

# CP12/11<sup>\*</sup>

Financial Services Authority

## Quarterly consultation

(No. 33)



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The Financial Services Authority invites comments on this Consultation Paper. Comments on Chapter 2 and 8 of this CP should reach us by 6 July and Chapters 3 to 7 of this CP should reach us by 6 August 2012.

Comments may be sent by electronic submission using the form on the FSA's website at: [www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12\\_11\\_response.shtml](http://www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12_11_response.shtml).  
You can also respond by email: [cp12\\_11@fsa.gov.uk](mailto:cp12_11@fsa.gov.uk)

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

Chapter 2:	Ian Evans	Telephone: 020 7066 5516
Chapter 3:	Simon Dixon	Telephone: 020 7066 1698
Chapter 4:	William Hewitson	Telephone: 020 7066 0152
Chapter 5:	Emily Christofides	Telephone: 020 7066 7150
Chapter 6:	Antony Bedford	Telephone: 020 7066 1852
Chapter 7:	Arman Fallah	Telephone: 020 7066 2824
Chapter 8:	Lee Taylor	Telephone: 020 7066 5952

If you responding in writing to several chapters, please send your comments to Roslyn Anderson in Communications, who will pass your response on as appropriate.

All responses to the above people should be sent to:  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

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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.

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# Abbreviations used in this paper

<b>ACP</b>	AMA change policy
<b>AMA</b>	advanced measurement approach
<b>APF</b>	authorised professional firm
<b>BBA</b>	British Banking Association
<b>BCD</b>	Banking Consolidation Directive
<b>BCRR</b>	base capital resources requirement
<b>BIPRU</b>	Prudential sourcebook for Banks, Building Societies and Investment Firms
<b>CAR</b>	Commission Auction Regulation
<b>CASS</b>	Client Assets sourcebook
<b>CBA</b>	cost benefit analysis
<b>CEBS</b>	Committee of European Banking Supervisors (the EBA's predecessor)
<b>CMAR</b>	client money and asset return
<b>COBS</b>	Conduct of Business sourcebook
<b>CP</b>	Consultation Paper
<b>DEPP</b>	Decision Procedure and Penalties manual
<b>EBA</b>	European Banking Authority
<b>EC</b>	European Commission

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<b>EG</b>	Enforcement Guide
<b>EU</b>	European Union
<b>FOS</b>	Financial Ombudsman Service
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GENPRU</b>	General Prudential sourcebook
<b>ICOBS</b>	Insurance: Conduct of Business sourcebook
<b>INSPRU</b>	Prudential sourcebook for Insurers
<b>IPRU(FSOC)</b>	Interim Prudential sourcebook for Friendly Societies
<b>IPRU(INS)</b>	Interim Prudential sourcebook for Insurers
<b>LR</b>	Listing Rules sourcebook
<b>MCOB</b>	Mortgages and Home Finance: Conduct of Business sourcebook
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>NMRA</b>	non-mainstream regulated activity
<b>PROF</b>	Professional Firms sourcebook
<b>RAP</b>	recognised auction platform
<b>RDC</b>	Regulatory Decisions Committee
<b>RDR</b>	Retail Distribution Review
<b>REC</b>	Recognised Investment Exchanges and Recognised Clearing Houses sourcebook
<b>RMAR</b>	retail mediation activities return
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls sourcebook

# 1

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## Overview

- 1.1 In this Consultation Paper (CP), we invite comments on miscellaneous amendments to the Handbook. It proposes amendments:
- to the advanced measurement approach (AMA) (the Guidelines), to give firms guidance on how to communicate AMA extensions and changes (Chapter 2);
  - to the rules on the calculation of counterparty credit risk exposure values for financial derivatives, securities financing transactions and long settlement transactions in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) (Chapter 3);
  - to implement the latest review by the European Commission on amounts laid down in the Insurance and Reinsurance Directive (Chapter 4);
  - to the Professional Firms sourcebook (PROF), by removing a rule which allows authorised professional firms under five designated professional bodies to carry out non-mainstream regulated activity (NMRA) without being subject to rules from those bodies (Chapter 5);
  - to give the FSA powers to consider applications to become recognised auction platforms (Chapter 6);
  - to extend applications in Chapter 5 of the Listing Rules sourcebook (LR) and to modify the annual notification requirement for sponsors in LR 8 (Chapter 7); and
  - to the implementation date of Chapter 14.4 of the Conduct of Business sourcebook (COBS) and inserts a new Glossary definition (Chapter 8).

### CONSUMERS

Chapter 8 is relevant to consumers.

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# 2

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## Advanced measurement approach (AMA) – extensions and changes

### Introduction

- 2.1 This chapter proposes amendments to the advanced measurement approach (AMA) (the Guidelines), in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) and the Senior Management Arrangements, Systems and Controls sourcebook (SYSC).
- 2.2 We propose:
- a specific reference to the Guidelines in BIPRU 6.5.5BG and SYSC 7.1.16BG; and
  - that firms should be able to demonstrate they have taken the Guidelines into account when managing AMA extensions and changes.
- 2.3 The proposed amendments, if approved, will be made under section 138 (General rule-making powers, section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 2.

### Background

- 2.4 The European Banking Authority (EBA) published the Guidelines on 6 January 2012.<sup>1</sup> The Guidelines provide firms with guidance on how to communicate AMA extensions and

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<sup>1</sup> <http://eba.europa.eu/News--Communications/Year/2012/EBA-publishes-Guidelines-on-AMA-extensions-and-cha.aspx>



changes to the competent authority and how to define internal policies for AMA extensions and changes (AMA change policy) in line with supervisory expectation.

- 2.5 The details relevant to firms are contained in Section III of the European Banking Authority (EBA) Guidelines on Advance Measurement Approach (AMA), Extensions and Changes (GL45).
- 2.6 We welcome the Guidelines and propose to adopt them in the supervision of all BIPRU firms that have AMA approval. Firms should demonstrate that they have considered the Guidelines when meeting the risk management standards required of them.
- 2.7 We propose to give effect to the Guidelines by inserting references to them in BIPRU 6.5.5BG and SYSC 7.1.16BG.

### **Key features of the Guidelines**

- 2.8 Article 105 Part 1 of Directive 2006/48/EC and Article 20 Part 1 of Directive 2006/49/EC allow institutions to use, within the AMA, their internal risk models to determine the regulatory capital charge for operational risk, provided the competent authority expressly approves these models.
- 2.9 The Guidelines deal with the process surrounding communication and approval by the competent authority of AMA extensions and changes. While the Guidelines do not contain requirements regarding firm's modelling or risk management, AMA extensions and changes may have a considerable impact on the quality and reliability of the operational risk framework, and on the level of regulatory capital for operational risk.
- 2.10 Firms should develop an AMA change policy (ACP) that documents its principles and procedures for classifying and processing planned AMA extensions and changes. The ACP should include criteria for classifying possible extensions and changes, the internal process and responsibilities for implementing and documenting AMA extension and changes.
- 2.11 The Guidelines require changes to be classified according to their materiality as significant, major or minor changes. This classification is important because, while extensions, significant and major changes require prior approval by the competent authority, firms only need to regularly (and retrospectively) notify the competent authority of minor changes.
- 2.12 Supervisors will review the AMA change policies and may either approve or object to the proposed extensions, significant and major changes. Minor changes do not require pre-approval, but the supervisor may, post-implementation, object to the changes.
- 2.13 The Guidelines provide a non-exhaustive set of examples that elaborate the criteria for classifying extensions and changes in the different categories.

## Proposed changes to BIPRU and SYSC

- 2.14 These Guidelines are relevant to all firms that have an AMA waiver approval.
- 2.15 The Guidelines set out a series of practices and procedures for the treatment of extensions and changes to an AMA used to determine the regulatory capital charge for operational risk.
- 2.16 The structure of the Guidelines (ie the number of Articles and Annex), do not lend themselves to inclusion in the Handbook. Therefore, we propose a specific reference to the guidelines in BIPRU 6.5.5BG and SYSC 7.1.16BG.
- 2.17 The proposed references highlight that firms should be able to demonstrate that they have taken into account of the Guidelines when managing AMA extensions and changes.

**Q2.1:** Are the references to the EBA Guidelines clear?

## Consultation period

- 2.18 During the preparation of the guidelines, two consultations were undertaken:
- on 15 December 2010, the EBA's predecessor, the Committee of European Banking Supervisors (CEBS), submitted the draft Guidelines on AMA extensions and changes for public consultation until 15 March 2011; and
  - a public hearing was held on 23 February 2011 at the EBA premises in London, to allow interested parties to share their views with the EBA.
- 2.19 Overall, participants at the public hearing and respondents to the public consultation were supportive of the proposed Guidelines. They appreciated that they clarify the requirements for communicating AMA changes and extensions to the competent authority and they clarify relevant supervisory processes.
- 2.20 Following on from this consultation process, the EBA has approved and published the Guidelines and has mandated that these must be given effect by supervisors by 6 March 2012. We consider a one month consultation period is justified. In view of this, and that we do not expect the proposed amendments to be contentious, we invite comments by 6 July 2012.
- 2.21 However, the references to the guidelines will not appear in our Handbook until September 2012.

## Cost benefit analysis

- 2.22 The Guidelines developed by the EBA only deal with the process for the approval of and communication with competent authorities regarding AMA extensions and changes. They do not contain requirements regarding the modelling or risk management of institutions.
- 2.23 The only potential compliance cost for firms identified by the EBA is the need to develop an internal procedure to assess the materiality of changes that is in line with the Guidelines. However, firms already have internal governance procedures and will only need to amend them in light of the Guidelines. So, the incremental costs will be of minimal significance.

**Q2.2:** Do you have any comments on our cost benefit analysis?

## Compatibility statement

- 2.24 Our proposed changes to the Handbook are necessary to implement in the UK the Guidelines produced by the EBA. The proposed changes will clarify the process that firms need to use to communicate with us when they change their AMA models and are compatible with our regulatory objectives of market confidence and financial stability.
- 2.25 Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to principles of good regulation. Given that the proposed changes will not have significant cost benefit implications, and they are necessary, we are satisfied that the changes are proportionate and that they are compatible with the principles of good regulation.

## Equality and diversity

- 2.26 We have considered the equality and diversity impact of these proposed changes and we do not believe they give rise to any discrimination or other equality concerns.

### Contact

**Comments should reach us by 6 July 2012. Please send them to:**

Ian Evans  
Prudential Policy Department  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

Telephone: 020 7066 5516  
Email: [cp12\\_11@fsa.gov.uk](mailto:cp12_11@fsa.gov.uk)

# 3

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## Proposed minor amendment to rules on counterparty credit risk exposure netting requirements

### Introduction

- 3.1 This chapter proposes a minor amendment to the rules on the calculation of counterparty credit risk exposure values for financial derivatives, securities financing transactions and long settlement transactions in the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU).
- 3.2 We propose to make a change to BIPRU 13.7.6R(2), clarifying the requirements for recognition of netting in the calculation of capital requirements.
- 3.3 The proposed amendments, if approved, will be made under section 138 (General rule-making power), section 150(2) (Action for damages), section 156 (General supplementary powers) and section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA).
- 3.4 The changes will be of interest to firms with significant activities in financial derivatives and securities financing transactions. The text of the proposed amendment can be found in Appendix 3.

## Proposed amendments

- 3.5** BIPRU 13.7.6R sets out the requirements for recognition of contractual netting in assessing capital requirements. A firm must have a contractual netting agreement with its counterparty which, in the event of that counterparty's default, allows the firm to pay or to claim a single net amount for all transactions under that agreement. In order to demonstrate that such netting would be recognised on the default of a counterparty, a firm must obtain legal opinions from all relevant jurisdictions confirming that the netting would be recognised under the laws of those jurisdictions. This rule is derived from the Banking Consolidation Directive 2006/48/EC (BCD).<sup>2</sup>
- 3.6** The rule sets out the three categories of laws that are considered relevant: the law of the jurisdiction in which the counterparty is incorporated (and that of any foreign branch involved); the law governing individual transactions; and the law governing the netting contract or agreement. However, it has been queried whether the rule in its present form is potentially ambiguous, and may be interpreted as requiring opinions in respect of the laws of only one of the three categories of jurisdiction. Such an interpretation is inconsistent with the intention of the BCD, as the drafting of the relevant provision makes it clear that opinions in respect of all three relevant jurisdictions are required.
- 3.7** We propose to amend BIPRU by removing the words 'or' and linking (b) and (c) with 'and'. This should remove any ambiguity and make it clear that opinions must be obtained for each of the jurisdictions specified in BIPRU 13.7.6R(2)(a), (b) and (c). This amended wording is also consistent with the text of the original provision of the BCD.

**Q3.1** Do you agree with our proposal to amend BIPRU 13.7.6R(2)?

## Cost benefit analysis

- 3.8** Section 155 of FSMA requires us to undertake a cost benefit analysis of our proposed requirements and to publish the results, unless we consider the proposal does not give rise to any costs or any increase in costs is of minimal significance.
- 3.9** We appreciate that, in principle, the change in the text could imply an increase in capital requirements for firms that may have previously been interpreted as requiring legal opinions on only one of the relevant categories of jurisdiction and which have not obtained, or are unable to obtain, positive netting opinions for all three. However, based on the evidence we gathered from external and internal legal experts, we do not have reason to believe that firms and their advisers have relied upon the incorrect interpretation of the existing text despite the current ambiguity. This indicates that it is highly unlikely that they are calculating capital on a net basis in respect of those agreements for which they do not

<sup>2</sup> Annex III Part 7 point (b).

have the necessary opinions. We do not expect that the proposed change in wording will have a material effect on current market practice or lead to an increase in firms' administrative costs or capital requirements of more than minimal significance.

