

Consultation Paper

CP11/27[★]

Financial Services Authority

Quarterly consultation

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The Financial Services Authority invites comments on this Consultation Paper. Comments on Chapters 2 to 9 of this CP should reach us by **6 February 2012**.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2011/cp11_27_response.shtml.

You can also respond by email: cp11_27@fsa.gov.uk

If you wish to respond by letter, please send your comments to the person named at the end of each chapter and set out below:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us 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 Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

ACCIA	Association of Certified International Investment Analysts
AFM	authorised fund manager
AUP	agreed-upon-procedures
BIPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms
CBA	cost benefit analysis
CFP	contingency funding plans
CII	Chartered Insurance Institute
CISI	Chartered Institute of Securities and Investments
COBS	Conduct of Business sourcebook
COLL	Collective Investment Schemes sourcebook
CoMC	Code of Market Conduct
COMP	Compensation sourcebook
COND	Threshold Conditions sourcebook
CP	Consultation Paper
CRD	Capital Requirement Directive
DC	defined contribution
DWP	Department for Work and Pensions
EA	Equality Act 2010

EEA	European Economic Area
ELR	employer's liability register
ERN	employer's reference number
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
FAIFS	funds of alternative investment funds
GEN	General Provisions sourcebook
IAQ	Investment Administration Qualification
ICOBS	Insurance: Conduct of Business sourcebook
ILAS	individual liquidity adequacy standards
ILG	individual liquidity guidance
IOC	Investment Operations Certificate
KII	key investor information
MAR	market conduct
NURS	non-UCITS retail scheme
PAIF	property authorised investment fund
PDMRs	persons discharging managerial responsibilities
PS	Policy Statement
QCP	Quarterly Consultation Paper
RDR	Retail Distribution Review
S2P	state second pension
SCV	single customer view
SMEs	small and medium enterprises
SUP	Supervision manual
TC	Training and Competence sourcebook
UCITS	undertakings for collective investment in transferable securities
UCITS IV	revised UCITS directive

1

Overview

- 1.1 In this Consultation Paper (CP), we invite comments on miscellaneous amendments to the Handbook. It proposes amendments:
- to clarify the liquidity rules by confirming the policy intention of the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) rules, to change the realisation requirements for non-liquid asset buffer assets to operational testing through the use of the central bank facilities and to provide details of management actions on the occurrence of certain events (Chapter 2);
 - to implement the Department for Work and Pensions' changes that will abolish the option to contract out of the state second pension (S2P) (Chapter 3);
 - to the form and scope of directors' certificates and reports by auditors for employer's liability registers (ELRs) and qualifying tracing office databases, and amendments to the content of ELRs for co-insurance, excess insurance, claims made and employer's reference numbers (Chapter 4);
 - to the information disclosure requirements in the Insurance: Conduct of Business sourcebook (ICOBS) as a result of the implementation of Solvency II (Chapter 5);
 - to guidance in the Code of Market Conduct, where the disclosure of inside information by brokers during deals, in which stock owned by persons discharging managerial responsibilities (PDMRs) is being sold (Chapter 6);
 - to improve the clarity of the reporting requirements and to facilitate better data quality (Chapter 7);
 - to allow a non-UCITS retail scheme (NURS) that is subject to investment powers and borrowing limits to act as a feeder fund and to incorporate consequential changes to the rules applying to UCITS feeder funds (Chapter 8); and
 - to the qualification standards that advisers have to meet as part of the Retail Distribution Review (RDR) (Chapter 9).

1.2 Comments on Chapters 2 to 9 of this CP should reach us by 6 February 2012.

CONSUMERS

The proposals in Chapters 4, 5 and 8 may be of interest to consumers.

2

Proposed minor changes to the liquidity regime

Introduction

- 2.1 This chapter proposes minor amendments to our liquidity rules in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU). These amendments are:
- to correct a drafting omission in BIPRU 12.7.3R and 12.7.5R to clarify and confirm the original policy intention of the rules;
 - a change to the realisation requirements in relation to the use of central bank facilities in BIPRU 12.7.11R; and
 - an amendment to BIPRU 12.9.13R to include a requirement to provide the FSA with details of the management actions taken on the events defined in BIPRU 12.9.14R.
- 2.2 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 150(2) (Actions for damages), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA).
- 2.3 The amendments will be of interest to individual liquidity adequacy standards (ILAS) BIPRU firms and simplified ILAS BIPRU firms, and are unlikely to concern consumers. The proposed Handbook text can be found in Appendix 2.

Proposed amendments

Amendments to BIPRU 12.7.3R and BIPRU 12.7.5R

- 2.4 BIPRU 12.7 establishes the rules for those assets that the FSA considers to be eligible for inclusion in the regulatory liquid asset buffer. BIPRU 12.7.3R states that a high quality debt security issued by a government or central bank may be included if it is issued by an EEA state, Canada, Australia, Japan, Switzerland or the USA.
- 2.5 The wording of BIPRU 12.7.3R has led at least one firm to interpret it as not preventing them from including debt securities issued by governments and central banks, other than those listed, to be included in liquid asset buffers. That interpretation is contrary to the policy intention and we are acting to close this potential loophole.
- 2.6 The original and continuing purpose of the rule is to restrict the eligible debt securities to only those countries listed. Therefore, we propose to insert the word ‘only’ so that the rule reads ‘a firm may include *only* a debt security which is ...’ to reaffirm the original intention of the rule.
- 2.7 The same issue occurs in the text of BIPRU 12.7.5R, which establishes the countries with which sight deposits can be held and be eligible for the buffer. We propose to amend this rule in the same way.
- 2.8 A minor drafting amendment to BIPRU 12.7.2R is also proposed to shift the location of the word ‘only’ for better grammatical sense.

Q2.1: Do you agree with our proposal to amend BIPRU 12.7.3R and BIPRU 12.7.5R?

Amendments to BIPRU 12.7.11R

- 2.9 BIPRU 12.7.11R provides that firms must periodically realise:
- assets in their liquid assets buffer; and
 - other assets through the use of central bank facilities.
- 2.10 BIPRU 12.7.11R(2) states that a firm must periodically realise, through the use of central bank facilities, a proportion of its assets. Originally, this rule had two purposes:
- 1) to remove operational impediments to accessing the central bank facilities; and
 - 2) to reduce any stigma associated with the use of the facilities.

After further consultation with the Bank of England, we are limiting the purpose of the rule to the removal of operational impediments by removing the requirement to realise such assets.

- 2.11** Instead, we propose to amend BIPRU 12.7.11R(2) to make it clear that we expect a firm to test its operational ability to raise funds relating to assets not in its liquid assets buffer through the central bank facilities to which it has access. The detailed requirements of 12.7.11R(3) and 12.7.12R(4) will not apply to the proposed operational testing requirement. The rules in BIPRU 12.7.11R have been renumbered accordingly to implement this proposal. We also propose to amend the wording in BIPRU 12.7.11R(3)(d) to remove reference to central bank transactions.

Q2.2: Do you agree with our proposals to amend BIPRU 12.7.11R?

Amendments to BIPRU 12.9.13R, 12.9.14R and 12.9.18R

- 2.12** BIPRU 12.9.13R establishes what a firm must do if any of the defined events in BIPRU 12.9.14R occurs. In summary, the events in BIPRU 12.9.14R are a breach, or expected breach, of the simplified buffer requirement or the firm's liquid assets buffer falling, or being expected to fall, below the level advised in its individual liquidity guidance.
- 2.13** Currently, firms are required to notify the FSA of the event in writing, provide a reason for the event and implement its contingency funding plan (CFP). As part of our supervisory reviews, we have assessed the quality and completeness of firms' CFPs. In general, we have found them to be deficient in a number of respects. In addition, we are giving further consideration to their interconnection with recovery and resolution plans. We will provide clarity regarding this within our policy statement on recovery and resolution plans following CP11/16¹ next year.
- 2.14** A firm's CFP should be viewed as a suite of actions that can be taken to help it alleviate any stress it is facing. The current wording of the rule has the potential to indicate that the CFP has a single invocation point, which is not what was intended. A firm should take actions outlined within the CFP as and when necessary, and also consider actions not listed in its CFP. These invocation procedures should not be restricted to a trigger event hard-coded in the FSA's Handbook.
- 2.15** We propose to amend the rule so that firms are required to provide the FSA with an explanation of the actions it has taken to address an event in BIPRU 12.9.14R, which may include taking actions from its CFP.
- 2.16** Further, we propose to amend BIPRU 12.9.13R, 12.9.14R and 12.9.18R to simplify the text and make it more accessible, by redefining 'events' for the purpose of BIPRU 12.9.13R. The definition of 'events' in that context is proposed to be breach of a buffer requirement, the liquid assets buffer falling below the level advised in guidance or the funding profile ceasing to conform to that advised in the guidance. We propose not to include expected breach within the definition. Instead, we propose to refer to expected occurrence directly in BIPRU 12.9.13R. The new definition of 'event' carries over to BIPRU 12.9.18R. These proposed changes are for drafting clarity only and do not represent any policy change.

¹ CP11/16, *Recovery and Resolution Plans*, (August 2011).

Q2.3: Do you agree with our proposal to amend BIPRU 12.9.13R, 12.9.14R and 12.9.18R?

Cost benefit analysis

Amendments to BIPRU 12.7.3R and BIPRU 12.7.5R

- 2.17** In PS09/16² we considered the costs and benefits of firms holding high-quality government bonds, central bank reserves and bonds issued by multi-lateral development banks. The proposed amendment makes it clear that only those debt securities issued by, and sight deposits held with, the specified governments and central banks stated in the rule may be included in a firm's liquid asset buffer. The purpose of the change is to ensure the quality of these assets with particular regard to the markets in which they are traded. If firms have been holding assets, other than those listed, for the purpose of their individual liquidity guidance (ILG), these firms will incur costs to replace these assets. Benefits arise from preventing firms from holding low quality assets.

Amendment to BIPRU 12.7.11R

- 2.18** The purpose of this rule is to ensure that FSA-regulated firms have regular access to central bank emergency liquidity assistance. The proposed change clarifies that the realisation should be in the form of tests of a firm's operational ability to access funding. We do not expect any significant changes in the costs and benefits quantified in PS09/16.

Amendments to BIPRU 12.9.13R, 12.9.14R and 12.9.18R

- 2.19** The proposal establishes that the FSA will receive information about the actions taken by a firm over the period leading up to an ILG breach or expected breach event, as described in BIPRU 12.9.14R. The benefits arise from the FSA's improved ability to assess the situation ahead of the firm delivering its liquidity remediation plan. We do not expect this to represent a significant additional cost to firms or the FSA.

Q2.4: Do you agree with the cost benefit analysis?

Compatibility statement

- 2.20** In Chapter 14 of PS09/16, we set out our view that the liquidity reporting regime is compatible with our statutory objectives and the principles of good regulation. The

² PS09/16, *Strengthening liquidity standards including feedback on CP08/22, CP09/13, CP09/14*, (October 2009).

proposed amendments in this consultation are driven by feedback from firms and other industry participants, as well as internal FSA analysis. The policy intention has not changed from that set out in PS09/16.

- 2.21** The minor amendments we are consulting on are intended to help us deliver our policy set out in PS09/16 and, thereby, to meet our statutory objectives of market confidence and consumer protection. We have considered the principles of good regulation and, in particular, the principle that a burden or restriction should be proportionate to the benefits and the need to use our resources in the most efficient and economic way, as well as the international character of financial services and markets, and the desirability of maintaining the competitive position in the UK.

Equality and diversity

- 2.22** We have assessed that our proposals do not give rise to discrimination and that the proposals are of low relevance to the equality agenda. We would nevertheless welcome any comments that respondents may have on any equality issues they believe arise.

Contact

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3

Abolition of contracting out for defined contribution pensions schemes

Introduction

- 3.1 On 12 March 2010, the Department for Work and Pensions (DWP) confirmed that the option to contract out of the state second pension (S2P) with a defined contribution (DC) pension scheme will be abolished from 6 April 2012. In addition, rights already obtained by contracting out no longer need to be recorded separately and the annuity purchased with those rights can be based on the same rates as the remainder of the pension fund.
- 3.2 In July 2010, CP10/15³ consulted on the consequent changes required to our rules for contracting-out comparisons. COBS 13 Annex 2.4 sets down how to calculate a comparison between the pension given up in the S2P and projections of the personal or stakeholder pension that might be bought by the ‘minimum contributions’ received from the government. A personal or stakeholder pension that can receive minimum contributions is termed an ‘appropriate personal pension’. The rights obtained by the minimum contributions are called ‘protected rights’.
- 3.3 In November 2010 we published the revised rules in the Conduct of Business Sourcebook (Abolition of contracting out for defined contribution schemes) Instrument 2010.⁴ These required the period used for the pension comparison to end on 5 April 2012. After then our rules on contracting out would in any case have become redundant, so the proposed new amendments remove all references to contracting out.
- 3.4 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 145 (Financial promotion rules), section 156 (General supplementary powers) and section 157(1) (Guidance) under the Financial Services and Markets Act 2000 (FSMA) and

³ Chapter 6 of CP10/15, *Quarterly consultation (No 25)*, (July 2010), http://www.fsa.gov.uk/pubs/cp/cp10_15.pdf

⁴ http://fsahandbook.info/FSA/handbook/LI/2010/2010_58.pdf

related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook. The text of the proposed amendments can be found in Appendix 3.

Proposed amendments

- 3.5 With effect from 6 April 2012, we intend to remove from the Handbook rules all references to ‘contracting out’, ‘appropriate personal pension’ and ‘protected rights’. This means ‘contracting out comparison’ and ‘appropriate personal pension’ can be removed from the Glossary.
- 3.6 Our present rules cover two aspects of contracting out:
- COBS 13 Annex 2.3.1R(3) describes the unisex basis to be used in a projection for a future annuity and contracting out comparison; and
 - COBS 13 Annex 2 Parts 4.1R and 4.2R describe how to calculate a projection for an appropriate personal pension if a client is considering whether to contract out. In addition, COBS 13.4.R(2) and COBS 14.2.1R(3A) explains that where a self-invested personal pension is used to contract out, a retail client must also be provided with a projection and contracting out comparison.
- 3.7 As a consequence of the above proposals, SUP 16.8.13R(2) becomes redundant. This required certain appropriate personal pension schemes to be excluded from data and persistency reports.

Q3.1: Do you have any comments on the rule changes we propose to make to reflect the DWP’s decision to end contracting out from 6 April 2012?

Cost benefit analysis

- 3.8 Firms can already illustrate wholly non-protected rights pension benefits, but they can now remove the term ‘non-protected rights’ from illustrations because it will no longer have any context. We believe the cost of this removal will be minor, particularly as firms will already be planning to change their literature.
- 3.9 This change will benefit consumers by removing a potentially confusing descriptor. Many firms use the descriptor ‘non-protected rights’ in illustrations even when there is no protected rights element. Consumers can be confused by this lack of context. Consequently, removal of all references to protected rights will make illustrations clearer. Firms would also not need to maintain two illustration bases for pension benefits.

Q3.2: Do you agree with our assumption that the cost of changing illustration systems will be negligible?

Compatibility statement

- 3.10 The amendments to COBS 13 and COBS 14 are designed to help us meet our consumer protection and market confidence objectives by reflecting the change in legislation. We consider the changes comply with the principles of good regulation and, in particular, the principle that a burden or restriction should be proportionate to the expected benefits, as our analysis indicates that the cost impact of our proposal will be negligible. We are satisfied that these proposals are compatible with our general duties under section 2 of the Financial Services and Markets Act 2000.

Equality and diversity issues

- 3.11 We have assessed the equality and diversity impact of these changes and do not believe that they will give rise to any issues.

Contact

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4

Tracing employers' liability insurers

Introduction

- 4.1 This chapter proposes changes to ICOBS 8.4 (Claims handling – employers' liability insurers) and will be of interest to consumer groups, insurers and their intermediaries, and employers and their employees.
- 4.2 In PS11/4⁵, we introduced a policy to require insurers to include all UK commercial lines employers' liability policies entered into or renewed on or after 1 April 2011 on employers' liability registers (ELRs). In addition, policies for which claims are made on or after 1 April 2011, including historical policies written before 1 April 2011, are required to be included. For policies issued on or after 1 April 2012, specific policy details must be included. For earlier policies, only the details specified that are held by insurers must be included.
- 4.3 This chapter includes proposals that we amend our rules with effect from 1 April 2012 to include details of the form and scope of the directors' certificates and reports by auditors that we require to be provided for ELRs. In addition, we are proposing to give firms the option of applying the current rules to certificates and reports on ELRs as at 1 April 2012, as these ELRs were prepared while the current rules were in force. We are also proposing to provide transitional relief from the requirement to obtain independent assurance reports by allowing reports by auditors on this first occasion to be prepared on the basis of agreed-upon-procedures (AUP) that satisfy an FSA framework.
- 4.4 This chapter also includes proposals for directors' certificates and independent assurance reports for qualifying tracing offices, and proposals for ELRs for co-insurance, excess insurance, the definition of 'claims made' and employers' reference numbers (ERNs).

⁵ PS11/4, *Tracing employers' liability insurers*, (February 2011).

- 4.5 We propose these amendments through our powers under section 138 (General rule-making power), section 149 (Evidential provisions), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 4.
- 4.6 Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement under section 155 of FSMA does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
- 4.7 The cost benefit analysis of the proposals for directors' certificates and reports by auditors on ELRs (including transitional arrangements and our proposed framework relating to the use of agreed-upon-procedures) has been set out in a separate section in this chapter. For the other policy proposals the costs and benefits are considered alongside the description of the policy.

Directors' certificates and reports by auditors on ELRs

- 4.8 Our current policy (ICOBS 8.4.4R(1)(b)) includes a requirement for insurers that are responsible for the production of ELRs to obtain a written statement from a director that, to the best of their knowledge, the ELR has been properly prepared in accordance with the requirements of ICOBS 8.4.
- 4.9 Our current policy (ICOBS 8.4.4R(1)(c)) also requires these insurers to obtain an independent assurance report addressing the accuracy and completeness of the ELR, prepared by an auditor satisfying the requirements of SUP 3.4 and SUP 3.8.5R to 3.6.6R, and addressed to the directors of the insurer.
- 4.10 Insurers are required to obtain both the director's certificate and independent assurance report at least once a year, the first being required for most firms⁶ in relation to the ELR as at 1 April 2012 and obtained by 1 July 2012.
- 4.11 In using the term 'assurance' in PS11/4, we recognised the existence of various assurance alternatives, which vary in terms of the level of assurance provided and the form of assurance opinion expressed. In our response on director certification and independent assurance of ELRs⁷, we announced our intention to consult further on the requirements for director certification and independent assurance and their cost effectiveness. This was to allow early experiences to be taken into account when setting up and operating the new employers' liability tracing systems. This chapter introduces that further consultation, which will close on 6 February 2012.

⁶ Firms that commenced carrying out UK commercial lines employers' liability insurers after 1 April 2011 are required to provide a directors' certificate and independent assurance report for a register at a date no later than twelve months after commencing the business.

⁷ PS11/4, *Tracing employers' liability insurers*, (February 2011), page 26.

- 4.12 The purpose of director certification and independent assurance of ELRs is to ensure tracing information available to claimants remains reliable and is compliant with the requirements set out in ICOBS 8.4.4R(2) on an ongoing basis. While our rules are required to be interpreted in the light of their purpose (GEN 2.2.1R), we consider that the range of possible interpretations of our rules as they stand is wide and that further specification is needed to establish a proportionate and effective approach in practice.

Directors' certificates

- 4.13 We propose that directors should be able to regard 'material compliance' as sufficient to enable them to provide an unqualified certificate. To make the director's statement clear to those who may seek to rely on it, we are proposing to require the firm to obtain a statement from a director that, to the best of their knowledge, the ELR is materially compliant with ICOBS 8.4.4R(1)(a) instead of properly prepared in accordance with the requirements of ICOBS 8.4. We propose to set out in our rules what we mean by the term 'materially compliant'. The director's statement will also be required to include this definition of 'materially compliant' so that users can see how much reliance they can place on it. It will not prevent firms who consider that they have achieved 100% compliance from stating this if they wish to do so.
- 4.14 It may not always be possible to achieve 100% compliance at all times, and a few errors or omissions might not be regarded as material. Therefore, we propose, for the purposes of producing the director's certificate, that an ELR in which there are errors and omissions for 1% or less of the policies required to be included should be defined as 'materially compliant'. For this purpose, an error is any deviation from our requirements for the inclusion of policy details in ELRs that may adversely affect the result of a search. However, by definition, we require firms to be fully compliant and errors and omissions within the 1% limit still need to be corrected as soon as they are detected for the firm to comply with the underlying rule. We would expect firms to have systems and controls in place to be able to deliver this.
- 4.15 We appreciate that the proposed limit of 1% is arbitrary in nature. We are prepared to consider alternatives to the limit of 1%, which may, for example, be better defined as a combination of an absolute number and a percentage for smaller firms. However, in our judgement, a tight limit of 1% is broadly commensurate with ensuring an acceptable level of successful traces.

