Consultation Paper

CP11/7*

Financial Services Authority

Quarterly consultation

(No. 28)

Financial Services Authority

April 2011

Contents

The Financial Services Authority invites comments on this Consultation Paper.

Comments on Chapters 2, 4 and 9 of this CP should reach us by 6 May 2011, and comments on Chapter 3 should reach us by 13 May 2011. Comments on all other chapters should reach us by 6 June 2011.

Comments may be sent by electronic submission using the form on the FSA's website at www.fsa.gov.uk/Pages/Library/Policy/CP/2011/cp11_07_response.shtml.

You can also respond by email: cp11_07@fsa.gov.uk

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

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Chapter 3:	Peter Curtis	Telephone: 020 7066 4608 or Fax: 020 7066 4609
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If you are responding in writing to several chapters, please send your comments to Roslyn Anderson in Communications, who will pass your response on as appropriate.

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

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

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

Acronyms used in this paper

BBA	British Bankers' Association
BCD	Banking Consolidation Directive
BIPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms
CBA	const benefit analysis
CCJ	consumer credit jurisdiction
CESR	Committee of European Securities Regulators (now ESMA)
CFEB	Consumer Financial Education Body
CIS	collective investment scheme
COBS	Conduct of Business Sourcebook
COLL	Collective Investment Schemes sourcebook
CP	Consultation Paper
CRD3	Capital Requirements Directive
DEPP	Decision Procedure and Penalties manual
DISP	Dispute Resolution: Complaints sourcebook
EBA	European Banking Authority
ESMA	European Securities and Markets Authority
FEES	Fees manual
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000

the Fund	Business Growth Fund
GABRIEL	GAthering Better Regulatory Information Electronically
GENPRU	General Prudential sourcebook
ICOB	Insurance: Conduct of Business sourcebook
MiFID	Markets in Financial Instruments Directive
MMF	money market fund
OFT	Office of Fair Trading
ombudsman service	Financial Ombudsman Service
QMMF	qualifying money market fund
RDC	Regulatory Decisions Committee
RDR	Retail Distribution Review
SMEs	small and medium enterprises
ST-MMF	short-term money market fund
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
UCITS	undertakings for collective investment in transferable securities
VJ	voluntary jurisdiction
WAL	weighted average life
WAM	weighted average maturity

1

Overview

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

- to the Glossary definition of Holloway sickness policy to capture the features of the Holloway system (Chapter 2);
- to revise transitional guidance applying to certain firms and the provision of the Remuneration Code requiring payment of at least 50% of variable remuneration in shares or other non-cash instruments (Chapter 3);
- to making the rules in the Fees manual (FEES) for ourselves and the Financial Ombudsman Service and the application of the CFEB levies for the Money Advice Service (Chapter 4);
- to amend certain prudential rules which would apply to banks' investments in funds and holding companies which make venture capital investments (Chapter 5);
- to the guidance for completing data items found in the Supervision manual (SUP) and to make the FSA's requirements clearer (Chapter 6);
- to the Supervision manual (SUP) to improve the clarity of the rules, content, related annexes and to facilitate better data quality (Chapter 7);
- to the Dispute Resolution: Complaints (DISP) sourcebook to reflect how the new statutory power that provides for the FSA to make consumer redress schemes will operate in practice (Chapter 8); and
- to the Collective Investment Schemes sourcebook (COLL) Conduct of Business Sourcebook (COBS) and the Glossary of definitions as a result of guidelines issued by the European Securities and Markets Authority (ESMA) together with other consequential amendments to the Handbook (Chapter 9).

1.2 Responses to Chapters 2, 4, and 9 of this Consultation should be received by 6 May 2011, and responses to Chapter 3 should be received by 13 May 2011. Responses to all other chapters should be received by 6 June 2011.

CONSUMERS

The proposals in Chapters 2, 6 and 8 may be of interest to consumers.

2

Definition of Holloway sickness policies

Introduction

2.1 This chapter proposes to amend the Glossary definition of 'Holloway sickness policy'.

2.2 We would make these amendments under section 138 (General rule making power) and section 157 (1) of the Financial Services and Markets Act 2000 (FSMA). The text of the amendments can by found in Appendix 2. The amendments will be of interest primarily to firms (insurers and intermediaries), but also to consumers and consumer bodies.

Background

2.3 Holloway sickness policies are insurance policies combining income protection insurance and an investment element, which are sold by around a dozen friendly societies. They are intended primarily as sickness protection rather than savings, although they often generate surpluses in which the policyholder participates. The size of the investment element can range from a very small sum to a significant amount when compared with the total premiums paid. This investment element of Holloway policies means that they come within our Conduct of Business sourcebook (COBS).

2.4 The current Glossary definition of Holloway sickness policy is 'a policy offered or effected by a friendly society under the Holloway system'.[1] This definition does not define the 'Holloway system' and we consider that it would be helpful to have a clearer definition.

1 Glossary, 'Holloway sickness policy'

Proposed amendments

2.5 The proposed new definition will link these policies more clearly to their original purpose, which was to provide insurance while at the same time allowing a society's policyholders to share in the society's surplus. Following discussions with Holloway business providers, we propose to expand the existing definition to capture the features of the Holloway system. We have replaced the reference to the 'Holloway system' with a list of four characteristics that will need to be met in order for the policy to be classified as a Holloway sickness policy. Those characteristics are broadly that:

- permanent health benefits are provided under a long-term insurance contract;
- in addition to these benefits, premium amounts include an element to provide for solvency, for volatility of experience, and for investment purposes;
- surpluses are apportioned to policyholders and vest in the policyholder at maturity, retirement, death, or as otherwise specified; and
- the surplus apportioned is an amount which reflects the insurance margins and a percentage of the investment returns based on the amount of premium paid.[2]

2.6 We believe that these characteristics are integral to such policies and as such we have proposed that they are mandatory rather than illustrative.

2.7 We recently consulted in CP11/01[3], on whether Holloway policies should come under the new Glossary definition of 'retail investment product' being introduced under the Retail Distribution Review (RDR) rules and therefore be subject to the new rules from 31 December 2012. In that consultation we proposed that those policies which have only a small investment element would be exempt from the RDR. A policy to which that exemption would apply would be known as a 'Holloway exempt sickness policy' and would be defined as 'a Holloway sickness policy in respect of which the mid-rate projection in the key features illustration prepared for the purposes of COBS 13.1.1R(2) shows a projected maturity value of 20% or less of accumulated premiums'.[4] Final rules, following that consultation, have yet to be published, but the draft wording links into the existing 'Holloway sickness policy' definition. As a result, subject to the outcome of this consultation, an exempt policy would also need to fall within the underlying definition proposed in this chapter.

2.8 We make the above definition change to remove any uncertainty in relation to what constitutes a Holloway sickness policy, which should be helpful when we make policy changes affecting such business.

2 The full glossary definition for consultation is set out in Appendix 2
3 CP11/01: *Quarterly Consultation Paper No.27* (January 2011)
4 Ibid, Appendix 8

2.9 Whilst holders of Holloway policies may participate in the society's surplus, they are exempt from COBS 20 on the fair treatment of with-profits policyholders. As part of our aim to continue to review COBS 20 to meet ongoing challenges, we intend to consult later in the year on whether Holloway business should remain fully exempt from COBS 20.

Q2.1: Do you agree with our proposal to amend the definition of Holloway sickness policy as described above?

Q2.2: Do you have any comments on the definition proposed in Appendix 2?

Cost benefit analysis

2.10 The new definition of 'Holloway sickness policy' is intended to provide greater clarity for the policies falling within its scope, rather than changing this scope. Non-profit policies offered by Holloway providers will continue to come under the Insurance: Conduct of Business sourcebook (ICOBS) rather than COBS. So the definition will not lead to any additional costs or benefits, besides the greater clarity as to what constitutes a 'Holloway sickness policy' for both providers and FSA supervisors.

Compatibility statement

2.11 The proposed change has proper regard to the principles of good regulation. It will give firms writing Holloway insurance contracts business greater clarity in relation to the scope of the Handbook definition of Holloway sickness policies by removing any uncertainty.

Equality and diversity issues

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

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3

Remuneration Code – Proposal to extend the transitional guidance on share-based awards

Introduction

3.1 This chapter proposes amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC). We are proposing to amend the transitional provision relating to SYSC 19A (TP3.5G(2)), which states that firms previously subject to the Remuneration Code (the Code) may be able to justify not complying with the requirement to pay 50% of variable remuneration in shares or other non-cash instruments (SYSC 19A.3.47R), provided they take reasonable steps to comply as soon as reasonably possible and in any event by 1 July 2011.

3.2 We would amend this transitional guidance under our powers in section 157 (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The proposed changes to the Handbook are set out in Annex 3 to this CP.

3.3 These proposals are of particular interest to building societies, mutuals and other non-listed firms within the scope of the Remuneration Code.

3.4 These proposals relate to the guidance set out in PS10/20[5] published in December 2010, which followed CP10/19 published in July 2010. Consultation on them closes on 13 May 2011.

5 PS10/20: *Revising the Remuneration Code: Feedback on CP10/19 and final rules* (December 2010)

Proposed amendments

3.5 The latest revisions to the Capital Requirements Directive (CRD3) introduced a requirement that a substantial portion (at least 50%) of any variable remuneration consists of (a) shares or share-linked instruments and (b) where appropriate, certain capital instruments.

3.6 Firms that were subject to our Code for the 2009 performance year were expected to apply this requirement to their 2010 remuneration awards. However, on the grounds of proportionality, we included transitional guidance in our rules that recognised that certain firms may be able to justify not complying with this requirement, provided they take reasonable steps to comply as soon as reasonably possible and in any event by 1 July 2011.

3.7 Following our discussions with the relevant firms and trade associations, we received feedback that certain firms may still have difficulties in meeting this requirement in 2011. The reason is that mutuals and other non-listed firms continue to encounter genuine difficulties in devising the relevant alternative instruments (which are 'share-linked instruments or equivalent non-cash instruments' or 'capital instruments which are eligible for inclusion at stage B1 of the calculation in the capital resources tables (i.e. hybrid capital)).

3.8 We understand that this is a problem which is also being encountered in other EU Member States. The European Banking Authority's task force on remuneration will be considering whether to issue further guidance on the issue. However, it will not be able to do so before July 2011.

3.9 We are therefore proposing to extend the existing transitional guidance for up to one year (until 1 July 2012 at the latest) for firms to whom the Remuneration Code applies where both of the following conditions are satisfied:

- the firm is a non-listed firm; and
- all parent undertakings of the firm are non-listed undertakings.

The references to 'non-listed firms' tracks the language of SYSC 19A.3.47R(1)(a), which in turn copies out the relevant provision of CRD3. In this context, we consider that 'listing' would include admission to trading on a regulated market and refers to the listing of equity, rather than debt, instruments.

3.10 Firms that are part of a group containing a listed parent are not covered by this extension of the transitional guidance since such firms should be able to create an award that reflects to some extent the share performance of the listed parent. We therefore propose that the current transitional guidance should continue to apply to such firms, giving them until 1 July 2011 at the latest to comply.

3.11 If the proposal outlined in paragraph 3.9 is implemented, we would expect the relevant firms to put in place appropriate arrangements, processes and mechanisms during the extended transitional period, to manage the risks raised by their inability to comply with the 'shares or other instruments' requirement. We will also work with the relevant firms on developing alternatives to cash and shares. Furthermore, we would, if appropriate, challenge firms about why they consider it is not possible for them to comply, especially the larger or more sophisticated firms.

3.12 We would expect these firms to come as close as possible to compliance with the Code's requirements, rather than simply not applying the provision in question.

3.13 Furthermore, as this is a developing area of European regulatory practice, we will need to take account of wider developments. So we will keep the continued suitability of maintaining this transitional guidance under review during the proposed extension period. This includes considering whether the transitional period should be reduced if the EBA task force publishes guidance on this issue before the end of 2011.

3.14 To reflect the downside risk of shares/share-like instruments, the portion of variable remuneration paid in cash (in lieu of shares) must be subject to performance adjustment provisions (malus[6]) in line with Remuneration Principle 12(h).

3.15 SYSC 19A.3.47R(2) states that shares, share linked instruments and other capital instruments must be subject to an appropriate retention policy. We therefore propose (in TP3.7G(3)(b)) that the cash which represents the element of the variable remuneration that would otherwise have been paid in shares should be subject to appropriate deferral and performance adjustment policies. If required, we would be prepared to give firms more information on how we would expect these requirements to be met.

Q3.1: Do you agree with the proposal to extend the transitional guidance on share-based awards for certain firms until 1 July 2012 at the latest?

Q3.2: Do you agree with the proposals in paragraph 3.9, 3.10, 3.11 and 3.15 for non-listed firms that are not part of a group containing a listed parent?

6 A performance adjustment technique that allows firms to adjust the as-yet unvested portion of an individual's bonus to take account of developments after communication of the bonus.

Cost benefit analysis

3.16 We do not expect the proposals to generate material compliance costs for firms. Our proposed amendments for extending the potential transitional period for certain firms in complying with the 'shares or other instruments' requirement should only generate costs to the extent that they delay the realisation of some of the Code's benefits.

3.17 On the benefit side, the proposals will give affected firms more time to adjust to the 'shares or other instruments' requirement of the Code. This additional flexibility could slightly reduce the costs these firms will face in complying with the requirements.

Compatibility statement

3.18 We believe our proposals are compatible with our general duties under section 2 of FSMA. Our remuneration Code contributes to meeting our market confidence and financial stability objectives. In line with the principles of good regulation we are required to have regard, amongst other things, to the principle that the burden on firms imposed by our rules is proportionate to the benefits. The longer potential transitional period set out in this chapter will make our 'shares or other instruments' requirement more proportionate. We believe that this approach is the most appropriate way to achieve our objectives.

Equality and diversity

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

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4

Proposed amendments to the Fees manual

Introduction

4.1 In this chapter we propose the following amendments to the Fees manual (FEES) to clarify the:

- respective responsibilities of ourselves and the Financial Ombudsman Service[7] in making the rules; and
- application of the 'on account' payment of CFEB[8] levies for the Money Advice Service.

Proposed amendments

Separating the FSA and ombudsman service rules in the Fees manual

(Impact throughout the Fees manual – draft rules in Appendix 4, to be implemented May 2011)

4.2 In CP10/24[9], we redrafted Annex 1 of FEES 5 and made some consequential amendments elsewhere in the Fees manual, to clarify the respective responsibilities of ourselves and the ombudsman service in making the rules. We now propose to extend that process throughout the manual. This is a joint consultation with the ombudsman service.

7 The ombudsman service
8 Consumer Financial Education Body
9 *Regulatory fees and levies: Policy proposals for 2011/12* (October 2010)

4.3 The ombudsman service is funded by a combination of fees, set by different authorities:

- *General levy*: all authorised firms pay a general levy set annually by the FSA, unless they have notified us that they are exempt;
- *Consumer credit jurisdiction (CCJ) fee*: consumer credit licensees pay a CCJ fee for a five-year period. This is set and collected by the Office of Fair Trading (OFT);
- *Voluntary jurisdiction (VJ)*: VJ participants pay an annual levy set by the ombudsman service depending on the sectors in which they operate; and
- *Case fee*: case fees (currently £500) are paid by all firms, although the first three cases for any respondent in the financial year are free of charge. These are set and collected by the ombudsman service.

4.4 There are references to these various rules in different parts of the Fees manual, and it is not always clear who has responsibility for making them. There are also statements defining the scope of FSA rules which might inadvertently be read as applying to rules set by other bodies. Having reviewed FEES 5 Annex 1 for CP10/24, therefore, we have taken the opportunity to re-edit the manual and clarify all the references to the ombudsman service.

4.5 The proposed Handbook text is set out in Appendix 4. These proposals do not affect the level of fees and levies. They merely simplify the Fees manual.

Q4.1: Do you agree with our proposed clarification of references to the ombudsman service in the Fees manual?

Money Advice Service levies on account payments

(FEES 7.2.1R – draft rules in Appendix 4, to be implemented May 2011)

4.6 In CP10/5[10] we consulted on the basis for raising levies for the Consumer Financial Education Body (CFEB) and we introduced a new chapter of the Fees manual, FEES 7. The CFEB levy framework covered by FEES 7 mirrors that of the FSA's periodic fees framework set out in FEES 4. The body performing the function of consumer financial education has now changed its name to the Money Advice Service (MAS) but the levy will still be referred to in the Fees manual as the 'CFEB levy' as the levy relates to the function set out in section 6A of FSMA (i.e. 'consumer financial education body') rather than to the actual title of the body undertaking it.[11]

10 CP10/5, *Regulatory fees and levies: Rates proposals 2010/11 and feedback statement on Part 1 of CP09/26* (February 2010)
11 This body was previously named the 'Consumer Financial Education Body Limited'.

4.7 Under FEES 4.3.6R(1), if a firm pays in one financial year a FSA periodic fee that is, at least £50,000, it must pay a sum equal to 50% of that periodic fee 'on account' as a pre-payment towards its periodic fee for the following financial year by the 30 April of that year, the balance of that following year's actual periodic fee being payable by 1 September. FEES 4.3.6R(2) provides that, where the FSA periodic fee was less than £50,000 in the last fee year, the whole amount due for the following year is payable by 1 July.

4.8 The provisions of FEES 4.3.6R(1) are applied to the CFEB levy through FEES 7.2.1R(2). Our policy intention, as stated in CP10/5, was that the effect of this would be that firms which pay 'on account' because their FSA periodic fees in the previous year were at least £50,000 should also pay 50% of their CFEB levy 'on account'. However, as FEES 4.3.6R is currently applied to the CFEB levy, it could have the effect that a firm only pays 50% of its CFEB levy 'on account' if its CFEB levy in the previous year was at least £50,000, which was not the policy intention.

4.9 We are proposing to amend FEES 7.2.1R to clarify this policy intention by adding a modification.

Q4.2: Do you agree that the proposed amendment to FEES 7.2.1R more clearly aligns it to the policy intention for when an 'on account' CFEB levy should be paid by firms?

Cost benefit analysis

4.10 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 or the ombudsman's fees.

Compatibility statement

4.11 The draft rules we are consulting on in this chapter aim to clarify earlier policy consultations and therefore continue to be compatible with our general duties under section 2 of FSMA. For this reason we believe the burden on firms affected by them is proportionate to the benefits. We do not believe the proposals have any other impact upon our aim of meeting the principles of good regulation.

Equality and diversity

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

Contact

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5

Prudential treatment of venture capital investments

Introduction

5.1 We propose amending the Handbook as part of our response to Business Finance Taskforce proposal to establish the Business Growth Fund (the Fund).

5.2 Although these amendments are relevant to the proposed Fund, the structure of the Fund model shows considerable similarities to venture capital holdings by banks where the bank invests funds into an intermediate financial holding company (financial institution) and that institution invests in the equity of venture capital investments. So the amendments will also apply to other similar venture capital models.

5.3 We would make these amendments under our powers in section 138 (General rule-making power), section 150(2) (Action for damages), section 156 (General supplementary powers) and section 157 (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The changes to the Handbook are set out in Appendix 5 to this CP.

Proposed amendments

5.4 The Fund is a proposal by the Business Finance Taskforce comprising of the six largest UK banks and the British Bankers' Association (BBA) to create a Fund which will invest in the equity of UK small and medium enterprises (SMEs). Over a number of years the fund's investments are planned to build up to £1.5bn. The Fund's objective is to plug a gap in the equity financing of SMEs whose capital needs are too large to be supported by government schemes but small enough that the management costs of such investments can render them uneconomic.

5.5 The prudential requirements on the banks' investments in the Fund will be affected by the prudential treatment relating to material holdings and other deductions, large exposures, and the risk weights that should be applied to banks' banking book equity investments.

5.6 Banks with an investment (above a 10% holding) in an entity (financial institution) that has a portfolio of venture capital investments are required to deduct the value of the investment in the financial institution under the material holdings rule in GENPRU 2.2.209R. Additionally, GENPRU 2 Annex 2R (see also GENPRU 2.2.216AG) requires banks to deduct their investments in any participation or subsidiary which are not already deducted as a material or qualifying holding.

5.7 We require a material holding capital deduction to avoid double-counting of capital (double gearing) within the financial system. The deduction for investments in subsidiaries and participations addresses the problem where capital may be tied up in the investment and not be immediately transferable to the firm for a capital benefit in the event of a stressed situation. To the extent that a venture capital entity is not regulated and engages solely in non-financial investments, there is a strong case to argue that the bank's investment in that entity does not lead to double gearing in the financial system and deducting the investment in the financial institution is disproportionate to the risks posed.

5.8 Where a firm invests in a holding company which in turn invests in the Fund or other venture capital investments, then a bank's lending to that holding company could be subject to the requirements relating to Connected Lending of a Capital Nature as per GENPRU 2.2.221R.

5.9 The large exposures regime applies a non-risk sensitive regulatory backstop limit of 25% to a BIPRU firm's exposures to a counterparty or counterparties connected to the firm (connected counterparties) or a group of connected clients. This backstop limit aims to make it less likely that the default of an obligor leads to the regulated firm failing. It also ensures that firms are not over-exposed to group entities.

5.10 Where some banks consolidate their holdings such as these venture capital investments, it is likely that the banks' investments will fall within the definition of a connected counterparty as such an investment will constitute a participating interest. This is because BIPRU 10.3.8R(2), in defining a connected counterparty, includes an associate – the definition of which covers an affiliated company. Entities are affiliated if they are in the same 'group'. The definition of a 'group', in turn, includes a situation where one entity has a participating interest in another. In this case, if a bank proportionally consolidates its investment in the Fund or other venture capital funds then these investments will form part of the aggregate connected counterparty exposures.

5.11 As long as such a fund is adequately diversified across a range of equity investments in the non-financial sectors, its risks are unlikely to be strongly correlated with the specific risks of the investing bank. We are amending the application of the 'participating interest' part of the definition of connected counterparty in the large exposures regime to exclude the Fund or other comparable venture capital funds.