## Compatibility statement

- 3.10** These proposals aim to clarify rules that are designed to meet our market confidence and financial stability objectives and have been developed with regard to the principles of good regulation. In particular, our proposals have been developed bearing in mind the proportionality principle and the international character of the financial services industry. We are satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

## Equality and diversity issues

- 3.11** We have assessed the equality issues that arise in our proposals. We believe that they do not give rise to discrimination and are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

**Q3.2:** Do you have any comments on the cost benefit analysis, compatibility statement or equality and diversity issues?

### Contact

**Comments should reach us by 6 August 2012. Please send them to:**

Simon Dixon  
Markets Division  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS  
Telephone: 020 7066 1698  
Email: [cp12\\_11@fsa.gov.uk](mailto:cp12_11@fsa.gov.uk)

# 4

## Insurance modification

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### Introduction

- 4.1 In this chapter we are proposing amendments to the General Prudential sourcebook (GENPRU), the Prudential sourcebook for Insurers (INSPRU), the Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC)) and the Interim Prudential sourcebook for Insurers (IPRU(INS)). We are consulting on these changes following the latest review by the European Commission on certain amounts laid down in the Insurance and Reinsurance Directives.
- 4.2 We intend that the proposed amendments, with any suitable changes after consultation, will come into effect on 31 December 2012. This means that they will be effective for financial years ending on or after 31 December 2012. Reporting changes will also apply to returns for financial years ending on or after 31 December 2012.
- 4.3 The material in this chapter is aimed at insurance companies, friendly societies, trade bodies, specialist external users of the financial returns and other participants in the insurance market. The proposals are technical changes and clarifications; they are unlikely to have a direct impact on consumers.
- 4.4 The amendments, if approved, will be made under section 138 (General rule-making power), section 150(2) (Actions for damages), section 156 (General supplementary powers), section 157 (Guidance) and section 340 (Appointment) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed changes are set out in Appendix 4.

## Changes to the General Prudential sourcebook (GENPRU)

### *Base capital resources requirement for an insurer*

- 4.5 Following reviews by the European Commission of certain amounts laid down in the Insurance<sup>3</sup> and Reinsurance Directives<sup>4</sup> to take into account changes in the European index of consumer prices, we need to increase the base capital resources requirement (BCRR) for insurers to continue to comply with those Directives. Notices<sup>5</sup> were published in the European Journal on 15 December 2011 for both the Insurance Directives and also for the Reinsurance Directive.
- 4.6 Our policy for updating these amounts and the euro amounts for premiums and claims used to calculate the general insurance capital requirement (see paragraph 4.13) was proposed in paragraphs 2.38 to 2.40 and question 7 of CP06/12<sup>6</sup>, and confirmed in paragraphs 8.29 to 8.32 of CP06/16.<sup>7</sup>
- 4.7 Our policy is that the changes to these amounts will be implemented by amending the relevant amounts as they appear in our rules to make it clear when they come into force and, as far as possible, to maintain a level playing field between insurers writing reinsurance and pure reinsurers by keeping the amounts in line, even though this is not a requirement of the Directives. This is explained further in GENPRU 2.1.31G. Our aim is to ensure substitute products are treated equivalently.
- 4.8 The minimum impact of the European Commission's reviews on the BCRR for reinsurers is that the BCRR for captive reinsurers is increased to €1.2m and the BCRR for other pure reinsurers is increased to €3.4m. The BCRR for life insurers and for general insurers writing liability business, other than pure reinsurers, is increased to €3.7m, with a one-quarter reduction for mutuals. The BCRR for general insurers not writing liability business, other than pure reinsurers, is increased to €2.5m, again with a one-quarter reduction for mutuals.
- 4.9 Our BCRR for pure reinsurers is already €3.5m, as it was increased in line with the previous increase for direct insurers with effect from 31 December 2009. We propose to increase the BCRR for pure reinsurers other than captive reinsurers to €3.7m for the reasons set out in paragraph 4.7.
- 4.10 The corresponding BCRR for non-directive insurers was last reviewed in 2009 and the BCRR was then increased with effect from 31 December 2010. We are not proposing any further review of the BCRR for non-directive insurers at this time.

3 [http://ec.europa.eu/internal\\_market/insurance/legislation/index\\_en.htm#nonlife](http://ec.europa.eu/internal_market/insurance/legislation/index_en.htm#nonlife)

4 [http://ec.europa.eu/internal\\_market/insurance/legislation/index\\_en.htm#reinsurance](http://ec.europa.eu/internal_market/insurance/legislation/index_en.htm#reinsurance)

5 [http://ec.europa.eu/internal\\_market/insurance/legislation/index\\_en.htm#nonlife](http://ec.europa.eu/internal_market/insurance/legislation/index_en.htm#nonlife)

6 CP06/12, *Implementing the Reinsurance Directive*, (January 2006).

7 CP06/16, *Prudential changes for insurers*, (January 2006).



## Cost benefit analysis

- 4.11 The proposed changes for direct insurers that are within the scope of the Insurance Directives, and the change for captive reinsurers that are within the scope of the Reinsurance Directive, are necessary to maintain compliance with those directives. The proposed change for other pure reinsurers is appropriate to give effect to our established published policy of maintaining a level playing field between pure reinsurers and direct insurers that write reinsurance business, to ensure substitute products are treated equivalently.
- 4.12 We estimate that the change will increase capital requirements for one life firm and for around 30 non-life firms by a total of approximately £5.75m. Using an assumed cost of capital of 4%, this would mean compliance costs for all affected firms of around £0.25m a year. The costs of raising this amount of capital are expected to be in the region of £0.1m to £0.3m, where the funding comes from the market. Most of this cost is necessarily incurred to maintain directive compliance. We have not identified any pure reinsurers that would be directly affected by the proposed increase in the BCRR. We have not attempted to estimate benefits in terms of maintaining policyholder protection, but consider that they are likely to outweigh costs. The benefits of increasing capital requirements come from improved policyholder protection. We expect these benefits to be commensurate with the small amount of capital raised across the industry.

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

### *Premium and claims indices used to calculate the general insurance capital requirement*

- 4.13 Following the reviews by the European Commission referred to in paragraph 4.5, the premium and claims indices required by the First Non-Life Directive<sup>8</sup> as amended by the non-life Solvency I Directive<sup>9</sup>, have also been updated. It is proposed to increase the amount stated in INSPRU 1.1.45R for premiums from €57.5m to €61.3m, and the amount stated in INSPRU 1.1.47R for claims from €40.3m to €42.9m. These increases are required for direct insurers to continue to comply with the non-life Directives. It is also proposed to increase these amounts for non-directive insurers and pure reinsurers to maintain a level playing field in line with established policy, to ensure substitute products are treated equivalently, although these increases are not directive requirements.

8 73/239/EEC, [http://ec.europa.eu/internal\\_market/insurance/legislation/index\\_en.htm#nonlife](http://ec.europa.eu/internal_market/insurance/legislation/index_en.htm#nonlife)

9 2002/13/EEC, [http://ec.europa.eu/internal\\_market/insurance/legislation/index\\_en.htm#nonlife](http://ec.europa.eu/internal_market/insurance/legislation/index_en.htm#nonlife)

## Cost benefit analysis

- 4.14 The cost benefit analysis in paragraph 4.11 applies to this proposal. Similarly, to maintain a level playing field, we propose to make the corresponding changes to the premiums basis and claims basis calculations for non-directive insurers, to ensure substitute products are treated equivalently. We estimate that the total effect on regulatory capital requirements is about £7m, affecting around 110 life and non-life firms with business subject to the general insurance capital requirement. Using an assumed cost of capital of 4%, this represents an annual compliance cost of approximately £0.3m. We have not attempted to estimate benefits in terms of maintaining policyholder protection, but consider that they are likely to outweigh costs. The costs of raising this capital from the market are expected to be in the region of £0.1m to £0.4m. We expect the benefit to be a small improvement in policyholder protection.

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

### *Appendix 2 – General insurance business solvency margin*

- 4.15 In paragraph 4.13, we propose to increase the premium and claims indices in the calculation of the general insurance capital requirement for both directive and non-directive insurers to which INSPRU applies. Similarly, to maintain a level playing field, we propose to make the corresponding changes to the premiums basis and claims basis calculations for non-directive friendly societies, to ensure substitute products are treated equivalently. As non-directive friendly societies only write a small amount of business that is subject to the general insurance business solvency margin, and the volume of this business is generally quite small, we expect the effect on them to be minimal, and therefore costs and benefits to be of minimal significance.

### *Appendix 10 – Prudential reporting forms*

- 4.16 We propose to amend FSC3 Forms 11 and 12 to correspond to the changes proposed in paragraph 4.15. The costs and benefits of this proposed change are of minimal significance.

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

### *Proposed amendments to Volume 2 of IPRU(INS) – Appendix 9.1 and Forms 11 and 12*

- 4.17 We propose to amend the amounts shown in line 33 of Form 11 and line 33 of Form 12 to correspond to the changes in INSPRU 1.1.45R and INSPRU 1.1.47R, proposed in paragraph 4.13. The costs and benefits of this proposed change are of minimal significance.

**Q4.1:** Are you content with the changes to the Insurance Prudential sourcebooks proposed in this chapter and Appendix 4?

### **Compatibility statement**

- 4.18 We propose to make changes to GENPRU, INSPRU, IPRU(INS) and IPRU(FSOC) that give better effect to our policy and maintain compliance with European directives. The amendments do not fundamentally change our objectives or our approach. The compatibility statements in previous consultations would not have been written differently if they had taken account of the latest proposals. Therefore, we invite stakeholders requiring further information to refer to our explanation in these earlier consultations on how our rules and guidance:

- 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, including being proportionate to the expected benefits.

### **Equality and diversity**

- 4.19 We have concluded that our proposals do not give rise to discrimination and are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

## Contact

**Comments should reach us by 6 August 2012. Please send them to:**

William Hewitson  
Prudential Policy Division  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS  
Telephone: 020 7066 0152  
Email: [cp12\\_11@fsa.gov.uk](mailto:cp12_11@fsa.gov.uk)

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# 5

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## Authorised professional firms and the NMRA regulatory gap

### Introduction

- 5.1 In this chapter we are proposing amendments to the Professional Firms sourcebook (PROF), by removing a rule which allows authorised professional firms under five designated professional bodies to carry out non-mainstream regulated activity (NMRA) without being subject to rules from those bodies.
- 5.2 The proposed amendments, if approved, will be made under section 138 (General rule-making power) and section 156 (General supplementary powers) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook text can be found in Appendix 5.

### Background

- 5.3 Professional firms (solicitors, accountants, actuaries and chartered surveyors) carrying on financial services business can be regulated in three different ways.
- 1) As exempt from FSA regulation for certain financial services activities that are genuinely incidental to their professional activities. Exempt professional firms are exclusively regulated by their designated professional body.
  - 2) They may carry on a 'mainstream regulated activity' (ie financial services activity that is not merely incidental to their professional activity and/or is of a kind, such as giving investment advice, which means they cannot be exempt from FSA authorisation). These

firms have to apply for FSA authorisation in the usual way and have to meet most of our rules, although there are some exceptions, varying by designated professional body.

- 3) Non-mainstream regulated activity<sup>10</sup> (NMRA) was created because, under Part 20 of FSMA, a firm cannot be both authorised and exempt. Some professional firms were authorised in order to undertake mainstream regulated activity, but also wished to do some incidental business. NMRA allowed them to do this incidental business on a level playing field with an exempt firm, (ie without it being subject to the rules for mainstream activity). PROF gives effect to this intention, through a number of special exemptions from or modifications to our rules for NMRA. The rationale was that the designated professional bodies would regulate NMRA to the same extent that they regulate the financial services activities of exempt professional firms.

- 5.4 During consultation on CP11/13<sup>11</sup>, we became aware that authorised professional firms regulated by five of the designated professional bodies<sup>12</sup> are not in fact subject to rules for NMRA under those bodies. The majority of FSA rules are disapplied for NMRA.
- 5.5 If this gap is allowed to persist, consumers will lack protection for business conducted as NMRA. In particular, they are not subject to complaints handling and redress requirements from which clients of exempt professional firms benefit. We consider this outcome to be unacceptable. In theory, the gap could be filled either by us making rules or by each of the five affected designated professional bodies doing so. The present consultation is aimed at applying our rules to address the possible consumer detriment.
- 5.6 We noted in PS11/17<sup>13</sup> that the rule changes proposed in CP11/13 would have addressed this problem but, as we were not aware of this issue, we had not considered its impact in our cost benefit analysis<sup>14</sup>, and the affected firms and designated professional bodies would have had insufficient time to prepare. Therefore, we amended our proposal to ensure that these firms were not affected by the new rules, and undertook to consult separately in 2012.

