Consultation Paper

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Financial Services Authority

Quarterly consultation

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Financial Services Authority

Contents

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by **6 June 2010**.

Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/Pages/Library/Policy/CP/2010/cp10_10_response.shtml).

Or you can respond by email: cp10_10@fsa.gov.uk
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1 Introduction

1.1 In this Consultation Paper (CP), we invite comments on miscellaneous amendments to the Handbook. It proposes amendments to:

- the FEES manual, restructuring Special Project Fee (SPF), to reflect extending the scope to include persons in administration or liquidation or firms that become subject to the stabilisation powers under COND 3.1 and extending its application to other firms and recognised bodies;
- the General Prudential sourcebook (GENPRU) to recognise an obligatory deduction from core Tier 1 capital and amend the clarifying guidance accordingly;
- the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) in order to amend the conditions that a firm is to comply with if it is to operate the simplified ILAS approach;
- the Insurance Prudential sourcebook (INSPRU) in relation to our rules on the valuation of reinsurance cash flows when calculating mathematical reserves;
- the Conduct of Business sourcebook (COBS), to improve the clarity of the COBS 4 text and to propose that, before approving promotions for an overseas person, a firm is required to take reasonable steps to ensure that the overseas person will deal with retail clients in the UK in an honest and reliable way;
- the Client Assets sourcebook (CASS) to correct a typographical error;
- Chapter 16 of the Supervision manual (SUP) to collect more meaningful details from firms;
- Section A of the Retail Mediation Activities Return (RMAR) contained in SUP, with specific reference to the reporting requirements for insurance intermediaries subject to MIPRU;
- Chapter 11 of the Supervision manual (SUP) to provide additional guidance relating to aggregation of holdings in cases of acting in concert and deemed voting power;

- Chapter 10 of the Supervision manual (SUP) to clarify the time necessary to assess approved persons applications; and
- the Listing Rules (LR) and Disclosure and Transparency Rules (DTR), to effect a small number of amendments, including the pre-emption rights loophole, Company Reporting Directive application clarification, and Guidance into Rule and Companies Act 2006 consequential amendments.

1.2 Responses to this CP should be received by **6 June 2010**.

2 Proposed changes to Fees manual – Special Project Fees (FEES)

2.1 In this chapter we propose to make changes to FEES 3 Annex 9R the 'general Special Project Fee (SPF)' for certain restructuring transactions. We are adding firms in administration or in liquidation or that become subject to the stabilisation powers under COND 3.1 to the restructuring transactions currently covered. From now on in this chapter we will refer to these additions to the restructuring SPF as 'extended scope'. We are also extending the application of this SPF to other firms and recognised bodies. We would make these changes under our general fee-raising powers in paragraph 17, Schedule 1 of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed changes is set out in Appendix 2 to this CP.

2.2 These changes will apply to firms in the 14 sub-sets of fee-block A, fee-block B and fee-block G.3, which are set out in Table 2.1 at the end of this chapter.

2.3 The changes are driven by our experience that when some firms come under the extended scope we can incur exceptional supervisory costs and costs arising from other key functions, such as policy and our internal general counsel's team. With large firms in particular, we may become involved in litigation or otherwise incur external costs.

2.4 We are not proposing to apply this SPF to small firms. We are proposing that we should be able to use this SPF where our additional costs exceed £50,000. This is because we believe that we should recover those costs – which can be substantial – from the individual firm rather than those costs being recovered across all firms in the particular fee-block. This is a continuation of our policy of 'user pays', which we consulted on when we introduced the restructuring SPF.

Proposed amendment

2.5 In May 2009 we introduced a general SPF, to be levied where a firm needs to undertake a restructuring exercise that requires:

- restructuring of regulatory capital;
- raising of additional capital;
- a corporate re-organisation; and/or

- a change to the structure of – or benefits accruing from – with-profits funds, or attribution and re-attributions of inherited estates.

2.6 This type of general SPF is only charged where our exceptional additional costs exceed £50,000.

2.7 We are now proposing to extend the circumstances where a restructuring SPF is levied to also include where firms come under the extended scope. In these cases we continue to supervise such firms to ensure that any risks to consumers are mitigated, and any proposals to transfer all or part of regulated business from these firms is carried out in an orderly manner and meets our regulatory requirements. As with the current restructuring transactions, we only expect to levy this extended scope SPF where the firms in these circumstances are large and we incur exceptional additional costs. We will therefore only levy this extended SPF where these additional costs exceed £50,000.

2.8 As well as using SPFs where we incur exceptional costs under the current restructuring transactions, we use them where we incur exceptional costs when we are requested by firms to provide specific guidance, and for recovering EU Directive implementation costs. The rationale for using SPFs in this way is that, in the right circumstances, regulatory work that is performed exclusively for a particular firm's benefit should be paid by them rather than by other fee payers in the same fee-block.[1] We believe that this rational for using SPFs is also applicable to the circumstances where firms come under the proposed extended scope and we incur exceptional regulatory costs.

2.9 We propose that the extended scope restructuring SPF will be calculated in the same way as for the current restructuring transactions:

- The SPF will be calculated based on the number of hours individuals work on the firm in administration or liquidation or that has become subject to the stabilisation powers in COND 3.1, plus external costs of professional advisers we need to engage.
- Our hourly rate will be based on the costs we use for funding our projects internally. These are average staff costs per hour of each grade within each of the key functions that could be involved in a particular administration or liquidation or activity connected to a firm that has become subject to the stabilisation powers under COND 3.1. The three key functions are Supervision, Policy and General Counsel and we use an average cost per hour across these functions for each grade. Table 2.2 below sets out, for these key functions, the individual grades and the hourly rates that we currently use. We will consult separately when we revise these rates in the future.

1 For full details of our overall policy on SPFs see chapter 9 of PS09/8 – '*Consolidated Policy Statement on our fee-raising arrangements and regulatory fees and levies 2009/10*' (published June 2009)

Table 2.2: Hourly rate for areas and grades of individuals within them

	Supervision, Policy, General Counsel
Administrator	£25
Associate	£50
Technical Specialist	£85
Manager	£90
Any other person employed by the FSA	£135
Notes: (i) Hourly rate is average across each function for each grade. (ii) Any other person employed by the FSA relates to time spent by a Head of Department, Director, a Managing Director or the Chief Executive Officer.	

2.10 As with the current restructuring SPFs, we will write to the firms involved to let them know:

- our intention to charge a general SPF;
- the expected scale and duration of the transaction; and
- the incremental costs we expect to incur to complete the transaction.

2.11 As with the current restructuring SPFs, depending on the scale and duration of the extended scope, we may ask the SPF fee-payer to make an initial on-account payment at the start, and monthly or other regular fee payments thereafter until the work is complete.

> Q1: Do you agree with extending the scope of the current restructuring Special Project Fee (SPF) to also cover firms placed in administration or liquidation or subject to the stabilisation powers under COND 3.1?

2.12 Payment services institutions were not under our regulatory remit when the current restructuring SPF was put in place. We are therefore proposing to apply the current restructuring SPF and the extended scope (firms in administration or liquidation only) to payment services institutions in fee-block G.3.

> Q2: Do you agree with extending the application of the current restructuring SPF and the proposed extended scope (only firms in administration or liquidation) to payment services institutions in fee-block G3?

2.13 The periodic fees for bodies in fee-block B (recognised investment exchanges, recognised clearing houses, service companies or operators of a multi-lateral trading facility) are set for the forthcoming fee year on an individual basis. This approach enables any exceptional costs arising from restructuring transactions we may incur during the year, which were not anticipated when the periodic fee was set, to be recovered from fee-block B bodies in the following year. However, in the case of exceptional costs arising from bodies covered by the extended scope (only placed in administration or liquidation), it may not be possible to recover them in the following

year, as they may no longer exist at that time. We are therefore applying the extended scope (only firms in administration or liquidation) SPF to bodies in fee-block B so we can recover such exceptional costs in the year they are incurred.

Q3: Do you agree with applying the extended scope (only firms in administration or liquidation) of the restructuring SPF to firms in fee-block B?

2.14 Payment services institutions were not under our regulatory remit when the restructuring SPF was put in place. We are therefore proposing to apply the current restructuring SPF and the extended scope to payment services institutions in fee-block G.3.

Q4: Do you agree with extending the scope of the current restructuring SPF to also cover firms placed in administration or liquidation?

Q5: Do you agree with applying the current restructuring SPF and the extended scope SPF to payment services institutions in fee-block G.3 and applying the extended scope SPF to the firms in fee-block B?

Cost benefit analysis

2.15 Section 155(9) of the Financial Services and Markets Act 2000 (FSMA) exempts us from having to carry out a cost benefit analysis on our fees.

Compatibility statement

The principle that a burden to be imposed should be proportionate to the benefits

2.16 We believe the proposals in this chapter deliver greater consistency between the fees we charge and the costs and complexity of tasks we carry out in fulfilling our statutory objectives.

Reference

Table 2.1 Fee-blocks to which restructuring SPFs do/will apply (see paragraph 2.2 above)

Fee-blocks	
A.1	Deposit acceptors (i)
A.2	Home finance providers and administrators
A.3	Insurers – general
A.4	Insurers – life
A.5	Managing agents at Lloyd's
A.6	The Society of Lloyd's
A.7	Fund managers

A.9	Operators, Trustees and Depositaries of collective investment schemes and Operators of personal pension schemes or stakeholder pension schemes
A.10	Firms dealing as principal
A.12	Advisory arrangers, dealers or brokers (holding or controlling client money or assets, or both)
A.13	Advisory arrangers, dealers or brokers (**not** holding or controlling client money or assets, or both)
A.14	Corporate finance advisers
A.18	Home finance providers, advisers and arrangers
A.19	General insurance mediation
B. (ii)	(1) It: • is a *recognised body* under section 286 of the Financial Services and Markets Act 2000; • has been prescribed as an operator of a prescribed market under the Financial Services and Markets Act (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996); or • is a service company. (2) Operators of a *multi-lateral trading facility*
G.3	Is an authorised payment institution, an EEA authorised payment institution of the Post Office Limited.
Note (i) The extension to firms that become subject to the stabilisation powers in COND 3.1 only applies to the applicable firms in fee-block A. Note (ii) The current restructuring SPF will not be applied to fee-block B, only the extension to firms in administration or liquidation.	

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3 Proposed changes to the General Prudential sourcebook (GENPRU)

Introduction

3.1 In this chapter, we propose to include a new rule into GENPRU 1.3 (Valuation) to recognise an obligation arising from the bank payroll tax as a deduction from core Tier 1 capital and amend the clarification guidance accordingly. We also propose one consequential amendment to the glossary definitions in the Handbook.

3.2 We would make these amendments under sections 138 (General rule-making power) and 157 (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The texts of the proposed amendments are set out in Appendix 3 to this Consultation Paper.

Proposed amendment

3.3 In the 2009 Pre-Budget Report, the Chancellor announced a new bank payroll tax ('bonus tax'). This is a one-off levy on banks and building societies of 50% on bonuses paid to certain of their employees that:

- exceed £25,000; and
- are awarded in the period from 9 December 2009 to 5 April 2010.

3.4 In his 2010 Budget, the Chancellor confirmed that a bonus tax would be levied on this basis.

3.5 The bonus tax will reduce a firm's core Tier 1 regulatory capital by the amount of bonus tax recognised in its financial statements.

3.6 We understand there are different views on the accounting for the bonus tax under International Financial Reporting Standards (IFRS) – either in accordance with International Accounting Standard (IAS) 37 Provisions, Contingent Liabilities and Contingent Assets; or with IAS 19 Employee Benefits. This could result in inconsistent accounting between firms.

3.7 A firm that adopts the IAS 37 approach would risk overstating core Tier 1 capital until it recognises the bonus tax expense in its financial statements. We are therefore proposing to amend the existing rules in GENPRU 1.3.9R (General requirements: Adjustments to accounting values) to ensure that, for the purposes of calculating

core Tier 1 capital, all firms recognise the associated economic liability arising from the bonus tax in the same reporting period in which they recognise a bonus expense. The rule will apply only until a firm has recognised the bonus tax expense for accounting purposes.

3.8 UK Generally Accepted Accounting Practice (GAAP) does not contain equivalent accounting requirements for short-term employee benefits and accounting for bonuses. However, the two main accounting treatments under IFRS are also available under UK GAAP.

Q6: Do you agree with our proposed amendments?

3.9 Following the consultation period, we may reassess our proposal to amend the existing rules, considering the progress of the bonus tax legislation through Parliament.

Cost benefit analysis

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

3.11 The proposal will only have an impact on firms that do not recognise the bonus tax expense in the period in which they recognise the bonus expense itself. So we expect the proposal will have no impact on a large number of firms.

3.12 For firms that are affected by this proposal, the cost of recognising the tax in the period we consider correct for regulatory purposes will be temporary, and we expect this to be of minimal significance based on the likely levels of bonus tax payable. For the large banks, for which we have bonus tax information, the tax amounts to less than 0.5% of core Tier 1 capital. We estimate that the opportunity cost of recognising the tax for regulatory purposes would range from £1.8m to £3.5m per affected firm.[2] We expect that small firms will face substantially smaller costs.

3.13 The key benefits of our proposal are that regulatory capital will reflect a firm's true economic position and it also furthers consistency of regulatory capital calculations across firms. Both will help to protect consumers by ensuring a more prudent capital position and by increasing market confidence in firms' published levels of regulatory capital.

Compatibility statement

3.14 The proposal aims to meet our statutory objective of consumer protection. Requiring firms to recognise a reduction in core Tier 1 capital, arising from an economic liability to pay the bonus tax, helps protect consumers by ensuring that capital numbers are not overstated and by promoting market confidence in firms' published levels of regulatory capital.

2 We assume this opportunity cost is the return on capital for the 3 months in which the firm would otherwise hold that capital (assuming the legislation is in effect three months after our proposed Handbook changes). Using a range of possible outcomes for firms with relatively large bonus pools (between £150m and £300m) and assuming an incremental cost of capital of 4.7% per annum (consistent with CP09/29), the opportunity cost to the firm for recognising the tax in their capital (to match the bonus expense) would be from £1.8m to £3.5m.

3.15 We have considered the principles of good regulation and in particular the principle that a burden or restriction imposed should be proportionate to the expected benefits. Our analysis indicates that the impact of our proposal on costs should be minimal. We also consider that the proposal should minimise adverse effects on competition by requiring firms to apply a more consistent approach in calculating core Tier 1 capital.

3.16 We do not consider that our proposal raises any issues in relation to equality and diversity.

Q7: Do you agree that recognition of the bonus tax in accordance with our proposal does not raise any issues in relation to equality and diversity?

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4 Proposed changes to the simplified ILAS conditions in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

Introduction

4.1 This chapter proposes amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU). The amendments that are to be consulted on, if approved, will amend the conditions that we expect a firm to comply with if it is to operate the simplified ILAS[3] approach, in particular the proposed amendments affecting BIPRU 12.6.6R and BIPRU 12.6.7R.

4.2 This chapter will be of interest to firms seeking to operate the simplified ILAS approach. The proposals are driven by feedback from a number of retail firms that the simplified ILAS conditions, as currently set out in our Handbook, do not deliver the intended policy for this class of firm. We have also taken the opportunity to propose a clarification of certain criteria contained within the simplified ILAS conditions. We intend that, subject to consultation, final rules will be made at our Board's July 2010 meeting.

4.3 The proposed amendments would be made under sections 138 (General rule-making power), section 150(2) (Actions for damages) and section 156 (General supplementary powers) of FSMA.

