1.5G the Q&As on Guidelines on Alternative Performance Measures because the Q&A is already one of the PR documents in our Handbook Level 3 Materials
 - add into PRR 1.1.5G the Guidelines on Risk Factors, which is already the subject of a note at the end of PRR 2.3.3UK. A note is added to PRR 1.1.5G on the prospectus regime guidance in the Knowledge Base
- 6.11** We propose to add URLs into PRR 1.1.5G from documents stored in:
- the Handbook's Technical Standards

- the Handbook's Level 3 Materials
- our Knowledge Base

6.12 This should better help readers of the PRR to access these materials.

6.13 Changes are also proposed to PRR 1.1.7G, PRR 5.4.5G and PRR App 1.1 (Relevant definitions) in order to update them for these changes.

Q6.2: Do you agree with our proposed changes to the PRR to align with changes arising from PMB 34?

LR consequential amendments

6.14 We propose, subject to the outcome of the PMB 34 consultation, 4 changes to align the LR with the changes proposed in PMB 34:

- Delete the definition 'ESMA Prospectus Recommendations', which is the LR's term for the CESR Recommendations and which would no longer apply under the PMB 34 proposals.
- Insert a definition for the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market TN 619.1).
- Amend the definition of 'mineral expert's report' to replace 'ESMA Prospectus Recommendations' with a reference to the appropriate part of the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market / TN 619.1).
- Update LR 13.4.8R (on the acquisition of a scientific research based company or related assets) to replace its reference to 'ESMA Prospectus Recommendations' with a reference to the appropriate part of the Guidelines on disclosure requirements under the Prospectus Regulation and Guidance on specialist issuers (Primary Market / TN 619.1).

Q6.3: Do you agree with our proposed changes to the Listing Rules to align with changes arising from PMB 34?

Cost benefit analysis

6.15 Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis unless, in accordance with section 138L, we believe that there will be no increase in costs or that the increase will be of minimal significance. Section 138I also requires us to publish an estimate of costs and benefits unless these cannot be reasonably estimated or it is not reasonably practicable to estimate them.

6.16 We are satisfied that the proposed amendments do not increase costs to firms or consumers, or that any increase will be of minimal significance, as they do not create any new obligations. Further, the amendments will result in better signposting of our prospectus-related guidance.

Impact on mutual societies

- 6.17** Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons. We do not expect the proposals in this chapter to have any different impact on mutual societies.

Compatibility statement

- 6.18** When consulting on new rules, we are required by section 138I(2) of FSMA to explain why we believe that making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA). We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code.
- 6.19** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments are consistent with our operational objectives of securing an appropriate degree of consumer protection, promoting market integrity and promoting effective competition in the interests of consumers. We do not expect any costs to arise from these changes, while they have the benefit of better signposting our prospectus related guidance.

Equality and diversity

- 6.20** Having considered the equality and diversity issues that may arise from the proposed amendments in this chapter, we do not think they will adversely impact any of the groups with protected characteristics under the Equality Act 2010 (ie, age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment). However, we welcome comments on any equality and diversity issues respondents believe may arise. We will review our assessment prior to publishing final rules.

7 Changes to reporting requirements in the Supervision manual

Introduction

- 7.1** We collect regulatory data to inform and support our supervision of firms. Our data reporting requirements are set out in the Handbook, predominantly in the Supervision manual (SUP). We use internal feedback and feedback directly from firms to clarify and improve these requirements. This chapter sets out our proposed changes to regulatory reporting forms, their application rules and supporting guidance notes.
- 7.2** This chapter will be of interest to firms required to complete FIN-A (Annual Report and Accounts Form).
- 7.3** The proposed changes and the statutory powers that the changes will be made under are set out in Appendix 6.

Summary of proposal

Alterations to the question and guidance notes (SUP 16 Annex 1B) for form FIN-A (Annual Report and Accounts form)

- 7.4** We propose to update the question and enhance the guidance for data item 7 in order to clarify for firms what data we are requesting.
- 7.5** Data item 7 asks for a 'Yes' if a firm's submitted annual report and accounts have been subject to an audit and the auditor has:
- qualified their opinion
 - added an explanatory paragraph
 - provided written comment on internal controls
- 7.6** We propose to update the question to clarify that the explanatory paragraph would need to be adverse for it to meet the criteria for firms to select 'Yes'. This will ensure that general comments from auditors are not considered in this question and will allow us to capture only firms that may have financial issues.
- 7.7** We also propose to amend the guidance to clarify that the answer should be a 'Yes' if the explanatory paragraph expresses an adverse opinion and/or includes a paragraph headed 'emphasis of matter, other matter, or material uncertainty related to going concern'. Our proposed enhancements to the guidance will provide clarity to firms and remove ambiguity as to what data we are requesting.

Q7.1: Do you have any comments on our proposals to update the question and amend guidance notes for FIN-A contained in SUP 16 Annex 1B?

Cost benefit analysis

- 7.8** Sections 138I(2)(a) of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA provides that Section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increases will be of minimal significance.
- 7.9** Having assessed the individual changes proposed in this chapter, and based on previous estimates relating to similar reporting changes, we believe the exemption of minimal significance applies to these items; therefore, no CBA is required for the proposals in this chapter.

Q7.2: Do you have any comments on our assessment that any increase in costs from the changes set out in this chapter will be of only minimal significance?

Impact on mutual societies

- 7.10** Section 138K(2) of FSMA requires us to provide an opinion on whether the impact of proposed rules on mutual societies is significantly different to the impact on other authorised persons. We are satisfied that the proposed changes in this chapter do not impact mutual societies any differently to any other authorised persons.

Compatibility statement

- 7.11** Section 1B of FSMA requires us, as far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives. We also need to carry out our general functions in a way that promotes effective competition in the interests of consumers.
- 7.12** The proposed changes in this chapter will further clarify our expectations as to what data we are requesting. In turn, this will allow more effective and efficient supervision of firms which will help us to advance our consumer protection objective.
- 7.13** We do not believe that the proposed changes will have an impact on competition. The changes are expected to impose no or minimal costs on firms and do not affect firms' incentives or ability to compete in the market.

Equality and diversity

- 7.14** We do not believe that the proposals in this chapter adversely impact any of the groups with protected characteristics specified in legislation (ie, age, disability, sex,

marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).

7.15 We will continue to consider the equality and diversity implications of the proposals during the consultation period and, if necessary, will revisit them when we update the Handbook.

7.16 We welcome any feedback to this chapter of the consultation on our equality and diversity assessment.

8 Amendments to our rules on corporate reporting in machine-readable electronic format under DTR 4

Introduction

- 8.1** Under our transparency rules, we require issuers to prepare annual financial reports in a machine-readable electronic format. These rules are set out in Disclosure Guidance and Transparency Rules (DTR) 4.1.14R and the TD ESEF Regulation.
- 8.2** These requirements originate in EU legislation for the European single electronic reporting format (ESEF) initiative, which aims to enhance the accessibility of issuers' financial data and make the process of evaluating corporate performance across industry sectors and different jurisdictions by investors easier.
- 8.3** The proposed changes set out below follow our Policy Statement (PS20/14) published in November 2020 where we decided to delay our requirements by one year.
- 8.4** The proposed changes are relevant to issuers with transferable securities admitted to trading on a UK regulated market that prepare consolidated annual financial statements in accordance with International Financial Reporting Standards (IFRS). These issuers must electronically mark up or 'tag' their financial statements for financial years starting on or after 1 January 2021.
- 8.5** The only taxonomy that we currently permit is the 'core taxonomy' in Annex VI of the TD ESEF Regulation. This is the ESEF taxonomy that reflects the updates to the IFRS taxonomy published by the IFRS Foundation in March 2019.
- 8.6** However, the core taxonomy in the TD ESEF Regulation does not take account of more recent taxonomy updates because those only came into force under EU rules after 31 December 2020. This means that issuers cannot currently use later versions of the ESEF taxonomy. They also cannot currently use the UK Single Electronic Format (UKSEF) taxonomy issued by the Financial Reporting Council (FRC), which is based on the ESEF taxonomy and is used for filing at Companies House.
- 8.7** We have received feedback that differing requirements between UK authorities and between the transparency requirements in the UK and overseas (specifically in the European Economic Area (EEA)) may result in issuers needing to produce multiple versions of IFRS financial statements tagged according to different taxonomies or different versions of those taxonomies. This would add cost and administrative burden for issuers without necessarily enhancing transparency.
- 8.8** We are therefore proposing to allow issuers to use a wider range of taxonomies for the 2021 and 2022 financial years than is currently permitted.

- 8.9** In doing this, we recognise that the permitted versions of the ESEF and UKSEF taxonomies will also become outdated in due course. We therefore plan to consult next year on a longer-term approach that provides a clear basis upon which annual updates to the IFRS taxonomy can be adopted and used by issuers in compliance with our rules. We may also consider more flexibility for overseas issuers to choose between other taxonomies that are linked to the IFRS taxonomy.

Summary of proposals

- 8.10** We are proposing to amend Article 4(4) of the TD ESEF Regulation to permit issuers to use the following taxonomies for financial years beginning on or between 1 January and 31 December 2021:
- the core taxonomy in Annex VI of the TD ESEF Regulation
 - the versions of the ESEF taxonomy that reflect either the IFRS Foundation's 2020 taxonomy updates (ESEF 2020) or the 2021 taxonomy updates (ESEF 2021)
 - the version of the UKSEF taxonomy issued by the FRC in its '2021 suite' (UKSEF 2021 suite), or the version that will be formally issued later this year in the '2022 suite' (UKSEF 2022 suite)
- 8.11** This flexibility will allow issuers to select the taxonomy that is most suited to their circumstances, while still achieving our policy intent of requiring machine-readable financial reporting which will facilitate analysis.
- 8.12** ESEF 2020 is already in force in the EU (contained within the second amending regulation to the ESEF Regulation of 6 November 2020). ESEF 2021 is expected to come into force later this year or in early 2022 (see the European Securities and Markets Authority's (ESMA's) Final Report published May 2021).
- 8.13** The FRC's UKSEF 2021 suite was formally issued in September 2020. Its UKSEF 2022 suite is currently under consultation and is expected to be formally issued in October 2021.
- 8.14** For financial years beginning on or after 1 January 2022, we are proposing to remove the core taxonomy and the older versions of UKSEF and ESEF from the list of permitted taxonomies set out in this consultation. This will mean that the ESEF 2021 and UKSEF 2022 suite taxonomies will still be available to issuers to comply with our rules.
- 8.15** In making these proposals, we seek to provide clarity for issuers in advance of the 2022 reporting season and for issuers in their preparations for the 2022 financial year. However, given that we are planning to consult further in 2022, it is important to note that we may add to the list of permitted taxonomies and/or vary the permitted taxonomies according to factors such as the issuer's country of incorporation. Nevertheless, we are also seeking stakeholders' views as to whether we should specify now these permitted taxonomies for the 2022 financial year.
- 8.16** Issuers will be able to access the machine-readable and downloadable XBRL taxonomy files for the core taxonomy and the ESEF taxonomies from ESMA's website. The FRC makes the XBRL files for UKSEF available on its website. The XBRL files for these taxonomies are not currently available on the FCA's website.

8.17 We recognise that some of the more technical aspects of tagging annual financial statements in the TD ESEF Regulation have been drafted with the core taxonomy in mind and also use terms that are specific to ESEF. We therefore propose some further, consequential changes to the TD ESEF Regulation, for example to allow for differences in technical specifications or filing rules associated with the additional taxonomies. These relate to:

- the restrictions on overseas issuers marking up, or tagging other parts of the annual financial report set out in Article 5(2)
- the requirements for embedding mark-ups (tagging) in the annual financial report using the inline XBRL specifications set out in Annex III (Article 6(a))
- the requirements on marking up and filing rules set out in Annex IV (Article 6(b))

8.18 We also remind issuers that the option to mark-up other parts of the annual financial report under Article 5(1) remains available to EEA-incorporated issuers until 31 March 2022. This option arises from the application of the Temporary Transitional Power to Article 5(1) of the TD ESEF Regulation, as set out in row 28.4 of Annex A to the main FCA transitional directions.

Q8.1: Do you agree with our proposal to amend the TD ESEF Regulation to allow issuers to use the taxonomies as specified in the draft legal instrument for the financial years beginning on or between 1 January 2021 and 31 December 2021? Please state your reasons.

Q8.2: Do you agree with our proposal to amend the TD ESEF Regulation now to specify ESEF 2021 and UKSEF 2022 suite as permitted taxonomies for financial years beginning on or after 1 January 2022? Please state your reasons.

Q8.3: Do you agree with our proposed further, consequential changes to the TD ESEF Regulation (in Articles 5 and 6) to accommodate the additional taxonomies? Please state your reasons.

Cost benefit analysis

8.19 Our proposal gives in-scope issuers more choice in the taxonomies that they can use to prepare their financial statements under our rules. As this proposal does not increase requirements on these issuers, but instead provides alternative options for complying with our rules, we do not consider that our changes will impose any additional ongoing costs. There may be limited one-off familiarisation costs to issuers from reading this consultation and the legal instrument, but we expect these to be minimal.

8.20 Further, by indicating our intended approach to taxonomies permitted for the 2022 financial year, we are giving issuers more certainty and greater flexibility, which may act to reduce their costs in meeting our requirements and improve the quality of their tagging, thus increasing the overall benefits of the ESEF initiative.

Impact on mutual societies

- 8.21** Sections 138S and 138K of the Financial Services and Markets Act 2000 (FSMA) require us to state whether, in our opinion, our proposed technical standards have a significantly different impact on authorised persons who are mutual societies, compared to other authorised persons.
- 8.22** We do not expect the proposals in this chapter to have a different impact on mutual societies.

Compatibility statement

- 8.23** When consulting on new technical standards, we are required by sections 138S and 138I(2) of FSMA to explain why we believe that making the proposed standards:
- is compatible with our strategic objective;
 - advances one or more of our operational objectives; and
 - has regard to the regulatory principles in section 3B of FSMA and for the importance of taking action intended to minimise financial crime (section 1B(5)(b) of FSMA).
- 8.24** We are also required to have regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulators' Code.
- 8.25** We are satisfied that the proposed amendments are compatible with our objectives and regulatory principles. The amendments are compatible with our strategic objective and advance our operational objectives of securing an appropriate degree of consumer protection, promoting market integrity and promoting effective competition in the interests of consumers. We consider the proposed flexibility will support issuers in reporting their financial accounts with electronic tags, which in turn makes information more accessible to investors and analysts seeking to value and compare companies on UK regulated markets. This will enhance the efficiency and integrity of price formation on our markets and support investment decisions made by, or on behalf of, UK consumers.
- 8.26** We consider the measures to be proportionate considering section 3B of FSMA, since we do not expect any costs to arise from these changes because they have the benefit of providing flexibility and clarity for companies subject to DTR 4.1.14R – specifically, by giving such companies a choice of taxonomies.

Equality and diversity

- 8.27** Having considered the equality and diversity issues that may arise from the proposed amendments in this chapter, we do not think they will adversely impact any of the groups with protected characteristics under the Equality Act 2010. However, we welcome comments on any equality and diversity issues respondents believe may arise. We will review our assessment prior to publishing final technical standards.

9 UK Emissions Trading Scheme

Introduction

- 9.1** In Consultation Paper (CP) 21/6, we consulted on the UK Emission Trading Scheme Instrument 2021 which contains amendments to a number of Handbook modules and the Perimeter Guidance manual (PERG). These amendments were made to reflect the creation of a UK emissions trading scheme. We received no responses to the questions that we asked in our consultation. When making the UK Emission Trading Scheme Instrument 2021, which entered into force on 30 April 2021, we noted that this was based on the legislation in force at the time of the making of the instrument (see Handbook Notice 87).
- 9.2** In the same Handbook Notice, we noted that the effect of the Recognised Auction Platforms and Greenhouse Gas Emissions Trading Scheme Auctioning (Amendment) Regulations 2021, which came into force on 19 May 2021, was to broaden the category of eligible auction participants to include, among others, third country investment firms and credit institutions with Part 4A permissions corresponding to equivalent UK eligible participants. We said that we would update our perimeter guidance in due course to reflect these increases in the scope of eligibility.

Summary of proposals

- 9.3** Further to the broadening of the eligibility status for firms bidding in emission allowances on the UK emission auction platform, we propose to amend the relevant sections of our perimeter guidance in PERG 2 and PERG 13.
- 9.4** PERG 2.7 is amended to reflect the fact that the first of the 3 categories of firm (see PERG 2.7.6B, which explains how the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (Statutory Instrument 2001/544) and the Greenhouse Gas Emissions Trading Scheme Auctioning Regulations 2021 together generate 3 broad categories of person in relation to bidding for emission allowances on a UK auction platform) able to bid on the UK auction platform includes types of third country investment firm and credit institutions.
- 9.5** Similarly, PERG 13 is updated to reflect this extension of the types of firm able to bid on the UK auction platform. PERG 13 Annex 2 continues to provide guidance on the mapping of MiFID investment services and activities to regulated activities, including bidding in emission auctions. We consider that the perimeter guidance – notably in PERG 2.7 and PERG 13.4, as updated – will continue to assist firms in understanding how emission allowances and bidding activity are treated for the purposes of Financial Services and Markets Act 2000 (FSMA) authorisation and regulation.

Q9.1: Do you agree with the proposed amendments to PERG 2 and PERG 13?

Cost benefit analysis

- 9.6** No cost benefit analysis is required in relation to the perimeter guidance.

Compatibility statement

- 9.7** We propose to make changes to PERG to improve the clarity of the guidance on existing legislation. We are satisfied that these proposals are compatible with our general duties under section 1B of FSMA, including the importance of taking action intended to minimise financial crime, having regard to the regulatory principles in section 3B. The guidance aims to secure an appropriate degree of consumer protection and promoting market integrity by helping to enable fuller understanding of the regulatory perimeter.
- 9.8** We are also satisfied that, so far as is compatible with advancing these operational objectives, the proposed amendments comply with our duty to promote effective competition in the interests of consumers. In preparing the proposals as set out in this consultation, we have had regard to the recommendations made by the Treasury under section 1JA of FSMA about aspects of the economic policy of the Government in connection with our general duties. It is our opinion that making the proposed changes is consistent with these recommendations, including those relating to climate change.
- 9.9** We have given due regard to the principles in the Legislative and Regulatory Reform Act 2006 Regulators' Compliance Code and consider that we are exercising our regulatory functions in a transparent, accountable, proportionate and consistent way, targeting areas where action is needed. We are making guidance available to all firms and persons on the practical effects of various interlocking UK legislation and when authorisation is required or otherwise in regard to regulated activities relating to emission allowances.

Equality and diversity

- 9.10** We have considered the equality and diversity issues that may arise from the proposals in this quarterly CP. We do not consider that the proposals have a differential impact on any group sharing one of the characteristics protected under the Equality Act 2010. We will continue to consider the equality and diversity implications of the proposals during the consultation period.

Annex 1

Abbreviations used in this paper

Abbreviation	Description
AFRs	Annual financial reports
ATE	After the event
BTE	Before the event
CASS	Client Assets sourcebook
CBA	Cost benefit analysis
CESR	Committee of European Securities Regulators
CONC	Consumer Credit sourcebook
CP	Consultation paper
DTR	Disclosure Guidance and Transparency Rules
DWP	Department for Work and Pensions
EEA	European Economic Area
ESEF	European single electronic reporting format
ESEF Regulation	Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing the TD with regard to regulatory technical standards on the specification of a single electronic reporting format
ESMA	European Securities and Markets Authority
FCA	Financial Conduct Authority
FIN-A	Annual Report and Accounts Form
First ESEF Amending Regulation	Commission Delegated Regulation (EU) 2019/2100 of 30 September 2019 amending the TD ESEF Regulation
FRC	Financial Reporting Council
FSMA	Financial Services and Markets Act 2000
GC	Guidance consultation
GI	General insurance
IFRS	International Financial Reporting Standards
IPCD	Implementation period completion day
IPRU-INV	Interim Prudential sourcebook for Investment Businesses
LIBOR	London Interbank Offered Rate
LR	Listing Rules sourcebook
MaPS	Money and Pensions Service

Abbreviation	Description
MAS	Money Advice Service
MiFID	Markets in Financial Instruments Directive
PD	Prospectus Directive
PDF	Portable document format
PERG	Perimeter Guidance manual
PMB	Primary Market Bulletin
PR	Prospectus Regulation
PRR	Prospectus Regulation Rules sourcebook
PS	Policy statement
Q&As	Questions and Answers
QCP	Quarterly consultation paper
SFS	Standard Financial Statement
SMR	Senior Managers Regime
SONIA	Sterling Overnight Index Average
SUP	Supervision manual
TD	Transparency Directive
TD ESEF Regulation	the UK version of the ESEF Regulation, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018
TN	Technical note
TPAS	The Pensions Advisory Service
UKSEF	UK single electronic format, a taxonomy issued by the FRC
URL	Uniform resource locator

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1

List of questions

- Q2.1:** Do you agree with our proposed changes?
- Q3.1:** Do you have any comments on the proposal to move the consultation process for amending forms made by Direction?
- Q3.2:** Do you have any comments on the proposal to move forms made by Direction from the Handbook?
- Q3.3:** Do you have any views on whether Authorisation forms made through rules should not be consulted on in the future and moved from the Handbook?
- Q4.1:** Do you agree with our proposals to update references to MaPS legacy brands to MoneyHelper and give firms 12 months from the final rules being made to make the changes?
- Q5.1:** Do you agree with the proposed changes to LIBOR references in IPRU-INV?
- Q5.2:** Do you agree with the proposed changes to LIBOR references in CASS?
- Q5.3:** Do you agree with the proposed changes to LIBOR references in PERG?
- Q5.4:** Do you agree with the proposed changes to LIBOR references in the Handbook glossary?
- Q6.1:** Do you agree with our proposal to remove the CESR Recommendations and the PD Q&As from the Handbook?
- Q6.2:** Do you agree with our proposed changes to the PRR to align with changes arising from PMB 34?
- Q6.3:** Do you agree with our proposed changes to the Listing Rules to align with changes arising from PMB 34?
- Q7.1:** Do you have any comments on our proposals to update the question and amend guidance notes for FIN-A contained in SUP 16 Annex 1B?
- Q7.2:** Do you have any comments on our assessment that any increase in costs from the changes set out in this chapter will be of only minimal significance?

- Q8.1:** Do you agree with our proposal to amend the TD ESEF Regulation to allow issuers to use the taxonomies as specified in the draft legal instrument for the financial years beginning on or between 1 January 2021 and 31 December 2021? Please state your reasons.
- Q8.2:** Do you agree with our proposal to amend the TD ESEF Regulation now to specify ESEF 2021 and UKSEF 2022 suite as permitted taxonomies for financial years beginning on or after 1 January 2022? Please state your reasons.
- Q8.3:** Do you agree with our proposed further, consequential changes to the TD ESEF Regulation (in Articles 5 and 6) to accommodate the additional taxonomies? Please state your reasons.
- Q9.1:** Do you agree with the proposed amendments to PERG 2 and PERG 13?

Appendix 2

Draft Handbook text

General insurance value measures reporting

**VALUE MEASURES REPORTING AND MONITORING (AMENDMENT)
INSTRUMENT 2021**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give 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 listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The Supervision manual (SUP) of the FCA’s Handbook of rules and guidance is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Value Measures Reporting and Monitoring (Amendment) Instrument 2021.

By order of the Board
[date]

Annex

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

...

16.27 General insurance value measures reporting

...

Requirement to submit a value measures report

...

16.27.9 R *Firms* must comply with the following in relation to the table in SUP 16.27.8R:

(1) ...

(2) the exception to (1) is in relation to *policies* which include a legal expenses product element (after the event or before the event legal expenses, as described in SUP 16 Annex 48R), where the *insurer* of the legal expenses element must separately report the value measures data for the legal expenses element; and

(3) ...

...

16 Annex 48R Products covered by the reporting requirement in SUP 16.27.7R

Product	Product definition
<u>After the event legal expenses</u>	<u>contracts of insurance</u> (or cover within a <u>policy</u>), taken out in relation to an event that <u>has already occurred, to provide cover against the risks of loss to the persons insured attributable to their incurring legal expenses, including costs of litigation in relation to that event.</u>
Alloy wheel insurance	...

<u>Before the event legal expenses</u>	<u><i>contracts of insurance</i> (or cover within a <i>policy</i>), taken out in relation to a potential future event or events, to provide cover against the risks of loss to the persons insured attributable to their incurring legal expenses, including costs of litigation.</u>
...	
<u>Legal expenses</u>	<i>contracts of insurance</i> (or cover within a <i>policy</i>) against the risks of loss to the persons insured attributable to their incurring legal expenses including costs of litigation.
...	