Q4.1: Do you agree with the proposed change in the required director's certificate and the definition of 'materially compliant'? If not, what would you suggest and why?

- 4.16** Experience to date has suggested that achieving material compliance as defined above may be challenging for some insurers in the short term. This may be because of their dependence on employers, intermediaries and/or systems which are not fully automated to capture the information needed to prepare ELRs completely and accurately in the time required. On the other hand, as other insurers have no, or few, policy details to include on ELRs, we would expect them to be able to produce a director's certificate that the ELR is 'materially compliant' without undue difficulty.
- 4.17** The logistics of obtaining timely, accurate and complete information for all insured employers in the UK (estimated to be in excess of one million per year) are such that material compliance for the industry as a whole may not be achievable in the short term. As a consequence, it may be that a significant number of insurers are unable to obtain an unqualified director's certificate. Therefore, we propose to require firms that are unable to obtain a statement from a director that the ELR is materially compliant to obtain a 'qualified certificate' from a director identifying the respects in which the ELR is not materially compliant and confirming the steps being taken by the firm to ensure that it will be materially compliant as soon as practicable.
- 4.18** To put these measures in context, we are proposing that a qualified director's certificate must include a description of its systems and controls for producing the register. We require firms to ensure their ELRs are fully compliant, and to make improvements in the level of compliance where needed. Correspondingly, the systems and controls of insurers should identify and measure any non-compliance, chase for missing information on a regular basis and correct inaccuracies when they are detected. We would expect firms to do this as far as practicable before their directors provide their certificates.
- 4.19** To encourage ongoing measurement of non-compliance, we propose that qualified certificates must include:
- a) an estimate of the number of policies missing from the ELR as a proportion of the total policies that are required to be on the ELR; and
 - b) an estimate of the number of policies present on the ELR for which the ELR is incomplete or incorrect (as against the requirements in ICOBS 8.4) as a proportion of the total policies that required to be on the ELR.

As it may be difficult to estimate the level of non-compliance accurately in some circumstances, we propose that the basis of each estimate must be included in the qualified certificate.

- 4.20** To illustrate incompleteness under paragraph 4.19(b), policy details would be regarded as incomplete if an item of information required by ICOBS 8.4 is not present on the ELR for a policy that is included. They will not be regarded as incomplete, if ICOBS 8.4 only requires information held by the insurer to be included for policies issued or renewed before 1 April 2012 and the insurer does not hold that information. However, they will be

regarded as incomplete if information required to be held is not included, eg the employers' reference number (ERN) or names of all the subsidiaries covered by the policy, for policies issued or renewed on or after 1 April 2012.

- 4.21** To illustrate incorrectness under paragraph 4.19(b), policy details will be regarded as incorrect under ICOBS 8.4 if an item of information on the ELR has an invalid format, or has been extracted from the insurer's records incorrectly. They will not be regarded as incorrect if the ELR contains the same information as the records from which ELR is extracted and has valid format. They will be regarded as incorrect if the information has invalid format, eg an ERN that has an invalid number of characters.
- 4.22** It is proposed that a qualified director's certificate is permitted to contain additional information to explain the level of non-compliance. Information may also be included about policy details on the ELR which are additional to our requirements and which are expected to improve the effectiveness of searches overall, eg if historical policies additional to those we require to be included have been added to the ELR.
- 4.23** Even though it may not be possible in the short term for some insurers to obtain an unqualified director's certificate, this should be possible in the medium term and we consider that the underlying requirements for policy details to be included on ELRs should remain in place to achieve the ultimate objective of ensuring an acceptable level of tracing successes for claimants.
- 4.24** We wish to avoid making requirements that firms are unable to comply with in the short term. Therefore, we propose to introduce a transitional provision for one year, under which firms will be deemed to not be in breach of the underlying rules if the reason for non-compliance is the inability to obtain information from third parties outside of their control, provided that they have used and continue to use best endeavours to obtain such information. We also remind firms and directors of their responsibilities and our ability to intervene and, where appropriate, to apply sanctions if a firm is in breach.
- 4.25** The director's certificate and report by an auditor the firm is required to obtain, should relate to the level of compliance achieved without regard to this transitional provision so that any material non-compliance is identified and appropriately addressed.
- 4.26** As some firms are expected to need to obtain qualified directors' certificates, we propose that all directors' certificates be submitted to us within three months of the date of the ELR to which they relate and that they are made available on request to persons needing to be aware of the level of accuracy and completeness of the ELR.

Q4.2: Do you agree with the proposed form and scope of the qualified director's certificate required to be made if an unqualified certificate cannot be obtained and the transitional provision for one year concerning whether a firm unable to obtain information out of its control is in breach? If not, please explain.

Q4.3: Do you agree with our proposal that all directors' certificates should be submitted to us within three months of the date of the ELR to which they relate and that they should be made available, on request, to persons needing to be aware of the level of accuracy and completeness of the ELR? If not, please explain.

Reports by auditors

- 4.27** We propose that, in the long term, independent assurance reports are prepared by auditors on the basis of providing a 'limited assurance' opinion confirming whether the auditor has found no reason to believe that the ELR may not be materially compliant with ICOBS 8.4.4R(1)(a). We propose to use the same definition of 'materially compliant' as proposed above in the context of the director's certificate. We identify below the key risks that we wish to be addressed by the auditor in assessing compliance with ICOBS 8.4.4R(1)(a) and propose that reference is made to these risks in the report. The auditor will need to tailor the assurance procedures appropriately to the circumstances of a particular firm. They will need to sufficiently consider the systems and controls over time and the sampling needed to support their opinion on the material compliance of the ELR for which a limited assurance opinion addressing the specified key risks is being provided.
- 4.28** As ELRs are derived from records of recent processing that has been subject to existing controls and audit procedures, we consider it appropriate for the limited assurance engagement on ELRs to address the risks of inaccurate or incomplete extraction from the underlying records to the ELR, and of invalid information contained on the ELR.
- 4.29** The risks to be addressed may be summarised as the risk that the ELR is not completely and accurately compiled from data held in the insurer's underlying records. We propose that the risks to be addressed by the limited assurance engagement comprise:
- 3) the omission of EL policies issued or renewed on or after 1 April 2011 from the register, the details of which are included in the underlying records;
 - 4) the omission of policies for claims made on or after 1 April 2011, the details of which are included on the underlying records;
 - 5) inaccurate or incomplete details of relevant policies on the underlying systems entered on the register;
 - 6) non-EL policies entered on the register; and
 - 7) missing or invalid information which is required to be on the register regardless of what the firm holds on its underlying systems (ERNs, subsidiaries).

4.30 The limited assurance engagement is expected to involve the auditor in:

- examining the systems and controls for producing the ELR;
- reconciling the numbers of policies issued and renewed on or after 1 April 2011 between the ELR and underlying records;
- reconciling the number of policies for which claims are made on or after 1 April 2011; and
- sampling the ELR and the underlying records to confirm that the information on the ELR appropriately reflects the underlying records and is valid.

Q4.4: Do you agree with the proposal that, in the long term, independent assurance reports should be prepared by the auditor on a limited assurance basis addressing the risks specified? If not, please explain.

4.31 Making directors' certificates available on request to those needing to be aware of the level of accuracy and completeness of ELRs will provide sufficient information for most users. To avoid potential misunderstanding and unnecessary cost, we propose to limit the current requirement to make reports by auditors available so that they are no longer generally available on request.

4.32 We propose to require reports by auditors to be submitted to us, along with the directors' certificates, within three months of the date of the ELRs to which they relate. We also propose that the reports continue to be made available to qualifying tracing offices on request, when such offices are used by the insurer to make their ELRs available. In addition, when tracing offices obtain information from other insurers for the purposes of offering a comprehensive tracing service under ICOBS 8.4.4R(2)(d), we propose that they should be able to obtain a copy of the independent auditors' reports from those insurers.

Q4.5: Do you agree with our proposal to require reports by auditors to be submitted to us along with directors' certificates within three months of the date of the ELR to which they relate? Do you agree that they should be available to qualifying tracing offices on request if the insurer is using the tracing office to make its ELR available or if the tracing office is obtaining information from the insurer for the purposes of offering a comprehensive tracing service? If not, please explain.

- 4.33** Reports are currently required to be prepared by an auditor satisfying the requirements of SUP 3.4 and SUP 3.8.5R to 3.8.6R. The purpose of this requirement is to ensure that the auditor is independent of the firm and suitably qualified. While we propose to retain the requirement, we believe that its purpose may, for ELRs dated after 1 April 2012, be capable of being satisfied cost effectively by assurance arrangements within qualifying tracing offices that do not fully meet the requirement. We would be prepared to consider applications from insurers for modifications to allow them to use qualifying tracing offices to prepare independent assurance reports, if needed. This would be subject to satisfying the statutory tests under section 148 of FSMA and be likely to require demonstration that the tracing office is independent, has sufficient resources and is appropriately qualified and experienced so that modification does not give rise to undue risk to consumers.

Q4.6: Do you agree with our proposal to retain the requirement for auditors to satisfy the requirements of SUP 3.4 and SUP 3.8.5R to 3.8.6R? If not, please explain.

Transitional provisions

- 4.34** In addition to the transitional provision referred to in Q2, we propose to include transitional provisions, so that firms may choose to comply with the requirements set out in the current rules in relation to the register created while the current rules are in place (ie the register as at 1 April 2012). Firms that choose to rely on these transitionals and act in accordance with paragraphs 4.35 to 4.38, in relation to the requirements set out in the current rules, will be deemed to be compliant with the rules we are consulting on, which we propose will be in force from 1 April 2012. That does not prevent other firms from complying with the transitional provisions in other ways.
- 4.35** Under our current rules, firms are required to obtain a statement from a director that their ELR as at 1 April 2012 is, to the best of the director's knowledge, properly prepared in accordance with ICOBS 8.4. We propose to allow firms to continue to apply this requirement if they wish to for the director's certificate relating to the ELR prepared by the firm while the current rules were in force (ie the ELR as at 1 April 2012). For firms choosing this option, while other approaches may be possible to comply with the requirement, we propose that directors may use the proposed definition of 'materially compliant' as a guide in providing their statement about whether the register has been 'properly prepared'.
- 4.36** If firms are unable to comply with the requirement to obtain a 'properly prepared' certificate from a director for their ELR as at 1 April 2012, in response to that non-compliance, we will ask firms to submit a qualified statement to the FSA by 1 July 2012.

- 4.37 Under our current rules, firms are required to obtain an independent assurance report prepared by an auditor addressing the accuracy and completeness of the ELR as at 1 April 2012. We propose to allow firms to continue to apply this requirement if they wish to for the report relating to the ELR prepared by the firm while the current rules were in force (ie the ELR as at 1 April 2012). While other approaches may be possible to comply with the requirement, we propose to allow firms, by way of transitional relief, to obtain reports prepared on the basis of AUP, addressing the same risks as for limited assurance engagement and complying with the FSA framework.
- 4.38 A report based on AUP would not be an independent assurance report as it would not require the auditor to express an assurance opinion. It would, however, mean that procedures required by the FSA framework would be carried out independently by a qualified auditor. The report would include the results of applying procedures that would be useful at this stage of implementing our policy, when systems and controls are still developing and some teething troubles are being experienced. Users of both the director's statement and the report by the auditor would be able to see the results of the AUP, together with information from the director's statement and draw conclusions about the quality of the ELR and the actions they should take, if any. We may, for example, decide to commission further work under section 166 of FSMA for insurers where we have concerns over their levels of accuracy and completeness.
- Q4.7: Do you agree with the proposed transitional provisions to allow firms to comply with the current rules regarding directors' certificates and reports by auditors for ELRs as at 1 April 2012? Do you agree that reports should be allowed to be prepared on the basis of agreed-upon-procedures complying with an FSA framework? If not, please explain.

The FSA framework for agreeing procedures where an AUP approach is permitted

- 4.39 For an AUP approach to be permitted as a basis for a report by an auditor, the AUP procedures would need to address the key risks set out in paragraph 4.29 and satisfy the proposed framework set out below. The detailed procedures would be agreed between the auditor and the insurer to ensure that the auditor's programme is tailored to the firm's particular circumstances. The auditor would not express an opinion but would describe the procedures carried out in detail, their rationale and results.
- 4.40 As there is a risk that the ELR is not completely and accurately compiled from data held on the insurer's underlying records, we expect that insurers will have controls in place over both the completeness objective and the accuracy objective.

- 4.41** Control over the completeness objective for new and renewed policies is expected to comprise reconciliation between the ELR and the underlying records on the basis of a numerical count of policies. The procedure to be performed by the auditor, for new EL policies, is to test the reconciliation between the number of policies on the ELR and the number of policies in the underlying policy records. This procedure will address risks (1) and (4) in paragraph 4.29.
- 4.42** Control over the completeness objective for claims made is likely to involve a management review to ensure that relevant individual claims have been entered on the ELR. For newly made EL claims, the auditor should test this internal review process by selecting a representative sample of claims and ensuring that they have been entered on the ELR when required and that there is evidence of the internal control operating effectively. This procedure is in response to risk (2) in paragraph 4.29.
- 4.43** The focus needs to be on the accuracy of the entries recorded on the ELR. Control over this objective is expected to comprise detailed testing of individual entries. The auditor's procedures need to focus on whether, for entries on the ELR, all required information is included and is in agreement with the information held on underlying systems. The auditor should test internal controls over this process by selecting a representative sample of entries and checking whether data accuracy controls have been applied and all required information is present and corresponds with the source data. The method of selecting the sample and the rationale for its being representative would be included in the report. This procedure is in response to risks (3) and (5) in paragraph 4.29.
- 4.44** We propose that a randomly selected sample of 25 policies or claims made from a homogenous set of 1,000 or fewer items is used as benchmark for a representative sample. A homogeneous set comprises policies on the same system or claims made associated with policies on the same system. For homogeneous sets larger than 1,000, the benchmark would increase in proportion to the square root of the ratio of the population size to a population of 1000 to improve the reliability of the sample test for larger populations. For a homogeneous set of 4,000 items the benchmark is a randomly selected sample of 50 items and for a homogeneous set of 16,000 items the benchmark is a randomly selected sample of 100 items. The rationale for representative sample selection differing from the above benchmark would make reference to the benchmark and explain the reason for any difference.
- 4.45** The auditor produces a report which gives a detailed account of the procedures performed, their rationale and results.

Q4.8: Do you agree with the proposed FSA framework for determining agreed-upon-procedures permitted to be used by auditors in producing reports for ELRs as at 1 April 2012? If not, please explain.

Cost benefit analysis for directors' certificates and reports by auditors on ELRs

- 4.46 The cost benefit analysis in PS11/4 included cost estimates for providing directors' certificates and independent assurance reports. These estimates were based on industry cost estimates for meeting similar requirements of Employers' Liability Tracing Office (ELTO) membership. In particular, £9.6m was identified as an upper boundary for ongoing costs, as it included the cost of searching for records that are not required to be on ELRs. However, the costs of director certification and independent assurance were not separately identified. In this consultation, we are providing more detail of our requirements. We present a detailed assessment of the costs, and the effect of the changes to our requirements. Given that the costs of the original proposals were previously considered in PS11/4, the costs presented here are not fully incremental to those costs previously provided.
- 4.47 To date, 235 insurers have notified us that they have actual or potential liability for UK commercial lines employers' liability insurance claims. We propose to require this number of directors' certificates and reports by auditors to be submitted to the FSA by 1 July 2012. By setting out in advance a framework for AUPs, we expect to minimise our involvement in agreeing procedures to be carried out at individual firm level. We expect to remind firms of the requirement to provide certificates and reports. A team in the FSA will monitor their receipt, review them when received and refer them to supervisors if there is evidence of material non-compliance either from the director's certificate, report by the auditor or both. We consider that this systematic approach will be more efficient and effective than making ad hoc requests for certificates and reports. We estimate that three months of FSA resource will be used initially in this processing of certificates and reports at a cost of £12,000 and that subsequent processing will be one month per year at a cost of £4,000.
- 4.48 While the cost to an insurer of producing a director's certificate was included in the cost benefit analysis in PS11/4, we expect the information needed for the director's certificate to be available from the firm's processes for monitoring compliance and reporting to management, so that provision of the director's certificate should not give rise to material incremental costs to the firm. The fact that the requirement has been refined means that the costs need to be reconsidered. The proposed definition of 'materially compliant' acts as a threshold above which specific information is required to be made available by directors. This makes the regulatory process for dealing with material non-compliance more certain, efficient and effective both for firms and ourselves. Without that requirement, any non-compliance would need to be handled on an ad hoc basis. The requirement is expected to improve consistency of supervisory approach and enable supervisors to identify and prioritise cases of non-compliance in a systematic way. We therefore consider that introducing the proposed requirements for directors' certificates will reduce some costs for us and firms when addressing non-compliance.
- 4.49 Our proposals for reports by auditors specify more precisely what is needed to address the accuracy and completeness of an ELR. The statement of key risks to be addressed helps to achieve consistency, while allowing the auditor to exercise his judgement in determining and carrying out procedures necessary to provide a limited assurance opinion.

- 4.50** The costs of reports by auditors increase with sample sizes. Reports by auditors providing limited assurance are not required until 1 July 2013, by which time systems and controls are expected to be relatively well established and the sample sizes needed to provide limited assurance are likely to be smaller than they would have been if limited assurance had been required earlier. The size of a limited assurance engagement is expected to vary according to the size and complexity of the firm and is estimated to take, on average, 150 hours per firm at a cost of £18,000 in audit fees and £3,000⁸ of insurer's staff costs, giving a total cost of £21,000 annually. The estimate for the industry as a whole is £4.9m for all 235 firms to obtain a limited assurance report.
- 4.51** We are proposing to allow firms to obtain their first reports by auditors in 2012 based on AUP. This reflects the fact that we have not previously specified the form and scope of the report by the auditor. It also reflects the early experience of implementing our requirements and the teething troubles that are being experienced. Permitting AUP to be used is expected to reduce the uncertainty around the cost of obtaining the first reports by auditors, compared to our current requirements, and to provide a basis for subsequent development of limited assurance. This is expected to make the costs more predictable for firms and auditors while providing us with detailed information about the results of the auditor's procedures for the first round of reports. We estimate that AUP would normally be performed by relatively junior audit staff compared with those involved in providing limited assurance. On the other hand, additional costs are likely to arise for the first audit reports because of the need for the auditor to become familiar with systems and controls, agree detailed procedures and to establish representative sample selection. Similarly, the insurer is likely to incur costs from agreeing the scope of the review of procedures. We therefore expect the costs of the initial reports by auditors based on AUP to be of a similar order to the costs of future reports based on limited assurance.
- 4.52** The benefits of the proposals are that the costs of identifying whether an insurer is potentially liable to pay compensation are reduced both for claimants and insurers. Lower search costs should mean that more claims can be traced.
- 4.53** Directors' certificates and reports by auditors will provide valuable information to help the FSA supervise compliance with ELR requirements. Where problems or risks are identified, we will be able to ensure that they are addressed and mitigated, and we will prioritise the most serious concerns. This enforcement of the rules will enable the benefits of the ELR to be realised in cases where there would otherwise be non-compliance by firms. The enforcement will also create stronger incentives for firms to comply with the ELR requirements since it is more likely that the FSA would identify problems and risks and take action than if there were no requirements for directors' certificates and audit by auditors, or if these requirements were unclear.

⁸ Based on Audit Commission's London hourly rates for certifying claims and returns assuming each 100 man hours is split as follows: Partner three hours, Senior Manager four hours, Manager 20 hours, Assistant manager 38 hours, Junior Staff 35 hours. Insurer's staff costs are expected to arise from the need to provide information to the auditor and to discuss the auditor's conclusions and estimated to involve staff at similar levels for 25% of the time spent by the auditors at salary rates (including overheads) at two-thirds of audit rates.

- 4.54 By improving levels of compliance with ELR rules, particularly where there is joint and several liability, our requirements promote a proportionate allocation of claims as all insurers should be identified.
- 4.55 We require insurers to meet valid claims as they fall due. Ensuring that insurers pay claims when they are due improves the welfare of claimants. The improvement in claimants' welfare amounts to more than the monetary value of the claim in economic terms because claimants will be able to consume goods and services that significantly improve their quality of life. The government will be able to recoup previously paid benefits and lump sums paid for certain dust related diseases, if the compensation payment is for the same condition that the benefits or lump sums were paid for. The government would also gain as it will no longer have to pay lump sums under the state compensation schemes for dust related diseases where there has been a previous successful civil claim.

Q4.9: Do you have any comments on our cost benefit analysis for our proposals for the director certification and reports by auditors on ELRs?

Directors' certificate and independent auditor's report on qualifying tracing offices

- 4.56 Our current requirements permit insurers to use a tracing office if it meets certain conditions, including that the tracing office publishes the following in its annual report.
- 1) A certificate from the directors of the tracing office stating whether the tracing office has complied with requirements in ICOBS 8.4.9R(1) to (6) for the period covered by the annual report ie:
 - maintaining a database;
 - maintaining adequate records;
 - having effective arrangements for information security, information back up and business continuity, and preventing the misuse of data;
 - accepting and responding to search requests; and
 - having adequate arrangements for providing to a firm, upon request and without delay, a full copy of the information on the database that the firm has provided to it.
 - 2) An independent assurance report addressing the accuracy and completeness of the database, prepared by an auditor satisfying the requirements of SUP 3.4 and SUP 3.8.5R to 3.8.6R, and addressed to the directors of the tracing office.

