

**FINANCIAL CONDUCT AUTHORITY AND PRUDENTIAL REGULATION
AUTHORITY HANDBOOK DESIGNATION (PARTICULAR
MODIFICATIONS) INSTRUMENT 2013**

WHEREAS:

- A. The Authority has, in accordance with Article 5 of the Designation Order, appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include the function of the Financial Conduct Authority of modifying a Relevant Instrument.
- B. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.
- C. By virtue of Article 7(1) of the Designation Order this Instrument shall be treated as if it had been made by the Financial Conduct Authority acting through its governing body.

Interpretation

1 In this Instrument (including the Recitals):

- (1) “Designation Order” means the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (SI 2013/161);
- (2) “the Authority” means the Financial Services Authority;
- (3) “the 2000 Act” means the Financial Services and Markets Act 2000;
- (4) “the 2012 Act” means the Financial Services Act 2012;
- (5) “the Authority” means the Financial Services Authority;
- (6) “Financial Conduct Authority” means the body corporate referred to in section 1A of the 2000 Act as amended by section 6 of the 2012 Act;
- (7) “Prudential Regulation Authority” means the body corporate referred to in section 2A(1) of the 2000 Act as amended by section 6 of the 2012 Act;
- (8) “Handbook” means the Authority’s Handbook of Rules and Guidance (and including for this purpose the Handbook Guides and Regulatory Guides published by the Authority alongside the Handbook of Rules and Guidance) in each case as published on the Authority’s Handbook website at 11h59 on 27 February 2013;
- (9) “Designation Instrument” means The FCA and PRA Handbook Designation Instrument 2013, made by order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body (FCA 2013/8) and by the Board of the Prudential Regulation Authority (PRA 2013/3);
- (10) “Relevant Instrument” has the meaning in section 119(6)(b) of the 2012 Act;
- (11) “FCA Relevant Instrument” means a Relevant Instrument designated by the Financial Conduct Authority under the Designation Instrument;
- (12) “PRA Relevant Instrument” means a Relevant Instrument specified by the Prudential Regulation Authority under the Designation Instrument;

- (13) “Commencement date” means 1 April 2013, provided that Her Majesty’s Treasury makes the Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order in the form of the draft laid before Parliament on 24 January 2013.

Modifications of rules etc by the Financial Conduct Authority

- 2 The Financial Conduct Authority modifies each FCA Relevant Instrument (or part of such instrument) as specified in each Annex¹ to this Instrument. For the avoidance of doubt, this paragraph does not give effect to any modification shown in an Annex to this Instrument as relating to or affecting an instrument not designated by the Financial Conduct Authority.
- 3 The modification of an FCA Relevant Instrument under paragraph 2 takes effect:
 - (1) on the Commencement Date; or
 - (2) if later, on the date on which the Designation Instrument comes into effect in relation to that FCA Relevant Instrument.

Modifications of rules etc by the Prudential Regulation Authority

- 4 The Prudential Regulation Authority modifies each PRA Relevant Instrument (or part of such instrument) as specified in each Annex to this Instrument. For the avoidance of doubt, this paragraph does not give effect to any modification shown in an Annex to this Instrument as relating to or affecting an instrument not designated by the Prudential Regulation Authority.
- 5 The modification of a PRA Relevant Instrument under paragraph 4 takes effect:
 - (1) on the Commencement Date; or
 - (2) if later, on the date on which the Designation Instrument comes into effect in relation to that PRA Relevant Instrument.

Citation

- 6 This instrument may be cited as the FCA and PRA Handbook Designation (Particular Modifications) Instrument 2013.

By order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body

28 February 2013

By order of the Board of the Prudential Regulation Authority

¹ For convenience (and without operative effect) Schedule A lists the Annexes to this Instrument by the Module of the Handbook to which each Annex relates.

7 March 2013

SCHEDULE A

For convenience (and without operative effect) this Schedule lists the Annexes referred to in paragraph 2 and paragraph 4 of this Instrument by the Module of the Handbook to which each Annex relates.

Handbook Module	Annex
Principles for Businesses (PRIN)	Annex 1
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex 2
The Fit and Proper test for Approved Persons (FIT)	Annex 3
Financial Stability and Market Confidence sourcebook (FINMAR)	Annex 4
Training and Competence sourcebook (TC)	Annex 5
Fees manual (FEES)	Annex 6
General Prudential sourcebook (GENPRU)	Annex 7
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex 8
Prudential sourcebook for Insurers (INSPRU)	Annex 9
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex 10
Prudential sourcebook for UCITS Firms (UPRU)	Annex 11
Interim Prudential sourcebook for Friendly Societies (IPRU(FSOC))	Annex 12
Interim Prudential sourcebook for Insurers (IPRU(INS))	Annex 13
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex 14
Conduct of Business sourcebook (COBS)	Annex 15
Insurance: Conduct of Business sourcebook (ICOBS)	Annex 16
Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)	Annex 17
Banking: Conduct of Business sourcebook (BCOBS)	Annex 18
Client Assets sourcebook (CASS)	Annex 19
Market Conduct sourcebook (MAR)	Annex 20

Supervision manual (SUP)	Annex 21
Dispute Resolution: Complaints sourcebook (DISP)	Annex 22
Consumer Redress Schemes sourcebook (CONRED)	Annex 23
Compensation sourcebook (COMP)	Annex 24
Building Societies sourcebook (BSOCS)	Annex 25
Collective Investment Schemes sourcebook (COLL)	Annex 26
Credit Unions New sourcebook (CREDS)	Annex 27
Professional Firms sourcebook (PROF)	Annex 28
Regulated Covered Bonds sourcebook (RCB)	Annex 29
Listing Rules sourcebook (LR)	Annex 30
Prospectus Rules sourcebook (PR)	Annex 31
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex 32
Energy Market Participants Guide (EMPS)	Annex 33
Oil Market Participants Guide (OMPS)	Annex 34
Service Companies Guide (SERV)	Annex 35
The Building Societies Regulatory Guide (BSOG)	Annex 36
The Collective Investment Scheme Information Guide (COLLG)	Annex 37
Financial Crime: a guide for firms (FC)	Annex 38
The Perimeter Guidance Manual (PERG)	Annex 39
The Responsibilities of Providers and Distributors for the Fair Treatment of Customers Guide (RPPD)	Annex 40
The Unfair Contract Terms Regulatory Guide (UNFCOG)	Annex 41

Annex 1

Amendments to the Principles for Businesses sourcebook (PRIN)

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

1.1 Application and purpose

...

Consequences of breaching the Principles

...

1.1.8 G The *Principles* are also relevant to the ~~FSA's~~ FCA's powers of information-gathering, to vary a *firm's* ~~Part IV permission~~ Part 4A permission, and of investigation and intervention, and provide a basis on which the ~~FSA~~ FCA may apply to a court for an *injunction* or restitution order or require a *firm* to make restitution. However, the *Principles* do not give rise to actions for damages by a *private person* (see *PRIN* 3.4.4R).

1.1.8A G The *Principles* are also relevant to the PRA's powers of information-gathering, to vary a *firm's* Part 4A permission, and of investigation and intervention, and provide a basis on which the PRA may apply to a court for an *injunction* or restitution order or require a *firm* to make restitution.

...

Sch 6 Rules that can be waived

Sch 6.1 G ~~As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives. [deleted]~~

Sch 6.1A G As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

Sch G As a result of section 138A of the Act (Modification or waiver of rules) the

6.1B

[PRA]

PRA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code). However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the PRA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 2

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

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

1.1A Application

...

1.1A.2 G The provisions in SYSC should be read in conjunction with GEN 2.2.23R to [FCA/ PRA] GEN 2.2.25G. In particular:

- (1) Provisions made by both the FCA and PRA may contain obligations for or references to FCA-*authorised persons*. GEN 2.2.23R limits the application of those provisions so that the PRA will only apply them in respect of PRA-*authorised persons* and not to such FCA-*authorised persons* as are included within the provision.
- (2) Provisions made by both the FCA and PRA may be applied by both regulators to PRA-*authorised persons*. Such provisions are applied by each regulator to the extent of its powers and regulatory responsibilities.

...

3.2 Areas covered by systems and controls

...

3.2.11 G (1) ~~A firm's arrangements should be such as to furnish its governing body with the information it needs to play its part in identifying, measuring, managing and controlling risks of regulatory concern. Three factors will be the relevance, reliability and timeliness of that information. [deleted]~~

- (2) ~~Risks of regulatory concern are those risks which relate to the fair treatment of the firm's customers, to the protection of consumers, to confidence in the UK financial system, to the use of that system in connection with financial crime, and to financial stability. [deleted]~~

3.2.11A G (1) A firm's arrangements should be such as to furnish its governing body with the information it needs to play its part in identifying,

[FCA] measuring, managing and controlling risks of regulatory concern. Three factors will be the relevance, reliability and timeliness of that information.

- (2) Risks of regulatory concern are those risks which relate to the fair treatment of the *firm's customers*, to the protection of *consumers*, to effective competition and to the integrity of the *UK financial system*. Risks which are relevant to the integrity of the *UK financial system* include risks which relate to its soundness, stability and resilience and to the use of the system in connection with *financial crime*.

3.2.11B [PRA] G (1) A *firm's* arrangements should be such as to furnish its *governing body* with the information it needs to play its part in identifying, measuring, managing and controlling risks of regulatory concern. Three factors will be the relevance, reliability and timeliness of that information.

- (2) Risks of regulatory concern are those risks which relate to the safety and soundness of *PRA-authorised persons*.

...

10.1 Application

...

Types of conflicts

....

10.1.4A [FCA] G ...

10.1.4B [PRA] G Other firms should take account of the rule on the types of conflicts (see SYSC 10.1.4R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1.3.3G.

...

Record of conflicts

...

10.1.6A [FCA] G ...

10.1.6B [PRA] G Other firms should take account of the rule on records of conflicts (see SYSC 10.1.6R) as if it were guidance (and as if "should" appeared in that rule instead of "must", as explained in SYSC 1 Annex 1.3.3G).

...

Contents of policy

...

10.1.11A G
[FCA] ...

10.1.11B G Other firms should take account of the rules relating to conflicts of interest policies (see SYSC 10.1.10R and SYSC 10.1.11R) as if they were guidance (and as if "should" appeared in those rules instead of "must", as explained in SYSC 1 Annex 1.3.3G).
[PRA]

...

10.2.3 G SYSC 10.2.2R is made under section ~~147~~ 137P of the *Act* (Control of information *rules*). It has the following effect:

...

12.1 Application

...

12.1.2 R Except as set out in SYSC 12.1.4R, this section applies with respect to different types of *group* as follows:
[FCA/
PRA]

- (1) SYSC 12.1.8R and SYSC 12.1.10R apply with respect to all *groups*, including ~~FSA-regulated EEA financial conglomerates~~, UK-regulated EEA financial conglomerates, other *financial conglomerates* and *groups* dealt with in SYSC 12.1.13R to SYSC 12.1.16R;
- (2) the additional requirements set out in SYSC 12.1.11R and SYSC 12.1.12R only apply with respect to ~~FSA-regulated EEA financial conglomerates~~ UK-regulated EEA financial conglomerates; and

...

...

12.1.4 R ...

- (2) The *rules* referred to in (1):
- (a) only apply with respect to a *financial conglomerate* if it is ~~an FSA-regulated EEA financial conglomerate~~ a UK-regulated EEA financial conglomerate;

...

...

13 Operational risk: systems and controls for insurers

...

13.2 Purpose

...

13.2.4 G ~~Operational risk can affect, amongst other things, a firm's solvency, or lead to unfair treatment of consumers or lead to financial crime. A firm should consider all operational risk events that may affect these matters in establishing and maintaining its systems and controls. [deleted]~~

13.2.4A G Operational risk can, amongst other things, lead to unfair treatment of consumers or lead to financial crime. A firm should consider all operational risk events that may affect these matters in establishing and maintaining its systems and controls.
[FCA]

13.2.4B G Operational risk can affect, amongst other things, a firm's solvency. A firm should consider all operational risk events that may affect these matters in establishing and maintaining its systems and controls.
[PRA]

13.3 Other related Handbook sections

- 13.3.1 G ~~The following is a non-exhaustive list of rules and guidance in the Handbook that are relevant to a firm's management of operational risk:~~
- (1) ~~SYSC 14 and INSPRU 5.1 contain specific rules and guidance for the establishment and maintenance of operational risk systems and controls in a prudential context.~~
- (2) ~~COBS contains rules and guidance that can relate to the management of operational risk; for example, COBS 2 (Conduct of business obligations), COBS 4 (Communicating with clients, including financial promotions), COBS 6 (Information about the firm, its services and remuneration), COBS 7 (Insurance mediation), COBS 9 (Suitability (including basic advice)), COBS~~

~~11 (Dealing and managing), COBS 12 (Investment research),
COBS 14 (Providing product information to clients) and COBS 19
(Pensions: supplementary provisions). [deleted]~~

- 13.3.1A G The following is a non-exhaustive list of *rules* and *guidance* in the
[FCA] Handbook that are relevant to a *firm's* management of operational risk:
- (1) COBS contains *rules* and *guidance* that can relate to the
management of operational risk; for example, COBS 2 (Conduct of
business obligations), COBS 4 (Communicating with clients,
including financial promotions), COBS 6 (Information about the
firm, its services and remuneration), COBS 7 (Insurance
mediation), COBS 9 (Suitability (including basic advice)), COBS
11 (Dealing and managing), COBS 12 (Investment research),
COBS 14 (Providing product information to clients) and COBS 19
(Pensions: supplementary provisions).

- 13.3.1B G The following is a non-exhaustive list of *rules* and *guidance* in the
[PRA] Handbook that are relevant to a *firm's* management of operational risk:
- (1) SYSC 14 and INSPRU 5.1 contain specific *rules* and *guidance* for
the establishment and maintenance of operational risk systems and
controls.

...

...

14 ~~Prudential risk~~ Risk management and associated systems and controls for insurers

14.1 Application

...

Purpose

- 14.1.3 G This section sets out some *rules* and *guidance* on the establishment and
[PRA] maintenance of systems and controls for the management of a *firm's*
prudential risks. A *firm's* prudential risks are those that can reduce the
adequacy of its financial resources, and as a result may adversely affect
~~confidence in the financial system or prejudice consumers~~ its safety and
soundness or prejudice policyholders. Some key prudential risks are credit,
market, liquidity, operational, insurance and group risk.

- 14.1.4 G The purpose of this section is to serve the ~~FSA's regulatory objectives of
[PRA] consumer protection, market confidence and financial stability~~ PRA's
statutory objectives of promoting the safety and soundness of PRA-

authorised persons and contributing to the securing of an appropriate degree of protection for those who are, or may become, policyholders. In particular, this section aims to reduce the risk that a *firm* may pose a threat to these ~~regulatory objectives~~ statutory objectives, either because it is not prudently managed, or because it has inadequate systems to permit appropriate senior management oversight and control of its business.

...

How to interpret this section

- 14.1.6 [PRA] G This section is designed to amplify *Principle 3* (Management and control) which requires that a *firm* take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. This section is also designed to be complementary to *SYSC 2*, *SYSC 3* and *SYSC 13* in that it contains some additional *rules* and *guidance* on senior management arrangements and associated systems and controls for *firms* that could have a significant impact on the ~~FSA's objectives in a prudential context~~ PRA's objectives.

...

The role of systems and controls ~~in a prudential context~~

- 14.1.10 [PRA] G ~~In a prudential context, a~~ A *firm's* systems and controls should provide its senior management with an adequate means of managing the *firm*. As such, they should be designed and maintained to ensure that senior management is able to make and implement integrated business planning and risk management decisions on the basis of accurate information about the risks that the *firm* faces and the financial resources that it has.

...

Business planning and risk management

- 14.1.17 [PRA] G Business planning and risk management are closely related activities. In particular, the forward-looking assessment of a *firm's* financial resources needs, and of how business plans may affect the risks that it faces, are important elements of prudential risk management. A *firm's* business planning should also involve the creation of specific risk policies which will normally outline a *firm's* strategy and objectives for, as appropriate, the management of its market, credit, liquidity, operational, insurance and group risks and the processes that it intends to adopt to achieve these objectives. *SYSC 14.1.18R* to *SYSC 14.1.25G* set out some *rules* and *guidance* relating to business planning and risk management ~~in a prudential context~~ (see also *SYSC 3.2.17G*, which states that a *firm* should plan its business appropriately).

...

Internal controls: introduction

14.1.26 G *Internal controls* should provide a *firm* with reasonable assurance that it
[PRA] will not be hindered in achieving its objectives, or in the orderly and
legitimate conduct of its business, by events that may reasonably be
foreseen. More specifically ~~in a prudential context~~, *internal controls* should
be concerned with ensuring that a *firm's* business plan and risk management
systems are operating as expected and are being implemented as intended.
The following *rule* (SYSC 14.1.27R) reflects the importance of *internal
controls* ~~in a prudential context~~.

...

14.1.29 G ...
[PRA]

14.1.29A G When determining the adequacy of its *internal controls*, a *firm* should
[FCA] consider both the potential risks that might hinder the achievement of the
objectives listed in SYSC 14.1.28G, and the extent to which it needs to
control these risks. More specifically, this should normally include
consideration of:

- (1) the appropriateness of its reporting and communication lines (see SYSC 3.2.2G);
- (2) how the delegation or contracting of functions or activities to *employees*, *appointed representatives* or, where applicable, its *tiered agents* or other third parties (for example *outsourcing*) is to be monitored and controlled (see SYSC 3.2.3G to SYSC 3.2.4G and the additional guidance on the management of *outsourcing* arrangements is also provided in SYSC 13.9);
- (3) the risk that a *firm's employees* or contractors might accidentally or deliberately breach a *firm's* policies and procedures (see SYSC 13.6.3G);
- (4) the need for adequate segregation of duties (see SYSC 3.2.5G);
- (5) the establishment and control of risk management committees;
- (6) the need for risk assessment and the establishment of a risk assessment function (see SYSC 3.2.10G);
- (7) the need for internal audit and the establishment of an internal audit function and audit committee (see SYSC 3.2.15G to SYSC 3.2.16G).

Internal controls: segregation of duties

14.1.30 G The effective segregation of duties is an important internal control ~~in the~~
prudential context. In particular, it helps to ensure that no one individual is

[PRA] completely free to commit a *firm's* assets or incur liabilities on its behalf. Segregation can also help to ensure that a *firm's governing body* receives objective and accurate information on financial performance, the risks faced by the *firm* and the adequacy of its systems. In this regard, a *firm* should ensure that there is adequate segregation of duties between *employees* involved in:

...

...

Management information

14.1.46 [PRA] G Many individuals, at various levels of a *firm*, need management information relating to their activities. However, SYSC 14.1.47G to SYSC 14.1.50G concentrates on the management information that should be available to those at the highest level of a *firm*, that is, the *firm's governing body* and relevant *senior managers*. In so doing SYSC 14.1.47G to SYSC 14.1.50G amplify SYSC 3.2.11G and SYSC 3.2.12G (which outline the *FSA's PRA's* high level policy on senior management information) by providing some additional *guidance* on the management information that should be available ~~in a prudential context~~.

...

Record keeping

14.1.51 [PRA] G SYSC 3.2.20R requires a *firm* to take reasonable care to make and retain adequate records. The following policy on record keeping supplements SYSC 3.2.20R by providing some additional *rules* and *guidance* on record keeping ~~in a prudential context~~. The purpose of this policy is to:

...

- (2) help the *FSA PRA* to satisfy itself that a *firm* is operating in a prudent manner and is not prejudicing ~~the interests of its customers, market confidence or financial stability~~ its safety and soundness or the interests of policyholders .

...

15 Credit risk management systems and controls for insurers

15.1 Application

...

Purpose

...

- 15.1.5 G Credit risk concerns the ~~FSA in a prudential context~~ PRA because
[PRA] inadequate systems and controls for credit risk management can create a threat to the ~~regulatory objectives of market confidence, consumer protection and financial stability~~ statutory objectives of promoting the safety and soundness of PRA-*authorised persons* and contributing to the securing of an appropriate degree of protection for those who are or may become policyholders by:

...

...

17 Insurance risk systems and controls

17.1 Application

...

Purpose

- 17.1.3 G This section provides *guidance* on how to interpret SYSC 14 (~~Prudential~~
[PRA] ~~risk~~ Risk management and associated systems and controls) in so far as it relates to the management of insurance risk. Insurance risk refers to fluctuations in the timing, frequency and severity of insured events, relative to the expectations of the *firm* at the time of underwriting. Insurance risk can also refer to fluctuations in the timing and amount of *claim* settlements. For *general insurance business* some specific examples of insurance risk include variations in the amount or frequency of *claims* or the unexpected occurrence of multiple *claims* arising from a single cause. For *long-term insurance business* examples include variations in the mortality and persistency rates of *policyholders*, or the possibility that guarantees could acquire a value that adversely affects the finances of a *firm* and its ability to treat its *policyholders* fairly consistent with the *firm's* obligations under the FCA's Principle 6. More generally, insurance risk includes the potential for expense overruns relative to pricing or provisioning assumptions.

- 17.1.4 G Insurance risk concerns the ~~FSA in a prudential context~~ PRA because
[PRA] inadequate systems and controls for its management can create a threat to the ~~regulatory objectives of market confidence, consumer protection and financial stability~~ statutory objectives of promoting the safety and soundness of PRA-*authorised persons* and contributing to the securing of an appropriate degree of protection for those who are or may become policyholders. Inadequately managed insurance risk may result in:

...

- (2) the inability of a *firm* to treat its *policyholders* fairly consistent with the *firm's* obligations under the *FCA's Principle 6* (for example, in relation to bonus payments).

...

17.1.12 G The identification of insurance risk should normally include:
[PRA]

...

...

Record keeping

17.1.38 G The *FSA's PRA's* high level *rules* and *guidance* for record keeping are outlined in SYSC 3.2.20R (Records). Additional *rules* and *guidance* ~~in relation to the *prudential context*~~ are set out in SYSC 14.1.51G to SYSC 14.1.64G. In complying with these *rules* and *guidance*, a *firm* should retain an appropriate record of its insurance risk management activities. This may, for example, include records of:

...

...

19A Remuneration Code

19A.1 General application and purpose

Purpose

...

19A.1.6 G ...
[FCA/
PRA]

- (3) ~~The *Remuneration Code* also fulfils the *FSA's* duty under section 139A of the Act (General rules about remuneration) to have *rules* requiring certain *firms* to have and act in accordance with a *remuneration* policy which is consistent with the effective management of risks and with the *FSB Compensation Standards*.~~
[deleted]

...

19A.3 Remuneration principles for banks, building societies and investment firms

...

Application: categories of staff and proportionality

19A.3.3 R ...

[FCA/
PRA]

[Note: In addition, the PRA has set out information on the division of firms into categories for the purpose of providing a framework for the operation of the remuneration principles proportionality rule. It is available at [web address tbc].]

[Note: In addition to the guidance in this section which relates to the remuneration principles proportionality rule, the FSA ~~has given guidance~~ gave guidance on the division of firms into categories for the purpose of providing a framework for the operation of the remuneration principles proportionality rule. This was ~~published as finalised guidance FG12/19 'General Guidance on Proportionality'~~ and is available at <http://www.fsa.gov.uk/static/pubs/guidance/fg12-19.pdf> guidance was published in Policy Statement 10/20 Revising the Remuneration Code and is available at [web address tbc] updated by [web address tbc]]

...

19A.3.6 G (1) In the *FSA's appropriate regulator's* view:

[FCA/
PRA]

...

[Note: The FSA ~~has given guidance~~ gave guidance on the application of particular rules on remuneration structures in relation to individuals who are Remuneration Code staff for only part of a given performance year. This guidance was published in Policy Statement 10/20 Revising the Remuneration Code and is available at <http://www.fsa.gov.uk/Pages/Library/Policy/Policy/index.shtml> [web address tbc]]

...

...

Remuneration Principle 12: Remuneration structures - introduction

..

19A.3.34 G (1) Taking account of the *remuneration principles proportionality rule*, the ~~FSA~~ appropriate regulator does not generally consider it necessary for a *firm* to apply the *rules* referred to in (2) where, in relation to an individual ("X"), both the following conditions are satisfied:

[FCA/
PRA]

...

[**Note:** The ~~FSA has also given guidance~~ FSA also gave guidance on the application of certain *rules* on *remuneration* structures in relation to individuals who are *Remuneration Code staff* for only part of a given performance year. This guidance was published in Policy Statement 10/20 Revising the Remuneration Code and is available at <http://www.fsa.gov.uk/Pages/Library/Policy/Policy/index.shtml>. [web address tbc]]

...

20 Reverse stress testing

20.1 Application and purpose

...

Purpose

...

20.1.4 G ...

[PRA]

20.1.4A G The reverse stress testing requirements are an integral component of a *firms* business planning and risk management under SYSC. For *BIPRU firms* as referred to in SYSC 20.1.1R(1)(a), this chapter amplifies SYSC 7.1.1G to SYSC 7.1.8G on risk control.

[FCA]

...

Sch 6 Rules that can be waived

Sch 6.1 G ~~As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives. [deleted]~~

Annex 3

Amendments to the Fit and Proper test for Approved Persons sourcebook (FIT)

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

1 General

1.1 Application and purpose

...

1.1.2 G The purpose of *FIT* is to set out and describe the criteria that the *FSA* appropriate regulator will consider when assessing the fitness and propriety of a *candidate* for a *controlled function* (see generally *SUP* 10 on *approved persons*). The criteria are also relevant in assessing the continuing fitness and propriety of *approved persons*. ~~The criteria that the *FSA* will consider in relation to an *authorised person* are described in *COND*.~~

1.2 Introduction

...

1.2.2 G ~~The method of applying for *approved person* status is set out in *SUP* 40. [deleted]~~

...

1.2.3 G ~~Under section 63(1) of the *Act* (Withdrawal of approval), the *FSA* may withdraw its approval if it considers that the *person* in respect of whom the approval was given is not fit and proper to perform the *controlled function* to which the approval relates. [deleted]~~

1.2.3A G Under section 63(1) of the *Act* (Withdrawal of approval), the *FCA* may withdraw an approval under section 59 given by the *FCA* or the *PRA* in relation to the performance by a person of a function if it considers that the *person* is not a fit and proper *person* to perform the function.

1.2.3B G Under section 63(1A) of the *Act* (Withdrawal of approval), the *PRA* may withdraw an approval under section 59 in relation to the performance by a *person* (“A”) of a function if: (a) the *PRA* gave the approval, or the *FCA* gave the approval and the function is a *significant influence function* performed in relation to the carrying on by a *PRA-authorised person* of a regulated activity; and (b) the *PRA* considers that A is not a fit and proper person to perform the function.

...

2.2 Competence and capability

2.2.1 G In determining a *person's* competence and capability, the ~~FSA~~ FCA will have regard to all relevant matters including but not limited to:
[FCA]

- (1) whether the *person* satisfies the relevant ~~FSA~~ FCA training and competence requirements in relation to the *controlled function* the *person* performs or is intended to perform;

...

2.2.1A G In determining a *person's* competence and capability, the PRA will have regard to all relevant matters including but not limited to:
[PRA]

- (1) whether the *person* has demonstrated by experience and training that the *person* is suitable , or will be suitable if approved, to perform the *controlled function*;
- (2) whether the *person* has adequate time to perform the *controlled function* and meet the responsibilities associated with that function.