5.12 We propose to amend our rules so that, where a bank has a participation in a venture capital fund such as the Fund, the investment will not be subject to a capital deduction, thereby becoming eligible for a risk-weighting treatment. In addition, to reduce the likelihood that the fund will be regarded as a connected counterparty within the large exposures regime, we propose amending the definition of connected counterparty to limit the range of circumstances in which such a fund might fall within that definition.

5.13 A key condition for this prudential treatment is that the venture capital fund may not invest in credit institutions or financial institutions[12] – were it to do so, a capital deduction should be applied to the banks' investments in it, so that double gearing of capital within the financial system is avoided.

5.14 The proposed amendments are:

1) Solo level – material holdings

Where the investment in a venture capital fund is consolidated at the group level, we are proposing removing the requirement for the banks to make a material holding deduction at solo level. Likewise, if the bank made its investment in the venture capital fund through a holding company that is fully or proportionally consolidated, we propose removing the requirement for the bank to make a material holdings deduction for this at solo level.

2) Solo level – investments in subsidiary undertakings and participations

We are also proposing removing the deduction for investments in subsidiary undertakings and participations in GENPRU 2 Annex 2R (see also GENPRU 2.2.216AG) at solo level. This requires banks to deduct their investments in any participation or subsidiary that are not already deducted as a material or qualifying holding (irrespective of whether the investee is financial or non-financial).

3) Solo level – connected lending of a capital nature

We will amend GENPRU 2.2.221R so that investments in the Fund and in other funds which make Venture Capital investments will not be subject to deduction at solo level due to the requirements on Connected Lending.

4) Consolidated level – investments in subsidiary undertakings and participations

We also propose amending GENPRU 2 Annex 2R as it is applied by BIPRU 8.6 in relation to the calculation of consolidated capital resources, in the instance where a proportional consolidation of the venture capital fund could still lead to a deduction of the underlying venture capital investments (made by the fund) by applying the deduction for investments in subsidiaries and participations to the consolidated calculation.

12 '*Financial institution*' is as defined in the FSA Handbook and the Banking Consolidation Directive (BCD), so it includes companies whose principal activity is acquiring holdings.

5) Large exposures – connected counterparties

We propose to amend the application of BIPRU 10.3.8R to the banks' investments in the Fund (as well as to firms' investments in other funds with similar characteristics as the Fund) so that any participating interest in the Fund (or in similar venture capital funds) will be ignored in determining a BIPRU firm's connected counterparties. The basic 25% large exposures limit will continue to apply to a firm's other venture capital exposures. Similarly, the companies in which the Fund (or similar funds) invests could still be connected counterparties of the bank, depending on the circumstances. We also propose removing for these purposes (i.e. for venture capital funds) from the definition of connected counterparty the 'community of interest' the part which reads:

> 'any other person whose business or domestic relationship with A or his associate might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties'.

Risk-weighting

5.15 The banks' investments in the Fund will be regarded under BIPRU as an investment in a CIU (collective investment undertaking). Since the underlying investments in the Fund are equity, BIPRU requires that the 'Simple Risk Weight approach is applied. In essence, this applies a risk weight of 400% to investments in private equities, 300% for exchange traded equities and 200% for a 'sufficiently diversified' private equity portfolio.

5.16 We propose a two-fold test for determining whether a private equity portfolio is sufficiently diversified which addresses both sectoral and name concentration.

5.17 To address sectoral concentration our starting point is that the Fund's investment in the individual UK SMEs is classified according to the UK SIC Standard Industrial Classification (UK SIC (2007)). We propose to use the following limits to address and minimise sectoral concentration:

- no single sector can make up more than 20% of the Fund; and
- the four largest sectoral constituents have to make up less than 60% of the Fund.

5.18 To address single name concentration we propose that the Fund must have at least 30 investments. This is based on evidence relating to the diversification benefits that can be achieved by diversifying an equity portfolio, which suggests that adding a larger number of exposures above this level achieves only modest incremental diversification benefits.

5.19 Crucially, the analysis referred to assumes that each exposure has an equal weight in the overall Fund. As a result setting a rule relating to the minimum number of investments undertaken by the Fund would not be sufficient. So we propose that the effective number of exposures is at least 30, where effective exposure is:

- $N = (((\Sigma_i)(EAD_i))^2 / ((\Sigma_i)(EAD_i^2))$[13]

Where EAD_i represents the exposure value for the ith investment made by the Fund.

Q5.1: Do you agree we should make the proposed amendments to the capital deductions as described in paragraph 1.14(i-iv)?

Q5.2: Do you agree we should amend the application and definition of connected counterparties as described in paragraph 1.14(v)?

Q5.3: Do you have any comments on our proposals for clarifying the meaning of 'sufficiently diversified' for the purposes of applying an appropriate risk-weighting for an investment in a CIU?

Cost benefit analysis

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

5.21 We do not expect the proposals to generate material compliance costs for firms. Our proposed amendments set out an alternative, less severe, prudential treatment for firms' investments in venture capital entities than the current capital deduction. Our proposals would also reduce the likelihood that the investments will be regarded as connected counterparties under the large exposure regime. The firms are not required to meet any new capital requirements or undertake any additional reporting.

5.22 We expect the proposals to have the following capital impact:

1) Amending the material holdings and connected lending deductions for the Fund specifically would reduce the aggregate amount of total capital banks would need to hold by approximately £1.3bn. This number assumes that banks aggregate contributions to the Fund are around £1.5bn and that their investment is eligible for the diversified portfolios risk-weight.

13 For example, this formula is used in BIPRU 9.12.17R

2) And amending the material holdings deduction for non-financial venture capital investments made by large UK banks would reduce the aggregate amount of total capital these banks would need to hold by approximately £3bn.[14] This number is based on data from large UK banks' as of December 2009 and assumes that their investments would be eligible for the diversified portfolios risk-weight.

5.23 Finally, the proposed amendment to our large exposure regime would reduce the likelihood that banks' investments in venture capital funds fall under their connected counterparty category. This should free up space for other exposures that a firm can have under that category without breaching its large exposures limit.

5.24 We do not expect our proposals to have resource implications for us. The proposed amendments will not require any additional reporting or monitoring by supervision.

Compatibility statement

5.25 We believe our proposals are compatible with our general duties under FSMA.

5.26 Our rules on capital and large exposures contribute to meeting our market confidence and financial stability objectives. In line with the principles of good regulation we are required to have regard to the principle that the burden on firms imposed by our rules is proportionate to the benefits. We consider that our proposals make our capital and large exposure rules more proportionate to the risks posed to our objectives by banks' venture capital investments. We believe that reducing the capital charges for venture capital investments and reducing their likelihood of being captured as 'connected counterparties' is the best way to achieve our objectives.

Equality and diversity

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

14 The capital relief could be potentially higher than £3bn as the proposals would also allow to risk-weight rather than deduct other venture capital investments that fall under the categories of 'investments in subsidiary undertakings and participations' and 'connected lending'. Precise data on these two categories was not available.

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6

Proposed minor changes to the liquidity regime

Introduction

6.1 This chapter proposes minor amendments to our guidance on liquidity reporting in the Supervision manual (SUP).

6.2 The proposed amendments, if approved, will be made under sections 138 (General rule-making power), section 150(2) (Actions for damages), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA).

6.3 The proposed Handbook text can be found in Appendix 6 to this CP.

6.4 In PS09/16[15] 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. Elements of the regime were phased in for different classes of firm throughout 2010.

6.5 We propose amendments to the guidance for completing data items found in the Supervision manual (SUP). These amendments make our requirements clearer and correct errors. None of the proposed amendments set out in this chapter is intended to change the liquidity policy nor the associated reporting requirements.

6.6 The amendments will be of interest to BIPRU firms that submit data items FSA047, FSA048, FSA051, FSA052, FSA054 and FSA055.

6.7 The amendments are unlikely to be of specific interest to consumers.

15 PS09/16 *Strengthening liquidity standards* (October 2009)

Background and context

6.8 From 1 June 2010, we phased in a comprehensive suite of liquidity reporting returns (FSA047–FSA055). Industry participants have told us they do not understand how to complete some sections of data items FSA047, FSA048, FSA051, FSA052, and FSA054. Firms are also finding it difficult to determine which liquidity data items they must complete.

6.9 FSA047, FSA048, FSA051, FSA052, and FSA054 are part of the suite of liquidity reporting returns providing a comprehensive view of firms' maturity analysis, analysis of concentration and funding profiles. The suite of returns applies to a wide range of firms that are within the BIPRU 12 liquidity regime's scope (including, for example, non-UK firms operating within the UK). We monitor and analyse liquidity risk issues using this suite of liquidity reporting returns.

6.10 Firms have been submitting these data returns on a phased basis, by class of firm, since June 2010. Analysis of returns combined with feedback from respondents indicates that certain sections of the forms are not being completed correctly.

6.11 We provide extensive guidance for completing and submitting these data items in section 16, Annex 25 of the Supervision manual (SUP). We maintain this guidance regularly, responding to feedback and analysis of firms' returns.

6.12 We also provide instructions for firms on which data items they are expected to complete, by Regulated Activity Group (RAG) in SUP16.12 (Reporting Requirements). Feedback from firms suggests that these instructions are not clear enough to communicate the requirements for standard *ILAS BIPRU firms* and *non-ILAS BIPRU firms*. *Non-ILAS BIPRU firms* are only required to complete FSA055 and not FSA047-054. Standard *ILAS BIPRU firms* are required to complete FSA047-FSA054 but not FSA055.

Proposed amendments

6.13 We propose amendments to liquidity reporting requirements (SUP 16.12) and guidance (SUP 16 Annex 25G).

6.14 We propose that the guidance for firms on the completion of FSA047, FSA048, FSA051, FSA052 and FSA054 in SUP16 Annex 25G be amended to reflect the changes below. In addition, we propose that SUP16.12 be amended to include clarification on reporting requirements for *ILAS BIPRU firms* and *non-ILAS BIPRU firms*.

SUP 16 Annex 25G

6.15 In FSA047 we propose:

1) an amendment to include guidance on the treatment of segregated collateral, cash and related deposits, where firms accounting results in consolidation of these assets and liabilities; and

2) an amendment to include guidance on time bands and reporting periods for data elements to incorporate the 'modified following' convention.

6.16 In FSA048 we propose:

1) an amendment to include guidance on the treatment of segregated collateral, cash and related deposits, as in FSA047;

2) an amendment to include guidance on time bands and reporting periods for data elements to incorporate the 'modified following' convention;

3) clarification of what constitutes direct participation in settlements systems;

4) inclusion of supplementary guidance for the treatment of tri-party repos collateral, in line with published FAQs;

5) clarification on the treatment of own-name securities and repo of these securities that do not satisfy credit quality step 2;

6) an amendment to guidance on the definition of 'SME' to include deposits from small and medium sized charities;

7) clarification to guidance on the treatment of client / brokerage free cash to exclude margin received; and

8) an amendment to guidance on the treatment of derivatives margining and exposure, to exclude all segregated margin received or placed.

6.17 In FSA051 we propose to correct our guidance on the use of source data items for reporting FSA051 to include FSA047 as well as FSA048.

6.18 In FSA052 we propose:

1) a correction to guidance on the use of source data items for reporting FSA052 to include FSA047 as well as FSA048;

2) a clarification to guidance on the reporting of weighted average spread; and

3) to include a definition of a 'spread' for the purposes of reporting FSA052.

6.19 In FSA054 we propose to correct our guidance on the use of source data items for reporting FSA054 to include FSA047 as well as FSA048.

SUP 16.12 (Reporting Requirements)

6.20 We propose to amend SUP 16.12.11R (RAG 3), 16.12.15R (RAG 4), 16.12.22AR (RAG 7) and 16.12.25AR (RAG 8) to indicate that *non-ILAS BIPRU firms* must complete only FSA055 and not deliver FSA047-FSA054 and that *ILAS BIPRU firms* must complete FSA047-FSA054 and not FSA055.

Q6.1: Do you agree with our proposal to amend the reporting requirements and data item guidance in SUP 16?

Cost benefit analysis

6.21 We consider that no further cost benefit analysis (CBA) is required. The proposed amendments and additions make the intention and meaning of the current guidance within SUP 16 Annex 25G clearer. The additional guidance on reporting requirements in SUP 16.12 seeks to ensure that firms do not complete data items that they are not required to. The proposed amendments will not increase or reduce the amount of information. These proposals do not materially alter the balance of costs and benefits considered within the CBA in PS09/16.

Compatibility statement

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

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

6.24 The minor amendments 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. We have also considered the principles of good regulation and, in particular, the principle that a burden or restriction should be proportionate to the benefits, the need to use our resources in the most efficient and economic way as well as the international character of financial services and markets and the desirability of maintaining the competitive position in the UK.

6.25 The proposed amendments to SUP 16 will help firms complete the suite of liquidity data items which are intended to make it easier for firms and the FSA to monitor liquidity risk. This would help support our market confidence objective. As discussed in PS09/16, the prudential liquidity framework takes into account the principles of *proportionality* as well as *efficiency and economy*.

Equality and diversity

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

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7

Proposed changes to Chapter 16 of the Supervision manual

Introduction

7.1 This chapter proposes amendments to Chapter 16 of the Supervision manual (SUP) relating to the reporting requirements in SUP 16.12 (Integrated Regulatory Reporting).

7.2 We would make these amendments under sections 138 (General rule-making power), 156 (General supplementary powers) and 157 (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments is set out in Appendix 7 to this CP.

7.3 The proposed amendments affect the following provisions:

- SUP 16.12.5R;
- SUP 16 Annex 24R (reporting forms); and
- SUP 16 Annex 25G (guidance on completing the forms).

7.4 The changes to FSA031 and FSA032 follow on from guidance changes consulted on in Chapter 3 of CP10/1[16] which we anticipate will be formally made by the FSA Board at its meeting in March. Some of the changes will also be reflected in the GABRIEL reporting system, so some firms may need to adjust their systems to take account of these changes. However, it is not expected the changes consulted on will impose an extra financial or reporting burden on those firms affected.

16 CP10/1, *Quarterly consultation (No 23)* (January 2010)

Proposed amendments

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

7.6 The following changes are relevant to:

- firms subject to the Capital Requirements Directive (CRD);
- UK consolidation groups; and
- exempt CAD firms subject to IPRU(INV) Chapters 9 or 13.

7.7 SUP 16.12.6R identifies that the reporting frequency for FSA046 and FSA058, on a UK Consolidation Group basis, is quarterly for both data items. However, under SUP 16.12.5R, it is not clear that reporting on a UK Consolidation Group basis applies, despite the original policy intention. In order to remove any possible confusion, we intend to add a reference to note 2, to both FSA046 and FSA058 in SUP 16.12.5R.

7.8 In CP10/1, we consulted on changes to the guidance for data items FSA031 (Capital Adequacy for exempt CAD firms, subject to IPRU(INV) Chapter 9) and FSA032 (Capital Adequacy for exempt CAD firms, subject to IPRU(INV) Chapter 13). This change was to clarify that firms could report their PII indemnity limits in euros or the currency of the report.

7.9 So that we are aware of the currency that firms are using to report their PII indemnity limits, we are consulting on the addition of a data element in the PII table (for both FSA031 and FSA032) that allows firms to specify the currency they have used. The field is situated immediately before the indemnity limits fields. Firms will be able to submit either data in euros or in one of the other seven reporting currencies that can be used in the GABRIEL system.

7.10 Firms will have to know this piece of information in order to correctly complete the indemnity limits amounts in the following four columns of the PII table. Therefore, we believe that this additional data filed will not increase the reporting burden on firms who submit FSA031 or FSA032.

7.11 Accompanying the proposed change to FSA031 and FSA032, there will be corresponding guidance that explains how firms should complete the new field using the appropriate three digit ISO country code.

7.12 Following the changes made to FSA004 in Integrated Regulatory Reporting (Amendment No 10) Instrument 2011/3, we are proposing to add validation rules that will ensure computational accuracy in the new elements that come into effect on 1 June 2011. Rules are added to the total fields, in rows 1, 18, 23, 28 and 33, and on the corporate rows 21 and 31, to ensure the following 'of which' items do not exceed the total corporate amount.

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

Q7.1: Do you agree with our proposed changes to SUP 16.12.5R, and to Annexes 24R and 25G?

Cost benefit analysis

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

7.15 In view of the nature of the proposed changes, we expect that firms may require system changes, but we believe that any increase in costs will be of minimal significance. This expectation is based on discussion with GABRIEL specialists at the FSA, firms and Independent Software Vendors that have taken place prior to previous consultation (CP10/10 para. 8.20) with similar amounts and types of change. Changes to guidance should result in no increase of costs and we expect compliance costs from these proposals to also be minimal.

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

Compatibility statement

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

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

7.18 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.

Equality and diversity

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

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8

Consumer redress schemes

Introduction

8.1 Section 14 of the Financial Services Act 2010[17] provides for the FSA to make consumer redress schemes. It replaces the provisions of section 404 of the Financial Services and Markets Act 2000 (FSMA), which enabled the Treasury to authorise schemes for reviewing past business. We believe the new power will facilitate redress for a large number of consumers and should act as a credible deterrent.

8.2 In July 2010, we published guidance aimed at giving firms and consumers greater clarity about how the new power will operate in practice.[18] This consultation proposes consequential and administrative changes to the Handbook, many of which were flagged in the guidance, to reflect how the power will operate in practice.

8.3 The changes proposed in this chapter to the Dispute Resolution: Complaints (DISP) sourcebook are a joint consultation with the Financial Ombudsman Service (the ombudsman service).[19] A draft instrument is attached in Appendix 8.

Role of the ombudsman service in a scheme

8.4 Previously, under section 228(2) (Determination under the compulsory jurisdiction) of FSMA, even where we proposed a generic solution to a widespread issue, the ombudsman service was required to consider the merits of individual cases on the basis of what the ombudsman considered to be fair and reasonable in the circumstances of each case.

8.5 Now, under section 404B(4), where we impose a generic solution through a consumer redress scheme, the ombudsman service must consider the merits of relevant cases on the basis of what the outcome would have been under the scheme. The effect is that the ombudsman service must consider whether or not the firm did what the scheme required it to do.

17 The Financial Services Act 2010 amends FSMA by substituting new sections 404 and 404 A-G for the previous section 404.

18 *Guidance Note No. 10, Consumer Redress Schemes*, (July 2010).

19 The rules in DISP 1, and the rules in DISP 2 relating to the ombudsman service's compulsory jurisdiction, are made by us. However, most of the rules in DISP 3, which set out the ombudsman's procedures, are made by the ombudsman service.

Proposed amendments

Firms' complaint handling requirements

8.6 In the event that we established a consumer redress scheme, its rules would detail how relevant firms must operate it.[20] Among other things, rules made by us under section 404A of FSMA may:

- specify the things firms must do when operating a scheme (e.g. assessing evidence, determining redress and providing us with information); and
- set time limits within which firms are expected to take such actions.

8.7 The existing Chapter 1 of DISP sets out the factors that firms must take into account when investigating and assessing complaints, and the time limits in which they must be dealt with. It also sets out the requirements for recording information about complaints received and for reporting this to us.

8.8 To avoid the risk of potential overlaps between firms' complaint handling requirements under DISP 1 and operating any scheme, we propose a new rule (DISP 1.1.11AR) which would automatically switch off the complaints resolution, time limit, recording and reporting rules in the event that a scheme is established.

8.9 The effect of this proposal is that a firm would not be under an obligation to consider a complaint in accordance with the rules in DISP 1 where the subject matter of the complaint falls to be dealt with (or had been dealt with) under a scheme. Rather, the issue raised by the complaint would be dealt with by the firm directly under the scheme. Consumers would still have recourse to either the ombudsman service or the courts if they were dissatisfied with a firm's investigation under the scheme.

Complaints to the ombudsman service

8.10 Section 404B of FSMA deals with consumer complaints to the ombudsman service about:

- an act or omission which falls to be dealt with (or has been dealt with) under a consumer redress scheme;
- a determination made by a firm under a scheme; or
- a failure by a firm to make a determination under a scheme.

8.11 Under section 404B (11), all such complaints fall within the ombudsman service's Compulsory Jurisdiction (CJ). We propose new guidance (DISP 2.3.2C G) to reflect this.

20 A consumer redress scheme may apply to authorised persons and payment service providers. However, this chapter uses 'firm' to refer to all such persons.

8.12 Both we and the ombudsman service have identified four key scenarios which involve the ombudsman service dealing with complaints about issues that fall, or may fall, within the scope of a scheme.

8.13 The first scenario is when the ombudsman service receives complaints while a scheme is operating that fall within its scope but the time limit for the firm to deal with cases under the scheme has not expired. In this situation, the ombudsman service proposes a new rule (DISP 3.2.2AR) where it can refer the complaint back to the firm to be dealt with in accordance with the scheme.

8.14 The second scenario is when the ombudsman service receives complaints about the outcome of a firm's investigation under a scheme.

8.15 If the ombudsman service considers that the firm has reviewed the subject matter of the complaint as required under the scheme (including issuing the equivalent of a final response as described in paragraph 8.19), it may dismiss the complaint without considering its merits under the proposed new rule DISP 3.3.4R(5A). One example would be where the scheme provides for one standard form of redress and the firm has offered the required redress, but the consumer is dissatisfied with the form of redress provided for by the scheme.

8.16 In other cases the ombudsman service may have to consider the merits of the complaint. However, in accordance with section 404B(4), the ombudsman service will determine the complaint by reference to what, in the opinion of the ombudsman service, the determination under the scheme should be or should have been, rather than by referring to what is 'fair and reasonable'[21] (i.e. whether or not the firm did what the scheme required it to do). The ombudsman service proposes new guidance to reflect this (DISP 3.6.2G and DISP 3.6.5AG). Examples would be where:

- the firm does not offer redress, and the consumer claims that (under the terms of the scheme) the firm should have done so; or
- the scheme provides for two different forms of redress depending on the circumstances of the case: the firm has offered one form of redress; and, the consumer claims that (under the terms of the scheme) the firm should have offered the other.

