

Consultation Paper

CP11/11^{*}

Financial Services Authority

Quarterly consultation

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The Financial Services Authority invites comments on this Consultation Paper. Comments on Chapter 3 of this CP should reach us by **6 July 2011**. Comments on all other chapters should reach us by **6 August 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/2011/11_11.shtml

You can also respond by email: cp11_11@fsa.gov.uk

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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.

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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

BCOBS	Banking: Conduct of Business sourcebook
BIPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms
CBA	cost-benefit analysis
COBS	Conduct of Business sourcebook
COLL	Collective Investment Schemes sourcebook
COMP	Compensation sourcebook
CP	Consultation Paper
DLG	defined liquidity group
EEA	European Economic Area
EPP	executive pension plan
EUR	euro
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GABRIEL	GATHERING Better Regulatory Information Electronically
GBP	British sterling
GPP	group personal pensions
ILAS	Individual Liquidity Adequacy Standards
ILG	individual liquidity guidance
MiFID	Markets in Financial Instruments Directive
PERG	Perimeter Guidance manual

PS	Policy Statement
QCP	Quarterly Consultation Paper
RDR	Retail Distribution Review
SLRP	Supervisory Liquidity Review Process
SMEs	small and medium enterprises
SPS	Statement of Professional Standing
SSAS	small self-administered scheme
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls sourcebook
TC	Training and Competence sourcebook
UCITS	undertakings for collective investment in transferable securities
USD	US dollars
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 add a new rule to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) to clarify that common platform firms conducting investment services and activities from a branch in another EEA State are subject to the host state's requirements under Article 13(2) of MiFID (Chapter 2);
 - to extend the list of appropriate qualifications for individual advisers and add bodies to the list for accredited body status (Chapter 3);
 - to make minor amendments to liquidity reporting requirements, correct and amend the simplified Individual Liquidity Standards for BIPRU firms and extend the transitional arrangements for former Mismatch firms (Chapter 4);
 - to provide guidance on certain descriptions firms should use to promote financial products (Chapter 5);
 - to clarify how consumers may be able to cancel ongoing adviser charges for services relating to a financial product without being required to withdraw his or her investments (Chapter 6);
 - to enable certain corporate trustees of occupational pension schemes to make claims to the Financial Services Compensation Scheme in relation to life insurance policies (Chapter 7);
 - to clarify guidance in relation to property investment clubs and land investment schemes (Chapter 8); and
 - to simplify the way firms submit written reports to the FSA (Chapter 9).

- 1.2 Responses to Chapter 3 of this Consultation should be received by 6 July 2011. Responses to all other chapters should be received by 6 August 2011.

CONSUMERS

The proposals in Chapters 5, 6, 7 and 8 may be of interest to consumers.

2

Proposed additional rule in Chapter 6 of the Senior Management Arrangements, Systems and Controls sourcebook

Introduction

- 2.1 In this chapter we propose to add a new rule (SYSC 6.1.7R) to Chapter 6.1 of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) (Compliance, internal audit and financial crime). The rule will apply to a common platform firm¹ conducting investment services and activities from a branch in another EEA State. The purpose of the rule is technical, to make it clear that such branches are subject to the host state's requirements for those investment services and activities for the purposes of Article 13(2) of the Markets in Financial Instruments Directive (MiFID).
- 2.2 We would make this amendment under section 138 (General rule-making power), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed new rule is in Appendix 2.

¹ A common platform firm is a firm that is a BIPRU firm (ie a firm covered by the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) — a building society, bank, full scope BIPRU investment firm, BIPRU limited licence firm or BIPRU limited activity firm), an exempt Capital Adequacy Directive (CAD) firm, a UK MiFID investment firm which falls within the definition of 'local firm' in Article 3.1P of the CAD or a dormant account fund operator (see the Glossary to the FSA Handbook). <http://fsahandbook.info/FSA/html/handbook/Glossary/C>

Proposed amendment

- 2.3 When we consulted on our proposals to implement MiFID in a Consultation Paper in 2006², it was our clear policy intention that the common platform (SYSC Chapters 4-10) requirements apply to a common platform firm in relation to passported activities carried on from a branch in another member state (as set out in SYSC 2.16R in Part 2 to Annex 1 to SYSC Chapter 1). While it is clear that the high-level over-arching rule SYSC 4.1.1R ('a firm must have robust governance arrangements...') and the common platform generally apply in this way to EEA branches of UK common platform firms conducting investment services and activities, the drafting in SYSC 6.1.1R appears to cut back the application of the compliance requirements so they only apply in relation to compliance with UK rules. This is because SYSC 6.1.1R makes reference to the 'regulatory system'³ which could be read as not extending to compliance with host state requirements.
- 2.4 Therefore, we have decided to propose a new rule to make it clear that an EEA branch of a common platform firm is also subject to the host state's requirements under MiFID and the MiFID implementing directive for those investment services and activities the branch conducts.

Q2.1: Do you agree with our proposed new rule to make it clear that EEA branches of UK common platform firms are subject both to UK and to their host state's requirements for any investment services or activities they conduct?

Cost-benefit analysis

- 2.5 The proposed rule does not place a new requirement on common platform firms with EEA branches which have been subject to MiFID's requirements since 1 November 2007. Therefore, the proposed rule will have no impact on firms' behaviour and is not expected to result in material costs to UK-based firms.

Compatibility statement

- 2.6 This change is clarificatory and will eliminate potential uncertainty and confusion, and therefore better implement the policy we have previously consulted on and implemented (see CP06/9 and PS07/23). We are satisfied that the new rule will help deliver our statutory objectives and is compatible with the principles of good regulation.

2 CP06/9: *Organisational systems and controls: Common platform for firms* (May 2006), subsequently confirmed in Policy Statement 06/13: *Organisational systems and controls: Common platform for firms – feedback on CP06/9* (October 2006)

3 As defined in the Glossary of the FSA Handbook

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3

Proposed changes to the Training and Competence sourcebook

Introduction

- 3.1 In Chapter 2 of PS11/1⁴ we confirmed our intention to supervise and enforce professional standards for individual advisers under the Retail Distribution Review (RDR). We also said that there would be an enhanced role for bodies we accredit and set out how bodies could apply to us for accredited status.
- 3.2 In Chapter 3 of PS10/18⁵ we confirmed publication of an appropriate qualifications list within our Training and Competence sourcebook (TC). We confirmed that we would continue to add qualifications to the lists.
- 3.3 We have now assessed a number of bodies for accredited status and received requests to add further qualifications to our lists.
- 3.4 Therefore, this chapter proposes to:
- extend the list of appropriate qualifications for a number of activities; and
 - add the names of bodies who have applied for accredited body status where we have assessed them as meeting our criteria.
- 3.5 Separate to the above changes, we also propose a change to the following activities in TC Appendix 1 to exclude ‘personal pension schemes’:
- advising on securities that are not stakeholder pension schemes or broker funds; and

⁴ PS11/1: *Distribution of retail investments: Delivering the RDR – professionalism* (January 2011)

⁵ PS10/18: *Competence and ethics* (December 2010)

- advising on and dealing in securities that are not stakeholder pension schemes or broker funds.
- 3.6 These amendments would be made under section 138 (General rule-making power), section 149 (Evidential provisions), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). This chapter will be of interest to firms and individuals who are subject to our TC requirements, including where our professionalism requirements under the RDR apply.

Appropriate qualifications

- 3.7 TC includes qualification requirements for individuals carrying out certain retail activities. Requiring individuals to be qualified is one way of securing an appropriate degree of protection for retail consumers.
- 3.8 We confirmed in PS10/18 and PS11/1 the list of qualifications appropriate for each retail activity. This list is published in Appendix 4E of TC. We said that we would consult for one month each time a qualification was added, removed or other changes made to the list.

Proposed additional qualifications

- 3.9 The qualifications we propose to add are set out in the draft Handbook text in Appendix 3. Where we have been asked, we have added certain legacy⁶ qualifications from the previous list maintained by the Financial Services Skills Council.

Q3.1: Do you agree that we should add these qualifications to our lists?

Other changes to qualifications

- 3.10 We have also made a couple of changes to the status of certain qualifications, showing how they can be used to meet our RDR qualifications reform (for example, where they can be coupled with qualifications gap-fill to meet our full requirement).

⁶ Qualifications that are no longer available to new students but still meet our appropriate qualification requirements as indicated in our lists

Regulatory modules

- 3.11** Within our qualifications lists, we include a number of individual modules which specifically cover a combination of UK financial services, regulation and ethics. These individual regulatory modules are taken from appropriate qualifications on our lists.
- 3.12** Where our rules require an individual to attain a regulatory module, it should be clear that we mean a regulatory module from an appropriate qualification. So, on that basis, we are considering if there is a need to list regulatory modules separately.
- 3.13** We have not included the overseeing activities⁷ in our consideration, as the structure of these qualifications lists is different so listing regulatory modules separately remains appropriate. For these activities, individuals can use a combination of modules to meet our requirement, so listing the regulatory modules separately remains appropriate for the time being.

Q3.2: Do you agree that there is no need to separately list any regulatory modules in Appendix 4E apart from the overseeing activities?

Q3.3: If your answer to Q3.2 is yes then do you think we should remove all regulatory modules now, or as we review the underlying examination standards?

Accredited bodies

- 3.14** In PS11/1 we confirmed that accredited bodies would need to satisfy requirements in four broad areas:
- to act in the public interest and further the development of the profession;
 - to carry out effective verification services;
 - to have appropriate systems and controls in place and provide evidence to us of continuing effectiveness; and
 - to cooperate with us on an ongoing basis.
- 3.15** We also said that interested candidates could submit their application to us so we could consider them for accredited body status.

⁷ Overseeing on a day-to-day basis: operating a collective investment scheme or undertaking the activities of a trustee or depositary of a collective investment scheme; safeguarding and administering investments or holding client money; administrative functions in relation to managing investments; administrative functions in relation to effecting or carrying out contracts of insurance which are life policies; and administrative functions in relation to the operation of stakeholder pension schemes

3.16 We have received a number of complete applications and have assessed them against the criteria in TC Appendix 6G. On the basis of that assessment, we intend to confer accredited body status on six applicants and we consult here on including them in our Handbook. The six accredited bodies for consultation are:

- CFA Society of the UK;
- The Chartered Institute for Securities and Investment;
- The Chartered Institute of Bankers in Scotland;
- The Chartered Insurance Institute;
- The Institute of Financial Planning; and
- The Institute of Financial Services.

3.17 The criteria is based on what we expect all accredited bodies to demonstrate from 31 December 2012, so the proposed accredited bodies may not all have the appropriate capabilities or systems and controls in place now. In fact, as the accredited body role is new, it is very unlikely that any accredited body is 100% ready now. We are satisfied that the applicants and their independent auditors have provided sufficient detail about how they expect to implement the appropriate systems and controls between now and 31 December 2012. We may, or may not, have required applicants to carry out additional remedial work and to confirm that this has been completed on a specified date well in advance of 31 December 2012. We have also told each applicant that we expect their next annual audit report to demonstrate how they have made the intended progress in developing their capabilities and/or their systems and controls, where these are not already in place. We have encouraged each accredited body to publish their annual audit report although we have not made this a requirement.

3.18 We expect to receive further applications from potential accredited bodies in the future and we will consult on any decision to accredit these bodies. Confirmation of who the accredited bodies are will enable advisers to decide which one they wish to approach to validate their qualification gap-fill (if required) and to issue their Statement of Professional Standing (SPS). A choice of accredited bodies also allows advisers to shop around.

Q3.4: Do you have any information based on the four criteria in paragraph 3.14 that may influence our final decision to include the proposed accredited bodies in our Handbook?

TC activities relating to securities

- 3.19** During our assessment of the content of qualifications, we became aware that the underlying exam standards covering securities did not include any content on personal pension schemes.
- 3.20** The term ‘personal pension scheme’ is currently included in our Glossary definition of a ‘security’ as there are certain rights available under those schemes. These are the rights that membership to a scheme confer on a member (for example, the right to make payments to the scheme or to transfer the value to another scheme). ‘Personal pension scheme’ also appears under our Glossary definition of a packaged product.
- 3.21** We consulted in 2006 (CP06/5⁸) on the government’s extension of the range of firms that could set up and operate personal pension schemes. As a result of that consultation, the term ‘personal pension scheme’ appeared under both ‘security’ and ‘packaged product’. This consultation meant that the operation of all personal pension schemes was regulated from 6 April 2007.
- 3.22** The Glossary definitions of ‘security’ and ‘packaged products’ are relevant to TC as they form part of the activities we describe in TC Appendix 1 that have a qualification requirement.
- 3.23** It is right that ‘personal pension scheme’ continues to be included as a term within the definition of a ‘security’ but, for the purpose of being competent to advise on a personal pension scheme, it is the reference within the definition of ‘packaged products’ that is relevant.
- 3.24** We are proposing to exclude personal pensions from the following activities in TC Appendix 1:
- advising on securities that are not stakeholder pension schemes or broker funds; and
 - advising on and dealing in securities that are not stakeholder pension schemes or broker funds.
- 3.25** This will make it clear that an individual who wishes to advise on personal pension schemes should refer to our list of appropriate qualifications on ‘packaged products’.
- 3.26** We do not believe this will have an impact on individuals who currently advise on securities as, if they advise on personal pension schemes, they are already likely to hold an appropriate qualification that meets our requirements for ‘packaged products’. We would be interested to hear from respondents if this reflects industry practice.