Annex 4

Amendments to the Financial Stability and Market Confidence sourcebook (FINMAR)

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

1.2 Financial stability information powers

Introduction

- 1.2.1 G The ~~FSA~~ PRA has a ~~regulatory objective~~ statutory objective of ~~contributing to the protection and enhancement of UK financial stability~~ promoting the safety and soundness of PRA-*authorised persons*. That objective is to be advanced primarily by the PRA (1) seeking to ensure that the business of PRA-*authorised persons* is carried on in a way which avoids any adverse effect on the stability of the UK financial system, and (2) seeking to minimise the adverse effect that the failure of a PRA-*authorised person* could be expected to have on the stability of the UK financial system. Section 250 of the Banking Act 2009 imposes a duty on the ~~FSA~~ PRA to collect information that it thinks is, or may be, relevant to the stability of individual financial institutions or to one or more aspects of the *UK financial system*.

...

Annex 5

Amendments to the Training and Competence sourcebook (TC)

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

Sch 6 Rules that can be waived

- Sch 6.1 G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 6

Amendments to the Fees manual (FEES)

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

1.1 Application and Purpose

...

1.1.3A G The rules in FEES should be read in conjunction with GEN 2.2.23R to GEN 2.2.25G. In relation to FEES, some rules are made by both the FCA and PRA. Those rules may contain obligations for or references to FCA-authorised persons (for example payment service providers and electronic money issuers) notwithstanding that they also are made by the PRA in order to apply them to PRA-authorised persons. GEN 2.2.23R limits the application of those rules so that the PRA will only apply them in respect of PRA-authorised persons and not to such FCA-authorised persons as are specifically included within the rule.

[FCA/
PRA]

...

2. General Provisions

2.1 Introduction

...

Purpose

...

2.1.5 G ~~Paragraph 17 of Schedule 1 to and section 99~~ Paragraph 23 of Schedule 1ZA of the Act, regulation 92 of the *Payment Services Regulations* and regulation 59 of the *Electronic Money Regulations* enable the ~~FSA~~ FCA to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the *FSCS* levy, *FOS* levies and *CFEB* levies are set out in *FEES* 6.1, *FEES* 5.2 and *FEES* 7.1.4G respectively. Case fees payable to the *FOS Ltd* are set out in *FEES* 5.5A. *Fee-paying payment service providers* and *fee-paying electronic money issuers* are not required to pay the *FSCS* levy but are liable for *FOS* levies.

[FCA]

2.1.5-A G Paragraph 31 of Schedule 1ZB of the Act enables the PRA to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the FSCS levy are set out in FEES 6.1.

[PRA]

2.1.5A G Regulation 92 of the *Payment Services Regulations* and regulation 59 of the *Electronic Money Regulations* each provide that the functions of the ~~FSA~~

[FCA] FCA under the respective regulations are treated for the purposes of ~~paragraph 17 of Schedule 1~~ paragraph 23 of Schedule 1ZA to the *Act* as functions conferred on the ~~FSA~~ FCA under the *Act*. ~~Paragraphs 17(2) and (3) Paragraphs 23(7) and 20(1)(b)~~ however, have not been included. These are, respectively, the ~~FSA's~~ FCA's obligation to ensure that the amount of penalties received or expected to be received are not to be taken into account in determining the amount of any fee payable and the provision that allows fees to be raised to repay borrowed monies in respect of expenses incurred, before or after the coming into force of the *Act* or the Bank of England Act 1998.

2.1.6 G The ~~FSA~~ appropriate regulator fees payable will vary from one ~~financial year~~ fee year to another, and will reflect the ~~FSA's~~ appropriate regulator's funding requirement for that period and the other key components, as described in *FEES* 2.1.7G. Periodic fees, which will normally be payable on an annual basis, will provide the majority of the funding required to enable the ~~FSA~~ appropriate regulator to undertake its statutory functions.

...

2.1.9A G PRA-authorized persons and persons seeking to become PRA-authorized persons should note that the *FCA* and the *PRA* have agreed for the *FCA* to act as the *PRA's* agent in relation to the collection of *PRA* fees. Where applicable, both PRA and FCA fees should be paid as a single payment to the FCA, which will receive the payment in its own capacity in respect of FCA fees and in its capacity as agent for the PRA in respect of the PRA fees. References to this arrangement will be referred to in FEES where applicable.

...

2.2 Late Payments and Recovery of Unpaid Fees

Late Payments

...

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

...

3 Application, Notification and Vetting Fees

3.1 Introduction

...

Purpose

...

- 3.1.5 G (1) The rates set for authorisation fees represent an appropriate proportion of the costs of the *FSA appropriate regulator* in processing the application or exercise of *Treaty rights*.
[FCA/
PRA]
- (2) ~~The fees for *collective investment schemes* reflect the estimated costs to the *FSA* of assessing applications and notifications. The level of fees payable in respect of an application or a notification will vary depending upon the provision of the *Act* under which it is made. This fee is adjusted when the *scheme* concerned is an *umbrella*. [deleted]~~
- (3) ~~Application fees for *recognised bodies* are calculated from a tariff structure intended to reflect the estimated cost of processing an application of that type and complexity. [deleted]~~

3.1.5A G The fees for *collective investment schemes* reflect the estimated costs to the *FCA* of assessing applications and notifications. The level of fees payable in respect of an application or a notification will vary depending upon the provision of the *Act* under which it is made. This fee is adjusted when the *scheme* concerned is an *umbrella*.
[FCA]

3.1.5B G Application fees for *recognised bodies* are calculated from a tariff structure intended to reflect the estimated cost of processing an application of that type and complexity.
[FCA]

...

3.1.7 G A potential applicant for ~~*Part IV permission*~~ *Part 4A permission* (or *Treaty firm*) has the opportunity to discuss its proposed application (or exercise of *Treaty rights*) with the *FSA appropriate regulator* before submitting it formally. (For more information, contact the Firm Contact Centre (020 7066 3954) or visit the *FSA* website How do I get authorised: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>.) If an applicant for ~~*Part IV permission*~~ *Part 4A permission* (or *Treaty firm*) does so, the *FSA appropriate regulator* will be able to use that dialogue to make an initial assessment of the fee categorisation and therefore indicate the authorisation fee that should be paid.
[FCA/
PRA]

3.1.8 G See the *FSA* website How do I get authorised: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml> in relation to the procedures for making applications for ~~*Part IV permission*~~ and *SUP 13A* for procedures for the exercise of *Treaty rights* by *Treaty firms*. [deleted]

...

Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	...
...		
<p>(s) In the case of an <i>insurance business transfer scheme</i>, a transferor.</p> <p>Note - for the purpose of this paragraph an <i>insurance business transfer scheme</i> consists of a single transferor and a single transferee. Where however such a scheme is part of a single larger scheme, that larger scheme is treated as a single <i>insurance business transfer scheme</i>. If an <i>insurance business transfer scheme</i> includes more than one transferor in accordance with this paragraph, the transferors are liable to pay the fee under column (2) jointly.</p>	<p>Either (1) or (2) as set out below:</p> <p>(1) In the case of an <i>insurance business transfer scheme</i> involving <i>long term insurance business</i>, 18,500 <u>9,250 to the PRA and 9,250 to the FCA</u>; or</p> <p>(2) in the case of an <i>insurance business transfer scheme</i> not involving <i>long term insurance business</i>, 10,000 <u>5,000 to the PRA and 5,000 to the FCA</u>.</p> <p><u>The amount payable to the PRA above is collected by the FCA as agent of the PRA.</u></p>	
...		

...

3 Annex 1R Authorisation fees payable

[FCA/PRA] Part 1 - Authorisation fees payable

For PRA-*authorised persons* and *persons* seeking to become PRA-*authorised persons*, the amount payable to the PRA is 50% of the amount payable under Part 1 and the amount payable to the FCA is 50% of the amount payable under Part 1. The amount payable to the PRA above is collected by the FCA as agent of the PRA.

For FCA-*authorised persons* and *persons* seeking to become FCA-*authorised persons*, the amount payable to the FCA is the amount payable under Part 1.

3 Annex 6R Fees payable for a permission or guidance on its availability in connection with the Basel Capital Accord

[FCA/
PRA]

Table 2

Application group	Description of group		Application fee		
	Modified eligible liabilities (m)	Number of traders as at the 31 December prior to the <i>FSA appropriate regulator financial year fee year</i> in which the fee is payable	Advanced IRB ('000)	Foundation IRB ('000)	AMA ('000)
Group 2	>40,000	>200	232	198	146
Group 3	>5,000 - 40,000	26 - 200	94	72	51
Group 4	0 - 5,000	0 - 25	42	30	24

3 Annex 9 Special Project Fee for restructuring

[FCA/
PRA]

(4) R		Where the transaction in (2) involves raising capital outside the <i>group</i> to which the <i>firm</i> belongs, any SPFR in relation to that transaction is only payable by the largest <i>firm</i> in that <i>group</i> . The largest <i>firm</i> is the one that pays the highest periodic fee in the <i>FSA appropriate regulator financial year fee year</i> (the 12 months ending 31 March) in which the bill is raised. For the purpose of the calculation in (9), all time spent and fees and disbursements incurred in relation to the group are added together.
	...	

4 Periodic fees

...

4.1.5 G The *Society of Lloyd's*, which has ~~permission under section 315(2) of the Act~~
[FCA/ (The Society: authorisation and permission), has its own fee block.
PRA]

...

4.2.2 G (1) ...
[FCA/
PRA]

(2) ~~A recognised body may also have obligations to pay fees to the FSA under other rules arising from legislation other than the Act. For example a recognised body may have an obligation to pay a fee as an approved operator of a relevant system under the Uncertificated Securities Regulations 1995 (SI 1995/3272). [deleted]~~

4.2.2A G A recognised body may also have obligations to pay fees to the FCA under other rules arising from legislation other than the Act. For example a recognised body may have an obligation to pay a fee as an approved operator of a relevant system under the Uncertificated Securities Regulations 1995 (SI 1995/3272).
[FCA]

4.2.3 G The ~~FSA~~ FCA will issue invoices in respect of the FCA and PRA to firms and other fee payers and expects to do so at least 30 days before the dates on which payments fall due under FEES 4.2.1R.
[FCA/
PRA]

Method of payment

4.2.4 R (1) ~~Unless (2) applies, a~~ A periodic fee must be paid using either direct debit, credit transfer (BACS/CHAPS), cheque, Maestro or by credit card (Visa/Mastercard only). Any payment by permitted credit card must include an additional 2% of the sum paid.
[FCA/
PRA]

(2) ~~The FSA does not specify a method of payment for a recognised body or a designated professional body. [deleted]~~

4.2.4A R The FCA does not specify a method of payment for a recognised body or a designated professional body.
[FCA]

...

Modifications for persons becoming subject to periodic fees during the course of a financial fee year

4.2.6 R (1) Unless (2) applies, if the event, as described in column 4 of the table in

[FCA/
PRA] *FEES* 4.2.11R, giving rise to, or giving rise to an increase in, the fee payable in *FEES* 4.2.1R, occurs on or after 1 July of the relevant ~~financial year~~ *fee year*, the periodic fee required under *FEES* 4.2.1R is modified for:

...

- (2) For *recognised bodies*, if the recognition order is made during the course of the relevant ~~financial year~~ *fee year*, the periodic fee required is set out in Column (4) of the table in *FEES* 4.2.11R.

...

4.2.7A G Projected valuations for a *firm's* first year will be collected for the 12 month period beginning with the date a *firm* becomes authorised or registered, or the date its *permission* and/or *payment service* activities are extended. That information will be used to calculate the periodic fee for the remainder of the ~~financial year~~ *fee year* in which the *firm* was authorised or registered or its *permission* and/or *payment service* activities were extended (adjusted in accordance with *FEES* 4.2.7R) and to calculate the periodic fee for the following ~~financial year~~ *fee year*. Projected valuations are not relevant for those fee payers that are only required to pay fixed fees.

...

Application of *FEES* 4.2.7BR

4.2.7C G The table below sets out the period within which a *firm's* tariff base is calculated (the data period) for second year fees calculated under *FEES* 4.2.7BR. The example is based on a *firm* that acquires *permission* on 1 November 2009 and has a financial year ending 31 March. Where valuation dates fall before the *firm* receives *permission* it should use projected valuations in calculating its fees.

[FCA/
PRA]

References in this table to dates or months are references to the latest one occurring before the start of the *FSA's appropriate regulator's* ~~financial year~~ *fee year* unless otherwise stated.

...

...

4.2.10 R A *person* need not pay a periodic fee on the date on which it is due under the relevant provision in *FEES* 4.2.1R, if:

[FCA/
PRA]

...

- (2) (2) unless *FEES* 4.3.6R(3), *FEES* 4.3.6R(4) or *FEES* 4.3.6R(4A) (Time and method for payment) applies, that date would otherwise fall on or before the 30th *day* after the date on which the *FSA FCA* (in its own capacity or in its capacity as agent for the *PRA*) has sent written notification to that *person* of the fee payable on that date, in which case

he must pay on or before the 30th *day* after the date on which the ~~FSA~~ FCA sends the notification.

4.2.11 R Table of periodic fees

[FCA/
[PRA]

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
Any <i>firm</i> (except an <i>ICVC</i> or a <i>UCITS</i> <i>qualifier</i>)	As specified in <i>FEES</i> 4.3.1R	(1) Unless (2) or (3) apply, on or before the relevant dates specified in <i>FEES</i> 4.3.6R. (2) Unless (3) applies, if an event specified in column 4 occurs during the course of a financial year <i>fee year</i> , 30 days after the occurrence of that event, or if later the dates specified in <i>FEES</i> 4.3.6R. (3) Where the <i>permission</i> is for <i>operating a multilateral trading facility</i> , the date specified in <i>FEES</i> 4 Annex 10 (Periodic fees for MTF operators).	<i>Firm</i> receives <i>permission</i> , or becomes authorised or registered under the <i>Payment Services Regulations</i> or the <i>Electronic Money Regulations</i> ; or <i>firm</i> extends <i>permission</i> or its <i>payment service</i> activities
<i>Persons</i> who hold a certificate issued by the FSA <u>FCA</u> under article 54 of the <i>Regulated Activities Order</i> (Advice given in newspapers etc.)	1,000	(1) Unless (2) applies, on or before 30 April (2) If an event in column 4 occurs during the course of a financial year <i>fee year</i> , 30 days	Certificate issued to <i>person</i> by FSA <u>FCA</u> under Article 54 RAO
Any <i>manager</i> of an <i>authorised</i> unit trust;	In relation to each unit trust the amount	after the occurrence of that event	<i>Authorisation order</i> is made in relation to the relevant

	specified in <i>FEES 4</i> Annex 4R		<i>scheme</i>
Any <i>ACD</i> of an <i>ICVC</i> ; and	In relation to each <i>ICVC</i> the amount specified in <i>FEES 4</i> Annex 4R		
<i>Persons</i> who, under the constitution or founding arrangements of a <i>recognised scheme</i> , is responsible for the management of the property held for or within the <i>scheme</i> ;	In relation to each <i>recognised</i> <i>scheme</i> the amount specified in <i>FEES 4</i> Annex 4R		The relevant <i>scheme</i> becomes a recognised collective investment scheme
...			
<i>UK recognised body</i>	<i>FEES 4</i> Annex 6R, part 1 for a <i>UK RIE</i> or <i>UK RCH</i> ; and <i>FEES 4</i> Annex 6R, part 1A for a <i>UK RIE</i> that is also an <i>RAP</i>	(1) Unless (2) applies, by the due dates set out in <i>FEES 4</i> Annex 6R, part 1 and (in the case of an <i>RAP</i>) part 1A (2) If the event in column 4 occurs during the course of a financial year <i>fee year</i> , 30 days after the occurrence of that event	<i>Recognition order</i> is made. The modified periodic fee is specified in <i>FEES 4</i> Annex 6R, Part 1 and (in the case of an <i>RAP</i>) Part 1A.
<i>Overseas recognised body</i>	<i>FEES 4</i> Annex 6R, part 2	(1), unless (2) applies, 1 July. (2) If the event in column 4 occurs during the course of a financial year <i>fee year</i> , 30 days after the occurrence of that event.	<i>Recognition order</i> is made. The modified periodic fee is specified in <i>FEES 4</i> Annex 6R, Part 2.

...			
All <i>firms</i> reporting transactions in <i>securities derivatives</i> to the FSA <i>FCA</i> in accordance with <i>SUP 17</i> , and <i>market operators</i> who provide facilities for trading in <i>securities derivatives</i> .	<i>FEES 4 Annex 9R</i>	Within 30 <i>days</i> of the date of the invoice	Not applicable
Any <i>issuer</i> of a <i>regulated covered bond</i> .	<i>FEES 4 Annex 11R</i>	(1) Unless (2) applies, on or before the relevant dates specified in <i>FEES 4.3.6R</i> (2) If an event specified in column 4 occurs during the course of a financial year <i>fee year</i> , 30 <i>days</i> after the occurrence of that event or, if later, the dates specified in <i>FEES 4.3.6R</i>	A <i>person</i> becomes registered as an <i>issuer</i> of a <i>regulated covered bond</i>

...

4.3 Periodic fee payable by firms (other than ICVCs and UCITS qualifiers)

...

- 4.3.2 G (1) The amount payable by each *firm* will depend upon the category (or categories) of *regulated activities* or *payment services* it is engaged in (fee-blocks) and whether it is issuing *electronic money*, and on the amount of business it conducts in each category (tariff base). The fee-blocks and tariffs are identified in *FEES 4 Annex 1R* (and guidance on calculating certain of the tariffs is at *FEES 4 Annex 12G*), while *FEES 4 Annex 2R* sets out the tariff rates for the relevant ~~financial year~~ *fee year*. In the case of *firms* that provide *payment services* and/or issue *electronic money*, the relevant fee blocks, tariffs and rates are set out in *FEES 4 Annex 11R*.

...

Calculation of periodic fee (excluding fee-paying payment service providers and fee-paying electronic money issuers)

4.3.3 R The periodic fee referred to in *FEES* 4.3.1R is (except in relation to the *Society*,
[FCA/
[PRA] *fee-paying payment service providers* and *fee-paying electronic money issuers*)
calculated as follows:

...

- (6) apply any applicable payment charge specified in *FEES* 4.2.4R, provided that:
- (a) for payment by direct debit, successful collection of the amount due is made at the first attempt by the *FSA FCA (in its own capacity and, if applicable, in its capacity as agent for the PRA)*; or
 - (b) for payment by credit transfer, the amount due is received by the *FSA FCA (in its own capacity and, if applicable, in its capacity as agent for the PRA)* on or before the due date.

...

Modification for firms with new or extended permissions

4.3.4 G (1) A *firm* which becomes authorised or registered during the course of a
[FCA/
[PRA] ~~financial year~~ *fee year* will be required to pay a proportion of the periodic fee which reflects the proportion of the year for which it will have a *permission* or the right to provide particular *payment services* or the right to issue *electronic money* - see *FEES* 4.2.5G and *FEES* 4.2.6R.

...

- (4) These provisions do not apply to a *firm's* periodic fees in relation to its *permission* for operating a *multilateral trading facility* obtained from the *FSA* during the course of a ~~financial year~~ *fee year*.

...

Time of payment

4.3.6 R ...

[FCA/
[PRA]

- (2) If the *firm's* or *regulated covered bond issuer's* periodic fee for the previous ~~financial year~~ *fee year* was less than 50,000, it must pay the periodic fee due in full by 1 July in the ~~financial year~~ *fee year* to which that sum relates.
- (3) If a *firm* has applied to cancel its ~~Part IV permission~~ *Part 4A permission* in the way set out in *SUP* 6.4.5D (Cancellation of permission), or its

status as a *payment institution* under regulation 10 of the *Payment Services Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 14 of the *Payment Services Regulations* (Supplementary provisions), or its status as an *electronic money issuer* under regulation 10 of the *Electronic Money Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 15 of the *Electronic Money Regulations* (Supplementary provisions), then (1) and (2) do not apply but it must pay the total amount due when the application is made.

- (4) If the *FSA appropriate regulator* has exercised its *own-initiative powers* to cancel a *firm's Part IV permission in the way set out in EG 8* (~~Variation and cancellation of permission on the FSA's own initiative and intervention against incoming firms~~) *Part 4A permission*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.

...

Groups of firms

- 4.3.7 R A *firm* which is a member of a *group* may pay all of the amounts due from other *firms* in the same *group* under *FEES* 4.2.1R, if:
[FCA/
PRA]

- (1) it notifies the ~~FSA~~ *FCA (in its own capacity and, if applicable, in its capacity as agent for the PRA)* in writing of the name of each other *firm* within the *group* for which it will pay; and

...

...

- 4.3.9 G If the payment made does not satisfy in full the periodic fees payable by all of the members of the *group* notified to the ~~FSA~~ *FCA* under *FEES* 4.3.7R, the ~~FSA~~ *FCA (in its own capacity and, if applicable, in its capacity as agent for the PRA)* will apply the sum received among the *firms* which have been identified in the notification given under *FEES* 4.3.R(1) in proportion to the amounts due from them. Each *firm* will remain responsible for the payment of the outstanding balance attributable to it.
[FCA/
PRA]

- 4.3.10 G If a *firm* pays its fees through an agent outside the scope of *FEES* 4.3.7R the *firm* is responsible for ensuring that the ~~FSA~~ *FCA (in its own capacity and, if applicable, in its capacity as agent for the PRA)* is informed that the sum being paid is for that *firm's* periodic fees.
[FCA/
PRA]

...

4.4 Information on which Fees are calculated

...

4.4.3 R To the extent that a *firm* has provided the information required by this section to the ~~FSA~~ appropriate regulator as part of its compliance with another provision of the *Handbook*, it is deemed to have complied with the provisions of this section.

[FCA/
PRA]

4.4.4 G In most cases a *firm* will provide the information required by this section as part of its compliance with the provisions of *SUP*. To the extent that the ~~FSA~~ FCA (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*), does not obtain sufficient, or sufficiently detailed, information ~~it~~ the FCA or the PRA, as appropriate, may seek this by using ~~its~~ the general information gathering powers (see *SUP* 2 (Information gathering by the ~~FSA~~ appropriate regulator on its own initiative)).

[FCA/
PRA]

...

6 Financial Services Compensation Scheme Funding

...

6.1.13 G ~~The FSA intends to consult in January each year on the amount which it will set as the~~ The limit on the management expenses attributable to the forthcoming financial year of the FSCS will be consulted on in January each year.

[FCA/
PRA]

...

6.3.3 G ~~The FSCS has committed itself in the Memorandum of Understanding with each of the FSA FCA and the PRA (the text of which can be found on the FSA website www.fsa.gov.uk) to publish regularly an indicative timetable for its levy procedures and its policy in respect of levying.~~

[FCA/
PRA]

6.3.4 G The discretion over levying in COMP FEES 6 also gives the *FSCS*, if it thinks this appropriate, the ability to use third parties as its agents in raising and collecting the levies.

[FCA/
PRA]

...

6.4.10 G Since a *firm* that becomes a *participant firm* in the course of a financial year of the *compensation scheme* will already be obtaining a discount in relation to the *base costs levy* through the modified fee provisions of *FEES* 4.2.6 R, no *rule* is necessary in COMP FEES 6 for discounts on the *base costs levy*.

[FCA/
PRA]

...

7 CFEB levies

...

7.1.3 G Section 6A(1) of the *Act* (Enhancing public understanding of financial matters etc) (as it had effect before the passing of the Financial Services Act 2012) ~~requires~~ required the *FSA* to establish the *CFEB* in order to enhance:

[FCA]

...

...

Appendix 1 Unauthorised Mutuals Registration Fees Rules

...

App 1 Further information on fees

Annex

2G

[FCA]

...	
2	Paragraph 17 of Schedule 1 <u>Paragraph 23 of Schedule 1ZA</u> to the <i>Act</i> enables the FSA <u>FCA</u> to charge fees to cover its expenses in carrying out its functions.
...	
6	Paragraph 17(4) of Schedule 1 <u>Paragraph 23(8) of Schedule 1ZA</u> to the <i>Act</i> permits the FSA <u>FCA</u> to recover fees as a debt owed to the FSA <u>FCA</u> and the FSA <u>FCA</u> will consider court action for recovery through the civil courts.

...

Transitional Provisions

...

TP 3 Transitional provisions relating to changes to the FSCS levy arrangements taking effect in 2010/11

...

3.2.3 R A *firm* is in run-off for these purposes if it has ceased to effect new *contracts of insurance*, its *permission for effecting contracts of insurance* has been cancelled, its exclusive remaining business is administering its remaining insurance liabilities and, if it is required to supply one, it has supplied a run-off plan to the ~~FSA~~ under SUP App 2.8.1R.

[PRA]

...

Sch 6 Rules that can be waived

Sch 6 G ~~As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives. [deleted]~~

6.1
[FCA] G As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its *rules*, other than *rules* made under section 137O (threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

6.2
[PRA] G As a result of section 138A of the Act (Modification or waiver of rules) the PRA has power to waive all its *rules*, other than *rules* made under section 137O of the Act (threshold condition code). However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the PRA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

Annex 7

Amendments to the General Prudential sourcebook (GENPRU)

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

1.1 Application

...

1.1.2A G A firm should refer to GEN 2.2.13AR (cross-references in the Handbook) and GEN 2.2.23R to GEN 2.2.25G (cutover: application of provisions made by both the FCA and the PRA) when applying the rules and guidance in GENPRU. In particular, many rules in GENPRU are made by both the PRA (in relation to PRA-*authorised persons*) and by the FCA (in relation to BIPRU investment firms that are FCA-*authorised persons*).

[PRA/
FCA]

1.1.2B G As the FCA does not have the power to impose prudential rules and guidance on PRA-*authorised persons*, references to PRA-*authorised persons* or PRA rules that are included in FCA GENPRU provisions will not be relevant in the FCA's application of that provision, unless otherwise stated.

[FCA]

...

1.2 Adequacy of financial resources

...

Capital planning

1.2.73A G ...

(9) ~~For an *insurer*:~~

- (a) ~~the treatment of new business when making capital projections is likely to be different from its ICA. In projecting its financial position, an *insurer* should take account of new business based on the *firm's* business plan, but flexed to take account of potential changes in trading conditions and strategy. When assessing its current capital adequacy under its ICA, an *insurer* should take account of the effects of closure to new business (see GENPRU 1.2.27 G, GENPRU 1.2.73AG (3) and (4) and INSPRU 7.1.16 G to INSPRU 7.1.19 G). Also, an *insurer* may use methods that are more approximate than used for its ICA (for example, in projecting the *with profits insurance capital component* for realistic basis life firms and the *capital resources* needed to meet the~~

overall financial adequacy rule); and

- (b) ~~where management discretion is exercised as a normal part of an *insurer's* business (for example, in changing bonus rates or *surrender values* in accordance with the *PPFM* for *with-profits business*), under (3)(c) the *insurer* does not need to estimate the effect of an adverse event on its financial position without adjusting for such changes. However, the effect on the financial position of varying such actions should be estimated and understood. [deleted]~~

1.2.73B G ...

1.2.73C G For an *insurer*:

[PRA/
FCA] (1) the treatment of new business when making capital projections is likely to be different from its *ICA*. In projecting its financial position, an *insurer* should take account of new business based on the *firm's* business plan, but flexed to take account of potential changes in trading conditions and strategy. When assessing its current capital adequacy under its *ICA*, an *insurer* should take account of the effects of closure to new business (see *GENPRU* 1.2.27G, *GENPRU* 1.2.73AG (3) and (4) and *INSPRU* 7.1.16G to *INSPRU* 7.1.19G). Also, an *insurer* may use methods that are more approximate than used for its *ICA* (for example, in projecting the *with-profits insurance capital component* for *realistic basis life firms* and the *capital resources* needed to meet the *overall financial adequacy rule*); and

- (2) where management discretion is exercised as a normal part of an *insurer's* business (for example, in changing bonus rates or *surrender values* in accordance with the *PPFM* for *with-profits business*), under *GENPRU* 1.2.73AG (3)(c) the *insurer* does not need to estimate the effect of an adverse event on its financial position without adjusting for such changes. However, the effect on the financial position of varying such actions should be estimated and understood.