4.4 The text of the proposed amendments is set out in Appendix 4 to this CP.

Proposed amendment

Background and context

4.5 In the Policy Statement 'Strengthening liquidity standards' (PS09/16, October 2009) we set out our final policy for the UK's new framework for liquidity regulation. The new liquidity regime came into force on 1 December 2009. The elements of the

3 ILAS: Individual Liquidity Adequacy Standards

regime are to be 'switched-on' for different classes of firm on a phased basis; the 'switch on' commenced in December 2009 and will continue during 2010.

4.6 In PS09/16 we recognised that the full quantitative regime contained in the standard ILAS approach would be challenging for simpler firms and disproportionate to their risk profiles. We stated our intention that firms with simpler business models and straight-forward liquidity risks should be enabled to focus on management of those risks, rather than on compliance with an individualised regime provided by the standard ILAS approach that is designed to cover a wider set of risks.

The simplified ILAS approach

4.7 The simplified ILAS approach is set out in BIPRU 12.6. As discussed in PS09/16, it is intended to apply to a range of firms with simpler business models. A firm wishing to operate the simplified ILAS approach is expected to comply with a number of criteria, including that it operates a simple business, complies with a foreign currency restriction and holds a simplified ILAS waiver.

4.8 Once a firm is a simplified ILAS BIPRU firm, it will be required to ensure that the size of its liquidity buffer is at all times greater than or equal to the simplified buffer requirement as defined in BIPRU 12.6.9R. Additionally, a firm will need to assess and maintain, on an ongoing basis, adequate liquidity resources for the purpose of meeting the overall liquidity adequacy rule (BIPRU 12.2.1R). It will also be required to carry out an Individual Liquidity Systems Assessment (ILSA) in line with the requirements at BIPRU 12.6.21R.

Intention of proposals

4.9 Following publication of our new liquidity rules in October 2009, feedback received from a number of firms has indicated that the simplified ILAS conditions contained in our Handbook do not deliver the intended policy for retail firms.

4.10 We undertook a review of the business model conditions for retail firms (simple retail banks and building societies) contained within our Handbook at BIPRU 12.6.6(1)R. We found that a number of firms that are 'simple' retail firms would potentially be unable to qualify for the simplified ILAS approach based on the conditions as currently set out in our Handbook. We propose an amendment is made to the simplified ILAS conditions so that those conditions will capture the full population of retail firms intended by the policy in PS09/16 to be eligible for this approach.

4.11 We consider that the original policy intention for 'money-box' banks and certain small wholesale firms predominantly funded by their parent is delivered by the simplified ILAS conditions contained in our Handbook, and so we do not propose to amend the conditions for these firm types.

Proposed amendments

4.12 We propose that the simplified ILAS condition 1 for retail firms at BIPRU 12.6.6R should be amended to include a 'business model restriction'. To qualify for the simplified ILAS approach under this option a firm would be expected to meet the following conditions:

(a) no less than 75% of the firm's total liabilities are accounted for by retail deposits; and

(b) either:

(i) the firm's total assets, as reported on in FSA 001, do not exceed £250m; or

(ii) the firm's total assets, as reported in FSA 001, do not exceed £1bn and with no less than 70% of those assets accounted for by

(1) assets of the kind that fall into BIPRU 12.7.2R and which the firm counts towards its simplified buffer requirement; and

(2) retail loans, as reported on FSA 015 in cell 11A.

4.13 Our analysis shows that the proposed amendments will capture the intended retail firms and align with the original policy intention for simpler retail firms as set out in PS09/16.

Q8: Do you agree with the proposal to include the 'business model restriction' into the simplified ILAS condition applicable to simpler retail firms?

4.14 We also take this opportunity to propose clarifying certain criteria contained within the simplified ILAS conditions. We propose that for all elements of the simplified ILAS conditions at BIPRU 12.6.6R:

(a) The definition of 'retail lending' should be aligned to the definition within existing data item FSA015 (cell 11A). This cell records all loans to individuals and those to retail small and medium sized enterprises ('SME'). The proposed amendment represents a slight expansion of the criteria.

(b) Where the simplified ILAS conditions refer to 'total assets' this should refer to a firm's most recent FSA001 data item.

4.15 We do not consider these amendments will have a significant impact on firms as they are already required to complete data items FSA001 and FSA015. The amendments will assist us to monitor the criteria in BIPRU 12.6.6R on an ongoing basis more effectively.

Q9: Do you agree with the proposal (for the purpose of the simplified ILAS conditions) to align the definition of total assets to that reported in data item FSA001?

Q10: Do you agree with the proposal (for the purpose of the simplified ILAS conditions) to align the definition of retail loans to that reported in data item FSA015 (cell 11A)?

Timeline considerations

4.16 We are seeking to finalise any changes to the simplified ILAS conditions in a manner consistent with existing timelines for the implementation of the new liquidity policy. This means that those firms seeking to be a simplified ILAS BIPRU firm need to have a decision in time for the 1 June 2010 deadline, by which time firms need to be in possession of a simplified ILAS waiver.

4.17 We therefore advised on our website[4] our particular willingness to consider firms' applications for a simplified ILAS waiver based on either:

- the simplified ILAS conditions contained in our current Handbook at BIPRU 12.6; or
- the proposed conditions noted in this consultation.

We requested that firms notify us of their intention to apply for a simplified ILAS waiver by 19 March 2010.

4.18 Any simplified ILAS waiver granted on the basis of the proposed conditions will be made, subject to a condition that the waiver will cease if our Board decides not to confirm the proposals. In that event, the default position would be that a firm would then be subject to the standard ILAS approach in BIPRU 12.5.

Cost benefit analysis

4.19 In PS09/16 Chapter 13, we set out our CBA for our finalised policy for our new liquidity regime, and this included a section that commented on our CBA for the simplified ILAS approach. We have reviewed our CBA and have considered the impacts that arise from the amendments we propose in this consultation.

4.20 In PS09/16 we estimated liquidity compliance costs for simplified ILAS BIPRU firms to be approximately £14m a year. To produce this estimate we calculated the average liquid asset shortfall for a sample of firms and extrapolated this shortfall to all firms expected to be eligible for the simplified ILAS approach. The proposed eligibility criteria for the simplified ILAS approach that we are consulting on in this chapter will not significantly affect this estimate.

4.21 The average shortfall in liquid assets calculated for all sample firms in PS09/16 was around 4% of their total assets. Using the same analysis, assuming that maintaining a portfolio of government bonds has a cost of 150 basis points, as in PS09/16, and considering that the firms eligible under the new criteria hold together approximately £27 billion of assets[5] (in the PS09/16 CBA this was approximately £25 billion), we estimate the revised liquidity compliance cost of the simplified ILAS approach to be £15m a year.

4.22 We do not expect the difference in cost to materially affect the balance of cost and benefits of the liquidity regime in general and of the simplified ILAS approach in particular.

4 http://www.fsa.gov.uk/Pages/Doing/Regulated/Notify/Waiver/Consent/index.shtml

5 We believe this is now a better estimate than the £25 billion of assets estimated for PS09/16.

Q11: Do you agree that the proposals set out in this consultation will not materially affect the balance of the costs and benefits of the simplified ILAS approach?

Compatibility statement

4.23 In Chapter 14 of PS09/16, we set out our view that the finalised liquidity standards, including the simplified ILAS approach, are compatible with our statutory objectives and the principles of good regulation.

4.24 As noted above, the proposed amendments in this consultation are driven by feedback from a number of retail firms that the simplified ILAS conditions currently set out in our Handbook do not deliver the intended policy of PS09/16. The policy intention for the simplified ILAS approach has not changed from that set out in PS09/16.

4.25 The proposals we are now consulting on are intended to help us deliver our policy set out in PS09/16 and thereby to meet our statutory objectives of market confidence and consumer protection.

4.26 By refining the existing requirements, we expect the eligibility criteria for firms wanting to apply for the simplified ILAS approach to be more clearly defined. This facilitates in making the prudential liquidity risk framework more risk-sensitive by aligning liquidity risks more closely to firms' business models. In addition, simplified ILAS BIPRU firms will be better able to monitor their liquidity risk drivers, making them less likely to fail. This would be a positive outcome for consumer protection.

4.27 In PS09/16, and in proposing the amendments set out in this chapter, we have considered the principles of good regulation and in particular the principle that a burden or restriction should be proportionate to the benefits. Our updated CBA analysis indicates that we do not expect the difference in cost from our proposals to materially affect the balance of cost and benefits of the liquidity regime in general and of the simplified ILAS approach in particular. In addition, we have had regard to the need to use our resources in the most efficient and economic way, and clarifying the criteria for the simplified ILAS approach will enable us to supervise firms more effectively and efficiently in the future.

Q12: Do you agree that the proposals set out in this consultation are compatible with our statutory objectives and principles of good regulation?

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5 Proposed changes to the Prudential sourcebook for Insurers (INSPRU)

Introduction

5.1 In this chapter we propose to amend the Prudential sourcebook for Insurers (INSPRU) in relation to our rules on the valuation of reinsurance cash flows when calculating mathematical reserves. These rules include INSPRU 1.2.79R(2), which applies to certain reinsurance and analogous non-reinsurance financing arrangements entered into by life insurers. This rule allows these insurers, for the purpose of calculating their mathematical reserves, to disregard reinsurance cash outflows that are unambiguously linked to the emergence, as surplus of margins included in the valuation of existing insurance contracts.

5.2 A number of concerns have arisen over the application of this particular rule by some firms to 'unfunded' financial reinsurance and analogous non-reinsurance arrangements. This chapter outlines and invites comments on the changes we are proposing to the rules and guidance in INSPRU 1.2 to give effect to the policy intention set out in paragraph 5.24.

5.3 Our powers to make rules and guidance, and the processes we must follow, are set out in FSMA. Sections 138, 150(2), 156 and 157 are relevant. The proposed guidance consulted on here would be guidance as specified in Section 157(3) of FSMA.

5.4 The text of the proposed amendments to INSPRU is set out in Appendix 5 to this Consultation Paper.

5.5 Subject to this consultation, we intend that the changes addressed in this chapter should be made at the September 2010 meeting of our Board. The proposed changes to the rules and guidance in INSPRU will be brought into force in October 2010 and will apply to all financial reinsurance and analogous non-reinsurance financing arrangements entered into by life insurers after 10 December 2009.

5.6 This material is likely to be of interest primarily to life insurers, their reinsurers and other counterparties with which life insurers transact analogous non-reinsurance financing arrangements, together with users of the financial information contained in the annual financial returns produced by these insurers. The proposals are unlikely to be of specific interest to consumers.

Background

5.7 We understand that a number of life insurers have recently been considering unfunded reinsurance and analogous non-reinsurance financing arrangements (including contingent loan transactions) with reinsurers or investment banks – a number of which involve other connected transactions, such as deposit arrangements and stock-lending transactions. These are generally structured so that no real cash flows (other than the payment of a fee to the counterparty) are expected to take place for a significant period of time, in some cases extending beyond 20 years.

5.8 Under our current rules and guidance, insurers may be able to place some significant value on reinsurance and analogous non-reinsurance financing arrangements by disregarding the value of future cash outflows that are contingent on surplus emerging from a specified block of business. This produces positive valuation differences that result in an increase in Tier 1 capital. We are aware of no equivalent regime that allows this treatment of contingent liabilities in any other country, in International Financial Reporting Standards (IFRS) or in Solvency II.

Concerns relating to unfunded transactions

5.9 There is often significant counterparty risk and operational legal risk that result from reinsurance and analogous non-reinsurance financing arrangements where these are unfunded. Similar risks may arise when these arrangements are connected with other arrangements that together have the effect of an unfunded transaction. The arrangements are often quite complex in their structure, and we are seeing an increasing number of covenants and representations that could result in undermining the contingent nature of the cash outflows.

5.10 The price or compensation sought by the markets for credit risk has increased substantially over the last two years, so that counterparty risk is now seen as a much larger risk than it was pre-credit crunch. It is not clear if this increased price is being fully reflected in the credit sought by insurers for unfunded (and other) reinsurance contracts. This is particularly relevant for long-term contracts under which no payment is receivable from the counterparty for long periods of time, sometimes in excess of 20 years.

5.11 There is also a binary element to consider in relation to counterparty and operational risks – a capital charge will only provide a limited amount of relief if default should occur under the reinsurance or analogous non-reinsurance financing arrangements. Again, these are greater risks for many unfunded financial reinsurance arrangements, particularly where they are long-term arrangements.

5.12 In addition, there is often a 'wrong way' risk that results from these arrangements. In the event of market or demographic circumstances arising where a loss has been incurred by the insurer, which is to be covered by the reinsurance arrangement, the counterparty has also suffered a loss from these same circumstances, which could result in the deterioration of its credit standing.

5.13 Moreover, it is difficult to see how such unfunded arrangements, which result in counterparty and operational risk, satisfy the loss absorbency characteristics that we

expect to see in Tier 1 capital – including, for example, the requirement that the item must be available to the firm for unrestricted and immediate use to cover risks and losses as soon as these occur.

5.14 We have also seen a number of proposed arrangements that involve transactions connected to a funded contingent loan, where the loan amount received by the insurer at the start of the arrangements is transferred back to the counterparty (or some other related person) – for example, by way of collateral, deposit or stock-lending arrangement. We believe that such connected transactions provide implicit or explicit support for the risk transferred under the contingent loan and undermine the contingent nature of the cash outflows under the arrangements.

5.15 In addition, insurers should be considering the potential effect in 2012 of the new Solvency II regime as part of their capital planning. There are not expected to be any rules corresponding to INSPRU 1.2.79R(2), following the implementation of Solvency II, that would allow insurers to disregard reinsurance cash outflows that are contingent on the emergence of future surplus. Such transactions, therefore, will not result in Tier 1 capital under Solvency II. We expect this will increase the likelihood that such transactions will be terminated following the implementation of Solvency II. This raises the concern that unfunded reinsurance and analogous non-reinsurance financing arrangements could be entered into by insurers to increase their capital resources for regulatory purposes without any expectation of cash inflows to be generated under the arrangements. Again, it would be difficult to see how such arrangements could be treated as resulting in loss-absorbing capital.

5.16 As a result of all these concerns, we wrote a letter to the Association of British Insurers (ABI) on 10 December 2009 explaining how our existing rules and guidance apply to unfunded reinsurance and analogous non-reinsurance financing arrangements, including the application of guidance on counterparty risk in INSPRU 1.2.80G, the risk transfer principle in INSPRU 1.1.19AR to 1.1.19FG, and the counterparty exposure restrictions in INSPRU 2.1.8R.

5.17 We said in our letter that we are considering new rules to clarify how these risks should be taken into account when valuing reinsurance and analogous non-reinsurance financing cash flows, where the reinsurance or analogous non-reinsurance financing arrangements are unfunded or have the effect of unfunded transactions. We said we did not envisage that our new rules would apply to arrangements already in effect by the date of that letter.

Issue to be addressed

5.18 For the reasons described in paragraphs 5.9 to 5.17, we believe that restrictions should be applied to the operation of INSPRU 1.2.79R(2) for unfunded reinsurance and analogous non-reinsurance financing arrangements, so that such unfunded arrangements do not create positive valuation differences that are recognised as core Tier 1 capital.