- 4.57** The Employers' Liability Tracing Office (ELTO) is the only qualifying tracing office and its directors have published a statement confirming that it complies in all material respects with ICOBS 8.4.9R(1) to (6) as required by our transitional provisions until it publishes its first annual report. We expect ELTO to be able to include the directors' certificate in its annual report and propose no changes to the scope and form of this certificate.
- 4.58** Our requirements on maintaining the tracing offices' database are limited so that the tracing office does not fail to meet our conditions simply because the information provided by firms is inaccurate or incomplete.
- 4.59** As the independent assurance report is published (in the tracing office's annual report) and the tracing office is not regulated, we propose that the level of assurance expressed by the auditor should be higher than that required for ELRs. Therefore, we propose that the report provides reasonable assurance and the auditor confirms whether, in all material respects, it maintains a database that accurately and reliably stores information submitted by firms under the rules, and that it has systems that can adequately keep the database up to date in the light of new information provided by firms. This means that the independent auditor will decide on the assurance procedures he or she regards to be appropriate to support a positive reasonable assurance opinion.

Cost benefit analysis

- 4.60** We understand that the requirement specified corresponds to the level of assurance expected by ELTO. Therefore, we do not expect our proposed requirement to impose new costs on tracing offices nor to give rise to new benefits compared with the current rules. We expect the rules on tracing offices to complement the requirements on directors' certificates and reports by auditors on ELRs.

Q4.10: Do you agree with the proposal that the independent assurance report for qualifying tracing offices should be prepared on the basis of the auditor providing the 'reasonable assurance' opinion stated? If not please explain.

Co-insurance

- 4.61** Co-insurance is provided if two or more insurers share the cover provided to an employer for the same period and one insurer is the lead insurer. To avoid unnecessary duplication in ELRs and the ELTO databases, reduce costs and improve the efficiency of searches, a modification by consent has been granted to 29 insurers not to include policy details of a co-insurance arrangement for which they are not the lead insurer. That modification is subject to conditions that include the firm and the lead insurer entering into and maintaining up-to-date written agreements identifying the policies in relation to which the

firm is a co-insurer and the proportions of the risk for which the co-insurer is responsible. The firm must be satisfied that the lead insurer complies with the requirements in ICOBS in relation to the co-insured policies. The waiver by consent expires on 30 June 2012 and we propose to make the corresponding changes to ICOBS so that the waiver by consent does not need to be renewed.

Cost benefit analysis

- 4.62 Including rules and guidance in our Handbook corresponding to the modification makes the requirement permanent and reduces the uncertainty associated with the renewal of the modification by consent. This means that firms are able to plan with greater certainty the systems and procedures they need to maintain compliance with our requirements, thereby reducing the cost of compliance.
- 4.63 Where the proposal allows a co-insurer not to include a policy on its ELR, the lead insurer will still be required to include the policy and will be able to identify its other co-insurers. The benefits of the ELR will be maintained for these policies but any additional costs to a lead insurer from maintaining a record of coinsurers will not be material, given that lead insurers maintain records of co-insurers for commercial reasons.
- 4.64 Claimants will be able to identify lead insurers by searching ELRs and tracing office databases. Through the lead insurer they will be able to identify coinsurers. Claimants should therefore experience protection when coinsurance is used.

Q4.11: Do you agree with our proposal to incorporate the current modification by consent regarding co-insurance in our rules and guidance? If not, please explain.

Excess insurance

- 4.65 Excess insurance provides cover where cover provided by another policy is exceeded. A modification by consent has been granted to 27 insurers not to include details of their excess insurance policies, subject to certain conditions being satisfied, including a requirement that there is a high limit on the primary policy. This is to avoid duplication of details in the ELR and ELTO databases that would give rise to unnecessary enquiries when the primary insurer needs to be contacted in the first instance, thereby avoiding unnecessary cost and improving the effectiveness of the search process. Where the primary policy has a high limit (£5m in relation to a single event), claims that trigger the excess policy where the insurer cannot be found are very unlikely. The waiver by consent expires on 30 June 2012. We propose to make the corresponding changes to ICOBS so that the waiver by consent does not need to be renewed.

- 4.66 4.66 If a search is being made for a claim of a size that is likely to exceed the limit of a primary policy, the published waivers currently provide a source of information about potential excess insurers. To provide similar protection for consumers, we propose to require insurers to notify us if they are excess insurers taking advantage of our proposal so that we may include this information on the FSA list of insurers.

Cost benefit analysis

- 4.67 As with the modification by consent for co-insurance, including corresponding rules and guidance in our Handbook makes the requirement permanent and reduces the uncertainty associated with renewing the modification by consent. This means that firms are able to plan with greater certainty the systems and procedures they need to have in place to maintain compliance with our requirements, thereby reducing costs of uncertainty about our requirements.
- 4.68 There will no material cost incurred by the FSA in recording the additional notifications required from excess insurers and including it on the FSA list of insurers. For excess insurers who have been granted a modification by consent, the cost of the one-off additional notification that the insurer is an excess insurer would be expected to be offset by the saving from not needing to apply to renew the modification.

Q4.12: Do you agree with our proposal to incorporate the current modification by consent on excess insurance in our rules and guidance and require firms who take advantage of our proposal to notify us if they provide excess insurance? If not, please explain.

Definition of claims made

- 4.69 We currently require policy details to be included in ELRs for claims made on or after 1 April 2011. Our transitional provisions permit firms to use different definitions of 'claims made' according to how they record claims on their systems. This may be the date a claim is created in the firm's systems or the date the claim is settled. We propose a single definition of 'claims made' and to apply this definition to all firms so that policy details for claims are included as soon as reasonably possible. We propose extending the transitional for a further year to allow firms time to adapt their processes. The proposed definition is that a claim is made when coverage for a claim received has been established by the firm within a reasonable time period following receipt of the claim. We believe that three months is a reasonable time for a firm to establish whether it has provided coverage and that a claim should be regarded as made for tracing purposes if the firm has not established coverage within three months of receipt. The firm then has three months from the date a

claim is made to include the corresponding policy details in its ELR. After this time, it is expected that including the policy details for the claim will be important to searches being made, as it may result in other searches of the policy being successful.

Cost benefit analysis

- 4.70** The proposed clarification of the meaning of ‘claims made’ recognises that coverage needs to be established by an insurer when a claim is received. It also provides a basis for a consistent definition to be used among insurers, which is expected to reduce complexity and cost in the long term. The extension of the transitional arrangements recognises that changes to processes may need to be implemented. From information we have on the length of time it takes insurers to establish coverage for a claim, a three month limit should not generate incremental costs or benefits because coverage tends to be established within this limit.
- 4.71** The cost of entering a policy on the ELR as a result of a claim being made remains the same under this change. However, some insurers may incur this cost earlier as claims are as ‘made’ with three months of receipt of a claim unless it is established that the firm did not provide coverage. Claimants will benefit from the earlier identification and payment of claims, and reducing search costs arising from subsequent search requests due to differences in the timing of the search and the data being available on the ELR.

Q4.13: Do you agree with our proposed definition of ‘claims made’ and the transitional period of one year to allow time for firms to adapt their systems?

Uniqueness of ERNs

- 4.72** Our current policy is based on the assumption that the employer’s reference number (ERN) allocated by HM Revenue and Customs (HMRC) is unique for each employer. Further investigation has shown that this is not always the case and that some large companies have several ERNs. We propose that all ERNs are recorded on ELRs for companies covered by policies issued or renewed on or after 1 April 2012, as they are a reliable link with employment histories obtainable from HMRC and enable a cross check to be performed with their records to ensure the ongoing integrity of ELRs in future. This means that multiple entries will be included for employers with multiple ERNs. A transitional period of one year is proposed to allow time for systems to adapt and to prepare for this information to be collected at renewal.

Cost benefit analysis

- 4.73** The one-year transitional period will allow firms to make the necessary changes to their information collection processes. Large companies with multiple ERNs will be treated as one company with subsidiaries. Subsidiaries are already required to be recorded separately on ELRs. The benefit is that all claimants who know their employers' ERNs will be able to search ELRs and tracing office databases and trace whether an insurer provided cover and, if so, who that insurer was.
- 4.74** We do not expect an increase in insurers' ongoing costs compared to their current requirements, as the cost of collecting several ERNs from a large employer will not be much different from collecting one ERN. Also, the systems implications for insurers are not expected to be significant as insurers are already required to include multiple entries in their ELRs for companies and their subsidiaries. The cost to insurers of collecting one ERN was estimated as part of the policy statement.
- 4.75** The benefit of this change is that there is a greater chance that a search for a policy will find the liable insurer using an ERN.

Q4.14: Do you agree with our proposal for all ERNs of companies covered to be included on ELR registers and the transitional period of one year to allow time for firms to adapt their information collection processes?

Compatibility statement

- 4.76** We propose amending the rules and guidance in our Handbook to enable us to better achieve our regulatory objective of protecting consumers by requiring insurers to make information available. This will help claimants trace employers' liability insurers and establish a framework which ensures tracing information remains reliable.
- 4.77** We consider that our proposals represent the most appropriate way of meeting our objectives within the limits of our powers, which prevent sub-delegation to organisations over which we have no control.
- 4.78** Our proposals take into account the principles of good regulation in section 2(3) of FSMA. We consider that the proposals allow the most efficient use of our resources in respect of ongoing data. Proportionality of regulatory requirements has been observed by recognising the practical difficulties of collating information. The options for how firms may make available the required information and ensure it is reliable using qualifying tracing offices or their own websites and resources, help to minimise the effect our proposals have on competition.

Contact

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5

Changes to ICOBS as a result of the implementation of Solvency II

Introduction

- 5.1 We propose to make changes to the Insurance: Conduct of Business sourcebook (ICOBS) and to the Glossary of definitions within the Handbook as a result of the UK implementation of the Solvency II Directive.⁹
- 5.2 The FSA consulted on proposed changes to other parts of the Handbook as a result of Solvency II in CP11/22.¹⁰ That CP proposed changes to some of the definitions in the Glossary that were necessary as a result of the implementation of Solvency II. Some of these definitions appear in the proposed changes to ICOBS in this CP. In CP11/22, we said that some changes to ICOBS would be proposed as a result of implementing Solvency II and we are consulting on these changes here. The changes are to the following rules and guidance:
- ICOBS 1 Annex 1;
 - ICOBS 6.2.2R, 6.2.3R, 6.2.4R, 6.3.1R, 6.3.3R, 6.3.4R; and
 - ICOBS 7.1.1R, 7.1.3R, 7.1.5R.
- 5.3 The FSA proposes these amendments in the exercise of the powers under section 138 (General rule-making power), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA) and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

⁹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance. The amendments consulted on here are as a result of articles 183 to 186.

¹⁰ CP11/22, *Transposition of Solvency II – Part 1*, (November 2011).

- 5.4 The text of the proposed amendments can be found in Appendix 5. The proposals will mainly be of interest to firms involved in insurance mediation activity.

Proposed amendments

- 5.5 As part of the transposition of articles 183 to 186 of the Solvency II Directive, minor amendments are required to ICOBS regarding information provided to policyholders. Currently, ICOBS contains a number of information disclosure requirements that derive from directives which preceded Solvency II. We are updating ICOBS to reflect that, unless otherwise stated, those directives will no longer apply.
- 5.6 Most of our proposed amendments have no material effect on the meaning of the current rules, since they merely replace a reference to one of the previous directives with a reference to Solvency II. We have made some changes to reflect wording used in Solvency II that differs to that used in a preceding directive. However, we have retained wording where the wording in Solvency II is not materially different to the preceding directives.
- 5.7 Regarding contracts of large risk, Solvency II requirements on the provision of information about the location of the head office (or, where applicable, branch) of the firm do not apply. We have introduced a new rule into ICOBS 1 Annex 1 to make this clear.
- 5.8 ICOBS 6.3.1R requires firms to communicate certain information to customers before the conclusion of a pure protection contract. This information is set out in the instrument in Appendix 5. Firms will be required to communicate a concrete reference to the solvency and financial condition report (SFCR), if this report is available. The SFCR is the public report that firms are required to publish annually under Solvency II.
- 5.9 A new rule in ICOBS 6 is also proposed to implement the part of Solvency II that requires that the notification of mid-term changes to a pure protection contract must meet the same requirements that apply to initial disclosures in terms of the language used.
- 5.10 Article 13(27) of Solvency II gives Member States the discretion to extend the definition of 'large risks' to risks insured by professional associations, joint ventures or temporary groupings. We have decided not to extend the definition of large risks in this way, because ICOBS only makes use of the definition of large risks in relation to contracts entered into by non-commercial customers so extending the definition as allowed would have no practical effect. However, we are proposing minor changes to the Glossary definition of 'contracts of large risk' to implement Solvency II.

Q5.1: Do you have any comments on our proposed changes to ICOBS as a result of implementing Solvency II?

Cost benefit analysis

- 5.11** It is our view that the proposed changes will not have significant cost benefit implications for firms. These are minor changes to ICOBS as a result of Solvency II and have no material effect on the meaning of the current rules. Firms are also given time until 1 January 2013 at the earliest, to comply with the requirements to communicate certain information to customers before the conclusion of a pure protection contract. Therefore, firms have sufficient time to implement these changes as part of business-as-usual updates and at minimal costs.

Compatibility statement

- 5.12** Our proposed changes to the Handbook rules and guidance are necessary to implement certain provisions in the Solvency II Directive. The proposed changes will give further clarity to our existing rules. Therefore, they are compatible with our regulatory objectives, in particular, achieving an appropriate degree of protection for consumers.
- 5.13** Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to principles of good regulation. Given that the proposed changes will not have significant cost benefit implications, and they are necessary, we are satisfied that the changes are proportionate and that they are compatible with the principles of good regulation.

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6

PDMR transactions: guidance on the role of brokers

Introduction

- 6.1** In this chapter we are consulting on the provision of additional guidance within the Code of Market Conduct (CoMC), specifically within MAR 1.4 of the Handbook.
- 6.2** Any guidance made following the consultation process will be made under section 119 of the Financial Services and Markets Act 2000 (FSMA) which provides that the FSA must propose and issue a code containing provisions that it considers will give appropriate guidance determining whether or not behaviour amounts to market abuse. The text of the proposed amendments to MAR 1.4 can be found in Appendix 6.
- 6.3** This consultation is being undertaken as a result of follow-up discussions of the issue as it was raised in Market Watch 35 in June 2010. This paper sought to draw the market's attention to provisions of the CoMC that were relevant to the disclosure of inside information by brokers during deals in which stock owned by persons discharging managerial responsibilities (PDMRs) is being sold.
- 6.4** This consultation will be of particular interest to brokers, investors, listed issuers and PDMRs.

Background

- 6.5 In Market Watch 35¹¹ we published the results of our discussions with market participants regarding the role of brokers when dealing with sales of stock by PDMRs. In particular, it focused on the responsibilities of brokers in dealing with inside information in relation to the deal.
- 6.6 Discussions with market participants had indicated that the market generally considered passing inside information about the fact that a PDMR was selling stock, and/or the identity of that PDMR, to potential buyers was acceptable. We were told that potential buyers would expect brokers to disclose such information to them. Respondents felt that potential breaches of section 118(3) of FSMA were avoided if the potential buyers were 'brought inside' if the information was deemed to be inside information.
- 6.7 We noted that MAR 1.4.5E, specifically paragraphs 2(c) and 3, was being interpreted as providing justification for such disclosure. MAR 1.4.5E sets out factors we will take into consideration when determining whether or not a disclosure was made improperly under s118(3)¹² of the FSMA, that is whether or not the disclosure was made by a person 'in the proper course of the exercise of his employment, profession or duties'.
- 6.8 In Market Watch 35, we had not been made aware of any circumstances under which such a disclosure would be within the exercise of a broker's employment, profession or duties. We commented that market practice was not sufficient to make the disclosure 'reasonable' or 'necessary'.
- 6.9 Follow-up discussions have indicated that market participants continue to consider the disclosure of such inside information to be acceptable despite the publication of Market Watch 35.

Options

- 6.10 In reaching the position set out in this consultation we considered three possible options.
- We could reiterate the position set out in Market Watch 35 by reissuing the guidance through our formal guidance procedure. This would clarify that, in the opinion of the FSA, passing inside information regarding a sale of PDMR stock is market abuse in the form of improper disclosure. This would, in effect, prohibit any passing of inside information in this regard.
 - Consult on mandating pre-disclosure to the market of all PDMR transactions, which would ensure there would be no inside information in such deals, so no potential to breach the market abuse rules in this way.

11 www.fsa.gov.uk/pubs/newsletters/mw_newsletter35.pdf

12 The second [type of behaviour considered to be market abuse] is where an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties.'

- Consult on changes to guidance in the CoMC to the effect that passing such inside information is prima facie market abuse in the form of improper disclosure, but set out one instance where we believe the ‘proper exercise’ exemptions outlined could be met.

6.11 In the light of the market’s response to Market Watch 35, and for the reasons set out in this chapter, we consider that the last option is the most appropriate and this consultation reflects that position.

Pre-disclosure

6.12 Despite the fact that we have chosen not to propose mandatory pre-disclosure, this remains an option. However in any sale of PDMR stock, concerns that disclosing information regarding the PDMR could be market abuse are avoided unequivocally by the transaction being announced in advance.

6.13 The proposal in this CP to amend MAR applies to situations where the route of pre-disclosure is *not* followed.

Proposed amendments

6.14 Our current view is that passing inside information that a seller of stock is a PDMR would amount to market abuse (improper disclosure) unless certain limited circumstances apply. We are proposing to amend the CoMC to reflect this position and to set out one instance where such disclosure would be in the proper course of the exercise of a person’s employment, profession or duties.

6.15 In previous discussions, market participants had argued that passing inside information regarding the fact that a seller of stock is a PDMR was acceptable under either MAR 1.4.5E(2)(c) or MAR 1.4.5E(3).

6.16 MAR 1.4.5E(2)(c) states that passing inside information may be acceptable if it is reasonable to do so and to facilitate any commercial, financial or investment transaction (and where the disclosure is accompanied by the imposition of confidentiality requirements). However, our discussions with external participants highlighted that the main reason why brokers passed this information to potential buyers was to maintain long-term commercial relationships with the buyer. For instance, it has been argued that a buyer who believes they have been disadvantaged by not being made aware that stock they are buying is from a PDMR (because the price of the share goes down on announcement of the PDMR sale) will cease dealing with that particular broker. It is not clear to us that, regardless of what commercial imperatives may be at stake, passing inside information for these reasons is ‘reasonable’ for the purposes of MAR 1.4.5E(2)(c).

- 6.17** Market Watch 35 also stated that we had yet to be made aware of any instances where disclosing such inside information would fall within the exemptions provided for in MAR 1.4.5E(3). We reiterate the point made in Market Watch 35 that all the elements of MAR 1.4.5E(3) must be met to satisfy that particular evidential provision and allow disclosure of inside information to the buyer.
- 6.18** It became clear, however, from further discussions following the publication of Market Watch 35 that this issue is of most concern when PDMRs in smaller issuers are seeking to dispose of stock. Generally, it is an issue for smaller brokers who would be more likely to provide these services to these PDMRs.
- 6.19** The information that such a holder wishes to sell stock is more likely to be inside information as they are likely to be significant stock holders. Also, any sale will be taken as a commentary on the company and will therefore have more of an impact on the share price. Smaller issuers may have less dispersed stock that will consequently be less liquid, exacerbating the price sensitivity of the disposal and increasing the difficulties in selling the stock.
- 6.20** In such limited circumstances involving particularly illiquid stock in a smaller issuer, a broker may be unable to complete the deal without first passing the inside information (that it is a PDMR selling) to selected clients. These would be a limited number of clients that the broker is aware are interested in this particular stock (indeed, often they are shareholders already), who would be contacted to ascertain interest and, if possible, take up this deal. In such a case, existing shareholders may well be prepared to acquire the PDMR's stock to avoid an overhang and a possible disorderly market in the stock.
- 6.21** It may be that this would be a scenario in which disclosure is either reasonable for the purposes of MAR 1.4.5E(2)(c) and/or satisfies all the criteria in MAR 1.4.5E(3). Potential buyers who receive this information would need to be able to demonstrate that they had not used this information as the basis of any trading decision to avoid the prohibition on insider dealing.
- 6.22** With the principle set out in paragraphs 6.12 and the exception set out in paragraph 6.19 in mind, we are considering amending the CoMC to:
- provide a description of behaviour that does not amount to improper disclosure, being the passing of inside information regarding the fact that the seller is a PDMR, and/or the identity of that PDMR, and/or the purpose of the sale by the PDMR, where the illiquidity of the stock is such that the transaction could not otherwise be completed without creating a disorderly market; and
 - give an example of behaviour which we consider to be market abuse (improper disclosure) passing inside information regarding the fact that the seller is a PDMR, and/or the identity of that PDMR, other than as outlined above.

