Consultation Paper

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Financial Services Authority

Quarterly consultation

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Contents

The Financial Services Authority invites comments on this Consultation Paper. Comments on Chapter 4 of this CP should reach us by **13 August 2010.** Comments on all other Chapters should reach us by **6 September 2010**.

Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/Pages/Library/Policy/CP/2010/cp10_15_response.shtml).

Or you can respond by email: cp10_15@fsa.gov.uk

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

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

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

1 Introduction

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

- the Fees manual, to restrict the FSCS's right to raise an exit levy for anticipated compensation and/or management expenses to the FSCS levy year in which the firm exits the scheme, and to enable the FSCS to raise an exit levy when a firm stops carrying out activities within a particular activity class or sub-class;
- the explanation of the tariff base for deposit takers set out in the Fees manual to clarify that, from 31 December 2010, the tariff base of 'protected deposits' will continue to apply for all accounts that are excluded from the Single Customer View;
- the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU), to simplify the regime of liquidity assessment for Simplified ILAS firms, to simplify liquidity reporting requirements, to amend liquidity systems and controls requirements in order to implement changes to the Banking Consolidation Directive, and to introduce additional guidance to BIPRU TP 30 clarifying how the liquidity floor for mismatch banks is intended to operate;
- the Conduct of Business sourcebook (COBS), to incorporate Recommendation 20 of the Walker Review on Corporate Governance, which states that the FSA should require institutions that are authorised to manage assets for others to disclose clearly on their websites or in other accessible form the nature of their commitment to the Stewardship Code or their alternative business model;
- the pensions rules in COBS, in order to make it clear that contracting-out comparisons should only reflect the period up to abolition of contracting-out (April 2012);
- the Banking Conduct of Business sourcebook (BCOBS), to provide guidance in relation to exercising a right of set-off on retail consumer accounts, and to make a minor drafting amendment to guidance relating to information about compensation arrangements;

- the Title Transfer Collateral Arrangements (TTCA) rules and the money due and payable to the firm provisions in the Client and Assets Sourcebook (CASS), to strengthen protection for retail clients who place money and assets with investment businesses, as well as to ensure a consistent application of our client money and asset rules;
- sections D1 and E, as well as the replacement of section D2, of the Retail Mediation Activities Return (RMAR) of Chapter 16 in the Supervision manual (SUP), following from changes to the capital resources computation and connected requirements for Personal Investment Firms, and professional indemnity insurance requirements;
- guidance notes to data item FSA015 of Chapter 16 in SUP, in order to clarify guidance on regulatory reporting via FSA015 and facilitate more effective data gathering;
- Chapter 16 Annex 24R and Chapter 16 Annex 25G of SUP, to include capital buffer planning data in reporting of capital adequacy in FSA003; and
- Chapter 10 of the Supervision manual, to correct a technical error and, in so doing, clarify the types of firm for which the significant management function, CF29, is relevant.

1.2 Responses to Chapter 4 of this CP should reach us by **13 August 2010**. Responses to all other chapters in this CP should reach us by **6 September 2010**.

2 Proposed changes to Chapter 6 of the Fees manual on FSCS exit levies (FEES)

Introduction

2.1 In this chapter we outline our proposal to amend the rules in Chapter 6 of the Fees manual (FEES) relating to a firm exiting an activity class or sub-class protected by the Financial Services Compensation Scheme (FSCS).

2.2 The FSCS classes in Fees 6 Annex 3 are made up of deposits, life and pensions, investment, general insurance, and home finance. With the exception of the deposit class, each broad class is divided into two sub-classes based on provider or intermediation activities.

2.3 The FSCS has always had the right to impose an exit levy against a firm when it ceased to be an FSCS participant firm. The purpose of the exit levy is to enable the FSCS to meet its expenses in relation to compensation and/or management expenses costs.

2.4 Until 2008 the right to raise an exit levy was restricted to raising an exit levy for anticipated expenses in the year following the exit. Following the deposit taker defaults in 2008 we changed the rule (FEES 6.7.6R) without consultation to give the FSCS the right to raise exit levies against a firm the purpose of meeting its expenses incurred or expected to be incurred, at any time in the future in respect of defaults which had already occurred. At the time we felt that by widening the exit levy rules, we would avoid the incentive otherwise created for firms to exit the FSCS and avoid contributing to the costs relating to the 2008 defaults.

Proposed amendments

2.5 We propose a change to the amendments introduced to FEES 6.7.6R in 2008 to restrict the FSCS's right to raise an exit levy for anticipated compensation and/or management expenses in respect of the FSCS levy year (April 1 to March 31) in which the firm exits the scheme.

2.6 We also propose to amend FEES 6.7 to enable the FSCS to raise an exit levy when a firm stops carrying out activities within a particular activity class or sub-class, but remains active in one or more other classes.

Reasons for changing the existing exit levy rules

2.7 Our experience and review of the situation in the 18 months following the rule change has led us to re-appraise the necessity of the changes made in 2008.

2.8 If a cost-benefit analysis (CBA) had been undertaken before introducing the rule change in 2008, it is likely we would have focused on the potential benefits of removing the incentive for firms to exit the FSCS and providing fairness for the other firms remaining liable to payment of FSCS levies.

2.9 However, 18 months after the rule was changed, we are not persuaded that these benefits, and the risks they sought to mitigate, are as material as we anticipated.

2.10 To date, we have not seen a widespread exit from FSCS. The only exits we have seen relate to European Economic Area (EEA) branches that were forced to cease topping-up into the FSCS as their home state protection was increased to be at least equivalent to the FSCS cover. We are not persuaded that the existing rule is the reason firms have remained authorised as UK deposit takers and FSCS participant firms.

2.11 We think that the predominant risk is that EEA deposit takers decide to close their UK subsidiaries and then branch back in. Another possibility is that foreign deposit takers operating in the UK might relocate to another EEA country and branch back into the UK. However we believe that the risk is low (this is discussed further within the CBA).

2.12 Although we recognise that where a large deposit taker exits the impact on remaining firms would be significant, we believe that the risk of a large EEA deposit taker exiting is small. Also, where a small deposit taker exits we believe the cost to remaining firms would be minimal.

2.13 Since the decision in 2008, we have become aware that the rule change has also had an unintended consequence. It has the potential to undermine our interpretation of the accounting treatment of FSCS levies. Currently firms need only accrue for liabilities incurred up to (but not beyond) the balance sheet date (12–18 month period). Because the FSCS can raise an exit levy at any time in the future, this interpretation could be undermined and firms could be required to accrue for their total known share of FSCS liabilities, including the £20bn borrowed by the FSCS to cover the failures in the deposit class. We do not believe this is an appropriate outcome.

2.14 We are therefore not convinced we would have made the change to the rule – particularly if we could have anticipated some of the issues that are now clear from the experience of operating the amended rule – and so propose to amend it. In addition, the existing exit levy rules provide that a levy is only applied where a firm ceases to be an FSCS participant firm. The rules do not provide that an exit levy should be applied where a firm exits one or more of the particular classes or sub-classes covered by the FSCS. Therefore, where a firm, for instance, exits the deposit class but continues to carry on other activities covered by the FSCS, it will remain an FSCS participant firm and so avoid paying an exit levy in respect of

exiting that class. Under our proposal firms that cease to carry out activities in a particular class or sub-class will be subject to an exit levy.

Q1: Do you agree that restricting the FSCS's ability to raise a single exit levy addresses the unintended consequences from the 2008 rule changes?

Q2: Do you agree that giving the FSCS the right to raise an exit levy against a firm when it leaves a particular activity class or sub-class is an appropriate measure?

Cost-benefit analysis

2.15 Section 155 of FSMA requires us to publish a cost-benefit analysis (CBA) of the implications of the proposed amendments.

Direct costs to FSA and FSCS

2.16 We do not believe that the proposal will have a material impact on the administrative/financial costs of the FSA or FSCS.

Impact on remaining firms in a sub-class

2.17 We recognise that limiting the FSCS's discretion to apply a levy to anticipated costs arising in relation to the FSCS levy year of a firm's departure will result in increasing the levy payments of the remaining firms within the relevant sub-class. For example, in the deposit class the exiting firms' contribution to the deposit taker's default costs will be redistributed among the remaining firms in that sub-class.

2.18 The cost increase from the redistribution of the levies among the remaining firms in the class or sub-class would only be significant if a large firm left the scheme. To illustrate this point, we estimate that if a large deposit taker was to leave the scheme next year, the additional cost for the remaining deposit takers could range from £0.6bn to £1bn over the next ten years. The majority of these costs would be borne by the remaining banks and a smaller fraction by the building societies. However, we believe that the risk of a large entity exiting the scheme as a result of the rule change is low.

2.19 As already noted we believe that the greatest risk of firms exiting lies in the possibility of EEA deposit takers closing their subsidiaries and branching back into the UK. However, we believe that the risk of these firms exiting is low because of a number of factors, as listed in paragraph 2.20 set out below.

2.20 We think that the cost of such a restructure would overshadow any potential exit levy the firm would face. There would be significant procedural and legal requirements, with associated cost, to de-authorise a UK subsidiary in order to relocate and passport back into the UK, which a firm would need to weigh against future legacy cost repayments stemming from the 2008 banking defaults. Such a course of action is also likely to lead to legal issues in relation to any contracts the subsidiary has entered into, impact on the employees of the firm, significant tax implications, and professional fees. Enabling the FSCS to raise an exit levy when a

firm stops carrying out activities within a particular activity class but remains active in one or more other classes, may lead to redistributing the levies. If we take our previous example of a large deposit taker exiting, we estimate that the maximum exit levy faced by such a firm would be approximately £200m. In the case of the exit of a smaller firm or a firm in another class, the exit levy would be significantly lower.

Impact on consumers

2.21 Whatever the size of the firm exiting the scheme, we do not believe that, in a competitive environment, the redistribution of the exiting firm's levy liability will materially affect consumers.

Indirect costs

2.22 We recognise that, in the case of the deposit class, limiting the FSCS discretion as proposed could incentivise firms to 'free ride' on the scheme's benefits and then seek to exit in order to avoid paying their contribution to the default costs in the deposit taker class. However, we believe the likelihood of this happening is reduced by the legal and administrative constraints associated with exiting.

Benefits

2.23 The existence of an FSCS exit levy going beyond the FSCS levy year may induce deposit-taking firms to accrue for their total future liability to the FSCS now, and this could impact on a firm's profit and loss account, its retained earnings and therefore the firm's Tier 1 capital. Limiting the FSCS's discretion as proposed removes this risk.

2.24 Limiting the FSCS's discretion to raise an exit levy beyond the FSCS levy year in which a firm departs could also lower barriers to entry, particularly into the deposit class, which in turn could have a positive effect on competition and market efficiency.

2.25 Enabling the FSCS to raise an exit levy when a firm stops carrying out activities within a particular activity class or sub-class, but remains active in one or more other classes, will contribute to a level playing field among firms exiting a particular market, regardless of whether or not they remain active in other markets.

Compatibility Statement

2.26 The proposals set out in this chapter are designed to help us meet our statutory objectives. We believe that by limiting the FSCS discretion we:

- meet our market confidence objective by reducing the possible burden placed on firms accruing for all future liability to the FSCS;
- meet our financial stability objective by mitigating against the risk that exit levies may adversely affect a firm's Tier 1 capital; and
- we have considered the principles of good regulation and in particular the principle that a burden or restriction should be proportionate to the expected benefits. Our analysis indicates that the cost impact of our proposal will be

minimal given that the size of the levy on the class will be the same, regardless of the number of firms that are members of the class. We do not expect the redistribution effect of allocating the share of the legacy cost levy applied to the departed EEA deposit takers will materially affect the remaining firms in the deposit class. However, if a big firm were to exit, this could have a material impact on remaining firms, which would apply to any activity class with large outstanding compensation costs.

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3 Proposed changes to the Fees manual – Tariff measures for the deposit class (FEES)

Introduction

3.1 In this chapter we propose to make changes to FEES 6 Annex 3: 'Financial Services Compensation Scheme – classes and sub-classes'. In particular, we propose to amend the explanation of the tariff base for deposit takers, which is due to take effect from 31 December 2010.

3.2 The changes supplement the policy proposals and rules relating to tariff measures as set out in the Consultation Paper, *Financial Services Compensation Scheme reform: Fast payout for depositors and raising consumer awareness* (CP09/3) and Policy Statement, *Banking and compensation reform: Including feedback on CP08/23, CP09/3, CP09/11 and CP09/16* (PS09/11).

3.3 These changes will apply from 31 December 2010 to all UK authorised deposit-taking firms, i.e. fee-block A1.

3.4 The changes are intended to eliminate confusion by explicitly implementing the policy intention from PS09/11. They are in response to feedback from industry stakeholders since the publication of PS09/11.

Proposed amendments

3.5 Chapter 7 of CP09/3 proposed to change the FSCS tariff measure for the deposits class to 'eligible protected deposits'. Since 1 December 2001, when we were given our statutory powers, the FSCS tariff measure for deposit takers has been 'protected deposits', which until 31 December 2010 includes all amounts in potentially eligible accounts.

3.6 The implementation of a Single Customer View (SCV), required by 31 December 2010, will enable deposit takers to have an accurate measure of the amount of compensation per eligible depositor. So we proposed in CP09/3 to change the tariff measure to 'eligible protected deposits'.

3.7 We outlined in CP09/3 how the proposed amendments would enable a fairer allocation of levies between deposit takers and would ensure that levies are allocated in line with the degree of FSCS protection received by each firm.

3.8 As highlighted in CP09/3, there will be cases where eligibility identification may be difficult and require further FSCS investigation. Examples of such cases include a claim made on behalf of another person, e.g. where a solicitor has deposited sums in a client account. These accounts would have to be flagged on the deposit taker's system, but the deposit taker would not flag the underlying client as eligible or not – that would only be identified upon investigation by the FSCS.

3.9 In PS09/11 we therefore confirmed that accounts held by the account holder on behalf of others who may be eligible for FSCS compensation, should be excluded from the SCV. We also clarified that, for similar reasons, non-active accounts should also be excluded from the SCV. As set out in PS09/11, a non-active account:

- is a dormant account as defined in the Dormant Bank and Building Society Accounts Act 2008;
- is an account for which the firm has received formal notice of a legal dispute or competing claims to the proceeds of the account; or
- appears on the 'Consolidated list of financial sanctions targets in the United Kingdom' that is maintained by the Treasury.

3.10 By implication, the tariff base of 'eligible protected deposits' cannot properly apply to these accounts. Our intention was that the tariff basis of 'protected deposits' would therefore continue to apply for the accounts excluded from the SCV. However, the rules in PS09/11 Appendix 1 (to take effect from 31 December 2010) do not make this intention explicit, except in relation to the accounts held on behalf of others.

3.11 Feedback from the industry since PS09/11 was published in July 2009 indicates that, without explicit instructions, there is some confusion among deposit takers about how to treat the three excluded non-active accounts when calculating tariff data. In the absence of explicit instructions for these exclusions, it is possible to infer that accounts that are not active do not need to be included in the tariff data at all.

3.12 The proposed change, the text of which can be found in Appendix 3, will clarify that, from 31 December 2010, where an account has been excluded from the single customer view because it is an account that is not active (as set out above), the calculation of the tariff base will be based, as now, on 'protected deposits'.

Q3: Do you agree that the proposed change will clarify the treatment of accounts that are not active for the purposes of calculating tariff data?

Cost benefit analysis

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

3.14 The clarifying change should have no effect in comparison with the current tariff measure, as it applies to accounts that, from 31 December 2010, would be classified

as non-active accounts. No costs arise from it. The FSCS levy for the deposits class as a whole will not be affected by this change. The proposed change will only result in a redistribution of the levy within the class.

3.15 In addition, there may be modest benefits from the improved clarity, with those reading the rules needing to spend slightly less time to understand their effect.

3.16 However, as the policy intention was not sufficiently clear in either CP09/3 or PS09/11, and particularly because the rules as written (to take effect from 31 December 2010) can be interpreted as excluding non-active accounts from the tariff data calculation completely, our proposed change may impose some additional costs beyond those anticipated by firms who adopted this interpretation.

3.17 To evaluate these costs, we first needed to identify the number of accounts that fall into the non-active account categories, and the value of these accounts. To do this, we referred to a wide range of existing statistical data relating to UK deposit takers. We also consulted with various stakeholders, including FSA Enforcement and Financial Crime Division, the Treasury and industry trade bodies the British Banking Association (BBA) and the Building Societies Association (BSA).

Dormant accounts

3.18 In November 2008, the BBA and the BSA estimated that there were between £250m and £350m of unclaimed funds in banks and up to £130m in building societies. This represents less than 0.05% of all protected deposits in the UK that year. The BBA and the BSA believed these figures were likely to fall as the industry continued its endeavours to reunite customers with their accounts.

Accounts subject to a legal dispute or competing claim

3.19 Neither the FSA nor deposit-taking firms have readily available data to confirm the number of accounts subject to legal dispute or competing claim and their value, but the BBA and BSA were able to offer us some estimates. On the basis of these estimates we expect that fewer than 500,000 accounts fall into this category, with an aggregate balance of less than £1.8 billion. These deposits therefore account for less than 0.2% of all protected deposits as at 30 December 2008.

Accounts that appear on the Treasury's 'Consolidated list of financial sanctions targets in the United Kingdom'

3.20 It is our understanding from the Treasury that the number and value of these accounts is relatively small. This has led us to conclude that a requirement to include these deposits in tariff data will not create significantly material costs for deposit-taking firms. We are unable to disclose further information on these frozen accounts due to the sensitive nature of that data.

Costs for firms

3.21 The above mentioned figures do not represent the actual cost to deposit-taking firms, merely an indication of the figures these firms will be required to report as fee tariff data.

3.22 The FSCS levy for the deposits class as a whole will not be affected by our proposed changes. Each fee-block that a firm is allocated to has its own fee rates. These fee rates are applied to the fee tariff data that firms provide us. The effect of reporting these additional three categories of accounts in the tariff data will, therefore, be a redistribution of the levy within the class.

3.23 This means that, when compared with the rules as currently written to take effect from 31 December 2010, deposit-taking firms who have accounts within these three categories of non-active accounts will incur additional costs. Conversely, however, deposit-taking firms who do not have any of these accounts will see a reduction in costs.

3.24 In any case, we have performed a series of example indicative calculations, which show that, even if these accounts were to be proportionately distributed across all deposit-taking firms, the amount of levy these accounts would attract, if reported on a 'protected deposit' basis, would be minimal.

3.25 In performing these calculations we used the 2009/10 tariff rates and we made the following assumptions:

- the three categories of exclusions are proportionately spread across all UK authorised deposit takers;
- dormant accounts represent 0.05% of each deposit taker's total protected deposits; and
- accounts subject to a legal dispute or competing claim represent 0.2% of each deposit taker's total protected deposits.

1. Type of deposit-taker	2. Approximate value of total protected deposits	3. Approximate value of accounts that are not active	4. Approximate FSCS levy in respect of accounts that are not active
Large	£82 bn	£205m	£3,900
Medium	£4.5 bn	£11.5m	£220
Small to medium	£1.5 bn	£3.9m	£73
Small	£265m	£670,000	£13

3.26 These examples are for illustrative purposes only. The actual percentages will vary across firms. However, even where a firm holds a greater number of these accounts than illustrated, the figures above indicate that the corresponding levy for the additional accounts would not be materially significant.

3.27 Deposit-taking firms will continue to have the facility, as set out in FEES 6.5.15R, to exclude from the tariff base the protected deposits held by persons who are not eligible claimants.

3.28 The ongoing cost of reporting will not change as the current process will still apply, though some minor initial adjustments may be required.

3.29 The cost of not making the proposed amendment should also be taken into account when considering the cost implications of our proposed change. Without the change, and in the event that the FSA were to declare a deposit-taking firm in default after 31 December 2010, the cost of FSCS compensation for non-active accounts would ultimately be borne by the remaining live levy paying firms. This could take the form of increased levies in subsequent years or even interim levies within the same year. The failed firm would not have made any contribution regarding the compensation for these accounts. Such an approach is inconsistent with our objectives as set out in CP09/3 and PS09/11, one of which was to ensure that the tariff measure more accurately reflects the amount of liability that firms in the deposit class present to the FSCS.

3.30 For all of these reasons, we expect our proposal will not impose a significant burden on firms and will not have any broader economic effects. We also anticipate a benefit to both firms and the FSCS in terms of the clarity provided and the fairer distribution of levies.

Q4: Do you agree with our assessment that the costs of this proposal will not impose a significant burden on firms?

Compatibility statement

3.31 We believe that our proposed rule is compatible with our statutory objectives of consumer protection and financial stability. We consider that the proposed rule is the most appropriate mechanism for delivering these regulatory objectives by ensuring that FSCS fees are calculated in the most appropriate and fairly distributed manner.

3.32 In presenting this proposal, we are satisfied that it is compatible with the general duties given to us in section 2 of FSMA, in particular the principle that a burden or restriction should be proportionate to the expected benefits.

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4 Proposed minor amendments to the liquidity regime (BIPRU)

Introduction

4.1 This chapter proposes minor amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) and the Supervision manual (SUP).

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

4.3 The proposed Handbook text can be found in Appendix 4 to this Consultation Paper (CP).

Background and context

4.4 In the Policy Statement (PS) *'Strengthening liquidity standards'* (PS09/16),[1] we set out our final policy for the UK's new framework for liquidity regulation. The new liquidity regime came into force on 1 December 2009. Elements of the regime are to be phased in for different classes of firm: the systems and controls requirements began from 1 December 2009;[2] and the quantitative and reporting requirements will be phased in during 2010, commencing 1 June 2010.

4.5 This chapter contains a number of proposed amendments to the liquidity policy Handbook text contained in BIPRU 12. These amendments provide clarification, correct mistakes or replace current Handbook text with directive text, using 'intelligent copy out'. None of the proposed amendments set out in this chapter are intended to change the liquidity policy from its original intention:

- item 1: Simplified ILAS[3] approach (BIPRU 12.6);
- item 2: Liquidity reporting (SUP 16);
- item 3: Systems and controls requirements (BIPRU 12.3 and 12.4); and
- item 4: Transitional provisions for mismatch firms (BIPRU TP 30).

1 PS09/16, Strengthening liquidity standards, October 2009. www.fsa.gov.uk/pages/Library/Policy/Policy/2009/09_16.shtml
2 1 November 2010 for firms with a Global Liquidity Concession (GLC).
3 Individual Liquidity Adequacy Standards (ILAS)

4.6 The amendments will be of interest to several firms, including those who fall under the simplified ILAS approach (item 1), UK banks and building societies (item 2), all relevant BIPRU firms to which BIPRU 12 applies (item 3) as well as firms that managed liquidity using Chapter LM IPRU (BANK) from 30 November 2009 (item 4).

4.7 These proposals are unlikely to be of specific interest to consumers.

Proposed amendments

Item 1 – Simplified ILAS approach (BIPRU 12.6)

(a) Designated Money Market Fund (DMMF) – definition

Issue to be addressed

4.8 Simplified ILAS BIPRU firms may hold DMMFs as part of their BIPRU 12.7 liquid assets buffer.

4.9 DMMFs are a sub-set of the broader universe of money market funds and to qualify for the BIPRU 12.7 liquid assets buffer, they must meet certain criteria including:

- they must invest solely in assets that are eligible for the liquid assets buffer; and
- the DMMF must offer same-day liquidity to any redemption requests made before 15:00 GMT.

4.10 We have received feedback from industry participants that this 'cut-off' time is causing practical difficulties, as currently no funds can comply with the 15:00 GMT requirement for operational reasons.

Background and context

4.11 In PS09/16 we recognised that it could be unreasonable to require some smaller firms that use the simplified ILAS approach to hold government bonds (for the purposes of their BIPRU 12.7 liquid assets buffer) as they may not have market access or repo capability. To address this, we included two options in our Handbook:

(i) the Bank of England permits them to open reserve accounts (subject to the firms complying with relevant conditions); and

(ii) they could hold, in their buffers, investments in DMMFs that meet specific conditions.

4.12 However, no funds that meet the Glossary definition of DMMFs currently exist in the market. Some money market fund providers and trade bodies have given feedback that, on practical grounds (including the nature of tri-party repo settlement operations and the necessary time required for back–office functions for settlement), they cannot provide a fund that will meet the same–day settlement requirement for redemption requests made at or before 15:00 GMT. Current industry practice for

money market funds is to settle any redemption requests on the same day that are made before 10.30–11.30 GMT, with some providers who engage in bilateral repos before 13:00 GMT.

Proposed amendments

4.13 We propose that the Glossary definition of DMMF should be amended. The 'cut-off' time should be changed from 15:00 GMT to 12:00 GMT.

4.14 The proposed amendment is expected to allow sufficient time for funds to settle same-day redemption requests, while retaining an appropriate window within a day for firms to submit their redemption requests for same-day settlement. Overall, the effect of the proposal will be to bring the practical outcomes or the DMMF definition back in line with our intended policy of providing a cost-effective option for simplified ILAS BIPRU firms in respect of their liquid assets buffer requirements.

Q5: Do you agree with our proposal to amend the definition of a designated money market fund?

(b) Small or medium sized enterprise (SME) deposits and retail deposits

Issue to be addressed

4.15 For the purposes of the simplified ILAS approach, our Handbook defines 'retail deposit' in BIPRU 12.6.7R as a deposit accepted from a 'consumer'. While this definition is appropriate in categorising retail deposits, it does mean that SME[4] deposits are by default treated as 'wholesale'.

4.16 Under the simplified ILAS approach, a stressed outflow of 100% must be applied to wholesale deposits – this is considerably higher than the stresses the simplified ILAS approach applies to retail deposits, as outlined below.

Background and context

4.17 Simplified ILAS BIPRU firms must use the prescribed formula when calculating their required liquid assets buffer.

4.18 Firms must analyse the characteristics of their retail deposits and wholesale deposits and also take credit pipeline effects into account. They must apply the prescribed outflow stress per category of deposit. For retail deposits classified as Type A (lower-quality retail deposits) the outflow stress to be applied is 20%, while it is 10% for Type B (the most stable retail deposits). However, for wholesale deposits, the prescribed outflow stress is 100%.

4.19 Under our current Handbook requirements, SME deposits are automatically treated with a 100% outflow stress. This outcome is not thought to be proportionate. It is also inconsistent with observed behaviour of SME deposits in a stress.

4 SME deposits: account holder is a small or medium-sized enterprise (SME)

Proposed amendments

4.20 We propose that SME deposits should be subjected to the same outflow stress as that applied to Type A retail deposits. This would result in a 20% outflow stress being applied instead of 100%.

4.21 In making this proposal, we are taking into account the behavioural similarities between SME deposits and 'flighty' retail Type A deposits (for the purposes of calculating outflows under stress within the simplified ILAS approach).