Our proposal

5.19 We therefore propose to introduce new rules and guidance, which will mean that INSPRU 1.2.79R(2) will only apply to reinsurance or analogous non-reinsurance financing arrangements provided:

- the credit taken for the arrangements does not at any time exceed the accumulated value of net cash inflows received by the insurer;
- there are no connected transactions (including deposit, collateral or stocklending transactions) that would provide implicit or explicit support for the arrangement or counterparty; and
- there are no features in the arrangements or any connected transaction that would impair the loss absorbency of the capital that is generated by this arrangement.

5.20 We propose that our new rules and guidance should only apply to reinsurance and analogous non-reinsurance financing arrangements that come into effect after 10 December 2009. However, our proposal will not affect reinsurance or analogous non-reinsurance financing arrangements (including longevity swaps) where the cash outflows under such arrangements are given a value when calculating mathematical reserves under INSPRU 1.2. In other words our new rules would not affect the valuation of such arrangements where INSPRU 1.2.79R(2) would not currently be applied.

5.21 It should be noted, however, that it will continue to be necessary under INSPRU 1.2 for life insurers to establish prudent margins for adverse deviation, including margins for any uncertainty about the amount or timing of amounts to be paid or received, and the risk of credit default by the reinsurer when valuing all reinsurance cash flows, including those arising under analogous non-reinsurance financing arrangements.

5.22 Insurers will continue to be required to restrict their counterparty exposures and asset exposures to prudent levels and ensure that those exposures are adequately diversified in accordance with INSPRU 2.1.8R.

5.23 In addition, in accordance with our present INSPRU 1.1.19AR, there is a further restriction that insurers may only take credit for reinsurance or analogous non-reinsurance financing arrangements if and to the extent that there has been an effective transfer of risk from the firm to a third party.

Intended outcome

5.24 The intention of the proposed rule change is to ensure that the valuation of cash flows under reinsurance and analogous non-reinsurance financing arrangements does not create core Tier 1 capital where such arrangements result in counterparty and other exposures that undermine the characteristics of Tier 1 capital. This will ensure that the cash inflows from such arrangements are available to the firm for unrestricted and immediate use to cover risks and losses as and when they arise. This will also ensure that Tier 1 capital is not created by transactions under which no cash flows (other than the payment of a fee to the reinsurer) are ever expected to take place.

Proposed rules and guidance

5.25 We propose to introduce a new condition to the application of INSPRU 1.2.79R(2) so that reinsurance cash outflows may only be disregarded if the criteria in the new rule INSPRU 1.2.79AR are satisfied. This new condition would apply in addition to the existing condition in INSPRU 1.2.79R(2) that such cash outflows must be unambiguously linked to the emergence as surplus of margins included in the valuation of existing insurance contracts or to the exercise by a reinsurer of its rights under a termination clause.

5.26 The new rule INSPRU 1.2.79AR would require that:

- the value of cash outflows under the reinsurance arrangement is subject to an upper limit equal to the value of net cash inflows under the arrangement already been received by the insurer, accumulated at 5% p.a. (being an average rate of return that may be deemed to be earned on investments);
- there are no connected transactions that would provide implicit or explicit support for the reinsurance arrangement; and
- no feature of the arrangements or connected transaction would impair the loss absorbency of the capital that is generated by this arrangement.

5.27 Further guidance will be introduced in INSPRU 1.2.79BG to clarify that certain transactions (including loans, deposits, repos, and stock-lending transactions) are examples of connected transactions that could result in the reinsurance no longer meeting all the criteria referred to in INSPRU 1.2.79R(2) and INSPRU 1.2.79AR.

5.28 In our letter of 10 December 2009 to the ABI, which is published on our website (http://www.fsa.gov.uk/pubs/other/abi_letter10dec09.pdf), we said that although we would shortly be consulting on our proposals, we did not envisage proposing changes that would apply to reinsurance or analogous non-reinsurance financing arrangements that were already in effect by the date of that letter.

5.29 We believe that it may be disproportionate to apply our new rule to arrangements that were already in place on 10 December 2009. We understand there are relatively few of these arrangements currently in place and those arrangements are nevertheless subject to our existing rules and guidance, including the requirement that appropriate account should be taken of any counterparty and asset exposures and operational risk when cash flows under these arrangements are valued. Accordingly, we are seeking views on whether transactions effected in good faith before that date should be grandfathered for the period up to the implementation of Solvency II, by not applying the rule change to such pre-existing transactions.

5.30 We are also seeking views on whether, as an alternative to our proposed rule change, there are any risk mitigation techniques that could effectively mitigate the counterparty and other exposures resulting from unfunded reinsurance and analogous non-reinsurance financing arrangements that would achieve our intended outcome as set out in paragraph 5.24.

Q13: Do you agree that our proposed new rules and guidance for the valuation of reinsurance and analogous non-reinsurance financing arrangements by life insurers will ensure that any core Tier 1 capital created would be consistent with the characteristics of Tier 1 capital?

Q14: Do you agree that the proposed new rules and guidance should apply to all reinsurance and analogous non-reinsurance financing arrangements that come into effect after 10 December 2009?

Q15: Do you think that arrangements that come into effect before 10 December 2009 should be grandfathered for the period until the implementation of Solvency II?

Q16: Do you think there are any risk mitigation techniques that could be applied to unfunded reinsurance and analogous non-reinsurance financing techniques as an alternative to our proposed rule change that would ensure that our intended outcome is achieved?

Q17: Do you believe that there are any modifications to these rules and guidance that would allow us to achieve more effectively the intended outcome described at paragraph 5.24 above?

Cost benefit analysis

5.31 In the light of the valuation and technical provisions requirements under the Solvency II Directive, we do not expect to be able to maintain any rule following the implementation of Solvency II that would have the effect of INSPRU 1.2.79R(2). Therefore, any benefit that could be achieved from the regulatory treatment available under INSPRU 1.2.79R(2) would no longer apply following the implementation of Solvency II. Pending the implementation of Solvency II, there is a risk that INSPRU 1.2.79R(2) could be applied to unfunded reinsurance or analogous non-reinsurance financing arrangements for the purpose of creating Tier 1 capital at low cost. The concern is that unfunded arrangements result in counterparty and other exposures that undermine the loss absorbency of the capital resulting from the application of INSPRU 1.2.79R(2).

5.32 Our proposed rule change in this CP should ensure that the quality of capital created by the application of INSPRU 1.2.79R(2) is consistent with the characteristics of core Tier 1 capital. We would also expect our new rules to result in a greater level of diligence on the part of firms when considering the extent of the risk transfer achieved under reinsurance and analogous non-reinsurance financing arrangements. Together, this will improve the level of protection for consumers of life insurance products.

5.33 Removing the opportunity to apply INSPRU 1.2.79R(2) to unfunded reinsurance and analogous non-reinsurance arrangements should also result in greater market transparency, and facilitate the transition to Solvency II, under which such arrangements are not expected to provide capital relief.

5.34 We estimate that if firms with existing unfunded reinsurance or analogous non-reinsurance arrangements, that were already in place by 10 December 2009, were to replace these transactions with ordinary equity capital, this would result in annual costs spread over a small number of firms of around £50m in aggregate. However, we are seeking views in this paper on whether these existing arrangements should be grandfathered, which could then reduce these costs.

5.35 There will be opportunity costs for firms who might otherwise have had the opportunity to raise Tier 1 capital more cheaply than at the normal market cost for raising such capital. It is difficult to assess the size of such opportunity costs, since they will depend on the behaviour of a range of firms with differing views on the risks and benefits associated with these transactions. Moreover, the opportunity costs to firms are not equivalent to regulatory costs, and can only be seen as an upper bound on this type of cost because they do not take into account the increase in safety of the business that should result from the proposed rule change.

Compatibility statement

5.36 We believe that our proposed rule change is compatible with our consumer protection and market confidence statutory objectives by improving the quality of new capital that may be created by life insurers through financial reinsurance and analogous arrangements. We did consider the removal of INSPRU 1.2.79R(2) altogether, but this would have prevented the operation of funded financial reinsurance contracts as well, even though funded arrangements normally present much lower credit and operational risks for insurers, and generally result in loss absorbing capital.

5.37 Accordingly, we believe that this is a proportionate response to the issues that we have identified and, as explained above, will not create any undue burden for firms.

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6 Proposed changes to the Conduct of Business sourcebook (COBS)

Introduction

6.1 This chapter proposes changes to COBS 4 to reflect feedback received from industry stakeholders in response to our COBS Post Implementation Review.

Proposed amendment

6.2 The proposed changes will clarify:

- the limited extent to which COBS 4 applies in relation to financial promotions for deposits;
- how the rules apply in relation to communications that do, or do not, relate to a firm's MiFID or equivalent third country business; and
- that the restrictions in COBS 4.8.3R relate to both solicited and unsolicited financial promotions that are not in writing.

6.3 In addition we are proposing to change the COBS 4.9.3R rule, which currently requires firms communicating or approving promotion for overseas persons to "have no reason to doubt that the overseas person will deal with retail clients in the UK in an honest and reliable way". Given industry feedback received, and our own market observations, we propose to revise this rule so a firm cannot communicate or approve a financial promotion for an overseas person unless it has taken positive action, 'reasonable steps', to satisfy itself that the overseas person will deal with retail clients in the United Kingdom in an honest and reliable way. In our view, what amounts to reasonable steps will vary depending on the nature of the overseas firm, its relationship with the approving firm and the nature of the product or service concerned. Firms will have to consider for themselves what is needed and will have the flexibility to do more or less depending on the circumstances. That said, we expect that reasonable steps will generally include: enquiring into the overseas firm's business model, researching the overseas firm and checking with the overseas firm's regulators.

Q18: Do you agree that the changes proposed will improve the clarity of the COBS 4 text?

Q19: Do you agree with our proposal to require a firm, communicating or approving a promotion for an overseas person, to take reasonable steps to satisfy itself that the overseas person will deal with retail clients in the United Kingdom in an honest and reliable way?

Cost benefit analysis

6.4 Section 155 of the Financial Services and Market Act 2000 (FSMA) requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement under section 155 of FSMA does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

6.5 As the clarifying changes should have no effect, there should be no costs arising from these. There may be modest benefits from the improved clarity, with those reading the rules needing to spend slightly less time to understand their effect.

6.6 However, the proposal relating to financial promotions for overseas persons is expected to result in behavioural changes that will impose some additional costs on affected firms. These additional costs will depend on the relationship the authorised firm has with the overseas firm:

- For firms approving a promotion for an overseas firm in the same international group, costs involved in complying with this revised rule should be low as the firms will already be known to each other.
- For other firms, the cost of approving a promotion for an overseas firm will depend on various factors like the country of origin of the overseas firm, its size and the volume of products that are sold. The number of authorised firms affected is expected to be low since we understand that few firms carry out this activity, and of those that do, most do so only to a limited extent.

For these reasons, we expect the additional costs of the proposals to be of minimal significance.

6.7 We also expect some benefits in proportion to the costs. Though these will be small, we would expect some improvement to consumer protection, as consumers will only receive financial promotions from overseas persons that have been actively assessed as honest and reliable by an authorised firm.

6.8 There may also be a minor impact on market confidence as it will become harder for dishonest or unreliable overseas firms to contact UK consumers legitimately.

Q20: Do you agree with our assessment that the costs of this proposal will tend to be of limited significance or, where they are not, in proportion to the benefits?

Compatibility statement

6.9 The change to COBS 4.9.3R is designed to help us meet our consumer protection and market confidence objectives. We do not expect the other proposals in this chapter to have an impact on our statutory objectives. We are, therefore, satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

Contact

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7 Proposed changes to the Client Assets sourcebook (CASS)

Introduction

7.1 We are proposing to correct a typographical error found within the Client Assets sourcebook at CASS 7.7.2R(2).

Proposed amendment

7.2 CASS 7.7.2R(2) currently cross-references to CASS 7.7.2(3), but should cross-reference to CASS 7.7.2(4):

> "(2) subject to (3), for the clients (other than clients which are insurance undertakings when acting as such with respect of client money received in the course of insurance mediation activity and that was opted in to this chapter) for whom that money is held, according to their respective interests in it."

7.3 The cross reference to CASS 7.7.2R(3) is incorrect and does not reflect published policy intention. We understand that it is generally accepted in the market that this cross reference is wrong and should in fact refer to CASS 7.7.2R(4). Therefore we propose that this rule is amended to read:

> "(2) subject to (4), for the clients (other than clients which are insurance undertakings when acting as such with respect of client money received in the course of insurance mediation activity and that was opted in to this chapter) for whom that money is held, according to their respective interests in it."

7.4 Although this is a typographical error, we recognise that changing the cross-reference does change the legal effect of the rule and so we are consulting on this change in accordance with section 155 of Financial Services and Market Act 2000 (FSMA).

Q21: Do you agree with our proposal to correct the typographical error found within CASS 7.7.2R(2)?

Cost benefit analysis

7.5 Section 155 of FSMA requires us to publish a cost benefit analysis (CBA) of the implications of any proposed amendments to the rules. However, as we are correcting a typographical error, we believe the costs and benefits of the proposed amendment to be of minimal significance.

Compatibility statement

7.6 The amendment proposed is compatible with our general duties because it improves the clarity of the rule, and so enhances the compatibility of this provision with our statutory duties.

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8 Proposed changes to reporting data items in the Supervision manual (SUP)

Introduction

8.1 This chapter proposes amendments to reporting data items and guidance as set out in Chapter 16 of the Supervision manual (SUP). We would make these amendments under sections 138, 156 and 157 of the Financial Services and Market Act 2000 (FSMA). The text of the proposed amendments is set out in Appendix 8 to this CP.

8.2 The proposed amendments affect the following provisions:

- SUP 16 Annex 24R (reporting data items); and
- SUP 16 Annex 25G (guidance on completing the forms).

8.3 The majority of our amendments are driven by our ongoing aim to improve the data we collect from firms. Collecting more meaningful data will not only improve our monitoring of firms but will also allow for enhanced cross-sectoral analysis. The smaller amendments to data items are driven by recent enquiries and requests for clarification of reporting requirements.

8.4 We are also proposing amendments to our guidance, which is designed to help firms complete their returns. Our aim is to make it easier for firms to follow our reporting requirements and we do not intend to impose an extra financial or reporting burden on them.

Proposed amendment

8.5 The amendments are relevant to:

- firms subject to the Capital Requirements Directive (CRD);
- UK consolidation groups;
- firms that are unable to hold client money in relation to MiFID business and do not have a safeguarding and administering investments permission (exempt Capital Adequacy Directive (CAD) firms);
- other investment firms;

- Lloyd's members' advisers; and
- firms carrying out contracts of insurance.

Summary of amendments

8.6 The proposals in this chapter are:

- minor changes to existing data items and guidance; and
- changes to Pillar 2 information reporting (FSA019).

Minor changes to existing data items and guidance

FSA001 Balance sheet – Data elements 7 and 10

8.7 We have received inquiries from firms regarding the reporting of gilts on FSA001 – specifically whether they should be reported in data element 7 'Treasury bills and other eligible bills' or in data element 10 'Debt securities'. We believe that all long-position debt securities, with the exception of gilts, should be reported in data element 10. Gilts should be reported in data element 7 and short-position debt securities in data element 30A. We propose to add guidance for FSA001 to make this clear to firms.

8.8 To further clarify the reporting in data element 7 and to reflect the fact that eligible bills are not in common usage, we propose to alter the data element's title from 'Treasury bills and other eligible bills' to 'Securities eligible for use in central bank operations'.