Q6.1: Do you agree with our analysis?

Q6.2: Do you agree with the proposed changes?**Cost benefit analysis**

- 6.23** In presenting these proposals, we are satisfied that they are compatible with the general duties conferred upon us under section 73 of the Financial Services and Markets Act 2000 (FSMA). The proposed amendments to the CoMC clarify the limited conditions under which passing of inside information is permitted, as stated in MAR 1.4.5E(2)(c) and MAR 1.4.5E(3). The benefit that could arise from this guidance is that all industry members abide by the same standards. As such, this guidance could contribute to a reduction of inappropriate behaviour and a lower likelihood of breaching the rules, thereby reducing market abuse. In turn, this may contribute to increased market confidence.
- 6.24** We expect the revised guidance to impose minimal costs on firms. We expect that any significant costs that could arise from a potential reduction in the number of transactions to be mitigated by the exemption provided. We consider that this guidance is the most appropriate way of meeting our objectives.

Q6.3: Do you agree with our analysis of costs and benefits?**Compatibility statement**

- 6.25** We are satisfied these proposals meet our regulatory objectives and that these proposals are compatible with the principles of good regulation set out in section 2(3) of FSMA.

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7

Proposed changes to Chapter 16 of the Supervision manual

Introduction

- 7.1 This chapter proposes amendments to Chapter 16 of the Supervision manual (SUP), relating to the reporting requirements in SUP 16.12 (Integrated Regulatory Reporting).
- 7.2 We would make these amendments under section 138 (General rule-making power), section 156 (General supplementary powers) and section 157 (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments is set out in Appendix 7.
- 7.3 The proposed amendments affect SUP 16.12, SUP 16 Annex 24R (reporting forms) and SUP 16 Annex 25G (guidance on completing the forms).
- 7.4 Our amendments and proposed changes are driven by recent enquiries and requests for clarification of reporting requirements. Some of the changes will be reflected in the GABRIEL reporting system, so some firms may need to adjust their systems to take account of these changes. However, it is not expected the changes consulted on will impose an extra financial or reporting burden on those firms affected.

Proposed amendments

- 7.5 The intention of these changes is to improve the clarity of the rules and content within SUP 16.12 and related annexes, and to facilitate better data quality. We have proposed these amendments to help firms better understand the data that they need to report.

7.6 The changes will be relevant to:

- firms subject to the Capital Requirements Directive (CRD);
- firms with permission to carry on the regulated activity of managing investments;
- firms completing some or all of the Retail Mediation Activities Return; and
- Lloyds' Managing Agents and Wholesale London Market Insurance Companies.

FSA004 – Guidance and validation rule amendment

7.7 Following queries from a number of firms, we propose to expand the guidance on column F of FSA004 (Credit Risk). The guidance will clarify that firms should report fair value adjustments that do not relate to impairments in this column. By clarifying this, we anticipate that firms will have a greater understanding of the reporting requirement and we expect that the quality of submitted data will improve.

7.8 In Integrated Regulatory Reporting (Amendment No 10) Instrument 2011¹³, rows 39 and 40 were added to FSA004, titled 'of which: to specialised lending BIPRU 4.5'. It was intended that these rows would be sub-sets of rows 21 and 31, 'corporates'. It has now been established that small and medium-sized enterprise (SME) and specialised lending values are not mutually exclusive, ie the latter incorporates SME-specialised lending so the sum of the two rows (22 & 39 and 32 & 40) can be greater than row 21 or 31.

7.9 Therefore, we are proposing to remove the validation rules on rows 21 and 31 to ensure that firms with a large portion of specialised lending in their SME corporate portfolio are able to submit the FSA004 data item correctly.

FSA038 – Guidance change

7.10 We have identified that the existing guidance has been misinterpreted by a limited number of firms. The guidance does not acknowledge the valuation of derivatives for overlay portfolios.

7.11 We want to clarify that firms are required to use the accounting valuation of their position on a mark-to-market basis rather than the exposure value, and we want to address the event of firm managing an overlay portfolio. To resolve this, we propose to add to the guidance under 'Value of Derivatives'.

7.12 We are intending to clarify through the guidance how a firm should deal with mandates that have been sub-delegated to it from non-UK based entities.

13 FSA Handbook Notice 106, http://www.fsa.gov.uk/pubs/handbook/hb_notice106.pdf.

FSA028 – Data elements 1A, 2A and 3A

- 7.13** Data element 3A asks ‘if the answer to 2A is “Yes”, what is the reference number of the UK consolidation group?’. This reference number was used in the early reporting system that was used to collect data between the introduction of the Capital Requirements Directive and the implementation of the GABRIEL system and is now redundant. Therefore, we propose to delete the question.
- 7.14** In 2009, the Handbook was amended¹⁴ to delete the data item FSA009 from SUP 16 Annex 24R and SUP 16 Annex 25G. However, the data item and guidance of FSA028 still refer to FSA009 under elements 1A and 2A. To ensure consistency, we intend to remove the references to FSA009 from elements 1A and 2A as they appear on FSA028 and the corresponding guidance.

FSA018 – Data element 1A

- 7.15** This data element asks to ‘identify the integrated group’. This reference code, as agreed between the FSA and the UK integrated group, is not relevant within FSA018. Therefore, we propose to delete the question.

FSA003 – Validations for 144A and 145A

- 7.16** In 2010, the Handbook was amended¹⁵ to introduce data elements 144A and 145A to FSA003 and the corresponding guidance which outlines the validation rules for these fields. For clarity, we propose the validation rules outlined in the guidance are also added to the internal validation rules list.

108A = 0 then 144A = 0, else 144A = 15A - 108A - 142A

109A = 0 then 145A = 0, else 145A = 57A - 109A - 142A

- 7.17** These additional validation rules have no impact on the meaning or composition of the elements, but are proposed to ensure that the data submitted by firms is accurate and free from error.

Retail Mediation Activities Return (RMAR) guidance changes

- 7.18** Changes are proposed to the RMAR guidance to bring the annex in line with other policy and system changes.

Q7.1: Do you agree with our proposed changes to SUP 16, Annexes 24R and 25G?

¹⁴ Handbook Administration (No 14) Instrument 2009 (FSA 2009/37).

¹⁵ Integrated Regulatory Reporting (Amendment No 9) Instrument 2010 (FSA 2010/68).

Cost benefit analysis

- 7.19** Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement, under section 155 of FSMA, does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
- 7.20** By making these amendments, we believe that there will be an improvement in data quality, as we have provided clarity to firms on how to complete particular reporting fields. The improved guidance should also reduce the amount of time firms spend completing their reporting requirements, raising queries and the FSA answering them.
- 7.21** Although the proposed changes are expected to lead to a reduction in ongoing compliance costs, firms might face one-off implementation costs as a result of having to make system changes. However, any increase in costs will be of minimal significance. Our view is based on discussions with GABRIEL specialists at the FSA, firms and independent software vendors that took place in CP10/10¹⁶ that involved making similar types of changes to reporting requirements.

Q7.2: Do you agree with our cost benefit analysis?

Compatibility statement

- 7.22** The data collected through observation of SUP 16.12 is designed to help us meet our consumer protection and market confidence objectives. The proposals in this consultation will have no impact on our other statutory objectives.
- 7.23** By ensuring that our rules, guidance and the data we collect is accurate and complete, we expect to acquire a better quality of data submitted to us. We believe this will enhance our ability to identify issues that may undermine market confidence or lead to consumer detriment. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.
- 7.24** As we expect the costs of proposed changes to be of minimal significance, we believe that the burden of our proposals is proportionate to the expected benefits. There will be no effect on the remaining principles of good regulation. For these reasons, we believe that we have had regard to the principles of good regulation and consider these proposals to be the most appropriate way of meeting our statutory objectives.

¹⁶ CP10/10, *Quarterly consultation (No 24)*, (April 2010), para 8.20.

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8

Proposed changes to the Collective Investment Schemes sourcebook

Introduction

- 8.1** This chapter proposes amendments to the Collective Investment Schemes sourcebook (COLL), which will:
- allow any non-UCITS retail scheme (NURS) that is subject to the investment powers and borrowing limits of COLL 5.6 to act as a feeder fund; and
 - incorporate two consequential changes to the rules applying to UCITS feeder funds.
- 8.2** The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 139(4) (Miscellaneous ancillary matters), section 156 (General supplementary powers), section 157(1) (Guidance), section 247 (Trust scheme rules) and section 248 (Scheme particulars rules) of the Financial Services and Markets Act 2000 (FSMA); regulation 6 of the Open-Ended Investment Companies Regulations 2001 (OEIC Regulations), and the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook. The text of the proposed amendments is set out in Appendix 8.

NURS master-feeder arrangements

Background

- 8.3 Following the implementation of the last set of changes to the UCITS Directive (known as UCITS IV) in the UK in July 2011, master-feeder structures have been introduced for UCITS schemes. There are currently only a limited number of categories of NURS feeder funds in existence:
- authorised unit trusts that are relevant pension schemes and dedicated to units in a single regulated collective investment scheme;
 - schemes that are dedicated to units in a single property authorised investment fund (PAIF); and
 - non-UCITS retail schemes operating as funds of alternative investment funds (FAIFs) and dedicated to units in a single collective investment scheme.
- 8.4 Respondents to the UCITS IV consultation welcomed the idea to extend the ability to establish master-feeder arrangements to all types of NURS. Based on these responses we indicated in PS11/10¹⁷ that we would bring forward proposals to apply certain aspects of the UCITS IV Directive to NURS.
- 8.5 Contrary to the detailed and prescriptive rules for UCITS master-feeder structures, COLL currently contains only a few rules for the special categories of existing NURS feeders. Such a level of detail for UCITS master-feeder arrangements is partly a result of the need to ensure an appropriate level of protection for investors where cross-border arrangements are established under the single market for UCITS-compliant funds. Since NURS do not have passporting rights, we have concluded that it is not necessary to apply all of the UCITS IV measures to them. Instead, we are seeking to align the new regulatory framework for feeder NURS as much as possible with the existing NURS regimes in COLL, while adopting certain measures that are applicable to UCITS master-feeder arrangements and necessary to ensure adequate investor protection.
- 8.6 We propose to introduce a general regulatory framework to allow master-feeder arrangements for non-UCITS retail schemes. We propose to leave the arrangements for existing NURS feeders (ie FAIFs, pension feeder funds and PAIF feeder funds) unchanged for the present.

General provisions

- 8.7 Rather than placing all of the rules in COLL 5.6, we have decided to insert them in the relevant parts of COLL, according to their precise subject matter. As a result, any firm intending to operate a feeder NURS subject to COLL 5.6 will need to look carefully at COLL as a whole.

¹⁷ PS11/10, *Transposition of the revised UCITS Directive*, (September 2011).

- 8.8** The first issue to address is what types of master a feeder NURS should be able to invest in. Considering that the feeder NURS will be dedicated to units in a single master scheme, we think it is crucial that the master scheme offers investors of the feeder NURS an equivalent level of protection to the feeder NURS itself. Consequently, the range of permissible master schemes is limited to funds that could potentially be sold directly to retail investors in the UK (ie UK UCITS schemes, other NURS, UCITS authorised in other EEA Member States (whether or not they have been notified for marketing in the UK) and other recognised schemes). We propose to add two definitions to the Glossary ('feeder NURS' and 'qualifying master scheme') and set out requirements about the qualifying master scheme in COLL 5.6.26R. Please note that for the purpose of this chapter and in the context of master-feeder arrangements for non-UCITS retail schemes, we will continue to refer to 'master' or 'master schemes' as shorthand for 'qualifying master scheme'.

Q8.1: Do you agree with the proposed types of master scheme that a feeder NURS may be dedicated to?

Investment powers of a feeder NURS

- 8.9** To enable the feeder NURS to be dedicated to units in a single collective investment scheme, we will extend the scope of COLL 5.6.7R(6) so that all feeders are exempted from the 35% limit on investment in units of any one scheme. Contrary to master-feeder arrangements established under the UCITS Directive, feeder NURS will *not* be required to invest at least 85% of their scheme property in units of the master scheme, but they must be *dedicated* to investment in units of a single master scheme.
- 8.10** The master scheme itself will be prohibited from investing more than 15% in value of its property in other collective investment schemes, ie the master cannot be a fund of funds or a feeder fund (COLL 5.6.26R(2)). An authorised fund manager (AFM) wishing to operate a feeder NURS dedicated to a master scheme, which itself operates as a fund of funds or another feeder fund, can set up a NURS operating as a FAIF.
- 8.11** The remaining part of the feeder NURS assets may be invested only in cash or near-cash, or in derivatives for efficient portfolio management. Regarding this remaining part of the feeder NURS assets, we are proposing to require the NURS to comply with the general rule on maintaining a prudent spread of risk, as we do for UCITS feeder funds (COLL 5.6.3R(1A)). This requirement is more relevant for a feeder NURS as we are not specifying a hard limit on the minimum proportion of the fund that must be held in units of the master scheme.

Q8.2: Do you agree with the proposed amendments to COLL 5.6?

Instrument, prospectus and reporting requirements

- 8.12** In COLL 3 and COLL 4 we set out some new requirements for the provision of information to potential investors in feeder NURS. A single fund that is to operate exclusively as a feeder NURS, and an umbrella where each sub-fund will operate as a feeder NURS, must contain a statement in its trust deed or instrument of incorporation that it is a feeder NURS and, as such, dedicated to units in a single master scheme (COLL 3.2.6R(7E)). In the case of an umbrella where the AFM intends to operate a combination of one or more sub-funds as standard NURS or FAIFs or feeder NURS, the instrument should state only that the scheme is operating as a NURS and the prospectus of the scheme should set out which sub-funds will operate as FAIFs and/or feeder NURS (COLL 4.2.5R(23A)).
- 8.13** We consulted in Chapter 6 of CP11/18¹⁸, issued in September 2011, on changing COLL 4.2.5R to require the operator of a NURS umbrella to state in the prospectus which sub-funds are NURS and which are NURS operating as FAIFs. Our new proposal supersedes that consultation. Also, the feeder NURS is not obliged to identify its specific master scheme in its trust deed or instrument of incorporation. This will avoid the need to amend the instrument if, for example, the master scheme changes its name.
- 8.14** In terms of additional disclosure requirements, we propose that the AFM of any feeder NURS must, where requested by the investor, provide them with a copy of the prospectus, annual and half-yearly long reports of its master scheme, free of charge (COLL 4.2.3BR and COLL 4.5.16R). We will not require a feeder NURS to supply the FSA on an ongoing basis with copies of the master scheme's prospectus, annual or half-yearly reports as we will receive them in the majority of cases automatically from the operator of the master scheme. However, to cover circumstances where we wish to have a copy of the master scheme's prospectus or annual and half-yearly long reports, the rules require the AFM of the feeder NURS to provide it to us.¹⁹
- 8.15** The annual reports of the feeder NURS (both short and long) must include a statement of the aggregate charges of the feeder and its master. Also, every periodic report of a feeder NURS must include a description of how the annual and half-yearly short and long reports of the master scheme can be obtained. We recognise that not every master scheme will publish a short report so we have applied this provision only to UK authorised funds (COLL 4.5.5R(1B), COLL 4.5.7R(6), COLL 4.5.8R(5)).
- 8.16** Regarding the content of the prospectus of the feeder NURS, we are proposing to align the rules with the current prospectus disclosure regime for feeder UCITS. That means the feeder NURS must name the specific master scheme in its prospectus, explain the master's investment objective and policy and its risk profile, and say whether the performance records of the feeder NURS and its master scheme are identical or how and why they differ. The prospectus will also have to disclose how unitholders may obtain further information on the master scheme as well as the aggregate charges of the feeder and its master (COLL 4.2.5R(25B)).

¹⁸ CP11/18, *Quarterly consultation paper (No 30)*, (September 2011).

¹⁹ COLL, Sch 2, Notification requirements.

Q8.3: Do you agree with the proposed amendments to COLL 3 and COLL 4?

Investor information

- 8.17** Since July 2011 we have made a rule modification by consent available to authorised fund managers of non-UCITS retail schemes, allowing them to choose to produce a document (the NURS-KII) equivalent to the UCITS key investor information document. Consequently, all NURS may be promoted to retail investors in the UK with a simplified prospectus, a NURS-KII or a key features document. We propose to permit the AFM of a feeder NURS to make the same choice of pre-contractual documents, so that the type of document can be consistent for the AFM's range of NURS. As we indicated when we issued the modification by consent, this is a temporary arrangement that will be reviewed when the European Commission brings out its proposals for harmonised disclosure documents for packaged retail investment products. We are proposing certain modifications to the requirements for the individual documents, to reflect the unique characteristics of feeder NURS.
- 8.18** If an AFM opts to use the simplified prospectus for a feeder NURS, it must disclose how the master-feeder arrangement works and give investors information about the master scheme's objectives and investment policy, its risk profile and how the master's prospectus, periodic reports and accounts, and other pre-sale disclosure documents can be obtained. Furthermore, any past performance presentation has to be specific to the feeder NURS and cannot reproduce the performance record of the master scheme (COLL 4.6.8R(27)). There is no specific rule requirement for the simplified prospectus to disclose the aggregate charges of the feeder NURS and its master scheme, since we consider that this is captured by the methodology for calculating the total expense ratio of the feeder NURS (COLL 4.6.8R).
- 8.19** Authorised fund managers wishing to use the NURS-KII modification by consent for a feeder NURS should be aware that we propose to make a further adaptation to the contents of the risk and reward profile section. The NURS-KII must not contain a synthetic risk and reward indicator for a feeder NURS dedicated to units in a master scheme, which itself has a significant exposure to immovables permitted under COLL 5.6.18R. Significant exposure is understood as at least 20% in value of the master scheme's property. Instead, a feeder NURS-KII must include a full narrative of risks that are materially relevant to the fund and derive from the investment in the master scheme. This prohibition is in line with the existing provisions applicable to non-feeder NURS in the modification by consent. These items are not included in the draft rules in the Appendix to this CP because they relate to the modification by consent rather than the Handbook.

- 8.20** Section 3 of Chapter 13 of the Conduct of Business sourcebook (COBS) deals with the content of a key features document. These are comparatively high-level requirements. Consequently, we are adding a rule in COBS 13.3 requiring a key features document for a feeder NURS to include a statement identifying the feeder NURS as such, along with information specific to the feeder NURS and its master scheme. In particular, the information provided should enable investors to also understand the master scheme's key particulars.
- 8.21** We are proposing guidance that the AFM of the feeder NURS should have due regard to the provisions in COLL 4.6.8R in terms of additional information about a feeder NURS and its master scheme (COBS 13.3.5G). We have not included all the additional disclosure provisions foreseen in the simplified prospectus or NURS-KII for a feeder NURS. However, we think the AFM should at least have due regard to these provisions when producing the key features document. Additionally, the guidance in COBS 13.3.5G will clarify that the appropriate charges information required by COBS 13.4.1R and COBS 13 Annex 3 should represent the aggregate of the charges of the feeder NURS and its master scheme, as disclosed in the feeder NURS most up-to-date prospectus.

Q8.4: Do you agree with the proposed amendments to the simplified prospectus, the key features document and the modification by consent for the NURS-KII?

Changes affecting a feeder NURS

- 8.22** The AFM of a feeder NURS will be subject to the rules in COLL 4.3 concerning changes to the scheme. In July, we introduced new provisions for UCITS master-feeder arrangements (COLL 4.3.11R, COLL 4.3.12R and COLL 4.3.13G)²⁰, requiring AFMs to treat any change to the master scheme as a change to the feeder and classify it accordingly. Given their importance to investor protection, we now propose to extend those rules and guidance to feeder NURS. This means that the AFM has to assess the impact of the change to the master scheme in terms of how it affects the unitholders in the feeder NURS.
- 8.23** There might be cases where the AFM of the feeder NURS receives insufficient notice of the intended change to the master scheme. Hence (in line with the UCITS requirements), we have not imposed any strict obligation to comply with the time limits in the standard rules on fund changes, but have said that the AFM of the feeder NURS must comply with those rules as soon as reasonably practicable after it has been informed of the relevant change to the master scheme.

Q8.5: Do you agree with the proposed amendments to COLL 4.3?

²⁰ UCITS IV Directive Instrument 2011 (FSA 2011/39).