8.17 The third scenario arises where the ombudsman service receives complaints once a scheme has ceased to operate. This situation would cover cases such as where firms had failed to undertake or complete an investigation under a scheme within the period in which it was operating. In this situation the ombudsman service would be required to deal with complaints in accordance with the scheme, subject to relevant time limits (see paragraphs 8.18 to 8.20 below).

21 Financial Services and Markets Act 2000, section 228(2).

8.18 The fourth scenario is when the ombudsman service receives complaints or considers complaints when we are consulting on a scheme, but the scheme is not yet in place. A scheme must be established by us in accordance with our rule-making processes, including consultation and cost benefit analysis (CBA). Publicity in the run-up to formal consultation may lead to a rapid rise in the number of complaints to the ombudsman service about the issue. Alternatively, the ombudsman service may already have received complaints about an issue a scheme is being developed to address. In these situations, the ombudsman service would consider whether or not to place a hold on complaints that may fall within the scope of the scheme (in line with normal operational practice).[22] In the event of the scheme being made, the ombudsman service would be able to refer the relevant complaints back to the firm to be dealt with in accordance with the scheme (see paragraph 8.12). If a scheme was not made, the ombudsman service would deal with the complaints in the usual manner.

Time limits and case fees

8.19 Consumers currently have six months after a relevant firm has provided its final response to complain to the ombudsman service about how the firm has dealt with their complaints. We propose parallel arrangements for complaints to the ombudsman service about the outcome of a firm's investigation under a scheme, since the communication which a firm provides to a consumer about the outcome of its investigation is equivalent to its response to a complaint. To give effect to this, we propose:

- including the term 'redress determination' as a defined term in the Glossary. A firm would be able to provide a consumer with a redress determination after completing the steps required under a scheme (see sections 404(5) to (7) of the FSMA). As with a firm's 'final response', we propose a redress determination would need to:
  - be in writing;
  - set out the outcome of a firm's investigation;
  - inform the consumer that, if he is dissatisfied, he may make a complaint to the ombudsman service and must do so within six months; and
  - include a copy of the ombudsman service's standard explanatory leaflet.
- creating a new rule (DISP 2.8.1R(3)), so the ombudsman service can only consider complaints when a firm has either:
  - sent the consumer a redress determination (about the outcome of its investigation under a scheme);
  - failed to send the consumer a redress determination in accordance with the time limits specified under the scheme; or

22 For example, pending the outcome of the 'test case' on unauthorised overdraft charges, the ombudsman service placed a hold on related complaints.

- amending DISP 2.8.2R so the ombudsman service cannot consider complaints more than six months after a firm has provided a redress determination.

8.20 If a firm has failed to provide a redress determination (for example, because it had omitted to deal with a particular consumer's case under a scheme), consumers would have three or six years to complain to the ombudsman service in accordance with the standard time limits.[23] This is on the basis that failing to provide a redress determination is equivalent to an 'act or omission' about which a consumer can complain to the ombudsman service under the existing rules. We propose amending the definition of 'complaint' in the Glossary to reflect this.

8.21 We propose deleting DISP 2.8.5R(1) which refers to the possibility that the three and six year time limits for complaints could have been extended under a scheme made under the previous section 404 power. However, if in relation to any particular scheme we think it is appropriate to extend the time limits applying to a consumer making a complaint to the ombudsman service, we will consult on the necessary rule changes then.

8.22 We also propose amending the definition of 'chargeable case' in the Glossary, so the ombudsman service will not charge a case fee where it considers it apparent from the complaint, when it is received, and from any redress determination issued by the firm, that the complaint should not proceed (and the ombudsman service has dismissed the complaint accordingly under the proposed new rule DISP 3.3.4R(5A)). This will read across from the current approach to case fees.

8.23 If it is not apparent to the ombudsman service from the complaint when it is received and from any redress determination issued by the firm that the complaint should not proceed, the ombudsman service will have to consider the matter and a case fee will be chargeable (even if the complaint is dismissed under DISP 3.3). It will therefore be in firms' interests to ensure that a redress determination clearly sets out the outcome of their investigation under the scheme and the basis for it.

Ombudsman awards, directions and dealing with information

8.24 Section 3.7 of DISP sets out the ombudsman service's procedures for determining money and interest awards for consumers where it has upheld a complaint against a firm, as well as the maximum award limit and procedures for directing firms to take steps in relation to a complainant.

23 Under DISP 2.8.2 R (2) the ombudsman cannot consider a complaint more than: (a) six years after the event complained of; or (if later) three years after the date on which the complainant became aware (or ought reasonably to become aware) that he had cause for complaint.

8.25 Sections 404B(5) to (8) make provision for the ombudsman service's procedures for determining money and interest awards, and directing firms to take particular actions where it has considered a complaint about the outcome of a firm's investigation (or failure to undertake an investigation) under a scheme. Therefore, the ombudsman service proposes amending section 3.7 of DISP to reflect that, where a scheme is in place, money awards and directions will reflect what, in the ombudsman service's opinion, the outcome of the firm's investigation should be (or should have been) under a scheme. New rule DISP 3.7.2BR reflects the intention of section 404B that interest will only be payable on any amount that is not paid by the date for payment specified in the money award. We propose new guidance in DISP 3.7.4AG to reflect that the cap on the maximum money award that the ombudsman service can make also applies in relation to consumer redress schemes.

Q8.1 Do you have any comments about our proposed amendments to DISP to reflect the operation of a scheme?

Compensation

8.26 The Financial Services Compensation Scheme (FSCS) is the UK's statutory fund of last resort for customers of authorised financial services firms. This means it can pay compensation if a firm is unable or likely to be unable to pay claims against it. The FSCS covers deposits, insurance policies, insurance broking (for business on or after 1 January 2005), investment business and home finance (for business on or after 31 October 2004). The rules covering compensation can be found in the Compensation sourcebook (COMP) of the Handbook. The rules relating to the funding of the scheme are in section 6 of the Fees manual (FEES 6).

8.27 We propose two amendments to COMP to reflect the likely operation of the FSCS where it deals with claims that fall within the scope of a scheme.

8.28 The first amendment reflects the fact that, under section 404(8) of FSMA, firms will have to operate the scheme in respect of all consumers who were eligible for redress at the time the rules were made. To put it another way, once the scheme has been made, firms cannot use a defence of limitation to avoid considering a particular consumer's case. This means that consumers will not lose out if firms take some time to review all the cases covered by the scheme. To match this, we propose that the FSCS must also disregard a defence of limitation that becomes available after a scheme has been made or imposed (COMP 8.2.4AR).

8.29 Second, in line with the operation of the ombudsman service in accordance with section 404B of FSMA, we propose that the FSCS considers claims that fall within the scope of a scheme in accordance with the scheme. However, in line with the existing provisions in respect of pensions review cases[24], the FSCS would have discretion to depart from the terms of the scheme where it considered it essential to provide the claimant with fair compensation (COMP 12.4.22R). We believe this will promote consistent outcomes for consumers, whether the scheme is being applied by firms, the ombudsman service or (in the event that a firm defaults) the FSCS. The FSCS's limits on the amount of compensation it could pay in the event of a claim would continue to apply – a reflection of its role as a fund of last resort.

Q8.2 Do you have any comments about our proposed amendments to COMP to reflect the operation of a scheme?

Disciplinary measures

8.30 Section 404C of FSMA provides that Part 14 of FSMA (Disciplinary measures), which applies to authorised persons, also applies to relevant firms that are not (or are no longer) authorised persons. Section 404(2) of FSMA defines 'relevant firms' as (a) authorised persons, or (b) payment service providers. This means that unauthorised payment service providers may be subject to public censure or financial penalties under Part 14 of FSMA for breaching a scheme's rules.

8.31 Under FSMA, we are required to prepare and issue a statement of our policy for:

- the imposition and amount of financial penalties on persons that breach a scheme's rule; and
- the procedure for giving warning notices and decision notices when making these decisions.

The circumstances in which we will impose a public censure or financial penalty on a person for breaching a scheme's rules

8.32 Chapter 6.2 of our Decision Procedure and Penalties manual (DEPP) sets out our policy for deciding whether to take action to impose a financial penalty or public censure. We propose to adopt the same approach when deciding whether to impose a financial penalty or public censure on a person that breaches a scheme's rules as we believe this will ensure consistency. This does not require any changes to DEPP.

24 COMP 12.4.6 R

How we will determine the level of penalty

8.33 We published our new five-step policy for determining the level of a penalty (see PS10/4, *Enforcement financial penalties*) in March 2010. This policy is set out in DEPP 6.5 to DEPP 6.5D, and is divided into cases against firms (which includes for these purposes those unauthorised persons who are not individuals), non-market abuse cases against individuals, and market abuse cases against individuals. As this penalty-setting policy applies to all types of cases, we consider that, in order to have a consistent, single approach to setting penalties, it should also apply when we determine the appropriate level of penalty to impose on a person that breaches a scheme's rules. This does not require any changes to DEPP.

Decision maker

8.34 We believe the Regulatory Decisions Committee (RDC) should be the decision maker for giving warning notices and decision notices in cases where we impose a public censure or financial penalty on a person that breaches a scheme's rules. This is consistent with the fact that the RDC decides the level of other penalties. This required a minor amendment to DEPP (shown in Annex B in the draft instrument).

8.35 We also propose to make consequential amendments to our Enforcement Guide, as a result of the new section 404C.

Q8.3 Do you have any comments about our proposed disciplinary policy for consumer redress schemes?

Cost benefit analysis

8.36 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.

8.37 The main benefit of making the consequential changes to the Handbook now is to provide greater information about how a consumer redress scheme is likely to operate in practice and the interaction with the ability of consumers to complain to the ombudsman service. This will enable consumers to better understand the options open to them should they be dissatisfied with a firm's investigation under a scheme. It will also give firms greater clarity and certainty about how operating a scheme would relate to the operation of the ombudsman service and the FSCS. Each proposal has other, further benefits. These are dealt with separately in the sections below.

8.38 Rules made by the ombudsman service in accordance with Schedule 17, Part II, section 14 of FSMA do not require a CBA. This CBA consequently does not cover the changes to rules and guidance in DISP 3 proposed by the ombudsman service. Nor does this CBA cover proposed guidance on the change to the ombudsman service's compulsory jurisdiction. This is because it is guidance on section 404B(11) of FSMA, not guidance on our rules.

8.39 In the absence of a scheme and, given the clarifying nature of the proposed changes, the proposed changes will not result in material costs for firms. The main cost to us is in communicating the changes to firms, which would be covered from existing resources as part of our normal communications. In the context of a scheme, the actual costs will depend on the number of firms and consumers affected and the specific details of the scheme. Such specific costs would need to be subject to CBA as and when we consult on a future scheme. As a result, no CBA is required and in the remainder of this chapter we explain why we consider that the relevant changes proposed in this chapter have zero or minimal costs.

Firms' complaint handling requirements

8.40 The benefit of switching off firms' standard complaint handling rules in the event of a scheme is to avoid overlap between the complaint handling rules and the rules made under a scheme. This will give firms certainty that – in the event of a scheme – they will not need to handle customer complaints about issues that fall within the scope of a scheme in line with our normal DISP rules.

8.41 The proposed rule change has no costs either for firms or for us.

Time limits

8.42 The proposals in relation to time limits are to ensure that the arrangements for complaints about the outcome of consumer redress schemes are in line with those which already apply to other types of complaint.

8.43 Making these changes now will give firms greater certainty about their obligations under a scheme. It will also give consumers information about their recourse to the ombudsman service under a consumer redress scheme.

8.44 We believe that implementing the proposal to delete DISP 2.8.5R(1)[25] – and not adapting it to apply to the new section 404 power – gives firms greater certainty at no loss of redress to consumers (as the previous section 404 power has never been used). As set out above, if in relation to any particular scheme we think it is appropriate to extend the time limits for making a complaint to the ombudsman service, we will consult on the necessary rule changes at that time.

25 DISP 2.8.5R(1) currently refers to the possibility that the three and six year time limits for complaints could have been extended under a scheme made under the previous section 404 power.

8.45 We consider that the costs of the above proposals are likely to be minimal. As and when a scheme is made there may be other direct and indirect costs to firms. These will need to be subject to CBA as and when we consult on the operation of a scheme in future.

Compensation

8.46 **Defence of limitation.** Currently, firms will have to deal with all cases under a scheme where the limitation period (the deadline by which a claim must be made) has not expired when the scheme rules are made (FSMA section 404(8)). Our suggested amendment ensures that this benefit is extended to customers of firms that have gone into default. It therefore ensures that where, during or after a scheme, a firm has gone into default, consumers have the same rights as the customers of a firm that remains a going concern.[26]

8.47 **FSCS to consider claims in accordance with a scheme.** The benefit of this amendment is that consumers are consistently treated with regard to the amount of redress, whether the firm involved remains in business or has gone into default. The FSCS can depart from the terms of the scheme where it considers this essential to provide the claimant with fair compensation, but the normal limits on compensation will still apply.

8.48 The two amendments above have only minimal direct costs to firms or us. There are likely to be some indirect costs from the first amendment as and when a scheme is made. These are likely to be transfers as the first amendment may increase the number of consumers likely to have the right to redress in the context of a scheme than might otherwise be the case. As a result, as and when a scheme is made, this may increase the costs to the FSCS and ultimately those firms continuing to fund the FSCS. However, the precise costs will depend on the nature of the scheme, and will need to be subject to a CBA when a scheme is consulted upon.

Disciplinary measures

8.49 Our proposals apply our current approach to deciding whether to impose a penalty, and the amount of that penalty, to breaches of a scheme's rules. This ensures we will have a single, consistent approach to penalties, and so will extend the benefits of clarity, transparency and deterrence associated with our existing penalties regime.

8.50 We do not expect our proposals to increase the overall amount of resources we devote to enforcement. There will not, therefore, be any additional costs to us. There may be costs to firms, especially unauthorised payment service providers, in terms of staff training with regard to our penalties policy, but we consider these are unlikely to be material.

26 Under COMP 8.2.4 R, the FSCS already has the discretion to disregard a defence of limitations in connection with claims about some products and services.

Glossary

8.51 Defining 'redress determination' gives firms clarity about the nature of the communications they may have to undertake after completing an investigation under a scheme. It also provides consumers with information about what they can expect of firms subject to a scheme. The definition follows the model of a 'final response', as it sets out what should be included in the communication and specifies what information should be provided about the availability of the ombudsman service. This will ensure consumers receive clear information about the outcome of the investigation under a scheme and the options open to them in the future.

8.52 Amending the definition of 'chargeable case' to reflect redress determination will give firms clarity about the circumstances under which the ombudsman service may charge a case fee. Amending the definition of 'complaint' to include redress determination will give firms and consumers clarity about when the ombudsman service may consider a complaint about a firm's investigation under a scheme.

8.53 There is likely to be a cost to firms in terms of preparing and sending out redress determinations under a consumer redress scheme. It is not possible at this stage to consider how much it might cost the industry to provide such determinations to customers, as we do not know how many firms and customers may be involved in any future scheme or schemes. However, when consulting upon a possible scheme in future, the CBA will include the costs of firms communicating with customers in the context of overall compliance costs to firms.

Compatibility statement

8.54 We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

8.55 Our consequential amendments provide greater information about how a consumer redress scheme is likely to operate in practice, and the interaction with the ability of consumers to complain to the ombudsman service. We have had regard to the principles of good regulation, including the principle that any redress scheme we create must be proportionate to the consumer detriment it is designed to address.

Equality and diversity

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

Contact

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9

Proposed changes to the Collective Investment Schemes sourcebook

Introduction

9.1 This chapter proposes a number of amendments to the Collective Investment Schemes sourcebook (COLL), Conduct of Business Sourcebook (COBS) and Glossary of definitions as a result of guidelines issued by the Committee of European Securities Regulators (CESR), now the European Securities and Markets Authority (ESMA), together with other consequential changes needed to the Handbook as a result of implementing the Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV) (the substance of which has been consulted on separately).

9.2 We would make the UCITS IV consequential amendments under the same provisions as listed in the main UCITS IV instrument as consulted on jointly with HM Treasury. The money market fund provisions would be made under sections 138 (General rule-making power), 156 (General supplementary powers), 157(1) (Guidance), 247 (Trust scheme rules) and 248 (Scheme particulars rules) of the Financial Services and Markets Act 2000 (FSMA) and regulation 6 of the Open-Ended Investment Companies Regulations 2001 (OEIC Regulations). The text of the proposed amendments is set out in Appendix 9 to this CP.

9.3 As both sets of proposals are required to be applicable from 1 July 2011, and to ensure we have adequate time to apply any recommendations arising from the consultation, the consultation period is one month.

Proposed amendments

Common definition of European money market funds

9.4 During 2008 some UCITS schemes around Europe encountered liquidity issues as a result of their interests in non-investment grade money market instruments. Some of these schemes used the term 'money market' in their name.

9.5 As result of these issues and their impact on these 'money market funds', in December 2008 the CESR agreed that better co-ordination between its members on money market funds was needed given the lack of a harmonised definition.

9.6 In October 2009 CESR issued a consultation paper (Ref CESR/09-850) with a proposal for a common definition and in May 2010 it published guidelines on a common definition of European money market funds (Ref CESR/10-049) (the Guidelines).

9.7 CESR was replaced by ESMA as from 1 January 2011. However, guidance issued by CESR remains in force until such time as it is adopted, replaced or revoked by ESMA.[27] The Guidelines are not intended to affect the existing rules covering qualifying money market funds (QMMFs), which are an exclusive category of UCITS created under the markets in financial instruments Directive (MiFID). However, some requirements are common to both QMMFs and the funds defined in the Guidelines. We therefore propose to create, in our rules, a distinction between QMMF, ST-MMF and MMF.

The Guidelines

9.8 The Guidelines set out a two-tiered approach to defining money market funds, with definitions for 'short-term money market funds' (ST-MMF) and 'money market funds' (MMF). The Guidelines are applicable to all authorised collective investment schemes in Member States (e.g. UCITS, non-UCITS retail schemes (NURS) and qualified investor schemes (QIS) in the UK) and effectively forbid the use of the term 'money market' or similar by any collective investment scheme (CIS) that does not comply with the guidelines or the MiFID definition of a Qualified Money Market Fund (QMMF).[28]

FSA approach to implementation

9.9 We propose to introduce the Guidelines as rules. Although firms generally apply COLL guidance in full we feel that applying the Guidelines as rules demonstrates a commitment to the intended outcome of the Guidelines and will ensure consistency of application across all captured funds.

27 See the Decisions of the Board of Supervisors on Rules of procedures of 11 January 2011 (Ref.ESMA/2011/BS/1), www.esma.europa.eu/popup2.php?id=7494

28 www.esma.europa.eu/index.php?page=document_details&from_title=Documents&id=6638

9.10 The most significant impact on COLL will be the introduction of COLL 5.9 which details the requirements for both ST-MMF and MMF. These requirements, and associated guidance, will apply to UCITS, NURS and QIS. These requirements are taken directly from the Guidelines with only minor changes to ensure consistency with the rest of COLL. This section will also contain rules on determining high quality money market instruments and calculating the weighted average life (WAL) and weighted average maturity (WAM) of money market instruments.

9.11 As the intention of the Guidelines is to restrict the investment policies of schemes which use the term 'money market' in their title, we propose to introduce rules on the naming of schemes. These rules will prevent schemes from using the term 'money market' in their title or similar terms which could reasonably be considered to imply that a fund invests predominantly in money market instruments, unless they comply with one of the money market fund definitions. We have provided a non-exhaustive list of names which we believe could lead investors to reasonably believe that a fund is investing predominantly in money market instruments such as 'money fund'. Firms are reminded that the FSA is able to refuse applications where a name is undesirable or misleading, which includes where a name implies that a fund has certain qualities or merits which might not be justified or is inconsistent with a fund's investment objectives or policy.

9.12 In addition to these proposals we intend to apply the remaining parts of the Guidelines as follows:

- introduce Glossary definitions for money market fund, short-term money market fund, weighted average life, weighted average maturity and CESR's guidelines on a common definition of European money market funds;
- require disclosures in the prospectus, simplified prospectus and key investor information;
- remove the ability of UCITS schemes which comply with the definitions to hold up to 10% of the scheme property in ineligible assets;
- remove the ability of NURS which comply with the definitions to hold up to 20% of the scheme property in ineligible assets;
- require that NURS and QIS that comply with the money market fund definitions can only hold approved money market instruments as defined in COLL 5.2.7FR to COLL 5.2.7HG;
- restrict money market funds to daily valuation unless the scheme is marketed through an employee savings scheme or to a specific category of investor subject to redemption restrictions in which case valuation can be weekly; and
- include ST-MMFs that value on an amortised cost basis in the guidance on price rectification in COLL 6.3.13R and, for QIS, new paragraphs COLL 8.5.9AR and COLL 8.5.9BG.

Transitional provisions

9.13 The Guidelines allow for a transitional period of up to six months for schemes to be brought into line with the definitions. We propose to apply this transitional period in full.

Q9.1: Do you agree with the approach taken by the FSA in applying the Guidelines?

Q9.2: Do you think the list of restricted names should be extended? Should fund names that include the term 'cash' be included?

Qualifying money market funds

9.14 In addition to the introduction of the ST-MMF and MMF rules, we intend to make three amendments to the COLL rules in relation to QMMFs to ensure consistency.

9.15 We propose to include QMMFs in the disclosure requirements in the simplified prospectus (COLL 4.6.8R) and to restrict QMMFs from holding ineligible assets as currently permitted under COLL 5.2.8R (COLL 5.2.9AR). Finally, we propose to include QMMFs in the rules for restrictions on the names for money market funds (COLL 6.9.8AR).

Q9.3: Do you agree to the extension of certain rules to encompass QMMFs?

Q9.4: Do you agree that there is a clear distinction between QMMFs and the proposed ST-MMF and MMF requirements?

Consequential changes

9.16 We are also consulting on a number of consequential changes to the Handbook that arise from the implementation of the revised and recast UCITS Directive (UCITS IV). The main consultation on this subject has been carried out jointly with HM Treasury and closed on 21 March. We are currently considering the responses, but as the matters we are consulting on in this paper do not depend on policy decisions, they will not be affected by any changes we may make to the main body of draft rules and guidance.

