

REQUIREMENT NOTICE
SKILLED PERSONS REPORT

To: [Name of bank] [the “Firm”]

Of: [Address]

Date: [Date]

This Requirement Notice (“the Notice”) in writing in accordance with Section 166 of the Financial Services and Markets Act 2000 (“FSMA”) requires [Name of bank] (“the Firm”) to provide the Financial Services Authority (“the FSA”) with a Report (“the Report”) by a Skilled Person. The scope of the Report and the specific procedures to be carried out are set out in the attached Annex 1 to this Notice.

The Firm gave an Undertaking to the FSA on [Date 2012] in relation to the Firm’s proactive redress and past business review exercise for Interest Rate Hedging Products (the “Undertaking”) (Annex 2). On [Date 2012], the FSA gave the Firm notice in writing in accordance with Section 166 of FSMA to provide it with a Report by a Skilled Person in relation to the Firm’s proactive redress and past business review exercise (the “2012 Notice”). The Firm and the Skilled Person created a methodology for the purpose of carrying out the proactive redress and past business review exercise and tested the methodology in a pilot exercise as required by the 2012 Notice.

The FSA reviewed the Firm’s pilot exercise and the FSA and the Firm considered it desirable to amend the Undertaking. The Undertaking was amended by a Supplemental Agreement between the Firm and the FSA dated [Date 2013] and the amendments set out in a Schedule thereto (Annex 3). The FSA and the Firm also agreed certain matters relating to the conduct of proactive redress and past business review exercise for Interest Rate Hedging Products in an exchange of letters/emails dated [Date(s) 2013] (“the Exchange of Letters”) (Annex 4).

In light of the foregoing, the FSA considers it necessary to replace the 2012 Notice with this Notice.

The defined terms used in this Notice and Annex 1 shall have the same meaning as set out in the Undertaking (as amended).

The purpose of the Report is to provide an independent review of the proactive redress exercise and past business review to be carried out by the Firm in respect of sales of Interest Rate Hedging Products.

Section 166 of FSMA gives the FSA the power to require a Report on any matter about which the FSA has required or could require the provision of information or production of documents under section 165 of FSMA. Section 165 gives the FSA the power to require information and documents reasonably required in connection with the exercise by the FSA of functions conferred on it by or under FSMA.

The appointment of a Skilled Person to produce a Report under Section 166 of FSMA is one of the FSA's regulatory tools to supervise and monitor firms. The FSA may use the Report and associated materials in connection with the exercise of its functions under FSMA, including relying on the Report, or any part of it, in any subsequent enforcement action that the FSA decides is appropriate to take.

The Firm is reminded of the requirements of Chapter 5 of the Supervision Manual ("SUP") (which is part of the FSA Handbook) regarding Skilled Persons and in particular the requirements of SUP 5.5 which apply in the case of the Report required by this Notice.

The FSA approved the Skilled Person, [name of Skilled Person] on [date].

The Firm is responsible for paying the fees and related expenses of the Skilled Person as agreed in the contract.

The Firm must inform the FSA of the direct cost of commissioning the Report once completed. Please note that this cost should exclude charges for any work that is undertaken by the Skilled Person which is outside the scope of the Report. The Skilled Person must notify the FSA within seven days of any material changes (greater than 10%) in the estimated cost of commissioning this Report.