## Proposed amendments

- 5.7 The final policy in PS11/17 meant that NMRA could only be carried out by authorised professional firms that were regulated for this activity under rules made by their designated professional body. If not, affected firms' NMRA would be treated as mainstream regulated activities and subject to the majority of requirements in the FSA Handbook.

10 We provided a detailed explanation of NMRA in Annex 2 of CP11/13, *Authorised professional firms and legal services reform*, (July 2011).

11 CP11/13, *Authorised professional firms and legal services reform*, (July 2011). This CP addressed a gap in regulatory protection arising from the Solicitors Regulation Authority's decision not to regulate the financial services activities of its authorised business structures.

12 The Institutes of Chartered Accountants in England and Wales, Ireland and of Scotland, the Law Society of Scotland, and the Association of Chartered Certified Accountants.

13 PS11/17, *Authorised professional firms and legal services reform*, (December 2011).

14 Although we did assess the impact of the rules we consulted on in CP11/13, the subsequent discovery of the gap meant that these would have applied to a larger population of firms than we originally anticipated.

- 5.8 We did not apply the change to authorised professional firms regulated by five designated professional bodies.<sup>15</sup> However, we now propose to do so and for the changes to take effect from April 2013.
- 5.9 The designated professional bodies concerned are able to create rules for NMRA that would allow their members to continue being subject to the NMRA provisions, avoiding the costs set out in the cost benefit analysis below. This could bring costs for them which may need to be passed on to their members. Our discussions with the bodies concerned suggest that they are unlikely to do this, although this is subject to their normal decision making processes and governance, and their review of the costs presented in this analysis.

**Q5.1:** Do you agree with our proposed amendment to PROF 5.2.1AR?

### **Cost benefit analysis**

- 5.10 The purpose of this cost benefit analysis (CBA) is to estimate in quantitative terms where possible and in qualitative terms when not, the economic costs and benefits of the proposed policy. The FSA collects limited information from firms in relation to NMRA. This makes estimating the costs of our changes more difficult, as we do not hold data on the type or volume of activities that firms carry out.
- 5.11 To carry out the CBA we:
- have used previous estimates from CP11/13 because it also estimated the costs of NMRA being treated as mainstream regulated activities; and
  - shared these estimates, updated where necessary, with a small sample of representative firms from the affected designated professional bodies and used their responses to refine our thinking.
- 5.12 The responses indicated that the number of firms that carry out NMRA may be smaller than we expected, and the number of firms which will stop carrying out NMRA completely as a result of the changes may be higher than expected. We inferred this from the comments that our respondents made about other firms' likely responses to the changes alongside their own.
- 5.13 We welcome feedback on the estimates presented below as part of this consultation.
- 5.14 We are assuming for the purposes of this analysis that none of the designated professional bodies concerned will be creating rules for NMRA, although we recognise that they will want to consider the costs for firms set out below. At present, 224 authorised professional

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<sup>15</sup> This exclusion was effected through PROF 5.2.1AR.

firms (APFs) under the five designated professional bodies<sup>16</sup> are able to carry out NMRA. However, the responses from our small sample suggested that a number of firms do not do so in practice. We are not able to extrapolate accurately from the sample, but it is clear that in practice the overall cost to the sector will be lower than our cost estimate because firms not doing any NMRA will be unaffected by our changes.

## Options for firms

**5.15** We assume that a proportion of the firms concerned will avoid full mainstream regulation by adopting one of several possible approaches. These firms will not have to meet the requirements that arise from our changes, but will face other costs, varying with the option chosen. There are three options:

- a firm may split out its mainstream activities into a new entity that would seek FSA authorisation, with the remaining professional firm carrying out the former NMRA as exempt regulated activity; we estimate the cost of applying for FSA authorisation to be in the range of £1,500 to £5,000, with £2,200 for administration<sup>17</sup>;
- a firm may cease to carry on mainstream activities, allowing it to cancel its FSA authorisation and carry out what used to be NMRA as exempt regulated activity; we estimate the cost of cancellation to be in the range of £300 to £2,600<sup>18</sup>; and
- a firm may cease to carry on NMRA without making any other changes. This would produce no direct costs, but the potential loss of services to clients is covered under 'Indirect costs' below.

**5.16** In all cases above, the analysis and decision making involved would require the input of senior staff in firms and/or consultants, and the time involved would vary significantly by size and complexity of the firm. We estimate costs in the range of £500 to £16,400.<sup>19</sup>

16 The Institute of Chartered Accountants in England and Wales – 135; Law Society of Scotland – 45; The Association of Chartered Certified Accountants – 24; The Institute of Chartered Accountants of Scotland – 15; The Institute of Chartered Accountants in Ireland – 5.

17 Application fee varies depending on scope of permission. Administration cost based on Real Assurance Estimation of FSA Administrative Burdens, June 2006, updated to 2012.

18 Costs depend on the size and activity of firms and are based on estimates provided as part of the Real Assurance Estimation of FSA Third Party Administrative Burdens, June 2006, updated to 2012.

19 We estimate the analysis would take between seven to 200 man hours, with internal opportunity cost between £490 (£70x7) and £14,000 (£70x200) (using Office of National Statistics data for the hourly pay rate of corporate managers and senior officials). Where consultants are used, we estimate a range from £200 (one consultant for one day at £200 per day) to £15,000 (two staff at £500 per day for three weeks). We assume the decision makers would be internal in all cases and would consist of between two and ten individuals, each for two hours. This would result in an opportunity cost for firms in a range from £280 (£70x2x2) to £1,400 (£70x10x2).



## Incremental compliance costs

- 5.17** The authorised professional firms concerned are not subject to any rules from their designated professional bodies on NMRA, other than the high level principles of the profession. Our rule change would mean that the affected firms no longer meet the criteria for their activity being NMRA, so if they continue to carry out the same activities, these would be treated as mainstream regulated activity, with significantly increased FSA rule requirements.
- 5.18** We have defined firms as small (one to five), medium (six to 10) and large (more than 10), depending on the number of individuals in the firm that are involved in FSA-regulated activity (both mainstream and non-mainstream).
- 5.19** We have estimated the total one-off compliance costs to be in the region of £5,000 for small firms, £36,000 for medium firms and £93,000 for larger firms. The total ongoing compliance costs are £8,000 to £24,000 for small firms, £17,000 to £39,000 for medium firms and £39,000 to £74,000 for large firms. The main drivers of these costs are:
- ensuring qualification requirements for staff are met;
  - complying with the Insurance: Conduct of Business sourcebook (ICOBS), Conduct of Business sourcebook (COBS), Mortgages and Home Finance: Conduct of Business sourcebook (MCOB);
  - ensuring individuals are approved to perform certain controlled functions;
  - providing auditors' client assets reports; and
  - for large firms, reporting via the client money and asset return (CMAR).

5.20 The table below provides a breakdown of these costs by types of regulatory requirement and the assumptions used.

**Table 1 – Incremental compliance costs**

Type of compliance cost	Sub-category of cost	Firm size	One-off costs per firm	Ongoing costs per firm per year
Approved persons	New approved persons required	S	Minimal <sup>20</sup>	No ongoing costs which are not captured elsewhere in this analysis
		M	£240 average application cost plus £2,020 if interview is required. We assume four individuals per firm with none requiring interview $4 \times £240 = £960$ .	No ongoing costs which are not captured elsewhere in this analysis
		L	£240 average application cost plus £2,020 if interview is required. We assume 15 individuals per firm with average of one requiring interview $(15 \times £240) + (1 \times £2,020) = £5,620$ .	No ongoing costs which are not captured elsewhere in this analysis
FSA fees	Increase in fees due to permissions no longer being limited to NMRA	S M L	No one-off costs, all costs would be ongoing	An increase in fees depends on whether the firm is currently limited to NMRA for all the regulated activities that feed in to a fee block. <sup>21</sup> The largest change would result where this is the case for a number of fee blocks. We have considered current fee data for the 215 potentially affected firms which suggest that a maximum of c.125 firms may be affected by this. We are not able to estimate the cost here because we do not hold tariff data for NMRA.

20 Assumption that one person carries out both the NMRA and the mainstream activity for the firm. This means that what used to be NMRA will be dealt with by the same person, who must already satisfy any approved persons requirements.

21 See the note in between activities A.6 and A.7 at FEES 4 Annex 1.

22 Required investment in training and competence framework is likely to be minimal – existing framework sufficient to manage the requirements.

23 Maintenance of competence as required by the Training and Competence sourcebook (TC) does not bring requirements over and above what would be required of any accountancy or law firm.

Training and competence	Maintaining competence (excluding qualification requirements)	S	Minimal <sup>22</sup>	Minimal <sup>23</sup>
		M		
		L		
	Qualification requirements	S	Minimal <sup>24</sup>	N/A – any costs are one-off by definition
		M	£21,341 <sup>25</sup>	
		L	£42,682 <sup>26</sup>	
	RDR related requirements (excluding qualifications)	S	N/A - any costs are ongoing by definition	Minimal <sup>27</sup>
		M		£1,100 <sup>28</sup>
		L		£2,200 <sup>29</sup>
Conduct of business	ICOB	S	£4,646 <sup>30</sup>	£3,817 <sup>31</sup>
		M	£13,800	£11,452
		L	£36,800	£30,540
	COBS	We have taken the figures for ICOBS as an approximation for complying with COBS <sup>32</sup>		
	MCOB	We have taken the figures for ICOBS as an approximation for complying with MCOB <sup>32</sup>		

24 Assumption that one person carries out both the NMRA and the mainstream activity for the firm. This means that what used to be NMRA will be dealt with by the same person, who must already satisfy any qualification requirement.

25 We assume that separate individuals deal with NMRA and mainstream activity so the individuals who were doing NMRA may need to obtain an appropriate qualification. We assume three individuals need to upgrade, with a mix of two Retail Distribution Review (RDR) and one non-RDR qualifications. RDR qualifications - direct cost = £2,521 (source NMG Report published alongside CP11/14, uprated to present). Opportunity cost = 300 hours study (70% in own time @ £14.12 per hour = £2,965; 30% in work time @ £90.80 per hour = £2,772), Total = £8,258. For non-RDR qualification, direct cost estimated at £1,000. Opportunity cost 200 hours study, (70% in own time @ £14.12 per hour = £1,977; 30% in work time @ £30.80 per hour = £1,848) Total = £4,825. TOTAL = (2x £8,258) + (1x £4,825) = £21,341.

26 We assume that separate departments deal with NMRA and mainstream activity, so the individuals who were doing NMRA may need to obtain appropriate qualifications. We assume six individuals need to upgrade, with a mix of four RDR and two non-RDR qualifications. Applying the figures at the previous footnote, this gives a total of (4x £8,258) + (2x £4,825) = £42,682.

27 We assume that one person carries out both the NMRA and the mainstream activity for the firm. This means that what used to be NMRA will be dealt with by the same person, who is already within scope of the RDR.

28 We assume that separate individuals deal with NMRA and mainstream activity so the individuals who were doing NMRA may need to meet RDR requirements - assume two individuals are within scope of RDR. Statement of professional standing - £85; continued professional development (CPD) direct cost = £134; opportunity cost of CPD – NMG Consulting found that only 20% of advisers are not doing this much CPD already. For this group, the average increase needed was 13.3 hours. Divided 70/30 to home/work time, giving 9.3 hours in own time and four hours at work, with rates of £14.12p/h and £30.80p/h respectively. Total = ((9.3 x £14.12) + (4x£30.80)) = £255. Cost of observing ethical standards - £80. Total cost = £554 x 2 people = £1,108.

29 We assume that separate departments deal with NMRA and mainstream activity so the individuals who were doing NMRA may need to meet RDR requirements - we assume four individuals are within scope of the RDR. Applying the figures at the previous footnote, this gives £554 x 4 people = £2,216.

30 Research for ICOB in 2003 found an average one-off cost to firms of £4,365. We have uprated this to £5,730 for inflation. In the absence of data on the split of fixed/variable costs, we have taken number of relevant staff as a proxy for cost. We have assumed that a small/medium/large firm averages 2.5/7.5/20 individuals taking part in FSA regulated activity, and that 90%:9%:1% of the affected 220 firms are small:medium:large. This divides up a total cost of £1,260,600 (£5,730x220 firms) in proportion to the total number of staff employed in each size category of firm. This gives £4,646, £13,800 and £36,800 for small/medium/large firms.

31 Research for ICOB in 2003 found an average ongoing cost to firms of £3,624. We have uprated this to £4,757 for inflation then followed the approach described in the previous footnote.

32 The costs will clearly increase if firms are subject to more than one area (eg MCOB as well as ICOBS), but will not increase proportionately due to economies of scale.