Q3.5: Do you agree that we should exclude ‘personal pension schemes’ from activities in TC Appendix 1 that relate to ‘securities’?

⁸ CP06/5: *The regulation of personal pension schemes including SIPPs* (April 2006)

Cost-benefit analysis

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

Additional appropriate qualifications

- 3.28 This proposal does not increase the costs set out in the CBA in CP10/12⁹, as it simply updates the list of appropriate qualifications. We believe the proposal will deliver potential benefits by increasing the choice of qualifications available.

Listing accredited bodies in the Handbook

- 3.29 This proposal does not increase the costs set out in the CBA in CP10/14¹⁰, as it simply proposes to list some accredited professional bodies in our Handbook. We believe the proposal will deliver benefits by confirming which bodies have received accredited status to enable retail investment advisers and their firms to make decisions about how they can meet our requirements to hold an SPS.

Changes to the Glossary definition of ‘security’

- 3.30 We believe the costs of this proposal are minimal as the clarification will already reflect what individuals are doing in the industry, which is adhering to competence standards required for advising on packaged products if they wish to advise on personal pension schemes. Our understanding is that qualifications required to advise on securities do not tend to include content on personal schemes. Therefore, individuals currently offering advice on personal pension schemes are likely to hold a qualification relevant for packaged products. The proposal will deliver benefits by confirming our initial approach in CP06/5 about how we expect individuals to demonstrate their competence to advise on personal pension schemes.

Compatibility statement

- 3.31 These proposals are designed to meet our consumer protection objective and are relevant to the principles of good regulation – in particular, promoting innovation in conjunction with regulated activities. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

⁹ CP10/12: *Competence and ethics* (June 2010).

¹⁰ CP10/14: *Delivering the RDR: Professionalism, including its applicability to pure protection advice* (June 2010)

Equality and diversity issues

- 3.32 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 that they believe arise.

Contact

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4

Proposed minor changes to the liquidity regime

Introduction

- 4.1 This chapter proposes minor amendments to our liquidity regime, including amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) and to rules on liquidity reporting in the Supervision manual (SUP).
- 4.2 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 150(2) (Actions for damages), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA).
- 4.3 The proposed amendments, outlined in Appendix 4, will be of interest to:
- Individual Liquidity Adequacy Standards (ILAS) BIPRU firms;
 - firms that are or could potentially be part of a ‘defined liquidity group (DLG) by default’;
 - simplified ILAS BIPRU firms;
 - firms that managed liquidity risk using Chapter LM IPRU(BANK) as at 30 November 2009 (Mismatch regime); and
 - ILAS BIPRU firms that have a total balance sheet size between £1 billion and £5 billion.

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

Background and context

- 4.4 In PS09/16¹¹ 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.
- 4.5 This chapter proposes the following minor amendments:
- 1) an amendment to the reporting requirements for the completion of FSA052 (SUP 16.12) and associated guidance (SUP 16 Annex 25G);
 - 2) an amendment to the Glossary definition of 'DLG by default';
 - 3) corrections and amendments to the simplified ILAS approach (BIPRU 12.6);
 - 4) an extension to the transitional arrangements for former Mismatch firms (BIPRU TP 30); and
 - 5) an amendment to the Glossary definition of 'low frequency liquidity reporting firm'.
- 4.6 None of the proposed amendments are intended to change the liquidity policy from its original intention.

Proposed amendments

(1) Amendment to the reporting requirements for the completion of FSA052 (SUP 16.12) and associated guidance (SUP 16 Annex 25G)

Issue to be addressed

- 4.7 FSA052 records information about firms' sterling, US dollar and euro-denominated wholesale liabilities. The rules for completing the data item are in SUP 16.12. There is also a guidance document for completing the data item in SUP 16 Annex 25G.
- 4.8 The rules in SUP 16.12 can be read inconsistently with the guidance in SUP 16 Annex 25G. SUP 16.12 instructs firms to complete the data item in the reporting currency (i.e. the currency in which the firm chooses to submit its returns), while the guidance is being construed as directing firms to record their wholesale liabilities in the respective currency.
- 4.9 The policy intention is for the data item to collect information in three respective currencies (sterling (GBP), US dollar (USD) and euro (EUR)). There is a current inconsistency in firms' reporting practices; the rule should be corrected to reflect the required policy intention and to clarify our requirements.

11 PS09/16: *Strengthening liquidity standards* (October 2009)

Background and context

- 4.10 FSA052 is the data item that records average transaction volume and prices for certain types of firms' wholesale liabilities. The data item records sterling, US dollar and euro-denominated liabilities. Due to an error in the rules in SUP 16.12, firms are being instructed to complete this data item in their reporting currency.
- 4.11 The guidance document SUP 16 Annex 25G is being construed to instruct firms that they should report in the respective currencies of the liabilities (GBP, USD and EUR). Our internal systems are designed to collect data in these three currencies. We are aware that there is inconsistency in the way firms report; therefore, we propose to amend the rule to achieve the original policy objective and to clarify how we require firms to report.

Proposed amendments

- 4.12 We propose to amend SUP 16.12 to instruct firms to report the data item only in the currencies named in FSA052, so that liabilities in sterling are reported in sterling, those in US dollars are reported in US dollars and those in euros are reported in euros. We also propose to clarify the guidance document (SUP 16 Annex 25G) to complement the rule change.
- 4.13 Please note that Appendix 6 to CP11/07 included a proposed amendment to SUP 16 Annex 25G reporting guidance for FSA052. In the light of these proposed amendments, we do not intend to proceed with the implementation of that change.

Q4.1: Do you agree with our proposal to amend SUP 16.12 reporting requirements and SUP 16 Annex 25G guidance document?

(2) Amendment to the Glossary definition of 'DLG by default'*Issue to be addressed*

- 4.14 A 'DLG by default' is a liquidity reporting group that includes at least one UK-regulated ILAS BIPRU firm and all other firms that rely on the ILAS BIPRU firm(s) for material liquidity support and/or provide the ILAS BIPRU firm(s) with material liquidity support.
- 4.15 The current definition can result in the creation of a DLG by default where there are two or more ILAS BIPRU firms but no other material non-ILAS BIPRU¹² entities that provide or receive material liquidity support within the group. This leads to solo returns and a consolidated return for the DLG, which is only the aggregate of the solo returns. There is no added value in the consolidated level of reporting.

12 Firms that are not ILAS BIPRU firms, as opposed to firms that are non-ILAS BIPRU firms (i.e. that complete FSA055)

Background and context

- 4.16** A DLG by default is a liquidity reporting group in which the members are determined by the UK-regulated firm, with its supervisor, in accordance with the Glossary definition. DLG by default reporting collects information (via FSA047 and FSA048) on a consolidated basis from that group.
- 4.17** The DLG by default comprises the ILAS BIPRU firm(s) and all other firms in the group that provide material liquidity support to the ILAS BIPRU firm(s) or are reliant on the ILAS BIPRU firm(s) for material liquidity support. This can include cases where the only firms in the DLG are UK-regulated ILAS BIPRU firms, meaning that these firms report their data, on solo and consolidated group bases, unnecessarily.

Proposed amendments

- 4.18** We propose to amend the Glossary definition of ‘DLG by default’ so that when there are only ILAS BIPRU firms within the reporting group, the DLG by default reporting requirement does not apply.

Q4.2: Do you agree with our proposal to amend the Glossary definition of ‘DLG by default’?

(3) Corrections and amendments to the simplified ILAS approach (BIPRU 12.6)

Issue to be addressed

- 4.19** There are several minor amendments proposed to the simplified ILAS approach that correct errors, including an amendment to the simplified formula in BIPRU 12.6.17R to include data collected from FSA048 and associated footnotes, and an amendment to BIPRU 12.6.15R for the purpose of calculating a firm’s credit pipeline commitment.

Background and context

- 4.20** We allow firms with relatively simple business models to apply for a waiver to calculate the size and content of their liquid assets buffers according to the simplified approach set out in BIPRU 12.6. This approach includes rules and guidance that determine the formula firms should use to calculate the size of the buffer.

Proposed amendments

- 4.21** We propose that the formula in BIPRU 12.6.17G and the rule in BIPRU 12.6.15R are amended as follows:

- 1) in the 'wholesale net cash outflow component' section of the formula, the columns from FSA048 that capture 'non-defined/open maturity' data are missing from the formula, we propose that this is amended so that the data from these columns is captured;
- 2) the footnotes to the formula should be amended accordingly; and
- 3) the word 'retail' should be removed from BIPRU 12.6.15R. The simplified approach currently only captures the exposure risk to retail pipeline commitments. Since firms that qualify for the simplified approach can have both retail and wholesale pipeline commitments, the rules should capture the exposure risk of the complete range of firms' potential business activities. We propose that the rule is amended so that all credit pipeline exposure risks will be captured.

Q4.3: Do you agree with our proposal to amend the simplified approach in BIPRU 12.6?

(4) An extension to the transitional arrangements for former Mismatch firms (BIPRU TP 30)

Issue to be addressed

- 4.22** The transitional arrangements for firms formerly subject to the Mismatch regime are set out in BIPRU TP 30, which applies until firms receive individual liquidity guidance (ILG) and expires 30 November 2011. The transitional arrangements need to be extended to allow us time to issue ILG to all firms.

Background and context

- 4.23** BIPRU TP 30 provides rules and guidance for standard ILAS BIPRU firms that, as at 30 November 2009, calculated their liquidity resources in accordance with Chapter LM of IPRU(BANK), 'the Mismatch regime'. The transitional arrangements instruct these firms how to calculate the amount of liquidity resources they are required to hold.
- 4.24** Following the firm's Supervisory Liquidity Review Process (SLRP), we will give each firm ILG, which will include the amount of liquidity resources they are required to hold, together with a tailored 'glidepath' advising the proportion of BIPRU 12.7 compliant liquid assets that the buffer should comprise.
- 4.25** The timetable for completing SLRPs and issuing ILG needs to be extended and the arrangements that cover former Mismatch firms should be extended accordingly. It is expected that all firms affected will be issued with ILG by 31 December 2012.

Proposed amendments

- 4.26 We propose to extend the duration of BIPRU TP 30 from 30 November 2011 to 31 December 2012. We also propose to correct a typographical error.

Q4.4: Do you agree with our proposal to amend TP 30?

(5) Amendment to the Glossary definition of ‘low frequency liquidity reporting firm’*Issue to be addressed*

- 4.27 Standard ILAS BIPRU firms and groups report liquidity data items on a weekly or monthly basis, depending on the total size of their balance sheet. Firms with a total balance sheet size of £1 billion or above, currently report on a weekly basis. In response to our regulatory reform programme, and following industry feedback, we have undertaken a risk assessment of the threshold for low frequency reporting firms. We have concluded that the current threshold captures more firms in weekly reporting than required, given the relative risk they pose to our statutory objectives. Therefore, we propose to raise the threshold limit for monthly reporting.

Background and context

- 4.28 Our liquidity regime, set out in BIPRU 12, requires standard ILAS BIPRU firms to submit a suite of liquidity data items at a frequency dependent on the total balance sheet size of the firm. Firms are required to submit data items FSA047, FSA048 and FSA052 on a weekly basis unless they qualify as a low frequency reporting firm. Low frequency liquidity reporting firms submit these data items monthly.
- 4.29 The current definition of a low frequency liquidity reporting firm captures those firms that have balance sheet assets of less than £1 billion.
- 4.30 The number of firms captured by the current definition is disproportionately large, given the relative risk they pose to our statutory objectives. It is an inefficient use of our resources to analyse the weekly returns. Our regulatory approach is to focus more resources on firms that pose greater risks.

Proposed amendments

- 4.31 We propose to amend the Glossary definition of ‘low frequency liquidity reporting firm’ to raise the threshold to qualify as a monthly reporter from a balance sheet size of £1 billion to £5 billion.

