

# Solvency II

March 2015





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In this Policy Statement we report on the main issues arising from the following FSA Consultation Papers:

CP11/23, *Solvency II and linked long-term insurance business*

CP11/25, *Distribution of retail investments – RDR Adviser Charging and Solvency II*

CP11/27, *Quarterly consultation paper No.31*

CP12/13, *Transposition of Solvency II – Part 2*

We also publish here the final rules.

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## Abbreviations used in this document

<b>COBS</b>	The Conduct of Business Sourcebook with rules and guidance for insurance firms writing investment business.
<b>EIOPA</b>	European Insurance & Occupational Pensions Authority
<b>FSA</b>	Financial Services Authority
<b>FSMA</b>	Financial Services & Market Act
<b>ICOBS</b>	The Conduct of Business Sourcebook for non-investment insurance firms.
<b>INSPRU</b>	The Insurers' Prudential Rulebook
<b>PPFM</b>	Principles & Practices of Financial Management which with-profits firms are required to publish to describe the management of their funds.
<b>PRA</b>	Prudential Regulation Authority
<b>Solvency II</b>	European directive (No 2009/138 EC) <sup>1</sup> on the taking up and pursuit of the business of Insurance and Reinsurance. Transposition into UK law is required by 1 January 2016. Its purpose is broadly to introduce an economic risk-based approach to incentivise insurance and reinsurance undertakings to properly measure and manage their risks. It is designed to improve the protection of policyholders and beneficiaries by requiring firms to hold risk-based capital.
<b>SUP</b>	Supervision Manual

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<sup>1</sup> The Solvency II Directive text is at : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:335:0001:0155:en:PDF>



# 1. Overview

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## Introduction

- 1.1** The Solvency II Directive is being transposed into the UK by the FCA and the Prudential Regulation Authority (PRA)<sup>2</sup>. It comes into effect for firms from 1 January 2016. We (the FCA) are changing our rules, both to transpose some of the articles and to harmonise our rules with the Directive. We are publishing our final rules in this paper.

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## Who does this affect?

- 1.2** The FCA rules giving effect to parts of the Directive, and the changes to other rules and guidance set out in this Policy Statement, apply to most insurance and reinsurance firms. Some 'non-Directive' firms are excluded from Solvency II. Non-Directive firms are broadly those with gross premium incomes below €5m and gross technical provisions below €25m<sup>3</sup>. Non-Directive firms should be aware of the changes as well because the Directive may apply to them in future. The PRA has also published rules to give effect to the rest of the Directive and made changes to its own rules.

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## Is this of interest to consumers?

- 1.3** The Solvency II Directive is designed to improve consumer protection by requiring firms to hold risk-based capital. However, there are some conduct related changes, for example around disclosure requirements and a need to update our rules to reflect the PRA rule book changes. The PRA is now responsible for the prudential supervision of insurance firms, in which the new Solvency II requirements play an important part. The changes we are making to our conduct rules have minimal direct impact on retail consumers or consumer groups, as they largely have the effect of continuing provisions contained in the previous insurance directives.

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## Context

- 1.4** The main purpose of the Solvency II Directive is to increase consumer protection by requiring member states to ensure firms better assess the risks that they run and hold capital against those risks. The PRA is responsible for this aspect of the Directive. But the Financial Services Authority (FSA) also consulted on changes to its conduct rules, which FCA must now implement

<sup>2</sup> HMT is also making Regulations which partly transpose the Directive. [www.legislation.gov.uk/uksi/2015/575/contents/made](http://www.legislation.gov.uk/uksi/2015/575/contents/made)

<sup>3</sup> Note that there are other conditions that must be satisfied – see article 4 of the Directive and the PRA rules that give effect to article 4. There are also exclusions based on activity. See Chapter 2 of the PRA Rulebook: Solvency II firms: General application.

to align with the Directive and to adopt its terminology. We also need to cross-refer our rules with the PRA's new Rulebook transposing Solvency II. In a few areas a change to the conduct policy intent is intended.

- 1.5** The FSA consulted in 2011 and 2012 (in CP11/23<sup>4</sup>, CP11/25<sup>5</sup> and CP12/13<sup>6</sup>) and has already provided some feedback, in FS12/2<sup>7</sup>, on some of the unit-linked changes. The FCA issued further feedback in FS14/1<sup>8</sup> (October 2014) on its with-profits and unit-linked rules.
- 1.6** The PRA issued further feedback and a Policy Statement (PS2/15<sup>9</sup>) on 20 March 2015.
- 1.7** Part of this Policy Statement is designed to explain the rules that we are making where we have transposition responsibility. This is in relation to a limited number of Articles of the Solvency II Directive which deal solely with conduct matters<sup>10</sup>, mostly relating to provision of information to consumers. The other chapters of this Policy Statement deal with changes needed in certain sections of our Handbook to ensure that our rules and guidance do not infringe Directive requirements. They are consistent with, and appropriate in the light of, changes the PRA are making to their rules as a consequence of the Directive.
- 1.8** In November we consulted on changes to the Approved Persons Regime for Solvency II firms. These reforms reflect the Directive's requirements relating to the fitness and propriety of individuals performing important roles in firms. On 27 March 2015 we published a follow-up CP which consults on our proposals for the practical implementation of these reforms, as well as on some further changes regarding governance in Solvency II firms.

### Summary of feedback and our response

- 1.9** The FSA has already provided some feedback in FS12/2 (to CP11/22), and the FCA published feedback in FS14/1 to Chapters 7 and 8 of FSA CP12/13 (on with-profits and unit-linked changes respectively). The changes needed to transpose Articles 183-6 into our Handbook were consulted on in CP11/25 and CP11/27, with feedback in FS12/5<sup>11</sup>.
- 1.10** Consequential changes to other chapters of our Handbook were originally consulted on in part of Appendix 6 of FSA CP12/13. The structure of regulation has subsequently changed (through the creation of the PRA, and the FCA focus on conduct) and the PRA is transitioning from the PRA Handbook to the PRA Rulebook. This has led us to make further changes to the rules that were previously subject to consultation. These are outlined in section 5 below.
- 1.11** The material in Chapters 7 and 8 of CP12/13 was the subject of an FCA Feedback Statement in October last year, and responses to that Feedback Statement are set out in this Policy Statement. Feedback on the earlier chapters has already been provided in Feedback Statements issued by us and the FSA, or has been the subject of consultation by the PRA.

<sup>4</sup> [www.fsa.gov.uk/pubs/cp/cp11\\_23.pdf](http://www.fsa.gov.uk/pubs/cp/cp11_23.pdf)

<sup>5</sup> [www.fca.org.uk/static/pubs/cp/cp11\\_25.pdf](http://www.fca.org.uk/static/pubs/cp/cp11_25.pdf)

<sup>6</sup> [www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp1213](http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp1213)

<sup>7</sup> [www.fca.org.uk/static/pubs/discussion/fs12-02.pdf](http://www.fca.org.uk/static/pubs/discussion/fs12-02.pdf)

<sup>8</sup> [www.fca.org.uk/news/fs14-1-solvency-ii-cobs-rule-changes](http://www.fca.org.uk/news/fs14-1-solvency-ii-cobs-rule-changes)

<sup>9</sup> [www.bankofengland.co.uk/pr/ Documents/publications/ps/2015/ps215.pdf](http://www.bankofengland.co.uk/pr/ Documents/publications/ps/2015/ps215.pdf)

<sup>10</sup> In particular articles 183-187, 133(3) and 152.

<sup>11</sup> [www.fsa.gov.uk/library/policy/policy/2012/12-05.shtml](http://www.fsa.gov.uk/library/policy/policy/2012/12-05.shtml)

## Next steps

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### What do you need to do next?

- 1.12** Insurance and reinsurance firms will need to prepare themselves to comply with these changes from the start date of the Solvency II Directive on 1 January 2016.

### What will we do?

- 1.13** We will also be making arrangements to comply or ensure consistency with the requirements of the Solvency II Directive and related Solvency II material<sup>12</sup>. Supervisors will be discussing with selected firms how they are preparing to comply with the rules and ensure effective and timely implementation of the Directive requirements.

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<sup>12</sup> Including the Solvency II regulation of 10 October 2014, which came into force on 18 January 2015 and is directly applicable to firms, and EIOPA guidelines on governance arrangements.

## 2. Transposition of the Solvency II Directive

- 2.1** This chapter sets out the actions required of the FCA to transpose those articles of the Solvency II Directive for which we have transposition responsibility. Most of the articles in the Directive are being transposed by the PRA in their paper *Solvency II: a new regime for insurers*, also being published in March 2015.
- 2.2** Firms will need to comply with the amended rules in the Conduct of Business Sourcebook (COBS) and the Conduct of Business Sourcebook for non-investment insurance firms (ICOBS), outlined below.

### The Solvency II Directive and its transposition

- 2.3** The Solvency II Directive comprises over 300 articles. We have agreed with HM Treasury and the PRA that the FCA will be responsible for transposing those articles of the Directive concerned with conduct. This Policy Statement covers articles 133(3), 152 and 183-7<sup>13</sup>. Part (3) of article 133 forms part of the requirements of the Directive about how firms invest assets and arises in connection with the so called Prudent Person Principle (article 132). It was consulted on in CP12/13. Article 152 deals with the appointment of a claims representative for third-party motor vehicle liability. Articles 183-7 are primarily concerned with point-of-sale disclosure requirements and matters relating to the contract with policyholders. They are similar requirements to those included in the various 'Solvency I' directives. As a result they are already largely included in our rules in COBS and ICOBS and require minimal changes.

#### Article 133 (3)

- 2.4** The FSA consulted on adopting article 133(3)<sup>14</sup> in section 2 of CP11/23 (see paragraph 2.35 in particular). This permits Member States to restrict the types of assets or reference values which policy benefits may be linked to, where the investment risk is being borne by policyholders.
- 2.5** The FSA reported feedback on this proposal in FS12/5. It advised that the principle underlying our approach to unit-linked business is that where the policyholder or beneficiary is a natural person and bears the direct investment risk, we will maintain a list of approved assets. This is intended to ensure consumers (including defined contribution pension scheme members) are properly protected from exposure to inappropriately risky assets.
- 2.6** Some respondents felt that we should not maintain the list of approved assets. However, most agreed with our view that such a list would help ensure consumers were protected from exposure to inappropriately risky assets.

<sup>13</sup> See also Chapter 5. This describes how the FCA will have an indirect transposition role in relation to Article 42 of Solvency II Directive (fit and proper requirements of persons), where it receives and processes information in relation to approved persons where the information would otherwise have to be submitted to the PRA under its rules transposing Article 42.

<sup>14</sup> See Article 133 (3) of Solvency II: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:335:0001:0155:en:PDF>. The UCITS Directive can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:302:0032:0096:EN:PDF>

## Our response

The FCA will continue to maintain a list of assets for permitted links. The necessary rules are included in COBS 21.

### Article 152

**2.7** Article 152 concerns non-life insurers providing third party motor vehicle cover that passport into another state on a services basis. The Article requires the host member state to require those insurers to appoint a claims representative in the host state's territory to deal with claims arising out of events occurring in its territory.

**2.8** We have included the requirement on incoming EEA firms to appoint a claims representative in the existing requirements in ICOBS 8.2.

### Articles 183-7

**2.9** These articles of the Directive are about the information that firms must provide to policyholders, both at the outset of their policy and subsequently, and matters relating to their contact with policyholders.

**2.10** The content of Articles 183-6 is largely contained in the FCA Handbook already, as they are largely recast from the various Solvency 1 directives and were located in ICOBS and COBS. The FSA consulted in CP11/25 and CP11/27 on the consequential changes needed to these rules, and fed back on them in Chapter 4 of FS12/5. This list sets out where the rules can be found:

Article 183      ICOBS 6.2.2

Article 184      ICOBS 6.2.3/4

Article 185      COBS 1.1, COBS 1 Annex 1, COBS 13.1, 13.3, COBS 13 Annex 1 and 2, COBS 14.2, COBS 16.6, COBS 20.4.7 and ICOBS 6.3.1, 6.3.3 and 6.3.4

Article 186      ICOBS 7.1 and COBS 15.2

**2.11** For Article 187 we have included a copy out of Article 187 in the new ICOBS 2.5.1R (2). We consider this helpful for the avoidance of doubt, where reliance would otherwise be placed on the unfair contract terms legislation or common law principles.

**2.12** Since publishing PS12/5, we have made two main changes to the COBS rules giving effect to Article 185:

Firstly, the changes to COBS 13 Annex 2R 1.7 included in PS12/5 amended a version of the Handbook which was subsequently updated in December 2013 as part of domestic changes to key features illustrations for personal pensions.<sup>15</sup> COBS 13 Annex 2R 1.7 was updated through Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment No 2) Instrument 2013 While the final rules included with this Policy Statement do not change the policy intent of those included in PS12/5, they amend the Handbook text as updated in December 2013.

Secondly, in PS12/5 we proposed the insertion of a new rule at COBS 16.6.3AR to require a long-term insurer, choosing to provide information about likely future with-profit bonuses, to report the differences between the actual bonuses payable and the figures previously provided.

<sup>15</sup> COBS 13 Annex 2R 1.7 was updated through Conduct of Business Sourcebook (Key Features Illustrations for Personal Pensions) (Amendment No 2) Instrument 2013.

This rule would have only applied to new policies entered into after Solvency II came into effect. Having reviewed the interpretation of Article 185(5), we feel this was an overly narrow interpretation of this provision and consider that this should apply to communications after 1 January 2016 for both new and existing policies.

In PS12/5, we set out our interpretation that we did not consider projections to be figures about the future development of profit participation. We considered projections to be outside the scope of Article 185(5) and therefore COBS 16.6.3AR. We intend to review this position in the summer, taking into account wider changes to the UK pensions landscape and the development of pre-contractual information as part of the Packaged Retail & Insurance-based Investment Products Regulation.

## 3.

# Changes to COBS: with-profits and unit-linked business

- 3.1** The FSA consulted in CP12/13 on changes to the rules and guidance in COBS 20 on with-profits business. In addition, the FSA consulted in CP11/23 and CP12/13 on changes to the rules and guidance in COBS 21 on unit-linked business. This chapter sets out the new rules and guidance that will be applicable for Solvency II firms from 1 January 2016.

### COBS Chapter 20 – With-profits business

#### Comments on our Feedback Statement

- 3.2** We published a Feedback Statement (FS14/1) in October 2014 setting out responses made to Chapter 7 of the FSA's CP12/13 on changes to our with-profits conduct rules and how we intended to proceed, including the publication of some draft rules. We invited general comments to that Feedback Statement and we have received some further comments from those firms and bodies listed in Annex 1.
- 3.3** Some mutual firms commented that the move from the long term fund concept to the with-profits ring-fenced fund may have implications for the membership activities that their constitutions permit them to undertake where these take place within their with-profits funds.
- 3.4** Some mutual firms were concerned that the new rule COBS 20.1A.10R would have the effect of preventing cross-subsidy between or to sub-funds because of the references to 'applying assets in a with-profits fund only for the purpose of the business in the with-profits fund'.
- 3.5** Finally, some mutual firms were also concerned that our changes to provisions regarding strategic investments were too restrictive and thought that the Solvency II requirements did not impose a 'best interests' test other than for assets covering technical provisions.

#### Our response to mutual firms

The changes being made are not intended to conflict with our existing policy on mutual firms. Our detailed comments on the issues for mutual firms are:

- The changes to definitions and the rules are not intended to impact on a firm's ability to seek various solutions to their Project Chrysalis issues<sup>16</sup>. Nor are they intended to affect any ability mutual firms currently have to

<sup>16</sup> Project Chrysalis is a reference to issues raised by firms and the FSA in relation to the conflicts between mutuality and the rights and interests in the with-profits funds. See for example our recent Policy Statement PS14/5, providing a possible different approach on the subject: [www.fca.org.uk/static/documents/policy-statements/ps14-05.pdf](http://www.fca.org.uk/static/documents/policy-statements/ps14-05.pdf).

undertake activities within the common fund, where those activities comply with COBS 20 and the Insurers' Prudential Rulebook (INSPRU) (taking into account the firm's particular circumstances).

- Firms considering whether such activities can comply with existing COBS 20 and INSPRU provisions should refer to Policy Statement 14/5, which sets out the FCA position on those matters. Any firms concerned about compliance with COBS 20 and INSPRU requirements (or replacement provisions) in light of their particular circumstances should contact their supervisor. Some firms asked us to set out in our new rules that these member activities are permitted where certain conditions are met. We are not making the changes requested. We think that any changes to our rules along those lines would have an impact on substantive issues for mutual firms, and in particular Project Chrysalis, instead of being neutral.
- We think it is possible for the business of a with-profits fund to include some cross-subsidy of other funds or sub-funds, so long as any such arrangements properly take into account the interests of the with-profits policyholders in the with-profits funds in light of FCA Principles and COBS 20 requirements. Such cross-subsidy is likely to be in essence an investment of the assets in the with-profits fund, which needs to comply with Solvency II Regulations. Therefore, firms would be expected to consider risk/reward profiles of such arrangements, and how they may affect the with-profits fund and relevant interests of the policyholders.
- We have also revised certain references in the new distribution rules (COBS 20.2.19A and B) to address perceived tensions with the developments in Project Chrysalis affecting mutual firms (see also paragraph 3.12).
- We have already reflected in our guidance that the 'best interests' test applies where there is a conflict of interest (for example between firm and policyholder), even where the assets in question do not cover technical provisions. We do not agree with comments that the new guidance on strategic investments regarding the 'best interests test' is more restrictive than Solvency II requires and so we have not made any changes to these provisions. However, for consistency we have added this proviso into the new guidance on loans to connected persons (20.2.32BG), which now begins 'Where there is a conflict of interest...'. We had taken the view that loans to connected persons would automatically involve a conflict of interest. But we cannot rule out the possibility that it may not do so in particular circumstances, so we have made this change.

- 3.6** Firms also commented that we should work with the PRA to ensure common definitions of our respective roles, with any differences identified and justified. In addition, one respondent suggested that the definition of with-profits assets should be permitted (but not required) to include the capital requirements for non-profit business also written in the fund.

#### Our response

We have agreed with PRA that we will adopt common definitions to the extent practicable. In particular we intend to adopt, by reference, the PRA's definition

of the 'with-profits fund'. The definition of "with-profits assets" is already aligned and we propose to make the non-substantive changes necessary to make other common definitions such as 'with-profits insurance business' and 'with-profits policy' the same.

We are also proposing to make changes to our rule which requires assets to be held in the fund to meet liabilities (20.1A.5R). The intention is to avoid duplication with the PRA version of this rule (rule 2.1 in the PRA Rulebook: Solvency II firms: With-profits) by cross-referring in part to the PRA requirements. So instead of requiring assets to be held to meet the best estimate component of technical provisions, we require assets to be held to meet 'with-profits policy liabilities' as defined by the PRA (and as required by the PRA with-profits rule 2.1 referred to above). Firms should note that we will still keep in our rules the additional provision (not contained in PRA rules) that requires that assets are also kept in the fund to cover 'other liabilities'. These include (as per COBS 20.1A.1R) those required to treat customers fairly, and those in relation to future transfers out of the fund properly attributable to shareholders. Firms should also note that we keep in COBS 20.1A.6R the record-keeping requirements as proposed in FS14/1, and the definition of with-profits fund surplus. These both refer to the best estimate component of technical provisions.

We do not think that the definition of "with-profits assets" impacts on the position of the capital requirements for non-profit business also written in the fund.

- 3.7** One respondent commented on the requirement to include detail of any support arrangements in the Consumer Friendly Principles & Practices of Financial Management (PPFM) and thought that this was excessive.

#### Our response

We consider that it is important for policyholders to be made aware of support arrangements provided to the fund in which they are invested, and therefore require details to be provided in the full PPFM.

- 3.8** Some concern was raised about the period in the proposed timetable being too long for the notification of changes in the proportion of surplus distributed to with-profits policyholders (with a three-month lead time for notification to consumers).

#### Our response

We have reduced the timescales for pre-notification of relative reductions in the proportions of surplus distributed to with-profits policyholders to two months to us and one month before payment to with-profits policyholders.

- 3.9** Another respondent questioned our intention to exclude the risk margin from the definition of technical provisions in relation to the requirements for distributions and the inherited estate. The respondent argued that margins effectively existed in the Solvency I regime because of the

requirement to calculate reserves on a prudent basis, while the Solvency II technical provisions have to be calculated on a best-estimate basis.

#### Our response

We have considered the comments about the prudent nature of current technical provision calculations in the 'distribution' rules. We have decided not to amend our proposals to include the risk margin in the calculations, as we consider that excluding the risk margin would be the closest approximation of our existing rules. In relation to the calculations in the rule requiring assets to be held to meet liabilities (20.1A.5R), we now no longer refer to best-estimate components of technical provisions. This is because we now cross-refer to the PRA requirements to hold assets to meet 'with-profits policy liabilities'.

- 3.10** Some respondents also observed that firms could not be both realistic basis life firms and Solvency II firms (as in COBS 20.2.18R) and suggested that we remove those parts of the Handbook.

#### Our response

We agree and will remove such references.

- 3.11** On distributions, concern was raised that the requirement to advise with-profits policyholders about relative reductions in payouts could require mutual firms (such as friendly societies) to contact their with-profits policyholders. This is because they currently make payments to members who are not necessarily with-profits policyholders.

#### Our response

We have made slight changes to the wording of the rules on distributions and their application to mutual firms. We have made it clearer that it is the proportion of surplus being allocated to the with-profits policyholders that is relevant, and that it is the amounts of surplus available for with-profits distribution to which it is compared. There is an issue about whether COBS 20 and INSPRU permit any surplus arising within a with-profits fund to be distributable to any persons other than with-profits policyholders (and shareholders to the extent of any interest). We consider that this touches on the Project Chrysalis issues already discussed above. It is not an issue on which these changes are intended to have an impact.

- 3.12** We have also chosen to make drafting changes to a small number of the provisions. We consider that they do not affect the meaning but may improve clarity. They include the following:

- COBS 20.1A.2R, which deals with how sub-funds are identified. This will now refer to 'assets identified as forming a distinct part of the fund', and not to 'assets identified in connection with a particular part'. Instead of '...and restricts discretionary additions to policy benefits to those arising from the investment or other experience of only that part', it will now refer to '...restricts participation in the profits or other experience of that distinct part to a particular category of with-profits policies'.
- COBS 20.1A.3R (1), which imposes a restriction of the with-profits fund 'grandfathering' provision in 20.1A.3R (2). At the moment this says that a grandfathering provision does not apply 'if COBS 20.1A.2 requires a firm to create or make changes to sub-funds...'. It will now say that it does not apply 'to the extent that it would be inconsistent with the operation of COBS 20.1A.2 where the effect is to require a firm to create or make changes to sub-funds...'.
- COBS 20.2.17C R(2) (b). Instead of 'distributions relating to technical provisions', we have used 'distribution that is intended to meet a liability for which allowance has been made in the technical provisions'.

These changes are incorporated in the rules attached.

## COBS Chapter 21 – Unit-linked business

### Our consultations and feedback

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- 3.13** The FSA provided feedback on its first consultation in FS12/2, and we published FS14/1 in October 2014 with feedback on Chapter 8 of the FSA's CP12/13. These Feedback Statements set out how we intended to proceed, including publication of some working-level draft rules. We invited general comments on the Feedback Statement.
- 3.14** One respondent raised a query on whether it was our intention to only apply the new regulations on stock lending and permitted derivatives to Solvency II firms and not to non-Directive firms.

#### Our response

We confirm that this was our intention and we make this clearer in the attached instrument (see changes to rules COBS 21.3.9R and 21.3.13R).

The rest of the COBS 21 changes in CP 12/13 and fed back on in FS 14/1 are remaining unchanged as they were largely welcomed by respondents to CP 12/13

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### Compatibility with our general duties

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- 3.15** The FSA consultation included a statement of compatibility with its objectives. The FCA's objectives are different and we have therefore provided a new compatibility statement in Annex 2.

## 4.

# Other consequential changes to the Handbook

- 4.1** The introduction of Solvency II requires a number of consequential changes to the Handbook. These include changes to disapply rules and guidance being replaced by PRA provisions transposing Solvency II, and changes to achieve consistency with those provisions and other Solvency II material. These include the level 2 EU Regulation (EU 2015/35) of 10 October 2014 and EIOPA guidelines of 28 January 2015, and changes to correctly cross-refer to terminology introduced by the Directive.

### Consequential changes to the FCA Handbook

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- 4.2** The FSA consulted on a number of consequential changes in CP12/13. However, since then, the FSA has been split into two regulators with different objectives. This has a bearing on the content of the consequential changes we set out in this document.
- 4.3** The main impact of the regulatory split is that the PRA and FCA now have two separate rulebooks. In places of common interest (such as governance) the FSA had proposed making one set of rules transposing Solvency II requirements, which could deal with both Solvency II prudential requirements and also UK domestic conduct matters. As the PRA rules transposing Solvency II have a prudential focus, we have had to consider alternative approaches to ensure that we continue to have provisions in the Handbook which allow us to pursue the Directive's conduct objectives. One option could have been for us to make identical rules to the PRA's rules transposing the Directive, but with our rules having a broader conduct focus. This was not the Government's preferred approach to Solvency II transposition. This means we are retaining more of the original Handbook material than the FSA had originally proposed to retain in CP12/13. Where necessary we have added guidance to explain the interaction between our provisions and the new PRA rules.
- 4.4** The second impact of the regulatory split is that the PRA has now moved to a different form of rulebook. Given this, there are structural and referencing changes that need to be made in the FCA Handbook. In part we have relied on our power in section 137T of FSMA to cross-refer, where appropriate, to relevant PRA provisions instead of copying those provisions into our Handbook. We hope that this reduces unnecessary duplication, but it may mean that some of the user functionality of a combined or self-contained Handbook is lost as a result.
- 4.5** We have also been mindful of changes to the original Solvency II Directive brought about by the Omnibus 2 Directive.<sup>17</sup>
- 4.6** The PRA has not yet completed work on the consequential changes to their rule book and there may be some additional changes necessary to our Handbook when this work is concluded.

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<sup>17</sup> Directive 2014/51/EU

We have published this PS now as we must transpose parts of the directive by 31 March. We thought it helpful that firms have other changes as early as possible.

- 4.7** The FSA did not receive any feedback to their consultation on the consequential changes. The changes outlined below are our proposals in the light of the changed circumstances, including those following the change to having a separate conduct regulator.

#### **Systems & Controls handbook (SYSC)**

- 4.8** The FSA consulted on dis-applying certain SYSC rules on the basis that it would make one set of governance rules under Solvency II. The Government's preference is for PRA only to make the rules required for Solvency II transposition in this area and for FCA not to duplicate those. As our objectives have a conduct focus that may not be covered by the Directive measures or the PRA's objectives, we consider that existing FCA rules on governance in SYSC will still be needed to support our objectives. We do not consider there to be an inconsistency between FCA rules and those made under Solvency II.

- 4.9** In *Changes to the Approved Persons Regime for Solvency II firms: forms, consequential changes, transitional arrangements and FCA governance proposals*<sup>18</sup> we are consulting on some changes to SYSC to give clarity in certain cases, for example where the Solvency II derived requirements make provisions for a Chief Risk Officer, risk management system, internal control function and outsourcing.

- 4.10** These amendments include:

- Adding specific guidance to highlight areas where we consider that provisions made under the Solvency II Directive may be particularly relevant; and
- Dis-applying parts of SYSC guidance to minimise overlap with the PRA's rules.

- 4.11** The FSA consulted on disapplying SYSC 2.1.3(2) to incoming EEA firms. This rule requires a firm to have a person with oversight for systems. In light of the split of regulators we no longer consider that disapplying that rule would be appropriate. Therefore we will retain this rule to the extent that the oversight role relates to systems in the UK dealing with conduct in the UK branch. We consider that this is consistent with Solvency II requirements.