16 Annex 48AR Value measures report form (REP019)

REP019-
Value
measures
report

- 1 Reporting period covered by this report
- 2 Is this the first report or restatement?
- 3 Reporting Firm
- 4 Please confirm that the reporting firm understands that the FCA produces and publishes guidance that contains the value measures data information that the firm submitted to the FCA
- 5 Please confirm that the reporting firm has informed any other firm to whom the relevant value measures information data relate that the FCA publishes the guidance

Year ended 31/12/XXXX
FRN Number

Product category	Add-on or stand-alone or all	Distribution arrangement	Number of policy sales to UK consumers	Total retail premiums (written)	Number of claims registered	Average number of policies in force	Claims frequency	Number of claims where all or part of the claim has been accepted and a pay-out has been made (and the claim is closed at the year-end)	Number of claims that have been rejected in the year	Claims acceptance rate	Total claims pay-out cost (for claims where all or part of the claim has been accepted and a pay-out has been made and the claim is closed at the year-end)	Average claims pay-out	The amount that the top 2% of claim pay-outs are above	Number of claim walkaways	Number of claims complaints	Claims complaints as a % of claims
			Number	£'000	Number	Number	%	Number	Number	%	£'000	£	£	Number	Number	%
After the event legal expenses	All	Names of five largest distribution arrangements														
Alloy wheel insurance	...															
Before the event legal expenses - home	All	Names of five largest distribution arrangements														
Before the event legal expenses - motor	All	Names of five largest distribution arrangements														
Before the event legal expenses - other	All	Names of five largest distribution arrangements														
...																
Identity Theft	...															
Key cover	Add-on	Names of five largest distribution arrangements														

FCA 2021/XX																
Key cover	Stand-alone	Names of five largest distribution arrangements														
Legal expenses—home	All	Names of five largest distribution arrangements														
Legal expenses—motor	All	Names of five largest distribution arrangements														
Legal expenses—other	All	Names of five largest distribution arrangements														
...																
Vehicle misfuelling insurance	...															
Vehicle pothole insurance	Add-on	Names of five largest distribution arrangements														
Vehicle pothole insurance	Stand-alone	Names of five largest distribution arrangements														
...																

Amend the following as shown.

TP 1 Transitional provisions

...

TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
21	...				
<u>22</u>	<u>SUP 16.27.12</u>	<u>R</u>	<u>When reporting data on legal expenses, a <i>firm</i> can choose whether the first value measures report to be provided on 28 February 2022 uses the form and format set out in:</u>	<u>From [date to be added] to 1 March 2022</u>	<u>1 July 2021</u>
			(1) <u>SUP 16 Annex 48AR where after the event and before the event legal expenses insurance is reported as separate product categories; or</u>		
			(2) <u>instrument FCA 2020/40, where both after the event and before the event legal expenses insurance is reported together under the same product category 'legal expenses', as defined in instrument FCA 2020/40.</u>		

<u>23</u>	<u>SUP</u> <u>16.27.12</u>	<u>G</u>	Instrument FCA 2020/40 <u>defines 'legal expenses' as</u> <u><i>contracts of insurance</i> (or</u> <u>cover within a <i>policy</i>) against</u> <u>the risks of loss to the persons</u> <u>insured attributable to their</u> <u>incurring legal expenses</u> <u>including costs of litigation.</u>		
-----------	-------------------------------	----------	---	--	--

Appendix 3

Draft Handbook text

Amendments to the Handbook to reflect branding changes by the Money and Pensions Service

MONEY AND PENSIONS SERVICE (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance); and
 - (4) section 226 (Compulsory jurisdiction).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D
Consumer Credit sourcebook (CONC)	Annex E

Amendments to material outside the Handbook

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

Citation

- E. This instrument may be cited as the Money and Pensions Service (Consequential Amendments) Instrument 2021.

By order of the Board
[date]

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

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

~~*Money Advice Service*~~
MoneyHelper

the consumer financial education body (*CFEB*) originally established by the *FSA* under section 6A(1) of the *Act* (Enhancing public understanding of financial matters etc) (as it had effect before the passing of the Financial Services Act 2012).

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

9 Suitability (including basic advice) (other than MiFID and insurance-based investment products)

...

9 Annex 2 Sales processes for stakeholder products

...

Stakeholder pensions		
...		
21.	<p>A <i>firm</i> may provide a copy of the table setting out initial monthly pension amounts, found within the “Stakeholder pension decision tree” factsheet, available on www.moneyadvice.service.org.uk <u>https://www.moneyhelper.org.uk</u> in accordance with COBS 13 Annex 2.1.8R, but in doing so should also provide and explain the caveats and assumptions behind the table. A <i>firm</i> should make it clear that the decision on how much to invest is the <i>retail client’s</i> responsibility and that he <u>they</u> should get further advice if has any concerns.</p>	

...

13 Preparing product information

...

13 Annex 2 Projections

This annex belongs to COBS 13.4.1R(1) (Contents of a key features illustration), 13.5.1R (Projections for in-force products) and 13.5.2 (Projections: other situations).

...

R	
1.8	In the case of a of a <i>stakeholder pension scheme</i> in circumstances where a <i>generic key features illustration</i> is permitted under COBS 13.4.2R, the specimen benefits

	table, contained within the “Stakeholder pension decision tree” factsheet available on www.moneyadvice.service.org.uk https://www.moneyhelper.org.uk and headed “Pension Table...How much should I save towards a pension?” which sets out initial monthly pension amounts, may be used instead of a <i>standardised deterministic projection</i> but only if it is accompanied by an explanation of the caveats and assumptions behind the table.
--	--

...

19 Pensions supplementary provisions

...

19.4 Open market options

...

Definitions

19.4.1 R In this section:

- (1) ‘fact sheet’ means the ~~Money Advice Service~~ *MoneyHelper* fact sheet or a statement provided by a *firm* that gives materially the same information;
- (1A) ‘~~Money Advice Service~~ *MoneyHelper* fact sheet’ means the guide “Your pension: it’s time to choose”, available on ~~www.moneyadvice.service.org.uk~~ <https://www.moneyhelper.org.uk>;

...

Single page summary document

...

19.4.7 G For the purpose of COBS 19.4.6AR(2)(b) where a *firm* provides its own statement as the fact sheet, it should include materially the same information in the ~~Money Advice Service~~ *MoneyHelper* fact sheet about:

- (1) ...

...

...

Communications about options to access pension savings

19.4.15 G A *firm* should ensure that when it makes any communication with a *retail client* concerned with the *client’s* options to access their pension savings it has regard to the *fair, clear and not misleading rule*, the *client’s best interests rule* and *Principles 6 and 7*. In particular a *firm* should:

(1) refer to the contents of the ~~Money Advice Service~~ MoneyHelper fact sheet to identify what information might assist the *client* to understand their options;

(2) consider whether it needs to include or refer to any information contained in ~~Money Advice Service~~ MoneyHelper fact sheet;

...

...

19.9 Pension annuity comparison information

...

Content of pension annuity comparator information

19.9.4 R When providing a guaranteed quote to a *retail client* a *firm* must use the relevant template in COBS 19 Annex 3R to provide:

...

(5) the helpline phone number and the website address for the ~~Money Advice Service~~ MoneyHelper and an explanation that the phone number and website can be used to obtain *pension annuity* quotes from other *pension annuity* providers;

...

...

Information comparing a guaranteed quote and a market-leading pension annuity quote

...

19.9.8 G When a *firm* is required to generate a market-leading *pension annuity* quote it may use:

		(1)	the facility on the Money Advice Service <u>MoneyHelper</u> website available on https://www.moneyhelper.org.uk/guaranteed-income ; or
--	--	-----	--

...

19.10 Drawdown, investment pathways and cash warnings

...

Step 3: offer pathway investments

19.10.21 R (1) The third step is for the *firm* to:

- (a) (i) offer the *retail client* a *pathway investment* that corresponds to the *investment pathway* option selected in step 2; or

...

- (iii) (for pathway investments exempt firms only) refer the *retail client* to the ~~*Money and Pensions Service drawdown comparator*~~ *MoneyHelper investment pathways* comparison tool available on <https://www.moneyhelper.org.uk/pathways>;

...

- (c) provide the *retail client* with a clear and prominent statement:

...

- (ii) that the ~~*Money and Pensions Service MoneyHelper*~~ is available to assist the *retail client* with shopping around for *pathway investments* with an explanation of how they may access the ~~*Money and Pensions Service MoneyHelper*~~ and the ~~*Money and Pensions Service drawdown comparator*~~ *MoneyHelper investment pathways* comparison tool available on <https://www.moneyhelper.org.uk/pathways>.

...

...

Preparing for step 3

19.10.24 R To prepare for step 3:

...

- (4) pathway investments exempt firms must be in a position to either:

- (a) ...

- (b) refer clients to the ~~*Money and Pensions Service MoneyHelper drawdown comparator*~~ *investment pathways* comparison tool available on <https://www.moneyhelper.org.uk/pathways>.

...

Information, including cash warnings, for clients who have not decided to invest at least 50% of their drawdown fund in pathway investments

...

19.10.30 R Before carrying out the *retail client's* request referred to in COBS 19.10.8R, the *firm* must:

...

- (3) remind the *retail client* that they can shop around and how to do that, including the option of using the ~~Money and Pensions Service drawdown comparator~~ MoneyHelper investment pathways comparison tool available on <https://www.moneyhelper.org.uk/pathways>; and

...

...

Cash warnings

...

19.10.39 G The *firm* should also:

...

- (4) remind the *retail client* (in line with the requirements in COBS 19.4) that the *retail client* can:

...

- (c) review information on the ~~Money and Pensions Service's~~ MoneyHelper website available on <https://www.moneyhelper.org.uk>.

...

Warning on expiry of a fixed-term product

...

19.10.44 G The *firm* should also:

...

- (2) remind the *retail client* (in line with the requirements in COBS 19.4) that they can:

...

- (c) review information on the ~~Money and Pensions Service's~~ MoneyHelper website available on <https://www.moneyhelper.org.uk>.

...

Record keeping

...

- 19.10.47 G A *firm* to which the record-keeping rules in SYSC 3 (Systems and controls) or SYSC 9 (Record-keeping) apply should maintain a record of its compliance with the requirements in this section including:

...

- 12 where a pathway investment exempt *firm* refers *retail clients* to the ~~*Money and Pensions Service drawdown comparator*~~ *MoneyHelper investment pathways comparison tool* at step 3:

- (a) the number of *retail clients* directed to the ~~*Money and Pensions Service drawdown comparator*~~ *MoneyHelper investment pathways comparison tool*;

...

...

...

19 Format for annuity information

Annex 3

...

Part 1: Template for cases where the guaranteed quote does not provide highest annual income

Where the guaranteed quote does not provide the highest annual income

Firm Logo

keyfacts®

Annuity features

Purchase price £XX,XXX

No guarantee period

Paid quarterly in advance

Payments increase by 2% per year

Dependents income

[Other key features of annuity]

If relevant, include key information here such as:

You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission from your provider.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

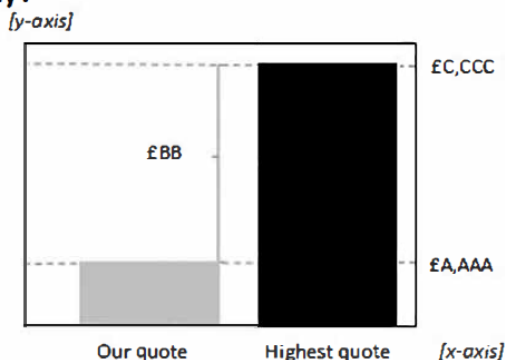
Our quote

This annuity will provide you with an annual income of:

£A,AAA**Can you get a better income from your annuity?**

Based on your key information, there are quotes available from other providers offering higher rates. If you select our product, you would be losing out on £BB per year.

And, if applicable: You are entitled to a [guaranteed annuity rate from your current pension provider][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX. If you select our product, you could be losing out on £DD per year.



The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyadvice.service.org.uk/annuitiesquote moneyhelper.org.uk/guaranteed-income or call 0800138 7777.

Company contact details and other key information

Part 2: Template for cases where the guaranteed quote, the guaranteed annuity rate, a guaranteed minimum pension or section 9(2B) rights offer the highest annual income

Where a guaranteed quote, a guaranteed annuity rate, a guaranteed minimum pension or section 9(2B) rights offers the highest annual income

<i>Firm Logo</i>	keyfacts ®
Annuity features	
Purchase price £XX,XXX	No guarantee period
Paid quarterly in advance	Payments increase by 2% per year
Dependents income	[Other key features of annuity]

If relevant, include key information here such as:

You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

This annuity would provide you with an annual income of:

£A.AAA

Can you get a better income from your annuity?

Based on your key information, our quote is the highest available to you.

Or in the event that the consumer is entitled to a guaranteed annuity rate or minimum level of guaranteed pension which is higher:

You are entitled to a [guaranteed annuity rate from your current pension provider] [minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX. If you select our product, you could be **losing out on £DD per year.**

The Financial Conduct Authority is a financial services regulator. It requires us to inform you that you can shop around if you want to. If you want to see what other options are available from other providers please visit moneyadvice.service.org.uk/annuitiesquotes moneyhelper.org.uk/guaranteed-income or call 0800 138 7777.

Company contact details and other key information

Part 3: Template for cases where the retail client refuses to answer questions to determine whether the client is eligible for an enhanced annuity, or does not consent to a market-leading quote being generated

Where the retail client refuses to answer questions to determine whether the client is eligible for an enhanced annuity, or appropriate consent has not been given to allow a firm to generate a market-leading quote

Firm Logo

keyfacts[®]**Annuity features**Purchase price **£XX,XXX****No guarantee period**Paid **quarterly** in advancePayments **increase** by 2% per year**Dependants income***[Other key features of annuity]*

If relevant, include key information here such as:

You are entitled to a [guaranteed annuity rate][minimum level of guaranteed pension] from [date/customer's age] paying an [estimated] annual income of £X,XXX.

You are entitled to tax free cash greater than 25% of your pension pot. You may lose this right if you switch provider. Your existing pension provider will be able to provide more information about this.

For arranging this policy, your intermediary will receive £ZZZ commission from your provider.

You have agreed with your adviser that the cost of their services will be taken from this policy as follows [provide details here].

Our quote

This annuity would provide you with an annual income of:

£A,AAA**Can you get a better income from your annuity?**

You may be able to get a higher income by shopping around.

If you want to see what other options are available from other providers please visit moneyadvice.service.org.uk/annuitiesquotes moneyhelper.org.uk/guaranteed-income or call 0800 138 7777.

Did you know?

If you've not already been asked questions about your health or lifestyle, answering these could get you even more income.

For example - if you've smoked tobacco, been advised by a medical professional to adjust your lifestyle to improve your health or had a medical condition requiring prescribed medication or hospital treatment - you may be entitled to more income than is quoted above.

Visit moneyadvice.service.org.uk/annuitiesquotes moneyhelper.org.uk/guaranteed-income or call 0800 1387777 to find out more.

Company contact details and other key information

Annex C

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

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

4 Advising and selling standards

...

4.11 Sale and rentback: advising and selling standards

...

FCA consumer factsheet on sale and rent back

- 4.11.2 R (1) As soon as the *customer* expresses an interest in becoming a *SRB agreement seller*, a *regulated sale and rent back firm* must provide ~~him~~ the customer with the ~~Money Advice Service~~ MoneyHelper consumer factsheet on sale and rent back in a *durable medium*, which may be accessed through <http://www.moneyadvice.service.org.uk>, <https://www.moneyhelper.org.uk>.
- (2) ~~The firm on~~ On providing the ~~Money Advice Service~~ MoneyHelper consumer factsheet in (1) to the *customer*, the firm must give ~~him~~ the customer an oral explanation of it, so as to ensure ~~that the customer fully understands~~ its contents are fully understood.

...

5 Pre-application disclosure

...

5.6 Content of illustrations

...

Risk warning

...

- 5.6.65 R The following text must be included at the end of Section 7 ‘Are you comfortable with the risks?’: ‘The ~~Money Advice Service~~ MoneyHelper information sheet “You can afford your mortgage now, but what if...?” will help you consider the risks. You can get a free copy from <http://www.moneyadvice.service.org.uk> <https://www.moneyhelper.org.uk>, or by calling 0800 138 7777.’

...

Risk warning

...

- 5.6.14 R The following text must be included at the end of Section 7 ‘Are you
5 comfortable with the risks?’: ‘The ~~Money Advice Service~~
MoneyHelper information sheet “You can afford your mortgage now,
but what if...?” will help you consider the risks. You can get a free
copy from ~~<http://www.moneyadviceservice.org.uk>~~
<https://www.moneyhelper.org.uk>, or by calling 0800 138 7777.’

...

**5 The mortgage illustration: table of contents, prescribed text and
Anne prescribed section headings and subheadings.
x 1R**

...

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

~~The Money Advice Service~~ MoneyHelper publishes useful guides on choosing a mortgage. These are available free through its website:
~~www.moneyadviceservice.org.uk~~ <https://www.moneyhelper.org.uk>, or by calling
~~0300 500 5000~~ 0800 138 7777.

...

6 Disclosure at the offer stage

...

6.9 Regulated sale and rent back agreements

...

Written pre-offer document: Stage One

- 6.9.3 R (1) ...

...

- (3) The written pre-offer document must be accompanied by the
~~Money Advice Service~~ MoneyHelper consumer factsheet on sale
and rent back (even if the *firm* has already provided this) which
the *firm* must provide to the *customer* in a *durable medium* and

which may be accessed through www.moneyadviceservice.org.uk
<https://www.moneyhelper.org.uk>.

- (4) On providing the ~~Money Advice Service~~ MoneyHelper consumer factsheet to the *SRB agreement seller*, the *firm* must give ~~him~~ an oral explanation of what it contains, so as to ensure that ~~he~~ the *SRB agreement seller* understands its contents, unless the *firm* has already done so.

...

...

9 Equity release: product disclosure

...

9 The illustration: table of contents, prescribed text and prescribed section headings and subheadings

Anne
x 1R

...

1. About this information	
<p>We are required by the Financial Conduct Authority (FCA) – the independent watchdog that regulates financial services – to provide you with this illustration. All firms selling lifetime mortgages are required to give you illustrations like this one, that contain similar information presented in the same way. Ask for other illustrations if you want to compare this lifetime mortgage with lifetime mortgages from other lenders. The Money Advice Service <u>MoneyHelper</u> provides useful information on lifetime mortgages and other ways of releasing equity from your home in a booklet called ‘<u>Equity Release Schemes, Lifetime Mortgages and Home Reversion Plans</u> <u>Releasing equity from your home</u>’. You can get this free through the <u>MoneyHelper Money Advice Service</u> website www.moneyadviceservice.org.uk https://www.moneyhelper.org.uk or by calling 0300 500 5000 <u>0800 138 7777</u>.</p>	
...	

9 Anne x 2R	The illustration: table of contents, prescribed text and prescribed section headings and sub-headings
...	

1. About this information	
<p>We are required by the Financial Conduct Authority (FCA) - the independent watchdog that regulates financial services - to provide you with this illustration. All</p>	

firms selling home reversion plans are required to give you illustrations like this one, containing similar information presented in the same way. Ask for other illustrations if you want to compare this home reversion plan with other products designed to release equity from your home. ~~The Money Advice Service~~ MoneyHelper provides useful information on ways of releasing equity from your home in a booklet called '~~Raising money from your home~~ Releasing equity from your home'. You can get this free through the ~~Money Advice Service~~ MoneyHelper website ~~www.moneyadviceservice.org.uk~~ <https://www.moneyhelper.org.uk> or by calling ~~0300 500 5000~~ 0800 138 7777.

...

13 Arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans

...

13.4 Arrears: provision of information to the customer of a regulated mortgage contract

13.4. R ...
1

- (1) the current ~~Money Advice Service~~ MoneyHelper information sheet “Problems paying your mortgage”;

...

13.4. G (1) The ~~Money Advice Service~~ MoneyHelper information
2 sheet “Problems paying your mortgage” is available on the website www.moneyadviceservice.org.uk <https://www.moneyhelper.org.uk>; copies can also be obtained by calling ~~0300 500 5000~~ 0800 138 7777.

- (2) [deleted]

13.4. G (1) A *firm* may provide the information in *MCOB* 13.4.1
3 R(2), (3), (4), (5) and (6) orally, for example by telephone, but must provide the information in a *durable medium* with a copy of the ~~Money Advice Service~~ MoneyHelper information sheet “Problems paying your mortgage” within 15 *business days* of becoming aware of the *customer’s* account falling into arrears.

...

...

13.7 Business loans and loans to high net worth mortgage customers: tailored provisions

- 13.7. R Where the *regulated mortgage contract* is for a business
1 purpose or is with a *high net worth mortgage customer*, a firm
may as an alternative to *MCOB 13.4.1R(1)* provide the
following information in a *durable medium* instead of the
~~Money Advice Service~~ MoneyHelper information sheet
“Problems paying your mortgage”:

...

...

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

1 Treating complainants fairly

1.1 Purpose and application

...

Application to firms

...

1.1.9A G The scope of this sourcebook does not include:

- (1) a *complaint* about pre-commencement investment business which was regulated by a *recognised professional body* (those *complaints* will be handled under the arrangements of that professional body); or
- (2) a *complaint* about the administration of an *occupational pension scheme*, because this is not a *regulated activity* (firms should refer complainants to the *Pensions Ombudsman* rather than to the Financial Ombudsman Service and should refer consumers' general requests for information or guidance to ~~the Pensions Advisory Service~~ MoneyHelper).

...

Annex E

Amendments to the Consumer Credit sourcebook (CONC)

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

3 Financial promotions and communications with customers

...

3.4 Risk warning for high-cost short-term credit

...

Risk warnings

- 3.4.1 R (1) A *firm* must not *communicate* or *approve* for *communication* a *financial promotion* in relation to *high-cost short-term credit*, unless it contains the following risk warning:
- “Warning: Late repayment can cause you serious money problems. For help, go to ~~moneyadvice.service.org.uk~~ moneyhelper.org.uk”.

...

- (3) Instead of the website address in paragraph (1), a *firm* may include the ~~Money Advice Service’s~~ MoneyHelper logo registered ~~community UK~~ trade mark number ~~EU009695909~~ UK00003476779.

...

- 3.4.2 G ~~The Money Advice Service~~ MoneyHelper has granted a licence to use the logo referred to in CONC 3.4.1R(3) for the purposes of that *rule*. The terms of the licence are available from ~~the Money Advice Service~~ MoneyHelper.

...

3.9 Financial promotions and communications: debt counsellors and debt adjusters

...

Contents of financial promotions and communications

...

- 3.9.4A G *Firms* are reminded of:

...

- (2) the *rule* in CONC 8.2.4R which requires *firms* to notify the *customer* that free *debt counselling, debt adjusting* and *providing of credit information services* is available and that the *customer* can find out more by contacting ~~the Money Advice Service~~ MoneyHelper.

...

7 Arrears, default and recovery (including repossessions)

...

7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors

...

Forbearance and due consideration

...

7.3.7A G (1) ...

- (2) A *firm* may refer the *customer* to a *not-for-profit debt advice body* by, for example, providing the *customer* with a copy of the current arrears information sheet under section 86 of the *CCA*, or with the name and contact details of a *not-for-profit debt advice body* or ~~the Money Advice Service~~ MoneyHelper; or directly transferring the *customer's* call to a *not-for-profit debt advice body*.

...

...

8 Debt advice

...

8.2 Conduct standards: debt advice

...

Signposting to sources of free debt counselling, etc

8.2.4 R A *debt management firm* must prominently include:

- (1) in its first written or oral communication with the *customer* a statement that free *debt counselling, debt adjusting* and *providing of credit information services* is available to *customers* and that the *customer* can find out more by contacting ~~the Money Advice Service~~ MoneyHelper; and

- (2) on its web-site the following link to the ~~Money Advice Service~~ MoneyHelper web-site
 (~~<https://www.moneyadviceservice.org.uk/en/tools/debt-advice-locator>~~ <https://www.moneyhelper.org.uk/en/money-troubles/dealing-with-debt/use-our-debt-advice-locator>).

[**Note:** paragraph 1.7 of Debt Management Protocol]

...

8.5 Financial statements and debt repayment offers

...

- 8.5.2 G The format of the financial statement sent to *lenders* on behalf of the *customer* should be uniform and logically structured in a way that encourages consistent responses from *lenders* and reduces queries and delays. *Firms* may wish to use the Common Financial Statement formerly facilitated by the Money Advice Trust, the Standard Financial Statement (SFS) facilitated by MoneyHelper, or an equivalent or similar statement.

[**Note:** paragraph 3.24 of *DMG*]

...

Annex F

Amendments to the Perimeter Guidance manual (PERG)

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

8 Financial promotion and related activities

...

8 Examples of what is and is not a personal recommendation and advice

Annex

1

...

(D) Website with filtering		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
<p><i>Firm D</i> decides to make its list of the investment products it sells easier to search. The website allows the customer to filter products based upon specified factors. Only products that meet the search criteria input by the customer are displayed.</p>		
...		
<p>(8) A <i>firm</i> runs a <i>personal pension scheme</i>. It provides a filtering process of the type described in example (D4).</p> <p>In addition, it provides an online calculation tool that allows its customers to calculate what their regular contribution rates would need to be to meet a level of income that the customer wishes to have in retirement.</p>	No	<p>Likely not to be regulated advice.</p> <p>The contribution calculator is not regulated advice taken on its own. It does not recommend that the customer buy any particular investment.</p> <p>It should also not involve regulated advice taken with the other customer tools in this example, for the following reasons taken together. The contribution calculator just helps the customer decide how much they want to invest and not whether they should invest. The contribution calculator provides additional information about the way that the <i>firm</i> has designed its funds to perform (see <i>PERG</i> 8.30A.12G).</p>

<p>The tool also allows the customer to calculate their spare income, as in example (F17).</p> <p>The <i>firm</i> makes available information, from a neutral third party source like the Pensions Advisory Service <u>MoneyHelper</u>, about suggested contribution rates.</p>		
...		