Operational requirements for feeder NURS

- 8.24** The UCITS framework requires a legal agreement (or internal conduct of business rules) between the master and feeder fund which governs the sharing of information and how the feeder will interact with its master. We are not imposing a similar requirement on the AFM of the feeder NURS. However, to ensure an orderly and smooth operation between the feeder NURS and its master, we are consulting on introducing some operational requirements for feeder NURS.
- 8.25** Prior to the investment in the master scheme, the AFM of the feeder NURS must be satisfied that it can obtain all necessary information from the master scheme to comply on an ongoing basis with the rules in our Handbook (COLL 13.2.2R(1)). The AFM of the feeder NURS must also take appropriate measures to ensure that the timings of its valuation process and publication of unit prices are co-ordinated with those of its master scheme to avoid any arbitrage opportunities (COLL 13.2.5R).
- 8.26** The UCITS Directive bans the master UCITS from imposing any subscription or redemption fees on the feeder UCITS for the issue, sale, redemption or cancellation of units in the master UCITS. Considering the range of permissible master schemes for feeder NURS, we are unable to impose such a rule on the AFM of the master scheme. However, an equivalent way is to require the AFM of the feeder NURS to reimburse the feeder NURS, if any fees are charged to the NURS when it buys and sells units in its master. We have clarified that this obligation will not apply to the deduction of a dilution levy or a stamp duty reserve tax (SDRT) provision from transactions in units of the master scheme (COLL 13.2.4R).
- 8.27** Further, we propose to introduce COLL 13.2.7R, which will be applicable to any UK master scheme. The rule is intended to protect the interests of unitholders in the master other than the feeder NURS and ensure they are fairly treated. It will prohibit the AFM of the UK master from providing information to the feeder if this would unfairly prejudice the interests of other unitholders by not making that information available to them at the same time (or at all).
- 8.28** So that the UK master is aware of being a master of that particular feeder NURS, we propose in COLL 13.2.2R(3) that the feeder NURS must tell the master in advance of its investment as a feeder.
- 8.29** UCITS feeder and master depositaries and auditors are obliged to enter into information-sharing agreements. In view of the range of potential master schemes for feeder NURS, we will not require information-sharing agreements between the depositaries or auditors of feeder NURS and master schemes. However, we propose (in the drafted provision of COLL 13.2.2R(2)) that the depositary of the feeder NURS should be consulted by the AFM prior to investment into the master scheme as to whether it is satisfied it will be able to obtain all the information necessary from the master scheme, its operator or depositary for it to be able to comply with its obligations under COLL 6.6.4R.

- 8.30** The investment and borrowing powers of a feeder NURS will prohibit an investment into a master scheme, which invests more than 15% of its assets in other collective investment schemes. To avoid circularity of investment, the master scheme should not invest, within this 15% limit, in units of the feeder NURS. As the master scheme might be domiciled outside the UK, a rule applying to the master scheme or its operator would not be effective in all cases. Instead, the AFM of the feeder NURS will have the responsibility to prevent any circularity of holdings by taking reasonable care to ensure that its units are not beneficially (ie directly or indirectly through nominees) owned by its master (COLL 13.2.3R).

Q8.6: Do you agree with our proposals regarding the operational requirements for feeder NURS?

Suspension of dealings in units

- 8.31** We believe our current set of rules in COLL 7.2 regarding the suspension and restart of dealings in NURS is sufficiently comprehensive and offers sufficient investor protection, so we do not propose to extend the specific rule applicable to feeder UCITS (COLL 7.2.1AR) to feeder NURS.

Q8.7: Do you agree with our proposal or do you think it is necessary to issue a similar rule or guidance to COLL 7.2.1AR for feeder NURS?

Q8.8: Are there any other requirements in terms of master-feeder arrangements and that relate to the UCITS rules, which we should apply to feeder NURS and have not done so in our proposal?

UCITS IV consequential changes

- 8.32** Since we made rules on 1 July 2011 to implement UCITS IV, we have become aware of two other points that require clarification in COLL. First, COLL 3.2.6R(7D) may be interpreted in such a way that an AFM of a feeder UCITS may not operate a UCITS umbrella that consists of a mixture of sub-funds operating as standard UCITS and sub-funds operating as feeder UCITS. We are consulting on amending this rule to remove the need for the instrument constituting the feeder UCITS, where the scheme is an umbrella that does not operate exclusively as a feeder UCITS, to state that the scheme will operate as a feeder UCITS. Instead, we propose the instrument must state that the scheme is operating as a UCITS and the prospectus for the scheme will indicate which sub-funds are feeder UCITS (COLL 4.2.5R(25-A)).

- 8.33** Secondly, we have noted that COLL 4.5.5R(1A)(a) (Contents of a short report) currently requires the half-yearly short report of a feeder UCITS to include a statement of the aggregated charges of the feeder UCITS and its master. However, there is no equivalent requirement for the half-yearly long report of the feeder UCITS to contain this information. We did not mean to require the short report of a feeder fund to contain information over and above what appears in the long report, so we propose to modify the COLL rule to apply only to short reports for the annual accounting period of the feeder UCITS. This will bring the rules for UCITS schemes in line with our proposals for periodic reports for feeder NURS.

Q8.9: Do you agree with these proposed changes?

Cost benefit analysis

- 8.34** Section 155 of FSMA requires us to publish a cost benefit analysis (CBA) of the implications of the proposed amendments. The requirement under section 155 of FSMA does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

NURS master-feeder arrangements

- 8.35** A decision to establish a feeder NURS will be a purely commercial one on the part of the AFM. There are no obligatory costs for AFMs.
- 8.36** Our policy proposal is to allow any non-UCITS retail schemes, subject to the investment and borrowing limits of COLL 5.6, to establish master-feeder arrangements similar to those introduced for UCITS schemes under UCITS IV. The contents of COLL now reflect the level of prescription in the Directive for UCITS master-feeder structures. However, as NURS do not qualify for the cross-border passporting rights conferred by the Directive, we have concluded that imposing equivalent requirements would be unduly burdensome.
- 8.37** We believe that our proposed feeder NURS regime delivers an appropriate degree of consumer protection, particularly as we have limited the range of permissible master schemes to those funds that could potentially be sold directly to retail investors in the UK. Consequently, the master scheme will offer investors an equivalent level of protection to the feeder NURS itself. Where necessary, we have amended our set of rules to ensure transparency and an adequate spread of risk in terms of the remaining part of the feeder NURS assets.
- 8.38** An application for authorisation of a standard stand-alone NURS requires a fee of £1,500 (this fee is doubled for umbrella structures). We are not proposing a different fee for an application from a feeder NURS.

- 8.39 The addition of a NURS feeder scheme within an existing NURS umbrella structure will be treated under the relevant legislation as a change to the existing scheme which, while requiring FSA approval, does not currently attract an application fee.
- 8.40 All of the arrangements for existing NURS feeder funds (ie FAIFs, pension feeder funds and PAIF feeder funds) are left unchanged, ie our policy proposal does not lead to any costs for these schemes.
- 8.41 In line with the introduction of master-feeder structures for UCITS we consider the advantages of these arrangements for any new NURS feeder fund to be:
- a stimulus to innovation as firms will take advantage of greater regulatory flexibility to launch feeder NURS; and
 - potentially lower-cost funds, through greater economies of scale via the new pooling opportunities provided by our proposals.

UCITS IV consequential changes

- 8.42 We do not expect the proposed amendments to lead to an increase in costs. The first proposal clarifies that managers have the flexibility to operate schemes with a combination of sub-funds consisting of standard UCITS and feeder UCITS, should they wish to do so. We do not propose to introduce any requirements on AFMs other than changes to the information disclosed in the prospectus. At this stage, we have not authorised any feeder UCITS within an existing UCITS umbrella structure so this policy change in terms of disclosure will affect only new feeder UCITS. As the AFM will have to update the prospectus of an existing umbrella in any event to incorporate the new sub-fund, this requirement will not impose any additional costs over and above those of launching the new feeder UCITS.
- 8.43 For the same reason mentioned above, the change to the information required to be disclosed in the half-yearly short report of a feeder UCITS will not affect any existing fund. There would have been a cost to the AFM of the feeder UCITS to calculate this figure as it does not appear in the equivalent long report (it is not a UCITS Directive requirement), so modifying this rule will represent a potential cost saving for the AFM.

Compatibility statement

- 8.44 The proposals are compatible with our statutory objectives of market confidence and consumer protection. Regarding the principles of good regulation, the particularly relevant principles are those of proportionality, facilitating innovation and facilitating competition.
- 8.45 With respect to competition, the ability to have a general NURS master-feeder structure will align the investment powers of NURS with those of UCITS, which should increase the range of available funds for retail investors in the UK and will facilitate competition between AFMs operating UCITS and NURS.

- 8.46** To ensure that a burden or restriction we impose should be proportionate to the expected benefits, we have carefully considered which aspects of the UCITS master-feeder regime need to be applied to NURS to secure the appropriate degree of consumer protection.

Equality and diversity issues

- 8.47** We have assessed the equality issues that arise in our proposals. We believe that they do not give rise to discrimination and are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

Q8.10: Do you have any comments on the CBA, compatibility statement or equality and diversity issues?

Contact

Comments should reach us by 6 February 2012. Please send them to:

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9

Changes to the Training and Competence sourcebook

Introduction

- 9.1 In Chapter 3 of PS10/18²¹ we confirmed publication of an appropriate qualifications list within our Training and Competence sourcebook (TC). We confirmed that we would continue to add qualifications to the lists. This consultation paper proposes extending the list of appropriate qualifications for a number of activities.
- 9.2 This chapter will be of interest to firms and individuals who are subject to our TC requirements, including where our professionalism requirements under the Retail Distribution Review (RDR) apply.
- 9.3 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 9.

Appropriate qualifications

- 9.4 TC includes qualification requirements for individuals carrying out certain retail activities. Requiring individuals to be qualified is one way of securing an appropriate degree of protection for retail consumers.
- 9.5 We confirmed in PS10/18 and PS11/1²² the list of qualifications appropriate for each retail activity. This list is published in Appendix 4E of TC. We said that we would consult for one month each time a qualification was added, removed or other changes were made to the list.

21 PS10/18, *Feedback to CP10/12 Competence and ethics and final rules*, (December 2010).

22 PS11/1, *Distribution of retail investments: Delivering the RDR-Professionalism*, (January 2011).

Proposed additional qualifications

9.6 We propose to make the following changes to the list of appropriate qualifications in TC Appendix 4E.

- 1) Advising on (but not dealing in) securities (which are not stakeholder pension schemes, personal pension schemes or broker funds) (Activity 2):
 - add Association of Certified International Investment Analysts (ACCIA) CIIA qualification (provided it is accompanied with UK appropriate qualifications modules covering regulation and ethics, investment principles and risk, and personal taxation); and
 - add CASS Business School Msc in Banking and International Finance, (provided it is accompanied with UK appropriate qualifications modules covering regulation and ethics, investment principles and risk, and personal taxation).
- 2) Advising on, and dealing in Securities (which are not stakeholder pension schemes or broker funds) (Activity 12):
 - add Association of Certified International Investment Analysts (ACCIA) CIIA qualification (provided it is accompanied with UK appropriate qualifications modules covering regulation and ethics, investment principles and risk, and personal taxation); and
 - add CASS Business School Msc in Banking and International Finance, (provided it is accompanied with UK appropriate qualifications modules covering regulation and ethics, investment principles and risk, and personal taxation).
- 3) Advising on (but not dealing in) Derivatives and Advising on and dealing with or for clients in Derivatives (Activities 3 and 13):
 - add CASS Business School Msc in Banking and International Finance, (provided it is accompanied with UK appropriate qualifications modules covering regulation and ethics, investment principles and risk, and personal taxation).
- 4) Managing investments or Acting as a Broker fund adviser (Activities 10 and 14):
 - add Chartered Insurance Institute (CII) J10: Discretionary Investment Management.
- 5) Overseeing on a day-to-day basis operating a collective investment scheme or undertaking activities of a trustee or depositary of a collective investment scheme (Activity 15):
 - add ACI Operations Certificate when combined with Chartered Institute of Securities and Investments (CISI) Introduction to Securities and Investments and one of the Regulatory units of the Investment Operations Certificate (IOC); and

- add ACI Dealing Certificate when combined with Chartered Institute of Securities and Investments (CISI) Introduction to Securities and Investments and one of the Regulatory units of the Investment Operations Certificate (IOC).
- 6) Overseeing on a day-to-day basis administrative functions in relation to managing investments (Activity 17):
- add ACI Operations Certificate when combined with Chartered Institute of Securities and Investments (CISI) Introduction to Securities and Investments and one of the regulatory units of the Investment Operations Certificate (IOC); and
 - add ACI Dealing Certificate when combined with Chartered Institute of Securities and Investments (CISI) Introduction to Securities and Investments and one of the regulatory units of the Investment Operations Certificate (IOC).
- 7) Overseeing on a day-to-day basis safeguarding and administering investments or holding client money (Activity 16):
- add Chartered Institute of Securities and Investments (CISI) Investment Administration Qualification (IAQ) – ISA and PEP Administration Module 6.

Q9.1: Do you agree that we should add these qualifications to our lists?

Other changes to qualifications

9.7 We propose that the following qualifications on the Appropriate Qualification list are amended as follows:

- 1) Advising on (but not dealing in) securities (which are not stakeholder pension schemes, personal pension schemes or broker funds) (Activity 2):
 - amend the key for the ACI Diploma from ‘d’ to ‘a’, meets full qualification requirements up to and after 1 January 2013.
- 2) Advising on, and dealing in Securities (which are not stakeholder pension schemes or broker funds) (Activity 12):
 - amend the ACI Diploma to show that it meets RDR requirements.

Q9.2: Do you agree that we should make these amendments to qualifications on our lists?

Cost benefit analysis

- 9.8 Section 155 of the Financial Services and Markets Act 2000 (FSMA) requires us to perform a cost benefit analysis (CBA) of our proposed requirements and to publish the results, unless we consider the proposals will not give rise to any costs or to an increase in costs of minimal significance.

Additional appropriate qualifications

- 9.9 This proposal does not increase the costs set out in the CBA in CP10/12²³ as it simply updates the list of appropriate qualifications. We believe the proposal will deliver potential benefits by increasing the choice of qualifications available.

Compatibility statement

- 9.10 These proposals are designed to meet our consumer protection objective and have been developed having regard to the principles of good regulation. In particular, our proposals have been developed bearing in mind the proportionality principle and the international character of the financial services industry. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

Equality and diversity issues

- 9.11 We have assessed that our proposals do not give rise to discrimination and that the proposals are of low relevance to the equality agenda. Nevertheless we would welcome any comments respondents may have on any equality issues they believe arise.

Contact

Comments should reach us by 6 February 2012. Please send them to:

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²³ CP10/12, *Competence and ethics*, (June 2010).

Appendix 1

List of questions

Chapter 2:

- Q2.1:** Do you agree with our proposal to amend BIPRU 12.7.3R and BIPRU 12.7.5R?
- Q2.2:** Do you agree with our proposal to amend BIPRU 12.7.11R?
- Q2.3:** Do you agree with our proposal to amend BIPRU 12.9.13R, 12.9.14R and 12.9.18R?
- Q2.4:** Do you agree with the cost benefit analysis?

Chapter 3:

- Q3.1:** Do you have any comments on the rule changes we propose to make to reflect the DWP's decision to end contracting out from 6 April 2012?
- Q3.2:** Do you agree with our assumption that the cost of changing illustration systems will be negligible?

Chapter 4:

- Q4.1:** Do you agree with the proposed change in the required director's certificate and the definition of 'materially compliant'? If not, what would you suggest and why?
- Q4.2:** Do you agree with the proposed form and scope of the qualified director's certificate required to be made if an unqualified certificate cannot be obtained and the transitional provision for one year concerning whether a firm unable to obtain information out of its control is in breach? If not, please explain.
- Q4.3:** Do you agree with our proposal that all directors' certificates should be submitted to us within three months of the date of the ELR to which they relate and that they should be made available, on request, to persons needing to be aware of the level of accuracy and completeness of the ELR? If not, please explain.
- Q4.4:** Do you agree with the proposal that, in the long term, independent assurance reports be prepared by the auditor on a limited assurance basis addressing the risks specified? If not, please explain.
- Q4.5:** Do you agree with our proposal to require reports by auditors to be submitted to us along with directors' certificates within three months of the date of the ELR to which they relate? Do you agree that they should be available to qualifying tracing offices on request if the insurer is using the tracing office to make its ELR available or if the tracing office is obtaining information from the insurer for the purposes of offering a comprehensive tracing service? If not, please explain.
- Q4.6:** Do you agree with our proposal to retain the requirement for auditors to satisfy the requirements of SUP 3.4 and SUP 3.8.5R to 3.8.6R? If not, please explain.

- Q4.7:** Do you agree with the proposed transitional provisions to allow firms to comply with the current rules regarding directors' certificates and reports by auditors for ELRs as at 1 April 2012? Do you agree that reports should be allowed to be prepared on the basis of agreed-upon-procedures complying with an FSA framework? If not, please explain.
- Q4.8:** Do you agree with the proposed FSA framework for determining agreed-upon-procedures permitted to be used by auditors in producing reports for ELRs as at 1 April 2012? If not, please explain.
- Q4.9:** Do you have any comments on our cost benefit analysis for our proposals for the director certification and reports by auditors on ELRs?
- Q4.10:** Do you agree with the proposal that the independent assurance report for qualifying tracing offices should be prepared on the basis of the auditor providing the 'reasonable assurance' opinion stated? If not please explain.
- Q4.11:** Do you agree with our proposal to incorporate the current modification by consent regarding co-insurance in our rules and guidance? If not, please explain.
- Q4.12:** Do you agree with our proposal to incorporate the current modification by consent on excess insurance in our rules and guidance and require firms who take advantage of our proposal to notify us if they provide excess insurance? If not, please explain.
- Q4.13:** Do you agree with our proposed definition of 'claims made' and the transitional period of one year to allow time for firms to adapt their systems?

Q4.14: Do you agree with our proposal for all ERNs of companies covered to be included on ELR registers and the transitional period of one year to allow time for firms to adapt their information collection processes?

Chapter 5:

Q5.1: Do you have any comments on our proposed changes to ICOBS as a result of implementing Solvency II?

Chapter 6:

Q6.1: Do you agree with our analysis?

Q6.2: Do you agree with the proposed changes?

Q6.3: Do you agree with our analysis of costs and benefits?

Chapter 7:

Q7.1: Do you agree with our proposed changes to SUP 16, Annexes 24R and 25G?

Q7.2: Do you agree with our cost benefit analysis?

Chapter 8:

Q8.1: Do you agree with the proposed types of master scheme that a feeder NURS may be dedicated to?

Q8.2: Do you agree with the proposed amendments to COLL 5.6?

Q8.3: Do you agree with the proposed amendments to COLL 3 and COLL 4?

- Q8.4:** Do you agree with the proposed amendments to the simplified prospectus, the key features document and the modification by consent for the NURS-KII?
- Q8.5:** Do you agree with the proposed amendments to COLL 4.3
- Q8.6:** Do you agree with our proposals regarding the operational requirements for feeder NURS?
- Q8.7:** Do you agree with our proposal or do you think it is necessary to issue a similar rule or guidance to COLL 7.2.1AR for feeder NURS?
- Q8.8:** Are there any other requirements in terms of master-feeder arrangements and that relate to the UCITS rules, which we should apply to feeder NURS and have not done so in our proposal?
- Q8.9:** Do you agree with these proposed changes?
- Q8.10:** Do you have any comments on the CBA, compatibility statement or equality and diversity issues?

Chapter 9:

- Q9.1:** Do you agree that we should add these qualifications to our lists?
- Q9.2:** Do you agree that we should make these amendments to qualifications on our lists?

Appendix 2

Proposed minor changes to liquidity regime

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

Powers exercised

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

Commencement

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

Amendments to the Handbook

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

Citation

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

By order of the Board
[*date*]

Annex

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

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

12.4 Stress testing and contingency funding

...

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

...

12.7 Liquid assets buffer

...

12.7.2 R For the purpose of satisfying *BIPRU 12.2.8R*, a firm to which this section applies may ~~only~~ include in its liquid assets buffer only:

- (1) high quality debt securities issued by a government or central bank;
- (2) securities issued by a *designated multilateral development bank*;
- (3) reserves in the form of sight deposits with a central bank of the kind specified in *BIPRU 12.7.5R* and *BIPRU 12.7.6R*; and
- (4) in the case of a *simplified ILAS BIPRU firm* only, investments in a *designated money market fund*.

12.7.3 R Subject to *BIPRU 12.7.4R*, for the purpose of *BIPRU 12.7.2R(1)*, a firm may include only a debt security which is:

- (1) issued by the central government or central bank of an *EEA State*;
or
- (2) issued by the central government or central bank of Canada, the Commonwealth of Australia, Japan, Switzerland or the United States of America.

...

12.7.5 R Subject to *BIPRU 12.7.6R*, for the purpose of *BIPRU 12.7.2R(3)* a firm may include only reserves in the form of sight deposits held by the firm with the

central bank of:

- (1) an *EEA State*; or
- (2) Canada, the Commonwealth of Australia, Japan, Switzerland or the United States of America.

...