#### **Threshold Conditions**

- 4.12** The FSA consultation on changes to guidance on Threshold Conditions included references to the Prudential sourcebook for Solvency II insurers (SOLPRU) (which was expected to contain the provisions of the governance articles of Solvency II). These references are no longer appropriate following the split into the PRA and the FCA. However, we propose to continue the intention of the proposed changes – which is to refer to the fact that there are provisions derived from Solvency II in PRA rules which set out high level requirements that may be relevant to the FCA's assessment of threshold conditions. We have included guidance to make clear that FCA will take them into account to the extent relevant.

#### **Application provisions in the General Prudential Sourcebook (GENPRU)**

- 4.13** Most of the application requirements in GENPRU applicable to Solvency II firms will be for the PRA, not the FCA (see for example GENPRU 1.1.2A and B). As a result we have in general carved Solvency II firms out of the application provisions. That is not to say that we apply GENPRU rules to non-Directive insurers – given that we do not prudentially regulate dual-regulated firms – but we need to await further consultations by the PRA before making more

<sup>18</sup> [www.fca.org.uk/news/cp15-16-changes-to-the-approved-persons-regime-for-solvency-ii-firms](http://www.fca.org.uk/news/cp15-16-changes-to-the-approved-persons-regime-for-solvency-ii-firms)

general changes in the application of GENPRU to insurers. As we regulate some cross-sectoral groups (those with an FCA parent but which may contain insurers) we continue to have an interest in GENPRU 3 and will be retaining it. We have made some consequential changes to this chapter but expect further changes may be required in future, following consultation by the PRA in relation to its application of changes to its rules after the introduction of Solvency II (which may include non-Directive firms).

#### **Insurers' Prudential Rule Book (INSPRU)**

**4.14** We have disappplied most of INSPRU for Solvency II firms as the relevant prudential requirements will be in PRA rulebooks from January 2016. Where conduct matters were included in INSPRU then we have included those for Solvency II firms in COBS 20 and COBS 21 as necessary (see Chapter 3 above). We have deleted INSPRU 1.3 as it related to realistic basis firms, which will no longer be relevant after the introduction of Solvency II.

**4.15** For Lloyd's we have retained the conduct focused provisions in INSPRU 8 that the FSA had proposed deleting, as we believe that they are necessary for us to carry out our supervisory functions. This includes the retention of parts of INSPRU 8.2 requiring Lloyd's to notify the FCA about changes to byelaws, and of INSPRU 8.4 about the capacity transfer market. We have moved the Lloyd's reporting rule on information currently in the transfer market in the Interim Prudential Sourcebook for Insurers (IPRU (INS)) to INSPRU 8, as we continue to require that information to support our objectives.

**4.16** We propose to retain those parts of INSPRU 7 (as outlined in the application guidance provision INSPRU 7.1.3) that apply to Dormant Account Fund Operators.

#### **IPRU INV – Lloyd's**

**4.17** We are planning to retain the prudential provisions of Chapter 4 of the Interim Prudential Sourcebook for Investment Businesses (IPRU (INV)) relating to Lloyd's firms (rather than deleting them as the FSA had proposed), as we believe that they are necessary for us to carry out our supervisory functions. These provisions currently relate to underwriting agents, which include both managing agents and members' agents. We have changed the focus of these provisions so that they relate only to members' agents where the FCA continues to have prudential responsibility (and to avoid duplication with the PRA's role in relation to managing agents).

#### **Conduct of Business Sourcebook (COBS)**

**4.18** The FSA consulted in CP11/25 on amendments to COBS disclosure requirements. We have made those changes now, as set out in the instrument attached to this Policy Statement. There is one particular point to note in COBS Annex 2R: 1.7(2) – this was amended from the text consulted on in the FCA 2013/80 Conduct of Business Sourcebook (Key Features illustrations for Personal Pensions) (Amendment No 2) Instrument 2013, as outlined in paragraph 2.11 above.

#### **Non-investment Conduct of Business' Sourcebook (ICOBS)**

**4.19** The FSA quarterly Consultation Paper of December 2011 consulted on changes to ICOBS. We have made these changes subject to a number of relatively modest amendments. The main ones are the inclusion of article 187 in ICOBS 2.5.1 and the amendments to ICOBS 8.2 to reflect article 152, described in 2.5 above.

#### **Supervision manual (SUP 2 Information gathering)**

**4.20** In SUP 2 the FSA consulted on disapplying, for Solvency II firms, provisions relating to information-gathering requirements for firms with material outsourcing contracts. This was because Treasury regulations were planning to give power to the regulators to obtain information directly from outsourcers and to allow inspections. We no longer consider it appropriate to disapply these

requirements, even when there is a power to obtain information directly<sup>19</sup>, as this is not always the most appropriate route. We intend to retain these SUP provisions to ensure that the FCA has appropriate access to outsourcer firms.

#### **Supervision Manual (SUP 4 Actuaries)**

- 4.21** We now intend to retain our requirements in SUP 4 for actuaries appointed in Solvency II firms even where an actuary is not required (for example, for the actuarial function governed by PRA's Rules in *Solvency II rules: conditions governing business*). In particular, our conduct requirements for with-profits actuaries (SUP 4.3.16A et seq.) remain – although we have added matters which we consulted on, to support the changes made to COBS 20. We consider that it is important to retain these rules to meet our requirements regarding publication of the list of disqualified actuaries and retain rules and guidance about the performance of their activities.
- 4.22** The provisions that we will now retain include rules in SUP 4 that the FSA consulted on removing in CP12/13. These are the sections about disqualified actuaries (SUP 4.3.11-12b), and the requirements for actuaries regarding objectivity, whistleblowing, termination, and rights and duties (SUP section 4.5). However, we will not retain our provisions relating to experience and qualifications (4.3.8G to 4.3.10G) in Solvency II firms, other than for the with-profits actuary. Requirements regarding the head of actuarial functions are retained in PRA rules. We will not retain our guidance prescribing what the general actuarial function should cover (4.3.13R-4.3.15G) as this is largely prudential in nature.
- 4.23** We will also change references to provisions regarding the appointment of external actuaries, which now appear in the PRA instrument *PRA Rulebook: Solvency II firms: Actuaries Instrument*, and the with-profits actuary function in Solvency II firms, which is in the *PRA Rulebook: Solvency II firms: Senior Insurance Management Functions Instrument*.

#### **Supervision Manual (SUP 11 Controllers)**

- 4.24** We note there that the Omnibus 2 Directive allows implementing regulations to be made which may prescribe the information to be provided on a change in control application. However, we have not yet seen any proposals on this from EIOPA. We note that, in any event, member state regulators will have the power to ask for certain information they require over and above this. We have not included any changes to refer to this in advance of any proposals being drawn up.

<sup>19</sup> For example under section 165.

## 5. Governance in insurance firms

- 5.1** The Solvency II Directive introduces new requirements to ensure the fitness and propriety of persons performing important functions in firms. We consulted on proposals to support the implementation of these requirements in November 2014<sup>20</sup>. We will publish a Policy Statement and final rules on the majority of these proposals in due course.

### Fit and Proper Test for Approved Persons

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- 5.2** One specific proposal which we consulted on in the November CP, and which we plan to introduce for the March Solvency II transposition deadline, is an amendment to the Fit and Proper Test for Approved Persons to state that we will take into account the Solvency II framework when making our assessment of candidates. This will include consideration of firms' own assessment of candidates' fitness and propriety as required under PRA rules and the Solvency II Regulation and EIOPA Guidelines, as well as EIOPA Guidelines directed to supervisory authorities themselves.

#### Our response

We have received no challenges to this proposal and are publishing amended guidance on the Fit and Proper Test for Approved Persons in Solvency II firms to implement it.

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<sup>20</sup> [www.fca.org.uk/static/documents/consultation-papers/cp14-25.pdf](http://www.fca.org.uk/static/documents/consultation-papers/cp14-25.pdf)

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# Annex 1

## List of non-confidential respondents to our Feedback Statement (FS14/1) on COBS changes

Association of British Insurers (ABI)

Institute & Faculty of Actuaries

Investment & Life Assurance Group (ILAG)

LV=

Police Mutual

Scottish Widows

Towers Watson

## Annex 2

# Compatibility with our general duties

This section aims to set out how the proposals to transpose the Solvency II Directive into UK law, and make associated changes, are compatible with our objectives and the principles of good regulation. This statement applies to the population of insurance firms covered by the Directive.

### Compatibility with the FCA's general duties

1. This Annex follows the requirements set out in section 138 I of FSMA. When consulting on rules, we are required by section 138 I of FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3 B of FSMA. We are also required by section 138 K (2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
2. This Annex also sets out our view of how the proposed rules are compatible with our competition duty (so far as is compatible with acting in a way which advances our consumer protection or market integrity objectives) to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1 B (4) of FSMA). We do not consider that the introduction of the Directive into the UK will impact on equality and diversity implications for either customers or employees of the insurance firms. In our view the proposed rules will not have a significantly different impact on mutual societies as opposed to other authorised persons.

### The FCA's strategic objective and regulatory principles

3. The proposals set out in this paper are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. The Solvency II Directive is aimed at policyholder protection and our proposals in this paper support its implementation in the UK. We consider that these changes will improve the position of policyholders who will themselves ensure that the relevant markets insurance function well.
4. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in section 3B of FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

### The need to use our resources in the most efficient and economical way

5. The proposals on which we have consulted will have an impact on the FCA's existing authorisation, supervision and enforcement processes and systems. Our approach has been largely to adhere closely to the Solvency II requirements to avoid unnecessary additional requirements which may affect the efficient use of our resources. In any event, the impact on resources is expected to be minimal as existing capacity is likely to be deployed.

### **The principle that a burden or restriction should be proportionate to the benefits**

6. The proposals set out in sections 2, 3 and 4 were originally consulted on by the FSA. They are designed to support the Directive's aims of promoting the soundness and stability of insurance firms, and protecting consumers by minimising the impact of failure of firms on markets and their customers.

The FSA's Consultation Paper CP11/22 *Transposition of Solvency II: Part 1*<sup>21</sup> indicated that the total direct costs (mostly prudential aspects of necessary changes now the responsibility of the PRA) of introducing the Directive requirements on firms were around £1.9bn (with additional regulatory costs), with the identified benefits including improved governance and risk management, better capital allocation, lower probability of default and increased transparency leading to an enhanced level of protection for policyholders.

The PRA updated this in CP16/14 *Transposition of Solvency II: Part 3*.<sup>22</sup> We consider that the nature of the conduct changes (which are largely recast) means that the cost of these parts will be very modest and the improvements brought about by the changes can be justified.

CP12/13 discussed in paragraphs 7.68 onwards the costs of the with-profits rules changes in COBS 20 and elsewhere, and concluded that each of the changes had minimal or no cost-benefit implications. We do not consider that this has changed. None of the respondents to FS14/1 mentioned cost-benefit issues. Paragraphs 8.34 and 8.35 concluded that the changes to our unit-linked rules in COBS 21 would have no significant cost-benefit implications. We do not consider that this analysis has changed.

The proposals set out in section 5 of this paper on which we have consulted are intended to support fitness and propriety of key individuals in firms, and in particular to ensure that the Directive's regulatory requirements with regards to the fitness and propriety of individuals in Solvency II functions are met. They should not add additional burdens on firms.

We therefore believe the proposals in this consultation paper are a proportionate way of incorporating Solvency II requirements into our rule book given there are no costs or benefits from the proposals.

### **The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**

7. The proposed changes are intended to have a positive impact on the conduct of Solvency II firms, which should contribute to the advancement of this objective.

### **The general principle that consumers should take responsibility for their decisions**

8. The proposals we have made concern in part changes to the requirements for the provision of information to consumers for Solvency II firms, and so should improve the ability of consumers to take more responsibility for their decisions.

### **The responsibilities of senior management**

9. Some of the proposals contained in CP14/25 were aimed at ensuring that individuals with significant influence within Solvency II insurers were fit to execute all their responsibilities. The new Solvency II requirements are consistent with FCA's current position in relation to the assessment of senior management. We will be amending our process for assessing the fitness and propriety of people with significant influence functions (SIFs) to reflect EIOPA guidelines.

<sup>21</sup> [www.bankofengland.co.uk/publications/Documents/other/prapolicy/2013/transpositionofsolvency2-1cp11-22.pdf](http://www.bankofengland.co.uk/publications/Documents/other/prapolicy/2013/transpositionofsolvency2-1cp11-22.pdf)

<sup>22</sup> [www.bankofengland.co.uk/prapolicy/publications/cp/2014/cp1614.pdf](http://www.bankofengland.co.uk/prapolicy/publications/cp/2014/cp1614.pdf)

**The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons**

10. We believe our proposals comply with this principle. We understand that the objectives, detailed business plans, constitutions or memoranda and articles of insurance firms are varied, and consider that our proposals here do not have a negative impact on that principle.

**The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA**

11. We have sought to explain the approach that we have taken in this Policy Statement so that firms understand the requirements that will apply to them from 1 January 2016. We consider that this publication, along with FS14/1 and previous feedback, helps to promote this principle.

**The principle that we should exercise our functions as transparently as possible**

12. We are an open and transparent regulator. The FCA has engaged actively with relevant stakeholders throughout the consultation process.

**The FCA's operational objectives  
Consumer protection and market integrity**

13. The proposals contained in this Policy Statement are intended to assist in the implementation of a European Directive whose aim is policyholder protection. We consider that it creates a structure that will make it more likely that high standards of conduct are observed (with an impact on market integrity in particular, in relation to the additional focus on fit and proper assessments). We therefore consider that these aims and objectives support our consumer protection and market integrity objectives.

**Promoting competition**

14. The Directive's proposals act primarily to advance our consumer protection objective. The scope for promoting effective competition in a way that would remain compatible with advancing that objective is limited. However, we consider that these proposals promote effective competition in the interests of consumers so far as is compatible with acting in a way which advances the consumer protection objective, in accordance with our duty under section 1B(4) of FSMA. We have taken care not to apply the requirements unnecessarily beyond the scope of the Solvency II Directive in order to avoid inadvertent effects on competition.

# Appendix 1

## Made rules (legal instrument)

**SOLVENCY II DIRECTIVE (CONSEQUENTIAL HANDBOOK AMENDMENTS)  
INSTRUMENT 2015**

**Powers exercised**

- A. The Financial Conduct 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 137A (General rule-making power);
  - (2) section 137T (General supplementary powers);
  - (3) section 138C (Evidential provisions);
  - (4) section 138D(2) (Actions for damages);
  - (5) section 139A(1) (Power of the FCA to give guidance); and
  - (6) section 318(1) and (5) (Exercise of powers through Council).
- B. The rule-making powers listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 January 2016.

**Amendments to the Handbook**

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

(1)	(2)
Glossary	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
Fit and Proper Test for Approved Persons (FIT)	Annex D
General Prudential sourcebook for Banks, Building Societies, Insurers and Investment Firms (GENPRU)	Annex E
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex F
Prudential sourcebook for Insurers (INSPRU)	Annex G
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex H
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex I
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex J
Conduct of Business sourcebook (COBS)	Annex K
Insurance: Conduct of Business sourcebook (ICOBS)	Annex L
Supervision manual (SUP)	Annex M
Compensation sourcebook (COMP)	Annex N

Regulated Covered Bonds sourcebook (RCB)	Annex O
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**Amendments to the material outside the Handbook**

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

**Notes**

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

**Citation**

- H. This instrument may be cited as Solvency II Directive (Consequential Handbook Amendments) Instrument 2015.

By order of the Board of the Financial Conduct Authority  
24 March 2015

## Annex A

### Amendments to the Glossary of definitions

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

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

*beneficiary* any *person* who is entitled to a right under a *contract of insurance*.

[**Note:** recital 16 of the *Solvency II Directive*]

*EIOPA* the European Insurance and Occupational Pensions Authority established in accordance with Regulation (EU) No. 1094/2010 of the European Parliament and of the Council of 24 November 2010.

*SCR* means the solvency capital requirement calculated in accordance with the Solvency Capital Requirement – General Provisions; Standard Formula; and Internal Models Parts of the PRA Rulebook: Solvency II Firms.

*SFCR* the solvency and financial condition report as detailed in the PRA Rulebook: Solvency II Firms: Reporting 3 to 6.

*Solvency II Directive information* (in *COBS*) *Solvency II Directive* information as required in *COBS* 13 Annex 1R.

*Solvency II firm* a *firm* which is any of:

- (a) a “UK Solvency II firm” as defined in chapter 2 of the PRA Rulebook: Solvency II Firms: Insurance General Application;
- (b) a third-country insurance undertaking, namely an undertaking that would require authorisation as an insurance undertaking under article 14 of the *Solvency II Directive* if its head office was situated in the *EEA*;
- (c) an undertaking authorised in accordance with a non-*UK EEA State’s* measures which implement article 14 of the *Solvency II Directive*;
- (d) the *Society* and, separately, a *managing agent*; and
- (e) an *insurance special purpose vehicle*,

but excluding any *firm* to the extent that rule 2 of PRA Rulebook:

Solvency II Firms: Transitional Measures disapplies relevant rules implementing the *Solvency II Directive*.

*Solvency II Regulations* directly applicable EU Commission Delegated Regulations adopted in accordance with the *Solvency II Directive*.

*with-profits fund surplus*

The difference between:

- (a) the value of the assets of the *with-profits fund* identified in accordance with *COBS 20*; and
- (b) the value of the best estimate component of *technical provisions* in respect of the *policies* written out of or transferred into that *with-profits fund* and the value of the other liabilities, including those referred to in *COBS 20.1A.1R*, in the fund;

calculated in accordance with PRA Rulebook: Solvency II Firms: Valuation, Technical Provisions, and Surplus Funds rule 2, and applicable parts of the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014, and as determined by *actuarial investigation*.

Amend the following definitions as shown:

*actuarial function*

...

(in the *FCA Handbook*) *PRA controlled function* CF12 in the table of *PRA controlled functions*, described more fully in *SUP 4.3.13R* and *SUP 10B.8.1R* or, for a *Solvency II firm*, the function in rule 6.1 of the PRA Rulebook: Solvency II firms: Conditions Governing Business.

*actuarial investigation*

- (1) (other than in *COBS*) an investigation to which *IPRU-INS* rule 9.4 applies.
- (2) (in *COBS* and *SUP 4*) for a *Solvency II firm*, an investigation having regard to generally accepted actuarial practice, carried out at least once in every 12-month period with advice, as appropriate, from the persons holding the *with-profits actuary function* and the *actuarial function*.

*admissible asset*

- (1) ~~(for the purpose of the rules in *GENPRU* and *INSPRU* as they apply to members of the Society of Lloyd's, the Society and managing agents) an asset that, subject to paragraphs (2) and (3) of *GENPRU 2 Annex 7R*, falls into one or more categories in paragraph (1) of *GENPRU 2 Annex 7R* as modified by *GENPRU 2.3.34R*.~~
- (2) otherwise:

- (a) (in relation to an *insurer* which is not a *pure reinsurer*) an asset that, subject to paragraphs (2) and (3) of *GENPRU 2 Annex 7R*, falls into one or more categories in paragraph (1) of *GENPRU 2 Annex 7R*; or
- (b) (in relation to a *pure reinsurer*) an asset the holding of which is consistent with compliance by the *firm* with *INSPRU 3.1.61AR*.

*ancillary risk*

~~(in relation to an *insurer* with *permission* under the *Act* to insure a principal risk belonging to one *class* (as defined for the purposes of *INSPRU* and *SUP*) of *general insurance business*) a risk included in another such class which is:~~

- ~~(a) connected with the principal risk,~~
- ~~(b) concerned with the object which is covered against the principal risk, and~~
- ~~(c) the subject of the same contract insuring the principal risk.~~

~~However, the risks included in classes 14, 15 and 17 may not be treated as risks ancillary to other classes, except that the risk included in class 17 (legal expenses insurance) may be regarded as an ancillary risk of class 18 where:~~

- ~~(d) the conditions laid down in (a) to (c) are fulfilled, and~~
- ~~(e) the principal risk relates solely to assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence or where it concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.~~

~~[deleted]~~

*annualised net written premiums*

~~(for the purposes of *INSPRU 1.4*) in relation to a *financial year*, the net written premiums received during that *financial year*, except that in relation to a financial annualised net written premiums year that has been validly extended beyond, or shortened from, a period of 12 months, the amount of *net written premiums* is the amount determined in accordance with the formula:  $NWP \times 365/D$  where:~~

- ~~(1) NWP is the amount of *net written premiums* received in the financial year; and~~
- ~~(2) D is the number of days in that *financial year*. [deleted]~~

*approved index*

in relation to *permitted links*:

- (a) ...
- (aa) relevant indices meeting the requirements of COLL 5.2.33R; or
- ...
- assessable mutual* (~~for the purposes of INSPRU 1.4) a *mutual* where the *insurance business* carried on by the *mutual* is limited to the provision of *insurance business* to its members and whose articles of association, rules or bye laws provide for the calling of additional contributions from members to meet *claims*. [deleted]~~
- balancing amount* in respect of a *syndicate*, any part of the *capital resources* that:
- (a) ~~the *managing agent* of the *syndicate* has assessed to be necessary to support the *insurance business* carried on by the *members* of the *syndicate* through the *syndicate*, including those *capital resources* required to support the risks arising at *syndicate* level that affect that business; but~~
- (b) ~~are not managed by or at the direction of the *managing agent* of the *syndicate*. [deleted]~~
- capital instrument* (in COBS, GENPRU, and BIPRU and ~~INSPRU 6~~ and in relation to an *undertaking*) any *security* issued by or loan made to that *undertaking* or any other investment in, or external contribution to the capital of, that *undertaking*.
- captive reinsurer* a pure reinsurer owned by:
- (a) ~~a financial undertaking other than an insurance undertaking or a reinsurance undertaking; or~~
- (b) ~~a group of insurance undertakings or reinsurance undertakings to which the Insurance Groups Directive applies; or~~
- (c) ~~a non-financial undertaking,~~
- ~~the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which that pure reinsurer is a member. [deleted]~~
- collateral* (1) ...
- (2) (in COBS (except COBS 21.3) and CASS) any of the following:
- ...

(3) (in *INSPRU*, COBS 21.3 and *SYSC*):

...

*collective insurance* (in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph VIII of Part II of Schedule 1 to the *Regulated Activities Order* (Contracts of long-term insurance), of a kind referred to in article ~~2(2)(e) of the *Consolidated Life Directive*~~ 2(3)(b)(v) of the *Solvency II Directive* ("the operations carried out by life insurance undertakings ~~companies~~ such as those referred to in Chapter 1, Title 4 of Book IV of the French "Code des assurances").

*Community Co-Insurance Directive* ~~the Council Directive of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance (No 78/473/EEC). [deleted]~~

*community co-insurance operation* ~~an a co-insurance operation to which the Community Co-Insurance Directive applies, as modified by article 26 of the Second Non-Life Directive~~ relates to one or more risks classified under *general insurance business classes 3 to 16* and which fulfils the conditions in article 190(1)(a) to (f) of the *Solvency II Directive*.

*competent authority* ...

(3) (in relation to a group, and for the purposes of *SYSC* 12 (Group risk systems and controls requirement), *GENPRU*, and *BIPRU* and *INSPRU*, any national authority of an *EEA State* which is empowered by law or regulation to supervise *regulated entities*, whether on an individual or group-wide basis.

...

*Consolidated Life Directive* ~~the Council Directive of 5 November 2002 on the taking up and pursuit of the business of life assurance (No 2002/83/EC), which consolidates the provisions of the *First, Second and Third Life Directives*. [deleted]~~

*Consolidated Life Directive information* ~~(in *COBS*) the Consolidated Life Directive information (*COBS* 13 Annex 1R). [deleted]~~

*contract of insurance* ...

(2) ...

(e) contracts of a kind referred to in article ~~2(2)(e) of the *Consolidated Life Directive*~~ 2(3)(b)(v) of the *Solvency II Directive* (Collective insurance etc); and

	(f)	contracts of a kind referred to in article 2(3)(c) of the <i>Consolidated Life Directive Solvency II Directive</i> (Social insurance);
	...	
<i>contracts of large risks</i>		(in <i>ICOBS</i> ) contracts of insurance covering risks within the following categories, in accordance with article 5(d) <del>13(27)</del> of the <i>First Non-Life Solvency II Directive</i> .
<i>counterparty</i>	...	
	(2)	for the purposes of the rules relating to insurers in <i>GENPRU</i> and <i>INSPRU</i> <del>(in relation to an insurer, the Society, a syndicate or member ('A')):</del>
	...	
<i>covered bond</i>	...	
	(4)	<del>(in accordance with Article 22(4) of the <i>Third Non-Life Directive</i> and Article 24(4) of the <i>Consolidated Life Directive</i> and for the purposes of <i>INSPRU</i> 2.1) a <i>debenture</i> that is issued by a <i>credit institution</i> ...</del>
<i>credit equalisation provision</i>		<del>the provision required to be established by <i>INSPRU</i> 1.4.43R. [deleted]</del>
<i>EEA firm</i>		(in accordance with paragraph 5 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) any of the following, if it does not have its relevant office in the <i>United Kingdom</i> :
	...	
	(d)	an undertaking pursuing the activity of direct insurance <del>(within the meaning of article 2 of the <i>Consolidated Life Directive</i> (No. 2002/83/EC) or of Article 1 of the <i>First Non-Life Directive</i> (No. 73/239/EEC))</del> which has received authorisation under <del>of the <i>Consolidated Life Directive</i> or Article 6 of the <i>First Non-Life Directive</i></del> article 14 of the <i>Solvency II Directive</i> from its <i>Home State regulator</i> ;
	...	
	(g)	<del>an undertaking pursuing the activity of reinsurance (within the meaning of article 1 of the <i>Reinsurance Directive</i>) which has received authorisation under article 3 of the <i>Reinsurance Directive</i> from its <i>Home State Regulator</i>. [deleted]</del>
	...	

<i>EEA insurer</i>	an <i>insurer</i> , other than a <i>pure reinsurer</i> <del>or a <i>non-directive insurer</i></del> , whose head office is in any <i>EEA State</i> except the <i>United Kingdom</i> and which has received <i>authorisation</i> under <del>article 6 of the <i>First Life Directive</i> or article 4 of the <i>Consolidated Life Directive</i> or article 6 of the <i>First Non-Life Directive</i></del> <u>article 14 of the <i>Solvency II Directive</i></u> from its <i>Home State Regulator</i> .
<i>EEA prudential sectoral legislation</i>	...  (b) (in relation to the <i>insurance sector</i> ) in particular this includes requirements laid down in the <del><i>First Non-Life Directive</i>, the <i>Consolidated Life Directive</i> and the <i>Insurance Groups Directive</i></del> <u><i>Solvency II Directive</i></u> .
<i>EEA pure reinsurer</i>	a <del><i>reinsurance undertaking</i> (other than an <i>ISPV</i>)</del> <u><i>pure reinsurer</i></u> whose head office is in any <i>EEA State</i> except the <i>United Kingdom</i> and which has received (or is deemed to have received) <i>authorisation</i> under <del>article 3 of the <i>Reinsurance Directive</i></del> <u>article 14 of the <i>Solvency II Directive</i></u> from its <i>Home State Regulator</i> .
<i>EEA-deposit insurer</i>	a <del><i>non-EEA insurer</i></del> <u><i>Solvency II firm</i></u> that is a <i>third-country insurance undertaking</i> and that has made a deposit in an <i>EEA State</i> (other than the <i>United Kingdom</i> ) under <del>article 23 of the <i>First Non-Life Directive</i> (as amended)</del> <u>162(2)(e) of the <i>Solvency II Directive</i></u> in accordance with <del>article 26-167</del> of that Directive <del>or under article 51 of the <i>Consolidated Life Directive</i> in accordance with article 56 of that Directive.</del>
<i>equalisation provision</i>	<del>a provision required to be established under the rules in <i>INSPRU</i> 1.4. [deleted]</del>
<i>excess surplus</i>	(a) a <i>firm</i> <del>that is not a <i>Solvency II firm</i></del> will have an excess surplus in a <i>with-profits fund</i> if, and to the extent that: <ul style="list-style-type: none"> <li>(a) the <i>regulatory surplus</i> <del>(or in the case of a <i>realistic life firm</i> the excess of realistic value of assets over realistic value of liabilities)</del> in that <i>with-profits fund</i>; and</li> <li>(b) any other financial resources applied to, or expected to be applied to, that <i>with-profits fund</i>;</li> </ul> <p>exceed:</p> <ul style="list-style-type: none"> <li>(e) the amount required to meet the higher of any</li> <li>(iii) <i>regulatory capital requirement</i> or the <i>firm's individual capital assessment</i> (at the <i>firm's</i> own risk appetite) for existing business; and</li> </ul>

- ~~(d)~~ any further amount necessary to support the new
- (iv) business plans of that *with-profits fund*.