Appendix 4

Draft Handbook text

Proposal to amend LIBOR references in the Handbook

LIBOR TRANSITION MISCELLANEOUS INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The modules of the FCA’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
Client Assets sourcebook (CASS)	Annex C

Amendments to material outside the Handbook

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

Notes

- F. In the annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s 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 LIBOR Transition Miscellaneous Instrument 2021.

By order of the Board
[*date*]

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

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

Amend the following definition as shown.

structured deposit (in accordance with article 3 of the *Regulated Activities Order*) a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:

- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as ~~EURIBOR or LIBOR~~ SONIA (whether or not adjusted); or

...

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.

Annex D Interim Prudential sourcebook for Investment Businesses

Annex D Required Forms

[*Editor's note:* The forms comprising IPRU-INV Annex D can be found in the Appendix at the end of this Instrument.]

TP 1 Table: Transitional provisions applying to IPRU(INV)

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
21
22	<u>IPRU(INV) 5.6.5R, IPRU(INV) 13.15.8R and IPRU(INV) Annex D</u>	<u>R</u>	<p>The changes made on 1 January 2022 to the <u>Prescribed Subordinated Loan Agreement and the form of subordinated loan in IPRU(INV) Annex D 5.1 and 13.1 only apply to agreements entered into on or after 1 January 2022.</u></p> <p><u>Agreements entered into prior to 1 January 2022 are subject to IPRU(INV) Annex D as it applied prior to 1 January 2022, except that a firm may replace any reference to LIBOR in such agreements with</u></p>	<u>From 1 January 2022 indefinitely</u>	<u>1 January 2022</u>

			<u>a fair replacement rate.</u>		
<u>23</u>	<u>IPRU(INV) 5.6.5R, IPRU(INV) 13.15.8R and IPRU(INV) Annex D</u>	<u>G</u>	<p>The standard subordinated loan agreements for <u>IPRU-INV 5</u> and <u>IPRU-INV 13</u> contained references to <u>LIBOR</u>, for example in the context of the <u>maximum rate of interest that could be charged under the agreement.</u></p> <p><u>LIBOR is being wound down, and the FCA is encouraging firms to take appropriate action to transition to alternative rates.</u></p> <p><u>The purpose of the transitional in row 22 is to allow firms to amend their existing subordinated loan agreements to transition from LIBOR to a fair replacement rate. New agreements will be subject to the new standard forms, which do not refer to LIBOR.</u></p>	<u>From 1 January 2022 indefinitely</u>	<u>1 January 2022</u>

Annex C

Amendments to the Client Assets sourcebook (CASS)

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

5 **Client money: insurance distribution activity**

...

5.5 **Segregation and the operation of client money accounts**

...

Interest and investment returns

...

- 5.5.32 G If a *firm* outlines its *policy* on its payment of interest, it need not necessarily disclose the actual rates prevailing at any particular time; the *firm* should disclose the terms, for example, ~~LIBOR~~ the relevant reference rate plus or minus ‘x’ percentage points.

...

Annex D

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.6 Specified investments: a broad outline

...

Deposits

...

- 2.6.4-A G (1) *A structured deposit* is a kind of *deposit*.
- (2) *A structured deposit* is a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:
- (a) an index or combination of indices; or
 - (b) *a financial instrument* or combination of *financial instruments*; or
 - (c) *a commodity* or combination of *commodities* or other physical or non-physical non-fungible assets; or
 - (d) a foreign exchange rate or combination of foreign exchange rates.
- (3) A variable rate *deposit* whose return is directly linked to an interest rate index such as ~~Euribor or Libor~~ SONIA (whether or not adjusted) is not a *structured deposit* under paragraph (2)(a).
- (4) (3) applies whether or not the interest is predetermined and whether it is fixed or variable.

Appendix

ANNEX D

[Required Forms]

Interim Prudential Sourcebook for Investment Businesses: Required Forms

These forms are the required forms referred to in IPRU(INV) and are listed below (a short contents list appears at the beginning of each section of the annex):

IPRU(INV) Chapter	FORM
----------------------	------

2 Authorised professional firms

2.1 Bond

3 Securities and Futures Firms which are not MiFID Investment Firms ~~or which are Exempt BIPRU Commodities Firms~~

3.1 Approved Form of Subordinated Loan Agreement

3.2 Form of Deed of Termination

3.3 Form of Deed of Variation

3.4 Form of Guarantor Undertaking

3.5 Guidance Notes

**5 Investment Management Firms
(former IMRO Firms)**

5.1 Prescribed Subordinated Loan Agreement

5.2 Prescribed Approved Undertaking

9 Exempt CAD Firms [deleted]

~~9.1 Long Term Subordinated Loan Agreement [deleted]~~

~~10.2 [deleted]~~

~~9.3 Form of Deed of Termination [deleted]~~

~~9.4 Form of Deed of Variation [deleted]~~

~~9.5 Form of Guarantor Undertaking [deleted]~~

~~10.6 [deleted]~~

~~10.7 [deleted]~~

~~9.8 Guidance Notes [deleted]~~

**13 Personal Investment Firms
(Former PIA Firms)**

13.1 Form of subordinated loan (with guidance notes)

2. Authorised professional firms

Form		Page
2.1	Form of Bond	2

**FORM OF BOND FOR AUTHORISED PROFESSIONAL
FIRMS
(SEE IPRU (INV) 2)**

BY THIS BOND AS A DEED WE [] of [] (“the Principal”) and [] of [] (“the Surety”) as witnessed by its common seal (so that the Surety whose seal is affixed below shall alone be bound) are jointly and severally bound upon the terms and conditions herein set out to [] (“the Trustee”) in the sum of £[] ([sum in words]) or such other sum as may from time to time be agreed between the Surety and the Principal (“the Penalty Sum”).

WHEREAS:-

- (1) The Trustee has consented to enter into this bond as trustee and to hold the rights and benefits under this bond upon trust for any Customer of the Principal in accordance with the terms of this bond.**
- (2) The Surety at the request of the Principal has agreed to be bound in the Penalty Sum upon the terms and conditions hereinafter contained.**

NOW THIS DEED WITNESSES as follows:-

- (1) For the purposes of this bond a claim shall arise if the following conditions are satisfied:-**
 - a. the Scheme has determined the Principal to be in default;**
 - b. the Trustee has determined to pay compensation to an eligible claimant whose claim is in respect of a Civil Liability incurred by the Principal in connection with its carrying on of Regulated Activities; and**
 - c. the claim in question relates to a Loss.**
- (2) The Surety and the Principal are held and firmly bound to the Trustee for the payment of any sum arising out of any claim under the provisions of Clause 1 hereof to the extent that any such claim exceeds the sum of fifty thousand pounds (£50,000) provided that the aggregate of any such sum or sums does not exceed the Penalty Sum.**
- (3) The Trustee hereby declares that it holds all its rights and benefits under this bond upon trust for the Customers in respect of whom or for which such claim or claims were made absolutely.**
- (4) The Trustee shall, insofar as it may lawfully do so, notify the Surety of any claim or Matter of which the Trustee is aware which may give rise to any claim hereunder such notice to be addressed to the Surety in writing at its address set out above or to such other address as may have been notified to the**

Trustee in writing by the Surety and any such information which the Trustee shall when serving such notice designate as confidential shall be held and retained by the Surety in confidence.

- (5) Payment of any sum to the Trustee in respect of any claim shall be due thirty (30) days after the giving of notice thereof pursuant to Clause 4 hereof the Surety shall pay any such sum or sums on demand.**
- (6) The Surety may give written notice to the Trustee sent by recorded delivery service to the address set out above or such other address as the Trustee shall from time to time advise in writing (and serving a copy of such notice upon the Principal) terminating its liability under this bond which liability shall accordingly cease sixty (60) days after receipt by the Trustee in writing of such notice ("the Termination Date") save in respect of any claim rising out of anything notified by the Trustee to the Surety pursuant to Clause 4 prior to or within the period of six months after the Termination Date.**
- (7) Notwithstanding the Release or Discharge of the Principal the Surety shall remain liable in respect of any claim arising during the period in which this bond was in force or which shall be made within six months of the Termination Date.**
- (8) The Principal and its executors administrators or representatives whosoever jointly and severally agree and covenant with the Surety and the Trustee as follows:-**
 - a. That they shall and will from time to time and notwithstanding the Release or Discharge of the Principal indemnify the Surety and its successors and assigns from and against all claims losses costs and expenses which the Surety shall or otherwise might at any time sustain or be put to under or by virtue of this bond.**
 - b. That the Principal is an authorised professional firm which has Permission under the Act to carry on Regulated Activities and will give notice forthwith to the Surety in writing if it shall cease to have such Permission or if it shall become aware of any Matter which might give rise to it being declared in default by the Scheme.**
 - c. That the Principal will calculate the Penalty Sum that may be required under this bond from time to time so as to ensure that it complies with the Rules.**
 - d. That the persons named herein are duly authorised for an on behalf of the Principal to execute this bond in the manner appearing below.**
 - e. That the Trustee is irrevocably authorised to provide such information to the Surety as it shall think fit or as may be required for the purpose of making any claim and the Surety is irrevocably authorised to provide such information to the Trustee in relation to the obligations of the**

Principal secured by this bond as it shall think fit.

f. That the Principal will duly and promptly pay the annual premium due in respect of this bond.

(9) In this bond words and expressions having capitalised initial letters shall have the meanings set out in this bond and where not so defined shall have the meanings set out in the Glossary annexed to the General Provisions Instrument 2001 and as the same may hereafter be varied amended or supplemented from time to time

“the Act”	means the Financial Services and Markets Act 2000 or any amendment or re-enactment of the provisions thereof;
“Civil Liability”	means a civil liability as defined in the Scheme Regulations;
“Customer”	means a customer as defined in the Scheme Regulations;
“Loss”	means a loss which has been the subject of a valid claim determined by the Scheme in respect of which the amount of the Civil Liability is in excess of £50,000;
“Matter”	means any proceedings initiated under the Act against the Principal in relation to its Regulated Activities;
“the Principal”	means the authorised professional firm named herein and includes each of the partners thereof where applicable;
"Release or Discharge"	means the release of the Principal in relation to the termination of any Authorisation under the provisions of the Act;
“Scheme”	means the Financial Services Compensation Scheme;
"Scheme Regulations"	means the Financial Services Compensation Scheme Regulations.

Save where the context otherwise requires words and expressions used herein and in the Act shall bear the meaning given to them in the singular shall include the plural.

**IN WITNESS THEREOF the Principal acting by*
and***

**as their duly authorised representatives and the Surety have executed and delivered
this bond as a deed this day of**

EXECUTED AND DELIVERED AS A DEED by

Witness

Signature

Occupation

Address

.....

EXECUTED AND DELIVERED AS A DEED by

Witness

Signature

Occupation

Address

.....

*** Where appropriate this bond should be executed by the compliance partner
 and the partner with overall responsibility for the Principal's Regulated
 Activities**

3. Securities and Futures Firms which are not *MiFID* Investment Firms or which are Exempt BIPRU Commodities Firms

Form		Page
3.1	Approved Form of Subordinated Loan Agreement	2
3.2	Form of Deed of Termination	17
3.3	Form of Deed of Variation	19
3.4	Form of Guarantor Undertaking	21
3.5	Guidance Notes	23
3.6	Form of Approved Bank Bond (with power of attorney)	31
3.7	Approved Form of Undertaking	34

3.1 Approved Form of Subordinated Loan Agreement

A. Front Page

THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in **Schedule 1** to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms

BETWEEN -

- (1) **the Lender** (as defined in the Standard Terms set out in **Schedule 2** to this Agreement), and
- (2) **the Borrower** (as defined in the Standard Terms)

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) as an eligible capital substitute in accordance with the *FCA*'s rule [IPRU(INV) 3-63] and has fully disclosed to the *FCA* the circumstances giving rise to the Loan or Facility and the effective subordination of the Loan and each Advance.

IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in **Schedule 1** to this Agreement and the Standard Terms set out in **Schedule 2** to this Agreement.

This Agreement is executed by the parties the day and year indicated in the Variable Terms.

Schedule 1

B. Variable Terms

1. Date of Agreement	
2. Effective Date	
3. Lender	
4. Address of Lender	
5. Borrower	
6. Address of Borrower	

7. The Loan or Facility

With reference to paragraph 2 of the Standard Terms,

8. Interest

With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows -

9. Repayment

With reference to paragraph 4(2) of the Standard Terms and subject always to paragraphs 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms, the terms for repayment are -

10. Additional terms

With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are -

10. **Additional terms (contd)**

--

11. **Jurisdiction**

With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process -

(a) by the Lender -

--

of

--

(b) by the Borrower -

--

of

--

Schedule 2

C. Standard Terms

Interpretation

1 (1) In this Agreement -

“Advance” means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Borrower” means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

“Business Day” means any day except Saturday, Sunday or a bank or public holiday in England;

“Effective Date” means the date on which this Agreement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

“Excluded Liabilities” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in the Insolvency of the Borrower;

“Facility” means the loan facility referred to in paragraph 2(2);

“Financial Resources” has the meaning given in the Financial Rules;

“Financial Resources Requirement” has the meaning given it in the Financial Rules;

“Financial Rules” means the rules in IPRU(INV) Chapter 3 in the *Handbook*;

“Insolvency” means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“Insolvency Officer” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower's Insolvency;

- 1 (1) **“Lender”** means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

“Liabilities” means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

“Loan” means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Partner” means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

“Senior Liabilities” means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

“Subordinated Liabilities” means all Liabilities to the Lender in respect of the Loan or each Advance made under this Agreement and all interest payable thereon.

“the FCA” means The Financial Conduct Authority Limited whose registered office is at ~~25 The North Colonnade, Canary Wharf, London, E14 5HS~~ 12 Endeavour Square, London, E20 1JN; and

- (2) Any reference to any rules of the *FCA* is a reference to them as in force from time to time.
- (3) Reference to any gender includes a reference to all other genders.
- (4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

The Loan or Facility

- 2 (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby **acknowledges** its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.
- (2) Where, as indicated in the Variable Terms this Agreement is for a loan facility -
- (a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;
- (b) the Facility will be available until the last available date specified in the Variable Terms; and

- 2 (2) (c) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.
- (3) The Lender and the Borrower undertake to provide the FCA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FCA in the request.

Interest

- 3 Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.

Repayment

- 4 (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).
- (2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3).
- (3) (a) Unless the *FCA* otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, until five BusinessDays have elapsed from the *FCA* confirming in writing to the Borrower receipt of the Borrower's written notice of his intention to do so, except that -
- (i) where, immediately after repayment or prepayment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement, the prior written approval of the *FCA* shall be obtained before any repayment or prepayment;
 - (ii) any notice under this sub-paragraph or the terms referred to in subparagraph (2) above shall be ineffective if -
 - (aa) the Insolvency of the Borrower commences before the date on which such notice expires; or
 - (bb) the *FCA* notifies the Borrower orally or in writing of its refusal to consent to such repayment or prepayment by the time such notice period expires.
- (b) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FCA, except that where -
- (i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or

- 4** (3) (b) (ii) before payment, the Insolvency of the Borrower commences,
no such payment may be made without the prior written approval of the *FCA*.
- (4) If in respect of the Loan or any Advance default is made for a period of -
- (a) seven days or more in the payment of any principal due, or
 - (b) 14 days or more in the payment of any interest due,
- the Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Day's prior written notice to the *FCA* of its intention to do so.
- (5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.
- (6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if -
- (a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;
 - (b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and
 - (c) the Lender has given seven Business Days' prior written notice to the *FCA* of its intention to institute such proceedings.
- (7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.

Subordination

- 5** (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon -
- (a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower and, being a partnership, the Borrower has not been dissolved) the Borrower being in compliance with not less than 120% of its Financial Resources Requirement immediately after payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that -
 - (i) paragraph 4(3) has been complied with; and
 - (ii) the Borrower could make such payment and still be in compliance with such Financial Resources Requirement;
 - (b) (if an order has been made or effective resolution passed for the Insolvency of the Borrower or, if a partnership, the Borrower is to be dissolved) the Borrower being “solvent” at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be “solvent”.
- (2) For the purposes of sub-paragraph (1)(b) above, the Borrower shall be “solvent” if it is able to pay its debts (other than the Subordinated Liabilities) in full disregarding -
- (a) obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower, and
 - (b) the Excluded Liabilities.
- (3) Interest will continue to accrue at the rate specified pursuant to paragraph 3 on any payment which does not become payable under this paragraph 5.
- (4) For the purposes of sub-paragraph (1)(b) above, a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FCA, shall in the absence of proven error be treated and accepted by the FCA, the Lender and the Borrower as correct and sufficient evidence of the Borrower’s solvency or Insolvency.

- 5** (5) Subject to the provisions of sub-paragraphs (6), (7) and (8) below, if the Lender shall receive from the Borrower payment of any sum in respect of the Subordinated Liabilities -
- (a) when any of the terms and conditions referred to in sub-paragraph (1) above is not satisfied, or
 - (b) where such payment is prohibited under paragraph 4(3), the payment of such sum shall be void for all purposes.
- (6) Any sum referred to in sub-paragraph (5) above shall be received by the Lender upon trust to return it to the Borrower.
- (7) Any sum so returned shall then be treated for the purposes of the Borrower's obligations hereunder as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower hereunder.
- (8) A request to the Lender for return of any sum referred to in sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

Representations and undertakings of Borrower

- 6** From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FCA -
- (a) secure all or any part of the Subordinated Liabilities;
 - (b) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;
 - (c) amend any document evidencing or providing for the Subordinated Liabilities;
 - (d) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
 - (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected; or
 - (f) arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and
- other than as disclosed in writing to the FCA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

Representations and undertakings of Lender

7 From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without the prior written consent of the FCA -

- (a) assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;
- (b) purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;
- (c) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;
- (d) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (e) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected; or
- (f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and

other than as disclosed in writing to the FCA, the Lender represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).

Borrower being a partnership

8 Where the Borrower is a partnership -

- (a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption of new Partners or by a change of name PROVIDED THAT -
 - (i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in this Agreement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from those obligations and the FCA has agreed in writing to the release; and

- 8** (a) (ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FCA may consider necessary;
- (b) the obligations and undertakings of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.

Partial invalidity

- 9** If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

The FCA and indemnity

- 10** The FCA shall not, by virtue of having rights under this Agreement, be taken to be a trustee for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FCA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FCA as a consequence of it having rights, or taking action under this Agreement.

Additional terms

- 11** Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.

Entire agreement

- 12** This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.

Amendments

- 13** Any amendments to this Agreement must be made by the prescribed Deed of Variation and any amendments made or purported to be made without the consent of the FCA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FCA to be a party to this Agreement.

Notices to the FCA

- 14** A notice given to the FCA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FCA has given to the sender written confirmation of its receipt.

Law

- 15** This Agreement is governed by English law.

Jurisdiction

- 16** For the benefit of the FCA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.

Rights of the FCA

- 17** Although not a party to the Agreement, the FCA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FCA a benefit.

3.2 FORM OF DEED OF TERMINATION

THIS DEED OF TERMINATION is made on the day of 20.....

BETWEEN -

- (1) * [insert full name of Lender] (registered in [England] number *) whose registered office is at [*if an individual or partnership* of] * (“the **Lender**”).
- (2) * [insert full name of Borrower] (registered in [England] number *) whose registered office is at [*if an individual or partnership* of] * (“the **Borrower**”).
- (3) **The Financial Conduct Authority Limited** whose registered office is at ~~25 The North Colonnade, Canary Wharf, London, E14 5HS~~ 12 Endeavour Square, London, E20 1JN (“the **FCA**”).

WHEREAS -

A subordinated loan agreement was entered in between the Lender (1); the Borrower (2); and the FCA (3) on [date] (“the Agreement”) pursuant to which the Lender agreed to make available to the Borrower a [Loan/Facility] of up to [£]. [insert brief details of any Variations] The parties to the Agreement now wish to terminate the Agreement.

IT IS AGREED THAT -

1. The Agreement shall be deemed terminated [in accordance with its terms] with effect from [the date of this Deed of Termination/insert relevant future date]. All obligations and liabilities arising before that date shall remain continuing.
2. This Deed is governed by English Law.

IN WITNESS WHEREOF this Deed has been executed by the parties and is intended to be and is hereby delivered on the date first above written.

Executed as a deed by [full name of Lender]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by
[full names of individual partners of Lender]

(as such partners and as individuals)

Signed
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Lender]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

Executed as a deed by [full name of Borrower]

..... Signed
Director

Signed
Director/Secretary

or

Signed as a deed by [full names of
individual partners of Borrower] (as such
partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Borrower]
(*if an individual*)

Signed.....

in the presence of

Signed.....
Witness

The Common Seal of THE FINANCIAL
CONDUCT AUTHORITY LIMITED
was hereunto affixed in the
presence of

Signed
Authorised Signatory

Signed
Authorised Signatory

3.3 FORM OF DEED OF VARIATION

THIS DEED OF VARIATION is made on the day of 20.....

BETWEEN -

- (1) * [insert full name of Lender] (registered in [England] number *) whose registered office is at [*if an individual or partnership of*] * (“the **Lender**”);
- (2) * [insert full name of Borrower] (registered in [England] number *) whose registered office is at [*if an individual or partnership of*] * (“the **Borrower**”);
and
- (3) **The Financial Conduct Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS 12 Endeavour Square, London, E20 1JN (“the **FCA**”).

WHEREAS -

A subordinated loan agreement was entered into between the Lender (1); the Borrower (2); and the FCA (3) on [date] (“the Agreement”) pursuant to which the Lender agreed to make available to the Borrower a (Loan/Facility) of up to [£].

The parties to the Agreement now wish to vary the Agreement to [insert brief details].

IT IS AGREED THAT -

1. The Agreement shall be deemed varied [, in accordance with its terms,] from [the date of this Deed of Variation/insert relevant future date] so that the FCA is no longer a party to the agreement. Any obligation owed to or by, and any requirement for any consent or permission to be given to or by FCA shall be of no further effect. FCA is hereby released from each and every obligation owed by it under the Agreement. Although on execution of this deed the FCA is no longer a party to the Agreement, it may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FCA a benefit.

[insert additional clauses/details of amended clauses].

[to the extent that any term of the Agreement is inconsistent with their terms and conditions contained in the Approved Form, the terms and conditions in the Approved Form shall prevail (provided that for the purposes of this clause 1, in clauses 11 and 12 of the Approved Form, the expressions “Variable Terms” and “Agreement” shall be deemed to include references to the Agreement and this Deed)]*

2. All other terms and conditions of the Agreement remain unchanged.
3. This Deed is governed by English Law.

IN WITNESS WHEREOF this Deed has been executed by the parties and is intended to be and is hereby delivered on the date first above written.

Executed as a deed by [full name of Lender]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by [full names of
individual partners of Lender] (as such
partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Lender]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

Executed as a deed by [full name of Borrower]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by [full names of individual

partners of Borrower]
(as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

or

Signed as a deed by [full name of Borrower]
(*if an individual*)

Signed.....

in the presence of

Signed.....
Witness

The Common Seal of THE FINANCIAL
CONDUCT AUTHORITY LIMITED
was hereunto affixed in the presence of

Signed
Authorised Signatory

Signed
Authorised Signatory

[FCA]

3.4 FORM OF GUARANTOR UNDERTAKING

This undertaking is entered into the [] day of [] 20[] by

[] (the “Guarantor”) of [] in favour of

The Financial Conduct Authority Limited (“the FCA”) whose registered office is at ~~25 The North Colonnade, Canary Wharf, London, E14 5HS~~ 12 Endeavour Square, London, E20 1JN.

WHEREAS:-

- (A) By a subordinated loan agreement (the “Loan Agreement”) [made on []/ [of even date] between [] (the “Lender”), [] (the “Borrower”) and the FCA, the Lender made available to the Borrower a loan [facility] on the terms and conditions contained in the Loan Agreement.
- (B) By a guarantee (the “Guarantee”) made [of even date] between the Guarantor and the Lender, the Guarantor guaranteed the obligations of the Borrower to the Lender under the Loan Agreement on the terms and conditions contained in the Guarantee.

IT IS HEREBY AGREED as follows:-

- 1 The Guarantor hereby undertakes to the FCA that all and any rights which the Guarantor may have against the Borrower in respect of the Guarantee (whether by subrogation or otherwise howsoever) shall be subordinated on the same terms and conditions (mutatis mutandis) set out in the Loan Agreement (as amended from time to time) and further undertakes and confirms that the Guarantor will be bound by the terms of the Loan Agreement as if the Guarantor were a party to it in place of the Lender.
- 2 This undertaking is governed by English law.

IN WITNESS whereof this deed has been executed by the Guarantor on the date first above written.

Executed as a Deed by
[]

Witness:.....

Witness's Name:

Witness's Address:

.....