Q4.5: Do you agree with our proposal to amend the Glossary definition of 'low frequency liquidity reporting firm'?

Cost-benefit analysis

(1) Amendment to the reporting requirements for the completion of FSA052 (SUP 16.12) and associated guidance (SUP 16 Annex 25G)

- 4.32** Firms that submit in the reporting currency, on the basis of SUP 16.12, may have to change their systems to comply with the proposed rule change.
- 4.33** In Policy Statement PS09/16, we estimated the one-off costs of implementing the new liquidity reporting requirements¹³, a proportion of which includes the cost of requiring firms to report FSA052. There are 303 firms that report FSA052. The cost estimate of implementing the liquidity regime for these 303 firms is approximately £143 million. We have assumed that these proposed changes to FSA052 reporting will be 10% of the total costs. This is likely to be an overestimate as this proposal represents a software change for the conversion of the data to the appropriate currencies rather than the establishment of the infrastructure required to collect the data.
- 4.34** From analysing the two-thirds of the affected population of firms who responded to our request for information on how they currently report, we estimate that approximately 80% of firms will not be materially affected by the rule change. These firms either report in three currencies, submit nil returns, or do not have multiple currency wholesale liabilities. If the 20% proportion is extrapolated to the total population of firms, the total estimated cost would be £2.82 million.
- 4.35** We estimate that the one-off costs to firms of changing systems are outweighed by the benefits of removing the inconsistency in firms' reporting. By amending the rule, firms' data will be of sufficient quality to ensure robust supervision of firms. All firms will report in the same way, meaning the data can be relied on. This will ensure that the policy achieves the benefits originally identified in PS09/16, i.e. a reduction in the probability of bank failure and a reduction in the likelihood and cost of systemic crisis.

(2) Amendment to the Glossary definition of 'DLG by default'

- 4.36** The amendment to the Glossary definition of 'DLG by default' will remove an unnecessary burden on firms that duplicate reporting by submitting the same data items on a solo and consolidated level.

¹³ PS09/16: *Strengthening liquidity standards* (October 2009), paragraph 13.46

- 4.37 We do not expect firms to incur incremental costs for proposed changes to the definition of DLG by default. The changes will potentially reduce the costs for the affected firms associated with the preparation, management review and systems to submit additional consolidation reporting levels. We also see no reduced benefit in removing the DLG by default reporting level, as we will collect information on the relevant firms' liquidity risk via the solo level reports.

(3) Corrections and amendments to the simplified ILAS approach (BIPRU 12.6)

- 4.38 The proposed changes address specific errors in the formula referred to by rules and guidance for the calculation of the simplified liquid asset buffer. These amendments do not impose any material or significant costs on firms.
- 4.39 An additional rule change for simplified firms will broaden the scope of the credit pipeline commitments from only retail customer commitments to include wholesale commitments. This will increase the liquid assets buffer requirement for firms.
- 4.40 Data from firms' current positions indicate that a small number of firms have wholesale pipeline commitments and that these firms will still be compliant with their liquid asset buffer requirement after the proposed change. Therefore, we consider that no material or significant costs will be imposed on firms.

(4) Extension to the transitional arrangements for former Mismatch firms (BIPRU TP 30)

- 4.41 Amending the transitional provisions for former Mismatch firms, such that the transitional arrangements are extended, would not impose any material or significant costs on firms.
- 4.42 There are two off-setting considerations in delaying the increase in standards of the liquidity regime for former Mismatch firms to the extent that these firms take advantage of the longer transition period:
- the benefits of the liquidity regime will not be fully realised over the period of the delay (mitigation of firms' liquidity risk and associated reduction in probability of firm failures); and
 - the costs to firms of a tougher prudential regime will be lower in the transition period.
- 4.43 Proportionate transitional arrangements for all ILAS BIPRU firms will ensure that costs increase gradually over the same period for all firms. This means that firms formerly on the Mismatch regime do not face proportionately higher costs over the transition period.

(5) Amendment to the Glossary definition of 'low frequency liquidity reporting firm'

- 4.44 Amending the Glossary definition of 'low frequency liquidity reporting firm' by raising the threshold for monthly reporting from £1 billion to £5 billion will decrease the reporting frequency of approximately 50 firms. We believe that the costs of setting up direct systems and controls estimated in CP09/13 are unaffected by the proposed amendments, as firms are still required to report the same data.
- 4.45 However, the lower overall reporting frequency could reduce affected firms' ongoing reporting costs, initially estimated at an average of £144,880 per year, per firm, during normal times. It should be noted that this cost estimate was based on larger institutions and, therefore, is likely to be an over-estimate for smaller firms. The ongoing cost reduction could be higher at stressed times, as firms could be asked to report on a weekly basis. Lower reporting frequency could also alleviate our data-handling costs.
- 4.46 Lower reporting frequency, both in normal times and during stress periods, may reduce our ability to monitor firms' liquidity risk management. Given that our analysis indicates that the affected firms pose a lower relative threat to our statutory objectives, and that we retain the capacity to require weekly reporting in times of stress, we do not consider that these risks are material.

Compatibility statement

- 4.47 In Chapter 14 of PS09/16 we set out our view that the finalised liquidity regime – including the liquidity reporting regime, systems and controls requirements, as well as the transitional provisions for former Mismatch firms – is compatible with our statutory objectives and the principles of good regulation.
- 4.48 The proposed minor amendments in this consultation are driven by feedback from firms and other industry participants, as well as internal FSA analysis.
- 4.49 The proposals on which we are now consulting are intended to help us deliver our policy set out in PS09/16, and therefore 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 and the need to use our resources in the most efficient and economic way, as well as the international character of financial services and markets and the desirability of maintaining the competitive position in the UK.

Equality and diversity

- 4.50 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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5

Proposed change to guidance on the use of certain terms in promotions

Introduction

- 5.1 This chapter sets out our proposals to provide guidance on how firms should use certain descriptions to promote financial products.
- 5.2 The proposal would require a change to the Conduct of Business sourcebook (COBS) and Banking: Conduct of Business sourcebook (BCOBS) within the FSA Handbook. We would make these amendments under section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook changes are in Appendix 5.

Proposed amendments

- 5.3 In recent years, to meet demand from risk-averse consumers, the financial services industry has developed a growing and innovative market for products, including structured products, which are often described as ‘guaranteed’, ‘protected’ or ‘secure’. We have reviewed this market and concluded that some firms promote these products without any clear and adequate justification for the descriptions used. We believe that this could be implicitly misleading and could lead to consumers misunderstanding what is actually offered to them.

- 5.4 So firms understand more explicitly our view of how the ‘fair, clear and not misleading’ rule applies, we are proposing to introduce some guidance on this rule in COBS 4 and BCOBS 2. This is to ensure that firms know that, when using terms such as ‘guaranteed’, ‘protected’ or ‘secure’, they should provide information, in financial promotions or other product literature, to make it clear what these terms mean for the consumer. This guidance will facilitate more effective supervision of this market. If we proceed with our proposals, firms will have six months to comply with this guidance.

Q5.1: Do you agree that the proposed guidance on use of the terms ‘guaranteed’, ‘protected’ or ‘secure’ is appropriate?

Cost-benefit analysis

- 5.5 This guidance should result in minimal costs to firms as affected products are usually launched in tranches at least every six months, and the transitional period proposed will give firms enough time to incorporate the required changes in the wording of future promotions. As the outcome of previous interventions has not been quite as expected, these changes aim to reduce uncertainty about the meaning of certain terms. As a result, this guidance should increase supervisory effectiveness by achieving higher levels of compliance and associated consumer outcomes.

Compatibility statement

- 5.6 The aim of this guidance is to clarify an existing rule and ensure that it continues to be compatible with our general duties under section 2 of FSMA. For this reason, we believe the burden on firms affected 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 and are satisfied that they are the most appropriate for the purposes of meeting our objectives.

Equality and diversity

- 5.7 We have assessed that our proposals do not give rise to discrimination and that the proposal is of low relevance to the equality agenda.

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6

Retail Distribution Review – Adviser Charging

Introduction

- 6.1** We published the final Retail Distribution Review (RDR) rules on Adviser Charging, in PS10/6¹⁴ and the final rules on Consultancy Charging, which apply to group personal pensions (GPPs), in PS10/10.¹⁵ We consulted in CP10/22¹⁶, on amendments to those rules, which were intended to clarify the rules following queries from trade bodies and firms (a feedback statement and final rules for issues other than trail commission were published in Handbook Notice 109 on 4 May, and final rules on trail commission will follow later this year). We now propose to make a further change, which has arisen following queries.
- 6.2** We intend to issue the proposed amendment in exercise of our powers under section 138 (General rule-making power) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the amendment can be found in Appendix 6. The amendment will be of interest primarily to firms, but also to consumers and consumer bodies, as it will affect how firms interact with retail clients.

¹⁴ PS10/6: *Distribution of retail investments: Delivering the RDR – feedback to CP09/18 and final rules* (March 2010)

¹⁵ PS 0/10: *Delivering the Retail Distribution Review: Corporate pensions – feedback to CP09/31 and final rules* (June 2010)

¹⁶ CP10/26: *Quarterly Consultation 26* (October 2010), Chapter 5

Proposed amendment

- 6.3** Under the Adviser Charging rules, adviser charges can be paid by the retail client over a period of time if the charges are for an ongoing service for the provision of personal recommendations or related services, or where they relate to a regular payment product (COBS 6.1A.22R, as amended in April following consultation in Chapter 5 of CP10/22). Where the ongoing charge relates to an ongoing service, guidance in COBS 6.1A.26G(5) states that, to comply with the rule on disclosure of total adviser charges, information provided to the retail client should include how the client can cancel the ongoing service and stop payment of the associated charges.
- 6.4** It has been suggested that it should be possible to have a business model where ongoing advice would be an integral part of the overall service provided. For example, ongoing advice would be provided together with fund management, so that the client would need to withdraw his or her investments from the firm's managed funds if the client wished to cancel the firm's ongoing advice service. Such a business model would not meet the intention underlying the Adviser Charging rules, i.e. that the customer should be able to cancel a service at any time without penalty. It would also be contrary to Principle 6 (Treating Customers Fairly), as it could deter clients from cancelling ongoing advice services.
- 6.5** The proposed amendment clarifies that a firm must ensure that a retail client can cancel an ongoing service for the provision of personal recommendations and related services without being required to withdraw his or her investments at the same time. It would also apply to a member of a GPP¹⁷ who wished to cancel an ongoing service for individual advice, given under the Adviser Charging rules, about that GPP.
- 6.6** The proposed amendment in COBS 6.1A.22R refers to cancellation 'without penalty'. Guidance to accompany this new requirement states that if a customer cancels the ongoing advice service, a firm should only require the customer to pay an amount that is in proportion to the extent of the service already provided by the firm, up to the date the ongoing advice service is cancelled. If the firm also provides other services, such as fund management, it should make it clear to the customer that those charges will continue after the ongoing advice service has been cancelled.

¹⁷ 'GPP' here includes group personal pensions, group stakeholder pensions and group self-invested personal pensions (SIPPs)

6.7 We would welcome views on whether the same amendment should be made to the Consultancy Charging rules for GPPs, which apply to the relationship between an adviser and the employer who has set up the GPP. Ongoing services are common for GPPs and include services such as GPP scheme administration and assistance to the employer with promoting the scheme to new employees. Consultancy Charging will include the cost of these services, and we consider it unlikely that an employer would wish to cancel the ongoing services without also moving the GPP to another provider. Therefore, there does not appear to be a need to allow employers to cancel ongoing services in isolation. An agreement between adviser and employer is likely to outline the arrangements for any remaining charges on termination of the agreement.

Q6.1: Do you agree with our proposed amendment clarifying that a retail client can cancel an ongoing service for the provision of personal recommendations and related services without also having to withdraw his investments?

Q6.2: Do you agree that the same change is not needed for GPPs, under the Consultancy Charging rules? If not, please explain your reasons.

Cost-benefit analysis

Costs

6.8 When proposing new rules or amendments to rules, we are obliged (under section 155 of FSMA) to publish a cost-benefit analysis (CBA), unless we consider that the proposals will give rise to no costs or an increase in costs of minimal significance. As a matter of policy, we also provide a CBA for significant proposed guidance relating to rules.

6.9 The changes proposed in this chapter are intended to clarify the rules published with PS10/6 and are in line with the policy intention underlying those rules, which was that retail clients should be able to cancel an ongoing advice service and stop payment of the associated charges. We have set out guidance to explain this at COBS 6.1A.26G(5). As the transition to RDR rules has not yet happened, we believe that any additional regulatory costs will be minimal for any firms who may have previously misunderstood the policy intent. There is no evidence to suggest that the misunderstanding was widespread. Our supervisory and sector team knowledge suggests that firms are still considering how to structure and implement Adviser Charging. So this clarification is unlikely to add material cost to the RDR implementation process.