FSA002 Income statement – Data element 31B

8.9 In Chapter 3 (Proposed amendments to Chapter 16 of the Supervision manual) of CP 10/01 we proposed including interest paid on swaps entered into for the purposes of hedging interest rate risk in data element 31B. Following on from this proposal, we intend to include fair value movements on interest rate swaps for hedging purposes in this same data element and will make changes in guidance to reflect this.

8.10 For the above reasons, we believe that the title 'On other deposits' is no longer suitable as interest rate swaps are not deposits but hedging instruments. 'On other items' is deemed a more appropriate description.

FSA005 Market risk – Data elements 22G and 24G

8.11 Firms using standard market risk rules to calculate their equity specific risk are required to enter the market value of their equity holdings in data elements 22G and 24G. Our validation then multiplies these entries by the relevant Position Risk Adjustment (PRA) to get the firm's specific equity Position Risk Requirement (PRR). In accordance with BIPRU 7.3.13R firms must amend their PRR according to the profit or loss that they would make on certain convertible debt positions if these were to be converted.

8.12 The current FSA005 does not provide a data element to allow firms to report this PRR adjustment. To ensure firms comply with BIPRU 7.3.13R and make and report this adjustment to us, we propose to add an additional data element below 24G titled 'Convertibles Adjustment'. Accompanying guidance instructing firms on how to complete this new data element will also be added.

FSA008 Large exposures – Data element 3A

8.13 This data element asks 'Are you a member of a UK integrated group?' where the answer can only be yes or no. The guidance gives further instructions were the answer is yes but incorrectly makes reference to data element 7A instead of data element 3A. We propose to correct this so the guidance will read correctly as: 'If the answer to 3A is Yes...'

Changes to Pillar 2 information reporting

FSA019 Pillar 2 information

8.14 We intend to make small changes to the wording of FSA019. In particular, we propose to amend the wording of data elements 2B and 3B to ensure this is consistent with language used in the Handbook. We have deleted the word 'internal' and added 'resource' to avoid confusion by firms and to achieve consistency with the Handbook Glossary.

8.15 To ensure firms are continually thinking about the costs associated with winding down when completing FSA019 we propose adding new data elements 40B, 41B, 42B and 43B, which specifically relate to winding down costs. These additional data elements will ensure that we have the full picture of a firm's risk profile.

8.16 We propose amending the wording of data element 26B, as firms are incorrectly treating this data element as a request for the policy excess amount rather than a request for details of the largest single claim that can be made on the policy. The use of the word 'deductible' appears to have caused the confusion. We have rephrased the question to ask for the 'largest single claim', to avoid further confusion.

8.17 We propose adding a new data element 44B relating to the policy excess amount, which adds to our understanding of a firm's indemnity insurance cover and should reiterate our expectations of the information requested under 26B.

8.18 The Handbook instrument FSA 2009/34 removed the reference to BIPRU 4.3.39R and BIPRU 4.3.40R from the question asked in data element 28B. However, the change was only applied to the guidance for this data element. To ensure consistency with this earlier guidance change, we intend to remove the reference to BIPRU 4.3.39R and BIPRU 4.3.40R from element 28B as it appears on FSA019.

Q22: Do you agree with the proposed changes to SUP 16 Annexes 24R and 25G?

Cost benefit analysis (CBA)

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

8.20 In view of the nature of the proposed changes, we expect that firms will require system changes, but we believe that any increase in costs will be of minimal

significance. This expectation is based on discussions with firms, external software vendors and with GABRIEL[6] specialists at the FSA. Changes to guidance should result in no increase of costs and we expect compliance costs arising from these proposals to also be minimal.

Q23: Do you agree with our cost benefit analysis?

Compatibility statement

8.21 The data collected through observation of SUP 16.12 rules are designed to help us meet our consumer protection and market confidence objectives. The proposals in this consultation will have no impact on our other statutory objectives.

8.22 By ensuring that our guidance and the data we collect is accurate and complete, we expect to acquire a better understanding of data submitted to us. We believe that this will enhance our ability to identify issues that may undermine market confidence or lead to consumer detriment. We are, therefore, satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

8.23 As we expect the costs of proposed changes to be of minimal significance, we believe that the burden of our proposals is proportionate to the expected benefits. There will be no effect on the remaining principles of good regulation. For these reasons, we believe that we have had regard to the principles of good regulation and consider these proposals to be the most appropriate way of meeting our statutory objectives.

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6 Gathering Better Regulatory Information Electronically

9 Proposed changes to RMAR Section A: Balance Sheet for Insurance Intermediaries subject to MIPRU (SUP)

Introduction

9.1 This chapter proposes amendments to Chapter 16 of the Supervision manual (SUP). In particular it concerns the reporting requirements in SUP 16.12 ('Integrated Regulatory Reporting') for insurance intermediaries which are subject to the requirements outlined in the Prudential sourcebook for Mortgage and Home Finance Firms and Insurance Intermediaries (MIPRU).

9.2 We would make these amendments under sections 138, 156 and 157 of FSMA. The text of the proposed amendments is set out in Appendix 9 to this CP.

9.3 The proposed amendments affect SUP 16 Annex 18A (reporting forms) and SUP 16 Annex 18BG (guidance on completing the forms).

Our amendments and proposed changes are driven by the need to use our resources in the most efficient and economic way.

Background

9.4 All insurance intermediaries are required to submit the Retail Mediation Activities Return (RMAR) to the FSA. The RMAR facilitates the collection of information required by us as a basis for our supervision activities. It also has the purpose set out in SUP 16.12.2G, i.e. helping us analyse firms' financial, and other, conditions and performance, and to understand their business.

9.5 Threshold Condition 4 requires the FSA to ensure that a firm has adequate resources in relation to the specific regulated activity or regulated activities that it seeks to carry on, or carries on. Work carried out during the last 18 months as part of our wholesale insurance intermediaries' supervision activities in relation to Threshold Condition 4 has confirmed that some insurance intermediaries do not pay sufficient attention to risks such as amounts owed by fellow group undertakings. The proposals in this consultation seek to address this.

9.6 We have clarified our expectations in relation to Threshold Condition 4 in a Dear CEO letter dated 22 February 2010.[7]

Proposed amendments

9.7 We require firms to submit RMA-A balance sheet data in accordance with generally accepted accounting practice (MIPRU 4.2.3). Companies are required by the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 and the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 to provide details of the following under the heading 'Debtors' in their balance sheet or in a note to their accounts:

- amounts owed by group undertakings; and
- amounts owed by undertakings in which the company has a participating interest.

9.8 We consider our supervisory effectiveness would be improved if insurance intermediaries subject to MIPRU reported these items in their RMA-A submission. This would make it easier for us to identify associated risks and target our supervisory resource more effectively.

9.9 Incorporated firms already submit this information to Companies House under Companies Act requirements, and we expect that non-incorporated firms would compile this data for management purposes.

9.10 We therefore propose two amendments that would apply to all insurance intermediaries subject to MIPRU.

9.11 First, we are proposing an additional data element to RMA-A (balance sheet) to inform us which insurance intermediaries subject to MIPRU include in their current assets amounts owed by directors, group undertakings, or undertakings in which the company has a participating interest. Under this proposal, insurance intermediaries subject to MIPRU must enter the total of such amounts falling due within one year as a memorandum item. In accordance with generally accepted accounting practice, and other entries in RMA-A, the baseline date for the proposed new memorandum field will be the firm's reporting period end.

9.12 Second, we are proposing an additional data element to RMA-A (balance sheet) to inform us which insurance intermediaries subject to MIPRU include shares in group undertakings as part of their investments, where such investments are held as current assets. Under this proposal, insurance intermediaries subject to MIPRU must enter details of such amounts as a memorandum item.

9.13 Our proposals would mean that affected firms would complete a maximum of two additional data entry fields in RMA-A, where these are applicable, as detailed in the draft instrument (Appendix 9).

7 http://www.fsa.gov.uk/pubs/ceo/Dear_ceo_ltr.pdf

9.14 Subject to consultation and our Board approval, we expect these requirements will come into force on 31 December 2011 and that they will apply to all insurance intermediaries that are subject to MIPRU.

Q24: Do you agree with our proposals to modify RMA-A (balance sheet) to collect additional information as described above?

Q25: Do you agree that our proposals should apply to all insurance intermediaries subject to MIPRU?

Cost benefit analysis

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

9.16 In view of the nature of the proposed changes, we expect that any incremental costs involved in making changes to the RMAR will not be significant. Possible costs may come from two principal sources: data retrieval and data provision.

9.17 In terms of data retrieval, all incorporated firms are under a duty to keep adequate accounting records (Section 386 of the Companies Act 2006). As mentioned above, we anticipate that non-incorporated firms would compile this data for management purposes. Accordingly, we would not expect additional data retrieval costs to arise from compliance with our proposals to be significant.

9.18 The majority of firms submit their RMAR return via GABRIEL, our online regulatory reporting system for the collection, validation and storage of regulatory data. As our proposed changes will, at most, require firms to complete two additional data entry fields, we consider that any additional data provision costs will be negligible.

Compatibility statement

9.19 The data reported to us under SUP 16.12 is designed to help us meet our consumer protection and market confidence objectives. The proposals in this consultation will have no impact on our other statutory objectives.

9.20 By ensuring that our rules and guidance on reporting are accurate and relevant, we expect to acquire a better understanding of the financial resources available to firms. We believe that our proposals will enhance our ability to identify issues that may undermine market confidence or lead to consumer detriment. We are therefore satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

9.21 As we expect the costs of the proposed changes to be minimal, we believe that the burden of our proposals is proportionate to their expected benefits. There will be no effect on the other principles of good regulation.

9.22 For these reasons, we believe that we have had regard to the principles of good regulation and consider these proposals to be the most appropriate way of meeting our statutory objectives.

Contact

Comments should reach us by 6 June 2010. Please send them to:

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10 Proposed changes to the controllers' regime in the Supervision manual (SUP)

Introduction

Background

10.1 The Acquisitions Directive was implemented in the UK on 21 March 2009 by making changes to the controllers' regime contained in the Financial Services and Markets Act 2000 (FSMA).[8]

10.2 It is highly desirable for both firms and us to have as much clarity as possible regarding the controllers' regime. We believe that following implementation of the Directive there is one issue on which guidance is needed. This relates to acting in concert and deemed voting power.

10.3 Specifically we would like to clarify when shares or voting power should be aggregated for the purpose of determining whether, as a result of this aggregation, someone who decides to acquire or increase control needs to give notice to us in writing before making the acquisition.

10.4 We have therefore drafted Handbook guidance for the benefit of all controllers and potential controllers. This describes our proposed approach to acting in concert and deemed voting power. It outlines our position on these issues with illustrative examples in question and answer format. These examples are not intended to be exhaustive, they are intended to provide an indication of our expectations, including the circumstances in which we would and would not need to receive notification.

10.5 Although the EU Level 3 Committees have provided some guidance on the phrase 'acting in concert', this guidance (the L3 guidance) is not intended to be comprehensive or to define the scope of who needs to notify the competent authorities. The draft guidance we have outlined in this consultation is not intended to replace the L3 guidance, but to supplement it.

8 Part XII and section 422 of FSMA

10.6 The proposed Handbook guidance is set out in Appendix 10.

Q26: Do you agree with our approach to notifications relating to acting in concert and deemed voting power, as outlined in the proposed SUP 11 Annex 2G text?

Cost benefit analysis

10.7 FSMA requires us to consult publicly on guidance before we issue it formally. However, the Regulatory Reform Order has lifted the requirement that, as part of a consultation on proposed guidance on rules, we must publish a cost benefit analysis. In PS 07/10[9] we have set out the factors we will consider when we decide whether to undertake and consult on a cost benefit analysis of proposed guidance. For the reasons described below we believe that none of these criteria apply here.

10.8 We do not consider that the proposal will impose any material burden, and therefore we do not envisage that either firms or the FSA will face additional costs as a result of these proposals. There will be no material change to the processes which are followed or the necessary systems and infrastructure, as notification is currently required. However, we do anticipate a benefit to both firms and the FSA in terms of the clarity provided and the impact on efficiency that this engenders.

Compatibility statement

10.9 We believe that the proposed guidance is compatible with our statutory objective of market confidence. By providing this guidance, we expect the role of those acting in concert to be more clearly defined. This will allow greater clarity concerning when to disclose relationships to us, which may otherwise undermine market confidence.

10.10 In presenting this proposal, we are satisfied that it is compatible with the general duties given to us in section 2 of FSMA, in particular to the principle that a burden or restriction should be proportionate to the expected benefits, and the need to use our resources in the most efficient and economic way.

10.11 Our analysis indicates that neither firms nor the FSA will face additional costs as a result of these proposals. Furthermore, this guidance will facilitate effective regulation, as clarity will be provided and it minimises the need for firms or individuals to raise queries on this issue. Such clarity will promote efficiency and effectiveness in our operations which will benefit both us and firms. We therefore believe our proposals to be proportionate and in line with the need to use our resources in the most efficient and economic way.

10.12 In addition, we do not consider this proposal to have adverse effects on competition within regulated activities.

9 http://www.fsa.gov.uk/pubs/policy/ps07_10.pdf

Contact

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11 Proposed changes to Chapter 10 of the Supervision manual (SUP)

Introduction

11.1 In this chapter, we propose to amend the Supervision Manual (SUP) to remove the only reference we make in it to non-statutory service standards in respect of supervision processes.

11.2 More generally, and in line with our Business Plan for 2009/10, we are reviewing our externally-facing service standards to ensure that they continue to be fit for purpose. The review aims to ensure that the existing standards are in line with our shift towards an intensive supervisory approach and that we have an efficient, unambiguous and comprehensive set of standards in line with our principles of good regulation. The proposed amendment discussed in this chapter is separate from this review.

11.3 The process concerned is the approved persons application in SUP 10. Instead, we propose to refer to the standard response times provided on our website.[10] This is consistent with our approach, for example, to the variation of permissions process in SUP 6.3.37.

11.4 The purpose of the proposed amendment is to clarify the time necessary for us to assess approved persons applications for the role in question, its complexity, and the detail and nature of the supporting information supplied by the firm on behalf of the individual.

11.5 SUP 10 Annex 1 Frequently Asked Question 21 currently gives typical approval times of seven business days for significant influence functions (SIFs) and four business days for customer functions. However, if information is missing or the information provided gives us cause for concern, processing time will almost always be longer.

11.6 Our Consultation Paper CP10/03 (Effective corporate governance – Significant influence controlled functions and the Walker review, published in January 2010) noted our greater focus on the quality of governance in firms against the background of our more intensive supervisory approach. The changes we have made to the way we operate our approved persons regime to deliver this means that the percentage rate of meeting our typical processing times will be lower.

10 http://www.fsa.gov.uk/Pages/About/Aims/Performance/standards/current/index.shtml

11.7 We recognise the importance to firms of knowing how long an application is likely to take and that is why we publish on our website the results of our performance against our service standards information on a six-monthly basis.

Proposed amendments

11.8 Our commitment in our Performance Account to process 85% of applications either in two, four or seven days[11] constrains our ability to consider and, where necessary, question in greater depth applications for approved person status. While we will endeavour to process applications as quickly as possible – and, typically, the majority are likely to continue to be done within these deadlines – there is a risk that focusing on the speed at which applications are processed may be to the detriment of the quality of the assessment.

11.9 We therefore believe that it is no longer helpful to hardwire timings into the Handbook, but that the key point is for firms to have information about how long the application process is taking us when we report on performance against our service standards every six months.