3.5 Guidance Notes on Completion of Agreements

A GENERAL

Introduction

1. These Notes are designed to accompany the Approved Forms of Subordinated Loan Agreement, ~~each~~ of which is in four parts: the front page, the Variable Terms in Schedule 1, the Standard Terms in Schedule 2 and the signature page. The parties will need to set out details of themselves and the transaction in the Variable Terms and complete the signature page. The front page and the Standard Terms should remain unaltered.
2. All communications with the FCA regarding the proposed Agreement should in the first instance be via the firm's usual contact.
3. ~~Firms are advised to ensure that the appropriate form of subordinated loan agreement is used (Chap 9/Chap 3). This is, of course, dependent on the firm's authorisation categorisation. Should the firm's categorisation change, this should be discussed with the firm's usual contact as it is likely that any subordinated loan agreement in place will have to be revised. [Deleted]~~

Preparation of the Agreement

4. (a) The form containing the Variable Terms may be completed or re-typed according to preference.

(b) Rather than re-type the Standard Terms (Schedule 2), firms should simply **photocopy Schedule 2 of the FCA precedent (or print it from the website) and include it as part of the original Agreement.**
5. [Deleted]

Financial Rule IPRU(INV) 3-63

6. Firms are referred to rule IPRU(INV) 3-63 on the use of subordinated loans, including restrictions on approved lenders, repayment provisions and gearing limits.

B NOTES ON VARIABLE TERMS

Dates

7. If the **Effective Date of the Agreement** is to be different from the Date of the Agreement, care should be taken to record this in paragraph 2. Where this is the case, the Effective Date will normally be expected to be later than the Date of the Agreement. If the Effective Date is to be a date prior to the date of the Agreement (for example because the loan was drawn down before the Agreement was put in place), the firm will be expected to provide a reasonable explanation to the FCA as to why it was not possible to document the loan more promptly.

Addresses

8. Paragraphs 4 and 6: The address given should be the firm's registered office or equivalent.

Partnerships

9. Paragraph 5: Where the Borrower is a partnership, insert "See Additional Terms, paragraph 10() below" and in paragraph 10 of Schedule 1, insert the names and addresses of each of the partners.

The Loan or Facility

10. Paragraph 7: Check that paragraph 2 of the Standard Terms accurately reflects the intentions of the parties.
11. Suggested wording for a loan is:
"This is an agreement for the Loan of £[]."

12. Suggested wording for a facility is:

"This is an agreement for a Facility under which the Lender is committed to make Advances in pounds sterling to the Borrower up to a maximum amount of £[] until the last available date of the Facility being [..... (date)].

The terms (if any) agreed between the parties on the mechanics of drawdown are as follows - ". *

* For example, the parties may wish to provide that:

"Advances may be drawdown in integral multiples of £100,000."

Interest

13. Paragraph 8: the FCA will be concerned if an excessive rate of interest compared with the market rate is charged. Broadly speaking a rate of interest will be regarded by the FCA as excessive if it is not a commercial one. Compound interest is not acceptable.

Repayment

14. Irrespective of the form of agreement being used, the specified notice period runs from the date of drawdown and, therefore, where a loan is in the form of a facility, each advance must be for a minimum of the required period.
15. Repayment clauses have given rise to confusion in the past. Sample wordings are set out below.
16. Under rule IPRU(INV) 3-63(5), an amount repayable within three months of the effective date of the loan or advance is only acceptable as an eligible capital substitute in the absence of a waiver. A notice period of less than three months will accordingly require a waiver which will not normally be given. In many cases the most convenient approach is to provide for repayment on the expiry of three months written notice, such notice to be given to the FCA as well as to the other party to the agreement.
17. Paragraph 9: Examples of suggested wordings for either a fixed repayment date or repayment on notice in relation to IPRU(INV) 3 are as follows:
- (a) "The Borrower shall repay [the Loan/each Advance made to it] on the date which falls three months after the date of drawdown of the [Loan/relevant Advance]."
 - (b) "The Borrower shall repay [the Loan/each Advance made to it] three months after the date on which:
 - (a) the Borrower gives written notice to the Lender and to the FCA; or
 - (b) the Lender gives written notice to the Borrower and to the FCA."

Note: either (a) or (b) above by itself is sufficient.

- (c) "[The Loan / Each Advance made to the Borrower] shall be repayable on the date specified by notice in writing given by the Lender to the Borrower and to the FCA or notice in writing given by the Borrower to the Lender and to the FCA, in either case that date being not less than three months after the date on which the notice is given."

Additional terms

18. Paragraph 10: Additional terms may be agreed between the borrower and lender such as those relating to -

- representations and warranties
- provision of financial and other information
- covenants
- costs and expenses
- taxes and increased costs
- mechanics of payment
- notices
- termination provisions.

However, they should not be inconsistent with the Agreement or the FCA rules. For example, any terms dealing with additional payments by the borrower (eg to compensate for taxes or increased costs) should be subject to the FCA's prior written consent. Covenants and additional representations and warranties should not be inconsistent with the existing representations and warranties in paragraphs 6 and 7 of the Standard Terms. Similarly, any notices clause should take into account paragraph 14 of the Standard Terms (notices to the FCA of no effect until receipt confirmed). Any inconsistency between the Variable Terms and the Standard Terms is resolved in favour of the Standard Terms (paragraph 11 of the Standard Terms).

The lender and borrower should note that the action which can be taken by the lender in response to any breach of representation, warranty or covenant by the borrower is considerably constrained by paragraphs 4 and 5 of the Standard Terms. Therefore the value to the lender of including additional representations, warranties or covenants is very limited.

19. See also note 9 above for the situation where the borrower is a partnership and notes ~~24-25~~ 21-22 below for additional terms relating to law and jurisdiction.

Law and jurisdiction

20. If the borrower or lender is resident in another jurisdiction and does not have a branch office within the United Kingdom, paragraph 11 of the Variable Terms should be completed.
21. The borrower should not be appointed agent for service of process on the lender in case a dispute arises between them.

C NOTES ON STANDARD TERMS

Representations and undertakings

22. Paragraphs 6(f) and 7(f): The guarantor or other provider of security must waive its right of subrogation against the borrower until all Senior Liabilities of the borrower have been paid in full. A form of deed for this purpose is available from the FCA.
23. On the effect of other terms relating to the subordinated liabilities not contained in this Agreement, see also paragraph 12 of the Standard Terms.
24. Paragraphs 15 and 16: See Notes ~~24-25~~ 20-21 above.

D SIGNATURE PAGE

Arrangements for execution post FCA approval

25. **Two identical original Agreements** (i.e. the front page, the two Schedules and the signature page, each copy stapled or otherwise bound together) should be prepared for signature. Firms and lenders may use any of the execution forms set out in Notes ~~34-35~~ 31-32 below.

E DEEDS OF VARIATION/ DEEDS OF TERMINATION

26. Firms are advised to ensure that the appropriate standard form is used. These forms are available from the FCA on request.
27. The recitals to the deed should refer to the amount of the loan/ each advance and where applicable, briefly summarise the effect of any previous variation of the agreement and of variation of the original agreement which is currently proposed.
28. A variation or termination of a subordinated loan agreement can only be effected by the execution of a further deed. In particular, this means that the formalities for executing a deed (see note ~~34-36~~ 31-33 below) must be observed for all deeds of variation or termination and that all parties to the original agreement must also be parties to the subsequent deed of variation or termination. Only the forms set out at Notes ~~35(1) and (2) or 36(2)~~ 31(1) and (2) or 32(2) below are appropriate for execution as a deed.
29. A deed of variation will be required where the parties wish to change the terms of a subordinated loan agreement eg. where the amount of the loan or advance is to be increased. A deed of termination is needed where the parties wish to bring to terminate an agreement that is in place before it would otherwise come to an end. This could occur, for example, where the firm wants to substitute a new lender. Please note that where a subordinated loan agreement is terminated in this way, all obligations and liabilities of the parties arising before the date of termination remain in effect.

F Execution

30. In the case of English, Welsh and Northern Irish companies, reference is made to section 43 of the Companies Act 2006 under which a company may contract:
- by writing under its common seal, or
 - through any person acting under its authority, express or implied.

Section 44 of the Companies Act 2006 governs the execution of documents by English, Welsh and Northern Irish companies.

31. Suggested wordings for English companies are:

(1) THE COMMON SEAL OF

[]
was hereunto affixed
in the presence of

.....
Director

.....
Director/secretary

OR

(2) EXECUTED as a deed

by
Director Director/secretary

(3) SIGNED for and on behalf of
[]

by
.....
Authorised signatory

(4) SIGNED for and on behalf of
[]
by

.....
Director Director/secretary

32. Suggested wording for individuals is –

(1) SIGNED by []
in the presence of -

Signature of witness

Name of witness

Address of witness
.....

OR

(2) EXECUTED as a deed by []

in the presence of -

Signature of witness

Name of witness

Address of witness
.....

33. In the case of overseas companies or partnerships, appropriate wording should be used. If necessary, firms should obtain legal advice from lawyers qualified in the relevant jurisdiction.

FORM OF APPROVED BANK BOND
"A"

1. This Bond is issued by [] of [] ("the Bank")
for the benefit of [] ("the Firm").
2. The Bank hereby IRREVOCABLY AND UNCONDITIONALLY undertakes to the Firm that forthwith upon receipt of a notice of demand in the form referred to in paragraph 3 of this Bond it shall pay to the Firm the sum of £[] ("the Bonded Amount").
3. The notice of demand referred to in paragraph 2 of this Bond is a notice duly executed by The Financial Conduct Authority Limited ("the FCA") on behalf of the Firm (pursuant to the power of attorney executed contemporaneously herewith) which :-
 - (i) is deposited at any time during the currency of this Bond at the address of the Bank set out in paragraph 1 of this Bond (or such other address as may be notified by the Bank in writing to the FCA for this purpose from time to time);
 - (ii) demands payment in full of the Bonded Amount; and
 - (iii) certifies that the Firm is in default of its financial resources requirement as determined in accordance with the rules in IPRU(INV)3 in the *Handbook* ("the Financial Rules") as in force at the relevant time. The Bank shall not be entitled to inquire into or require proof of the facts stated in the notice of demand which, as between the Bank, the FCA and the Firm, shall be conclusive.
4. The Bank shall have no recourse to the assets of the Firm in respect of the Bonded Amount and no other person shall have recourse to the assets of the Firm in respect of the Bonded Amount until payment in respect of all present and future sums, liabilities and obligations payable or owing by the Firm (whether actual or contingent, jointly or severally or otherwise howsoever) has been made in full to all other creditors.
5. The Bank may not terminate the Bond unless -
 - (i) the Firm will have financial resources equal to at least 120% of its financial resources requirement as determined in accordance with the Financial Rules of the FCA as in force at the relevant time immediately after termination of the Bond; or
 - (ii) the Bank is authorised by the FCA to terminate the Bond.
6. This Bond will not be terminated before the date specified in paragraph 8 below through any act or default of the Firm or otherwise.
7. This Bond shall not be affected by any change in:-
 - (i) the constitution of the Bank or the Firm; or
 - (ii) the provisions of the Financial Rules of the FCA.

8. This Bond shall remain valid from the date of its issue until [] [and the Bank[and the Firm] hereby irrevocably submit to the non exclusivejurisdiction of the English courts and irrevocably appoint [] as agents for the service of process in the said jurisdiction].*
9. This Bond shall be governed by and construed and take effect in all respects in accordance with English law.

EXECUTED as a deed this [] day of [] 20[].

THE COMMON SEAL of)
[Bank])
was hereunto affixed)
in the presence of:-)

* Words in square brackets only necessary if the Bank or the Firm is incorporated outside the U.K.

POWER OF ATTORNEY

BY THIS POWER OF ATTORNEY given on the [] day of [] a company [incorporated in the United Kingdom] having its registered office at [] ("the Company") appoints The Financial Conduct Authority Limited ("the FCA") whose registered office is ~~25 The North Colonnade, Canary Wharf, London, E14 5HS~~ 12 Endeavour Square, London, E20 1JN to be the true and lawful attorney of the Company for the following purpose:-

By way of security for the obligation of the Company to maintain sufficient financial resources as required by the rules in IPRU(INV) 3 of the *Handbook* as in force from time to time to demand payment on behalf of the Company of the sums payable pursuant to the terms of the Approved Bank Bond (annexed hereto marked "A") in the manner prescribed by the terms of such Approved Bank Bond.

The Company declares the authority hereby conferred to be irrevocable as long as the Company shall remain authorised to conduct investment business in the United Kingdom by the FCA.

The authority hereby conferred may be exercised on behalf of the FCA by any one of its officers or employees duly authorised in that regard by a resolution of the FCA's Board or a duly authorised committee thereof.

This Power of Attorney shall be governed by and construed and take effect in all respects in accordance with English law.

IN WITNESS WHEREOF this deed has been duly executed by the Company and it is intended to be and is hereby delivered the day and year first above written.

THE COMMON SEAL of)
[Company])
was hereunto affixed)
in the presence of:-)

3.7 APPROVED FORM OF UNDERTAKING

THIS UNDERTAKING is entered into the [] day of [] 20[] BETWEEN:

- (1) [] of [] ("the Covenantor");
- (2) THE FINANCIAL CONDUCT AUTHORITY LIMITED ("the FCA") whose registered office is ~~25 The North Colonnade, Canary Wharf, London, E14 5HS~~ 12 Endeavour Square, London, E20 1JN; and
- (3) [] of [] ("the Principal") [and [] of [], [] of [], and [] of []] the individual partners of the Principal as such partners and as individuals **] +].

WHEREAS:

- (A) The Principal is authorised to carry on one or more regulated activities in the United Kingdom (as defined under the Financial Services and Markets Act 2000) by the FCA.
- (B) The Principal is required pursuant to the Financial Rules to maintain a Financial Resources Requirement (and the FCA has agreed that such Financial Resources Requirement may in part be represented by one or more undertakings in the form hereof to the extent that any undertaking(s) will not exceed the excess of 30% of the Principal's Base Requirement over the value of any Approved Bank Bond.
- (C) The Principal has requested the Covenantor to give an undertaking to the FCA for the purposes of the Principal's Financial Resources Requirement which the Covenantor has agreed to do.

NOW IT IS HEREBY AGREED AND DECLARED as follows:

1. Definitions

In this Undertaking:

"Base Requirement" has the meaning given in the Financial Rules;

"Business Day" means a day on which The International Stock Exchange of the United Kingdom Limited is open for business;

"Excluded Liabilities" means Liabilities which are expressed to be and in the opinion of the Insolvency Officer of the Principal [or, where relevant, the Insolvency Officer of a Partner**], do, rank junior to the Subordinated Liabilities in the insolvency of the Principal;

"Financial Resources" has the meaning given in the Financial Rules;

"Financial Resources Requirement" has the meaning given in the Financial Rules;

"the Financial Rules" means the rules in IPRU(INV) 3 of the *Handbook*;

"Insolvency" means and includes liquidation, winding up, bankruptcy and sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Principal) or the equivalent in any other jurisdiction to which the Principal may be subject;

"Insolvency Officer" means and includes any person duly appointed to administer and distribute assets of the Principal in the course of the Principal's insolvency;

"Liabilities" means all present and future sums, liabilities and obligations payable or owing by the Principal [or any Partner**] (whether actual or contingent, jointly or severally or otherwise howsoever); [**"Partner"** means an individual partner of the Principal**];

"Senior Liabilities" means all Liabilities except all Liabilities in respect of any sums paid to the Principal under the terms of this Undertaking and Excluded Liabilities;

"Subordinated Liabilities" means all Liabilities to the Covenantor in respect of repayment of any sums paid to the Principal under the terms of this Undertaking. Any reference to any rules of the FCA is a reference to them as already amended and includes a reference to any revoked rules which may be remade with or without amendments, and to any future rules and/or amendments of them.

2. In consideration of the FCA agreeing to take this Undertaking into account for the purpose of determining compliance by the Principal with its Financial Resources Requirement the Covenantor with intent to bind its successors and assigns and any body corporate with which it may amalgamate or merge HEREBY UNDERTAKES with and to the FCA and the Principal that at any time after the occurrence of any Event of Default specified in paragraph 6 hereof ("Event of Default") and notwithstanding that any other Event of Default may have occurred prior thereto the Covenantor will on demand in writing made upon it by the FCA accompanied by a certificate of the FCA as referred to in paragraph 9 hereof ("the Certificate") pay to the Principal or as the case may be the FCA (as determined in accordance with paragraph 3 below) the sum of £[] ("the Specified Amount").
3. In the case of an Event of Default falling within any of sub-paragraphs (1)(a), (1)(b) or (1)(c) of paragraph 6 below the sum to be paid pursuant to paragraph 2 above shall be paid to the FCA to be used at its discretion for any lawful purpose of the FCA, and in the case of an Event of Default falling within sub-paragraph (1)(d) of paragraph 6 below the sum to be paid pursuant to paragraph 2 above shall be paid to the Principal.
4. The liability of the Covenantor hereunder shall not be affected or discharged and the Covenantor shall not be released from its obligations hereunder by any act, omission, matter or thing whatsoever whereby, if the Covenantor was treated as a surety, guarantor or cautioner for the Principal, its liability would or might have been so affected or discharged or it might have been so released.
5. the FCA may without notification to or the consent of the Covenantor and without affecting or discharging the Covenantor's liability hereunder or releasing the Covenantor from its obligations hereunder from time to time waive or omit or fail to exercise or delay exercising its rights hereunder in respect of any Event of Default and any such waiver, omission, failure or delay shall not prejudice or affect the FCA's rights hereunder in respect of that Event of Default (except in the case of a waiver) or any other or further Event of Default (whether or not of the same kind).
6. (1) The following shall be Events of Default for the purposes hereof:
 - (a) the Principal is deemed to be insolvent (as determined in accordance with sub-paragraph (2) below);
 - (b) the Principal is unable or admits its inability to pay its debts as they fall due or makes a general assignment for the benefit of, or a compensation with, its creditors;

- (c) an encumbrancer takes possession or a receiver, judicial factor, or similar officer is appointed over all or any part of the undertaking or assets of the Principal;
- (d) the Principal shall in the bona fide opinion of the FCA have failed to maintain an excess of Financial Resources over its Financial Resources Requirement and in the bona fide opinion of the FCA shall not have remedied the same within seven days after being required by the FCA to restore the deficiency.

[(2) The Principal is deemed to become insolvent:

- (a) on the making of a winding-up order against it; or
- (b) on the passing of a resolution for a voluntary winding up in a case in which no statutory declaration has been made under Section 89 of the Insolvency Act 1986 or Article 534 of the Companies (Northern Ireland) Order 1986; or
- (c) on the holding of a creditors meeting summoned under Section 95 of that Act or Article 54 of that Order; or
- (d) on the appointment of an administrator for it under Section 9 of that Act; or
- (e) the occurrence of an event corresponding as nearly as may be to any of those mentioned in sub-paragraphs (a) to (d) above in any other jurisdiction to which the Principal may be subject.*]

[(2) The Principal is deemed to become insolvent:

- (a) in England and Wales on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under Section 420 of that Act; or
- (b) in Scotland, on the making of an award of sequestration on the estate of the partnership; or
- (c) in Northern Ireland, on the making of an adjudication of bankruptcy against any one of the partners; or
- (d) elsewhere on the occurrence of an event corresponding as nearly as may be to any of those mentioned above in this sub-paragraph.**]

[(2) The Principal is deemed to become insolvent if:

- (a) in England and Wales, a bankruptcy order is made against him; or in Scotland, an award of sequestration is made on his estate; or
- (b) in Scotland, and award of sequestration is made on his estate; or
- (c) in Northern Ireland, an adjudication of bankruptcy is made against him; or
- (d) elsewhere than in the United Kingdom, there occurs in relation to him any event corresponding to those mentioned above in this paragraph. *
* *]

7. This Undertaking shall be a continuing undertaking and shall apply irrespective of, and shall not be affected or discharged by, any matter relating to the compliance at any time by the Principal with its Financial Resources Requirement and in particular (but without limitation) the fact (if such be the case) that the Principal at any time complies or is able to comply with the Financial Resources Requirement without making use of this Undertaking or taking the same into account for the purposes of its Financial Resources Requirement.
8. This Undertaking shall apply in relation to any Event of Default occurring at or before the close of business on the earliest (if any) to occur of the following dates ("the Termination Date"):
- (a) if the Covenantor gives the FCA not less than six months' written notice of its desire to terminate this Undertaking with effect from the date (being a date falling on or after the second anniversary of the date hereof) specified therein, such specified date;
 - (b) if the FCA and the Covenantor agree in writing to terminate this Undertaking with effect from the date specified in such agreement, such specified date; and
 - (c) if this Undertaking shall cease with effect from any day to be eligible to represent (in whole or in part) the Financial Resources Requirement to be maintained by the Principal pursuant to the Financial Rules, the date falling two business days after such day:
- provided that no demand may be made upon the Covenantor hereunder later than midnight on the thirtieth business day after the Termination Date.
9. (a) In any demand proceedings or otherwise under this Undertaking the occurrence of any Event of Default shall be conclusively proved by a certificate signed by a duly authorised signatory of the FCA which shall specify the Event of Default which has occurred and to which the certificate relates and shall give brief particulars thereof.
- (b) If the FCA requires the Principal to remedy a breach of its Financial Resources Requirement as referred to in paragraph 6(1)(d) hereof, it shall notify the Covenantor thereof as soon as reasonably practicable thereafter.
10. A demand shall be duly made upon the Covenantor hereunder if it is signed by a duly authorised signatory of the FCA (accompanied by evidence reasonably satisfactory to the Covenantor of the signatory's authority) and is addressed to the Covenantor at its registered office [principal place of business in the United Kingdom] and posted by first-class mail and (if it has not been received prior thereto) the Covenantor shall be taken to have received such demand forty-eight hours after it is posted.
11. (1) The rights of the Covenantor to repayment of any sums paid to the Principal or, as the case may be, reimbursement by the Principal of any sums paid to the FCA under the terms of this Undertaking are subordinated to the Senior Liabilities and accordingly repayment of any such sums is conditional upon:
- (a) (if an order has not been made or an effective resolution passed for the insolvency of the Principal) the Principal being in compliance with its Financial Resources Requirement prevailing at the time of payment by the Principal, and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that, subject to sub-paragraph (2) below, the Principal could make such payment and still be in compliance with such Financial Resources Requirement immediately thereafter;
 - (b) (if an order has been made or effective resolution passed for the insolvency of the Principal) [or if the Principal shall be

dissolved**] the Principal being solvent at the time of payment by the Principal, and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Principal could make such payment and still be solvent immediately thereafter. For the purposes of this sub-paragraph, the Principal shall be solvent if it is able to pay its debts in full and in determining whether the Principal is solvent there shall be disregarded obligations which are not payable or capable of being established or determined in the insolvency of the Principal and the Excluded Liabilities.

- (2) No payment of the Subordinated Liabilities shall be made at any time pursuant to sub-paragraph (1)(a) above unless:
- (a) the Principal has given to the FCA prior written notification that it proposes to make such payment; and
 - (b) the FCA has notified the Principal in writing that it consents to such proposed payment.

The Principal shall give or procure that there are given to the FCA such information and auditor's certificate in relation to such proposed payment as the FCA may require.

- (3) For the purposes of sub-paragraph (1)(b) above a report given at any relevant time as to the solvency of the Principal by its Insolvency Officer, in form and substance acceptable to the FCA, shall in the absence of proven error be treated and accepted by the FCA, the Covenantor and the Principal as correct and sufficient evidence thereof.
- (4) If the Covenantor shall receive from the Principal [or any Partner**] payment of any sum in respect of the Subordinated Liabilities when any of the terms and conditions referred to in sub-paragraphs (1) or (2) above is not satisfied the payment of such sum shall be void for all purposes and [such sums shall be received by the Covenantor upon trust to return the same to the Principal+++] [the Covenantor shall at any time thereafter be bound to return such sum to the Principal or, as the case may be, its Insolvency Officer+] (and any sums so returned shall then be treated for the purposes of the Principal's obligations hereunder as if they had not been paid by the Principal and its original payment shall be deemed not to have discharged any of the obligations of the Principal hereunder). A request to the Covenantor for return of any sum under the foregoing provisions of this sub-paragraph (4) shall be in writing and shall be made by or on behalf of the Principal or, as the case may be, its Insolvency Officer.