(b) a *Solvency II firm* will have an excess surplus in a *with-profits fund* if, and to the extent that:

- (i) the *with-profits fund surplus* in that *with-profits fund*; and
- (ii) any other financial resources applied to, or expected to be applied to, that *with-profits fund*;

exceed:

- (iii) the amount required to meet the higher of any notional *SCR* in relation to that *with-profits fund* and any capital provision determined in relation to the *with-profits fund* at the *firm's* own risk appetite, as reflected in the *firm's* own risk and solvency assessment carried out from time to time as detailed in the PRA Rulebook: Solvency II Firms: Conditions Governing Business rules 3.8 to 3.10; and

- (iv) any further amount necessary to support the new business plans of that *with-profits fund*.

*financial year in question*

(for the purposes of *INSPRU* 1.1 ~~and of the definition of *non-directive insurer*~~) the last *financial year* to end before the date on which the latest accounts of the *insurer* are required to be deposited with the *appropriate regulator*; the preceding *financial year* and previous *financial years* are construed accordingly.

*First Life Directive*

the Council Directive of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No 79/267/EEC). ~~[deleted]~~

*First Non-Life Directive*

the Council Directive of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life insurance (No 73/239/EEC). ~~[deleted]~~

*group*

...

(6) (in relation to a *Solvency II firm*) a group of *undertakings* that:

- (a) consists of a *participating undertaking*, its *subsidiary undertakings* and the *undertakings* in which it holds a *participation*, as well as

undertakings linked to each other by a consolidation Article 12(1) relationship; or

(b) consists of a mutual-type group.

[**Note:** article 2(5) of the *MiFID implementing Directive* and article 212(1)(c) of the *Solvency II Directive*]

<i>group capital resources</i>	<del>in relation to an undertaking in <i>INSPRU</i> 6.1.17R, that undertaking's group capital resources as calculated in accordance with <i>INSPRU</i> 6.1.36R. [deleted]</del>
<i>group capital resources requirement</i>	<del>in relation to an undertaking in <i>INSPRU</i> 6.1.17R, that undertaking's group capital resources requirement as calculated in accordance with <i>INSPRU</i> 6.1.33R. [deleted]</del>
<i>IMD insurance undertaking</i>	(as defined in article 2(1) of the <i>Insurance Mediation Directive</i> ) an undertaking which has received official authorisation in accordance with article 6 14 of the <del><i>Consolidated Life Directive</i></del> or article 6 of the <del><i>First Non Life Directive</i></del> <i>Solvency II Directive</i> .
<i>individual capital resources requirement</i>	<del>has the meaning in <i>INSPRU</i> 6.1.34 R. [deleted]</del>
<i>inherited estate</i>	<u>in relation to each with-profits fund:</u> <ol style="list-style-type: none"> <li>(1) <u>for a firm which is not a <i>Solvency II firm</i>, an amount representing the fair market value of the <i>with-profits assets</i> less the <i>realistic value of liabilities</i> value of liabilities of a <i>with profits fund</i>, except liabilities in relation to <i>non-profit insurance business</i>;</u></li> <li>(2) <u>for a <i>Solvency II firm</i>, means the <i>with-profits fund surplus</i>.</u></li> </ol>
<i>insurance business grouping</i>	<del>a grouping comprising descriptions of <i>general insurance business</i> determined in accordance with <i>INSPRU</i> 1.4.12R. [deleted]</del>
<i>Insurance Directives</i>	<del>the <i>Consolidated Life Directive</i> and the <i>First Non Life Directive</i>, <i>Second Non Life Directive</i> and <i>Third Non Life Directive</i>. [deleted]</del>
<i>insurance group</i>	(1) <del>an <i>insurance parent undertaking</i> and its related undertakings;</del> (2) <del>a <i>participating insurance undertaking</i> (not within (1)) and its related undertakings. [deleted]</del>
<i>Insurance Groups Directive</i>	<del>Directive of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance</del>

	<del>undertakings in an insurance group (1998/78/EC). [deleted]</del>
<i>insurance parent undertaking</i>	<p><del>a parent undertaking which is:</del></p> <p>(a) <del>a participating insurance undertaking which has a subsidiary undertaking that is an insurance undertaking;</del> <del>or</del></p> <p>(b) <del>an insurance holding company which has a subsidiary undertaking which is an insurer.</del></p> <p>(c) <del>an insurance undertaking (not within (a)) which has a subsidiary undertaking which is an insurer. [deleted]</del></p>
<i>insurance special purpose vehicle</i>	<p><del>an undertaking whether incorporated or not, other than an insurance undertaking or reinsurance undertaking which has received an official authorisation in accordance with article 6 of the First Non-Life Directive, article 4 of the Consolidated Life Directive or article 3 of the Reinsurance Directive; which has received authorisation in accordance with article 211(1) or (3) of the Solvency II Directive and:</del></p> <p>(a) <del>which assumes risks from such insurance undertakings or reinsurance undertakings a regulated insurance entity ;</del> <del>and</del></p> <p>(b) <del>which fully funds its exposures to such risks through the proceeds of a debt issuance or some other financing mechanism where the repayment rights of the providers of such debt or other financing mechanism are subordinated to the undertaking's reinsurance obligations to the insurance or reinsurance undertakings in respect of the risks in (a).</del></p> <p><u>[Note: article 13(26) of the Solvency II Directive]</u></p>
<i>insurance undertaking</i>	<p>(1) <del>(except in COBS) an undertaking, or (in CASS 5 and COMP) a member, whether or not an insurer, which carries on insurance business.</del></p> <p>(2) <del>(in COBS) an undertaking or a member which carries on insurance business.</del></p> <p><u>an undertaking including a member that carries on insurance business, whether or not an insurer.</u></p>
<i>insurer</i>	<del>a firm with permission to effect or carry out contracts of insurance (other than a UK ISPV an ISPV).</del>
<i>leading insurer</i>	<del>(in relation to a community co-insurance operation) has the same meaning as in the Community Co-Insurance Directive a co-insurer that assumes the leader's role in co-insurance practice and, in</del>

	<u>particular, determines the terms and conditions of insurance and rating.</u>
<i>Lloyd's actuary</i>	the <i>actuary</i> appointed by the <i>Society</i> under <i>SUP</i> 4.6.1R. <u>[deleted]</u>
<i>Lloyd's actuary function</i>	<del><i>controlled function</i> CF12B in the <i>table of controlled functions</i>, described more fully in <i>SUP</i> 10.7.22R. <u>[deleted]</u></del>
<i>Lloyd's Return</i>	the financial report that the <i>Society</i> is required to submit to the <i>FSA</i> under <i>IPRU(INS)</i> 9.48(1). <u>[deleted]</u>
<i>mixed activity insurance holding company</i>	<del>(in accordance with article 1(j) 212(1)(g) of the <i>Insurance Groups Directive</i> (Definitions)) a <i>parent undertaking</i>, other than an <i>insurance undertaking</i>, an <i>insurance holding company</i> or a <i>mixed financial holding company</i>, the <i>subsidiary undertakings</i> of which include at least one <i>insurance undertaking</i>. <u>[deleted]</u></del>
<i>non-credit equalisation provision</i>	the provision required to be established under <i>INSPRU</i> 1.4.17R. <u>[deleted]</u>
<i>non-directive firm</i>	(in <i>SUP</i> 11 (Controllers and close links) and <i>SUP</i> 16 (Reporting requirements)) ... a <i>UK domestic firm</i> other than:  ...  (d) <del>a <i>Solvency II firm</i> an <i>undertaking</i> pursuing the activity of direct insurance within the meaning of:</del>  (i) <del>article 2 of the <i>Consolidated Life Directive</i>, authorised under that directive; or</del>  (ii) <del>article 1 of the <i>First Non-Life Directive</i>, authorised under that directive;</del>  (e) <del>an <i>undertaking</i> pursuing the activity of <i>reinsurance</i> within the meaning of article 2.1 (a) of the <i>Reinsurance Directive</i>, authorised under that directive.</del>
<i>non-directive friendly society</i>	(a) <del>a <i>friendly society</i> whose <i>insurance business</i> is restricted to the provision of benefits which vary according to the resources available and in which the contributions of the members are determined on a flat rate basis;</del>  (b) <del>a <i>friendly society</i> whose <i>long-term insurance business</i> is restricted to the provision of benefits for employed and self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity (whether or not the commitments arising from such operations are fully covered at all times</del>

by mathematical reserves);

- (c) ~~a friendly society which undertakes to provide benefits solely in the event of death where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;~~
- (d) ~~a friendly society (carrying on long-term insurance business):~~
  - (i) ~~whose additional contributions registered rules contain provisions for calling up from members or reducing their benefits or claiming assistance from other persons who have undertaken to provide it; and~~
  - (ii) ~~whose annual gross premium income (other than from contracts of reinsurance) has not exceeded 5 million Euro for each of the three preceding financial years;~~
- (e) ~~a friendly society (carrying on general insurance business):~~
  - (i) ~~whose registered rules contain provisions for calling up additional contributions from members or reducing their benefits;~~
  - (ii) ~~whose gross premium income (other than from contracts of reinsurance) for the preceding financial year did not exceed 5 million Euro; and~~
  - (iii) ~~whose members provided at least half of that gross premium income;~~
- (f) (i) ~~a friendly society whose liabilities in respect of general insurance contracts are fully reinsured with or guaranteed by other mutuals (including friendly societies); and~~
- (ii) ~~the mutuals providing the reinsurance or the guarantee are subject to the rules of the First Non-Life Directive;~~

and in each case whose *insurance business* is limited to that described in any of (a) to (f).

a friendly society that is not a Solvency II firm.

*non-directive insurer*

- (a) ~~an insurer which is a provident or mutual benefit institution whose insurance business is restricted to the provision of benefits which vary according to the resources available~~

- and in which the contributions are determined on a flat rate basis; or
- (b) ~~an insurer whose long term insurance business is restricted to the provision of benefits for employed and self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity (whether or not the commitments arising from such operations are fully covered at all times by mathematical reserves); or~~
  - (e) ~~an insurer which undertakes to provide benefits solely in the event of death where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind; or~~
  - (d) ~~a mutual (carrying on long term insurance business) whose:
 
    - (i) ~~articles of association contain provisions for calling up additional contributions from members or reducing their benefits or claiming assistance from other persons who have undertaken to provide it; and~~
    - (ii) ~~annual gross premium income (other than from contracts of reinsurance) has not exceeded 5 million Euro for each of the financial year in question and the two previous financial years; or~~~~
  - (e) ~~a mutual (carrying on general insurance business) whose:
 
    - (i) ~~articles of association contain provisions for calling up additional contributions from members or reducing their benefits;~~
    - (ii) ~~business does not cover liability risks, other than ancillary risks, or credit or suretyship risks;~~
    - (iii) ~~gross premium income (other than from contracts of reinsurance) for the financial year in question did not exceed 5 million Euro; and~~
    - (iv) ~~members provided at least half of that gross premium income; or~~~~
  - (f) ~~an insurer whose insurance business (other than reinsurance) is:~~

- (i) ~~restricted to the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence;~~
- (ii) ~~carried out exclusively on a local basis and consists only of benefits in kind; and~~
- (iii) ~~such that the gross premium income from the provision of assistance in the financial year in question did not exceed 200,000 Euro; or~~
- (g) (i) ~~a mutual whose liabilities in respect of general insurance contracts are fully reinsured with or guaranteed by other mutuals (including friendly societies); and~~
- (ii) ~~the mutuals providing the reinsurance or the guarantee are subject to the rules of the First Non-Life Directive.~~

an insurer which is not a Solvency II firm.

*non-directive mutual*

~~a mutual that falls into (d), (e) or (g) of the definition of a non-directive insurer that is not a Solvency II firm.~~

*Non-Life Directives*

~~the First Non-Life Directive, the Second Non-Life Directive and the Third Non-Life Directive. [deleted]~~

*outsourcing*

- (1) (except in SYSC 8, COBS 11.7, SYSC 3 and SYSC 13 to the extent applicable to a Solvency II firm, and the definition of relevant person) the use of a person to provide customised services to a firm other than:

...

- (2) (in SYSC 8, COBS 11.7, SYSC 3 and SYSC 13 to the extent applicable to a Solvency II firm, and the definition of relevant person) an arrangement of any form between a firm and a service provider performs a process, service or an activity which would otherwise be undertaken by the firm itself.

[Note: article 2(6) of the MiFID implementing Directive and article 13(28) of the Solvency II Directive]

*participating insurance undertaking*

~~an insurer which:~~

- (a) ~~has a subsidiary undertaking that is an insurance undertaking; or~~

	(b) holds a <del>participation in an insurance undertaking</del> ; or
	(c) is linked to an <del>insurance undertaking by a consolidation Article 12(1) relationship</del> . <del>[deleted]</del>
<i>participation</i>	(for the purposes of <i>GENPRU</i> (except <i>GENPRU</i> 3) and for the purposes of <i>BIPRU</i> (except <i>BIPRU</i> 12) and <del><i>INSPRU</i></del> as they apply on a consolidated basis):
	...
<i>permitted derivatives contract</i>	in relation to <i>permitted links</i> , a contract involving a <i>derivative</i> or <i>quasi-derivative</i> that:
	(a) <u>(for a <i>Solvency II firm</i>) satisfies <i>COBS</i> 21.3.13R to <i>COBS</i> 21.3.14G, as applied in relation to assets covering liabilities in respect of <i>linked long-term contracts of insurance</i>; and</u>
	(b) <u>(for an <i>insurer</i> which is not a <i>Solvency II firm</i>) satisfies <i>INSPRU</i> 3.2.5R to <i>INSPRU</i> 3.2.35AG with the exception of <i>INSPRU</i> 3.2.18R, as applied in relation to assets covering liabilities in respect of <i>linked long-term contracts of insurance</i>.</u>
<i>permitted scheme interests</i>	(a) <del>in respect of a firm's business with <i>institutional linked policyholders</i> only, any of the following:</del>
	(i) <del>a <i>qualified investor scheme</i> or its <i>EEA</i> equivalent;</del>
	(ii) <del>any <i>unregulated collective investment scheme</i> that invests only in <i>permitted links</i> and publishes its prices regularly;</del>
	(iii) <del>any of the interests set out in (b)(i) to (b)(iv);</del> <del>[deleted]</del>
	(b) in respect of a firm's business with <i>linked policyholders</i> , <del>other than those described in (a)</del> , any of the following:
	...
<i>permitted stock lending</i>	in relation to <i>permitted links</i> , a <i>stock lending</i> transaction (including a <i>repo</i> transaction) that:
	(a) <u>(for a <i>Solvency II firm</i>) satisfies <i>COBS</i> 21.3.11R to <i>COBS</i> 21.3.12R (inclusive); and</u>
	(b) <u>(for an <i>insurer</i> which is not a <i>Solvency II firm</i>) satisfies <i>INSPRU</i> 3.2.36AR to <i>INSPRU</i> 3.2.42G (inclusive).</u>
<i>policyholder</i>	(1) <u>(except for <i>contracts of insurance</i> where the <i>insurer</i> is a</u>

Solvency II firm) (as defined in article 3 of the Financial Services and Markets Act 2000 (Meaning of “Policy” and “Policyholder”) Order 2001 (SI 2001/2361)) the *person* who for the time being is the legal holder of the *policy*, including any *person* to whom, under the *policy*, a sum is due, a periodic payment is payable or any other benefit is to be provided or to whom such a sum, payment or benefit is contingently due, payable or to be provided; and

(2) (in respect of a contract of insurance where the insurer is a Solvency II firm), a policyholder, which includes a beneficiary.

*realistic basis life firm* a ~~firm to which GENPRU 2.1.18R applies (and which is therefore required to calculate a with profits insurance capital component in accordance with INSPRU 1.3).~~ [deleted]

*realistic current liabilities* ~~(in relation to a with profits fund) the realistic current liabilities of the with profits fund calculated in accordance with INSPRU 1.3.190R.~~ [deleted]

*realistic excess capital* ~~(in relation to a with profits fund) has the meaning set out in INSPRU 1.3.32R.~~ [deleted]

*realistic value of assets* ~~(in relation to a with profits fund) has the meaning set out in INSPRU 1.3.33R.~~ [deleted]

*realistic value of liabilities* ~~(in relation to a with profits fund) the sum of the with profits benefit reserve, the future policy related liabilities and the realistic current liabilities for the with profits fund.~~ [deleted]

*receivable* ~~(in relation to a member, a period and a premium) a premium due to the member in respect of contracts of insurance effected during the period, whether or not the premium is received during that period.~~ [deleted]

*regulated insurance entity* an insurance undertaking or reinsurance undertaking within the meaning of Article 4 of the ~~Consolidated Life Directive~~, Article 6 of the ~~First Non-Life Directive~~ or Article 1(b) of the ~~Insurance Groups Directive~~ article 13(1) and (4) of the Solvency II Directive.

*regulatory basis only life firm* a firm carrying on long-term insurance business ~~which is not a realistic basis life firm.~~

*Reinsurance Directive* the Directive of 16 November 2005 of the European Parliament and of the Council (No 2005/68/EC) on reinsurance and amending the ~~First Non-Life Directive~~ and the ~~Third Non-Life Directive~~ as well as the ~~Insurance Groups Directive~~ and the ~~Consolidated Life~~

- Directive: ~~[deleted]~~
- Second Life Directive* ~~the Council Directive of 8 November 1990 on the coordination of laws, etc and laying down provisions relating to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (No 90/619/EEC). [deleted]~~
- sectoral rules* (in relation to a *financial sector*) rules and requirements relating to the prudential supervision of *regulated entities* applicable to *regulated entities* in that *financial sector* as follows:
- ...
- (f) (in relation to any *financial sector*) those requirements include both ones applying on a solo basis and ones applying on a consolidated basis; and
- (g) ~~(in relation to the *insurance sector*) references in this definition to consolidated supervision are to supplementary supervision, similar expressions being interpreted accordingly; and [deleted]~~
- ...
- Single Market Directives* (a) the *Banking Consolidation Directive*;
- (b) the *Solvency II Directive* ~~Insurance Directives (within the meaning of paragraph 1 of Schedule 3 to the Act);~~
- (ba) ~~the *Reinsurance Directive*; [deleted]~~
- (c) *MiFID*;
- (d) the *Insurance Mediation Directive*; and
- (e) the *UCITS Directive*.
- social insurance* (in relation to a *class of contract of insurance*) the *class of contract of insurance*, specified in paragraph IX of Part II of Schedule 1 to the *Regulated Activities Order* (Contracts of long-term insurance), of a kind referred to in article 2(3)(c) of the ~~*Consolidated Life Directive*~~ *Solvency II Directive* ("operations relating to the length of human life which are prescribed by or provided for in *social insurance* legislation, ~~when in so far as they are effected or managed by life insurance undertakings at their own risk by assurance undertakings in accordance with the laws of an EEA State~~").
- Society GICR* ~~the general insurance capital requirement calculated by the Society as if it were an insurer under GENPRU 2.3.13R. [deleted]~~
- solo capital resources* (1) (for the purposes of *GENPRU 3* ~~and *INSPRU 6*~~) capital

	resources <u>or eligible own funds</u> that are or would be eligible <del>as capital</del> under the <i>sectoral rules</i> that apply for the purpose of calculating its <i>solo capital resources requirement</i> . Paragraph 6.8 of <i>GENPRU 3 Annex 1R</i> (Solo capital resources requirement: the insurance sector) applies for the purpose of this definition in the same way as it does for the definition of <i>solo capital resources requirement</i> .
	...
<i>solo capital resources requirement</i>	... (2) (for the purposes of <del>INSPRU 6</del> <u>GENPRU 1</u> ) a capital resources requirement calculated on a solo basis as defined in paragraph 6.2 to 6.7 of <i>GENPRU 3 Ann 1R</i> as it would apply if references to <i>financial conglomerate</i> in those paragraphs were replaced with references to <i>insurance group</i> .
	...
<i>Solvency 2-II Directive</i>	the Directive 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 ( <u>Solvency II</u> ) (No 2009/138/EC).
<i>State of the commitment</i>	... in this definition, "commitment" means (in accordance with article 2 of the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (SI 2001/3625)) any contract of insurance of a kind referred to in <del>article 2 of the Consolidated Life Directive</del> <u>article 2(3) of the Solvency II Directive</u> .
<i>syndicate actuary</i>	<del>an actuary appointed to a syndicate as required by SUP 4.6.9R(1).</del> [deleted]
<i>syndicate ICA</i>	<del>the capital assessment performed by a managing agent under the overall Pillar 2 rule, GENPRU 1.5.1R(1), INSPRU 7.1 and INSPRU 1.1.57R(1) in respect of each syndicate managed by it.</del> [deleted]
<i>technical provision</i>	(a) <u>(for a firm which is not a Solvency II firm)</u> a technical provision established: <ul style="list-style-type: none"> <li>(a) for <i>general insurance business</i>, in accordance with (i) <i>INSPRU 1.1.12R</i>; and</li> <li>(b) for <i>long-term insurance business</i>, in accordance (ii) with <i>INSPRU 1.1.16R</i>.</li> </ul>

	(b) <u>(for a <i>Solvency II firm</i>) means the technical provisions established in accordance with PRA Rulebook Solvency II Firms: Technical Provisions rule 2.1.</u>
<i>Third Life Directive</i>	<del>the Council Directive of 10 November 1992 on the coordination of laws, etc, and amending Directives 79/267/EEC and 90/619/EEC (No 92/96/EEC). [deleted]</del>
<i>UK-deposit insurer</i>	a <i>non-EEA insurer</i> that has made a deposit in the <i>United Kingdom</i> under article 23 of the <i>First Non-Life Directive</i> 162(2)(e) of the <i>Solvency II Directive</i> in accordance with article 26 167 of that Directive <del>or under article 51 of the <i>Consolidated Life Directive</i> in accordance with article 56 of that Directive.</del>
<i>ultimate insurance parent undertaking</i>	<del>an <i>insurance parent undertaking</i> that is not itself the <i>subsidiary undertaking</i> of another <i>insurance parent undertaking</i>. [deleted]</del>
<i>with-profits actuary function</i>	... <u>(in the FCA Handbook) PRA controlled function CF12A in the table of PRA controlled functions, described more fully in SUP 4.3.16AR and SUP 10B.8.2R or, for a <i>Solvency II firm</i>, the function described in rule 8 of PRA Rulebook: Solvency II firms: Insurance – Senior Insurance Management Functions.</u>
<i>with-profits assets</i>	<del>assets that match liabilities in respect of <i>with-profits insurance business</i> or represent a <i>with-profits surplus assets</i> in a <i>with-profits fund</i>, except those meeting liabilities in respect of <i>non-profit insurance business</i>.</del>
<i>with-profits fund</i>	(1) <u>for a <i>firm</i> that is not a <i>Solvency II firm</i> (except in <i>INSPRU</i>):</u> ... (2) <u>for a <i>Solvency II firm</i> means a “with profits fund” as defined in the PRA Rulebook: Glossary.</u> (3) for the purposes of <i>INSPRU</i> , a <i>long-term insurance fund</i> in which <i>policyholders</i> are eligible to participate in any <i>established surplus</i> .
<i>with-profits insurance business</i>	the business of <i>effecting contracts of insurance</i> or <del>carrying out <i>with-profits insurance contracts</i> carrying out <i>contracts of insurance</i> that are <i>with-profits policies</i>.</del>
<i>with-profits insurance capital component</i>	<del>the capital component for <i>with-profits insurance business</i> of a <i>realistic basis life firm</i> calculated in accordance with <i>INSPRU</i> 4.3. [deleted]</del>
<i>with-profits policy</i>	<del>a contract falling within the class of <i>long-term insurance business</i> which is eligible to participate in any part of any</del>

*established surplus* a *long-term insurance contract* which provides benefits through eligibility to participate in discretionary distributions based on profits arising from the *firm's* business or from a particular part of the *firm's* business.

## Annex B

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

#### 1 Application and purpose

##### 1.1A Application

- 1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Insurer</i>	Chapters 2, 3, <del>4</del> <u>12</u> to 18, 21
...	

- 1.1A.2 G ...

- (2) ... Such provisions are applied by each regulator to the extent of its powers and regulatory responsibilities. This general principle also applies where the PRA have made rules in the PRA Rulebook for Solvency II firms which overlap with those in SYSC.
- (3) For Solvency II firms, the FCA considers that the requirements and guidance in Chapters 2, 3, 12 to 18 and 21 of SYSC are not inconsistent with either:
- (a) the parts of the PRA Rulebook implementing the governance provisions in the Solvency II Directive (articles 40 to 49) or
- (b) the Solvency II Regulation (EU) 2015/35 of 10 October 2014 (articles 258 to 275).

In most cases, there is no direct overlap with those provisions because the SYSC requirements are directed at FCA conduct requirements not expressly covered by or under the Solvency II Directive. Where there is a direct overlap with SYSC rules and guidance, the FCA will take the Solvency II Directive derived requirements into account and will interpret the SYSC rules and guidance in a way that avoids inconsistency.

## 1 Annex Detailed application of SYSC

1

<b>Part 1</b>	<b>Application of SYSC 2 and SYSC 3 to an insurer, a managing agent and the Society</b>			
...				
1.4	R	SYSC 3.2.6AR to SYSC 3.2.6JG do not apply:		
		(1)	...	
		(2)	in relation to the following <i>regulated activities</i> :	
			...	
		(c)	<i>long-term insurance business</i> which is outside the <del><i>Consolidated Life Directive</i></del> <i>Solvency II Directive</i> (unless it is otherwise one of the <i>regulated activities</i> specified in this rule);	
			...	
2.11	R	The <i>common platform requirements on financial crime</i> apply as set out in SYSC 1 Annex 1.2.8R, except that they do not apply:		
		(1)	...	
		(2)	in relation to the following <i>regulated activities</i> :	
			...	
		(c)	<i>long-term insurance business</i> which is outside the <del><i>Consolidated Life Directive</i></del> <i>Solvency II Directive</i> (unless it is otherwise one of the <i>regulated activities</i> specified in this rule);	
...				

...

## 12 Group risk systems and controls requirements

### 12.1 Application

...

- 12.1.2 R Except as set out in SYSC 12.1.4R, this section applies with respect to different types of *group* as follows:
- (1) SYSC 12.1.8R and SYSC 12.1.10R apply with respect to all *groups*, including UK-regulated *EEA financial conglomerates*, other *financial conglomerates* and *groups* dealt with in SYSC 12.1.13R to ~~SYSC 12.1.16R~~ SYSC 12.1.15R;
- ...
- (3) the additional requirements set out in SYSC 12.1.13R to SYSC ~~12.1.16R~~ SYSC 12.1.15R only apply with respect to *groups* of the kind dealt with by whichever of those *rules* apply.

...

#### Purpose

...

- 12.1.7 G This section implements Articles 73(3) (Supervision on a consolidated basis of credit institutions) and 138 (Intra-group transactions with mixed activity holding companies) of the *Banking Consolidation Directive*, and Article 9 of the *Financial Groups Directive* (Internal control mechanisms and risk management processes) ~~and Article 8 of the *Insurance Groups Directive* (Intra-group transactions)~~.