...

2.2 Capital resources

...

2.2.7 G Parts of this section are irrelevant to a *BIPRU firm* whose *capital resources* consist of straightforward *capital instruments*. Therefore the *FSA's Personal handbooks* facility available on its website allows a *BIPRU firm* to screen out those parts of this section that are not relevant to a *simple capital issuer*.

...

Other requirements: insurers carrying on with-profits business (Insurer only)

2.2.270 R *GENPRU 2.2.270R to GENPRU 2.2.275G only apply to an insurer.*

2.2.270A G *GENPRU 2.2.271R to GENPRU 2.2.272G and GENPRU 2.2.274G are made by both the PRA and FCA for the purpose of applying these provisions to insurers pursuant to the statutory objectives.*
[PRA/
FCA]

2.2.271 R *An insurer carrying on with-profits insurance business must, in addition to the other requirements in respect of capital resources elsewhere in GENPRU 2.2, meet the following conditions before a capital instrument can be included in that insurer's capital resources:*

...

(3) no amounts, whether interest, principal, or other amounts, must be payable by the *firm* under the *capital instrument* if the *firm's* assets would then be insufficient to enable it to declare and pay under a *with-profits insurance contract* discretionary benefits that are consistent with the *firm's* obligations under the FCA's Principle 6 (Customers' interests).

2.2.272 G The purpose of *GENPRU 2.2.271R* is to achieve practical subordination of *capital instruments* if they are to qualify as *capital resources* to the liabilities an *insurer* has to *with-profits policyholders*, including liabilities which arise from the regulatory duty (as regulated by the FCA) to treat *customers* fairly in setting discretionary benefits. (FCA's Principle 6 (Customers' interests) requires a *firm* to pay due regard to the interests of its customers and treat them fairly.) It is not sufficient for a *capital instrument* to be subordinated to such liabilities only on winding up of the *firm* because such liabilities to *policyholders* may have been reduced by the inappropriate use of management discretion to enable funds to be applied in repaying subordinated *capital instruments* before winding up proceedings commence.

...

2 Annex 8G Guidance on applications for waivers relating to implicit items

Implicit items under the Act	
...	
16	The FSA <u>PRA</u> recognises that the assessment of the insurance <i>technical provisions</i> reflects the contractual obligations of the <i>firm</i> . <i>Implicit items</i> are therefore margins over and above an economic assessment in these

	<p><i>technical provisions</i> only. Non-contractual "constructive" obligations arising from a <i>firm's</i> regulatory duty (<u>as regulated by the FCA</u>) to treat <i>customers</i> fairly e.g. regarding future terminal bonuses, are not fully captured by the <i>technical provisions</i>. A <i>firm</i> must instead be satisfied that it has sufficient <i>capital resources</i> at all times to meet its obligations under <u>the FCA's</u> Principle 6. The granting of a <i>waiver</i> for an <i>implicit item</i> does not in any way detract from this requirement and a <i>firm</i> will need to be satisfied that this condition is still met.</p>
...	

...

3.1.27 R ...

Capital adequacy requirements: compulsory application of Method 4 3 from Annex I of the Financial Groups Directive

3.1.28 R (1) The condition in this *rule* is satisfied for the purpose of *GENPRU* 3.1.27R(1) with respect to a *firm* and a *financial conglomerate* of which it is a member (with the result that *GENPRU* 3.1.26R automatically applies to that *firm*) if:

...

- (b) the *financial conglomerate* is not part of a wider ~~FSA regulated EEA financial conglomerate~~ UK regulated EEA financial conglomerate;
- (c) the *financial conglomerate* is not an ~~FSA regulated EEA financial conglomerate~~ a UK regulated EEA financial conglomerate under another *rule* or under paragraph (b) of the definition of ~~FSA regulated EEA financial conglomerate~~ UK regulated EEA financial conglomerate (application of supplementary supervision through a *firm's* ~~Part IV permission~~ Part 4A permission)

...

...

3.1.34 R *GENPRU* 3.1.35R applies to a *firm* with respect to a *financial conglomerate* of which it is a member if:

...

- (2) that *financial conglomerate* is an ~~FSA regulated EEA financial conglomerate~~ UK regulated EEA financial conglomerate.

Annex 8

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

There are no amendments to this module in this Instrument.

Annex 9

Amendments to the Prudential sourcebook for Insurers (INSPRU)

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

1 Capital resources requirements and technical provisions for insurance business

...

1.2 Mathematical reserves

...

1.2.6 G A number of the *rules* in this section require a *firm* to take into account its regulatory duty to treat *customers* fairly. In this section, references to such a duty are to ~~a *firm's* duty~~ the duty of a *firm* regulated by the *FCA* to pay due regard to the interests of its *customers* and to treat them fairly (see the *FCA's* Principle 6 in *PRIN*). This duty is owed to both *policyholders* and potential *policyholders*.

1.2.6A G A number of *rules* in this section are made by the *FCA* and the *PRA*. Some of the rules made by the *FCA* and *PRA* contain references to, or are reliant on, *rules* that are only made by the *PRA*. *Firms* should consider *GEN* 2.2.13AR (cross-references in the *Handbook*) and *GEN* 2.2.23R to *GEN* 2.2.25G (cutover: application of provisions made by both the *FCA* and the *PRA*) when applying these *rules*. In the context of mathematical reserves, the *FCA* *rules* ensure a *firm* takes into account its regulatory duty to treat *customers* fairly. Where an *FCA* rule refers to a *PRA* rule, *GEN* 2.2.13AR and *GEN* 2.2.23R will apply so that the *PRA* rule is also made by the *FCA* to the extent necessary to make the *FCA* rule function but only to the extent of the *FCA's* powers and regulatory responsibilities.

[PRA / FCA]

...

Methods and assumptions

1.2.10 R In the actuarial valuation under *INSPRU* 1.2.7R, a *firm* must use methods and prudent assumptions which:

...

(6) take into account its regulatory duty to treat its *customers* fairly (see *FCA's* Principle 6); and

...

1.3 With-profits insurance capital component

...

Definitions

...

1.3.14 G In this section, any reference to a *firm's* regulatory duty to treat its *customers* fairly is a reference to ~~the firm's duty~~ the duty of a firm regulated by the FCA under FCA's Principle 6 (Customers' interests). This states that a *firm* must pay due regard to the interests of its *customers* and treat them fairly.

1.3.15 G In this section, any reference to the *Principles and Practices of Financial Management (PPFM)* is a reference to the requirements in the FCA's rules at COBS 20.3 (Principles and Practices of Financial Management) for *firms* to establish, maintain and record the principles and practices of financial management according to which the business of its *with-profits funds* is conducted.

...

Credit risk scenario for reinsurance

1.3.94 R ...

(2) For the purposes of (1), no account is to be taken of *reinsurance* or analogous non-*reinsurance* financing arrangements between *undertakings* in the same *group* where:

(a) the ceding and accepting *undertakings* are regulated by the ~~FSA PRA, FCA~~ or a regulatory body in a *designated State or territory* for insurance (including *reinsurance*);

...

(c) for any subsequent cession or cessions of the ceded risk which are material (individually or in aggregate) each of the ceding and accepting *undertakings* (including subsequent accepting *undertakings*) is regulated by the ~~FSA PRA, FCA~~ or a regulatory body in a *designated State or territory* for insurance (including *reinsurance*).

...

...

1.5 Internal-contagion risk

Application

...

- 1.5.2 R *INSPRU* 1.5 does not apply, to the extent stated, to any *insurer* in (1) to
[PRA] (4):
- (1) none of the provisions apply to *non-directive friendly societies*;
 - (2) none of the provisions, ~~apart from *INSPRU* 1.5.33R (payment of financial penalties)~~ apply to *firms* which qualify for authorisation under Schedule 3 or 4 of the *Act*;
 - (3) ~~*INSPRU* 1.5.33R (payment of financial penalties) does not apply to *mutuals*; [deleted]~~
 - (4) *INSPRU* 1.5.41R to *INSPRU* 1.5.57R (*UK branches* of certain *non-EEA insurers*) do not apply to:
 - (a) *UK insurers*; or
 - (b) *non-EEA insurers* whose *insurance business* in the *United Kingdom* is restricted to *reinsurance*; or
 - (c) *EEA-deposit insurers*; or
 - (d) *Swiss general insurers*.

- 1.5.2A R *INSPRU* 1.5 does not apply, to the extent stated, to any *insurer* in (1) to
[FCA] (3):
- (1) none of the provisions apply to *non-directive friendly societies*;
 - (2) none of the provisions, apart from *INSPRU* 1.5.33R (payment of financial penalties), apply to *firms* which qualify for authorisation under Schedule 3 or 4 of the *Act*;
 - (3) *INSPRU* 1.5.33R (payment of financial penalties) does not apply to *mutuals*.

...

- 1.5.5 R In the application of this section to activities carried on by a *non-EEA insurer*:
[PRA]
- (1) *INSPRU* 1.5.13R to *INSPRU* 1.5.15G and *INSPRU* 1.5.41R apply in relation to the whole of its business carried on world-wide;
 - (2) all other provisions of this section apply only in relation to:

- (a) in the case of any *UK-deposit insurer*, activities carried on from *branches* in any *EEA State*; and
- (b) in any other case, activities carried on from a *branch* in the *United Kingdom*.

1.5.5A R In the application of this section to activities carried on by a *non-EEA insurer*:
[FCA]

(1) *INSPRU 1.5.13R to INSPRU 1.5.13BG* apply in relation to the whole of its business carried on world-wide;

(2) all other provisions of this section apply only in relation to:

- (a) in the case of any *UK-deposit insurer*, activities carried on from *branches* in any *EEA State*; and
- (b) in any other case, activities carried on from a *branch* in the *United Kingdom*.

...

Separately identify and maintain long term insurance assets

...

1.5.28 G As a result of *INSPRU 1.5.27R(2)*, an *actuarial investigation* undertaken to determine an *established surplus* remains in-date for three months from the date as at which the determination of the surplus was made. However, even where the investigation is still in-date, the *firm* should not make the transfer unless there is sufficient surplus at the time of the transfer to allow it to be made without breach of *INSPRU 1.1.20R* or *INSPRU 1.1.21R* of the *PRA Handbook*.

...

Payment of financial penalties

1.5.33 R If the ~~*FSA*~~ *FCA* or *PRA* imposes a financial penalty on a *long-term insurer*, the *firm* must not pay that financial penalty from a *long-term insurance fund*.

1.5.34 G ~~*INSPRU 1.5.2R*~~ *1.5.2AR* states that this provision applies to all *firms*, except *mutuals*, and includes *firms* qualifying for authorisation under Schedule 3 or 4 to the *Act*.

...

3.1 Market risk in insurance

...

Covering linked liabilities

...

- 3.1.61-A G Where liabilities are linked to orders made under section 148 of the Social Security Administration Act 1992, *firms* are required by *COBS* 21.3.5R to notify ~~their supervisors~~ the PRA before effecting any such business and to explain how the risks associated with this business will be safely managed. This requirement does not apply in respect of liabilities for which a limited revaluation premium has been paid to the Department for Work and Pensions so that the liability for revaluation, while still linked to section 148 orders, is limited to 5%. The risks may be mitigated by holding assets to cover an alternative index which is reasonably expected to at least cover the section 148 order (e.g. RPI plus a margin) over the duration of the link. The *firm's* exposure to an order under section 148 exceeding this index should be appropriately limited by putting a cap on the liabilities linked to the order so that risks are within acceptable limits.

...

3.2 Derivatives in insurance

Application

...

- 3.2.3A G References in this section to *GENPRU* are to *GENPRU* in the *PRA Handbook*.
[PRA /
FCA]

...

5 Operational Risk Management

5.1 Application

...

Purpose

- 5.1.3 G This section provides *guidance* on how to interpret *SYSC* 14.1.18R and *SYSC* 14.1.19R(2) (which relate to the design and documentation of risk management systems) ~~in so far as they relate to the management of~~

~~operational risk in a prudential context~~. Operational risk has been described by the Basel Committee on Banking Supervision as "the risk of loss, resulting from inadequate or failed internal processes, people and systems, or from external events". Thus this section covers management of risks concerning any of the *firm's* operations, whether caused by internal or external matters. However, it does not cover management of credit, market, liquidity and insurance risk. Examples of operational risk exposures that this section is meant to address include internal and external fraud; failure to comply with employment law or meet workplace safety standards; damage to physical assets; business disruptions and system failures; and transaction processing failures.

5.1.4 G Operational risk concerns the ~~FSA in a prudential context~~ PRA because inappropriate management of operational risk can adversely affect the solvency or business continuity of a *firm*, threatening the ~~regulatory objectives~~ statutory objectives of ~~market confidence, consumer protection and financial stability~~ promoting the firm's safety and soundness and contributing to the securing of an appropriate degree of protection for those who are or may become policyholders.

5.1.5 G This section contains *guidance* on how a *firm* should determine, ~~in a prudential context~~, its policy for operational risk management and its processes for the identification, assessment, monitoring and control of operational risk. In addition, *guidance* is provided on record keeping in relation to operational risk.

...

7 Individual Capital Assessment

7.1 Application

...

7.1.3A G A firm should refer to GEN 2.2.23R to GEN 2.2.25G (cutover: application of provisions made by both the FCA and the PRA) when applying the rules and guidance in INSPRU 7. In particular:
[FCA/
PRA]

(1) INSPRU 7.1.16G to 7.1.18G and INSPRU 7.1.20G are made by the FCA for the purpose of applying this guidance to insurers pursuant to the statutory objectives; and

(2) certain rules and guidance in INSPRU 7.1 are also made by the FCA for the purpose of their application to dormant account operators. These provisions are INSPRU 7.1.4G to 7.1.21G, INSPRU 7.1.25G to 7.1.27, INSPRU 7.1.29G to 7.1.73G and INSPRU 7.1.91G to 7.1.99G.

...

7.1.9A G This section sets out in greater detail the approach to be taken by a *firm* when carrying out the assessment of capital described in the preceding paragraph. This is the assessment referred to as an *individual capital assessment*. *GENPRU* 1.2.42 R is a general requirement for a *firm* to carry out stress tests and scenario analyses taking into account an appropriate range of adverse circumstances and events relevant to the *firm's* business and risk profile and to estimate the financial resources it would need to continue to meet the *overall financial adequacy rule* in the stress scenarios considered. As part of its obligations under *GENPRU* 1.2.42 R, the *firm* must carry out stress tests and scenario analyses to estimate the financial resources it would need to support its business plans and continue adequately to cover its *CRR* and meet the *overall financial adequacy rule* over a time horizon of 3 to 5 years. This is a separate requirement from that to carry out an *ICA*, and *guidance* on this requirement is provided in *GENPRU* 1.2.73A G. This is a separate requirement from that to carry out an *ICA*, and *guidance* on this requirement is provided in *GENPRU* 1.2.73A G and *GENPRU* 1.2.73CG. In particular, *firms* should note that there is no requirement that the level of capital required as identified by the *ICA* should be equal to, or exceed, the *CRR*.

...

7.1.26 G The *ICA* should assume that a *firm* will continue to manage its business having regard to the ~~FSA's~~ *PRA's* and *FCA's* Principles for Businesses. In particular, a *firm* should take into account how the ~~FSA's~~ Principles for Businesses may constrain its prospective management actions, for example, the *FCA's* Principle 6 (Treating Customers Fairly).

...

Sch 5 Rights of action for damages

Sch 5.1 G The table below sets out the *rules* in *INSPRU* contravention of which by an *authorised person* may be actionable under section ~~150~~ 138D(2) of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2 G If a "Yes" appears in the column headed "For *private person*", the *rule* may be actionable by a *private person* under section ~~150~~ 138D(2) (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A "Yes" in the column headed "Removed" indicates that the ~~FSA~~ *FCA* has removed the right of action under section ~~150(2)~~ 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3 G The column headed "For other *person*" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an

indication of the type of *person* by whom the *rule* may be actionable is given.

Chapter/Appendix	Section/Annex	Right of action under section 150 <u>138D(2)</u>		
		For <i>private person</i>	Removed	For other <i>person</i>
All <i>rules</i> in <i>INSPRU</i>		No	Yes <i>(INSPRU 9.1.1R)</i>	No

Annex 10

Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

2.3.2 G In determining a *person's* knowledge and ability, the *firm* should have regard
[FCA] to matters including, but not limited to, whether the *person*:

...

- (2) satisfies the relevant requirements in the ~~FSA's~~ FCA's Training and Competence sourcebook and the Senior Management Arrangements, Systems and Controls sourcebook.

2.3.2A G In determining a *person's* knowledge and ability, the *firm* should have regard
[PRA] to matters including, but not limited to, whether the *person*:

- (1) has demonstrated by experience and training that he is able or will be able to perform his duties related to the *firm's* insurance mediation activity; and

- (2) satisfies the relevant requirements in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC).

...

3.1.3 G The purposes of this chapter are to:
[FCA]

...

- (2) meet the ~~regulatory~~ statutory objectives of consumer protection and ~~maintaining market confidence~~ protecting and enhancing the integrity of the UK financial system by ensuring that *firms* have adequate resources to protect themselves, and their *customers*, against losses arising from breaches in its duties under the *regulatory system* or civil law.

3.1.3A G The purposes of this chapter are to:
[PRA]

- (1) implement article 4.3 of the *Insurance Mediation Directive* in so far as it requires *insurance intermediaries* to hold professional indemnity insurance, or some other comparable guarantee, against any liability

that might arise from professional negligence; and

- (2) meet the *statutory objective* of promoting the safety and soundness of *PRA-authorised persons* by ensuring that *firms* have adequate resources to protect themselves against losses arising from breaches in its duties under the *regulatory system* or civil law.

...

3.1.5A G Under *Principles 3* and *4* a *firm* is required to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and to maintain adequate financial resources.
[PRA]

Annex 11

Amendments to the Prudential sourcebook for UCITS Firm (UPRU)

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

1.2 Purpose

- 1.2.1 G (1) The purpose of this sourcebook is to amplify *Principle 4* (Financial prudence) which requires a *firm* to maintain adequate financial resources to meet its *designated investment business* commitments and to withstand the risks to which its business is subject. This assists in the achievement of the ~~regulatory~~ statutory objectives of consumer protection, ~~market confidence and financial stability~~ and protecting and enhancing the integrity of the UK financial system.

...

...

2.3 Application of certain rules in the interim prudential sourcebook for investment businesses

- 2.3.1 R (1) The following *rules* in the Interim Prudential sourcebook for investment businesses apply to a *firm* in respect of *qualifying subordinated loans, qualifying undertakings* and records:
- (a) *IPRU(INV) 5.2.5(1), (2) and (4) to (7)R*; and
 - (b) *IPRU(INV) 5.2.6(3)R* ; ~~and~~
 - (c) ~~*IPRU(INV) 5.3.1(1)R*~~ and ~~*IPRU(INV) 5.3.1(4) to 5.3.1(6)R*~~.
- (2) References in those *rules* to:
- (a) *IPRU(INV) Table 5.2.2(1)R* are to be construed as references to *UPRU Table 2.2.1R*;
 - (b) *IPRU(INV) 5.2.3(1)R* are to be construed as references to *UPRU 2.1.1R*; and
 - (c) ~~*IPRU(INV) 5.3.1(3)R*~~ are to be construed as references to ~~*UPRU 2.4.1R*~~; and
 - (~~d~~) *IPRU(INV) 5.2.1(2)* are to be construed as references to *UPRU 2.1.1R*.

Annex 12

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

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

GUIDANCE: THE PURPOSE OF THE PRUDENTIAL RULES FOR FRIENDLY SOCIETIES AND AN OVERALL DESCRIPTION

4. One of the features of a *contract of insurance* is the long period of risk the contract may cover. The prudential rules for *friendly societies* seek to protect the *policyholder* against the risk that a *friendly society* will fail to meet a valid claim as it falls due ~~or to fulfil the reasonable expectations of *policyholders*~~

...

11. As part of the continuing supervision of a *friendly society*, the rules in Chapter 5 require the *friendly society* to prepare certain accounts and statements in accordance with the rules and deposit them with the ~~FSA~~ PRA. ~~In addition, Chapter 6 requires a *friendly society* to make certain statistical returns.~~

...

APPLICATION

...

Actions for damages

- 1.2 Section ~~150(1)~~ 138D(2) of the *Act* does not apply.

...

Annex 2

...

Duty of care

...

5. Annex 3 also draws attention to the special duty of care that the *officers* of a *friendly society* have in respect of ~~safeguarding~~ protecting the interests of *policyholders*. This duty is recognised in the PRA and FCA's Principles for Business, including principle 6 of the FSA FCA's Principles for Businesses (paying due regard to policyholders interests and treating them fairly). In the ~~FSA's~~ PRA's view, because of the increasing risk of error and omission, and the possibility that any liabilities which may arise as a result could be substantially greater than an *officer's* or *officers'* financial resources to cover them, that duty of care places a responsibility on a *committee* to consider whether the *friendly*

society should obtain indemnity insurance cover for appropriate *officers* in the interests of members (see 6).

...

Annex 3

Part I

...

B. ACCOUNTING RECORDS AND SYSTEMS

11. The principal reasons why a *friendly society* (including any *registered branch*) or a group is required by rule 3.1 to maintain adequate accounting and other records are:

(a) ...

(b) ...

(c) to safeguard the assets of the *friendly society* (or branch) and to protect the interests of *policyholders*;

...

Annex 13

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

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

INTRODUCTION

...

2 The provisions of the *Act* listed in Chapter 11 of this instrument are specified for the purpose of section 153(2). ~~[deleted]~~

...

Chapter 9

FINANCIAL REPORTING

...

9.6

...

(6) There must be deposited with every revenue ‘account’ and ‘balance sheet’ of an *insurer* any statement or report on the affairs of the *insurer* made or submitted:

(a) ...

(b) to the *insurer's with-profits policyholders* under ~~COBS 20.3.3G~~, COBS 20.4.7R or SUP 4.3.16AR(4) of the *FCA Handbook*,

in respect of the *financial year* to which the ‘account’ and ‘balance sheet’ relate.

...

9.42C The decision tree determining application of 9.42B

...

Stage B: Is that *financial conglomerate*:

- an *insurance conglomerate*; and
- a ~~FSA regulated EEA financial conglomerate~~ UK regulated EEA financial conglomerate?

Stage C: Is the *insurer* a member of more than one *financial conglomerate* that is:

- an *insurance conglomerate*; and
- a ~~FSA regulated EEA financial conglomerate~~ UK regulated EEA financial conglomerate?

Identify the ~~FSA regulated insurance conglomerate~~ PRA regulated insurance conglomerate that is not part of another ~~FSA regulated EEA financial conglomerate~~ UK regulated EEA financial conglomerate for the purpose of this rule.

...

Information in the capacity transfer market

- 9.62
- (1) The *Society* must give the ~~FSA~~ FCA a report as at the end of each calendar quarter in which any capacity is transferred.
 - (2) The report referred to in ~~INSPRU 8.4.3 R (1)~~ (1) must reach the ~~FSA~~ FCA within one month of the end of the relevant calendar quarter and must include information on:
 - (a) the total capacity in *syndicates* transferred during the quarter, analysed by *syndicate* and method of transfer;
 - (b) the number, and nature, of all investigations by the *Society* into conduct in the *capacity transfer market* undertaken or continued during the quarter; and
 - (c) the number, and nature, of all complaints received during the quarter about the operation of the *capacity transfer market*.

...

Chapter 11

...

PART 2

GENERAL PROVISIONS

Powers under which the rules are made

- 11.3 ~~The rules and guidance in the IPRU (INS) are made under the following sections of the Act—~~
- ~~(a) section 138 (general rule making power);~~
 - ~~(b) section 141 (insurance business rules);~~
 - ~~(c) section 150(2) (actions for damages);~~
 - ~~(d) section 156 (general supplementary powers);~~
 - ~~(e) section 157 (guidance); and~~
 - ~~(f) section 340 (appointment of auditors and actuaries). [deleted]~~

...

Appendix 9.6 (rules 9.34 and 9.35)

Certificates by Directors and Report of the Auditor

...

2

- ...
- (c) the *with-profits fund* has been managed in accordance with the *Principles and Practices of Financial Management*, as established, maintained and recorded under *COBS 20.3* of the *FCA Handbook*; and

...

3B

- ...
- (b) the *director* has, in preparing the *return*, taken and paid due regard to –
 - (i) ...
 - (ii) advice from every *actuary* appointed by the *insurer* to perform *with-profits actuary function* in accordance with *SUP 4.3.16AR* of the *FCA Handbook* and *SUP 4.3.16R* of the *PRA Handbook*.

...

Annex 14

Amendments to the Interim Prudential sourcebook for Investment Business (IPRU(INV))

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

1.1 PURPOSE

...

- 1.1.2 The *rules and guidance* in this sourcebook will assist the ~~FSA~~ appropriate regulator to meet the statutory objectives ~~of protecting consumers and maintaining market confidence~~. This sourcebook does so by setting minimal capital and other risk management standards thereby mitigating the possibility that firms will be unable to meet their liabilities and commitments to *consumers* and counterparties.

...

Annex A LIMITED LIABILITY PARTNERSHIPS: ELIGIBLE MEMBERS' CAPITAL

...

Purpose

- 1.4 G The purpose of this annex is to amplify *Principle 8* (Financial resources) which requires *a firm* to maintain adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject. This annex imposes various conditions that must be satisfied for members' capital to count as "Tier 1" or equivalent grade capital in meeting the *limited liability partnership's* financial resources requirement. These conditions are made up of conditions specific to *limited liability partnerships* and general conditions based for the most part on those set out in article 57 of *the Banking Consolidation Directive*. This assists in the achievement of the ~~regulatory objectives~~ statutory objective of consumer protection ~~and market confidence~~.

Annex 15

Amendments to the Conduct of Business sourcebook (COBS)

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

9 Annex Basic advice initial disclosure information 1R

This Annex belongs to COBS 9.6.5R(1)

Information that comprises the following:	
...	
4.	a statement, <u>in accordance with GEN 4</u> , that the <i>firm</i> is authorised and regulated by the FSA FCA (or if an <i>appointed representative</i> , a statement of whom it is an <i>appointed representative</i> and that that <i>firm</i> is authorised and regulated by the FSA FCA) to give basic advice, together with the registration number of the firm and the fact that the <i>firm's</i> status can be checked with the FSA FCA on 0845 730 0104 or on the FSA FCA website at www.fsa.gov.uk [tbc];
...	

...

20.1 Application

...

20.1.3 R For an *EEA insurer*:

[FCA]

- (1) the *rules and guidance* on treating with-profits policyholders fairly (COBS 20.2.1G to COBS 20.2.41G and COBS 20.2.53R to COBS 20.2.60G) apply only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by an *EU instrument*;
- (2) COBS 20.3 (Principles and Practices of Financial Management) does not apply;
- (3) the *rule* on providing information to *with-profits policyholders* who are *habitually resident* in the *United Kingdom* (COBS 20.4.4R) and the *rule* on production and provision of a *CFPPFM* (COBS 20.4.5R) apply, but the rest of COBS 20.4 (Communications with with-profits

policyholders) does not; and

- (4) the *rule* on production and provision of a *CFPPFM* (*COBS* 20.4.5R) applies as if a reference to a *firm* was a reference to an *EEA insurer* in relation to any of its *with-profits policyholders* who are *habitually resident* in the *United Kingdom*.