12. The Covenantor will not without the prior written consent of the FCA :

- (i) assign or purport to assign to any person the whole or any part of the Subordinated Liabilities;
- (ii) purport to retain or set off at any time any amount payable by it to the Principal [or any Partner* *] against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Undertaking; amend any document evidencing or providing for the Subordinated Liabilities;
- (iii) amend any document evidencing or providing for the Subordinated Liabilities;

- (iv) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Undertaking;
 - (v) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected;
 - (vi) take any security from any person for all or any part of the Subordinated Liabilities, and the Covenantor shall, upon obtaining security in breach of this Undertaking, hold the same [on trust for+++][as agent of and for the benefit of+] the Principal.
13. The Covenantor acknowledges that the FCA would seek to enforce any breach of the undertaking of the Covenantor contained in Clause 2 hereof by seeking an order for specific performance thereof and the Covenantor acknowledges that an order for specific performance would be the remedy appropriate to be granted to the FCA for such a breach.
14. This Undertaking forms the entire agreement as to the agreement of the Covenantor to provide an undertaking in relation to the Principal's Financial Resources Requirement. If there are any other terms relating thereto existing at the date hereof and not comprised in this Undertaking such terms shall be of no further force and effect. No variation of or amendment to this Undertaking shall be of any effect unless it is in writing subscribed by all the parties hereto. Any amendment to this Undertaking made or purported to be made without the consent of the FCA shall be void.
- [15. This Undertaking shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Principal by the retirement of the present partners or [either] [any] of them or the assumption of new partners or by a change of name it being provided that:
- (a) A retired partner shall continue to be liable for the payment of all sums due hereunder and implementation of all other obligations herein contained until such time as the Bank and the remaining partner[s] shall agree in writing to release a retired partner from such obligations; and
 - (b) In the event of a new partner being assumed as a partner of the Principal the other partners shall procure that said assumed partner shall become bound to the Covenantor as a party to these presents and shall execute such addendum hereto as the Covenantor and the FCA may consider necessary. **] +]
- [16. The Principal and the Partners hereby acknowledge to the Covenantor and the FCA that subject to the foregoing provisions of the Agreement they will be jointly and severally liable to the Covenantor for any sum paid by the Covenantor hereunder and that irrespective of whether such sum was paid by the Covenantor to the Principal or to the FCA . **] +]
17. This Undertaking is governed by [English law+++++] [the law of Scotland+] [Northern Irish law+++++] [, and for the benefit of the FCA solely the Covenantor irrevocably submits to the jurisdiction of the [English Courts+++++] [Court of Session, Scotland+] [Northern Irish Courts+++++] and appoints [] as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that such non-exclusivity prejudices the submission to such jurisdiction].

Notes:

- (1) To be executed by the Covenantor under seal - other parties to execute either under seal or under hand.
- (2) Words in brackets throughout this document marked with a single asterisk are for use where the Principal is a corporation, those marked with a double asterisk are for use where the Principal is a partnership, and those marked with a triple asterisk where the Principal is an individual.
- (3) Words in brackets marked with a single cross are for use where the agreement is governed by Scottish law, with two crosses where the agreement is governed by either Scottish or Northern Irish law, three crosses where it is governed by either English or Northern Irish law, four crosses where it is governed by Northern Irish law and five crosses where it is governed by English law. Thus, for instance, words marked ++* * would be for use where the Borrower is a partnership and the agreement is governed by either Scottish or Northern Irish law.
- (4) Words in brackets in paragraph 17 above only required where either the Covenantor or the Principal (or both) are not incorporated in any part of the United Kingdom.

Investment Management Firms

(former IMRO Firms)

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PRESCRIBED SUBORDINATED LOAN AGREEMENT

THIS SUBORDINATED LOAN AGREEMENT is made the _____ day of _____ 20____
between:

- (1) [_____] of [_____] (“the Lender” which term includes its permitted successors and assigns);
- (2) [_____] of [_____] (“the Borrower” which term includes its permitted successors and assigns).

WHEREAS

- (A) The Borrower is [has applied to be] regulated by FCA.
- (B) The Borrower is required to maintain financial resources to meet the provisions of Chapter 5 of the Interim Prudential Sourcebook as they apply to the Borrower at any particular time.
- (C) The Lender has agreed to lend [has lent] to the Borrower an amount as set out herein upon and subject to the terms and conditions contained in this Agreement.

NOW IT IS HEREBY AGREED as follows:

1. Definitions In this Agreement:

“Business Day”

means a day on which banks are open for all banking business in London;

“FCA”

means the Financial Conduct Authority;

“Interest Amount”

in respect of an Interest Period means the amount of interest payable in respect of such Interest Period calculated by applying the Rate of Interest in respect of such Interest Period to the average amount (calculated on a daily basis) of the principal of the Loan (together with any interest due but unpaid) outstanding during such Interest Period and multiplying the resulting sum by a fraction of which the numerator is equal to the actual number of days in the Interest Period concerned and the denominator is equal to 365;

“Interest Payment Date”

means [] and [] in each year;

“Interest Period”

means the period starting on the day following an Interest Payment Date and ending on the next following Interest Payment Date provided that the First Interest Period shall commence on the date hereof and end on the next following Interest Payment Date;

“Interim Prudential Sourcebook”

means the Interim Prudential Sourcebook for Investment Businesses made by the FCA;

~~“LIBOR”~~

~~in respect of an Interest Period means the rate determined by such London clearing bank as the Lender and Borrower shall agree to be the arithmetic mean (rounded to the nearest 1/16 of one per cent) of the offered quotations for 6 months sterling deposits in the London inter bank market at 11.00am (London time) on the Business Day prior to the commencement of such Interest Period;~~

“Loan”

means the Principal Amount (as defined in Clause 2) together with interest accrued thereon as may be outstanding from time to time;

“Rate of Interest”

in respect of an Interest Period means an amount expressed as ~~a percentage per annum equal to the sum of LIBOR in respect of such Interest Period (expressed as a percentage per annum) and [] per cent per annum~~ if a fixed rate of interest is charged, or as the sum of a variable reference rate plus [] percent per annum;

“Senior Creditors”

means all such persons who are:

- (a) unsubordinated creditors of the Borrower; or
- (b) subordinated creditors of the Borrower other than those whose claims are expressed to rank and do rank, pari passu with or junior to the claims of the Lender hereunder.

Clause headings in this Agreement are inserted for ease of reference only and shall not affect the construction of this Agreement.

2. The Loan

- (a) The Lender [hereby agrees to advance]/[has on [] advanced] to the Borrower by way of loan the principal amount of [] (the “Principal Amount”) upon and subject to the terms and conditions contained in this Agreement.
- [(b) [Upon signature hereof]/[On []] the Lender shall pay, or procure the payment of, the Principal Amount to the Borrower in freely available funds at its account number [] with [] bank.]

3. Interest

- (a) Subject to the provisions of Clause 7 of this Agreement:
 - (i) the Borrower will until repayment of the Loan in full pay to the Lender interest on the Loan or on any part or parts thereof for the time being remaining due hereunder in accordance with a written notice given by the Lender to the Borrower;
 - (ii) on each Interest Payment Date the Borrower shall pay to the Lender the Interest Amount in respect of the Interest Period ending on such Interest Payment Date;

provided that at no time during the continuance of this Agreement shall the Rate of Interest exceed an annual rate of 5 per cent above ~~LIBOR~~ the arithmetic mean of the Bank of England base rate for that period.

	(b)	No payment on account of interest shall be made at any time to the extent that such payment would cause the Borrower to be in breach of rule 5.2.1 of Chapter 5 of the Interim Prudential Sourcebook (or any equivalent Rule for the time being in force). Any amount of interest whose payment is deferred under this provision shall be paid when and to the extent that the Borrower would not be in breach of rule 5.2.1 of the Interim Prudential Sourcebook after such payment. [The Agreement may make provision for interest on interest.]
4.	Early Repayment	<p>Subject to the provisions of Clause 7 of this Agreement the Borrower may make an early repayment of the whole or any part of the Loan provided that:</p> <p>(a) the written consent of FCA to such repayment is first obtained by the Borrower;</p> <p>(b) the Borrower must give to the Lender not less than one Business Day's prior notice of its intention to make such repayment, specifying the amount thereof and the date on which it is to be made (such notice to be ineffective if the winding up of the Borrower commences before the date on which such notice expires); and</p> <p>(c) the Borrower shall simultaneously pay all interest accrued to the date of repayment.</p>
5.	Repayment of the Loan	<p>Subject to the provisions of Clause 7 of this Agreement the Loan shall be repayable upon the expiry of [] months' written notice given by the Lender to the Borrower provided that:</p> <p>(a) such notice shall expire on a day falling after [five] [two] years from the date of [drawdown] [hereof]; and</p> <p>(b) the prior written consent of FCA to the repayment has first been obtained by the Borrower and not withdrawn; but</p> <p>(c) such notice shall cease to have effect if the windingup of the Borrower commences before the date on which such notice expires.</p>
6.	Event of Default	<p>Subject to the provisions of Clauses 7 and 10 of this Agreement:</p> <p>(a) if default is made for a period of five Business Days or more in the payment of any of the principal amount of the Loan [or for a period of 15 Business Days or more in the payment of any of the interest due in respect of the Loan] the Lender may, after taking such preliminary steps or actions as may be necessary, institute proceedings to wind up the Borrower;</p>

- (b) if an order is made or an effective resolution is passed for the winding up of the Borrower, the Loan shall forthwith become repayable.

7. Subordination

Notwithstanding the provisions of Clauses 4, 5 and 6 of this Agreement, the rights of the Lender in respect of the Loan are subordinated in all respects to the rights of Senior Creditors in respect of amounts outstanding to them payable by the Borrower (“Senior Liabilities”) and accordingly payment of any amount (whether in respect of principal, interest or otherwise and whether by way of repayment or prepayment) of the Loan shall be in all respects conditional upon compliance with the provisions below:

- (a) The written consent of FCA to such payment is first obtained by the Borrower.
- (b) (i) If at any time or from time to time an order has been made or an effective resolution passed for the winding up of the Borrower, then any payment of any amount (whether in respect of principal, interest or otherwise and whether by way of repayment or prepayment) of the Loan which under any other Clause of this Agreement would fall due for payment whilst the Borrower was insolvent or in insolvent liquidation will not fall so due, and instead such payment will become due for payment only if and when and to the extent that the Borrower could make such payment in whole or in part and still be solvent (whether or not it was in liquidation) thereafter. [Interest pursuant to Clause 3 hereof will continue to accrue on each and every such payment which is suspended under this Clause. Any payment suspended under this Clause but ultimately made will be made according to the amount of principal or interest (as the case may be) due to the Lender and in the event of both principal and interest being so suspended, payment will be made on account of principal before any payment is made on account of interest, but such alteration in order of payment will not prejudice the right of the Lender (which the Borrower acknowledges and confirms) to receive, subject to this Clause 7(b)(i) the full amount to which it would have been entitled if monies from time to time available for payment had been applied instead on account of interest before principal].

(ii) For the purposes of Clause 7(a) and (b) the Borrower may, and will whenever requested by the Lender whilst any payment remains suspended, procure a report or opinion by its auditors or (if it is in liquidation) by its liquidator as to whether or not the Borrower would be solvent at any time in any circumstances or whether or to what extent any payment in respect of the Loan could be made without infringing the provisions of this Sub-Clause and in the absence of proven error such report or opinion shall be treated and accepted by the Borrower and the Lender as correct and sufficient evidence of such fact.

(iii) Nothing in this Clause shall prevent the Lender from presenting or supporting any petition to wind up the Borrower, and the Borrower shall not put forward or rely on the provisions of this Clause as a ground for opposing any petition presented or supported by the Lender.

8. Payments

Subject to the provisions of Clause 7 of this Agreement:

- (a) all payments to be made by the Borrower hereunder shall be made in immediately available funds before [] on the date on which payment is due in such manner as the Lender may from time to time direct;
- (b) if any sum becomes due for payment pursuant to this Agreement on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and interest shall be adjusted accordingly;
- (c) all sums payable by the Borrower hereunder shall be paid in full without set off or counter claim and free and clear of and without deduction or withholding for or on account of any present or future taxes, duties or other charges. If any payment shall be subject to any such tax or if the Borrower shall be required by law to make any such deduction or withholding, the Borrower will pay such tax, will ensure that such payment, deduction or withholding, will not exceed the minimum legal liability therefore and will simultaneously pay to the Lender such additional amounts as will result in the Lender receiving a net amount equal to the full amount which the Lender would have received had no such payment, deduction or withholding been required.

9.	Regulatory Consent	<p>The Lender will not without the prior written consent of FCA:</p> <ul style="list-style-type: none"> (a) assign or purport to assign to any person this Agreement or the whole or any part of its rights against the Borrower in respect of the Loan; (b) purport to retain or set off at any time any amount of the Loan against any amount otherwise payable by it to the Borrower except to the extent that payment of such amount of the Loan would be permitted at such time by this Agreement; (c) amend or waive or concur in amending or waiving the terms of this Agreement; (d) attempt to obtain repayment of the whole or any part of the Loan otherwise than in accordance with the terms of this Agreement; (e) take or omit to take any action whereby the subordination of the Loan or any part thereof as provided for in Clause 7 of this Agreement might be terminated, impaired or adversely affected; or (f) take any security from any person for all or any part of the Loan and so that the Lender shall, upon obtaining security in breach of this Clause, hold the same on trust for the Borrower.
10.	Sole Remedy	<p>The Lender shall not be entitled to any remedy against the Borrower in respect of any default by the Borrower in repayment or prepayment of the Loan, or to enforce any other term of this Agreement, other than to institute proceedings to wind up the Borrower, provided always that the Borrower shall not, by the institution of such proceedings, become or be obliged to pay any sums or sum sooner than the same would otherwise have been payable by it pursuant to this Agreement.</p>
11.	Trust	<p>Any amounts paid by the Borrower or received or recovered by the Lender or any security taken from any person in respect of the Loan in breach of the provisions of this Agreement and any distributions of any kind or character in respect of the Loan received or recovered by the Lender otherwise than in accordance with the provisions of this Agreement shall be held on trust by the Lender to return the same to the Borrower, or where applicable, the liquidator or other similar such officer.</p>

12.	Entire Agreement	The Borrower and the Lender acknowledge that this Agreement forms the entire agreement relating to the Loan. If there are any other terms relating to the Loan existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.
13.	Continuing Obligations	The obligations of the Borrower and Lender hereunder shall be continuing obligations and shall be and remain fully effective until the repayment of the Loan in full in accordance with the provisions of this Agreement.
14.	Governing Law	This Agreement shall be governed by and construed in accordance with the laws of England and each of the parties hereby irrevocably submits to the non-exclusive jurisdiction of the Courts of England and Wales, Scotland and Northern Ireland.
15.	Rights of the FCA	Although not a party to the agreement, the FCA may in its own right enforce a term of the agreement to the extent that it purports to confer upon the FCA a benefit.
16.	Notices	<p>Any notice of demand to be given or made hereunder may be delivered by hand or sent by first class registered or pre-paid post to the recipient at the address first above mentioned or such other address as it shall last notify to each of the other parties hereto. Such notice shall be deemed to have been received:</p> <p>(a) if delivered by hand, on the day of delivery;</p> <p>(b) if sent by first class registered or pre-paid post three days after the date of despatch (as to which the sender's certificate shall be conclusive).</p>
17.	Counterparts	<p>This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.</p> <p>IN WITNESS whereof the parties hereto have executed this Agreement as a deed the day and date first above written.</p>

Notes for Prescribed Subordinated Loan Agreement

These notes accompany the *prescribed subordinated loan agreement* and are intended to assist those who are or propose to be regulated by FCA. These notes relate solely to the mechanical drafting aspects of the prescribed agreement.

These notes refer to the Clauses in the order in which they appear in the prescribed agreement.

- | | | |
|----|-----------|---|
| 1. | Parties | Complete the name, registered number and registered office of the Lender and the Borrower. |
| 2. | Loan | <p>The Specimen Agreement provides for two alternative ways of advancing the Loan:</p> <ul style="list-style-type: none">(a) one advance on the date of the Agreement; or(b) one advance at a date other than the date of the Agreement. Firms are requested to specify clearly the date of the advance. |
| 3. | Interest | <p>The maximum rate of interest is 5 per cent above LIBOR <u>Bank of England base rate</u>. However, if a fixed rate of interest is charged, the Interest Rate must not exceed 5 per cent above LIBOR <u>Bank of England base rate</u> on the date the Loan is first taken out.</p> <p>If the Loan is to be free of interest:</p> <ul style="list-style-type: none">(a) Clause 3 should be deleted and replaced by the words “The Loan shall be interest-free”; and(b) the definitions of “Interest Amount”, “Interest Payment Date”, “Interest Period”; LIBOR and “Rate of Interest” should be deleted and consequential changes should be made to Clauses 4(c), 6(a), 7(preamble), 7(b)(i), and 8(b) accordingly. |
| 4. | Repayment | <p>The specified date of repayment must not be less than two years after:</p> <ul style="list-style-type: none">(a) the date of the Agreement; or(b) where the principal amount was advanced after the date of the Agreement, the date the principal amount was advanced. |

5.	Execution	The date of the Agreement is the date on which execution of the Agreement by all parties is completed. Execution must accord with the laws and regulations governing the execution of documents in the jurisdiction of the Firm's principal place of business (e.g. a company whose principal place of business is in England, Wales and Northern Ireland must observe the requirements of Part 4 of the Companies Act 2006).
6.	Number of copies of Agreements	Three copies of the Agreement should be executed by both the Lender and the Borrower and forwarded to FCA. FCA will retain one original Agreement and return the other two copies to the Firm.

PREScribed QUALIFYING UNDERTAKING

THIS UNDERTAKING IS ENTERED INTO

THE DAY OF 20 BETWEEN

- (1) [] of [] (“the Bank” or “Holding Company”)
- (2) FINANCIAL CONDUCT AUTHORITY whose registered office is at ~~25 The North Colonnade, Canary Wharf, London E14 5HS~~ 12 Endeavour Square, London, E20 1JN (“FCA”) and
- (3) [] of [] (“the Principal”)

WHEREAS

- (A) The Principal is regulated by FCA
- (B) The Principal is required to maintain financial resources to meet the provisions of Chapter 5 of the Interim Prudential Sourcebook as they apply to the Principal and FCA has agreed that the Financial Resources Requirement may in part be represented by one or more undertakings in the form hereof
- (C) The Principal has requested the Bank or Holding Company to give an undertaking to FCA for the purposes of the Principal’s Financial Resources Requirement which the Bank or Holding Company has agreed to do

NOW THESE PRESENT WITNESS and it is hereby agreed and declared as follows:

1. In this Undertaking:

“Business Day”

means a day on which the Bank or Holding Company is open for business;

“Excluded Liabilities”

means Liabilities which are expressed to be and in the opinion of the liquidator of the Principal, do, rank junior to the Subordinated Liabilities in such liquidation;

“Financial Resources Requirement”

means the amount of liquid capital which the Principal is, pursuant to the Rules, required to maintain at any particular time;

“Interim Prudential Sourcebook”

means the Interim Prudential Sourcebook for Investment Businesses made by the FCA;

“Liabilities”

means all present and future sums, liabilities and obligations payable or owing by the Principal (whether actual or contingent, jointly or severally or otherwise howsoever);

“Senior Liabilities” means all Liabilities except all Liabilities in respect of any sums paid to the Principal under the terms of this Undertaking and Excluded Liabilities;

“Subordinated Liabilities”

means all Liabilities of the Principal to the Bank or Holding Company in respect of repayment of any sums paid to the Principal under the terms of this Undertaking;

“the Rules”

means the Rules of FCA from time to time; the term

“liquid capital”

has the meaning ascribed to it in the Rules;

any reference to an enactment is a reference to it as already amended and includes a reference to any repealed enactment which it may re-enact, with or without amendments, and to any future re-enactment and/or amendment of it.

2. (a) In consideration of FCA agreeing to take this Undertaking into account for the purpose of determining compliance by the Principal with its Financial Resources Requirement the Bank or Holding Company with intent to bind its successors and assigns and any body corporate with which it may amalgamate or merge
HEREBY UNDERTAKES with and to FCA and the Principal that at any time after the occurrence of any Event of Default specified in paragraph 5 hereof (“Event of Default”) and notwithstanding that any other Event of Default may have occurred prior thereto the Bank or Holding Company will on demand in writing made upon it by FCA accompanied by a certificate of FCA as referred to in paragraph 8 hereof (“the Certificate”) pay to the Principal the sum of £[] (“the Specified Amount”).

(b) The Bank or Holding Company shall pay the Specified Amount to such account of the Principal as FCA may specify.
3. The liability of the Bank or Holding Company hereunder shall not be affected or discharged and the Bank or Holding Company shall not be released from its obligations hereunder by any act, omission, matter or thing whatsoever whereby, if the Bank or Holding Company was treated as a surety or guarantor for the Principal, its liability would or might have been so affected or discharged or it might have been so released.
4. FCA may without notification to or the consent of the Bank or Holding Company and without affecting or discharging the Bank’s or the Holding Company’s liability hereunder or releasing the Bank or Holding Company from its obligations hereunder from time to time waive or omit or fail to exercise or delay exercising its rights hereunder in respect of any Event of Default and any such waiver, omission, failure or delay shall not prejudice or affect FCA’s rights hereunder in respect of that Event of Default (except in the case of a waiver) or any other or further Event of Default (whether or not of the same kind).

5. The following shall be Events of Default for the purposes hereof:
- (a) the Principal is deemed to be unable to pay its debts in accordance with Section 123 of the Insolvency Act 1986;
 - (b) the Principal is unable or admits its inability to pay its debts as they fall due or makes a general assignment for the benefit of, or a composition with, its creditors;
 - (c) an encumbrancer takes possession, or a receiver, administrator or similar officer is appointed, of all or any part of the undertaking or assets of the Principal;
 - (d) the Principal shall in the opinion of FCA be in breach of its Financial Resources Requirement and in the opinion of FCA shall not have remedied such breach within 5 Business Days after being required by FCA to restore the deficiency.
6. This Undertaking shall be a continuing undertaking and shall apply irrespective of, and shall not be affected or discharged by, any matter relating to the compliance at any time by the Principal with its Financial Resources Requirement and in particular (but without limitation) the fact (if such be the case) that the Principal at any time complies or is able to comply with the Financial Resources Requirement without making use of this Undertaking or taking the same into account for the purposes of its Financial Resources Requirement.
7. This Undertaking shall apply in relation to any Event of Default occurring at or before the close of business on the earliest (if any) to occur of the following dates ("the Termination Date"):
- (a) if the Bank or Holding Company gives FCA not less than six months' written notice of its desire to terminate this Undertaking with effect from the date (being a date falling on or after the second anniversary of the date hereof) specified therein, such specified date;
 - (b) if FCA and the Bank or Holding Company agree in writing to terminate this Undertaking with effect from the date specified in such agreement, such specified date; and
 - (c) if this Undertaking shall cease with effect from any day to be eligible to represent (in whole or in part) the Financial Resources Requirement to be maintained by the Principal pursuant to the Rules, the date falling two Business Days after such day. Provided that no demand may be made upon the Bank or Holding Company hereunder later than midnight on the thirtieth Business Day after the Termination Date.
8. (a) In any demand proceedings or otherwise under this Undertaking the occurrence of any Event of Default shall be conclusively proved by a certificate signed by a duly authorised signatory of FCA which shall specify the Event of Default which has occurred and to which the certificate relates and shall give brief particulars thereof.
- (b) If FCA requires the Principal to remedy a breach of its Financial Resources Requirement as referred to in paragraph 5(d) hereof, it shall notify the Bank or Holding Company thereof as soon as reasonably practicable thereafter.

9. A demand shall be duly made upon the Bank or Holding Company hereunder if it is signed by a duly authorised signatory of FCA (accompanied by evidence reasonably satisfactory to the Bank or Holding Company of the signatory's authority) and is addressed to the Bank or Holding Company at its registered office [principal place of business in the UK] and posted by first class mail and (if it has not been received prior thereto) the Bank or Holding Company shall be taken to have received such demand forty-eight hours after it is posted.
10. (a) The rights of the Bank or Holding Company to repayment of any sums paid to the Principal under the terms of this Undertaking are subordinated to the Senior Liabilities and accordingly repayment of any such sums is conditional upon:
- (i) (if an order has not been made or an effective resolution passed for the winding up of the Principal) the Principal being in compliance with its Financial Resources Requirement prevailing at the time of payment by the Principal and no such payment which would otherwise fall due will fall so due except to the extent that, subject to sub-paragraph (b) below, the Principal could make such payment and still be in compliance with such Financial Resources Requirement immediately thereafter;
 - (ii) (if an order has been made or effective resolution passed for the winding up of the Principal) the Principal being solvent at the time of payment by the Principal and accordingly no such payment which would otherwise fall due for payment will fall due except to the extent that the Principal could make such payment and still be solvent immediately thereafter. For the purposes of this sub-paragraph, the Principal shall be solvent if it is able to pay its debts in full and in determining whether the Principal is solvent for the purposes of this sub-paragraph there shall be disregarded obligations which are not payable or capable of being established or determined in the winding up of the Principal and the Excluded Liabilities.
- (b) No payment of the Subordinated Liabilities shall be made at any time pursuant to sub-paragraph (a)(i) above unless:
- (i) the Principal has given to FCA prior written notification that it proposes to make such payment; and
 - (ii) FCA has notified the Principal in writing that it consents to such proposed payment.
- The Principal shall give or procure that there are given to FCA such information and auditor's certificate in relation to such proposed payment as FCA may require.
- (c) For the purposes of sub-paragraph (a)(ii) above a report given at any relevant time as to the solvency of the Principal by its liquidator, in form and substance acceptable to FCA, shall in the absence of proven error be treated and accepted by FCA, the Bank or Holding Company and the Principal as correct and sufficient evidence thereof.

(d) If the Bank or Holding Company shall receive from the Principal payment of any sum in respect of the Subordinated Liabilities when any of the terms and conditions referred to in sub-paragraphs (a) or (b) above is not satisfied the payment of such sum shall be void for all purposes and such sums shall be received by the Bank or Holding Company upon trust to return the same to the Principal and the Bank or Holding Company shall at any time thereafter be bound to return such sum to the Principal or, as the case may be, its liquidator (and any sums so returned shall then be treated for the purposes of the Principal's obligations hereunder as if they had not been paid by the Principal and its original payment shall be deemed not to have discharged any of the obligations of the Principal hereunder). A request to the Bank or Holding Company for return of any sum under the foregoing provisions of this sub-paragraph (d) shall be in writing and shall be made by or on behalf of the Principal or, as the case may be, its liquidator.