Financial Ombudsman Service	Disclosure of FOS eligibility in documentation/ client discussions	S/M/L	Minimal – electronic documents and staff knowledge will be kept updated as part of BAU		
	Senior management liaison with the FOS	S/M/L	Minimal – opportunity cost of learning about FOS and the firm’s responsibilities	Nil <sup>33</sup>	
	Administration costs of handling FOS cases	S/M/L	Minimal	£300 per case <sup>34</sup>	
	FOS fees for fourth and subsequent FOS cases	S/M/L	Minimal	£500 per case <sup>35</sup>	
	Implementing FOS rulings on redress	S/M/L	Minimal	£1,060 per case, the average cost of redress per complaint referred to FOS, uprated by inflation. <sup>36</sup>	
	Implementing FOS rulings on non-financial directions to firm	S/M/L	Minimal	Minimal. Our conversations with firms suggest that this is not commonplace, and given the total number of APF complaints, we expect this to be minimal.	
Complaints	Disclosure of complaints handling procedures in documentation/ client discussions	S/M/L	Minimal	Minimal – electronic documents and staff knowledge will be kept updated as part of BAU	
	Complaints handling and resolution procedures	S/M/L	Minimal	£3,000 – 2hrs per month executive oversight <sup>37</sup>	
	Complaint records (three to five years)	S	Minimal <sup>38</sup>	£18 <sup>39</sup>	
		M		£90 (5 complaints)	
		L		£180 (10 complaints)	
Bi-annual complaints reports (DISP)	S/M/L	Minimal	Minimal – costs will not vary with increased numbers of complaints		
Publication of complaints data summary (500+)	S/M/L	Minimal	Minimal – APF firms of any size highly unlikely to reach 500 complaints		

33 The cost set out under ‘Administration costs of handling FOS cases’ includes an estimate for this ongoing liaison.

34 Analysis of 2011 data on complaints reported to FSA indicates only 19 APFs had new cases opened, with the median among these being one case per firm. None of the cases was raised with the Financial Ombudsman Service (FOS) (although it is possible that this could still happen in future). We are unable to estimate the number of future complaints as this will vary on a firm-by-firm basis therefore we have provided the cost per case to inform firms.

35 See previous footnote. From 2013, firms with fewer than 2,000 cases a year will be given 25 free cases.

36 CP11/10, *Consumer complaints: The ombudsman award limit and changes to complaints-handling rules*, (May 2011). This figure includes an estimate for implementing FOS rulings on distress/compensation payments, which occur in 28% of cases.

Client money	CASS oversight approved person controlled function CF10a	S	Minimal <sup>40</sup>	Minimal – any costs are one-off only
		M		
		L	£2,260 <sup>41</sup>	
	CASS small firms reporting	S	Minimal	£50
		M		
		L	Minimal <sup>41</sup>	
	Client Money and Asset Return (CMAR) for CASS medium and large firms	S	Minimal	Minimal
		M		
		L	£5,000 <sup>42</sup>	
	CASS record keeping	S/M/L	Minimal <sup>44</sup>	
	Segregation of client money	S	£120 <sup>45</sup>	£25 per client <sup>46</sup>
		M	£180	
		L	£240	
	Segregation of client assets	S/M/L	Minimal <sup>47</sup>	
	Auditor's client assets report - management review of findings	S	N/A – we expect any costs to be ongoing only	£1,100 - £17,600 <sup>48</sup>
M		£1,710 to £23,600 <sup>49</sup>		
L		£2,310 to £29,600 <sup>50</sup>		

37 Based on an FSA estimate in CP10/21, *Consumer complaints: The ombudsman award limit and changes to complaints-handling rules*, (September 2010).

38 Firms will have existing complaints recording systems to meet their designated professional body requirements.

39 One complaint at £18 each – from estimation of FSA Administrative Burdens, Real Assurance, 2006, p20 - £9 to £15 per complaint, uprated to 2012.

40 Our small and medium APFs will almost certainly fall into the Client Assets sourcebook (CASS) small firm definition. CASS small firms do not require a CF10a.

41 Our large APFs may fall into the medium or large CASS firm definitions, must complete the client and money asset return (CMAR), and will probably require an interview at an additional £2,020 above the £240 cost of application.

42 CP10/9, *Enhancing the Client Assets Sourcebook*, (March 2010). The one-off cost is the average provided by CASS medium and large firms, although we consider this to be an absolute upper bound here.

43 CP10/9 – the range of ongoing costs indicates upper and lower bounds, where the lower bound represents an internal FSA estimate, whereas the upper bound is the average of responses to the firm survey used to assess the costs of introducing CMAR for CASS large and medium-sized firms.

44 We are assuming no incremental systems costs on a one-off or ongoing basis, as firms in question are likely to have electronic systems in place to track and segregate client money already.

45 Two hours at a rate of £60/hr including overheads. Bank fees assumed minimal. Increased to three and four hours for medium/large firms.

46 Calculated on the basis that client money rules in CASS 5 and 7 account for a maximum of 50% of the £50 per client cost of complying with all of CASS (from CP06/14, *Implementing MiFID for Firms and Markets*, (July 2006), uprated for inflation).

47 We are not aware of any firms engaged – on an NMRA basis – in the activities of holding financial instruments in the course of Markets in Financial Instruments Directive (MiFID) business and/or safeguarding and administering investments in the course of non-MiFID business – that would make them subject to the custody rules in CASS 6 and 9.

48 This includes three elements: producing the report, range from £700 to £15,300; staff admin cost, averaged as £200; one hour per person reviewing the findings of the auditor's report – between £210 and £2,100 annually.

49 This includes three elements: producing the report, range from £1,300 to £21,300; staff admin cost, averaged as £200; one hour per person reviewing the findings of the auditor's report – between £210 and £2,100 annually.

50 This includes three elements: producing the report, range from £1,900 to £27,300; staff admin cost, averaged as £200; one hour per person reviewing the findings of the auditor's report – between £210 and £2,100 annually.

RMAR	Reporting in sections B, G, H & I	S/M/L	N/A – we expect any costs to be ongoing only	Minimal <sup>51</sup>
Total		S	£4,976	£7,685 to £24,185
		M	£36,491	£16,562 to £38,992
		L	£92,602	£38,890 to £73,720

## Factors which may reduce compliance costs

5.21 There are a number of potential factors which may significantly reduce the compliance cost estimates set out above.

- Reorganisations of firms' structures and business activities (see 'Options for firms' above) may largely avoid the direct costs set out.
- For FSA fees, because a number of regulated activities feed into each fee block, the removal of some limitations will have no effect. Even if firms become subject to a new fee block, many of them may be below the tariff threshold.
- On training and competence, the costs are likely to be less than we estimated because only a subset of NMRA activities would be in the scope of the Retail Distribution Review (RDR) and require qualifications. Further, some individuals within scope of the RDR may already hold relevant qualifications that meet RDR requirements and will require significantly fewer hours and lower costs.
- For conduct of business purposes, some firms will already be treating NMRA as if it were mainstream regulated activity to reduce complexity. For these firms, there will be zero impact from the conduct of business changes.
- Some firms treat NMRA as mainstream activity in all respects to help maintain a clear boundary between professional and FSA-regulated activities, and therefore reduce compliance risk. For these firms, there will be zero impact from any of the changes.
- The cost of implementation of the Client Assets sourcebook (CASS) may be less significant than stated due to similarity with the designated professional bodies' existing rules.
- The client money and asset return (CMAR) for CASS medium and large firms will only be a new requirement for firms whose activities are currently fully required/limited to NMRA. We estimate this to be a maximum of 25 firms.

<sup>51</sup> The retail mediation activities return (RMAR) will not be a new requirement for any firm as the scope of regulated activities will not change under our proposals. Firms are already reporting mainstream activity and in section B should already be able to identify rebated commission.

- In the RMAR, some firms may already be reporting NMRA as part of their returns in sections G to I, which would mean no change to the figures reported in these sections due to our rule changes.

5.22 Where these relate to existing practices or arrangements within firms, they are supported by our discussions with firms in the relevant sectors.

### **Direct costs to the FSA**

5.23 Our changes mean that there will be an increase in the number of firms that are subject to the more onerous form of regulation under the professional firms regime. We intend that the supervision and administration of client money, authorisation and approvals, training and competence, and firms' conduct of business will be met from the current FSA business plan and will not require additional resources.

### **Indirect costs**

5.24 We have considered what, if any, impact there might be on number and variety of products available and on competition.

5.25 As noted under 'Firm options' above, some firms will continue to offer the services currently provided as NMRA as exempt regulated activity without incurring these compliance costs. In these cases, the firms will continue to operate with no impact on competition.

5.26 As a result of the designated professional bodies' decisions and the implementation of our change, some authorised professional firms may have incentives to leave the market altogether if the compliance cost exceeds the potential revenue from this activity. In these cases, by definition, the level of NMRA business is likely to be relatively small.

5.27 The impact on competition is likely to be negligible as there will remain some 5,000 exempt professional firms in the legal and accountancy sectors that can offer NMRA-type services as exempt regulated activity, incidental to their professional services. There are also many more firms from outside the professions that can offer the required financial services separately.

5.28 Therefore, we consider that the number of firms that could potentially exit given the current market size will not have a material impact on competition.

## Benefits to consumers

- 5.29 Our proposals will close an existing regulatory gap which exists for NMRA which is carried out by authorised professional firms regulated by five of the designated professional bodies. This will reinstate appropriate levels of consumer protection in key areas including client money, complaints handling and conduct of business.
- 5.30 However, this cost benefit analysis has identified a number of potential incremental costs from the proposed rule change which means that reinstating this level of consumer protection will occur at a higher cost than currently experienced by the firms in question.

**Q5.2:** Do you agree with the cost benefit analysis?

## Compatibility statement

- 5.31 This section sets out our assessment of the compatibility of our proposals with our general duties under section 2 of FSMA and with our regulatory objectives set out in sections 3 to 6 of FSMA. We also outline how our proposals are consistent with our principles of good regulation to which we must have regard.
- 5.32 We consider that our proposals are the most appropriate way to achieve our objectives. Our approach targets only the firms that are directly affected by this issue. Therefore, professional firms outside this will be able to continue to take advantage of the authorised professional firms regime, provided their designated professional body continues to maintain rules covering their financial services activities.

## Equality and diversity

- 5.33 We have considered the likely equality and diversity impact of our proposals. Certain groups are potentially more affected by our changes, due to the legal and accountancy professions being over represented compared to the UK population in terms of males, older people, and black, minority and ethnic people. On balance, we believe these proposals are a justified and proportionate means of protecting consumers. As part of our ongoing supervision of professional firms we will monitor the impact of any changes implemented and consider whether we need to make any adjustments.



## Contact

**Comments should reach us by 6 August 2012. Please send them to:**

Emily Christofides

Policy Division

Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

Telephone: 020 7066 7150

Email: [cp12\\_11@fsa.gov.uk](mailto:cp12_11@fsa.gov.uk)

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# 6

## Imposing civil penalties on RAPs

### Introduction

- 6.1 In PS12/1<sup>52</sup> we outlined changes to our Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC). These amendments gave the FSA powers to consider applications to become recognised auction platforms (RAPs). A RAP is a new type of recognised body and the only UK body on which EU emission allowances may be auctioned pursuant to the EU Commission Auction Regulation (CAR).<sup>53</sup>
- 6.2 RAP status derives from HM Treasury's (the Treasury) RAP Regulations 2011.<sup>54</sup> In a recent CP<sup>55</sup>, the Treasury proposed to amend these regulations to introduce a power for the FSA to impose a penalty on, or censure, a RAP where it is in breach of certain directly applicable requirements in CAR. Those powers would be provided in new regulations 5A and 5B (appearing in Article 7 of the draft order in the CP). This consultation outlines our implementation of those powers.
- 6.3 The proposed amendments, if approved will be made under section 157(1) (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook text can be found in Appendix 6.

### Background

- 6.4 The Treasury has proposed conferring these powers to ensure that the FSA has the power to impose civil penalties for contraventions of requirements in Articles 20(7), 21(1), 21(2)

52 PS12/1, *Auctioning of greenhouse gas emission allowances: Feedback to CP11/14*, (January 2012).

53 EU Commission Regulation 1031/2011, as amended by Commission Regulation 1210/2011.

54 SI 2011/2699.

55 HM Treasury, *Regulating certain bidders in auctions of EU emissions allowances*, (February 2012).

and 54 of CAR, as required by CAR itself. While section 395 of FSMA has not been applied to the RAP Regulations and we are under no obligation to consult, we have chosen to do so in the interests of transparency and in line with our principles of good regulation. In the event that similar powers are brought forward for other recognised bodies under the Financial Services Bill, we may revisit these rules to ensure that all similar powers remain coherent.

- 6.5 We also note that this consultation is based on the draft order proposed in the Treasury's CP. To the extent that the final order that is made differs from the consultation version, our policy may also need to be amended.

### **Proposed amendment**

- 6.6 Regulations 5A and 5B (amendments to the Treasury's RAP Regulations appearing in Article 7 of the draft order in their CP) are designed to provide the FSA with additional powers to enforce compliance with a number of provisions in the EU Commission's Auction Regulations that require RAPs to take responsibility for the vetting of those they admit to bid. It will add to our existing supervisory powers over RAPs, by giving us powers to impose civil penalties on them or to release public statements to censure them if they have failed to comply with the regulations.
- 6.7 These powers are proposed to be granted to the FSA by virtue of the Treasury's amendment to their RAP Regulations. Our changes to REC merely act to explain the powers and set our policy in exercising them.
- 6.8 We propose including an explanation of our approach to these powers in a new chapter in REC. It outlines that the FSA will only use these powers where it is appropriate to do so and with regard to the relevant factors listed under the Decision Procedure and Penalties manual (DEPP) within our Handbook. Where the FSA is proposing or deciding to publish a statement censuring a RAP or impose a penalty on a RAP, the FSA's decision maker will be the Regulatory Decisions Committee (RDC). This is to ensure that the FSA's power to censure or impose a penalty on a RAP is exercised consistently with similar penalty and censure powers of the FSA under other legislation.
- 6.9 Where the RDC does use the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive. We will issue a warning notice followed by a decision notice, stating the amount of the penalty. A firm will have a right of appeal to the Tribunal in the normal way following receipt of a decision notice. We have also proposed minor consequential amendments to the Enforcement Guide (EG).