...

- 12.1.9 G ... ~~Risk~~ Unless the *firm* is a *Solvency II firm*, risk management processes must include the stress testing and scenario analysis required by *GENPRU* 1.2.42R and *GENPRU* 1.2.49R(1)(b).

...

- 12.1.10 G SYSC 1.1A.2G sets out the general principle that the *FCA* will apply  
A provisions to the extent of its powers and regulatory responsibilities. SYSC  
12.1.10R will, therefore, have limited application to a *Solvency II firm*.

#### Financial conglomerates

- 12.1.11 R Where this section applies with respect to a *financial conglomerate*, the risk management processes referred to in SYSC 12.1.8R(2) or, for a *Solvency II firm*, the risk management system referred to in the PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3, must include:
- ...
- 12.1.12 R Where this section applies with respect to a *financial conglomerate*, the internal control mechanisms referred to in SYSC 12.1.8R(2) or, for a *Solvency II firm*, the internal control system referred to in the PRA Rulebook: Solvency II firms: Conditions Governing Business, rule 3, must

include:

...

## Annex C

## Amendments to the Threshold Conditions (COND)

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

## 2.4 Appropriate resources

...

2.4.2 G ...

- (3) High level systems and control requirements are in *SYSC*. The *FCA* will consider whether the *firm* is ready, willing and organised to comply with these and other applicable systems and controls requirements when assessing if it has appropriate non-financial resources for the purposes of this *threshold conditions* set out in paragraphs 2D and 3C to Schedule 6 of the Act. For a *Solvency II firm*, the PRA Rulebook: Solvency II firms: Conditions Governing Business and *Solvency II Regulation* (EU) 2015/35 of 10 October 2014 also contain systems and control requirements and the *FCA* will take these into account.

...

2.4.4 G ...

- (2) Relevant matters to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* may include but are not limited to:

...

- (d) whether the *firm* has taken reasonable steps to identify and measure any risks of regulatory concern that it may encounter in conducting its business (see *COND 2.4.6G*) and has installed appropriate systems and controls and appointed appropriate human resources to measure them prudently at all times. For a *Solvency II firm*, the PRA Rulebook: Solvency II firms: Conditions Governing Business and *Solvency II Regulation* (EU) 2015/35 of 10 October 2014 also contain systems and control requirements on these matters and the *FCA* will take these into account; and

...

## Annex D

### Amendments to the Fit and Proper test for Approved Persons (FIT)

In this Annex, underlining indicates new text.

#### 1.2 Introduction

...

1.2.4A G ...

1.2.4B G Where the application relates to a function within a Solvency II firm and is for an FCA controlled function which is also a Solvency II Directive 'key function' as defined in the PRA Rulebook: Glossary, then the FCA will also have regard to the assessment made by the firm as required in article 273 of the Solvency II Regulation (EU) 2015/35 of 10 October 2014; Rules 2.1 and 2.2 of the PRA Rulebook: Solvency II Firms: Insurance - Fitness and Propriety, and other factors, as set out in EIOPA Guidelines on system of governance dated 28 January 2015 (see Guideline 16).

## Annex E

### Amendments to the General Prudential sourcebook for Banks, Building Societies, Insurers and Investment Firms (GENPRU)

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

#### 1 Application

##### 1.1 Application

...

1.1.2 G Broadly speaking however, *GENPRU* applies (except as provided in *GENPRU* 1.1.2AG) to:

(1) an *insurer* that is not a *Solvency II* firm;

...

...

##### 1.2 Adequacy of financial resources

###### Application

1.2.1 R This section applies to:

...

(2) an *insurer*, unless it is:

...

(e) an *incoming Treaty firm*; or

(f) a *Solvency II* firm.

...

1.2.1A R This section also applies to an *insurer*, unless it is:

...

(5) an *incoming Treaty firm*; or

(6) a *Solvency II* firm.

...

- 1.2.48 R The requirements of the *ICAAP rules* as they apply on a consolidated basis must be carried out on the basis of the consolidated position of:
- (1) ~~(if *GENPRU 1.2.45R* applies) that *insurance group*; [deleted]~~
- ...
- 1.2.49 R (1) In accordance with the general principles in *GENPRU 1.2.48R* and *BIPRU 8* (Group risk - consolidation), for the purpose of the *ICAAP rules* as they apply on a consolidated basis:
- ...
- (e) references to the *CRR* are to the consolidated capital requirements applicable to the relevant group under *BIPRU 8* (Group risk - consolidation) ~~or, as the case may be, *INSPRU 6* (Group risk: Insurance groups);~~
- ...
- (2) For the purpose of this *rule* the relevant group is the group referred to in *GENPRU 1.2.48R* and the members of that group are those *undertakings* that are included in the scope of consolidation with respect to the ~~*insurance group*, *UK consolidation group*~~ or, as the case may be, *non-EEA sub-group* in question.
- ...
- 1.2.55 G The purpose of *GENPRU 1.2.51R – GENPRU 1.2.53R* is to enable the *appropriate regulator* to assess the extent, if any, to which a *firm's* assessment, calculated on a consolidated basis, is lower than it would be if each separate legal entity were to assess the amount of capital it would require to mitigate its risks (to the same level of confidence) were it not part of a group subject to consolidated supervision under *BIPRU 8* (Group risk – consolidation) ~~or *INSPRU 6.1* (Group risk: Insurance groups).~~ ...
- ...
- 1.2.73C G ... Also, an *insurer* may use methods that are more approximate than used for its *ICA* ~~(for example, in projecting the *with profits insurance capital component* for *realistic basis life firms* and the *capital resources* needed to *meet the overall financial adequacy rule*);~~ and
- ...
- Group risk (BIPRU firm only)
- ...
- 1.2.88 G A *firm* should include in the written record referred to in *GENPRU 1.2.60R* a description of the broad business strategy of ~~the *insurance group*~~, the *UK consolidation group* or the *non-EEA sub-group* of which it is a member, the

group's view of its principal risks and its approach to measuring, managing and controlling the risks. This description should include the role of stress testing, scenario analysis and contingency planning in managing risk at the solo and consolidated level.

- 1.2.89 G A *firm* should satisfy itself that the systems (including IT) of ~~the insurance group~~, the *UK consolidation group* or the *non-EEA sub-group* of which it is a member are sufficiently sound to support the effective management and, where applicable, the quantification of the risks that could affect ~~the insurance group~~, the *UK consolidation group* or the *non-EEA sub-group*, as the case may be.

...

### 1.3 Valuation

#### Application

- 1.3.1 R (1) This section of the *Handbook* applies to an *insurer*, unless it is:

...

- (b) an *incoming EEA firm*; ~~or~~
- (c) an *incoming Treaty firm*; or
- (d) a *Solvency II firm*.

...

...

- 1.3.3 G ...
- (2) ~~In the case of an *insurer*, GENPRU 1.3.4R implements the requirements of Articles 23.3(viii) and 24.2(iv) of the *Consolidated Life Directive*. [deleted]~~

...

## 2 Capital

### 2.1 Calculation of capital resources requirements

#### Application

- 2.1.1 R This section applies to:

...

(2) an *insurer*, unless it is:

...

(e) an *incoming Treaty firm*; or

(f) a *Solvency II firm*.

...

## 2.2 Capital resources

### Application

2.2.1 R This section applies to:

...

(2) an *insurer* unless it is:

...

(e) an *incoming Treaty firm*; or

(f) a *Solvency II firm*.

...

### Notification of issuance of capital instruments

...

2.2.61H G Details of the notification to be provided by a *BIPRU firm* in relation to *capital instruments* issued by another *undertaking* in its *group* for inclusion in its *capital resources* or the *consolidated capital resources* of its *UK consolidation group* or *non-EEA sub-group* are set out in *BIPRU* 8.6.1AR to *BIPRU* 8.6.1FR. ~~Details of the notification to be provided by an *insurer* in relation to *capital instruments* issued by another *undertaking* in its *group* for inclusion in its *group capital resources* are set out in *INSPRU* 6.1.43AR to *INSPRU* 6.1.43FR.~~

...

### Deductions from tiers one and two: Material holdings (BIPRU firm only)

...

2.2.213 R An item falls into this provision for the purpose of *GENPRU* 2.2.212R if it

is:

...

- (2) ~~subordinated debt or another item of capital that falls into Article 16(3) of the *First Non-Life Directive* or, as applicable, Article 27(3) of the *Consolidated Life Directive* is~~ an item of “basic own funds” as defined in the PRA Rulebook: Glossary.

...

Other requirements: insurers carrying on with-profits business (Insurer only)

2.2.270 R *GENPRU 2.2.270R to GENPRU 2.2.275G* only apply to an *insurer* falling within *GENPRU 2.2.*

...

### 3 Cross sector groups

...

Risk concentration and intra-group transactions: Table of applicable sectoral rules

3.1.36 R Table: application of sectoral rules  
This table belongs to *GENPRU 3.1.35R*

The most important financial sector	Applicable sectoral rules	
	Risk concentration	Intra-group transactions
...		
<i>Insurance sector</i>	<del>None</del> <u><i>PRA Rulebook</i></u>	<u><i>Rule 9.39 of IPRU(INS) and, for Solvency II firms, the PRA Rulebook: Solvency II firms.</i></u>
...		

...

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

...

7 Table

---

A mixed financial holding company	4.4	<p>A <i>mixed financial holding company</i> must be treated in the same way as:</p> <p>...</p> <p>(2) an <i>insurance holding company</i> (if the <i>rules</i> in <u>INSPRU 6.1 PRA Rulebook: Solvency II Firms: Group Supervision</u> are applied).</p>
-----------------------------------	-----	--

8 Table: PART 5: Principles applicable to all methods

...		
Application of sectoral rules: General	5.4	<p>The following adjustments apply to the <i>applicable sectoral rules</i> as they are applied by the <i>rules</i> in this annex.</p> <p>...</p> <p>(2) If any of those <i>rules</i> would otherwise not apply to a situation in which they are applied by <i>GENPRU 3 Annex 1R</i>, those <i>rules</i> nevertheless still apply (and in particular, any of those <i>rules</i> that would otherwise have the effect of disapplying consolidated supervision (<del>or, in the case of the insurance sector, supplementary supervision</del>) do not apply).</p> <p>...</p>
...		
No capital ties	5.7	<p>...</p> <p>(4) If:</p> <p>...</p> <p>(d) <i>GENPRU 3.1.29R</i> even if the <i>applicable sectoral rules</i> do not deal with how <i>undertakings</i> not linked by capital ties are to be dealt with for the purposes of consolidated supervision (<del>or, in the case of the insurance sector, supplementary supervision</del>).</p> <p>...</p>
...		

9 Table: PART 6: Definitions used in this Annex

...		
Solo capital resources requirement:	6.4	<p>...</p> <p>(2) <del>Subject to (3), the</del> <u>The solo capital resources</u></p>

Insurance sector		<p><i>requirement of a Solvency II firm <del>an undertaking</del> in the insurance sector is the capital resources requirement identified (for a Solvency II firm) in <del>INSPRU 6.1.34R(1) to (8)</del> the PRA Rulebook: <u>Solvency II firms: Solvency Capital Requirement – General Provisions</u> as applying to that undertaking.</i></p> <p><del>(3) INSPRU 6.1.34R(1)(b) does not apply for the purposes of this annex.</del></p>
...		

...

11 Table: Paragraph 6.10: Application of sectoral consolidation rules

Financial sector	Sectoral rules
...	
<i>Insurance sector</i>	<i><u>INSPRU 6.1. PRA Rulebook: Solvency II Firms: Group Supervision</u></i>
...	

...

### 3 Annex 3G      Guidance Notes for Classification of Groups

...

#### *General guidance*

...

Please note the following:

...

(d) You will need to assign non-regulated financial entities to one of these sectors:

- **banking/investment** activities are listed in - Annex 1 to the Capital Requirements Directive 2013/36/EU.
- **insurance** activities are listed in ~~IPRU Insurers Annex 11.1 and 11.2 p 163-168.~~ schedule 1 to, and contracts of insurance defined in article 3(1) of, the Regulated Activities Order.

...

...

## Annex F

### 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.

#### 5.5 Other funded credit risk mitigation

...

Life insurance policies: Minimum requirements

- 5.5.5 R For life insurance policies pledged to a *lending firm* to be recognised the following conditions must be met:
- (1) the party providing the life insurance must be subject to ~~Directive 2002/83/EC and Directive 2001/17/EC of the European Parliament and of the Council~~ the *Solvency II Directive*, or is subject to supervision by a competent authority of a third country which applies supervisory and regulatory arrangements at least equivalent to those applied in the Community;

...

## Annex G

### Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

## 1 Capital resources requirements and technical provisions for insurance business

### 1.1 Application

1.1.1 R *INSPRU* 1.1 applies to an *insurer* unless it is:

...

(3) an *incoming Treaty firm*; or

(4) a *Solvency II firm*.

...

1.1.6 G This section may apply in cases where a *firm* has its head office in another *EEA State* but is neither an *incoming EEA firm* nor an *incoming Treaty firm*; ~~this could arise in the case of a *non-directive mutual*.~~

...

1.1.28 R ~~In addition to complying with *INSPRU* 1.1.27 R, a *realistic basis life firm* must also ensure that the *realistic value of assets* for each of its *with profits funds* is at least equal to the *realistic value of liabilities* of that fund.~~  
[deleted]

1.1.29 G *INSPRU* 1.1.27 R and *INSPRU* 1.1.28 R support the funding of *policyholder* benefits by requiring *firms* to maintain *admissible assets* in *with-profits funds* to cover the *technical provisions* and other *long-term insurance liabilities* relating to all the business in that fund, ~~and, in the case of a *realistic basis life firm*, realistic assets to cover the realistic liabilities of the *with profits insurance contracts* written in the fund.~~

### 1.2 Mathematical reserves

#### Application

1.2.1 R *INSPRU* 1.2 applies to a *long-term insurer* unless it is:

...

- (3) an *incoming Treaty firm*; or
- (4) a *Solvency II firm*.

...

- 1.2.31 G ...The calculations required for *accumulating with-profits policies* are set out in *INSPRU* 1.2.71R(1). ~~For *realistic basis life firms*, except for *accumulating with-profits policies*, the *mathematical reserves* may be calculated without taking into account discretionary benefits, including both *annual bonuses* and *final bonuses*. For such *firms* full allowance for discretionary benefits is made in the calculation of the *realistic value of liabilities* (see *INSPRU* 1.3.105R(5)).~~

...

Application of *INSPRU* 1.2 to Lloyd's

- 1.2.92 R ~~*INSPRU* 1.2 applies to *managing agents* in accordance with *INSPRU* 8.1.4R. [deleted]~~

...

*INSPRU* 1.3 (With-profits insurance capital component) is deleted in its entirety. The deleted text is not shown.

Amend the following as shown.

## 1.5 Internal-contagion risk

Application

...

- 1.5.2A R *INSPRU* 1.5 does not apply, to the extent stated, to any *insurer* in (1) to (3):
- (1) none of the provisions apply to:
    - (a) *non-directive friendly societies*; or
    - (b) *Solvency II firms*;
  - (2) none of the provisions, apart from *INSPRU* 1.5.33R (payment of financial penalties) apply to *firms* which qualify for authorisation under Schedule 3 ~~or~~ 4 of the *Act*;

...

...

Permissions not to include both types of insurance

- 1.5.17 G ...
- (3) It is the policy of the *appropriate regulator*, ~~in compliance with EU directives on insurance~~, not to grant or vary *permission* if that would allow a newly established *firm*, or an existing *firm* engaging solely in *general insurance business* or solely in *long-term insurance business*, to engage in both *general insurance business* and *long-term insurance business*. This does not apply where a *firm's permission* to carry on *long-term insurance business* is or is to be restricted to *reinsurance*. It also does not apply where a *firm's permission* to carry on *general insurance business* is or is to be restricted to *effecting or carrying out accident or sickness contracts of insurance* (see ~~article 18(2) of the Consolidated Life Directive~~).
- (4) Where a *firm's permission* extends to *effecting or carrying out life and annuity contracts of insurance* this will normally include *permission* to *effect or carry out accident contracts of insurance* or *sickness contracts of insurance* on a supplementary basis (see ~~article 2(1)(e) of the Consolidated Life Directive~~).
- ...
- 1.5.29 G ... the business in that fund. ~~INSPRU 1.1.28R requires a realistic basis life firm to ensure that the realistic value of assets for each of its with profits funds is at least equal to the realistic value of liabilities of that fund.~~
- 1.5.30 R (1) A *firm* must apply or use a *long-term insurance asset* only for the purposes of its *long-term insurance business*.
- (2) For the purposes of (1), applying or using an asset includes coming under any obligation (even if only contingently) to apply or use that asset.
- 1.5.31 R A *firm* must not agree to, or allow, any mortgage or charge on its *long-term insurance assets* other than in respect of, and for the purposes of, a *long-term insurance liability*.
- ...
- Payment of financial penalties
- ...
- 1.5.34 G ~~INSPRU 1.5.2R states that this provision applies to all firms, except mutuals, and includes firms qualifying for authorisation under Schedule 3 or 4 to the Act. [deleted]~~
- ...
- Application of INSPRU 1.5 to Lloyd's

- 1.5.58 R ~~INSPRU 1.5 applies to *managing agents* and to the *Society* in accordance with:~~
- ~~(1) for *managing agents*, *INSPRU 8.1.4R*; and~~
  - ~~(2) for the *Society*, *INSPRU 8.1.2R*. [deleted]~~
- 1.5.59 R The *Society* and *managing agents* must take all reasonable steps to ensure that:
- ~~(1) a *corporate member* does not carry on any commercial business other than *insurance business* and activities arising directly from that business; and~~
  - ~~(2) *individual members* do not, in their capacity as *underwriting members*, carry on any commercial business other than *insurance business* and activities arising directly from that business. [deleted]~~

...

### 3 Market risk

#### 3.1 Market risk in insurance

- 3.1.1 R *INSPRU 3.1* applies to an *insurer*, unless it is:

...

(3) an *incoming Treaty firm*; or

(4) a *Solvency II firm*.

...

Purpose

...

- 3.1.7 G *INSPRU 3.1* addresses the impact of *market risk* on *insurance business* in the ways set out below:

...

(6) ~~The *Reinsurance Directive* *INSPRU 3.1.61AR* applies to *pure reinsurers* "prudent person" investment principles in relation to the investment of their assets. *INSPRU 3.1.61AR* sets out these principles.~~

...

## Application of INSPRU 3.1 to Lloyd's

3.1.62 R ~~INSPRU 3.1 applies to *managing agents* and to the *Society* in accordance with:~~

(1) ~~for *managing agents* INSPRU 8.1.4R, subject to INSPRU 3.1.65R below; and~~

(2) ~~for the *Society*, INSPRU 8.1.2R: [deleted]~~

...

### 3.2 Derivatives in insurance

## Application

3.2.1 R This section applies to an *insurer*, unless it is:

(1) a *non-directive friendly society*; or

(2) an *incoming EEA firm*; or

(3) an *incoming Treaty firm*; or

(4) a *pure reinsurer*; or

(5) a *Solvency II firm*.

...

## 7 Individual Capital Assessment

### 7.1 Application

...

7.1.13 R ... in accordance with INSPRU 1.1.72CR. ~~For *realistic basis life firms* ECR forms part of the *CRR* and is calculated in accordance with GENPRU 2.1.38R.~~

...

Appropriate regulator assessment process - all firms

...

7.1.99 G ... ~~The *appropriate regulator* will not grant a *waiver* that would cause a breach of the minimum capital requirements under the *Insurance Directives*~~

~~or Reinsurance Directive.~~

...

## 8 General provisions applying INSPRU and GENPRU to Lloyd's

### 8.1 Application

...

8.1.2 R ~~If a provision in INSPRU or GENPRU applies to the Society "in accordance with" this rule, the Society must:~~

- ~~(1) manage each member's funds at Lloyd's;~~
- ~~(2) manage its central assets; and~~
- ~~(3) supervise the insurance business carried on by each member at Lloyd's;~~

~~so as to achieve in relation to those assets and that insurance business the same effect as the relevant INSPRU or GENPRU provision would have (that is, conforming with the requirements of any rule and taking appropriate account of any applicable guidance,) when applied to a firm or to the insurance business of a firm. [deleted]~~

8.1.3 G ~~The Society is subject to INSPRU and GENPRU rules in respect of the insurance business of each Lloyd's member. These include rules in respect of:~~

- ~~(1) the calculation of the capital resources requirements for each member;~~
- ~~(2) the financial resources it manages on behalf of members; and~~
- ~~(3) the Society's own financial resources. [deleted]~~

8.1.4 R ~~If a provision in INSPRU or GENPRU applies to managing agents "in accordance with" this rule, the managing agent must, in relation to each syndicate managed by it and for each syndicate year, manage:~~

- ~~(1) the syndicate assets; and~~
- ~~(2) the insurance business carried on by the members of the syndicate through that syndicate;~~

~~so as to achieve in relation to those assets and that insurance business the same effect as the relevant INSPRU or GENPRU provision would have (that is, conforming with the requirements of any rule and taking appropriate account of any applicable guidance) when applied to a firm or to the~~

*insurance business of a firm.* [deleted]

- 8.1.5 G *Syndicate membership may change from year to year or it may remain constant. Managing agents are required to apply INSPRU and GENPRU to the insurance business carried on through each syndicate for each syndicate year. This should ensure that INSPRU and GENPRU are applied to Lloyd's in a way that is consistent with the provision of capital to support the insurance business underwritten.* [deleted]

...

## 8.2 Special provisions for Lloyd's

...

### Obligations under INSPRU and GENPRU

- 8.2.2 R *The Society must ensure that all participants in the Lloyd's market are made aware of their obligations under INSPRU and GENPRU.* [deleted]

...

- 8.2.12 R *The arrangements in INSPRU 8.2.11R must enable the Society to identify any significant overstatement of financial resources resulting from any transaction falling within INSPRU 8.2.11R(2) to INSPRU 8.2.11R(4), including as a result of:*

- (1) *any differences in the amounts recorded as due or payable by each party to any such transaction; or*
- (2) *any actual or likely disputes between the parties to any such transaction.* [deleted]

- 8.2.13 R *If the Society identifies a significant overstatement of the kind referred to in INSPRU 8.2.12R, it must ensure that an appropriate adjustment is made, including if appropriate by a deduction from or reduction in the value attributed to:*

- (1) *the capital resources of any member concerned; or*
- (2) *the Society's capital resources.* [deleted]

...

### Provision of information by managing agents

- 8.2.17 R *A managing agent must, as soon as possible, give the Society any information the managing agent has concerning material risks to funds at Lloyd's or central assets.* [deleted]

- 8.2.18 R *A managing agent need not comply with INSPRU 8.2.17R if the managing agent knows that the Society already has the relevant information.* [deleted]

Amendments to byelaws, trust deeds and standard form letters of credit and guarantees

...

- 8.2.24 R The *Society* must, as soon as it is practical to do so, notify the ~~appropriate regulator~~ FCA of its intention to make any amendment which may alter the meaning or effect of any *byelaw*, including:

...

- 8.2.25 R The *Society* must provide the ~~appropriate regulator~~ FCA with full details of:

...

...

- 8.2.28 R The information provided to the ~~appropriate regulator~~ FCA by the *Society* under *INSPRU* 8.2.25R must include:

...

- 8.2.29 G The ~~appropriate regulator~~ FCA would normally expect to receive the information required under *INSPRU* 8.2.25R and *INSPRU* 8.2.28R not less than three months in advance of the proposed change.

...

## 8.4 Capacity Transfer Market

...

- 8.4.8 R (1) The *Society* must give the *FCA* a report as at the end of each calendar quarter in which any capacity is transferred.
- (2) The report referred to in (1) must reach the *FCA* within one month of the end of the relevant calendar quarter and must include information on:
- (a) the total capacity in *syndicates* transferred during the quarter, analysed by *syndicate* and method of transfer;
- (b) the number, and nature, of all investigations by the *Society* into conduct in the *capacity transfer market* undertaken or continued during the quarter; and
- (c) the number, and nature, of all complaints received during the quarter about the operation of the *capacity transfer market*.

...

**Transitional provisions**

Application				
1.1	R	<i>INSPRU</i> TP 1 applies to an insurer unless it is:		
		...		
		(3)	an <i>incoming Treaty firm</i> ; <u>or</u>	
		(4)	a <i>Solvency II firm</i> .	
...				

PRU waivers				
Application				
3.1	R	<i>INSPRU</i> TP 3 applies to an <i>insurer</i> unless it is		
		...		
		(3)	an <i>incoming Treaty firm</i> ; <u>or</u>	
		(4)	a <i>Solvency II firm</i> .	
...				

...

**Sch 1 Record keeping requirements**

...

Handbook reference	Subject of Record	Contents of Record	When must record be made	Retention period
...				
<i>INSPRU</i> 1.3.17R, <i>INSPRU</i> 1.3.19R	Calculation of <i>with-profits insurance capital component</i>	(1) The methods and assumptions used in making any calculation required for the purposes of <i>INSPRU</i> 1.3 (and any subsequent	Not specified	An appropriate period

		<p>changes) and the reasons for their use</p> <p>(2) Any change in practice (in particular changes in those items which will or may be significant in relation to the eventual <i>claim</i> values) and the nature of, reasons for, and effect of, any change in approach with respect to those methods and assumptions</p>		
...				

...

**Sch 6 Rules that can be waived**

G The rules in *INSPRU* can be waived by the *appropriate regulator* under sections 138A and 138B of the *Act* (Modification or waiver of rules), except for *INSPRU* 9.1.1R (Actions for damages). However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *appropriate regulator* to grant a *waiver* that would be incompatible with the *United Kingdom's* responsibilities under those directives. It therefore follows that if a *rule* in *INSPRU* contains provisions which derive partly from a directive, and partly not, the *appropriate regulator* will be able to consider a *waiver* of the latter requirements only, unless the directive provisions are optional rather than mandatory.

## Annex H

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

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

#### **GUIDANCE: THE PURPOSE OF THE PRUDENTIAL RULES FOR FRIENDLY SOCIETIES AND AN OVERALL DESCRIPTION**

...

7 Chapter 3 focuses on systems and controls. *Friendly societies* should also refer to the provisions on senior management arrangements, systems and controls in the High Level Standards part of the Handbook (SYSC) and to Annex 3 of *IPRU(FSOC)*. *Directive friendly societies* should also refer to the PRA Rulebook: Solvency II firms: Conditions Governing Business and the *Solvency II Regulation of (EU) 2015/35 of 10 October 2014 which contain systems and control requirements, and the FCA will take these into account.*

...

#### **Chapter 1: Application**

##### **Application**

...

1.1A The rules in Chapters 1, 2 (with the exception of rule 2.3(1)(a) in relation to *registered branches*), 3 ~~(with the exception of rule 3.1(7))~~, rule 4.20, rule 5.1A, Chapters 7 and 8 also apply to a *directive friendly society* which has permission under the Act to *effect or carry out contracts of insurance*. A *directive friendly society* must also comply with any requirement imposed on it by or under the Act, the 1992 Act or the 1974 Act.

...

#### **Chapter 2: Integrity, Skill, Care and Diligence**

##### **Legal Compliance**

2.1 A *friendly society* must take reasonable steps to ensure that –

- (a) it does not carry on activities beyond its powers;
- (b) it and its *registered branches* comply with –
  - (i) any requirements of or under the 1992 Act or the Act which relate to the conduct of its *insurance business*, and

- (ii) any applicable requirement (whether of the law of any part of the United Kingdom or of the law of another *EEA State*) which gives effect to the ~~*insurance-Directives*~~ *Solvency II Directive* or is otherwise applicable to the insurance activities of the *friendly society*.

...

## Chapter 7: Definitions

### Part I Definitions

7.1 In this Part of the *IPRU(FSOC)*, unless the contrary intention appears, the following definitions apply –

...