4.22 The impact of the proposal would be to require simplified ILAS BIPRU firms to hold BIPRU 12.7 eligible buffer assets against 20% of their SME deposits instead of 100%. Under the regulatory reporting requirements for liquidity, firms will still be required to report SME deposits and retail deposits separately as part of their submission of FSA047–FSA048.

Q6: Do you agree with our proposed treatment of SME deposits within the simplified ILAS approach?

(c) Simplified buffer calculation

Issue to be addressed

4.23 The simplified buffer calculation in our Handbook describes how firms should calculate their buffer requirements. This includes:

(i) BIPRU 12.6.10R (3), which requires firms to exclude from the calculation inflows relating to liquid buffer assets; and

(ii) BIPRU 12.6.16R (3), which requires firms to include outflows of securities due to repo or sale.

4.24 Taken together, these requirements mean that for those firms with liquid assets maturing within the three-month stress, such as US Treasury bills, they neither benefit from holding the security nor the inflow of cash when they mature.

4.25 In addition, the formula proposed as guidance in the Handbook[5] does not capture all relevant rows of the FSA 047/048 returns. An amendment is needed to correct this error.

Proposed amendments

4.26 We propose amending the formula for calculating the simplified ILAS buffer requirement and the associated Handbook text. This includes amending:

- BIPRU 12.6.10R (3)(a) to exclude "forward sales, forward purchases, redemptions and any other transactions"; and
- BIPRU 12.6.16R (3) to also include 'forward purchases' and cash flows excluded under BIPRU 12.6.10R (3)(a).

5 BIPRU 12.6.17 G

- BIPRU 12.6.17G, in which the formula omits a row and will need to take into account the change in stress for the SME deposits as outlined above. The relevant corrections to the formula are outlined in Appendix 4.

Q7: Do you agree with our proposed changes to the simplified buffer calculation?

Item 2 – Liquidity reporting (SUP 16)

(a) FSA044 liquidity reporting return

Issue to be addressed

4.27 From 1 June 2010, we will phase in a comprehensive suite of liquidity reporting returns (FSA047–FSA055). We retired existing liquidity returns FSA010 and FSA013; however, we were silent on FSA044. We have since received feedback from industry participants and a specific response to the quarterly consultation CP10/01[6] questioning this omission.

Background and context

4.28 FSA044 is a liquidity reporting return that was created under the previous liquidity regime that was applicable to banks and building societies. It is intended to capture the funding profile, by sector and maturity, of UK banks and building societies to monitor mismatches in assets and deposits. Unconsolidated UK banks and building societies report FSA044 quarterly, while those that report on a UK consolidation group basis report twice a year.

4.29 The new suite of liquidity reporting returns provides a comprehensive view of firms' maturity analysis, analysis of concentration and funding profiles. The new suite of returns applies to a wide range of firms that are within the BIPRU 12 liquidity regime's scope (including, for example, non-UK firms operating within the UK). We intend to monitor and analyse liquidity risk issues using the new suite of liquidity reporting returns.

Proposed amendments

4.30 Given our intention to monitor and analyse liquidity risks using the new suite of liquidity reporting returns, we believe it would be burdensome to continue requiring UK banks and building societies to also complete and submit FSA044. As a result we propose to retire FSA044 as a regulatory return. This would be effective from 1 January 2011 to ensure we have the full 2010 year data and perspective. FSA044 returns for the period beginning before but ending after 1 January 2011 would still have to be delivered to the FSA.

Q8: Do you agree with our proposal to remove FSA044 as a liquidity reporting return?

6 CP10/01: Quarterly consultation No.23

(b) Definition of Defined Liquidity Group (DLG) by default

Issue to be addressed

4.31 Our Handbook requires, for the purposes of the liquidity regime, firms that are not part of a group that is subject to our or any other regulatory body's consolidated supervision should be treated as UK-lead regulated and, therefore, DLG by default reporting applies to such firms. Our current rules are drafted such that the DLG by default applies to a wider pool of firms than originally intended.

Background and context

4.32 In PS09/16, we outlined how our reporting requirements will apply to firms and detailed three consolidation levels of reporting:

- solo basis;
- DLG by modification – if the firm has a modification, the DLG includes each entity on whose liquidity support we permit the firm to rely for the purposes of meeting the overall liquidity adequacy rule;
- DLG by default – entities that are part of a firm's group where it provides or is committed to provide material support to (or receive from) the firm against liquidity risk, or have reasonable grounds to believe that the firm would supply such support and vice versa.

4.33 The consolidation levels described in paragraph 4.32 are not mutually exclusive. For example, a self-sufficient UK-lead regulated firm would report on a solo basis as well as on a DLG by default basis. For a UK-lead regulated firm with an intra-group modification, it would report on solo, UK DLG and DLG by default basis.

4.34 The DLG by default is intended to capture entities within a group that could require (or provide) material support from (or to) the ILAS entity under idiosyncratic or market-wide stress. Where this reliance (to/from) the firm does not exist it should be unnecessary for the firm to report on a DLG by default basis, as there is no potential reliance under stress from any other entity in the group.

4.35 Based on our current Handbook rules, if a firm is:

i. Part of a group that is subject to our consolidated supervision, where that group is not part of a bigger group subject to consolidated supervision by another regulator, DLG by default reporting applies.

ii. Part of a group that is subject to our consolidated supervision, where that group is part of a wider group subject to consolidated supervision by another regulator, DLG by default reporting does not apply.

iii. Part of a group that is not subject to our consolidated supervision, where that group is subject to consolidated supervision by another regulator, DLG by default reporting does not apply.

iv. Not part of any group or its group is not subject to ours or any other regulatory body's consolidated supervision, it is currently treated as UK-lead regulated and is therefore DLG by default reporting.

4.36 Our current Handbook rules are drafted so that the DLG by default applies to a wider pool of firms than originally intended. However, we consider that in practice for those firms that fall under paragraph 4.35 (iv), only foreign subsidiaries that are credit institutions or broker/dealers could provide the level of material support that was intended by the policy. In cases where no foreign banks or brokers/dealers exist in a firm's group, the DLG by default gives no more useful information from a liquidity perspective than the ILAS solo or DLG by modification perspective.

4.37 In practice, this is similar to our domestic regime, where only the ILAS BIPRU firms (which are limited to credit institutions or certain full-scope investment firms) are included in UK DLGs.

Proposed amendments

4.38 We propose that the DLG by default definition should be amended. In the case of a firm that is not part of a group that is subject to our or any other regulatory body's consolidated supervision, the definition should be amended so the DLG by default definition is restricted to group members that are a credit institution or investment firm authorised to deal on its own account. The DLG by default definition will continue covering undertakings whose main purpose is to raise funds for the firm or group to which the firm belongs. SSPEs and other financing vehicles in the group should also continue to be included within the scope of the DLG by default definition.

4.39 The impact of the proposal would be to remove the burden for certain firms (i.e. those that are not group members but are a credit institution or investment firm authorised to deal on its own account from having to submit another consolidation level of reporting). We consider that, for these firms, the solo and DLG by modification consolidation levels of reporting will provide the appropriate level of information from a liquidity perspective for these firms.

Q9: Do you agree with our proposed changes to the definition of liquidity group by default?

Item 3 – Systems and controls requirements (BIPRU 12.3 and 12.4)

Issue to be addressed

4.40 We need to make several minor amendments to the liquidity systems and controls requirements contained in our Handbook at BIPRU 12.3 and 12.4. This is necessary to implement changes to the Banking Consolidation Directive (BCD) Annex V.

Background and context

4.41 The European Parliament and Council approved a number of amendments to the BCD in response to the recent crisis.[7] These include several changes to the liquidity risk management provisions contained in Annex V to the BCD. The amending directive notes that the required changes draw on work undertaken by the Committee of European Banking Supervisors and the Basel Committee on Banking Supervision. The amending directive requires the necessary steps to bring in to force the new provisions by 31 October 2010.

4.42 Our liquidity systems and controls materials are contained in our Handbook at BIPRU 12.3 and 12.4. The current materials take account of the 'Principles for Sound Liquidity Management and Supervision' dated September 2008, issued by the Basel Committee on Banking Supervision (as noted at BIPRU 12.3.2 G and in PS09/16).

4.43 As noted in PS09/16, we intend that BIPRU 12.3 and 12.4 materials should be consistent with and reflect directive requirements. The structure of our new liquidity regime, including the BIPRU 12.3 and 12.4 systems and controls materials, was designed to be sufficiently flexible to allow us to amend it through time, subject to consultation, to reflect the new international standards.

Proposed amendments

4.44 We propose a number of minor amendments be made to BIPRU 12.3 and 12.4 to implement the changes to Annex V liquidity risk management provisions contained within the BCD.

4.45 The amendments are minor and do not impose any significant new policy requirements on firms either generally or on particular sectors. They include:

(i) restating existing Handbook requirements using directive text;

(ii) in some cases the directive text is more explicit or expansive in its commentary when compared to the current Handbook text, but not to such a level that a significantly higher standard is set by the directive text;

(iii) removing duplications that arise as a result of including directive text; and

(iv) consequential renumbering of Handbook provisions. The table at paragrpah 4.71 provides an overview of the proposed amendments.

4.46 Given the minor nature of the amendments, we do not intend to provide a transitional period for the proposed changes.

4.47 Our Handbook text requires the qualitative requirements to apply in a manner proportionate to a firm's nature, size and complexity; this will continue to apply to the revised BIPRU 12.3 and 12.4 materials.

7 17.11.2009 L302/97 Directive 2009/111/EC 16 September 2009 amending Directive 2006/48/EC and 2007/64/EC (The directive is also referred to as "CRD2")

Q10: Do you agree with our proposal to amend BIPRU 12.3 and 12.4 to implement the changes to Annex V of the BCD?

Item 3 – Transitional provisitions for mismatch firms (BIPRU TP 30)

Issue to be addressed

4.48 Many firms have read BIPRU TP 30 as requiring them to establish, immediately upon TP 30 becoming applicable on 1 November 2010, a liquid assets buffer that contains sufficient assets meeting the requirements of BIPRU 12.7 to cover the ILAA stresses set out in BIPRU 12.5. This is an incorrect reading of the text.

Background and context

4.49 BIPRU TP30.3R deals with the overall amount of liquidity resources a firm that, as of 30 November 2009, calculated this amount in accordance with IPRU(BANK) (a mismatch firm). It does not specify the proportion of liquidity resources a mismatch firm must hold in a liquid assets buffer that meets the liquid asset buffer requirements.

4.50 We recognise it may take time for mismatch firms to build a buffer that is of suitable size and quality and the transition from our liquidity regime (in force immediately before the BIPRU 12 regime) is likely to be a gradual one.

Proposed amendments

4.51 We propose to add guidance to BIPRU TP 30 to clarify our intention and expectation of firms as they move from their current position to one in which they hold a buffer of suitable size and quality, as required by the BIPRU 12 regime.

4.52 The guidance should explain that, in carrying out its ILAA, a firm must record the evidence that supports its assessment of the adequacy of its liquid assets buffer. While a firm is building up its liquid assets buffer, its assessment of the adequacy of that buffer should include an analysis of its ability to satisfy its liquidity needs with liquidity resources that are not eligible to be included in the liquid assets buffer.

Q11: Do you agree with our proposal to provide additional guidance to mismatch firms on the operation of BIPRU TP 30?

Cost-benefit analysis

Simplified ILAS approach

(a) Designated Money Market Fund (DMMF) – definition

4.53 In our assessment, changing the 'cut-off' time for DMMFs from 15:00 GMT to 12:00 GMT would:

(i) not pose any material or significant costs to existing DMMFs (as none currently exist); and

(ii) not impose any material or significant costs for simplified ILAS BIPRU firms, when compared to the costs assumed in the cost-benefit analysis (CBA) of PS09/16. Small costs to firms associated with bringing the 'cut-off' time for making redemption requests forward by three hours are smaller compared to the benefits of being able to hold in their buffers investment in DMMFs.

(b) Small or medium sized enterprise (SME) deposits and retail deposits

4.54 As a result of requiring SME deposits to be subjected to a stress outflow of 20% instead of 100%, simplified ILAS BIPRU firms will have to hold less liquid assets buffer against SME deposits, which will lower their cost of complying with the new liquidity regime. In particular, they would hold eligible liquid assets of 20% of their SME deposits rather than the100% of their SME deposits, all else being equal.

4.55 Using data from those firms that applied for the simplified modification by consent for our analysis, and, based on these reported levels of SME funding, we estimate industry savings in the long run of approximately £37.7m (assuming 100% of the simplified buffer requirement).

4.56 We expect that a 20% outflow stress will be appropriate to cover the liquidity risk in these deposits. The benefit to the liquidity regime should not be affected by this change.

(c) Simplified buffer calculation

4.57 The proposed amendment intends to correct an error that prevents firms from benefitting when holding liquid assets or their cash inflow at maturity. This amendment will lower firms' costs as firms will get credit for some short-term assets in their buffer. The benefit for the liquidity regime is unchanged as it was intended that firms used these short-term liquid assets to cover liquidity risk in the first place.

Liquidity Reporting

(a) FSA044 liquidity reporting return

4.58 Removing FSA044 as a liquidity reporting return should provide the industry with lower costs associated with systems, preparation and review by management. To gauge this for CBA purposes, we asked the British Bankers Association and the Building Societies Association to provide indicative cost savings from removing FSA044 from a sample of four to five firms.

4.59 These estimates ranged from between £300,000 to £2,000,000 depending on the size of the firm. In terms of management days, assuming on average four management days are needed to prepare and review a FSA044 report, we estimate approximately 6,000 management days per year will be freed, enabling management to focus on the new liquidity forms.

4.60 We expect one-off costs associated with removing FSA044 are outweighed by the ongoing cost of continuing to require this report. We also see no reduced benefit in removing FSA044, as we will be collecting information on liquidity via the new liquidity reports that were introduced as part of the new liquidity regime.

(b) Definition of Defined Liquidity Group (DLG) by default

4.61 We do not expect firms to incur incremental costs with respect to proposed changes to the definition of DLG by default. The changes will potentially reduce the cost for the affected firms associated with the preparation, management review and systems to submit additional consolidation reporting levels.

Systems and controls

4.62 As noted earlier in this chapter, the proposed amendments to BIRPU 12.3 and 12.4 are minor, do not impose any significant new policy requirements and will not change firms' behaviour in the market. We do not expect these amendments will change the cost or benefits as estimated in PS09/16.

Transitional arrangement for mismatch firms

4.63 We consider that no further CBA is required as the proposed guidance clarifies the intention and meaning of the current rules within BIPRU TP 30. The proposed guidance does not materially alter the balance of costs and benefits considered within the CBA undertaken for the purposes of PS09/16.

Compatibility statement

4.64 In Chapter 14 of PS09/16, we set out our view that the finalised liquidity regime, including the simplified ILAS approach, the liquidity reporting regime, systems and controls requirements, as well as the transitional provisions for mismatch firms, are compatible with our statutory objectives and the principles of good regulation.

4.65 The proposed minor amendments in this consultation are driven by feedback from firms, other industry participants as well as internal FSA feedback, and the need to update our Handbook to reflect BCD amendments. The policy intention for all four items has not changed from that set out in PS09/16.

4.66 The proposals we are now consulting on are intended to help us deliver our policy set out in PS09/16 and thereby to meet our statutory objectives of market confidence and consumer protection. We have also considered the principles of good regulation and, in particular, the principle that a burden or restriction should be proportionate to the benefits, the need to use our resources in the most efficient and economic way, as well as the international character of financial services and markets and the desirability of maintaining the competitive position in the UK.

Simplified ILAS approach

4.67 By making the minor amendments to the definition of DMMFs, firms subject to the simplified ILAS approach potentially have another cost-effective option available to them for the purposes of complying with their liquid assets buffer requirements. The amendment, together with the amendments to the simplified buffer calculation, will assist affected firms to more accurately calculate how much liquid buffer assets they need to hold, potentially making them less likely to fail. These potential outcomes

facilitate and support our work to meet our consumer protection objective. By enabling SME deposits to be stressed with a 20% outflow stress rather than 100% we are also taking the principle of proportionality into account.

Liquidity reporting

4.68 The proposed amendments to the liquidity reporting requirements will reduce the regulatory reporting burden for affected firms. Firms will be able to focus their resources on the new suite of liquidity reports, which are intended to facilitate improved monitoring of liquidity risk both by firms and the ourselves. This would assist in supporting our market confidence objective. As discussed in PS09/16, the new prudential liquidity framework takes into account the principles of proportionality as well as efficiency and economy.

Systems and controls

4.69 By implementing the amendments to the BCD Annex V, we ensure that our systems and controls requirements take into account international developments, with due regard to the principles of proportionality and international character. As noted in our CBA analysis of this issue, we do not expect costs to arise from the proposed changes to BIPRU 12.3 and 12.4 to be other than those already considered within the PS09/16 CBA.

Guidance to mismatch firms

4.70 The proposal to provide additional guidance to mismatch firms would clarify further how our new quantitative standards apply to these firms during the transitional period, enabling them to better manage their liquidity risk and hold the appropriate levels of liquid buffer assets. This in turn would improve consumer protection and mean we have due to regard to the principle of proportionality.

Q12: Do you agree that the amendments we propose are compatible with our statutory objectives and principles of good regulation?

Additional Information

4.71 Overview of proposed amendments to liquidity systems and controls requirements at BIPRU 12.3 and 12.4.

Current Handbook text BIPRU Ref	Proposed Handbook text BIPRU ref	Comment	Does this result in a substantive change from current position in the Handbook?
12.3.1G –12.3.3G	12.3.1G –12.3.3G	No text changes proposed.	No
12.3.4R	12.3.4R 12.3.4AG	Proposed amendment implements Annex V paragraph 14 and part of 14(a) – "robust strategies, policies, processes, systems ... to be in place ... and to be tailored to business lines, currencies and entities ..." Directive text restates existing Handbook requirements. Some minor reorganisation of materials into a rule and evidential provision. Some issues previously dealt with by components of current BIPRU 12.3.6E will be dealt with by the proposed BIPRU 12.3.4R and BIPRU 12.3.4AG.	No
12.3.5R	12.3.5R	Proposed amendment implements part of Annex V paragraph 14(a): "strategies policies, processes ... to be proportionate ... to the complexity risk profile ... of the firm". Directive text restates existing requirement using directive text. Directive text says a firm is to "reflect the firm's importance in each EEA state in which it carries out its business" in its strategies, policies, processes, etc. While the directive text is explicit in saying that firms should consider more than just their activities with their Home State, this does not constitute a new or significantly higher standard than that set out in the current BIPRU 12.3 and 12.4 requirements. The current Handbook text requires a firm's systems and arrangements to be appropriate to the size, nature and complexity of its operations and, where appropriate, this should consider its activity in UK and non-UK (including EEA and non EEA) jurisdictions.	No
12.3.6(1)E	N/A	Propose deletion – the 'time horizons' issue will be dealt with by proposed BIPRU 12.3.4R (Annex V paragraph 14a).	No
12.3.6 (2)E	N/A	Propose deletion – the 'risk tolerance' issue will be dealt with by proposed BIPRU 12.3.6R (Annex V paragraph 14a).	No
12.3.6 (3)E	12.3.6E	No text changes proposed.	No
12.3.6 (4)E	N/A	Propose deletion – the 'limits setting' issue will be dealt with by proposed BIPRU 12.3.4 (Annex V paragraph 14).	No

Current Handbook text BIPRU Ref	Proposed Handbook text BIPRU ref	Comment	Does this result in a substantive change from current position in the Handbook?
12.3.6(5)E 12.3.6(6)E 12.3.6(7)E 12.3.7G	12.3.6E – 12.3.7G	No text changes proposed.	No
12.3.8R	12.3.8R	Proposed amendment to insert directive text at part (3) of proposed BIPRU 12.3.9R – to implement part of Annex V paragraph 14(a) (a firm is to ensure "its liquidity risk tolerance is communicated to all relevant business lines"). While the directive text is new, it does not set a new or significantly higher standard compared to the requirements in the current Handbook. Instead, it makes explicit that the action should take place. The action is implicit in the current BIPRU 12.3 requirements – there would be little point in having strategies, policies and processes in place by which to measure, manage and monitor risks if the limit structure and expectations were not communicated to the business.	No
12.3.9G – 12.3.22R	12.3.9G – 12.3.23R	No text changes proposed. Some minor cross-referencing amendment to reflect renumbering of the proposed Handbook text.	No
NA NA	12.3.22AR 12.3.22BR	Proposed amendment at BIPRU 12.3.22AR – to insert directive text to implement Annex V paragraph 16 (distinguish between pledged and unencumbered assets, etc. Also to take account of legal status, location of assets and how to mobilise them.) Proposed amendment at BIPRU 12.3.22BR – to insert directive text to implement Annex V paragraph 17 (to have regard to legal, regulatory and operational limitations, etc.) While the directive text is new, it does not set a new or significantly higher standard compared to the requirements in the current Handbook. Instead, it makes explicit and expands on some aspects of current BIPRU 12.3.22R which, among other things, requires firms to actively manage their collateral. To be able to do this a firm would need to be aware of and/or have regard to a range of legal considerations relevant to its collateral positions.	No
12.3.23R – 12.3.26R	12.3.23R – 12.3.26R	No text changes proposed. Some minor cross-referencing amendments to reflect renumbering of the proposed Handbook text.	No
12.3.27R	12.3.27R	Proposed amendment implements Annex V paragraph 15 (firm to develop methodologies to identify measure, manage and monitor funding position, etc). Directive restates existing Handbook requirements.	No

Current Handbook text BIPRU Ref	Proposed Handbook text BIPRU ref	Comment	Does this result in a substantive change from current position in the Handbook?
12.3.28G – 12.3.32E	12.3.28G – 12.3.32E	No text changes proposed. Some minor cross-referencing amendments to reflect renumbering of the proposed Handbook text.	No
NA	12.4.-2R	Proposed amendment implements Annex V paragraph 18 (firm to consider different liquidity risk mitigation tools, etc). While the directive text is new, it does not set a new or significantly higher standard compared to the requirements in the current Handbook. Instead, it makes explicit and expands on some aspects of current BIPRU 12.3 and 12.4 materials – for example current BIPRU 12.3.5R requires firms to have arrangements in place that are comprehensive and proportionate to the nature scale and complexity of the firm's activities.	No
NA	12.4.-1R	Proposed amendment implements Annex V paragraph 19 (firm to assess alternative stress scenarios including those that consider off balance sheet and contingent liabilities). While the directive text is new, it does not set a new or significantly higher standard compared to the requirements in the current Handbook. Instead, it makes explicit and expands on some aspects of current BIPRU 12.3 and 12.4 materials – for example current BIPRU 12.4.1R requires firms to undertake regular and appropriate stress tests.	No
12.4.1R – 12.4.4G	12.4.1R – 12.4.4G	No text changes proposed. Some minor cross referencing amendments to reflect renumbering of the proposed Handbook text.	No
12.4.5E	12.4.5E – 12.4.5AR	Proposed amendment implements Annex V paragraph 20 (firm to consider the potential impact of certain scenarios over a range of time horizons). Directive text restates current BIPRU 12.4.5E.	No
12.4.6G – 12.4.9R	12.4.6G – 12.4.9R	No text changes proposed. Some minor cross-referencing amendments to reflect renumbering of the proposed Handbook text.	No
12.4.10R	12.4.10R	Proposed amendment implements Annex V paragraph 21 (firm to develop an effective contingency plan). Directive text restates current BIPRU 12.10R. Directive text refers to generic 'contingency plans' – we propose retention of BIPRU 12.4's use of the term 'contingency funding plan'. It is our view that this does not conflict with the directive intent.	No

Current Handbook text BIPRU Ref	Proposed Handbook text BIPRU ref	Comment	Does this result in a substantive change from current position in the Handbook?
12.4.11R	12.4.11R	Proposed amendment implements Annex V paragraph 22 (firm to have contingency plans to address possible liquidity shortfalls, to be regularly tested – to be approved by senior management). Directive text restates current BIPRU 12.10R requirement. The directive text refers to 'senior management'. However, we propose amending this to 'governing body' – as it will be more in keeping with the rest of BIPRU 12.3 and 12.4. It is our view that this does not conflict with the directive intent.	No
12.4.12G – 12.4.15G	12.4.12G – 12.4.15G	No text changes proposed. Some minor cross-referencing amendments to reflect renumbering of the proposed Handbook text.	No

Contact

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5 Disclosure of commitment to the Stewardship Code principles (COBS)

Introduction

5.1 This chapter proposes an amendment to the Conduct of Business sourcebook (COBS) to incorporate Recommendation 20 of the Walker Review on Corporate Governance.[8]

5.2 The Walker Review concluded that there was a need for better engagement between asset managers acting on behalf of their clients, and the boards of the companies they invested in. As such, the review made the following FSA-specific recommendation regarding disclosure of asset managers' commitment to the Stewardship Code:

"*Recommendation 20: The FSA should require institutions that are authorised to manage assets for others to disclose clearly on their websites or in other accessible form the nature of their commitment to the Stewardship Code or their alternative business model.*"

5.3 The Stewardship Code sets out good practice for investor engagement and was adopted by the Financial Reporting Council (FRC) on 2 July 2010.

5.4 Following this recommendation, we are consulting on the introduction of a requirement for UK-authorised firms managing investments on behalf of professional clients to disclose the nature of their commitment to the Stewardship Code, or to explain their alternative business model.

5.5 We propose the inclusion of this new requirement within COBS 2.2. The proposed amendment is outlined in Appendix 5.

5.6 This proposed requirement will be relevant to firms that manage investments on behalf of professional clients[9] and also to professional clients and other investors that use the services of asset managers.

8 A review of corporate governance in UK banks and other financial industry entities: Final Recommendations 26 November 2009, www.hm-treasury.gov.uk/d/walker_review_261109.pdf

9 The term 'professional client' is explained in COBS 3.5 http://fsahandbook.info/FSA/html/handbook/COBS/3/5#D182. The term includes investment firms, collective investment schemes and pension funds amongst other professional clients.

5.7 Readers of this chapter should be aware of the following related consultations that have recently been undertaken:

- FRC – Stewardship Code[10] (closed 16 April 2010); and
- FSA – CP10/3 *Effective Corporate Governance*[11] (closed 28 April 2010).

Proposed amendments

5.8 The purpose of the Walker recommendation was to secure sufficient disclosure to allow prospective clients of asset managers to make informed decisions when awarding management mandates.

5.9 We believe that the recommendation is consistent with our aim to promote efficient, orderly and fair markets and we committed to consult on this recommendation in November 2009.[12] We expanded on this commitment in Chapter 6 of CP10/3.