- 12.7.11 R (1) For the purpose of *BIPRU 12.7.9R(3)*, a ~~firm~~ *firm* must periodically realise a proportion of the assets in its liquid assets buffer through *repo* or outright sale to the market.
- (2) ~~A firm must also ensure that it periodically realises, through the use of central bank liquidity facilities, a proportion of those of its assets which do not fall into *BIPRU 12.7.2R(1)* or *BIPRU 12.7.2R(2)*. [deleted]~~
- (3) A *firm* must ensure that in carrying out such periodic realisation:
- (a) it does so without reference to the *firm's* day-to-day liquidity needs;
 - (b) it realises in varying amounts the assets in its liquid assets buffer;
 - (c) the cumulative effect of its periodic realisation over any twelve *month* period is that a significant proportion of the assets in its liquid assets buffer is realised; and
 - (d) in *repo* to the market ~~and central bank or in collateral swap transactions with a central bank~~, it enters into transactions of varying durations.
- (4) A *firm* must establish and maintain a written policy setting out its approach to periodic realisation of its assets.
- (5) A *firm* must also ensure that it periodically tests its operational ability to raise funds, through the use of central bank liquidity facilities to which it has access, using a proportion of those of its assets not in its liquid assets buffer.

...

12.9 Individual liquidity guidance and regulatory intervention points

...

12.9.12 G ...

12.9.12A G The *FSA* expects that *firms* will respond dynamically to any deterioration in its liquidity position and will take contingent action as set out in its

contingency funding plan well in advance of a potential event.

12.9.13 R ~~On the occurrence of any~~ As soon as a firm becomes aware of the occurrence or expected occurrence of the events identified in *BIPRU* 12.9.14R, ~~a firm must as soon as it becomes aware of the event in question it must~~ immediately provide to the FSA:

- (1) ~~notify the FSA~~ notification in writing ~~of the event;~~
- (2) ~~provide the FSA with~~ an adequately reasoned explanation for the ~~deviation~~ event; and
- (3) ~~implement~~ an indication of the management actions the firm has taken to date to address the event, including actions from its contingency funding plan.

12.9.14 R For the purpose of *BIPRU* 12.9.13R, the events in question are:

- (1) in the case of a *simplified ILAS BIPRU firm* only, ~~breach, or expected breach,~~ of the *simplified buffer requirement* unless this has been superseded by *individual liquidity guidance* that it has accepted;
- (2) in the case of a *standard ILAS BIPRU firm* or a *simplified ILAS BIPRU firm*, being a *firm* which in either case has accepted *individual liquidity guidance* given to it by the *FSA*:
 - (a) its liquid assets buffer falling, ~~or being expected to fall~~ below, the level advised in the *guidance*; or
 - (b) its funding profile ceasing, ~~or being expected to cease,~~ to conform to that advised in the *guidance*.

...

12.9.18 R For the purposes of *BIPRU* 12.9.17R, a *firm's* liquidity remediation plan must:

...

- (3) in relation to any of the events identified in *BIPRU* 12.9.14R that has occurred, or is expected to occur, detail the actions that the *firm* intends to take to remedy the ~~relevant deviation~~ event, or avoid the expected ~~deviation~~ event, as the case may be, including information about:
 - (a) the amount of funding that it is intended to raise;
 - (b) the intended funding providers; and
 - (c) the maturity profile of the intended funding;

...

Appendix 3

Abolition of contracting out for defined contribution pensions schemes

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

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 145 (Financial promotion rules);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [6 April 2012].

Amendments to the Handbook

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

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

Citation

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

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

Delete the following definitions.

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

contracting out comparison a description of:

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

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

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

13.4 Contents of a key features illustration

...

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

...

(2) If the product is:

- (a) a *SIPP* from which no *income withdrawals* are being taken ~~(but if the *SIPP* is being used to contract out of the State Second Pension, the *key features illustration* must include a projection for an *appropriate personal pension* and a *contracting-out comparison*, for those benefits); or~~
- (b) a *life policy* that will be held in a *CTF* or sold with *basic advice* (unless the *policy* is a *stakeholder pension scheme*).

...

13 Annex 2 Projections

...

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

...

R	
4	How to calculate a projection for an appropriate personal pension

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

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

14.2 Providing product information to clients

The provision rules

14.2.1 R A *firm* that sells:

...

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

...

...

Annex C

Amendments to the Supervision manual (SUP)

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

16.8 Persistence reports from insurers and data reports on stakeholder pensions

...

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

...

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

...

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

...

Appendix 4

Tracing employers' liability insurers

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

Powers exercised

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

Commencement

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

Amendments to the Handbook

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

Citation

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

By order of the Board
[Date]

Annex

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

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

8.4 Employers' Liability Insurance

Application

8.4.1 R ...

(3) In this section references to:

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

...

Purpose

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

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

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

(a) ...

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

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

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

...

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

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

...

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

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

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

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

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

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

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

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

- (1) be prepared on the basis of providing a limited assurance opinion confirming whether the auditor has found no reason to believe that the *firm* has not materially complied with the requirements in *ICOBS*

8.4.4R(2) and ICOBS 8 Annex 1 in the production of its employer's liability register having regard in particular to the possible errors and omissions referred to in (3) below;

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

8.4.4D G The FSA expects that in order to address the risks referred to ICOBS 8.4.4CR(3) the auditor producing the report will undertake the following tasks, tailored as necessary to the firm's circumstances:

- (1) assess the systems and controls used by the firm to produce the employers' liability register;
- (2) reconcile the numbers of policies issued and renewed on or after 1 April 2011 for which information is included on the register and the number of policies for which the firm has details in the underlying records;
- (3) reconcile the numbers of policies in respect of which claims are made on or after 1 April 2011 for which information is included on the register and the number of policies for which the firm has details in the underlying records; and
- (4) analyse representative samples of both policy information appearing on the register, and of information contained in the firm's underlying records, to ensure that the firm's data accuracy systems and controls have been applied and that all required information is included on the register and is in a valid format, and that the included information is accurate compared to the information contained in the underlying records.

FSA notification requirements

8.4.6 ...

8.4.6A R A firm with potential liability under an excess policy and which satisfies the requirements in ICOBS 8 Annex 1.1.1BR must notify the FSA before the date upon which it first seeks to rely upon that rule.

Requirement to make employers' liability register and supporting documents available

- 8.4.7 R (1) A *firm* must make available:
- (a) the information in the employers' liability register either:
 - (i) ...
 - (ii) by arranging for a tracing office which meets the conditions in *ICOBS* 8.4.9R to make the information available on the tracing office's website; ~~and~~
 - (b) ~~on request, the latest director's certificate to a potential claimant, or other person needing to be aware of the level of accuracy and/or completeness of the register, on request by that person and independent assurance report; and~~
 - (c) the latest report prepared by an auditor for the purposes of *ICOBS* 8.4.4R(1)(c) to a tracing office which has obtained information from the *firm* for the purposes of providing comprehensive tracing information, in accordance with *ICOBS* 8.4.4R(2)(d).
- (2) If a *firm* arranges for a tracing office to make information available for the purposes of (1)(a)(ii) the *firm* must:
- (a) send to the tracing office copies of its latest *director's* certificate and ~~independent assurance~~ report prepared by the *firm's* auditor;
 - ...
- 8.4.8 E For the purposes of *ICOBS* 8.4.4R(2)(d) and *ICOBS* 8.4.7R(1)(a)(ii) the existence of published and up-to-date versions of both a certificate from the *directors* of the tracing office, stating that the tracing office has complied in all material respects with the requirements in *ICOBS* 8.4.9R(1) to (6), and ~~an independent a reasonable~~ assurance report, addressing the accuracy and completeness of the tracing office's database, may be relied upon as tending to establish that a *firm* has satisfied the requirement to use a tracing office which meets the conditions in *ICOBS* 8.4.9R(1) to (6).

Qualifying tracing offices

- 8.4.9 R The conditions referred to in *ICOBS* 8.4.4R(2)(d) and *ICOBS* 8.4.7R(1)(a)(ii) are that the tracing office is one which:
- ...
- (2) maintains adequate records of the *director's* certificates and ~~independent assurance~~ reports prepared by an auditor sent to it by *firms* for the purposes of complying with these *rules*;
- ...
- (7) includes in its published annual report:
- (a) a certificate from the *directors* of the tracing office stating whether the tracing office has complied with the requirements in (1) to (6) in relation to the period covered by the annual report; and
- (b) an independent reasonable assurance report satisfying the requirements in *ICOBS* 8.4.9AR, addressing the accuracy and completeness of the database, prepared by an auditor satisfying the requirements of *SUP* 3.4 and *SUP* 3.8.5R to 3.8.6R, and addressed to the *directors* of the tracing office; and
- (8) ...

8.4.9A R The requirements referred to in *ICOBS* 8.4.9R(7)(b) are that the report must:

- (1) be prepared on the basis of providing reasonable assurance; and
- (2) include an opinion from the auditor confirming whether, in all material respects, the tracing office maintains a database which accurately and reliably stores information submitted to it by *firms* for the purpose of complying with relevant requirements in *ICOBS* 8.4 and that it has systems which can adequately keep it up to date in the light of new information provided by *firms*.

...

Updating and verification requirements

- 8.4.11 R (1) A *firm* must notify the *FSA*:
- (a) of any information provided to the *FSA* under *ICOBS* 8.4.6R or *ICOBS* 8.4.6AR which ceases to be true or accurate; and
- (b) of the new position, and in relation to changes to information provided under *ICOBS* 8.4.6R in accordance with the notification requirements under *ICOBS* 8.4.6R;

...

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

...

(d) Obtain and submit to the FSA a *director's* certificate:

- (i) no later than twelve *months* after the date of the most recent *director's* certificate, obtained and submitted to the FSA in accordance with *ICOBS* 8.4.4R(1)(b) or this *rule*;
- (ii) complying with the requirements, and containing ~~the statement~~ one of the statements, set out in *ICOBS* 8.4.4R(1)(b); and

...

(e) Obtain and submit to the FSA an ~~independent assurance~~ report prepared by an auditor:

- (i) no later than twelve *months* after the date of the most recent ~~independent assurance~~ report, obtained and submitted to the FSA in accordance with *ICOBS* 8.4.4R(1)(c) or this *rule*;
- (ii) complying with the requirements, ~~and containing the statement~~, set out in *ICOBS* 8.4.4R(1)(c); and
- (iii) in relation to a version of the employers' liability register dated no more than three *months* prior to the date of the ~~assurance~~ report; and

(f) make available, in accordance with *ICOBS* 8.4.7R, the *director's* statement in (d) and the ~~independent assurance~~ report in (e) no later than 3 *months* after the effective date of the version of the register to which they relate, in place of the previous certificate and report.

8.4.12 G ...

8.4.12A R For the purposes of *ICOBS* 8.4.11R(2)(a), 8.4.11R(2)(b) and *ICOBS* 8 Annex 1 a claim is deemed to be made in relation to a *policy* at the earlier of:

- (1) the date on which the *firm* establishes that it has provided relevant cover under the *policy*, and is therefore potentially liable subject to the terms of the *policy*; and
- (2) the date 3 *months* after the receipt by the *firm* of the claim.

...

8 Annex 1 Employers' liability register

See *ICOB*S 8.4.4R(1)(a).

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

1.1 R A *firm* must:

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

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

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

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

- (1) the principal *insurer's* maximum liability under the primary *policy* covering the risk is for no less than £5,000,000 in relation to a single event;
- (2) the *firm* has no liability to potential claimants until those claimants have exhausted their remedies against the principal *insurer*; and

- (3) the *firm* has adequate arrangements for identifying and recording the *policies* in relation to which the *firm* provides excess cover under an *excess policy*.

1.2 R FORM (*see next page*)

EMPLOYERS' LIABILITY REGISTER (effective date: [])

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

NOTES

-
7. The ERN is the employers' reference number provided by Her Majesty's Revenue and Customs for that employer. If the employer has more than one ERN then all ERNs must be included in the register.
-

continued

Part 2 In relation to information not required to be included

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

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

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

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

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

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

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

...

TP 1 Transitional Provisions

...

Employers' liability insurance: disclosure by insurers

7 R ...

8 R (1) ...

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

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

(b) by 1 July 2012.

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

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

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

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

TP 8AR applies until 1 July 2012.

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

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

(2) notwithstanding (1), a *firm* referred to in (1) will be deemed to have complied with *ICOBS* 8.4.4R(1)(c) to the extent that the report obtained and submitted includes a detailed account of the procedures performed and the results of those procedures including, as a

minimum:

- (a) a description of the underlying records from which the register is extracted;
- (b) a description, and the results, of the tests aimed at addressing the risk that the register is not completely and accurately compiled from data held on the *firm's* underlying records, and of the method of selecting the sample and the rationale for its being representative, including the following:
 - (i) a reconciliation of the number of *policies* for which information is included in the register against the number of relevant *policies* for which details are contained in the underlying records;
 - (ii) analysis of a representative sample of relevant employers liability claims made to the *firm* to ensure claims made have been entered onto the register; and
 - (iii) analysis of a representative sample of *policies* in relation to which information appears on the register to ensure that the *firm's* data accuracy systems and controls have been applied to the information that appears, and that all required information is included and that the included information is accurate compared to the information contained in the underlying records;
- (c) for the purposes of (b)(ii) and (iii), unless (d) applies, the *firm* must adopt the following approach to determining a representative sample in relation to each set of claims made, or *policies*, for which the same systems and controls are used in producing information for the register:
 - (i) for each set with a thousand or fewer claims made, or *policies*, a sample may be regarded as representative if it contains a minimum of 25 randomly selected claims made or *policies*;
 - (ii) for each set with over a thousand claims made or *policies*, a sample may be regarded as representative if the minimum number used increases from 25 in linear proportion to the square root of the total number of claims made or *policies* within the set;
 - (ii) for sets where the information required to be placed on the register relates to fewer than 25 *policies*, the sample may be regarded as representative if it includes all of those *policies*;

- (d) where the *firm* and the auditor consider that the approach to determining a representative sample set out in (c)(i) to (iii) are inappropriate having regard to the *firm's* particular circumstances, the report must set out the reasons for selecting a different representative sample by reference to the methods set out in (c); and
- (e) any other procedures agreed between the *firm* and the auditor as deemed necessary to be carried out by the auditor to test the compliance by the *firm* with *ICOBS* 8.4.4R(1)(a) tailored as appropriate to correspond to the *firm's* particular circumstances and the results of those procedures.

TP 8BR applies until 1 July 2012.

- 8C G The requirement set out in 8BR(2) is for what is commonly referred to by auditors as 'agreed upon procedures' under which the auditor is not required to provide an opinion or express assurance.
- 9 G ...
- 9A R (1) For the purposes of *ICOBS* 8.4.4R(1)(a), to the extent that a *firm* is unable to include information required under *ICOBS* 8.4.4R(2)(b)(ii) solely because of a failure by a third party outside the *firm's* control, then provided that the *firm* has used, and continues to use, best endeavours to obtain that information, the *firm* will be deemed to comply with the requirements in *ICOBS* 8.4.4R(2)(b)(ii) and the corresponding parts of *ICOBS* 8 Annex 1.
- (2) For the purposes of *ICOBS* 8.4.4R(1)(b) and (1)(c), a *firm* must treat references to compliance with *ICOBS* 8.4.4R(1)(a), *ICOBS* 8.4.4R(2) and *ICOBS* 8 Annex 1 as if TP 9AR did not apply.
- 9B G The effect of TP 9AR(1) is that a *firm* will not be in breach of the requirements to include relevant information on its register to the extent that it is unable to obtain that information from third parties over which it does not exercise control. However, in order to be able to rely on this provision the *firm* will need to be able to demonstrate that it has used its best endeavours to obtain the information from the third party over the relevant time period and continues to do so. The effect of TP 9AR(2) is that even though the *firm* may not be regarded as being in breach of the underlying requirements in *ICOBS* 8.4.4R(1)(a), the *director's certificate* and report prepared by an auditor will need to be addressed at the level of compliance of the register as if TP 9AR(1) did not provide any transitional relief from the *firm* being in breach.

TP 9AR and 9BG apply until 1 April 2013.

...

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

...

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

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

- 14 R For the purposes of *ICOBS* 8.4.4R(1)(a) and *ICOBS* Annex 1.1.2R (Form) a *firm* is not required to include more than one ERN relating to a particular employer in the employers' liability register.

TP 14 applies until 1 April 2013.

Schedule 2.1

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
<u><i>ICOBS</i> 8.4.4R1(b), <i>ICOBS</i> 8.4.4R(3), <i>ICOBS</i> 8.4.11R(2)(d)</u>	<u>A statement satisfying the requirements of <i>ICOBS</i> 8.4.4R(1)(b)</u>	<u>A statement satisfying the requirements of <i>ICOBS</i> 8.4.4R(1)(b)</u>	<u>Obtaining a statement satisfying the requirements of <i>ICOBS</i> 8.4.4R(1)(b)</u>	<u>Three months from the date of the version of the register being commented on in accordance with <i>ICOBS</i> 8.4.4R(3) or 8.4.11R(2)(d).</u>
<u><i>ICOBS</i> 8.4.4R1(c), <i>ICOBS</i> 8.4.4CR, <i>ICOBS</i> 8.4.4R(3), <i>ICOBS</i> 8.4.11R(2)(e)</u>	<u>A report satisfying the requirements of <i>ICOBS</i> 8.4.4CR</u>	<u>A report satisfying the requirements of <i>ICOBS</i> 8.4.4CR</u>	<u>Obtaining a report satisfying the requirements of <i>ICOBS</i> 8.4.4CR</u>	<u>Three months from the date of the version of the register being reported on in accordance with <i>ICOBS</i> 8.4.4R(3) or 8.4.11R(2)(e).</u>
<i>ICOBS</i> 8.4.6 R	Whether or not business falling within <i>ICOBS</i> 8.4.4 R (1) is being carried out	Statement by <i>director</i> that, to the best of the <i>director's</i> knowledge,	<i>Firms</i> or <i>syndicate</i> members <i>carry out contracts of insurance</i> which	One month

		content is true and accurate, and if relevant details of the internet address at which the employers' liability register is made available, the <i>firm's</i> contact details and the period over which the <i>firm</i> or <i>syndicate</i> member provided cover under relevant <i>policies</i> .	are <i>general insurance contracts</i>	
<u>ICOBS 8.4.6AR R</u>	<u>that the <i>firm</i> has potential liability under an excess <i>policy</i> and satisfies the requirements and relies on the provisions in ICOBS 8 Annex 1.1.1BR</u>	<u>A statement that the <i>firm</i> has potential liability under an excess <i>policy</i>; satisfies the requirements and relies on the provisions in ICOBS 8 Annex 1.1.1BR</u>	<u><i>Firm</i> relies on ICOBS 8 Annex 1.1.1BR</u>	<u>Prior to reliance on ICOBS 8 Annex 1.1.1BR</u>
<u>ICOBS 8.4.11 R</u>	Changes to the accuracy of the contents of the notification in <u>ICOBS 8.4.6 R (1) or ICOBS 8.4.6AR</u>	Details of the change and of the new position	Changes to the accuracy of a notification made under <u>ICOBS 8.4.6 R or ICOBS 8.4.6AR</u>	Within one <i>month</i> of the change

Appendix 5

Changes to ICOBS as a result of the implementation of Solvency II

**INSURANCE: CONDUCT OF BUSINESS SOURCEBOOK (SOLVENCY II
AMENDMENT) INSTRUMENT 2012**

Powers exercised

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

Commencement

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

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Insurance: Conduct of Business sourcebook (ICOBS) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Insurance: Conduct of Business Sourcebook (Solvency II Amendment) Instrument 2012.

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.

- contracts of large risk* (in ~~ICOB~~ ICOBS) *contracts of insurance* covering risks within the following categories, in accordance with article 5(~~d~~) 13(27) of the ~~First Non-Life Solvency II Directive~~:
- (a) *railway rolling stock, aircraft, ships* (sea, lake, river and canal vessels), *goods in transit, aircraft liability and liability of ships* (sea, lake, river and canal vessels);
 - (b) *credit and suretyship*, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;
 - (c) *land vehicles* (other than *railway rolling stock*), *fire and natural forces, other damage to property, motor vehicle liability, general liability, and miscellaneous financial loss*, in so far as the *policyholder* exceeds the limits of at least two of the following three criteria:
 - (i) balance sheet total: ~~€~~6.2 million;
 - (ii) net turnover: ~~€~~12.8 million;
 - (iii) average number of *employees* during the financial year: 250.

Annex B

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

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

1 Annex 1 Application (see ICOBS 1.1.2R)

...

Part 2: What?		
Modifications to the general application rule according to activities		
...		
2.2	G	...
<u>2.3</u>	<u>R</u>	<u>ICOBS 6.2.3R does not apply to contracts of large risk.</u>
		<u>[Note: article 184(1) of the Solvency II Directive]</u>
...		

Part 4: Guidance		
...		
5		Consolidated Life <u>Solvency II Directive</u> : effect on territorial scope
5.1	G	The Consolidated Life Solvency II Directive's scope covers long-term insurers authorised under that Directive conducting long-term insurance business. <u>Solvency II undertakings.</u>
...		
5.4	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be determined <u>laid down</u> by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the Consolidated Life Directive <u>156, 180, 185 and 186 of the Solvency II Directive</u>).