- 6.10** Our proposed amendment is particularly relevant to vertically integrated firms as it specifically refers to the retail client's right to cancel the ongoing advice service without having to withdraw his or her investment. We have considered whether such firms are likely to incur additional costs as a result, including any potential loss of revenue. If a retail client decided to cancel ongoing advice, the firm would continue to earn fees from the retention of the client's investments and would be able to charge the client for advice received to date.
- 6.11** We have also considered whether there is any potential for the changes in this chapter to affect Adviser Charging structures in a way that could have an adverse impact either for firms or clients. However, as firms will always be entitled to recover adviser charges for services provided up to the date of cancellation, irrespective of the structure of the adviser charges, we do not believe this to be the case.
- 6.12** Overall, we do not consider that business models should be significantly affected, or that the clarification will add materially to the cost estimates contained in the cost-benefit analysis in PS10/6.

Benefits

- 6.13** We believe the proposed rule change will benefit consumers by ensuring they can cancel an ongoing service for the provision of personal recommendations, and related services, without also needing to withdraw their investments, which could deter them from exercising their right to cancel the service.

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

Compatibility statement

- 6.14** As noted above, the change we have proposed in this chapter is intended to clarify the rules published with PS10/6, and is in line with the policy intention underlying those rules. We still believe that the rules as amended are compatible with our statutory objectives and the principles of good regulation.

Equality and diversity issues

- 6.15** We have assessed the equality and diversity impact of our proposal, and do not believe that it will give rise to any issues. However, we would welcome any comments respondents may have on this.

- 6.16** We would encourage firms (both product providers and adviser firms) to consider how they can meet their own responsibilities under the new legislation.

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7

Proposed amendments to the Compensation sourcebook

Introduction

- 7.1 This chapter describes proposed amendments to the Compensation sourcebook (COMP). The main amendment is proposed to enable certain corporate trustees of occupational pension schemes to make claims to the Financial Services Compensation Scheme (FSCS) in relation to a life insurance policy of an insurer in the same group, where the sponsoring employer is a ‘large employer’.
- 7.2 The FSCS is the UK’s statutory compensation fund for customers of authorised financial services firms. It can pay compensation if a firm is unable, or likely to be unable, to pay claims against it. This will generally be because the firm has stopped trading and has insufficient assets to meet claims, or is ‘in default’, as described in our rules.
- 7.3 We would make these amendments under section 138 (General rule-making power), section 156 (General supplementary powers), section 213 (The compensation scheme) and section 214 (General) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 7 and, subject to approval from the Board, the proposed commencement date is 6 October 2011. The proposals will be relevant to consumers who are members of occupational pension schemes where the trustee of the scheme is a company (a ‘corporate trustee’).
- 7.4 The proposal supplements changes that we consulted on in 2004¹⁸ for corporate trustees.

18 CP04/15: *Quarterly Consultation (No.2)* (October 2004)

Proposed amendments

7.5 The proposed amendments:

- extend eligibility to make claims to the FSCS if a life insurer¹⁹ fails to group affiliated²⁰ corporate trustees of occupational pension schemes where the sponsoring employer is ‘large’; and
- clarify our rules to confirm that, if a firm that is not a life insurer fails, group-affiliated corporate trustees of occupational pension schemes where the sponsoring employer is ‘large’ are not eligible to make claims to the FSCS.

7.6 Under our rules, claimants who are companies²¹ in the same group as the firm in default are generally not eligible to make claims to the FSCS. This means that any support to a company that is failing, has to come from other companies in that group and those companies cannot abdicate that responsibility and then benefit from compensation arrangements.

7.7 However, in 2005²² we amended our rules to enable corporate trustees of occupational, personal and stakeholder pension schemes, in the same group as a firm in default, to make claims to the FSCS where the underlying beneficiary would otherwise be an eligible claimant. The claims can relate to any business that is protected by FSCS; for example, deposits, investment business or insurance. Before this change, these trustees would have been barred from making a claim to the FSCS for pension scheme assets held by the trustees, even though the claim would be on behalf of underlying pension scheme members.

7.8 Trustees of a small self-administered scheme, or of an occupational pension scheme of an employer that is not a large company, large partnership or large mutual association (a large employer), are eligible to make claims to the FSCS in relation to any business that is protected by the FSCS. Where the trustees’ claim relates to a life insurance contract, the trustees are generally able to claim if the life insurer fails, whether or not the employer who set up the occupational pension scheme is a large employer.²³

7.9 However, under our rules²⁴, a corporate trustee of an occupational pension scheme in the same group as the life insurer cannot claim if the employer is a large employer. The current basis of eligibility for making claims on the FSCS by a corporate trustee of an occupational pension scheme is illustrated in the table below.

19 In this chapter, we use the term ‘life insurers’ to describe firms authorised to carry on life insurance business. These firms include both life insurers and some friendly societies

20 A corporate trustee of an occupational pension scheme in the same group as the life insurance company

21 The term used in the rules (COMP 4.2.2R(9)) is ‘bodies corporate’ in the same ‘group’. ‘Bodies corporate’ can be bodies which are not companies, but in the context of this proposal they are likely to be companies; therefore, we refer to ‘companies’ in this chapter

22 *Handbook Notice 43*, published 25 April 2005, Compensation Sourcebook (Amendment No 6) Instrument 2005 (FSA 2005/24). We received six responses to the consultation

23 COMP 4.3.2R. This follows the policy approach in the Policyholders Protection Act 1975 (PPA), which set up the previous compensation scheme for insurance company failures. There was no restriction relating to large employers under the PPA

24 COMP 4.2.2R(9)

	Eligibility to claim		
	Deposits	Investment	Life insurance
Non-group corporate trustee	Employer must not be large	Employer must not be large	Employer can be any size
Group affiliated corporate trustee	Employer must not be large	Employer must not be large	Employer must not be large

- 7.10** This means that, if a life insurer fails, the protection available from the FSCS for trustees of occupational pension schemes and underlying beneficiaries depends on the scheme structure the employer has chosen to adopt. Where the employer is a large employer, FSCS protection will depend on whether the trustee is a corporate trustee in the same group as the life insurer that issued the policies held by the trustees.
- 7.11** We do not think that this provides the appropriate degree of protection to consumers who are members of these occupational pension schemes. It also seems odd that the size of the employer is only relevant if the corporate trustee of the pension scheme is in the same group as the failed life insurer. We understand that some insurers who are aware of this issue have taken it into account in deciding whether to have individual or corporate trustees for their staff occupational pension schemes.
- 7.12** Therefore, we propose to amend COMP 4.2.2R(9) to enable a corporate trustee of an occupational pension scheme to make claims to the FSCS in relation to a life insurance policy where the sponsoring employer is a 'large employer' and the trustee is in the same group as the life insurer that issued the policy. This would bring their treatment into line with non-group affiliated corporate trustees.
- 7.13** We also propose to change our rules to make it clear that, in the event of other failures (i.e. not of a life insurer), corporate trustees of occupational pension schemes where the sponsoring employer is 'large' and the trustees are in the same group as the firm that has failed, are not eligible to make claims to the FSCS. This second change clarifies an existing rule, does not change its effect and remains in line with the treatment of non-group affiliated corporate trustees.

Q7.1: Do you agree that a corporate trustee of an occupational pension scheme should be eligible to make claims to the FSCS in relation to a life insurance policy where the trustee is in the same group as the life insurer that issued the policy and the sponsoring employer is a large employer (as is the current position for non-group affiliated trustees)?

Cost-benefit analysis

Affected population

- 7.14** It is difficult to estimate the number of occupational pension schemes that will be affected by this proposal and the value of the life insurance policies held by the corporate trustees of these schemes.
- 7.15** There are approximately 150 life insurers authorised by the FSA to carry on life insurance.²⁵ Under half (17 out of 38) of the respondents to a survey sent out to life insurers suggest that they have a group-affiliated corporate trustee, which acts as trustee of an occupational pension scheme. The responses also suggest that, in the majority of cases where there is a corporate trustee, the trustee acts for the life insurer's or life insurance group's staff pension scheme or schemes and not for the schemes of other employers. In some cases, the trustees act for occupational pension schemes, which are small self-administered schemes (SSASs). Currently, trustees of SSASs are eligible to make claims to the FSCS irrespective of the size of the employer so the change will not affect these schemes.
- 7.16** The number of schemes that a corporate trustee acts for varies greatly, from one or two where the trustees act only for the insurer's staff scheme or schemes, through to over 1,000 or over 20,000. Information provided by some insurers indicates that, in some cases, where trustees act for a large number of schemes, these are one-member schemes; for example, individual executive pension plans (EPPs) which an employer has set up for senior staff.

Costs to the FSA

- 7.17** The incremental costs to the FSA will be of minimal significance, and mainly relate to changes to the Handbook, when rule changes relate to the eligibility of people who can make claims to the FSCS and this does not impact on the FSA.

Costs to firms

- 7.18** Extending the categories of persons who are eligible to make claims to the FSCS means that firms, in particular life insurers, could face higher costs due to increased FSCS levies. These levies are split between management expenses and compensation costs.

²⁵ This excludes UK branches of EEA insurers and also 100 small friendly societies which are not required to make annual reports to the FSA

- 7.19 Management expenses include base costs which are incurred in running the scheme; and specific costs which are default-related costs, such as verifying and meeting claims for compensation. The base cost is distributed between all participant firms and any increase as a result of the proposals is not expected to be material. Specific costs will depend on the number of claimants and the resources required to verify the eligibility of claimants for FSCS compensation.

Compensation costs

- 7.20 The FSCS protects 90% of the value of benefits under life insurance policies, in the case of a life insurer defaulting. The potential compensation costs as a result of this proposal will depend on the likelihood of a life insurer failing, the increase in the number of eligible claimants as a result of this proposal and the value of their claims. The FSCS payouts will result in firms in the relevant FSCS sub-class(es) being levied to finance the payouts. These costs to firms generate an equivalent benefit to consumers. Although the costs are initially borne by firms, in the longer term they are likely to pass them on to their customers through increased charges.
- 7.21 The varying size of occupational pension schemes of large employers, with corporate trustees, in terms of the number of members in any scheme and the value of the policies held by the trustees of a scheme, makes it difficult to quantify the impact of this proposal in the case of a life insurer defaulting. In the past, there have been few instances of life insurers failing, and the implementation of Solvency II and ongoing prudential supervision work aims to reduce further the likelihood of a life insurer failing in the future. If a firm does not fail, these compensation costs do not materialise.
- 7.22 However, we estimate that, if a life insurer failed, the value of the additional benefits protected by the FSCS, expressed as a percentage of the insurer's total liabilities to life insurance policyholders, could range from 0.1% to as much as 10%. This estimate depends on a number of factors, including whether the trustees act only for the insurer or life insurance group's staff pension scheme(s) and/or the schemes of other employers.
- 7.23 This is considered an over-estimate as it includes policies already covered by the FSCS, such as schemes where the sponsoring employer is not large. It has not been possible to estimate the extent of this over-estimation.

Benefits

- 7.24** The main benefit of extending the eligibility of FSCS claims, is the additional protection for policyholders in the case of a life insurer failing. The cost of this is a transfer of funds from firms levied by the FSCS, to policyholders of the defaulted firm. As described above, the size of FSCS compensation is difficult to estimate, especially given the variation in the value of funds held by trustees of occupational pension schemes and the number of members of such schemes. However, preliminary figures indicate that the rule change could benefit thousands of members of occupational pension schemes in the case of a life insurer failing. Extending the eligibility of FSCS claims is also likely to increase market confidence.
- 7.25** Another benefit from this proposal is that it ensures consistent treatment between group and non-group affiliated corporate trustees, and helps clarify the meaning and intention of our rules. It is expected that this proposal will not have a material market impact.

Q7.2: Do you have any comment on our cost-benefit analysis (CBA) in relation to these proposals? Do you have any analysis or evidence that supports, contradicts or otherwise relates to this CBA?