20.1.3A [PRA] R For an *EEA insurer* the *rules and guidance* on treating with-profits policyholders fairly (*COBS* 20.2.33G to *COBS* 20.2.35G and *COBS* 20.2.53R to *COBS* 20.2.54R) apply only in so far as responsibility for the matter in question has not been reserved to the *firm's Home State regulator* by an *EU instrument*.

...

20.2 Treating with-profits policyholders fairly

...

20.2.17 [FCA] R A *firm* must:

- (1) ~~not make a distribution from a *with-profits fund*, unless the whole of the cost of that distribution can be met without eliminating the *regulatory surplus* in that *with-profits fund*; and~~
- (2) ensure that the amount distributed to *policyholders* from a *with-profits fund*, taking into account any adjustments required by *COBS* 20.2.17AR, is not less than the *required percentage* of the total amount distributed.

...

20.2.17C [PRA/
FCA] R A *firm* must not make a distribution from a *with-profits fund*, unless the whole of the cost of that distribution can be met without eliminating the *regulatory surplus* in that *with-profits fund*.

...

Other rules and guidance on the conduct of with-profits business

20.2.35 [FCA] G When a *firm* determines its investment strategy, and the acceptable level of risk within that strategy, it should take into account:

- (1) the extent of the guarantee in its *with-profits policies*;
- (2) any representation that it has made to its *with-profits policyholders*;
- (3) its established practice; and

- (4) the amount of capital support available.

20.2.35 G When a firm determines its investment strategy, and the acceptable level of
A risk within that strategy, it should take into account:

[PRA]

- (1) the extent of the guarantee in its with-profits policies; and
(2) the amount of capital support available.

...

Process for reattribution of inherited estates: Policyholder advocate:
appointment and role

20.2.42 R A firm that is seeking to make a reattribution of its inherited estate must:

[FCA]

- (1) first discuss with the ~~FSA~~ FCA (as part of its determination under *COBS 20.2.21R*):
- (a) its projections for capital required to support existing business, which must include an assessment of:
- (i) the firm's future risk appetite for the *with-profits fund* and other relevant business; and
- (ii) how much of the margin for prudence can be identified as excessive and removed from the projected capital requirements; and
- (b) its projections for capital required to support future new business, which must include an assessment of:
- (i) new business volumes;
- (ii) product terms; and
- (iii) pricing margins;
- (2) following the discussions referred to in (1), identify at the earliest appropriate point a *policyholder advocate*, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of *policyholders*, to negotiate with the firm on behalf of relevant *with-profits policyholders* and seek the approval of the ~~FSA~~ FCA for the appointment of the policyholder advocate as soon as he is identified, or appoint a policyholder advocate nominated by the ~~FSA~~ FCA if its approval is not granted; and
- (3) involve the policyholder advocate designate at the earliest possible opportunity to enable him to participate effectively in the

negotiations about the proposals for the *retribution*.

20.2.42 R A firm that is seeking to make a *retribution* of its *inherited estate* must
A first discuss with the PRA:

[PRA]

- (1) its projections for capital required to support existing business, which must include an assessment of:
 - (a) the firm's future risk appetite for the *with-profits fund* and other relevant business; and
 - (b) how much of the margin for prudence can be identified as excessive and removed from the projected capital requirements; and
- (2) its projections for capital required to support future new business, which must include an assessment of:
 - (a) new business volumes;
 - (b) product terms; and
 - (c) pricing margins.

...

Sch 6 Rules that can be waived

Sch 6.1G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 16

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

Sch 6 Rules that can be waived

- Sch 6.1 G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its ~~rules~~, other than rules made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

...

Annex 17

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

Sch 6 Rules that can be waived

- G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 18

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

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

Sch 6 Rules that can be waived

- Sch 6.1 G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FS~~FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FS~~FCA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

Annex 19

Amendments to the Client Assets sourcebook (CASS)

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

Sch 6 Rules that can be waived

Sch 6.1G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules), the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 20

Amendments to the Market Conduct sourcebook (MAR)

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

Sch 6 Rules that can be waived

- Sch 6.1 G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 21

Amendments to the Supervision manual (SUP)

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

2.1 Application and purpose

...

2.1.5 G Part XI of the *Act* (Information Gathering and Investigations) gives the ~~FSA~~
[FCA] FCA statutory powers, including:

- (1) to require the provision of information (see sections 165, ~~165A~~, and EG 3 and ~~FINMAR1~~);

...

...

2.2 Information gathering by the ~~FCA~~ appropriate regulator on its own initiative: background

...

2.2.3 G The ~~FSA~~ FCA would not normally seek to gather information using the
[FCA] methods described in *SUP 2.3* or *SUP 2.4* in a situation where the ~~FSA~~ FCA could not have obtained it under the powers in Part XI of the *Act* (Information Gathering and Investigations). In particular, the limitations in the following sections of the *Act* are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplementary powers) under which no *person* may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); the ~~FSA~~ FCA would not normally seek such information using the methods described in *SUP 2.3* or *SUP 2.4*; and
- (2) section 413 (Protected items), under which no *person* may be required under the *Act* to produce, disclose or permit the inspection of *protected items*; a *firm* would not breach *Principle 11* or the *rules* in this chapter by not producing such items.

2.2.3A G The PRA would not normally seek to gather information using the methods
[PRA] described in SUP 2.3 in a situation where the PRA could not have obtained
it under the powers in Part XI of the Act (Information Gathering and
Investigations). In particular, the limitations in the following sections of the

Act are relevant to this chapter:

- (1) section 175(5) (Information and documents: supplementary powers) under which no *person* may be required under Part XI of the *Act* (Information Gathering and Investigations) to disclose information or produce a document subject to banking confidentiality (with exceptions); the *PRA* would not normally seek such information using the methods described in *SUP 2.3*; and
- (2) section 413 (Protected items), under which no *person* may be required under the *Act* to produce, disclose or permit the inspection of *protected items*; a *firm* would not breach *Principle 11* or the *rules* in this chapter by not producing such items.

Confidentiality of information

2.2.4 G When the ~~FSA~~ FCA obtains confidential information using the methods of information gathering described in *SUP 2.3* or *SUP 2.4*, it is obliged under Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. The ~~FSA~~ FCA will not disclose confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.

[FCA]

2.2.4A G When the *PRA* obtains confidential information using the methods of information gathering described in *SUP 2.3*, it is obliged under Part XXIII of the *Act* (Public Record, Disclosure of Information and Co-operation) to treat that information as confidential. The *PRA* will not disclose confidential information without lawful authority, for example if an exception applies under the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001/2188) or with the consent of the *person* from whom that information was received and (if different) to whom the information relates.

[PRA]

Admissibility of information in proceedings

2.2.5 G Information obtained by the ~~FSA~~ FCA using the methods described in *SUP 2.3* and *SUP 2.4* is admissible in evidence in any proceedings, so long as it complies with any requirements governing the admissibility of evidence in the circumstances in question.

[FCA]

2.2.5A G Information obtained by the *PRA* using the methods described in *SUP 2.3* is admissible in evidence in any proceedings, so long as it complies with any requirements governing the admissibility of evidence in the circumstances in question.

[PRA]

2.3 Information gathering by the ~~FSA~~ appropriate regulator on its own

initiative: cooperation by firms

...

Suppliers under material outsourcing arrangements

...

2.3.9 G When a *firm* appoints or renews the appointment of a supplier under a
[FCA/ *material outsourcing* arrangement, it should satisfy itself that the terms of
PRA] its contract with the supplier require the supplier to give the *FSA*
appropriate regulator access to its premises as described in *SUP* 2.3.5R(2),
and to cooperate with the *FSA appropriate regulator* as described in *SUP*
2.3.7R. The *FSA appropriate regulator* does not consider that the
'reasonable steps' in *SUP* 2.3.7R would require a *firm* to seek to change a
contract, already in place either when that *rule: (1)* was made by the *FSA* on
21 June 2001; or (2) was designated by the *appropriate regulator*, until
renewal of the contract.

...

2.3.12 G ~~In complying with *Principle 11*, the *FSA* considers that a *firm* should
cooperate with it in providing information for other regulators. Sections 169
(Investigations etc. in support of overseas regulator) and 169A (Support of
overseas regulator with respect to financial stability) of the *Act* give the *FSA*
certain statutory powers to obtain information and appoint investigators for
overseas regulators if required (see *DEPP 7*, *EG 3* and *FINMAR 1*).~~
[deleted]

2.3.12A G In complying with *Principle 11*, the *FCA* considers that a *firm* should
[FCA] cooperate with it in providing information for other regulators. Sections 169
(Investigations etc. in support of overseas regulator) of the *Act* gives the
FCA certain statutory powers to obtain information and appoint
investigators for *overseas regulators* if required (see *DEPP 7*; and *EG 3*).

2.3.12B G In complying with *Principle 11*, the *PRA* considers that a *firm* should
[PRA] cooperate with it in providing information for other regulators. Sections 169
(Investigations etc. in support of overseas regulator) and 169A (Support of
overseas regulator with respect to financial stability) of the *Act* give the *PRA*
certain statutory powers to obtain information and appoint investigators for
overseas regulators if required (see *FINMAR 1*).

...

3.1 Application

3.1.2 R Applicable sections (see *SUP* 3.1.1R)
[FCA/ This table and the provisions in *SUP* 3 should be read in conjunction with
PRA] *GEN* 2.2.23R to *GEN* 2.2.25G. In particular, the *PRA* does not apply any of the
provisions in *SUP* 3 in respect of *FCA-authorised persons*. *SUP* 3.10 and *SUP*
3.11 are applied by the *FCA* only.

...

- 3.1.2A G If a *firm* falls within more than one row in column (1) of the table in *SUP*
[FCA/
PRA] 3.1.2R, *SUP* 3.1.1R requires the *firm* and its external auditor to comply with all the sections referred to in column (2) or (3). ~~For example, a bank which carries on designated investment business which is also a mortgage lender, falls in rows (4) and (9). Therefore, the bank must comply with *SUP* 3.1 to *SUP* 3.7, and its external auditor must comply with *SUP* 3.1, *SUP* 3.2, *SUP* 3.8 and *SUP* 3.10.~~

...

3.2 Purpose

...

- 3.2.6 G The rights and duties of auditors are set out in *SUP* 3.8 (Rights and duties of
[FCA] all auditors) and *SUP* 3.10 (Duties of auditors: notification and report on client assets). *SUP* 3.8.10G includes the auditor's statutory duty to report certain matters to the ~~FSA~~ *FCA* imposed by regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (information given by auditor or actuary to ~~the FSA~~ a regulator). An auditor should bear these rights and duties in mind when carrying out *client* asset report work, including whether anything should be notified to the ~~FSA~~ *FCA* immediately.

- 3.2.6A G The rights and duties of auditors are set out in *SUP* 3.8 (Rights and duties of
[PRA] all auditors). *SUP* 3.8.10G includes the auditor's statutory duty to report certain matters to the *PRA* imposed by regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (information given by auditor or actuary to a regulator).

3.3 Appointment of auditors

...

- 3.3.3 G (1) *SUP* 3.3.2R applies to every *firm* to which this section applies. That
[PRA] includes a *firm* which is under an obligation to appoint an auditor under an enactment other than the *Act*, such as the Companies Act 1985 or the Companies Act 2006, as appropriate. Such a *firm* is expected to wish to have a single auditor who is appointed to fulfil both obligations. *SUP* 3.3.2R is made under section ~~138~~ 137F of the *Act* (~~General rule-making power~~ The *PRA*'s general rules), in relation to such *firms*, and under section 340(1) (Appointment) in relation to other *firms*.
- (2) *Building societies* and *friendly societies* are reminded that they are subject to the provisions of Schedule 11 to the Building Societies Act 1986 and Schedule 14 to the Friendly Societies Act 1992 relating to

auditors, in addition to the provisions in this chapter. In relation to *SUP* 3.3.2R(2), such *firms* may give the *FSA PRA* a single notification of a vacancy in the office of auditor provided that the notification complies with the requirements of the relevant Act and *SUP* 3.3.2R(2).

- 3.3.3A G *SUP* 3.3.2R applies to every *firm* to which this section applies. That includes a *firm* which is under an obligation to appoint an auditor under an enactment other than the *Act*, such as the Companies Act 1985 or the Companies Act 2006, as appropriate. Such a *firm* is expected to wish to have a single auditor who is appointed to fulfil both obligations. *SUP* 3.3.2R is made under section 137A of the *Act* (The *FCA*'s general rules), in relation to such *firms*, and under section 340(1) (Appointment) in relation to other *firms*.
- [FCA]

...

3.4 Auditors' qualifications

...

Disqualified auditors

- 3.4.5 R A *firm* must not appoint as auditor a *person* who is disqualified by the *FSA* under ~~section 345~~ Part XXII of the *Act* (Disqualification Auditors and Actuaries) from acting as an auditor either for that *firm* or for a relevant class of *firm*.
- [FCA/
PRA]

- 3.4.6 G If it appears to the *FSA appropriate regulator* that an auditor of a *firm* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under sections 345 or 345A, respectively, of the *Act*. For more detail about what happens when the disqualification of an auditor is being considered or put into effect, see EG 15. A list of persons who are disqualified by the *FSA* under section 345 of the *Act* may be found on the *FSA FCA*'s website (www.fsa.gov.uk) [web address tbc]
- [FCA/
PRA]

...

4 Actuaries

...

4.2 Purpose

- 4.2.1 G Section 340 of the *Act* gives the *FSA PRA* power to make *rules* requiring an *authorised person*, or an *authorised person* falling into a specified class, to appoint an *actuary*. Section 340 further empowers the *FSA PRA* to make *rules* governing the manner, timing and notification ~~to the *FSA*~~ of such an appointment and, where an appointment is not made, for the *FSA PRA* to make

an appointment on the firm's behalf. The ~~FSA's~~ rule-making powers of the PRA and FCA under section 340 of the *Act* also extend to an *actuary's* duties ~~and to the cessation of an *actuary's* term of office.~~

...

4.3 Appointment of actuaries

...

- 4.3.2 G The provisions relating to the duties of an *actuary* appointed to perform these functions are set out in *SUP* 4.3.13R to *SUP* 4.3.18G. The functions performed by *actuaries* appointed by a *firm* under *SUP* 4.3.1R are specified as *controlled functions* (CF 12, the *actuarial function*, and CF 12A, the *with-profits actuary function*) in *SUP* 10B (PRA-Approved persons). As a result, an application must be made to the ~~FSA~~ PRA under section 60 of the *Act* (Applications for approval) for approval by the PRA with the consent of the FCA of the *person* proposing to take up such an appointment. Section 61(3) of the *Act* (Determination of applications) gives the ~~FSA~~ PRA three months to grant its approval or give a *warning notice* that it proposes to refuse the application. A *firm* should not appoint an *actuary* until the ~~FSA~~ PRA with the consent of the FCA has approved the *actuary*. In order to comply with *SUP* 4.3.1R, a *firm* should ensure it applies to the ~~FSA~~ PRA as soon as practicable before the date when it needs the *actuary* to take office. The ~~FSA~~ PRA will need time to consider the application before deciding whether to grant approval. See *SUP* 10B (PRA-Approved persons).

...

- 4.3.5 G The ~~FSA~~ PRA will not normally seek to appoint an *actuary* under *SUP* 4.3.3R if a notification under *SUP* 10B (PRA-Approved persons) has been received from the *firm* in relation to a proposed appointment of an *actuary* under *SUP* 4.3.1R, and that application is still being considered.

...

- 4.3.11 R A *firm* must not appoint under *SUP* 4.3.1R an *actuary* who is disqualified by the ~~FSA~~ FCA under section 345 of the *Act* (~~Disqualification~~ Disciplinary measures: FCA) or the PRA under section 345A of the *Act* (Disciplinary measures: PRA) from acting as an *actuary* either for that *firm* or for a relevant class of *firm*.
- 4.3.12 G If it appears to the ~~FSA~~ FCA or PRA that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A, respectively, of the *Act*. ~~For more detail about what happens when the disqualification of an actuary is being considered or put into effect, see EG 15 (Disqualification of auditors and actuaries).~~ A list of actuaries who are disqualified by the ~~FSA~~ FCA may be found on the ~~FSA~~ FCA website (www.fsa.gov.uk) [web address tbc].

... (needs the new FCA website address)

...

4.3.16 G ~~[deleted]~~ An actuary appointed to perform the *with-profits* actuary function
[PRA] R must:

- (1) advise the *firm's* management, at the level of seniority that is reasonably appropriate, on key aspects of the discretion to be exercised affecting those classes of the *with-profits* business of the *firm* in respect of which he has been appointed;
- (2) where the *firm* is a *realistic basis life firm* advise the *firm's* governing body as to whether the assumptions used to calculate the with-profits insurance component under *INSPRU* 1.3 are consistent with the *firm's PPFM* in respect of those classes of the *firm's with-profits* business;
- (3) at least once a year, report to the *firm's* governing body on key aspects (including those aspects of the *firm's* application of its *Principles and Practices of Financial Management* on which the advice described in (1) has been given) of the discretion exercised in respect of the period covered by his report affecting those classes of *with-profits* business of the *firm*;
- (4) request from the *firm* such information and explanations as he reasonably considers necessary to enable him properly to perform the duties in (1) to (3);
- (5) advise the *firm* as to the data and systems that he reasonably considers necessary to be kept and maintained to provide the duties in (4); and
- (6) in the case of a *friendly society* to which this section applies, perform the function of appropriate actuary under section 12 (Reinsurance) of the *Friendly Societies Act 1992* or section 23A (Reinsurance) of the *Friendly Societies Act 1974* as applicable, in respect of those classes of its *with-profits* business covered by his appointment.

4.3.16 R An actuary appointed to perform the *with-profits* actuary function must:
A
[FCA]

- (1) advise the *firm's* management, at the level of seniority that is reasonably appropriate, on key aspects of the discretion to be exercised affecting those classes of the *with-profits* business of the *firm* in respect of which he has been appointed;
- (2) where the *firm* is a *realistic basis life firm* advise the *firm's* governing body as to whether the assumptions used to calculate the with-profits

insurance component under *INSPRU* 1.3 are consistent with the *firm's PPFM* in respect of those classes of the *firm's with-profits business*;

- (3) at least once a year, report to the *firm's governing body* on key aspects (including those aspects of the *firm's application of its Principles and Practices of Financial Management* on which the advice described in (1) has been given) of the discretion exercised in respect of the period covered by his report affecting those classes of *with-profits business* of the *firm*;
- (4) in respect of each financial year, make a written report addressed to the relevant classes of the *firm's with-profits policyholders*, to accompany the *firm's* annual report under \bar{COBS} 20.4.7R as to whether, in his opinion and based on the information and explanations provided to him by the *firm*, and taking into account where relevant the *rules and guidance* in \bar{COBS} 20, the annual report and the discretion exercised by the firm in respect of the period covered by the report may be regarded as taking, or having taken, the interests of the relevant classes of the *firm's with-profits policyholders* into account in a reasonable and proportionate manner;
- (5) request from the *firm* such information and explanations as he reasonably considers necessary to enable him properly to perform the duties in (1) to (4);
- (6) advise the *firm* as to the data and systems that he reasonably considers necessary to be kept and maintained to provide the duties in (5); and
- (7) in the case of a *friendly society* to which this section applies, perform the function of appropriate actuary under section 12 (Reinsurance) of the Friendly Societies Act 1992 or section 23A (Reinsurance) of the Friendly Societies Act 1974 as applicable, in respect of those classes of its *with-profits business* covered by his appointment.

...

4.4 Appropriate actuaries

...

- 4.4.4 R A *firm* must not appoint as *appropriate actuary* an *actuary* who has been disqualified by the *FSA FCA* under section 345 of the *Act* (~~Disqualification~~ Disciplinary measures: FCA) or the *PRA* under section 345A of the *Act* (Disciplinary measures: PRA) from acting as an *actuary* either for that *firm* or for a relevant class of *firm*.
- 4.4.5 G If it appears to the *FSA FCA* or *PRA* that an *appropriate actuary* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A, respectively, of the *Act*. ~~For more detail about what happens when the disqualification of an actuary is~~

being considered or put into effect, see *EG 15 (Disqualification of auditors and actuaries)*. A list of *actuaries* who have been disqualified by the *FSA* may be found on the *FSA FCA* website [web address tbc].

...

4.5 Provisions applicable to all actuaries

...

4.5.7 G (1) *Actuaries* appointed under this chapter are subject to regulations made by the Treasury under sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to the Authority a regulator). Section 343 and the regulations also apply to an actuary of an *authorised person* in his capacity as an actuary of a *person* with *close links* with the *authorised person*.

[FCA/
PRA]

(2) These regulations oblige *actuaries* to report certain matters to the *FSA appropriate regulator*. Sections 342(3) and 343(3) of the *Act* provide that an *actuary* does not contravene any duty by giving information or expressing an opinion to the *FSA appropriate regulator*, if he is acting in good faith and he reasonably believes that the information or opinion is relevant to any functions of the *FSA appropriate regulator*. These provisions continue to have effect after the end of the actuary's term of appointment.

~~In relation to Lloyd's, an effect of the *insurance market direction* set out at *SUP 3.1.13D* is that sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to the *FSA*) apply also to *actuaries* who are appointed to evaluate the *long-term insurance business* of a *syndicate*.~~

4.5.7A G In relation to Lloyd's, an effect of the *insurance market direction* set out at *SUP 3.1.13D* is that sections 342(5) and 343(5) of the *Act* (Information given by auditor or actuary to a regulator) apply also to *actuaries* who are appointed to evaluate the *long-term insurance business* of a *syndicate*.

[PRA]

...

4.5.11 G When an *actuary* appointed under *SUP 4.3.1R* ceases to hold office, he ceases to perform a *controlled function*. A *firm* is therefore required under *SUP 10.13.6R* to tell the *FSA PRA* within seven *business days* of its *actuary* ceasing to hold office and to complete a withdrawal form (Form C, *SUP 10 Annex 6R*). Note also the requirement of *SUP 10.13.7 R* in relation to qualified withdrawals.

[PRA]

...

4.6 Lloyd's

...

4.6.2 G The functions performed by the *actuary* appointed as the *Lloyd's actuary* under SUP 4.6.1R are specified as *controlled functions* in SUP 10B (~~Approved persons~~ PRA-Approved persons). As a result, an application must be made to the ~~FSA~~ PRA under section 60 of the *Act* (Applications for approval) for approval of the *person* proposing to take up such an appointment. Section 61(3) of the *Act* (Determination of applications) gives the ~~FSA~~ PRA three months to grant its approval or give a *warning notice* that it proposes to refuse the application. An *actuary* should not be appointed until the ~~FSA~~ PRA with the consent of the FCA has approved the *actuary*. In order to comply with SUP 4.6.1R, the *Society* should ensure it applies to the ~~FSA~~ PRA as soon as practicable before the date when it needs the *actuary* to take office. The ~~FSA~~ PRA will need time to consider the application before deciding whether to grant approval.

...

4.6.5 R The *Society* must not appoint under SUP 4.6.1R as *Lloyd's actuary* an *actuary* who is disqualified by the ~~FSA~~ FCA under section 345 of the *Act* (~~Disqualification~~ Disciplinary measures: FCA) or the *PRA* under section 345A of the *Act* (Disciplinary measures: PRA) from acting: ...

4.6.6 G If it appears to the ~~FSA~~ FCA or *PRA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A, respectively, of the *Act*. ~~For more detail about what happens when the disqualification of an actuary is being considered or put into effect, see EG 15.~~ A list of *actuaries* who are disqualified by the ~~FSA~~ FCA may be found on the ~~FSA~~ FCA website.

...

4.6.13 R A *managing agent* must not appoint under SUP 4.6.9R as *syndicate actuary* an *actuary* who is disqualified by the ~~FSA~~ FCA under section 345 of the *Act* (~~Disqualification~~ Disciplinary measures: FCA) or the *PRA* under section 345A of the *Act* (Disciplinary measures: PRA) from acting: ...

4.6.14 G If it appears to the ~~FSA~~ FCA or *PRA* that an *actuary* has failed to comply with a duty imposed on him under the *Act*, it may have the power to and may disqualify him under section 345 or 345A, respectively, of the *Act*. ~~For more detail about what happens when the disqualification of an actuary is being considered or put into effect, see EG 15.~~ A list of *actuaries* who are disqualified by the ~~FSA~~ FCA may be found on the ~~FSA~~ FCA website.

...

9.2.2 G A *firm* and its professional advisers should address requests for

individual *guidance* to the *firm's* usual supervisory contact at the ~~FSA~~ FCA, with the exception of requests for *guidance* on the *Code of Market Conduct (MAR 1)* which should be addressed to the specialist team within the ~~Markets and Exchanges Division~~ Markets Division. A *firm* may wish to discuss a request for *guidance* with the relevant contact before making a written request.

...

- 9.3.2 G The ~~FSA~~ FCA may give individual *guidance* to a *firm* on its own initiative if it considers it appropriate to do so. For example:
- (1) the ~~FSA~~ FCA may consider that general *guidance* in the *Handbook* does not appropriately fit a *firm's* particular circumstances (which may be permanent or temporary) and therefore decide to give additional individual *guidance* to the *firm*;
 - (2) some of the ~~FSA's~~ FCA's requirements are expressed in general terms; however, there may be times when the ~~FSA~~ FCA will wish to respond to a *firm's* particular circumstances by giving individual *guidance* on the application of the general requirement in these circumstances;
 - (3) the ~~FSA~~ FCA may consider that a *firm* should be given more detailed *guidance* than that contained in the ~~Handbook~~ FCA Handbook; for example, where a *firm* holds positions in instruments of a non-standard form it may be appropriate to give the *firm* additional or more detailed *guidance* on how the ~~FSA~~ FCA considers that it should calculate its financial resources requirement
 - (4) in some instances a *rule* allows a *firm* to select which requirement, within a range of alternative requirements, a *firm* should comply with; in many instances, the ~~Handbook~~ FCA Handbook gives *guidance* setting out the circumstances in which compliance with a particular requirement is appropriate; the ~~FSA~~ FCA may sometimes consider it necessary to give additional individual *guidance* to tell a *firm* which requirement it considers appropriate;
 - (5) in relation to the maintenance of adequate financial resources, the ~~FSA~~ FCA may give a *firm* individual *guidance* on the amount or type of financial resources the ~~FSA~~ FCA considers appropriate, for example *individual capital guidance* for *BIPRU firms* ~~and insurers~~; further *guidance* on how and when the ~~FSA~~ FCA may give *individual capital guidance* on financial resources is contained in the Prudential Standards part of the *Handbook*:
 - (a) for a *BIPRU firm*: *GENPRU 1.2* and *BIPRU 2.2*; and
 - (b) ~~for an insurer: GENPRU 1.2 and INSPRU 7.1; [deleted]~~
 - (c) for a *securities and futures firm* (or other *firm* required to comply with *IPRU(INV) 3*): *IPRU(INV) 3-79R*; ~~and~~

(d) ~~for an insurer: *INSPRU 7*~~ [deleted]

App 2 Insurers: Regulatory intervention points and run-off plans

...

App 2.1.5 G *SUP App 2.7.1G is made by the FCA for the purpose of its application to dormant account fund operators, rather than insurers.*

[FCA]

...

App 2.3.1 G To fulfil its obligations under the *Insurance Directives*, and as part of the ~~FSA's~~ PRA's risk-based approach to supervision, there are certain times when the ~~FSA~~ PRA needs to monitor a *firm* more closely than it normally would. This is so the ~~FSA~~ PRA can fulfil its function of supervising the safety and soundness of firms properly and meet the ~~regulatory objective~~ statutory objective of securing an appropriate degree of protection for ~~consumers~~ policyholders.

[PRA]

...