~~*insurance Directives* means –~~

- (a) ~~the *first non-life Directive*, the *second non-life Directive* and the *third non-life Directive*, and such other Directives as make provision with respect to the business of direct insurance other than long-term assurance; and~~
- (b) ~~the *Consolidated Life Directive*, and such other Directives as make provision with respect to the business of direct long-term assurance;~~

...

~~*taxes included in premiums* has the same meaning as the words "taxes pertaining to the premiums" in the third indent of the first sub-paragraph of article 16(3) of the *first non-life Directive*;~~

## Annex I

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

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

## CONTENTS

### Volume One: Rules

...

#### Chapter 9 Financial reporting

...

Part V ~~Group Capital Adequacy~~ [deleted]

...

Part VII ~~Lloyd's of London~~ [deleted]

...

### Volume 2: Appendices to the Rules

...

Appendix 9.2 General insurance business: revenue account and additional information (Forms 20A and 20 - ~~39~~ 36) (rules 9.14 to ~~9.22~~ 9.21)

...

Appendix 9.7 ~~Insurance statistics: other EEA states (Forms 91 to 94) (rule 9.37)~~ [deleted]

...

Appendix 9.9 ~~Group Capital Adequacy (rule 9.40 to rule 9.42 and guidance 9.43)~~ [deleted]

...

Appendix 9.12 ~~Certificate by the Council (rule 9.58 (1)(a))~~ [deleted]

Appendix 9.13 ~~Statement by the Lloyd's actuary (rule *IPRU(INS)* 9.58 (1)(b))~~ [deleted]

Appendix 9.14 ~~Certificate by syndicate actuary (rule *IPRU(INS)* 9.58 (1))~~ [deleted]

Appendix 9.15 ~~Auditor's report (rule *IPRU(INS)* 9.58(3))~~ [deleted]

Appendix 9.16 ~~Accounting classes (rule IPRU(INS) 9.49(1)(b))~~ [deleted]

Appendix 9.17 ~~Accounting Records~~ [deleted]

Appendix 9.18 ~~Auditors' Report~~ [deleted]

...

## Chapter 1: Application Rule

---

### CONTENTS

#### *Application*

...

1.2 ~~The Society of Lloyd's~~ [deleted]

...

## Chapter 1: Application Rule

---

### Application

#### *Insurers*

1.1 An insurer must comply with *IPRU(INS)* unless it is -

- (a) a *friendly society*<sup>1</sup>; or
- (b) an *EEA insurer* or an *EEA pure reinsurer* qualifying for authorisation under Schedules 3 or 4 to the Act; or
- (c) a *Solvency II firm*.

#### *The Society of Lloyd's*

1.2 ~~No provisions of *IPRU(INS)* apply to the Society of Lloyd's, or members of the Society of Lloyd's except rules 9.37 and 9.38, and Part VII of Chapter 9.~~ [deleted]

...

---

<sup>1</sup> A non-directive friendly society must comply with *IPRU(FSOC)*; a directive friendly society must comply with *GENPRU* and *INSPRU* PRA Rulebook: Solvency II firms; and with Chapters 1, 2 (with the exception of rule 2.3(1)(a) in relation to registered branches), and 3, 4 (rules 4.20 to 4.23 only), 5 (rule 5.1A only) 7; and 8 and Appendix 3 of *IPRU(FSOC)*. Rule 5.1A of *IPRU(FSOC)* effectively applies most of Chapter 9 of *IPRU(INS)* to directive friendly societies, notwithstanding *IPRU(INS)* 1.1(a)

Part VII of Chapter 9 is deleted in its entirety. The deleted text is not shown.

...

## ANNEX 11.1

### CLASSES OF LONG-TERM INSURANCE BUSINESS

...

VIII	Collective insurance etc	Effecting or carrying out contracts of a kind referred to in <del>Article 2(2)(e) of the Consolidated Life Directive</del> <u>article 2(3)(b)(v) of the <i>Solvency II Directive</i></u> .
IX	Social insurance	Effecting or carrying out contracts of a kind referred to in <del>Article 2(3) of the Consolidated Life Directive</del> <u>article 2(3)(c) of the <i>Solvency II Directive</i></u> .

## Annex J

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

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

#### **4 Chapter 4: Lloyd's firms**

...

4.2.3 D *Underwriting agents* are subject to regulation by the *Society* as well as by the *appropriate regulator*. In particular, they are subject to requirements as to their financial resources and as to making and maintaining accounting records, set by the *Society*. The *appropriate regulator* is satisfied that *underwriting agents* will be subject to adequate financial resource and accounting requirements as long as they remain subject to and comply with requirements at least equivalent to Lloyd's Capital and Solvency Requirements 2001 and the relevant parts of, or requirements made under Lloyd's Underwriting Agents Byelaw (No. 4 of 1984), in each case as amended and in force immediately before *commencement*. Accordingly, instead of imposing an obligation directly on ~~*underwriting agents members' agents*~~, the directions in IPRU(INV) 4.4.1D to 4.4.5D and 4.5.1D require the *Society* to require those firms to comply with the relevant requirements.

...

4.3.1 D The directions in IPRU(INV) 4.4.1D to 4.4.5D and 4.5.1D are given in relation to the exercise of the powers of the *Society* and of the *Council* generally, with a view to achieving the objective that ~~*underwriting agents members' agents*~~ have adequate financial resources to support, and keep and preserve adequate accounting records in respect of their business at Lloyd's.

#### **4.4 Financial Resources Requirements**

4.4.1 D The *Society* must maintain appropriate and effective arrangements to require ~~*underwriting agents members' agents*~~ to meet and continue to meet financial resource requirements ...

4.4.2 D The *Society* must give the ~~*appropriate regulator*~~ FCA a report on each ~~*underwriting agent's members' agent's*~~ compliance with the financial resource requirements referred to in IPRU(INV) 4.4.1D as at the end of each quarter (determined by reference to each underwriting agent's *accounting reference date*).

4.4.3 D The report referred to in IPRU(INV) 4.4.2D must reach the ~~*appropriate regulator*~~ FCA within two months of the end of the relevant quarter and

must state:

- (1) whether the *Society* has any information indicating or tending to indicate that, during the quarter to which the report relates, the ~~*underwriting agent members' agent*~~ failed to meet the financial resource requirements referred to in *IPRU(INV)* 4.4.1D;
- (2) whether, at the end of the quarter to which the report relates, the ~~*underwriting agent members' agent*~~ failed to meet the financial resource requirements referred to in *IPRU(INV)* 4.4.1D; and
- (3) the nature and extent of any failure to comply reported under (1) or (2) and the actions taken or to be taken by the *Society* in response to this.

4.4.4 D In addition to the reports required under *IPRU(INV)* 4.4.2D, the *Society* must give the ~~*appropriate regulator FCA*~~ an annual report on each ~~*underwriting agent's members' agent's*~~ compliance or non-compliance with financial resource requirements as at the end of that ~~*underwriting agent's members' agent's*~~ financial year.

4.4.5 D The report in *IPRU(INV)* 4.4.4D must reach the ~~*appropriate regulator FCA*~~ within seven months of that ~~*underwriting agent's members' agent's*~~ accounting reference date and must:

- (1) confirm that:
  - (a) the *Society* has received from that ~~*underwriting agent members' agent*~~ in respect of the financial year to which the report relates, all relevant attachments to the Annual Financial Return that the ~~*underwriting agent members' agent*~~ is required to make to the *Society* under the requirements identified in *IPRU(INV)* 4.4.1D;
  - (b) that ~~*underwriting agent members' agent*~~ met the applicable financial resource requirements at the end of the financial year to which the report relates; and
  - (c) the *Society* is not aware of any matters likely to be of material concern to the ~~*appropriate regulator FCA*~~ relating to that ~~*underwriting agent's members' agent's*~~ compliance with financial resource requirements during the year to which the report relates, or arising from the attachments referred to in (a); or

...

...

## 4.5 Accounting Records

- 4.5.1 D The *Society* must maintain appropriate and effective arrangements to require ~~*underwriting agents*~~ *members' agents* to meet the obligation to keep and preserve accounting records, set out in ...

...

## Chapter 5: Financial Resources

...

### TABLE 5.2.2(1) CALCULATION OF OWN FUNDS AND LIQUID CAPITAL

...

#### PART II

#### DETAILED REQUIREMENTS

...

#### 5A Material insurance holdings (Item 8)

- (a) ...
- (b) An item falls into this provision for the purpose of (a) if it is:
- (i) ...
- (ii) subordinated debt or another item of capital that forms part of the tier two capital resources that falls into Article 16(3) of the *First Non-Life Directive* or, as applicable, Article 27(3) of the *Consolidated Life Directive* GENPRU 2 or, as the case may be, *INSRU 7*, or is an item of "basic own funds" defined in the PRA Rulebook: Glossary.

...

## Chapter 9: Financial resources requirements for an exempt CAD firm

...

### Appendix 9(1): Interpretation

...

- material insurance holdings* (a) ...
- (b) An item falls into this provision for the purpose of (a) if it is:
- (i) ...
- (ii) subordinated debt or another item of capital that

forms part of the tier two capital resources that falls into Article 16(3) of the ~~First Non Life Directive~~ or, as applicable, Article 27(3) of the ~~Consolidated Life Directive~~ GENPRU 2 or, as the case may be, INSPRU 7, or is an item of “basic own funds” defined in the PRA Rulebook: Glossary.

...

**13 Chapter 13: Financial Resource Requirements for Personal Investment Firms**

...

**Table 13.5.4(2) Part I**

This table forms part of *rule 13.5.4*

<b>EXEMPT CAD FIRM</b>		
<b>ASSETS</b>	<b>CALCULATION</b>	<b>TYPE OF ADJUSTMENT</b>
...		
(13) All other assets	... Eligible capital instruments include ordinary share capital, <del>cumulative</del> preference shares, perpetual securities and long-term subordinated loans, that are eligible for insurance undertakings under <del>PRU 2</del> <u>GENPRU 2</u> or, as the case may be, <u>INSPRU 7</u> , or is <u>an item of basic own funds as defined in the PRA Rulebook: Glossary.</u>	An Illiquid Adjustment
...		

## Annex K

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

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

## 1 Annex 1 Application (see COBS 1.1.2R)

...

## Part 3: Guidance

...		
<b>5.</b>	<b><u>Consolidated Life Solvency II Directive: effect on territorial scope</u></b>	
5.1	G	The <del>Consolidated Life Solvency II Directive</del> 's scope covers <u>Solvency II firms, including long-term insurers authorised under that Directive</u> <del>conducting long-term insurance business</del> . The <i>rules</i> in this sourcebook within the Directive's scope are the cancellation <i>rules</i> (COBS 15) and those <i>rules</i> requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>contract of insurance</i> . The Directive specifies minimum information and cancellation requirements and permits <i>EEA States</i> to adopt additional information requirements that are necessary for a proper understanding by the <i>policyholder</i> of the essential elements of the commitment.
5.2	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be <del>determined</del> <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 <del>33, 35, 36 and 47 of the Consolidated Life Directive</del> <u>156, 180, 185 and 186 of the Solvency II Directive</u> )
<b>6</b>	<b>Distance Marketing Directive: effect on territorial scope</b>	
...		
6.5	G	In the <i>FCA's</i> view:
		...
	(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <del>Consolidated Life Solvency II Directive</del> , 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 ( <i>COBS 15</i> ), derived from the <i>Consolidated Life Solvency II Directive</i> apply on a ‘country of origin’ basis rather than being based on the <del>state</del> <i>State of the commitment</i> ; (See articles 4(1) and 16 of the <i>Distance Marketing Directive</i> , <del>noting that the <i>Distance Marketing Directive</i> was adopted after the <i>Consolidated Life Directive</i></del> )
	...	
<b>7</b>	<b>Electronic Commerce Directive: effect on territorial scope</b>	
...		
7.3	G	The effect of the Directive on this sourcebook is subject to the ‘insurance derogation’, which is the only ‘derogation’ in the Directive that the <i>FCA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under and carrying on an <i>electronic commerce activity</i> within the scope of the <i>Consolidated Life Solvency II Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the ‘general good’. Where the derogation applies, the <i>financial promotion rules</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm’s</i> ‘country of origin’ applies rules of like effect) but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>Electronic Commerce Directive</i> ; Annex to European Commission Discussion Paper <i>MARKT/2541/03</i> )
...		

#### **4 Communicating with clients, including financial promotions (COBS 4)**

...

##### **4.10 Systems and controls and approving and communicating financial promotions**

Systems and controls

- 4.10.1 G The *rules* in *SYSC 3* (and also for *Solvency II firms*, the *PRA Rulebook: Solvency II firms: Conditions Governing Business*) and *SYSC 4* require a *firm* that communicates with a *client* in relation to *designated investment business*, or *communicates* or *approves a financial promotion*, to put in place systems and controls or policies and procedures, or an effective internal control system, in order to comply with the *rules* in this chapter.

...

##### **13.1 The obligation to prepare product information**

...

13.1.2 R A *firm* must prepare the ~~Consolidated Life~~ Solvency II Directive information for each *life policy* it effects;

(1) in a clear and accurate manner and in writing; and

(2) 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 commitment so permits or the policyholder is free to choose the law applicable;

in good time before that information has to be provided.

[~~Note: article 36(1) of, and Annex III to, the Consolidated Life Directive~~  
article 185(1) and (6) of the Solvency II Directive]

Exceptions

13.1.3 R A *firm* is not required to prepare:

...

(3) a *key features illustration*:

...

(d) for a *packaged product* which, at the end of its fixed term, provides for the return of the initial capital invested and a specified level of growth linked by a pre-set formula to the performance of a specified asset or index or a combination of assets or indices; ~~or~~.

(4) ~~the Consolidated Life Directive information, if the policy is a reinsurance contract or a pure protection contract. [deleted]~~

...

## 13.2 Product information: production standards, form and contents

...

13.2.3 G The ~~Consolidated Life~~ Solvency II Directive information can be included in a *key features document*, a *key features illustration* or any other *document*.

...

## 13.3 Contents of a key features document

...

Additional requirements for packaged products

## 13.3.2 R Table

...		
	'Questions and Answers'	...
[ <b>Note:</b> in respect of 'Risks', article 185(4) of the <i>Solvency II Directive</i> ]		

...

13 Annex 1R ~~The Consolidated Life~~ Solvency II Directive Information

This annex belongs to *COBS* 13.1.2R (~~The Consolidated Life Directive Information~~ Solvency II Directive information)

Information about the firm	
(1)	The <i>firm's</i> name and its legal form;
(2)	The name of the <i>EEA State</i> in which the head office and, where appropriate, agency or branch concluding the contract is situated; <del>and</del>
(3)	The address of the head office and, where appropriate, agency or branch concluding the contract; <u>and</u>
(3A)	<u>A concrete reference to the <i>firm's</i> <i>SFCR</i> allowing the <i>policyholder</i> easy access to this information.</u>
Information about the commitment	
(4)	Definition of each benefit and each option;
(5)	Term of the contract;
(6)	Means of terminating the contract;
(7)	Means of payment of <i>premiums</i> and duration of payments;
(8)	Means of calculation and distribution of bonuses;
(9)	Indication of surrender and paid-up values and the extent to which they are guaranteed;
(10)	Information on the <i>premiums</i> for each benefit, both main benefits and supplementary benefits, where appropriate;
(11)	For unit-linked <i>policies</i> , <u>the</u> definition of the units to which the benefits are linked;
(12)	Indication of the nature of the underlying assets for unit-linked <i>policies</i> ;

(13)	Arrangements for application of the <del>cooling-off period</del> <u>cancellation period</u> or right to withdraw;
(14)	General information on the tax arrangements applicable to the type of <i>policy</i> ;
(15)	The arrangements for handling complaints concerning contracts by <i>policyholders</i> , lives assured or <del>beneficiaries</del> <i>beneficiaries</i> under contracts including, <del>where</del> <u>where</u> appropriate, the existence of a complaints body ( <u>usually the Financial Ombudsman Service</u> ), without prejudice to the right to take legal proceedings; and
(16)	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 <i>insurer</i> proposes to choose.
	[ <b>Note:</b> <del>article 36(1) of, and Annex III to, the Consolidated Life Directive</del> article 185(2) and (3) of the <i>Solvency II Directive</i> ]

...

### 13 Annex 2R Projections

...

R	
Exceptions	
1.7	...
<u>1.7</u> <u>A</u>	<u>If a projection is prepared in connection with an offer for or conclusion of a personal pension scheme, three different rates of return must be used.</u>
[ <b>Note:</b> article 185(5) of the <i>Solvency II Directive</i> ]	

...

R			
5.	Projections: accompanying statements and presentation		
5.1	...		
		(f)	...
[ <b>Note:</b> article 185(5) of the <i>Solvency II Directive</i> ]			

R
---

Additional requirements: pension schemes and products linked to other products		
5.2	...	
[Note: article 185(5) of the <i>Solvency II Directive</i> ]		

...

## 14.2 Providing product information to clients

...

- 14.2.1 R A *firm* that sells:
- ...
- (2) a *life policy* ~~that is not a reinsurance contract~~ to a *client*, must provide the ~~Consolidated Life~~ *Solvency II Directive* information to that *client*;

...

[Note: in respect of (2), article 36(1) of, and Annex III to, the ~~Consolidated Life Directive~~ *Solvency II Directive* 185(1) of the *Solvency II Directive*]

...

...

- 14.2.5 R A *firm* is not required to provide:
- ...
- (3) the ~~Consolidated Life~~ *Solvency II Directive* information, if another *person* is required to provide that information by the *rules* of another *EEA State*;

...

[Note: in respect of (3), article 36(4) of, and Annex III to, the ~~Consolidated Life Directive~~ *Solvency II Directive* 185(8) of the *Solvency II Directive*]

...

- 14.2.7 R A *firm* is not required to provide a *key features document* or a *key features illustration* for:

...

- (2) a *life policy* ~~that is not a reinsurance contract~~ if:

...

...

[**Note:** in respect of (2), articles 4(1) and 16 of the *Distance Marketing Directive* and article ~~36 of the *Consolidated Life Directive*~~ 185 of the *Solvency II Directive*]

...

## 15.2 The right to cancel

Cancellable contracts

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

...

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

...

15.2.3 R The cancellation period begins:

...

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

...

## 16.6 Communications to clients – life insurance, long term care insurance and income withdrawals

...

16.6.2 R (1) ~~If~~ The *policyholder* must be informed if during the term of a *life policy* entered into on or after 1 July 1994, there is any proposed change in the following information; referred to in paragraphs (1) to (12) of the ~~Consolidated Life Directive~~ information (COBS 13 Annex 1R) the ~~long-term insurer~~ must inform the *policyholder* of the effect of the change before the change is made,

(a) the *policy conditions*;

(b) the name of the *insurer*, its legal form or the address of its

head office and, where appropriate, of the agency or branch which concluded the contract; and

- (c) the information in (8) to (13) of COBS 13 Annex 1R (The Solvency II Directive information) in the event of a change in the *policy* conditions or amendment of the law applicable to the contract.

(2) A notification in (1) must be made:

- (a) in a clear and accurate manner and in writing; and  
 (b) in an official language of the *State of commitment* or in another language if the *policyholder* so requests and the law of the *State of commitment* so permits or the *policyholder* is free to choose the law applicable.

[~~Note: article 36(2) of the *Consolidated Life Directive* 185(5) and (6) of the *Solvency II Directive*~~]

16.6.3 R If a *life policy* entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonuses are unspecified, the *long-term insurer* must, in every calendar year except the first, either:

- (1) notify the *policyholder* in writing of the amount of any bonus which has become payable under the contract, and which has not previously been notified under this *rule*; or  
 (2) give the *policyholder* in writing sufficient information to enable him to determine the amount of any such bonus.

[~~Note: in respect of (1), article 185(5) of the *Solvency II Directive*~~]

16.6.3A R If a *firm* provides figures, on or after 1 January 2016, about the potential future development of bonuses under a *with-profits policy* it must inform the *policyholder* annually in writing of any differences between the actual bonuses payable to date and the figures previously provided.

[~~Note: article 185(5) of the *Solvency II Directive*~~]

...

## 20.1 Application

...

20.1.3 R For an *EEA insurer*:

- (1) (a) the *rules and guidance on the with-profits fund (COBS 20.1A)*, on treating *with-profits policyholders* fairly (*COBS*

20.2.1G to *COBS* 20.2.41G and *COBS* 20.2.53R to *COBS* 20.2.60G), and the governance provisions in *COBS* 20.5 apply only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by a European Community an EU instrument;

notwithstanding the above:

- (b) *COBS* 20.2.26AR (financial penalties and the *with-profits fund*) applies;
- (c) the rules and guidance on the notification of *policyholders* where there is a change in the percentage allocation of distributions (*COBS* 20.2.19AR to *COBS* 20.2.19CG) apply but only to the extent that the *UK* is the *State of the commitment*;

...

- (3) the rule on providing information to *with-profits policyholders* ~~who are habitually resident in~~ where the United Kingdom is the *State of the commitment* (*COBS* 20.4.4R) and the rule on production and provision of a *CFPPFM* (*COBS* 20.4.5R) apply, but the rest of *COBS* 20.4 (Communications with *with-profits policyholders*) does not; ~~and~~
- (4) the rule on production and provision of a *CFPPFM* (*COBS* 20.4.5R) applies as if a reference to a *firm* was a reference to an *EEA insurer* in relation to any of its *with-profits policyholders* ~~who are habitually resident in~~ where the *State of the commitment* is the United Kingdom; and
- (5) references in *COBS* 20 to a *with-profits fund* or to terms derived from the *Solvency II Directive* requiring transposition in the *Home State*, apply as if they were references to the relevant fund or terms established in accordance with the requirements of the *Home State*.

Insert the following new section after *COBS* 20.1. The text is not underlined.

## **20.1A The with-profits fund**

‘Other liabilities’ in the *with-profits fund*

- 20.1A.1 R For the purposes of calculating any *with-profits funds surplus* and the rules and guidance in *COBS* 20, including *COBS* 20.1A.5R, *COBS* 20.1A.6R and *COBS* 20.2.17C, a *firm* must include the following non-exhaustive list as ‘other liabilities’:
- (1) liabilities arising from its regulatory duty to treat *customers* fairly

(where not already included in *technical provisions*); and

- (2) the value of any prospective future transfers out of the *with-profits fund* properly attributable to shareholders in accordance with *COBS 20*.

Sub-funds

- 20.1A.2 R (1) Where the *firm*:
- (a) identifies particular assets as forming a distinct part of its *with-profits fund*; and
- (b) restricts participation in the profits or other experience of that distinct part of the fund to a particular category of *with-profits policies*;
- then, provided that:
- (c) such identification and restriction is consistent with the considerations in (3), and
- (d) the *firm* treats each affected category of *with-profits policyholder* fairly, having regard to those considerations;
- each such part constitutes a separate *with-profits fund*.
- (2) Notwithstanding (1), each different part of its *with-profits fund* constitutes a separate *with-profits fund* if that is necessary in order to treat each affected category of *with-profits policyholder* fairly, having regard to the considerations in (3).
- (3) The considerations referred to in (1) and (2) are the terms of the relevant *with-profits policies*; the *firm's* established practice; its *PPFM* and/or other relevant communications to affected *with-profits policyholders*, and the terms of any arrangement formally approved by a court of competent jurisdiction, *appropriate regulator* or *previous regulator*.
- 20.1A.3 R (1) For a *Solvency II firm* operating a with-profits fund prior to 1 January 2016:
- (a) assets in the with-profits fund held in accordance with *INSPRU* on 31 December 2015 are deemed to be items in a *with-profits fund* for the purposes of *COBS 20* from 1 January 2016, provided that any transfers out of, and any outgoings from, the fund up to 31 December 2015 were made in accordance with, and/or do not as at 31 December 2015, constitute, or continue to constitute, a breach of *INSPRU 1.5.21R* and *INSPRU 1.5.27R*;

- (b) any assets transferred out of the fund in breach of *INSPRU* 1.5.21R and 1.5.27R are deemed not to have been transferred out of the fund and remain part of the *with-profits fund*;
  - (c) to the extent that the assets in (b) have also been transferred out of the *firm* then, before (a) can apply to the *firm*, the *firm* must transfer into the *with-profits fund* assets equal to the value of the assets referred to in (b), and of a similar quality, having regard to the PRA Rulebook: Solvency II Firms: Investments.
- (2) *Firms* to which (1)(a) applies must, in any event, comply with *COBS* 20.1A.2R. Paragraph (1)(a) does not apply to the extent that it would be inconsistent with the operation of *COBS* 20.1A.2R where the effect is to require a *firm* to create or make changes to sub-funds amounting to separate *with-profits funds*.

#### Governance arrangements for the with-profits fund

- 20.1A.4 R A *Solvency II firm* effecting or carrying out *with-profits insurance business* must identify the assets relating to all the business written in, or transferred into, each *with-profits fund* which it is required to hold under *COBS* 20.1A.5R or PRA Rulebook: Solvency II firms: With Profits rule 2.1.
- 20.1A.5 R A *Solvency II firm* must ensure that it holds assets in each of its *with-profits funds* of a value at least sufficient to cover the “with-profits policy liabilities” defined in the PRA Rulebook: Glossary and as required by PRA Rulebook: Solvency II firms: With Profits rule 2.1, and any other liabilities in respect of all of the business written in, or transferred into, that *with-profits fund*.
- 20.1A.6 R A *Solvency II firm* must maintain separate accounting records for each of its *with-profits funds*. The accounting records must identify:
- (1) all of the assets of that *with-profits fund*;
  - (2) the best estimate component of *technical provisions* for the *with-profits policies* written in, or transferred into, that *with-profits fund*;
  - (3) the best estimate component of *technical provisions* for the *non-profit insurance contracts* written in, or transferred into, that *with-profits fund*;
  - (4) any other liabilities of the *with-profits fund* not covered by (2) or (3), and their value calculated in accordance with PRA Rulebook: Solvency II Firms: Valuation and applicable parts of the *Solvency II Regulation* (EU) 2015/35 of 10 October 2014.
- 20.1A.7 G A *Solvency II firm* must ensure that the assets in its *with-profits funds* are separately identified and allocated to the relevant *with-profits fund* at all

times. Assets in external accounts (e.g. with banks, custodians, or brokers) should be segregated in the *firm's* books and records into separate accounts for *with-profits insurance business* and other business. Where a *firm* has more than one *with-profits fund*, separate accounting records must be maintained for each fund. Accounting records should clearly document the allocation.

- 20.1A.8 R A *Solvency II firm* must not transfer assets out of a *with-profits fund* unless:
- (1) the assets represent any part of a *with-profits fund surplus*, or represent assets held in accordance with *COBS 20.1A.5R* in relation to the part of a distribution that has been made which is properly attributable to shareholders, in accordance with *COBS 20*; and
  - (2) no more than three months have passed since the *actuarial investigation* determining that surplus.
- 20.1A.9 G For the purposes of *COBS 20.1A.8R*, an *actuarial investigation* is required to determine any *with-profits fund surplus* for the requirements in *COBS 20* and remains in-date for three months from the date when the determination of the surplus was made. However, even where the investigation is still in-date, the *firm* should not make the transfer unless there is sufficient surplus at the time of the transfer to cover the value of the assets being transferred. The *actuarial investigation* carried out may rely, in part, on any relevant and sufficiently up-to-date valuation exercise carried out for the purposes of calculating *technical provisions* under the PRA Rulebook: *Solvency II Firms: Technical Provisions* and applicable parts of the *Solvency II Regulation (EU) 2015/35* of 10 October 2014, provided that the person carrying out the *actuarial investigation* considers it appropriate to do so.
- 20.1A.10 R (1) A *Solvency II firm* must use or apply an asset in a *with-profits fund* only for the purpose of the business in the *with-profits fund*.
- (2) For the purpose of (1), applying or using an asset includes any obligation (even if only contingent) to apply or use that asset.
- 20.1A.11 R A *Solvency II firm* must not agree to, or allow, any mortgage or charge on the assets in any of its *with-profits funds*, other than in respect of, and for the purposes of, the business in the *with-profits fund*.
- 20.1A.12 G References in *COBS 20.1A.10R* and *COBS 20.1A.11R* to ‘the purposes of the business’ in the *with-profits fund* include the payment of claims, expenses and liabilities arising from that business, the acquisition of lawful access to fixed assets to be used in that business and the investment of assets. The payment of liabilities may include repaying a loan but only where that loan was incurred for the purpose of the business written into the *with-profits fund*. The purchase or investment of assets may include an exchange at fair market value of assets (including cash) between the *with-profits fund* and other assets of the *firm*. A *Solvency II firm* may also lend securities held in a *with-profits fund* under a stock lending transaction, or transfer assets as collateral for a stock lending transaction, where the *firm* is

the borrower and where such lending or transfer is for the benefit of the business written into the *with-profits fund*.