- 11.** The Bank or Holding Company will not without the prior written consent of FCA:
- (i) assign or purport to assign to any person the whole or any part of the Subordinated Liabilities;
 - (ii) purport to retain or set-off at any time any amount payable by it to the Principal against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Undertaking;
 - (iii) amend any document evidencing or providing for the Subordinated Liabilities;
 - (iv) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Undertaking;
 - (v) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected;
 - (vi) take any security from any person for all or any part of the Subordinated Liabilities, and the Bank or Holding Company shall, upon obtaining security in breach of this undertaking, hold the same on trust for the Principal.
- 12.** The Bank or Holding Company acknowledges that FCA would seek to enforce any breach of the Undertaking of the Bank or Holding Company contained in Clause 2 hereof by seeking an order for specific performance thereof and the Bank or Holding Company acknowledges that an order for specific performance would be the remedy appropriate to be granted to FCA for such a breach.
- 13.** This Undertaking forms the entire Agreement as to the agreement of the Bank or Holding Company to provide an undertaking in relation to the Principal's Financial Resources Requirement. If there are any other terms relating thereto existing at the date hereof and not comprised in this Undertaking such terms shall be of no further force and effect. No variation of or amendment to this Undertaking shall be of any effect unless it is in writing subscribed by all the parties hereto. Any amendment to this Undertaking made or purported to be made without the consent of FCA shall be void.

- 14.** This Undertaking is governed by English law [and for the benefit of FCA solely the Bank or Holding Company irrevocably submits to the jurisdiction of the Courts of England and Wales, Scotland and Northern Ireland and appoints [] as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that such non-exclusivity prejudices the submission to such jurisdiction].
- (1) *To be executed by the Bank or Holding Company under seal—other parties to execute either under seal or under hand.*
- (2) *Words in brackets in 9 and 14 above are required only where either the Bank or Holding Company or the Principal (or both) are not incorporated in any part of the UK.*
- (3) *Where the Principal is not a company, the provisions of the Undertaking shall (in agreement with FCA) be amended as appropriate to reflect the legal status of the Principal.*

9 Exempt CAD Firms [deleted]

	Form	Page
[[FCA]	9.1 Long Term Subordinated Loan Agreement	2
	10.2 [deleted]	
[[FCA]	9.3 Form of Deed of Termination	17
[[FCA]	9.4 Form of Deed of Variation	20
[[FCA]	9.5 Form of Guarantor Undertaking	23
	10.6 [deleted]	
	10.7 [deleted]	
[[FCA]	9.8 Guidance Notes	27

9.1 Approved Form of Long Term Subordinated Loan Agreement

A. Front Page

~~THIS AGREEMENT is made on the date set out in the Variable Terms (as set out in Schedule 1 to this Agreement) and is to be effective on that date unless a different effective date is set out in those terms~~

BETWEEN

- ~~(1) the Lender (as defined in the Standard Terms set out in Schedule 2 to this Agreement), and~~
- ~~(2) the Borrower (as defined in the Standard Terms)~~

~~WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FCA rule IPRU(INV) 9.5 and has fully disclosed to the FCA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance.~~

~~IT IS AGREED THAT this Agreement shall comprise the Variable Terms set out in Schedule 1 to this Agreement and the Standard Terms set out in Schedule 2 to this Agreement.~~

~~This Agreement is executed by the parties the day and year indicated in the Variable Terms.~~

Schedule 1

B. Variable Terms

1. Date of Agreement	
2. Effective Date	
3. Lender	
4. Address of Lender	
5. Borrower	
6. Address of Borrower	

7. ~~The Loan or Facility~~

~~With reference to paragraph 2 of the Standard Terms,~~

8. ~~Interest~~

~~With reference to paragraph 3 of the Standard Terms, interest shall be calculated and paid as follows –~~

9. Repayment

~~With reference to paragraph 4(2) of the Standard Terms and subject always to paragraphs 4(3) (restrictions on repayment) and 5 (subordination) of the Standard Terms, the terms for repayment are—~~

~~Notes to paragraph 9—~~

1. ~~The repayment date for the Loan must be one or more of—
 - a date not less than five years from the date of drawdown,
 - a date not less than five years from the Borrower giving notice in writing to the Lender and the FCA, or
 - a date not less than five years from the Lender giving notice in writing to the Borrower and the FCA.~~
2. ~~Where this Agreement is for a loan facility each Advance must be treated separately and have a repayment date not less than five years from the date of drawdown, or be subject to not less than five years' notice or have and be subject to both.~~

10. ~~Additional terms~~

~~With reference to paragraph 11 of the Standard Terms, the additional terms to this Agreement are –~~

11. ~~**Jurisdiction**~~ With reference to paragraph 16 of the Standard Terms, the person(s) indicated below is (are) appointed as agents for service of process -

(a) ~~by the Lender~~

~~of~~

(b) ~~by the Borrower~~

~~of~~

Schedule 2

C. Standard Terms

Interpretation

1 (1) In this Agreement—

“Advance” means, where this Agreement is for a loan facility, an amount drawn or to be drawn down by the Borrower or otherwise made available by the Lender under this Agreement as that amount may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Borrower” means the person identified as such in the Variable Terms and includes its permitted successors and assigns and, where the Borrower is a partnership, each Partner;

“Business Day” means any day except Saturday, Sunday or a bank or public holiday in England;

“Effective Date” means the date on which this Agreement is to take effect being the date of this Agreement unless otherwise stated in the Variable Terms;

“Excluded Liabilities” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do, rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

“Facility” means the loan facility referred to in paragraph 2(2);

“Financial Resources” has the meaning given in the Financial Rules;

“Financial Resources Requirement” has the meaning given it in the Financial Rules;

“Financial Rules” means the rules in IPRU(INV) Chapter 9 in the *handbook*;

“Insolvency” means and includes liquidation, winding up, bankruptcy, sequestration, administration, rehabilitation and dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“Insolvency Officer” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower's Insolvency;

~~1~~ (1) **“Lender”** means the person identified as such in the Variable Terms and includes its permitted successors and assigns;

“Liabilities” means all present and future sums, liabilities and obligations payable or owing by the Borrower (whether actual or contingent, jointly or severally or otherwise howsoever);

“Loan” means the indebtedness of the Borrower to the Lender referred to in paragraph 2(1) as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

“Partner” means, where the Borrower is a partnership, each and every partner of the Borrower as a partner and as an individual (see also paragraph 8);

“Senior Liabilities” means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

“Subordinated Liabilities” means all Liabilities to the Lender in respect of the Loan or each Advance made under this Agreement and all interest payable thereon.

“the FCA” means The Financial Conduct Authority Limited whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS; and

(2) Any reference to any rules of the FCA is a reference to them as in force from time to time.

(3) Reference to any gender includes a reference to all other genders.

(4) Reference to a paragraph is to a paragraph of these Standard Terms, unless otherwise indicated.

~~The Loan or Facility~~

~~2~~ (1) Where as indicated in the Variable Terms this Agreement is for a loan, the Borrower hereby **acknowledges** its indebtedness to the Lender in the sum mentioned in the Variable Terms as an unsecured loan upon and subject to the terms and conditions of this Agreement.

(2) Where, as indicated in the Variable Terms this Agreement is for a loan facility—

(a) the maximum aggregate principal amount of each Advance outstanding at any time under the Facility shall not exceed the maximum amount specified in the Variable Terms or such other amount as may be agreed between the Borrower and the Lender from time to time;

(b) the Facility will be available until the last available date specified in the Variable Terms; and

~~2 — (2) (e) any specific terms dealing with the mechanics of drawdown are contained in the Variable Terms.~~

~~(3) The Lender and the Borrower undertake to provide the FCA, immediately upon request, with details in writing of all principal and interest in respect of the Loan or each Advance outstanding for the time being and all payments of any amount made in the period specified by the FCA in the request.~~

Interest

~~3 — Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan or each Advance in full, the Borrower will pay to the Lender interest on the Loan or each Advance (or on any part or parts of it or them for the time being outstanding under this Agreement) calculated and payable in the manner set out in the Variable Terms.~~

Repayment

~~4 — (1) The provisions of this paragraph are subject in all respects to the provisions of paragraph 5(subordination).~~

~~(2) The terms concerning repayment are set out in the Variable Terms but are subject to paragraph 4(3).~~

~~(3) (a) Except where the FCA otherwise permits, no repayment or prepayment of the Loan or any Advance may be made, in whole or in part, before the relevant repayment date provided for in paragraph 9 of the Variable Terms.~~

~~(b) At the request of the Borrower, the FCA may permit the early repayment or prepayment of the Loan or any Advance, in whole or in part, only where, immediately after such repayment or prepayment, the Borrower's Financial Resources would be greater than 100% of its Financial Resources Requirement.~~

~~(c) Payments of interest at a rate not exceeding the rate provided for in paragraph 3 may be made without notice to or consent of the FCA, except that where —~~

~~(i) immediately after payment, the Borrower's Financial Resources would be less than or equal to 120% of its Financial Resources Requirement; or~~

~~(ii) before payment, the Insolvency of the Borrower commences,~~

~~no such payment may be made without the prior written consent of the FCA.~~

~~(4) If in respect of the Loan or any Advance default is made for a period of —~~

~~(a) seven days or more in the payment of any principal due, or~~

~~(b) 14 days or more in the payment of any interest due,~~

- ~~4 — (4) The Lender may, at its discretion and after taking such preliminary steps or actions as may be necessary, enforce payment by instituting proceedings for the Insolvency of the Borrower after giving seven Business Days' prior written notice to the FCA of its intention to do so.~~
- ~~(5) Subject to (6) below, the Lender may at its discretion, subject as provided in this Agreement, institute proceedings for the Insolvency of the Borrower to enforce any obligation, condition or provision binding on the Borrower under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan or any Advance) PROVIDED THAT the Borrower shall not by virtue of the institution of any such proceedings for the Insolvency of the Borrower be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it.~~
- ~~(6) The Lender may only institute proceedings for the Insolvency of the Borrower to enforce the obligations referred to in (5) above if—~~
- ~~(a) a default under those obligations is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender requiring such default to be remedied;~~
 - ~~(b) the Lender has taken all preliminary steps or actions required to be taken by it prior to the institution of such proceedings; and~~
 - ~~(c) the Lender has given seven Business Days' prior written notice to the FCA of its intention to institute such proceedings.~~
- ~~(7) No remedy against the Borrower other than as specifically provided by this paragraph 4 shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower of any of its obligations under this Agreement.~~

Subordination

- ~~5 — (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount (whether principal, interest or otherwise) of the Subordinated Liabilities is conditional upon—~~
- ~~(a) (if an order has not been made or an effective resolution passed for the Insolvency of the Borrower and, being a partnership, the Borrower has not been dissolved) the Borrower being in compliance with not less than 120% of its Financial Resources Requirement immediately after payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that~~
 - ~~(i) paragraph 4(3) has been complied with; and~~

- ~~5 — (1) (a) (ii) the Borrower could make such payment and still be in compliance with such Financial Resources Requirement; and~~
- ~~(b) the Borrower being “solvent” at the time of, and immediately after, the payment by the Borrower and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be “solvent”.~~
- ~~(2) For the purposes of sub-paragraph (1)(b) above, the Borrower shall be “solvent” if it is able to pay its Liabilities (other than the Subordinated Liabilities) in full disregarding—~~
- ~~(a) obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower, and~~
- ~~(b) the Excluded Liabilities.~~
- ~~(3) Interest will continue to accrue at the rate specified pursuant to paragraph 3 on any payment which does not become payable under this paragraph 5.~~
- ~~(4) For the purposes of sub-paragraph (1)(b) above, a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to the FCA, shall in the absence of proven error be treated and accepted by the FCA, the Lender and the Borrower as correct and sufficient evidence of the Borrower’s solvency or Insolvency.~~
- ~~(5) Subject to the provisions of sub-paragraphs (6), (7) and (8) below, if the Lender shall receive from the Borrower payment of any sum in respect of the Subordinated Liabilities—~~
- ~~(a) when any of the terms and conditions referred to in sub-paragraph (1) above is not satisfied, or~~
- ~~(b) where such payment is prohibited under paragraph 4(3), the payment of such sum shall be void for all purposes.~~
- ~~(6) Any sum referred to in sub-paragraph (5) above shall be received by the Lender upon trust to return it to the Borrower.~~
- ~~(7) Any sum so returned shall then be treated for the purposes of the Borrower’s obligations hereunder as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower hereunder.~~
- ~~(8) A request to the Lender for return of any sum referred to in sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.~~

Representations and undertakings of Borrower

~~6~~ — From and after the date of this Agreement (or the Effective Date if earlier), the Borrower shall not without the prior written consent of the FCA —

- ~~(a) — secure all or any part of the Subordinated Liabilities;~~
- ~~(b) — redeem, purchase or otherwise acquire any of the Subordinated Liabilities;~~
- ~~(c) — amend any document evidencing or providing for the Subordinated Liabilities;~~
- ~~(d) — repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;~~
- ~~(e) — take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part thereof to the Senior Liabilities might be terminated, impaired or adversely affected; or~~
- ~~(f) — arrange or permit any contract of suretyship (or similar agreement) relating to its liabilities under this Agreement to be entered into, and~~

~~other than as disclosed in writing to the FCA, the Borrower represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).~~

Representations and undertakings of Lender

~~7~~ — From and after the date of this Agreement (or the Effective Date if earlier), the Lender shall not without the prior written consent of the FCA —

- ~~(a) — assign, transfer, dispose of or encumber the whole or any part of the Subordinated Liabilities or purport to do so in favour of any person;~~
- ~~(b) — purport to retain or set off at any time any amount payable by it to the Borrower against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set off in breach of this provision to the Borrower and such retention or set off shall be deemed not to have occurred;~~
- ~~(c) — amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;~~
- ~~(d) — attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;~~
- ~~(e) — take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected; or~~

~~7 (f) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining or enforcing any security, guarantee or indemnity notwithstanding this undertaking, hold the same (and any proceeds thereof) on trust for the Borrower, and~~

~~other than as disclosed in writing to the FCA, the Lender represents that it has not done so before the date of this Agreement (or the Effective Date if earlier).~~

~~Borrower being a partnership~~

~~8 Where the Borrower is a partnership—~~

~~(a) this Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present Partners or any of them or the assumption of new Partners or by a change of name PROVIDED THAT—~~

~~(i) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligations in this Agreement until the Lender and the remaining Partner(s) shall agree in writing to release a retired Partner from those obligations and the FCA has agreed in writing to the release; and~~

~~(ii) in the event of a new Partner being assumed as a partner of the Borrower the other Partners shall procure that said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum hereto as the Lender and the FCA may consider necessary;~~

~~(b) the obligations and undertakings of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally.~~

~~Partial invalidity~~

~~9 If any of the provisions of this Agreement is or becomes invalid, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.~~

~~The FCA and indemnity~~

~~10 The FCA shall not, by virtue of having rights under this Agreement, be taken to be a trustee or other fiduciary for, or have any obligations to, any person to whom some or all of the Senior Liabilities are owed. Each of the Lender and Borrower shall on demand indemnify the FCA against all claims, losses, costs, expenses and other liabilities made against or incurred by the FCA as a consequence of it having rights, or taking action under this Agreement.~~

Additional terms

- ~~11 — Any additional terms agreed between the parties are set out in the Variable Terms provided that, if there is any inconsistency between the Variable Terms and the Standard Terms, the Standard Terms shall prevail.~~

Entire agreement

- ~~12 — This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date hereof and not comprised in this Agreement such terms shall be of no further force and effect.~~

Amendments

- ~~13 — Any amendments to this Agreement must be made by the prescribed Deed of Variation and any amendments made or purported to be made without the consent of the FCA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FCA to be a party to this Agreement.~~

Notices to the FCA

- ~~14 — A notice given to the FCA under this Agreement shall have no effect, and time shall not start to run in connection with that notice, until the FCA has given to the sender written confirmation of its receipt.~~

Law

- ~~15 — This Agreement is governed by English law.~~

Jurisdiction

- ~~16 — For the benefit of the FCA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the English Courts and, to the extent that it does not have a place of business within the jurisdiction, appoints the process agent specified in the Variable Terms as agent for receipt of service of process in such courts. Such jurisdiction shall be non-exclusive except to the extent that non-exclusivity prejudices the submission to the jurisdiction.~~

Rights of the FCA

- ~~17 — Although not a party to the Agreement, the FCA may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FCA a benefit~~

[FCA]

9.3 FORM OF DEED OF TERMINATION

THIS DEED OF TERMINATION is made on the day of 20....

~~BETWEEN~~

- (1) — * [insert full name of Lender] (registered in [England] number *) whose registered office is at [if an individual or partnership of] * (“the **Lender**”).
- (2) — * [insert full name of Borrower] (registered in [England] number *) whose registered office is at [if an individual or partnership of] * (“the **Borrower**”).
- (3) — **The Financial Conduct Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS (“the **FCA**”).

~~WHEREAS~~

A subordinated loan agreement was entered in between the Lender (1); the Borrower (2); and the FCA (3) on [date] (“the Agreement”) pursuant to which the Lender agreed to make available to the Borrower a [Loan/Facility] of up to [£]. [insert brief details of any Variations] The parties to the Agreement now wish to terminate the Agreement.

~~IT IS AGREED THAT~~

1. — The Agreement shall be deemed terminated [in accordance with its terms] with effect from [the date of this Deed of Termination/insert relevant future date]. All obligations and liabilities arising before that date shall remain continuing.
2. — This Deed is governed by English Law.

~~IN WITNESS WHEREOF~~ this Deed has been executed by the parties and is intended to be and is hereby delivered on the date first above written.

Executed as a deed by [full name of Lender]

.....

Signed
Director

Signed
Director/Secretary

or

Signed as a deed by
[full names of individual partners of Lender]
(as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

~~or~~

Signed as a deed by [full name of Lender]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

Executed as a deed by [full name of Borrower]

.....

Signed
Director

Signed
Director/Secretary

~~or~~

Signed as a deed by [full names of individual
partners of Borrower]
(as such partners and as individuals)

Signed.....
Partner

Signed.....
Partner/Witness

~~or~~

Signed as a deed by [full name of Borrower]
(if an individual)

Signed.....

in the presence of

Signed.....
Witness

~~The Common Seal of THE FINANCIAL
CONDUCT AUTHORITY LIMITED
was hereunto affixed in the presence of~~

Signed
~~Authorised Signatory~~

Signed
~~Authorised Signatory~~

9.4 FORM OF DEED OF VARIATION

THIS DEED OF VARIATION is made on the day of 2.....

~~BETWEEN~~

- (1) — * [insert full name of Lender] (registered in [England] number *) whose registered office is at [if an individual or partnership of] * (“**the Lender**”);
- (2) — * [insert full name of Borrower] (registered in [England] number *) whose registered office is at [if an individual or partnership of] * (“**the Borrower**”); and
- (3) — **The Financial Conduct Authority Limited** whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS (“**the FCA**”).

~~WHEREAS~~

A subordinated loan agreement was entered into between the Lender (1); the Borrower (2); and the FCA (3) on [date] 199 (“the Agreement”) pursuant to which the Lender agreed to make available to the Borrower a (Loan/Facility) of up to [£].

The parties to the Agreement now wish to vary the Agreement to [insert brief details].

~~IT IS AGREED THAT~~

1. — The Agreement shall be deemed varied [, in accordance with its terms,] from [the date of this Deed of Variation/insert relevant future date] so that the FCA is no longer a party to the Agreement. Any obligation owed to or by, and any requirement for any consent or permission to be given to or by, FCA shall be of no further effect. FCA is hereby released from each and every obligation owed by it under the Agreement. Although on the execution of this deed the FCA is no longer a party to the Agreement, it may in its own right enforce a term of the Agreement to the extent that it purports to confer upon the FCA a benefit.

[insert additional clauses/details of amended clauses].

to the extent that any term of the Agreement is inconsistent with their terms and conditions contained in the Approved Form, the terms and conditions in the Approved Form shall prevail (provided that for the purposes of this clause 1, in clauses 11 and 12 of the Approved Form, the expressions “Variable Terms” and “Agreement” shall be deemed to include references to the Agreement and this Deed.

2. — All other terms and conditions of the Agreement remain unchanged.
3. — This Deed is governed by English Law.

~~IN WITNESS WHEREOF this Deed has been executed by the parties and is intended to be and is hereby delivered on the date first above written.~~

~~Executed as a deed by [full name of Lender]~~

~~..... Signed
Director~~

~~Signed
Director/Secretary~~

~~or~~

~~Signed as a deed by
[full names of individual partners of Lender]
(as such partners and as individuals)~~

~~Signed
Partner~~

~~Signed
Partner/Witness~~

~~or~~

~~Signed as a deed by [full name of Lender]
(if an individual)~~

~~Signed~~

~~in the presence of~~

~~Signed
Witness~~

~~Executed as a deed by [full name of Borrower]~~

~~..... Signed
Director~~

~~Signed
Director/Secretary~~

~~or~~

~~Signed as a deed by [full names of individual~~

~~partners of Borrower]~~
~~(as such partners and as individuals)~~

Signed.....
~~Partner~~

Signed.....
~~Partner/Witness~~

~~or~~

~~Signed as a deed by [full name of Borrower]~~
~~(if an individual)~~

Signed.....

~~in the presence of~~

Signed.....
~~Witness~~

~~The Common Seal of THE FINANCIAL~~
~~CONDUCT AUTHORITY LIMITED was~~
~~hereunto affixed in the presence of~~

Signed
~~Authorised Signatory~~

Signed
~~Authorised Signatory~~

9.5 ~~FORM OF GUARANTOR UNDERTAKING~~

This undertaking is entered into the [] day of [] 20[] by

[] (the "Guarantor") of [] in favour of

~~The Financial Conduct Authority Limited~~ ("the FCA") whose registered office is at 25 The North Colonnade, Canary Wharf, London, E14 5HS.

WHEREAS:-

- (A) ~~By a subordinated loan agreement (the "Loan Agreement") made [of even date] between [] (the "Lender"), [] (the "Borrower") and the FCA, the Lender made available to the Borrower a loan [facility] on the terms and conditions contained in the Loan Agreement.~~
- (B) ~~By a guarantee (the "Guarantee") made [of even date] between the Guarantor and the Lender, the Guarantor guaranteed the obligations of the Borrower to the Lender under the Loan Agreement on the terms and conditions contained in the Guarantee.~~

IT IS HEREBY AGREED as follows:-

- 1 ~~The Guarantor hereby undertakes to the FCA that all and any rights which the Guarantor may have against the Borrower in respect of the Guarantee (whether by subrogation or otherwise howsoever) shall be subordinated on the same terms and conditions (mutatis mutandis) set out in the Loan Agreement (as amended from time to time) and further undertakes and confirms that the Guarantor will be bound by the terms of the Loan Agreement as if the Guarantor were a party to it in place of the Lender.~~
- 2 ~~This undertaking is governed by English law.~~

IN WITNESS whereof this deed has been executed by the Guarantor on the date first above written.

Executed as a Deed by

[]

Witness:.....

Witness's Name:

Witness's Address:.....

.....

9.8 Guidance Notes on Completion of Agreements

A — GENERAL

Introduction

1. — These Notes are designed to accompany the Approved Forms of Subordinated Loan Agreement, each of which is in four parts: the front page, the Variable Terms in Schedule 1, the Standard Terms in Schedule 2 and the signature page. The parties will need to set out details of themselves and the transaction in the Variable Terms and complete the signature page. The front page and the Standard Terms should remain unaltered.
2. — All communications with the FCA regarding the proposed Agreement should in the first instance be via the firm's inspector.
3. — Firms are advised to ensure that the appropriate form of subordinated loan agreement is used (Chap 9/Chap 3). This is, of course, dependent on the firm's authorisation categorisation. Should the firm's categorisation change, this should be discussed with the firm's usual contact as it is likely that any subordinated loan agreement in place will have to be revised.

Preparation of the Agreement

4. — (a) — The form containing the Variable Terms may be completed or re-typed according to preference.

(b) — Rather than re-type the Standard Terms (Schedule 2), firms should simply **photocopy Schedule 2 of the FCA precedent or print it from the website and include it as part of the original Agreement.**
5. — [Deleted]

Financial Rules

6. — Firms are referred to rule IPRU(INV) 9.5 on the use of subordinated loans, including restrictions on approved lenders, repayment provisions and gearing limits.