Compatibility statement

- 7.26** We consider our proposals to be compatible with our general duties under section 2 of FSMA and with the statutory objectives set out in sections 3 to 6. Our proposals are designed to meet our statutory objectives of consumer protection and market confidence.
- 7.27** Our proposals will ensure that members of certain occupational pension schemes with a corporate trustee will be able to benefit from FSCS protection in the same way as members of equivalent schemes that are structured differently.
- 7.28** Our proposal will also remove an anomaly in our current approach regarding FSCS protection in relation to occupational pension schemes. This should make our rules more accessible and the approach in our rules more consistent in their application to similar circumstances which may arise in the event of the failure of a life insurer. This, in turn, should help to ensure that our rules meet our market confidence objective.
- 7.29** 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. The costs associated with this proposal are given above and will only materialise in the case of a life insurer defaulting. The likelihood of such an event occurring is considered to be low, given that only one life insurer has failed in the past. In the case of a default, the additional compensation costs incurred will be spread across other firms in the industry, and transferred to consumers who, without this proposal, would not have been compensated.

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8

Proposed amendments to the Perimeter Guidance manual

Introduction

- 8.1 This chapter proposes amendments to the Perimeter Guidance manual (PERG) in relation to property investment clubs and land investment schemes.
- 8.2 Recent litigation has revealed the need to make it clear that informality in agreements is not a barrier to an arrangement amounting to a collective investment scheme. In considering whether a property investment club or land investment scheme may be a collective investment scheme, we focus on the substance of how the scheme is actually operated.
- 8.3 We also think that this would be a good opportunity to clarify a number of issues, including that:
- 1) investors in collective investment schemes do not need to be holding an interest in the underlying property of the scheme;
 - 2) in relation to land investment schemes in particular, seeking planning permission for, or marketing of, the land as a whole are features of management in the same way as actually obtaining such permission or disposing of the land; and
 - 3) it is irrelevant who the original owner of the land is.
- 8.4 We intend to issue the proposed guidance using our powers under section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The proposed text of the amendments is set out in Appendix 8.

- 8.5 Our proposals are aimed primarily at businesses that may have questions about the scope of the activities involved in this consultation.

Proposed amendments

- 8.6 Q1 in PERG 11.1 provides a background to the guidance on property investment clubs and land investment schemes set out in PERG 11.2 and 11.3. The proposed amendments to Q1 aim to clarify that the guidance applies to a wide range of arrangements, including those where offers to sell plots of land are not supported by written agreements and the responsibility for obtaining planning permission or looking to market the land is informal in nature, or different in reality to what may be stated in the documentation.

Q8.1: Do you have any comments on the draft text of the proposed guidance in PERG 11.1?

- 8.7 We propose amendments to the responses to Q4, Q6 and Q7 in PERG 11.2. Q4 clarifies that ownership rights over the relevant plot of land is not a relevant factor in deciding whether a collective investment scheme arises. Q6 and Q7 aim to reinforce the importance, when assessing whether or not an arrangement amounts to a collective investment scheme, of looking beyond formal agreements and considering how an arrangement operates in practice.

Q8.2: Do you have any comments on the draft text of the proposed guidance on PERG 11.2?

- 8.8 The amendments proposed to the question and response to Q20 in PERG 11.3 aim to make it clear that a firm's activities may amount to the operation of a collective investment scheme even if it does not undertake to obtain planning permission or to find buyers in the future. Offering to seek planning permission, or agreeing to market the land, may be enough for a business to be found to be managing the property as a whole for the purposes of the collective investment scheme definition.
- 8.9 The proposed text also makes it clear that, in deciding whether a collective investment scheme has been created, all relevant factors will be taken into account, including written statements, contractual provisions, the action of the parties and any representations made to the investor by the seller or his or her employees, agents and representatives.
- 8.10 There is also guidance in Q20 that deals with situations where the seller might be purporting to establish and/or operate a collective investment scheme.

- 8.11** The new question proposed at Q20A makes it clear that the answers to Q20 would not be different where the land for sale is owned by someone other than the person putting the arrangements into place, and that it would be possible for a collective investment scheme to exist where a third party is responsible for management of the land after sale.
- 8.12** The new question proposed at Q20B makes it clear that it does not matter if the arrangements only relate to plots of land within a larger site, which include plots that do not form part of the same arrangements.
- 8.13** The new question proposed at Q20C gives guidance on cases where there may be management as a whole even if each individual investor is given bespoke representations about their particular plots of land.
- 8.14** The proposed amendments to the response to Q21 are intended to clarify the position where a business attempts to disown statements made by its representatives. It is not unreasonable for consumers to rely on information they receive from a business (its staff or its agents) and a business will generally be deemed to be responsible for any representations made to potential investors.

Q8.3: Do you have any comments on the draft text of the proposed guidance in Q20, Q20A, Q20B, Q20C and Q21 in PERG 11.3?

Cost-benefit analysis

- 8.15** A cost-benefit analysis of the proposed amendment is not required in this instance because we are issuing guidance on existing legislation (i.e. on regulated activities concerning collective investment schemes) rather than on rules made by us.

Compatibility statement

- 8.16** We propose making changes to PERG that improve the clarity of the guidance on existing legislation. We believe our proposals are compatible with our regulatory objectives, are the most appropriate way of meeting our objectives; and take account of the principles of good regulation in section 2(3) of FSMA.

Equality and diversity

- 8.17 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.

Contact

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

Zaglul Islam
GCD Wholesale, Perimeter Team
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Telephone: 020 7066 8846
Fax: 020 7066 3333
Email: CP11_11@fsa.gov.uk

9

General provisions on reporting

Introduction

- 9.1 This chapter sets out our proposals to simplify the way firms submit written reports to the FSA. This proposal is relevant to all firms that currently submit written reports in accordance with Supervision Manual (SUP) Chapter 16.
- 9.2 The proposal would change the requirement for some firms which currently submit their written reports to the firm's usual supervisory contact at the FSA. Instead, these firms would be required to submit their written reports to a central reporting area, which already receives written reports from most firms.
- 9.3 This proposal would require a change in our handbook rules. These amendments would be made under section 138 (General rule-making power), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook rule changes are presented in Appendix 9.

Proposed amendments

- 9.4 Firms are required to submit regulatory returns on a regular basis. Submitting data for most firms takes place through an online regulatory reporting system (GABRIEL). However, certain written reports are submitted to us outside of GABRIEL via alternative methods, such as post, hand delivery, email or fax.

- 9.5 There is a dedicated central reporting team that handles the regulatory data received via these alternative methods. However, as a result of the current rule, firms who have a dedicated supervisory contact usually address their written reports accordingly, with the result that these reports are not being received by the dedicated team. This current mechanism creates inconsistencies in the way in which we collect regulatory data. We are keen to ensure that all regulatory data received is collected centrally before onward transmission to the firm's usual supervisory contact.
- 9.6 Therefore, we propose to remove the rule stating that a written report must be 'given to or addressed for the attention of the firm's usual supervisory contact'. Instead, we intend to require all such written reports to be delivered to the central reporting team. We also propose to remove the reference in the rule to the Early Reporting System, which has been replaced by GABRIEL and is no longer operational.
- 9.7 It is expected that, in time, this rule change will also enable us to enhance our intrusive supervisory regime by improving the enforcement of reporting deadlines. A simplified method of collecting regulatory reports should allow the central reporting team to monitor submissions from all firms, facilitating the consistent application of the rule that allows us to levy an administrative fee on firms who fail to submit their reports on time.

Cost-benefit analysis

- 9.8 Section 155 of FSMA requires us to publish a cost-benefit analysis of the implications of the proposed amendments. This requirement does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
- 9.9 In view of the nature of the proposed changes, we expect that any increase in costs will be of minimal significance. The proposals are administrative changes and, because the nature of reporting affected by this proposal is paper-based, we do not expect firm systems will need to be altered as a result of this proposal. This expectation is informed by discussions with supervision specialists at the FSA.

Compatibility statement

- 9.10 The data collected through observing SUP 16 rules are designed to help us meet our consumer protection and market confidence objectives. The proposals in this consultation will have no impact on our other statutory objectives.

- 9.11** As we expect the costs of proposed changes to be minimal, we believe that the impact of our proposals is proportionate to their expected benefits. We also believe that our efficiency will be enhanced by reducing duplication of information processing and deploying staff across various areas of the organisation. This will enable us to focus supervisory resources more effectively to help us meet our intrusive supervisory agenda. It will also ensure that we are consistent in our method of record-keeping and will enable us to enhance our baseline supervision of firms.
- 9.12** For these reasons, we believe that we have had regard to the principles of good regulation and consider these proposals to be the most appropriate way of meeting our statutory objectives.

Contact

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

Mark Randall
The Authorisations Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Telephone: 020 7066 1368
Fax: 020 7066 3905
Email: CP11-11@fsa.gov.uk

Appendix 1

List of questions

Chapter 2:

- Q2.1:** Do you agree with our proposed new rule to make it clear that EEA branches of UK common platform firms are subject both to UK and to their host state's requirements for any investment services or activities they conduct?

Chapter 3:

- Q3.1:** Do you agree that we should add these qualifications to our lists?
- Q3.2:** Do you agree that there is no need to separately list any regulatory modules in Appendix 4E apart from the overseeing activities?
- Q3.3:** If your answer to Q3.2 is yes then do you think we should remove all regulatory modules now, or as we review the underlying examination standards?
- Q3.4:** Do you have any information based on the four criteria in paragraph 3.14 that may influence our final decision to include the proposed accredited bodies in our Handbook?
- Q3.5:** Do you agree that we should exclude 'personal pension schemes' from activities in TC Appendix 1 that relate to 'securities'?

Chapter 4:

- Q4.1:** Do you agree with our proposal to amend SUP 16.12 reporting requirements and SUP 16 Annex 25G guidance document?
- Q4.2:** Do you agree with our proposal to amend the Glossary definition of 'DLG by default'?
- Q4.3:** Do you agree with our proposal to amend the simplified approach in BIPRU 12.6?
- Q4.4:** Do you agree with our proposal to amend TP 30?
- Q4.5:** Do you agree with our proposal to amend the Glossary definition of 'low frequency liquidity reporting firm'?

Chapter 5:

- Q5.1:** Do you agree that the proposed guidance on use of the terms 'guaranteed', 'protected' or 'secure' is appropriate?

Chapter 6:

- Q6.1:** Do you agree with our proposed amendment clarifying that a retail client can cancel an ongoing service for the provision of personal recommendations and related services without also having to withdraw his investments?
- Q6.2:** Do you agree that the same change is not needed for GPPs, under the Consultancy Charging rules? If not, please explain your reasons.
- Q6.3:** Do you agree with our analysis of the costs and benefits of our proposed change?

Chapter 7:

- Q7.1:** Do you agree that a corporate trustee of an occupational pension scheme should be eligible to make claims to the FSCS in relation to a life insurance policy where the trustee is in the same group as the life insurer that issued the policy and the sponsoring employer is a large employer (as is the current position for non-group affiliated trustees)?
- Q7.2:** Do you have any comment on our cost-benefit analysis (CBA) in relation to these proposals? Do you have any analysis or evidence that supports, contradicts or otherwise relates to this CBA?

Chapter 8:

- Q8.1:** Do you have any comments on the draft text of the proposed guidance in PERG 11.1?
- Q8.2:** Do you have any comments on the draft text of the proposed guidance on PERG 11.2?
- Q8.3:** Do you have any comments on the draft text of the proposed guidance in Q20, Q20A, Q20B, Q20C and Q21 in PERG 11.3?

Appendix 2

Proposed additional rule in Chapter 6 of the Senior Management Arrangements, Systems and Controls sourcebook

Appendix 3

Proposed changes to the Training and Competence sourcebook

Appendix 4

Proposed minor changes to the liquidity regime

Appendix 5

Proposed change to guidance on the use of certain terms in promotions

Appendix 6

Retail Distribution Review – Adviser Charging

Appendix 7

Proposed amendments to the Compensation sourcebook

Appendix 8

Proposed amendments to the Perimeter Guidance manual

Appendix 9

General provisions on reporting

Appendix 2

Proposed additional rule in Chapter 6 of the Senior Management Arrangements, Systems and Controls sourcebook

**SENIOR MANAGEMENT ARRANGEMENTS, SYSTEMS AND CONTROLS
(AMENDMENT NO 3) 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 156 (General supplementary powers); and
 - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

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

Amendments to the Handbook

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

Notes

- E. In the Annex to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

Citation

- F. This instrument may be cited as the Senior Management Arrangements, Systems and Controls (Amendment No 3) Instrument 2011.

By order of the Board
[*date*]

Annex

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

In this Annex, underlining indicates new text.

6.1 Compliance

...

- 6.1.7 R (1) This rule applies to a *common platform firm* conducting *investment services and activities* from a *branch* in another *EEA State*.
- (2) References to the *regulatory system* in SYSC 6.1.1R, SYSC 6.1.2R and SYSC 6.1.3R apply in respect of a *firm's branch* as if "*regulatory system*" includes a *Host State's* requirements under *MiFID* and the *MiFID implementing Directive* which are applicable to the *investment services and activities* conducted from the *firm's branch*.