9.17 Most of the changes are simply alterations to cross-references to the Directive text, to reflect the fact that its articles have been renumbered in the new version. There are also clarifications in guidance of the scope and application of rules (e.g. changes to COBS 11.1.5G).

9.18 Proposals which involve changes with a legal effect are as follows:

GEN 4.1.4R (Annex B of the draft instrument) will require an EEA UCITS management company, operating a UK-authorised UCITS scheme, to ensure that it does not state or imply that the company itself is authorised by the FSA or is regulated by the FSA where that is not the case;

COBS 11.1.5G (Annex E of the draft instrument) clarifies the application of the personal dealing rules where collective portfolio management activities are being carried out on a cross-border basis under the Directive passport;

SUP 11.8.1R (Annex F of the draft instrument) ensures the rule on notifying the FSA of changes in the authorisation status of an existing controller will be applied where that controller is a UCITS management company authorised in another EEA State;

COMP 14.2.3G (Annex G of the draft instrument) clarifies that COMP 14.2.1R will apply to a UCITS management company only in respect of activities other than collective portfolio management;

COLL 7.7.23R (Annex H of the draft instrument) implements Article 48(4) of the Directive by requiring the authorised fund manager of a UCITS scheme that is the receiving UCITS in a merger subject to the Directive, to inform the scheme's depositary in writing when the merger is complete; and

COLL 9.2.2G and 12.1.3G clarify the legal position under Article 16(1) of the Directive that a management company passport is not required in order to market units of a UCITS in another EEA State under chapter XI of the Directive.

Q9.5: Do you agree with the consequential amendments?

Cost benefit analysis

9.19 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 to produce a CBA does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

Common definitions of European money market funds

9.20 These proposals ensure a consistent approach to the operation of money market funds across Europe with unitholders benefitting from clearly designated, and regulated, funds in all jurisdictions.

9.21 We have undertaken a review of schemes currently in the Investment Management Association (IMA) money market funds sector, together with those schemes on the FSA register featuring the terms 'money market' or 'cash' in their name. From this review we estimate approximately 40 schemes/sub-funds will be affected by the requirements, accounting for no more than 1% of the total funds under management by UK-authorised CIS.

9.22 Discussions with industry participants have indicated that initial costs to those firms affected by the requirements will cover legal advice, redrafting of marketing material, and systems development. Legal costs are estimated at £1,200 per scheme/sub-fund. Redrafting of marketing material will depend on the extent of any changes, number of documents affected and delivery methods (e.g. paper, electronic, etc) however we do not expect these costs to be significant.

9.23 Firms may also have to enhance monitoring processes to ensure compliance with the WAM and WAL requirements; however, we believe these costs to be minimal as firms will already have extensive monitoring processes in place.

9.24 Depositaries may have to enhance monitoring processes to enable them to ensure authorised fund managers' (AFM) compliance with COLL 5.9, in particular, the WAM and WAL requirements. Costs will vary depending on the sophication of existing systems and the methods by which each depositary ensures the AFMs' compliance with COLL 5. Although these costs will therefore be on a case-by-case basis we do not expect them to be significant.

9.25 We do not expect any additional costs to the FSA.

Consequential amendments

9.26 The benefit of these proposals is to ensure that the Directive is transposed into UK regulation in a complete and clearly explained way, so that firms understand and are able to fulfil their responsibilities. We do not expect any significant costs to arise from these proposals, either to the FSA or regulated firms.

Compatibility statement

Common definitions of European money market funds

9.27 The proposals aim to meet our statutory objectives of market confidence and consumer protection. By incorporating the guidelines into the Handbook we expect that the requirements for AFMs and depositaries will be more clearly defined, by allowing the operation of money market funds within restrictive parameters with better protection for investors in these funds.

9.28 We have considered the principles of good regulation and in particular the principle that a burden or restriction should be proportionate to the expected benefits. Our analysis indicates that cost impact will be minimal for all of the changes proposed, which introduce to COLL European-wide guidelines applicable to the operation of money market funds.

Consequential amendments

9.29 We do not consider that our proposal has any direct implications in relation to our regulatory objectives as such. We have had regard to the principles of good regulation, including the principle that restrictions we impose on the industry must be proportionate to the benefits that are expected to result from those restrictions and the desirability of maintaining the competitive position of the UK. Our proposal aims to merely realign the Handbook with the UCITS Directive.

Equality and diversity

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

Contact

Comments should reach us by 6 May 2011. Please send them to:

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Appendix 1

List of questions

Chapter 2:

Q2.1: Do you agree with our proposal to amend the definition of Holloway sickness policy as described above?

Q2.2: Do you have any comments on the definition proposed in Appendix 2?

Chapter 3:

Q3.1: Do you agree with the proposal to extend the transitional guidance on share-based awards for certain firms until 1 July 2012 at the latest?

Q3.2: Do you agree with the proposals in paragraph 3.9, 3.10, 3.11 and 3.15 for non-listed firms that are not part of a group containing a listed parent?

Chapter 4:

Q4.1: Do you agree with our proposed clarification of references to the ombudsman service in the Fees manual?

Q4.2: Do you agree that the proposed amendment to FEES 7.2.1R more clearly aligns it to the policy intention for when an 'on account' CFEB levy should be paid by firms?

Chapter 5:

Q5.1: Do you agree we should make the proposed amendments to the capital deductions as described in paragraph 1.14 (i-iv)?

Q5.2: Do you agree we should amend the application and definition of connected counterparties as described in paragraph 1.14(v)?

Q5.3: Do you have any comments on our proposals for clarifying the meaning of 'sufficiently diversified' for the purposes of applying an appropriate risk-weighting for an investment in a CIU?

Chapter 6:

Q6.1: Do you agree with our proposal to amend the reporting requirements and data item guidance in SUP 16?

Chapter 7:

Q7.1: Do you agree with our proposed changes to SUP 16.12.5R, and to Annexes 24R and 25G?

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

Chapter 8:

Q8.1: Do you have any comments about our proposed amendments to DISP to reflect the operation of a scheme?

Q8.2: Do you have any comments about our proposed amendments to COMP to reflect the operation of a scheme?

Q8.3: Do you have any comments about our proposed disciplinary policy for consumer redress schemes?

Chapter 9:

Q9.1: Do you agree with the approach taken by the FSA in applying the Guidelines?

Q9.2: Do you think the list of restricted names should be extended? Should fund names that include the term 'cash' be included?

Q9.3: Do you agree to the extension of certain rules to encompass QMMFs?

Q9.4: Do you agree that there is a clear distinction between QMMFs and the proposed ST-MMF and MMF requirements?

Q9.5: Do you agree with the consequential amendments?

Appendix 2

Definition of Holloway sickness policies

Appendix 2

GLOSSARY AMENDMENT (DEFINITION OF HOLLOWAY SICKNESS POLICY) INSTRUMENT 2011

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 141 (Insurance business rules);
(3) section 156 (General supplementary powers); and
(4) section 157(1) (Guidance).

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

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Glossary Amendment (Definition of Holloway Sickness Policy) Instrument 2011.

By order of the Board
[*date*]

Annex

Amendments to the Glossary of definitions

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

Holloway sickness policy	a *policy* offered or effected by a *friendly society* ~~under the Holloway system~~, which includes all of the following characteristics:

(a) *permanent health* benefits are provided under a *long-term insurance contract*;

(b) in addition to *permanent health* benefits, *premium* amounts include an element to provide for solvency of the *friendly society*, for volatility of experience, and for investment purposes on behalf of the *policyholder*;

(c) surpluses accrued are apportioned to *policyholders* and are held in a *policyholder's* individual account, which vests in the *policyholder* at maturity, retirement or death or as otherwise specified by contractual provisions or individual society rules; and

(d) the surplus apportionment is an amount which reflects insurance margins and a percentage of investment returns based upon the amount of *premium* paid.

Appendix 3

Remuneration Code – Proposal to extend the transitional guidance on share-based awards

Appendix 3

SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS (REMUNERATION TRANSITIONAL GUIDANCE) INSTRUMENT 2011

Powers exercised

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

Commencement

B. This instrument comes into force on 1 July 2011.

Amendments to the Handbook

C. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with the Annex to this instrument.

Citation

D. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Remuneration Transitional Guidance) Instrument 2011.

By order of the Board
[ ]

Annex

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

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

TP 3 Remuneration code

…

5 ~~G~~ ~~(1)~~ ~~The *FSA* recognises that *firms* may require additional time to comply in full with the requirements of the *Remuneration Code* where they were not subject to the version of the *Remuneration Code* that applied before 1 January 2011. The *FSA* considers that a *firm* may be able to rely on the proportionality provisions in *SYSC* 4.1.2R and *SYSC* 19.3.3R to justify not complying with the requirements of the *Remuneration Code* relating to *remuneration* structures by 1 January 2011 provided it takes reasonable steps to comply as soon as reasonably possible and in any event by 1 July 2011.~~

~~(2)~~ ~~On a similar basis and on the same timescales set out in (1), a *firm* which was subject to the previous version of the *Remuneration Code* may be able to justify not complying with the requirement to pay 50% of variable *remuneration* in *shares* or other non-cash instruments (*SYSC* 19.3.47R).~~ [deleted]

…

7 G (1) This *guidance* applies to a *firm* to whom the *Remuneration Code* applies where both of the following conditions are satisfied:

(a) condition 1 is that the *firm* is a non-listed *firm*; and

(b) condition 2 is that any *parent undertaking* of the *firm* is a non-listed *undertaking*.

(2) The *FSA* considers, in the circumstances set out in (3), that a *firm* to whom this guidance applies might (but will not necessarily) be able to rely on the proportionality provisions of *SYSC* 4.1.2R and the *remuneration principles proportionality rule* to justify not complying with the requirement to pay at least 50% of variable *remuneration* in *shares* or other non-cash instruments (*SYSC* 19A.3.47R).

(3) The circumstances referred to in (2) are as follows:

(a) Circumstance 1 is that the *firm* is taking the necessary steps to comply with the requirement as soon as reasonably

possible, and in any event by 1 July 2012.

(b) Circumstance 2 relates to the proportion of cash that would have been issued in *shares* or other non-cash instruments had *SYSC* 19A.3.47R been complied with ("relevant cash"). The relevant cash should not be paid at the point in time that the *shares* or other non-cash instruments would have vested. This is because *shares* or other non-cash instruments continue to have risk-alignment features following vesting due to the requirement for the *firm* to apply an appropriate retention policy (*SYSC* 19A.3.47R(2)). Instead, the *firm* should pay the relevant cash following a period of deferral, the length of which should mirror the retention policy that would have been applied had *SYSC* 19A.3.47R been complied with. Where the relevant cash is already subject to deferral in accordance with *SYSC* 19A.3.49R, this period of deferral should be added to the period determined under *SYSC* 19A.3.49R. The relevant cash should be subject to performance adjustment in accordance with Remuneration Principle 12(h) (*SYSC* 19A.3.51R to *SYSC* 19A.3.53G) until it vests.

(c) Circumstance 3 is that the *firm* has adopted and is maintaining specific and effective arrangements, processes and mechanisms to manage the risks raised by its non-compliance with *SYSC* 19A.3.47R.

(4) The *guidance* in (1) to (3) ceases to have effect on 1 July 2012. As a result this *guidance* does not apply to *remuneration* which vests on or after 1 July 2012 (including *remuneration* awarded before 1 July 2012, but where deferral under *SYSC* 19A.3.49R leads to it vesting on or after 1 July 2012).

Appendix 4

Proposed amendments to the Fees manual

FEES (CFEB LEVY AND FINANCIAL OMBUDSMAN SERVICE RULES) INSTRUMENT 2011

Powers exercised by the Financial Ombudsman Service

A. The Financial Ombudsman Service Limited makes in Annex A to this instrument:

(1) the rules and guidance relating to the payment of fees under the Compulsory Jurisdiction;
(2) the rules and guidance for licensees relating to payment of fees under the Consumer Credit Jurisdiction; and
(3) the standard terms for VJ participants relating to the payment of fees under the Voluntary Jurisdiction;

in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(a) paragraph 8 (Guidance) of Schedule 17;
(b) paragraph 15 (Fees) of Schedule 17;
(c) paragraph 16C (Fees) of Schedule 17; and
(d) paragraph 18 (Terms of reference to the scheme) of Schedule 17.

B. The making of these rules, standard terms and guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

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

(1) the Act:

(a) section 156 (General supplementary powers);
(b) section 157(1) and (4) (Guidance);
(c) section 234 (Industry funding);
(d) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority); and
(e) paragraph 12(1) (Funding of the relevant costs by authorised persons or payment service providers) of Part 2 of Schedule 1A (Further provision about the Consumer Financial Education Body);

(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).

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

Commencement

E. This instrument comes into force on xxx 2011.

Amendments to the Handbook

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

G. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex B to this instrument.

Citation

H. This instrument may be cited as the Fees (CFEB Levy and Financial Ombudsman Service Rules) Instrument 2011.

By order of the Financial Ombudsman Service Limited
[TBC]

By order of the Board
[*] May 2011

Annex A

Amendments to the Fees manual (FEES)

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

1.1 Application and purpose

1.1.1 G *FEES* applies to all *persons* required to pay a fee or levy under a provision of the *Handbook*. The purpose of this chapter is to set out to whom the *rules* and *guidance* in *FEES* apply. *FEES* 2 (General Provisions) contains general provisions which may apply to any type of fee payer. *FEES* 3 (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example various application fees (including those in relation to authorisation, variation of *Part IV permission*, *listing* and the Basel Capital Accord) and fees relating to certain notifications and document vetting requests. *FEES* 4 (Periodic fees) covers all periodic fees and transaction reporting fees. *FEES* 5 (Financial Ombudsman Service Funding) relates to *FOS* levies (in *FEES* 5.1) and case fees (in *FEES* 5.5A). ~~and~~ *FEES* 6 (Financial Services Compensation Scheme Funding) relates to the *FSCS* levy. *FEES* 7 relates to the *CFEB levy*.

1.1.2 R This manual applies in the following way:

…

FEES 1, 2 and 7 do not apply to an *incoming EEA firm* or an *incoming Treaty firm* that has not established a *branch* in the *United Kingdom*.

The application statement at *FEES* 1.1.2R(3) does not apply to *FEES* 5.5A, *FEES* 5 Annex 2R or *FEES* 5 Annex 3R.

1.1.3 G The application of *FEES* 5.5A and *FEES* 5 Annex 3R is set out in *FEES* 5.5A.1R. The relevant provisions of *FEES* 5 and *FEES* 2 are applied to *VJ Participants* by the *standard terms* (see *DISP* 4).

…

2.1.1 R Except to the extent referred to in *FEES* 2.1.1AR, ~~This~~ this chapter applies to every *person* who is required to pay a fee or share of a levy to the *FSA*, *FOS Ltd* or *FSCS*, as the case may be, by a provision of the *Handbook*.

2.1.1A R This chapter does not apply in relation to *FEES* 5.5A, *FEES* 5 Annex 2 or *FEES* 5 Annex 3.

…

2.1.4 G The purpose of this chapter is to set out the general provisions applicable to those who are required to pay fees or levies to the *FSA*~~, case fees to the *FOS*~~

~~*Ltd*~~ or a share of the *FSCS* levy.

2.1.5 G Paragraph 17 of Schedule 1 to and section 99 of the *Act*, regulation 92 of the *Payment Services Regulations* and regulation 59 of the *Electronic Money Regulations* enable the *FSA* to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the *FSCS* levy, *FOS* levies ~~and case fees~~ and *CFEB levies* are set out in *FEES* 6.1, *FEES* 5.2 and FEES 7.1.4G respectively. Case fees payable to the *FOS Ltd* are set out in *FEES* 5.5A. *Fee-paying payment service providers* and *fee-paying electronic money issuers* are not required to pay the *FSCS* levy but are liable for *FOS* levies.

…

2.1.7 G The key components of the *FSA* fee mechanism (excluding the *FSCS* levy, the *FOS* levy ~~and case fees~~, and the *CFEB levy* which are dealt with in *FEES* 5, *FEES* 6, and *FEES* 7) are:

…

…

2.2.1 R If a *person* does not pay the total amount of a periodic fee (including fees relating to *transaction reports* to the *FSA* using the *FSA's* Transaction Reporting System (see *SUP* 17)), *FOS* levy ~~or case fee~~, or share of the *FSCS* levy or *CFEB levy*, before the end of the date on which it is due, under the relevant provision in *FEES* 4, 5, 6 or 7, that *person* must pay an additional amount as follows:

…

…

2.2.2 G The *FSA*, (for periodic fees, *FOS* and *FSCS* levies and *CFEB levies*), ~~and the *FOS Ltd* (for *FOS* case fees),~~ expect to issue invoices at least 30 *days* before the date on which the relevant amounts fall due. *FOS* case fees are invoiced on a monthly basis. Accordingly it will generally be the case that a *person* will have at least 30 *days* from the issue of the invoice before an administrative fee becomes payable.

…

2.2.4 G In addition, the *FSA* may be entitled to take regulatory action in relation to the non-payment of fees, *FOS* levies and *CFEB levies*. The *FSA* may also take regulatory action in relation to the non-payment of ~~*FOS* case fees or~~ a share of the *FSCS* levy, after reference of the matter to the *FSA* by ~~the *FOS Ltd* or~~ the *FSCS* ~~respectively~~. What action (if any) that is taken by the *FSA* will be decided upon in the light of the particular circumstances of the case.

…

2.3.1 R If it appears to the *FSA*~~,~~ or the *FSCS* (in relation to any *FSCS* levy only) ~~or the *FOS Ltd* (in relation to any *FOS* case fee only)~~, that in the exceptional circumstances of a particular case, the payment of any fee, *FSCS* levy, *FOS* levy or *CFEB levy* would be inequitable, the *FSA*~~,~~ or the *FSCS* ~~or the *FOS Ltd*~~, as relevant, may (unless *FEES* 2.3.2BR applies) reduce or remit all or part of the fee or levy in question which would otherwise be payable.

2.3.2 R If it appears to the *FSA*~~,~~ or the *FSCS* (in relation to any *FSCS* levy only) ~~or the *FOS Ltd* (in relation to any *FOS* case fee only)~~, that in the exceptional circumstances of a particular case to which *FEES* 2.3.1R does not apply, the retention by the *FSA*, the *FSCS*, ~~the *FOS Ltd*~~ or the *CFEB*, as relevant, of a fee, *FSCS* levy, *FOS* levy or *CFEB levy* which has been paid would be inequitable, the *FSA*, the *FSCS*~~, the *FOS Ltd*~~ or the *CFEB*, may (unless *FEES* 2.3.2BR applies) refund all or part of that fee or levy.

…

Application

5.1.1 R ~~This chapter applies~~ *Rule*s and *guidance* made by the *FSA* in this chapter apply to~~:~~

~~(1)~~ every *firm* which is subject to the *Compulsory Jurisdiction*. ~~and (apart from *FEES* 5.3, 5.4 and 5.8) every *licensee* which is subject to the *Consumer Credit Jurisdiction* of the *Financial Ombudsman Service*; and~~

~~(2)~~ ~~every other *person* who is subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*.~~

5.1.1-A G Whilst no rule made by the *FSA* in this chapter applies to *licensees* subject to the *Consumer Credit Jurisdiction* or to *VJ participants*, some of the *guidance* may do. The application of rules made by the *FOS Ltd* in this chapter is set out in *FEES* 5.5A and described in *FEES* 5.1.2AG.

5.1.1A R A reference to "*firm*" in this chapter includes a reference to a *fee-paying payment service provider* ~~except in FEES 5.5 and where "*firm*" is used elsewhere in this chapter in connection with the obligation to pay case fees~~.

5.1.1B R *FEES* 5.1.1.AR does not apply to *FEES* 5.5A or *FEE*S 5 Annex 2R or Annex 3R unless otherwise stated in rules made by *FOS Ltd*.

5.1.2 G ~~The relevant provisions of *FEES* 5 are applied to *VJ participants* by the *standard terms* (see *DISP* 4).~~ The rules set out in the table under *FEES* 5.1.2AG are made by the *FOS Ltd*. All other *FEES* 5 rules are made by the *FSA*.

5.1.2A G Table of FEES 5 rules made by the FOS Ltd

FEES 5 rules made by the FOS Ltd	Description

FEES 5.5A	Rules relating to case fees
FEES 5 Annex 2R	Annual General Levy Payable in Relation to the Voluntary Jurisdiction
FEES 5 Annex 3R	Case Fees Payable

5.1.3 G ~~References in this chapter to "*firms*" are to be construed, where relevant, as including:~~

~~(1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints* (see Transitional Provisions 6 and 7 of *DISP*); and~~

~~(2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.~~

[deleted]

5.1.3A G ~~References in this chapter to *licensees* are to be construed, where relevant, as a result of section 226A of the *Act*, as including *persons* who were formerly *licensees* in respect of complaints about acts or omissions which occurred at the time when they were *licensees*, provided the complaint falls within a description specified in the *Consumer Credit Jurisdiction* rules in force at the time of the act or omission.~~ [deleted]

5.1.4 R A *firm* which is exempt under *DISP* 1.1.12R is also exempt from *FEES* 5.1, 5.2, 5.3, 5.4 and ~~to *FEES*~~ 5.6.

…

5.1.6 R ~~A *firm* which becomes exempt under *FEES* 5.1.4 R during the course of a *financial year* is to be treated for the purposes of its contribution to the *general levy*, as a *firm* to which *FEES* 5.9 applies.~~ [deleted]

5.1.6A G *Firms* which cease to be *authorised* and therefore subject to the *Compulsory Jurisdiction* part way through the year will not receive a refund of their *general levy* except in exceptional circumstances.

…

5.3.7 G Under the *standard terms*, *VJ participants* will be required to pay to *FOS Ltd* an amount calculated on a similar basis towards the costs of operating the *Voluntary Jurisdiction* of the *Financial Ombudsman Service*, see *FEES* 5 Annex 2R. *FOS Ltd* will be responsible for invoicing and collecting this amount.