...		
7	Distance Marketing Directive: effect on territorial scope	
...		
7.5	In the FSA's view:	
...		
	(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Consolidated Life Solvency II Directive</i> , the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i> requiring pre-contract information and cancellation rules derived from the <i>Consolidated Life Solvency II Directive</i> apply on a 'country of origin' basis rather than being based on the <i>State of the commitment</i> ; (see articles 4(1) and 16 of the <i>Distance Marketing Directive</i> noting that the <i>Distance Marketing Directive</i> was adopted after the <i>Consolidated Life Directive</i>).
...		

...

6 Product Information

6.2 Pre-contract information: general insurance contracts

...

~~Non life insurance directive~~ Solvency II Directive disclosure requirements

6.2.2 R Before a *general insurance contract* is concluded, a *firm* must inform a *customer* who is a natural *person* of:

- (1) the law applicable to the contract where the parties do not have a free choice, or the fact that the parties are free to choose the law applicable and, in the latter case, the law the *firm* proposes to choose; and
- (2) the arrangements for handling *policyholders'* complaints concerning contracts including, where appropriate, the existence of a complaints body (usually the *Financial Ombudsman Service*), without prejudice to the *policyholders'* right to take legal proceedings.

[**Note:** article ~~31 of the *Third Non Life Directive*~~ 183(1)–(2) of the *Solvency II Directive*]

6.2.3 R (1) ~~If the *insurance undertaking* is an An EEA firm, the *firm* must~~

inform ~~the~~ a customer, before any commitment is entered into, of the *EEA State* in which the head office or, where appropriate, the ~~branch~~ branch with which the contract is to be concluded, is situated.

- (2) Any documents issued to the *customer* must convey the information required by this *rule*.

[**Note:** article 43(2) of the *Third Non-Life Directive* 184(1) of the *Solvency II Directive*]

- 6.2.4 R ~~The~~ An EEA firm must ensure that the contract or any other document granting cover, together with the insurance proposal where it is binding upon the *customer*, ~~must state~~ states the address of the head office, or, where appropriate, of the ~~branch~~ branch of the ~~insurance undertaking~~ firm which grants the cover.

[**Note:** article 43(2) of the *Third Non-Life Directive* 184(2) of the *Solvency II Directive*]

...

6.3 Pre- and post-contract information: pure protection contracts

~~Life Insurance directive~~ Solvency II Directive disclosure requirements

- 6.3.1 R (1) Before a *pure protection contract* is concluded, a *firm* must ~~inform a customer of~~ communicate, at least, the information in the table below to the customer.
- (2) The information must be ~~communicated~~ provided in a clear and accurate manner, in writing, and in an official language of the *State of the commitment* or in another language ~~agreed by the parties~~ if the policyholder so requests and the law of the State of the commitment so permits or the policyholder is free to choose the applicable law.

Information to be communicated before conclusion	
(1)	...
(2)	The name of the <i>EEA State</i> in which the head office and, where appropriate, the agency or branch <u>branch</u> concluding the contract is situated.
(3)	...
(3a)	<u>If the SFCR is available, a concrete reference to the SFCR, allowing the policyholder easy access to this information.</u>
...	

(9)*	Arrangements for application of the cancellation period.
(10)	...
(11)	The arrangements for handling complaints concerning contracts by <i>policyholders</i> , lives assured or beneficiaries <i>beneficiaries</i> under contracts including, where appropriate, the existence of a complaints body (usually the <i>Financial Ombudsman Service</i>), without prejudice to the right to take legal proceedings.
(12)	The law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the insurance undertaking <i>firm</i> proposes to choose.
Note: the <i>rule</i> on mid-term changes applies to items marked with an asterisk (see <i>ICOBS 6.3.3R</i>).	

[**Note:** ~~Annex III(A) to the Consolidated Life Directive~~ article 185 of the Solvency II Directive]

...

Mid-term changes

- 6.3.3 R A firm must keep a customer informed throughout the term of a pure protection contract of any change concerning ~~In addition to the policy conditions, both general and special, a customer must, throughout the term of a pure protection contract, receive~~ and any change in the following information:
- (1) ~~any change in~~ the name of the ~~insurance undertaking~~ *firm*, its legal form or the address of its head office and, where appropriate, of the agency or ~~branch~~ branch which concluded the contract; and
 - (2) all the information marked ‘*’ in the table of information to be communicated before conclusion, in the event of a change in the *policy* conditions or amendment of the law applicable to the contract.

[**Note:** ~~Annex III(B) of the Consolidated Life Directive~~ article 185(3) and (5) of the Solvency II Directive]

- 6.3.4 R When a firm provides a customer with information in accordance with *ICOBS 6.3.3R*, it must provide it in a clear and accurate manner, in writing, in an official language of the State of the commitment, or in another language if the policyholder so requests and the law of the State of the commitment so permits or the policyholder is free to choose the law applicable.

[**Note:** article 185(3), (5) and (6) of the Solvency II Directive]

...

7 Cancellation

7.1 The right to cancel

The right to cancel

- 7.1.1 R A *consumer* has a right to cancel, without penalty and without giving any reason, within:
- (1) 30 *days* for a *contract of insurance* which is, or has elements of, a *pure protection contract* or *payment protection contract*; or
 - (2) 14 *days* for any other *contract of insurance* or *distance contract*.
- [**Note:** article 6(1) of the *Distance Marketing Directive* in relation to a *distance contract* and article ~~35 of the *Consolidated Life Directive*~~ 186 of the *Solvency II Directive* in relation to a *pure protection contract*]

...

Exceptions to the right to cancel

- 7.1.3 R The right to cancel does not apply to:
- ...
- (3) a *pure protection contract* of six *months'* duration or less which is not a *distance contract*;
- ...
- [**Note:** articles 6(2)(b) and (c) of the *Distance Marketing Directive* and ~~35(1) and (2) of the *Consolidated Life Directive*~~ article 186(2) of the *Solvency II Directive*]

...

Start of the cancellation period

- 7.1.5 R The cancellation period begins either:
- (1) from the day of the conclusion of the contract, except in respect of a *pure protection contract* where the time limit begins when the *customer* is informed that the contract has been concluded; or
 - (2) from the day on which the *consumer* receives the contractual terms and conditions and any other pre-contractual information required under this sourcebook, if that is later than the date referred to above.

[**Note:** article 35 of the ~~*Consolidated Life Directive*~~ 186(1) of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

Appendix 6

PDMR transactions: formal guidance on the role of brokers

MARKET CONDUCT SOURCEBOOK (AMENDMENT NO 11) INSTRUMENT 2012

Powers exercise

- A. The Financial Services Authority makes this instrument in the exercise of
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 119 (The code);
 - (b) section 121 (Codes: procedure);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]* 2012.

Amendments to the Handbook

- D. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Market Conduct Sourcebook (Amendment No 11) Instrument 2011.

By order of the Board
[date]

Annex

Amendments to the Market Conduct sourcebook (MAR)

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

1.4. Market abuse (improper disclosure)

...

Descriptions of behaviour that does not amount to market abuse (improper disclosure)

...

1.4.4 C ...

1.4.4A C Disclosure of inside information by a broker to a potential buyer regarding the fact that the seller of qualifying investments is a person discharging managerial responsibilities or the identity of the person discharging managerial responsibilities or the purpose of the sale by the person discharging managerial responsibilities where:

- ...
- (1) the disclosure is made only to the extent necessary, and solely in order to dispose of the investment;
 - (2) the illiquidity of the stock is such that the transaction could not otherwise be completed; and
 - (3) the transaction could not be otherwise completed without creating a disorderly market;

will not, of itself, amount to market abuse (improper disclosure).

...

Examples of market abuse (improper disclosure)

1.4.6 G The following ~~is an example~~ are examples of market abuse (improper disclosure):

- (1) X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.
- (2) A, a person discharging managerial responsibilities in B PLC, asks C, a broker, to sell some or all of A's shares in B PLC. C discloses to a potential buyer that A is a person discharging managerial responsibilities or discloses the identity of A, in circumstances where

the fact that A is a *person discharging managerial responsibilities* or the identity of A, is *inside information*, other than in the circumstances set out in *MAR 1.4.4A*.

Appendix 7

Proposed changes to Chapter 16 of the Supervision manual

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

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance);
 - (4) section 213 (The compensation scheme);
 - (5) section 214 (General);
 - (6) section 234 (Industry Funding); and
 - (7) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [date] 2012

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Integrated Regulatory Reporting (Amendment No 13) Instrument 2012.

By order of the Board
[date] 2012

Annex

Amendments to the Supervision manual (SUP)

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

16 Annex 18BG **NOTES FOR COMPLETION OF THE RETAIL MEDIATION ACTIVITIES RETURN ('RMAR')**

...

Introduction: general notes on the RMAR

1. These notes aim to assist *firms* in completing and submitting the relevant sections of the Retail Mediation Activities Return ('RMAR').
2. The purpose of the RMAR is to provide a framework for the collection of information required by the *FSA* as a basis for its supervision activities. It also has the purpose set out in paragraph ~~16.7.3G~~ 16.12.2G of the Supervision Manual, i.e. to help the *FSA* to monitor *firms'* capital adequacy and financial soundness.

...

Scope

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

...

Application of RMAR sections

7. ~~*Firms* conducting home finance providing activity or administering a home finance transaction (including those that carry on an activity that is treated as arranging in COBS—see MCOB 1.2.12) that also conduct the above activities are required to complete the RMAR in addition to other data requirements. [deleted]~~
8. However, these *firms* are not required to complete all sections of the *RMAR*. Certain data requirements will be de-duplicated because of the separate reporting requirements imposed in relation to other ~~regulated activities~~ in the form of the *MLAR*. Broadly, a *firm* that has the ~~permission to carry on home finance providing activity or administering a home finance transaction~~ will not be subject to our proposed data requirements for financial reporting in the *RMAR* (*RMAR* sections A, B, C, D & E) For details, see ~~SUP 16.7. [deleted]~~

...

Accounting Principles

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

...

(c) (i) With the exception of section J, all AII amounts should be shown in pounds sterling one of the reporting currencies accepted by the GABRIEL system, unless otherwise specified in the Handbook (e.g. in MIPRU 3.2.7R). Section J must be completed in pounds sterling.

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

...

Section B: Profit & Loss Account

...

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

...

Section C: Client Money and assets

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

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

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

Note 1: *firms* that only carry on *home finance mediation activity* or *reinsurance mediation* are exempt from the *client money rules*, and are not therefore required to complete this section of the RMAR (~~unless, in the case of reinsurance mediation, the firm has made an election under CASS 5.1.1R(3)(a)~~) In respect of reinsurance contracts, CASS 5.1 to CASS 5.6 do not apply unless the firm has made an election under CASS 5.1.1R(3)(a) to comply with those rules.

Note 2: An authorised professional firms firm regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland must comply with the rules of ~~their~~ its designated professional body as specified in CASS 5.1.4R, and if ~~they do it does~~ so, they it will be deemed to comply with ~~the relevant sections of CASS 5.2 to CASS 5.6.~~ These *firms* are not therefore required to complete this section of the RMAR.

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

Section C: guide for completion of individual fields

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

...

Section E: Professional Indemnity Insurance

...

Part 2

At this point, if the *firm* has PII policy details to report, it should do so by clicking on the 'add PII policy' button in the summary screen. This will then prompt you to name the sub-section, e.g. 'policy1'. You may also add further sub-sections if the *firm* has two or more policies (up to a maximum of ten).

...

Section F: the *threshold conditions*

Sub-heading: close links

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

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

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

- insurance mediation activity; or
- home finance activity;

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

...

Sub-heading: controllers

...

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

...

(3) an existing *controller* increasing or decreasing a *kind of control* which he already has so that the percentage of shares or *voting power* concerned becomes or ceases to be equal to or greater than 20%, ~~30~~33% or 50%;

...

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

...

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

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

Chapter 2 (specific requirements for particular activities)—for those *firms* indicated in TC 2.1.1R who are involved in specified activities, such as *advising on investments* or on *home finance transactions* (see, generally, TC 2.1.4R), we have set additional training and competence requirements over and above the Commitments. These extra requirements cover recruitment, training, attaining competence, (in some cases this includes a requirement for individuals to pass an examination), maintaining competence, and the supervision of individuals.

It should be noted that Chapter 2 only applies in relation to advising on *non investment*

~~insurance contracts where this activity is carried on with or for retail customers.~~

...

Section G: guide for completion of individual fields

...	
Number of staff that supervise others to give advice	<p>Note the requirements in the Training & Competence Sourcebook (TC 2.4, 2.6 and 2.7 <u>TC 2.1.2R, TC 2.1.3G, TC 2.1.4G and TC 2.1.5R</u>) for employees to be appropriately supervised, and also the competencies that are required for those who supervise others.</p> <p>If any of these staff carries out supervisory activities in relation to more than one business type, they should be counted in each applicable field. The 'total' in the right hand column field should be the actual number of applicable employees, however, rather than a total of the three columns.</p>
Number of advisers that have been assessed as competent	<p>This is a subset of the total of 'number of staff that give advice' above.</p> <p>See TC 2.1.4R <u>Appendix 1.1R</u> for the detailed training & competence requirements relating to individual activities.</p> <p>If staff are competent in relation to more than one business type, they should be counted in each applicable field. The 'total' in the right hand column field should be the actual number of applicable employees, however, rather than a total of the three columns.</p>
Number of advisers that have passed appropriate examinations	<p>This is a subset of the total in 'number of staff that give advice' above.</p> <p>In the case of certain activities, <i>TC 2</i> imposes requirements on <i>firms</i> in relation to their <i>employees</i> and passing examinations. See, for example, requirements relating to employees engaged in advising a customer on a regulated mortgage contract for a non-business purpose (TC Appendix 1.1.1(20)), and requirements relating to employees engaged in advising on investments which are packaged products (TC appendix 1.1.1(4)). <u>The relevant activities to which <i>TC</i> applies and require employees to obtain appropriate qualifications can be found in <i>TC Appendix 1</i>. Then appropriate qualifications for these activities can be found in <i>TC Appendix 4E</i>.</u></p> <p>If staff have qualifications in relation to more than one business type, they should be counted in each applicable field. The 'total' in the right hand column field should be the actual number of applicable employees, however, rather than a total of the three columns.</p>
...	
On the basis of a fair analysis of the market	<p>A <i>firm</i> gives recommendations on a fair analysis of the market when it has considered a large number of providers in the relevant sector(s) of the market (<i>ICOB</i> <u><i>ICOB</i></u> 4.2.11R).</p>

...

Section H: guide for completion of individual fields

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

...

Section I: guide for completion of individual fields

...	
(ii) non-investment insurance chains	
Total non-investment insurance premium derived from retail customers	You should state here the total of premiums payable by <i>retail customers</i> during the reporting period in relation to non-investment insurance products.
Of this business, please indicate in column C the products where retail sales were passed up a chain and in column D where this business is significant (see notes above) Please also indicate in column E where the firm has dealt directly with the retail customer within the chain	You should indicate in column C for each product in which transactions have been passed up a chain. If this business is significant (see definition above) for one or more product types, this should be indicated in column D. <i>Firms</i> should also indicate in column E the product types for which they transact business in a chain, but directly with the <i>customer</i> .
(iii) dealing as agent	
Number of sales to retail customers during the reporting period where the firm dealt as agent	You should state here the number of sales during the reporting period where the <i>firm</i> dealt as agent of a product provider (i.e. with delegated authority).
Premium paid by retail customers during the reporting period where the firm dealt as agent	You should state here the total value of premiums payable by <i>retail customers</i> during the reporting period, whether annual or one off, where the <i>firm</i> dealt as agent of a product provider (i.e. with delegated authority).
Of the total of these sales, please indicate in column F the products where the firm dealt as agent, and in column G where this business is significant (see notes above)	You should indicate in column F for each product in which the <i>firm</i> has dealt as agent, and also in column G for each product type where this business is significant.
(iv) claims handling	
If you assist in the administration and performance of contracts of insurance: Please provide: Number of claims handled on behalf of customers during the reporting period	If you are authorised to <i>assist in the administration and performance of a contract of insurance on behalf of customers</i> , you should state here the number of new insurance claims that have been handled on <i>customers'</i> behalf during the reporting period.
(v) Lloyd's brokers – product sales data	
% of regulated business revenue	This should be a summary of the percentages of the <i>firm's</i> revenue in relation to retail, commercial and reinsurance business: Retail: insurance offered to individuals as opposed to commercial entities. Commercial: insurance taken out by a commercial entity (as opposed to an individual). Reinsurance: insurance protection taken out by an insurer to limit its aggregation of exposure on business written. Figures may be rounded to the nearest 20%, but the total should be 100%.

Section J: data required for calculation of fees

...

Data for fees calculations	<i>Firms</i> will need to report data for the purpose of calculating <i>FSA</i> , <i>FOS</i> and <i>FSCS</i> levies.
FSA	The relevant information required is the tariff data set out in <i>FEES</i> 4 Annex 1R Part 2 under fee blocks <u>A12</u> , <u>A13</u> , A 18 and <u>A19</u> . Note that <i>firms</i> are required to report tariff data information relating to all business falling within fee blocks <u>A12/A13/A18/A19</u> and not simply that relating to retail investments.
FOS	The relevant information required is the tariff data set out in <i>FEES</i> 5 Annex 1R industry blocks 8/9, 16 and 17. Note that <i>firms</i> are required to report tariff data information relating to all business falling within investments industry blocks 8/9, 16 and 17.
FSCS	The relevant information required is the tariff data set out in sub-classes B2, C2, D2, and E2, <i>FEES</i> 6 Annex 3R. Note that <i>firms</i> are required to report tariff data information relating to all business falling within <u>sub-classes B2, C2, D2 and E2</u> , <i>FEES</i> 6 Annex 3R and not simply that relating to retail investments.

...

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

16 Annex 24R Data items for SUP 16.12

...

FSA018 UK Integrated Groups – large exposures

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

A

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

...

...

FSA028 Non-EEA sub-groups

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

Yes/No

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

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

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

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

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

...

...

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

...

FSA003 – Capital Adequacy validations

Internal validations

...

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

...

FSA004 – Credit risk

...

Column F

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

FSA004 – Credit risk validations

Internal validations

...

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

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

...

FSA018 UK Integrated Groups – large exposures

...

General**1 Identify the UK integrated group**

[To follow] [deleted]

...

FSA028 – Non-EEA sub-groups

...

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

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

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

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

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

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

...

FSA038 – Volumes and Type of Business

...

Delegation and extent of delegation

...

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

...

Value of derivatives

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

...

Appendix 8

Proposed changes to the Collective Investment Schemes sourcebook

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

Powers exercised

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

Commencement

- C. This instrument come into force on [date].

Amendments to the Handbook

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

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

Citation

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

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position.

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

Annex B

Amendment to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

13.3 Contents of a key features document

...

13.3.3 R ...

Feeder NURS

13.3.4 R A key features document for a feeder NURS must include a statement identifying it as such a scheme, along with information specific to the feeder NURS and its qualifying master scheme enabling investors to also understand the qualifying master scheme's key particulars.

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

Annex C

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

[Editor's note: The text in this Annex is based on the Board of the FSA approving the Collective Investment Schemes Sourcebook (Amendment No 6) Instrument 2011, as consulted on in September 2011 and for which the consultation period has now closed.]

3.2 The instrument constituting the scheme

...

Table: contents of the instrument constituting the scheme

- 3.2.6 R This table belongs to *COLL* 3.2.4R (Matters which must be included in the instrument constituting the scheme)

...	
	Feeder UCITS
7D	For a <u>UCITS scheme which is operating exclusively as a feeder UCITS</u> , a statement that it is a <i>feeder UCITS</i> and as such will permanently invest at least 85% in value of the <i>scheme property</i> in units of a single <i>master UCITS</i> .
	<u>Feeder NURS</u>
<u>7E</u>	<u>For a non-UCITS retail scheme which is operating exclusively as a feeder NURS</u> , a statement that it is a <i>feeder NURS</i> and as such is <i>dedicated to units in a single UCITS or non-UCITS retail scheme or recognised scheme</i> .
...	

...

4.2 Pre-sale notifications

...

- 4.2.3A R ...

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

- 4.2.3B R (1) The authorised fund manager of a feeder NURS must, where requested by an investor or the FSA (see *COLL* Schedule 2 (Notification requirements)), provide such person with a copy of the

prospectus of its qualifying master scheme free of charge.

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

...