11.10 We therefore propose rewording the answer to SUP 10 Annex 1 FAQs Q21 as follows:

> "Q.21 How long will the FSA take to process an application for approved person status?
>
> The length of time taken to process the application will relate directly to the complexity of the application under consideration. The FSA publishes standard response times on its website at www.fsa.gov.uk setting out how long the application process is expected to take in practice. From time to time, the FSA also publishes its performance against these times. However, if information is missing from the application, or the information provided gives the FSA cause for concern, processing time will almost always be longer. In each case, the FSA will notify the firm of any extension to the processing times."

11.11 The text showing the proposed amendment can be found in Appendix 11. It will be of interest to firms submitting an application for a candidate to become an approved person.

11.12 We propose to make the change to the Handbook guidance at the same time as the implementation of the rule changes for SIFs as set out in CP10/03.

Q27: Do you agree with the proposed revised wording to SUP 10 Annex 1 FAQs Q21?

11 The Service Standards contained within our Performance Account currently measures our service on the basis of processing approved persons applications within two (short form application), four (customer functions) or seven (SIFs) days.

Cost benefit analysis

11.13 Our proposal does not place any new requirements on firms or applicants, as they should already be disclosing to us all relevant and required information adequately to assess applications – our proposal does not remove that requirement. The change proposed aims to clarify existing practice. There will be no incremental costs.

Compatibility statement

11.14 The change aims to allow us to ensure good governance within regulated firms and, in particular, to ensure, on the basis of full and detailed assessment of approved persons applications, that individuals in governance roles are qualified, competent and capable to fulfil them. As such, the proposal is fully consistent with our already publicised, more intensive supervisory approach and is consistent with the principles of good regulation.

Contact

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12 Proposed changes to Listing Rules and Disclosure and Transparency Rules (LR/DTR)

Introduction

12.1 In this chapter we are consulting on a small number of amendments to the Listing Rules (LRs) and Disclosure and Transparency Rules (DTRs).

12.2 We are making four sets of amendments to clarify the application of the LRs and the DTRs. The text of the amendments is set out in Appendix 12 (LR) and Appendix 13 (DTR).

12.3 This chapter will be of interest primarily to issuers and firms advising on, investing in or dealing with UK-listed securities, as well as individual investors in UK-listed securities.

Proposed amendments

Pre-emption rights loophole

12.4 The Listing Regime will require overseas issuers with a premium listing of equity shares to offer pre-emption rights to their shareholders from 6 April 2010 (there is a one year transitional for existing issuers), although issuers are free to comply before then. Our rules already impose a similar requirement on UK issuers. However, as explained in our Policy Statement PS10/2 ('Listing Regime Review Feedback on CP09/24 and CP09/28 with final rules') the current drafting of LR 9.3.11R and LR 9.3.12R could allow overseas issuers to dilute those holdings if the issuer issued new 'equity securities' that could convert into equity shares. UK issuers would not be able to benefit from the same loophole because the related requirement in the Companies Act 2006 precludes this possibility. To prevent the possibility of dilution arising from an issue of convertible securities we propose to amend LR 9.3.11R and LR 9.3.12R by replacing 'equity shares' with 'equity securities' in a number of places.

12.5 In CP09/24 our cost benefit analysis (CBA) of extending the pre-emption requirement to overseas issuers was based on the assumption that the requirement would be comparable to the Companies Act requirement. Therefore, our proposed amendment in this paper does not alter the original CBA analysis.

Company Reporting Directive application clarification

12.6 The Company Reporting Directive (2006/46/EC) requires companies whose securities are traded on a regulated market to produce a Corporate Governance statement. The requirement is implemented in the UK through the Disclosure and Transparency Rules (refer to DTR 7.2) and the requirement was recently extended to certain listed overseas issuers to which it would not otherwise apply. This was achieved in CP09/24 through new rules LR 9.8.7AR and LR 14.3.24R (to which LR 18.4.3(2)R cross refers). Following this change, the UK Listing Authority has received a number of queries from overseas issuers querying the application of the requirements set out in DTR 7.2. To make the application of this requirement clearer to overseas issuers, we are proposing to add guidance after DTR 1B.1.5R to draw issuers' attention to the extension of the requirement.

Guidance into rule

12.7 We are consulting on changing LR 1.6.1G from guidance into a rule. This is to clarify our position about which requirements we expect issuers with securities listed in certain categories to comply with. The rule does not introduce any additional obligations on issuers and therefore there are no additional costs.

Companies Act 2006 consequential amendments

12.8 The Companies Act 2006 does not recognise the concept of 'authorised share capital'. LR 13.8.3R, which requires a circular when a company proposes to increase its authorised share capital, is therefore redundant for UK incorporated companies. Although the rule may continue to be relevant for overseas incorporated listed issuers, our view is that it is not necessary to preserve the rule only for them. Following a further change in the Companies Act 2006, we also propose amending LR 13.8.4R to introduce a carve-out for a reduction of capital in connection with a redenomination of share capital pursuant to Companies Act 2006 section 626 (Reduction of capital in connection with redenomination).

Q28: Do you agree with the drafting of our proposed changes to LR 9.3.11R (the right of pre-emption) and LR 9.3.12R?

Q29: Do you agree that the new guidance at DTR 1B.1.5AG is helpful in drawing attention to the obligations on certain issuers in LR 9.8.7A, LR 14.3.24 and LR 18.4.3(2)?

Q30: Do you agree with our proposal to change LR 1.6.1G into a rule?

Q31: Do you agree with our deletion of LR 13.8.3R?

Q32: Do you agree with the addition of a carve-out in LR 13.8.4R from the need to issue a circular for a reduction of capital pursuant to section 626 of the Companies Act 2006 (Reduction of capital in connection with redenomination)?

Cost benefit analysis

12.9 Section 155 of FSMA requires us to publish a CBA of the implications of any proposed amendments. However, the requirement under section 155 of FSMA does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

12.10 Given the clarifying nature of the proposed changes, we do not envisage that they will lead to a cost increase of more than minimal significance.

Compatibility statement

12.11 In presenting the proposals set out in this chapter, we are satisfied that they are compatible with the general duties conferred upon us under section 73 of FSMA.

12.12 The amendments proposed are compatible with our general duties because they improve the accuracy and usability of the clarified provisions, and thereby enhance the compatibility of those provisions with our statutory duties.

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

12.13 The proposals set out in this chapter should not lead to any material change in terms of how efficiently and economically we use our resources.

The principle that a burden or restriction imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of the burden or restriction

12.14 We do not consider that the proposed amendments will impose any material burden or restrictions on a person as these amendments do not attempt to change market practice, rather to clarify the existing LRs and DTRs.

The desirability of facilitating innovation for listed securities

12.15 We do not consider that our proposed amendments have a direct effect on this duty.

The international character of capital markets and the desirability of maintaining the competitive position of the UK

12.16 The proposals maintain the 'super-equivalent' status of our Listing Regime and in the case of the changes to LR 9.3.11R and 9.3.12R aim to create a level playing field for UK and overseas issuers.

Contact

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Appendix 1

List of specific consultation questions

Chapter 2

Q1: Do you agree with extending the scope of the current restructuring special project fee (SPF) to also cover firms placed in administration or liquidation or subject to the stabilisation powers under COND 3.1?

Q2: Do you agree with extending the application of the current restructuring SPF and the proposed extended scope (only firms in administration or liquidation) to payment services institutions in fee-block G3?

Q3: Do you agree with applying the extended scope (only firms in administration or liquidation) of the restructuring SPF to firms in fee-block B?

Q4: Do you agree with extending the scope of the current restructuring SPF to also cover firms placed in administration or liquidation?

Q5: Do you agree with applying the current restructuring SPF and the extended scope SPF to payment services institutions in fee-block G.3 and applying the extended scope SPF to the firms in fee-block B?

Chapter 3

Q6: Do you agree with our proposed amendments?

Q7: Do you agree that recognition of the bonus tax in accordance with our proposal does not raise any issues in relation to equality and diversity?

Chapter 4

Q8: Do you agree with the proposal to include the 'business model restriction' into the simplified ILAS condition applicable to simpler retail firms?

Q9: Do you agree with the proposal (for the purpose of the simplified ILAS conditions) to align the definition of total assets to that reported in data item FSA001?

Q10: Do you agree with the proposal (for the purpose of the simplified ILAS conditions) to align the definition of retail loans to that reported in data item FSA015 (cell 11A)?

Q11: Do you agree that the proposals set out in this consultation will not materially affect the balance of the costs and benefits of the simplified ILAS approach?

Q12: Do you agree that the proposals set out in this consultation are compatible with our statutory objectives and principles of good regulation?

Chapter 5

Q13: Do you agree that our proposed new rules and guidance for the valuation of reinsurance and analogous non-reinsurance financing arrangements by life insurers will ensure that any core Tier 1 capital created would be consistent with the characteristics of Tier 1 capital?

Q14: Do you agree that the proposed new rules and guidance should apply to all reinsurance and analogous non-reinsurance financing arrangements that come into effect after 10 December 2009?

Q15: Do you think that arrangements that come into effect before 10 December 2009 should be grandfathered for the period until the implementation of Solvency II?

Q16: Do you think there are any risk mitigation techniques that could be applied to unfunded reinsurance and analogous non-reinsurance financing techniques as an alternative to our proposed rule change that would ensure that our intended outcome is achieved?

Q17: Do you believe that there are any modifications to these rules and guidance that would allow us to achieve more effectively the intended outcome described at paragraph 5.24 above?

Chapter 6

Q18: Do you agree that the changes proposed will improve the clarity of the COBS 4 text?

Q19: Do you agree with our proposal to require a firm, communicating or approving a promotion for an overseas person, to take reasonable steps to satisfy itself that the overseas person will deal with retail clients in the United Kingdom in an honest and reliable way?

Q20: Do you agree with our assessment that the costs of this proposal will tend to be of limited significance or, where they are not, in proportion to the benefits?

Chapter 7

Q21: Do you agree with our proposal to correct the typographical error found within CASS 7.7.2R(2)?

Chapter 8

Q22: Do you agree with the proposed changes to SUP 16 Annexes 24R and 25G?

Q23: Do you agree with our cost benefit analysis?

Chapter 9

Q24: Do you agree with our proposals to modify RMA-A (balance sheet) to collect additional information as described above?

Q25: Do you agree that our proposals should apply to all insurance intermediaries subject to MIPRU?

Chapter 10

Q26: Do you agree with our approach to notifications relating to acting in concert and deemed voting power, as outlined in the proposed SUP 11 Annex 2G text?

Chapter 11

Q27: Do you agree with the proposed revised wording to SUP 10 Annex 1 FAQs Q21?

Chapter 12

Q28: Do you agree with the drafting of our proposed changes to LR 9.3.11R (the right of pre-emption) and LR 9.3.12R?

Q29: Do you agree that the new guidance at DTR 1B.1.5AG is helpful in drawing attention to the obligations on certain issuers in LR 9.8.7A, LR 14.3.24 and LR 18.4.3(2)?

Q30: Do you agree with our proposal to change LR 1.6.1G into a rule?

Q31: Do you agree with our deletion of LR 13.8.3R?

Q32: Do you agree with the addition of a carve-out in LR 13.8.4R from the need to issue a circular for a reduction of capital pursuant to section 626 of the Companies Act 2006 (Reduction of capital in connection with redenomination)?

Appendix 2

Proposed change to the FEES manual – Special Project Fees (FEES)

Appendix 2

FEES (SPECIAL PROJECT FEE FOR RESTRUCTURING) (AMENDMENT) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under:

(1) the Financial Services and Markets Act 2000 ("the Act"):

(a) section 99 (Fees);
(b) section 101 (Part 6 rules: general provisions);
(c) section 156 (General supplementary powers);
(d) section 157(1) (Guidance);
(e) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and

(2) the following provisions of the Payment Services Regulations 2009 (SI 2009/209) ("the Regulations"):

(a) regulation 82 (Reporting requirements);
(b) regulation 92 (Costs of supervision); and
(c) regulation 93 (Guidance).

B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [1 July 2010].

Amendments to the Handbook

D. The Fees manual (FEES) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Fees (Special Project Fee for Restructuring) (Amendment) Instrument 2010.

By order of the Board
[xx May 2010]

Annex

Amendments to the Fees manual (FEES)

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

1.1 Application and Purpose

…

Application

1.1.2 R This manual applies in the following way:

(1) *FEES* 1, 2 and 3 apply to~~:~~ the fee payers listed in column 1 of the Table of application, notification and vetting fees in *FEES* 3.2.7R.

(a) ~~every applicant for *Part IV permission* (including an *incoming firm* applying for *top-up permission*);~~ [deleted]

(b) ~~every *Treaty firm* that wishes to exercise a *Treaty right* to qualify for *authorisation* under Schedule 4 to the *Act* (Treaty rights), except those providing *cross border services* only, in respect of *regulated activities* for which it does not have an *EEA right*;~~ [deleted]

(c) ~~every applicant for a certificate under article 54 of the *Regulated Activities Order*;~~ [deleted]

(d) ~~every applicant for an *authorisation order* for, or for recognition of, a *collective investment scheme*;~~ [deleted]

(e) ~~every operator of a scheme making a notification under section 264 or section 270 of the *Act*;~~ [deleted]

(f) ~~every *person* seeking to become a *designated professional body*;~~ [deleted]

(g) ~~every applicant for recognition as a *recognised body* under Part XVIII of the *Act* (Recognised investment exchanges and clearing houses);~~ [deleted]

(h) ~~every applicant for *listing* (under the *listing rules*);~~ [deleted]

(i) ~~every applicant for approval as a *sponsor* (under the *listing rules*);~~ [deleted]

(j) ~~every *issuer* (under the *listing rules*) of tranches from debt issuance programmes and *securitised derivative* tranches;~~

[deleted]

(k) ~~every *issuer* (under the *listing rules*) involved in specific events or transactions during the year where documentation is subject to transaction vetting by the *FSA*;~~ [deleted]

(l) ~~under the *prospectus rules* every *issuer*, *offeror* or *person* requesting approval or vetting of the documents arising in relation to specific events or transactions that it might be involved in during the year;~~ [deleted]

(m) ~~every applicant to be listed as a *designated investment exchange*;~~ [deleted]

(n) ~~every *firm* applying for variation of its *Part IV permission*;~~ [deleted]

(o) ~~every *firm* applying for or being concerned in an application for permission to use an *advanced prudential calculation approach* or *guidance* on the availability of such a permission (including any future proposed amendments to those approaches);~~ [deleted]

(p) ~~every *firm* or *person* referred to in category (u) of Column 1 of *FEES* 3.2.7R;~~ [deleted]

(q) ~~every applicant applying for authorisation as an *authorised payment institution* or registration as a *small payment institution* under the *Payment Services Regulations*;~~ [deleted]

(r) ~~every applicant for variation of its authorisation or registration under the *Payment Services Regulations*; and~~

(s) ~~every *insurer* applying for a *ceding insurer's waiver*.~~ [deleted]

…

…

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
…		
(ze) Any ~~*firm* in any one or more of the A fee blocks defined in *FEES* 4 Annex 1R Part 1, except fee block A.16~~ *person* to which	Special Project Fee for restructuring in accordance with *FEES* 3 Annex 9.	…

the Special Project Fee for restructuring applies under *FEES* 3 Annex 9R.		
…		

…

3 Annex 9R Special Project Fee for restructuring

(1) The Special Project Fee for restructuring ("the SPFR") is payable by a ~~*firm*~~ *person* if:

(a) it is a *recognised investment exchange* or a *recognised clearing house* or it falls within any of the ~~A~~ following fee-blocks defined in Part 1 of *FEES* 4 Annex 1R~~, except if it is in fee-block A.16 only;~~ or *FEES* 4 Annex 11R:

(i) any of the A fee-blocks, except if it is in fee block A.16 only;

(ii) any of the B fee-blocks;

(iii) fee-block G.3;

(b) it engages in, or prepares to engage in, the activity set out in (2) or the circumstances set out in (2A) or the conditions set out in (2C) apply to it; and

…

(2) The activity referred to in (1)(b) involves the ~~*firm*~~ *person* undertaking or making arrangements with a view to either:

…

(2A) Paragraph (2) only applies to paragraphs (1)(a)(i) and (1)(a)(iii).