...

Delete all of FEES 5.5. The deleted text is not shown.

Add the following new section in its place. The text is not underlined.

Note that any corresponding current provision in the Handbook which will be deleted or changed by this instrument is shown in italics under the new provision.

5.5A Case fees

Application

5.5A.1 R The requirements in *FEES* 5.5A apply to:
5.1.1R

(1) every *firm* or *payment service provider* which is subject to the *Compulsory Jurisdiction* and every *licensee* which is subject to the *Consumer Credit Jurisdiction* of the *Financial Ombudsman Service*; and

(2) every other *person* who is subject to the *Compulsory Jurisdiction* in relation to *relevant complaints*.

5.5A.2 G *DISP* 4.2.6R applies certain *rules* in *FEES* to *VJ Participants* as part of the *standard terms*, but substituting *'VJ Participant' for 'firm'*. As a result, *VJ Participants* are required to pay case fees set out in *FEES* 5.5A.6R, *FEES* 5.5A.13R and *FEES* 5 Annex 3R.

5.5A.3 R References in *FEES* 5.5 to "*firms*" are to be construed, where relevant, as
5.1.3G including:

(1) in accordance with the *Ombudsman Transitional Order*, *unauthorised persons* subject to the *Compulsory Jurisdiction* in relation to *relevant complaints* (see Transitional Provisions 6 and 7 of *DISP*); and

(2) as a result of section 226 of the *Act*, *unauthorised persons* who were formerly *firms* in respect of complaints about acts or omissions which occurred at the time when they were *firms*, provided that the *Compulsory Jurisdiction* rules were in force in relation to the activity in question.

5.5A.4 G References in *FEES* 5.5A and *FEES* 5 Annex 2R and 3R to *licensees* are to be
5.1.3A G construed, where relevant as a result of section 226A (Consumer credit jurisdiction) of the *Act*, as including *persons* who were formerly *licensees* in respect of complaints about acts or omissions which occurred at the time when they were *licensees*, provided the complaint falls within a description specified in the *Consumer Credit Jurisdiction* rules in force at the time of the act or omission.

Purpose

5.5A.5 R *5.1.7G in part* The purpose of *FEES* 5.5A is to set out the requirements on *firms* to pay case fees (invoiced and collected directly by *FOS Ltd*) in order to fund the operation of the *Financial Ombudsman Service*. *FEES* 5.5A also provides for *unauthorised persons* to pay case fees to *FOS Ltd* in respect of any *relevant complaints* which it handles.

Standard Case fee

5.5A.6 R *5.5.1R* A *firm* or a *licensee* must pay to *FOS Ltd* the standard case fee specified in *FEES* 5 Annex 3R in respect of each *chargeable case* relating to that *firm* or licensee which is closed by the *Financial Ombudsman Service*, unless a special case fee is payable or has been paid in respect of that case under *FEES* 5.5A.13R to *FEES* 5.5A.22R.

5.5A.7 R *5.5.1AR* *FEES* 5.5A.6R applies to *payment service providers* in the same way as it applies to *firms*.

5.5A.8 G *5.5.2G* The standard case fee, which will be subject to consultation each year, will be calculated by dividing the *annual budget* for the *Compulsory Jurisdiction*, less the amount to be raised by the *general levy*, by the estimated number of *chargeable cases* which the *Financial Ombudsman Service* expects to close in the relevant *financial year*.

5.5A.9 G *5.5.2A G* For the purposes of the *Consumer Credit Jurisdiction*, the standard case fee, which will be subject to consultation each year, will be calculated by dividing the *annual budget* for the *Consumer Credit Jurisdiction*, less the amount to be raised by the sum determined by *FOS Ltd* under section 234A (Funding by consumer credit licensees etc) of the *Act*, by the estimated number of *chargeable cases* which the *Financial Ombudsman Service* expects to close in the relevant *financial year*.

5.5A.10 R *5.5.3R* A *credit union* which is subject to the *minimum levy* in an *industry block* is not required to pay a standard case fee in respect of *chargeable cases* relating to that *industry block*.

5.5A.11 R *5.5.4R* Any *firm* falling into either *industry block* 13 or *industry block* 15 in *FEES* 5 Annex 1R is not required to pay the standard case fee in respect of *chargeable cases* relating to those *industry blocks*.

5.5A.12 G *5.5.5G* The *firms* in *industry blocks* 13 and 15 are cash plan health providers and small *friendly societies*. These arrangements have been made in respect of these *firms* to take account of the fact that the amount at issue is likely to be small relative to the case fee. Instead, the full unit cost of handling complaints against these *firms* will be recovered through the *general levy* in accordance with the relevant tariff-base and no case fee will be payable. Similar arrangements have been made under *FEES* 5.5A.10R in respect of small *credit unions*.

Special Case fees: complaints from small businesses

5.5A.13 R *5.5.6R* A *firm* must pay to *FOS Ltd* a special case fee, as specified in *FEES* 5 Annex 3R in respect of each *chargeable case* relating to that *firm* which is closed by the *Financial Ombudsman Service* and which was referred to the *Financial Ombudsman Service* by *eligible complainants* who fall within *DISP* 2.7.3R (2), *DISP* 2.7.6R(12)(a) and *DISP* 2.7.6R(12)(a).

5.5A.14 R *5.5.6AR* *FEES* 5.5A.13R applies to *payment service providers* in the same way it applies to *firms*.

Special case fees: firms which cease to be authorised, persons which cease to be payment service providers and persons which cease to be licensees

5.5A.15 R *5.5.7R* A *firm* which ceases to be *authorised* must pay to *FOS Ltd* a special case fee, as specified in *FEES* 5 Annex 3R in respect of each *chargeable case* relating to that *firm* which is closed by the *Financial Ombudsman Service* and which concerned an act or omission occurring when the *firm* was *authorised* and where the complaint was made after its *authorisation* ceased.

5.5A.16 R *5.5.7AR* *FEES* 5.5A.15R applies to *persons* which cease to be *licensees* in the same way as it applies to *firms* which cease to be *authorised*.

5.5A.17 R *5.5.7BR* *FEES* 5.5A.15R applies to *persons* which cease to be *payment service providers* in the same way as it applies to *firms* which cease to be *authorised*.

Special case fees: relevant complaints against persons who were subject to a former scheme

5.5A.18 R *5.5.8R* An *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay to *FOS Ltd* a special case fee as specified in *FEES* 5 Annex 3R in respect of each *chargeable case* relating to that *unauthorised person* which is closed by the *Financial Ombudsman Service*.

5.5A.19 G *5.5.9G* Under the *Ombudsman Transitional Order*, *FOS Ltd* can handle complaints about members of a *former scheme* which that scheme could have handled before *commencement*, even if the *unauthorised person* concerned does not become *authorised* by the *FSA* after that date. Where *FOS Ltd* handles such complaints, the *unauthorised person* concerned will be required to pay a special case fee.

Special case fees for 2001/02

5.5A.20 R *5.5.10R* A *firm* which was a member of *PIA* before *commencement* must pay to *FOS Ltd* a special case fee, as specified in *FEES* 5 Annex 3R, in respect of each *chargeable case* relating to that firm received by the *Financial Ombudsman Service* after *commencement* and before 31 March 2002.

5.5A.21 R *5.5.11R* *FEES* 5.5A.20R does not apply in relation to a *chargeable case* which relates to a complaint which proceeded or would have proceeded under a *former*

scheme other than the PIAOB scheme.

5.5A.22 R *5.5.12R* A *firm* which was not a member of a *former scheme* before the *commencement day* must pay to *FOS Ltd* a special case fee, as specified in *FEES* 5 Annex 3R, in respect of each *chargeable case* which relates to business conducted by the firm after the *commencement day* and which is closed by the *Financial Ombudsman Service* before 31 March 2002.

5.5A.23 G *5.5.14G* A *firm* which was, before *commencement*, a member of *PIA* and a *former scheme* other than the PIAOB scheme will not, on account of the exclusion in *FEES* 5.5A21R, be required to pay the special case fee specified by *FEES* 5.5A.20R in respect of all *chargeable cases* relating to it but only those which arise in respect of investment business matters which would have been eligible under the PIAOB scheme.

Case fee exemption

5.5A.24 R *5.5.15R* Notwithstanding the above, a *firm*, *payment service provider* or *licensee* will only be liable for, and *FOS* will only invoice for, the standard case fee or, as the case may be, the special case fee, in respect of the fourth and subsequent *chargeable cases* in any *financial year*.

5.5A.25 G *5.5.16G* A case fee exemption provision was first applied in the financial year 1 April 2004 to 31 March 2005. For that financial year only, each authorised firm was invoiced for a standard case fee for the third and subsequent chargeable case received by the *Financial Ombudsman Service*, subject to the annual levy having been invoiced and paid by the firm within the *Financial Ombudsman Service's* normal credit terms. For the financial year commencing 1 April 2005 and for subsequent financial years, the case fee exemption provision contained in *FEES* 5.5A.24R applies. This provision is not retrospectively applicable to financial years prior to 1 April 2005.

5.5A.26 R *5.1.4R* A *firm* or *payment service provider* which is exempt under *DISP* 1.1.12R is also exempt from *FEES* 5.5A.

5.5A.27 R *5.1.4AR* A *firm* or *payment service provider* will only be exempt from *FEE*S 5.5A.28R to *FEES* 5.5A.30R, as applicable, for any given *financial year* if it met the conditions in *DISP* 1.1.12R on 31 March of the immediately preceding *financial year*.

Payment

5.5A.28 R *5.7.2R* A *firm* or *licensee* must pay to *FOS Ltd* any standard case fee or special case fee which it is liable to pay under *FEES* 5.5A.6R, 5.5A.13R, 5.5A.15R, 5.5A.18R, 5.5A.20R, or 5.5A.22R, as appropriate, in respect of *chargeable cases* for which it is invoiced by *FOS Ltd* within 30 calendar *days* of the date when the invoice is issued by *FOS Ltd*.

5.5A.29 R *5.7.2AR* *FEES* 5.5A.28R applies to *payment service providers* in the same way it applies to *firms*.

5.5A.30 R A *firm* or an *unauthorised person* which is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay any standard case fee or special case fee within 30 calendar *days* of the date when the invoice is issued by *FOS Ltd*.
5.7.3R

Leaving the Financial Ombudsman Service

5.5A.31 R Where a *firm* ceases to be *authorised* part way through a *financial year*:
5.9.1R

(1) it will remain liable to pay standard case fees in respect of *chargeable cases* against it which are closed by the *Financial Ombudsman Service* for the remainder of that *financial year*; and

(2) it must pay the special case fee specified under *FEES* 5.5A.15R in respect of any other *chargeable cases* against it which are closed by the *Financial Ombudsman Service*.

5.5A.32 R *FEES* 5.5A.31R applies to *persons* ceasing to be *licensees* or *payment service providers* part way through a *financial year* in the same way as it applies to *firms* which cease to be *authorised*.
5.9.1AR

5.5A.33 G *Firms* and *payment service providers* will continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *authorised*, or cease to be *payment service providers*. *Firms* and *payment service providers* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which their *authorisation* ceased or, as the case may be, they ceased to be *payment service providers*. The special case fee will apply to any complaint closed after the end of that year since the *firm* or *payment service provider* will no longer be contributing to the *general levy*.
5.9.2G

5.5A.34 G *Licensees* will also continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *licensees*. *Licensees* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which they ceased to be *licensees*. The special case fee will apply to any complaint closed after the end of that year since the *licensee* will no longer be contributing to any sum determined under section 234A of the *Act*.
5.9.3G

Late payments and remission of case fees

5.5A.35 R *FEES* 2.2.1R applies as if a reference in that rule to the *FOS* levy is a reference to case fees payable under *FEES* 5.5A and a reference to the *FSA* is a reference to *FOS Ltd*.

5.5A.36 G The *FOS Ltd* (in respect of case fees) may take steps to recover any money owed to it (including interest). The *FSA* may also take regulatory action in relation to the non-payment of *FOS* case fees after reference of the matter to the *FSA* by the *FOS Ltd*. What action (if any) that is taken by the *FSA* will be
2.2.4G

decided upon in the light of the particular circumstances of the case.

5.5A.37 R *FEES* 2.3.1R and 2.3.2R applies as if a reference in those rules to the *FOS* levy is a reference to case fees payable under *FEES* 5.5A and a reference to the *FSA* is a reference to *FOS Ltd*.

Amend the following as shown.

5.7.2 R ~~A *firm* or *licensee* must pay to *FOS Ltd* any standard case fee or special case fee which it is liable to pay under *FEES* 5.5.1R, *FEES* 5.5.6R, *FEES* 5.5.7R, *FEES* 5.5.8R, *FEES* 5.5.10R, or *FEES* 5.5.12R, as appropriate, in respect of *chargeable cases* for which it is invoiced by *FOS Ltd* within 30 calendar *days* of the date when the invoice is issued by *FOS Ltd*.~~ [deleted]

5.7.2A R ~~*FEES* 5.7.2R applies to *payment service providers* in the same way it applies to *firms*.~~ [deleted]

5.7.3 R ~~A *firm* or an *unauthorised person* who is subject to the *Compulsory Jurisdiction* in relation to a *relevant complaint* must pay any standard case fee or special case fee within 30 calendar *days* of the date when the invoice is issued by *FOS Ltd*.~~ [deleted]

…

5.9.1 R ~~Where a *firm* ceases to be *authorised* part way through a *financial year*…..*Financial Ombudsman Service*.~~ [deleted]

5.9.1A R ~~*FEES* 5.9.1R applies to *persons* ceasing to be *licensees* or *payment service providers* part way through a *financial year* in the same way as it applies to *firms* which cease to be *authorised*.~~ [deleted]

5.9.2 G ~~*Firms* which cease to be *authorised* part way through the year will not receive a refund of their *general levy* except in exceptional circumstances……. or *payment service provider* will no longer be contributing to the *general levy*.~~ [deleted]

5.9.3 G ~~*Licensees* will also continue to be liable for any case fees relating to *chargeable cases* closed by the *Financial Ombudsman Service* after they cease to be *licensees*. *Licensees* will be charged the standard case fee where the complaint was closed by the *Financial Ombudsman Service* before the end of the year in which they ceased to be *licensees*. The special case fee will apply to any complaint closed after the end of that year since the *licensee* will no longer be contributing to any sum determined under section 234A of the *Act*.~~ [deleted]

…

7.2.1 R Subject to *FEES* 7.2.1AR, a ~~A~~ *firm* must pay each *CFEB levy* applicable to it:

(1) …

(2) in accordance with the provisions of *FEES* 4.3.6R as modified by *FEES* 7.2.1AR.

7.2.1A R (1) For the purposes of *FEES* 7.2.1R(2), *FEES* 4.3.6R(1) is modified so that if a *firm's* periodic fees for the previous financial year was at least £50,000, the *firm* must pay:

(a) an amount equal to 50% of the *CFEB levy* payable for the previous year, by 30 April in the financial year to which the sum due under *FEES* 7.2.1R relates; and

(b) the balance of the *CFEB levy* due for the current financial year by 1 September in the financial year to which that sum relates.

(2) For the purposes of *FEES* 7.2.1R(2), *FEES* 4.3.6R(2) is modified so that if the *firm's* periodic fee for the previous financial year was less than £50,000, the *firm* must pay its *CFEB levy* in full by 1 July in the financial year to which that sum relates.

Annex B

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

4.2.6 R The following *rules* in *FEES* apply to *VJ participants* as part of the *standard terms*, but substituting '*VJ participant*' for '*firm*':

…

(7) ~~*FEES* 5.5.1R~~ *FEES* 5.5A.6R (standard case fee);

(8) ~~*FEES* 5.5.6R~~ *FEES* 5.5A.13R (special case fee);

(9) ~~*FEES* 5.5.15R~~ *FEES* 5.5A.24R (case fee exemption);

… (10) *FEES* 5.7.1R, ~~5.7.2R to 5.7.4R~~ 5.7.4R, 5.5A.28R and 5.5A.30R (payments) but substituting, in *FEES* 5.7.1R, '*FOS Ltd*' for 'the *FSA*'.

…

Sch 4 Powers Exercised

…

Sch 4.5 G

The powers to make rules relating to the Ombudsman Scheme are shared between the *FSA* and the *FOS Ltd*. *FOS Ltd's* rules are subject to *FSA* consent or approval. The rules made exclusively by *FOS Ltd* are:	
…	
FEES 5	~~*FEES* 5.1.6R~~ ~~*FEES* 5.5 (all rules)~~ *FEES* 5.5A (all rules) ~~*FEES* 5.7.2R~~ ~~*FEES* 5.7.3R~~ ~~*FEES* 5.9.1R~~ *FEES* 5 Annex 2R *FEES* 5 Annex 3R

…

Appendix 5

Prudential treatment of venture capital investments

Appendix 5

VENTURE CAPITAL INVESTMENTS INSTRUMENT 2011

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);
(3) section 156 (General supplementary powers); and
(4) section 157(1) (Guidance).

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

Commencement

C. This instrument comes into force on [ ].

Amendments to the Handbook

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

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

Citation

F. This instrument may be cited as the Venture Capital Investments Instrument 2011.

By order of the Board
[ ]

Annex A

Amendments to the General Prudential sourcebook (GENPRU)

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

2.2 Capital resources

...

2.2.209 R (1) ~~A~~ Subject to (2) and (3), a *material holding* is:

~~(1)~~(a) a *BIPRU firm's* holdings of *shares* and any other interest in the capital of an individual *credit institution* or *financial institution* (held in the *non-trading book* or the *trading book* or both) exceeding 10% of the *share* capital of the issuer, and, where this is the case, any holdings of subordinated debt of the same issuer are also included as a *material holding*; the full amount of the holding is a *material holding*; or

~~(2)~~(b) a *BIPRU firm's* holdings of *shares*, any other interest in the capital and subordinated debt in an individual *credit institution* or *financial institution* (held in the *non-trading book* or the *trading book* or both) not deducted under ~~(1)~~ (a) if the total amount of such holdings exceeds 10% of that *firm's capital resources* at stage N (Total tier one capital plus tier two capital after deductions) of the calculation in the *capital resources table* (calculated before deduction of its *material holdings*); only the excess amount is a *material holding*; or

~~(3)~~(c) a *bank* or *building society's* aggregate holdings in the *non-trading book* of *shares*, any other interest in the capital, and subordinated debt in all *credit institutions* or *financial institutions* not deducted under ~~(1) or (2)~~ (a) or (b) if the total amount of such ~~*holdings*~~ holdings exceeds 10% of that *firm's capital resources* at stage N of the calculation in the *capital resources table* (calculated before deduction of its *material holdings*); only the excess amount is a *material holding*; or

~~(4)~~(d) a *material insurance holding*.

(2) If a *BIPRU firm* holds *shares* in the capital of Business Growth Fund plc or another *financial institution* which makes *venture capital investments* (in this section and its related annexes, a "Venture Capital Investor") and the following conditions are met:

(a) the sole business of the Venture Capital Investor is the making of *venture capital investments*;

(b) none of the *venture capital investments* made by the Venture Capital Investor is an investment in a *credit institution* or *financial institution*;

(c) the Venture Capital Investor is included in the *firm's UK consolidation group* in accordance with *BIPRU* 8.5; and

(d) where the Venture Capital Investor is not a *CIU*, the *firm* risk weights its *exposure* to the Venture Capital Investor as if it were an *equity exposure* to which the simple risk weight approach is applied as set out in *BIPRU* 4.7.9R to *BIPRU* 4.7.12R (and in calculating its *capital resources requirement* the *firm* must risk weight that *exposure* in accordance with those *rules* and notwithstanding that those *rules* would not otherwise apply to that calculation);

the Venture Capital Investor may be ignored for the purposes of determining whether there is a *material holding*.

(3) If a *BIPRU firm* holds *shares* in the capital of a *subsidiary undertaking* which is a *financial institution* solely by reason of its principal activity being the acquiring of holdings and which in turn holds *shares* in the capital of a Venture Capital Investor (in this section and its related annexes, a "Venture Capital Holding Company") and the following conditions are met:

(a) the Venture Capital Investor meets the conditions in (2)(a) and (b);

(b) the business of the Venture Capital Holding Company is limited to the holding of *shares* in Venture Capital Investors;

(c) none of the *venture capital investments* made by a Venture Capital Investor in which the Venture Capital Holding Company holds *shares* is an investment in a *credit institution* or *financial institution*;

(d) the Venture Capital Holding Company is included in the *firm's UK consolidation group* in accordance with *BIPRU* 8.5; and

(e) the *firm* risk weights its *exposure* to the Venture Capital Holding Company as if it were an *equity exposure* to which the simple risk weight approach is applied as set out in *BIPRU* 4.7.9R to *BIPRU* 4.7.12R (and in calculating its *capital resources requirement* the *firm* must risk weight that *exposure* in accordance with those *rules* and notwithstanding that those *rules* would not otherwise apply to that

calculation);

the Venture Capital Holding Company may be ignored for the purposes of determining whether there is a *material holding*.

…

2.2.216A R (1) ...

(2) The effect of those *rules* is to achieve the deduction of all investments in *subsidiary undertakings* and *participations* for *banks* and *building societies* by ensuring that amounts not already deducted under other *rules* are accounted for at this stage of the calculation of *capital resources*, except where the investment has been made in a Venture Capital Investor or a Venture Capital Holding Company, so long as the sole business of the Venture Capital Investor, including where a Venture Capital Holding Company has invested in the *share* capital of that Venture Capital Investor, is the making of *venture capital investments*.

(3) The following investments in *subsidiary undertakings* and *participations* should be deducted at this stage:

(a) those not deducted in Part 1 of stage M because of the operation of the thresholds in *GENPRU* 2.2.205R (on qualifying holdings) and *GENPRU* 2.2.209R (on material holdings); and

(b) those which do not meet the definition of *qualifying holding* or *material holding*, but excluding investments in Venture Capital Investors which are ignored in accordance with *GENPRU* 2.2.209R(2), and investments in Venture Capital Holding Companies which are ignored in accordance with *GENPRU* 2.2.209R(3), for the purposes of determining whether there is a *material holding*.