## Cost benefit analysis

- 6.10** The new enforcement powers granted to the FSA allow us to impose penalties where existing rules are not being followed. This does not change the costs of compliance faced by firms and already calculated in CP11/14.<sup>56</sup> We do not believe that the powers will result in significant additional costs to the FSA, as their use would simply replace the use of another regulatory tool that might currently be employed.
- 6.11** This sanctions regime may increase market confidence in UK RAPs.

## Compatibility statement

- 6.12** The sanctions regime provides guidance on new enforcement powers in the RAP Regulations. The effective and appropriate use of our investigation and enforcement powers plays an important part in the pursuit of our regulatory objectives, particularly the market confidence and consumer protection objectives.

## Equality and diversity

- 6.13** We have considered the equality and diversity impact of these proposed changes and we do not believe they give rise to any discrimination or other equality concerns.

### Contact

**Comments should reach us by 6 August 2012. Please send them to:**

Antony Bedford  
Markets Division  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS  
Telephone: 020 7066 1852  
Email: [cp12\\_11@fsa.gov.uk](mailto:cp12_11@fsa.gov.uk)

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<sup>56</sup> CP11/14, *Auctioning of greenhouse gas emission allowances*, (July 2011).

# 7

## Proposed changes to chapters 5 and 8 of the Listing Rules sourcebook (LR)

### Introduction

- 7.1 This chapter proposes amendments to Chapter 5 of the Listing Rules sourcebook (LR) regarding the cancellation of listing of securities, and to LR8, regarding the annual notification requirements for sponsors.
- 7.2 This chapter will be of interest to listed issuers, their advisers, sponsors and investors.

### Proposed changes to Listing Rule 5.2

- 7.3 We propose the following changes:
- to extend the application of the exemption set out in LR 5.2.12R to cancellations of listing of equity shares with a standard listing, as well as those with a premium listing;
  - to extend the range of insolvency or reconstruction measures, which will benefit from the exemption provided in LR 5.2.12R;
  - to explicitly extend the application of the exemption provided in LR 5.2.12R to overseas issuers; and
  - to insert new guidance in LR 5.2.13G for the application of LR 5.2.12R to overseas issuers.

- 7.4 The amendments, if approved, will be made under section 73A (Part 6 Rules), section 77 (Discontinuance and suspension of listing), section 96 (Obligations of issuers of listed securities), section 101 (Part 6 Rules: general provisions), section 157(1) (Guidance) and Schedule 7 (The Authority as Competent Authority for Part IV) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook text can be found in Appendix 7.

### *Background*

- 7.5 LR 5 sets out the requirements for suspending, cancelling and restoring listing of securities. LR 5.2.12R allows an issuer to dispense with the requirement under LR 5.2.5R (in the case of premium listed issuers) to obtain the prior approval of shareholders for a cancellation and the requirement under LR 5.2.8R to give at least 20 business days' notice of the cancellation, where there is a takeover or a restructuring of the issuer effected by a scheme of arrangement under Part 26 of the Companies Act 2006 or where the issuer is in liquidation or administration under a court order.
- 7.6 The provisions under LR 5.2.5R and LR 5.2.8R were introduced to provide shareholders with the protection of a vote, or the ability to trade out their positions in circumstances where the issuer's securities would otherwise be cancelled from listing. However, there are various circumstances connected with the winding up or reorganisation of an issuer where these requirements are inappropriate. For example, because the issuer is insolvent, its management has passed out of the hands of its directors to an officer with statutory responsibilities or where a shareholder vote has been obtained to approve a step that is inconsistent with a continuation of listing.
- 7.7 In particular, the existing exemption in LR 5.2.12R(2) is currently limited to court orders obtained under the Insolvency Act 1986. There are a number of other insolvency procedures available under UK insolvency and other legislation (including a number of out-of-court procedures such as voluntary wind-ups approved by shareholders), which we consider should be included in the exemption. One common situation is where an investment entity wishes to liquidate its assets for a distribution to shareholders or 'roll-over' its investments into another vehicle.
- 7.8 It is reasonable that the benefits of these exemptions should extend to overseas issuers subject to equivalent overseas legislation that has similar effect to UK insolvency or reconstruction procedures. This is not currently the case and the existing rule applies only with regard to UK legislation despite the international character of the official list.
- 7.9 Finally, we see no reason why the exemption in LR 5.2.12R should apply only to equity shares with a premium listing. Instead, we think it is appropriate for LR 5.2.12R to apply to all equity shares as this properly reflects the policy intention behind this exemption.

### *Proposed Handbook amendments*

**7.10** We propose to amend the reference to ‘*equity shares with a premium listing*’ in LR 5.2.12R to a reference to ‘*equity shares*’ instead.

**Q7.1:** Do you agree with our proposal to amend the reference to equity shares with a premium listing in LR 5.2.12R to refer to equity *shares*?

**7.11** We propose to extend the scope of the exemption in LR 5.2.12R to apply to all UK insolvency or reconstruction procedures by amending LR 5.2.12R(2) and inserting LR 5.2.12R(3) to (6). We propose to extend the benefit of this exemption to overseas issuers by inserting LR 5.2.12R(7). Finally, we propose to include guidance that sets out a non-exhaustive list of factors which the FSA will have regard to when considering the equivalence of overseas insolvency or reconstruction procedures.

**Q7.2:** Do you agree with our proposal to extend the scope of the exemption in LR 5.2.12R to all UK insolvency or reconstruction procedures and offer overseas equivalence, by amending LR 5.2.12R(2), inserting LR 5.2.12R(3) to (7), and LR 5.2.13G?

### **Cost benefit analysis**

**7.12** Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. This does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

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

### **Proposed changes to the Annual Notification Requirement for Sponsors in LR 8.7**

**7.14** We propose the following changes:

- modifying the arrangements for the annual notification so that all sponsors will have to provide their written confirmation in January, rather than on the anniversary of the date of their particular approval as a sponsor; and
- that the written confirmation is provided by submitting a completed ‘sponsor annual notification form’ to the FSA (this is set out in Appendix 7).

- 7.15 The proposed amendments, if approved, will be made under section 73A (Part 6 Rules), section 88 (Sponsors), section 89 (Public censure of sponsor), section 96 (Obligations of issuers of listed securities), section 101 (Part 6 Rules: general provisions) and schedule 7 (The Authority as Competent Authority for Part VI) of the Financial Services and Markets Act 2000 (FSMA). The proposed Handbook text can be found in Appendix 7.

### *Background*

- 7.16 Under LR 8.7.7R a sponsor must provide to the FSA, on an annual basis, written confirmation that it continues to satisfy the criteria for approval as a sponsor as set out in LR 8.6.5R, as well as details of the basis upon which it considers that it meets each criteria in that rule.
- 7.17 The FSA has traditionally allocated each sponsor its own ‘annual confirmation birthday’. This is normally the first day of a calendar month. Each year on its annual confirmation birthday, the FSA sends a letter to the sponsor requesting their written confirmation under LR 8.7.7R that it continues to satisfy the criteria for approval as a sponsor as set out in LR 8.6.5R. This letter typically contains requests for specific information that supports the sponsor’s confirmation and assists the FSA with its supervisory functions. It is often necessary for further information requests to be made by the FSA in connection with the sponsor’s original submission.

### *Issues with the current arrangements*

- 7.18 Our accumulated experience suggests that the current arrangements may be placing an unnecessary administrative burden on both sponsors and the FSA.
- 7.19 As set out above, it is often necessary for the FSA to make further information requests about the sponsor’s written confirmation. We believe that requesting and responding to these requests can lead to the submission of written confirmations becoming an unnecessarily protracted and time consuming process, for both sponsors and the FSA.
- 7.20 Regarding the current system of annual confirmation birthdays set out above, the FSA is required to devote resources to processing annual confirmations all year round, rather than in a concentrated period of time at the start of each calendar year, which we believe would be a more efficient use of time and would allow us to carry out our annual supervisory planning more efficiently and effectively.
- 7.21 We believe that the arrangements could be improved so as to use both FSA and sponsor resources in a more efficient and economic way.

### *Proposed Handbook amendments*

- 7.22 We propose to amend LR 8.7.7R so that a sponsor is required to provide written confirmation to the FSA each year in January that it continues to satisfy the criteria for



approval as a sponsor as set out in LR 8.6.5R, as well as details of the basis upon which it considers that it meets each criteria in that rule.

- 7.23** We believe that requiring all written confirmations from sponsors to be submitted at the start of each calendar year will enable the FSA to process annual confirmations and carry out annual supervisory planning more efficiently and effectively, resulting in a more effective use of time and resources.

**Q7.3:** Do you agree with our proposal to amend LR 8.7.7R so that a sponsor is required to provide written confirmation to the FSA each year in January that it continues to satisfy the criteria for approval as a sponsor as set out in LR 8.6.5R?

- 7.24** We are also proposing to insert LR 8.7.7AR requiring sponsors to provide written confirmation via a completed sponsor annual notification form, which would be available on the UK Listing Authority section of the FSA's website. This consolidated form is designed to allow sponsors to provide written confirmation under LR 8.7.7R and to provide supporting information, while also allowing the FSA to collect information to support its supervisory functions in a single communication. Although it may still be necessary to request additional information, we envisage that this will happen infrequently, compared to the current arrangements.

**Q7.4:** Do you agree with our proposal to insert LR 8.7.7AR, requiring sponsors to provide written confirmation via a completed sponsor annual notification form?

### *Transitional relief for sponsors*

- 7.25** We believe it is appropriate to offer transitional relief for sponsors who would be required to provide a written confirmation to the FSA under the current arrangements and who, under our proposed changes, would then be required in quick succession to provide a written confirmation in January 2013.
- 7.26** It is envisaged that the new arrangements would come into force on 6 October 2012. As a result, under the revised LR 8.7.7R, there would be no obligation for sponsors with 'annual confirmation birthdays' falling on or after 6 October 2012 to submit an annual notification until January 2013. Sponsors with 'annual confirmation birthdays' falling on or before 5 October 2012 should submit a written confirmation in accordance with the current LR 8.7.7R.

## Cost benefit analysis

- 7.27 Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. This does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
- 7.28 Given the nature of the proposed changes, we envisage that both the FSA and sponsors will benefit from cost savings as resources are used in a more efficient and economic way.

## Compatibility statement

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

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

- 7.30 Our proposals in relation to the annual notification requirement of sponsors will allow us to use our resources in a more efficient and economic way.

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

- 7.31 Our proposals in LR 5.2.12R and LR 5.2.13G to extend the relief from LR 5.2.5R and LR 5.2.8R are intended to adjust the application of these safeguards so they apply in a more proportionate manner.

*The desirability of facilitating innovation for listed securities*

- 7.32 We do not consider that our proposals have a direct effect on this duty.

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

- 7.33 Our proposals bring overseas issuers within the scope of the exemption in LR 5.2.12R explicitly.

*The need to minimise the adverse effects on competition of anything done in the discharge of the FSA's functions*

- 7.34 We do not consider that our proposals have a direct effect on this duty.

*The desirability of facilitating competition for listed securities*

- 7.35 We do not consider that our proposals have a direct effect on this duty.

## Equality and diversity issues

- 7.36 We have concluded that the proposals set out in this chapter are of low relevance to the equality agenda. Nevertheless, we would welcome any comments respondents may have on any equality issues they believe arise.

### Contact

**Comments should reach us by 6 August 2012. Please send them to:**

Arman Fallah

Markets Division

Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

Telephone: 020 7066 2824

Email: [cp12\\_11@fsa.gov.uk](mailto:cp12_11@fsa.gov.uk)

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# 8

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## Investing in authorised funds through nominees

### Introduction

- 8.1 In this chapter, we propose delaying the introduction of rules and guidance in the Conduct of Business sourcebook (COBS) and a definition in the Glossary. These rules and guidance relate to the interaction between nominee holders and beneficial owners in respect of holdings of units in authorised investment funds.
- 8.2 The proposed amendments, if approved, will be made under section 138 (General rule-making power) and section 156 (General supplementary powers) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments can be found in Appendix 8.

### Background

- 8.3 In CP10/29<sup>57</sup>, we consulted on rules and guidance requiring platform operators and other nominee companies to provide fund information and voting rights to the beneficial owners of units in authorised funds. The aim of these proposals was to reduce the difference in treatment between the increasing number of consumers who hold fund units through nominees and those who invest in funds directly. The proposals included an additional section in Chapter 14 of COBS (COBS 14.4), and a Glossary definition of the term ‘intermediate unitholder’.