Table: contents of the prospectus

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

...	
Investment objectives and policy	
3	The following particulars of the investment objectives and policy of the <i>authorised fund</i> :
	...
(ka)	where a <i>scheme</i> is a <i>feeder scheme</i> (other than a <i>feeder UCITS</i> or a <i>feeder NURS</i>), which (in respect of investment in <i>units</i> in <i>collective investment schemes</i>) is <i>dedicated to units</i> in a single <i>collective investment scheme</i> , details of the <i>master scheme</i> and the minimum (and, if relevant, maximum) investment that the <i>feeder scheme</i> may make in it;
	...
22C	For a <i>non-UCITS retail scheme</i> which is an <i>umbrella</i> with a mixture of <i>sub-funds</i> operating either as a <i>FAIF</i> or a standard <i>non-UCITS retail scheme</i>, a statement to that effect and a statement identifying which <i>sub-funds</i> operate as a <i>FAIF</i> and which operate as a standard <i>non-UCITS retail scheme</i>.
General information	
23	...
<u>Information on certain non-UCITS retail scheme umbrellas</u>	
23A	<u>Where the <i>sub-funds</i> of a <i>non-UCITS retail scheme</i> which is an <i>umbrella</i> are not all:</u>
(a)	<i>feeder NURS</i> ; or
(b)	<i>FAIFs</i> ;
<u>then the <i>prospectus</i> should indicate whether each <i>sub-fund</i> falls into either (a)</u>	

	or (b).
...	
25	...
	<u>Information on certain UCITS scheme umbrellas</u>
<u>25-A</u>	<u>Where the <i>sub-funds</i> of a UCITS scheme which is an <i>umbrella</i> are not all <i>feeder UCITS</i> then the <i>prospectus</i> should indicate any <i>sub-fund</i> which is a <i>feeder UCITS</i>.</u>
	Information on a feeder UCITS
25A	...
	<u>Information on a feeder NURS</u>
<u>25B</u>	<u>In the case of a <i>feeder NURS</i>, the following information:</u>
	(a) <u>a declaration that the <i>feeder NURS</i> is a feeder of a particular <i>qualifying master scheme</i> and as such is <i>dedicated to units</i> in a single <i>qualifying master scheme</i> and the minimum (and, if relevant, maximum) investment that the <i>feeder NURS</i> may make in its <i>qualifying master scheme</i>;</u>
	(b) <u>the investment objective and policy of the <i>feeder NURS</i>, including the risk profile; and whether the performance records of the <i>feeder NURS</i> and the <i>qualifying master scheme</i> are identical, or to what extent and for which reasons they differ, including a description of how the balance of the <i>scheme property</i> which is not invested in <i>units</i> of the <i>qualifying master scheme</i> is invested in accordance with <i>COLL 5.6.7R(6A)</i> (Spread: general);</u>
	(c) <u>a brief description of the <i>qualifying master scheme</i>, its organisation, its investment objective and policy, including the risk profile, and an indication of how the <i>prospectus</i> of the <i>qualifying master scheme</i> may be obtained;</u>
	(d) <u>how the <i>unitholders</i> may obtain further information on the <i>qualifying master scheme</i>;</u>
	(e) <u>a description of all remuneration or reimbursement of costs payable by the <i>feeder NURS</i> by virtue of its investment in <i>units</i> of the <i>qualifying master scheme</i>, as well as the aggregate charges of the <i>feeder NURS</i> and the <i>qualifying master scheme</i>; and</u>
	(f) <u>a description of the tax implications of the investment into the <i>qualifying master scheme</i> for the <i>feeder NURS</i>.</u>
...	

...

4.3 Approvals and notifications

...

Change events relating to feeder UCITS and feeder NURS

- 4.3.11 R Where the *authorised fund manager* of either a *UCITS scheme* which is a *feeder UCITS* or a *feeder NURS* is notified of any change in respect of its *master UCITS* or *qualifying master scheme* which has the effect of a change to the *feeder UCITS* or *feeder NURS*, the *authorised fund manager* must:
- (1) classify it as a fundamental change, significant change or a notifiable change to the *feeder UCITS* or *feeder NURS* in accordance with the *rules* in this section; and
 - (2)
 - (a) for a fundamental change, obtain approval from the *unitholders* by way of an *extraordinary resolution*; or
 - (b) for a significant change, give written notice to *unitholders* of that change; or
 - (c) for a notifiable change, comply with *COLL* 4.3.8R (Notifiable changes).
- 4.3.12 R The actions required by *COLL* 4.3.11 R(2)(a) and (b) must be carried out as soon as reasonably practicable after the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* has been informed of the relevant change to the *master UCITS* or *qualifying master scheme*.
- 4.3.13 G
- (1) The *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should assess the change to the *master UCITS* or *qualifying master scheme* in terms of its impact on the *feeder UCITS* or *feeder NURS*. For example, a change to the investment objective and policy of the *master UCITS* or *qualifying master scheme* that alters its risk profile would constitute a fundamental change for the *feeder UCITS* or *feeder NURS*. In order for the *feeder UCITS* or *feeder NURS* to continue investing in the *master UCITS* or *qualifying master scheme*, the *authorised fund manager* of the *feeder UCITS* or *feeder NURS* should obtain the approval of *unitholders* by way of an *extraordinary resolution*, or else make a proposal to invest in a different *master UCITS* or *qualifying master scheme*. For a *feeder UCITS* this should be done in accordance with *COLL* 11.2.2R (Application for approval of an investment in a master UCITS).
 - (2) Not all changes affecting the *master UCITS* or *qualifying master scheme* will have the same significance for the *feeder UCITS* or *feeder NURS* and its *unitholders*. For example, a change to how the *prices* of the *units* in the *master UCITS* or *qualifying master scheme* are published might not be a significant change for the *feeder*

UCITS or feeder NURS if the *prices* of its own *units* continue to be published in the same way.

- (3) Where the *authorised fund manager* of the *feeder UCITS or feeder NURS* receives insufficient notice of the intended change to the *master UCITS or qualifying master scheme* to be able to seek the prior approval of *unitholders* to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the *feeder UCITS or feeder NURS*.

...

4.5 Reports and accounts

...

Contents of a short report

4.5.5 R ...

- (1A) The short report of a *UCITS scheme* which is a *feeder UCITS* must also include:
- (a) in relation to an annual accounting period only, a statement on the aggregate charges of the *feeder UCITS* and the *master UCITS*;

...

[**Note:** article 63(2) of the *UCITS Directive*]

- (1B) The short report of a feeder NURS must also include:
- (a) in relation to an annual accounting period only, a statement of the aggregate charges of the *feeder NURS* and its *qualifying master scheme*;
- (b) a description of how the annual and half-yearly long reports of its qualifying master scheme can be obtained; and
- (c) where the qualifying master scheme is a UCITS scheme or non-UCITS retail scheme, a description of how the annual and half-yearly short reports of its *qualifying master scheme* can be obtained.

...

Contents of the annual long report

- 4.5.7 R ...
- (5) ...
- (6) An annual long report of a *feeder NURS* must also include:
- (a) a statement on the aggregate charges of the *feeder NURS* and its *qualifying master scheme*; and
- (b) a description of how the annual long report of its *qualifying master scheme* can be obtained.

...

Contents of the half-yearly long report

- 4.5.8 R
- (4) ...
- (5) The half-yearly long report of a *feeder NURS* must also include a description of how the half-yearly and annual reports of its *qualifying master scheme* can be obtained.

...

- 4.5.15 R ...

Provision of annual and half-yearly long reports for qualifying master schemes of feeder NURS

- 4.5.16 R (1) The authorised fund manager of a *feeder NURS* must, where requested by an investor or the FSA (see COLL Schedule 2 (Notification requirements)), provide to such *person* copies of the annual and half-yearly long reports of its *qualifying master scheme* free of charge.
- (2) Except where an investor requests paper copies or the use of *electronic communications* is not appropriate, the annual and half-yearly long reports of its *qualifying master scheme* may be provided in a *durable medium* other than paper or by means of a website that meets the *website conditions*.

4.6 Simplified Prospectus provisions

...

Contents of the simplified prospectus

- 4.6.8 R This table belongs to the rule on production and publication of a simplified prospectus (*COLL* 4.6.2R and *COLL* 4.6.6R)

Contents of simplified prospectus

...		
(23)	...	
<u>Additional information for a feeder NURS</u>		
<u>Objectives and investment policy</u>		
(24)	(a)	<u>where the <i>scheme</i> is a <i>feeder NURS</i>, in the description of objectives and investment policy, information about the proportion of the <i>feeder NURS</i>' assets which is invested in the <i>qualifying master scheme</i>; and</u>
	(b)	<u>a description of the <i>qualifying master scheme</i>'s objectives and investment policy, supplemented as appropriate by either of the following:</u>
	(i)	<u>an indication that the investment returns of the <i>feeder NURS</i> will be very similar to those of the <i>qualifying master scheme</i>; or</u>
	(ii)	<u>an explanation of how and why the investment returns of the <i>feeder NURS</i> and <i>qualifying master scheme</i> may differ.</u>
<u>Risk profile</u>		
(25)	(a)	<u>where the <i>scheme</i> is a <i>feeder NURS</i> and where the risk profile of the <i>feeder NURS</i> differs in any material respect from that of the <i>qualifying master scheme</i>, this fact together with an explanation for it; and</u>
	(b)	<u>any liquidity risk and the relationship between purchase and redemption arrangements for the <i>qualifying master scheme</i> and <i>feeder NURS</i>.</u>
<u>Practical information</u>		
(26)		<u>where the <i>scheme</i> is a <i>feeder NURS</i>, information specific to the <i>feeder NURS</i>, including:</u>
	(a)	<u>a statement that the following <i>documents</i> of the <i>qualifying master scheme</i> are available to <i>unitholders</i> of the <i>feeder NURS</i> upon request, and how they may be obtained:</u>
	(i)	<u>the <i>prospectus</i>;</u>
	(ii)	<u>the <i>key investor information document</i> (or <i>key features document</i>)</u>

			<u>or simplified prospectus or where the authorised fund manager of the qualifying master scheme has a dispensation in the form of a general waiver by consent so that it may provide a key investor information document as modified by the general waiver direction, that document); and</u>
		(iii)	<u>the periodic reports and accounts.</u>
	(b)		<u>where the qualifying master scheme is not established in the United Kingdom, and this may affect the feeder NURS' tax treatment, a statement to this effect.</u>
<u>Feeder NURS: past performance presentations</u>			
(27)	(a)		<u>Any past performance presentation in the document of the feeder NURS must be specific to the feeder NURS and must not reproduce the performance record of the qualifying master scheme.</u>
	(b)		<u>The requirement in (a) does not apply where the feeder NURS:</u>
		(i)	<u>shows the past performance of its qualifying master scheme as a benchmark; or</u>
		(ii)	<u>was launched as a feeder NURS at a later date than the qualifying master scheme and where a simulated performance which is based on the past performance of the qualifying master scheme is shown for the years before the feeder NURS existed; or</u>
		(iii)	<u>has a performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart of the relevant years, with any material change labelled.</u>
<u>General Note</u>			
...			

...

5.6 Investment powers and borrowing limits for non-UCITS retail schemes

...

5.6.3 R (1) ...

(1A) For a feeder NURS, (1) applies only to the extent that the feeder NURS invests in assets other than units of the qualifying master scheme.

...

...

Spread: general

5.6.7 R ...

(6) Except for a *feeder fund*, a *feeder NURS* or a *scheme dedicated to units* in a single *property authorised investment fund*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.

(6A) *Schemes* which (in respect of investment in *units* in *collective investment schemes*) are *dedicated to units* in a single *property authorised investment fund* or *qualifying master scheme* must, in addition to the investment in the *property authorised investment fund* or *qualifying master scheme*, only hold cash or *near cash* to maintain sufficient liquidity to enable the *scheme* to meet its commitments, such as *redemptions*. *Schemes* may also use techniques and instruments for the purpose of *efficient portfolio management*, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

...

Investment in collective investment schemes

5.6.10 R A Except for a *feeder NURS*, a *non-UCITS retail scheme* must not invest in *units* in a *collective investment scheme* (second *scheme*) unless the second *scheme* meets each of the requirements at (1) to (5):

...

5.6.25 G ...

Qualifying collective investment schemes for feeder NURS

5.6.26 R The authorised fund manager of a feeder NURS must not cause the feeder NURS to invest in the qualifying master scheme, unless the qualifying master scheme meets each of the requirements in (1) to (3):

(1) the qualifying master scheme:

(a) satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive; or

(b) is a recognised scheme; or

(c) is a non-UCITS retail scheme;

- (2) the *qualifying master scheme* is prohibited from having more than 15% in value of the property of that *scheme* consisting of *units in collective investment schemes*; and
- (3) where the *qualifying master scheme* is an *umbrella*, the provisions in (2) and COLL 5.6.7R (Spread: general) apply to each *sub-fund* as if it were a separate *scheme*.

...

5.7 Investment powers and borrowing limits for NURS operating as FAIFs

...

Purpose

5.7.2 G ...

- (2) ~~Some examples~~ One example of the different investment and borrowing powers under the *rules* in this section for *non-UCITS retail schemes* operating as *FAIFs* ~~are~~ is the power to: invest up to 100% of the value of the *scheme property* in *schemes* to which COLL 5.7.7R (Investment in collective investment schemes) applies.
- (a) ~~invest up to 100% of the value of the *scheme property* in *schemes* captured by COLL 5.7.7R; and~~
- (b) ~~invest in a single *master scheme*.~~

...

After COLL 12 insert the following new chapter. This text is not underlined.

13 Operation of feeder NURS

13.1 Introduction

Application

13.1.1 R This chapter applies to:

- (1) the *authorised fund manager* of a *feeder NURS*;
- (2) an *ICVC* that is a *feeder NURS*;
- (3) the *authorised fund manager* of a *UCITS scheme* or *non-UCITS retail*

scheme which operates as a *qualifying master scheme* to a *feeder NURS*; and

- (4) (in the case of *COLL* 13.2.6R (Inducements) only) any *person* acting on behalf of either the *feeder NURS* or the *authorised fund manager* of the *feeder NURS*.

Purpose

- 13.1.2 G This chapter sets out various obligations, additional to those found elsewhere in the *Handbook*, that *persons* listed in *COLL* 13.1.1R must comply with in relation to the operation of a *feeder NURS* and its *qualifying master scheme*.

13.2 Operational requirements for feeder NURS

Application

- 13.2.1 R This section applies as follows:
- (1) *COLL* 13.2.2R to *COLL* 13.2.6R apply to the *authorised fund manager* of a *feeder NURS*;
 - (2) *COLL* 13.2.6R also applies to:
 - (a) an *ICVC* that is a *feeder NURS*; and
 - (b) any *person* acting on behalf of either the *feeder NURS* or the *authorised fund manager* of the *feeder NURS*.
 - (3) *COLL* 13.2.7R applies to the *authorised fund manager* of a *UCITS scheme* or a *non-UCITS retail scheme* which operates as a *qualifying master scheme* to a *feeder NURS*.

Pre-investment requirements of the authorised fund manager of a feeder NURS

- 13.2.2 R Prior to the investment into the *qualifying master scheme*, the *authorised fund manager* of the *feeder NURS* must:
- (1) be satisfied on reasonable grounds that the *authorised fund manager* can obtain all the information necessary from the *qualifying master scheme* to comply on an ongoing basis with the *rules* in *COLL*;
 - (2) have consulted the *depository* of the *feeder NURS* as to whether that *depository* can obtain all the information necessary from the *qualifying master scheme*, the *operator* of the *qualifying master scheme* or the *depository* of the *qualifying master scheme* such that the *depository* of the *feeder NURS* can comply with its duties under *COLL* 6.6.4R (General duties of the depository); and
 - (3) where the *qualifying master scheme* is a *UCITS scheme* or a *non-*

UCITS retail scheme, inform the *authorised fund manager* of the *qualifying master scheme* of the date on which the *feeder NURS* will begin to invest into the *qualifying master scheme* as a *feeder NURS*.

Ownership of units in a feeder NURS

- 13.2.3 R The *authorised fund manager* of a *feeder NURS* must take reasonable care to ensure that its *units* are not beneficially owned by the *qualifying master scheme*.

Charges made by the *qualifying master scheme* or its operator to a *feeder NURS* on investment or disposal

- 13.2.4 R (1) Where the *authorised fund manager* of a *qualifying master scheme* imposes any *preliminary charge* or *redemption charge* on the *feeder NURS* for the issue, sale, redemption or cancellation of *units* in the *qualifying master scheme*, the *authorised fund manager* of the *feeder NURS* must pay the *feeder NURS* an amount equal to such *charge* within four *business days* following the *investment* or disposal of *units* in the *qualifying master scheme*.
- (2) In this *rule*, where the *authorised fund manager* of a *qualifying master scheme* requires any addition to or deduction from the consideration paid on the acquisition or disposal of *units* in the *qualifying master scheme* which is, or is like, a *dilution levy* made in accordance with *COLL 6.3.8R* (Dilution) or *SDRT provision* made in accordance with *COLL 6.3.7R* (SDRT Provision), it is to be treated as part of the *price* of the *units* and not as part of any *preliminary charge* or *redemption charge* referred to in (1).

Avoidance of opportunities for market timing

- 13.2.5 R The *authorised fund manager* of a *feeder NURS* must take appropriate measures to co-ordinate the timing of the *feeder NURS*' net asset value calculation and publication with those of its *qualifying master scheme*, including the publication of *dealing prices*, in order to avoid market timing of their *units*, preventing arbitrage opportunities.

Inducements

- 13.2.6 R Where, in connection with an investment in the *units* of the *qualifying master scheme*, a distribution fee, commission or other monetary benefit is received by:
- (1) a *feeder NURS*; or
 - (2) an *authorised fund manager* of a *feeder NURS*; or
 - (3) any *person* acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the *scheme property* of the *feeder NURS* within four *business days* of receipt of that *fee*,

commission or other monetary benefit.

Obligations to unitholders of a qualifying master scheme

- 13.2.7 R Where the *qualifying master scheme* is a *UCITS scheme* or a *non-UCITS retail scheme*, the *authorised fund manager* of the *qualifying master scheme* must not provide or make available information to the *authorised fund manager* of the *feeder NURS* without at the same time also providing or making available that information to the *unitholders* of the *qualifying master scheme* other than the *feeder NURS* (the other *unitholders*) if it would unfairly prejudice the interests of the other *unitholders*.

...

Amend the following as shown.

Schedule 2 Notification requirements

...

2.2 G Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>COLL</i> 4.2.3AR(1)(b)	...			
<u><i>COLL</i></u> <u>4.2.3BR(1)</u>	<u><i>Prospectus of the qualifying master scheme of a feeder NURS</i></u>	<u>Copy provided</u>	<u>Upon request by the FSA</u>	<u>Immediate</u>
...				
<i>COLL</i> 4.5.15R(1)(b)	...			
<u><i>COLL</i></u> <u>4.5.16R(1)</u>	<u>Annual and half-yearly long report of the qualifying master scheme of a feeder NURS</u>	<u>Copy provided</u>	<u>Upon request by the FSA</u>	<u>Immediate</u>
...				

Appendix 9

Changes to the Training and Competence sourcebook

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

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 149 (Evidential provisions);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (Guidance).
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

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

Citation

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

By order of the Board
[*date*]

Annex

Amendments to the Training and Competence sourcebook (TC)

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

Appendix 4E Appropriate Qualification tables

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

Qualification table for : Advising on (but not dealing in) <i>Derivatives</i> –Activity number 3 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
<u>Msc in Banking and International Finance (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>CASS Business School</u>	<u>a</u>
...		

Qualification table for : Advising on, and dealing in, <i>securities</i> (which are not <i>stakeholder pension</i> schemes or <i>broker funds</i>) –Activity number 12 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
<u>CIIA qualification (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>Association of Certified International Analysts (ACCIA)</u>	<u>a</u>
<u>Msc in Banking and International Finance (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>CASS Business School</u>	<u>a</u>
ACI Diploma	ACI	a
...		

...

Qualification table for : Advising on, and dealing in, <i>Derivatives</i> –Activity number 13 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
<u>Msc in Banking and International Finance (provided it is accompanied with appropriate qualifications modules covering regulation & ethics, investment principles & risk and personal taxation)</u>	<u>CASS Business School</u>	<u>a</u>
...		

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

Qualification table for : Overseeing on a day to day basis operating a collective investment scheme or undertaking activities of a trustee or a depository of a Collective Investment Scheme – Activity number 15 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
<u>ACI Operations Certificate when combined with Chartered Institute of Securities and Investment (CISI) Introduction to Securities & Investments and one of the Regulatory units of the Investment Operations Certificate (IOC)</u>	<u>ACI</u>	<u>3</u>
<u>ACI Dealing Certificate when combined with Chartered Institute of Securities & Investments (CISI) Introduction to Securities & Investments and one of the Regulatory units of the Operations Certificate (IOC)</u>	<u>ACI</u>	<u>3</u>
...		

Qualification table for : Overseeing on a day to day basis safeguarding and administering investments or holding client money – Activity number 16 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
<u>Investment Administration Qualification (IAQ) – ISA and PEP Administration Module 6</u>	<u>Chartered Institute of Securities & Investments (CISI)</u>	<u>1</u>
...		

Qualification table for : Overseeing on a day to day basis administrative functions in relation to managing investments – Activity number 17 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
<u>ACI Operations Certificate when combined with Chartered Institute of Securities and Investment</u>	<u>ACI</u>	<u>3</u>

Appendix 9

<u>(CISI) Introduction to Securities & Investments and one of the Regulatory units of the Operations Certificate (IOC)</u>		
<u>ACI Dealing Certificate when combined with Chartered Institute of Securities & Investments (CISI) Introduction to Securities & Investments and one of the Regulatory units of the Operations Certificate (IOC)</u>	<u>ACI</u>	<u>3</u>
...		

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