[Note: article 13(2) of *MiFID*]

Appendix 3

Proposed changes to the Training and Competence sourcebook

TRAINING AND COMPETENCE SOURCEBOOK (QUALIFICATIONS AMENDMENTS NO 2) AND ACCREDITED BODIES INSTRUMENT 2011

Powers exercised

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

Commencement

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

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Training and Competence sourcebook (TC) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Training and Competence Sourcebook (Qualifications Amendments No 2) and Accredited Bodies Instrument 2011.

By order of the Board
[*date*]

Annex A**Amendments to the Glossary of definitions**

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

[Editor's Note: The effect of the amendments shown in this Annex will be to revoke the changes made in Part 2 of Annex A to the Retail Distribution (Training and Competence) Instrument 2011 (FSA 2011/5).]

accredited body

any of the following bodies recognised by the *FSA* ~~to act as an accredited body~~ for the purpose of providing the independent verification required under TC 2.1.27R:

- (a) CFA Society of the UK;
- (b) The Chartered Institute for Securities and Investment;
- (c) The Chartered Institute of Bankers in Scotland;
- (d) The Chartered Insurance Institute;
- (e) The Institute of Financial Planning;
- (f) The Institute of Financial Services.

Annex B

Amendments to the Training and Competence sourcebook (TC)

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

Qualification requirements before starting activities

...

2.1.7 R A *firm* must ensure that an *employee* does not carry on any of the following activities without first attaining each module of an *appropriate qualification*:

(1) [deleted]

(1A) advising on and dealing in *securities* which are not *stakeholder pension schemes*, *personal pension schemes* or *broker funds*;

...

...

Appendix 1.1 Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

App 1.1.1 R

Activity		Products/Sector	Is there an appropriate qualification requirement?
<i>Designated investment business</i> carried on for a <i>retail client</i>			
...			
Advising	2	<i>Securities</i> which are not <i>stakeholder pension schemes</i> , <u><i>personal pension schemes</i></u> or <i>broker funds</i>	Yes
...			
Advising and dealing	12	<i>Securities</i> which are not <i>stakeholder pension schemes</i> , <u><i>personal pension schemes</i></u> or <i>broker funds</i>	Yes
...			
Dealing	13A	<i>Securities</i> which are not <i>stakeholder pension schemes</i> , <u><i>personal pension schemes</i></u> or <i>broker funds</i>	No

		<i>funds</i>	
...			

continued

Appendix 4E – Appropriate Qualification tables

Qualification table for : Advising on (but not dealing in) securities (which are not stakeholder pension schemes, personal pension schemes or broker funds) – Activity number 2 in TC Appendix 1.1.1R

Qualification	Qualification provider	Key
...		
Associate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)	b
<u>Certificate in Investment Planning</u>	<u>Chartered Institute of Bankers in Scotland</u>	<u>c</u>
<u>Investment paper (post-August 1994 syllabus)</u>	<u>Chartered Institute of Bankers in Scotland</u>	<u>c</u>
SFA Securities Representatives Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	c
...		
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	b
Associate or Fellow (life and pensions route only)	Chartered Insurance Institute	b
<u>Financial Planning Certificate</u>	<u>Chartered Insurance Institute</u>	<u>c</u>
<u>G70 paper of the Advanced Financial Planning Certificate</u>	<u>Chartered Insurance Institute</u>	<u>c</u>
<u>Certificate for Financial Advisers (Pre 31/10/2004)</u>	<u>ifs School of Finance (formerly the Chartered Institute of Bankers)</u>	<u>c</u>
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in England and Wales</u>	<u>c</u>
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in Ireland</u>	<u>c</u>
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in Scotland</u>	<u>c</u>
...		
Elementary, Intermediate and International Capital Markets course	Korea Securities Trading Institute	d
<u>Module B(ii), Securities and Portfolio Management</u>	<u>Law Society of England and Wales</u>	<u>d</u>
...		

Qualification table for : Advising on (but not dealing in) Derivatives – Activity number 3 in TC Appendix 1.1.1R

Qualification	Qualification Provider	Key
...		
Fellow by examination	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment)	b

	Management & Research)	
<u>Certificate in Investment Planning</u>	<u>Chartered Institute of Bankers in Scotland</u>	<u>c</u>
<u>Investment paper (post August 1994 syllabus)</u>	<u>Chartered Institute of Bankers in Scotland</u>	<u>c</u>
...		
<u>Advanced Financial Planning Certificate (must include a pass in G70 paper)</u>	Chartered Insurance Institute	b
<u>Associate or Fellow (life and pensions route only)</u>	Chartered Insurance Institute	b
<u>Fellow or Associate</u>	Faculty or Institute of Actuaries	a
<u>Financial Planning Certificate</u>	<u>Chartered Insurance Institute</u>	<u>c</u>
<u>G70 paper of the Advanced Financial Planning Certificate</u>	<u>Chartered Insurance Institute</u>	<u>c</u>
<u>Certificate for Financial Advisers (pre 31/10/2004)</u>	<u>ifs School of Finance (formerly Chartered Institute of Bankers)</u>	<u>c</u>
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in England and Wales</u>	<u>c</u>
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in Ireland</u>	<u>c</u>
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in Scotland</u>	<u>c</u>
...		
<u>Investment Practice paper of the Investment Management Certificate</u>	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/Institute of Investment Management & Research)	d
<u>Investment Paper (pre-August 1994 syllabus)</u>	<u>Chartered Institute of Bankers in Scotland</u>	<u>d</u>
...		
<u>International Fixed Income and Derivatives (IFID) Certificate Programme</u>	ICMA Centre/ University of Reading (Formerly ISMA Centre/ University of Reading)	d
<u>Investment Management Paper from the Associateship</u>	<u>ifs School of Finance (formerly the Chartered Institute of Bankers)</u>	<u>d</u>
<u>Investment Planning Paper – Paper 2</u>	<u>Institute of Bankers in Ireland</u>	<u>d</u>
...		
<u>Representative of Public Securities Qualification – Type 1</u>	Japanese Securities Dealers Association	d
<u>Module B(ii), Securities and Portfolio Management</u>	<u>Law Society of England and Wales</u>	<u>d</u>
...		

Qualification table relating to : Advising on *Packaged Products* (which are not *broker funds*) and *Friendly Society* tax-exempt policies - Activity Numbers 4 and 6 in TC Appendix 1.1.1 R

Qualification	Qualification Provider	Key
----------------------	-------------------------------	------------

...		
Certificate in Investment Planning (Post 17/09/2004)	Chartered Institute of Bankers in Scotland	c
<u>Investment Paper (post-August 1994 Syllabus)</u>	<u>Chartered Institute of Bankers in Scotland</u>	<u>c</u>
...		
Diploma for Financial Advisers (post 2010)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	a
Certificate for Financial Advisers (Post 1/11/2004)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	e c
Certificate for Financial Advisers (Pre 31/10/2004)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	e c
Professional Certificate in Banking (PCertB) (where candidate has passed the Practice of Financial Advice module)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	a
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in England and Wales</u>	<u>c</u>
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in Ireland</u>	<u>c</u>
<u>Initial test of competence</u>	<u>Institute of Chartered Accountants in Scotland</u>	<u>c</u>
...		
Fellowship	Institute of Financial Planning	b
<u>Module B(i) Retail Branded/Packaged Products</u>	<u>Law Society of England and Wales</u>	<u>d</u>
...		
Post Graduate in Financial Services (1995 to 2001)	University of the West of England	b
<u>Investment Management Paper from the Associateship</u>	<u>ifs School of Finance (formerly the Chartered Institute of Bankers)</u>	<u>d</u>
<u>Investment Planning Paper 2</u>	<u>Institute of Bankers in Ireland</u>	<u>d</u>
<u>Investment paper (pre-August 1994 syllabus)</u>	<u>Chartered Institute of Bankers in Scotland</u>	<u>d</u>
Certificate in Investment Planning Paper 1 (Pre 31/10/2004)	Chartered Institute of Bankers in Scotland	e
Certificate in Investment Planning – <u>Paper 1</u> (Post 17/09/2004)	Chartered Institute of Bankers in Scotland	e
...		

Qualification table for : Advising on, and dealing in *Securities* (which are not *stakeholder pension schemes*, *personal pension schemes* or *broker funds*) – Activity number 12 in TC Appendix 1.1.1R

Qualification	Qualification Provider	Key
----------------------	-------------------------------	------------

...		
Associate	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)	b
<u>Investment Management Certificate (Level 3)</u>	<u>CFA Society of UK</u>	<u>c</u>
<u>Associateship – must include a pass in the investment paper</u>	<u>Chartered Institute for Bankers in Scotland</u>	<u>b</u>
...		
SFA Securities and Financial Derivatives Representative Examination	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	b
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	b
<u>G70 paper of the Advanced Financial Planning Certificate</u>	<u>Chartered Insurance Institute</u>	<u>c</u>
Associateship (must include a pass in the Investment Paper)	ifs School of Finance (Formerly the Chartered Institute of Bankers)	b
London Stock Exchange Full Membership Exams – where candidates hold three or four papers or have both the Stock Exchange Practice and Techniques of Investment papers	London Stock Exchange (records now kept by The Chartered Institute for Securities & Investment; Formerly the Securities & Investment Institute)	<u>a-b</u>
BA (Hons) Financial Services, Planning and Management	Manchester Metropolitan University	<u>e-a</u>
TSA Registered Representative Examinations	The Securities Association	<u>b c</u>
...		
Trainee Dealers Representative Examination	Kuala Lumpur Stock Exchange	d
<u>Module B(ii), Securities and Portfolio Management</u>	<u>Law Society of England and Wales</u>	<u>d</u>
...		

Qualification table for : Advising on and dealing with or for clients in <i>Derivatives</i> – Activity number 13 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...		
Fellow by examination	CFA Society of UK (Formerly United Kingdom Society of Investment Professionals/ Institute of Investment Management & Research)	b
<u>Investment Management Certificate</u>	<u>CFA Society of UK</u>	<u>c</u>
...		
Financial Futures and Options paper of the Diploma	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	a
Advanced Financial Planning Certificate (must include a pass in G70 paper)	Chartered Insurance Institute	b

<u>G70 Paper of Advanced Financial Planning Certificate</u>	<u>Chartered Insurance Institute</u>	<u>c</u>
...		
Representative of Public Securities Qualifications – Type 1	Japanese Securities Dealers Association	d
<u>Module B(ii), Securities and Portfolio Management</u>	<u>Law Society of England and Wales</u>	<u>d</u>
...		

...

Qualification table for : <i>Advising on syndicate participation at Lloyd's</i> - Activity number 9 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
Lloyd's Market Certificate	Lloyd's/ Chartered Insurance Institute	1
<u>Award in London Market Insurance</u>	<u>Chartered Insurance Institute</u>	<u>1</u>
Lloyd's and London Market Introductory Test (Formerly the Lloyd's Introductory Test)	Lloyd's	1

...

Qualification table for : <i>Overseeing on a day to day basis safeguarding and administering investments or holding client money</i> – Activity number 16 in TC Appendix 1.1.1R		
Qualification	Qualification Provider	Key
...
Investment Administration Qualification – ISA and PEP Administration Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
<u>Investment Administration Qualification – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)</u>	<u>6</u>
<u>Investment Operations Certificate – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)</u>	<u>6</u>
...		

Qualification table for : Overseeing on a day to day basis administrative functions in relation to managing *investments*

- (i) arranging settlement;
- (ii) monitoring and processing corporate actions;
- (iii) client account administration, liaison and reporting including valuation and performance measurement;
- (iv) ISA, PEP or CTF administration;
- (v) Investment trust savings scheme administration.

Activity number 17 in TC Appendix 1.1.1R

Qualification	Qualification Provider	Key
...
Investment Operations Certificate – Private Client Administration Module	The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)	6
<u>Investment Administration Qualification – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)</u>	<u>6</u>
<u>Investment Operations Certificate – Collective Investment Schemes Administration Module</u>	<u>The Chartered Institute for Securities & Investment (Formerly the Securities & Investment Institute)</u>	<u>6</u>
...		