5.10 The proposed requirement would apply to UK-authorised firms, but would be restricted to firms that are managing investments on behalf of professional clients that are not natural persons.

5.11 We further propose to exclude venture capital firms from the requirement. We believe this exclusion is consistent with the Walker recommendations as the Walker Review acknowledges that, within the private equity model, the distance between owner and manager is much shorter and the link between the two is often an important ingredient in investment performance.

Rationale

5.12 The Walker Review identified a need for more effective engagement between Boards and shareholders. Over time, as investments have become more aggregated with institutional investors, the gap has widened between beneficial owners and the management of companies they have invested in. Walker argues that this gap has made it more difficult for beneficial owners to participate in active stewardship.

5.13 Asset managers could play an effective role in addressing the gap through active engagement, but ultimately it rests on the investor to determine their preferred approach to engagement when awarding management mandates.[13]

5.14 Active engagement is only one approach adopted to maximise investment returns and investors should be free to choose whether or not such an engagement strategy suits their needs. This choice should be a considered one, based on their objectives and the investment strategy, and we believe the requirement we are consulting on will help to facilitate this choice.

10 www.frc.org.uk/press/pub2216.html
11 www.fsa.gov.uk/pages/Library/Policy/CP/2010/10_03.shtml
12 www.fsa.gov.uk/pages/Library/Communication/Statements/2009/re_walker_review.shtml
13 www.hm-treasury.gov.uk/d/fin_assetmanagement_091109.pdf

How the proposed amendment addresses this

5.15 Consideration of the merits of different investment strategies is outside the scope of this paper. Our objective is to establish whether we should require relevant firms to disclose the nature of their commitment to the Stewardship Code, or to explain their alternative business model.

> Q13: Do you agree that we should introduce a new rule in COBS, as outlined in Appendix 5?

5.16 We do not propose to exclude asset managers whose business models place greater emphasis on active trading rather than engagement. In some cases therefore, disclosure may involve no more than a statement that, because of the chosen investment strategy, engagement does not occur and the firm does not consider that its clients expect such engagement.

> Q14: Is there any reason why other categories of firm should be excluded from the scope of this requirement? Please explain your position.

5.17 It is our intention that asset managers with multiple mandates will still provide a disclosure statement. We recognise that asset managers may have numerous mandates, some that are consistent with the principles of the Stewardship Code and others that are not. We propose that in these circumstances, the disclosure statement should explain the normal investment strategy of the firm, noting that this may vary depending on the mandate received or the management approach applied.

> Q15: Do you agree that a general disclosure would suffice in cases where asset managers' clients have different expectations or requirements?

5.18 We do not think it is proportionate to require commitment to the Stewardship Code as part of our authorisation process, as there are legitimate trading strategy reasons why asset managers may choose not to engage with the companies they invest in.

5.19 We do not intend to incorporate this requirement within firms' existing (FSA) periodic reporting or disclosure document obligations, as the FRC will be responsible for the operation and oversight of the Stewardship Code.

5.20 Our preferred position is to require disclosure on a firm's website so that the information is easily accessible for prospective investors.

> Q16: Do you agree that disclosure should be through the firm's website? What other methods of disclosure would be appropriate (e.g. via the prospectus, or periodic reporting) to make the statement accessible?

Cost benefit analysis

5.21 Section 155 of FSMA requires us to publish a cost benefit analysis (CBA) of the implications of the proposed amendments unless we consider that the proposals will give rise to no costs or to an increase in costs of minimal significance.

5.22 Given the nature of the proposed changes, we expect a cost increase of minimal significance. We note that all of the fund managers[14] that participated in the Investment Management Association's 2008 engagement survey had policy statements on engagement – 28 already make these public by putting them on their websites, while the remainder made them available to clients on request.[15]

5.23 The proposal will make asset managers' approaches to the Stewardship Code more transparent, especially where they currently do not have a formal policy, or do not make their policy public. Whether the proposed changes will lead to more effective operation of the investment chain will, however, depend on both the FRC's oversight of the Stewardship Code and whether transparency leads to:

- better engagement between asset managers and the companies they invest in; and
- improved communication between asset managers and their clients.

Q17: Do you agree with our assessment that the increase in costs for firms as a consequence of our proposed requirement will be of minimal significance?

Compatibility statement

5.24 We are satisfied that the proposed amendments described in this chapter are compatible with our regulatory objectives and international commitments, and that we have had appropriate regard to the principles of good regulation.

14 The 32 participants managed UK equities of £561 billion – 68% of all UK equities managed by UK managers.
15 www.investmentuk.org/press/2009/20090520-2-01.pdf

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6 Abolition of contracting-out for defined contribution schemes (COBS)

Introduction

6.1 On 12 March 2010, the Department for Work and Pensions (DWP) confirmed that the option to contract out of the State Second Pension (S2P) with a defined contribution (DC) pension scheme will be abolished from 6 April 2012.

6.2 COBS 13[16] Annex 2 ('How to calculate a projection for an appropriate personal pension') requires that clients who are considering whether they should contract out via a personal or stakeholder pension, must be given a comparison between the pension given up in the S2P and projections of the pension they could buy with 'minimum contributions' from the government.

6.3 The comparison is based on the total contributions for the current and the next two tax years. Consequently these rules require review for the period before appropriate personal pensions cease on 5 April 2012, at which point they will no longer apply.

Proposed amendment

6.4 It may be possible to retain our current wording if firms use zero contributions for the comparisons for tax years after 6 April 2012 and make it clear they have done so. But we believe that using zero contributions for the period after April 2012 will be difficult to explain to a consumer.

6.5 We therefore propose to change our rules to make it clear that contracting-out comparisons should only reflect the period up to abolition. The proposed change in Appendix 6 is intended to apply until contracting-out is abolished, without us needing to amend the rule again next year. At this stage we wish to maintain a consistent approach used by all firms. However, we are willing to consider alternatives to the present method of illustrating the financial merits of remaining in the S2P or contracting out of it.

16 Conduct of Business sourcebook

6.6 Although this is a small and expected change, we are aware that this may be costly for firms with legacy systems, when set against the very low volume of comparisons expected up until abolition. But we understand that some firms have already altered their systems in anticipation of this rule change. Others no longer offer contracting-out via personal and stakeholder pension contracts.

Q18: Do you agree that the rule change proposed is sufficiently clear?

Q19: Can you suggest an alternative method by which the financial merits of staying in the S2P until 5 April 2012 or contracting-out of it can be clearly portrayed?

Cost benefit analysis

6.7 From the data available, it is likely that the number of consumers who wish to contract out in each of the next two tax years will be less than 2,000 (from 20,000 in 2007). The number of comparisons requested will be greater than this, but the demand faced by a provider still offering this option will be relatively low.

6.8 Given the reduced demand for contracting-out before abolition, we anticipate that, as a consequence of the DWP rule change, more firms may withdraw from the market. However, firms that remain will still have to provide a contracting-out comparison to consumers who are considering this option. For firms with systems that cannot be readily updated we believe adequate alternatives could be used at negligible cost to the industry.

6.9 Introducing this amendment provides regulatory certainty to those firms providing these comparisons to 2012.

Q20: Do you agree with our assumption that adequate alternatives are available to firms?

Compatibility statement

6.10 The change to COBS 13 Annex 2 is designed to help us meet our consumer protection and market confidence objectives. We have considered the principles of good regulation and, in particular, the principle that a burden or restriction should be proportionate to the expected benefits, as our analysis indicates that the cost impact of our proposal will be minimal. We do not expect the other proposals in this chapter to have an impact on our statutory objectives. We are, therefore, satisfied that these proposals are compatible with our general duties under Section 2 of the Financial Services and Markets Act 2000 (FSMA).

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7 Proposed changes to the Banking Conduct of Business sourcebook (BCOBS)

Introduction

7.1 In this chapter we propose amending the Banking Conduct of Business sourcebook (BCOBS), to provide guidance in relation to exercising a right of set-off on retail consumer accounts. We are extending the guidance to make reference to set-off in BCOBS 4.1 (The appropriate information rule), and adding further guidance about using set-off in BCOBS 5.1 (Post-sale requirements). We are also consulting on a minor amendment to the BCOBS guidance relating to information about compensation arrangements. This is a minor drafting change, and not a change in policy.

7.2 Our powers to give guidance, and the processes we must follow, are set out in FSMA. The relevant sections are 155 and 157. These proposals will be of relevance to banks, building societies and credit unions. They will also be of relevance to consumer groups.

Background

7.3 In principle, under the common law of banking, a banker has the right of set-off (sometimes called a right to combine accounts). This means that a bank may (but is not obliged to) combine an account in debit against another account in credit and be liable only for the balance.

7.4 The right of set-off falls within our remit on the deposit-taking side, with the consumer credit aspects falling under the remit of the Office of Fair Trading (OFT). The Lending Code, which is a voluntary code of practice for the industry, includes guidance on using set-off and is monitored and enforced by the Lending Standards Board. We believe set-off is covered within our high level principles and rules; however, we think it would be helpful to set out in guidance in BCOBS what we expect from firms regarding their use of set-off.

7.5 We recognised that set-off, affecting accounts within our scope, was potentially a concern during 2009 when we were developing the banking conduct regime. This led to us including a Q&A about set-off rights in the Moneymadeclear guide, *Just the facts about your bank account*.[17]

17 www.moneymadeclear.org.uk/pdfs/your_bank_account.pdf

7.6 We understand that only a minority of customers are affected by set-off. Firms vary in the frequency of their use of set-off – some use set-off relatively often, affecting approximately 1–2% of all their customers, and others use set-off rarely. From discussions with banks and building societies we also understand that set-off is sometimes used in situations where some customers may regard it as a benefit, such as when they have missed a credit card payment in error rather than due to difficulties with meeting payments.

7.7 However, we have some evidence that consumer knowledge of the right of set-off is low. We also have evidence that the use of set-off can be of significant detriment to consumers if it causes them to struggle to meet their priority payments and living costs. Citizens Advice Bureau (CAB) and Money Advice Trust have provided us with a number of recent case studies that demonstrate the negative effects that the use of set-off can have on consumers when it appears to have been used unfairly. In many of the case studies, it seems that the consumer had no knowledge of the right of set-off before it was used on their account. It also seems that in some instances, the bank or building society had not left the consumer with enough money to meet their priority payments and essential living costs. For example, some consumers were unable to pay their mortgage or rent due to their bank or building society as a result of set-off being applied to their accounts.

7.8 Problems presented by use of the right of set-off appear to be on the increase. Citizens Advice has told us that the number of problems with set off dealt with by Citizens Advice Bureaux in England and Wales has increased year on year over the last three years. We also have evidence from some large retail banks that their use of set-off has increased in the last year.

7.9 Taking the above factors into account, we have decided to consult on guidance for firms in relation to their right of set-off, which we think will help to clarify how customers should be treated fairly.

7.10 This chapter includes proposals on adding guidance to BCOBS regarding:

- the information that should be provided to customers before and after set-off is used;
- how set-off payments should be determined; and
- the types of accounts that set-off should not normally be used on.

Proposed amendments

Appropriate information

7.11 We propose adding guidance to BCOBS 4.1 (as BCOBS 4.1.4AG(2)(a)), stating that, to comply with the appropriate information rule, the firm should provide an explanation to its retail customers of the nature and extent of the firm's right of set-off in good time before the consumer is bound by the contract for the retail banking service. This information may be incorporated in the terms and conditions that apply to the contract for the retail banking service.

7.12 Having gathered questionnaire responses from a selection of firms and after discussing the subject with consumer agencies, we think that appropriate information in the context of set-off means that, as a minimum, the information should be set out in the account terms and conditions. This means that information about set-off would be provided along with other details about the rights and obligations of the customer, and also means that customer would have information about set-off that they can refer to should the need arise. We have considered whether we should go further by proposing that information about the right of set-off should be provided in the pre-contract information separately from the terms and conditions. However, we do not believe that doing so would provide additional benefits for most consumers.

7.13 Our reasoning is that requiring disclosure of set-off as part of the sales process seems disproportionate and risks overloading consumers with too much information. In addition, such a proposal would not directly benefit existing account holders, and the impact on new account holders would be limited if set-off was applied a significant amount of time after the account was opened.

Q21: Do you agree with our proposal that information about set-off should be provided in the account terms and conditions?

Q22: Do you see a need for further information, beyond that set out in our proposal, to be provided about set-off when a customer opens an account?

7.14 We also propose adding guidance to BCOBS 4.1 (as BCOBS 4.1.4AG(2)(b)), stating that where a firm knows or reasonably ought to know that the consumer is beginning or continuing to experience difficulties in meeting their payment obligations, the firm should provide general information in relation to the nature of the firm's right of set-off, as well as the generic circumstances in which the firm may rely on that right, within a reasonable period before the firm seeks to exercise its right of set-off. This information may be communicated in a standard form of words and may be incorporated in another communication sent by the firm to the consumer.

7.15 This does not mean the customer should be given specific notice that set-off will be used on their account. Instead, customers should be given general information about the right of set-off.

Q23: Do you agree with our proposal for firms informing customers of the right of set-off when they are beginning or continuing to experience difficulty in meeting their payment obligations?

7.16 Finally, we propose inserting guidance to BCOBS 4.1 (as BCOBS 4.1.4AG(2)(c)), stating that where a firm has exercised a right of set-off, it should provide prompt notification of this to the consumer. This notification should clearly identify the date that the firm exercised its right of set-off and the amount debited from the consumer's account in reliance on that right.

Q24: Do you agree with our proposal that customers should be promptly notified about the use of set-off on their account?

Post-sale requirements

7.17 We propose adding to the guidance in BCOBS 5.1 (Post-sale requirements), explaining banks' responsibilities under Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly) and BCOBS 5.1.1R. As far as is practical, firms should review the information that is available and accessible to them, relating to the consumer's account, on an individual basis, and estimate the amount of any 'subsistence balance'.

7.18 We have defined subsistence balance as any sum of money payable by a firm to a consumer or standing to the credit of the consumer in an account with the firm where that sum is needed by the consumer to meet essential living expenses or priority debts (whether owed to the firm or a third party).

Essential living costs – these include costs such as housekeeping, transport, and health and social care payments. They will be difficult to determine in the case of some customers, so we think it will be sufficient for firms to make reasonable estimates about the amount required for a customer's subsistence balance.

Priority debts – where non-payment can result in consumers being imprisoned, losing their home or losing their essential goods and services. These include mortgage/rent payments, utility bills and council tax.

Q25: Do you agree with our proposals for exercising the right of set-off fairly?

Q26: Do you have any suggestions of other ways of exercising the right of set-off fairly?

7.19 We also propose adding to the guidance in BCOBS 5.1, stating that firms should not set off as far as practicable:

- any debt due solely from a consumer, or any debit balance on an account held in the sole name of a consumer, against (or with) any sum of money payable by the firm to that consumer and another person jointly or any credit balance on an account held in the joint names of that consumer and another person;
- any debt due from, or a debit balance on an account held by, a consumer in a personal capacity against (or with) any sum of money payable by the firm to the consumer or standing to the credit of the consumer in an account held with the firm, where the firm knows or reasonably ought to know that:
  - (i) a third party is beneficially entitled to that money or that the consumer is a fiduciary in respect of that money; or
  - (ii) the consumer has received that money from a government department or local authority for a specific purpose or is under a legal obligation to a third party to retain and deal with that money in a particular way.

Q27: Do you agree with our proposal that firms should not use set-off in the types of scenarios listed above?

7.20 We propose exempting credit unions from the proposals relating to the post-sale period. There is a customised statutory regime for credit unions in the Industrial and Provident Societies Act 1965 and Credit Unions Act 1979 – s.22 of the 1965 Act states:

"A registered society shall have a lien on the shares of any member for any debt due to the society by that member, and may set off any sum credited to the member on those shares in or towards the payment of that debt."

On the basis that the exercise of set-off for credit unions is provided for in specific legislation, we do not consider it to be appropriate to subject credit unions to our post-sale proposals. However, we propose that the guidance on providing appropriate information about set-off should apply, in the interests of transparency and enabling credit union customers to make decisions on an informed basis.

Q28: Do you agree with our proposal to apply the guidance in the information requirements to credit unions, but exempt them from our post-sale guidance on set-off?

7.21 As we are consulting on guidance intended to illuminate existing rules rather than making new rules, we do not propose a transitional period.

Q29: Do you agree that our proposed guidance should take effect immediately?

Information about compensation arrangements

7.22 We are also using this opportunity to consult on a minor amendment to the text in BCOBS referring to information about compensation arrangements. BCOBS 4.1.4G sets out the type of information that should be provided or made available to a banking customer in order meet the requirements of the appropriate information rule (4.1.1R). With the commencement of COMP 16 on 1 January 2010, we altered the reference in BCOBS 4.1.4G(8), to read 'information about compensation arrangements in accordance with COMP 16'. COMP 16 sets out the information about compensation that relevant firms must disclose, how frequently that information should be disclosed and the methods of communication that should be used.

7.23 In order to clarify our expectations, and to reduce cross-references in the Handbook, we propose to amend 4.1.4G(8) to instead read "the terms of any compensation scheme if the firm cannot meet its obligations in respect of the retail banking service". This does not represent a change in policy or interpretation, and there are therefore no additional costs or benefits associated with this clarification.

Q30: Do you have any comments on our proposed amendment to BCOBS 4.1.4G(8)?

Cost-benefit analysis

7.24 Banks, building societies and credit unions will be affected by our proposals relating to set-off. We estimate up to 387 banks and building societies, which are FSA/ EEA authorised firms, and 494 credit unions may be affected.[18]

7.25 To assess the impact on firms, we sent a questionnaire to a sample of banks and building societies, asking them to estimate the potential costs arising from our proposals. We received eight responses: six banks and two building societies.

7.26 Respondents represent approximately 55% of the personal current account market. Respondents varied in the frequency of their use of set-off; some made relatively high numbers of set-off transactions (1–2% of all their customers were affected), and others used set-off rarely.

Direct costs to the FSA

7.27 The proposals will result in minimal incremental costs to the FSA. Supervisors will take account of the new guidance within their existing supervisory approach.

Appropriate information

Adding guidance in BCOBS regarding the information that should be provided to customers before and after set-off is used

Compliance cost

7.28 In summary, most respondents thought that significant incremental costs or benefits were unlikely to result from our proposals to add guidance to BCOBS regarding the information that should be provided to customers before and after set-off is used (paragraphs 7.11 – 7.16).

7.29 Most respondents stated that they already include information about set-off in account terms and conditions. One respondent indicated that it does not include information about set-off in the account terms and conditions. For this firm and any other firms who are currently not including information about set-off in the account terms and conditions, potential costs of this proposal would be the one-off costs of legal review and documentation re-print. One respondent indicated that one-off reprinting costs could be around £30,000 per firm but noted that these costs would be minimal if sufficient time were given to run down stocks.

7.30 Most respondents stated that they either do notify customers of the right of set-off before it is used on their account (where the customer has missed credit repayments), or they are planning to introduce this practice shortly. One respondent (with fewer than ten set-off transactions per year) commented that they only use set-off at the end of a banking relationship with a customer. We are following up on this to obtain more information. We think overall that the costs of this proposal will be minimal.

18 This figure is calculated from the number of firms with the regulated permission for 'deposit taking', taken from the FSA's register as of 31 March 2010.

7.31 All respondents stated that they do provide customers with prompt notification of set-off, and include the figure in customer statements, so again we believe the costs of this proposal will be minimal.

Benefits

7.32 Our proposed guidance on providing appropriate information about set-off in account terms and conditions increases transparency about set-off for all consumers opening accounts, as consumers will be provided with relevant information to which they can refer at a later date. This may help to empower some consumers and result in some people managing their accounts on a more informed basis.

7.33 Firms providing information to customers about set-off when they get into payment difficulties could encourage some customers to contact their bank or building society and then work to agree a way forward.

7.34 Some customers might be clearer about their financial position and so should be in a better position to organise their finances as a result of firms providing prompt notification of the use of set-off.

7.35 However, based on our research on consumer behaviour in financial markets,[19] we acknowledge that significant incremental benefits may not result from our proposals. The benefits will depend on the number of consumers that are likely to act on the information provided before and after set-off is used; this number may not be high.

Post-sale requirements

Adding guidance in BCOBS regarding how set-off payments should be determined

Compliance cost

7.36 In summary, most respondents thought that significant incremental costs were unlikely to result from our proposals of adding guidance in BCOBS regarding the post sale requirements (paragraphs 7.17 – 7.18). However, some firms will be affected by the proposals and thus we expect that some firms will incur costs in the amount of £3million to £4 million per year.

7.37 The majority of respondents say they already consider customers on an individual basis, leaving them with enough money to meet their priority debts and essential living costs. So for these firms, we think the costs of this proposal will be minimal.

7.38 However, the questionnaire also suggests that some firms may need to adjust their practices in the light of the proposed guidance, in order to proactively consider customers on an individual basis.

7.39 It was indicated that a basic assessment to identify whether a customer is in payment difficulties, and estimate the amount needed to meet priority debts and essential living costs, would take around 10–12 minutes per customer. Most of this additional work will be done by administrator-level employees whose hourly rate has been estimated

19 www.fsa.gov.uk/pubs/consumer-research/crpr69.pdf

at £10 (i.e. average £16,000 p.a.) including a standard overhead of 30% in accordance with the Standard Cost Model (SCM).[20] Therefore, we estimate the incremental cost to firms to be £1.50–2.00 per customer. Given the data obtained from firms' responses to the questionnaire, we think approximately two million set-off transactions would be affected. So, as a result of this proposal, the overall costs to these firms will be in the region of £3–4 million per year. However, these estimates represent an upper bound for compliance costs as firms are expected to introduce cost efficient ways to deal with the issue.

Benefits

7.40 The benefit of firms leaving customers with enough money to meet their priority payments and essential living costs will be that some customers may avoid getting into more serious difficulties, due to being unable to pay their rent/mortgage and other key expenses. It should also result in a smaller likelihood that customers and any dependents will be left without enough money to live on and resort to some type of short-term emergency finance. Finally, it should also limit the possible intangible negative effects of set-off transactions (for example, the disruptive effect of having to unexpectedly renegotiate other payments).

7.41 The tangible benefits are potential savings for consumers from avoiding costs associated with having to resort to some type of short-term emergency finance and/or being unable to pay their rent/mortgage and other key expenses. From the questionnaire, it was estimated that a typical set-off is between £100 and £200 per transaction. From an informal survey of short-term lenders currently active in the market, we estimate the average interest rate charged on short-term loans is around 300–400% per year. Thus, the cost of short-term lending to cover a typical set-off transaction of £100–200 will be between £25 and £60 per month. In addition, there are potentially other costs that a customer would incur due to being unable to pay their rent/mortgage and other key expenses. For example, mortgage arrears charges vary between £30 and £50 with an average arrears charge of £40 per month.[21] Therefore, we estimate that a typical benefit of firms leaving customers with enough money to meet their priority payments and essential living costs will vary between £65 and £100.

7.42 If the number of set-off transactions per year that fail to meet the required standards of fairness is 30,000–60,000 or more (which represents between 1.5% and 3% of approximately 2 million set-off transactions that would be affected), this would exceed the expected compliance costs resulting from these proposals (£3–4 million, see paragraph 7.39). Based on our supervisory experience, number of set-off transactions that are not currently in line with the requirements of BCOBS and the Principles for Businesses is likely to be at least equal to this figure.

20 Real Assurance 2006 study on administrative burdens.

21 See FSA CP10/2 "Mortgage Market Review: Arrears and Approved Persons"

Adding guidance to BCOBS regarding types of accounts on which set off should not be used

Compliance cost

7.43 The majority of respondents do not use set-off on any of the types of accounts we have identified above (paragraph 7.19). For these respondents, the costs of this proposal will be minimal. Some respondents do use set-off on joint accounts where the debt is held solely in one person's name, and we expect these firms to incur costs.

7.44 Respondents that do use set-off on joint accounts indicated that the incremental staff costs of complying with our proposed guidance would be around £1.3 million per year. In addition, the respondents stated that they would incur one-off costs of complying with our proposed guidance in the region of £15 million without giving further details, making it difficult to assess its reliability.

Benefits

7.45 Responses to the questionnaire suggest that there will be around 400,000 joint account affected by this. We think our proposals are in line with our requirement to treat banking customers fairly, which includes joint account holders. When set-off is used on joint accounts where the debt is held solely in one person's name, we believe it may have the effect of making an account holder the guarantor of the other account holder's debts, but without the information that a guarantor should usually be given. We believe that when set-off is used in such a scenario, it may come as a surprise to the account holder who has not accrued the debt. Not using set-off in these circumstances should enable consumers to have more confidence in their personal banking and more certainty over their financial affairs. Most questionnaire respondents either agreed with us about the benefits or simply stated that they did not use set off in these circumstances.

7.46 Regarding the other types of accounts that we have identified, we think that some consumers may benefit from not having money taken in a set-off transaction that has been earmarked for essential payments such as health or social care payments, as inability to pay for these essential services could have serious consequences.

Compatibility statement

7.47 We consider that our proposals are compatible with our general duties under Section 2 of FSMA. Our proposals are designed to meet our statutory objective of consumer protection, in line with the benefits identified above. Some consumers should benefit more widely due to increased knowledge of the right of set-off. Our more detailed guidance will help ensure that firms deal fairly with consumers who are in payment difficulties, or who are beginning to experience difficulties with meeting their payments.

7.48 In developing our proposals, we have considered the principles of good regulation and are satisfied that our proposals are the most appropriate for the purposes of meeting our objectives for the reasons stated in the CP. In particular, we believe that costs we impose on the industry are proportionate to the benefits that are expected to result from these proposals. We do not expect the proposals in this CP to have any material adverse effects on competition.

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8 Client Money and Assets – limiting the use of Title Transfer Collateral Arrangements, and adding guidance to the Money Due and Payable to the Firm provisions (CASS)

Introduction

8.1 This chapter proposes changes to the Client Assets Sourcebook (CASS) Chapter 6 'Custody rules', and Chapter 7 'Client money rules' in relation to the Title Transfer Collateral Arrangements (TTCA) rules and associated guidance, and guidance associated with the 'Money due and payable to the firm' rules.

8.2 The changes proposed will apply to all firms to which CASS 6 and 7 apply, and will affect those firms using TTCA to reduce the client money they segregate for their retail clients.

8.3 We propose to make these amendments under sections 138 (General rule-making power), 139 (Miscellaneous ancillary matters), 156 (General supplementary powers) and 157 (Guidance) of the Financial Services and Markets Act 2000 (FSMA). The texts of the proposed amendments are set out in Appendix 8 to this Consultation Paper.