(2B) The circumstances referred to in (1)(b) are that:

(a) an *insolvency order* is in effect as respects the *person*; or

(b) the *person* is being voluntarily wound up; or

(c) steps are being taken for the making of an *insolvency order* or voluntary winding up of, or with respect to, the *person* by someone entitled to take such steps.

References to an *insolvency order* or winding up include the equivalent process in any jurisdiction outside the *United Kingdom*. References to an *insolvency order* include such an order made under the Banking Act 2009.

(2C) The conditions referred to in (1)(b) are that:

(a) the *person* falls within the A.1 fee-block; and

(b) the Bank of England or the Treasury have exercised a stabilisation power in respect of the *person* under the Banking Act 2009.

(3) No SPFR is payable where:

…

(b) the *FSA* has given any *guidance* to the ~~*firm*~~ *person* in relation to the same matter and charged for it and only paragraph (2) applies to the *person*; or

(c) the transaction only involves the ~~*firm*~~ *person* seeking to raise capital within the *group* to which it belongs and only paragraph (2) applies to the *person*.

(4) Where the transaction involves raising capital outside the *group* to which the ~~*firm*~~ *person* belongs and only paragraph (2) applies to the *person*, any SPFR in relation to that transaction is only payable by the largest ~~*firm*~~ *person* in that *group*. The largest ~~*firm*~~ *person* is the one that pays the highest periodic fee in the *FSA* financial year (the 12 *months* ending 31 March) in which the bill is raised.

…

(6) The SPFR is calculated as follows:

(a) Determine the number of hours, or part of an hour, taken by the *FSA* in relation to regulatory work conducted as a consequence of the activities or circumstances referred to in (2), (2B) or (2C)(b), as appropriate.

…

Appendix 3

Proposed changes to the General Prudential sourcebook (GENPRU)

Appendix 3

GENERAL PRUDENTIAL SOURCEBOOK (VALUATION) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power); and
(2) section 157(1) (Guidance).

B. The rule making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [6 August 2010].

Amendments to the Handbook

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

E. The General Prudential sourcebook (GENPRU) is amended in accordance with Annex B to this instrument.

Citation

F. This instrument may be cited as the General Prudential Sourcebook (Valuation) Instrument 2010.

By order of the Board
[23 July 2010]

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position.

bank payroll tax	the tax in relation to bonus awards and other forms of *remuneration* proposed in the draft legislation published by HM Revenue and Customs on 9 December 2009, subject to any revisions made from time to time by HM Revenue and Customs.

Annex B

Amendments to the General Prudential sourcebook (GENPRU)

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

1.3.9 R For the purposes of *GENPRU*, *BIPRU* or *INSPRU*, except where a *rule* in *GENPRU*, *BIPRU* or *INSPRU* provides for a different method of recognition or valuation:

…

(2) in respect of a *defined benefit occupational pension scheme*:

…

(b) a *firm* may substitute for a *defined benefit liability* the *firm's deficit reduction amount*;

(3) if a *firm* falls within the scope of the *bank payroll tax* in relation to a *remuneration* expense and has recognised the *remuneration* expense but not the associated *bank payroll tax* for accounting purposes, it must also recognise in the same regulatory reporting period any associated *bank payroll tax*.

…

1.3.12 G The provisions of *GENPRU* 1.3.9R(1), *GENPRU* 1.3.9R(2), ~~to~~ *GENPRU* 1.3.10R and *GENPRU* 1.3.36R apply only to the extent that the items referred to in those paragraphs would otherwise be recognised under the accounting requirements applicable to the *firm*. Some of those requirements may only be relevant to a *firm* subject to *international accounting standards*.

Proposed changes to the simplified ILAS conditions in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

PRUDENTIAL SOURCEBOOK FOR BANKS, BUILDING SOCIETIES AND INVESTMENT FIRMS (LIQUIDITY) (AMENDMENT) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power);
(2) section 150(2) (Actions for damages); and
(3) section 156 (General supplementary powers).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [1 August 2010.]

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Prudential Sourcebook for Banks, Building Societies and Investment Firms (Liquidity) (Amendments) Instrument 2010.

By order of the Board
[22 July 2010]

Annex

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

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

Simplified ILAS conditions

12.6.6 R The first condition is that:

(1) no less than 75% of the *firm's* total liabilities are accounted for by retail *deposits*; and:

(a) the *firm's* total assets do not exceed £250 million; or

(b) the *firm's* total assets do not exceed £1 billion and no less than 70% of those assets are accounted for by:

(i) assets of the kind that fall into *BIPRU* 12.7.2R and which the *firm* counts towards its *simplified buffer requirement*; and

(ii) retail loans; or

(c) no less than 70% of ~~its~~ the *firm's* total assets are accounted for by retail loans; or

~~(2)~~ (d) ~~no less than 75% of the *firm's* total liabilities are accounted for by retail *deposits* and~~ no less than 70% of the *firm's* total assets are accounted for by~~;~~:

~~(a)~~ (i) *money-market instruments* with a residual contractual maturity of three *months* or less; or

~~(b)~~ (ii) sight *deposits* held with a *credit institution*; or

~~(c)~~ (iii) term *deposits* with a residual contractual maturity of three *months* or less held with a *credit institution*; or

~~(3)~~ (2) no less than 80% of the *firm's* total liabilities are accounted for by liabilities owed to its *parent undertaking* and the amount of the *firm's* total assets does not exceed £1 billion.

12.6.6A R For the purpose of *BIPRU* 12.6.6R, a *firm* must calculate:

(1) its total assets by reference to its most recent FSA001 *data item*; and

(2) its retail loans as the total of its lending to the retail sector

recorded in cell 11A in its most recent FSA015 *data item*.

12.6.7 R In this section, a "retail *deposit*" is a *deposit* accepted from a *consumer*.

(1) ~~a "retail *deposit*" is a *deposit* accepted from a *consumer*; and~~ [deleted]

(2) ~~a "retail loan" is a loan to a *consumer*.~~ [deleted]

Appendix 5

Proposed changes to the Prudential sourcebook for Insurers (INSPRU)

Appendix 5

PRUDENTIAL REQUIREMENTS FOR INSURERS (AMENDMENT NO 5) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(a) section 138 (General rule-making power);
(b) section 150(2) (Actions for damages);
(c) section 156 (General supplementary powers); and
(d) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [6 October 2010].

Amendments to the Handbook

D. The Prudential sourcebook for Insurers (INSPRU) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Prudential Requirements for Insurers (Amendment No 5) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

Reinsurance

...

1.2.79 R A *firm* must value *reinsurance* cash flows using methods and assumptions which are at least as prudent as the methods and assumptions used to value the underlying *contracts of insurance* which have been reinsured. In particular:

(1) ...

(2) subject to meeting the conditions in *INSPRU* 1.2.79AR, *reinsurance* cash outflows that are unambiguously linked to the emergence as surplus of margins included in the valuation of existing *contracts of insurance* or to the exercise by a *reinsurer* of its rights under a termination clause need not be valued (see *INSPRU* 1.2.85R); and

(3) ...

1.2.79A R The conditions referred to in *INSPRU* 1.2.79R(2) are that:

(1) the *reinsurance* is not connected with any other transaction, which, when taken together with the *reinsurance*, could result in the requirements set out in *INSPRU* 1.2.79R(2) no longer being satisfied or in the risk transferred under the *reinsurance* being undermined.

(2) there are no features of the *reinsurance* or any connected transaction that would undermine the loss absorbency of any addition to *capital resources* arising as positive valuation differences; and

(3) the present value of the future *reinsurance* cash outflows that may be disregarded under *INSPRU* 1.2.79R(2), must not at any time exceed the value of the aggregate net cash inflows that have already been received by the *firm* under the contract of *reinsurance* accumulated at an assumed rate of 5% per annum.

1.2.79B G Examples of connected transactions that could have the effect described in *INSPRU* 1.2.79AR(1) might include a *deposit*, loan, *repo*, or *stock lending* transaction between the *firm* and the *reinsurer*, or between the *firm* and an undertaking that is closely related to the *reinsurer*. For these purposes, the expression 'closely related' shall have the meaning set out in *INSPRU* 2.1.40R.

In the Transitional Provisions insert the following new transitional provisions. The text is not underlined.

7 Mathematical reserves

Application

7.1 R *INSPRU* TP 7 applies to an *insurer* to which *INSPRU* 1.2 applies.

Duration of transitional

7.2 R *INSPRU* TP 7 applies until the relevant *rule* is revoked.

7.3 R *INSPRU* 1.2.79AR does not apply in respect of *reinsurance* and analogous non-*reinsurance* financing agreements that came into effect before 10 December 2009, provided that immediately before [6 October 2010] the *firm* had the benefit of *INSPRU* 1.2.79R(2) in relation to those *reinsurance* or analogous non-*reinsurance* financing agreements.

Appendix 6

Proposed changes to the Conduct of Business sourcebook (COBS)

Appendix 6

FINANCIAL PROMOTIONS (AMENDMENT) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power);
(2) section 145 (Financial promotion rules);
(3) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Financial Promotions (Amendment) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

4.1.2 G (1) This chapter applies in relation to an *authorised professional firm* in accordance with *COBS* 18 (Specialist regimes).

(2) This chapter applies, to a limited extent, in relation to *communicating* or *approving* a *financial promotion* that relates to a *deposit* if the *deposit* is a *structured deposit*, *cash deposit ISA* or *cash deposit CTF*.

…

4.3.1 R (1) …

(2) ~~In the case of~~ If a *financial promotion* ~~that~~ relates to ~~the~~ a *firm's MiFID or equivalent third country business*, this *rule* does not apply to the extent that ~~a~~ the *financial promotion* is a *third party prospectus*.

(3) ~~In the case of~~ If a *financial promotion* ~~that does not relate~~ relates to ~~the~~ a *firm's* business, that is not *MiFID or equivalent third country business*, this *rule* applies to *communicating* or *approving* ~~a~~ the *financial promotion* but does not apply:

…

…

4.5.1 R (1) …

R (2) ~~This section does not apply in relation to~~ If a communication ~~that is made by~~ relates to a ~~*firm* in relation to its~~ *firm's MiFID or equivalent third country business*, this section does not apply:

(a) to the extent that it is a *third party prospectus*; ~~or~~

(b) …

(3) ~~This section does not apply in relation to~~ If a communication ~~that is not made by~~ relates to a ~~*firm*~~ *firm's* business that is not ~~in relation to its~~ *MiFID or equivalent third country business*, this section does not apply:

…

…

4.6.1 R (1) …

(2) ~~This section does not apply in relation to~~ If a communication ~~by~~ relates to a ~~*firm* in relation to its~~ *firm's MiFID or equivalent third country business*, this section does not apply:

(a) to the extent that the communication is a *third party prospectus*; ~~or~~

(b) …

(3) ~~This section does not apply in relation to~~ If a communication ~~by~~ relates to a ~~*firm*~~ *firm's* business that is not ~~other than in relation to its~~ *MiFID or equivalent third country business*, this section does not apply:

…

…

4.7.1 R …

(3) ~~This *rule* does not apply in relation to~~ If a communication ~~made by~~ relates to a ~~*firm* in relation to~~ *firm's MiFID or equivalent third country business*, this section does not apply:

…

(4) ~~This section does not apply in relation to~~ If a communication ~~that is not made by~~ relates to a *firm's* business, that is not ~~in relation to~~ *MiFID or equivalent third country business*, this section does not apply:

…

…

4.8.1 R This section applies to a *firm* in relation to the *communication* of a *financial promotion* that is not in writing, …

…

4.8.3 R A *firm* must not ~~initiate a non-written *financial promotion communicated* to a particular *person*~~ *communicate* a solicited or unsolicited *financial promotion* that is not in writing, to a *client* outside the *firm's* premises, unless the *person communicating* it:

…

…

4.9.1 R (1) Subject to (2) and (3), this section applies to a *firm* in relation to the *communication* or *approval* of a *financial ~~promotions~~ promotion* that ~~relate~~ relates to the business of an *overseas person*.

(2) …

(3) ~~This section does not apply to~~ If a communication ~~by~~ relates to a ~~*firm*~~ *firm's* business, that is not ~~other than in relation to its~~ *MiFID or equivalent third country business*, this section does not apply:

…

…

4.9.3 R A *firm* must not *communicate* or *approve* a *financial promotion* which relates to a particular *relevant investment* or *relevant business* of an *overseas person*, unless:

(1) …

(2) the *firm* has ~~no reason to doubt~~ taken reasonable steps to satisfy itself that the *overseas person* will deal with *retail clients* in the *United Kingdom* in an honest and reliable way.

…

4.11.1 R …

(4) ~~This *rule* does not apply in relation to~~ If a communication ~~that is made by~~ relates to a ~~*firm* in relation to its~~ *firm's MiFID or equivalent third country business*, this section does not apply:

…

(5) ~~This *rule* does not apply in relation to~~ If a communication ~~made by~~ relates to a ~~*firm*~~ *firm's* business, that is not ~~other than in relation to~~ *MiFID or equivalent third country business*, this section does not apply:

…

Appendix 7

Proposed changes to the Client Assets sourcebook (CASS)

CLIENT ASSETS SOURCEBOOK (CLIENT MONEY RULES) (AMENDMENT) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers in or under the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power); and
(2) section 139 (Miscellaneous ancillary matters).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

D. The Client Assets sourcebook (CASS) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Client Assets Sourcebook (Client Money Rules) (Amendment) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Client Assets sourcebook (CASS)

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

7.7.2 R A *firm* receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:

(1) for the purposes of and on the terms of the *client money rules* and the *client money distribution rules*;

(2) subject to (~~3~~ 4), for the *clients* (other than *clients* which are *insurance undertakings* when acting as such with respect of *client money* received in the course of *insurance mediation activity* and that was opted in to this chapter) for whom that *money* is held, according to their respective interests in it;

…

Appendix 8

Proposed changes to reporting data items in the Supervision manual (SUP)

Appendix 8

INTEGRATED REGULATORY REPORTING (AMENDMENT NO 6) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers); and
(3) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [*date*] 2010

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Integrated Regulatory Reporting (Amendment No 6) Instrument 2010.

By order of the Board
[*date*] 2010

Annex

Amendments to the Supervision manual (SUP)

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

16 Annex 24R Data items for SUP 16.12

…

FSA001
Balance Sheet

…

		A **Trading book**	B **Non-trading book**
…			
6	Credit items in the course of collection from banks		
7	~~Treasury bills and other eligible bills~~ Securities eligible for use in central bank operations		
8	Deposits with, and loans to, credit institutions		

…

FSA002
Income statement

…

26	Interest paid		
27	*of which*	on bank and building society deposits	
28		on retail deposits	
29		on corporate deposits	
30		on intra-group deposits	
31		on other ~~deposits~~ items	
32	Fee and commission expense		

…

FSA005
Market risk

Note: In this table numerical references correspond with those shown on the online submission form and are not presented here in strict numerical order.