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<sup>57</sup> CP10/29, *Platforms: Delivering the RDR and other issues for platforms and nominee-related services*, (November 2010).

- 8.4 As a result of the feedback received after consultation we made some changes to our proposals, to achieve our desired outcome in a less burdensome way. PS11/9<sup>58</sup> included a summary of the responses to the CP, together with the amended versions of COBS 14.4 and the ‘intermediate unitholder’ Glossary definition.
- 8.5 COBS 14.4 and the new Glossary definition will come into effect on 31 December 2012.

### **Issues raised with us since the rules were made**

We have received an increasing number of questions in the last few months from firms and trade bodies on implementing the rules. Some of the issues were not raised by respondents to the initial consultation. In some cases this was because of the changes made as a result of the consultation itself.

- 8.6 These queries have focused on operational aspects of the rules, including important issues such as the scope of application given differing business models across the potential population of intermediate unitholders.

### **Proposal to delay implementation of the rules**

Firms (and other stakeholders) should use consultation periods provided to assess the impact of proposed rules on their businesses and respond within the indicated timescale, rather than raising issues after the consultation period but before the ‘in-force’ date. However, we accept there are genuine questions which would be helpful for us to resolve before the industry proceeds to implementation.

- 8.7 To do this, we plan to consult on amendments to COBS 14.4, so we propose to defer the implementation of the current rules to 31 December 2013. This is to ensure we have adequate time to consult and make any subsequent rules, and firms have enough time to implement the revised requirements.
- 8.8 We will leave the existing rules in place because we are not intending to alter their basic structure, involving investor notifications being provided by platforms and other nominee companies on a non opt-out basis.
- 8.9 In this paper we are consulting solely on deferring the date the rules come into force, to allow time for the subsequent consultation and for firms to implement revised rules after that.

**Q8.1:** Do you agree with the proposed delay in the date that COBS 14.4 rules come into force?

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58 PS11/9, *Platforms – Delivering the RDR and other issues for platforms and nominee-related services*, (August 2011).

## Cost benefit analysis

- 8.10** CP10/29 and PS11/9 contained, respectively, cost benefit analysis (CBA) on our original proposals and the subsequent made rules and guidance. Delaying the date on which this material comes into force will delay those costs and benefits (firms will incur costs implementing the proposals and ongoing costs once they are in force, while the benefits to consumers will now occur later).
- 8.11** The deferral allows for an additional consultation exercise, which will help firms in their implementation by providing additional clarity on the requirements. The costs and benefits of any proposed revisions themselves will be included in the additional consultation. Firms will also have additional time to prepare, which will be of assistance given the current pace of regulatory reform. While we accept that (some) firms will already have invested resource in preparing for implementation of the original rules, we expect little of this work will have been superfluous, as we do not propose to change the basic structure and intention of the rules.
- 8.12** For consumers, provision of specified information about their fund holdings through nominees would start a year later than originally planned. However, some nominee firms do currently allow investors to obtain information through them, although some charge for this service. Overall, we believe it will be beneficial for consumers that firms have a clear set of requirements to implement.

## Compatibility statement

- 8.13** The proposed deferral is particularly relevant to our statutory objective of market confidence. It allows time for a consultation exercise to address some of the issues firms and trade bodies have raised with the current rules and guidance, which will make implementation clearer for firms.
- 8.14** The proposed deferral is compatible with the principles of good regulation, in particular that the FSA needs to use its resources in an efficient and economic way (in dealing with firm queries and waiver requests) and the principle that the imposition of a burden must be broadly proportionate to its benefits.

## Equality and diversity issues

- 8.15** In CP10/29 and PS11/9 we stated that the substantive proposals did not give rise to discrimination and were of low relevance on the equality agenda. We believe this statement applies to this proposal to defer the date the rules come into force.

**Q8.2:** Do you have any comments on the CBA, compatibility statement or on equality and diversity issues, related to the proposal to defer the date on which the rules come into force?

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## Contact

**Comments should reach us by 6 July 2012. Please send them to:**

Lee Taylor

Investment Funds Team

Policy Division

Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

Telephone: 020 7066 5952

Email: [cp12\\_11@fsa.gov.uk](mailto:cp12_11@fsa.gov.uk)

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## Appendix 1

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# List of questions

### Chapter 2:

**Q2.1:** Are the references to the EBA Guidelines clear?

**Q2.2:** Do you have any comments on our cost benefit analysis?

### Chapter 3:

**Q3.1** Do you agree with our proposal to amend BIPRU 13.7.6R(2)?

**Q3.2:** Do you have any comments on the cost benefit analysis, compatibility statement or equality and diversity issues?

**Q4.1:** Are you content with the changes to the Insurance Prudential sourcebooks proposed in this chapter and Appendix 4?

**Q5.1:** Do you agree with our proposed amendment to PROF 5.2.1AR?

**Q5.2:** Do you agree with the cost benefit analysis?

## Chapter 7:

- Q7.1:** Do you agree with our proposal to amend the reference to equity shares with a premium listing in LR 5.2.12R to refer to equity shares?
- Q7.2:** Do you agree with our proposal to extend the scope of the exemption in LR 5.2.12R to all UK insolvency or reconstruction procedures and offer overseas equivalence, by amending LR 5.2.12R(2), inserting LR 5.2.12R(3) to (7), and LR 5.2.13G?
- Q7.3:** Do you agree with our proposal to amend LR 8.7.7R so that a sponsor is required to provide written confirmation to the FSA each year in January that it continues to satisfy the criteria for approval as a sponsor as set out in LR 8.6.5R?
- Q7.4:** Do you agree with our proposal to insert LR 8.7.7AR, requiring sponsors to provide written confirmation via a completed sponsor annual notification form?

## Chapter 8:

- Q8.1:** Do you agree with the proposed delay in the date that COBS 14.4 rules come into force?
- Q8.2:** Do you have any comments on the CBA, compatibility statement or on equality and diversity issues, related to the proposal to defer the date on which the rules come into force?

## Appendix 2

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# Advanced measurement approach (AMA) – extensions and changes

**ADVANCED MEASUREMENT APPROACH GUIDELINES INSTRUMENT 2012**

**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”):
- (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 [1 August 2012].

**Amendments to the Handbook**

- D. The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) is amended in accordance with Annex A to this instrument.
- E. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Advanced Measurement Approach Guidelines Instrument 2012.

By order of the Board  
[date]

## Annex A

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

In this Annex, underlining indicates new text

**7.1 Risk control**

...

Operational risk

...

**7.1.16B** G In meeting the general standards referred to in SYSC 7.1.16R, a firm with AMA approval should be able to demonstrate to the FSA that it has considered and complies with Section III of the European Banking Authority's Guidelines on the Advanced Measurement Approach (AMA) – Extensions and Changes published in January 2012. These can be found at <http://eba.europa.eu/News--Communications/Year/2012/EBA-publishes-Guidelines-on-AMA-extensions-and-cha.aspx>

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

In this Annex, underlining indicates new text.

**6.5 Operational risk: Advanced measurement approaches**

...

Minimum standards

...

**6.5.5B** G In meeting the general risk management standards referred to in *BIPRU* 6.5.5R(1), a *firm* with AMA approval should be able to demonstrate to the *FSA* that it has considered and complies with Section III of the European Banking Authority's Guidelines on the Advanced Measurement Approach (AMA) – Extensions and Changes published in January 2012. These can be found at <http://eba.europa.eu/News--Communications/Year/2012/EBA-publishes-Guidelines-on-AMA-extensions-and-cha.aspx>

## Appendix 2A

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# Designation of Handbook Provisions

FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website<sup>1</sup> for further details about this process.

We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
BIPRU 6.5.5BG	FCA and PRA
SYSC 7.1.16BG	FCA and PRA

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<sup>1</sup> [http://www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/about\\_fsa/handbook-pra-fca.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml)





## Appendix 3

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# Proposed minor amendment to rules on counterparty credit risk exposure netting requirements

**CAPITAL REQUIREMENTS DIRECTIVE (HANDBOOK AMENDMENTS NO 5)  
INSTRUMENT 2012**

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

**Citation**

- E. This instrument may be cited as the Capital Requirements Directive (Handbook Amendments No 5) Instrument 2012.

By order of the Board  
*[date]*

## Annex

**Amendments to the Prudential sourcebook for Banks, Building Societies and  
Investment Firms**

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

**13 The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions**

...

Conditions for recognition

13.7.6 R A *firm* may treat contractual netting as risk-reducing only under the following conditions:

...

(2) the *firm* must be in a position to provide to the *FSA*, if requested, written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would, in the cases described under (1), find that the *firm's* claims and obligations would be limited to the net sum, as described in (1), under:

- (a) the law of the jurisdiction in which the counterparty is incorporated and, if a foreign *branch* of an *undertaking* is involved, also under the law of the jurisdiction in which the *branch* is located; ~~or~~
- (b) the law that governs the individual transactions included; ~~or~~ and
- (c) the law that governs any contract or agreement necessary to effect the contractual netting;

...



## Appendix 3A

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# Designation of Handbook Provisions

FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website<sup>1</sup> for further details about this process.

We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
BIPRU 13.7.6 (2) R	PRA and FCA

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<sup>1</sup> [http://www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/about\\_fsa/handbook-pra-fca.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml)



## Appendix 4

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# Insurance modification

**PRUDENTIAL REQUIREMENTS FOR INSURERS (AMENDMENT NO 6)  
INSTRUMENT 2012**

**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 150(2) (Actions for damages);
    - (c) section 156 (General supplementary powers);
    - (d) section 157 (Guidance); and
    - (e) section 340 (Appointment); 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 Financial Services and Markets Act 2000.

**Commencement**

- C. This instrument comes into force on 31 December 2012. The amendments to IPRU(FSOC) and IPRU(INS) apply to all FSA returns for financial years ending on or after 31 December 2012.

**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)
General Prudential sourcebook (GENPRU)	Annex A
Prudential sourcebook for insurers (INSPRU)	Annex B
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex C
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex D

**Citation**

- E. This instrument may be cited as the Prudential Requirements for Insurers (Amendment No 6) Instrument 2012.

By order of the Board

[        ]



## Annex A

## Amendments to the General Prudential sourcebook (GENPRU)

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

Table: Base capital resources requirement for an insurer

2.1.30 R This table belongs to *GENPRU 2.1.29R*

<i>Firm category</i>		Amount: Currency equivalent of
General insurance business		
Liability insurer (classes 10-15)	Directive mutual	€ <del>2.625</del> <u>2.775</u> million
	Non-directive insurer	€ 350,000
	Other (including mixed insurer but excluding pure reinsurer )	€ <del>3.5</del> <u>3.7</u> million
Other insurer	Directive mutual	€ <del>1.725</del> <u>1.875</u> million
	Non-directive insurer (classes 1 to 8, 16 or 18)	€ 260,000
	Non-directive insurer (classes 9 or 17)	€175,000
	Mixed insurer	€ <del>3.5</del> <u>3.7</u> million
	Other (excluding pure reinsurer)	€ <del>2.3</del> <u>2.5</u> million
Long-term insurance business		
Mutual	Directive	€ <del>2.625</del> <u>2.775</u> million
	Non-directive mutual	€ 700,000
Any other insurer (including mixed insurer but excluding pure reinsurer )		€ <del>3.5</del> <u>3.7</u> million
All business (general insurance business and long-term insurance business)		

<i>Pure reinsurer excluding captive reinsurer</i>	€ <del>3.5</del> <u>3.7</u> million
<i>Captive reinsurer</i>	€ <del>1.1</del> <u>1.2</u> million

...

#### Calculation of the base capital resources requirement

2.3.9 R The amount of the *base capital resources requirement* for the *members* in aggregate is:

- (1) for *general insurance business*, €~~3.2~~ 3.7 million; and
- (2) for *long-term insurance business*, €~~3.2~~ 3.7 million.

**Annex B****Amendments to the Prudential sourcebook for insurers (INSPRU)**

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

1.1.45 R The *premiums amount* is:

- (1) 18% of the *gross adjusted premiums amount*; less 2% of the amount, if any, by which the *gross adjusted premiums amount* exceeds €~~57.5~~ 61.3 million; multiplied by

...

...

1.1.47 R The *claims amount* is:

- (1) 26% of the *gross adjusted claims amount*; less 3% of the amount, if any, by which the *gross adjusted claims amount* exceeds €~~40.3~~ 42.9 million; multiplied by

**Annex C****Amendments to the Interim Prudential sourcebook for Friendly Societies  
(IPRU(FSOC))**

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

**Appendix 2****GENERAL INSURANCE BUSINESS SOLVENCY MARGIN****Part I: the Premiums Basis**

...

4. If the amount arrived at under 3 is more than ~~57.5~~ 61.3 million Euro, it must be divided into two portions, the former consisting of ~~57.5~~ 61.3 million Euro and the latter comprising the excess.

...

**Part II: the Claims Basis**

...

18. If the amount arrived at under 17 is more than ~~40.3~~ 42.9 million Euro, it must be divided into two portions, the former consisting of ~~40.3~~ 42.9 million Euro and the latter comprising the excess.

...

**Appendix 10****Prudential Reporting Forms**

...