B — NOTES ON VARIABLE TERMS

Dates

7. — If the **Effective Date of the Agreement** is to be different from the Date of the Agreement, care should be taken to record this in paragraph 2. Where this is the case,

~~the Effective Date will normally be expected to be later than the Date of the Agreement. If the Effective Date is to be a date prior to the date of the Agreement (forexample because the loan was drawn down before the Agreement was put in place), the firm will be expected to provide a reasonable explanation to the FCA as to why it was not possible to document the loan more promptly.~~

Addresses

8. ~~Paragraphs 4 and 6: The address given should be the firm's registered office or equivalent.~~

Partnerships

9. ~~Paragraph 5: Where the Borrower is a partnership, insert "See Additional Terms, paragraph 10() below" and in paragraph 10 of Schedule 1, insert the names and addresses of each of the partners.~~

The Loan or Facility

10. ~~Paragraph 7: Check that paragraph 2 of the Standard Terms accurately reflects the intentions of the parties.~~

11. ~~Suggested wording for a loan is:~~

~~"This is an agreement for the Loan of £[]."~~

12. ~~Suggested wording for a facility is:~~

~~"This is an agreement for a Facility under which the Lender is committed to make Advances in pounds sterling to the Borrower up to a maximum amount of £[] until the last available date of the Facility being [.....(date)]."~~

~~The terms (if any) agreed between the parties on the mechanics of drawdown are as follows -".*~~

- * ~~For example, the parties may wish to provide that:~~

~~"Advances may be drawdown in integral multiples of £100,000."~~

Interest

13. ~~Paragraph 8: the FCA will be concerned if an excessive rate of interest compared with the market rate is charged. Broadly speaking a rate of interest will be regarded by the FCA as excessive if it is not a commercial one. Compound interest is not acceptable.~~

Repayment

14. ~~Irrespective of the form of agreement being used, the specified notice period runs from the date of drawdown and, therefore, where a loan is in the form of a facility, each advance must be for a minimum of the required period.~~
15. ~~Repayment clauses have given rise to confusion in the past. The wording of such clauses will differ depending on which form is being used. Sample wordings for each of these forms of agreement are set out below.~~

Long-term form

16. ~~Firms are advised that for a long-term form the repayment date must be a specified date not less than 5 years from one or more of:~~

- ~~the date of drawdown;~~
- ~~the borrower giving notice in writing to the lender and the FCA; or~~
- ~~the lender giving notice in writing to the borrower and the FCA.~~

17. ~~Paragraph 9: Examples of suggested wordings for either a fixed repayment date or repayment on notice for a long-term form are as follows:~~

(a) ~~"The Borrower shall repay [the Loan/each Advance made to it] on the [date which falls five years after the date] [fifth anniversary] of drawdown of the [Loan/relevant Advance]."~~

(b) ~~"The Borrower shall repay [the Loan/each Advance made to it] five years after the date on which:~~

~~(a) the Borrower gives written notice to the Lender and to the FCA; or~~

~~(b) the Lender gives written notice to the Borrower and to the FCA."~~

~~Note: either (a) or (b) above by itself is sufficient.~~

(c) ~~"[The Loan / Each Advance made to the Borrower] shall be repayable on the date specified by notice in writing given by the Lender to the Borrower and to the FCA or notice in writing given by the Borrower to the Lender and to the FCA, in either case that date being not less than five years after the date on which the notice is given."~~

18 ~~[deleted]~~

19 ~~[deleted]~~

Additional terms

~~20. Paragraph 10: Additional terms may be agreed between the borrower and lender such as those relating to—~~

- ~~—representations and warranties~~
- ~~—provision of financial and other information~~
- ~~—covenants~~
- ~~—costs and expenses~~
- ~~—taxes and increased costs~~
- ~~—mechanics of payment~~
- ~~—notices~~
- ~~—termination provisions.~~

~~However, they should not be inconsistent with the Agreement or the FCA rules. For example, any terms dealing with additional payments by the borrower (eg to compensate for taxes or increased costs) should be subject to the FCA's prior written consent. Covenants and additional representations and warranties should not be inconsistent with the existing representations and warranties in paragraphs 6 and 7 of the Standard Terms. Similarly, any notices clause should take into account paragraph 14 of the Standard Terms (notices to the FCA of no effect until receipt confirmed). Any inconsistency between the Variable Terms and the Standard Terms is resolved in favour of the Standard Terms (paragraph 11 of the Standard Terms).~~

~~21. The lender and borrower should note that the action which can be taken by the lender in response to any breach of representation, warranty or covenant by the borrower is considerably constrained by paragraphs 4 and 5 of the Standard Terms. Therefore the value to the lender of including additional representations, warranties or covenants is very limited.~~

~~22. See also note 9 above for the situation where the borrower is a partnership and notes 24–25 below for additional terms relating to law and jurisdiction.~~

Law and jurisdiction

~~23. If the borrower or lender is resident in another jurisdiction and does not have a branch office within the United Kingdom, paragraph 11 of the Variable Terms should be completed.~~

~~24. The borrower should not be appointed agent for service of process on the lender in case a dispute arises between them.~~

C NOTES ON STANDARD TERMS

Representations and undertakings

25. ~~Paragraphs 6(f) and 7(f): The guarantor or other provider of security must waive its right of subrogation against the borrower until all Senior Liabilities of the borrower have been paid in full. A form of deed for this purpose is available from the FCA.~~
26. ~~On the effect of other terms relating to the subordinated liabilities not contained in this Agreement, see also paragraph 12 of the Standard Terms.~~
27. ~~Paragraphs 15 and 16: See Notes 24-25 above.~~

D — SIGNATURE PAGE

Arrangements for execution

28. ~~Two identical original Agreements (i.e. the front page, the two Schedules and the signature page, each copy stapled or otherwise bound together) should be prepared for signature. Firms and lenders may use any of the execution forms set out in Notes 34-35 below.~~

E — DEEDS OF VARIATION/ DEEDS OF TERMINATION

30. ~~Firms are advised to ensure that the appropriate standard the FCA form is used. These forms are available from the FCA on request.~~
31. ~~The recitals to the deed should refer to the amount of the loan/ each advance and where applicable, briefly summarise the effect of any previous variation of the agreement and of variation of the original agreement which is currently proposed.~~
32. ~~A variation or termination of a subordinated loan agreement can only be effected by the execution of a further deed. In particular, this means that the formalities for executing a deed (see note 34-36 below) must be observed for all deeds of variation or termination and that all parties to the original agreement must also be parties to the subsequent deed of variation or termination. Only the forms set out at Notes 35(1) and (2) or 36(2) below are appropriate for execution as a deed.~~
33. ~~A deed of variation will be required where the parties wish to change the terms of a subordinated loan agreement eg. where the amount of the loan or advance is to be increased. A deed of termination is needed where the parties wish to bring to terminate an agreement that is in place before it would otherwise come to an end. This could occur, for example, where the firm wants to substitute a new lender. Please note that where a subordinated loan agreement is terminated in this way, all obligations and liabilities of the parties arising before the date of termination remain in effect.~~

F — Execution

~~34. In the case of English, Welsh and Northern Irish companies, reference is made to section 43 of the Companies Act 2006 under which a company may contract:~~

~~— by writing under its common seal, or~~

~~— through any person acting under its authority, express or implied.~~

~~Section 44 of the Companies Act 2006 governs the execution of documents by English, Welsh, and Northern Irish companies.~~

~~36. Suggested wording for individuals is—~~

~~(1) SIGNED by []
in the presence of—~~

~~Signature of witness~~

~~Name of witness~~

~~Address of witness
.....~~

OR

~~(2) EXECUTED as a deed by []
in the presence of—~~


~~Signature of witness~~

~~Name of witness~~

~~Address of witness
.....~~

~~37. In the case of overseas companies or partnerships, appropriate wording should be used.
If necessary, firms should obtain legal advice from lawyers qualified in the relevant
jurisdiction.~~

13 Personal Investment Firms (former PIA firms)

	Form	
	13.1 Form of subordinated loan (with guidance notes)	

Page
2

13.1 FORM OF SUBORDINATED LOAN AGREEMENT FOR PERSONAL INVESTMENT FIRMS (SEE IPRU (INV) 13)

NOTES FOR COMPLETION OF THIS DOCUMENT

This subordinated loan Agreement is to be used for injecting additional funds into a firm on a semi-permanent basis. This loan should normally be made in cash. You should speak to FCA before completing the Agreement if you intend to make the loan by a transfer or assignment of assets.

- (1) *This is the standard form prescribed by FCA for long term or short term subordinated loans. A long term subordinated loan must have an original maturity of at least five years or, where it has no fixed term, be subject to five years' notice of repayment; a short term subordinated loan must have an original maturity of at least two years or, where it has no fixed term, be subject to two years' notice of repayment. Delete from the heading and from paragraph 4(2) (Repayment of the Loan) whichever period in brackets is not relevant.*
- (2) *In paragraph 2, you should insert the Effective Date of the Loan, that is, the date on which the Lender will make the advance, if this differs from the date of the Agreement.*
- (3) *Words in brackets marked with a double asterisk ** are for use where the Borrower is a partnership.*

Governing Law

Number of crosses	Governing Law
+	Scottish
++	Scottish or Northern Irish
+++	English or Northern Irish
++++	Northern Irish
+++++	English

*Example: Words marked ++** will be for use where the Borrower is a partnership and the Agreement is governed by either Scottish or Northern Irish law.*

- (4) *Words in round brackets in paragraph 10 are only required where either the Lender or Borrower (or both) is not incorporated in any part of the United Kingdom.*
- (5) *You should speak to FCA before changing or amending this standard form (for example, by adding provisions relating to the terms of the Loan to be made to the Borrower by the Lender). FCA reserves the right to make a charge for considering any non-standard agreement.*

BETWEEN:-

- (1) [] of
[]
(the “Lender” which term includes its permitted successors and assigns); and
- (2) [] of
[]
(the “Borrower” which term includes its permitted successors and assigns); [and
[] of
[],
[] of
[] and
[] of
[]
the individual partners of the Borrower as such partners and as individuals]

IT IS AGREED AS FOLLOWS:-**1. DEFINITIONS**

In this agreement:-

“Effective Date” means the date on which this Agreement is to take effect being the date of the Agreement unless otherwise stated in paragraph 2;

“Excluded Liabilities” means Liabilities which are expressed to be and, in the opinion of the Insolvency Officer of the Borrower, do rank junior to the Subordinated Liabilities in any Insolvency of the Borrower;

“Financial Resource Requirement” means 120 per cent. of the minimum amount of financial resources which the Borrower is required by FCA to maintain at any particular time in compliance with the Rules in chapter 13 of the Interim Prudential Sourcebook (“IPRU (INV)”) and any provisions amending or replacing them;

“Insolvency” means and includes liquidation, winding up, bankruptcy, sequestration, administration or dissolution (whichever term may apply to the Borrower) or the equivalent in any other jurisdiction to which the Borrower may be subject;

“Insolvency Officer” means and includes any person duly appointed to administer and distribute assets of the Borrower in the course of the Borrower’s Insolvency;

“Liabilities” means all present and future sums, liabilities and obligations payable or owing by the Borrower [or any Partner **] (whether actual or contingent, jointly or severally or otherwise howsoever);

“Loan” means the indebtedness of the Borrower to the Lender referred to in paragraph 2 as that indebtedness may be reduced from time to time by any repayment or prepayment permitted under this Agreement;

[**“Partner”** means an individual partner of the Borrower**];

“Rules” means the Rules of FCA from time to time in force;

“Senior Liabilities” means all Liabilities except the Subordinated Liabilities and Excluded Liabilities;

“Subordinated Liabilities” means all Liabilities to the Lender in respect of the Loan and all interest payable thereon.

2. LOAN

The Borrower hereby acknowledges its indebtedness to the Lender in the sum of
[] as an unsecured loan upon and subject to
the terms and conditions of this Agreement.

[Note: This paragraph may be adapted to reflect the actual basis on which the unsecured Loan arises and, if applicable, how it is to be drawn down. Members are requested to specify clearly the Effective Date of the Loan if it will differ from the date of the Agreement.]

3. INTEREST

Subject to the provisions of paragraphs 4 and 5, until repayment of the Loan in full the Borrower will [the Borrower and the partners hereby bind and oblige themselves jointly and severally to +**] pay to the Lender interest on the Loan or on any part or parts of it for the time being remaining due under this Agreement such interest to be calculated and to be payable as provided below.

[Enter details of interest calculations and manner and time of payments. The rate of interest is not to exceed an annual rate of five per cent. above ~~the London Inter-Bank Offered Rate for deposits of the currency in question~~ the arithmetic mean of the Bank of England base rate for the relevant interest period or (where a fixed rate of interest is charged) give per cent. per annum above such rate at the date the Loan is first taken out.]

4. REPAYMENT OF THE LOAN

- (1) The provisions of this paragraph are subject to the provisions of paragraph 5.
- (2) Except where the Borrower has obtained FCA’s prior written consent and that consent has not been withdrawn, **no** repayment or prepayment of the Loan shall be made, in whole or in part, earlier than a date:
 - (a) not less than [five years] [two years] from the date on which the Loan was first made; or

- (b) not less than [five years] [two years] from the date on which the Borrower gave notice in writing to the Lender and FCA, or
 - (c) not less than [five years] [two years] from the date on which the Lender gave notice in writing to the Borrower and FCA.
- (3) If default is made for a period of 7 days or more in the payment of any principal due in respect of the Loan or for a period of 14 days or more in the payment of any interest due in respect of the Loan the Lender may, in order to enforce payment, at its discretion and after taking such preliminary steps as may be necessary and after notifying FCA, institute proceedings for the Insolvency of the Borrower [or the Insolvency of all or any Partners**]. If an order is made or an effective resolution is passed for the winding up of the Borrower, the Loan shall become repayable.
- (4) The Lender may at its discretion, subject to the provisions which follow, institute proceedings for the Insolvency of the Borrower [or the Insolvency of all or any Partners**] to enforce any obligation, condition or provision binding on the Borrower [or on all or any Partners**+] under this Agreement (other than any obligation for the payment of principal moneys or interest in respect of the Loan) provided that the borrower [or any Partner**] shall not by virtue of the institution of any such proceedings be obliged to pay any sum or sums sooner than the same would otherwise have been payable by it. The Lender may only institute such proceedings to enforce the obligations referred to above if (i) the default is not remedied to the satisfaction of the Lender within 60 days after notice of such default is not remedied to the satisfaction of the Lender within 60 days after notice of such default has been given to the Borrower by the Lender (with a copy to FCA) requiring the default to be remedied and (ii) the Lender has taken all preliminary steps required to be taken by it prior to the institution of such proceedings.
- (5) No remedy against the Borrower [or any Partner**] other than as specifically provided by this paragraph shall be available to the Lender whether for the recovery of amounts owing under this Agreement or in respect of any breach by the Borrower [or any Partners**] of any of its obligations under this Agreement.

5. SUBORDINATION

- (1) Notwithstanding the provisions of paragraph 4, the rights of the Lender in respect of the Subordinated Liabilities are subordinated to the Senior Liabilities and accordingly payment of any amount whether principal (by way of repayment or prepayment), interest or otherwise, of the Subordinated Liabilities is conditional upon:-
 - (a) (if an order has **not** been made or an effective resolution passed for the Insolvency of the Borrower) the Borrower being in compliance with its Financial Resource Requirement prevailing at the time of payment by the Borrower; and accordingly no such amount which would otherwise

fall due for payment shall be payable except to the extent that repayment under paragraph 4(2) above is permitted and the Borrower could make such payment and still be in compliance with its Financial Resource Requirement immediately thereafter; and

- (b) (if an order has been made or an effective resolution has been passed for the Insolvency of the Borrower [or if the Borrower shall be dissolved**]) the Borrower being solvent at the time of payment by the Borrower; and accordingly no such amount which would otherwise fall due for payment shall be payable except to the extent that the Borrower could make such payment and still be solvent immediately thereafter. For the purposes of this sub-paragraph, the Borrower shall be solvent if it is able to pay its debts in full and in determining whether the Borrower is solvent for the purposes of this sub-paragraph there shall be disregarded obligations which are not payable or capable of being established or determined in the Insolvency of the Borrower.
- (2)
 - (a) No payment of the Subordinated Liabilities (other than in respect of interest) shall be made at any time under sub-paragraph (1) above unless the Borrower has obtained FCA's prior written consent to such payment and that consent has not been withdrawn.
 - (b) The Borrower shall give or ensure that there are given to FCA such information and auditor's certificate in relation to the proposed payment as FCA may require.
- (3) Payments of interest at a rate not exceeding the rate provided in paragraph 3 may be made to the extent permitted by sub-paragraph (1) above without prior notification to FCA.
- (4) For the purposes of sub-paragraph (1)(b) above a report given at any relevant time as to the solvency of the Borrower by its Insolvency Officer, in form and substance acceptable to FCA, shall in the absence of proven error be treated and accepted by FCA, the Lender and the Borrower as correct and sufficient evidence of the Borrower's solvency.
- (5) If the Lender shall receive from the Borrower [or any Partner**] payment of any sum in respect of the Subordinated Liabilities where repayment is prohibited under paragraph 4(2) or when any of the terms and conditions referred to in sub-paragraphs (1) or (2) above is not satisfied the payment of such sum shall be void for all purposes and [any such sum shall be received by the Lender upon trust to return the same to the Borrower+++] [the Lender shall at any time thereafter be bound to return such sum to the Borrower, or, as the case may be, its Insolvency Officer+] (and any sum so returned shall then be treated for the purposes of the Borrower's obligations under this Agreement as if it had not been paid by the Borrower and its original payment shall be deemed not to have discharged any of the obligations of the Borrower). A request to the Lender for return of any sum under the foregoing provisions of this sub-paragraph (5) shall be in writing and shall be made by or on behalf of the Borrower or, as the case may be, its Insolvency Officer.

6. UNDERTAKINGS OF BORROWER

From and after the date of this Agreement (or the Effective Date if earlier), the Borrower will not [and no Partner will**] without the prior written consent of FCA:-

- (1) secure all or any part of the Subordinated Liabilities;
- (2) redeem, purchase or otherwise acquire any of the Subordinated Liabilities;
- (3) amend any document evidencing or providing for the Subordinated Liabilities;
- (4) repay any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;
- (5) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected.

7. DOCUMENTATION

This Agreement forms the entire agreement as to the Subordinated Liabilities. If there are any other terms relating to the Subordinated Liabilities existing at the date of this Agreement and not comprised in it such terms shall be of no further force and effect. No variation of or amendment to this Agreement shall be of any effect unless it is in writing signed by all the parties. Any amendment to this Agreement made or purported to be made without the consent of FCA shall be void. For the avoidance of doubt, nothing in this paragraph requires the FCA to be a party to this agreement.

8. UNDERTAKINGS OF LENDER

The Lender will not without the prior written consent of FCA:-

- (1) assign or purport to assign to any person the whole or any part of the Subordinated Liabilities;
- (2) purport to retain or set-off at any time any amount payable by it to the Borrower [or any Partner**] against any amount of the Subordinated Liabilities except to the extent that payment of such amount of the Subordinated Liabilities would be permitted at such time by this Agreement, and the Lender shall immediately pay an amount equal to any retention or set-off in breach of this provision to the Borrower and such retention or set-off shall be deemed not to have occurred;
- (3) amend or waive the terms of any document evidencing or providing for the Subordinated Liabilities;
- (4) attempt to obtain repayment of any of the Subordinated Liabilities otherwise than in accordance with the terms of this Agreement;

- (5) take or omit to take any action whereby the subordination of the Subordinated Liabilities or any part of them to the Senior Liabilities might be terminated, impaired or adversely affected;
- (6) take or enforce any security, guarantee or indemnity from any person for all or any part of the Subordinated Liabilities, and the Lender shall, upon obtaining security, guarantee or indemnity in breach of this undertaking, hold the same [on trust for +++] [as agent of and for the benefit of ++] the Borrower.

[Note: Before giving its consent to a transaction falling under paragraph 8(6), FCA will need to be satisfied that the provider of security has waived his rights of subrogation against the Borrower until all Senior Liabilities of the Borrower have been paid in full.]

9. [This Agreement shall subsist in full force and effect notwithstanding any change which may take place from time to time in the constitution or title of the Borrower by the retirement of the present partners or [either] [any] of them or the assumption of new Partners or by a change of name it being provided that:-

- (a) a retired Partner shall continue to be liable for the payment of all sums due under this Agreement and implementation of all other obligation contained in it until such time as the Lender and the remaining Partner[s] shall agree in writing to release a retired Partner from such obligations and FCA has given its written consent to the release; and
- (b) in the event of a new partner being assumed as a Partner of the Borrower the other partners shall procure that the said assumed Partner shall become bound to the Lender as a party to this Agreement and shall execute such addendum to it as the Lender and FCA may consider necessary.

The obligations and undertakings of the Borrower under this Agreement shall bind the Borrower and the Partners jointly and severally. **+]

10. LAW [AND JURISDICTION]

- (1) This Agreement is governed by [English law +++++] [the law of Scotland +] [the law of Northern Ireland +++++] and, for the benefit of FCA solely, each of the Borrower and the Lender irrevocably submits to the jurisdiction of the [English Courts +++++] [Court of Session, Scotland +] [Northern Irish Courts +++++] (and, to the extent that it does not have a place of business within this jurisdiction, appoints [*name and address of agent for service*] as agent for receipt of service of process in such courts). Such jurisdiction shall be non-exclusive except to the extent that such non-exclusivity prejudices the submission to such jurisdiction.
- (2) Although not a party to the agreement, the FCA may in its own right enforce a term of the agreement to the extent that it purports to confer upon the FCA a benefit.

IN WITNESS whereof the parties hereto have duly executed this Agreement as a Deed the day and year first above written.

(EXECUTED AS A DEED and DELIVERED by
(the Lender
(and signed by:

Director

Director/Secretary

or

(SIGNED and DELIVERED as a DEED
by the individual partners of the Lender
(as such partners and as individuals
(in the presence of:

or

SIGNED and DELIVERED as a DEED by
the Lender (*if an individual*)
in the presence of:

(EXECUTED AS A DEED and DELIVERED by
(the Borrower
(and signed by:

Director

Director/Secretary

or

(SIGNED and DELIVERED as a DEED
(by the individual partners or the Borrower
(as such partners and as individuals
(in the presence of:

or

SIGNED and DELIVERED as a DEED by
the Borrower (if an individual)
in the presence of:

Dated this day of 20

BETWEEN

the Lender

and

the Borrower

**SUBORDINATED
LOAN AGREEMENT**

Appendix 5

Draft Handbook text

Consequential changes to the Prospectus Regulation Rules and Listing Rules to align with changes to prospectus regime guidance

LISTING RULES AND PROSPECTUS REGULATION RULES (PROSPECTUS GUIDANCE AND GUIDELINES) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 84 (Matters which may be dealt with by prospectus rules);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 137A (The FCA’s general rules);
 - (5) section 137T (General supplementary powers); and
 - (6) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Prospectus Regulation Rules sourcebook (PRR)	Annex C

Citation

- E. This instrument may be cited as the Listing Rules and Prospectus Regulation Rules (Prospectus Guidance and Guidelines) Instrument 2021.

By order of the Board
[date]

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>ESMA guidelines on alternative performance measures</i>	the guidelines issued by <i>ESMA</i> under article 16 of the ESMA Regulation covering alternative performance measures disclosed when publishing regulated information and prospectuses (ESMA/2015/1415).
<i>ESMA guidelines on APMs Questions and Answers</i>	the Questions and Answers published by <i>ESMA</i> on the <i>ESMA guidelines on alternative performance measures</i> (ESMA32-51-370).
<i>technical note on PR disclosure and specialist issuers</i>	the Guidelines on disclosure requirements under the <i>Prospectus Regulation</i> and Guidance on specialist issuers published by the <i>FCA</i> (Primary Market TN 619.1) as part of the <i>FCA</i> 's technical guidance on <i>LR</i> , <i>PRR</i> , and <i>DTR</i> . [Note: the technical guidance can be accessed on the <i>FCA</i> 's Knowledge Base at https://www.fca.org.uk/markets/primary-markets/knowledge-base .]

Amend the following definitions as shown.

<i>mineral expert's report</i>	a competent person's report prepared in accordance with paragraph 133 of the <i>ESMA Prospectus Recommendations</i> <u>Section VI.3 of the <i>technical note on PR disclosure and specialist issuers</i></u> .
--------------------------------	---

Delete the following definitions. The text is not shown struck through.

<i>ESMA Prospectus Opinions</i>	the following opinions published by <i>ESMA</i> :
	(1) [deleted]
	(2) Framework for the assessment of third country prospectuses under article 20 of the Prospectus Directive (ESMA/2013/317);
	(3) Assessment of Israeli laws and regulations on prospectuses (ESMA/2015/1015); and

- (4) Assessment of Turkish laws and regulations on prospectuses (ESMA/2016/268).

*ESMA PD
Prospectus
Questions and
Answers*

the Questions and Answers on the *Prospectus Directive* published by *ESMA* (ESMA31-62-780)

*ESMA
Prospectus
Recommendations*

the *ESMA* update of the CESR recommendations: The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (ESMA/2013/319).

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.

13 Contents of circulars: Premium listing

...

13.4 Class 1 circulars

...

Acquisition of a scientific research based company or related assets

- 13.4.8 R If a *class 1 transaction* relates to the acquisition of a *scientific research based company* or related assets, the *class 1 circular* must contain an explanation of the transaction's impact on the acquirer's business plan and the information set out in ~~Section 1e of Part III (Scientific research based companies) of the ESMA Prospectus Recommendations~~ Section VI.3 (Scientific research based companies) of the technical note on PR disclosure and specialist issuers.

...