Proposed amendments

Title Transfer Collateral Arrangements (TTCA)

8.4 We propose limiting the application of TTCA in CASS 6 and 7 so that they can only be used in relation to non-retail clients. The policy objective behind the introduction of these amendments is to strengthen protection for retail clients who place money and assets with investment businesses, as well as to ensure a consistent application of our client money and asset rules.

8.5 TTCA are arrangements by which a client agrees that monies or assets placed with a firm are to be treated as collateral in respect of the client's existing or future obligations, and that full ownership of such monies or assets is to be unconditionally transferred to the firm. This means that, in the event of the firm's failure, the client would risk ranking as an unsecured general creditor in relation to his or her monies and assets – the title or ownership to which would have been transferred to the firm using the TTCA. This contrasts with the position of a client whose money and/or assets are protected under CASS. Such a client would, in the case of failure of the

firm, have proprietary claim for the return of money and assets that had not been appropriated to satisfy the client's obligations to the firm.

8.6 In focused supervision visits undertaken in 2009, we discovered that some spread betting providers and firms offering Contracts for Difference (CFD) were using the TTCA and associated CASS provisions to remove retail clients' money from client money protection.

8.7 We consider the use of TTCA provisions to remove retail clients' money from client money protection a potential risk, especially to our consumer protection and, to some extent, our market confidence objectives.

8.8 While it is reasonable to presume that professional clients and eligible counterparties will normally be capable of appreciating and calculating counterparty risk, this would not be a reasonable presumption to make in the case of retail clients. Allowing firms the option of excluding retail clients' money and assets from the protection of the CASS regime effectively assumes retail clients should be able to assess the relevant risks. However, retail clients are less able to appreciate the resulting credit risk. For this reason we think that retail clients should be covered by the full scope of the protections afforded by CASS. This avoids the client bearing the credit risk of the firm's default.

8.9 Spread betting and CFD providers offering services to retail clients are predominantly investment businesses and are subject to lower capital requirements on the premise that client assets are protected appropriately. To ensure an orderly wind-down of an investment business in the event of its failure, asset segregation and protection as required by CASS needs to be in place. This helps to ensure clients receive their assets or monies back in a timely manner and without material loss.

8.10 It also appears that some firms, who have used the TTCA to remove their retail clients from the protection of the CASS regime, are in practice using these monies to finance their own business activities. Such firms are in effect using the TTCA to take additional risks, the costs of which are, at least in part, borne by their retail clients who may not be aware of or well placed to evaluate these risks.

8.11 The ability for firms to take advantage of TTCA is derived from the Markets in Financial Instruments Directive (MiFID), in particular Recital 27. Where a client makes an absolute transfer of its funds or assets to the firm for the purpose of securing its obligations, the Recital provides that those funds and assets should not be regarded as belonging to the client (and therefore not be subject to the client money and asset protections in the directive). We have always taken the view that this is not an approach that is likely to be appropriate in the case of retail clients. When the TTCA rules were introduced, we stated in the implementing Policy Statement:

"*… [W]e take this opportunity to reiterate our earlier comments that we would be concerned if firms tried to use the flexibility in the [MiFID] Recitals to avoid providing client money protection to retail clients. This would appear inconsistent with a firm's obligation to act honestly, fairly and professionally…*"[22]

22 PS07/2 "Policy Statement 07/2; Implementing the Markets in Financial Instruments Directive (MiFID) – Feedback on CP06/14, CP06/19 and CP06/20." (January 2007) page 26

8.12 The Recital envisages arrangements similar to the pre-MiFID CASS regime, which permitted intermediate clients and market counterparties to be opted out of client money protection (the 'professional client opt-out'). Before MiFID, private clients' money and assets could not be excluded from the segregation requirements. However, when introducing the TTCA requirements, we did not limit their application to non-retail clients as there was a concern that the re-categorisation of customers from the pre-MiFID to the post-MiFID categories might result in some instances where intermediate customers were categorised as retail clients and so would receive a different degree of protection to the pre-MiFID regime. However, we have always taken the view that TTCA is not an approach that is likely to be appropriate in the case of retail clients. As it appears that some firms have used the TTCA to remove their retail clients from the protection of the CASS regime, we now consider that our initial concern should no longer outweigh the risk that retail clients will not obtain the protection they need. We now propose that all retail clients' money and assets should be fully protected in accordance with CASS and that the ability of clients to agree to TTCA and the associated risks should be restricted to professional clients and eligible counterparties.

8.13 If intermediate customers were categorised as retail clients post-MiFID, firms will now have to either consider whether such clients can be properly re-categorised as elective professional clients in accordance with the applicable requirements in the Conduct of Business Sourcebook (COBS) and be able to use the TTCA or, alternatively, continue treating them as retail clients and segregate their money and assets accordingly.

8.14 If firms choose to re-categorise retail clients as elective professional clients, we remind them of the need to have regard to each particular client's circumstances and the requirements in relation to client categorisation, as set out in COBS. We will be vigilant to any inappropriate re-categorisation and we intend to conduct a post-implementation review during 2011 to ensure, among other things, that there is no abuse of the TTCA provisions and, in particular, that any re-categorisation of clients is in accordance with the rules.

8.15 We are not aware of any types of firm to which the CASS rules apply, other than spread betting and CFD providers, which use TTCA to remove retail clients' monies from client money protection. On this basis, a comprehensive prohibition on using TTCA for retail clients should only impact the spread betting and CFD sector. If the consultation reveals other instances where TTCA is regularly used to reduce retail client money protection, then we will take that into account in reaching final decisions.

8.16 The TTCA provision appears both within the custody (CASS 6) and client money (CASS 7) rules. Although our observations relate only to the use made of the TTCA by spread betting and CFD providers to remove retail clients from client money protection, we propose to apply our policy proposals to both the client money and custody rules to ensure consistent protection of both retail clients' money and assets.

8.17 Given the background set out above, we propose to introduce rules to limit the application of TTCA so they are only applicable to non-retail clients. This will apply comprehensively to all firms to which CASS 6 and/or 7 are applicable. We propose

to make these proposed amendments effective with a short transitional period, during which we would expect firms to take all practicable steps to provide the protections of segregation for retail clients, with that being an absolute requirement at the end of the transitional period.

Q31: Do you agree with our proposals to achieve proper protection of retail clients' money by limiting the application of TTCA to non-retail clients?

Q32: Are you aware of any other businesses that make use of TTCA for retail clients that have not been considered above?

Q33: Would these proposals have any unintended consequences not identified above?

Money due and payable to the firm

8.18 Some spread betting and CFD providers are using the 'money due and payable to the firm' provisions within CASS inappropriately to reduce the amount of money they segregate as client money for margin transactions. They have been doing this by segregating the total due to a client and inappropriately deducting amounts that have been categorised as due and payable to the firm – for example, initial margin – in a method not consistent with the segregation requirements in CASS 7 Annex 1G ('The standard method of internal client money reconciliation').

8.19 For margined transactions, in accordance with the standard method of internal client money reconciliation, firms are required to segregate daily what they would be liable to pay to a client for the margined transactions if each of the open positions was liquidated at the closing or settlement price.

8.20 Should a firm opt to apply a different method from the standard method of internal client money reconciliation, the firm is required by CASS 7.6.7R and CASS 7.6.8R to have records that show and explain that the method the firm is applying "affords an equivalent degree of protection to the firm's clients to that afforded by the standard method of internal client money reconciliation". These rules also require the firm's auditors to provide written confirmation to the FSA on the effectiveness of the systems and controls ahead of using a different method.

8.21 We propose inserting new guidance that will be associated with the existing 'Money due and payable to the firm' rules within CASS 7, reminding firms of their obligation to segregate client money in accordance with the standard method of internal client money reconciliation, or a different method that meets the requirements of CASS 7.6.7R and CASS 7.6.8R.

Q34: Do you agree with our proposals to introduce new guidance into the 'Money due and payable to the firm' within CASS 7?

8.22 As noted above, we intend to conduct a post-implementation review following the introduction of the rules and guidance on TTCA and the money due and payable provisions. We will remain vigilant of firms trying to avoid the rules regarding segregation of client money and assets.

Cost benefit analysis

8.23 When proposing new rules, we are obliged (under section 155 of FSMA) to publish a cost benefit analysis (CBA), unless we consider that the proposals will give rise to no costs or to an increase in costs of minimal significance.

8.24 To quantify the benefits and costs associated with the proposal of limiting the application of TTCA in CASS 6 and 7 so that they can only be used in relation to non-retail clients, we conducted a survey of all the firms we are currently aware of that provide spread betting and CFD services to retail clients[23] and hold client money (19 firms). The survey respondents were asked to provide the client money balances, costs and description of the impact if they were required to segregate all retail client monies held by them as at 31 March 2010. We received a total of 17 completed survey responses. We consider that these responses cover almost all of the spread betting and CFD providers in the UK who hold retail clients' money.

8.25 There will be negligible impact on the CBA from our proposal to insert new guidance associated with the 'Money due and payable to the firm' rules within CASS 7, as the proposed guidance reminds firms of their existing obligations.

Benefits

8.26 As set out above, our proposed amendments mainly address the FSA's consumer protection objective, and to ensure a consistent application of our client money and asset rules.

8.27 The survey identified over £1bn[24] of retail client money held with firms providing spread betting and CFD services to retail clients. The main benefit of the above policy proposals is to safeguard the currently unsegregated balance of this money to ensure retail clients do not bear the relevant credit risk, as well as to ensure the continued safeguarding of the segregated balance. Those clients who meet the requirements for elective professional clients and are willing to bear some of these credit risks (in exchange for some benefits) can still elect to be re-categorised as elective professional clients and continue to use the services provided by these firms.

8.28 The survey showed that of the total retail client money held, approximately £92m of retail client money is unsegregated (across 6 survey respondents), with the remainder segregated. As stated above, we consider that these results cover almost all of the spread betting and CFD providers to retail clients holding client money and so can be viewed as representative of the industry as a whole.

23 The survey population does not include firms that do not provide services to retail clients, or do not hold their clients' money.

24 The retail client money balances exclude any unsegregated balances held for clients that firms have informed us will be re-classified as elective professional clients in accordance with COBS.

8.29 Under our proposals, these unsegregated balances would be required to be segregated and protected by the CASS regime, so that retail clients do not bear the credit risk of the firm's default, in accordance with the FSA's consumer protection and market confidence objectives.

8.30 Furthermore, our proposals also provide future protection to currently segregated client money. The survey identified over £918m of client money segregated for retail clients. It is our understanding that if we do not implement the proposed amendments, some firms who do not currently apply the TTCA to their retail clients may start doing so.[25] This is because they may wish to compete with firms who have excluded their retail clients out of CASS on similar terms. Absent the current proposals, this might lead to a significant decrease in this balance of segregated retail client money, and a proportional increase in the unsegregated retail client money.

Costs

8.31 According to the survey responses, the policy proposals would not result in direct changes for more than half spread betting and CFD providers to retail clients[26] currently segregating all their retail client money. These firms consequently indicated that there were no associated costs because of the proposed changes.

8.32 Furthermore, the survey identified that two firms had already undertaken a review of their client money arrangements and segregated previously unsegregated client money for retail clients prior to the survey request. It is also understood that they intend to re-categorise a limited number of their existing retail clients with unsegregated funds as elective professional clients. These firms therefore submitted negligible costs associated with the policy proposals, limited to the cost of re-categorising a small number of their clients.

8.33 The survey identified that less than half of spread betting and CFD providers to retail clients do not currently segregate all retail client money.[27] Therefore, implementation of our proposed amendments would cause them to incur both one-off and ongoing costs.

8.34 From the survey responses, we understand that the one-off costs required to implement the proposals per firm are on average £0.13m,[28] equivalent to a total one-off industry cost of about £1m.[29] These one-off costs are largely associated with

25 This is based on survey responses and discussions with some spread betting and CFD providers who currently segregate all retail client money.

26 This is based on the survey identifying 9 respondents (from a total of 17) who do not make use of the TTCA provisions on retail clients, and segregate all retail client money, and thus the proposed amendments will not impact them. The 9 do not include the 2 firms identified in paragraph 8.32.

27 This is based on 6 respondents (out of 17 respondents in total) who are not segregating all of the client money they hold on behalf of their retail clients.

28 We understand that for some firms, the total unsegregated amounts represent the funds used to hedge against their clients' positions, and therefore for them to continue to hedge against their clients' positions they will need to raise an equivalent amount for the unsegregated retail client balances. Where applicable, the one-off costs set out in this section represent an approximation of the costs of raising the additional working capital required and the changes to the systems and client agreements. The ongoing cost largely represents an approximation of the servicing of the refinancing (e.g. loan interest payments) of an equivalent amount to the unsegregated retail client balances.

29 The total one-off industry cost is based on the average cost of £0.13m per firm multiplied by the 6 respondents who are not segregating all of the retail client money they hold and the 2 firms who have not responded to the survey.

the costs of arranging refinancing in order to segregate the retail client money that is currently not segregated (approximately £92m), together with a small proportion of costs for system upgrades and client agreement re-papering.

8.35 In addition we understand that firms will on average incur ongoing costs of £0.72m each year, equivalent to a total ongoing industry cost of about £5.8m.[30] These costs represent the ongoing business financing costs in terms of increased cost of capital as retail client money can no longer be used by firms. Part of this cost is, in effect, a cost transfer from clients to firms because, as a direct result of our proposed amendments, clients are no longer exposed to credit risk.

8.36 As the survey results show, our proposed amendments to limit the use of TTCA will lead to higher costs of financing for firms that do not currently segregate retail client money. However we note that firms that currently segregate all retail client money demonstrate that it is possible to have a business model to segregate all retail client money.

8.37 In addition, we understand from the survey that there will be some indirect costs of these proposed amendments. This is because they may affect the pricing offered to consumers and potentially the viability of the relevant firms' current retail product offerings. These proposals may also impact the viability of some firms if their business models remain unchanged, and may lead to some spread betting and CFD providers either ceasing to undertake business with retail clients or to completely cease providing spread betting and CFD services. We have no evidence to suggest that the proposed amendments will affect the choice available to professional clients in the provision of CFD and spread betting services.

8.38 The ceasing of business models based on unsegregated retail clients' monies is the main benefit of the proposed policies because they are likely to be harmful to consumers and financial markets, as explained above. As set out above, less than half of the spread betting and CFD providers to retail clients will sustain material costs and require changes to their systems, and potentially changes to their business models, implying that the majority of firms currently operate working business models on the premise of segregation of all retail client money.

Q35: Are you aware of any other costs that we have not considered above?

Compatibility statement

8.39 Our statutory objectives are set out in section 2(2) of FSMA. Our proposed amendments relate mainly to our consumer protection and, to some extent, to the FSA's market confidence statutory objectives. Given our understanding of the way the market is operating, we consider that the costs associated with the proposed amendments to be proportionate to the expected benefits.

8.40 There are likely to be some effects on competition as a result of the proposed measures. All spread betting and CFD providers will compete on the basis of segregating all retail client money they hold, while still have the option of treating

30 The total on-going cost is based on the average of £0.72m per firm multiplied by the 6 respondents who are not segregating all retail client money they hold and the 2 firms who have not responded to the survey.

non-retail clients (including elective professional clients) differently. The proposals may lead to some exits as some firms who do not currently segregate retail clients' money may be unable to change their business models successfully. However, as explained above, the ceasing of business models based on unsegregated retail clients' monies is likely to be beneficial to consumers and financial markets.

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

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9 Proposed amendments to the Retail Mediation Activities Return (RMAR) Sections D and E (SUP)

Background

9.1 This chapter proposes amendments to Chapter 16 of the Supervision Manual (SUP), which relates to the reporting requirements in SUP 16.12 (Integrated Regulatory Reporting) for firms that are required to submit the Retail Mediation Activities Return (RMAR). The proposed amendments affect the provisions in SUP 16 Annex 18AR (RMAR) and SUP 16 Annex 18BG (Notes for Completion of the RMAR). We will also change the relevant references to these forms in SUP 16.12.11R to SUP 16.12.27R.

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

9.3 Under the proposals in CP08/20,[31] which were subsequently confirmed in PS09/19,[32] the capital resources computation and connected requirements for Personal Investment Firms (PIFs) will change with effect from 31 December 2011. Some changes to the professional indemnity insurance (PII) requirements have come into effect from 31 December 2009.

9.4 As a result of these changes, we must make a number of consequential amendments to sections D1 and E of the RMAR, and replace section D2 of the RMAR with a new form so that these forms match these new prudential rules. We must also update the related guidance and change the relevant references to these forms in SUP 16.12.11 to SUP 16.12.27R so that we direct firms to them as appropriate.

Proposed amendments

9.5 RMAR section D (RMA-D) relates to capital resources and connected requirements. In RMA-D1 we intend to update the relevant references from 'Mortgage' firms to 'Home Finance' firms to reflect the FSA's current regulatory scope. In future, RMA-D1 will only relate to intermediaries that are subject to chapter 4 of MIPRU.[33] This will include home finance and non-investment insurance intermediaries as well

31 CP08/20: Review of the Prudential Rules for Personal Investment Firms – November 2008.

32 PS09/19: Review of the prudential rules for Personal Investment Firms (PIFs) – Feedback to CP08/20 and CP09/20 (Chapter 11) – November 2009.

33 MIPRU is the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries.

as PIFs that are subject to MIPRU Chapter 4, as they have permission to undertake such business. We have therefore removed the references to the IPRU (INV)[34] requirements in RMA-D1.

9.6 We propose to delete RMA-D2 and replace this with a new form, RMA-D6, as the changes we wish to make are substantial. RMA-D6 will reflect the new capital resources calculations for PIFs subject to chapter 13 of IPRU (INV).

9.7 These changes mean that in future a PIF that does not undertake any home finance or non-investment insurance mediation business will only need to complete RMA-D6.

9.8 RMAR section E (RMA-E) relates to PII. In this section we propose to change the relevant references from 'Mortgage' firms to 'Home Finance' firms; 'capital' to 'capital resources'; and to delete the references to 'readily realisable own funds', which will no longer be required.

9.9 We also intend to update the relevant sections of the 'Notes for Completion of the RMAR', which provide guidance on how firms should complete RMA-D1, the new forms RMA-D6 and RMA-E, and clarify what we expect from firms under the new rules. We also propose to change the references to RMA-D1 and RMA-D2 in SUP 16.12 so that these reflect the use of the updated forms correctly.

9.10 The consequential reporting amendments arising from the PII requirements that came into effect from 31 December 2009 have been largely dealt with in CP09/20,[35] wherein we amended the PII guidance in the RMAR 'Notes for Completion' to reflect the changes to terminology and rule references proposed in CP08/20. In this consultation we propose additional modifications to give further clarity.

9.11 Subject to consultation and FSA Board approval we propose to implement these changes on 31 December 2011 at the same time as the underlying rule changes in IPRU (INV) come into effect. Firms would therefore need to use the modified forms in respect of any reporting period ending on or after that date.

9.12 No transitional reporting arrangements are necessary. Although there are transitional arrangements for the capital resources and connected requirements confirmed in PS09/19, the proposed reporting structures for both the transitional and new capital resources regimes are the same.

Cost benefit analysis

9.13 Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments.

9.14 In view of the nature of the proposed changes we expect that costs to firms will be of minimal significance. This is based on the expectation that data provision costs will not change significantly as the vast majority of firms will not need to modify their IT arrangements in order to submit data.

34 IPRU (INV) is the Interim Prudential sourcebook for Investment Businesses.

35 CP 09/20: Chapter 11, Quarterly consultation (No. 21) (July 2009).

9.15 We also expect that firms will already have the necessary data available in order to demonstrate that they are in compliance with the new requirements of chapter 13 of IPRU (INV). We therefore do not expect any additional data retrieval costs to arise from compliance with our proposals. Moreover these proposals do not impact either on the number of firms we expect to report RMA-D1, RMA-6 and RMA-E or the frequency of the required reporting.

9.16 The costs to the FSA arising from the proposed changes to RMA-D1 and RMA-E, the substitution of RMA-D2 with RMA-D6, and the associated changes to our Business Intelligence systems are not expected to be significant.

9.17 The proposed changes arise as a consequence of the rule changes outlined in PS09/19. The primary benefit of these proposals is that they will ensure that our reporting infrastructure is aligned to the underlying rules in chapter 13 of IPRU (INV) and that firms will therefore be able to report relevant data. As such the proposed changes will support the realisation of the benefits outlined in CP08/20, i.e. a reduction in the administrative burden to the FSCS, reduced costs to the FSA, and reduced compliance costs to PIFs. We expect that not making the proposed changes to section D and E of the RMAR would prevent these benefits from being realised as firms would not be able to report the appropriate data.

Compatibility statement

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

9.19 By ensuring that our rules and guidance on reporting are aligned to our underlying capital resources and PII rules we expect that PIFs will be able to report relevant data effectively. We believe that our proposals will enhance our ability to identify issues that may undermine market confidence or lead to consumer detriment. We are therefore satisfied that these proposals are compatible with our general duties under Section 2 of FSMA.

9.20 As we expect the costs of the proposed changes to be of minimal significance, we believe that the burden of our proposals is proportionate to the expected benefits. We do not consider that our proposals have a direct effect on the other principles of good regulation.

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

Q36: Do you agree with our proposals to modify RMA-D1 and RMA-E, and to substitute RMA-D2 with RMA-D6, to reflect the changes to the capital resources and PII requirements outlined in PS09/19?

Q37: Do you agree that our proposals to modify the Notes for Completion of the RMAR make our expectations on how RMA-D1, RMA-D6 and RMA-E should be completed sufficiently clear?

Q38: Do you agree with the reference changes that we propose to make to SUP 16.12?

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10 Proposed amendments to the guidance supporting FSA015 (sectoral information including arrears and impairment) (SUP)

Introduction

10.1 This chapter proposes amendments to Chapter 16 of the Supervision Manual (SUP) relating to the reporting requirements in SUP 16.12 ('Integrated Regulatory Reporting') for firms that are required to submit data item FSA015. FSA015 captures sectoral information including arrears and impairment.

10.2 The proposed amendments are to the guidance notes which accompany data item FSA015. These are contained in SUP 16 Annex 25 'Guidance Notes for Data Items in SUP 15 Annex 24R'.

10.3 This is relevant to UK banks and building societies and UK consolidation groups.

10.4 We would make these amendments under section 157 of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendments is set out in Appendix 10 to this CP.

10.5 FSA015 captures information relating to arrears, write-offs and impairments across firms' assets including retail, corporate, financials, non-financials and debt instruments in the banking book. It aims to provide us with information on the credit quality of a firm's portfolio, thereby enabling us to assess potential threats to the firm's viability, and to allow us to monitor changes at a macro level. It is completed by approximately 200 UK incorporated banks and building societies and UK consolidation groups.

10.6 A review of FSA015 has shown that, in some circumstances, the quality of data received from firms is inadequate and inconsistent. This limits our ability to supervise firms effectively and to conduct meaningful macro-level evaluation.

10.7 One of the key reasons for poor data quality is the guidance provided to firms in the guidance notes accompanying FSA015. An analysis of the common misunderstandings that have been identified suggests this guidance is not sufficiently clear.

10.8 Some improvements to the guidance were subject to consultation in CP10/01 (Chapter 3 of the January 2010 QCP[36]) but these do not address all problems firms

36 www.fsa.gov.uk/pubs/cp/cp10_01.pdf

currently experience. We therefore propose to update this guidance further and to provide greater clarity to firms. Our aim is to ease the reporting process for firms by making our expectations clearer. By doing this we hope to improve the quality of data we receive and, consequently, to enhance our ability to supervise firms and conduct thematic reviews.

10.9 We do not propose to make any changes to the underlying policy or to change the number or the type of firms that are required to submit FSA015. Neither do we propose to change the frequency of reporting. We do not intend to impose an extra financial or reporting burden on firms.

10.10 Subject to consultation and FSA Board approval we propose to implement these changes at the earliest opportunity.

Proposed amendments

10.11 The proposed amendments to the guidance supporting FSA015 are outlined in full in SUP 16.12 Annex 25 'Guidance Notes for Data Items in SUP 15 Annex 24R' (see appendix 10).

10.12 We are aiming to clarify the guidance in areas where our expectations are not currently sufficiently clear. This includes the following proposals, with the aim of addressing the relevant issues:

- We propose to clarify the general guidance on what FSA015 is intended to cover and the type of exposures that should be included. In particular we propose to make it clear that derivatives should be excluded, and that trading book exposures other than counterparty risk exposures should also be excluded.
- We propose to add further explanation of the differences between the balances reported in columns A ('all balances, customer') and H ('all balances, accounting'). Specifically, we will be more explicit about what should be included in column H and will make it clearer that, for any firm using IFRS (International Financial Reporting Standards), we would expect the amounts in the two columns to be different as the valuation basis will differ.
- We propose to expand the definition of 'past due' to clarify that it is consistent with the Basel definition (e.g. column B, rows 12–26).
- We propose to provide additional guidance for calculating the amount to include under impaired loans with unsecured balances in column E, rows 12–26, to show this should be the balance owed, less the realisable value of the security held, for each loan included in column C or D. We would like to make it clear that, if the exposure is fully secured, we would usually expect a nil value in column E, unless it is known that the current realisable value of the security shows a shortfall.
- We propose to make it clear that, where firms have reported arrears in columns B–G for rows 1–11 and/or past due or impaired balances in columns B–D for rows 12–26, we would usually expect to see impairment balances in the same row in columns N and/or P.

- While we accept that this is not a formal validation, we propose to add the expectation that, in most cases, for each row, the sum of columns N+P for the previous period minus J, plus the sum of columns K+L+M (where J, K, L and M are from the current period), would be approximately equal to the sum of N+P for the current period.
- We would like to expand the definition for balances of loans with individual impairments (column Q). We propose to clarify that, generally, we would expect to see a balance reported here where an impairment balance has been included in column N for each category. In general we would also expect the value reported in column Q to be at least equal to the value in column N.
- We propose to add detail to explain how arrears on overdrafts and credit cards should be calculated (retail sector columns B–G).
- We propose to include additional guidance on which exposures should be included under 'Financial Sector' (rows 21–23); this should include any unquoted securities issued by financial sector institutions, but any quoted securities should be reported as debt instruments in rows 27–31.
- We propose to give additional guidance on the definition of a debt instrument ('Debt instruments (banking book)' rows 27–31). We will make it clear that debt instruments quoted on a recognised exchange and held in the banking book, regardless of the issuer type, should be reported in lines 27–31 and not elsewhere. We also propose to add guidance on the reporting of gilts and Treasury bills.

Q39: Do you agree with our intention to provide additional guidance to support FSA015?

Q40: Do you agree with the guidance outlined in SUP 16.12 Annex 25 'Guidance Notes for Data Items in SUP 15 Annex 24R' (see appendix 10)?