#### Management of the with-profits fund

- 20.1A.13 R A *Solvency II firm* which is subject to contractual terms providing for payments under a *capital instrument* included in that *insurer's own funds*, must:
- (1) manage any *with-profits fund* so that discretionary benefits under a *with-profits policy* are calculated and paid, disregarding, insofar as is necessary for its *customers* to be treated fairly, any requirements in such contractual terms whether or not they are absolute, contingent or at the discretion of the *firm*; and
  - (2) disclose its intention to manage the *with-profits fund* on the basis set out in (1) in the *firm's PPFM*.
- 20.1A.14 G (1) A *Solvency II firm* is expected to manage its *with-profits fund* so that amounts (whether interest, principal, or other outgoings) payable by the *firm* under a *capital instrument* included in that *insurer's own funds* (as determined in accordance with the PRA Rulebook: *Solvency II Firms: Own Funds*) do not impact on the *with-profits fund's* assets or on the *firm's* ability to declare and pay under a *with-profits policy* discretionary benefits that are consistent with the *firm's* obligations under *Principle 6* (Customers' interests).
- (2) A *firm*, other than a *mutual*, should not regard any asset held in the *with-profits fund* as necessarily available to cover payments or other obligations arising under a subordinated loan.
- 20.1A.15 R A *Solvency II firm* must ensure that it has adequate arrangements in place for ensuring that transactions affecting the assets of the *firm* operate fairly between *with-profits policyholders* and other persons interested in the other assets of the *insurer* and, where the *firm* has more than one *with-profits fund*, those transactions operate fairly between the *with-profits policyholders* in each of those funds.

Amend the following as shown.

## 20.2 Treating with-profits policyholders fairly

...

- 20.2.5 R ...
- (3) A *firm* must calculate unsmoothed asset share by:
    - (a) (i) for a *firm* which is not a *Solvency II firm*, applying the methods in *INSPRU* 1.3.119R to *INSPRU* 1.3.123R;

- (ii) for a firm which is a Solvency II firm, applying the methods in PRA Rulebook: Solvency II Firms Valuation, Technical Provisions and Surplus Funds and applicable parts of the Solvency II Regulation (EU) 2015/35 of 10 October 2014;

...

...

#### Conditions relevant to distributions

- 20.2.16B G References to distributions in COBS 20 includes distributions of distributable profits arising, namely any permanent addition to policy benefits made at the firm's discretion based on the investment or other experience in the fund or more generally. Distributions include those relating to expected payments for which allowance has been made in the technical provisions or to a firm's other liabilities arising from its regulatory duty to treat customers fairly, and not just distributions of any with-profits fund surplus.
- 20.2.16C G Examples of distributions include any payment of a cash bonus (including a final bonus on exit or a reduction in premium), or a declaration of a reversionary bonus in the form of a permanent addition to the benefits guaranteed to be payable at death or on maturity. In COBS 20.2.21R and COBS 20.2.22E (distributions from excess surplus) distributions also include any other amounts that are added to asset shares or to any other measure that is used to determine pay-outs under policies.
- ...
- 20.2.17C R A firm must not make a distribution from a *with-profits fund*, unless:
- (1) if it is not a Solvency II firm, the whole of the cost of that distribution can be met without eliminating the regulatory surplus in that with-profits fund; and
- (2) if it is a Solvency II firm:
- (a) the whole of the cost of that distribution can be met without eliminating the with-profits fund surplus in that with-profits fund; and
- (b) following any distribution that is made to meet a liability for which allowance has been made in technical provisions or other liabilities the firm is able to demonstrate that it reasonably expects to be able to continue to comply with the requirements in COBS 20.1A.5R (Governance arrangements for the with-profits fund).
- 20.2.18 R A ~~realistic basis life firm~~ firm which is not a Solvency II firm, must not

make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, unless the whole of the cost of that distribution (including the cost of any obligations that will or may arise from the decision to make a distribution) can be met from the excess, if any, of the ~~*realistic value of assets*~~ assets over the ~~*realistic value of liabilities*~~ liabilities in that *with-profits fund*.

20.2.19 R ...

Notification and other requirements in relation to certain distributions

20.2.19A R If a *firm* which is a *Solvency II firm* proposes to make a distribution from a *with-profits fund* to any *person* who is not a *with-profits policyholder*, where:

(1) the distribution to *with-profits policyholders* is smaller than the ‘pre-notification to *policyholder* minimum’ calculated in accordance with COBS 20.2.19BR(1) then the *firm* must:

(a) provide the *FCA* with written details of the proposed distribution at least two months prior to the proposed distribution, together with copies of draft notifications it proposes to send to *with-profits policyholders* to satisfy (b); and

(b) give affected *with-profits policyholders* in the fund at least one months prior written notice stating:

(i) that it proposes to make no distribution to them; or

(ii) that it proposes to make a distribution of an amount which is smaller than the ‘pre-notification to *policyholder* minimum’, and setting out the amount and how the distribution is calculated; and

the reasons for (i) or (ii) as relevant; or

(2) the distribution to *with-profits policyholders* does not meet the test in (1) but is smaller than the ‘after the event notification to *policyholder* minimum’ calculated in accordance with COBS 20.2.19BR(2) then the *firm* must:

(a) provide the *FCA* with written details of the proposed distribution at least one month prior to the proposed distribution together with copies of draft notifications it proposes to send to *with-profits policyholders* to satisfy (b); and

(b) give affected *with-profits policyholders* in the fund, notice of the distribution within a reasonable period from the date of the distribution, setting out the amount of the distribution, how it was calculated and the reasons for the change

compared to the last previous distribution.

- 20.2.19B R (1) The ‘pre-notification to *policyholder* minimum’ referred to in *COBS* 20.2.19AR is as follows:

$$\frac{b \times c}{a} - \frac{c}{50}$$

where

*a* is the total amount available for with-profits distribution in the *with-profits fund* in question at the time of the most recent previous distribution;

*b* is the amount of the most recent previous distribution to *with-profits policyholders*; and

*c* is the total amount available for with-profits distribution in relation to the proposed distribution.

- (2) The ‘after the event notification to *policyholder* minimum’ referred to in 20.2.19AR is as follows:

$$\frac{b \times c}{a} - \frac{c}{200}$$

where *a*, *b* and *c* have the same meaning as in (1).

- (3) The calculations in (1) and (2) must be determined by *actuarial investigation*.

- 20.2.19C G (1) If the circumstances in *COBS* 20.2.19AR(1) or (2) arise, the *firm* should also consider whether any reduction(s) in the proposed distribution and any previous distributions to *with-profits policyholders* over a period of at least the last five years are consistent with treating *with-profits policyholders* fairly and any other obligations of the *firm* under *COBS* 20.
- (2) When calculating the amounts distributed in *COBS* 20.2.19AR and *COBS* 20.2.19BR:
- (a) any amount allocated to *with-profits policyholders* in anticipation of a distribution is treated as included in the next distribution;
- (b) the amount of any available distributable profits is treated as reduced by any part of it which the *firm* has decided to carry forward unappropriated; and
- (c) risk margin associated with *technical provisions* should be excluded.

(3) A firm which is not a Solvency II firm is required to comply with IPRU(INS) 3.3.

...

20.2.25 R A proprietary firm may pay compensation or redress due to a *policyholder*, or former *policyholder*, from assets attributable to shareholders, whether or not they are held within a *long-term insurance fund* or *with-profits fund*, as relevant.

...

20.2.26 R ...

20.2.26A R A proprietary firm must not charge to a with-profits fund any financial penalty imposed on the firm by the appropriate regulator.

...

20.2.32 R A Unless COBS 20.2.32AR applies, a firm carrying on with-profits business must not:

...

20.2.32A R COBS 20.2.32R(1) does not apply to a Solvency II firm.

20.2.32B G Loans to a connected person using assets in a with-profits fund should be considered as investments of assets within the with-profits fund. As such, a Solvency II firm will need to ensure that:

(a) such loans comply with the PRA Rulebook: Solvency II Firms: Investments having regard to COBS 20.2.35AG; and

(b) where there is a conflict of interests, in the reasonable opinion of the firm's senior management, they are in the best interests of the with-profits policyholders in the relevant with-profits fund.

...

#### Support arrangements

20.2.34A R (1) A Solvency II firm must ensure that, in relation to any arrangements where assets outside a with-profits fund provide or may provide support to it, both the following requirements are met:

(a) the precise terms and conditions on which those support asset arrangements operate and assets may become available, including whether and when they are repayable;

(i) are adequately documented in the firm's records; and

- (ii) if the *firm* is required to produce a *PPFM*, are set out clearly and unambiguously in its *PPFM*, and an appropriate description is set out in the *CFPPFM*;
- (b) the operation of those support asset arrangements is consistent with terms and conditions in communications to *with-profits policyholders*, including any *PPFM* and *CFPPFM*.

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

- 20.2.35 G When a *firm*, other than a *Solvency II firm*, determines its investment strategy ...
- 20.2.35A G (1) A *Solvency II firm* is required to consider its investment strategy in relation to the assets in a *with-profits fund*, including any *strategic investments*, in accordance with the PRA Rulebook: Solvency II Firms: Investments. *Firms* are expected, in applying the PRA Rulebook: Solvency II Firms: Investments, to take into account the particular circumstances and requirements of the liabilities in the *with-profits fund* to which those assets relate. For example, a *Solvency II firm* will need to consider:
- (a) whether a *strategic investment* meets the criteria in the PRA Rulebook: Solvency II Firms: Investments; and
  - (b) that the investment will ensure the quality, security, liquidity of the portfolio of assets of the *firm* as a whole and that the investment(s) are localised to ensure their availability.
- (2) Where there is a conflict of interest (e.g. between the *with-profits policyholders* and the *firm*) the *firm* must ensure that the *strategic investment* is made in the best interests of *policyholders*. It is expected that a *Solvency II firm* applying the provisions in PRA Rulebook Solvency II Firms Investments in this manner will lead to *with-profits policyholders* being treated no less fairly than if the *firm* was not a *Solvency II firm* and was subject to COBS 20.2.35G and COBS 20.2.36R.
- 20.2.36 R A *firm*, other than a *Solvency II firm*, must not:
- ...
- ...
- 20.2.36B G ...
- (2) A *firm* should also consider whether making or retaining the ~~investment~~ a *strategic investment* should be disclosed to *with-profits policyholders*.

...

## 20.3 Principles and Practices of Financial Management

...

20.3.5 R A *firm's PPFM* must cover any matter that has, or it is reasonably foreseeable may have, a significant impact on the *firm's* management of *with-profits funds*, including but not limited to:

- (1) any requirements or constraints that apply as a result of previous dealings, including previous business transfer schemes; ~~and~~
- (2) the nature and extent of any shareholder or other commitment to support the *with profits fund*; and
- (3) the precise terms and conditions of support asset arrangements, as described in COBS 20.2.34AR.

...

## 20.4 Communications with with-profits policyholders

...

Requirements on EEA insurers

20.4.4 R In relation to any *with-profits policyholder* ~~who is habitually resident in~~ where the state of the commitment is the United Kingdom, an *EEA insurer* must:

- (1) ~~on request~~, provide the information necessary to enable that *policyholder* properly to understand the *insurer's* commitment under the *policy*;
- (2) ensure that the information provided is not narrower in scope or less detailed in content than the equivalent information required to be provided in the PPFM produced by a firm subject to COBS 20.3; and

...

...

## 20.5 With-profits governance

...

20.5.3 R A *firm* must ensure that the *terms of reference* contain, as a minimum, terms having the following effect:

...

(2) that the *with-profits committee* or advisory arrangement must:

...

(b) in any event give appropriate consideration to the following non-exhaustive list of specific matters:

...

(ix) the drafting, review, updating of and compliance with run-off plans, court schemes and similar matters; ~~and~~

(x) the costs incurred in operating the *with-profits fund*;

(xi) the identification and extent of the *firm's with-profits funds*, with particular regard to the considerations as to whether a part of the *with-profits fund* constitutes a separate *with-profits fund* in accordance with COBS 20.1A.2R (Sub-funds); and

(xii) the use and purpose of, and terms under which, support assets are available to the *with-profits fund*, having regard to the considerations in COBS 20.2.33G to COBS 20.2.34G and 20.2.34AR.

...

## 21 Permitted Links

### 21.1 Application

21.1.1 R ...

#### Limit to the application of COBS 21.3

21.1.1A R COBS 21.3 (Further rules for firms engaged in linked long-term insurance business) applies only in respect of *linked long-term contracts of insurance* where the investment risk is borne by a *policyholder* who is a natural person.

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

(1) ~~contracts that were effected before 1 July 1994, and under which *linked benefits* were permitted to be determined before that date;~~

(2) ~~contracts effected by an *insurer* that are *linked long term* contracts~~

~~only because the policyholder is eligible to participate in any established surplus;~~

- ~~(3) contracts effected by an EEA insurer that are linked long-term contracts only because the policyholder is eligible to participate in an excess of assets representing the whole or a particular part of the long-term insurance fund over the liabilities, or a particular part of the liabilities, of the insurer as determined by the law of the EEA state in which the head office of the insurer is situated;~~
- ~~(4) [deleted]~~
- ~~(5) contracts effected before 30 June 1995, to the extent that they provide for benefits to be determined by reference to a collective investment scheme that was a listed security immediately before 1 July 1994; and~~
- ~~(6) contracts linked to permitted units that were effected before 1 February 1992, except to the extent that they relate to acts or omissions on or after that date. [deleted]~~

## 21.2 Principles Rules for firms engaged in linked long-term insurance business

21.2.1 R ~~A~~ For the purposes of determining *policyholder* benefits, a *firm* must ensure that the values of its *permitted links* are determined fairly and accurately.

21.2.1A R An insurer must not contract to provide benefits under linked long-term contracts of insurance that are determined wholly or partly, directly or indirectly, by reference to fluctuations in any index or wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than in accordance with the rules in this section.

21.2.1B G Insurers other than EEA insurers effecting linked long-term contracts of insurance are obliged to comply with the requirements on investments in the PRA Rulebook Solvency II Firms Investments.

21.2.2 R ~~A firm must ensure that its linked assets:~~

- ~~(1) are capable of being realised in time for it to meet its obligations to linked policyholders; and~~
- ~~(2) are matched with its linked liabilities as required by the close matching rules. [deleted]~~

21.2.3 R ~~A firm must ensure that there is no reasonably foreseeable risk that the aggregate value of any of its linked funds will become negative. [deleted]~~

21.2.4 R ...

### Reinsurance

- 21.2.4A R A firm that has entered into a reinsurance contract in respect of its linked long-term insurance business must nevertheless discharge its responsibilities under its linked long-term insurance contracts, as if no reinsurance contract had been effected.
- 21.2.4B G To comply with the requirements of COBS 21.2.4AR, a firm should:
- (1) disclose to policyholders the implications of any credit-risk exposure they may face in relation to the solvency of the reinsurer; and
- (2) suitably monitor the way the reinsurer manages the business in order to discharge its continuing responsibilities to policyholders.
- 21.2.5 R ~~A firm must ensure that its systems and controls and other resources are appropriate for the risks associated with its linked assets and linked liabilities. [deleted]~~
- 21.2.6 R (1) ~~A firm must ensure when selecting linked assets that there is no reasonably foreseeable risk of a conflict of interest with its linked policyholders. [deleted]~~
- (2) ~~If a conflict does arise, the firm must take reasonable steps to ensure that the interests of the linked policyholders are safeguarded. [deleted]~~
- 21.2.7 R ~~In applying the rules in this section, a firm must consider the economic effect of its permitted links and linked assets ahead of their legal form. [deleted]~~
- Notification to the FCA
- 21.2.8 R A firm must notify the ~~appropriate regulator~~ FCA in writing as soon as it becomes aware of any failure to meet the requirements of ~~this section~~ COBS 21, or of the PRA Rulebook Solvency II Firms Investments to the extent applicable to linked long-term contracts of insurance.

...

## 21.3 **Rules Further rules for firms engaged in linked long-term insurance business**

### Application

- 21.3.-1 R The rules in this section apply to linked long-term contracts of insurance where the investment risk is borne by a policyholder who is a natural person.

### Permitted links

- 21.3.1 R An insurer must not contract to provide benefits under ~~linked long-term contracts of insurance~~ contracts of insurance that are determined:

- ...
- (2) wholly or partly by reference to the value of, or the income from, or fluctuations in the value of, property other than any of the following:
- ...
- (h) ~~[deleted]~~ approved money market instruments meeting the requirements in COBS 21.3.6R to COBS 21.3.8R;
- ...
- (l) *permitted derivatives contracts.*
- 21.3.1A R A firm must classify the types of property listed in COBS 21.3.1R(2)(a) to (2)(l) according to their economic behaviour ahead of their legal form.
- ...
- 21.3.3 R ~~A firm that has entered into a reinsurance contract in respect of its linked long term insurance business must nevertheless discharge its responsibilities under its linked long term insurance contracts as if no reinsurance contract had been effected. [deleted]~~
- 21.3.4 G ~~In order to comply with the requirements of COBS 21.3.3R a firm should:~~
- ~~(1) disclose to policyholders the implications of any credit risk exposure they may face in relation to the solvency of the reinsurer; and~~
- ~~(2) suitably monitor the way the reinsurer manages the business in order to discharge its continuing responsibilities to policyholders. [deleted]~~
- 21.3.5 R (1) ~~Except in the case specified in (2), a firm which proposes to undertake linked long term insurance business, which is linked to the average earnings index and used for the purposes of orders made by the Department for Work and Pensions under section 148 of the Social Security Administration Act 1992, must notify the appropriate regulator in writing of its intention to do so in good time before effecting any such business for the first time, or if there is a material change in the volume of such business, and explain how the risks associated with this business will be safely managed. [deleted]~~
- (2) ~~These requirements do not apply in respect of liabilities for which a limited revaluation premium has been paid to the Department for Work and Pensions so that the liability for revaluation, while still linked to orders made under section 148 of the Social Security Administration Act 1992, is limited to 5%. [deleted]~~

Insert the following new provisions after the COBS 21.3.5R (deleted). The text is not underlined.

## Money-market instruments

- 21.3.6 R A *money-market instrument* will be regarded as normally dealt in on the money market if it:
- (1) has a maturity at issuance of up to, and including, *397 days*; or
  - (2) has a residual maturity of up to, and including, *397 days*; or
  - (3) undergoes regular yield adjustments in line with money market conditions at least every *397 days*; or
  - (4) undergoes regular yield adjustments in line with money market conditions at least every *397 days*.
- 21.3.7 R (1) A *money-market instrument* will be regarded as liquid if it can be sold at limited cost in an adequately short timeframe.
- (2) A *money-market instrument* will be regarded as having a value which can be accurately determined at any time if accurate and reliable valuations systems, which fulfil the following criteria, are available:
- (a) enabling the *firm* to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and
  - (b) based either on market data or on valuation models, including systems based on amortised costs.
- (3) A *money-market instrument* that is normally dealt in on the money market and is admitted to, or dealt in, on an *eligible* market will be presumed to be liquid and have a value which can be accurately determined at any time, unless there is information available to the *firm* that would lead to a different determination.
- 21.3.8 G A *firm* should assess the liquidity of a *money-market instrument* in accordance with *CESR's UCITS eligible assets guidelines*, with respect to article 4(1) of the *UCITS eligible assets Directive*.

## Permitted stock lending transactions

- 21.3.9 R A *permitted stock lending* transaction is one which, for a *Solvency II firm*, satisfies the requirements in *COBS 21.3.11R* to *COBS 21.3.12R* and, for an *insurer* which is not a *Solvency II firm*, satisfies *INSPRU 3.2.36AR* to *INSPRU 3.2.42G*.
- 21.3.10 G The specific method of *stock lending* permitted is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers *securities* to the borrower other than

by way of *sale* and the borrower is to transfer those *securities*, or *securities* of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing *collateral* to the "lender" to cover him against the risk that the future transfer back of the *securities* may not be satisfactorily completed.

#### Stock lending: requirements

- 21.3.11 R (1) The *stock lending* arrangement is of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), and:
- (a) all the terms of the agreement under which *securities* are to be reacquired by the *firm* for the account of the unit-linked fund are in a form which is acceptable to the *firm* and in accordance with good market practice;
  - (b) the counterparty is:
    - (i) an *authorised person*; or
    - (ii) a *person* authorised by a *Home State regulator*; or
    - (iii) a *person* registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
    - (iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to *OTC derivatives*, by at least one of the following federal banking supervisory authorities of the United States of America:
      - (A) the Office of the Comptroller of the Currency;
      - (B) the Federal Deposit Insurance Corporation;
      - (C) the Board of Governors of the Federal Reserve System; and
      - (D) the Office of Thrift Supervision; and
  - (c) *collateral* is obtained to secure the obligation of the counterparty under the terms in (a) and the *collateral* is:
    - (i) acceptable to the *firm*;
    - (ii) adequate; and
    - (iii) sufficiently immediate; and

- (d) for the purposes of *property-linked assets* only:
  - (i) where the *linked policyholder* bears the whole of the risk associated with the *stock lending* transaction, the *linked policyholder* receives the whole of the recompense (net of fees and expenses);
  - (ii) the extent of any risk that the *linked policyholder* bears in relation to the *stock lending* transaction is disclosed to them; and
  - (iii) where the risk associated with the *stock lending* transaction is borne outside the *linked fund*, the *linked fund* receives a fair and reasonable recompense for the use of the *linked policyholders'* funds.
- (2) The counterparty for the purpose of (1) is the *person* who is obliged under the agreement in (1)(a) to transfer to the *firm* the *securities* transferred by the *firm* under the *stock lending* arrangement or *securities* of the same kind.
- (3) *COBS* 21.3.11R(1)(c) does not apply to a *stock lending* transaction made through Euroclear Bank SA/NV's Securities Lending and Borrowing Programme.

Stock lending: treatment of collateral

- 21.3.12 R (1) *Collateral* is adequate for the purposes of this section only if it is:
- (a) transferred to the *firm* or the *firm's* agent;
  - (b) at least equal in value, at the time of the transfer to the *firm* or its agent, to the value of the *securities* transferred by the *firm*; and
  - (c) in the form of one or more of:
    - (i) cash;
    - (ii) a certificate of *deposit*;
    - (iii) a letter of *credit*;
    - (iv) a *readily realisable security*;
    - (v) commercial paper with no embedded *derivative* content;
    - (vi) a *qualifying money market fund*.

- (2) *Collateral* is sufficiently immediate for the purposes of this section if:
- (a) it is transferred before or at the time of the transfer of the *securities* by the *firm*; or
  - (b) the *firm* takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the *day* of the transfer.
- (3) The *firm* must ensure that the value of the collateral at all times is at least equal to the value of the *securities* transferred by the *firm*.
- (4) The duty in (3) may be regarded as satisfied in respect of *collateral* the validity of which is about to expire, or has expired, where the *firm* takes reasonable care to determine that sufficient *collateral* will be transferred, at the latest, by the close of business on the *day* of expiry.

#### Requirements for derivative contracts

- 21.3.13 R A *permitted derivatives contract* is one which:
- (1) for a *Solvency II firm*, is effected or issued:
    - (a) on or under the rules of a *regulated market*; or
    - (b) off-market with an *approved counterparty*; and
 satisfies *COBS* 21.3.14G; and
  - (2) for an *insurer* which is not a *Solvency II firm*, satisfies *INSPRU* 3.2.5R to *INSPRU* 3.2.35AG with the exception of *INSPRU* 3.2.18R; and
  - (3) in each of (1) and (2) the provisions are applied in relation to assets covering liabilities in respect of *linked long-term* contracts of insurance.
- 21.3.14 G *Firms* are also required to comply with the PRA Rulebook Solvency II Firms Investment and ensure that the use of *derivative* contracts is adequately covered. *Firms* are also referred to the *rules* in *COLL* 5.3 (Derivative Exposure) in relation to the use of *derivatives* in investment funds and the further guidance from CESR and its successor body, ESMA, which represent good practice in this area.

...

Amend the following as shown.

#### Schedule 1 Record keeping requirements

...

**Sch 1.3G**

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>COBS</i> 19.2.3R	...			
<u><i>COBS</i> 20.2.34A R(1)(a)(i)</u>	<u>Support assets outside the <i>with-profits fund</i></u>	<u>Precise terms and conditions on which support assets operate and are available including whether and when they are repayable</u>	<u>When a <i>firm</i> first has support assets outside the <i>with-profits fund</i></u>	<u>Until the <i>firm</i> ceases to use support assets outside the <i>with-profits fund</i></u>
...				

**Sch 2 Notification requirements****Sch 2.1G**

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
...				
<u><i>COBS</i> 20.2.19AR(1)</u>	<u>Details of a proposed distribution.</u>	<u>Written details of the proposed distribution, together with copies of draft notifications it proposes to send to <i>policyholders</i>.</u>	<u>The proposed distribution to <i>policyholders</i> is smaller than the ‘pre-notification to <i>policyholder</i> minimum’ calculated in accordance with <i>COBS</i> 20.2.19BR(1).</u>	<u>At least two months prior to the proposed distribution</u>
<u><i>COBS</i> 20.2.19AR(2)</u>	<u>Details of a proposed distribution.</u>	<u>Written details of the proposed distribution, together with copies of draft notifications it proposes to send to <i>policyholders</i>.</u>	<u>The distribution to <i>policyholders</i> does not meet the test in <i>COBS</i> 20.2.19AR(1) but is smaller than the ‘after the event notification to <i>policyholder</i> minimum’ calculated</u>	<u>At least one month prior to the proposed distribution</u>

			<u>in accordance with COBS 20.2.19BR(2).</u>	
<i>COBS</i> 20.2.45R	...			
...				