(4) …

…

2.2.221 R (1) *GENPRU* 2.2.221R to *GENPRU* 2.2.235G only apply to a *bank*.

(2) If a *firm* has elected to ignore an investment in a Venture Capital Investor or a Venture Capital Holding Company in accordance with *GENPRU* 2.2.209R(2) or (3) for the purposes of determining whether there is a *material holding*, *GENPRU* 2.2.221R to *GENPRU* 2.2.233R do not apply to any lending by the *firm* to that Venture Capital Investor or Venture Capital Holding Company.

…

2 Annex 2R Capital resources table for a bank

The capital resources calculation for a bank		
Type of capital	**Related text**	**Stage**
...	…	…
Deductions from the totals of tier one and two		**(M)**
…	...	…
Reciprocal cross-holdings Investments in *subsidiary undertakings* and *participations* excluding: (1) any amount which is already deducted as *material holdings* or *qualifying holdings*; and (2) any investment in a Venture Capital Investor or a Venture Capital Holding Company which has been ignored in accordance with *GENPRU* 2.2.209R(2) or (3) for the purposes of determining whether there is a *material holding*.	*GENPRU* 2.2.217R to *GENPRU* 2.2.220R *GENPRU* 2.2.216AG	(Part 2 of stage M)
…	…	…

…

2 Annex 3R Capital resources table for a building society

The capital resources calculation for a building society		
Type of capital	**Related text**	**Stage**

…	…	…
Deductions from the totals of tier one and two		**(M)**
…	…	…
Reciprocal cross-holdings Investments in *subsidiary undertakings* and *participations* excluding: (1) any amount which is already deducted as *material holdings* or *qualifying holdings*; and (2) any investment in a Venture Capital Investor or a Venture Capital Holding Company which has been ignored in accordance with *GENPRU* 2.2.209R(2) or (3) for the purposes of determining whether there is a *material holding*.	*GENPRU* 2.2.217R to *GENPRU* 2.2.220R *GENPRU* 2.2.216AG	(Part 2 of stage M)
…	…	…

Annex B

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.

8.6 Consolidated capital resources

...

8.6.20 R ...

Venture Capital Investments

8.6.21 R Part 2 of stage M in the *capital resources table* for *banks* in *GENPRU* 2 Annex 2R and the *capital resources table* for *building societies* in *GENPRU* 2 Annex 3R is adjusted so as to read as follows in relation to the deduction of investments in *subsidiary undertakings* and *participations*:

Deductions from the totals of tier one and tier two		**(M)**
...	…	…
…	…	(Part 2 of stage M)
Investments in *subsidiary undertakings* and *participations* excluding: (1) any amount which is already deducted as *material holdings* or *qualifying holdings*; and (2) any investment in an *undertaking* that meets the following conditions: (a) the investment has been made by Business Growth Fund plc or another *financial institution* which makes *venture capital investments* and the *firm* is entitled to ignore the *financial institution* making that investment in accordance with *GENPRU* 2.2.209R(2) for the purposes of determining whether there is a	*GENPRU* 2.2.216AG	

material holding; (b) the investment is a *venture capital investment*; and (c) the *undertaking* is not a *credit institution* or *financial institution*.		

…

10.3 Identification of counterparties

…

10.3.8 R (1) ~~For~~ Subject to (2), for the purposes of *BIPRU* 10, and in relation to a *firm*, a *connected counterparty* means another *person* ('P') to whom the *firm* has an *exposure* and who fulfils at least one of the following conditions:

~~(1)~~(a) P is *closely related* to the *firm*; or

~~(2)~~(b) P is an *associate* of the *firm*; or

~~(3)~~(c) the same *persons* significantly influence the *governing body* of P and of the *firm*; or

~~(4)~~(d) the *firm* has an *exposure* to P that was not incurred for the clear commercial advantage of the *firm* or the *firm's group* and which is not on an arm's length basis.

(2) Where P is Business Growth Fund plc or another *financial institution* which makes *venture capital investments* and the *firm* is entitled to ignore that *financial institution* in accordance with *GENPRU* 2.2.209R(2) for the purposes of determining whether there is a *material holding*, (1) applies with the following modifications to the definition of *associate*:

(a) paragraph (3)(c) (community of interest) of that definition does not apply; and

(b) in applying paragraph (3)(a) (affiliated company) of that definition, paragraph (1)(e) (participating interests) of the definition of *group* does not apply.

Appendix 6

Proposed minor changes to the liquidity regime

LIQUIDITY REPORTING (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2011

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);
(3) section 156 (General supplementary powers); and
(4) section 157(1) (Guidance).

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

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Liquidity Reporting (Miscellaneous Amendments) Instrument 2011.

By order of the Board
[ ] 2011

Annex

Amendments to the Supervision manual (SUP)

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

16.12.11 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to *firm* type in the table below:

Description of *data item*	*Firms* prudential category and applicable *data items* (note 1)							
	BIPRU firms (note 17)			*Firms* other than *BIPRU firms*				
	730K	125K and *UCITS investment firms*	50K	*IPRU (INV)* Chapter 3	*IPRU (INV)* Chapter 5	*IPRU (INV)* Chapter 9	*IPRU (INV)* Chapter 13	*UPRU*
…								
Daily Flows	FSA047 (Notes 26, 29, ~~and~~ 31 and 33)							
Enhanced Mismatch Report	FSA048 (Notes 26, 29, ~~and~~ 31 and 33)							
Liquidity Buffer Qualifying Securities	FSA050 (Notes 27, 30, ~~and~~ 31 and 33)							
Funding Concentrat-ion	FSA051 (Notes 27, 30, ~~and~~ 31 and 33)							
Pricing data	FSA052 (Notes 27, 30, ~~and~~ 31 and 33)							
Retail and corporate funding	FSA053 (Notes 27, 30, ~~and~~ 31 and 33)							
Currency Analysis	FSA054 (Notes 27, 30, ~~and~~ 31 and 33)							
Systems and Controls Question-naire	FSA055 (~~Note~~ Notes 28 and 33)							
…								
Note 1	…							

Note 33	FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an *ILAS BIPRU firm*. An *ILAS BIPRU firm* does not need to complete FSA055. A *non-ILAS BIPRU firm* must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.

…

16.12.15 R The applicable *data items* referred to in *SUP* 16.12.4R according to type of *firm* are set out in the table below:

Description of *data item*	*Firms'* prudential category and applicable *data items* (note 1)							
	BIPRU			*Firms* other than *BIPRU firms*				
	730K	125K and *UCITS investment firms*	50K	*IPRU (INV)* Chapter 3	*IPRU (INV)* Chapter 5	*IPRU (INV)* Chapter 9	*IPRU (INV)* Chapter 13	*UPRU*
…								
Daily Flows	FSA047 (Notes 23, 26, ~~and~~ 28 and 30)							
Enhanced Mismatch Report	FSA048 (Notes 23, 26, ~~and~~ 28 and 30)							
Liquidity Buffer Qualifying Securities	FSA050 (Notes 24, 27, ~~and~~ 28 and 30)							
Funding Concentrat-ion	FSA051 (Notes 24, 27, ~~and~~ 28 and 30)							
Pricing data	FSA052 (Notes 24, 27, ~~and~~ 28 and 30)							
Retail and corporate funding	FSA053 (Notes 24, 27, ~~and~~ 28 and 30)							
Currency Analysis	FSA054 (Notes 24, 27, ~~and~~ 28 and 30)							
Systems and Controls Question-naire	FSA055 (~~Note~~ Notes 25 and 30)							
…								
Note 1	…							

Note 30	FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an *ILAS BIPRU firm*. An *ILAS BIPRU firm* does not need to complete FSA055. A *non-ILAS BIPRU firm* must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.

…

16.12.22 A R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to type of *firm* in the table below:

Description of d*ata item*	*Firms'* prudential category and applicable data item (note 1)					
	BIPRU 730k firm	*BIPRU 125k firm* and *UCITS investment firm*	*BIPRU 50k firm*	*Exempt CAD firms* subject to *IPRU(INV)* Chapter 13	*Firms* (other than *exempt CAD firms*) subject to *IPRU(INV)* Chapter 13	*Firms* that are also in one or more of *RAGs* 1 to 6 and not subject to *IPRU(INV)* Chapter 13
…						
Daily Flows	FSA047 (Notes 16, 19, ~~and~~ 21 and 23)					
Enhanced Mismatch Report	FSA048 (Notes 16, 19, ~~and~~ 21 and 23)					
Liquidity Buffer Qualifying Securities	FSA050 (Notes 17, 20, ~~and~~ 21 and 23)					
Funding Concentrat -ion	FSA051 (Notes 17, 20, ~~and~~ 21 and 23)					
Pricing data	FSA052 (Notes 17, 20, ~~and~~ 21 and 23)					
Retail and corporate funding	FSA053 (Notes 17, 20, ~~and~~ 21 and 23)					
Currency Analysis	FSA054 (Notes 17, 20, ~~and~~ 21 and 23)					
Systems and Controls Question- naire	FSA055 (~~Note~~ Notes 18 and 23)					
…						

Note 1	…
Note 23	FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an *ILAS BIPRU firm*. An *ILAS BIPRU firm* does not need to complete FSA055. A *non-ILAS BIPRU firm* must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.

…

16.12.25 A R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to type of *firm* in the table below:

Description of *data item*	*Firms'* prudential category and applicable *data item* (note 1)							
	BIPRU			*Firms* other than *BIPRU firms*				
	730K	125K	50K	*IPRU (INV)* Chapter 3	*IPRU (INV)* Chapter 5	*IPRU (INV)* Chapter 9	*IPRU (INV)* Chapter 13	*UPRU*
…								
Daily Flows	FSA047 (Notes 21, 24, ~~and~~ 26 and 28)							
Enhanced Mismatch Report	FSA048 (Notes 21, 24, ~~and~~ 26 and 28)							
Liquidity Buffer Qualifying Assets	FSA050 (Notes 22, 25, ~~and~~ 26 and 28)							
Funding Concentration	FSA051 (Notes 22, 25, ~~and~~ 26 and 28)							
Pricing data	FSA052 (Notes 22, 25, ~~and~~ 26 and 28)							
Retail and corporate funding	FSA053 (Notes 22, 25, ~~and~~ 26 and 28)							
Currency Analysis	FSA054 (Notes 22, 25, ~~and~~ 26 and 28)							
Systems and Controls Questionnaire	FSA055 (~~Note~~ Notes 23 and 28)							
…								
Note 1	…							

Note 28	FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054 must be completed by an *ILAS BIPRU firm*. An *ILAS BIPRU firm* does not need to complete FSA055. A *non-ILAS BIPRU firm* must complete FSA055 and does not need to complete FSA047, FSA048, FSA050, FSA051, FSA052, FSA053 and FSA054.

…

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

…

FSA047 Daily Flows

The purpose of this *data item* is to record details of an *ILAS BIPRU firm's* liquidity flows. ~~See further~~ This *guidance* should be read in conjunction with the *rules and guidance* in *SUP* 16.12.4.

Valuation

...

All collateral, cash and related deposits segregated for the benefit of a *client* should be excluded from FSA047 and FSA048 irrespective of the accounting treatment used by the *firm*.

...

Completion and submission to the FSA

…

FSA048 time bands are defined by the reporting date and the application of the 'modified following' market convention, ignoring the existence of any non-settlement weekdays (bank holidays) in any currency.

…

FSA048 Enhanced Mismatch Report

The purpose of this *data item* is to record details of an *ILAS BIPRU firm's* liquidity mismatch positions. ~~See further~~ This *guidance* should be read in conjunction with the *rules and guidance* in *SUP* 16.12.4.

Valuation

…

All collateral, cash and related deposits segregated for the benefit of a *client* should be excluded from FSA047 and FSA048 irrespective of the accounting treatment used by the

firm.

...

Completion and submission to the FSA

…

FSA048 time bands are defined by the reporting date and the application of the 'modified following' market convention, ignoring the existence of any non-settlement weekdays (bank holidays) in any currency.

…

Part 1 Memo items

…

5 Prior period's peak intra-day collateral used for settlement and clearing systems outside the UK

…

Direct participation in settlement systems refers only to direct access and participation in the central bank cash payment systems and not intra-day floating charges associated with facilities provided by custodians to facilitate securities settlement.

Part 2 Security, transferrable whole-loan and commodity flows

…

Repos, reverse repos, securities loans and collateral swaps:

…

Tri-party repo and tri-party reverse repo transactions should be treated in the same manner as all other *repo* and *reverse repo* transactions. The tri-party shell at the reporting date should be considered to be filled on a "worst case" basis, subject to the contractual rights of substitution, over the remaining contractual life of the net reverse repo/repo cash position. …

…

9 Own name securities and transferrable whole-loans

…

Any own-name securities or whole-loans that do not qualify for inclusion on line 9 should not be reported elsewhere in part 2. Any repo collateralised using own-name securities or whole-loans that do not qualify to be reported in part 2 should be reported as an unsecured borrowing in part 6.

…

53 SME deposits

A *firm* should report in this row all its deposits and account balances where the account holder is a *small or medium enterprise* (*SME*). A *firm* should also report here deposits and account balances where the account holder is a partnership, ~~or~~ a sole trader, or a charity which would be a small and medium-sized enterprise if it were a company.

…

56 Client/brokerage free cash

A *firm* should report here all cash balances which it has received from its prime brokerage/prime services *clients* and which are not segregated from the *firm's* own assets. A *firm* should not include ~~excess~~ *derivatives* margin cash in this row.

…

57 Principal FX cash flows (including currency swaps)

…

For example, if a *firm* was completing this *data item* to show its contractual assets and liabilities denominated in *US dollars* and it had transacted a forward foreign exchange contract to ~~sell~~ **sell** $75m against the ~~purchase~~ **purchase** of an equivalent amount of another currency four months after the reporting date, it would enter -75,000 in column F and make no other entries.

…

Part 10 Derivatives margining and exposure

Figures reported in rows 74 to 77 relate to any variation and initial margin given or received in respect of *derivative* transactions. A *firm* should report together figures for own account and client accounts but exclude any segregated margin (cash or collateral) and any subsequent placement of segregated margin.

…

Part 11 Assets included in Part 2 held under re-hypothecation rights

Rows 78 to 89 relate to securities reported in Part 2 of this *data item*, held as *clients'* assets or net ~~derivatives~~ **derivatives** margin collateral received in relation to which the *firm* has re-hypothecation rights. Row 81 is intentionally left blank.

…

FSA051 Funding Concentration

The purpose of this *data item* is to record details of an *ILAS BIPRU firm's* funding concentrations. ~~See further~~ This *guidance* should be read in conjunction with the *rules and guidance* in *SUP* 16.12.4.

…

Part 1 Wholesale deposits

In this part of the *data item* the *firm* should analyse and report the counterparties responsible for the 30 largest concentrations of deposits reported in lines 45 to 50 inclusive of FSA047 and FSA048.

Part 2 Repo funding

In this part of the *data item* the *firm* should analyse and report the counterparties responsible for the 30 largest concentrations of repo funding as reported in Part 5 of FSA047 and FSA048.

…

FSA052 Pricing Data

The purpose of this *data item* is to record details relating to the average transaction volume of, and process which the *firm* pays for, certain of its wholesale liabilities. ~~See further~~ This *guidance* should be read in conjunction with the *rules and guidance* in *SUP* 16.12.4.

…

Currency

A *firm* should report any wholesale liabilities denominated in sterling in rows 1 to 4, in US dollars in rows 5 to 8 and in euro in rows 9 to 12. A *firm* does not need to report liabilities denominated in any other currency in this *data item*.

US dollar, sterling and euro wholesale liabilities should all be reported in the reporting currency used in this *data item*.

...

General

...

(i) Cash deposits

A *firm* should report all fixed term cash deposits reportable in lines 45 to 49 of FSA047 and

FSA048 in row 1 if denominated in GBP, in row 5 if denominated in USD or row 9 if denominated in EUR.

(ii) Senior unsecured securities

A *firm* should report all senior unsecured securities issued reportable in line 40 of FSA047 and FSA048 in row 2 if denominated in GBP, in row 6 if denominated in USD or in row 10 if denominated in EUR.

(iii) Covered Bonds

A *firm* should report all covered bonds encumbering the *firm's* own assets the issuance of which would be reportable in line 43 of FSA047 and FSA048 in row 3 if denominated in GBP, in row 7 if denominated in USD or in row 11 if denominated in EUR.

(iv) Asset-backed securities (including ABCP)

A *firm* should report all debt issued by the *firm*'s SSPEs as reported on line 51 of FSA047 and FSA048. A *firm* should report such liabilities in row 4 if denominated in GBP, in row 8 if denominated in USD or in row 12 if denominated in EUR.

…

Weighted Average Spread and Volume Analysis:

…

For the purpose of reporting the average spread paid, a *firm* should report:

(1) for an instrument with an original maturity of less than or equal to one year, the spread payable by the *firm* for that liability, if it were to have been swapped to the benchmark overnight index for the appropriate currency at the time of transaction, and;

(2) for an instrument with an original maturity in excess of one year, the spread at issuance were it to be swapped to the relevant benchmark floating three month LIBOR for GBP and USD and EURIBOR for EUR, at the time of transaction.

For the purposes of calculating the average spread paid a *firm* should calculate the all-in cost in the currency of issue ignoring any FX swap, but including any premium or discount and fees payable or receivable, with the term of any theoretical or actual interest rate swap matching the term of the liability. The spread is the liability rate minus the swap rate.

…

FSA054 Currency Analysis

The purpose of this *data item* is to record details of a *firm's* currency mismatches. ~~See further~~ This *guidance* should be read in conjunction with the *rules and guidance* in *SUP* 16.12.4.

…

Completion and submission to FSA

A *firm* should complete this *data item* on a contractual basis based on an analysis of the *firm's* ~~balance sheet~~ cash flow and cash balances as reportable for FSA047 and FSA048 combined (rows 1 and 18 to 56), based on the FSA047 and FSA048 reporting date closest to the FSA054 ~~on the~~ reporting date in question.

General

...

In considering whether a *firm's* assets, liabilities or shareholders' equity are denominated in a specific currency, a *firm* should ignore the effect of any *derivatives*.

For example ~~e.g.~~, if a *firm* issues a liability if GBP and enters into a *derivative* to swap the cash flows of that liability to another currency, for the purposes of this *data item*, it should ~~would~~ be denominated in GBP.

…

Appendix 7

Proposed changes to Chapter 16 of the Supervision manual

INTEGRATED REGULATORY REPORTING (AMENDMENT NO X) INSTRUMENT 2011

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*] 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 Integrated Regulatory Reporting (Amendment No 12) Instrument 2011.

By order of the Board
[*date*] 2011

Annex

Amendments to the Supervision manual (SUP)

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

16.12 Integrated Regulatory Reporting

…

Regulatory Activity Group 1

16.12.5 R The applicable *data items* and forms or reports referred to in *SUP* 16.12.4R are set out according to *firm* type in the table below:

Description of *data item*	Prudential category of *firm*, applicable *data items* and reporting format (Note 1)							
	UK bank	*Building society*	*Non-EEA bank*	*EEA bank* that has *permission* to accept deposits, other than one with permission for cross border services only	*EEA bank* that does not have permission to accept deposits, other than one with permission for cross border services only	[deleted]	*Credit union*	*Dormant account fund operator* (note 15)
…								
Securitisation: non-trading book	FSA046 (~~note~~ notes 2 and 14)	FSA046 (~~note~~ notes 2 and 14)						
…								
Securitisation: trading book	FSA058 (~~note~~ notes 2 and 23)	…						
…								

16 Annex 24R Data items for SUP 16.12

…

FSA031
Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

. . .

35

	A	B	C	D	L	E	F	G	H	J	K
	PII Basic information									PII detailed information	
	PII policy	Annualised premium	Insurer (from list)	Start date	Renewal date	Currency of indemnity limits	Limit of indemnity required Single	Limit of indemnity required Aggregate	Limit of indemnity received Single	Limit of indemnity received Aggregate	Business line (from list)	Policy excess
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												

FSA032
Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

. . .

38

	A	B	C	D	M	E	F	G	H	J	K	L
	PII Basic information									PII detailed information		
	PII policy	Annualised premium	Insurer (from list)	Start date	Renewal date	Currency of indemnity limits	Limit of indemnity required Single	Limit of indemnity required Aggregate	Limit of indemnity received Single	Limit of indemnity received Aggregate	Business line	Policy excess	Policy exclusions
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													

. . .

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

…

FSA004 – Credit risk validations

Internal validations

Data elements are referenced by row then column.

Validation number	Data element		
…			
~~5~~	~~22A~~	≤	~~21A~~
~~6~~	~~22B~~	≤	~~21B~~
…			
~~11~~	~~32A~~	≤	~~31A~~
~~12~~	~~32B~~	≤	~~32A~~
…			
17	1D	=	Σ(2D:9D) + 37D + 38D + Σ(11D:17D)
18	1E	=	Σ(2E:9E) + 37E + 38E + Σ(11E:17E)
19	1F	=	Σ(2F:9F) + 37F + 38F + Σ(11F:17F)
20	18C	=	Σ(19C:21C)
21	18D	=	Σ(19D:21D)
22	18E	=	Σ(19E:21E)
23	18F	=	Σ(19F:21F)
24	21A	≥	22A + 39A
25	21B	≥	22B + 39B
26	21C	≥	22C + 39C
27	21D	≥	22D + 39D
28	21E	≥	22E + 39E
29	21F	≥	22F + 39F
30	23C	=	Σ(24C:27C)
31	23D	=	Σ(24D:27D)
32	23E	=	Σ(24E:27E)
33	23F	=	Σ(24F:27F)
34	28C	=	Σ(29C:31C)
35	28D	=	Σ(29D:31D)
36	28E	=	Σ(29E:31E)
37	28F	=	Σ(29F:31F)
38	31A	≥	32A + 40A
39	31B	≥	32B + 40B
40	31C	≥	32C + 40C
41	31D	≥	32D + 40D
42	31E	≥	32E + 40E
43	31F	≥	32F + 40F
44	33D	=	34D + 35D + 36D
45	33E	=	34E + 35E + 36E
46	33F	=	34F + 35F + 36F

…

FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

...