Cost-benefit analysis

10.13 FSMA requires us to consult publicly on guidance before we issue it formally. However, the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 has lifted the requirement that, as part of a consultation on proposed guidance on rules, we must publish a cost-benefit analysis. In PS07/10[37] we set out the factors we will consider when we decide whether to undertake and consult on a cost-benefit analysis of proposed guidance. For the reasons described below we believe that none of these criteria apply here.

10.14 We do not consider the proposal will impose any material burden and therefore we do not envisage that firms or the FSA will face significant additional costs as a result of these proposals. There will be no material change to the processes that are followed or the systems and infrastructure that are used in relation to the submission of FSA015. However, we do anticipate a benefit to both firms and the FSA in terms of the clarity provided and the impact on efficiency that this engenders.

37 www.fsa.gov.uk/pubs/policy/ps07_10.pdf

Compatibility statement

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

10.16 By ensuring that the guidance related to FSA015 is clear and comprehensive we expect to improve the quality of data submitted to us and, consequently, enhance our ability to identify issues that may undermine market confidence or lead to consumer detriment. We are therefore satisfied that these proposals are compatible with our general duties under Section 2 of FSMA.

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

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

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11 Proposed changes to Chapter 16 of the Supervision manual (SUP)

Introduction

11.1 This chapter proposes amendments to reporting data items and guidance as set out in Chapter 16 of the Supervision manual (SUP). We would make these amendments under sections 138, 156 and 157 of the Financial Services and Market Act 2000 (FSMA). The text of the proposed amendments is set out in Appendix 11 to this CP.

11.2 The proposed amendments affect the following provisions:

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

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

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

Proposed amendment

11.5 The amendments are relevant to all firms subject to the Capital Requirements Directive.

11.6 The amendments affect data item FSA003 and corresponding guidance. Separate chapters in this consultation paper deal with proposals on FSA015 (sectoral information, including arrears and impairment), FSA044 (analysis of assets and deposits by maturity band) and the Retail Mediation Activities Return.

Summary of proposals

11.7 The proposal in this chapter is to include capital buffer planning data in capital adequacy reporting (FSA003).

Inclusion of capital buffer planning data in capital adequacy reporting (FSA003)

11.8 Further to the regulatory return requirements as set out in SUP 16.12.3R we are proposing an amendment to the FSA003 data item. The changes we are proposing to make are as follows:

- to add two new data fields titled 'capital planning buffer' and 'draw down of capital planning buffer'; and
- to add two new fields within the form to explicitly incorporate the calculation of the capital planning buffer as a deduction in the surplus/(deficit) amount of total and general purpose capital held by a firm. These two new fields will be named 'surplus/(deficit) total capital over ICG and capital planning buffer' and 'surplus/(deficit) general purpose capital over ICG and capital planning buffer'.

11.9 We intend to make these four small changes to FSA003 to support the Handbook changes as proposed in CP09/30.[38] CP09/30 is a response to our recent experience and feedback we received in response to CP08/24[39] 'Stress and scenario testing', suggesting that firms did not understand the capital planning element. This is currently set as part of the total individual capital guidance (ICG) under the supervisory review and evaluation process (SREP) as being available to be drawn down during adverse external circumstances. To make this clearer for firms we have simplified the mechanism for using the CPB and set out our intention to re-articulate our expression of the CPB as a separate amount[40] to help firms, their boards and their auditors to understand it can be drawn down in adverse external circumstances.

11.10 CP09/30 sets out the Handbook changes we intend to make to support our separation of the ICG and CPB; specifically, our intention to break the link between the CPB and our financial adequacy rule (GENPRU[41] 1.2.26R). To help this Handbook change and overall clarification, we propose creating two new fields in the FSA003 to explicitly separate reporting the CPB amount from the ICG.

11.11 We intend to introduce these four new data fields to make clear that the CPB is a separate amount from the ICG and, additionally, to clarify that it is available to be drawn down during adverse external circumstances.

> Q41: Do you agree with the proposed changes to SUP 16 Annexes 24R and 25G?

38 www.fsa.gov.uk/pages/Library/Policy/CP/2009/09_30.shtml
39 www.fsa.gov.uk/pages/Library/Policy/CP/2008/08_24.shtml
40 This may be articulated in a number of ways including a pound sterling sum, or a percentage of CRR or total ICG.
41 Prudential sourcebook for general insurance.

Cost-benefit analysis

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

11.13 Firms are already required to collect and report the data on their capital positions to us, and firms' capital planning buffer element of the current ICG will be clearly articulated in the new ICG letters, as described in CP09/30. Therefore, we do not envisage that the creation of these four new fields will impose any additional data collection burden on firms. Furthermore, in a bid to minimise the implementation cost that may arise for firms as a result of changes to the reporting forms we have aligned our proposed changes to be implemented at the same time as the proposed changes to the FSA003 as consulted on in CP09/29.[42]

Q42: Do you agree with our cost benefit analysis?

Compatibility statement

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

11.15 By ensuring that our guidance and the data we collect and provide is set out as clearly as possible we expect that firms will acquire a better understanding of the underlying policy intention as currently set out in CP09/30. We are therefore satisfied that these proposals are compatible with our general duties under section 2 of FSMA.

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

42 CP 09/29 Strengthening Capital Standards 3 www.fsa.gov.uk/pages/Library/Policy/CP/2009/09_29.shtml

Contact

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12 Proposed changes to the approved persons regime in the Supervision manual (SUP)

Introduction

12.1 This chapter proposes an amendment to the Supervision sourcebook (SUP). The amendment would correct a technical error in the provision that sets out the types of firm to which the significant management function (CF29) applies.

12.2 The amendment would be made under our powers under sections 59 (Approval for particular arrangements), 138 (General rule-making power) and 156 (General supplementary powers) of the Financial Services and Markets Act 2000 (FSMA). The text of the proposed amendment can be found in Appendix 12.

12.3 The proposed amendment is to SUP 10.9.1R.

Proposed amendments

12.4 As part of our approved persons regime, we have the power pursuant to section 159 of FSMA to designate certain roles as 'controlled functions'. A person must be approved by us before they can perform one of these roles.

12.5 Controlled function 29 (CF29), the significant management function, is intended to apply in cases, generally only found in larger firms, where an individual is not a member of the firm's governing body (e.g. as a director), but who nevertheless exercises significant influence over the firm's affairs as the head of a significant business unit.[43] Previously there were several separate significant management functions (CF16–CF20) covering different sectors and areas of a business, but these were combined into a single function as part of a move to simplify the approved persons regime in November 2007.

12.6 Historically, there was a reference in the rules setting out the application of CF29, which cross-referred to responsibilities apportioned under SYSC 2.1.1R (a rule that requires firms to have a clear and appropriate apportionment of responsibilities). Following the introduction of the Markets in Financial Instruments Directive (MiFID) and the Capital Requirements Directive (CRD), SYSC 2 ceased applying to

43 In July 2009 the scope of the CF29 function was also expanded to include certain proprietary traders, as described in PS09/14 (www.fsa.gov.uk/pubs/policy/ps09_14.pdf). The correction described in this chapter does not concern proprietary traders, who are not affected by the error being addressed here.

MiFID or CRD firms. These were then subject to new provisions in SYSC under what is known as the 'common platform' approach (set out in SYSC, chapters 4–10). The common platform approach was then extended to most other firms, for which SYSC 2 also ceased to apply.[44]

12.7 However, it has come to our attention during a review of the Handbook that the reference to SYSC in the definition of CF29 was not updated to fully reflect this change. The result was that, technically speaking, CF29 was carved out for the majority of firms subject to the common platform, so that it currently only applies to those generally smaller firms covered by SYSC 4.4.

12.8 This carve-out appears to be an omission, as opposed to a deliberate policy decision, and the consultation papers published at the time did not indicate that CF29 would cease to apply to common platform firms. In fact, CP06/15, which introduced CF29, clearly states it will apply to both MiFID and non-MiFID firms in the future.[45]

12.9 In practice, we believe that firms are unaware of the omission of the relevant cross-reference and its implications, and have continued to operate in line with the stated policy intention, i.e. that CF29 continues to apply under the common platform (this is discussed in more detail in the cost benefit analysis section below). Therefore, we propose to amend the Handbook (by inserting a reference to SYSC 4.1.1R into SUP 10.9.1R) to bring it into line with the stated policy intention that CF29 will be relevant for all firms under the common platform.

12.10 This will not mean that every such firm will now need to have a person approved for the CF29 function. Whether a person performs the controlled function will depend on whether they satisfy the other conditions set out in SUP 10.9, which in turn will depend on the nature and structure of their business. The correction will simply mean that the Handbook will show that the function can apply – as opposed to a disapplication of the function for certain firms.

Q43: Do you agree with our proposal to amend the Handbook so that CF29 is not carved out for firms under the common platform, thus bringing the Handbook into line with our stated policy?

Cost benefit analysis

12.11 As noted above, the policy intention, communicated when MiFID was being implemented, was that the CF29 function would continue to be relevant to MiFID firms. There was also no intention to carve out the CF29 function when the common platform approach was extended to other firms. Therefore, this change will merely correct the wording of the rules so they properly reflect the original policy intention.

44 The exceptions being insurers, managing agents and the Society of Lloyd's, for whom SYSC 2 continues to apply. See CP07/23 (www.fsa.gov.uk/pubs/cp/cp07_23.pdf) and PS08/9 (www.fsa.gov.uk/pubs/policy/ps08_09.pdf) for more details on the extension of the common platform.

45 See for example Annex 3 of CP06/15 which explains the application of different controlled functions: www.fsa.gov.uk/pubs/cp/cp06_15.pdf

12.12 In practice, we believe that firms have continued operating in line with the policy intention, rather than the letter of the rules in the Handbook. Our records show many firms to whom the unintentional carve-out could have theoretically applied are continuing to register individuals for the CF29 function. However, whether or not CF29 will be relevant to a particular firm depends partly on that firm's internal governance arrangements. Therefore, we cannot tell from our data whether *all* firms who will require a CF29 after the proposed correction is made already have one. But we believe, based on the following factors, that very few firms, if any, will need to take action as a result of this change.

12.13 The unintentional carve-out is not plainly set out in the rules – rather, it is the consequence of some technical cross-referencing. Given the clear public statements we made about the continuing application of CF29, we think it unlikely that firms would have expected any change in scope.

12.14 Furthermore, our experience of discussing the approved persons regime with firms (both in firm-specific cases and as part of wider discussions around subsequent changes to the regime) strongly suggests the industry was not aware of this unintended carve-out in the Handbook and have been proceeding on the basis of the policy intention. Firms have not previously ever raised or queried this limitation with us.

12.15 Therefore, we believe that correcting the wording of the rules will result in very few, if any, firms having to seek additional approvals. Consequently, we believe that the overall costs arising from the proposed correction will be minimal. The change will not produce any additional benefits beyond those intended by the original introduction of the CF29 controlled function.[46]

Q44: Do you agree with our cost-benefit analysis, in particular our assumption that firms are already acting in line with the proposed amendment?

Compatibility statement

12.16 This amendment aims to correct a technical error in the Handbook and bring the rules into line with the stated policy intention, which we believe is already reflected in current practice. This correction will eliminate the potential for uncertainty and confusion over what we require of firms, and better implement the policy that was previously consulted and agreed upon. We are therefore satisfied that the change will help deliver our statutory objectives and is compatible with the principles of good regulation.

46 See the cost benefit analyses in CP53, which originally consulted on the introduction of significant management functions (www.fsa.gov.uk/pubs/cp/cp53.pdf) and CP05/10, which consulted on merging those multiple significant managing functions into a single CF29 function (www.fsa.gov.uk/pubs/cp/cp05_10.pdf).

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Appendix 1

List of questions

Appendix 1

List of specific consultation questions

Chapter 2

Q1: Do you agree that restricting the FSCS's ability to raise a single exit levy addresses the unintended consequences from the 2008 rule changes?

Q2: Do you agree that giving the FSCS the right to raise an exit levy against a firm when it leaves a particular activity class or sub-class is an appropriate measure?

Chapter 3

Q3: Do you agree that the proposed change will clarify the treatment of accounts that are not active for the purposes of calculating tariff data?

Q4: Do you agree with our assessment that the costs of this proposal will not impose a significant burden on firms?

Chapter 4

Q5: Do you agree with our proposal to amend the definition of a designated money market fund?

Q6: Do you agree with our proposed treatment of SME deposits within the simplified ILAS approach?

Q7: Do you agree with our proposed changes to the simplified buffer calculation?

Q8: Do you agree with our proposal to remove FSA044 as a regulatory reporting return?

Q9: Do you agree with our proposed changes to the definition of liquidity group by default?

Q10: Do you agree with our proposal to amend BIPRU 12.3 and 12.4 to implement the changes to Annex V of the BCD?

Q11: Do you agree with our proposal to provide additional guidance to mismatch firms on the operation of BIPRU TP30?

Q12. Do you agree that the amendments we propose are compatible with our statutory objectives and principles of good regulation?

Chapter 5

Q13: Do you agree that we should introduce a new rule in COBS, as outlined in Appendix 5?

Q14: Is there any reason why other categories of firm should be excluded from the scope of this requirement? Please explain your position.

Q15: Do you agree that a general disclosure would suffice in cases where asset managers' clients have different expectations or requirements?

Q16: Do you agree that disclosure should be through the firm's website? What other methods of disclosure would be appropriate (e.g. via the prospectus, or periodic reporting) to make the statement accessible?

Q17: Do you agree with our assessment that the increase in costs for firms as a consequence of our proposed requirement will be of minimal significance?

Chapter 6

Q18: Do you agree that the rule change proposed is sufficiently clear?

Q19: Can you suggest an alternative method by which the financial merits of staying in the S2P until 5 April 2012 or contracting-out of it can be clearly portrayed?

Q20: Do you agree with our assumption that adequate alternatives are available to firms?

Chapter 7

Q21: Do you agree with our proposal that information about set-off should be provided in the account terms and conditions?

Q22: Do you see a need for further information, beyond that set out in our proposal, to be provided about set-off when a customer opens an account?

Q23: Do you agree with our proposal for firms informing customers of the right of set-off when they are beginning or continuing to experience difficulty in meeting their payment obligations?

Q24: Do you agree with our proposal that customers should be promptly notified about the use of set-off on their account?

Q25: Do you agree with our proposals for exercising the right of set-off fairly?

Q26: Do you have any suggestions of other ways of exercising the right of set-off fairly?

Q27: Do you agree with our proposal that firms should not use set-off in the types of scenarios listed above?

Q28: Do you agree with our proposal to apply the guidance in the information requirements to credit unions, but exempt them from our post-sale guidance on set-off?

Q29: Do you agree that our proposed guidance should take effect immediately?

Q30: Do you have any comments on our proposed amendment to BCOBS 4.1.4G(8)?

Chapter 8

Q31: Do you agree with our proposals to achieve proper protection of retail clients' money by limiting the application of TTCA to non-retail clients?

Q32: Are you aware of any other businesses that make use of TTCA for retail clients that have not been considered above?

Q33: Would these proposals have any unintended consequences not identified above?

Q34: Do you agree with our proposals to introduce new guidance into the 'Money due and payable to the firm' within CASS 7?

Q35: Are you aware of any other costs that we have not considered above?

Chapter 9

Q36: Do you agree with our proposals to modify RMA-D1 and RMA-E, and to substitute RMA-D2 with RMA-D6, to reflect the changes to the capital resources and PII requirements outlined in PS09/19?

Q37: Do you agree that our proposals to modify the Notes for Completion of the RMAR make our expectations on how RMA-D1, RMA-D6 and RMA-E should be completed sufficiently clear?

Q38: Do you agree with the reference changes that we propose to make to SUP 16.12?

Chapter 10

Q39: Do you agree with our intention to provide additional guidance to support FSA015?

Q40: Do you agree with the guidance outlined in SUP 16.12 Annex 25 'Guidance Notes for Data Items in SUP 15 Annex 24R' (see appendix 10)?

Chapter 11

Q41: Do you agree with the proposed changes to SUP 16 Annexes 24R and 25G?

Q42: Do you agree with our cost benefit analysis?

Chapter 12

Q43: Do you agree with our proposal to amend the Handbook so that CF29 is not carved out for firms under the common platform, thus bringing the Handbook into line with our stated policy?

Q44: Do you agree with our cost-benefit analysis, in particular our assumption that firms are already acting in line with the proposed amendment?

Appendix 2

Proposed changes to Fees manual on FSCS exit levies (FEES)

Appendix 2

FINANCIAL SERVICES COMPENSATION SCHEME (PAYMENT OF LEVIES) (AMENDMENT) INSTRUMENT 2010

Powers exercised

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

(1) section 156 (General supplementary powers);
(2) section 213 (The compensation scheme);
(3) section 214 (General); and
(4) section 223 (Management expenses).

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

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Financial Services Compensation Scheme (Payment of Levies) (Amendment) Instrument 2010

By order of the Board
[*date*]

Annex

Amendments to the Fees manual (FEES)

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

6.7.6 R If a *firm* ceases to be a *participant firm* or carry out activities within one or more *sub–classes* part way through a *financial year* of the *compensation scheme*:

(1) it will remain liable for any unpaid levies which the *FSCS* has already made on the *firm*;

(2) the *FSCS* may make a levy upon it (which may be before or after the firm has ceased to be a *participant firm* or carry out activities within one or more *sub–classes*, but must be before it ceases to be an *authorised person*) for the costs which it would have been liable to pay had the *FSCS* made a levy on all *participant firms* or firms carrying out activities within that *sub-class* in the financial year it ceased to be a *participant firm* or carry out activities within that *sub-class* ~~at the time of the levy on the *firm*~~;

(3) ~~the *FSCS* may make a levy upon the *firm* (which may be before or after the firm has ceased to be a *participant firm*, but must be before it ceases to be an *authorised person*) for the purpose of meeting its expenses in relation to *compensation costs* and/or *management expenses* incurred or expected to be incurred at any time in the future in respect of defaults which have already occurred;~~ [deleted]

(4) ~~the *FSCS* may estimate any costs referred to in (3) by any method or approach it considers appropriate, and adjust them to reflect the time value of money based on the funding arrangements in place in relation to the default; and~~ [deleted]

(5) ~~paragraphs (3) and (4) apply notwithstanding any other provision in this chapter~~. [deleted]

Appendix 3

Proposed changes to Fees manual – Tariff measures for the deposit class (FEES)

Appendix 3

FINANCIAL SERVICES COMPENSATION SCHEME (DEPOSIT TARIFF BASE AMENDMENT) INSTRUMENT 2010

Powers exercised

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

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers);
(3) section 213 (The compensation scheme); and
(4) section 214 (General).

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

Commencement

C. This instrument comes into force on [31 December 2010].

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Financial Services Compensation Scheme (Deposit Tariff Base Amendment) Instrument 2010.

By order of the Board
[10 November 2010]

Annex

Amendments to the Fees manual (FEES)

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

6 Annex 3 Financial Services Compensation Scheme – classes and sub-classes

This table belongs to *FEES* 6.5.7R and *FEES* TP 2.5.2R

Class A	**Deposit**
…	
Tariff base	(1) *Protected deposits* and/or (2) *Protected dormant accounts* multiplied by 0.2 as at 31 December. Except where paragraph (4) says otherwise, *protected deposits* must be adjusted as follows.
	(1) Only include a *protected deposit* to the extent that an *eligible claimant* would have a claim in respect of it. (2) Exclude any amount in respect of which the *FSCS* would not pay compensation due to the maximum payment limits in *COMP* 10.2. (3) The tariff base calculation is made on the basis of the information that the *firm* would have to include in the *single customer view* it has to be able to produce under *COMP* 17 (Systems requirements for firms that accept deposits). The information must be of the extent and standard required if the *firm* was preparing the *single customer views* as at the valuation date for the tariff base (31 December). (4) (a) If this paragraph applies, the adjustments in (1) to (3) do not apply and the calculation is based on *protected deposits*. (b) This paragraph applies with respect to a *protected deposit* to the extent that, under *COMP* 17, the *firm* does not have to identify an *eligible claimant* with respect to that *protected deposit* because the account is held by the account holder on behalf of others. (c) This paragraph applies with respect to a *protected deposit* that has been excluded from the *single customer view* because it is an account that is not active, as defined in *COMP* 17.2.3R(2).

Appendix 4

Proposed minor changes to the liquidity regime (BIPRU)

LIQUIDITY STANDARDS (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2010

Powers exercised

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

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

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

Commencement

C. This instrument comes into force as follows:

(1) Part 1 of Annex A, Annex B, Annex C and Part 1 of Annex D come into force on 1 October 2010;
(2) Part 2 of Annex A comes into force on 1 November 2010; and
(3) Part 2 of Annex D comes into force on 1 January 2011.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex C
Supervision manual (SUP)	Annex D

Notes

E. In Annex C to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Liquidity Standards (Miscellaneous Amendments) Instrument 2010.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 1 October 2010

designated money market fund (in *BIPRU* 12 and *BSOCS*) a *collective investment scheme* authorised under the *UCITS Directive* or which is subject to supervision and, if applicable, authorised by an authority under the national law of an *EEA State*, and which satisfies the following conditions:

…

(e) it must provide liquidity through same day settlement in respect of any request for redemption made at or before ~~1500~~ 1200 hours GMT or, as the case may be, BST.

Part 2: Comes into force on 1 November 2010

DLG by default …

The following provisions also apply for the purpose of this definition.

(c) A *person* is not a member of a *firm's* DLG by default unless it also satisfies one of the following conditions:

…

(iii) it is an *undertaking* whose main purpose is to raise funds for the *firm* or for a *group* to which that *firm* belongs.

(ca) In the case of a *group liquidity reporting firm* that is within paragraph (a) of the definition of *UK lead regulated firm* (it is not part of a group that is subject to consolidated supervision by the *FSA* or any other *regulatory body*), paragraph (c)(i) of the definition of *DLG by default* is amended so that it only includes a member of the *firm's group* that falls into one of the following categories:

(i) it is a *credit institution*; or

(ii) it is an *investment firm* or *third country investment firm* authorised to *deal on own account*.

For these purposes:

(iii) *credit institution* has the meaning used in *SUP* 16 (Reporting requirements), namely either of the following;

(A) a credit institution authorised under the *Banking Consolidation Directive*; or

(B) an institution which would satisfy the requirements for authorisation as a credit institution under the *Banking Consolidation Directive* if it had its registered office (or if it does not have a registered office, its head office) in an *EEA State*; and

(iv) a *person* is authorised to *deal on own account* if:

(A) it is a *firm* and its *permission* includes that activity; or

(B) it is an *EEA firm* and it is authorised by its *Home State regulator* to do that activity; or

(C) (if the carrying on of that activity is prohibited in a state or territory without an authorisation in that state or territory) that *person* has such an authorisation.

…

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls

Comes into force on 1 October 2010

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

12.1.13 R If this *rule* applies under *SYSC* 12.1.14R to a *firm*, the *firm* must:

(1) ...

(2) ensure that the risk management processes and internal control mechanisms at the level of any *UK consolidation group* or non-*EEA sub-group* of which it is a member comply with the obligations set out in the following provisions on a consolidated (or sub-consolidated) basis:

...

(e) *BIPRU* 12.3.4R, *BIPRU* 12.3.5R, *BIPRU* 12.3.8R, *BIPRU* 12.3.22AR, *BIPRU* 12.3.22BR, *BIPRU* 12.3.27, *BIPRU* 12.4.-2R, *BIPRU* 12.4.-1R, *BIPRU* 12.4.5AR, ~~and~~ *BIPRU* 12.4.10R and *BIPRU* 12.4.11R;

...

Annex C

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

Comes into force on 1 October 2010

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

12.3.4 R A *firm* must have in place robust strategies, policies, processes and systems that enable it to identify, measure, manage and monitor *liquidity risk*~~, including those which enable it to assess and maintain on an ongoing basis the amounts, types and distribution of liquidity resources that it considers adequate to cover:~~ over an appropriate set of time horizons, including intra-day, so as to ensure that it maintains adequate levels of liquidity buffers. These strategies, policies, processes and systems must be tailored to business lines, currencies and entities and must include adequate allocation mechanisms of liquidity costs, benefits and risks.

[**Note:** annex V paragraph 14 of the *Banking Consolidation Directive*]

~~(1) the nature and level of the *liquidity risk* to which it is or might be exposed;~~

~~(2) the risk that the *firm* cannot meet its liabilities as they fall due; and~~

~~(3) in the case of an *ILAS BIPRU firm*, the risk that its liquidity resources might in the future fall below the level, or differ from the quality and funding profile, of those resources advised as appropriate by the *FSA* in that *firm's individual liquidity guidance* or, as the case may, its *simplified buffer requirement*.~~

12.3.4A G The strategies, policies, processes and systems referred to in *BIPRU* 12.3.4R should include those which enable it to assess and maintain on an ongoing basis the amounts, types and distribution of liquidity resources that it considers adequate to cover:

(1) the nature and level of the *liquidity risk* to which it is or might be exposed;

(2) the risk that the *firm* cannot meet its liabilities as they fall due; and

(3) in the case of an *ILAS BIPRU firm*, the risk that its liquidity resources might in the future fall below the level, or differ from the quality and funding profile, of those resources advised as appropriate by the *FSA* in that *firm's individual liquidity guidance* or, as the case may, its *simplified buffer requirement*.

12.3.5 R The strategies, policies, processes and systems ~~required by *BIPRU* 12.3.4R must be comprehensive and proportionate to the nature, scale and complexity of a *firm's* activities~~ referred to in *BIPRU* 12.3.4R must be proportionate to the complexity, risk profile, scope of operation of the *firm* and liquidity risk tolerance set by the *firm's governing body* in accordance with *BIPRU* 12.3.8R and reflect the *firm's*

importance in each *EEA State*, in which it carries on business.

[**Note:** annex V paragraph 14a of the *Banking Consolidation Directive*]

12.3.6 E (1) ~~A *firm* should ensure that it has in place a robust framework to project fully over an appropriate set of time horizons cash flows arising from assets, liabilities and off-balance sheet items.~~ [deleted]

(2) ~~A *firm* should ensure that its strategies, policies, processes and systems in relation to *liquidity risk* support the *liquidity risk* tolerance established by its governing body in accordance with *BIPRU* 12.3.8R.~~ [deleted]

(3) A *firm* should ensure that its strategies, policies, processes and systems in relation to *liquidity risk* enable it to identify, measure, manage and monitor its *liquidity risk* positions for:

(a) all sources of contingent liquidity demand (including those arising from off-balance sheet activities);

(b) all currencies in which that *firm* is active; and

(c) correspondent, custody and settlement activities.