FSC3 Form 11 (Sheet 1)

**Returns under the Friendly Societies Prudential Rules**

General insurance business: Calculation of required margin of solvency – first method

Name of Society

Period ended 31 December

	Reg No	Units	£/£000
	[ ]	[ ]	[ ]

Name of Fund/Summary

1 Last 12 months of this period

2 Last 12 months of previous period

Gross premiums receivable			11		
Premium taxes and levies (included in line 11)			12		
Sub-total A (11 – 12)			15		
Division of Sub-total A	Other than health insurance	Up to and including sterling equivalent of <del>57.5</del> 61.3 M Euro x 18/100	17		
		Excess (if any) over <del>57.5</del> 61.3 M Euro x 16/100	18		
	Health insurance	Up to and including sterling equivalent of <del>57.5</del> 61.3 M Euro x 6/100	19		
		Excess (if any) over <del>57.5</del> 61.3 M Euro x 16/300	20		
Sub-total B (17 + 18 + 19 + 20)			21		
Gross premiums earned			22		
Premium taxes and levies (included in line 22)			23		
Sub-total H (22 – 23)			26		
Division of Sub-total H	Other than health insurance	Up to and including sterling equivalent of <del>57.5</del> 61.3 M Euro x 18/100	28		
		Excess (if any) over <del>57.5</del> 61.3 M Euro x 16/100	29		
	Health insurance	Up to and including sterling equivalent of <del>57.5</del> 61.3 M Euro x 6/100	30		
		Excess (if any) over <del>57.5</del> 61.3 M Euro x 16/300	31		
Sub-total I (28 + 29 + 30 + 31)			32		

FSC3 Form 11 (Sheet 2)

**Returns under the Friendly Societies Prudential Rules**

General insurance business: Calculation of required margin of solvency – first method

Name of Society

Period ended 31 December

	Reg No	Units £/£000
<input type="text"/>	<input type="text"/>	<input type="text"/>

Name of Fund/Summary		1 Last 12 months of this period	2 Last 12 months of this period
Sub-total J (greater of sub-total B and sub-total I)	40	<input type="text"/>	<input type="text"/>
Claims paid in 3 year period	41	<input type="text"/>	<input type="text"/>
Claims outstanding carried forward at the end of the period	43	<input type="text"/>	<input type="text"/>
Claims outstanding brought forward at the beginning of the period	45	<input type="text"/>	<input type="text"/>
Sub-total C (41 + 43 – 45)	46	<input type="text"/>	<input type="text"/>
Amounts recoverable from reinsurers in respect of claims included in Sub-total C	47	<input type="text"/>	<input type="text"/>
Sub-total D (46 – 47)	48	<input type="text"/>	<input type="text"/>
First result Sub-total J x $\frac{\text{Sub-total D}}{\text{Sub-total C}}$ (or, if 0.5 is greater, x 0.5)	49	<input type="text"/>	<input type="text"/>
Provisions for claims outstanding (before discounting and net of reinsurance)	50	<input type="text"/>	<input type="text"/>
Brought forward amount (12.43.2 x 50.1 / 50.2 or, if less, 12.43.2)	51	<input type="text"/>	<input type="text"/>
Greater of lines 49 and 51	52	<input type="text"/>	<input type="text"/>

**NOTES**

- Entries in column 2, lines 17-20 and 28-31 must be the corresponding entries in column 1 of the Form for the previous year, even if the amount of Euro in the description of the line has changed.
- 51.2 must be 11.51.2 from the previous year's return.

## FSC 3 – FORM 12

## Returns under the Friendly Societies Prudential Rules

General insurance business: Calculation of required margin of solvency – second method, and statement of required minimum margin

Name of Society

Period ended 31 December

	Reg No	Units £/£000
<input style="width: 60%; height: 20px;" type="text"/>	<input style="width: 60%; height: 20px;" type="text"/>	<input style="width: 60%; height: 20px;" type="text"/>

Name of Fund/Summary		1 Last 12 months of this period		2 Last 12 months of the previous period
Reference period (means the three last preceding financial years) (Note 1)	11			
Claims paid in reference period	21			
Claims outstanding carried forward at the end of the period	23			
Claims outstanding brought forward at the beginning of the period	25			
Sub-total E (21 + 23 – 25)	29			
Sub-total F: Conversion of Sub-total E to annual figure (multiply by 12 and divide by the number of months in the reference period)	31			
Division of Sub-total F	Other than health insurance	Up to and including sterling equivalent of <del>40.3</del> 42.9M Euro x 26/100 (note 3)	32	
		Excess (if any) over <del>40.3</del> 42.9M Euro x 23/100 (note 3)	33	
	Health insurance	Up to and including sterling equivalent of <del>40.3</del> 42.9M Euro x 26/300 (note 3)	34	
		Excess (if any) over <del>40.3</del> 42.9M Euro x 23/300 (note 3)	35	
Sub-total G (32 to 35)	39			
Second result Sub-total G x Sub-total D / Sub-total C (or, if 0.5 is greater, x 0.5)	41			
Higher of first result and brought forward amount (Note 2)	42			
Required margin of solvency (the higher of lines 41 and 42)	43			
Minimum guarantee fund	44			
Required minimum margin (the higher of lines 43 and 44)	49			

## NOTES

1. If the society has not been in existence long enough to acquire a reference period, this must be stated and lines 11 to 41 ignored.
2. The entry at line 42 must be equal to the entry at line 52 on Form 11.
3. Entries in column 2, lines 32-35 must be the corresponding entries in column 1 of the Form for the previous year, even if the amount of Euro in the description of the line has changed.



**Annex D**

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

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

**APPENDIX 9.1** (rules 9.12 and 9.13)

**BALANCE SHEET AND PROFIT AND LOSS ACCOUNT (FORMS 1  
TO 3 AND 10 TO 19)**

...

Calculation of general insurance capital requirement – premiums amount and Brought forward amount

Form 11

Name of insurer  
 Global business / UK branch business / EEA branch business  
 Financial year ended  
 General/long-term insurance business

	Company registration number	GL/UK/CM	day	month	year	units
R11						£000
			This financial year		Previous year	
			1		2	

Gross premiums written		11		
Premium taxes and levies (included in line 11)		12		
Premiums written net of taxes and levies (11-12)		13		
Premiums for classes 11, 12 or 13 (included in line 13)		14		
Premiums for "actuarial health insurance" (included in line 13)		15		
Sub-total A (13 + ½ 14 - ²/₃ 15)		16		
Gross premiums earned		21		
Premium taxes and levies (included in line 21)		22		
Premiums earned net of taxes and levies (21-22)		23		
Premiums for classes 11, 12 or 13 (included in line 23)		24		
Premiums for "actuarial health insurance" (included in line 23)		25		
Sub-total H (23 + ½ 24 - ²/₃ 25)		26		
Sub-total I (higher of sub-total A and sub-total H)		30		
Adjusted sub-total I if financial year is not a 12 month period to produce an annual figure		31		
Division of gross adjusted premiums amount: x 0.18		32		
sub-total I (or adjusted sub-total I if appropriate) Excess (if any) over 57.5 61.3M EURO x 0.02		33		
Sub-total J (32-33)		34		
Claims paid in period of 3 financial years		41		
Claims outstanding carried forward at the end of the 3 year period	For insurance business accounted for on an underwriting year basis	42		
		43		
	For insurance business accounted for on an accident year basis	44		
Claims outstanding brought forward at the beginning of the 3 year period	For insurance business accounted for on an underwriting year basis	45		
	For insurance business accounted for on an accident year basis	46		
Sub-total C (41+42+43-44-45)		47		
Amounts recoverable from reinsurers in respect of claims included in Sub-total C		48		
Sub-total D (46-47)		49		
Reinsurance ratio (Sub-total D / sub-total C or, if more, 0.50 or, if less, 1.00)		50		
Premiums amount (Sub-total J x reinsurance ratio)		51		
Provision for claims outstanding (before discounting and net of reinsurance)		52		
Provision for claims outstanding (before discounting and gross of reinsurance) if both 51.1 and 51.2 are zero, otherwise zero.		53		
Brought forward amount (See instruction 4)		54		
Greater of lines 50 and 53				

## Appendix 4A

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# Designation of Handbook Provisions

FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website<sup>1</sup> for further details about this process.

We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
GENPRU 2.1.30R	PRA
GENPRU 2.3.9R	PRA
INSPRU 1.1.45R	PRA
INSPRU 1.1.47R	PRA
IPRU(FSOC) App 2	PRA
IPRU(FSOC) App 10	PRA
IPRU(INS) App 9.1	PRA

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<sup>1</sup> [http://www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/about\\_fsa/handbook-pra-fca.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml)



## Appendix 5

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# Authorised professional firms and the NMRA regulatory gap

**PROFESSIONAL FIRMS (AMENDMENT NO 2) INSTRUMENT 2012**

**Powers exercised**

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

**Commencement**

- C. This instrument comes into force on 1 April 2013.

**Amendments to the Handbook**

- D. The Professional Firms sourcebook (PROF) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Professional Firms (Amendment No 2) Instrument 2012.

By order of the Board  
[*date*]

## Annex

### Amendments to the Professional Firms sourcebook (PROF)

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

- 5.2.1A R ~~The condition at PROF 5.2.1R(6) does not apply if the *designated professional body* of the *authorised professional firm* is any of:~~
- ~~(1) the Institute of Chartered Accountants in England and Wales;~~
  - ~~(2) the Institute of Chartered Accountants of Scotland;~~
  - ~~(3) the Institute of Chartered Accountants in Ireland;~~
  - ~~(4) the Association of Chartered Certified Accountants; and~~
  - ~~(5) the Law Society of Scotland. [deleted]~~





## Appendix 6

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# Imposing civil penalties on RAPs

**RECOGNISED AUCTION PLATFORMS (PENALTY AND CENSURE POLICY)  
INSTRUMENT 2012**

**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 Handbook**

- C. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.
- D. The Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) is amended in accordance with Annex B to this instrument.

**Material outside the Handbook**

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

**Citation**

- F. This instrument may be cited as the Recognised Auction Platforms (Penalties and Censure Policy) Instrument 2012.

By order of the Board  
[*date*]

## Annex A

## Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text which is to be inserted as a new table after the 'Electronic Money Regulations' table in DEPP 2 Annex 1G.

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

...

<u>Recognised Auction Platforms Regulations 2011</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<u>Regulation 5A</u>	<u>where the FSA is proposing or deciding to publish a statement censuring an RAP, or to impose a financial penalty on an RAP</u>	<u>REC 2A.4</u>	<u>RDC</u>

## Annex B

## Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

After REC 2A.3, insert the following new section. The text is not underlined.

### 2A.4 Power and procedure for RAP penalties and censures

- 2A.4.1 G Under regulation 5A (Power to impose civil penalties) of the *RAP Regulations*, where the *FSA* considers that an *RAP* has contravened any requirement in articles 20(7), 21(1), 21(2) or 54 of the *auction regulation*, the *FSA* has the power to impose a civil penalty on that *RAP*.
- 2A.4.2 G Where the *FSA* is entitled to impose a penalty on an *RAP*, it may instead publish a statement censuring it.
- 2A.4.3 G The provisions of the *auction regulation* referred to in REC 2A.4.1G are directly applicable to an *RAP* and require it to, in summary:
- (1) require an applicant for admission to bid to ensure that its clients, and the clients of its clients, are able to comply with information requirements, interviews, investigations and verifications carried out or required by the *RAP*;
  - (2) refuse to grant admission to bid, or revoke or suspend that admission, to any person:
    - (a) that is not, or is no longer, eligible to bid (under article 18 of the *auction regulation*); does not meet, or no longer meets, the requirements of articles 18, 19 or 20 of the *auction regulation*; or is wilfully or repeatedly in breach of the *auction regulation*, the terms and conditions of its admission to bid or other related instructions or agreements; or
    - (b) where the *RAP* suspects the person is involved with money laundering, terrorist financing, criminal activity or market abuse, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities under the *auction regulation* to pursue or apprehend the perpetrators of those activities; and
  - (3) monitor the relationship with bidders.
- 2A.4.4 G The power in regulation 5A of the *RAP Regulations* to impose a civil penalty or publish a statement adds to the *FSA*'s other supervisory powers in relation to *RAPs* (see REC 4) and its power to impose penalties on an *RAP* under the *Money Laundering Regulations*. The *FSA* will use this power under the *RAP Regulations* where it is appropriate to do so and with regard to the relevant factors listed in DEPP 6.2.1G. In deciding between a civil

penalty or a public statement, the *FSA* will also have regard to the relevant factors listed in *DEPP* 6.4.