Appendix 4

Proposed minor changes to the liquidity regime

**LIQUIDITY STANDARDS (MISCELLANEOUS AMENDMENTS NO 3)
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 [*date*].

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Liquidity Reporting (Miscellaneous Amendments No 3) Instrument 2011.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

- DLG by default* (in relation to a *UK ILAS BIPRU firm* (a *group liquidity reporting firm*) and any reporting period under *SUP 16* (Reporting requirements)) the *firm* and each *person* identified in accordance with the following:
- (a) (in a case in which the *firm* is the only *UK ILAS BIPRU firm* in its *group*) that *person* meets any of the following conditions for any part of that period:
 - (i) that *person* provides material support to the *firm* against *liquidity risk*; or
 - (ii) that *person* is committed to provide such support or would be committed to do so if that *person* were able to provide it; or
 - (iii) the *firm* has reasonable grounds to believe that that *person* would supply such support if asked or would do so if it were able to provide it; or
 - (iv) the *firm* provides material support to that *person* against *liquidity risk*; or
 - (v) the *firm* is committed to provide such support to that *person* or would be committed to do so if the *firm* were able to provide it; or
 - (vi) the *firm* has reasonable grounds to believe that that *person* would expect the *firm* to supply such support if asked or that the *firm* would do so if it were able to provide it; or
 - (b) (in a case in which the *firm* is not the only *UK ILAS BIPRU firm* in its *group*):
 - (i) each of those other *UK ILAS BIPRU firms*; and
 - (ii) each *person* identified by applying the tests in (a) separately to the *firm* and to each of those other *UK ILAS BIPRU firms*, so that applying (b) to the *firm* and to each of those *UK ILAS BIPRU firms* results in their having the same *defined liquidity group*;
 - (iii) no *DLG by default* exists where the putative *DLG* consists only of *UK ILAS BIPRU firms*.

low frequency liquidity reporting firm any of the following:

- (a) a *simplified ILAS BIPRU firm*; or
- (b) a *standard ILAS BIPRU firm* whose most recent *annual report and accounts* show balance sheet assets of less than £15 billion (or its equivalent in foreign currency translated into sterling at the balance sheet date); or

...

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.

12.6.15 R The credit pipeline component is the sum represented by 25% of a *firm's* credit facilities offered to its ~~retail~~ *customers* but which are yet to be drawn down, including:

- (1) offers to make loans secured on residential property;
- (2) overdraft facilities; and
- (3) credit card facilities.

...

12.6.17 G In mathematical terms the calculation in *BIPRU* 12.6.9R and *BIPRU* 12.6.16R may be represented as follows:

<u>Liquidity Buffer \geq Wholesale net cash outflow component + Retail and SME deposit component + Credit pipeline component</u>	
<u>Liquidity buffer</u>	$FSA048_{18,1} + FSA048_{19,1} + FSA048_{6,1} + FSA048_{6,2} + FSA048_{25,2} + FSA048_{34,2}$ $+ \inf \{f(x) : x = 1,2,3 \dots y\}$ <p>where :</p> $f(x) = \sum_{m=1}^x FSA047_{6,m} + \sum_{m=1}^x FSA047_{25,m} + \sum_{m=1}^x FSA047_{34,m}$
<u>Retail and SME deposit component</u>	$\left(0.2 \times \sum_{n=53}^{54} \sum_{m=1}^{10} FSA048_{n,m} \right) + \left(0.1 \times \sum_{m=1}^{10} FSA048_{55,m} \right)$
<u>Credit pipeline component</u>	$0.25 \times \left(\sum_{n=59}^{69} FSA048_{n,1} \right)$
<u>Wholesale net cash outflow component</u>	$\left \min \left(0, \left(\sum_{n=44}^{51} FSA048_{n,1} \right) + \left(\sum_{m=1}^5 FSA048_{52,m} \right) + FSA048_{56,1} + \inf \{g(x) : x = 1,2,3 \dots y\} \right) \right $ <p>where :</p> $g(x) = \sum_{m=1}^y \left[\left(\sum_{n=20}^{23} FSA047_{n,m} \right) + \left(\sum_{n=26}^{30} FSA047_{n,m} \right) + \left(\sum_{n=35}^{51} FSA047_{n,m} \right) + FSA047_{57,m} \right]$

Where :

y = number of business days in three months

$FSA_{xxx}_{i,j}$ = The entry in FSAXXX row i column j

$\inf \{f(x) : x = 1,2,3\}$ represents the greatest lower bound of the function $f(x)$ over the range $x = 1,2,3$

Liquidity Buffer \geq Wholesale net cash outflow component + Retail and SME deposit component +

Credit pipeline component

<u>Liquidity buffer</u>	$FSA048_{18,1} + FSA048_{19,1} + FSA048_{6,1} + FSA048_{6,2} + FSA048_{25,2} + FSA048_{34,2}$ $+ \inf \{f(x) : x = 1,2,3..y\}$ <p>where :</p> $f(x) = \sum_{m=1}^x FSA047_{6,m} + \sum_{m=1}^x FSA047_{25,m} + \sum_{m=1}^x FSA047_{34,m}$
<u>Retail and SME deposit component</u>	$\left(0.2 \times \sum_{n=53}^{54} \sum_{m=1}^{10} FSA048_{n,m} \right) + \left(0.1 \times \sum_{m=1}^{10} FSA048_{55,m} \right)$
<u>Credit pipeline component</u>	$0.25 \times \left(\sum_{n=59}^{69} FSA048_{n,1} \right)$
<u>Wholesale net cash outflow component</u>	$\min \left(0, \left(\sum_{n=20}^{22} FSA048_{n,1} \right) + \left(\sum_{n=26}^{30} FSA048_{n,2} \right) + \left(\sum_{n=35}^{39} FSA048_{n,2} \right) + \left(\sum_{n=44}^{51} FSA048_{n,1} \right) + \right. \\ \left. + \left(\sum_{m=1}^5 FSA048_{52,m} \right) + FSA048_{56,1} + \inf \{g(x) : x = 1,2,3..y\} \right)$ <p>where :</p> $g(x) = \sum_{m=1}^y \left[\left(\sum_{n=20}^{23} FSA047_{n,m} \right) + \left(\sum_{n=26}^{30} FSA047_{n,m} \right) + \left(\sum_{n=35}^{51} FSA047_{n,m} \right) + FSA047_{57,m} \right]$

Where :

y = number of business days in three months

$FSA_{xxx}_{m,n}$ = The entry in FSAXXX row m column n

$\inf \{f(x) : x = 1,2,3\}$ represents the greatest lower bound of the function f(x) over the range x = 1,2,3

TP 30 Liquidity floor for certain banks

Application

30.1 R *BIPRU* TP 30 applies to a *firm* which as at 1 December 2009 is a *standard ILAS BIPRU firm* and which as at 30 November 2009 calculated its liquidity resources in accordance with Chapter LM of *IPRU(BANK)*.

Duration of transitional provisions

30.2 R *BIPRU* TP 30 applies:

- (1) in the case of an *incoming EEA firm* or a *third country BIPRU firm*, from 1 November 2010 until the earlier of the date on which the *firm*

receives *individual liquidity guidance* from the *FSA* and ~~30 November 2011~~ 31 December 2012; and

- (2) in the case of any other *firm*, from 1 October 2010 until the earlier of the date on which the *firm* receives *individual liquidity guidance* from the *FSA* and ~~30 November 2011~~ 31 December 2012.

Transitional provisions

30.3 R A *standard ILAS BIPRU firm* falling into *BIPRU TP 30.1* must ensure that at all times between 1 October 2010 or 1 November 2010 (as relevant) and the expiry of *BIPRU TP 30* it maintains liquidity resources which are no less in amount than the higher of:

- (1) the amount ~~it~~ it assesses as adequate in its *ILAA*; and
- (2) the amount that it would have maintained during that period had it calculated its liquidity resources solely in accordance with Chapter LM of *IPRU(BANK)* in the form in which it appeared on 30 September 2010 or 31 October 2010 (as relevant).

Annex C

Amendments to the Supervision manual (SUP)

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

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 <i>firm</i> , applicable <i>data items</i> and reporting format (Note 1)						
	<i>UK bank</i>	<i>Building society</i>	<i>Non-EEA bank</i>	<i>EEA bank that has permission to accept deposits, other than one with permission for cross border services only</i>	<i>EEA bank that does not have permission to accept deposits, other than one with permission for cross border services only</i>	<i>Credit union</i>	<i>Dormant account fund operator (note 15)</i>
...							
Pricing data	FSA052 (Notes 17, 21 and 22 and 24)	FSA052 (Notes 17, 21 and 22 and 24)	FSA052 (Notes 17, 19, 21 and 22 and 24)	FSA052 (Notes 17, 19, 21 and 22 and 24)	FSA052 (Notes 17, 19, 21 and 22 and 24)		
...							
...							
<u>Note 24</u>	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>						

...

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
...								
Pricing data	FSA052 (Notes 27, 30 and 31 and 33)							
...								
...								
Note 33	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>							

...

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			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
...								
Pricing data	FSA052 (Notes 24, 27 and 28 and 30)							
...								
...								
Note 30	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>							

...

16.12.22A 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	<i>Firms' prudential category and applicable data item (note 1)</i>					
	<i>BIPRU 730k firm</i>	<i>BIPRU 125k firm and UCITS investment firm</i>	<i>BIPRU 50k firm</i>	<i>Exempt CAD firms subject to IPRU(INV) Chapter 13</i>	<i>Firms (other than exempt CAD firms) subject to IPRU(INV) Chapter 13</i>	<i>Firms that are also in one or more of RAGs 1 to 6 and not subject to IPRU(INV) Chapter 13</i>
...						
Pricing data	FSA052 (Notes 17, 20 and 21 and 23)					
...						
...						
<u>Note 23</u>	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>					

...

16.12.25A 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	<i>Firms' prudential category and applicable data item (note 1)</i>							
	<i>BIPRU</i>			<i>Firms other than BIPRU firms</i>				
	730K	125K	50K	<i>IPRU (INV) Chapter 3</i>	<i>IPRU (INV) Chapter 5</i>	<i>IPRU (INV) Chapter 9</i>	<i>IPRU (INV) Chapter 13</i>	<i>UPRU</i>
...								
Pricing data	FSA052 (Notes 22, 25 and 26 and 28)							
...								
...								
<u>Note 28</u>	<u>This data item must be reported only in the currencies named in FSA052, so that liabilities in GBP are reported in GBP in rows 1 to 4, those in USD are reported in USD in rows 5 to 8, and those in Euro are reported in Euro in rows 9 to 12. Liabilities in other currencies are not to be reported.</u>							

SUP 16 Annex 25G	FSA052 Pricing Data ... Currency <u>A firm should ensure its wholesale liabilities denominated in sterling are reported in sterling; those in US dollars are reported in US dollars; and those in euro are reported in euro.</u> 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 <i>data item</i> ...
-----------------------------------	---

Appendix 5

Proposed change to guidance on the use of certain terms in promotions

FINANCIAL PROMOTIONS (AMENDMENT) INSTRUMENT 2011

Powers exercised

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

Commencement

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

Amendments to the Handbook

- C. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex A to this instrument.
- D. The Banking: Conduct of Business sourcebook (BCOBS) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Financial Promotions (Amendment) Instrument 2011.

By order of the Board
[*date*]

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

- 4.2.5 G ~~[deleted]~~ A communication or a *financial promotion* should not describe a feature of a product or service as “guaranteed”, “protected” or “secure”, or use a similar term unless:
- (1) that term is capable of being a fair, clear and not misleading description of it; and
 - (2) the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

Annex B

Amendments to the Banking: Conduct of Business sourcebook (BCOBS)

In this Annex, underlining indicates new text.

- 2.2.5 G A communication or a *financial promotion* should not describe a feature of a product or service as “guaranteed”, “protected” or “secure”, or use a similar term unless:
- (1) that term is capable of being a fair, clear and not misleading description of it; and
 - (2) the *firm* communicates all of the information necessary, and presents that information with sufficient clarity and prominence, to make the use of that term fair, clear and not misleading.

Appendix 6

Retail Distribution Review – Adviser Charging

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 3)
INSTRUMENT 2011**

Powers exercised

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

Commencement

- C. This instrument comes into force on 31 December 2012.

Amendments to the Handbook

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

Citation

- E. This instrument may be cited as the Retail Distribution Review (Adviser Charging No 3) Instrument 2011.

By order of the Board
[*date*]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1A Adviser charging and remuneration

...