(4) ~~A *firm* should ensure that it sets limits to control its *liquidity risk* exposure within and across lines of business and legal entities.~~ [deleted]

(5) A *firm* should ensure that it has in place early warning indicators to identify immediately the emergence of increased *liquidity risk* or vulnerabilities, including indicators that signal whether embedded triggers in funding or security arrangements such as warranties, covenants, events of default, conditions precedent or terms having similar effect are likely to, or will, be breached, occur or fail to be satisfied, or contingent risks will or are likely to crystallise, in either case with the result that access to liquidity resources may be impaired.

(6) A *firm* should ensure that it has in place reliable management information systems to provide its *governing body*, *senior managers* and other appropriate personnel with timely and forward-looking information on the liquidity position of the *firm*.

(7) Contravention of any of ~~(1) to (6)~~ (3), (5) and (6) may be relied upon as tending to establish contravention of *BIPRU* 12.3.4R.

…

12.3.8 R A *firm* must ensure that:

(1) its *governing body* establishes that *firm's liquidity risk* tolerance and that this is appropriately documented; ~~and~~

(2) its *liquidity risk* tolerance is appropriate for its business strategy and reflects its financial condition and funding capacity; and

(3) its *liquidity risk* tolerance is communicated to all relevant business lines.

[**Note:** annex V paragraph 14a of the *Banking Consolidation Directive*]

…

12.3.22A R A *firm* must distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations. A *firm* must also take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account as well as their eligibility and must monitor how assets can be mobilised in a timely manner.

[**Note:** annex V paragraph 16 of the *Banking Consolidation Directive*]

12.3.22B R A *firm* must also have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the *EEA*.

[**Note:** annex V paragraph 17 of the Banking Consolidation Directive]

…

12.3.27 R A *firm* must ~~have policies and processes for the measurement and management of its net funding position and requirements on an ongoing and forward looking basis. Alternative scenarios must be considered and the assumptions underpinning decisions concerning the net funding position must be reviewed regularly~~ develop methodologies for the identification, measurement, management and monitoring of funding positions. Those methodologies shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk.

[**Note**: annex V paragraph ~~14~~ 15 of the *Banking Consolidation Directive*]

…

12.4 Stress testing and contingency funding

12.4.-2 R A *firm* must consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements must be reviewed regularly.

[**Note**: annex V paragraph 18 of the *Banking Consolidation Directive*]

Stress testing

12.4.-1 R A *firm* must consider alternative scenarios on liquidity positions and on risk mitigants and must review regularly the assumptions underlying decisions concerning the funding position. For these purposes, alternative scenarios must address, in particular, off-balance sheet items and other contingent liabilities, including those of *securitisation special purpose entities* (*SSPEs*) or other special

purpose entities, in relation to which the *firm* acts as *sponsor* or provides material liquidity support.

[**Note**: annex V paragraph 19 of the *Banking Consolidation Directive*]

12.4.1 R In order to ensure compliance with the *overall liquidity adequacy rule* and with *BIPRU* 12.3.4R and *BIPRU* 12.4.-1R, a *firm* must:

(1) conduct on a regular basis appropriate stress tests so as to:

(a) identify sources of potential liquidity strain;

(b) ensure that current liquidity exposures continue to conform to the *liquidity risk* tolerance established by that *firm's governing body*; and

(c) identify the effects on that *firm's* assumptions about pricing; and

(2) analyse the separate and combined impact of possible future liquidity stresses on its:

(a) cash flows;

(b) liquidity position;

(c) profitability; and

(d) solvency.

12.4.2 R In accordance with *BIPRU* 12.3.11R, *BIPRU* 12.4.-2R and *BIPRU* 12.4.-1R, a *firm* must ensure that its *governing body* reviews regularly the stresses and scenarios tested to ensure that their nature and severity remain appropriate and relevant to that *firm*.

…

12.4.5 E (1) ~~In designing its stress tests, a *firm* should in particular ensure that it considers:~~

~~(a) short-term and protracted stress scenarios;~~

~~(b) institution-specific and market-wide stress scenarios; and~~

~~(c) combinations of (a) and (b).~~ [deleted]

(2) ~~Contravention of any of (1)(a) to (c) may be relied upon as tending to establish contravention of *BIPRU* 12.4.1R.~~ [deleted]

12.4.5A R A *firm* must consider the potential impact of institution-specific, market-wide and combined alternative scenarios. Different time horizons and varying degrees of stressed conditions must be considered.

[**Note**: annex V paragraph 20 of the *Banking Consolidation Directive*]

…

12.4.10 R A *firm* must ~~have an adequate *contingency funding plan* in place to deal with liquidity crises~~ adjust its strategies, internal policies and limits on *liquidity risk* and develop an effective *contingency funding plan*, taking into account the outcome of the alternative scenarios referred to in *BIPRU* 12.4.-1R.

[**Note**: annex V paragraph ~~15~~ 21 of the *Banking Consolidation Directive*]

12.4.11 R ~~In complying with *BIPRU* 12.4.10R, *a firm* must ensure that its *contingency funding plan* has been approved by its *governing body*.~~ In order to deal with liquidity crises, a *firm* must have in place contingency plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls. Those plans must be regularly tested, updated on the basis of the outcome of the alternative scenarios set out in *BIPRU* 12.4.-1R, and be reported to and approved by the *firm's governing body*, so that internal policies and processes can be adjusted accordingly.

[**Note:** annex V paragraph 22 of the Banking Consolidation Directive]

…

12.6.7 R In this section:

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

(2) a "retail loan" is a loan to a *consumer*; and

(3) "SME *deposits*" are *deposits* accepted from, and account balances where the account holders are, *small and medium-sized enterprises* (or *partnerships* or *sole traders* which would be *small and medium-sized enterprises* if they were companies).

…

Size of the simplified buffer requirement

12.6.9 R (1) A *simplified ILAS BIPRU firm* must ensure that the size of its liquid assets buffer is at all times greater than or equal to the amount produced by adding:

(a) the wholesale net cash outflow component;

(b) the retail ~~deposit~~ and SME *deposit* component; and

(c) the credit pipeline component.

(2) This is the *simplified buffer requirement*.

The wholesale net cash outflow component

12.6.10 R (1) The wholesale net cash outflow component is a *firm's* peak cumulative wholesale net cash outflow over the next three *months* where the peak is established by:

(a) calculating the daily wholesale net cash flow by reference to a *firm's* wholesale assets maturing that day and its wholesale liabilities falling due on that day;

(b) for each of the *business days* in the next three *months*, calculating the cumulative total of such daily net cash flows as at the *business day* in question; and

(c) identifying the minimum cumulative total figure out of all of the cumulative total figures calculated in accordance with (b).

(2) The figure identified in (1)(c) is the peak cumulative wholesale net cash outflow.

(3) For the purpose of calculating the peak cumulative wholesale net cash outflow, a *firm* must:

(a) exclude from the calculation in (1)(a) cash flows attributable to *repo* and reverse *repo*, forward sales, forward purchases, redemptions and any other transactions entered into by the *firm* where the security leg of the transaction in question is in respect of securities of the type described in *BIPRU* 12.7.2R (1) and (2);

(b) include wholesale cash outflows in that calculation according to their earliest contractual maturity; ~~and~~

(c) exclude wholesale cash flows attributable to reserves in the form of sight deposits with a central bank and *designated money market funds* that it includes in its liquid assets buffer in accordance with the *rules* on asset eligibility in *BIPRU* 12.7; and

(d) exclude any retail *deposits* or SME *deposits*.

The retail ~~deposit~~ and SME *deposit* component

12.6.11 R (1) The retail ~~deposit~~ and SME *deposit* component is the sum represented by:

(a) 20% of a *firm's* Type A retail *deposits*; ~~and~~

(b) 10% of a *firm's* Type B retail *deposits*; and

(c) 20% of a *firm's* SME *deposits*.

(2) A *firm* must:

(a) assess the likelihood that retail *deposits* that it holds will be withdrawn in response to actual or perceived changes in the *firm's*

credit-worthiness;

(b) calculate the amount of retail *deposits* that it assesses as having a higher than average likelihood of withdrawal in the circumstances described in (a) ("Type A" retail *deposits*); and

(c) class all other of its retail *deposits* as "Type B" retail *deposits*.

…

Buffer securities restriction

12.6.16 R (1) A *simplified ILAS BIPRU firm* may only include in its liquid assets buffer eligible government and *designated multilateral development bank* debt securities up to the value of the *buffer securities restriction*.

(2) For the purpose of calculating the *buffer securities restriction*, a *firm* must:

(a) calculate its daily net flow in government and *designated multilateral development bank* debt securities eligible as classes of assets for inclusion in the *firm's* liquid assets buffer;

(b) for each of the *business days* in the next three *months* calculate the cumulative total of such daily securities flows, including the opening balance, as at the *business day* in question; and

(c) identify the minimum cumulative total figure out of all of the cumulative total figures calculated in accordance with (b).

(3) For the purpose of (2)(a), a *firm* must include:

(a) all contractual inflows and outflows of eligible debt securities arising from *repo*, reverse *repo*, forward sales, forward purchases, redemptions and any other transactions involving those securities; and

(b) those cash flows excluded under *BIPRU* 12.6.10R(3)(a).

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

~~Liquidity Buffer ≥ Wholesale net cash outflow component Retail component + Credit pipeline component + wholesale net cash outflow component~~

~~Liquidity buffer~~	~~$FSA048_{18,1} + FSA048_{19,1} + FSA048_{6,1} + FSA048_{6,2} + \inf\{f(x): x = 1,2,3..y\}$~~ ~~*where :*~~ ~~$f(x) = \sum_{m=1}^{x} FSA047_{6,m}$~~

~~Retail component~~	$\left(0.2\times\sum_{m=1}^{10}\text{FSA048}_{54,m}\right)+\left(0.1\times\sum_{m=1}^{10}\text{FSA048}_{55,m}\right)$
~~Credit component~~	$0.25\times\left(\sum_{n=59}^{69}\text{FSA048}_{n,1}\right)$
~~Wholesale net cash outflow component~~	$\left\lvert\min\left(0,\left(\sum_{n=44}^{51}FSA048_{n,1}\right)+\left(\sum_{n=52}^{53}\sum_{m=1}^{5}FSA048_{n,m}\right)+FSA048_{56,1}+\inf\left\{g(x):x=1,2,3...y\right\}\right)\right\rvert$ *where :* $g(x)=\sum_{m=1}^{y}\left[\left(\sum_{n=20}^{22}FSA047_{n,m}\right)+\left(\sum_{n=26}^{30}FSA047_{n,m}\right)+\left(\sum_{n=35}^{51}FSA047_{n,m}\right)+FSA047_{57,m}\right]$

~~*Where :*~~

~~y = number of business days in three months~~

~~$FSAxxx_{i,j}$ = The entry in FSAXXX row i column j~~

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

Liquidity Buffer ≥ Wholesale net cash outflow component + Retail and SME deposit component + Credit pipeline component + wholesale net cash outflow component

Liquidity buffer	$\text{FSA048}_{18,1} + FSA048_{19,1} + FSA048_{6,1} + FSA048_{6,2} + FSA048_{25,2} + FSA048_{34,2} + \inf\{f(x): x = 1,2,3..y\}$ *where*: $f(x) = \sum_{m=1}^{x} FSA047_{6,m} + \sum_{m=1}^{x} FSA047_{25,m} + \sum_{m=1}^{x} FSA047_{34,m}$
Retail and SME *deposit* component	$\left(0.2 \times \sum_{n=53}^{54} \sum_{m=1}^{10} \text{FSA048}_{n,m}\right) + \left(0.1 \times \sum_{m=1}^{10} \text{FSA048}_{55,m}\right)$
Credit pipeline component	$0.25 \times \left(\sum_{n=59}^{69} \text{FSA048}_{n,1}\right)$
Wholesale net cash outflow component	$\left\lvert \min\left(0, \left(\sum_{n=44}^{51} FSA048_{n,1}\right) + \left(\sum_{m=1}^{5} \text{FSA048}_{52,m}\right) + FSA048_{56,1} + \inf\{g(x): x = 1,2,3...y\}\right)\right\rvert$ *where*: $g(x) = \sum_{m=1}^{y}\left[\left(\sum_{n=20}^{23} FSA047_{n,m}\right) + \left(\sum_{n=26}^{30} FSA047_{n,m}\right) + \left(\sum_{n=35}^{51} FSA047_{n,m}\right) + FSA047_{57,m}\right]$

Where:

y = number of business days in three months

$FSAxxx_{i,j}$ = The entry in FSAXXX row i column j

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

…

TP 30 Liquidity floor for certain banks

…

30.5 G (1) *BIPRU* TP 30.3R deals with the overall amount of liquidity resources a *firm* is required to hold. It does not specify the proportion of those liquidity resources that a *firm* must hold in a liquid assets buffer that meets the liquid asset buffer requirements (*BIPRU* 12.2.8R(1) and *BIPRU* 12.7).

(2) The *FSA* recognises that it may take time for a *firm* to build a buffer which is of a

sufficient size and quality and that the transition from the *FSA*'s liquidity regime in force immediately prior to the *BIPRU* 12 regime is likely to be a gradual one (see *BIPRU* 12.2.10G).

(3) In carrying out its *ILAA*, a *firm* must record the evidence which supports its assessment of the adequacy of its liquid assets buffer (see *BIPRU* 12.5.13R(3)). While a *firm* is building up its liquid assets buffer, its assessment of the adequacy of that buffer should include an analysis of its ability to satisfy its liquidity needs with liquidity resources that are not eligible to be included in the liquid assets buffer.

Annex D

Amendments to the Supervision manual (SUP)

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

Part 1: Comes into force on 1 October 2010

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

…

FSA048 Enhanced Mismatch Report

…

Part 3 Wholesale asset cash flows

In this Part of the *data item*, a *firm* should report the principal cash flows associated with its wholesale assets. Transactions which do not have a specific contractual maturity date should be entered in column A for rows 18 to 22 and column B for rows 25 to 30. Cash flows from outright sales, purchases and maturities associated with securities reported on line 6 may, at the *firm's* election, be reported either on line 25 or on line 23.

…

23 Own account security cash flows

A *firm* should report here the cash flows, based on the contractual principal inflows, resulting from the maturity, forward sale or purchase of own account securities reportable in rows 6 to 8 & 10 to 17. Cash flows from outright sales, purchases and maturities associated with securities reported on line 6 may, at the *firm's* election, be reported here or on line 25.

Where a *firm* has written down the principal of a security it should report this written-down principal as the cash inflow.

A *firm* should report cash flows based on their latest contractual maturity date.

…

25 Reverse Repo (items reported in line 6)

A firm should report here all cash flows resulting from secured lending transactions where the flow of securities arising from the transactions is reported in line 6.

Cash flows from outright sales, purchases and maturities associated with securities reported on line 6 may, at the *firm's* election, be reported here or

on line 23.

A firm should only report in this row any secured lending transactions where securities flows are reported in row 6.

…

Part 2: Comes into force on 1 January 2011

16 Reporting requirements

…

16.12 Integrated Regulatory Reporting

…

16.12.3 A G The following is designed to assist *firms* to understand how the reporting requirements set out in this chapter operate when the circumstances set out in *SUP* 16.12.3R(1)(a)(ii) apply.

…

(2) Example 2

A *UK bank* in *RAG* 1 that also carries on activities in *RAG* 5

Again, overlaying the *RAG* 1 reporting requirements with the requirements for a *RAG* 5 *firm* gives the following :

RAG 1 requirements (*SUP* 16.12.5R)	*RAG* 5 requirements (*SUP* 16.12.18AR)
…	
Sectoral information, including arrears and impairment	
~~Maturity analysis of assets and deposits~~	
…	

…

Regulated Activity Group 1

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

Description of data item	Prudential category of firm and applicable data items (Note 1)							
	UK bank	*Building society*	*Non-EEA bank*	*EEA bank* that has *permission* to accept deposits, other than one with permission for cross border services only	*EEA bank* that does not have permission to accept deposits, other than one with permission for cross border services only	Electronic money institutions	*Credit union*	*Dormant account fund operator* (note 15)
…								
~~Maturity analysis of assets and deposits~~	~~FSA044 (note 11)~~	~~FSA044 (note 11)~~	~~FSA044 (note 11)~~	~~FSA044 (note 11)~~				
…								
Note 11	~~Members of a UK consolidation group should only submit this data item at the UK consolidation group level.~~ [deleted]							
…								

16.12.6 R The applicable reporting frequencies for submission of *data items* and periods referred to in *SUP* 16.12.5R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Unconsolidated *UK bank*s and *building societies*	Solo consolidated *UK banks* and *building societies*	Report on a *UK consolidation group* or, as applicable, *defined liquidity group* basis by *UK banks* and *building societies*	Other members of *RAG* 1

…				
~~FSA044~~	~~Quarterly~~		~~Half yearly~~	~~Quarterly~~
…				

16.12.7 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.6R, unless indicated otherwise.

Data item	Daily	Weekly	Monthly submission	Quarterly submission	Half yearly submission	Annual submission
…						
~~FSA044~~				~~25 *business days*~~	~~25 *business days*~~	
…						

…

Data item FSA044 is deleted from SUP 16 Annex 24R (Data items for SUP 16.12) in its entirety, except that the heading for that item is amended as follows.

FSA044 Analysis of assets and deposits by maturity band

[Deleted]

…

The guidance notes for data item FSA044 (including the validations) are deleted from SUP 16 Annex 25G (Guidance notes for data items in SUP 16 Annex 24R) in their entirety, except that the heading for that item is amended as follows.

FSA044 Maturity analysis of assets and deposits

[Deleted]

…

…

SUP TP 1 Transitional provisions

…

SUP TP 1.2

...

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					
12 W	…				
12 X	*SUP* 16.12.5R to *SUP* 16.12.7R	R	(1) This *rule* deals with the effect of the abolition of *data item* FSA044 by the Liquidity Standards (Miscellaneous Amendments) Instrument 2010 and of changes to the definition of *DLG by default* made by that instrument. (2) The abolition of that *data item* does not have effect in relation to a *firm's* reporting period for that *data item* that has begun but not ended as at [01 January 2011]. (3) The changes to the definition of *DLG by default* do not have effect in relation to the reporting period of a *firm* that has begun but not ended as at [1 November 2010].	See column 4	See column 4

	…				

Disclosure of commitment to the Stewardship Code principles (COBS)

CONDUCT OF BUSINESS SOURCEBOOK (STEWARDSHIP CODE) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of:

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

(a) section 138 (General rule-making power);
(b) section 156 (General supplementary powers);
(c) section 247 (Trust scheme rules); and
(d) regulation 6(1) (FSA Rules) of the Open-Ended Investment Company Regulations 2001 (SI 2001/1228); and

(2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Conduct of Business Sourcebook (Stewardship Code) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

2.2 Information disclosure before providing services

…

Disclosure of commitment to the Financial Reporting Council's Stewardship Code

2.2.3 R A *firm*, other than a *venture capital firm*, which *manages investments* for a *professional client* that is not a natural person must disclose clearly on its website, or if it does not have a website in another accessible form:

(1) the nature of its commitment to the Financial Reporting Council's Stewardship Code; or

(2) where it does not commit to the Code, its alternative business model.

Appendix 6

Abolition of contracting-out for defined contribution schemes (COBS)

CONDUCT OF BUSINESS SOURCEBOOK (ABOLITION OF CONTRACTING OUT FOR DEFINED CONTRIBUTION SCHEMES) INSTRUMENT 2010

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of:

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

(a) section 138 (General rule-making power); and
(b) section 156 (General supplementary powers); and

(2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

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

Commencement

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

Amendments to the Handbook

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

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

Citation

F. This instrument may be cited as the Conduct of Business Sourcebook (Abolition of Contracting Out for Defined Contribution Schemes) Instrument 2010

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

contracting out comparison

a description of:

(a) the benefits that minimum contributions would secure if a *retail client* did not contract out of the State Second Pension; and

(b) the material differences between the anticipated position if a *retail client* remains contracted into the State Second Pension and the anticipated position of that *client* contracts out;

which is calculated to the *client's* state retirement age using the *lower* and *higher rates of return* and aggregate contributions for the current tax year and ~~the next two tax years~~ any future tax years in the period ending 5 April 2012.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

13 Annex 2 R Projections

…

4	How to calculate a projection for an appropriate personal pension
4.1	(If a *client* is considering whether to contract out), a *projection* for an *appropriate personal pension* must include or be accompanied by
	(1) a *contracting out comparison* providing a description of:
	(a) the benefits that minimum contributions would secure if a *retail client* did not contract out of the State Second Pension; and
	(b) the material differences between the anticipated position if a *retail client* remains contracted into the State Second pension and the anticipated position if that *client* contracts out;
	which is calculated to the *client's* state retirement age using the lower and higher rates of return in 4.2R and aggregate contributions for the current tax year and ~~the next two tax years~~ any future tax years in the period ending 5 April 2012.
	(2) an explanation that the figures in the comparison are intended to illustrate:
	(a) the amount of pension that *client* might get compared with the benefit to be given up under the State Second Pension; and
	(b) what might happen if the lower and higher rates of return were achieved each year.

Appendix 7

Proposed changes to the Banking Conduct of Business sourcebook (BCOBS)

BANKING: CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT NO 2) INSTRUMENT 2010

Powers exercised

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

Commencement

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

Amendments to the Handbook

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

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

Citation

E. This instrument may be cited as the Banking: Conduct of Business Sourcebook (Amendment No 2) Instrument 2010.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

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

priority debt (in *BCOBS*) an obligation on the part of a *consumer* to make a payment:

(a) where the remedies for a breach of that obligation potentially include seeking possession of, or seeking to exercise a power of sale in respect of:

(i) the sole or main residence of the *consumer* (for example, an obligation to pay secured by a mortgage or charge in respect of land, an obligation to pay rent under a tenancy, or an obligation to make payment under a licence to occupy land); or

(ii) the *consumer's* essential goods or services (for example, an obligation to pay under a hire purchase, conditional sale or hire agreement that relates to, or an obligation to pay secured by a charge on, the *consumer's* cooker, refrigerator, or the means to travel to work); or

(b) where that obligation arises out of an order of the court, an Act or secondary legislation (for example, an obligation to pay council tax, child support maintenance, income tax or court fines); or

(c) where that obligation arises under a contract for the provision of utility supplies (for example, water, gas or electricity).

right of set-off (in *BCOBS*) any right of a *firm*, whether under a contract for a *retail banking service* or the general law, to set-off or combine any debt due from a *consumer* or debit balance on an account held by a *consumer* against or with any sum payable by the *firm* to the *consumer* or credit balance on an account held by the *consumer*.

subsistence balance (in *BCOBS*) any sum of money payable by a *firm* to a *consumer* or standing to the credit of the *consumer* in an account with the *firm* where that sum is needed by the *consumer* to meet essential living expenses or *priority debts* (whether owed to the *firm* or a third party).

Annex B

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

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

1.1.5 R *BCOBS* 5.1.3AG and *BCOBS* 5.1.13R ~~does~~ do not apply to a *credit union*.

…

4.1.4 G The appropriate information *rule* applies before a *banking customer* is bound by the terms of the contract. It also applies after a *banking customer* has become bound by them. In order to meet the requirements of the appropriate information *rule*, information provided or made available by a *firm* to a *banking customer* should include information relating to:

…

(8) ~~information about compensation arrangements in accordance with *COMP* 16~~ the terms of any compensation scheme if the *firm* cannot meet its obligations in respect of the *retail banking service*;

…

4.1.4A G (1) This *guidance* applies to a *firm* only with respect to its *communications* and dealings with *consumers* where a *firm* has a *right of set-off*.

(2) To comply with the appropriate information *rule*, the *firm* should:

(a) provide an explanation of the nature and extent of the *firm's right of set-off* in good time before the *consumer* is bound by the contract for the *retail banking service*. This information may be incorporated in the terms and conditions that apply to the contract for the *retail banking service*;

(b) where the *firm* knows or reasonably ought to know that the *consumer* is beginning or continuing to experience difficulty in meeting his payment obligations, provide general information in relation to the nature of the *firm's right of set-off* and the generic circumstances in which the *firm* may rely on that right within a reasonable period before the *firm* seeks to exercise its *right of set-off*. This information may be communicated in a standard form of words and may be incorporated in another communication sent by the *firm* to the *consumer*; and

(c) where it has exercised a *right of set-off*, provide prompt notification of this to the *consumer*. This notification should

clearly identify the date that the *firm* exercised its *right of set-off* and the amount debited from the *consumer's* account in reliance on that right.

(3) The information referred to in paragraph (2) should be provided in plain and intelligible language on paper or in another *durable medium*.

…

Service

5.1.1 R A *firm* must provide a service in relation to a *retail banking service* which is prompt, efficient and fair to a *banking customer* and which has regard to any communications or *financial promotion* made by the *firm* to the *banking customer* from time to time.

5.1.2 G In determining the order in which to process payment instructions in relation to the *retail banking service*, a *firm* must have regard to its obligation to treat *banking customers* fairly.

…

Set-off

5.1.3A G To comply with its obligations under *BCOBS* 5.1.1R and *Principle* 6 of the Principles for Businesses set out in *PRIN* 2.1.1R, on any occasion where it proposes to exercise a *right of set-off*, a *firm* (other than a *credit union*) should, with respect to its dealings with *consumers*, so far as practicable:

(1) review the information available and accessible to the *firm* relating to the *consumer's* account, on an individual basis, and estimate the amount of any *subsistence balance*;

(2) refrain from seeking to set-off or combine:

(a) any debt due from, or a debit balance on an account held by, a *consumer* against or with that *subsistence balance*;

(b) any debt due solely from a *consumer*, or any debit balance on an account held in the sole name of a *consumer*, against or with any sum of money payable by the *firm* to that *consumer* and another person jointly or any credit balance on an account held in the joint names of that *consumer* and another person;

(c) any debt due from, or a debit balance on an account held by, a *consumer* in a personal capacity against or with any sum of money payable by the *firm* to the *consumer* or standing to the credit of the *consumer* in an account held with the *firm*, where the *firm* knows or reasonably ought to know that:

(i) a third party is beneficially entitled to that money or that the *consumer* is a fiduciary in respect of that

money; or

(ii) the *consumer* has received that money from a government department or local authority for a specific purpose or is under a legal obligation to a third party to retain and deal with that money in a particular way.

…

Client Money and Assets – limiting the use of Title Transfer Collateral Arrangements, and adding guidance to the Money Due and Payable to the Firm provisions (CASS)

CLIENT ASSETS SOURCEBOOK (TITLE TRANSFER AMENDMENT) INSTRUMENT 2010

Powers exercised

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

(1) section 138 (General rule-making power);
(2) section 139 (Miscellaneous ancillary matters);
(3) section 156 (General supplementary powers); and
(4) section 157(1) (Guidance).