ANNEX 1

Firm responsibilities

1. The FSA has found evidence of poor practices in the Firm's sale of Interest Rate Hedging Products to private customers and retail clients and is concerned that such practices, combined with product complexity, customer sophistication and sales incentives may have led to poor outcomes for customers.
2. The FSA and the Firm have agreed that the Firm will carry out a proactive redress exercise and past business review as set out in the Undertaking (as amended) and the Exchange of Letters. The following is a summary. The Firm is required to:
 - provide proactive redress to all Customers who do not meet the Sophisticated Customer Criteria and to whom the Firm sold Structured Collars on or after 1 December 2001 ("Category A Business");
 - carry out a past business review of all sales of Interest Rate Hedging Products (except Structured Collars and Caps) to, and provide fair and reasonable redress, where appropriate, to, all Customers who do not meet the Sophisticated Customer Criteria and to whom the Firm sold such Interest Rate Hedging Products on or after 1 December 2001 ("Category B Business"); and
 - carry out a past business review of all sales of Caps to, and provide fair and reasonable redress, where appropriate, to, all Customers who do not meet the Sophisticated Customer Criteria and to whom the Firm sold such Interest Rate Hedging Products on or after 1 December 2001 ("Category C Business") if, during the period of the Skilled Person's appointment, the Firm receives a Complaint from such a Customer about such a product,together, the "proactive redress and past business review exercise".
3. In doing the above, the Firm's responsibilities will include designing a methodology that will enable it to fulfil its responsibilities to Customers of the Firm's Category A, B and C Business.
4. In addition, the Firm:
 - will not (except in exceptional circumstances) foreclose on or adversely vary the existing lending facilities of Customers without giving prior notice to the relevant Customer and obtaining their prior consent, until the Firm has issued a final redress determination and, if relevant provided redress to the Customer; and
 - will consider on a case by case basis whether to suspend the payments payable by a Customer under an Interest Rate Hedging Product pending the outcome of the review of the sale to the Customer, where the Firm determines financial distress to be present.

Skilled Person Responsibilities

Overall objectives of the Skilled Person Report

5. The Skilled Person is to provide an independent review of all aspects of the proactive redress exercise and past business review, as described in section 3 (paragraphs 3.1 - 3.18) of the Undertaking (as amended) and the Exchange of Letters, as well as independent oversight of the application of that approach.
6. The Skilled Person is to provide independent oversight of the approach and methodology implemented by the Firm during the proactive redress exercise and past business review, as well as independent oversight of the application of that approach. The Skilled Person is also to confirm the appropriateness of redress proposed for Customers as contemplated in the Undertaking (as amended) and the Exchange of Letters.
7. The Skilled Person is to provide independent oversight of the Firm's approach to the undertaking it has given in relation to not foreclosing on Customers or adversely varying their existing lending facilities without giving the Customer prior notice and obtaining their prior consent, as well as providing independent oversight of the application of that approach.
8. The Skilled Person is to ensure the appropriateness of the Firm's procedures for considering on a case by case basis whether to suspend the payments payable by a Customer under an Interest Rate Hedging Product.

Proactive redress exercise and past business review

9. The Firm's methodology, updated to reflect the changes in the Undertaking (as amended) and as agreed in the Exchange of Letters (the "revised methodology"), will be reviewed by the Skilled Person to ensure it will achieve the requirements of the Undertaking (as amended) and the Exchange of Letters.
10. The Skilled Person's review of the methodology should include, but not be limited to assessing and ensuring:
 - For Relevant Category B Customers and Customers of Category C Business who have complained, the methodology will appropriately assess compliance of each sale of the Interest Rate Hedging Products with the Regulatory Requirements, taking into account, in particular, the Sales Standards;
 - The appropriate classification of each Customer of Category A and B Business and Customers of Category C Business who have complained, both by product and Sophisticated Customer Criteria;
 - The appropriateness and accuracy of the Firm's management information to be produced by the Firm;
 - The appropriateness of the Firm's governance, including the appropriateness of any committee or management structure put in place to monitor the implementation and progress of the review;
 - The appropriateness of all of the Firm's engagement with Customers;
 - The appropriateness and content of Customer communications, including letters and telephone scripts used and the Firm's policies for dealing with non-respondents;
 - The appropriateness of the Firm's approach to evidence gathering;
 - The appropriateness of the Firm's approach to calculating redress; and
 - The Firm will take into account all individual circumstances of the Customer.
11. The Skilled Person will, in relation to each sale, assess whether the revised methodology has been applied appropriately by the Firm, including those cases reviewed by the Firm and Skilled Person in the pilot exercise required by the 2012 Notice. In assessing whether the revised methodology has been appropriately applied, the Skilled Person will also review, and/or monitor all of the Firm's engagements with each Customer. The Firm needs to offer each Customer the opportunity to have the independent Skilled Person present during any meetings or telephone calls with that Customer. The Skilled Person must be available to attend.
12. Where the Customer declines to have the independent Skilled Person present during such meetings or telephone calls, the Firm will make best endeavours to ensure that such discussions are recorded. The recordings will be made available to the Skilled Person as part of their review.
13. The Firm should not proceed with the full review until the Firm and Skilled Person have confirmed that the revised methodology reflects the Undertaking (as amended) and the Exchange of Letters and the FSA is satisfied that this is the case.