	Specific equity risk by risk bucket	USD	GBP	EUR	CHF	YEN	Other	Total
22	Qualifying equities							
23	Qualifying equity indices							
24	Other equities, equity indices or equity baskets							
63	Convertibles adjustment							
25	PRR							

…

FSA019
Pillar 2 information

Note: In this table numerical references correspond with those shown on the online submission form and are not presented here in strict numerical order.

		B
		yes/no
1	Does GENPRU 1.2 apply to your firm?	
If so, please answer all the following questions:		000s
2	~~What is the internal capital amount that~~ How much capital do you consider adequate for the nature, scale and complexity of your firm's activities in line with its Internal Capital Adequacy Assessment Process (ICAAP)?	
3	What is the actual amount of ~~internal capital~~ capital resource your firm holds at the accounting reference date?	
		yes/no
4	Have you documented your ICAAP?	
		dd/mm/yy

…

	In your ICAAP, have you considered the impact of an economic downturn on:	
10	· your firm's financial position?	
11	· your business plans?	

	Is the firm exposed to the risks listed below? And if so, what amount of ~~internal capital~~ capital resource have you allocated to each of them?	yes/no A	000s B

12	·	market risk		
13	·	credit risk		
14	·	operational risk		
15	·	liquidity risk		
16	·	securitisation risk		
17	·	insurance risk		
18	·	pension obligation risk		
19	·	concentration risk		
20	·	residual risk		
21	·	business risk		
22	·	interest rate risk		
23	·	other (please specify)		

…

40	Have you calculated the cost of an orderly wind-down of the firm's business?	
41	What length of time have you calculated it will take to orderly wind down?	
42	What is the gross cost to your firm of a wind down?	
43	What is the net cost to your firm of a wind down?	
24	Does your firm have any professional indemnity insurance cover?	
	If so,	
25	What is the limit of the indemnity in the aggregate?	
26	~~What is the greatest deductible for any single claim?~~ What is the largest single claim that can be made on the insurance cover?	
44	What is the policy excess amount for any single claim?	
		rating
27	What is the credit rating of the lead underwriter?	
		yes/no
28	In your firm's ICAAP, do you take account of the results of the stress tests ~~set out in BIPRU 4.3.39R and BIPRU 4.3.40R~~?	
29	Does your firm deduct illiquid assets as set out in GENPRU 2.2.17R and 2.2.19R?	
		000s

…

37	Report the result of a 200 basis point shock to interest rates on your firm's economic value.	
		yes/no
38	Does the result of the above stress test exceed 20% of your ~~economic value~~ capital resources?	

39	Would the valuation adjustments required under GENPRU 1.3.35G enable you to sell or hedge out your firm's positions within a short period without incurring material losses under normal market conditions?	

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

FSA001 – Balance Sheet

This data item provides the FSA with a snapshot of the assets and liabilities of a firm, and details of items which although not on the balance sheet, nevertheless will have a potential impact on the financial health of the firm if they were to crystallise.

…

7 ~~Treasury bills and other eligible bills held~~ Securities eligible for use in central bank operations

Enter here any holdings of treasury bills or other ~~bills eligible for rediscount~~ securities eligible for use at *central banks*.

…

10 Debt securities

~~Report here only long positions in debt securities.~~ All long positions in debt securities, with the exception of gilts, should be reported in data element 10. If there is an overall short position, it should be reported in data element 30A.

Gilts should be reported in data element 7.

…

FSA002 – Income statement

This data item provides the FSA with information on the main sources of income and expenditure for a firm. It should be completed on a cumulative basis for the firm's current financial year up to the reporting date.

…

31B Of which: On other ~~deposits~~ items

This will only be relevant for *BIPRU investment firms* if they have issued bonds, interest rate swaps for hedging purposes or commercial paper.

Deposit takers will include all interest paid on all other balances not reported in 27B to 30B. It includes interest payments on bonds and subordinated loans, certificates of deposits and commercial paper issued.

Include here any losses on interest rate swaps used for hedging purposes.

…

FSA005 – Market risk

This data item provides the FSA with information on the market risk capital requirement under *GENPRU* 2.1.40R. The data item is intended to reflect the underlying prudential requirements contained in *GENPRU* and *BIPRU* and allows monitoring against the requirements set out there and also those individual requirements placed on firms. We have provided references to the underlying rules to assist in its completion.

…

24 Other equities

Enter the valuation of all other equities, equity indices or equities baskets.

[*CEBS' MKR SA EQU item 2.2, column 6*]

65 Convertibles adjustment

Enter the PRR adjustment here. This adjustment will be made to ensure observance of *BIPRU* 7.3.13R

25 PRR for specific equity risk

Enter the total PRR calculated in accordance with *BIPRU* 7.3.33R and *BIPRU* 7.3.34R.

[*CEBS' MKR SA EQU item 2, column 7*]

…

FSA008 – Large exposures

This data item captures information on *large exposures*, connected exposures within that, exposures by integrated groups, *trading book concentration risk excesses*, and also significant transactions with mixed activity holding companies and their subsidiaries.

…

3A Are you a member of a UK integrated group

This is only relevant for unconsolidated or solo-consolidated reporters.

The answer is either Yes or No.

If the answer to ~~7A~~ 3A is Yes, one of the members of the *UK integrated group* is also required to submit FSA018 on behalf of all members of the *UK integrated group* for the reporting date.

…

FSA019 – Pillar 2 questionnaire

This data, supplemented by other relevant data, will be used to inform the intensity of our risk assessment of a firm, or its group, under the Supervisory Review and Evaluation Process (SREP). It will allow us to reduce supervisory time by helping us to identify those firms with a risk profile for which we will carry out additional individual or thematic work.

…

2B ~~What is the internal capital amount that~~ How much capital do you consider adequate for the nature, scale and complexity of your firm's activities in line with its Internal Capital Adequacy Assessment Process (ICAAP)?

See *GENPRU* 1.2.26R. Enter the figure in 000s.

3B What is the actual amount of ~~internal capital~~ capital resource that your ~~firms~~ firm holds at the accounting reference date?

See *GENPRU* 1.2.26R. Enter the figure in 000s.

…

12B to 23B If so, what is the amount of ~~internal capital~~ capital resource you have allocated to each of them?

For each answer in Column A that is 'Yes', enter the gross amount excluding any management action offsets in column B in 000s.

BIPRU limited activity firms and *BIPRU limited licence firms* should include in 23B their assessment of the capital required to cover the fixed overheads requirement. A *firm* may assess that capital to be allocated to cover the fixed overheads requirement is more than one quarter of their annual fixed overheads.

40B Have you calculated the cost of an orderly wind-down of the firm's business?

The answer is either 'Yes' or 'No'. Examples of factors to consider include costs of transferring clients and any client assets, liquidating/closing any positions etc.

41B What length of time have you calculated it will take to orderly wind down?

If the answer to data element 40B is 'Yes', enter the number of months here in digits. Examples of factors to consider include the time it takes to transfer clients and any client assets, liquidating/closing any positions etc.

42B What is the gross cost to your firm of a wind down?

If the answer to data element 40B is 'Yes', enter the amount here in 000s. This is the total cost of winding down excluding any offsets from revenue/income gained during the wind down period.

43B What is the net cost to your firm of a wind down?

If the answer to data element 40B is 'Yes', enter the amount here in 000s. This is the total cost of winding down including any offsets from revenue/income gained during the wind down period.

24B Does your firm have any professional indemnity insurance?

The answer is either 'Yes' or 'No'.

25B If so, what is the limit of the indemnity in the aggregate?

If the answer to data element 24B is 'Yes', enter the amount here in 000s.

26B ~~What is the greatest deductible single claim?~~ What is the largest single claim that can be made on the insurance cover?

If the answer to data element 24B is 'Yes', enter the amount here in 000s.

44B What is the policy excess amount for any single claim?

If the answer to data element 24B is 'Yes', enter the amount here in 000s.

27B What is the credit rating of the lead underwriter?

Only answer if you answered 'Yes' to data element 24B. This is a text field to accept any value.

28B In your firm's ICAAP, do you take account of the results of stress tests?

The answer is either 'Yes' or 'No'.

…

37B Report the result of a 200 basis point shock to interest rate on your firm's economic value

See *BIPRU* 2.3.7R(2). Enter the figure in 000s.

38B Does the result of the above stress test exceed 20% of your ~~economic value~~ capital resources?

See *BIPRU* 2.3.7R (3). The answer to this is either 'Yes' or 'No'.

Appendix 9

Proposed changes to RMAR Section A: Balance Sheet for Insurance Intermediaries subject to MIPRU (SUP)

SUPERVISION MANUAL (RETAIL MEDIATION ACTIVITIES RETURN) (AMENDMENT NO 2) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers); and
(3) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on [31 December 2011].

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Supervision Manual (Retail Mediation Activities Return) (Amendment No 2) Instrument 2010.

By order of the Board
[December 2010

Annex

Amendments to the Supervision manual (SUP)

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

SUP 16 Annex 18AR Retail Mediation Activities Return ('RMAR')

…

SECTION A: Balance Sheet

Fixed Assets		
Intangible assets		RR0076
Tangible assets		RR0077
Investments		RR0078
TOTAL FIXED ASSETS		RR0079
Current assets		
Stocks	RR0081	
Debtors **(see Memo (1))**	RR0082	
Investments held as current assets **(see Memo (2))**	RR0083	
Cash at bank and in hand	RR0084	
Other assets	RR0085	
TOTAL CURRENT ASSETS	RR0086	
Liabilities: amounts falling due within one year		
Bank loans and overdrafts	RR0088	
Other liabilities falling due within one year	RR0089	
TOTAL AMOUNTS FALLING DUE WITHIN ONE YEAR	RR0090	
Net current assets		RR0091
Total assets less current ~~liablities~~ liabilities		RR0092
Other liabilities falling due after more than one year		RR0093
Provisions for liabilities and charges		RR0094
Net assets		RR0095
Memo: guarantees provided by firm		RR0096

Capital and reserves

Capital account (incorporated businesses excluding Limited Liability Partnerships)	
Ordinary share capital	RR0100
Preference share capital	RR0101
Share premium account	RR0102
Profit and Loss account	RR0103
Other reserves	RR0104
TOTAL CAPITAL AND RESERVES	RR0105
Capital account (unincorporated businesses and Limited Liability Partnerships)	
Sole trader/Partners' capital account/Members' capital	RR0119
Other reserves	RR0120
TOTAL CAPITAL AND RESERVES	RR0121

Memo (1):
Total amount falling due within one year from directors, fellow group undertakings or undertakings in which the firm has a participating interest where included in Debtors.

Memo (2)
Value of shares in group undertakings where such investments are held as current assets.

Notes
Memos (1) and (2) to be completed, where applicable, by all insurance intermediaries subject to MIPRU.

16 Annex 18BG Notes for completion of the Retail Mediation Activities Return ('RMAR')

…

NOTES FOR COMPLETION OF THE RMAR

Section A: Balance Sheet

The balance sheet data should be compiled in accordance with generally accepted accounting practice. Incorporated *firms* will already be submitting this information to Companies House under Companies Act requirements, and it would normally be expected that non-incorporated *firms* would compile this data for management purposes. ~~If further assistance is required in completing the balance sheet, professional guidance should be sought.~~

Insurance intermediaries subject to *MIPRU* should, where debtors include amounts owed by their directors, *group undertakings* or *undertakings* in which the *firm* has a participating interest, enter the total amount falling due to the *firm* within one year in the data entry field entitled:

"Memo (1):
Total amount falling due within one year from directors, fellow group undertakings or undertakings in which the firm has a participating interest where included in Debtors."

Insurance intermediaries subject to *MIPRU* should, where they include *shares* in *group undertakings* as part of their investments, where such investments are held as current assets, enter the total value to the *firm* in the data entry field entitled:

"Memo (2):
Value of shares in group undertakings where such investments are held as current assets."

If further assistance is required in completing the balance sheet, professional guidance should be sought.

This information will be used by the *FSA* to monitor the *firm*'s financial position and satisfy itself as to the *firm*'s ongoing solvency. Aggregated data may also be used to inform our supervision activities.

…

Appendix 10

Proposed changes to the controllers regime in the Supervision manual (SUP)

Appendix 10

CHANGE OF CONTROL (AGGREGATION OF HOLDINGS) INSTRUMENT 2010

Powers exercised

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

Commencement

B. This instrument comes into force on [*date*].

Amendments to the Handbook

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

Citation

D. This instrument may be cited as the Change of Control (Aggregation of Holdings) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text, unless otherwise stated.

11.3.1A G *SUP* 11 Annex 6G provides *guidance* on the circumstances in which one *person*'*s* holding of *shares* or *voting power* has to be aggregated with those of another *person* for the purpose of determining whether, as a result, someone who decides to acquire or increase *control* over a *firm* needs to give notice to the *FSA* in writing before making the acquisition. The circumstances are:

(1) where, in accordance with sections 178(2) (Obligation to notify the Authority: acquisitions of control) and 422(3) (Controller) of the *Act*, those *persons* are acting in concert; and

(2) where, in accordance with section 422(5) of the *Act*, the *voting power* in relation to a *person* must be aggregated to the voting power held by another *person*.

After SUP 11 Annex 5, insert the following new annex. The text is not underlined.

11 Annex 6G Aggregation of holdings for the purpose of prudential assessment of *controllers*

Q1: What is this guidance about?

A: This *guidance* considers the circumstances in which one *person*'s holdings of *shares* or *voting power* need to be aggregated with those of another *person* for the purpose of determining whether, as a result, someone who decides to acquire or increase *control* over an authorised *firm* needs to give notice to the *FSA* in writing (in accordance with section 178 (Obligation to notify the Authority: acquisitions of control) of the Act) before making the acquisition.

Q2: When are shares or voting power to be aggregated?

A: There are two situations which would require holdings to be aggregated. The first is where *shares* or *voting power* are held by *persons* 'acting in concert'. The second is where a *person* has 'deemed *voting power*'. These can apply together, for example,

where *shares* or *voting power* are held by people acting in concert and one or more of them has deemed *voting power*.

Acting in Concert

Q3: What does 'acting in concert' mean for these purposes?

A: **'**Acting in concert' broadly means doing something together by agreement (explicit or implicit) – a 'concert party'. What is the 'something'? For the purposes of the provisions contained in sections 178(2) and 422(3) (Controller) of the *Act*, it is the holding or acquiring of *shares* or *voting power*. Each member of the concert party must hold (or propose to acquire) *shares* or *voting power* (or deemed *voting power*) in the authorised *firm* or its *parent undertaking*.

Q4: Why do the aggregation provisions cover acting in concert in holding shares or voting power, as well as in acquiring shares or voting power?

A: These provisions relate to the prudential regulation of *controllers*. For these purposes a '*controller*' is defined in section 422 of the *Act* as a *person* holding particular levels of *shares* or *voting power*, or holding *shares* or *voting power* which confer significant influence over the management of an undertaking. Sections 178(2) and 422(3) of the *Act* – the provisions about acting in concert – provide that "the holding of *control* or *voting power* by a *person* …. includes any *control* or *voting power* held by another …. if [they] are acting in concert". This covers acting in concert in the context of holding the *shares* or *voting power*, as well as in acquiring them.

Q5: What types of arrangement amount to acting in concert in acquiring or holding shares or voting power for the purposes of these sections of the Act?