Professional Indemnity Insurance ….		
…		
Renewal date	35D	…
Currency of indemnity limits	35L	Using the appropriate International Organization for Standardization ISO 4217 three digit code (e.g. GBP), enter the currency in which the indemnity limits, in fields 35E to 35H are reported.
Limit of indemnity required – single	35E	…
…		

...

FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

Professional Indemnity Insurance …		
…		
Renewal date	38D	…
Currency of indemnity limits	38M	Using the appropriate International Organization for Standardization ISO 4217 three digit code (e.g. GBP), enter the currency in which the indemnity limits, in fields 38E to 38H are reported.
Limit of indemnity required – single	38E	…
…		

Appendix 8

Consumer redress schemes

CONSUMER REDRESS SCHEMES INSTRUMENT 2011

Powers exercised by the Financial Ombudsman Service Limited

A. The Financial Ombudsman Service Limited makes the rules and gives the guidance in Annex A and Part 2 of Annex C to this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 ("the Act"):

(1) paragraph 8 (Guidance) of Schedule 17; and
(2) paragraph 14 (The scheme operator's rules) of Schedule 17.

B. The making of these rules and the giving of this guidance by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Services Authority.

Powers exercised by the Financial Services Authority

C. The Financial Services Authority makes the rules and gives the guidance in Annex A, Annex B, Part 1 of Annex C, Annex D and Annex E to this instrument in the exercise of the following powers and related provisions of the Act:

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers);
(3) section 157(1) (Guidance);
(4) section 210(1) (Statements of policy);
(5) section 213 (The compensation scheme);
(6) section 214 (General);
(7) section 226 (Compulsory jurisdiction);
(8) section 395(5) (The Authority's procedures); and
(9) paragraph 13 (Authority's procedural rules) of Schedule 17 (The Ombudsman Scheme).

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

Commencement

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

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Decision Procedure and Penalties manual (DEPP)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Compensation sourcebook (COMP)	Annex D

Material outside the Handbook

G. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.

Citation

H. This instrument may be cited as the Consumer Redress Schemes Instrument 2011.

By order of the Board of the Financial Ombudsman Service Limited
[*date*] 2011

By order of the Board of the Financial Services Authority
[*date*] 2011

Annex A

Amendments to the Glossary of definitions

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

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

consumer redress scheme

a scheme imposed:

(a) by *rules* on *authorised persons* or *payment service providers* under section 404 (Consumer redress schemes) of the *Act*; or

(b) on a particular *firm* by a requirement imposed on its *permission*, or on a particular *payment service provider* by a *requirement* imposed on its *authorisation*, as envisaged by section 404F(7) of the *Act* but (in *DISP* 2 and *DISP* 3) only to the extent that section 404B of the *Act* is engaged by the scheme.

redress determination

a written communication from a *respondent* under a *consumer redress scheme* which:

(a) sets out the results of the *respondent's* determination under the scheme;

(b) encloses a copy of the *Financial Ombudsman Service's* standard explanatory leaflet; and

(c) informs the complainant that if he is dissatisfied, he may now make a *complaint* to the *Financial Ombudsman Service* and must do so within six *months*.

Amend the following definitions as shown:

chargeable case

any *complaint* referred to the *Financial Ombudsman Service*, except where:

(a) the *Ombudsman* considers it apparent from the *complaint*, when it is received, and from any *final response* or *redress determination* which has been issued by the *firm* or *licensee*, that the *complaint* should not proceed because:

…

…

complaint

(1) …

(2) (in *DISP*, except *DISP* 1.1 and the *complaints handling rules* and the *complaints record rule* in relation to *MiFID business*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a *redress determination*, which:

…

(3) (in *DISP* 1.1 and the *complaints handling rules* and the *complaints record rule* only in relation to *MiFID business*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service or a *redress determination*, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.

…

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

…

Section of the Act	Description	Handbook reference	Decision maker
...			
207(1)/ 208(1)	when~~, in respect of an *authorised person*,~~ the *FSA* is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a *permission* or impose a restriction in relation to the carrying on of a *regulated activity* (under section 206A). This applies in respect of an *authorised person*, or an *unauthorised person* to whom section 404C applies.*		*RDC*

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Part 1 Provisions made by the Financial Services Authority

1.1 Purpose and application

…

Consumer redress schemes

1.1.11A R Where the subject matter of a *complaint* falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, the *complaints resolution rules*, the *complaints time limit rules*, the *complaints record rule* and the *complaints reporting rules* do not apply.

…

2.3 To which activities does the Compulsory Jurisdiction apply?

…

Consumer redress schemes

2.3.2C G As a result of section 404B(11) of the *Act*, the *Ombudsman* can also consider under the *Compulsory Jurisdiction* a *complaint* from a complainant who:

(1) is not satisfied with a *redress determination* made by a *respondent* under a *consumer redress scheme*; or

(2) considers that a *respondent* has failed to make a *redress determination* in accordance with a *consumer redress scheme*.

…

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

2.8.1 R The *Ombudsman* can only consider a *complaint* if:

(1) the *respondent* has already sent the complainant its *final response*; or

(2) eight weeks have elapsed since the *respondent* received the *complaint*; or

(3) in relation to a *complaint* the subject matter of which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*:

(a) the *respondent* has already sent the complainant its *redress determination* under the scheme; or

(b) the *respondent* has failed to send a *redress determination* in accordance with the time limits specified under the scheme.

2.8.2 R The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

(1) more than six *months* after the date on which the *respondent* sent the complainant its *final response* or *redress determination*; or

…

…

Reviews of past business

2.8.5 R The six-year and three-year time limits do not apply where:

(1) ~~the time limit has been extended under a scheme for review of past business approved by the Treasury under section 404 of the *Act* (Schemes for reviewing past business); or~~ [deleted]

(2) …

…

3.7 Awards by the Ombudsman

…

3.7.4A G The effect of section 404B(5) of the *Act* is that the maximum award which the *Ombudsman* may make also applies in relation to a *complaint* the subject matter of which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*.

TP 1.1 Transitional Provisions Table

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					

28	Amendments to DISP made by the *FSA* in the Consumer Redress Schemes Instrument 2011		The amendments do not apply in relation to any consumer redress scheme imposed before the Instrument came into force on a particular firm, or on a particular payment service provider, as envisaged by section 404F(7) of the *Act*.	From [ ] indefinitely	[ ]

Part 2 Provisions made by the Financial Ombudsman Service

3.2 Jurisdiction

…

3.2.2A R If the subject matter of a *complaint* falls to be dealt with by the *respondent* under a *consumer redress scheme*, and the time limits specified under the scheme for doing so have not yet expired, the *Ombudsman* will refer it to the *respondent* to be dealt with under the scheme.

…

3.3 Dismissal without consideration of the merits and test cases

…

Grounds for dismissal

3.3.4 R The *Ombudsman* may dismiss a *complaint* without considering its merits if he considers that:

…

(5) the *respondent* has reviewed the subject matter of the *complaint* in accordance with:

(a) …

(b) ~~the terms of a scheme order under section 404 of the *Act* (Schemes for reviewing past business); or~~ [deleted]

(c) any formal regulatory requirement, standard or guidance published by the *FSA* or other regulator in respect of that type of *complaint*;

(including, if appropriate, making an offer of redress to the complainant), unless he considers that they did not address the particular circumstances of the case; or

(5A) the *respondent* has reviewed the subject matter of the *complaint* and issued a *redress determination* in accordance with the terms of a *consumer redress scheme*; or

…

…

3.6 Determination by the Ombudsman

Fair and reasonable

…

3.6.2 G Section 228 of the *Act* sets the 'fair and reasonable' test for the *Compulsory Jurisdiction* (other than in relation to *consumer redress schemes*) and the *Consumer Credit Jurisdiction* and *DISP* 3.6.1R extends it to the *Voluntary Jurisdiction*.

…

Consumer redress schemes

3.6.5A G As a result of section 404B of the *Act*, if the subject matter of a *complaint* falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, the *Ombudsman* will determine the *complaint* by reference to what, in the opinion of the *Ombudsman*, the *redress determination* under the *consumer redress scheme* should be or should have been.

…

3.7 Awards by the Ombudsman

…

Money awards

3.7.2 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, a ~~A~~ money award may be such amount as the *Ombudsman* considers to be fair compensation for one or more of the following:

…

3.7.2A G In relation to a *complaint* the subject matter of which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, a money award is a payment of such amount as the *Ombudsman* determines that a *respondent* should make (or should have made) to a complainant under the scheme.

3.7.2B G A money award under *DISP* 3.7.2AG may specify the date by which the amount awarded is to be paid.

…

3.7.6 G If the *Ombudsman* considers that fair compensation requires payment of a larger amount, he may recommend that the *respondent* pays the complainant the balance. The effect of section 404B(6) of the *Act* is that this is also the case in relation to a *complaint* the subject matter of which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*.

…

Interest awards

3.7.8 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, an ~~An~~ interest award may provide for the amount payable under the money award to bear interest at a rate and as from a date specified in the award.

3.7.8A G A money award under *DISP* 3.7.2AG may provide for interest to be payable, at a rate specified in the award, on any amount which is not paid by the date specified in the award.

…

Directions

3.7.11 R Except in relation to a *complaint* the subject matter of which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, a ~~A~~ direction may require the ~~respondent~~ *respondent* to take such steps in relation to the complainant as the *Ombudsman* considers just and appropriate (whether or not a court could order those steps to be taken).

3.7.11A G In relation to a *complaint* the subject matter of which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, a direction may require the *respondent* to take such action as the *Ombudsman* determines the *respondent* should take (or should have taken) under the scheme.

…

Annex D

Amendments to the Compensation sourcebook (COMP)

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

8.2 Rejection of application for compensation

…

8.2.3 R The *FSCS* must reject an application for compensation if:

… (1) …

unless *COMP* 8.2.4R or *COMP* 8.2.4AR applies; or

(2) …

…

8.2.4A R For a *claim* which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, the *FSCS* must disregard a defence of limitation which became available after the scheme was made or imposed.

…

12.4 The compensation calculation

…

Consumer redress schemes

12.4.22 R For a *claim* which falls to be dealt with (or has been dealt with) under a *consumer redress scheme*, the *FSCS* must apply the scheme in:

(1) assessing whether a *relevant person* has complied with the relevant regulatory requirements;

(2) assessing whether non-compliance has caused the claimant loss; and

(3) calculating the compensation due (where the *FSCS* may rely on calculations made by the *FSA* or other competent persons acting on the *FSA's* behalf or authorised to make them under the scheme);

unless the *FSCS* considers that departure from the scheme is essential in order to provide the claimant with fair compensation.

Annex E

Amendments to the Enforcement Guide (EG)

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

1.2 In the areas set out below, the *Act* expressly requires the FSA to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of *statutory notices* ~~.~~ :

…

(1A) sections 69 and 210 require the FSA to publish statements of policy on the imposition of financial penalties, suspensions or restrictions on *firms*, ~~and~~ *approved persons* and *unauthorised persons* to whom section 404C applies, the amount of financial penalties imposed, and the period for which suspensions or restrictions are to have effect;

…

7.2 The FSA has the following powers to impose a financial penalty and to publish a *public censure* ~~.~~ :

(1) It may publish a statement:

…

(f) against a *firm*, or an *unauthorised person* to whom section 404C applies, under section 205 of the *Act*.

(2) It may impose a financial penalty:

…

(d) on a *firm*, or an *unauthorised person* to whom section 404C applies, under section 206 of the *Act*.

Appendix 9

Proposed changes to the Collective Investment Schemes sourcebook

UCITS IV (CONSEQUENTIAL AMENDMENTS) AND MONEY MARKET FUNDS INSTRUMENT 2011

Powers exercised

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

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

(a) section 138 (General rule-making power);
(b) section 139(4) (Miscellaneous ancillary matters);
(c) section 145 (Financial promotion rules);
(d) section 156 (General supplementary powers);
(e) section 157(1) (Guidance);
(f) section 213 (The compensation scheme);
(g) section 214 (General);
(h) section 226 (Compulsory jurisdiction);
(i) section 247 (Trust scheme rules);
(j) section 340 (Appointment); and
(k) section 395 (The Authority's procedures);

(2) regulation 6(1) (FSA rules) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228); and

(3) the other powers listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

Commencement

C. The Annex to this instrument comes into force on [1 July 2011].

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
General Provisions (GEN)	Annex B
General Prudential sourcebook (GENPRU)	Annex C

Prudential sourcebook for UCITS Firms (UPRU)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Supervision manual (SUP)	Annex F
Compensation sourcebook (COMP)	Annex G
Collective Investment Schemes sourcebook (COLL)	Annex H
Regulated Covered Bonds sourcebook (RCB)	Annex I
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex J

Material outside the Handbook

E. The Collective Investment Scheme Information Guide (COLLG) is amended in accordance with Annex K to this instrument.

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

Citation

G. This instrument may be cited as the UCITS IV (Consequential Amendments) and Money Market Funds Instrument 2011.

By order of the Board
[2011]

Annex A

Amendments to the Glossary of definitions

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

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

CESR's guidelines on a common definition of European money market funds	the Committee of European Securities Regulators' guidelines on a common definition of European money market funds: 19 May 2010 (CESR/10-049). These are available at [*insert FSA library location*].
money market fund	an *authorised fund* or, in the case of an *umbrella*, a *sub-fund* (if it were a separate fund) which satisfies the conditions in *COLL* 5.9.5R (Investment conditions: money market funds) and is not a *qualifying money market fund*.
short-term money market fund	an *authorised fund* or, in the case of an *umbrella*, a *sub-fund* (if it were a separate fund) which satisfies the conditions in *COLL* 5.9.3R (Investment conditions: short-term money market funds) and is not a *qualifying money market fund*.
weighted average life	the weighted average of the remaining life (maturity) of each *security* held in a fund, meaning the time until the principal is repaid in full (disregarding interest and not discounting).
weighted average maturity	a measure of the average length of time to maturity of all of the underlying *securities* in a fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid.

Amend the following as shown.

asset management company	a management company within the meaning of Article ~~1a(2)~~ 2(1)(b) of the *UCITS Directive,* as well as an *undertaking* the registered office of which is outside the *EEA* and which would require authorisation in accordance with Article ~~5(1)~~ 6(1) of the *UCITS Directive* if it had its registered office within the *EEA*.
covered bond	(1) (in accordance with Article ~~22(4)~~ 52(4) of the *UCITS Directive* and except for the purposes of the *IRB approach* or the *standardised approach* to credit risk) a bond that is issued

by a *credit institution* which has its registered office in an *EEA State* and is subject by law to special public supervision designed to protect bondholders and in particular protection under which sums deriving from the issue of the bond must be invested in conformity with the law in assets which, during the whole period of validity of the bond, are capable of covering claims attaching to the bond and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

…

MiFID investment firm …

…

(3) a *UCITS investment firm* (only when providing the services referred to in Article ~~5(3)~~ 6(3) of the *UCITS Directive* in relation to the *rules* implementing the articles of *MiFID* referred to in Article ~~5(4)~~ 6(4) of that Directive);

…

non-directive firm …

…

(c) a *management company* as defined in article ~~1a.2~~ 2(1)(b) of the *UCITS Directive*, authorised under that directive;

…

UCITS Directive the European Parliament and Council Directive of ~~20 December 1985~~ 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (No ~~85/611/EEC~~ 2009/65/EC)~~, as amended~~.

Annex B

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text.

4.1.4 R *GEN* 4.5 (Statements about authorisation and regulation by the *FSA*) applies in relation to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*, provided that, in the case of the *MiFID business* of an *EEA MiFID investment firm* or the activities of an *EEA UCITS management company*, it only applies to business conducted within the territory of the *United Kingdom*.

Annex C

Amendments to the General Prudential sourcebook (GENPRU)

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

2.1.8 G …

(3) In the case of a *UCITS investment firm* this section implements (in part) Article ~~5a~~ 7 of the *UCITS Directive*.

Annex D

Amendments to the Prudential sourcebook for UCITS Firms (UPRU)

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

1.1 Introduction

…

1.1.3 G This sourcebook only applies to *UCITS firms*. *UCITS investment firms* are *BIPRU limited licence firms* and the prudential requirements for those *firms* are set out in the Prudential sourcebook for banks, building societies and investment firms and the General prudential sourcebook. The difference between the two types of *UCITS management companies* is that a *UCITS investment firm* in addition to carrying on the activities permitted by Article ~~5.2~~ 6(2) of the *UCITS Directive* (scheme management), may also carry on the activities permitted by Article ~~5.3~~ 6(3) such as portfolio management.

…

1.2.1 G (1) …

(2) This sourcebook also implements certain requirements of the *UCITS Directive* ~~as amended by the amending Council Directive 2001/107/EC~~ which among other matters imposes capital requirements on a *UCITS management company*.

…

Annex E

Amendments to the Conduct of Business sourcebook (COBS)

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

11.1.5 G The *EEA territorial scope rule* modifies the default territorial scope of the section on personal account dealing (see *COBS* 11.7) to the extent necessary to be compatible with European law (see paragraph 1.1R of Part 3 of *COBS* 1 Annex 1). This means that the section on personal account dealing also applies to passported activities carried on by a *UK MiFID investment firm* or a *UK UCITS management company* from a *branch* in another *EEA state*, but does not apply to the *UK branch* of an *EEA MiFID investment firm* in relation to its *MiFID business* or to an *EEA UCITS management company* in relation to activities it is entitled to carry on in the *United Kingdom* under the *UCITS Directive*.

…

Money market funds

13.3.3 R A *key features document* for a *short-term money market fund*, a *money market fund* or a *qualifying money market fund* must include a statement to that effect and a statement that the *authorised fund's* investment objectives and policies will meet the conditions of the relevant definition.

Annex F

Amendments to the Supervision manual (SUP)

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

11.8 Changes in the circumstances of existing controllers

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

…

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

…

Annex G

Amendments to the Compensation sourcebook (COMP)

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

14.2.3 G A notice under *COMP* 14.2.1R should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:

(1) the *firm* must be:

(a) a *credit institution*~~,~~; or

(b) an *IMD insurance intermediary*; or

(c) ~~an~~ a *MiFID investment firm*; or

(d) a *UCITS management company* that carries on the activities of *managing investments* (other than *collective portfolio management*), *advising on investments* or *safeguarding and administering investments*;

(2) the *firm* must have established a *branch* in the *United Kingdom* in the exercise of an *EEA right*; and

(3) the scope and/or level of cover provided by the *firm's Home State* compensation scheme must be less than that provided by the *compensation scheme*.

Annex H

Amendments to the Collective Investment Schemes sourcebook (COLL)

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

Table: contents of the prospectus

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

…		
Investment objectives and policy		
3	The following particulars of the investment objectives and policy of the *authorised fund*:	
	…	
	(qa)	where the *authorised fund* is a *qualifying money market fund*, *short-term money market fund* or *money market fund*, a statement to that effect and a statement that the *authorised fund's* investment objectives and policies will meet the conditions specified in the relevant definition ~~of *qualifying money market fund*~~.
	…	
…		

…

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

…

…		
Investment information		
(8)	a short description of the *scheme's* objectives including:	
	…	
	(b)	… ; ~~and~~
	(c)	… ; and

	(d)	where the *scheme* is a *qualifying money market fund*, *short-term money market fund* or *money market fund*, a statement to that effect and a statement that the *scheme's* investment objectives and policies will meet the conditions of the relevant definition;
…		

…

CESR guidelines: money market funds

4.7.9A G *Authorised fund managers* are further advised that CESR has issued guidelines in relation to matters that should be included in the *key investor information* for *money market funds* and *short-term money market funds*. See *CESR's guidelines on a common definition of European money market funds*.

…

Application

5.1.1 R …

(4) *COLL* 5.9 applies to the *authorised fund manager* and the *depositary* of an *authorised fund* which is a *UCITS scheme* or a *non-UCITS retail scheme* operating as a *money market fund* or a *short-term money market fund*.

…

5.2.7F R …

[**Note:** article ~~1(9)~~ 2(1)(o) of the *UCITS Directive*]

…

Guidance on assessing liquidity and quality of money-market instruments

5.2.7I G …

(2) Where an *approved money-market instrument* forms part of the *scheme property* of a *qualifying money market fund*, *short term money market fund* or *money market fund*, the *authorised fund manager* should adequately monitor that the instrument continues to be of high quality, taking into account both its credit risk and its final maturity.

[Note: *CESR's UCITS eligible assets guidelines* with respect to article 4(2) of the *UCITS eligible assets Directive*. Paragraph 11 of *CESR's guidelines on a common definition of European money market funds*.]

…

5.2.8 R …

[**Note:** article ~~19~~ 50(1)(a)-(d) and (h) and ~~2~~ (2)(a) of the *UCITS Directive* and article 3(1) of the *UCITS eligible assets Directive*]

…

5.2.9 G (1) This section specifies criteria based on those in article ~~19~~ 50 of the *UCITS Directive*, as to the nature of the markets in which the property of a *UCITS scheme* may be invested.

…

…

5.2.9A R Where a *scheme* is a *qualifying money market fund*, a *short-term money market fund* or a *money market fund*, the ability to hold up to 10% of the *scheme property* in ineligible assets under *COLL* 5.2.8R(4) does not apply.

…

5.2.10A (1)

[Note: article ~~19~~ 50(1)(h)~~, first to third indents~~ (i) to (iii) of the *UCITS Directive*]

…

…

5.2.10E G …

[**Note:** article ~~19~~ 50(1)(h), fourth indent of the *UCITS Directive* and article 7 of the *UCITS eligible assets Directive*]

…

5.2.13 R …

(1) the second *scheme* must:

…

(c) be authorised as a *non-UCITS retail scheme* (provided the requirements of article ~~19~~ 50(1)(e) of the *UCITS Directive* are met); or

(d) be authorised in another *EEA State* (provided the requirements of article ~~19~~ 50(1)(e) of the *UCITS Directive* are met); or

…

(provided the requirements of article ~~19~~ 50(1)(e) of the *UCITS Directive* are met);

…

5.2.14 G …

(2) Article ~~19~~ 50 of the *UCITS Directive* sets out the general investment limits. So, a *non-UCITS retail scheme*, or its equivalent *EEA scheme* which has the power to invest in gold or immovables would not meet the criteria set in *COLL* 5.2.13R(1)(c) and *COLL* 5.2.13R(1)(d).