Insert the following new definitions in the appropriate alphabetical position and amend or delete the existing definitions as shown.

Appendix 1 Relevant definitions

App 1.1 Relevant definitions

App 1.1.1 ...

...

<i>ESMA Prospectus Recommendations</i>	the ESMA update of the CESR recommendations: The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (ESMA/2013/319).
...	
<i>mineral expert's report</i>	a competent person's report prepared in accordance with paragraph 133 of the ESMA Prospectus Recommendations <u>Section VI.3 of the technical note on PR disclosure and specialist issuers.</u>
...	

<u>technical note on PR disclosure and specialist issuers</u>	the Guidelines on disclosure requirements under the <i>Prospectus Regulation</i> and Guidance on specialist issuers published by the <i>FCA</i> (Primary Market TN 619.1) as part of the <i>FCA</i> 's technical guidance on <i>LR</i> , <i>PRR</i> , and <i>DTR</i> . [Note: the technical guidance can be accessed in the <i>FCA</i> 's Knowledge Base at https://www.fca.org.uk/markets/primary-markets/knowledge-base .]
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Annex C

Amendments to the Prospectus Regulation Rules sourcebook (PRR)

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

1 Preliminary

1.1 Preliminary

...

Provisions concerning the prospectus regime

- 1.1.5 G The *FCA* considers that the following documents are relevant to the prospectus regime:
- (1) the *Prospectus Regulation*;
 - (2) Part 6 of the *Act*;
 - (3) the *PR Regulation*;
 - (4) these *rules*;
 - (5) ~~the *ESMA Prospectus Recommendations* (to the extent applicable);~~
[deleted]
 - (6) ~~the *ESMA PD Prospectus Questions and Answers* (to the extent applicable);~~ [deleted]
 - (7) the *ESMA PR Prospectus Questions and Answers*
(https://www.handbook.fca.org.uk/L3G/PR/esma31-62-1258_prospectus_regulation_qas.pdf);
 - (8) ~~the *ESMA Prospectus Opinions* (to the extent applicable);~~ and
[deleted]
 - (9) the *Prospectus RTS Regulation*
(https://www.handbook.fca.org.uk/techstandards/PD/2019/reg_2019_979_oj/);
 - (10) the *ESMA guidelines on risk factors*
(https://www.handbook.fca.org.uk/L3G/PR/esma31-62-1293_guidelines_on_risk_factors_under_the_prospectus_regulation.pdf);
 - (11) the *ESMA guidelines on alternative performance measures*
(<https://www.handbook.fca.org.uk/L3G/PR/2015-esma-1415en.pdf>);

(12) the ESMA guidelines on APMs Questions and Answers
(https://www.handbook.fca.org.uk/L3G/PR/esma32-51-370_qas_on_esma_guidelines_on_apms.pdf); and

(13) the technical note on PR disclosure and specialist issuers
(<https://www.fca.org.uk/publication/ukla/fca-tn-619-1.pdf>).

[**Note:** ~~ESMA~~ has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘Alternative Performance Measures’. See ESMA Guidelines on Alternative Performance Measures, 5 October 2015(ESMA/2015/1415) the FCA has also issued other guidance relating to the prospectus regime, which can be accessed in the FCA’s Knowledge Base (<https://www.fca.org.uk/markets/primary-markets/knowledge-base>).]

...

ESMA materials

- 1.1.7 G In determining whether the *Prospectus Regulation*, Part 6 of the *Act*, these *rules*, the *PR Regulation* and the *Prospectus RTS Regulation* have been complied with, the *FCA* will consider whether a *person* has acted in accordance with the ~~ESMA Prospectus Recommendations (to the extent applicable), the ESMA PD Prospectus Questions and Answers (to the extent applicable)~~ technical note on PR disclosure and specialist issuers, the *ESMA PR Prospectus Questions and Answers* and ~~the ESMA Prospectus Opinions (to the extent applicable), the ESMA guidelines on risk factors, the ESMA guidelines on alternative performance measures, and the ESMA guidelines on APMs Questions and Answers.~~

[**Note:** the FCA has also issued other guidance relating to the prospectus regime, which can be accessed in the FCA’s Knowledge Base at <https://www.fca.org.uk/markets/primary-markets/knowledge-base>.]

...

2 Drawing up the prospectus

...

2.3 Minimum information requirements

...

Risk factors

- 2.3.3 UK Article 16(1) to (3) of the *Prospectus Regulation* provides for the format and content of the risk factors to be included in a *prospectus*:

...

Risk factors

1. ...

...

~~[Note: ESMA guidelines on risk factors drafted pursuant to article 16(4) of the EU Prospectus Regulation.]~~

...

5 Other provisions

...

5.4 Miscellaneous

...

Property valuation reports

5.4.5 G To comply with paragraph 130 of the ~~ESMA Prospectus Recommendations (to the extent applicable)~~ in Section VI of the *technical note on PR disclosure and specialist issuers*, the FCA would expect a valuation report for a property company to be in accordance with either:

(1) ...

...

...

Insert the following new definitions in the appropriate alphabetical position and amend or delete the existing definitions as shown.

Appendix 1 Relevant definitions

App 1.1 Relevant definitions

App 1.1.1 ...

...	
<u>ESMA guidelines on alternative performance measures</u>	the guidelines issued by <i>ESMA</i> under article 16 of the ESMA Regulation covering alternative performance measures disclosed when publishing regulated information and prospectuses (ESMA/2015/1415).
<u>ESMA guidelines on APMs</u>	the Questions and Answers published by <i>ESMA</i> on the <i>ESMA guidelines on alternative performance measures</i> (ESMA32-51-370).

<u>Questions and Answers</u>							
...							
<u>ESMA Prospectus Opinions</u>	<p>the following opinions published by <i>ESMA</i>:</p> <table border="1"> <tr> <td>(1)</td><td>Framework for the assessment of third country prospectuses under article 20 of the Prospectus Directive (ESMA/2013/317);</td></tr> <tr> <td>(2)</td><td>Assessment of Israeli laws and regulations on prospectuses (ESMA/2015/1015); and</td></tr> <tr> <td>(3)</td><td>Assessment of Turkish laws and regulations on prospectuses (ESMA/2016/268).</td></tr> </table>	(1)	Framework for the assessment of third country prospectuses under article 20 of the Prospectus Directive (ESMA/2013/317);	(2)	Assessment of Israeli laws and regulations on prospectuses (ESMA/2015/1015); and	(3)	Assessment of Turkish laws and regulations on prospectuses (ESMA/2016/268).
(1)	Framework for the assessment of third country prospectuses under article 20 of the Prospectus Directive (ESMA/2013/317);						
(2)	Assessment of Israeli laws and regulations on prospectuses (ESMA/2015/1015); and						
(3)	Assessment of Turkish laws and regulations on prospectuses (ESMA/2016/268).						
<u>ESMA PD Prospectus Questions and Answers</u>	the Questions and Answers on the <i>Prospectus Directive</i> published by <i>ESMA</i> (ESMA31-62-780).						
...							
<u>ESMA Prospectus Recommendations</u>	the <i>ESMA</i> update of the CESR recommendations: The consistent implementation of Commission Regulation (EC) No 809/2004 implementing the Prospectus Directive (ESMA/2013/319).						
...							
<u>technical note on PR disclosure and specialist issuers</u>	<p>the Guidelines on disclosure requirements under the <i>Prospectus Regulation</i> and Guidance on specialist issuers published by the <i>FCA</i> (Primary Market TN 619.1) as part of the <i>FCA</i>'s technical guidance on <i>LR</i>, <i>PRR</i>, and <i>DTR</i>. [Note: the technical guidance can be accessed in the <i>FCA</i>'s Knowledge Base at https://www.fca.org.uk/markets/primary-markets/knowledge-base.]</p>						

Appendix 6

Draft Handbook text

Changes to reporting requirements in the
Supervision manual

SUPERVISION MANUAL (REPORTING No 16) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making provision identified above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

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 (Reporting No 16) Instrument 2021.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

...

16 Annex FIN-A Annual Report and Accounts 1AR

Annual Accounts		A
...		
7	If the firm's submitted annual report and accounts have been subject to an audit, has the auditor qualified their opinion, added an explanatory paragraph <u>expressing an adverse opinion</u> and/or provided written comment on internal controls?	Yes / No / N/A
...		

16 Annex Guidance notes for the completion of FIN-A in SUP 16 1BG Annex 1AR

...

Main Details

Annual Accounts	
...	
5	Are the firm's annual report and accounts <u>annual report and accounts</u> prepared on a going concern basis?
...	
7	If the firm's submitted annual report and accounts <u>annual report and accounts</u> have been subject to an audit, has the auditor qualified their opinion, added an explanatory paragraph <u>expressing an adverse opinion</u> and/or provided written comment on internal controls?

	<i>Firms</i> should select 'Yes' if the <i>firm's</i> most recent <i>annual report and accounts</i> have been to an audit and the auditor:	
	(a)	qualified the report on the audited <i>annual report and accounts</i> ; and/or
	(b)	added an explanatory paragraph <u>expressing an adverse opinion</u> ; and/or
	(c)	provided written comment on internal controls ; included a paragraph headed:
	(i)	<u>emphasis of matter</u> ;
	(ii)	<u>other matter</u> ; or
	(iii)	<u>material uncertainty related to going concern</u> ; or
	(d)	<u>provided written comment on internal controls</u> .
	Firms should select 'No' if:	
	(d) (e)	the annual report and accounts have been subject to an audit, but none of the conditions at (a) to (e) (d) apply.
	Firms should select 'N/A' if:	
	(e) (f)	the firm is not subject to an audit requirement; or
	(f) (g)	the firm is not required to submit their annual report and accounts.

Appendix 7

Draft Handbook text

Amendments to our rules on corporate reporting in machine-readable electronic format under DTR 4

TECHNICAL STANDARDS (ELECTRONIC REPORTING FORMAT) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:
- (1) regulation 72 (Transfer of directive functions to the FCA) of the Official Listing of Securities, Prospectus and Transparency (Amendment etc.) (EU Exit) Regulations 2019 (the “Regulations”), for the purposes specified in paragraph 31 (to specify the electronic reporting format for annual financial reports) of Schedule 2, Part 3 of the Regulations; and
 - (2) the following sections of the Financial Services and Markets Act 2000 (the “Act”):
 - (a) section 138P (Technical standards);
 - (b) section 138Q (Standards instruments);
 - (c) section 138S (Application of Chapters 1 and 2); and
 - (d) section 137T (General supplementary powers).
- B. The rule-making powers listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

- C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.
- D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

Amendments

- E. The following technical standard is amended in accordance with the Annex to this instrument.

Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format

Commencement

- F. This instrument comes into force on [*date*].

Citation

- G. This instrument may be cited as the Technical Standards (Electronic Reporting Format) Instrument 2021.

By order of the Board
[*date*]

Annex

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

COMMISSION DELEGATED REGULATION (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format

...

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ...

(1A) “ESEF 2020 taxonomy” means the combined set of the taxonomy elements set out in Annex II of Commission Delegated Regulation 2020/1989 amending Delegated Regulation (EU) 2019/815 as regards the 2020 update of the taxonomy laid down in the regulatory technical standards for the single electronic reporting format, and the following collection of links:

- (a) presentation linkbase, which groups the taxonomy elements;
- (b) calculation linkbase, which expresses arithmetic relationships between taxonomy elements;
- (c) label linkbase, which describes the meaning of each taxonomy element;
- (d) definition linkbase, which reflects dimensional relationships of the core taxonomy elements;

(1B) “ESEF 2021 taxonomy” means the combined set of the taxonomy elements set out in Annex [tbc] of Commission Delegated Regulation [tbc] amending Delegated Regulation (EU) 2019/815 as regards the 2021 update of the taxonomy laid down in the regulatory technical standards for the single electronic reporting format, and the following collection of links:

- (a) presentation linkbase, which groups the taxonomy elements;
- (b) calculation linkbase, which expresses arithmetic relationships between taxonomy elements;
- (c) label linkbase, which describes the meaning of each taxonomy element;
- (d) definition linkbase, which reflects dimensional relationships of the core taxonomy elements;

...

(3A) “permitted taxonomy” means a taxonomy permitted for the applicable financial years set out in article 4(5);

...

(4A) “UKSEF 2021 taxonomy” means the combined set of the taxonomy elements set out in the UKSEF Taxonomy within the 2021 Taxonomy Suite issued by the Financial Reporting Council on 29 September 2020, available at <https://www.frc.org.uk/accountants/accounting-and-reporting-policy/xbrl-frc-taxonomies>, and the following collection of links:

- (a) presentation linkbase, which groups the taxonomy elements;
- (b) calculation linkbase, which expresses arithmetic relationships between taxonomy elements;
- (c) label linkbase, which describes the meaning of each taxonomy element;
- (d) definition linkbase, which reflects dimensional relationships of the core taxonomy elements;

(4B) “UKSEF 2022 taxonomy” means the combined set of the taxonomy elements set out in the UKSEF Taxonomy within the 2022 Taxonomy Suite issued by the Financial Reporting Council on [date], available at <https://www.frc.org.uk/accountants/accounting-and-reporting-policy/xbrl-frc-taxonomies>, and the following collection of links:

- (a) presentation linkbase, which groups the taxonomy elements;
- (b) calculation linkbase, which expresses arithmetic relationships between taxonomy elements;
- (c) label linkbase, which describes the meaning of each taxonomy element;
- (d) definition linkbase, which reflects dimensional relationships of the core taxonomy elements;

...

Article 4

Marking up IFRS consolidated financial statements

...

(4) For markups set out in paragraphs 1, 2 and 3, issuers shall use the XBRL markup language and shall use ~~a taxonomy in which the elements shall be those set out in the core taxonomy~~ one of the taxonomies permitted for the applicable financial year in paragraph 5. Where, in accordance with point 4 of Annex IV, it is not appropriate to use elements in ~~the core~~ a permitted taxonomy, issuers shall create extension taxonomy elements as provided for in Annex IV.

(5) The permitted taxonomies are:

- (a) for financial years beginning on or after 1 January 2021 but before 1 January 2022:
 - (i) the core taxonomy;
 - (ii) the ESEF 2020 taxonomy;

- (iii) the ESEF 2021 taxonomy;
- (iv) the UKSEF 2021 taxonomy; and
- (v) the UKSEF 2022 taxonomy;
- (b) for financial years beginning on or after 1 January 2022:
 - (i) the ESEF 2021 taxonomy; and
 - (ii) the UKSEF 2022 taxonomy.

Article 5

Marking up other parts of the annual financial reports

...

- (2) Issuers incorporated in third countries shall not mark up any parts of their annual financial reports other than IFRS consolidated financial statements, except where they:
 - (a) mark up their IFRS consolidated financial statements in accordance with Article 4 using the UKSEF 2021 taxonomy or the UKSEF 2022 taxonomy; and
 - (b) mark up other parts of their annual financial reports in accordance with the UKSEF 2021 taxonomy or the UKSEF 2022 taxonomy.

Article 6

Common rules on markups

For markups made in accordance with Articles 4 and 5, issuers shall comply with the following:

- (a) embedding of markups in the issuers' annual financial reports in XHTML format using the Inline XBRL specifications set out in Annex III or in the permitted taxonomy the issuer uses;
- (b) ...

...

ANNEX II

Mandatory markups

...

Table 1

Mandatory elements of the ~~core~~ a permitted taxonomy to be marked up for financial years beginning on or after 1 January 2021

...

Table 2

Mandatory elements of ~~the~~ a permitted taxonomy to be marked up for financial years beginning on or after 1 January 2022

...

ANNEX IV

Marking up and filing rules

...

- (3) When marking up disclosures with a permitted taxonomy, issuers shall use the ~~the~~ permitted taxonomy element with the closest accounting meaning to the disclosure being marked up. Where there appears to be a choice of ~~the~~ permitted taxonomy elements, issuers should select the element with the narrowest accounting meaning and/or scope.
- (4) If the closest ~~the~~ permitted taxonomy element would misrepresent the accounting meaning of the disclosure being marked up as required by point 3, issuers shall create an extension taxonomy element and use that to mark up the disclosure concerned. All extension taxonomy elements created shall:
- (a) not duplicate the meaning and scope of any ~~the~~ permitted taxonomy element;

...

...

- (6) Issuers shall use the calculation linkbases of their extension taxonomies to document arithmetical relationships between numeric ~~the~~ permitted and/or extension taxonomy elements, in particular for arithmetic relationships between ~~the~~ permitted and/or extension taxonomy elements from the statement of financial position, statement of profit or loss and other comprehensive income, statement of changes in equity and statement of cash flows.
- (7) ...

Table 1

Element names, labels and prefixes of the root elements

Prefix	Element name	Label
...		
esef_cor	NotesAccountingPolicies AndMandatoryTags	Notes, accounting policies and mandatory the <u>permitted</u> taxonomy elements placeholder - this item MUST be used as a starting point for markups of disclosures in the notes to the financial statements

...

- (8) In their extension taxonomies, issuers shall not replace the labels or references of ~~core~~ permitted taxonomy elements. Issuer specific labels may be added to the ~~core~~ permitted taxonomy elements.
- (9) Issuers shall ensure that the issuer's extension taxonomy elements marking up the IFRS consolidated financial statements' statement of financial position, statement of profit or loss and other comprehensive income, statement of changes in equity and statement of cash flows are anchored to one or more ~~core~~ permitted taxonomy elements. In particular:
- (a) the issuer shall anchor its extension taxonomy element to the ~~core~~ permitted taxonomy element having the closest wider accounting meaning and/or scope to that extension taxonomy element of the issuer. The issuer shall identify the relationship of the extension taxonomy element concerned with the ~~core~~ permitted taxonomy element concerned in the issuer's extension taxonomy's definition linkbase. The extension taxonomy element shall appear as the target of the relationship;
 - (b) the issuer may anchor the extension taxonomy element to the ~~core~~ permitted taxonomy element or elements having the closest narrower accounting meaning and/or scope to that extension taxonomy element concerned. The issuer shall identify the relationship of the extension taxonomy element concerned with the ~~core~~ permitted taxonomy element or elements concerned in the issuer's extension taxonomy's definition linkbase. The extension taxonomy element shall appear as the source of the relationship or relationships. Where the extension taxonomy element combines a number of ~~core~~ permitted taxonomy elements, the issuer shall anchor that extension taxonomy element to each of those ~~core~~ permitted taxonomy elements except any such ~~core~~ permitted taxonomy element or elements, which are reasonably deemed to be insignificant.
- (10) Notwithstanding point 9, issuers do not need to anchor to another ~~core~~ permitted taxonomy element an extension taxonomy element that is used to mark up a disclosure in the statement of financial position, statement of profit or loss and other comprehensive income, statement of changes in equity or the statement of cash flows that is a subtotal of other disclosures in the same statement.

Appendix 8

Draft Handbook text

UK Emissions Trading Scheme

UK EMISSION TRADING SCHEME (No 2) INSTRUMENT 2021

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”).

Amendments to material outside the Handbook

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

Commencement

- C. This instrument comes into force on [*date*].

Citation

- D. This instrument may be cited as the UK Emission Trading Scheme (No 2) Instrument 2021.

By order of the Board
[*date*]

Annex

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.7 Activities: a broad outline

...

Bidding in emissions auctions

2.7.6B G The *RAO* and the *UK auctioning regulations* together generate three broad categories of *person* in relation to bidding for *emission allowances* on an *auction platform*:

- (1) The first category consists of a *MiFID investment firm* (other than a *collective portfolio management investment firm*) or a *third country investment firm* (other than one which would be a *collective portfolio management investment firm* if its head office were in the *United Kingdom*).
- (1A) The first category also consists of a *person* that is exempt from *MiFID* under article 2(1) (j), as onshored by Part 1 of Schedule 3 to the *RAO*, where it is bidding on behalf of a client of its main business or bidding on its own account (further information on the article 2(1) (j) exemption from *MiFID* is in *PERG* 13.5, Q44).
- (1B) A *person* in this first category is entitled to bid on an *auction platform* but requires permission from the *FCA* for *bidding in emissions auctions* to do so.
- (2) The second category consists of operators or aircraft operators bidding on their own account as well as group entities or business groupings of those operators or *UK* public bodies or *UK* state-owned entities that control any of those operators (as set out in regulation 16 of the *UK auctioning regulations*). A *person* or entity in this category is entitled to bid on an *auction platform* but does not require *permission* from the *FCA* to do so as a result of an exclusion from the *regulated activity of bidding in emissions auctions* in article 24B of the *RAO*.
- (3) The third category consists of all other *persons*. The *UK auctioning regulations* prevent an *auction platform* from granting these *persons* admission to bid. A *person* in this category is not

entitled to bid on an *auction platform* and the *FCA* is not able to grant such a *person permission* to do so.

...

13 Guidance on the scope of the UK provisions which implemented MiFID and CRD IV

...

13.4 Financial instruments

...

Emission allowances

Q34A. How are emission allowances treated?

They are covered in the following ways:

- Regulation 5(8) of the *UK auctioning regulations* deems as an investment service or activity the reception, transmission and submission of a bid for a financial instrument on an *auction platform* by ~~a MiFID~~ an investment firm permitted to carry on these activities under the regulations.
- The *UK auctioning regulations* regulate bids for allowances in the form of two-day spot contracts or five-day futures.
- The *UK auctioning regulations* allow the following to bid:
 - aircraft operators and others referred to in (5) below;
 - *MiFID investment firms* (other than *collective portfolio management investment firms*) and *UK credit institutions* and similar third country investment firms; and
 - a person exempt under article 2(1)(j) of MiFID as onshored in Part 1 of Schedule 3 to the *RAO* (see Q44 to Q45 for more on this exemption).
- An *emission allowance* is itself a financial instrument (C11).
- An option, future, swap, forward rate agreement or any other derivative contract relating to *emission allowances* is included as a C4 derivative.

It is not always clear how all this overlapping legislation fits together but in the FCA's view, it works like this (for ease of reference the phrase 'MiFID authorisation' is used to refer to *UK* requirements onshoring MiFID):

- (1) An emission allowance auctioned as a five-day future or a two-day spot contract is regulated under either the *EU auction regulation* or the *UK auctioning regulations*.
- (2) The five-day future auction product is a financial instrument and is regulated under MiFID as onshored by Part 1 of Schedule 2 to the *RAO*. It is included under C4 and C11.
- (3) The two-day spot contract product is also a financial instrument. It is included under C11. It is therefore also regulated under MiFID as onshored by Part 1 of Schedule 2 to the *RAO*.
- (4) In the FCA's view an *emission allowance* (including when auctioned under the *EU auction regulation* or the *UK auctioning regulations*) will not come within C1.
- (5) The *UK auctioning regulations* provide certain exemptions for aircraft operators and operators of plant and other installations. These exemptions continue to apply whether or not a MiFID exemption, as onshored in Part 1 of Schedule 3 to the *RAO* is available, but only for bidding activities covered by the *UK auctioning regulations*.
- (6) Thus for example, regulation 16 of the *UK auctioning regulations* enable business groupings of operators in (5) to be eligible to apply for admission to bid. The MiFID exemption in (12) below may not cover all such persons but they are still entitled to submit bids under the *UK auctioning regulations*.
- (7) The mere fact of being exempt under MiFID, as onshored in Part 1 of Schedule 3 to the *RAO* does not allow someone to bid under the *UK auctioning regulations*. The *UK auctioning regulations* regulate who can and cannot bid.
- (8) The *UK auctioning regulations* cover the reception, transmission and submission of a bid. This corresponds to the MiFID activities of the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients and dealing on own account.
- (9) Therefore the *UK auctioning regulations* activities of receiving, transmitting and submitting a bid are all also covered by MiFID, whether the *emission allowance* is auctioned as a five-day future or a two-day spot contract. However, a person exempt under (5) is not subject to MiFID when bidding (subject to (10)).
- (10) If a person who is allowed to bid under the *UK auctioning regulations* or is authorised under MiFID (because for example it wants to carry out other activities for which it needs MiFID authorisation), MiFID will apply to its bidding activities.

- (11) The MiFID investment services and activities that apply to a product covered by the *UK auctioning regulations* are not limited to the bidding activities listed in paragraph (8) of this list. All the MiFID investment services and activities apply to *emission allowances* auctioned as a financial instrument. Therefore, for example, giving personal recommendations about emission allowances (including bids) is covered by MiFID. Anyone wishing to carry out such activities will need to be authorised as a MiFID firm, unless some other exemption is available.
- (12) Article 2.1(e) of MiFID as onshored in Part 1 of Schedule 3 to the *RAO* exempts an operator with compliance obligations under the ~~UK~~ *trading scheme order 2020* from MiFID.
- (a) The exemption covers some of the same ground as the exemption in the *UK auctioning regulations* described in (5) to (7) above. However this overlap neither extends nor narrows the effect of the *UK auctioning regulations* exemption.
 - (b) The article 2.1(e) exemption also covers activities not covered by the *UK auctioning regulations*. So, for example, the article 2.1(e) exemption covers buying and selling the underlying *emission allowance* or the five-day future or two-day spot auction product in the secondary market.
 - (c) See the answer to Q35A for more details about the conditions of the exemption.
- (13) ~~Although third country investment firms cannot bid on an auction platform, an~~ An EU firm will be carrying on the *regulated activity* of *bidding in emissions auctions* if they bid from the UK on an EU auction platform.