A: Although the term 'acting in concert' has a potentially wide meaning, not all common actions taken by shareholders in relation to *shares* or *voting power* will amount to acting in concert for the purposes of the aggregation provisions. These provisions are relevant to the issue of whether *control* of an authorised *firm* is being or has been acquired or increased. We are only concerned with explicit or implicit agreements between *persons* acquiring or holding *shares* or voting rights in a manner which makes them, collectively, *controllers* of the *firm*.

There are therefore circumstances in which shareholders, who between them hold 10% or more of the *shares* or *voting power* in an authorised *firm* or its *parent undertaking*, may engage in a concerted exercise of *voting power*, without this amounting to 'acting in concert' in a manner requiring aggregation of their holdings for the purposes of the '*controller*' provisions. An agreement by one shareholder to vote with other shareholders on a specific issue, for example, rather than on an ongoing or sustained basis, would not in itself be likely to confer *control* on that *group* of shareholders, even where the *group* collectively holds 10% or more of the *voting power* in the *firm*.

Q6: How does this guidance relate to the Level-3 Committee Guidelines for the prudential assessment of acquisitions and increasing of holdings in the financial sector issued by CEBS, CESR and CEIOPS?

A: The Guidelines have been issued for the purposes of the Acquisitions Directive[1]. They do not address the wider issues covered by this *FSA guidance*. Although the Guidelines contain reference *to persons* 'acting in concert' when each of them decides to exercise 'rights linked to' *shares*, it is important to note that the Guidelines are not limited in their application to the exercise of voting rights. They also address the potential for aggregation of *shares* or *voting power* of *person*s acquiring or increasing holdings of *shares* or *voting power*, who have an agreement relating to any of the rights that may reasonably be regarded as linked in some way to those *shares*.

Deemed voting power

Q7: What is meant by 'deemed voting power'?

A: This is the expression used in this *guidance* to describe those cases set out in section 422(5)(a) of the *Act* in which one *person*'s holding of *voting power* is deemed to include that of another, or is attributed to another. For example, deemed *voting power* includes *voting power* held by one *person* under a "lasting common policy towards the management of the *undertaking* in question". It also includes *voting power* held by virtue of a "temporary transfer for consideration".

[1] Directive 2007/44/EC relating to the procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector.

Q8: Where X holds 10% of the voting power in a firm and X is the subsidiary of H, which itself has no holding at all directly in the firm, is H a controller?

A: Yes. This follows from section 422(5)(a)(v) of the *Act*, which provides that *voting power* includes, in relation to a *person* (H), *voting power* held by a *subsidiary* of H. The *voting power* held by X is attributed to H, making H a *controller*.

Q9: Are there any other examples of 'deemed voting power'?

A: Yes. These are set out in the remainder of section 422(5)(a) of the *Act* and include various forms of *voting power* attaching to collateral, managed funds, and so on.

Practical application of aggregation of holdings

Q10: Do people need to notify only if they acquire new shares or voting rights?

A: No. They will 'decide to acquire' *control* as a result of having entered into an agreement relating to an existing holding of *shares* or *voting rights* at the requisite level that falls under the acting in concert provisions, or as a result of taking some other action that falls within the deemed *voting power* provisions. This is because section 181 (Acquiring control) of the *Act* provides that someone acquires *control* when particular circumstances "begin to apply". Notice must be given before the *persons* actually begin acting in concert (in other words, when their agreement becomes binding) or before the deeming of *voting power* takes effect.

Q11: Do the aggregation provisions apply to shareholders agreeing how they will vote on a particular issue, for example, for reasons of good corporate governance?

A: No – see the answer to Question 5. The aggregation provisions are concerned with regulating the acquisition of *control*. We would not expect either the acting in concert or the deemed *voting power* provisions to be triggered simply because shareholders have agreed how to vote on a particular issue. The question here is whether shareholders have come together for a limited purpose or whether they have agreed a wider – and usually more permanent – objective.

Q12: What about agreements that future issues will be put to a vote of shareholders?

A: An agreement that does no more than require particular management actions to be put to a vote of shareholders, such as major acquisitions, disposals or new issues of *shares*, would not in itself trigger the requirement to notify. This is because there is no agreement as to how the shareholders will exercise their rights on, or whether the shareholders will adopt a common policy towards, such proposals.

Q13: What about agreements as to how to exercise voting power on future issues generally?

A: This would involve acting in concert in holding *shares* or *voting power*. It also involves a lasting common policy, but whether it involves deemed *voting power* would depend on whether the agreement relates to the management of the *undertaking*.

Acting in concert not only covers agreements to exercise *voting power*, but may also arise as a result of 'passive shareholder agreements'. In these, a shareholder (the 'passive shareholder') agrees explicitly or implicitly with another shareholder or group of shareholders (the 'active shareholder') that it will not exercise its *voting power*. For example, where the passive shareholder holds 8% of the *voting power* and the active shareholder holds 25% of the *voting power*, each would be regarded as having 33% of *voting power*, because their holdings should be aggregated under the acting in concert provisions. However, *persons* that acquire *shares* as part of an investment or hedging programme and have adopted a policy of consistently not voting those *shares* would not, by reason of that policy alone, be regarded as having entered into a passive shareholder agreement with other shareholders and so would not be regarded as acting in concert with them.

Q14: Are multiple purchasers of shares, who are party to a share purchase agreement and whose combined shareholding will satisfy the definition of 'controller' in section 422 of the Act, required to notify a proposed change of control, on the basis that they are acting in concert?

A: Yes, because – by entering into the agreement – they have collectively decided to acquire or increase *control*, unless it is clear from the terms of the agreement and the circumstances surrounding the purchase that the parties are merely acquiring *shares*

simultaneously and that insufficient commonality of interests exists between them in relation to the authorised *firm*.

On the basis of section 191A (Objection by the Authority) of the *Act* ("…the circumstances are that the Authority reasonably believes that …"), we will presume that parties who are acquiring *shares* under the same share purchase agreement are acting in concert in acquiring those *shares*. However, that presumption is capable of being rebutted in the circumstances described above (that is, if the parties are merely acquiring *shares* simultaneously and that insufficient commonality of interests exists between them in relation to the authorised *firm*). Some of the factors that we would consider relevant for the purposes of rebuttal are:

(i) the terms upon which *shares* are being acquired differ between the parties;

(ii) each of the parties is making the acquisition quite independently of the others (in other words, one or more of the parties may resile from the acquisition without this resulting in the agreement being terminated or otherwise impacting on the rights or obligations of the others to acquire *shares*);

(iii) the agreement contains no provisions obliging shareholders to act together on certain matters (for example, the appointment of *directors*) or to take certain action in common or not at all (for example, pursuing warranty or other claims under the agreement);

(iv) each of the parties to the agreement has been separately advised;

(v) the agreement contains no provisions that have the effect of narrowly restricting the category of *persons* to whom *shares* may be transferred (note that bare pre-emption rights would not, in themselves, be viewed as such a provision – see Question 16); and

(vi) the agreement contains an undertaking or other provision from the parties to the effect that they will not exercise their voting or other rights in respect of the *shares* they are acquiring in a manner that would amount to acting in concert for the purposes of sections 178 or 422 of the *Act*.

The above is not an exhaustive list. We will take an holistic approach to any consideration of a joint *share* acquisition of this kind and consider any other circumstances surrounding the transactions that may be relevant. Note that the inclusion of a provision of the kind referred to in (vi) above will not be sufficient in itself to rebut the presumption that the parties are acting in concert where this does not appear to be consistent with other provisions of the agreement, or with the circumstances surrounding the acquisition. Where it applies, the notification requirement applies to all the parties to the acquisition.

The presumption referred to above will not apply to a placement to end investors under a normal securities offering. The manager of the offering, through a book-building process, will identify investors willing to purchase *shares* at the same price as one another. The placees will not typically have an agreement amongst themselves and will not therefore be acting in concert in acquiring the *shares*, even if their agreement to buy *shares* is conditional upon the placement being fully subscribed. *Shares* that may be held by the managers as a result of the *share* placement will normally be disregarded if the conditions set out in section 422A(6)(b) of the *Act* are met.

Q15: What about agreements or decisions that are conditional on any necessary approval by the FSA?

A: Notice must be given under section 178(1) of the *Act* before 'making the acquisition' (i.e. before the agreement is concluded or 'closed'). It is not required to be given immediately when deciding to acquire or increase *control* or prior to entering into the agreement, but the *FSA* welcomes early notification.

Q16: What about pre-emption rights: 'drag along' rights and 'tag along' rights?

A: Typical examples of these arrangements are unlikely to trigger the requirement to notify under section 178(2) of the *Act* in themselves.

Bare pre-emption rights will simply indicate each shareholder's (the 'offeror') agreement to give fellow shareholders an option to purchase his *shares*, if he wishes to sell. The acquisition of *shares* under these arrangements cannot take place until the offeror decides to sell his *shares* and other shareholders decide to buy them.

Shareholders may not be acting in concert in holding or acquiring *shares* simply by agreeing to give each other future pre-emption rights but, if some shareholders enter into an agreement to buy the offeror's *shares*, this may fall within the acting in concert provisions. Note also that, if pre-emption provisions go beyond a mere 'right of first refusal' and place onerous restrictions on the ability of shareholders to transfer their *shares*, they may trigger the notification requirements.

'Drag along' and 'tag along' rights typically allow a selling shareholder to require other shareholders to sell on the same terms and other shareholders to insist on following a selling shareholder in selling on those terms. The existence of these arrangements would not generally involve acting in concert in holding or acquiring *shares*, though it may lead to that situation if some kind of acquisition agreement is entered into.

Q17: How does this guidance relate to the definition of 'acting in concert' in the Takeover Code (the 'Code')?

A: Although similar terminology may be used, the definition of 'acting in concert' in the Code relates solely to takeovers. This *guidance* relates to the quite different scenario of aggregation of holdings for the purposes of giving notice to the *FSA* before making an acquisition in an authorised *firm* in accordance with section 178 of the *Act* (that *firm* may be listed or not, a public or a private company). Therefore, this *guidance* does not have an impact on how 'acting in concert' is interpreted in the context of the Code and the reverse is similarly the case.

Appendix 11

Proposed changes to Chapter 10 of the Supervision manual (SUP)

Appendix 11

SUPERVISION MANUAL (CONTROLLED FUNCTIONS) (AMENDMENT NO 3) INSTRUMENT 2010

Powers exercised

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

Commencement

B. This instrument comes into force on [*date*].

Amendments to the Handbook

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

Citation

D. This instrument may be cited as the Supervision Manual (Controlled Functions) (Amendment No 3) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

SUP 10 Annex 1G Frequently asked questions

	Question	Answer
	Requirements of the regime	
…		
21	How long will the *FSA* take to process an application for *approved person* status?	~~Generally the *FSA* will handle this within seven *business days* for *significant influence functions* and four *business days* for *customer functions*.~~ The length of time taken to process the application will relate directly to the complexity of the application under consideration. The *FSA* publishes standard response times on its website at www.fsa.gov.uk setting out how long the application process is expected to take in practice. From time to time, the *FSA* also publishes its performance against these times. However, if information is missing from the application, or the information provided gives the *FSA* cause for concern, processing time will almost always be longer. In each case, the *FSA* will notify the *firm* of any extension to the processing times.

Appendix 12A

Proposed changes to Listing Rules (LR)

Appendix 12A

LISTING RULES SOURCEBOOK (AMENDMENT NO 6) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:

(1) section 73A (Part 6 rules);
(2) section 75 (Applications for listing);
(3) section 96 (Obligations of issuers of listed securities);
(4) section 101 (Part 6 rules: general provisions);
(5) section 138 (General rule-making power);
(6) section 156 (General supplementary powers);
(7) section 157(1) (Guidance); and
(8) schedule 7 (The Authority as Competent Authority for Part VI).

Commencement

B. This instrument comes into force on [*date*].

Amendments to the Handbook

C. The Listing Rules sourcebook (LR) is amended in accordance with the Annex to this instrument.

Citation

D. This instrument may be cited as the Listing Rules Sourcebook (Amendment No 6) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Listing Rules sourcebook (LR)

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

1.6.1 ~~G~~ R ~~Under other provisions of *LR* an~~ An *issuer* must comply with the *rules* that are applicable to every *security* in the category of *listing* which applies to each *security* the *issuer* has *listed*. The categories of *listing* are:

…

Pre-emption rights

9.3.11 R A *listed company* proposing to issue *equity* ~~*shares*~~ *securities* for cash or to sell *treasury shares* that are *equity shares* for cash must first offer those *equity* ~~*shares*~~ *securities* in proportion to their existing holdings to:

…

9.3.12 R *LR* 9.3.11R does not apply to:

(1) a *listed company* incorporated in the *United Kingdom* if a disapplication of statutory pre-emption rights has been authorised by shareholders in accordance with section 570 (Disapplication of pre-emption rights: directors acting under general authorisation) or section 571 (Disapplication of pre-emption rights by special resolution) of the Companies Act 2006 and the issue of *equity* ~~*shares*~~ *securities* or sale of *treasury shares* that are *equity shares* by the *listed company* is within the terms of the authority; or

(2) a *listed company* undertaking a *rights issue* or *open offer* provided the disapplication of pre-emption rights is with respect to:

(a) *equity* ~~*shares*~~ *securities* representing fractional entitlements; or

(b) *equity* ~~*shares*~~ *securities* which the *company* considers necessary or expedient to exclude from the offer on account of the laws or regulatory requirements of a territory other than its country of incorporation unless that territory is the *United Kingdom*; or

…

(4) an *overseas company* with a *premium listing* that has obtained the consent of its shareholders to issue *equity* ~~*shares*~~ *securities* other than in accordance with *LR* 9.3.11R either:

…

~~Increase in authorised share capital~~

13.8.3 R ~~A *circular* relating to a resolution proposing to increase the *company's* authorised share capital must include:~~ [deleted]

(1) ~~a statement of the proposed percentage increase in the authorised share capital of the relevant class; and~~ [deleted]

(2) ~~a statement of the reason for the increase.~~ [deleted]

Reduction of capital

13.8.4 R A *circular* relating to a resolution proposing to reduce the *company's* capital, other than a reduction of capital pursuant to section 626 (Reduction of capital in connection with redenomination) of the Companies Act 2006, must include a statement of the reasons for, and the effects of, the proposal.

Appendix 12B

Proposed changes to Disclosure and Transparency Rules (DTR)

Appendix 12B

DISCLOSURE RULES AND TRANSPARENCY RULES SOURCEBOOK (AMENDMENT NO 3) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in or under the Financial Services and Markets Act 2000 ("the Act"):

(1) section 73A (Part 6 rules);
(2) section 89O (Corporate governance rules);
(3) section 101 (Part 6 rules: general provisions);
(4) section 156 (General supplementary powers);
(5) section 157(1) (Guidance); and
(6) schedule 7 (The Authority as Competent Authority for Part VI).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

D. The Disclosure Rules and Transparency Rules sourcebook (DTR) is amended in accordance with the Annex to this instrument.

Citation

E. This instrument may be cited as the Disclosure Rules and Transparency Rules Sourcebook (Amendment No 3) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Disclosure and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text.

Application: Corporate governance statements

…

1B.1.5A	G	*LR* 9.8.7AR, *LR* 14.3.24R and *LR* 18.4.3R(2) extend the application of *DTR* 7.2 for certain *companies* which have *securities* admitted to the *official list* maintained by the *FSA* in accordance with section 74 (The official list) of the *Act*.

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