App 2.3.4 G In accordance with the *Insurance Directives*, a *firm* whose capital resources have fallen below its required margin of solvency, or its guarantee fund, is required, by the *rule* set out in this appendix, to submit a *scheme of operations*, together with an explanation of how its capital resources will be adequately restored. In order to secure an appropriate degree of protection for ~~consumers~~ policyholders, the ~~FSA~~ PRA applies the rule in this appendix to firms to which the provisions of the *Insurance Directives* would not otherwise apply.

[PRA]

...

App 2.3.8 G In relation to a *firm* carrying on *with-profits insurance business*, action which it takes either to restore its capital resources to the levels set by the intervention points in this appendix, or to prevent its capital resources falling below those points, should be consistent with *Principle 6* of the ~~FSA's~~ FCA's Principles for Businesses. The FCA's Principle 6 requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly.

[FCA / PRA]

App 2.3.9 G These *rules* are in addition to the other *rules* and *guidance* in *SUP*, in particular *SUP 2* (Information gathering by the ~~FSA~~ appropriate regulator on its own initiative), *SUP 15* (Notifications to the ~~FSA~~ FCA or PRA), *SUP 16* (Reporting requirements) and the Principles for Businesses (*PRIN*).

[PRA]

...

App 2.7.3
[FCA / PRA]

G In relation to a *firm* carrying on *with-profits insurance business*, if it intends either (a) to remedy a fall in the level of capital resources advised in its *individual capital guidance*, or (b) to prevent a fall in the level advised in that *guidance*, for example, in either case, by taking management action to de-risk a *with-profits fund* or by reducing non-contractual benefits for *policyholders*, it should explain to the ~~FSA~~ appropriate regulator how such proposed actions are consistent with the *firm's* obligations under ~~PRIN 2.1~~ the FCA's Principle 6 (Customers' interests).

...

App 2.7.5
[PRA]

G If a *firm* has not accepted *individual capital guidance* given by the ~~FSA~~ PRA it should, nevertheless, inform the ~~FSA~~ PRA as soon as practicable if its capital resources have fallen below the level suggested by that *individual capital guidance*. In such circumstances, the ~~FSA~~ PRA may ask the *firm* for further explanation as to why it does not consider the *individual capital guidance* to be appropriate. The ~~FSA~~ PRA may also consider using its powers under section 45 55M of the *Act* to, on its own initiative, ~~vary a firm's Part IV permission, so as to~~ require it a *firm* to hold such capital as the ~~FSA~~ PRA considers is necessary for the ~~firm~~ firm to comply with *GENPRU 1.2.26R*.

...

App 2.9.1

G ~~A firm that has notified the FSA of a new parent undertaking may be requested to submit a scheme of operations (see SUP 11.5.5G). A scheme of operations would be requested if the significance and circumstances of the change were considered to be sufficient to merit that level of scrutiny. This is normally only likely to be necessary when there has been an ultimate change in control, or when, as a result of the change in control, significant changes are proposed to the firm's regulated activities, business plan or strategy. A firm which has submitted a scheme of operations under SUP 11.5.5G, is not required to submit a further scheme of operations under this appendix unless SUP App 2.4, SUP App 2.5 or SUP App 2.8 applies. SUP App 2.13 does, however, apply to such a firm. [deleted]~~

...

App 2.10.1
[PRA]

G The ~~FSA~~ PRA may ask a *firm* seeking a grant or variation of *permission* to provide a *scheme of operations* as part of the application process (see *SUP 6.3.25G*). Such a *firm* is not required to submit to the PRA a further *scheme of operations* under this appendix unless *SUP App 2.4*, *SUP App 2.5* or *SUP App 2.8* applies. *SUP App 2.13* and *SUP 6 Annex 4* do, however, apply to such a *firm*.

...

App 2.11.4
[FCA /

G In relation to a *firm* which carries on *with-profits insurance business* and which submits a plan, the ~~FSA~~ appropriate regulator would expect an explanation of how any actions it plans to take to restore capital resources to the level of the guarantee fund, required margin of solvency or *capital*

PRA] *resources requirement* are consistent with the *firm's* obligations under the FCA's Principle 6 (Customers' interests).

...

App 2.15.14 [FCA] G ~~The FSA~~ Either regulator may request additional information and explanations from the *firm*. (See section 165 (~~Authority's~~ Regulators' power to require information) of the *Act*.)

...

Annex 22

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

INTRO 1 Introduction

[FCA] This part of the FCA Handbook sets out how *complaints* are to be dealt with by *respondents* (*firms, payment service providers, electronic money issuers, licensees and VJ participants*) and the *Financial Ombudsman Service*.

It refers to relevant provisions in the *Act* and in transitional provisions made by the Treasury under the *Act*. It includes *rules* made by the ~~FSA~~ FCA and rules made (and *standard terms* set) by *FOS Ltd* with the consent or approval of the ~~FSA~~ FCA. ~~Schedule 4 specifies the sections of the Act under which the rules in this sourcebook are made.~~

....

Appendix 1: ~~FSA's~~ FCA's guidance on handling mortgage-endowment complaints

This appendix contains the ~~FSA's~~ FCA's *guidance to firms* on handling *complaints* relating to mortgage endowments.

Appendix 3: ~~FSA's~~ FCA's rules and guidance on handling payment protection insurance complaints

This appendix sets out the approach which *firms* should use when handling *complaints* relating to the sale of *payment protection contracts*

...

Sch 6 Rules that can be waived

Sch 6.1
[FCA]

G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives or European Regulations, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives or Regulations.

Annex 23

Amendments to Consumer Redress Scheme Sourcebook (CONRED)

There are no amendments to this module in this Instrument.

Annex 24

Amendments to the Compensation sourcebook (COMP)

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

INTRO 1 is deleted in its entirety. The deleted text is not shown.

The following chapters (INTRO 1A and 1B) are new text and not underlined.

INTRO 1A Foreword [FCA]

(This Foreword to the Compensation sourcebook does not form part of COMP.)

The *Act* requires the *FCA* to make rules establishing a scheme for compensating consumers in cases where: (i) authorised *firms* are unable, or likely to be unable, to satisfy claims against them; or (ii) persons who have assumed responsibility for liabilities arising from acts or omissions of authorised *firms* (“successors”) are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions. The body established to operate and administer the compensation scheme is the *Financial Services Compensation Scheme Limited (FSCS)*. By making rules that allow the *FSCS* to pay compensation to retail consumers and small businesses, and focusing protection on those who need it most, the compensation scheme rules form an important part of the toolkit the *FCA* will use to meet its statutory objectives. This module of the *FCA Handbook* contains the rules and guidance that allow the *Financial Services Compensation Scheme Limited* to pay claims for compensation when an authorised person is unable or likely to be unable to meet claims against it. The rules specify who is eligible to receive compensation and in what circumstances, how much compensation can be paid to a claimant; and how the scheme will be funded. The compensation rules are of interest to consumers. The rules apply to the *FSCS* and to authorised firms.

The Sourcebook is divided into the following Chapters covering all aspects of the scheme:

Chapter 1: Introduction and Overview

This chapter provides an introduction to the *FSCS* rules and a table of question and answers that may be of interest to consumers.

Chapter 2: The *FSCS*

This chapter gives the *FSCS* the duty to administer the compensation scheme. It also sets out the general conditions the *FSCS* must follow when administering the scheme, such as having regard to the efficient and economic use of resources, the requirement to publish an Annual Report, and the duty to ensure consumers are informed about how they can make a claim. The rules in this chapter also require the *FSCS* to have in place procedures for dealing with

complaints.

Chapter 3 The qualifying conditions for paying compensation

This chapter sets out the main qualifying conditions that must be satisfied before the FSCS can pay compensation to claimants. These are that a claimant is eligible to claim; the activity that gave rise to the loss is protected by the scheme; the firm against which the claim is being made is protected by the scheme; and that the claimant has assigned his rights to the scheme. Chapters 4 to 7 expand on the general conditions described in Chapter 3.

Chapter 4 Eligible claimants

This chapter specifies who is eligible to receive compensation provided by the FSCS.

Chapter 5 What is a protected claim? This chapter specifies the activities that are protected by the FSCS.

Chapter 6 Relevant persons in default

This chapter specifies the circumstances when a firm is in default, that is, when a firm is to be taken as being unable or likely to be unable to meet claims against it. The FSCS can only pay compensation if the circumstances specified in Chapter 6 are met.

Chapter 7 Assignment of rights

This chapter enables the FSCS to make an offer of compensation conditional on the claimant assigning to it their rights to claim against the failed firm. If the FSCS recovers from the firm a greater sum than it has paid to the claimant, it must pay the balance to the claimant.

Chapter 8 Rejection of application and withdrawal of offer

This chapter allows the FSCS to reject an application for compensation or withdraw an offer of compensation in specified circumstances.

Chapter 9 Time limits on payment and postponing payment

This chapter requires the FSCS to pay a claim for compensation within a specified time unless specified conditions apply.

Chapter 10 Limits on the amount of compensation payable

This chapter specifies the maximum amount of compensation the FSCS can pay to a claimant.

Chapter 11 Payment of compensation

This chapter specifies to whom the FSCS may pay compensation. In certain circumstances compensation may be paid to a person other than the claimant.

Chapter 12 Calculating compensation

This chapter specifies how the FSCS will calculate the amount of compensation it can pay to a claimant.

Chapter 13 Funding

Chapter 13 relating to the funding of the FSCS has now been deleted. The

funding provisions for the FSCS are now contained in FEES 6 instead and allow the FSCS to make levies on authorised firms to fund the operation of the scheme or to pay compensation. FEES 6 specifies how FSCS can make levies, how costs are to be allocated, the maximum the FSCS can levy in any particular period of time, and how sums recovered from failed firms are to be treated.

Chapter 14 Participation by EEA firms

This chapter sets out the way the FSCS deals with incoming EEA firms who may choose to top-up into the FSCS to supplement the compensation available from their home state scheme.

INTRO 1B

[PRA]

Foreword

(This Foreword to the Compensation sourcebook does not form part of COMP.)

The *Act* requires the *PRA* to make rules establishing a scheme for compensating consumers in cases where: (i) authorised *firms* are unable, or likely to be unable, to satisfy claims against them; or (ii) persons who have assumed responsibility for liabilities arising from acts or omissions of authorised *firms* (“successors”) are unable, or likely to be unable, to satisfy claims against the successors that are based on those acts or omissions. The body established to operate and administer the compensation scheme is the *Financial Services Compensation Scheme Limited (FSCS)*. By making rules that allow the *FSCS* to pay compensation to retail consumers and small businesses, focusing protection on those who need it most, the compensation scheme rules form an important part of the toolkit the *PRA* will use to meet its statutory objectives.

This module of the *PRA Handbook* contains the rules and guidance that allow the *Financial Services Compensation Scheme Limited* to pay claims for compensation or secure continuity of insurance when an authorised person is unable or likely to be unable to meet claims against it. The rules specify who is eligible to receive compensation and in what circumstances, how much compensation can be paid to a claimant; and how the scheme will be funded. The compensation rules are of interest to consumers. The rules apply to the *FSCS* and to authorised firms.

The Sourcebook is divided into 17 Chapters covering all aspects of the scheme:

Chapter 1: Introduction and Overview

This chapter provides an introduction to the FSCS rules and a table of question and answers that may be of interest to consumers.

Chapter 2: The FSCS

This chapter gives the FSCS the duty to administer the compensation scheme. It also sets out the general conditions the FSCS must follow when administering the scheme such as having regard to the efficient and economic use of resources, the requirement to publish an Annual Report, and the duty to ensure consumers are informed about how they can make a claim. The rules in this

chapter also require the FSCS to have in place procedures for dealing with complaints.

Chapter 3 The qualifying conditions for paying compensation

This chapter sets out the main qualifying conditions that must be satisfied before the FSCS can pay compensation to claimants or take steps to secure continuity of insurance. These are that a claimant is eligible to claim; the activity that gave rise to the loss is protected by the scheme; the firm against which the claim is being made is protected by the scheme; and that the claimant has assigned his rights to the scheme. Chapters 4 to 7 expand on the general conditions described in Chapter 3.

Chapter 4 Eligible claimants

This chapter specifies who is eligible to receive compensation or benefit from the continuity of insurance provided by the FSCS.

Chapter 5 What is a protected claim? This chapter specifies the activities that are protected by the FSCS.

Chapter 6 Relevant persons in default

This chapter specifies the circumstances when a firm is in default, that is, when a firm is to be taken as being unable or likely to be unable to meet claims against it. The FSCS can only pay compensation, take steps to secure continuity of insurance, or provide assistance to an insurer in financial difficulties if the circumstances specified in Chapter 6 are met.

Chapter 7 Assignment or subrogation of rights

This chapter enables the FSCS to make an offer of compensation conditional on the claimant assigning to it their rights to claim against the failed firm. If the FSCS recovers from the firm a greater sum than it has paid to the claimant, it must pay the balance to the claimant.

Chapter 8 Rejection of application and withdrawal of offer

This chapter allows the FSCS to reject an application for compensation or withdraw an offer of compensation in specified circumstances.

Chapter 9 Time limits on payment and postponing payment

This chapter requires the FSCS to pay a claim for compensation within a specified time unless specified conditions apply.

Chapter 10 Limits on the amount of compensation payable

This chapter specifies the maximum amount of compensation the FSCS can pay to a claimant, and the limits on the FSCS's duty to secure continuity of insurance for policyholders. Different limits apply depending on whether a claim is for a deposit, a claim on an insurance policy, or a claim in connection with an investment.

Chapter 11 Payment of compensation

This chapter specifies to whom the FSCS may pay compensation. In certain circumstances compensation may be paid to a person other than the claimant.

Chapter 12 Calculating compensation

This chapter specifies how the FSCS will calculate the amount of compensation it can pay to a claimant.

Chapter 13 Funding

Chapter 13 relating to the funding of the FSCS has now been deleted. The funding provisions for the FSCS are now contained in FEES 6 instead and allow the FSCS to make levies on authorised firms to fund the operation of the scheme, to pay compensation or secure continuity of insurance. FEES 6 specifies how FSCS can make levies, how costs are to be allocated, the maximum the FSCS can levy in any particular period of time, and how sums recovered from failed firms are to be treated.

Chapter 14 Participation by EEA firms

This chapter sets out the way the FSCS deals with incoming EEA firms who may choose to top-up into the FSCS to supplement the compensation available from their home state scheme.

Chapter 15 Protected deposits: Payments from other schemes

This chapter provides for the FSCS to have the power to pay compensation on behalf of another compensation scheme or government and to recover the sums paid.

Chapter 16 Disclosure requirements for firms that accept deposits

This chapter sets out the format, frequency and method of communication that deposit-taking firms must use in informing eligible customers that their deposits are covered by the FSCS. It also requires deposit-taking firms to inform their customers if their deposits are not covered by the FSCS.

Chapter 17 Systems and information requirements for firms that accept deposits

This chapter sets out the information required by the FSCS to make deposit compensation payments to eligible depositors. This chapter also sets out the electronic requirements connected to the information contained within each Single Customer View, including the requirement to flag eligible depositor accounts, aggregate accounts held by each eligible depositor to provide a consistent view of each eligible depositor, perform a limit check on each aggregated Single Customer View and enable the electronic submission of the Single Customer View to the FSCS. This chapter also outlines a threshold below which the electronic requirements connected to the Single Customer View are not mandatory.

Amend the following text as shown.

1.1 Application, Introduction, and Purpose

...

Introduction

...

1.1.5 G Under section 212 of the ~~Act~~ (The scheme manager), the The FSA must establish a body corporate to exercise established the Financial Services Compensation Scheme Limited, a company limited by guarantee (FSCS). The FSCS exercises the functions that are conferred on that body corporate the scheme manager by Part XV of the Act, dealing with compensation. This body is the Financial Services Compensation Scheme Limited, a company limited by guarantee (FSCS).

[FCA/
PRA]

...

Purpose

...

1.1.9 G This sourcebook is one of the means by which the *FSA* will meet its *regulatory objectives* of securing the appropriate degree of protection for *consumers*, contributing to the protection and enhancement of the financial stability of the *United Kingdom* and maintaining confidence in the *UK financial system*. [deleted]

1.1.9A G This sourcebook is one of the means by which the *FCA* will meet its *statutory objectives* of securing an appropriate degree of protection for *consumers* and protecting and enhancing the integrity of the *UK financial system*.

[FCA]

1.1.9B G This sourcebook is one of the means by which the *PRA* will meet its *statutory objectives* of promoting the safety and soundness of *PRA-
authorised persons* (by seeking to minimise the adverse effect that the failure of a *PRA-
authorised person* could be expected to have on the stability of the *UK financial system*) and contributing to the securing of an appropriate degree of protection for those who are policyholders.

[PRA]

1.1.10 G By setting up the *FSCS* and making *rules* that allow the *FSCS* to provide compensation at a level appropriate for the protection of retail *consumers* and *small businesses*, the *FSA* enables *consumers* to participate in the financial markets with the confidence that they will be protected, at least in part, should the *relevant person* with whom they are dealing be unable to satisfy *claims* against it. [deleted]

1.1.10A G By making *rules* that allow the *FSCS* to provide compensation at a level appropriate for the protection of retail *consumers* and *small businesses*, the *FCA* enables *consumers* to participate in the financial markets with the confidence that they will be protected, at least in part, should the *relevant person* with whom they are dealing be unable to satisfy *claims* against it.

[FCA]

1.1.10B G By making *rules* that allow the *FSCS* to provide compensation at a level appropriate for the protection of retail *consumers* and *small businesses*, the *PRA* minimises the adverse effect that the failure of a *PRA-
authorised person* could be expected to have on the stability of the *UK financial*

[PRA]

system and enables consumers to participate in the financial markets with the confidence that they will be protected, at least in part, should the relevant person with whom they are dealing be unable to satisfy claims against it.

1.2 The FSCS

...

- 1.2.2 G (1) ~~In addition, the Act itself confers certain powers upon the FSCS, such as a power under section 219 of the Act (Scheme Manager's powers to require information) to require persons to provide information. These powers are not, therefore, covered by this sourcebook. [deleted]~~
- (2) ~~Of specific relevance to the way in which the FSCS fulfils its responsibilities is the relationship between the FSCS and the FSA. This is covered in a Memorandum of Understanding which can be found on the FSA FCA website www.fsa.gov.uk. [deleted]~~

- 1.2.2A G (1) In addition, the Act itself confers certain powers upon the FSCS, such as a power under section 219 of the Act (Scheme Manager's powers to require information) to require persons to provide information. These powers are not, therefore, covered by this sourcebook.
[FCA]
- (2) Of specific relevance to the way in which the FSCS fulfils its responsibilities is the relationship between the FSCS and the FCA. This is covered in a Memorandum of Understanding which can be found on the FCA website [web address tbc]

- 1.2.2B G (1) In addition, the Act itself confers certain powers upon the FSCS, such as a power under section 219 of the Act (Scheme Manager's powers to require information) to require persons to provide information. These powers are not, therefore, covered by this sourcebook.
[PRA]
- (2) Of specific relevance to the way in which the FSCS fulfils its responsibilities is the relationship between the FSCS and the PRA. This is covered in a Memorandum of Understanding which can be found on the PRA website www.pra.org.uk

...

2.2 Duties of the FSCS

...

Annual Report

- 2.2.5 G The *FSCS* must make and publish an annual report ~~to the FSA~~ on the
[FCA/ discharge of its functions (section 218 of the *Act* (Annual report)).
PRA]

...

9.2 When must compensation be paid?

- 9.2.1 R The *FSCS* must pay a *claim* as soon as reasonably possible after:
[PRA]

...

and in any event within:

- (3) in relation to a *claim* for a *protected deposit*, 20 *working days* of that date unless the ~~FSA~~ PRA has granted the *FSCS* an extension, in which case payment must be made no later than 30 *working days* from that date; or

[**Note:** article 10(1), first and second sub-paragraphs of the *Deposit Guarantee Directive*]

- (4) in relation to any other *claim*, three months of that date, unless the ~~FSA~~ PRA has granted the *FSCS* an extension, in which case payment must be made no later than six months from that date.

...

- 9.2.1B R The *FSCS* must pay a *claim* as soon as reasonably possible after:
[FCA]

- (1) it is satisfied that the conditions in *COMP* 3.2.1R have been met;
and
(2) it has calculated the amount of compensation due to the claimant;

and in any event within:

- (3) three months of that date, unless the *FCA* has granted the *FSCS* an extension, in which case payment must be made no later than six months from that date.

...

11.2 Payment

To whom must payment be made?

11.2.1 R ~~If the FSCS determines that compensation is payable (or any recovery or other amount is payable by the FSCS to the claimant), it must pay it to the claimant, or as directed by the claimant, unless:~~

~~(1) arrangements have or are being made to secure continuity of insurance under COMP 3.3.1R to COMP 3.3.2ER or the FSCS is taking measures it considers appropriate to safeguard *eligible claimants* under COMP 3.3.3R to COMP 3.3.6R; or~~

~~(2) COMP 11.2.2R or COMP 11.2.3R applies. [deleted]~~

11.2.1A R If the FSCS determines that compensation is payable (or any recovery or other amount is payable by the FSCS to the claimant), it must pay it to the claimant, or as directed by the claimant, unless COMP 11.2.2R applies.
[FCA]

11.2.1B R If the FSCS determines that compensation is payable (or any recovery or other amount is payable by the FSCS to the claimant), it must pay it to the claimant, or as directed by the claimant, unless:
[PRA]

(1) arrangements have or are being made to secure continuity of insurance under COMP 3.3.1R to COMP 3.3.2ER or the FSCS is taking measures it considers appropriate to safeguard *eligible claimants* under COMP 3.3.3R to COMP 3.3.6R; or

(2) COMP 11.2.3R applies.

...

12.2 Quantification: general

12.2.1 R The amount of compensation payable to the claimant in respect of:
[PRA]

...

12.2.1A R The amount of compensation payable to the claimant in respect of any type of *protected claim* is the amount of his overall net *claim* against the *relevant person* at the *quantification date* and any reference in COMP to overall *claim* means "overall net *claim*" or "overall gross *claim*" as appropriate.
[FCA]

...

Payments to the claimant

12.2.7 R The *FSCS* must take into account any payments to the claimant (including
[PRA] amounts recovered by the *FSCS* on behalf of the claimant) made by the *relevant person* or the *FSCS* or any other *person*, if that payment is connected with the *relevant person's* liability to the claimant:

- (1) in calculating the claimant's overall *claim*; and
- (2) for a *claim* for a *protected deposit*, by reducing the amount of compensation by the ~~FSCS~~ *FSCS* retention sum that the *FSCS* would have retained if it had made those recoveries itself.

12.2.7A R The *FSCS* must take into account any payments to the claimant (including
[FCA] amounts recovered by the *FSCS* on behalf of the claimant) made by the *relevant person* or the *FSCS* or any other *person*, if that payment is connected with the *relevant person's* liability to the claimant in calculating the claimant's overall *claim*.

...

14.4 Ending top-up cover

...

14.4.4 R ~~If the *incoming EEA firm* fails to meet its obligations for a period of twelve months following the notice, the *FSCS* may, subject to obtaining the consent of the *incoming EEA firm's Home State regulator*, terminate its *top-up cover*. Notwithstanding the termination of top-up cover under this rule, cover will continue for:~~

- ~~(1) *protected deposits* which are not repayable on demand without penalty; and~~
- ~~(2) *protected investment business* transacted before that termination.
[deleted]~~

14.4.4A R If the *incoming EEA firm* fails to meet its obligations for a period of
[FCA] twelve months following the notice, the *FSCS* may, subject to obtaining the consent of the *incoming EEA firm's Home State regulator*, terminate its *top-up cover*. Notwithstanding the termination of top-up cover under this rule, cover will continue for *protected investment business* transacted before that termination.

14.4.4B R If the *incoming EEA firm* fails to meet its obligations for a period of
[PRA] twelve months following the notice, the *FSCS* may, subject to obtaining the consent of the *incoming EEA firm's Home State regulator*, terminate its *top-up cover*. Notwithstanding the termination of top-up cover under this rule, cover will continue for *protected deposits* which are not repayable on demand without penalty.

...

Sch 2 Notification requirements

Sch 2.1G

1.	The aim of the guidance in the following table is to give the reader a quick overall view of the relevant requirements for notification and reporting. In all cases, other than those concerning Chapters 13, 14 and 17 and the Transitional Provisions, the notification rules in <i>COMP</i> apply only to the FSCS (the scheme manager).
2.	It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.2G

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>COMP</i> 2.2.5G	Annual Report	Not specified in <i>COMP</i> - see Memorandum of Understanding (MoU) between FSA <u>each regulator</u> and FSCS	End of Financial Year	Not specified in <i>COMP</i> (see MoU)
...				
<i>COMP</i> 17.3.1R	A firm must provide the FSA <u>PRA</u> with an <i>SCV implementation report</i> and <i>SCV report</i>	See <i>COMP</i> 17.3.6R(1) or <i>COMP</i> 17.3.6R(2) as applicable and <i>COMP</i> 17.3.9R(1) or <i>COMP</i> 17.3.9R(2) as applicable.	Receipt of <i>permission</i> to <i>accept deposits</i> or obtaining <i>top-up cover</i> as applicable	Three months
<i>COMP</i> 17.3.2R	A firm must provide the FSA <u>PRA</u> with an <i>SCV implementation report</i> and <i>SCV report</i>	See <i>COMP</i> 17.3.6R(1) or <i>COMP</i> 17.3.6R(2) as applicable and <i>COMP</i> 17.3.9R(1) or <i>COMP</i> 17.3.9R(2) as applicable.	A material change in the <i>firm's SCV system</i>	Three months
<i>COMP</i> 17.3.4R	A firm must provide the FSA <u>PRA</u> with an <i>SCV report</i>	<i>COMP</i> 17.3.9R(1) or <i>COMP</i> 17.3.9R(2) as applicable.	Every four years (starting from 31 December 2010 or the date of receiving <i>permission</i> to <i>accept deposits</i>)	See Trigger Event

			or in the case of an <i>incoming EEA firm</i> the date of obtaining <i>top-up cover</i> , whichever is later)	
...				

...

Sch 5 Rights of action for damages

...

Sch 5.2G

Chapter/ Appendix		Section/ Annex	Paragraph	For private person	Removed	For other person?
<i>COMP</i> 1		5	8	No	Yes – <i>COMP</i> 1.5.11G	No
<i>COMP</i> 13	Funding (all rules)			Yes	No	No
<i>COMP</i> 14.4.6R				Yes	No	No

Sch 6 Rules that can be waived

Sch 6.1G ~~As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the FSA has power to waive all its *rules*, other than *rules* made under section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the FSA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives. [deleted]~~

Sch 6.1AG As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.

[FCA]

Sch 6.1BG As a result of section 138A of the Act (Modification or waiver of rules) the PRA has power to waive all its *rules*, other than *rules* made under section 137O(Threshold condition code) of the Act. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the

[PRA]

PRA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 25

Amendments to the Building Societies Sourcebook (BSOCS)

There are no amendments to this module in this Instrument.

Annex 26

Amendments to the Collective Investment Schemes sourcebook (COLL)

There are no amendments to this module in this Instrument.

Annex 27

Amendments to the Credit Unions New Sourcebook (CREDS)

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

1.1 Application and Purpose

...

- 1.1.5 G The status of the provisions in *CREDS* is indicated by icons containing the letters R, G or E. Please refer to chapter six of the Reader's Guide for further explanation about the significance of these icons. The Reader's Guide can be found at http://www.fsa.gov.uk/pages/Handbook/readers_guide.pdf [web address tbc]
- [FCA/
PRA]

...

5.2 Components of capital

- 5.2.1 R ...