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

Commencement

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

Amendments to the Handbook

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

Citation

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

By order of the Board
[*date*]

Annex

Amendments to the Client Assets sourcebook (CASS)

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

Title transfer collateral arrangements

6.1.6 R The *custody rules* do not apply where a *client* (other than a *retail client*) transfers full ownership of a *safe custody asset* to a *firm* for the purpose of securing or otherwise covering present or future, actual, contingent or prospective obligations. A *firm* must not enter into this type of arrangement with a *retail client*.

[**Note:** recital 27 to *MiFID*]

…

Title transfer collateral arrangements

7.2.3 R Where a *client* (other than a *retail client*) transfers full ownership of *money* to a *firm* for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such *money* should no longer be regarded as *client money*. A *firm* must not enter into this type of arrangement with a *retail client*.

[**Note:** recital 27 to *MiFID*]

…

7.2.7 G ~~Pursuant to the *client's best interests rule*, a *firm* should ensure that where a *retail client* transfers full ownership of *money* to a *firm*:~~

~~(1) the *client* is notified that full ownership of the *money* has been transferred to the *firm* and, as such, the *client* no longer has a proprietary claim over this *money* and the *firm* can deal with it on its own right;~~

~~(2) the transfer is for the purposes of securing or covering the *client's* obligations;~~

~~(3) an equivalent transfer is made back to the *client* if the provision of collateral by the *client* is no longer necessary; and~~

~~(4) there is a reasonable link between the timing and the amount of the collateral transfer and the obligation that the *client* owes, or is likely to owe, to the *firm*.~~ [deleted]

…

7.2.10A G *Firms* are reminded that, notwithstanding that *money* may be due and payable to them, they have a continuing obligation to segregate *client money* in accordance with the *client money rules*. In particular, in accordance with *CASS* 7.6.2R, *firms* must ensure the accuracy of their records and accounts and are reminded of the requirement to carry out internal reconciliations of *client money* balances, either in accordance with the *standard method of internal client money reconciliation* or a different method which meets the requirements of *CASS* 7.6.7R and *CASS* 7.6.8R.

...

TP 1 Transitional Provisions

1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
…					
8	*CASS* 6.1.6R	R	(1) Where a *firm*, prior to [ ] 2010, has entered into a title transfer collateral arrangement (within the meaning of *CASS* 6.1.6R) with a *retail client*, it must as soon as reasonably practicable modify its contractual agreement with that *retail client* so as to remove its ability to utilise the title transfer collateral arrangement. (2) In any event, a *firm* must not rely on a title transfer collateral arrangement entered into before [ ] 2010 on or after [commencement + one month] 2010.	[ ] 2010 to [commencement + one month] 2010	[ ] 2010
9	CASS 7.2.3R	R	(1) Where a *firm*, prior to	[ ] 2010 to	[ ] 2010

			[ ] 2010, has entered into a title transfer collateral arrangement (within the meaning of *CASS* 7.2.3R) with a *retail client*, it must as soon as reasonably practicable modify its contractual agreement with that *retail client* so as to remove its ability to utilise the title transfer collateral arrangement. (2) In any event, a *firm* must not rely on a title transfer collateral arrangement entered into before [ ] 2010 on or after [commencement + one month] 2010.	[commencement + one month] 2010	

Appendix 9

Proposed amendments to the Retail Mediation Activities Return (RMAR) Sections D and E (SUP)

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

Powers exercised

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

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

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

Commencement

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

Amendments to the Handbook

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

Citation

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

By order of the Board
[*date*] 2010

Annex

Amendments to the Supervision manual (SUP)

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

16.12 Integrated Regulatory Reporting

…

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

Description of *data item*	*Firms* prudential category and applicable *data items* (note 1)							
	BIPRU firms (note 17)			*Firms* other than *BIPRU firms*				
	730K	125K and *UCITS investment firms*	50K	*IPRU (INV)* Chapter 3	*IPRU (INV)* Chapter 5	*IPRU (INV)* Chapter 9	*IPRU (INV)* Chapter 13	*UPRU*
…								
Capital adequacy	FSA003 (note 2)	FSA003 (note 2)	FSA003 (note 2)	FSA033 (note 18)	FSA034 or FSA035 (note 14)	FSA031	FSA032 (note 15) or Sections D1 and ~~D2~~ D6 RMAR (note 15)	FSA036
…								
…								
Note 15	FSA029, FSA030 and FSA032 must be completed by a *firm* subject to *IPRU(INV)* Chapter 13 which is an *exempt CAD firm*. Section A or Section B RMAR and ~~Sections D1 and D2~~ Section D6 RMAR only apply to a *firm* subject to *IPRU(INV)* Chapter 13 which is not an *exempt CAD firm*.							
…								

…

16.12.12 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.4R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	*BIPRU 730K firm*	*BIPRU 125K firm* and *UCITS*	*BIPRU 50K firm*	*UK consolidation group or*	*Firm* other than *BIPRU*

		investment firm		*defined liquidity group*	*firms*
…					
Section ~~D1 and D2~~ D6 RMAR					Half yearly (note 2) Quarterly (note 3)
…					

16.12.13 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.12R, unless indicated otherwise.

Data item	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
…						
Section ~~D1 and D2~~ D6 RMAR				30 *business days*	30 *business days*	
…						

…

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

Description of *data item*	*Firms* prudential category and applicable *data items* (note 1)							
	BIPRU firms (note 17)			*Firms* other than *BIPRU firms*				
	730K	125K and *UCITS investment firms*	50K	*IPRU (INV)* Chapter 3	*IPRU (INV)* Chapter 5	*IPRU (INV)* Chapter 9	*IPRU (INV)* Chapter 13	*UPRU*
…								
Capital adequacy	FSA003 (note 2)	FSA003 (note 2)	FSA003 (note 2)	FSA033	FSA034 or FSA035 (note 14)	FSA031	Section ~~D1 and D2~~ D6 RMAR or FSA032 (note 15)	FSA036
…								

…	
Note 15	FSA029, FSA030 and FSA032 must be completed by a *firm* subject to *IPRU(INV)* Chapter 13 which is an *exempt CAD firm*. Section A, B, C or F RMAR and Sections ~~D1 and D2~~ D6 RMAR only apply to a *firm* subject to *IPRU(INV)* Chapter 13 which is not an *exempt CAD firm*.
…	

16.12.16 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Firm's prudential category				
	BIPRU 730K firm	*BIPRU 125K firm* and *UCITS investment firm*	*BIPRU 50K firm*	*UK consolidation group* or *defined liquidity group*	*Firm* other than *BIPRU firms*
…					
Section ~~D1 and D2~~ D6 RMAR					Half yearly (note 2) Quarterly (note 3)
…					
…					

…

16.12.17 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.16R, unless indicated otherwise.

Data item	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
…						
Section ~~D1 and D2~~ D6 RMAR				30 *business days*	30 *business days*	

…

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

Description of *data item*	*Firm's* prudential category and applicable data item (note 1)				
	IPRU(INV) Chapter 3	*IPRU(INV)* Chapter 5	*IPRU(INV)* Chapter 9	*IPRU(INV)* Chapter 11	*UPRU*
…					
Capital adequacy	FSA033	FSA034 or FSA035 (note 4)	FSA031	FSA032 ~~(note 5)~~ or Section ~~D1 and D2~~ D6 RMAR (~~note~~ notes 5 and 7)	FSA036
…					
…					
Note 5	FSA032 must be completed by a *firm* subject to *IPRU(INV)* Chapter 13 which is an *exempt CAD firm.* Section D6 RMAR applies to a *firm* which is not an *exempt CAD firm.*				
…					

16.12.20 R The applicable reporting frequencies for submission of *data items* referred to in *SUP* 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

…	
Section ~~D1 and D2~~ D6 RMAR	Half yearly (note 2) Quarterly (note 3)
…	

16.12.21 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.20R.

Data item	Quarterly	Half yearly	Annual

…			
Section ~~D1 and D2~~ D6 RMAR	30 *business days*	30 *business days*	
…			

…

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

Description of d*ata item*	*Firm's* prudential category and applicable data item (note 1)					
	BIPRU 730k firm	*BIPRU 125k firm* and *UCITS investment firm*	*BIPRU 50k firm*	*Exempt CAD firm* subject to *IPRU(INV)* Chapter 13	*Firms* (other than *exempt CAD firms*) subject to *IPRU(INV)* Chapter 13	*Firms* that are also in one or more of *RAGs* 1 to 6 and not subject to *IPRU(INV)* Chapter 13
…						
Capital Adequacy	FSA003 (note 2)	FSA003 (note 2)	FSA003 (note 2)	FSA032	Section ~~D1 and D2~~ D6 RMAR (note 22)	
…						
…						
Note 22	Where a *firm* submits data items for both *RAG* 7 and *RAG* 9, the *firm* must complete both Sections D1 and D6 RMAR.					

…

16.12.23 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.22AR are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	Frequency				
	Unconsolidated *BIPRU investment firm*	Solo consolidated *BIPRU investment firm*	*UK Consolidation Group* or *defined liquidity group*	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million
…					

Section ~~D1 and D2~~ D6 RMAR				Half yearly	Quarterly
…					

16.12.24 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.23R, unless indicated otherwise.

Data item	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
…						
Section ~~D1 and D2~~ D6 RMAR				30 business days	30 business days	
…						

…

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

Description of *data item*	*Firms* prudential category and applicable *data items* (note 1)							
	BIPRU			*Firms* other than *BIPRU firms*				
	730K	125K	50K	*IPRU (INV)* Chapter 3	*IPRU (INV)* Chapter 5	*IPRU (INV)* Chapter 9	*IPRU (INV)* Chapter 13	*UPRU*
…								
Capital adequacy	FSA003 (note 2)	FSA003 (note 2)	FSA003 (note 2)	FSA033	FSA034 or FSA035 (note 14)	FSA031	Section ~~D1 and D2~~ D6 RMAR (note 17) or FSA 032 (note 15)	FSA036
…								

…

16.12.26 R The applicable reporting frequencies for *data items* referred to in *SUP*

16.12.25AR are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

Data item	*BIPRU 730K firm*	*BIPRU 125K firm*	*BIPRU 50K firm*	*UK consolidation group or defined liquidity group*	*Firm* other than *BIPRU firms*
…					
Section ~~D1 and D2~~ D6 RMAR					Half yearly (note 2) Quarterly (note 3)
…					

16.12.27 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.26R, unless indicated otherwise .

Data item	Daily	Weekly	Monthly	Quarterly	Half yearly	Annual
…						
Section ~~D1 and D2~~ D6 RMAR				30 *business days*	30 *business days*	
…						

…

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

…

	SECTION D1: Regulatory Capital							
	Home finance and non-investment insurance firms subject to MIPRU chapter 4							
		A	**B**	**C**			**A**	
		~~Mortgage~~ Home finance	Non-investment insurance	Retail investments				
1	Is the firm exempt from these capital resources requirements in relation to any of its retail mediation activities?	~~RR0198~~	~~RR0199~~	~~RR0200~~		~~Additional capital requirements for PII (if applicable)~~		
	Mortgage and non-investment insurance							
		Client money	Non-client money			**Eligible capital resources (~~mortgage~~ home finance and non-investment insurance)**		
2	Base requirement	~~RR0202~~	~~RR0203~~					
3	5% of annual income (firms holding client money)	~~RR0205~~				**Incorporated firms**		
4	2.5% of annual income (firms not holding client money)		~~RR0206~~					
					24	Share capital	~~RR0228~~	
5	**Capital resources requirement (higher of above)**	~~RR0207~~	~~RR0208~~		**25**	Reserves	~~RR0229~~	
					26	Interim net profits	~~RR323~~	
6	~~Other FSA capital resources requirements (if applicable)~~Additional capital resources requirements for PII (if applicable)	~~RR0210~~			**27**	Revaluation reserves	~~RR0233~~	
7	~~Additional capital resources requirements for PII (if applicable)~~ Other FSA capital resources requirements (if applicable)	~~RR0211~~			**28**	~~Eligible s~~Subordinated loans	~~RR0234~~	
					29	**less** Investments in own shares	~~RR0235~~	
8	**TOTAL CAPITAL RESOURCES REQUIREMENT**	~~RR0212~~			**30**	**less** Intangible assets	~~RR0236~~	
9	**TOTAL CAPITAL RESOURCES**	~~RR0213~~	See guidance		**31**	**less** interim net losses	~~RR0237~~	
10	**TOTAL CAPITAL RESOURCES EXCESS/DEFICIT**	~~RR0214~~			**32**	TOTAL CAPITAL RESOURCES	~~RR0238~~	

	~~**IPRU(INV) requirements for personal investment firms (retail investment activities only)**~~					**Unincorporated firms and limited liability partnerships (LLPs)**		
	~~Category of personal investment firm under IPRU(INV)~~	~~RR0215a~~			**33**	Capital of a sole trader or partnership or LLP members' capital	~~RR0240~~	
					34	~~Eligible subordinated~~ Subordinated loans	~~RR0245~~	
	~~**Own funds requirement**~~	~~RR0216~~	~~**A**~~		**36**	~~Personal assets not needed to meet non-business liabilities~~ **less** Intangible assets	~~RR0246~~ ~~RR0247~~	
	~~Additional own funds requirement for PII (if applicable)~~				**37**	**less** interim net losses	~~RR0248~~	
	~~Other FSA capital requirements (if applicable)~~				**38**	**less** excess of drawings over profits for a sole trader or p'ship	~~RR0249~~	
	~~**Total own funds requirement**~~				**35**	~~TOTAL CAPITAL RESOURCES~~ Personal assets not needed to meet non-business liabilities		
					39	TOTAL CAPITAL RESOURCES	~~RR0250~~	
	~~**Own funds**~~	~~RR0217~~						
	~~**Surplus/deficit of own funds**~~	~~RR0218~~						
		~~RR0219~~	~~RR0219a~~					
	~~**Adjusted net current assets requirement (if applicable)**~~	~~RR0220~~	~~**D**~~					
	~~**Adjusted net current assets (if applicable)**~~	~~RR0221~~	~~**E**~~					
	~~**Surplus/deficit (if applicable)**~~	~~RR0222~~	~~**F**~~					
	~~**Expenditure based requirement (if applicable)**~~	~~RR0223~~	~~**G**~~					
	~~**Adjusted Capital/liquid capital (if applicable)**~~	~~RR0224~~	~~**H**~~					
	~~**Surplus/deficit (if applicable)**~~	~~RR0225~~	~~**I**~~					

Delete the text of:

Section D2: Financial Resources – Non-ISD Personal Investment Firms

The deleted text is not shown.

Deleted – text not shown.

After D1 insert new **Section D6: Capital resources** (overleaf) in the place of Section D2. This text is not underlined:

SECTION D6: CAPITAL RESOURCES
Personal Investment Firms subject to IPRU(INV) chapter 13

1	Base requirement	
2	Expenditure based requirement	
3	Capital resources requirement per IPRU (INV) 13.3.2R	
4	Additional capital resources requirement for PII (if applicable)	
5	Other FSA capital resources requirements (if applicable)	
6	Total capital resources requirement	
7	Capital resources - as below	
8	**Surplus / deficit of capital resources**	

Capital resources - per IPRU (INV) 13.3.10R

9	Paid up share capital (excluding preference shares redeemable by shareholders within 2 years)	
10	Eligible LLP members' capital	
11	Balances on proprietor's or partners capital and current accounts, less excess LLP members' drawings and excess of current year drawings over current year profits	
12	Share premium account	
13	Retained profits (losses) plus current year net profits (losses) plus other reserves	
14	Revaluation reserves	
15	Subordinated loans	
16	Less: intangible assets	
17	Less: Contingent liabilities	
18	Less: Deficiencies in subsidiaries	

19	Less: Non-trade debtors (including from group and connected companies)	
20	Less: Trade debtors (including from group and connected companies)	
21	Less: Land and buildings (net of any liabilities secured by a charge on the assets)	
22	Less: Investments	
23	Less: Accrued income	
24	Less: Prepayments	
25	Less: Deposits	
26	Less: Other illiquid assets	
27	Personal assets of partnerships or sole traders	
28	**CAPITAL RESOURCES**	

Section E: Professional Indemnity Insurance (PII) Self-Certification – delete this form in its entirety (deleted text not shown) and replace with new Section E as shown below:

SECTION E: PII Self-Certification

		H	I	J
	Professional Indemnity Insurance (PII)	Home finance advising/arranging	Non-inv insurance advising/arranging/dealing/assisting	Retail investment advising/arranging
1	Does your firm hold a comparable guarantee or equivalent cover in lieu of PII, or is it otherwise exempt from holding PII in respect of any regulated activities (select as appropriate)?			
2	If your firm does not hold a comparable guarantee or equivalent cover and is not exempt does the firm currently hold PII?			
3	Has your firm renewed its PII cover since the last reporting date			

4

	A	B	C	D	E	F	G	H	I	J	O	K	L	M	N
	PII Basic information												PII detailed information		
	Activities covered by the policy								IMD firms should state their indemnity limits in Euros						
	PII policy	Home finance advising/arranging	Non-inv insurance advising/arranging/dealing/assisting	Retail investment advising/arranging	Retroactive start date (if any)	Annualised premium (Sterling)	Insurer (from list)	Start date	End date	Indemnity Limit (Single) in: Euros/Sterling/ Unlimited	Limit of Indemnity: Single	Indemnity Limit (Aggregate) in: Euros/Sterling/ Unlimited	Limit of Indemnity: Aggregate	Business line	Policy excess (Sterling)	Policy exclusions
1																
2																
3																

4															
5															
6															
7															
8															
9															
10															

		H
5	Annual income as stated on the most recent proposal form	
6	Amount of additional capital resources required for increased excess(es) (where applicable, total amount for all policies)	
7	Total amount of additional capital resources required for policy exclusion(s)	
8	Total of additional capital resources required	

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

…

NOTES FOR COMPLETION OF

THE RETAIL MEDIATION ACTIVITIES RETURN ('RMAR')

Contents

Introduction: general notes on the RMAR

…

Defined terms

…

Key abbreviations

5. The following table summarises the key abbreviations that are used in these notes:

...	…
CREDS	The Credit ~~unions~~ Unions New sourcebook, which is part of the FSA Handbook
…	…
IPRU(INV)	The Interim Prudential sourcebook for ~~investment~~ Investment ~~businesses~~ Businesses, which is part of the FSA Handbook
…	
MIPRU	The Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
MiFID	The *Markets in Financial Instruments Directive*
RMAR	Retail Mediation Activities Return, i.e. the information requirements to which these notes refer.
…	…

Scope

6. The following *firms* are required to complete the *RMAR*:

…

(b) *firms* with *permission* to carry on *home finance mediation activity*;

(c) ~~*firms* (defined as *retail investment firms*) that have *retail customers*, and have *permission* to carry on the following activities in relation to *retail investments*:~~
~~• *Advising on investments;*~~
~~• *Arranging (bringing about) deals in investments;*~~
~~• *Making arrangements with a view to transactions in investments*;~~ ~~and~~ *personal investment firms*; and

(d) ~~*personal investment firms*~~ other investment *firms* that have *retail customers* (defined as *retail investment firms),* and have *permission* to carry on the following activities in relation to *retail investments*:
• *Advising on investments;*
• *Arranging (bringing about) deals in investments;*
• *Making arrangements with a view to transactions in investments*;

…

NOTES FOR COMPLETION OF THE RMAR

…

Section D: ~~Regulatory~~ Capital Resources

~~Note: *Home purchase* and *reversion activity* should be included under the existing mortgage headings in this section of the RMAR.~~

~~'Higher of' requirements~~

In this section there are separate calculations of ~~regulatory~~ capital resources and capital resources requirements for the different types of business covered by the data requirements. The calculations are the same, however, for both *home finance mediation activity* and *insurance mediation activity* relating to *non-investment insurance contracts.*

~~If a *firm* carries on one or both of:~~

~~• *home finance mediation activity,* and/or~~
~~• *insurance mediation activity* relating to *non-investment insurance contracts* ,~~

~~and additionally carries on~~

~~• *designated investment business* (i.e. is subject to *IPRU(INV))*;~~

~~then a '**higher of**' requirement applies. This is set out in *MIPRU 4.2.5*R, which provides that in these circumstances, the higher of the capital resources requirements relating to the respective activities should apply.~~

~~In section D1, therefore, there are separate reporting requirements to establish the appropriate capital requirements for the following groups of activities and/or firms (the requirements have to be completed for all applicable categories) :~~

~~(i) firms carrying on home finance mediation activity, and/or insurance mediation activity relating to non-investment insurance contracts (the capital requirements are the same for both activities, calculated in section D1);~~

~~(ii) personal investment firms that carry on retail investment activities, but no other designated investment business. Capital requirements are calculated in section D2;~~

~~(iii) other personal investment firms, and firms that are subject to MIPRU, but are also subject to IPRU(INV) or CRED (see below). These additional capital requirements are not calculated as part of the RMAR.~~

~~In each case, it is the higher of the capital requirements that applies and is compared with the applicable calculation of financial resources.~~

(i) Section **D1** covers the appropriate capital resources and connected requirements in

MIPRU chapter 4 for *firms* carrying on *home finance mediation activity,* and/or *insurance mediation activity* relating to *non-investment insurance contracts* (the requirements have to be completed for all applicable categories). For such a firm that is also subject to *IPRU (INV)* or *BIPRU*, the requirement is the higher of the two capital resources requirements that apply (see *MIPRU* 4.2.5R) and is compared with the higher of the two capital resources calculations (see *MIPRU* 4.4.1R).

(ii) Section D6 covers the appropriate capital resources and connected requirements for *personal investment firms* that carry on *retail investment activities*. Those *firms* that carry on *designated investment business* and are subject to the *RMAR*, but do not meet the definition of *personal investment firm* (i.e. are not subject to *IPRU(INV)*) Chapter 13, are **not** subject to this section. Such *firms*, e.g. smaller stockbrokers that advise on *retail investments* as an incidental part of their business, remain subject to the financial resources requirements associated with their principal *regulated activities.* These additional capital resources requirements are not calculated as part of the *RMAR*, although will be relevant for the comparison required under *MIPRU* 4.2.5R.

~~Standard 'version 1'~~ Some ~~credit unions~~ *credit unions* are exempt from the capital resources requirements in *MIPRU,* under the terms set out in 4.1.8R of that sourcebook, although they have a capital resources requirement under the Credit Unions sourcebook *(CRED)*. For other ~~credit unions~~ *credit unions*, the capital resources requirement should be the highest of the amounts required under *MIPRU*, ~~or~~ *CRED* or *IPRU(INV)* (if applicable).

~~**Note on the scope of Sections D2**: *firms* that carry on *designated investment business* and are subject to the RMAR, but do not meet the definition of *personal investment firm*, i.e. are not subject to *IPRU(INV)* Chapter 13, will **not** be subject to this section. Such *firms*, e.g. smaller stockbrokers that advise on *retail investments* as an incidental part of their business, remain subject to the financial resources requirements associated with their principal *regulated activities*.~~

~~**Sub-sections:** this section is sub-divided as follows:~~

~~**D1**: in this sub-section, *firms* are required to complete the regulatory capital sections that are applicable for the types of business undertaken. The *personal investment firms* referred to in~~

~~(ii) above are required to complete section D2 to arrive at the totals required in D1.~~

~~**D2**: this section is completed by *personal investment firms* that are **not** subject to the requirements of *MiFID* and the *Capital Adequacy Directive* (CAD). It is used to calculate the financial resources and financial resources requirements set out in Chapter 13.10-12 of the Interim Prudential Sourcebook for Investment Businesses (*IPRU(INV)*). This in turn will provide the totals to be submitted in the D1 fields marked A to I as applicable.~~

Firms are required to complete the Sections that are applicable for the types of business they undertake. *Personal investment firms* must complete section D6 to arrive at the totals required in D1 (if D1 is relevant to them). They should calculate

their capital resources for the purpose of Section D6 as per Chapter 13 of (*IPRU(INV)*).

Guide for the completion of individual fields

Section D1: ~~Guide for the completion of individual fields~~ firms within the scope of *MIPRU* chapter 4

Is the firm exempt from these capital resources requirements in relation to any of its retail mediation activities?	The *firm* should indicate here if any *Handbook* exemptions apply in relation to the capital resources requirements in *MIPRU* or *IPRU(INV)* Chapter 13. Examples of *firms* that may be subject to exemptions include • Lloyd's *managing agents* (*MIPRU* 4.1.11R*);* • solo consolidated *subsidiaries of banks* or *building societies*; • small *credit unions* (as defined in *MIPRU* 4.1.8R); and • *investment firms* not subject to *IPRU(INV)* Chapter 13 (unless they additionally carry on *home finance mediation activity* or *insurance mediation activity* relating to *non-investment insurance contracts*).
~~**Home finance and non-investment insurance mediation** (see sub-paragraph (i) above)~~	
Base requirement	The minimum capital resources requirement for *firms* carrying on *home finance mediation activity* and/or *insurance mediation activity* relating to *non-investment insurance contracts* ~~are~~ is set out in *MIPRU* 4.2.11R. ~~If the *firm* carries on *designated investment business* as well as *home finance mediation activity, insurance mediation activity* or both, requirements under both *IPRU(INV) and MIPRU* need to be considered, as it is the higher of the requirements that needs to be met (see general notes above).~~
5% of annual income (firms holding client money)	For *firms* that hold *client money* or other *client* assets in relation to *insurance mediation activity* or *home finance mediation activity*, ~~this~~ the requirement ~~should be~~ is calculated as 5% of the annual income (see *MIPRU* 4.2.11R(2)) from the *firm's insurance mediation activity*, *home finance mediation activity*, or both.
2.5% of annual income (firms not holding client money)	For *firms* that do not hold *client money* or other *client* assets in relation to *insurance mediation activity* or *home finance mediation activity*, ~~this~~ the requirement ~~should be~~ is 2.5% of the annual income (see *MIPRU* 4.2.11R(1)) from the *firm's insurance mediation activity*, *home finance mediation activity*, or both.
Capital resources requirement~~s~~ (higher of above)	The higher of the base requirement and 5% of annual income (*firms* that hold *client money* or other *client* assets), or the higher of the base requirement and 2.5% of annual income (*firms* that do not hold *client money* or other *client* assets).
Additional capital resources requirements for PII (if applicable)	If the *firm* has any increased excesses on its PII policies, the total of the additional capital resources requirements required by the tables in *MIPRU* 3.2.13R or *MIPRU* 3.2.14R should be recorded here. See also section E of the RMAR.
Other *FSA* capital resources requirements (if applicable)	The *FSA* may from time to time impose additional requirements on individual *firms*. If this is the case for your *firm*, you should enter the relevant amount here. This excludes capital resources requirements in relation to PII, which are recorded ~~below~~ above.