Ongoing payment of adviser charges

- 6.1A.22 R A *firm* must not use an *adviser charge* which is structured to be payable by the *retail client* over a period of time unless (1) or (2) applies:
- (1) the *adviser charge* is in respect of an ongoing service for the provision of *personal recommendations* or related services and:
 - (a) the *firm* has disclosed that service along with the *adviser charge*; ~~or~~ and
 - (b) the *retail client* is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the *retail client* to give any reason; or
 - (2) the *adviser charge* relates to a *retail investment product* for which an instruction from the *retail client* for regular payments is in place and the *firm* has disclosed that no ongoing *personal recommendations* or services will be provided.
- 6.1A.22A G To comply with the *rule* on providing a *retail client* with the right to cancel an ongoing service for the provision of *personal recommendations* or related services without penalty (COBS 6.1.A.22R(1)(b)) a *firm* should:
- (1) ensure that any notice period of the *retail client*'s right of cancellation is reasonable;
 - (2) not make any charge in respect of cancellation of the ongoing service except for an amount which is in proportion to the extent of the service already provided by the *firm* up to the date of cancellation of the ongoing service; and
 - (3) not make cancellation conditional on, for example, requiring the *retail client* to sell any *retail investment products* to which the ongoing service relates.

Appendix 7

Proposed amendments to the Compensation sourcebook

COMPENSATION SOURCEBOOK (OCCUPATIONAL PENSION SCHEME TRUSTEES) INSTRUMENT 2011

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers);
 - (c) section 213 (The compensation scheme); and
 - (d) section 214 (General).
- 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 Compensation sourcebook (COMP) is amended in accordance with the Annex to this instrument.

Citation

- F. This instrument may be cited as the Compensation Sourcebook (Occupational Pension Scheme Trustees) Instrument 2011.

By order of the Board
[*date*]

Annex

Amendments to the Compensation sourcebook (COMP)

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

4.2.2 R Table COMP 4.2.2R Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

This table belongs to COMP 4.2.1R

(1)	...
(9)	<i>Bodies corporate</i> in the same group as the relevant person in default unless that <i>body corporate</i> is:
(i)	a trustee that falls within COMP 4.2.2R(1) or (4) of:
(a)	<u>a stakeholder pension scheme (which is not an occupational pension scheme) or a personal pension scheme (but in each case if the trustee is a firm it will only be an eligible claimant if its claim arises out of a regulated activity for which it does not have a permission);</u>
(b)	<u>(if the claim is with respect to a long-term insurance contract) a small self-administered scheme or an occupational pension scheme; or</u>
(c)	<u>(if the claim is not with respect to a long-term insurance contract) a small self-administered scheme or an occupational pension scheme of an employer which is not a large company, large partnership or large mutual association.</u>
(ii)	...
	...

...

TP1.1 Transitional Provisions Table

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

...					
<u>27</u>	<u>COMP 4.2.2R(9)</u>	<u>R</u>	<p><u>The changes referred to in (2), made by the Compensation Sourcebook (Occupational Pension Scheme Trustees) Instrument 2011 do not apply in relation to a claim against a relevant person that was in default before [insert date].</u></p>	<p><u>From [insert date] indefinitely</u></p>	<p><u>From [insert date]</u></p>

Appendix 8

Proposed amendments to the Perimeter Guidance manual

PERIMETER GUIDANCE (AMENDMENT NO 3) 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 [*date*].

Amendments to the Perimeter Guidance manual

- C. The Perimeter Guidance manual (PERG) is amended in accordance with the Annex to this instrument. The general guidance in PERG does not form part of the Handbook.

Citation

- D. This instrument may be cited as the Perimeter Guidance (Amendment No 3) Instrument 2011.

By order of the Board
[*date*]

Annex

Amendments to the Perimeter Guidance manual (PERG)

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

Guidance on property investment clubs and land investment schemes

11.1 Background

Q1. What is the purpose of these questions and answers (“Q&As”) and who should be reading them?

These Q&As are principally aimed at those involved in the running of property investment clubs or schemes involving the offering for sale of plots of land with express or implied arrangements for obtaining planning permission in respect of them or for the disposal of the land as a whole. They are intended to help such persons understand whether they will be carrying on a *regulated activity* and need to be an *authorised person* or *exempt person* under section 19 of the Financial Services and Markets Act 2000 . The Q&As may also be of assistance to investors in such schemes concerned about whether the scheme they are investing in should be run by an authorised or exempt person.

The Q&As that follow are set out in two sections:

- Guidance on property investment clubs (*PERG* 11.2)
- Guidance on land investment schemes (*PERG* 11.3)

11.2 Guidance on property investment clubs

...

Q4. What is a collective investment scheme and will my property investment club be one?

Broadly speaking, a collective investment scheme is any arrangement:

- the purpose or effect of which is to enable those taking part (either by owning the property, or part of it, or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property;
- where persons taking part do not have day-to-day control over the management of the property; and
- where either the contributions and profits or income are pooled, or the property is managed as a whole by or on behalf of the operator of the scheme, or both.

Whether your property investment club is a collective investment scheme or not

will depend on its individual structure and the facts surrounding it. If your club meets each of the above conditions and is not exempt, then its operation and promotion should come under FSA regulation. This is regardless of whether that was intended by the person operating or promoting the club. It is worth noting that ownership of the property is not a requirement, an arrangement may amount to a collective investment scheme even where participants hold no legal or beneficial interest in the underlying property.

...

Q6. What is the purpose of the 'day-to-day control' test and the nature of day-to-day control?

The purpose of the 'day-to-day control' test is to try to draw an important distinction about the nature of the investment that each investor is making. If the substance is that each investor is investing in a property whose management will be under his control, the arrangements should not be regarded as a collective investment scheme. On the other hand, if the substance is that each investor is getting rights under a scheme that provides, in practice, for someone else to manage the property, the arrangements would be regarded as a collective investment scheme.

Day-to-day control is not defined and so must be given its ordinary meaning. In our view, this means you have the power, from day-to-day, to decide how the property is actually managed. You can delegate actual management so long as you still have day-to-day control over it.

Q7. The participants in my property investment club do not get involved in every single management decision, but appoint agents to take decisions for them in accordance with criteria agreed between them. Have the participants lost day-to-day control?

We do not consider that day-to-day control means that each participant would themselves need to be involved in each and every decision taken, so long as they retain day-to-day control over the management. For example, delegating rent collection, cleaning and management services in relation to a property, by appointing agents to carry out these tasks would not necessarily mean that the participants lose day-to-day control, so long as the participants retain actual day-to-day control over the management of the agency contracts.

...

11.3 Guidance on land investment schemes involving planning permission arrangements

Q20. I run a business arranging for the sale of individual plots of development land to investors who ~~are also required to~~ use my services in ~~obtaining~~ seeking planning permission for, or ~~disposing~~ marketing of, the land as a whole (or both). Might I need to be authorised?

Yes, this is likely to be the case. This will be because the role you have in obtaining seeking planning permission or in marketing negotiating and effecting the sale of the land for resale (or both) may mean that you are operating a collective investment scheme (see Q4).

~~The~~ This is because the purpose or practical effect of the arrangements would appear to be to enable investors, as owners of parts of the land, to receive profits arising from your services in obtaining seeking planning permission or arranging disposal in respect of marketing the land as a whole. If the planning or disposal process is such that individual investors do not have actual day-to-day control over it, the arrangements are likely to amount to a collective investment scheme, and to operate it you would need to be authorised or exempt. The restrictions on financial promotions referred to in Q18 would also need to be considered.

It is likely that you will need to be authorised even if the arrangements do not require you to seek planning permission or market the land for the investors but, in all the circumstances, it is evident that this is intended to form part of your role.

Where you, or one of your agents, representatives or staff, make representations to investors that the services provided as part of the arrangements will include applying for planning permission or marketing the land at a later date, it will usually be reasonable for investors to rely on those representations and you will, accordingly, be bound by them. In deciding whether or not you are bound by those representations, it is unlikely to be relevant that agents or representatives are independent contractors or that you have taken steps to ensure that they do not make such representations.

This may be the case even if there are contractual provisions, or other notifications, disclaiming any direct or indirect responsibility for seeking planning permission or marketing the land. Whether or not an arrangement amounts to a collective investment scheme is determined by looking at the facts as a whole rather than considering contractual terms in isolation.

If your investors have purchased individual plots within a site on the shared understanding that the services provided as part of the arrangement will include seeking planning permission and marketing the site including the plots, the FSA may treat your business as having established a collective investment scheme which would require authorisation and the appropriate permission.

Even if you do not intend to seek planning permission or market the land but, in all the circumstances and taking account of what has been said and done, it is reasonable for the investors to believe that these services are to be provided as part of the arrangements, then you may still be establishing a collective investment scheme or purporting to do so. A business that purports to establish a collective investment scheme and which is not authorised or exempt will be in breach of section 19 of Financial Services and Markets Act 2000. Therefore, there does not need to be any shared understanding between you and investors in this regard.

Q20A. Would any of the answers to Q20 be different where the land for sale is not owned by my business or where a third party will act for investors in relation to the seeking of planning permission or marketing of the land for resale?

Not necessarily. It is not a requirement for the establishment of a collective investment scheme that you are the original owner of the property of the scheme, and you will still require authorisation as a person who has established a collective investment scheme even where a third party is responsible for the subsequent operation of the scheme.

Q20B. If the arrangements only relate to some plots within a larger site can there still be a collective investment scheme?

Yes. Those plots within the larger site can still constitute the underlying property of a collective investment scheme, even if other plots within the same site are not part of the scheme property.

Q20C. Where each plot-holder is separately represented in respect of their plots in relation to seeking planning permission or marketing for resale, can there still be management as a whole for the purposes of constituting a collective investment scheme?

If the reality of the arrangements is that the operator intends to seek planning permission, or is looking to market the property, as a whole, it is irrelevant that each individual investor is given bespoke representations on how his particular plot is to be managed.

Q21. I run a business which arranges for individual plots of land to be sold to potential investors and, whilst I refer to the possibility of obtaining planning permission as a way of increasing the value of the land, I don't agree with or, represent to such investors, that I or anyone else will, nor does anyone connected to me, have a role in pursuing any such permission nor any other control over the management of the land as a whole. Do I need to be authorised?

No, provided that no suggestions to the contrary have been made by you or by anyone representing you (see Q20). Also, ~~You~~ you must not adopt any ~~also have~~ such role ~~in reality~~ after sale of the land. Doing so could itself involve arrangements constituting one or more collective investment schemes.

If all of the participants have actual day-to-day control over the obtaining of

planning permission relevant to their individual plots of land and over any marketing for resale of those plots, the arrangements will not be a collective investment scheme. Arranging for direct investment in plots of land by itself is not a regulated activity as the legal title to a plot ~~plots~~ of land ~~are~~ is not, of themselves itself, a *specified investments investment*.

Appendix 9

General provisions on reporting

SUPERVISION MANUAL (AMENDMENT NO 18) INSTRUMENT 2011

Powers exercised

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

Commencement

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

Amendments to the Handbook

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

Citation

- D. This instrument may be cited as the Supervision Manual (Amendment No 18) Instrument 2011.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

How to submit reports

16.3.8 R A written report must be: delivered to the FSA by one of the methods listed in SUP 16.3.9R.

- (1) ~~given to or addressed for the attention of the firm's usual supervisory contact at the FSA; and~~
- (2) ~~delivered to the FSA by one of the methods listed in SUP 16.3.9 R.~~

16.3.9 R Method of submission of reports (see SUP 16.3.8R)

Method of delivery	
1.	<i>Post</i> to the published address of the FSA for postal submission of reports
2.	Leaving the report marked for the attention of "Central Reporting" at the published address of the FSA for hand delivery of reports and obtaining a dated receipt
3.	Electronic mail to an address for the firm's usual supervisory contact at the FSA and obtaining an electronic confirmation of receipt <u>Electronic mail or fax to the published e-mail address or fax number of the FSA's Central Reporting team</u>
4.	Hand delivery to the firm's usual supervisory contact at the FSA and obtaining a dated receipt
5.	Fax to the number notified by the firm's usual supervisory contact at the FSA, and receiving a successful transmission report for all pages of the report.
6. <u>4</u>	Online submission via the appropriate systems accessible from the FSA's website at www.fsa.gov.uk .
7.	Electronic submission via the Early Reporting System available from or through the FSA's website.

16.3.10 G

- (1) The current published address of the *FSA* for postal submission of reports is:

Central Reporting

The Financial Services Authority

PO BOX 35747

London E14 5WP

- (2) The current published address of the *FSA* for hand delivery of reports is:

(a)

Central Reporting

The Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

if the firm's usual supervisory contact at the *FSA* is based in London, or:

(b)

The Financial Services Authority

Quayside House

127 Fountainbridge

Edinburgh EH3 8DJ

if the *firm's* usual supervisory contact at the *FSA* is based in Edinburgh.

- (3) The current published email address and fax number for the *FSA's* Central Delivery team is DMT.Inbox@fsa.gov.uk and 020 7066 3905. The Central Delivery team does not handle general correspondence between firms and the *FSA*. Accordingly, firms should not make submissions to the Central Delivery team's email address or fax number other than as directed in SUP 16.3.8R.

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