[FCA/
PRA]

- (7) Subject to the conditions in (6), and the limit in (8), the amount of revaluation reserve used for the calculation of capital must be:
- (a) the amount standing to the credit of any such reserve in the balance sheet in the most recent annual return to have been sent to the *FSA PRA* under ~~*SUP 16.7.62R*~~ or *SUP 16.12.5R* (see *CREDS 8.2.3G*); or

...

...

7.2 General requirements concerning lending policy

- 7.2.1 R ~~A credit union must establish, maintain and implement an up-to-date lending policy statement approved by the committee of management that is prudent and appropriate to the scale and nature of its business, having regard to the limits outlined in *CREDS 7.3* to *CREDS 7.4*.~~

~~[Note: a transitional provision applies to this rule: see *CREDS TP 1.6*.]~~

[deleted]

7.2.1A R A credit union must establish, maintain and implement an up-to-date lending policy statement approved by the committee of management that is prudent and appropriate to the scale and nature of its business, having regard to the limits outlined in CREDS 7.3.
[FCA/
PRA]

7.2.1B R A credit union must establish, maintain and implement an up-to-date lending policy statement approved by the committee of management that is prudent and appropriate to the scale and nature of its business, having regard to the limits outlined in CREDS 7.4.
[PRA]

[Note: a transitional provision applies to CREDS 7.2.1AR and CREDS 7.2.1BR: see CREDS TP 1.6.]

...

8.2 Reporting requirements

...

Financial penalties for late submission of reports

8.2.8 G ...
[FCA/
PRA]

(2) Details of the FSA's policy and procedures on financial penalties are given in DEPP.

...

10 Application of other parts of the Handbook to Credit unions

...

10.1.3 G
[FCA/
PRA]

Module	Relevance to Credit Unions
The Principles for Businesses (PRIN)	The Principles for Businesses (PRIN) set out, in a small number of high-level requirements, the basic obligations of all regulated firms: <u>high-level requirements, some of which are imposed by the FCA and some by the PRA.</u> They provide a

	<p>general statement of regulatory requirements, and the FSA considers that the Principles are appropriate expressions of the standards of conduct to be expected of all financial firms including credit unions. <u>The Principles apply to all credit unions.</u> In applying the <i>Principles</i> to <i>credit unions</i>, the <u>FSA appropriate regulator</u> will be mindful of proportionality. In practice, the implications are likely to vary according to the size of the <i>credit union</i>.</p>
...	
Threshold Conditions (COND)	<p>In order to become <i>authorised</i> under the <i>Act</i> all <i>firms</i> must meet the <i>threshold conditions</i>. The <i>threshold conditions</i> must be met on a continuing basis by <i>credit unions</i>. Failure to meet one of the conditions is sufficient grounds for the exercise by the FSA <u>appropriate regulator</u> of its powers (see EG).</p>
Statements of Principle and Code of Practice for Approved Persons (APER)	<p>The purpose of the <i>Statements of Principle</i> contained in <i>APER 2</i> is to provide guidance to <i>approved persons</i> in relation to the conduct expected of them in the performance of a <i>controlled function</i>. The <i>Code of Practice for Approved Persons</i> sets out descriptions of conduct which, in the opinion of the FSA <u>appropriate regulator</u>, do not comply with a <i>Statement of Principle</i> and, in the case of <i>Statement of Principle 3</i>, conduct which tends to show compliance within that statement.</p>
The Fit and Proper test for Approved Persons (FIT)	<p>The purpose of <i>FIT</i> is to set out and describe the criteria that the FSA <u>appropriate regulator</u> will consider when assessing the fitness and propriety of a person in respect of whom an application is being made for approval to undertake a <i>controlled function</i> under the approved persons regime. The criteria are also relevant in assessing the continuing fitness and propriety of persons who have already been approved.</p>
General Provisions (GEN)	<p><i>GEN</i> contains <i>rules</i> and <i>guidance</i> on general matters, including interpreting the <i>Handbook</i>, statutory status disclosure, the FSA <u>appropriate regulator's</u> logo and insurance against financial penalties.</p>
...	
Supervision manual (SUP)	<p>The following provisions of <i>SUP</i> are relevant to <i>credit unions</i>: <i>SUP 1</i> (The FSA <u>appropriate regulator's</u> approach to supervision), <i>SUP 2</i> (Information gathering by the FSA <u>appropriate regulator</u> on its own initiative), <i>SUP 3.1</i> to <i>SUP 3.8</i> (Auditors), <i>SUP 5</i> (Skilled persons), <i>SUP 6</i> (Applications to vary or cancel Part IV 4A permission), <i>SUP 7</i> (Individual requirements), <i>SUP 8</i> (Waiver and modification of rules), <i>SUP 9</i> (Individual guidance), <i>SUP 10</i> (Approved persons), <i>SUP 11</i> (Controllers and Close links), <i>SUP 15</i> (Notifications to the FSA <u>appropriate regulator</u>) and <i>SUP 16</i> (Reporting</p>

	<p>Requirements).</p> <p><i>Credit unions</i> are reminded that they are subject to the requirements of the <i>Act</i> and <i>SUP 11</i> on <i>controllers</i> and <i>close links</i>, and are bound to notify the FSA <u>appropriate regulator</u> of changes...</p>
<p>Decision, Procedure and Penalties manual (<i>DEPP</i>)</p>	<p><i>DEPP</i> is relevant to <i>credit unions</i> because it sets out:</p> <p>(1) the FSA <u>FCA</u>'s decision-making procedure for giving <i>statutory notices</i>. These are <i>warning notices</i>, <i>decision notices</i> and <i>supervisory notices</i> (<i>DEPP</i> 1.2 to <i>DEPP</i> 5); and</p> <p>(2) the FSA <u>FCA</u>'s policy with respect to the imposition and amount of penalties under the <i>Act</i> (see <i>DEPP</i> 6).</p>
...	
<p>Complaints against the FSA (<i>COAF</i>)</p>	<p>This relates to complaints against the FSA.</p>
<p>The Enforcement Guide (<i>EG</i>)</p>	<p>The Enforcement Guide (<i>EG</i>) describes the FSA <u>FCA</u>'s approach to exercising the main enforcement powers given to it by the <i>Act</i> and by regulation 12 of the <i>Unfair Terms Regulations</i>.</p>
...	

Annex 28

Amendments to the Professional Firms sourcebook (PROF)

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

1.1 Application and Purpose

...

Purpose

...

1.1.6 G The *rules* and *guidance* in this sourcebook are intended to:

- (1) assist the protection of *clients of exempt professional firms* by ensuring that the ~~FSA~~ FCA has information which allows it to keep under review the exercise of the direction power under section 328 of the *Act* (see *PROF* 1.1.4G(4));
- (2) secure ~~the~~ an appropriate degree of protection for *consumers* by ensuring that the *clients* of an *exempt professional firm* are made aware that the firm is not an *authorised person*;
- (3) enable the ~~FSA~~ FCA to use its resources in an efficient and effective way in the collection of information relevant to its duty to keep itself informed under section 325 of the *Act* (~~Authority's~~ FCA's general duty); and
- (4) explain the background to and the arrangements made by the ~~FSA~~ FCA for:

...

...

3 Annex The ~~FSA's~~ FCA's duties and powers G 1G

Directions made by the ~~FSA~~ FCA under section 328(6)(a) of the Act (see *PROF* 3.2.7G)

1.1

G

As at 31 October 2004, the FSA had The <u>FCA</u> <u>has</u> made no directions under section 328(6)(a) of the <i>Act</i> .

3 Annex 2G The ~~FSA's~~ FCA's duties and powers G

Directions made by the ~~FSA~~ FCA under section 328(6)(b) of the Act (see *PROF 3.2.7G*)

~~As at 31 October 2004, the FSA had~~ The FCA has made no directions under section 328(6)(b) of the *Act*.

Sch 6 Rules that can be waived

6.1G

As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 29

Amendments to the Regulated Covered Bonds sourcebook (RCB)

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

1.1.4 G This section refers to some of the other parts of the ~~FSA's Handbook~~ FCA Handbook and PRA Handbook which may be relevant to *regulated covered bonds*.

...

1.1.6 G *BIPRU firms* which have *exposures to covered bonds* which meet the requirements set out in the provisions of BIPRU 3.4.106R to BIPRU 3.4.109R, whether made by the FCA or the PRA, may benefit from reduced *risk weights* as set out in the version of BIPRU 3.4.110R applying to that BIPRU firm.

Annex 30

Amendments to the Listing Rules sourcebook (LR)

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

Sch 6 Rules that can be waived

- Sch 6.1 G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

...

Annex 31

Amendments to the Prospectus Rules sourcebook (PR)

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

Sch 6 Rules that can be waived

- Sch 6.1 G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

...

Annex 32

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

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

Sch 6 Rules that can be waived

- Sch 6.1 G As a result of ~~regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973)~~ section 138A of the Act (Modification or waiver of rules) the ~~FSA~~ FCA has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the *Act*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the ~~FSA~~ FCA to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Annex 33

Amendments to the Energy Market Participants Guide (EMPS)

There are no amendments to this module in this Instrument.

Annex 34

Amendments to the Oil Market Participants Guide (OMPS)

There are no amendments to this module in this Instrument.

Annex 35

Amendments to the Service Companies Guide (SERV)

There are no amendments to this module in this Instrument.

Annex 36

Amendments to the Building Societies Regulatory Guide sourcebook (BSOG)

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

1.1 Application, purpose and definitions

...

Interpretation

1.1.2A G The interpretation provisions in GEN 2 apply as guidance to the interpretation of this Guide.
[FCA/
PRA]

Frequently used terms

1.1.3 G The following terms are used in this Guide and have the meaning described here:
[FCA/
PRA]

"the 1986 Act"	the Building Societies Act 1986 (<u>as amended</u>) [Note: as amended by or under the Building Societies Act 1997 and the Financial Services and Markets Act 2000. The 1986 Act has also been amended by other legislation.]
...	
"the Act"	the Financial Services and Markets Act 2000 (<u>as amended</u>)
...	
"approved person"	a person approved by the Authority under section 59 of the Act (Approval for particular arrangements) to perform a controlled function
"the Authority"	the Financial Services Authority
...	
"controlled function"	a function, relating to the carrying on of a regulated activity by a firm, which is specified, under section 59 of the Act (Approval for particular arrangements), in the table of controlled functions shown in the Supervision manual of the Authority's Handbook (see <i>SUP</i> 10.4.5R)

...	
“existing company”	...
“FCA”	<u>the Financial Conduct Authority</u>
“Fees Rules”	the Rules made by the Authority from time to time under paragraph 17 of Schedule 1 to the Financial Services and Markets Act 2000 prescribing the fees to be paid in connection with the discharge of its functions under the 1986 Act <u>the Rules made by the FCA under paragraph 23 of schedule 1ZA and the PRA under paragraph 31 of schedule 1ZB to the Act, prescribing the fees to be paid in connection with the discharge of the FCA’s or the PRA’s functions under the 1986 Act.</u>
...	
“Merger Resolutions”	the shareholding members’ resolution and borrowing members’ resolution required to approve a merger where no direction under section 42(B)(3) <u>of the 1986 Act</u> has been given
...	
“PIBS”	...
“PRA”	<u>the Prudential Regulation Authority</u>
“proxy voting form”	...
“ <u>the Prudential Regulator</u> ”	<u>(a) in relation to a building society which is a PRA- authorised person, the PRA; and (b) in relation to a building society which is not a PRA-authorized person, the FCA</u>
...	

...

Fit and proper test for directors

- 1.3.3 G A building society’s directors are elected by its members. Subject to certain exceptions, any natural person may be elected as a building society director (section 60 of the 1986 Act). Members have the right to nominate any
- [FCA/
PRA]

candidate for election. Unless that person is subject to an ~~Authority prohibition order~~ a prohibition order made under section 56 of the Act, the board cannot refuse to accept a candidate's nomination because the board does not regard that person as fit and proper. Prior to the election, the board should take reasonable steps to establish whether there are any facts or matters concerning the candidate's fitness and propriety which the members should be aware of. If there are, the board should bring them to the members' attention before the election takes place. The ~~Authority~~ Prudential Regulator will not vet candidates for election.

...

- 1.5.3 G This Guide reflects law and practice as at ~~23rd November 2006~~ 1 April 2013 and does not take into account subsequent developments.
[FCA/
PRA]

1A Applications for the Right to Obtain Access to the Registers of Members of Building Societies

...

- 1A.3.7 G Before giving a direction, the ~~Authority~~ FCA is required to give particulars of the application to the building society concerned and to give it the opportunity to make representations. If either the applicant or the society so requests, the ~~Authority~~ FCA must give both the opportunity of being heard by it. The FCA must also consult the PRA before making a direction.
[FCA/
PRA]

...

2 Merger Procedures

...

- 2.1.1 G This chapter ultimately derives from the Merger Procedures Guidance Note issued by the Commission in May 1999. It gives guidance on the requirements of the 1986 Act, as amended, ~~by and under the Act, under which~~ Under the Act certain functions of the Commission were transferred to the ~~Authority~~ Financial Services Authority and, subsequently, to the FCA and PRA. This chapter is not intended to be exhaustive and is not a substitute for looking at the 1986 Act as amended and the Mergers Regulations 1987 (SI 1987/2005) as amended by the Mergers (Amendment) Regulations 1995 (SI 1995/1874), the Merger Notification Statement Regulations 1999 (SI 1999/1215), where applicable, and a society's own Rules. Nor is it a substitute for the society seeking its own legal advice. It gives a description of the relevant provisions of the 1986 Act, of the information which must be

made available to the Authority Prudential Regulator and to societies' members, together with an outline of the procedures to be followed at general meetings, and the voting majorities required to pass the Merger Resolutions which the members are to be asked to approve. This chapter describes the role of the Authority Prudential Regulator in approving the statements to members under Schedule 16 to the 1986 Act, in its prudential supervision of mergers, and in confirmation hearings. It also gives a broad indication of the way in which the Authority Prudential Regulator may be expected to exercise its discretionary powers. Except as described in section 6, to which section 7 of this chapter also applies, this chapter is concerned only with voluntary mergers under Sections 93 and 94 of the 1986 Act.

2.1.1A G The 1986 Act assigns most of the functions relating to Merger Procedures to
[FCA/ "the appropriate authority". In order to clarify this, the term "Prudential
PRA] Regulator" is used throughout this chapter, including where guidance is being
given.

...

Statutory requirements

2.1.5 G
[PRA] ...

The procedures for all three are much the same, and the differences are explained in the relevant sections of this chapter. The Authority's practice as described in this chapter is derived exclusively from previous experience of transfers of engagements because, so far, there have been no amalgamations or partial transfers under the 1986 Act. However, it is not expected that the Authority's Prudential Regulator's handling of amalgamation procedures would be significantly different from what is described here.

...

Terms of a merger

2.2.7 G The terms negotiated between the parties in a merger will be set out in a
[FCA/ formal agreement. In the case of a transfer of engagements, Section 94(6) of
PRA] the 1986 Act requires the "extent of the transfer", and in practice the other
agreed terms, to be recorded in an Instrument of Transfer. For an
amalgamation, Section 93(2) of the 1986 Act requires the parties to agree on
a Memorandum and Rules for the successor society, and each to approve the
terms of the amalgamation by Merger Resolutions, so that there must be
agreement on the terms. The Authority Prudential Regulator will expect the
Instrument of Transfer or amalgamation agreement to be signed before the
Authority Prudential Regulator approves the Schedule 16 statement, although
it will be conditional on, among other things, approval by members and
confirmation by the Authority Prudential Regulator. In both cases the boards
of the societies will have approved the Instrument or agreement and the

Schedule 16 statement and, in the case of an amalgamation, the Memorandum and Rules of the successor society. Before such approval by the boards, drafts of the proposed Memorandum and Rules should have been cleared with the ~~registration team~~ FCA and the Prudential Regulator. The Rules of transferee societies should provide that members of transferor societies are not disenfranchised for any period after the merger is effected (see ~~paragraph~~ *BSOG 2.3.16G* and rule 4(9) of the BSA Model Rules 5th edition).

...

Bonus Payments to Members

- 2.2.10 G Whether any bonus is to be paid to members and, if so, its amount and distribution, are matters to be agreed by the boards of the societies concerned and to be approved by their members, subject to the discretion described in ~~paragraphs 4.41 and 4.42~~ *BSOG 2.4.41G* and *2.4.42G*. However, the ~~Authority~~ Prudential Regulator will wish to be satisfied that the combined society will maintain a prudent level of capital resources after the bonus is paid. A bonus may, for example, be paid to the members of a transferor society with a higher capital ratio than the transferee society so as to equalise the reserves which both bring to the combined society. If it is thought desirable also to pay a bonus to the members of the transferee society, then the reserves of the combined society may be equalised at a level below the capital ratio of the transferee society, but only if it is prudent to do so. The statutory requirements for approval of bonus payments are described in ~~paragraph~~ *BSOG 2.4.4G*.

...

Compensation to Directors and Other Officers

- 2.2.12 G Any compensation proposed to be paid to directors or other officers must be disclosed in the Schedule 16 Statement and approved by a separate special resolution of the members (see ~~paragraphs~~ *BSOG 2.3.11G* and *BSOG 2.4.3G*)

...

...

2.3 Information Provided To Members

Statutory requirements

- 2.3.1 G Part I of Schedule 16 to the 1986 Act requires a building society which desires to merge with another society to send to every member entitled to notice of a meeting of the society a statement concerning the matters specified in the Schedule. The statement is to be included in or with the notice of the meeting at which the Merger Resolutions are to be moved. No statement shall be sent unless its contents, so far as they concern the specified matters, have been approved by the ~~Authority~~ Prudential Regulator. Where

the transferee society has obtained the consent of the Authority Prudential Regulator to proceed by board resolution then it is exempt from this requirement (see ~~paragraphs~~ *BSOG 2.4.41G* and *BSOG 2.4.42G*).

2.3.2 G Meeting arrangements and resolutions are discussed in ~~section 4~~ *BSOG 2.4*.

[PRA]

...

The financial position

2.3.6 G Paragraph 1(4)(a) of Schedule 16 to the 1986 Act requires the Statement to contain information concerning the financial position of each of the societies participating in the merger. The members should be given sufficient information to enable them to gain an accurate understanding of the key financial features of their businesses. The information will include a balance sheet, recent results and certain financial ratios; for this purpose it is necessarily rather more detailed than is required for the annual Summary Financial Statement. In addition, further information will be required concerning accounting policies and other matters, as set out in ~~paragraph~~ *BSOG 2.3.10G*.

[PRA]

2.3.7 G The information should comprise consolidated accounts of each society and its connected undertakings prepared at a common balance sheet date which should be no more than 6 months before the date on which the Statement is approved by the Authority, or the date on which the Statement is to be sent to the members if that is expected to be significantly later. Information regarding results should relate to the relevant period ending on the chosen balance sheet date. The figures may be derived from audited or unaudited accounts. In either case, the source must be stated. If unaudited figures are used, the Authority Prudential Regulator will require a “letter of comfort” from the relevant society’s external auditors confirming that, in their opinion:

[PRA]

...

(3) in reviewing the data relating to the Statement, nothing has come to their attention which would cast doubt on the directors’ statement (see ~~paragraph~~ *BSOG 2.3.8G*) that there has been no material change affecting the information given.

2.3.8 G Since the financial information will necessarily relate to a period ending somewhat before the date of approval of the Schedule 16 Statement, the board is required to state whether or not there have been any material changes to the financial position in the interim. If the effect of a change cannot be quantified, it must be described so that the members at least know that it has been identified and is relevant to their consideration of the proposed merger. Failure to disclose such changes will be relevant to the Authority’s Prudential Regulator’s subsequent consideration of the society’s application for confirmation of the merger (see ~~paragraphs~~ *BSOG 2.5.4G*, *BSOG 2.5.12G* and *BSOG 2.5.13G*).

[PRA]

...

Interests of Directors and Other Officers

- 2.3.11 G Subparagraphs 1(4)(b) and (c) of Schedule 16 to the 1986 Act require the
[PRA] Statement to disclose any interests of the directors in the merger and any compensation to be paid to them or other officers. This information must be comprehensive and clear. It should include the following:

...

- (2) any compensation payable to directors or other officers for loss of office or reduction in emoluments, and the basis on which it is calculated; if a global sum is proposed to be given to a group of persons, the intended manner of apportionment should be stated (see ~~paragraph~~ *BSOG 2.2.12G*);

...

...

Bonus Payments to Members

- 2.3.13 G Paragraph 1(4)(d) of Schedule 16 to the 1986 Act requires the Statement to
[PRA] specify the bonus, if any, to be paid to members in consideration of the merger. The ~~Authority's~~ Prudential Regulator's views on what may, or may not, be regarded as bonus are given in ~~paragraph~~ *BSOG 2.2.11G*, and the statutory requirements for approval of bonus payments are described in ~~paragraph~~ *BSOG 2.4.4G*.

...

Other Matters

- 2.3.15 G As is noted in ~~paragraph~~ *BSOG 2.2.9G*, the Instrument of Transfer (or
[PRA] amalgamation agreement) will normally make provision for a number of matters in addition to those concerning the interests of directors and other officers and any bonus to be paid to the members. Such matters must be explained in the Schedule 16 Statement, together with any other matters of which the ~~Authority~~ Prudential Regulator may require particulars to be given (see paragraph 1(4)(f) of Schedule 16 to the 1986 Act). They are discussed in the following paragraphs.

- 2.3.16 G Post-merger membership rights should be secured by the adoption of ~~BSA~~
[PRA] Model Rule 4(9) (Fifth Edition, November 1997) BSA Model Rules which cover this matter or a similar Rule to the same effect. The purpose of the Rule is to ensure that members of a transferor society are not disenfranchised ...

...

Board Rationale and Statements

2.3.22 G A board putting a merger proposal to its members has, in addition to its
[PRA] statutory duty to provide a Schedule 16 Statement, a fiduciary duty to provide its members with essential factual information and a fair assessment of the issues so that they can take informed decisions on whether to approve the boards proposals. The ~~Authority~~ Prudential Regulator, therefore, expects that the Merger Document (see ~~paragraph~~ BSOG 2.3.4G) will include an explanation by or on behalf of the board of the reasons for the merger and the choice of merger partner. This rationale should give a fair assessment of the advantages and disadvantages of the merger and should be entirely consistent with the facts set out in the Schedule 16 Statement. In addition to explaining the rationale and its consequences for the members, it should explain the effect on the staff's terms and conditions of employment and expectations for future employment prospects. The planned timescale for integration of the businesses should also be explained.

...

2.3.25 G The rationale itself is not a statutory requirement, and is not subject to
[PRA] approval by the ~~Authority~~ Prudential Regulator. However, the ~~Authority~~ Prudential Regulator will take account of the information it provides when considering whether to confirm the merger (see ~~section~~ BSOG 2.5, particularly ~~paragraphs~~ BSOG 2.5.9G and BSOG 2.5.12G). Societies will, therefore, find it helpful to consult the ~~Authority's~~ Prudential Regulator's staff about the drafting and content of the rationale.

...

Application and the ~~Authority's~~ Prudential Regulator's Approval

2.3.28 G A society's formal application to the ~~Authority~~ Prudential Regulator for
[FCA/
PRA] approval of a Schedule 16 Statement is likely to be the culmination of many weeks of discussion with the ~~Authority's~~ Prudential Regulator's staff who will have reviewed and commented upon a draft or successive drafts of the Statement, having had regard also to drafts of the Instrument of Transfer (or amalgamation agreement) and the prudential information described in ~~section~~ BSOG 2.2. Societies should also have cleared any proposed Rule changes or, in the case of an amalgamation, the proposed Memorandum and Rules of the successor society, with the ~~registration team~~ FCA and the Prudential Regulator. The probable sequence of events is described more fully in ~~section~~ 2.8 BSOG 2.8. The case where the ~~Authority~~ Prudential Regulator has consented to a transferee society proceeding by board resolution, and thereby exempting it from the requirement to put Merger Resolutions, and sending a Schedule 16 Statement, to its members, is described in ~~paragraphs~~ BSOG 2.4.41G and BSOG 2.4.42G.

2.3.29 G Schedule 16 Statements must be prepared to the same standards as apply to
[PRA] financial statements and directors' reports. An application to the ~~Authority~~ Prudential Regulator for approval of a Schedule 16 Statement must be made in writing and should include a declaration made on behalf of the board, that the Statement is complete and includes all material information of which, in

the opinion of the directors, the members should be aware. That declaration should say whether or not there have been any other merger or takeover proposals (confidential or otherwise see ~~paragraph~~ *BSOG* 2.3.23G) and confirm that the information about them is correct. The application should be accompanied by the following documents:

...

- (2) two authenticated copies of the final draft of the Merger Document (or documents) in printer's proof form, including the Schedule 16 Statement, the board rationale, the notice of the general meeting and Merger Resolutions (including, in the case of an amalgamation, per section 93(2)(d) of the 1986 Act, three copies of the proposed Memorandum and Rules of the successor society), any merger or transfer proposal statements as mentioned in ~~paragraphs~~ *BSOG* 2.3.23G and *BSOG* 2.3.24G, and the directors' responsibility statements.

...

- (5) an assurance by, or on behalf, of the board that the society's systems for verification of membership records are capable of providing the information required to fulfil the relevant requirements of the 1986 Act and the Rules (see ~~paragraph~~ *BSOG* 2.4.15G);

...

- (8) confirmation that the final draft as submitted for approval does not differ from that previously seen by the ~~Authority~~ Prudential Regulator or, where it does, indicating each change that has been made.

2.3.29 G Per section 93(2)(d) of the 1986 Act, in the case of an amalgamation, three copies of the proposed Memorandum and Rules of the successor society must also be sent to the FCA.
A
[FCA/
PRA]

2.3.30 G The ~~Authority's~~ Prudential Regulator's approval of the Schedule 16 Statement will be confirmed by returning to the society one authenticated copy of the Statement with the ~~Authority's~~ Prudential Regulator's certificate of approval signed by an authorised signatory for the ~~Authority~~ Prudential Regulator. There is no statutory requirement for copies of Schedule 16 Statements to be placed on the public files of societies but, because the documents are in the public domain, it will be the ~~Authority's~~ Prudential Regulator's practice to pass copies to the ~~registration team~~ FCA for filing. Were a public announcement about the merger not to be made until after the ~~Authority~~ Prudential Regulator had approved the Schedule 16 Statement, the ~~Authority~~ Prudential Regulator would not pass a copy of the Statement to the ~~registration team~~ FCA until after the announcement. The supporting documents listed above will not be passed to the ~~registration team~~ FCA for inclusion on the public file.

2.3.31 G The PRA is required to consult the FCA before approving a Schedule 16
[PRA] Statement.

2.4 General Meetings and Resolutions

...

2.4.3 G Section 96(1) of the 1986 Act provides that, where a society wishes to pay
[PRA] compensation to directors or other officers for loss of office or diminution of
emoluments, such compensation must be approved by a special resolution of
the society's members (see also ~~paragraph~~ *BSOG 2.2.12G*), separate from the
Merger Resolutions ...

2.4.4 G The members' approval of bonus payments is required as part of the Merger
[PRA] Resolutions (see ~~Section~~ section 96(4) to (6) of the 1986 Act) and see
~~paragraph~~ *BSOG 2.2.11G* for the Authority's Prudential Regulator's view of
what may constitute a bonus). If the total gross cost of the proposed bonus(es)
(i.e. without any adjustment for prospective corporation tax recovery) is within
the prescribed limit, then approval for it need only be included in each of the
Merger Resolutions of the society whose funds are to be distributed. If it
exceeds that limit then it must be included in each of the Merger Resolutions
of each participating society. The prescribed limit was changed by the
Building Societies (Mergers) (Amendment) Regulations SI 1995/1874
amending S1 1987/2005 and now is:

...