## Annex L

## 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		
...		
4		<del>Non-Life Directives</del> <u>Solvency II Directive non-life business: effect on territorial scope</u>
4.1	G	The <del>Non-Life Directives'</del> <u>Solvency II Directive's</u> scope covers <u>insurers</u> authorised under <del>those Directives that</del> <u>Directive</u> conducting <u>general insurance business</u> .
4.2	G	The rules in this sourcebook within the <del>Directives'</del> <u>Directive's</u> scope ... and <u>ICOBS 8 (claims handling) except those parts of</u> <del>ICOBS 8.2 (motor vehicle liability insurers)</del> <u>implementing the Consolidated Motor Insurance Directive.</u>
4.3	G	The <del>Directives specify</del> <u>Directive specifies</u> minimum information requirements and <del>permit</del> <u>permits</u> <u>EEA States</u> to adopt additional mandatory rules. (See <del>article 7 of the Second Non-Life Directive</del> <u>articles 178, 180, 183, 184 of the Solvency II Directive</u> ).
4.4	G	If the <u>State of the risk</u> is an <u>EEA State</u> , the <del>Directives provide</del> <u>Directive provides</u> that the applicable information rules shall be

		determined by that state. Accordingly, if the <i>State of the risk</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 risk</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 <del>Directives</del> <u>Directive</u> explicitly <del>permit</del> <u>permits</u> <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See <del>articles 28 and 41 of the Third Non-Life Directive</del> <u>articles 156 and 180 of the Solvency II Directive</u> .)
...		
5		<del>Consolidated Life Solvency II Directive</del> <u>life business</u> : effect on territorial scope
5.1	G	The <del>Consolidated Life Solvency II Directive's</del> scope covers <i>long-term insurers authorised under that Directive</i> which are <i>Solvency II firms</i> conducting <i>long-term insurance business</i> .
...		
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 <del>determined</del> <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 <del>articles 33, 35, 36 and 47 of the Consolidated Life Directive</del> <u>156, 180, 185 and 186 of the Solvency II Directive</u> ).
...		
7		Distance Marketing Directive: effect on territorial scope
...		
7.5		In the <i>FCA's</i> view:
...		
	(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <del>Consolidated Life Solvency II Directive</del> , 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 <del>Consolidated Life Solvency II Directive</del> apply on a 'country of origin' basis rather than being based on the <i>State of the commitment</i> ; (see <del>articles 4(1) and 16 of the Distance Marketing Directive</del> <u>noting</u>

		that the <i>Distance Marketing Directive</i> was adopted after the <i>Consolidated Life Directive</i> ).
...		
8.4	G	The effect of the Directive on this sourcebook is subject to the 'insurance derogation', which is the only 'derogation' in the Directive that the <i>FCA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under, and carrying on an <i>electronic commerce activity</i> within, the scope of the <i>Insurance Directives Solvency II Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the 'general good'.
...		

...

## 2.5 Exclusion of liability, conditions and reliance on others

### Exclusion of liability and conditions

- 2.5.1 R (1) *A firm* must not seek to exclude or restrict, or rely on any exclusion or restriction of, any duty or liability it may have to a *customer* or other *policyholder* unless it is reasonable to do so and the duty or liability arises other than under the *regulatory system*.
- (2) *A Solvency II firm* must ensure that general and special policy conditions do not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

[Note: article 187 of the *Solvency II Directive*]

...

## 4 Information about the firm, its services and remuneration

...

### 4.2 Additional requirements for protection policies for insurance intermediaries and insurers

...

- 4.2.6 G *Insurers* cannot carry on an *insurance mediation activity* in respect of a third party's products unless they can show a natural fit or necessary connection between their insurance business and the third party's products (see the restriction of business in *INSPRU* 1.5.13R and rule 9 of the PRA Rulebook: Solvency II firms: Conditions Governing Business).

...

## 6 Product Information

...

### 6.2 Pre-contract information: general insurance contracts

...

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

6.2.2 R ...

[~~Note: article 31 of the Third Non-Life Directive~~ 183(1) to (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 <del>branch</del> <u>branch</u> concluding the contract is situated.
(3)	...
(3a)	<u>A concrete reference to the <i>firm's SFCR</i> allowing the <i>policyholder</i> 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 <del>beneficiaries</del> <u>beneficiaries</u> 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 <del>insurance undertaking</del> <u>firm</u> proposes to choose.
<b>Note:</b> 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 ~~In addition to~~ A firm must keep a customer informed throughout the term of a pure protection contract of any change concerning 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*]

...

## 8 Claims handling

...

### 8.2 Motor vehicle liability insurers

Application: who? what?

- 8.2.1 R (1) ...
- (2) The *rules* in this section relating to the appointment of claims representatives apply:
    - (a) in relation to claims by *injured parties* resulting from accidents occurring in an *EEA State* other than the *injured party's EEA State* of residence which are caused by the use of *vehicles* insured through an establishment in, and normally based in, an *EEA State* other than the *injured party's EEA State* of residence; and
    - (b) in relation to claims arising out of events occurring, and risks situated, in the United Kingdom, and covered by an incoming EEA firm on a services basis.
  - (3) The *rules* in this section relating to claims handling apply in respect of claims arising from any accident caused by a *vehicle normally based* in the *United Kingdom*.

[~~Note: article 20(1) of the Consolidated Motor Insurance Directive~~ and article 152 of the *Solvency II Directive*]

...

- 8.2.2A R A *person* carrying on, or seeking to carry on, *motor vehicle liability insurance business* must have a claims representative in each *EEA state* other than the *United Kingdom*.

8.2.2B    R    A incoming EEA firm carrying on motor vehicle liability insurance business and covering UK risks on a services basis must have a claims representative in the United Kingdom to deal with claims arising out of events occurring in the United Kingdom.

[**Note:** article 152 of the *Solvency II Directive*]

**Conditions for appointing claims representatives**

8.2.3       R    A *firm* must ensure that each claims representative:

...

[**Note:** article 21(1), (4) and (5) of the *Consolidated Motor Insurance Directive* and article 152 of the *Solvency II Directive*]

## Annex M

## Amendments to the Supervision manual (SUP)

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

### 3 Auditors

#### 3.1 Application

...

3.1.10 G Other relevant sections of the Handbook (see SUP 3.1.9G)

<i>Friendly society</i>	<i>IPRU(FSOC)</i>
<i>Insurer (other than a <u>Solvency II firm</u> or a friendly society)</i>	<i>IPRU(INS)</i>
...	

...

### 4 Actuaries

#### 4.1 Application

...

4.1.2A G This chapter applies in part to a *Solvency II firm* where it appoints an *actuary*. This will be in particular with regard to the *with-profits actuary function* but also where an external *actuary* is appointed to perform tasks of the actuarial *function* of a *Solvency II firm*, under PRA Rulebook: Solvency II Firms: Actuaries. More generally, this chapter applies to a *Solvency II firm* which chooses to appoint an *actuary* to fulfil the requirements under rule 6.1 of PRA Rulebook: Solvency II firms: Conditions Governing Business to provide for an actuarial *function*.

4.1.3 R Applicable sections

(1)	Category of firm	(2) Applicable sections or rules
(1)	A <i>long-term insurer</i> , other than:	SUP 4.1, SUP 4.2, SUP 4.3 and SUP 4.5
	(a) a <i>registered friendly society</i> which is a <i>non-directive friendly society</i> ;	
	(b) an <i>incorporated friendly society</i> that is a <i>flat rate benefits business friendly society</i> ; <del>and</del>	
	(c) an <i>incoming EEA firm</i> ; <u>and</u>	
	(d) a <i>Solvency II firm</i> (for which see (5) below).	
(2)	A <i>friendly society</i> , other than a <i>friendly society</i> within (1) <u>or</u> (5).	SUP 4.1, SUP 4.2, SUP 4.4 and SUP 4.5
(3)	A <del>Lloyd's <i>managing agent</i></del> , in respect of each <i>syndicate</i> it manages <del>[deleted]</del>	<del>SUP 4.1, SUP 4.2, SUP 4.5, SUP 4.6</del>
(4)	<del>The <i>Society of Lloyd's</i> [deleted]</del>	<del>SUP 4.1, SUP 4.2, SUP 4.5, SUP 4.6</del>
(5)	A <i>Solvency II firm</i> which does any of the following:	SUP 4.1, 4.2, 4.3, 4.4 and 4.5 except that:  SUP 4.3.8G to 4.3.10G do not apply to (a) and (b) in column 2; and  SUP 4.3.13R to 4.3.15G, and 4.4.6R do not apply.
	(a) <u>appoints an <i>actuary</i> to fulfil the <i>actuarial function</i> for the purposes of rule 6 of the <u>PRA Rulebook: Solvency II firms: Conditions Governing Business</u>;</u>	
	(b) <u>appoints an external <i>actuary</i> in accordance with <u>PRA Rulebook: Solvency II Firms: Actuaries</u>;</u>	
	(c) <u>appoints a <i>with-profits actuary</i>.</u>	

## 4.2 Purpose

...

4.2.2 G ... The purpose of the chapter is to ensure that:

- (1) *long term insurers* (other than certain *friendly societies* and *Solvency II firms*) ...; and
- (2) other *friendly societies* (other than *Solvency II firms*) carrying on insurance business...; and

- (3) ~~managing agents of Lloyd's syndicates employ or use an *actuary* of appropriate seniority and experience to evaluate the liabilities associated with *insurance business* carried on at Lloyd's where *Solvency II firms* appoint, employ or use an *actuary*, certain appropriate safeguards are in place.~~

- 4.2.3 G The functions described by SUP 4.2.2G(1) are performed by one or more *actuaries* who are required to hold office continuously and must be *approved persons*. *Solvency II firms* are required to have an actuarial function. *Solvency II firms* are not required to appoint an external actuary to fulfil the actuarial function for the purposes of rule 6 of the PRA Rulebook: *Solvency II firms: Conditions Governing Business*, but they must do so if they do not have the internal capability (see PRA Rulebook: *Solvency II Firms: Actuaries*). Whoever has responsibility for the actuarial function (whether internal or external) will need to be approved by the PRA as a Chief Actuary. *Solvency II firms* carrying on *with-profits business* are required to appoint a qualified *with-profits actuary* (whether internal or external). Whoever has responsibility for advising the *governing body* of the firm on the exercise of discretion affecting the firm's *with-profits business* will need to be approved by the PRA as a With-Profits Actuary. The principal duty of an *actuary* appointed to perform these functions is to advise the firm (see SUP 4.3.13R to SUP 4.3.18G for the rights and duties of such an *actuary*).

...

- 4.2.5 G ~~*Actuaries* act as a valuable source of information to the ~~appropriate regulator~~ *appropriate regulator* in carrying out its functions. For example, in determining whether a firm satisfies the *threshold conditions*, the ~~appropriate regulator~~ *appropriate regulator* has regard to whether the firm has appointed an *actuary* (or some other person with responsibility for the actuarial function required by rule 6 of the PRA Rulebook: *Solvency II firms: Conditions Governing Business*) with sufficient experience in the areas of business to be conducted by the firm.~~

- 4.2.6 G In making appointments under this chapter and in allocating duties to *actuaries*, firms are reminded of their obligation under SYSC 2.1.1R or rule 2.2(2) of the PRA Rulebook: *Solvency II firms: Conditions Governing Business* to maintain a clear and appropriate apportionment of significant responsibilities so that it is clear who has which of those responsibilities and that the business and affairs of the firm can be adequately monitored and controlled by the *directors*, relevant *senior managers* and *governing body* of the firm.

### 4.3 Appointment of actuaries

Appointment by firms

...

- 4.3.2 G The provisions relating to the duties of an *actuary* appointed to perform these functions are set out in *SUP* 4.3.13R to *SUP* 4.3.18G. For *Solvency II firms*, the *actuarial function* is set out in rule 6.1 of the PRA Rulebook: *Solvency II firms: Conditions Governing Business and the role of an external actuary* set out in the PRA Rulebook: *Solvency II Firms: Actuaries*. The functions performed by *actuaries* appointed by a *firm* under *SUP* 4.3.1R are specified as controlled functions (CF12 .... For *Solvency II firms* the functions required to be *controlled functions* are set out in PRA Rulebook: *Solvency II firms: Insurance – Senior Insurance Management Functions*. As a result ...

...

Disqualified actuaries

- 4.3.11 R A *firm* must not appoint under *SUP* 4.3.1R or rule 6.1 of the PRA Rulebook: *Solvency II firms: Conditions Governing Business, or in accordance with the PRA Rulebook: Solvency II Firms: Actuaries*, an *actuary* who is disqualified by the *FCA* under section 345 of the *Act* (Disciplinary measures: *FCA*) or the *PRA* under section 345A of the *Act* (Disciplinary measures: *PRA*) from acting as an *actuary* either for that *firm* or for a relevant class of *firm*.

...

- 4.3.12A R A *firm* must take reasonable steps to ensure that an *actuary* who is to be, or has been, appointed under *SUP* 4.3.1R or rule 6.1 of the PRA Rulebook: *Solvency II firms: Conditions Governing Business, or in accordance with the PRA Rulebook: Solvency II Firms: Actuaries*:

...

...

The actuarial function

...

- 4.3.14 G *IPRU(INS)* 9.4R and *IPRU(FSOC)* 5.1R require *firms* to which this section applies to cause an investigation to be made at least yearly by the *actuary* or *actuaries* appointed to perform the *actuarial function*, and to report on the result of that investigation. ~~*INSPRU* 1.3 requires *realistic basis life firms* to calculate the *with-profits insurance component* as part of their capital resources requirements.~~ The *firm* is responsible for the methods and assumptions used to determine the *liabilities* attributable to its *long-term insurance business*. ...

...

The with-profits actuary function

...

4.3.16A R An *actuary* appointed to perform the *with-profits actuary function* must:

...

(2) ~~where the *firm* is a *realistic basis life firm* advise the *firm's* governing body as to whether the assumptions used to calculate the with-profits insurance component under *INSPRU* 1.3 are consistent with the *firm's PPFM* in respect of those classes of the *firm's with-profits business*; [deleted].~~

(2A) where the *firm* is a *Solvency II firm*, advise the *firm's governing body* as to whether the assumptions used to calculate the future discretionary benefits within the *technical provisions* are consistent with the *firm's PPFM* in respect of those classes of the *firm's with-profits business*;

...

(8) advise on any *actuarial investigation* required to determine the *with-profits-fund surplus*.

...

#### 4.5 Provisions applicable to all actuaries

... Objectivity

4.5.1 R An *actuary* appointed under this chapter or the PRA Rulebook: Solvency II firms sector must be objective in performing his duties.

...

4.5.3 R An *actuary* appointed under this chapter or the PRA Rulebook: Solvency II firms must take reasonable steps ...

...

4.5.7 G (1) Actuaries appointed under this chapter or the PRA Rulebook: Solvency II firms are subject to regulations ...

...

...

4.5.8 G *SUP* 4.5.9R to *SUP* 4.5.11G apply to a *person* who is or has been an *actuary* appointed under this chapter or the PRA Rulebook: Solvency II firms.

4.5.9 R An *actuary* appointed under this chapter or the PRA Rulebook: Solvency II firms must notify the ~~appropriate regulator~~ appropriate regulator ...

- 4.5.10 R An *actuary* who has ceased to be appointed under this chapter or the PRA Rulebook: Solvency II firms, or who has been formally notified that he will cease to be so appointed, must notify the ~~appropriate regulator~~ appropriate regulator ...

...

#### Rights and duties

...

- 4.5.13 R When carrying out his duties, an *actuary* appointed under this chapter or the PRA Rulebook: Solvency II firms must pay due regard ...

- 4.5.14 G The standards, codes and guidance issued from time to time by the Institute ~~of Actuaries~~, and the Faculty of Actuaries and the Financial Reporting Council are important sources of generally accepted actuarial practice.

...

### 6.3 Applications for variation of permission and/or imposition, variation or cancellation of requirements

...

- 6.3.13 G The application for variation of *Part 4A permission* will need to provide information about the *classes of contract of insurance* for which variation of *Part 4A permission* is requested and also those *classes* qualifying to be carried on, on an ancillary or supplementary basis. For example, an *insurer* applying to vary its *permission* to include *class 10* (motor vehicle liability, other than carrier's liability) must satisfy the *FCA* that it will meet, and continue to meet, *threshold condition 3F* (Appointment of claims representatives). *Firms* should note that, although the relevant regulator is able in principle to use its power to give *Part 4A permission* for an applicant to carry on a *regulated activity* for which it did not originally apply, this is not possible under the ~~Insurance Directives~~ *Solvency II Directive*, which sets out minimum information requirements for an application for *authorisation* including information on the specified investments the applicant proposes to deal in.

...

## 11 Controllers and close links

...

### 11.8 Changes in the circumstances of existing controllers

- 11.8.1 R A *firm* must notify the *appropriate regulator* immediately it becomes aware of any of the following matters in respect of one or more of its *controllers*:

...

- (4) if a *controller*, who is authorised in another *EEA State* as a *MIFID investment firm*, *CRD credit institution* or *UCITS management company* or under the ~~*Insurance Directives*~~ *Solvency II Directive* or the *Insurance Mediation Directive*, ceases to be so authorised (registered in the case of an *IMD insurance intermediary*).

...

## 13 Exercise of passport rights by UK firms

### 13.1 Application and purpose

...

- 13.1.3 G This chapter does not apply to:

...

- (3) any insurance activity by way of provision of services which is provided by an *EEA firm* participating in a *community co-insurance operation* otherwise than as *leading insurer*; article ~~26.2~~ 190(2) of the ~~*Second Non-Life Solvency II Directive*~~ provides that only the *leading insurer* in such an operation is required to complete any passporting formalities (see also article 11 of the *Regulated Activities Order*); or

...

...

### 13.2 Introduction

...

- 13.2.3 G In some circumstances, a *UK firm* that is carrying on business which is outside the scope of the *Single Market Directives* has a right under the *Treaty* to carry on that business. For example, for an *insurer* carrying on both direct insurance and *reinsurance* business, the *authorisation* of *reinsurance* business is not covered by the ~~*Insurance Directives*~~ *Solvency II Directive*. The *firm* may, however, have rights under the *Treaty* in respect of its *reinsurance* business. Such *UK firms* may wish to consult with the *appropriate UK regulator* on their particular circumstances (see *SUP* 13.12.2G).

### 13.3 Establishing a branch in another EEA State

...

The conditions for establishing a branch

- 13.3.2 G A *UK firm* other than a *UK pure reinsurer* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the relevant conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

...

- (3) (a) ...
- (b) in any other case (except for a *firm* passporting under *AIFMD*):
- (i) the *Host State regulator* has notified the *UK firm* (or, where the *UK firm* is passporting under the *Insurance Directives Solvency II Directive*, the *PRA*) of the *applicable provisions* or, in the case of a *UK firm* passporting under *MiFID* or the *UCITS Directive*, that the *branch* may be established; or
- (ii) two *months* have elapsed beginning with the date on which the *appropriate UK regulator* gave the *consent notice*.

...

Issue of a consent notice to the Host State regulator

- 13.3.5 G ...
- (2) (a) If the *UK firm's EEA right* derives from the *Insurance Directives Solvency II Directive*, the *PRA* will give the *Host State regulator* a *consent notice* within three *months* unless it has reason to:

...

...

- (c) If the *PRA* has required a ~~financial~~ “recovery plan” or a “finance scheme” of a *UK firm* of the kind mentioned in ~~paragraph 1 of article 38 of the Consolidated Life Directive or paragraph 1 of article 20a of the First Non-Life Directive~~, PRA Rulebook: Solvency II firms: Undertakings in Difficulty, the *PRA* ~~will not~~ would not expect to give a *consent notice* for so long as it considers that *policyholders* are threatened within the meaning of those provisions.

...

...

13.3.6 G ...

(2) The *consent notice* will contain, among other matters, the *requisite details* or, if the *firm* is passporting under the ~~*Insurance Directives*~~ *Solvency II Directive*, the *relevant EEA details* (see SUP 13 Annex 1R) provided by the *UK firm* in its *notice of intention* (see SUP 13.5 (Notices of intention)).

(3) ...

...

#### 13.4 Providing cross border services into another EEA State

...

The conditions for providing cross border services into another EEA State

13.4.2 G A *UK firm*, other than a *UK pure reinsurer* or an *AIFM* exercising an *EEA right* to market an *AIF* under *AIFMD*, cannot start providing *cross border services* into another *EEA State* under an *EEA right* unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the *Act* and, if it derives its *EEA right* from the ~~*Insurance Directives*~~ *Solvency II Directive*, *AIFMD*, *MiFID* or the *UCITS Directive*, paragraph 20(4B) of Part III of Schedule 3 to the *Act*. It is an offence for a *UK firm* which is not an *authorised person* to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). The conditions are that:

...

(2) if the *UK firm* is passporting under the ~~*Insurance Directives*~~ *Solvency II Directive*, the *firm* has received written notice from the *PRA* as described in SUP 13.4.6G; or

...

...

Issuing a consent notice or notifying the Host State regulator

13.4.4 G ...

(2) (a) If the *UK firm's EEA right* derives from the ~~*Insurance Directives*~~ *Solvency II Directive*, paragraph 20(3A) of Part III of Schedule 3 to the *Act* requires the *PRA*, within one *month* of receiving the *notice of intention*, to:

...

(b) ...

- (c) If the *PRA* has required of a *UK firm* a ~~financial~~ “recovery plan” or “finance scheme” of the kind mentioned in paragraph 1 of article 38 of the ~~*Consolidated Life Directive*~~ or paragraph 1 of article 20a of the ~~*First Non-Life Directive*~~ *PRA Rulebook: Solvency II firms: Undertakings in Difficulty*, the *PRA* ~~will not~~ would not expect to give a *consent notice* for so long as it considers that *policyholders’* rights are threatened within the meaning of those provisions.

...

...

### 13.5 Notices of intention

...

- 13.5.2 R A *UK firm* wishing to provide *cross border services* into a particular *EEA State* for the first time under an *EEA right* other than under the *auction regulation* must submit a notice in the form set out in:

(1) ...

(1A) *SUP 13 Annex 3R* if the *UK firm* is passporting under the ~~*Insurance Directives*~~ *Solvency II Directive*; or

...

...

- 13.5.2A G *SUP 13.5.2R* does not apply to *UK pure reinsurers* or a *UK firm* exercising an *EEA right* under the *auction regulation* as they have automatic passport rights on the basis of their *Home State authorisation* under the ~~*Reinsurance Directive*~~ *Solvency II Directive* or the *auction regulation*. However, the information required by *SUP 13.5.2-AR* assists the ~~*FSA’s*~~ supervision of a *UK firm’s* provision of a service in another *EEA state* under the *auction regulation*.

...

### 13.6 Changes to branches

- 13.6.1 G Where a *UK firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive* (see *SUP 13.6.9AG*) or as a *pure reinsurer* ~~or the *Reinsurance Directive*~~ (see *SUP 13.6.9BR*) or the *CRD*, and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*. ...

- 13.6.2 G *UK firms* should note that if a *branch* in another *EEA State* ceases to provide services, this may represent a change in *requisite details* or, if the *firm* is passporting under the ~~*Insurance Directives*~~ *Solvency II Directive*, the

*relevant EEA details or relevant UK details.*

- 13.6.3 G *UK firms* should also note that changes to the details of *branches* may lead to changes to the *applicable provisions* to which the *UK firm* is subject. These changes should be communicated to the *UK firm* either by the *Host State regulator*, or, if the *firm* is passporting under ~~*Insurance Directives*~~ the *Solvency II Directive*, via the *PRA*.

...

Changes arising from circumstances beyond control of a UK firm

- 13.6.10 G (1) If the change arises from circumstances beyond the *UK firm's* control, the *UK firm*:
- (a) ...
- (b) may, if it is passporting under the ~~*Insurance Directives*~~ *Solvency II Directive*, make a change to its *relevant UK details* under regulation 15(1) ...

...

### 13.7 Changes to cross border services

- 13.7.1 G Where a *UK firm*, other than a *pure reinsurer*, is exercising an *EEA right* under the *UCITS Directive*, *MiFID*, ~~*Insurance Directives*~~ *Solvency II Directive* or *AIFMD* and is providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*. ...

...

### 13.8 Changes of details: provision of notices to the appropriate UK regulator

...

- 13.8.2 G *UK firms*, other than *pure reinsurers*, passporting under the *CRD* or the ~~*Insurance Directives*~~ *Solvency II Directive* may be required to submit the change to details notice in the language of the *Host State* as well as in English.

## 13 Annex 1 Passporting: Notification of intention to establish a branch in another EEA state

...

### 6 Consolidated Life Assurance Solvency II Directive (Life insurance)

**Note to section 6<sup>2</sup>**

If the firm is a pure reinsurer, it should not complete section 6 of this form, but should complete section 8 instead.

<sup>2</sup> Please note that this change needs to be in the same format as the current Note to Question 6.1 i.e. in a grey box on the left hand side of this part of the form.

...

6.6 Please confirm you have attached the following. †

...	...	...
<p>iii. For each of the first three years following the establishment of the <i>branch</i>, estimates of the <i>firm's</i>: <del>margin of solvency and the margin of solvency required and the method of calculation</del></p> <p>a) <u>future SCR as well as the calculation method used to derive those estimates; and</u></p> <p>b) <u>future "MCR" as defined in the PRA Rulebook: Glossary as well as the calculation method used to derive those estimates.</u></p>	<p><del>Attached</del></p> <p><u>Attached</u></p> <p><u>Attached</u></p>	<p><del><input checked="" type="checkbox"/></del></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
...		
<p>v. For each of the first three years following the establishment of the <i>branch</i>, the details described below with regards to the business carried on in the <i>EEA State</i> concerned:</p> <p>a) a statement setting out, on both optimistic and pessimistic bases, detailed estimates of income and expenditure for direct business, reinsurance acceptances and reinsurance cessions; and</p> <p>b) a statement of estimates <del>relating to</del> <u>of the financial resources intended to cover underwriting liabilities <i>technical provisions</i>, the "MCR" as defined in the</u></p>	<p>Attached</p> <p>Attached</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

	<u>PRA Rulebook: Glossary, and the SCR.</u>		
...			
x.	The technical bases that the <del>actuary</del> <i>person</i> appointed to the <u>actuarial function</u> in accordance with <del>SUP 4.3.1R</del> rule 6 of the <u>PRA Rulebook: Solvency II firms: Conditions Governing Business</u> proposes to use for each class of business to be carried on in the <i>EEA State</i> concerned, including the bases needed for calculating premium rates and <del>mathematical reserves</del> <i>technical provisions</i> .	Attached	<input type="checkbox"/>
...			

**7 ~~First, Second and Third Non-Life Insurance Directives~~ Solvency II Directive (Non-life insurance)**

**Note to section 7**<sup>3</sup>

If the *firm* is a *pure reinsurer*, it should not complete section 7 of this form, but should complete section 8 instead.

<sup>3</sup> Please note that this change needs to be in the same format as the current Note to Question 6.1 i.e. in a grey box on the left hand side of this part of the form.

...

**Note to question 7.3**

...

iii. If the ~~firm~~ *firm* covers (or intends to cover) risks relating to **legal expenses insurance**, please state, in question 7.3, the option chosen from those described in ~~Article 3(2)~~ of ~~Directive 87/344/EEC~~

of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance article 200(1) of the Solvency II Directive.

...

7.6 Please confirm you have attached the following. †

...	...	...
...	...	...
<p>iv. For each of the first three years following the establishment of the <i>branch</i>, estimates of the <i>firm's</i>: <del>margin of solvency and the margin of solvency required and the method of calculation.</del></p> <p>a) <u>future SCR, as well as the calculation method used to derive those estimates; and</u></p> <p>b) <u>future "MCR" as defined in the PRA Rulebook: Glossary, as well as the calculation method used to derive those estimates.</u></p>	<p>Attached</p> <p>Attached</p> <p>Attached</p>	<p><input checked="" type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>
<p>v. For each of the first three years following the establishment of the <i>branch</i>, the details described below about the business carried on in the EEA State concerned:</p> <p>a) estimates relating to expenses of management (other than cost of installation) and, in particular, those relating to current general expenses and commissions;</p> <p>b) estimates relating to premiums or contributions (both gross and net of all reinsurance ceded) and to claims (after all reinsurance</p>	<p>Attached</p> <p>Attached</p> <p>Attached</p>	<p><input type="checkbox"/></p> <p><input type="checkbox"/></p> <p><input type="checkbox"/></p>

recoveries); and		
c) estimates <del>relating to</del> <u>of</u> the financial resources intended to cover <del>underwriting liabilities</del> <u>technical provisions, the “MCR” as defined in the PRA Rulebook: Glossary, and the SCR.</u>		
...		

**8 Reinsurance Solvency II Directive (Reinsurance)**

...

**Note to section 8**  
  
Only pure reinsurers should complete this section of this form.

8.1 Please confirm the type(s) of reinsurance activity to be carried out by the branch under the ~~Reinsurance Directive~~ Solvency II Directive by ticking one of the boxes below. †

...

11 Declaration

...