- 2A.4.5 G The *FSA* will notify the subject of the investigation that it has appointed officers to carry out an investigation under either or both the *RAP Regulations* or the *Money Laundering Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FSA* expects to carry out a scoping visit early on in the enforcement process in most cases.
- 2A.4.6 G Where the *FSA* uses the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive and with regard to relevant factors listed in *DEPP* 6.5 to 6.5D in determining the appropriate level of financial penalty.
- 2A.4.7 G The *FSA* will also have regard to whether the person followed any of the *FSA*'s guidance and will not take action under regulation 5A where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.
- 2A.4.8 G When the *FSA* proposes or decides to take action against an *RAP* in exercise of its power in regulation 5A of the *RAP Regulations*, it must give the *RAP* a *warning notice* or a *decision notice* respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a *warning notice*, the *RAP* has a right to make representations on the *FSA*'s proposed decision.
- 2A.4.9 G Where the *FSA* is proposing or deciding to publish a statement censuring an *RAP* or impose a penalty on the *RAP* under regulation 5A of the *RAP Regulations*, the *FSA*'s decision maker will be the *RDC*. This is to ensure that the *FSA*'s power to censure or impose a penalty on an *RAP* has the same layer of separation in the decision making process, and is exercised consistently with, similar penalty and censure powers of the *FSA* under other legislation. The *RDC* will make its decisions following the procedure set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3. An *RAP* that receives a *decision notice* under regulation 5A of the *RAP Regulations* may refer the matter to the *Tribunal*.
- 2A.4.10 G Sections 393 and 394 of the *Act* apply to notices referred to in this section. See *DEPP* 2.4 (Third party rights and access to *FSA* material).
- 2A.4.11 G As with cases under the *Act*, the *FSA* may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in *DEPP* 6.7 applies to penalties imposed under the *RAP Regulations*.
- 2A.4.12 G The *FSA* will apply the approach to publicity that it has outlined in *EG* 6.

## Annex C

## Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text.

**19 Non-FSMA powers**

...

Recognised Auction Platforms Regulations 2011

- 19.120 G The FSA's policy for using the powers given to it by the RAP Regulations is set out in REC. This includes, for example, its policy in relation to the power to impose a financial penalty on or censure an RAP (REC 2A.4) and its policy in relation to the power to give directions to an RAP (REC 4.6).

## Appendix 7

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# Proposed changes to chapters 5 and 8 of the Listing Rules sourcebook

**LISTING RULES SOURCEBOOK (CANCELLATION OF LISTING)  
(AMENDMENT) INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 Rules);
  - (2) section 77 (Discontinuance and suspension of listing);
  - (3) section 96 (Obligations of issuers of listed securities);
  - (4) section 101 (Part 6 Rules: general provisions);
  - (5) section 157(1) (Guidance); and
  - (6) schedule 7 (The Authority as Competent Authority for Part VI).

**Commencement**

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

**Amendments to the Handbook**

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

**Citation**

- D. This instrument may be cited as the Listing Rules Sourcebook (Cancellation of Listing) (Amendment) Instrument 2012.

By order of the Board  
*[date]*



## Annex

## Amendments to the Listing Rules sourcebook (LR)

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

Cancellation as a result of schemes of arrangement etc

5.2.12 R *LR 5.2.5R and LR 5.2.8R do not apply to the cancellation of equity shares with a premium listing* as a result of:

- (1) a takeover or restructuring of the *issuer* effected by a scheme of arrangement under Part 26 of the Companies Act 2006; or
- (2) an administration or liquidation of the *issuer* pursuant to a court order under the Insolvency Act 1986, Building Societies Act 1986, Water Industry Act 1991, Banking Act 2009, Energy Act 2011 or the Investment Bank Special Administration Regulations 2011; or
- (3) the appointment of an administrator under paragraphs 14 (appointment by holder of floating charge) or 22 (appointment by company or directors) of Schedule B1 to the Insolvency Act 1986; or
- (4) a resolution for winding up being passed under section 84 of the Insolvency Act 1986; or
- (5) the appointment of a provisional liquidator by the court under section 135 of the Insolvency Act 1986; or
- (6) a company voluntary arrangement pursuant to Part 1 of the Insolvency Act 1986, subject to the time limits for the challenge of decisions made set out in Part 1 of the Insolvency Act 1986 having expired; or
- (7) statutory winding up or reconstruction measures in relation to an overseas issuer under equivalent overseas legislation having similar effect to those set out in (1) to (6).

5.2.13 G In determining whether the statutory winding up or reconstruction measures in relation to an overseas issuer under equivalent overseas legislation have a similar effect to those set out in LR 5.2.12R(1) to (6), the FSA will in particular have regard to whether those procedures require a court order, the approval of 75% of the shareholders entitled to vote on the resolution, or a formal declaration of the overseas issuer's insolvency or inability to pay its debts.

**LISTING RULES (SPONSORS) (AMENDMENT NO 2) INSTRUMENT 2012**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 Rules);
  - (2) section 88 (Sponsors);
  - (3) section 89 (Public censure of sponsor);
  - (4) section 96 (Obligations of issuers of listed securities);
  - (5) section 101 (Part 6 Rules: general provisions); and
  - (6) schedule 7 (The Authority as Competent Authority for Part VI).

**Commencement**

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

**Amendments to the Handbook**

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

**Notes**

- D. 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**

- E. This instrument may be cited as the Listing Rules (Sponsors) (Amendment No 2) Instrument 2012.

By order of the Board  
*[date]*

## Annex

## Amendments to the Listing Rules sourcebook (LR)

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

## Annual notifications

- 8.7.7 R A *sponsor* must provide to the *FSA* ~~on an annual basis~~ on or after the first *business day* of January in each year but no later than the last *business day* of January in each year:
- (1) written confirmation that it continues to satisfy the criteria for approval as a *sponsor* as set out in LR 8.6.5R; and
  - (1A) for each of the criteria in that rule, details of the basis upon which it considers that it meets the criteria.
  - (2) [deleted]
  - (3) [deleted]
  - (4) [deleted]
- 8.7.7A R Written confirmation must be provided by submitting a completed Sponsor Annual Notification Form to the *FSA* at the *FSA*'s address.
- [Note: The Sponsor Annual Notification Form can be found on the UKLA section of the *FSA*'s website.]

# Annual Notification Form

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## A. Sponsor's Annual Notification

We are writing as required by LR 8.7.7(1)R, to confirm that [INSERT NAME OF SPONSOR] continues to satisfy the criteria for approval as a sponsor as set out in LR 8.6.5R. We are satisfied that [INSERT NAME OF SPONSOR]:

- (1) is an authorised person or a member of a designated professional body;
- (2) is competent to perform sponsor services; and
- (3) has appropriate systems and controls in place to ensure that it can carry out its role as a sponsor in accordance with LR 8.

Pursuant to LR 8.7.7(1A)R we set out below details of the basis upon which [INSERT NAME OF SPONSOR] considers it meets each of the criteria for approval as a sponsor.


## **B. Information to support the confirmation made in Part A and to support the FSA's supervisory functions**

Sections 1 – 20 below request information to support the confirmation made in Part A and to support the FSA's ongoing supervisory functions in relation to you as a sponsor. To the extent that this information is included in Part A above you may insert cross references. All references to sponsor services are to sponsor services as defined in the Listing Rules.

### **1. Name of Sponsor**

### **2. Trading name (if different)**

### **3. Address**

**Postcode**

<b>Tel:</b>	<b>Email:</b>	<b>Fax:</b>
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# Annual Notification Form

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## 4. Primary contacts

Person(s) with overall responsibility for sponsor services	Person(s) with overall responsibility for compliance
Print Name	Print Name
Position	Position
Signature	Signature
Date	Date
Telephone/Email	Telephone/Email

## 5. Is the applicant:

*authorised* under the Financial Services and Markets Act 2000 (the *Act*)?

Yes

No

If yes what is the *FSA* firm registration number:

If no is the applicant a *member* of a *designated professional body*?

Yes

No

If yes what is the *FSA* firm reference number:

## Annual Notification Form

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- 6. Please provide details of any notifications required to be given to the FSA under LR 8.7.8R which have not been previously notified, in particular details of any regulatory intervention, criticism or disciplinary action as contemplated in LR 8.7.8(4)R.**

[Redacted area for question 6]

- 7. Please provide details of any anticipated significant changes to your firm's corporate business model in the 12 months following this annual notification (e.g. details of changes in business strategy, organisational structure, geographical markets and product lines).**

[Redacted area for question 7]

- 8. Please describe your firm's target market sector(s) and target size of issuer(s) for the provision of sponsor services in the 12 months following this annual notification.**

[Redacted area for question 8]

## Annual Notification Form

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**9. Please confirm the range of sponsor services your firm offers (e.g. new applications, further issues and class 1 circulars).**

[Redacted area for question 9]

**10. Please provide a list of Main Market listed companies who are existing clients of your firm. Please include details of the nature of the relationship with each client (e.g. corporate broker, financial adviser).**

[Redacted area for question 10]

**11. Please provide details of your firm's strategy for generating sponsor service mandates in the 12 months following this annual notification. Please provide details of your firm's expected provision of sponsor service mandates in the 12 months following this annual notification.**

[Redacted area for question 11]



# Annual Notification Form

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**12. Please describe your firm's sponsor service experience in the 12 months preceding this annual notification.**

<b>Date of sponsor service</b> <i>(e.g. document approval date, date of confirmation)</i>	<b>Name of Issuer</b>	<b>Description of sponsor service</b> <i>(e.g. new applicant, further issue, class I circular, refinancing and purchase of own equities)</i>	<b>Core Team</b>	<b>Completed (Y/N)</b>	<b>Joint Sponsor</b> <i>(If the firm acted as a joint sponsor, please identify the other sponsors and the Lead Sponsor for UKLA purposes)</i>

## Annual Notification Form

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**13. To the extent your firm considers it relevant to their confirmation, please describe your firm's corporate finance experience in the 12 months preceding this annual notification (excluding sponsor services).**

Date	Issuer	Description of service	Core Team	Completed (Y/N)	Key work streams

**14. To the extent your firm considers it relevant to their confirmation, please describe your firm's experience of advising or providing guidance on the Listing Rules, Disclosure Rules or Transparency Rules in the 12 months preceding this annual notification (excluding sponsor services).**

**15. Please include an organisational chart showing the team currently working on sponsor service mandates, making clear their grade/position and reporting lines. Please include details of the legal and compliance team providing support to the team working on sponsor service mandates.**

## Annual Notification Form

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**16. Please provide details of any staff movements in the team working on sponsor service mandates in the 12 months preceding this annual notification, including leavers, joiners and promotions. For new joiners, please describe their prior sponsor service and other corporate finance experience.**

**17. Please provide details of key worker/succession planning risks (for both temporary and permanent absences) within your firm's team working on sponsor service mandates and how they are managed.**

**18. Please provide details of any training and guidance provided to the team working on sponsor service mandates in the 12 months preceding this annual notification. Please provide details of any training and guidance to the team working on sponsor service mandates planned for the 12 months following this annual notification.**

## Annual Notification Form

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**19. Please provide details of any internal reviews conducted in relation your firm's provision of sponsor services in the 12 months preceding this annual notification and provide details of their conclusions.**

**20. Please provide details of any significant changes made to your firm's sponsor procedure manuals and practice notes in the 12 months preceding this annual notification.**

## Annual Notification Form

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### C. Declaration

- We have duly completed all sections of this form.
- We confirm that the information in this form is complete and correct to the best of our knowledge and belief.
- We understand that the FSA may require further information or documents at any time after this form has been returned.

**This form must be signed by two duly authorised officers of the firm. One should have overall responsibility for the provision of sponsor services and the other should have overall responsibility for compliance.**

**If you knowingly or recklessly give false or misleading information you may be liable to prosecution.**

Print Name	Print Name
Position	Position
Signature	Signature
Date	Date
Telephone/Email	Telephone/Email

**Please return this form to Sponsor Supervision on or after 2 January 2013 but no later than 31 January 2013, at the address below:**

**Sponsor Supervision  
UK Listing Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS**



## Appendix 7C

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# Designation of Handbook Provisions

FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website<sup>1</sup> for further details about this process.

We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows:

Handbook Provision	Designation
LR 5.2.12R	FCA
LR 5.2.13G	FCA
LR 8.7.7R	FCA
LR 8.7.7AR	FCA

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<sup>1</sup> [http://www.fsa.gov.uk/smallfirms/resources/one\\_minute\\_guides/about\\_fsa/handbook-pra-fca.shtml](http://www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml)





## Appendix 8

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# Investing in authorised funds through nominees

**RETAIL DISTRIBUTION REVIEW (PLATFORMS) (AMENDMENT)  
INSTRUMENT 2012**

**Purpose**

- A. The purpose of this instrument is to postpone the date on which certain amendments to the Handbook made by the Retail Distributions Review (Platforms) Instrument 2011 (FSA 2011/47) come into force.

**Powers exercised**

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

**Commencement**

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

**Amendments to the Handbook**

- E. The amendment to the Glossary of definitions by the insertion of the new definition “intermediate unitholder” by the Retail Distributions Review (Platforms) Instrument 2011 (FSA 2011/47) is postponed and comes into force on 31 December 2013 instead of 31 December 2012.
- F. The amendment to the Conduct of Business sourcebook (COBS) by the insertion of new section COBS 14.4 by the Retail Distributions Review (Platforms) Instrument 2011 (FSA 2011/47) is postponed and comes into force on 31 December 2013 instead of 31 December 2012.

**Citation**

- G. This instrument may be cited as the Retail Distributions Review (Platforms) (Amendment) Instrument 2012.

By order of the Board  
*[date]*

**PUB REF: 002954**

The Financial Services Authority  
25 The North Colonnade Canary Wharf London E14 5HS  
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099  
Website: [www.fsa.gov.uk](http://www.fsa.gov.uk)

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