- (3) or a sum equal to the society's reserves after deducting its fixed assets
(apportioned pro rata in respect of ~~4.4(2)~~ *BSOG 2.4.4G(2)* above),
whichever is the less. The Regulations should be consulted for the full
detail of the calculations.

...

2.4.8 G The "qualifying shareholding date" is either the last day of the financial year
[PRA] preceding the voting date or, if the voting date falls during that part of a
financial year which follows the conclusion of the society's Annual General
Meeting commenced in that year, the first day of the period beginning 56 days
before the date of the meeting. Therefore, if a society's Rules, ~~following the~~
~~BSA Model Rules (Fifth Edition)~~, include the provisions concerning
shareholding and continuity of membership described in ~~paragraph~~ *BSOG*
2.4.7G, and if the voting date is later than the AGM in that year, a person to be
entitled to vote on a shareholding members' resolution must:

...

But note that there is no requirement for continuity of shareholding between
~~2.4.8(1) and (2)~~ *BSOG 2.4.8G(1) and (2)*. (In contrast, in the case of an

ordinary or special resolution, membership at ~~2.4.8(1)~~ BSOG 2.4.8G(1) may be satisfied by either borrowing or shareholding membership provided the shareholding member satisfies the other conditions of ~~2.4.8(2) to (4)~~ BSOG 2.4.8G(2) to (4) in order to vote in his or her capacity as a shareholder.) Note also that a person cannot meet a requirement for “holding shares” on a given date, or during a given period, by relying on his holding of a share account with an overdrawn balance; and a person cannot meet a requirement for being a “member” on a given date (for example, at ~~2.4.8(a)~~ BSOG 2.4.8G(1)) by relying on his holding of such a share account.

...

- 2.4.11 G A member may vote once only on any resolution, irrespective of the number of
[PRA] accounts he or she may hold. The amount of the balance(s) held on an account(s) is not material, except to qualify to vote (see ~~paragraphs 2.4.7 and 2.4.8~~ BSOG 2.4.7G and 2.4.8G). Thus, a member with several share accounts and/or several mortgage accounts, whether as sole and/or representative joint shareholder or representative joint borrower, may vote once only on any resolution ...

...

Register of Members

- 2.4.14 G Every society is required to maintain a register of the names and addresses of
[PRA] its members and whether each member is a shareholding member or a borrowing member or both (paragraph 13 of Schedule 2 to the 1986 Act). The register should, so far as possible, be “de-duplicated”; that is, multiple account holders should be identified and their names recorded once only in the register. A society’s systems must also be capable of recognising those members who are eligible to vote by, for example, aggregating share account balances of multiple account holders to check that they have the requisite qualifying shareholding, by checking members’ continuity of shareholding (if and where applicable), and by identifying minors including (separately) those who will shortly attain their majority (see ~~paragraphs~~ BSOG 2.4.6G and BSOG 2.4.9G). Other situations requiring careful consideration are, for example, in relation to powers of attorney, personal representatives, and death of the representative joint holder or borrower. This information is required to ensure that the notice of the meeting is sent to all the members entitled to receive it and so that the scrutineers have adequate systems to validate the votes cast on the Merger Resolutions (see also ~~paragraph~~ BSOG 2.4.20G).

- 2.4.15 G It will be necessary for the directors of a society contemplating a merger to
[PRA] satisfy themselves, in consultation with their external auditors, that the society’s systems are capable of delivering the information described above. The ~~Authority~~ Prudential Regulator will require an assurance on this point when the society applies for approval of the Schedule 16 Statement (see ~~paragraph~~ BSOG 2.3.29G(5)). One of the criteria which the ~~Authority~~ Prudential Regulator has to consider at the confirmation stage is whether some relevant requirement of the 1986 Act or the Rules was not fulfilled (see

paragraphs *BSOG* 2.5.15G to *BSOG* 2.5.19G).

...

General Meeting Arrangements

- 2.4.18 G Paragraphs *BSOG* 2.4.19G to *BSOG* 2.4.34G consider the requirements for
[PRA] sending notices of meetings and Schedule 16 Statements to members, and the conduct of meetings at which Merger Resolutions are to be moved. It is for societies to satisfy themselves that they comply with the relevant requirements of the 1986 Act, their Rules and the general law on meetings.

Notice of Meeting

- 2.4.19 G The statutory requirements concerning notices are in paragraph 22 of Schedule
[PRA] 2 to the 1986 Act. Notice of the meeting must be given to each shareholding and borrowing member of the society who would be eligible to vote at the meeting if the meeting were held on the date of the notice (a single date for all notices irrespective of when they are despatched). In addition, notice must also be given to any person who will attain the age of 18 years after the date of the notice but on or before the date of the meeting, and to every person who becomes a shareholding or borrowing member of the society after the date of the notice but before the final date for receipt of proxy voting forms, and who would, in either case, be eligible to vote at the meeting if he remained a member until then. (In practice, this may mean sending out a notice to every such person, even if they will, in fact, not be entitled to vote). The Schedule 16 Statement must be sent in or with the notices (paragraph 1(2) of Schedule 16 to the 1986 Act). Accidental omission to give notice of a meeting to any person entitled to receive it does not invalidate the proceedings at the meeting. However, accidental omission does not include a systemic failure to send notices (e.g. omitting to send notices to new members, or omission of a group or class of members from the mailing list arising from a fault in a computer programme), nor all cases of error by management see also paragraph *BSOG* 2.4.39G.

...

- 2.4.21 G The Schedule 16 Statement is required, by paragraph 1(2) of that Schedule, to
[PRA] be sent in or with the notice of the meeting to every member entitled to that notice. As is suggested in paragraph *BSOG* 2.3.4G, it may be expedient to include both in a comprehensive Merger Document.

...

- 2.4.26 G Merger Resolutions or the other resolutions mentioned in paragraphs *BSOG*
[PRA] 2.4.1G to *BSOG* 2.4.3G, cannot be amended at the meeting except in a way which does not change their substance at all. This is because an amendment to such a resolution has to be subject to the same procedure and period of notice to members as the resolution itself ...

Conduct of the Voting

...

2.4.28 G Experience has demonstrated the need for societies to take the greatest care to ensure that they comply strictly with the statutory procedural requirements and their own Rules on meetings and resolutions. The chairman of the meeting should ensure that he or she is well briefed and aware of the Rules and the general law relating to procedural resolutions, such as resolutions to adjourn the meeting. The Authority Prudential Regulator will require a confirmatory report from the scrutineers on the validity of the voting procedures when the society applies for confirmation (see ~~paragraph~~ *BSOG* 2.4.38G).

...

2.4.37 G Validation checks during the counting of votes may be expected to include the following:

[PRA]

...

- (2) the member is eligible to vote under the 1986 Act and under the society's Rules (a proxy vote may still be valid even though the member ceases to be a member after the closing date for receipt of proxies see ~~paragraph~~ *BSOG* 2.4.12G(2));

...

...

2.4.40 G The Authority Prudential Regulator would find it helpful if the scrutineers' report would also comment upon any procedural difficulties encountered and give an analysis of the reasons why votes were found to be invalid, if the numbers of invalid votes appear to be significant (see also ~~paragraph~~ *BSOG* 2.5.14G).

[PRA]

...

2.5 Confirmation

...

2.5.2 G The parties in an amalgamation should make a joint application for confirmation to the Authority Prudential Regulator, while the parties to a transfer of engagements should make separate applications for confirmation of the transfer. These applications should specify the date on which the merger is intended to take effect and should be accompanied by two authenticated copies of the Instrument of Transfer, or the amalgamation agreement, and of the Merger Document or separate Schedule 16 Statement. In addition, in the case of an amalgamation, three signed copies of the Memorandum and Rules of the successor to the amalgamating societies should be sent to the ~~registration team~~ Prudential Regulator and the FCA. The scrutineers' report described in ~~paragraphs~~ *BSOG* 2.4.38G to *BSOG* 2.4.40G, and a certified copy of the minutes of the general meeting at which the Merger Resolutions were moved,

[FCA/
PRA]

must be enclosed with each application.

...

2.5.4 G ...

[PRA]

Section 95(5) then provides that the ~~Authority~~ Prudential Regulator shall not be precluded from confirming a merger by virtue only of the non-fulfilment of some relevant requirement of the 1986 Act or the Rules (the Third Criterion in *BSOG* 2.5.4(3)) if it appears to the ~~Authority~~ Prudential Regulator that the failure could not have been material to the members decision about the merger, and the ~~Authority~~ Prudential Regulator gives a direction under that sub-section that the failure is to be disregarded.

...

Scope of the ~~Authority's~~ Prudential Regulator's powers

2.5.6 G The ~~Authority's~~ Prudential Regulator's powers in connection with applications for confirmation of a merger are confined to considerations of whether, in the light of the facts, any of the Three Criteria apply. It is not for the ~~Authority~~ Prudential Regulator to consider, or make judgements about, the merits of a proposed merger or the fairness of its terms; these matters are first for the board of a society, and then for its members to decide. Once the members have approved the merger and its terms, the ~~Authority~~ Prudential Regulator has no powers to require a society to make any changes to those terms. The ~~Authority's~~ Prudential Regulator's discretionary powers are similarly confined to the matters described in ~~paragraphs~~ *BSOG* 2.5.4G and *BSOG* 2.5.5G.

[PRA]

2.5.7 G The ~~Authority~~ Prudential Regulator has no general power to determine disputes between a society and its members. Disputes concerning the services provided by societies in the ordinary course of their business are generally a matter, in the first instance, for a society's internal complaints procedure. They may also fall within the jurisdiction of the Financial Services Ombudsman. Disputes between a building society and a member of the society, in his capacity as a member, in respect of any rights or obligations arising from the Rules of the society or the provisions of the 1986 Act, fall within the jurisdiction of the High Court or, in Scotland, the Court of Session (Section 85 of and Schedule 14 to the 1986 Act). ~~However, the Authority does have power, on the written application of an eligible member, to direct that the member has the right to obtain names and addresses from the societys register of members. Before it gives such a direction, the Authority is required to be satisfied that the member requires that right for the purpose of communicating with members of the society on a subject relating to its affairs, and must have regard to the interests of the members as a whole and to all the other circumstances (Schedule 2, paragraph 15). A fee is payable by the applicant. Chapter 1A on applications for access to the register of members explains who is eligible to apply.~~

2.5.7A G However, the FCA does have power, on the written application of an eligible member, to direct that the member has the right to obtain names and addresses from the society's register of members. Before it gives such a direction, the FCA is required to be satisfied that the member requires that right for the purpose of communicating with members of the society on a subject relating to its affairs, and must have regard to the interests of the members as a whole and to all the other circumstances (Schedule 2, paragraph 15). A fee is payable by the applicant. Chapter 1A on applications for access to the register of members explains who is eligible to apply.
[FCA/
PRA]

...

2.5.24 G Copies of the society's comments on representations in the category set out in BSOG 2.5.22G(2) will be sent to those who made the representations so that they may concentrate their oral representations on the points which they consider to remain at issue. Persons making written representations who wish to see the society's response must, therefore, give notice of intention to make oral representations. The Authority Prudential Regulator will consider the written representations in the category set out in BSOG 2.5.22G(1) and the societies' responses to them in advance of the date set for hearing oral representations. The society may, exceptionally, apply to put to the Authority Prudential Regulator in confidence documents which the society considers to be commercially sensitive: the Authority Prudential Regulator will decide on the merits of each case whether, and on what terms, to accept them as being confidential. Persons in the category set out in BSOG 2.5.22G(3) will be asked to inform the Authority Prudential Regulator, in advance of the hearing, of the subject and general grounds of the representations they intend to make and their responses will be copied to the society.

...

2.5.32 G The PRA is required to consult the FCA before confirming an amalgamation or transfer of engagements or making a direction under section 95 of the 1986 Act. The PRA will notify the FCA if it confirms an amalgamation or transfer of engagements and will furnish the FCA with a copy of any direction it makes.
[PRA]

2.6 Transfer Of Engagements Under Direction

...

2.6.1A G The PRA is required to consult the FCA before giving a direction under section 42B of the 1986 Act.
[FCA/
PRA]

...

2.6.3 G The Merger Notification Statement must have been approved by the Authority

[PRA] Prudential Regulator before it is sent to the members, and must be sent within the specified time limit. Applications for approval should, in general, follow the procedure described in paragraph BSOG 2.3.28G, and the final draft of the Merger Notification Statement should be accompanied by the relevant documents listed in paragraph BSOG 2.3.29G, but as appropriate to the particular case and the less extensive information the statement is required to contain. The statement must include particulars of any compensation payable to directors or other officers of the transferor society to which the Authority Prudential Regulator has given its consent under paragraph 2(1) of Schedule 8A to the 1986 Act.

2.6.4 G Section BSOG 2.4 (General Meetings and Resolutions) does not apply, except
[PRA] that the directors will need to be satisfied that the society's register of members is correct to enable the society to send Merger Notification Statements to those entitled to receive them.

2.6.5 G When the board has resolved to transfer the society's engagements and Merger
[PRA] Notification Statements have been sent to its members, the society may apply to the Authority Prudential Regulator for confirmation of the transfer of engagements, but using an adaptation agreed with the Authority Prudential Regulator of the pro forma in Annex 2A. The procedure described in section BSOG 2.5 is to be followed, including the publication of notices in the official Gazettes and newspapers and the form of application. However, the lapse of time between each stage of the procedure may be modified according to the particular circumstances of a case, and having regard to the need to protect the investments of shareholders or depositors. While a scrutineers' report will not be required, the Authority Prudential Regulator will require a report from the society's external auditors on the adequacy of the society's systems to fulfil the requirements of the 1986 Act and the Rules with regard to the sending of Merger Notification Statements. This is, of course, relevant to the Authority's Prudential Regulator's consideration of the Third Criterion.

2.6.6 G As is noted in paragraph BSOG 2.6.1G, the First and Second Criteria are
[PRA] replaced, in those circumstances, by a single criterion as to whether the members or a proportion of them would be unreasonably prejudiced by the transfer. Whether this special criterion applies will be a matter of judgement for the Authority Prudential Regulator to make in the light of any representations made to it and its own enquiries in respect of the particular case. It follows also that, in considering the Third Criterion, the Authority Prudential Regulator will take account of the modified procedure.

2.7 Registration And Dissolution

...

2.7.2 G In the case of an amalgamation, the ~~registration team~~ FCA is required to be
[FCA/
PRA] satisfied as regards the proposed Rules, Memorandum and name of the successor society. The amalgamating societies are, therefore, advised to clear drafts of the proposed Rules and Memorandum with the ~~registration team~~ FCA

at an early stage (see ~~paragraph~~ *BSOG* 2.3.28G). When they apply to the ~~Authority~~ Prudential Regulator for confirmation under Section 93(2) of the 1986 Act, the amalgamating societies must ~~also~~ send three signed copies of the Rules and Memorandum to the ~~registration team~~ Prudential Regulator and the FCA (Section 93(2)(d)). If the ~~registration team~~ FCA is satisfied on these matters it will, upon confirmation by the Prudential Regulator, register the successor society and issue to it a certificate of incorporation specifying the date (the specified date) from which the incorporation takes effect, and will return to it one copy each of the Rules and Memorandum together with a certificate of registration. Copies are placed on the public file of the successor society.

2.7.3 G On the specified date of the amalgamation, all the property, rights and liabilities of the amalgamating societies are transferred to the successor society, the successor is given such permission under ~~Part IV~~ Part 4A of the Act as the ~~Authority~~ Prudential Regulator considers appropriate, and the amalgamated societies are dissolved and their registrations cancelled by the FCA, having consulted the PRA (Section 93, sub-sections (4), (5) and (6) and Section 103(1) of the 1986 Act). In deciding on the appropriate terms of the permission for the successor society, the ~~Authority~~ Prudential Regulator will have regard to the terms of the permissions of the amalgamating societies, including any limitations or requirements. It will also have regard to the business plan for the successor society.

[FCA/
PRA]

2.7.4 G In the case of a transfer of engagements, the ~~registration team~~ FCA will register a copy of the Instrument of Transfer and issue a registration certificate to the transferee society. A copy of the Instrument of Transfer and the registration certificate are placed on the public file of the transferee society. On the date specified in the registration certificate, the property, rights and liabilities of the transferor society are transferred to the transferee society, by virtue of Section 94(8) of the 1986 Act, the transferor society's authorisation is revoked by the ~~Authority~~ FCA, and the society itself is dissolved (Section 94(10)). The transferor society's registration is subsequently cancelled by the ~~registration team~~ FCA, having consulted the PRA, under Section 103(1).

[FCA/
PRA]

2.8 Timetable

...

2.8.2 G The likely sequence of events is as follows:

[FCA/
PRA]

Stage 1	Informal consultations with the Authority's <u>Prudential Regulator's</u> supervisory staff on both substance and timing of the proposed merger.
Stage 2	Submission to the Authority <u>Prudential Regulator</u> of:
	(a) prudential information: this should be available to the Authority <u>Prudential Regulator</u> for discussion with the society well before

	the Schedule 16 Statement is submitted for approval;
	(b) written details of the proposed terms of the merger: it will be helpful for both the societies and the <u>Authority Prudential Regulator</u> to be clear about these matters as soon as possible after Stage 1 and well before Stage 3 is reached.
	Submission to the registration team FCA and the <u>Prudential Regulator</u> , in the case of an amalgamation, of preliminary draft Rules and Memorandum, noting any unresolved issues.
Stage 3	Submission to the <u>Authority Prudential Regulator</u> and, in respect of (b) below to the Registration team FCA , in draft, of the following:
	...
	(c) the Merger Document, including the Schedule 16 Statement, unless consent to proceed by way of board resolution is being sought in respect of the transferee society, together with the explanations of change, comparability and commitments referred to in paragraphs <i>BSOG 2.3.8G</i> to <i>BSOG 2.3.10G</i> and <i>BSOG 2.3.27G</i> ;
	...
	After examination of these drafts, the <u>Authority Prudential Regulator</u> or, as the case may be, registration team staff the FCA will return them with any comments and, if necessary, will discuss them with the societies and their advisers. Any clearance by the <u>Authority Prudential Regulator</u> at this stage is provisional, and the <u>Authority Prudential Regulator</u> may seek further modification of the documents in the light of later information. Similarly, any clearance given by the registration team FCA is subject to review of the proofs submitted at stage 4. If the transferee society is applying for consent to proceed by way of board resolution, formal application to do so (with supporting justification) should be made to the <u>Authority Prudential Regulator</u> at this stage.
	...
Stage 5	Informal clearance of near-final proofs (particularly of the Schedule 16 Statement(s)) by the <u>Authority Prudential Regulator</u> . Informal clearance of proof copies of Rules and Memorandum by the registration team FCA and the <u>Prudential Regulator</u> , in the case of an amalgamation.
Stage	Formal submission of the Schedule 16 Statement(s) for approval by the <u>Authority Prudential Regulator</u> . The covering letter should

6	<p>include a declaration on behalf of the board of the society either:</p> <p>...</p> <p>(h) letter of comfort from the society's external auditors when required (see paragraph <i>BSOG 2.3.7G</i>);</p> <p>...</p> <p>(j) the fee payable by each society to the <u>Authority Prudential Regulator</u>.</p>
<p>NB Schedule 16 Statements should not be printed for distribution to members until after Stage 7.</p>	
Stage 7	<p>Approval by the <u>Authority Prudential Regulator</u> of the Schedule 16 Statement, or the <u>Authority's Prudential Regulator's</u> consent to proceed by board resolution. Approval or consent will be given by letter and one proof copy of the Schedule 16 Statement, with the certificate of approval signed on behalf of the <u>Authority Prudential Regulator</u>, will be returned to the society.</p>
Stage 8	<p>Printing and circulation of documents to members in time to be received by them at least 21 days before the voting date for the meeting at which the Merger Resolutions are to be moved (see paragraphs <i>BSOG 2.4.12G</i>, <i>BSOG 2.4.19G</i> and <i>BSOG 2.4.20G</i>).</p>
...	
Stage 10	<p>If the Merger Resolutions have been passed, application to the <u>Authority Prudential Regulator</u> for confirmation and publication of notices of that application in the London and Edinburgh or Belfast Gazettes, and in other newspapers (as the <u>Authority Prudential Regulator</u> directs). The application must notify the <u>Authority Prudential Regulator</u> of the specified effective date for the merger, and be accompanied by two authenticated copies of the Instrument of Transfer or amalgamation agreement. In addition, in an amalgamation, four <u>three</u> signed copies, <u>each</u>, of the Memorandum and Rules of the successor society, should be sent to the registration team FCA, and to the Prudential Regulator, should be sent to the <u>registration team FCA, and to the Prudential Regulator</u>. The societies must report to the <u>Authority Prudential Regulator</u> on the outcome of their meetings.</p>
Stage 11	<p>Notification by the <u>Authority Prudential Regulator</u> of the time and place of the confirmation hearing, if it is necessary to hold an oral hearing. The societies should allow sufficient time before the proposed effective date for the <u>Authority Prudential Regulator</u> to consider and write its decision, and in case it proves necessary to adjourn the hearing.</p>

Stage 12	Confirmation hearing and decision by the <u>Authority Prudential Regulator</u> whether to confirm the merger. <u>The PRA must consult the FCA before confirming an amalgamation.</u>
Stage 13	Registration by the registration team <u>FCA</u> to give effect to the amalgamation or transfer of engagements.

2.8.3 G The following table indicates the likely minimum time to be taken by the main stages outlined above:

[FCA/
PRA]

Pre Day 1	Board Resolution to Merge Initial discussions with <u>Authority Prudential Regulator</u> re timetable and prudential information Submission of terms and initial prudential information to <u>Authority Prudential Regulator</u> Submission of draft Rules and Memorandum to registration team <u>the FCA and Prudential Regulator</u> (amalgamations)
...	
Day 28	<u>Authority Prudential Regulator</u> gives informal approval to Schedule 16 Statement, Instrument of Transfer signed (Stage 5)
Day 35	Formal Schedule 16 approval by the <u>Authority Prudential Regulator</u> (Stage 7)
...	
Day 75	Application to <u>Authority Prudential Regulator</u> for confirmation (Stage 10) and submission of Rules and Memorandum to registration team <u>the FCA and Prudential Regulator</u> (amalgamations)
...	
Day 142	<u>Authority's Prudential Regulator's</u> Decision on Confirmation (Stage 12)
...	

2.8.4 G Notes:

[FCA/
PRA]

...

- (2) A significant amount of financial information needs to be assessed by the Authority Prudential Regulator prior to approval of Schedule 16 Statement.

...

- (4) Where the Prudential Regulator is the PRA it is under a statutory obligation to consult the FCA (see section 95(6A) of the 1986 Act). This consultation will take place within the above timetable.

...

2 Index to chapter 2

**Annex
3G**

[PRA]

INDEX		
...		
Schedule 16 Statement	...	
	Application and Commission Approval	<i>BSOG 2.3.28G to BSOG 2.3.30G</i>
	...	

...

2 Merger Confirmation Procedures

**Annex
4G**

4.1G

[PRA]

4.1	Introduction	
...		
4.1.2	G	The 1986 Act provides that when the necessary merger resolutions have been passed the societies must obtain confirmation by the <u>Authority Prudential Regulator</u> of the merger in accordance with Section 93(2) (amalgamations) or Section 94(7) (transfers of engagements) of the 1986 Act. If the <u>Authority Prudential Regulator</u> confirms the merger the <u>FCA</u> will issue a registration certificate.
...		
4.3.5	G	Copies of the society's comments on representations in category 4.3.3(2) will be sent to those who made the representations so that they may concentrate their representations at oral hearings on the points which they consider to remain at issue. Persons making written

		representations who wish to see the society's comments must, therefore, also give notice of intention to make oral representations. Any documents referred to in the society's comments will be made available by the society for inspection at a specified place which will be notified to those making oral representations. (The society may, exceptionally, apply to put to the <u>Authority Prudential Regulator</u> in confidence documents which the society considers to be commercially sensitive: the <u>Authority Prudential Regulator</u> will decide on hearing argument whether, and on what terms, to accept them as confidential). Persons in the category set out in <u>BSOG 2 Annex 4.3.3G(3)</u> will be asked to inform the <u>Authority Prudential Regulator</u> , in advance of the hearing, of the subject and general grounds of the representations they intend to make. The <u>Authority Prudential Regulator</u> will pass this information to the society.
...		
4.4	Purpose of the hearing	
4.4.1	G	The purpose of the hearing is to enable interested parties to make representations, and to enable the <u>Authority Prudential Regulator</u> to make such enquiry as it considers necessary, both of the society and of those making representations, in order to reach an informed view on those aspects of the decision on confirmation to which the representations are directed. The <u>Authority Prudential Regulator</u> will examine all the representations, whether written or oral, in relation to the three statutory criteria described in <u>paragraph BSOG 2 Annex 4.2.1G</u> . In the light of that examination, and consideration of all the representations and the society's response, the <u>Authority Prudential Regulator</u> will decide whether to confirm, or direct the society to correct any defects, or to refuse to confirm the merger. It is for the <u>Authority Prudential Regulator</u> to decide whether the matters discussed in representations are relevant to the statutory criteria.
...		

...

3 Transfer Procedures

3.1 Introduction

The Purpose of this Chapter

- 3.1.1 G This chapter ultimately derives from the Transfer Procedures Guidance Note published by the Commission in April 1998. It gives guidance on the requirements of the 1986 Act relevant to, and on the procedures to be followed by, a building society proposing to transfer its business to a
- [PRA]

company having permission under the Act to carry on those regulated activities which it will undertake as a result of the transfer. It is not intended to be exhaustive, and is not a substitute for looking at the 1986 Act and the Transfer Regulations, on which a society should seek its own legal advice. It describes the relevant provisions of the 1986 Act, and the information which must be made available to the ~~Authority~~ Prudential Regulator, the FCA, and to the society's members, and outlines the procedures to be followed at general meetings, including the voting majorities required to pass the Transfer Resolutions. The chapter also describes the role of the ~~Authority~~ Prudential Regulator in approving the Transfer Statement which must be sent to the members and in the confirmation procedure, together with its ongoing prudential supervision during the transfer process. The Transfer Summary, which a society may send to its members instead of the Transfer Statement, is also discussed. Except as described in ~~section~~ BSOG 3.7, to which ~~section~~ BSOG 3.8 also applies, this section is concerned only with voluntary transfers under Section 97 of the 1986 Act.

3.1.1A G The 1986 Act assigns most of the functions relating to Transfers of Business to “the appropriate authority”. In order to clarify this, the term “Prudential Regulator” is used throughout this chapter including where guidance is being given.
[PRA]

3.1.2 G It is for the directors of a society to assess the case for transfer, and they must explain and recommend their decision to the members. However, the ~~Authority's~~ Prudential Regulator's staff are willing to discuss with a society the procedures to be followed and the information required to ensure that the members can reach fully informed decisions. Societies are strongly recommended to consult the ~~Authority~~ Prudential Regulator early on in the formative stages of transfer proposals. Such consultation will, of course, be treated in the strictest confidence. It will be helpful, also, to have regard to the indicative timetable set out in ~~section~~ BSOG 3.9.
[FCA/
PRA]

...

3.1.4 G This chapter considers each stage of the transfer procedure in chronological order. The remainder of this section gives a synopsis of the relevant requirements of the 1986 Act, which are then discussed in more detail in subsequent sections, as follows:
[FCA/
PRA]

- (1) ~~Section~~ BSOG 3.2, Preliminary Matters, considers the rationale for a transfer and the handling of public announcements, and gives guidance on certain prudential issues.
- (2) ~~Section~~ BSOG 3.3, Terms of a Transfer, considers the mandatory provisions of Section 100 of the 1986 Act concerning the successor company's obligation to treat former shareholders of the society as depositors with it, and the Statutory Cash Bonus. It also considers the mandatory provisions of Sections 102B to D of the 1986 Act, concerning distributions to members who are Trustee Account Holders, the statutory restrictions on distributions to members in Section 100, and the permissive provisions of Sections 100 and

102A. The protective provisions for specially formed successor companies are also discussed.