I enclose the following sections (mark the appropriate section) \*

...	...
Section 6 – <del>Consolidated Life Assurance</del> <u>Solvency II Directive (Life insurance)</u>	...
Section 7 – <del>First, Second and Third Non Life Directives</del> <u>Solvency II Directive (Non-life insurance)</u>	...
Section 8 – <del>Reinsurance</del> <u>Solvency II Directive (Reinsurance)</u>	
...	

...

**13A Qualifying for authorisation under the Act****13A.1 Application and purpose**

Application

...

**13A.1.3 G**

(1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

(a) authorised in Gibraltar under the ~~*Insurance Directives*~~ *Solvency II Directive*; or

(aA) ~~authorised in Gibraltar under the *Reinsurance Directive*; or~~  
[deleted]

(b) ...

...

...

**13A.2 EEA firms and Treaty firms**

13A.2.1 G ... A *person* may be a *Treaty firm*, where, for example, it carries on business that includes *regulated activities*, the right to carry on which does not fall within the scope of the *Single Market Directive* or the *auction regulation* under which it is entitled to exercise an *EEA right*, for example, *reinsurance* in the case of a direct insurer to which the ~~*Insurance Directives*~~ apply *Solvency II Directive* applies.

...

**13A.4 EEA firms establishing a branch in the United Kingdom**

...

The notification procedure

13A.4.4 G (1) When the *appropriate regulator* receives a consent notice from the *EEA firm's Home State regulator*, it will, under paragraphs 13(2)(b), (c) and 13(3) of Part II of Schedule 3 to the *Act*, notify the *applicable provisions* (if any) to:

(a) ...

(b) in the case of an *EEA firm* passporting under the ~~*Insurance Directives*~~ *Solvency II Directive*, the *Home State regulator*; ...

...

...

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

...

<i>(1) Module of Handbook</i>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...		
<i>INSPRU</i>	<i>INSPRU</i> does not apply <del>unless the firm is an insurer to which INSPRU 1.5.33R applies.</del>	<u><i>INSPRU</i> does not apply.</u>
...		
<i>ICOBS</i>		<i>ICOBS</i> 8.4 <del>applies</del> and parts of <i>ICOBS</i> 8.2 <del>apply</del> except to the extent necessary to be compatible with European law. Other chapters of <i>ICOBS</i> do not apply, except to the extent necessary to be compatible with European law. Guidance on the territorial application of <i>ICOBS</i> is contained in <i>ICOBS</i> 1 Annex 1 G Part 4.21
...		
<i>SUP</i>	... <b>SUP 10A (Approved persons)</b> ... <u><i>SUP</i> 10A applies in a limited way in relation to an incoming EEA firm that is a Solvency II firm (see SUP 10A.1.8G).</u>	...  Does not apply.
...		

**13A Annex 2 Matters reserved to a Home State regulator**

...		
Requirements in the interest of the general good		
2	...	
	(1)	the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i> , <i>CRD credit institution</i> , <i>UCITS management company</i> <i>AIFM</i> or passporting <del>insurance undertaking</del> <u><i>Solvency II firm</i></u> to the Firm's Home State regulator. The <i>Insurance</i>

		<i>Mediation Directive</i> reaches the same position without expressly referring to the concept of prudential supervision. Accordingly, the <i>FCA</i> , as <i>Host State regulator</i> , is entitled to regulate only the conduct of the firm's business within the <i>United Kingdom</i> ;
...		
Application of SYSC 2 and SYSC 3		
4		SYSC 2 and SYSC 3 only apply to an <i>insurer</i> , a <i>managing agent</i> and the <i>Society</i> . See paragraph 8 below for a discussion of how the <i>common platform requirements</i> apply. SYSC 2.1.1R and SYSC 2.1.2G do not apply for a relevant <i>incoming Treaty firm</i> . The <i>FCA</i> and <i>PRA</i> <del>consider</del> <u>considers</u> that <del>they are</del> <u>it is</u> entitled, in the interests of the general good, to impose the requirements in SYSC 2.1.3R to SYSC 2.2.3G (in relation to the allocation of the function in SYSC 2.1.3R(2)) and SYSC 3 on an <i>incoming EEA firm</i> and an <i>incoming Treaty firm</i> ; but only in so far as they relate to those categories of matter responsibility for which is not reserved to the <i>firm's Home State regulator</i> .
...		
13		Examples of how SYSC 3 and/or the common platform provisions apply in practice.
	(1)	The Prudential Standards part of the <i>Handbook</i> ( <del>with the exception of <i>INSPRU 1.5.33R</i> on the payment of financial penalties and the <i>Interim Prudential sourcebook</i> (insurers) (<i>IPRU(INS)</i>) (rules 3.6 and 3.7)</del> ) do not apply to an <i>insurer</i> which is an <i>incoming EEA firm</i> . Similarly, SYSC 3 does not require such a <i>firm</i> :
	(a)	to establish systems and controls in relation to financial resources (SYSC 3.1.1R); or
	(b)	to establish systems and controls for compliance with that Prudential Standards part of the <i>Handbook</i> (SYSC 3.2.6R); or
	(c)	to make and retain records in relation to financial resources (SYSC 3.2.20R and SYSC 9.1.1R to 9.1.4G).

...

## 14 Incoming EEA firms changing details, and cancelling qualification for authorisation

### 14.1 Application and purpose

Application

...

- 14.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it

is:

- (a) authorised in Gibraltar under the ~~*Insurance Directives*~~ *Solvency II Directive*; or
- (aa) ~~authorised in Gibraltar under the *Reinsurance Directive*; or~~  
[deleted]

...

...

### 14.3 Changes to cross border services

- 14.3.1 G Where an *incoming EEA firm* passporting under the *MiFID*, *UCITS Directive*, ~~*Insurance Directives*~~ *Solvency II Directive* or *AIFMD* is exercising an *EEA right* and is providing *cross border services* into the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of those services. ...

...

Firms passporting under the ~~*Insurance Directives*~~ *Solvency II Directive*

- 14.3.5 G If an *incoming EEA firm* passporting under the ~~*Insurance Directives*~~ *Solvency II Directive* is providing *cross border services* into the *United Kingdom*, it must not make a change to the details referred to in regulation 7(1) unless it has complied with the relevant provisions.

...

### 16.4 Annual controllers report

...

- 16.4.4 G A *firm* and its *controllers* are required to notify certain changes in *control* (see *SUP 11 (Controllers and close links)*). The purpose of the *rules* and *guidance* in this section is:
- (1) ...
  - (2) to implement certain requirements relating to annual reporting of *controllers* which must be imposed on *firms* under the *Investment Services Directive*, the *Banking Consolidation Directive*, ~~the *Consolidated Life Directive*~~ and the ~~*Third Non-Life Directive*~~ *Solvency II Directive*; and

...

## 18 Transfers of business

...

**18.2 Insurance business transfers**

...

18.2.24 G The *guidance* set out in SUP 18.2.25G to SUP 18.2.30G derives from the requirements of the ~~*Insurance Directives*~~, the ~~*Reinsurance Directive*~~ *Solvency II Directive* and the associated agreements between *EEA regulators*. Schedule 12 of the *Act* implements some of these requirements.

18.2.25 G (1) If the transferee is (or will be) an *EEA firm* (authorised in its *Home State* to carry on *insurance business* under the ~~*Insurance Directives*~~ *Solvency II Directive*) or a *Swiss general insurance company*, then the *appropriate regulator* has to consult the transferee's *Home State regulator*, who has 3 months to respond. It will be necessary for the *appropriate regulator* to obtain from the transferee's *Home State regulator* a certificate confirming that the transferee will meet the *Home State's* solvency margin requirements (if any) after the transfer.

...

(2) If the transferee is *authorised* in the *United Kingdom*, the *appropriate regulator* will need to certify that the transferee will meet its solvency margin requirements after the transfer. If the *appropriate regulator* has required of a *UK firm* a ~~financial~~ “recovery plan” of the kind mentioned in ~~paragraph 1 of article 38 of the Consolidated Life Directive (2002/83/EC)~~ or paragraph 1 of article 20a of the ~~*First Non-Life Directive*~~, or paragraphs 1 and 2 of article 43 of the ~~*Reinsurance Directive*~~ the *PRA Rulebook: Solvency II firms: Undertakings in Difficulty*, the *appropriate regulator* will not issue a certificate for so long as it considers that *policyholders' rights* are threatened within the meaning of these paragraphs.

...

**18.3 Insurance business transfers outside the United Kingdom**

## Purpose

18.3.1 G Under section 115 of the *Act*, the *appropriate regulator* has the power to give a certificate confirming that a *firm* possesses any ~~*required minimum margin*~~ *necessary margin of solvency*, to facilitate an *insurance business* transfer to the *firm* under overseas legislation from a firm authorised in another *EEA State* or from a *Swiss general insurance company*. This section provides *guidance* on how the *appropriate regulator* would exercise this power and on related matters.

...

**Appendix 2 Insurers: Regulatory intervention points and run-off plans**

**App 2.1 Application**

App 2.1.1 R Subject to SUP App 2.1.6R, SUP App 2.1 to 2.15 apply to an insurer, unless it is:

- (1) a *Swiss general insurer*; or
- (2) an *EEA-deposit insurer*; or
- (3) an *incoming EEA firm*; or
- (4) an *incoming Treaty firm*.

...

App 2.1.4 G SUP App 2.14A and 2.15 applies apply to an insurer carrying on with-profits business, but SUP App 2.15 only applies if COBS 20.2.53R (Ceasing to effect new contracts of insurance in a with-profits fund) also applies.

...

App 2.1.6 R SUP App 2.7 and 2.11 do not apply to a Solvency II firm.

App 2.1.7 G The rules for Solvency II firms in difficulty or in an irregular situation are in the PRA Rulebook: Solvency II Firms: Undertakings in Difficulty.

**App 2.2 Interpretation**

App 2.2.1 R For the purpose of SUP App 2.1 to 2.14:

- (1) "capital resources":
 

...

  - (b) ~~in relation to a participating insurance undertaking, means P+T, where P and T have the meanings given by INSPRU 6.1.45R(3)(a) and (c) respectively, as calculated in accordance with INSPRU 6.1.43R; and [deleted]~~
  - (c) ~~in relation to any other firm, which is not a Solvency II firm, means the firm's capital resources as calculated in accordance with GENPRU 2.2.17R; and~~
  - (d) in relation to a Solvency II firm means the firm's "eligible own funds" as defined in the PRA Rulebook: Glossary;
- (2) "guarantee fund":

...

- (b) ~~in relation to a *participating insurance undertaking*, means the amount of capital resources which that *firm* must hold to comply with *INSPRU 6.1.45R(2)*; [deleted]~~
- (c) in relation to a *firm other than a Solvency II firm* which is not covered by (a) ~~or (b)~~, carrying on *general insurance business*, means the amount of capital resources which that *firm* must hold to comply with *GENPRU 2.2.34R*; and
- (d) in relation to a *firm other than a Solvency II firm*, which is not covered by (a) ~~or (b)~~, carrying on *long-term insurance business*, means the amount of capital resources which that *firm* must hold to comply with *GENPRU 2.2.33R*;

...

### App 2.3 Purpose

...

- App 2.3.8 G ~~In relation to a *firm* carrying on *with profits insurance business*, action which it takes either to restore its capital resources to the levels set by the intervention points in this appendix, or to prevent its capital resources falling below those points, should be consistent with *Principle 6* of the *FCA's Principles for Businesses*. The *FCA's Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. [deleted]~~

...

### App 2.7 Capital resources below the level of individual capital guidance

...

- App 2.7.3 G ~~In relation to a *firm* carrying on *with profits insurance business*, if it intends either (a) to remedy a fall in the level of capital resources advised in its *individual capital guidance*, or (b) to prevent a fall in the level advised in that *guidance*, for example, in either case, by taking management action to de-risk a *with profits fund* or by reducing non-contractual benefits for *policyholders*, it should explain to the *appropriate regulator* how such proposed actions are consistent with the *firm's* obligations under the *FCA's Principle 6* (Customers' interests). [deleted]~~

...

### App 2.8 Ceasing to effect contracts of insurance

- App 2.8.1 R If a *firm* (whether within or outside the scope of the *Solvency II Directive*) decides to cease to effect new *contracts of insurance*, it must, within 28 days

of that decision, submit a run-off plan to the *appropriate regulator* including:

...

...

## **App 2.10 Grant or variation of permission**

- App 2.10.1 G The *PRA* ~~may~~ will ask a ~~firm~~ Solvency II firms seeking a grant or variation of *permission* to provide a *scheme of operations* as part of the application process (see article 18 of the *Solvency II Directive*). It may make a similar request to other firms (see *SUP* 6.3.25G). ~~Such a firm is~~ Firms which have submitted such a scheme of operations are not required to submit a further *scheme of operations* under this appendix unless *SUP* App 2.4, *SUP* App 2.5 or *SUP* App 2.8 applies. *SUP* App 2.13 and *SUP* 6 Annex 4 do, however, apply to such a *firm*.

## **App 2.11 Submission of a scheme of operations or a plan for restoration**

...

- App 2.11.4 G ~~In relation to a firm which carries on with-profits insurance business and which submits a plan, the appropriate regulator would expect an explanation of how any actions it plans to take to restore capital resources to the level of the guarantee fund, required margin of solvency or capital resources requirement are consistent with the firm's obligations under the FCA's Principle 6 (Customers' interests). [deleted]~~

## **App 2.14A Fairness issues for with-profit firms in difficulty or in an irregular situation**

- App 2.14A.1 G *SUP* App 2.14A applies to a firm carrying on with-profits business.

- App 2.14A.2 G Action which a firm takes either to restore its capital resources to the levels set by the intervention points in this appendix or in PRA Rulebook: Solvency II Firms: Undertakings in Difficulty, or to prevent its capital resources falling below those points, should be consistent with Principle 6 of the FCA's Principles for Businesses. Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly.

- App 2.14A.3 G If a firm intends either (a) to remedy a fall in capital resources, or (b) to prevent such a fall, for example, by taking management action to reduce the risks to which a with-profits fund is exposed or by reducing non-contractual benefits for policyholders, it should explain to the FCA how such proposed actions are consistent with the firm's obligations under Principle 6

(Customers' interests).

App 2.14A.4 G Where a *firm* submits a plan for restoration under this appendix or complies with PRA Rulebook: Solvency II Firms: Undertakings in Difficulty, the FCA would expect an explanation of how any actions it plans to take to restore its capital resources are consistent with the *firm's* obligations under Principle 6 (Customers' interests).

**App 2.15 Run-off plans for closed with-profits funds**

...

Financial projections

App 2.15.8 G A ~~firm's~~ *firm*, other than a *Solvency II firm*, should include in its run-off plan should include:

...

App 2.15.8A G A *Solvency II firm* should include the following information in its run off plan, except in the circumstances set out in *SUP App 2.15.8BG*:

- (1) a forecast summary revenue account for the *with-profits fund*, in accordance with *SUP App 2.12.7R*;
- (2) a forecast summary balance sheet and “eligible own funds” as defined in the PRA Rulebook: Glossary and any notional *SCR* for the *with-profits fund*, in accordance with *SUP App 2.12.8R*; and
- (3) “eligible own funds”, “MCR” (as those terms are defined in the PRA Rulebook: Glossary), forecast summary balance sheet and *SCR* for the entire *firm*, in accordance with *SUP App 2.12.8R* and *SUP App 2.12.9R*;

in each case, for at least a three-year period, beginning on the date of closure.

App 2.15.8B G Delegated acts or implementing technical standards may be adopted under article 35(6) and (7) of the *Solvency II Directive* in relation, among other things, to run-off plans. In that event *Solvency II firms* should comply with those acts and standards to the extent that they supersede *SUP App 2.15.8AG*.

...

App 2.15.9 G ...

Table 2 - forecast summary balance sheet and statement of solvency for the relevant with-profits fund	
...	
(13)	<del>With-profits insurance capital component (for realistic basis life firms only)</del> [deleted]
...	

Table 3 - forecast summary balance sheet and statement of solvency for the firm		
...		
L10	<del>With-profits insurance capital component</del> [deleted]	<del>for realistic basis life firms only</del>
...		

App 2.15.10 G If a firm is a realistic basis life firm, its run-off plan should include:

- (1) a realistic balance sheet and statement of solvency position in the form of SUP App 2.15.9 G Table 2, if the financial position of the relevant *with-profits fund* would, when stated in that form, be materially different from the *firm's* most recent realistic solvency submission for that fund; or
- (2) a statement that the *firm* is satisfied that the closure of the *with-profits fund* will not materially affect the solvency position of that fund, as reflected in the *firm's* most recent solvency submission for that fund.  
[deleted]

App 2.15.11 G A firm's The run-off plan of a firm to which INSPRU 7 applies should include:

...

...

### Appendix 3 Guidance on passporting issues

...

#### App 3.6 Freedom to provide services

...

##### Place of supply

App 3.6.6 G ... The location of risks and commitments is found by reference to the rules set out in paragraph 6 of schedule 12 to the *Act*, which derive from ~~article 4 of the Consolidated Life Directive and article 2 of the Second Non-Life Directive~~ article 13(13) and (14) of the Solvency II Directive. ...

...

**App 3.10 Mapping of ~~Insurance Directives~~ the Solvency II Directive to the Regulated Activities Order**

Introduction

App 3.10.1 G The *guidance* in Table 3 describes in broad outline the relationship between:

- (1) the insurance-related *regulated activities* specified in the *Regulated Activities Order*; and
- (2) the activities within the scope of the ~~*Insurance Directives*~~ *Solvency II Directive*.

App 3.10.2 G This is a guide only and should not be used as a substitute for legal advice in individual cases

...

<b>Table 3: <del>Insurance Solvency II</del> Directive activities</b>		<b>Part II RAO Activities</b>	<b>Part III RAO Investments</b>
<b>1. <del>Insurance Directive</del> Non-life <u>insurance</u> activities</b>			
1.	Taking up and carrying on direct non-life insurance business	Article 10	Article 75
2.	Classes 1 to 18 of <del>direct</del> non-life insurance business in Point A of <del>the</del> Annex I to the <del>First</del> <u>Solvency II</u> Directive		Corresponding paragraphs 1 to 18 of Schedule 1, Part I
<b>2. <del>Consolidated Life Directive</del> <u>insurance</u> activities</b>			
1.	Taking up and carrying on direct life insurance business	Article 10	Article 75
2.	Classes I to IX of direct life insurance business in <del>the</del> Annex <del>I</del> <u>II</u> to the <del>Consolidated Life</del> <u>Solvency II</u> Directive		Corresponding paragraphs I to IX of Schedule 1, Part II

Meaning of contract of insurance

App 3.10.3 G ... Such funeral plans (to the extent that they are insurance) are also excluded from the ~~*Insurance Directives*~~ *Solvency II Directive*. It covers some contracts which might not otherwise be viewed as insurance in the

*United Kingdom* (for example, contracts of guarantee). These contracts are also governed by the *Insurance Directives Solvency II Directive*. ...

The *Insurance Directives Solvency II Directive*

- App 3.10.4 G Article 1 of the *First Non-Life Solvency II Directive* and article 2 of the *Consolidated Life Directive* provides that the *Directives Directive* "concerns lays down rules concerning ... the taking up and pursuit, within the Community, of the self-employed activity activities of direct insurance and reinsurance". By contrast, article Article 10 of the *Regulated Activities Order* (Effecting and carrying out contracts of insurance) also covers reinsurance.
- App 3.10.5 G Articles 2, 3 and 4 of the *First Non-Life Directive* and article 3 of the *Consolidated Life Directive* 3 to 12 of the *Solvency II Directive* set out certain exclusions by reference to:
- ...
- App 3.10.6 G Some of the exclusions referred to in the *Solvency II Directive* mirror exclusions in the *Regulated Activities Order*. So, the exclusion for breakdown insurance in article 2(3) 6 of the *First Non-Life the Solvency II Directive* is matched by a slightly narrower exclusion in article 12 of the *Regulated Activities Order* (Breakdown insurance). The separate treatment of benefit-in-kind funeral plans under the *Regulated Activities Order* (see SUP App 3.10.4G) is matched by their exclusion on a slightly wider basis in article 3(5) 10 of the *Consolidated Life Solvency II Directive*.
- Other requirements from these *Directives the Solvency II Directive* are also excluded from regulation by the *Exemption Order*.
- App 3.10.7 G Most of the exclusions under the *Directives*, however, are not excluded from being *regulated activities*. For example, article 3 of the *Consolidated Life Directive* and article 3 of the *Non-Life Directive* exclude certain mutual associations whose annual contribution income falls below a defined threshold. In the *United Kingdom*, these include certain smaller *friendly societies* commonly referred to as "*non-directive friendly societies*". The the activities of such societies 'non-directive friendly societies' are regulated under the *Act*, on a "lighter basis" than the activities of other insurers.

Territorial scope of the *Regulated Activities Order* and the *Directives Directive*

- App 3.10.8 G ... By contrast, under the *Directives Solvency II Directive*, the responsibility, as between *EEA States*, for regulating the conduct of passported insurance services is determined by reference to the location of the risk or commitment, as defined in article 1 of the *Consolidated Life Directive* and article 2 of the *Second Non-Life Directive* article 13(13) and (14) of the *Solvency II Directive*.

...

- App G An *insurer* authorised in another *EEA State* who is insuring *UK risks* and so

3.10.10 passports on a services basis under the ~~*Insurance Directives*~~ *Solvency II Directive* into the *United Kingdom* (see -), may not be carrying on a *regulated activity* in the *United Kingdom*. But, if it passports into the *United Kingdom*, it will qualify for *authorisation* under paragraph 12 of Schedule 3 to the *Act* (Firms qualifying for authorisation). Where this is the case, the *insurer* will be subject to conduct of business requirements in the *United Kingdom* (see SUP 13A.6 (Which rules will an incoming EEA firm be subject to?)).

Activities carried on by incoming EEA firms in connection with insurance business.

App 3.10.11 G Although the ~~*Insurance Directives*~~ *Solvency II Directive* is concerned with the *regulated activities* of *effecting* and *carrying out contracts of insurance*, an *incoming EEA firm* passported under the ~~*Insurance Directives*~~ *Solvency II Directive* will be entitled to carry on certain other *regulated activities* without the need for *top-up permission*. This is where the *regulated activities* are carried on for the purposes of or in connection with the *incoming EEA Firm's insurance business*. These *regulated activities* may include:

...

## Annex N

### Amendments to the Compensation sourcebook (COMP)

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

#### 14.1 Application and Purpose

...

- 14.1.3 G This chapter provides supplementary *rules and guidance* for an *incoming EEA firm* which is a *credit institution*, an *IMD insurance intermediary*, an *MiFID investment firm*, *UCITS management company* or an *AIFM*. It reflects in part the implementation of the *Deposit Guarantee Directive*, *Investors Compensation Directive*, and *UCITS Directive*. This sourcebook applies in the usual way to an *incoming EEA firm* which is exercising *EEA rights* under the ~~*Insurance Directives*~~ *Solvency II Directive*. Such a *firm* is not affected by the *Deposit Guarantee Directive*, the *Investors Compensation Directive* or the *UCITS Directive*.

...

## Annex O

### Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

#### 1.1 Introduction to sourcebook

...

- 1.1.7 G An insurer (which is not a UK Solvency II firm, non-directive friendly society, incoming EEA firm or an incoming Treaty firm) may benefit from increased counterparty limits under *INSPRU* 2.1.22R(3)(b). An insurer which is a UK Solvency II firm is subject to the rules in the PRA Rulebook which transpose the Solvency II Directive and also to Solvency II Regulation (EU) 2015/35 of 10 October 2014.

...

## Annex P

### Amendments to the Enforcement Guide (EG)

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

#### 8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

...

**Exercising the power under section 55Q to vary or cancel a firm's part 4A permission or to impose requirements on a firm in support of an overseas regulator: the FCA's policy**

...

8.19 Relevant Community obligations which the *FCA* may need to consider include those under the Capital Requirements Directive, the ~~Insurance Directives~~ *Solvency II Directive*, the Investment Services Directive/Markets in Financial Instruments Directive; and the Insurance Mediation Directive. Each of these Directives imposes general obligations on the relevant *EEA competent authority* to cooperate and collaborate closely in discharging their functions under the Directives.

...

#### 19 Non-FSMA Powers

...

##### Financial Conglomerates and Other Financial Groups Regulations 2004

...

19.64 The *FCA's powers* to vary a firm's *Part 4A permission* or to impose requirements under sections 55J and 55L of the *Act* have been extended under these Regulations. The *FCA* is able to use these powers where it is desirable to do so for the purpose of:

...

- acting in accordance with specified provisions of the ~~Insurance Groups Directive~~ *Solvency II Directive*.

...

## Annex Q

### Amendments to the Perimeter Guidance manual (PERG)

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

## 2 Authorisation and regulated activities

...

### 2.4 Link between activities and the United Kingdom

...

- 2.4.7 G *Electronic commerce activities*, other than *insurance business* falling within the scope of the ~~*Insurance Directives*~~ *Solvency II Directive*, provided by an *incoming ECA provider* will not be *regulated activities* (see PERG 2.9.18G(2)).

...

### 2.8 Exclusions applicable to particular regulated activities

...

Effecting and carrying out contracts of insurance

- 2.8.3 G The following activities are excluded from both the *regulated activities* of *effecting and carrying out contracts of insurance*.
- (1) In specified circumstances, the activities of an *EEA firm* when participating in a Community co-insurance operation are excluded. A Community co-insurance operation is defined in the ~~*Community Co-insurance Directive*~~ *Solvency II Directive*.
  - (2) ...
  - (3) *Electronic commerce activities* provided by an *incoming ECA provider* where those activities are outside the scope of the ~~*Insurance Directives*~~ *Solvency II Directive* (see PERG 2.9.18G).

...

...

Agreeing

- 2.8.15 G ... The provision of *electronic commerce activities* by an *incoming ECA provider* is also excluded from the *regulated activity* of agreeing to carry on certain other *regulated activities* (see PERG 2.7.21G). But this is not the case where the agreement relates to the *regulated activity* of *effecting or*

*carrying out contracts of insurance* falling under the *Insurance Directives Solvency II Directive* (see PERG 2.8.3G). ...

...

## 2.9 Regulated activities: exclusions applicable in certain circumstances

...

Incoming ECA providers

2.9.18 G ...

(2) ... Where activities consist of *electronic commerce activities*, an *incoming ECA provider* will not require *authorisation* for such activities in the *United Kingdom*. This does not extend to the *regulated activity of effecting or carrying out contracts of insurance* falling under the *Insurance Directives Solvency II Directive* (see PERG 2.8.3G). ...

...

## 5 Guidance on insurance mediation activities

...

### 5.3 Contracts of insurance

...

5.3.8 G ... The location of the risk or commitment may be determined by reference to the *EEA State* in which the risk is situated, defined in article 2(d) 13(13) of the ~~Second Non-Life Directive (88/357/EEC)~~ *Solvency II Directive* or the *EEA State* of the commitment, defined in article 1(1)(g) 13(14) of the ~~Consolidated Life Directive (2002/83/EC)~~ *Solvency II Directive*. ...

...

## 8 Financial promotion and related activities

...

### 8.12 Exemptions applying to all controlled activities

...

Incoming electronic commerce communications (article 20B)

8.12.38 G ... However, article 20B does not apply to the following communications:

...

- (2) an invitation or inducement to enter into a *contract of insurance* where:
- (a) it is made by an undertaking which has received official authorisation for direct insurance in line with ~~article 4 of the Consolidated Life Directive~~ or ~~article 6 of the First Non-life Directive~~ article 14 of the Solvency II Directive; and
  - (b) the insurance falls within the scope of ~~any of the Insurance Directives~~ the Solvency II Directive; or

...

...

## 16 Scope of the Alternative Investment Fund Managers Directive

...

### 16.2 What types of funds and business are caught?

...

#### Question 2.58: Is a bank or insurer caught?

An undertaking authorised under the ~~Insurance Directives~~ Solvency II Directive or the *CRD* will not be an *AIF*.

...

Financial Conduct Authority



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