Other issues

14. The Skilled Person is also required to assess and ensure the appropriateness of:
- the Firm's approach to the undertaking it has given in relation to foreclosure, namely, that it will not (except in exceptional circumstances) foreclose on or adversely vary the existing lending facilities of Customers without giving prior notice to the relevant Customer and obtaining their prior consent, until the Firm has issued a final redress determination and, if relevant provided redress to the Customer, and
 - (in any case where the firm proposes to rely on exceptional circumstances to foreclose on or adversely vary the existing lending facilities of Customers without giving prior notice to the relevant Customer and obtaining their prior consent) the application of that approach prior to the Firm taking any steps to foreclose on or adversely vary the existing lending facilities of any Customer.
15. In particular, in any case where the Firm proposes to foreclose on a Customer or adversely varies the Customer's existing lending facilities in circumstances where the Customer has not received prior notice and has not given prior consent, the Skilled Person will review the case to confirm that there are exceptional circumstances.
16. The Skilled Person is also required to assess and ensure the appropriateness of the Firm's procedures for considering on a case by case basis whether to suspend the payments payable by a Customer under an Interest Rate Hedging Product.

Reporting

17. The Skilled Person will provide the following:
- Management information on progress of their review on a weekly basis;
 - A Report on a monthly basis, summarising progress and any issues identified to date;
 - A tripartite meeting with the Firm and the FSA on a monthly basis; and
 - A final Report.
18. The final Report should be concise and should be structured as follows:
- An executive summary of the Report's findings;
 - An outline of the work that was undertaken to fulfil the requirements of the scope of the Report, including for each review conducted by the Skilled Person;
 - The nature and extent of documentation examined;
 - An outline of the Skilled Person's assessment of the proactive redress exercise and past business review methodology;
 - The outcomes for the Customers of the Firm's Category A, B and C Business. For example, key information on how many cases were due redress, the amount of redress and why the redress was due;

- The Skilled Person’s assessment of the matters identified at paragraphs 14 to 16 above (foreclosure in ‘exceptional circumstances’ and the case-by-case consideration of a suspension of the payments payable by a Customer under an Interest Rate Hedging Product);
- Whether the Skilled Person found it necessary to conduct further work not originally planned in order to meet the Report requirements and, if so, the nature and extent of such further work;
- Details of any other issues identified;
- Any lessons learned from the assessment of each of the issues requiring examination; and
- A breakdown of the total cost of the Report.

Interaction with the FSA

19. The Skilled Person will take into account the tripartite arrangement between the Firm, the Skilled Person and the FSA such that the FSA has access to all source material, documents and working papers of the Skilled Person in relation to this review, with no liability for costs.
20. Any problems that impact on the ability of the Skilled Person to complete the Report within the deadline agreed should be brought to the attention of the FSA as soon as possible. Openness and collaboration are encouraged during this process. Any differences of opinion between the Skilled Person and the Firm should be brought to the attention of the FSA as soon as possible.
21. The Skilled Person will report to the FSA on any other matters or issues that come to its attention that they consider the FSA should be made aware of in a timely manner.
22. The FSA will inform the Skilled Person when additional information important to the review arises through bilateral or trilateral meetings or other communications.