(3) In determining whether a *scheme* meets the requirements of article ~~19~~ 50(1)(e) of the *UCITS Directive* for the purposes of *COLL* 5.2.13R(1)(d) or *COLL* 5.2.13R(1)(e), the *authorised fund manager* should consider the following factors before deciding that the *scheme* provides a level of protection for *unitholders* which is equivalent to that provided to *unitholders* in a *UCITS scheme*:

[**Note:** article 26 of *CESR's UCITS eligible assets guidelines* with respect to article ~~19~~ 50(1)(e) of the *UCITS Directive*]

(4) The requirement for supervisory equivalence, as described in article ~~19~~ 50(1)(e) (first indent) of the *UCITS Directive*, also applies to *schemes* (that are not *UCITS schemes*) established in other *EEA States*. In considering whether the second scheme satisfies this requirement, the *authorised fund manager* should have regard to the first section of article 26 of *CESR's UCITS eligible assets guidelines*.

…

5.6.5C R Where a *scheme* is a *short-term money market fund* or a *money market fund*, the ability to hold up to 20% of *scheme property* in ineligible assets under *COLL* 5.6.5 R (2) does not apply.

Money Market funds

5.6.5D R *Approved money market instruments* held within a *non-UCITS retail scheme* which is a *short-term money market fund* or *money market fund* must also satisfy the criteria in *COLL* 5.2.7FR to *COLL* 5.2.7HR (Approved money-market instruments).

…

After COLL 5.8 insert the following new section. The text is not underlined.

5.9 Investment powers and other provisions for money market funds

Application

5.9.1 R This section applies to the *authorised fund manager* and the *depositary* of an *authorised fund* and to an *ICVC* which is a *UCITS scheme* or a *non-UCITS*

retail scheme operating as a *money market fund* or a *short-term money market fund*.

Explanation

5.9.2 G (1) This section contains *rules* on the types of permitted investments which *schemes* operating as *short-term money market funds* and *money market funds* may invest in. These *rules* are in addition to the requirements in *COLL* 5.2 (for *UCITS schemes*) and *COLL* 5.6 (for *non-UCITS retail schemes*).

(2) The purpose of these *rules* is to protect consumers by ensuring that an *authorised fund* or *sub-fund* which describes itself as a 'money market' fund operates in a more restricted fashion and aims to maintain the capital value of the fund and provide a return in line with money market rates.

Investment conditions: short-term money market funds

5.9.3 R A *short-term money market fund* must satisfy the following conditions:

(1) its primary investment objective must be to maintain the principal of the *scheme* and aim to provide a return in line with money market rates;

(2) it must invest only in *approved money market instruments* and *deposits* with *credit institutions*;

(3) it must, on an ongoing basis, ensure the *approved money market instruments* it invests in are of high quality, as determined by the *AFM*;

(4) it must:

(a) provide daily net asset value and price calculation and daily subscription and *redemption* of *units*; or

(b) where it is a *non-UCITS retail scheme* marketed solely through employee savings schemes and to a specific category of investor that is subject to divestment restrictions, provide weekly subscription and *redemption* opportunities to investors;

(5) it must limit its investment in *securities* to those with a residual maturity until the legal redemption date of less than or equal to 397 days;

(6) it must ensure that its *scheme property* has a *weighted average maturity* of no more than 60 days;

(7) it must ensure that its *scheme property* has a *weighted average life* of no more than 120 days;

(8) it must not take direct or indirect exposure to equity or *commodities*, including via *derivatives*;

(9) it must only use *derivatives* in line with the money market investment strategy of the *scheme* and where using *derivatives* that give exposure to foreign exchange must do so only for the purposes of hedging;

(10) it must only invest in non-base currency *securities* where its exposure is fully hedged;

(11) it must limit its investment in other *collective investment schemes* to:

(a) *regulated collective investment schemes*; and

(b) *schemes* that are authorised in another *EEA State* (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met);

which meet the definition of a "Short-Term Money Market Fund" in *CESR's guidelines on a common definition of European money market funds*; and

(12) it must aim to maintain a fluctuating net asset value or a constant net asset value.

[**Note:** box 2, paragraphs 1, 2, 3 (first sentence), 5, 6, 7, 8, 11, 12 and 13 of *CESR's guidelines on a common definition of European money market funds*]

5.9.4 G For the purposes of *COLL* 5.9.3R(5) a constant net asset value should be taken as referring to an unchanging face net asset value where income in the fund is accrued daily and can either be paid out to the *unitholder* or used to purchase more *units* in the *scheme*. An *authorised fund* with a constant net asset value should generally value *scheme property* on an amortised cost basis which takes the acquisition cost of the *security* and adjust this value for amortisation of premiums (or discounts) until maturity.

[**Note:** definition of "Constant NAV Money Market Funds" in *CESR's guidelines on a common definition of European money market funds*]

Investment conditions: money market funds

5.9.5 R In addition to satisfying the conditions in *COLL* 5.9.3R(1), (2), (3), (4), (8), (9) and (10) a *money market fund* must:

(1) limit investment in securities to those with a residual maturity until the legal redemption date of less than or equal to two years, provided that the time remaining until the next interest rate reset date is less than or equal to 397 days. Floating rate securities should reset to a money market rate or index;

(2) ensure its *scheme property* has a *weighted average maturity* of no more than 6 months;

(3) ensure its *scheme property* has a *weighted average life* of no more than

12 months;

(4) limit its investment in other *collective investment schemes* to:

(a) *regulated collective investment schemes*; and

(b) *schemes* that are authorised in another *EEA State* (provided the requirements of article 50(1)(e) of the *UCITS Directive* are met);

which meet the definition of a "Money Market Fund" or a "Short-Term Money Market Fund" in *CESR's guidelines on a common definition of European money market funds*; and

(5) have a fluctuating net asset value.

[**Note:** box 3, paragraphs 1, 3, 4, 5, 6 and 7 of *CESR's guidelines on a common definition of European money market funds*]

Duties of the authorised fund manager

5.9.6 R An *authorised fund manager* of a *short-term money market fund* or a *money market fund* must ensure that no *scheme* or *sub-fund* is labelled as a *short-term money market fund* or a *money market fund* unless the conditions in *COLL* 5.9.3R and *COLL* 5.9.5R respectively are met on an ongoing basis.

High quality money market instruments

5.9.7 R In determining whether *approved money market instruments* are high quality in accordance with *COLL* 5.9.2R(3) the *authorised fund manager* must take into account a range of factors including, but not limited to:

(1) the credit quality of the instrument; an instrument will be considered not to be high quality unless it is:

(a) an *approved money market instrument* which has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is of an equivalent quality as determined by the *authorised fund manager's* internal rating process; or

(b) for a *money market fund,* an *approved money market instrument* of investment grade quality which is issued or guaranteed by one of the following:

(i) a central authority of an *EEA state* or, if the *EEA State* is a federal state, one of the members making up the federation; or

(ii) a regional or local authority of an *EEA State*; or

(iii) the European Central Bank or a central bank of an *EEA State*; or

(iv) the European Union or the European Investment Bank;

(2) the nature of the asset class represented by the instrument;

(3) for structured financial instruments, the *operational risk* and *counterparty risk* inherent within the structured financial transaction; and

(4) the liquidity profile.

[**Note:** box 2, paragraphs 3 (second sentence) and 4 and box 3, paragraph 2 of *CESR's guidelines on a common definition of European money market funds*]

Calculating weighted average life and weighted average maturity

5.9.8 R (1) When calculating the *weighted average life* for *securities* (including structured financial instruments) for the purposes of *COLL* 5.9.3R(7) and *COLL* 5.9.5R(3), the maturity calculation must be based on either:

(a) the residual maturity until the legal redemption of the instruments; or

(b) if the financial instrument embeds a put *option*, the exercise date of the put *option* if the following conditions are fulfilled at all times;

(i) the put *option* can be freely exercised by the *authorised fund manager* at its exercise date;

(ii) the strike price of the put *option* remains close to the expected value of the instrument at the next exercise date; and

(iii) the investment strategy of the *scheme* implies that there is a high probability that the *option* will be exercised at the next exercise date.

(2) Where calculating the *weighted average life* for floating rate *securities* and structured financial instruments the *security's* stated final maturity should be used and not the interest rate reset dates.

(3) When calculating the *weighted average life* and *weighted average maturity* for the purposes of *COLL* 5.9.3R(6) and (7) and *COLL* 5.9.5R(2) and (3), an *authorised fund manager* must take into account the impact of *derivatives*, *deposits* and *efficient portfolio management*.

[**Note:** definition of "weighted average life" (second sentence) and box 2, paragraphs 9 and 10 of *CESR's guidelines on a common definition of*

European money market funds]

CESR guidelines

5.9.9 G In addition to the parts of the *CESRs guidelines on a common definition of European money market funds* specifically referred to in this section the *authorised fund managers* should have regard to the other parts of those guidelines when applying the *rules* in this section.

Amend the following as shown.

Valuation points

6.3.4 R …

(6B) *UCITS schemes* operating as *short-term money market funds* must have at least one *valuation point* every *business day* at which the valuation is carried out on an amortised cost or mark to market basis.

(6C) *Non-UCITS retail schemes* operating as *short-term money market funds* must have at least one *valuation point* every *business day* or, where the scheme is marketed solely through employee savings schemes or to a specific category of investors that is subject to *redemption* restrictions, at least one every week at which the valuation is carried out on an amortised cost or mark to market basis.

(6D) *Money market funds* must value with the appropriate frequency as required in (6B) or (6C) on a mark to market basis.

...

Valuation and pricing guidance

6.3.6 G This table belongs to *COLL* 6.3.2G(2)(a) and *COLL* 6.3.3R (Valuation).

…		
1	The valuation of scheme property	
	…	
	(2B)	*Short-term money market funds* may value *approved money-market instruments* on an amortised cost basis.
[**Note:** paragraph 21 of *CESR's guidelines on a common definition of European money market funds*]		
…		

…

Maintaining the value of a qualifying money market fund or a short term money market fund

6.3.13 R The *authorised fund manager* of a *qualifying money market fund* or a *short-term money market fund* valuing *scheme* property on an amortised cost basis must:

…

6.3.14 G The *authorised fund manager* should advise the *depositary* when the mark to market value of a *qualifying money market fund* or a *short-term money market fund* valuing *scheme property* on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *authorised fund manager* of a *qualifying money market fund* or *short-term money market fund* should agree procedures with the *depositary* designed to stabilise the value of the *scheme* in these events.

…

6.6.16 G …

(3) For the purpose of *COLL* 6.6.15R(2)(a)(iv) adequate co-operation will be ensured where the *FSA* has entered into a co-operation agreement of the kind referred to in article ~~50(4)~~ 102(3) of the *UCITS Directive* with the relevant *overseas regulator*.

…

Restrictions on names for money market funds

6.9.8A R The use in an *authorised fund* or a *sub-fund's* name of the term 'money market,' or a similar term which could reasonably be considered as implying that the fund or *sub-fund* invests predominantly in money market instruments, may only be used by:

(1) a *qualifying money market fund*;

(2) a *short-term money market fund*; and

(3) a *money market fund*.

[**Note:** paragraph 5 of *CESR's guidelines on a common definition of European money market funds*]

6.9.8B G Terms which could reasonably be considered as meaning the same as 'money market' include money fund, money securities, money instruments etc.

…

6.9.10 G (1) …

(2) The restrictions of business imposed by *COLL* 6.9.9R reflect the position under Article ~~5~~ 6 of the *UCITS Directive*. In accordance with recital ~~(7)~~ (12) of the ~~amending UCITS Management~~ Directive ~~(2001/107/EC)~~ the activities referred to at *COLL* 6.9.9R(3)(a) to *COLL* 6.9.9R(3)(c) may be performed on behalf of *EEA UCITS management companies*.

…

Confirmation obligation on completion of a UCITS merger

7.7.23 R The *authorised fund manager* of a *UCITS scheme* that is the *receiving UCITS* in either a *domestic* or *cross-border UCITS merger* must confirm in writing to the *depositary* of the *UCITS scheme* that the merger transfer is complete.

[**Note:** article 48(4) of the *UCITS Directive*]

7.7.24 G Regulation 13 of the *UCITS Regulations 2011* sets out the conditions that must be fulfilled for a merger transfer to be considered complete.

…

Names of schemes, sub-funds, and classes of units

8.2.3 R (1) The *authorised fund manager* must ensure that the name of the *scheme*, a *sub-fund* or a *class* of *unit* is not undesirable or misleading.

(2) The use in a *authorised fund* or *sub-fund's* name of the term 'money market,' or a similar term which could reasonably be considered as implying that the fund or *sub-fund* invests predominantly in money market instruments, may only be used by:

(a) a *short-term money market fund*;

(b) a *money market fund*.

[**Note:** paragraph 5 of *CESR's Guidelines on a common definition of European money market funds*]

Undesirable and misleading names

8.2.4 G *COLL* 6.9.6G Undesirable or misleading names) and *COLL* 6.9.8BG (Restrictions on scheme names) ~~contains~~ contain *guidance* as to names which may be restricted, undesirable or misleading.

…

Table: contents of qualified investor scheme prospectus

8.3.4 R This table belongs to *COLL* 8.3.2R.

…	
3	Investment objectives and policy
…	
(6)	Where the *scheme* is a *money market fund* or *short-term money market fund*, a statement to that effect and that the *scheme's* investment objectives and policies will meet the conditions in *COLL* 5.9.3R (Investment conditions: short-term money market funds) and *COLL* 5.9.5R (Investment conditions: money market funds) respectively.
…	

…

Money market funds

8.4.4A R The *authorised fund manager* of a *qualified investor scheme* which operates as a *money market fund* or *short-term money market fund* must satisfy the conditions in *COLL* 5.9.3R (Investment conditions: short-term money market funds) and *COLL* 5.9.5R (Investment conditions: money market funds) respectively.

[**Note:** box 2 and box 3 of *CESR's guidelines on a common definition of European money market funds*]

8.4.4B G The *authorised fund manager* of a *short-term money market fund* or *money market fund* should adequately monitor that *approved money market instruments* continue to be of high quality, taking into account its credit risk and its final maturity.

[**Note:** paragraph 11 of *CESR's guidelines on a common definition of European money market funds*]

8.4.4C R *Approved money market instruments* held within a *qualified investor scheme* which is a *short-term money market fund* or *money market fund* must also satisfy the criteria in *COLL* 5.2.7FR to *COLL* 5.2.7HR (Approved money-market instruments).

…

8.5.9 R …

(4A) Where a *scheme* operates as a *short-term money market fund*, the value of the *scheme property* must be determined either on an amortised cost or mark to market basis.

(4B) Where a *scheme* operates as a *money market fund*, the value of the *scheme property* must be determined on a mark to market basis.

(5) ~~The~~ Subject to (5A), the *scheme* must have a *valuation point* on each *dealing day*.

(5A) Where a *scheme* operates as a *money market fund* or a *short-term money market fund* which is marketed solely through employee savings schemes and to a specific category of investors that are subject to *redemption* restrictions, the *scheme* may have at least one *valuation point* every week.

…

Maintaining the value of a short-term money market fund

8.5.9A R The *authorised fund manager* of a *short-term money market fund* which values *scheme property* on an amortised cost basis must:

(1) carry out a valuation of the *scheme property* on a mark to market basis at least once a week and at the same *valuation point* used to value the *scheme property* on an amortised cost basis;

(2) ensure that the value of the *scheme property* when valued on a mark to market basis does not differ by more than 0.5% from the value of the *scheme property* when valued on an amortised cost basis.

[**Note:** paragraph 21 of *CESR's guidelines on a common definition of European money market funds*]

8.5.9B G The *authorised fund manager* should advise the *depositary* when the mark to market value of a *short-term money market fund* valuing *scheme property* on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The *authorised fund manager* of a *short-term money market fund* should agree procedures with the *depositary* designed to stabilise the value of the *scheme* in these events.

…

Marketing of units of an EEA UCITS scheme

9.2.2 G …

(4) Where a *management company* wishes to *market* the *units* of an *EEA UCITS scheme* it manages, without establishing a *branch* or pursuing any other activities or services in the *UK*, a management company passport is not required for such marketing activities.

…

[**Note:** article 16(1) second paragraph, article 91(1) and 91(4) of the *UCITS Directive*]

…

12.1.3 G Where an *authorised fund manager* wishes to *market* the *units* of a *UCITS scheme* it *manages* in a *Host State*, without establishing a *branch* or pursuing any other activities or services in that State, a management company passport is not required for such marketing activities. The relevant *UCITS scheme* need only be notified in accordance with *COLL* 12.4 in order to access the market of the *Host State*. The *marketing* must be carried on in conformity with the laws and regulations of that *Host State* as required by Chapter XI of the *UCITS Directive*.

[**Note:** article 16(1) second paragraph of the *UCITS Directive*]

…

TP 1 Transitional Provisions

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					
19	*COLL* 5.9.3R and *COLL* 5.9.5R	R	The conditions in *COLL* 5.9.3R and *COLL* 5.9.5R that a *money market fund* or a *short-term money market fund* must satisfy do not apply to investments acquired prior to 1 July 2011	1 July 2011 to 31 December 2011	1 July 2011

Annex I

Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

1.1.2 G The general purpose of this sourcebook is to set out the guidance, directions and rules made by the *FSA* under the *RCB Regulations*. Those regulations enable bonds to be issued which comply with Article ~~22(4)~~ 52(4) of the *UCITS Directive*.

Annex J

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

5.4.9 R Undertakings whose registered office is in a third country which would have required authorisation in accordance with Article ~~5(1)~~ 6(1) of the *UCITS Directive* or with regard to portfolio management under point 4 of section A of Annex 1 to *MiFID* if it had its registered office or, only in the case of an *investment firm*, its head office within the *EEA*, shall be exempted from aggregating holdings with the holdings of its *parent undertaking* under this *rule* provide that they comply with equivalent conditions of independence as *management companies* or *investment firms*. [Article 23(6) *TD*]

Annex K

The Collective Investment Scheme Information Guide (COLLG)

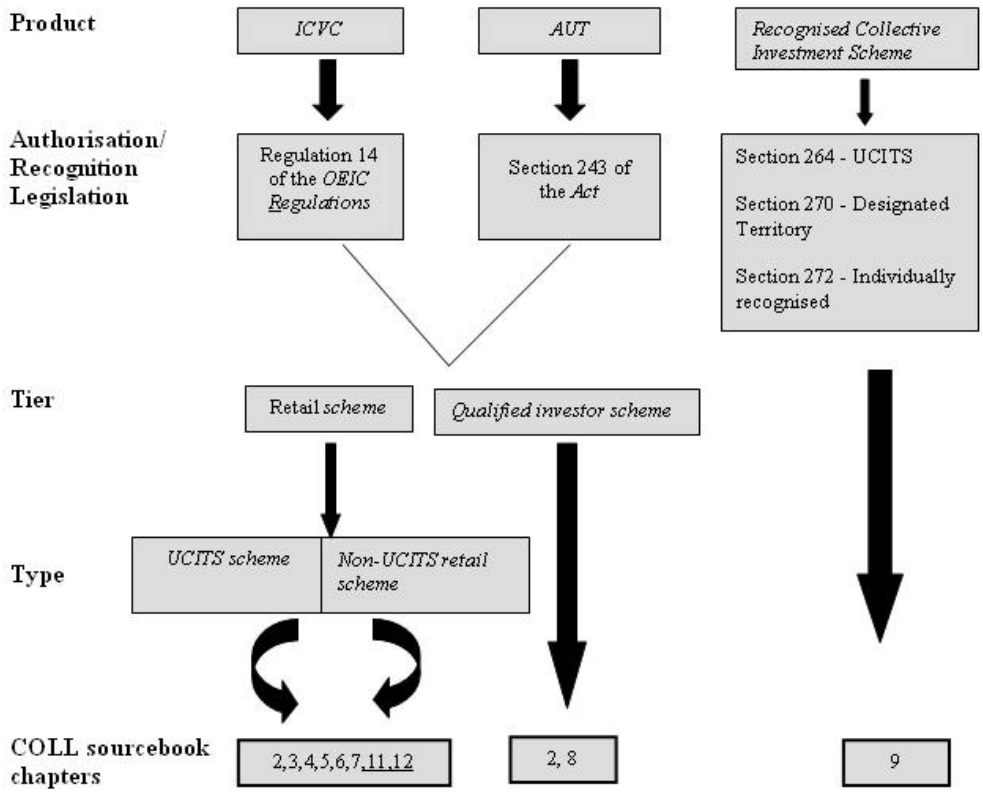
In this Annex, underlining indicates new text and striking through indicates deleted text.

5.1 Introduction

…

Regulated schemes: explanatory diagram

5.1.9 G This diagram provides a general description of the products covered by *COLL* and the relevant legislation and sections of *COLL*.



Annex L

Amendments to the Perimeter Guidance manual (PERG)

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

13.1 Introduction

…

MiFID scope

…

In addition to investment firms, MiFID is also relevant to credit institutions providing investment services or performing investment activities (see Q5) and ~~UCITS management companies~~ to *UCITS management companies* to which article ~~5(4)~~ 6(4) of the *UCITS Directive* applies (in other words, *UCITS investment firms*).

…

13.5 Exemptions from MiFID

…

13.5 Q43. Are we right in thinking that MiFID does not apply to collective investment undertakings and their operators?

…

In the case of *UCITS management companies*, some MiFID provisions will apply to those who provide portfolio management services, investment advice or safekeeping and administration services in relation to units to third parties, by virtue of article ~~5(4)~~ 6(4) of the *UCITS Directive* (see Q6).

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