- (3) ~~Section~~ BSOG 3.4, Information Provided to Members, discusses the form and content of the statutory Transfer Statement and the Transfer Summary, and the accompanying rationale and other statements by the board, and describes the form of application to be made to the Authority for approval of the Transfer Statement.
- (4) ~~Section~~ BSOG 3.5, General Meetings and Resolutions, discusses the register of members and members' entitlement to vote, the arrangements for general meetings, the conduct of voting on the Transfer Resolutions and the scrutineers' report.
- (5) ~~Section~~ BSOG 3.6, Confirmation, describes the form of application to the Authority for confirmation of a transfer, and the procedures which the Authority expects to follow in considering and hearing written and oral representations and in reaching its decision.
- (6) ~~Section~~ BSOG 3.7, Transfers Under Direction, describes the modified procedure to be followed when a society has been directed by the Authority to transfer its business to a company and to proceed by board resolution.
- (7) ~~Section~~ BSOG 3.8, Notification and Dissolution, briefly discusses the process of notification of the vesting date and dissolution of the society.
- (8) ~~Section~~ BSOG 3.9, Timetable, reviews the several stages of a transfer from start to finish.

...

- 3.1.10 G The statutory requirements of the 1986 Act are explained and discussed in more detail in subsequent sections of this chapter. However, as is stated in ~~paragraph~~ BSOG 3.1.1G, this chapter is not exhaustive and is not a substitute for considering, and taking professional advice on, the primary documents, which include:

the Building Societies Act 1986, as amended by or under other legislation, including:

the Building Societies (Joint Account Holders) Act 1995
the Building Societies (Distributions) Act 1997
the Building Societies Act 1997 and
the Financial Services and Markets Act 2000 (in particular by the
Financial Services and Markets Act 2000 (Mutual Societies) Order
2001), ~~and~~ the Financial Services and Markets Act 2000 (Consequential
Amendments and Repeals) Order 2001, and
the Financial Services and Markets Act [] (Mutual Society) Order [].



...

3.3 Terms of a Transfer

...

The Successor Company

...

3.3.20 G The terms of the transfer must include provision to secure that the society ceases to hold any shares in the specially formed successor company by the date on which the society is to dissolve (Section 100(11) of the 1986 Act). The provisions of the 1986 Act concerning the dissolution of the society and the disposal of any shares in its successor are discussed in ~~section~~ BSOG 3.8.
[PRA]

3.3.21 G The requisite protective provisions are the provisions of Section 101 of the 1986 Act which require the successor company to ensure that it does not allow one person, or two or more persons acting in concert, to hold more than 15% of the shares of the company during the period from the company's incorporation until 5 years after the vesting date. The purpose of this provision is, clearly, to protect the newly converted bank from takeover. The provisions will cease to apply if the ~~Authority~~ Prudential Regulator so directs or if the successor company acquires another financial institution, as defined in Section 101(6), or if the shareholders resolve to that effect by a majority representing at least 75% of the nominal value of shares giving voting rights. The PRA is required to consult the FCA before making a direction under section 101.
[PRA]

...

3.4 Information provided to Members

...

Application and Authority Approval

...

3.4.12 G Before approving a Transfer Statement the PRA is required to consult the
A FCA.

[PRA]

...

3.6 Confirmation

...

3.6.5A G The PRA is required to consult the FCA before confirming a transfer.

[PRA]

Scope of the Authority's Prudential Regulator's Powers

...

3.6.7 G The ~~Authority Prudential Regulator~~ has no general power to determine disputes between a society and its members, nor to seek to enforce other legislation or the general law. Disputes concerning services provided by societies in the ordinary course of their business are generally a matter, in the first instance, for a society's internal complaints procedure. They may also fall within the jurisdiction of the Financial Services Ombudsman Scheme. Disputes between a building society and a member of the society, in his or her capacity as a member, in respect of any rights or obligations arising from the Rules of the society or the provisions of the 1986 Act, fall within the jurisdiction of the High Court or, in Scotland, the Court of Session (Section 85 of and Schedule 14 to the 1986 Act). ~~However, the Authority does have power, on the written application of certain members, to direct that the member has the right to obtain names and addresses from the society's register of members. Before it gives such a direction, the Authority is required to be satisfied that the member requires that right for the purpose of communicating with other members of the society on a subject relating to its affairs, and must have regard to the interests of the members as a whole and to all the other circumstances (paragraph 15 of Schedule 2 to the 1986 Act). A fee is payable by the applicant. Chapter 1A of this Guide gives guidance on applications for access to the register of members.~~

3.6.7A G However, the FCA does have power, on the written application of certain members, to direct that the member has the right to obtain names and addresses from the society's register of members. Before it gives such a direction, the FCA is required to be satisfied that the member requires that right for the purpose of communicating with other members of the society on a subject relating to its affairs, and must have regard to the interests of the members as a whole and to all the other circumstances (paragraph 15 of Schedule 2 to the 1986 Act). A fee is payable by the applicant. Chapter 1A of this Guide gives guidance on applications for access to the register of members.

...

3.6.26 G The ~~Authority Prudential Regulator~~ will consider the written representations in the category set out in BSOG 3.6.24G(1) and the society's responses to them in advance of the date set for hearing oral representations. Copies of the society's comments on representations in the category set out in BSOG 3.6.24G(2) will be sent to those who made the representations so that they

[PRA]

may concentrate their oral representations on the points which they consider to remain at issue. A person making written representations who also wishes to see the society's response must, therefore, also give notice of intention to make oral representations. The society may, exceptionally, apply to put to the Authority Prudential Regulator in confidence documents which the society considers to be commercially sensitive: the Authority Prudential Regulator will decide on the merits of each case whether, and on what terms, to accept them as being confidential. Persons in the category set out in BSOG 3.6.24G(3) will be asked to inform the Authority Prudential Regulator, in advance of the hearing, of the subject and general grounds of the representations they intend to make, and their responses will be copied to the Society.

...

The Authority's Prudential Regulator's decision

- 3.6.33 G The Authority Prudential Regulator will not normally give an oral decision at the end of the hearing, ~~but may be expected to~~ and will reserve its decision to be issued later in writing, setting out its reasons. Copies of the written decision will be sent to the participants, and can be purchased by any other person. The Authority Prudential Regulator will ask the ~~registration team~~ FCA to place a copy on the public file of the society.
- [FCA/
PRA]

3.7 Transfers under Direction

- 3.7.1 G This section describes the Authority's Prudential Regulator's powers to direct a society to transfer its business to a company, and to proceed by board resolution, and the modified transfer procedure consequently prescribed by the 1986 Act. Section 42B of the 1986 Act provides that, if the Authority Prudential Regulator considers it expedient to do so to protect the investments of shareholders or depositors, it may direct a society, inter alia, to transfer its business to a company within a specified time (subsection (1)(b)). The PRA must consult the FCA before giving a direction under section 42B of the 1986 Act. In such a case, or where the Authority Prudential Regulator would have directed a transfer, but for the fact that negotiations were already under way, the Authority Prudential Regulator may also direct that the approval of the transfer shall be by board resolution rather than the Transfer Resolutions. In these circumstances, because neither a Transfer Statement nor Transfer Resolutions are required, the 1986 Act requires the society instead to send to every member entitled to notice of a meeting a statement (referred to below as a transfer notification statement) before it applies for confirmation of the transfer (paragraphs 9 and 10 of Schedule 8A to the 1986 Act). Finally, in these circumstances, the first two Confirmation Criteria concerning information made available to, and the views of, the members (see section 6) are replaced by a single criterion: the members or a proportion of them would be unreasonably prejudiced by the transfer;
- [PRA]

(paragraph 11 of Schedule 8A to the 1986 Act).

...

3.8 Notification and Dissolution

...

3.8.2 G Section 97(8) of the 1986 Act requires the society to notify the ~~Authority~~ Prudential Regulator and the FCA of the vesting date, and it must do so no later than 7 days before that date, and, unless a notice is given under subsection (10), subsection (9) provides that the society shall be dissolved on that date ...

...

3.8.4 G The ~~registration team~~ FCA will record the relevant date, or dates, notified to the ~~Authority~~ Prudential Regulator and the FCA by the society.

3.8.5 G The society will be dissolved on the vesting date or on the later date for dissolution referred to in ~~paragraph~~ *BSOG* 3.8.2G, and its registration will subsequently be cancelled by the ~~registration team~~ FCA under the provisions of Section 103(1)(a) of the 1986 Act having consulted the FCA.

3.9 Timetable

3.9.1 G The society will need to draw up a project plan covering the key elements in the transfer process and the relationships between them, and specifying when it wishes to receive the necessary clearances from the ~~Authority~~ Prudential Regulator. The time needed for the process will depend, among other things, on the length of time it takes to settle the final terms of the distribution scheme, the complexity of those terms and whether the scheme raises new legal issues (perhaps requiring resolution by application to the High Court), and the time needed to verify the register of members and the record of Trustee Account Holders. It will also be affected by the facility with which the society and its advisers can develop satisfactory documents and respond to enquiries and representations. The plan and the timetable will, of course, need to cover all that will be required of the society, and the successor company, in relation to the requirements of the Banking Regulator, and of the ~~Authority~~ FCA concerning the listing of any shares in the successor company.

3.9.2 G It will be helpful for the society to discuss its plans with the ~~Authority~~ Prudential Regulator during their formative stages, when the ~~Authority~~ Prudential Regulator will be prepared to give a view on their feasibility. However, although the ~~Authority~~ Prudential Regulator may agree that a

planned timetable appears to be manageable, it cannot undertake to meet any deadlines set by the society. In particular, the Authority Prudential Regulator cannot be constrained in the proper performance of its statutory functions by, for example, the society's wish to put the Transfer Resolutions to a SGM on or before the date of the AGM in that year, or the planned flotation date. The Authority Prudential Regulator will be mindful of the need to ensure that there is adequate time, compatible with its other business and commitments, to:

...

- (3) give interested parties an opportunity to make considered representations at the confirmation stage, for the society to respond to those representations, and for the Authority Prudential Regulator to consider all the evidence and arguments, including making any necessary further enquiries of its own, and to meet any statutory requirement for consultation; and

...

3.9.3 G The likely sequence of events is as follows:

[FCA/
PRA]

Stage 1	Informal preliminary discussions with the <u>Authority Prudential Regulator</u> and, if different, the Banking Regulator on both substance and timing of the proposed transfer.
Stage 2	Public announcement of the transfer proposals. The <u>Authority Prudential Regulator</u> will be ready to comment on drafts of the announcement and any supporting material, although the terms of the announcement are for the society to decide and the <u>Authority Prudential Regulator</u> is not required to approve them.
Stage 3	Consultation with the <u>Authority Prudential Regulator</u> on the outline structure of, and main features to be contained in, the Transfer Statement, and on the full specification of the proposed cash and/or share distribution scheme.
Stage 4	Submission to the <u>Authority Prudential Regulator</u> of the prudential information described in section <i>BSOG 3.2</i> .
Stage 5	Initial application to the <u>Authority Prudential Regulator</u> , with the appropriate fee, for approval of a full draft of the Transfer Statement, contained within a draft Transfer Document, supported by the material described in paragraph <i>BSOG 3.4.12G</i> .
Stage 6	Consideration by the <u>Authority Prudential Regulator</u> , and discussion with the society and its advisers, of the draft documents, including submission by the society of revised drafts as necessary. At this stage, the <u>Authority's Prudential Regulator's</u> staff will also be ready to comment informally on draft proxy forms and other material

	proposed to be sent to the members with, or in advance of, the Transfer Document. By this stage also, the society ought to have undertaken any mailing to members which it thinks necessary to verify its register of members (see paragraphs <i>BSOG</i> 3.5.14G to <i>BSOG</i> 3.5.17G), and to notify them of the rights of Trustee Account Holders (See paragraph <i>BSOG</i> 3.3.18G).
Stage 7	(if necessary) Further application to the <u>Authority Prudential Regulator</u> , with a further fee, for approval of a significantly revised Transfer Statement (see paragraph <i>BSOG</i> 3.4.14G).
...	
Stage 9	Informal indication by the <u>Authority Prudential Regulator</u> that it is satisfied with near-final proofs of the Transfer Statement, and the Transfer Agreement.
Stage 10	Formal submission to the <u>Authority Prudential Regulator</u> of the final draft of the Transfer Statement, together with the supporting documents described in paragraph <i>BSOG</i> 3.4.15G.
Stage 11	Approval by the <u>Authority Prudential Regulator</u> of the Transfer Statement. One proof copy of the Statement, identified and signed on behalf of the <u>Authority Prudential Regulator</u> , will be returned to the society.
Stage 12	Printing and distribution of meeting notice and Transfer Document to members of the society in time to be received by them at least 21 days before the last date for receipt of proxy forms for the meeting at which the Transfer Resolutions are to be moved. The <u>Authority Prudential Regulator</u> would appreciate being provided with a number (to be agreed) of copies of the final printed Transfer Document and any Transfer Summary and of the Transfer Statement if printed separately for distribution on request. Although not required by the 1986 Act, one copy of each will be passed to the Registration team <u>FCA</u> to be placed on the public file of the society.
...	
Stage 14	If the Transfer Resolutions are passed, application to the <u>Authority Prudential Regulator</u> for confirmation and publication of notices of that application in the official Gazettes and newspapers. The application should be accompanied by the requisite fee and the material specified in paragraph <i>BSOG</i> 3.6.2G.
Stage 15	Last date for receipt by the <u>Authority Prudential Regulator</u> of representations with respect to the applications. A minimum of four weeks should be allowed between Stages 14 and 15 and a further four weeks to Stage 16 (with extra time allowed for any public holidays which intervene). Representations will be copied to the

	society for its comments as and when they are received. The <u>Authority Prudential Regulator</u> will then require sufficient time before the hearing to consider and assess all the representations and the society's responses, and to make any further enquiries which it may think necessary.
...	
Stage 17	Notification to the society and representers, and publication, of the <u>Authority's Prudential Regulator's Decision</u> . It is advisable to allow a minimum of four weeks between Stages 16 and 17, again allowing extra time for any public holidays.
Stage 18	Notification by the society to the <u>Authority Prudential Regulator and the FCA</u> of the vesting date and, if later, the date of dissolution of the society.
...	

...

3.9.5 G The PRA is required to consult the FCA before approving a merger. This will happen before Stage 17 in the table above.
[PRA]

...

3 **Transfer Confirmation Procedures**
Annex
4

[PRA]

...		
4.3.1	G	The purpose of the hearing is to enable interested parties to make representations, and to enable the <u>Authority Prudential Regulator</u> to make such enquiry as it considers necessary, both of the society and of those making representations, in order to reach an informed view. The <u>Authority Prudential Regulator</u> will examine all the representations, whether written or oral, in relation to the four statutory criteria described in <u>paragraph BSOG 3 Annex 4.2.2G</u> . In the light of that examination, and consideration of all the representations and the society's response, <u>and after any consultation required by the 1986 Act</u> , the <u>Authority Prudential Regulator</u> will make its decision.
...		
4.4.4	G	The <u>Authority Prudential Regulator</u> will send copies of all written representations to the society, and will afford it an opportunity to comment on them (paragraph 8 of Schedule 17 to the 1986 Act). The <u>Authority Prudential Regulator</u> will consider the written representations in the categories set out in <u>BSOG 3 Annex 4.4.3G(1) and (2)</u> , and the

		<p>society's responses to them. A synopsis of the representations (probably in the form of a summary of each of the main points made and the numbers of persons making each point) and the society's responses may be made available to those participating in the oral hearing. This is intended to inform those making oral representations of the points already under consideration by the <u>Authority Prudential Regulator</u> with a view to avoiding unnecessary repetition.</p>
4.4.5	G	<p>Copies of the society's comments on representations in <u>the category set out in BSOG 3 Annex 4.4.3G(2)</u> will be sent to those who made the representations in time for the oral hearing so that they may concentrate their oral representations on the points which they consider to remain at issue. A person making written representations who wishes to see the society's comments must, therefore, also give notice of intention to make oral representations. Any documents referred to in the society's comments will be made available by the society for inspection at a specified place which will be notified to those making oral representations. (The society may, exceptionally, apply to put to the <u>Authority Prudential Regulator</u> in confidence documents which the society considers to be commercially sensitive: the <u>Authority Prudential Regulator</u> will decide on hearing argument whether, and on what terms, to accept them as being confidential). Persons in <u>the category set out in BSOG 3 Annex 4.4.3G(3)</u> will be asked to inform the <u>Authority Prudential Regulator</u>, in advance of the oral hearing, of the subject and general grounds of the representations they intend to make; the <u>Authority Prudential Regulator</u> will copy any response to the society.</p>
...		

Annex 37

Amendments to the Collective Investment Scheme Information Guide (COLLG)

There are no amendments to this module in this Instrument.

Annex 38

Amendments to the Financial Crime: a guide for firms sourcebook (FC)

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

Part 1, Annex 1:

Common terms

...

Term	Meaning
...	...
Financial Action Task Force (FATF)	...
<u>Financial Conduct Authority (FCA)</u>	<u>The Financial Conduct Authority has statutory objectives under FSMA that include protecting and enhancing the integrity of the UK financial system. The integrity of the UK financial system includes its not being used for a purpose connected with financial crime. We have supervisory responsibilities under the Money Laundering Regulations 2007 for authorised firms and businesses such as leasing companies and providers of safe deposit boxes. We also have functions under other legislation such as the Transfer of Funds (Information on the Payer) Regulations 2007, in relation to the EU Wire Transfer Regulation, and schedule 7 to the Counter-Terrorism Act 2008.</u>
Financial Intelligence unit (FIU)	...
...	
Financial Services Authority (FSA)	<u>The Financial Services Authority was the previous financial services regulator. The Financial Services Authority has It had</u> statutory objectives under FSMA that include <u>included</u> the reduction of financial crime. We have <u>The FSA had</u> supervisory responsibilities under the Money Laundering Regulations 2007 for authorised firms and businesses such as leasing companies and providers of safe deposit boxes. We also have <u>It also had</u> functions under other legislation such as the Transfer of Funds (Information on the Payer) Regulations 2007, in relation to the EU Wire Transfer Regulation, and schedule 7 to the Counter-Terrorism Act 2008.

...	
-----	--

Annex 39

Amendments to the Perimeter Guidance manual (PERG)

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

2 Annex Regulated activities and the permission regime
2G

[FCA] 1 Table

1.1 G	Table 1 is designed to relate the <i>permission</i> regime <u>as operated by the FCA to regulated activities</u> . It does not explain how the permission regime as operated by the PRA relates to regulated activities. It therefore does not cover PRA-regulated activities which only apply to PRA-authorised persons. Those <i>PRA-regulated activities</i> are set out in <u>Table 1A</u> . Section 42(6) <u>55E(4)</u> of the <i>Act</i> gives the FSA <u>FCA</u> the power to describe the <i>regulated activity</i> or <i>regulated activities</i> for which it gives <i>permission</i> in such manner as the FSA <u>FCA</u> considers appropriate. Table 1 details how the FSA <u>FCA</u> has chosen to describe the <i>regulated activities</i> and <i>specified investments</i> for the purposes of the <i>permission</i> regime.
1.2 G	In an application for Part IV permission <u>Part 4A permission</u> , an applicant will need to state the <i>regulated activities</i> it requires <i>permission</i> to carry on. This will involve an applicant identifying the <i>regulated activities</i> and the <i>specified investments</i> associated with those activities for which it requires Part IV permission <u>Part 4A permission</u> .
...	

2 Table

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
Accepting deposits	
(a) accepting deposits (article 5)	deposit (article 74)

[deleted]	
...	
Insurance business	
(b) <i>effecting contracts of insurance</i> (article 10(1)) (c) <i>carrying out contracts of insurance</i> (article 10(2)) [deleted]	<i>contract of insurance</i> (article 75) [expanded in Table 2]
...	
The Lloyd's market [see note 6 to Table 1]	
(q) <i>advising on syndicate participation at Lloyd's</i> (article 56)	membership of a Lloyd's syndicate (article 86(2))
(r) <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> (article 57)	<i>underwriting capacity of a Lloyd's syndicate</i> (article 86(1))
...	

3 Table

Notes to Table 1
<p>Note 1: In addition to the <i>regulated activities</i> listed in Table 1, article 64 of the <i>Regulated Activities Order</i> specifies that <i>agreeing to carry on a regulated activity</i> is itself a <i>regulated activity</i> in certain cases. This applies in relation to all the <i>regulated activities</i> listed in Table 1 apart from:</p> <ul style="list-style-type: none"> • <i>accepting deposits</i> (article 5); • <i>issuing electronic money</i> (article 9B); • <i>effecting and carrying out contracts of insurance</i> (article 10); • <i>operating a multilateral trading facility</i> (article 25D) • <i>establishing, operating or winding up a collective investment scheme</i> (article 51(1)(a)); • <i>acting as trustee of an authorised unit trust scheme</i> (article 51(1)(b)); • <i>acting as the sole depositary or sole director of an open-ended investment company</i> (article 51(1)(c)); • <i>establishing, operating or winding up a stakeholder pension scheme or</i>

<p><i>establishing operating or winding up a personal pension scheme</i> (article 52) : and</p> <ul style="list-style-type: none"> • <i>the meeting of repayment claims and/or managing dormant account funds (including the investment of such funds)</i> (article 63N).
<p><i>Permission to carry on the activity of agreeing to carry on a regulated activity will be given automatically by the FSA FCA in relation to those other regulated activities for which an applicant is given permission (other than those activities in articles 5, 9B, 40, 51 and 52 detailed above).</i></p>
<p>...</p>
<p>Note 6: Section 315 of the Act (The Society: authorisation and permission) states that the Society of Lloyd's has permission to carry on the regulated activities referred to in that section, one of which is specified in article 58 of the Regulated Activities Order. This permission is unique to the Society of Lloyd's.</p>
<p>...</p>

4 Table

Table 1A: PRA-only regulated Activities [See notes 1 and 2 to Table 1A]	
<u>Regulated activity</u>	<u>Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on</u>
<u>Accepting deposits</u>	
<i>(a) accepting deposits</i> (article 5)	<i>deposit</i> (article 74)
<u>Insurance business</u>	
<i>(b) effecting contracts of insurance</i> (article 10(1)) <i>(c) carrying out contracts of insurance</i> (article 10(2))	<i>contract of insurance</i> (article 75) [expanded in Table 2]
<u>The Lloyd's market</u>	
<i>(d) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> (article 57)	<i>underwriting capacity of a Lloyd's syndicate</i> (article 86(1))
<i>(e) the activity of arranging, by the</i>	<i>contract of insurance</i>

<p><i>Society</i>, of deals in contracts of insurance written at Lloyd's (article 58)</p>	
---	--

5 Table

<p>Notes to Table 1A</p>
<p><u>Note 1:</u> In addition to the <i>regulated activities</i> listed in Table 1A, article 64 of the <i>Regulated Activities Order</i> specifies that <i>agreeing to carry on a regulated activity</i> is itself a <i>regulated activity</i> in certain cases. This only applies in relation to the Lloyd's market activities in paragraphs (d) and (e).</p>
<p><u>Note 2:</u> The activity of <i>dealing in investments as principal</i> is also a <i>PRA regulated activity</i> where carried on by a <i>person</i> designated by the <i>PRA</i>.</p>

4 6 Table

<p>Table 2: Contracts of insurance</p>
<p>...</p>
<p>Notes to Table 2</p>
<p><u>Note 1:</u> See <i>IPRU(INS)</i> Ann 10.2 Part II for the groups of <i>classes of general insurance business</i> from the Annex to the <i>First non-Life Directive</i>.</p>
<p><u>Note 2:</u> See <i>IPRU(INS)</i> 11.8 and the definition of <i>ancillary risks</i> in <i>IPRU(INS)</i> for <i>guidance on the treatment of supplementary and ancillary provisions in relation to contracts of insurance</i>.</p>

5 7 Table

<p>Table 3: Securities, contractually based investments and relevant investments [see notes 1 and 2 to Table 3]</p>		
<p>Security (article 3(1))</p>	<p>Contractually based investment (article 3(1))</p>	<p>Relevant investments (article 3(1))</p>
<p>...</p>	<p>...</p>	<p>...</p>

...

4.1.2 G ~~With effect from 31 October 2004 certain~~ Certain activities relating to mortgages ~~have been~~ are regulated by the ~~FSA~~ FCA. The purpose of this guidance is to help *persons* decide whether they need *authorisation* and, if they do, to determine the scope of the ~~Part IV permission~~ Part 4A permission for which they will need to apply.

...

5.3.4 G As with any other contract, a *contract of insurance* that is not effected by way of a deed will only be legally binding if, amongst other things, it is entered into for valuable consideration. Determining what amounts to sufficient consideration in any given case is a matter for the courts. In practice, however, the legal definition of consideration is very wide. In particular, just because a *contract of insurance* is 'free' in the colloquial sense does not mean that there is no consideration for it. In the vast majority of cases, therefore, 'free' insurance policies (such as policies that act as loss leaders for an *insurance undertaking*) will be binding contracts and will amount to *specified investments* and therefore be subject to ~~FSA~~ regulation under the Act.

...

6.3.1 G The business of *effecting or carrying out contracts of insurance* is subject to prior *authorisation* under the Act and regulation by the ~~FSA~~ FCA and PRA. (There are some limited exceptions to this requirement, for example, for breakdown insurance.)

...

8.14.40 G In the ~~FSA's~~ FCA's opinion, provided that the purpose of the transaction is for the buyer to acquire the necessary control, it is irrelevant who is the seller. The exemption specifically applies to *financial promotions* which are *communicated* on behalf of the parties or potential parties to the transaction. ~~The Treasury, in its consultative document "Financial Services and Markets Act two year review: Changes to secondary legislation Proposals for change, February 2004" proposed changes to article 62 aimed primarily at limiting its scope in relation to the objective test referred to in PERG 8.14.35G. In its response to the comments received during the consultation, the Treasury announced, in its document "Financial Services and Markets Act two year review: Changes to secondary legislation Government response, November 2004" that it intends to make certain changes to article 62 in due course.~~

...

8.17.7 G *Advising on qualifying credit* ~~will be~~ is a *controlled activity* under paragraph
[FCA] 10B of Schedule 1 to the *Financial Promotion Order*; that is, advising a
person if the advice is:

...

8.17.8 G Agreeing to carry on each of these three *controlled activities* ~~will also be~~ is
[FCA] also a *controlled activity* under paragraph 11 of Schedule 1 to the *Financial*
Promotion Order.

...

10.2 General issues

[FCA] **Q2. I propose to provide services to a pension scheme - in what circumstances
will I need to be authorised by the FSA under the Act or be an exempt
person?**

...

Q3. How will I know if my proposed activities are regulated?

Regulated activities are specified in the Financial Services and Markets Act 2000
(Regulated Activities) Order 2001 ("the *Regulated Activities Order*"). They
include:

...

~~But some activities are specifically excluded from the FSA's regulatory scope.~~

...

In PERG 15 Annex 1, Flowchart 2 (PSD transitional arrangements) is deleted. The deleted
flowchart is not shown.

Annex 40

**Amendments to the Responsibilities of Providers and Distributors for the Fair
Treatment of Customers Guide (RPPD)**

There are no amendments to this module in this Instrument.

Annex 41

Amendments to the Unfair Contract Terms Regulatory Guide (UNFCOG)

There are no amendments to this module in this Instrument.