	There may be additional capital resources requirements imposed on *firms* that carry on a number of different *regulated activities*. For example, *firms* that carry on the activities of *home finance providing activity* or *administering a home finance transaction* in addition to *home finance mediation activity* and/or *insurance mediation activity*, and are not exempted under *MIPRU* 4.1.4R, may have an additional requirement under *MIPRU* 4.2.21R(2). If the *firm* carries on *designated investment business* as well as *home finance mediation activity, insurance mediation activity* or both, requirements under both *IPRU(INV) or BIPRU* and *MIPRU* must be considered, as it is the higher of the requirements that needs to be met (see general note (i) above). So if the requirement under *IPRU(INV)* or *BIPRU* for a *firm* is higher than *MIPRU* then you should include the difference here.
~~Additional capital requirements for PII (if applicable)~~	~~If the *firm* has any increased excesses on its PII policies, the total of the additional capital requirements required by the tables in *MIPRU* 3.2.13R or *MIPRU* 3.2.14R should be recorded here. See also section E of the RMAR.~~
TOTAL CAPITAL RESOURCES REQUIREMENT	Appropriate totals from above.
TOTAL CAPITAL RESOURCES	This should be the total of the capital resources calculated in accordance with *MIPRU* 4 in this section (D1) for incorporated or unincorporated *firms* as applicable. For *firms* that are additionally subject to *IPRU(INV)* or *CRED,* this should be the higher of the amount calculated in this section ('total capital resources') and the financial resources determined by *IPRU(INV)* or *CRED.* See *MIPRU* 4.4.1R.
TOTAL CAPITAL RESOURCES EXCESS/(DEFICIT)	This should show the amount of capital resources that the *firm* has in relation to its capital resources requirement.
~~**IPRU(INV) requirements for personal investment firms (retail investment activities only)**~~	~~*Firms* that carry on *retail investment activities,* but no other *designated investment* business, are subject to this section. It is populated from section D2 (see sub paragraph (ii) above).~~
~~Category of personal investment firm under *IPRU(INV)*~~	~~If the *firm* is subject to Chapter 13 of *IPRU(INV)*, it should enter here its firm category as defined in *IPRU(INV)* Appendix 13(1), i.e. A1, A2, A3, B1, B2 or B3.~~
~~Own funds requirement~~	~~**See Section D2**~~ ~~The own funds requirement ('OFR') should be calculated in accordance with Chapter 13 of the Interim Prudential Sourcebook for Investment Firms.~~ ~~Non *MiFID Firms* see section *IPRU (INV)* 13.10~~ ~~For a *low resource firm*, the OFR is always £10,000.~~
~~Additional own funds requirement for PII (if applicable)~~	~~If the *firm* has increased excesses or exclusions on its PII policies, the total of the additional capital requirements required by *IPRU(INV)* 13.1.4 should be recorded here. See also section E of the RMAR.~~
~~Other *FSA* capital requirements (if applicable)~~	~~The *FSA* may from time to time impose additional requirements on individual *firms*. If this is the case for your *firm*, you should enter the relevant amount here. This excludes capital requirements in relation to PII, which are~~

	recorded above.
Total own funds requirement	Appropriate totals from above.
Own funds	**See Section D2** This field should be filled in using the figure for own funds that is derived from the calculation in Section D2. Own funds should be calculated in accordance with Chapter 13 of the Interim Prudential Sourcebook for Investment Firms. Non-*MiFID Firms* see *IPRU (INV)* 13.10 Source data for the own funds calculation should be entered in the separate financial resources section for non-*MiFID firm*.
Surplus/deficit of own funds	**See Section D2** This field should be filled in using the figure for surplus/deficit that is derived from the calculation in Section D2. This should show the amount of the *firm*'s own funds in relation to its own funds requirement
Adjusted net current assets requirement (if applicable)	**See Section D2** All *personal investment firms* except *low resource firms* should at all times have adjusted net current assets of at least £1. *Low resource firms* should enter 'n/a' here.
Adjusted net current assets (if applicable)	**See Section D2** All *personal investment firms* except *low resource firms* should at all times have adjusted net current assets of at least £1. *Low resource firms* should enter 'n/a' here. This field should be filled in using the figure for adjusted net current assets that is derived from the calculation in Section D2. Adjusted net current assets should be calculated in accordance with Chapter 13 of the Interim Prudential Sourcebook for Investment *Firms*. Non-*MiFID Firms* see *IPRU (INV)*13.11
Surplus/deficit (if applicable)	**See Section D2** All *personal investment firms,* except *low resource firms*, should at all times have adjusted net current assets of at least £1. *Low resource firms* should enter 'n/a' here. This field should be filled in using the figure for surplus/deficit that is derived from the calculation in section D2 of the data requirements. This shows whether the *firm*'s net current assets are positive
Expenditure based requirement (if applicable)	**See Section D2** All *personal investment firms,* except *low resource firms*, should calculate their expenditure based requirement ('EBR') in accordance with Chapter 13 of the Interim Prudential Sourcebook for Investment Firms. *Low resource firms* should enter 'n/a' here. Non-*MiFID Firms* see *IPRU (INV)* 13.12
Adjusted Capital/liquid capital (if applicable)	**See Section D2** This field should be filled in using the figure for adjusted capital/liquid capital that is derived from the calculation in Section D2. Adjusted/liquid capital should be calculated in accordance with Chapter 13 of the Interim Prudential Sourcebook for Investment Firms.

	~~Non *MiFID Firms* see *IPRU (INV)* 13.12~~ ~~*Low resource firms* should enter 'n/a' here.~~
~~Surplus/deficit (if applicable)~~	~~**See Section D2**~~ ~~This field should be filled in using the figure for surplus/deficit that is derived from the calculation in Section D2.~~ ~~This shows the amount of the *firm*'s adjusted/liquid capital in relation to its expenditure based requirement.~~ ~~*Low resource firms* should enter 'n/a' here.~~
Eligible capital resources (~~mortgage~~ home finance and non-investment insurance)	
Incorporated firms	
Share capital	Share capital ~~in section A~~ which is eligible for inclusion as ~~regulatory~~ capital resources.
Reserves	These are the audited accumulated profits retained by the *firm* (after deduction of tax and dividends) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a *parent undertaking*. Any reserves that have not been audited should not be included in this field unless the *firm* is eligible to do so under Note 1 of *MIPRU* 4.4.2~~(3)~~R.
Interim net profits	Interim net profits should be verified by the *firm's* external auditor, net of tax or anticipated dividends and other appropriations to be included as capital. Any interim net profits that have not been verified should not be included in this field unless the *firm* is eligible to do so under Note 1 of *MIPRU* 4.4.2~~(3)~~R.
Revaluation reserves	Revaluation reserves ~~(unrealised reserves arising from revaluation of fixed assets) can only be included here if audited~~ are unrealised reserves arising from the revaluation of fixed assets. They can only be included here if audited unless the firm has an exemption in accordance with Note 1 of MIPRU 4.4.2R.
~~Eligible~~ Subordinated loans	Subordinated loans should be included in capital resources on the basis of the provisions in ~~*PRU* 9.3.56R and *PRU* 9.3.57R~~ *MIPRU* 4.4.7R and *MIPRU* 4.4.8R.
Less: investments in own shares	Amounts recorded in the balance sheet as investments which are invested in the *firm*'s own shares should be entered here as a deduction.
Less**:** intangible assets	Any amounts recorded as intangible assets in Section A ~~above~~ should be entered here as a deduction. ~~The balance sheet value for **goodwill** does not have to be deducted here until 14 January 2008. See *MIPRU* 4.4.4R~~
Less**:** interim net losses	Interim net losses should be reported where they have not already been incorporated into audited reserves. The figures do not have to be audited to be included.
Unincorporated firms and limited liability partnerships	
Capital of a sole trader or partnership or LLP members' capital	See *MIPRU* 4.4.2R
~~Eligible~~ Subordinated loans	Subordinated loans should be included in capital resources on the basis of the provisions in *MIPRU* 4.4.7R and *MIPRU* 4.4.8R.
~~Personal assets not needed to meet non-business liabilities~~	~~*MIPRU* 4.4.5R and 4.4.6G allow a *sole trader* or *partner* to use personal assets to cover liabilities incurred in the *firm*'s business unless:~~

	~~(1) those assets are needed to meet other liabilities arising from:~~ ~~(a) personal activities; or~~ ~~(b) another business activity not regulated by the *FSA*; or~~ ~~(2) the *firm* holds *client money* or other *client* assets.~~ ~~This field may be left blank if the *firm* satisfies the capital resources requirements without relying on personal assets.~~
Less: intangible assets	Any amounts recorded as intangible assets in Section A above should be entered here as a deduction. ~~The balance sheet value for **goodwill** does not have to be deducted here until 14 January 2008. See *MIPRU* 4.4.3R~~
Less: interim net losses	Interim net losses should be reported where they have not already been incorporated. The figures do not have to be audited to be included.
Less**:** excess of drawings over profits for a sole trader or partnership or LLP	Any excess of drawings over profits should be calculated in relation to the period following the date as at which the capital resources are being calculated. The figures do not have to be audited to be included.
Personal assets not needed to meet non-business liabilities	*MIPRU* 4.4.5R and 4.4.6G allow a *sole trader* or *partner* to use personal assets to cover liabilities incurred in the *firm*'s business unless: (1) those assets are needed to meet other liabilities arising from: (a) personal activities; or (b) another business activity not regulated by the *FSA*; or (2) the *firm* holds *client money* or other *client* assets. This field may be left blank if the *firm* satisfies the capital resources requirements without relying on personal assets.

~~**Section D2: non-ISD *personal investment firms***~~

~~This section is for non-*MiFID personal investment firms*. Its purpose is to assist in calculating the financial resources data that is required in section D1 above, based on the requirements of *IPRU(INV)* 13.10 to 13.12.~~

~~All non-*MiFID personal investment firms* are required to meet the Own Funds financial resources test as follows:~~

~~**Own Funds (test 1)**~~

~~*IPRU(INV)* requires that all non-*MiFID personal investment firms* have financial resources of at least £10,000 at all times. The Own Funds test is designed to evaluate *firms*' adherence to this requirement.~~

~~In addition, *firms* that do not fall within the definition of a *low resource firm* are required to meet the following additional financial resources tests.~~

~~**Adjusted Net Current Assets (test 1A)**~~

~~The purpose of this test is to ensure that the *firm* has adequate working capital to be~~

~~able to meet its liabilities as and when they fall due. It does this by taking the *firm's* net current assets (from the balance sheet), and applying the following actions:~~

~~(1) excluding assets which cannot be realised or recovered within twelve months;~~
~~(2) excluding amounts receivable from *connected persons* (to the extent that they are not properly secured, except certain allowable deposits);~~
~~(3) valuing *investments* at current market value.~~

~~The resulting balance should be at least £1.~~

~~**Expenditure Based Requirement (test 2)**~~

~~This is a capital requirement for *personal investment firms* that are not *low resource firms*, based on a *firm*'s overall audited expenditure. The Expenditure Based Requirement is calculated as a fraction of the *firm*'s annual fixed costs which, for this purpose, are based upon the *firm*'s annual expenditure and, in general terms, exclude cost items that would not be incurred were there no income. Thus staff bonuses and *partners*' profit shares (unless guaranteed) and any shared commissions are not treated as fixed costs for the purposes of the calculation.~~

Section D6: Capital Resources – Personal Investment Firms subject to IPRU(INV) chapter 13

Base requirement	The minimum capital resources requirement for a firm is set out in *IPRU(INV) 13.3.2*R(2). *Firms* must be aware of the Transitional Provisions in *IPRU(INV)* Chapter 13.
Expenditure-based requirement	The requirement is calculated as 1/4 of the firm's annual expenditure as required by *IPRU(INV)* 13.3.2R(1). For the purposes of the calculation fixed expenditure is that which is inelastic relative to fluctuations in the *firm's* level of business. Fixed expenditure is likely to include most salaries and staff costs, office rent, payment for the rent or lease of office equipment, and insurance premiums. It may be viewed as the amount of funds which a firm would require to enable it to cease business in an orderly manner, should the need arise. Staff bonuses; *employees* and *directors'* profit shares; some interest charges; shared commission and fees payable; emoluments of directors, partners or a sole trader; and other variable expenditure can be deducted for the purposes of the calculation, but the firm will need to identify for itself which costs amount to fixed expenditure.
Capital resources requirement per *IPRU(INV)* 13.3.2R (higher of above)	*Firms* are required to meet the capital resources requirement which is the higher of: (1) the base requirement; and (2) the expenditure-based requirement.
Additional capital resources requirement for PII (if applicable)	If the *firm* has increased excesses or exclusions on its PII policies, the total of the additional capital resources requirements required by *IPRU(INV)* 13.1.23R and 13.1.27R should be recorded here. See also section E of the *RMAR*.
Other *FSA* capital resources	The *FSA* may from time to time impose additional

requirements (if applicable)	requirements on individual *firms*. If this is the case for your *firm*, you should enter the relevant amount here. This excludes capital resources requirements in relation to PII, which are recorded above.
Total capital resources requirement	Appropriate totals from above.
Capital Resources - as below	This field should be filled in using the figure for capital resources as calculated in the second part of this Section.
Surplus/deficit of capital resources	This should show the amount of the *firm's* capital resources in relation to its capital resources requirement.

Capital resources calculation – per IPRU(INV) 13.3.10R

Paid up share capital excluding preference shares redeemable by shareholders within 2 years	Exclude redeemable preference shares which fall due within two years. If preference shares are not redeemable by the shareholder within 2 years, they must be treated in accordance with 13.3.1R and 13.3.14R.
Eligible LLP members' capital	
Balances on proprietor's or partners' capital and current accounts, less excess LLP members' drawings and excess of current year drawings over current year profits	
Share premium account	
Retained profits (losses) plus current year net profits (losses) plus other reserves	Retained profits (or losses) do not need to be audited and current year net profits (or losses) do not need to be verified.
Revaluation reserves	
Subordinated loans	Subject to the limits set out in 13.3.11R to 13.3.14R.
Less: intangible assets	Deduct intangible assets in full.
Less: Contingent liabilities	Deduct any contingent liability (including the overdraft of any other company that the firm has guaranteed).
Less: Deficiencies in *subsidiaries*	Include a deduction for the amount by which the liabilities of any *subsidiary* (excluding its capital and reserves) exceed its tangible assets. This requirement applies only to the extent that the firm has not already made such a provision in its balance sheet.
Less: Non-trade debtors (including from *group* and *connected* companies)	Deduct amounts in full.
Less: Trade debtors (including from *group* and connected companies)	Deduct amounts due and unpaid for more than 90 days.
Less: Land and buildings (net of any liabilities secured by a charge on the assets)	Deduct 30% of the net book value of land and buildings.
Less: *Investments*	Deduct the applicable percentage for investments as specified in Table 13.3.10.
Less: Accrued income	Deduct amounts receivable after more than 90 days.
Less: Prepayments	Deduct amounts which relate to goods or services to be received or performed after more than 90 days.
Less: *Deposits*	Deduct amounts other than: (a) cash and balances on current accounts and on deposit accounts with an approved bank or National Savings Bank that can be withdrawn within 90 days; (b) money on deposit with a UK local authority that can be withdrawn within 90 days;

	(c) money deposited and evidenced by a certificate of tax *deposit.*
Less: Other illiquid assets	Deduct amounts in full.
Personal assets of *partnerships* or *sole traders*	A *sole trader* or a *partnership* may include personal assets (based on a current independent valuation) to make up any shortfall in the required capital resources needed to meet its capital resources requirement. The assets must be discounted by the factors used for the calculations above in this Table and must not be needed to meet liabilities arising from personal activities or another business activity not regulated by the *FSA*.

Section E: Professional Indemnity Insurance

~~Note: *Home purchase* and *reversion activity* should be included under the existing mortgage headings in this section of the RMAR~~

This section requires *firms* to confirm that they are in compliance with the requirements in relation to professional indemnity insurance (PII).

Data is required in relation to all PII policies that a *firm* has in place, up to a limit of ten (the system will prompt you to submit data on all applicable policies). If a *firm* has more than ten policies, it should report only on the ten largest policies by premium.

Note on the scope of Section E: *retail investment firms* that fall within the scope of these data requirements, but do not meet the definition of *personal investment firm*, i.e. are not subject to *IPRU(INV)* 13, will **not** be subject to this section unless they undertake *non-investment insurance mediation* or *home finance mediation activities*.

The PII requirements for *authorised professional firms* ('APFs') that carry on *retail investment activities* are set out in *IPRU(INV)* 2.3. APFs that carry on *home finance mediation activity* or *insurance mediation activity* are subject to the full requirements of *MIPRU* 3.

Firms which are subject to the requirements in ~~both *IPRU* and *MIPRU*~~ *IPRU(INV)* 13 but also undertake *home finance* and /or *insurance mediation activity* must apply the PII rules outlined in *IPRU(INV)* 13, not *MIPRU* 3.

Section E: guide for completion of individual fields

Part 1

Does your firm hold a comparable guarantee or equivalent cover in lieu of PII, or is it otherwise exempt from holding PII in respect of any regulated activities (tick as appropriate)?	This question will establish whether a *firm* is exempt from the requirements and so is not required to hold PII. The conditions for comparable guarantees and other exemptions from the PII requirements for *firms* carrying on ***insurance*** or ***home finance mediation*** **and subject to** ***MIPRU*** are set out in *MIPRU* 3.1.1R paragraphs (3) to (6). ***Personal investment firms*** can only be exempted ~~by individual waiver granted by the *FSA* (unless *IPRU(INV)* 13.1.7R applies in respect of comparable guarantees)~~ if they have a comparable guarantee that complies with *IPRU(INV)* 13.1.7R). If the *firm* is required to hold PII – i.e. is not exempt from holding PII – you should enter 'no' in the data field. A *firm* is NOT exempt from holding PII if: • the *firm* has a group policy with an insurer; or • the *firm* has permission for a regulated business that requires PII, but does not currently carry it out; or • it is a *personal investment firm* meeting the exemption requirements for *mortgage intermediaries* and *insurance intermediaries* in *MIPRU* 3. *Retail investment firms* that do not meet the definition of *personal investment firm* are not required to complete this section of the RMAR unless they have permission for *non-investment insurance* or *home finance mediation activities*.
If ~~the~~ your firm does not hold a comparable guarantee or equivalent cover and is not exempt, does the firm currently hold PII?	*Firms* are required to take out and maintain PII at all times. You should only enter 'n/a' if the *firm* is exempt from the PII requirements for all the *regulated activities* forming part of the RMAR.
…	…

Part 2

At this point, if the *firm* has PII policy details to report, it should do so by clicking on the 'add PII policy' button in the summary screen. This will then prompt you to name the sub-section, e.g. 'policy1'. You may also add further sub-sections if the *firm* has two or more policies (up to a maximum of ten).

PII basic information

What activities are covered by the policy(ies)?	You should indicate which *regulated activities* are covered by the *firm's* PII policy or policies.
If your policy excludes all business activities carried on prior to a particular date (i.e. a retroactive start date), then insert the date here, if not please insert 'n/a'.	Required terms of PII are set out for *personal investment firms* in ~~*IPRU(INV)* 13.1.5R~~ *IPRU(INV)* 13.1.9R to 13.1.18R and for *mortgage intermediaries* and *insurance intermediaries* in *MIPRU* 3.2.4R. …
…	…

Limit of Indemnity	… Those firms subject to the *Insurance Mediation Directive (IMD)* requirements should state their limit in Euros; those that are not subject to the *IMD* should select 'Sterling' from the drop-down list. … For *personal investment firms*, see *IPRU(INV)* ~~13.1.9R~~ 13.1.10R and 13.1.13R and select either 'Euros' or 'Sterling' as applicable. …

…	…
Policy exclusion(s) (only in relation to exclusions you have had in the past or will have during the period covered by the policy)	If there are any exclusions in the *firm's* PII policy which relate to any types of ~~businesses~~ business or ~~activities~~ activity that the *firm* has carried out either in the past or during the lifetime of the policy, enter the business type(s) to which the exclusions relate here. …
…	…
~~Insurer~~ Insurer's name (please select from the drop-down list)	The *firm* should select the name of the *insurance undertaking* or Lloyd's syndicate providing cover. If the PII provider is not listed you should select 'other' and enter the name of the *insurance undertaking* or Lloyd's syndicate providing cover in the free-text box. If a policy is underwritten by more than one *insurance undertaking* or Lloyd's syndicate, you should select 'multiple' and state the names of all the *insurance undertakings* or Lloyd's syndicates in the free-text box.
Annual income as stated on the most recent proposal form	This should be the income as stated on the *firm's* most recent PII proposal form. For a *personal investment firm*, this is relevant income arising from all of the *firm's* activities for the last accounting year before the policy began or was renewed (*IPRU(INV)* 13.1.8R). For *insurance intermediaries* and ~~*mortgage*~~ *home finance intermediaries* this is the annual income given in the *firm's* most recent annual financial statement from the relevant *regulated activity* or activities (*MIPRU* 4.3.1R to 4.3.3R).
Amount of additional capital resource required for increased excess(es) (where applicable, total amount for all PII policies)	This should be calculated using the tables in *IPRU(INV)* ~~13.119R~~ 13.1.27R or *MIPRU* 3.2.14 to 3.2.15R as applicable. The total of additional capital resources (i.e. in relation to all of the *firm's* PII policies) should ~~have been~~ be reported under 'additional capital resources requirements for PII' in Section D1.
Amount of additional capital resources required for policy exclusion(s)	*Personal investment firms* only – this should be calculated in line with *IPRU(INV)* 13.1.23R. The

	total of additional capital resources (i.e. in relation to all of the *firm's* PII policies) should have been reported under 'additional capital resources for PII' in section ~~D1~~ D6.
Total of additional capital resources required	*Personal investment firms* only – this is the same figure as in section ~~D1~~ D6, representing the total of additional capital resources required under *IPRU(INV)* 13.1.23R to 13.1.27R for all of the *firm's* PII policies.
~~Total of readily realisable capital resources~~	~~*Personal investment firms* only – you should state here the total of the own funds reported in section D.~~
~~Excess/deficit of readily realisable own funds~~	~~This field is no longer relevant.~~

…

Appendix 10

Proposed amendments to the guidance supporting FSA015 (sectoral information including arrears and impairment) (SUP)

INTEGRATED REGULATORY REPORTING (AMENDMENT NO X) INSTRUMENT 2010

Powers exercised

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

Commencement

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

Amendments to the Handbook

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

Citation

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

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual [SUP]

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

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

…

FSA015 – Sectoral information, including arrears and impairment

…

Definitions

Coverage

FSA015 is intended to provide information on loans and similar financial assets broadly covered by *data elements* 5-10 of FSA001. Therefore, other asset types, such as those covered by FSA001, *data elements* 11-19, (e.g. intangible assets, fixed assets and prepayments) should be excluded unless otherwise specified below. In general we would expect fees due under loan agreements to be included but fees for services should not be included, unless the amount involved is large or significant, in which case it should be classified according to the debtor type. Overdrafts should be included. Where a *firm* is using *IFRS* and including derivatives on its balance sheet when it is reporting FSA001, then it should exclude the derivative figures in FSA015. For firms using UK GAAP, derivatives that are treated as off-balance sheet should also be excluded from FSA015. Trading book exposures, other than those relating to counterparty risk, should also be excluded.

All relevant assets should be included in columns A and H, even where the accounts have no associated arrears or impairments.

Column A: "All balances (customer) outstanding at period end"

This is the amount of total debt owed by the customer at the reporting date, and should comprise the total amount outstanding (after deducting any write-offs but without deduction for any provisions or impairments) in respect of:

(i) the principal of the ~~advance~~ debt (including any further advances made);

(ii) interest ~~accrued~~ due on the ~~advance~~ debt (but only up to the reporting date), including any interest suspended; do not include interest accrued but not yet payable; and

…

The treatment of loan assets that are being operated as part of a current account offset mortgage product (or similar products where *deposit* funding is offset against loan balances in arriving at a net interest cost on the account) will depend on the conditions pertaining to the ~~mortgage~~ product. The balance outstanding on such loans will need to be reported on the basis of the contractually defined balance according to the terms of the ~~mortgage~~ product. This might be the amount of loan excluding any offsetting funds, or it might be the net amount, depending upon the terms of the offset arrangement.

The appropriate rows of column A should be completed for all the categories to which the *firm* has an exposure even if there are no associated arrears.

It is not expected that these figures in this column will necessarily reconcile to any of the *firm's* published statutory data or on other *data items* except MLAR, as the valuation basis is likely to differ.

Columns B–G, rows 1-11: "Balances of accounts in arrears/default by band"

The analysis is based on expressing the amount of arrears and/or the amount past due on each ~~loan~~ debt as a percentage of the balance outstanding on the ~~loan~~ debt, allocating the total balance on each debt (calculated in the same way as for column A) ~~cases~~ to relevant arrears bands., ~~providing details of cases moving up into more serious arrears bands in the quarter (or half year in the case of a *UK consolidation group*), and giving information on loan performance during the quarter or half year.~~ (In cases where there is more than one loan to a

debtor (or debtors) secured on a single property, these should be amalgamated, where possible, in reporting ~~details of arrears cases.)~~ with balances allocated to the row representing the predominant part of the debt outstanding.

Arrears and amounts past due will arise through the debtor failing to service any element of his debt obligation to the *firm*, including capital, interest, or fees, fines, administrative charges, default interest or insurance premiums.

At the reporting date, for loan accounts the amount ~~of~~ in arrears or past due is the difference between:

(i) the accumulated total amounts of (monthly or other periodic) payments due to be received from the debtor; and

…

(i) include ~~accrued~~ interest and amounts due for payments only up to the reporting date but not beyond, do not include interest accrued but not yet payable;

…

~~Where a 'capitalisation' case that has at one time been correctly removed as fully performing but at some later time defaults, then this should be treated as a new default and the amount of arrears taken as that arising from this new default. That is, the previously capitalised arrears should not be reinstated as current arrears.~~ The decision to 'capitalise' arrears (or treat as if capitalised) is a business decision between the *firm* and the debtor.-By 'capitalisation' we mean a formal arrangement agreed with the debtor to add all or part of a debtor's arrears to the amount of outstanding principal (i.e. advance of principal including further advances less capital repayments received during the period of the loan) and then treating that amount of overall debt as the enlarged principal. This enlarged principal is then used as the basis for calculating future monthly payments over the remaining term of the loan. Where less than the full amount of arrears is capitalised (or indeed where none of the arrears is capitalised) then, providing there are arrangements made for the debtor to repay the non-capitalised arrears over a shorter period ranging for example from 3 to 18 months, this type of arrangement should also be regarded as an equivalent of 'capitalisation'.

~~The decision to 'capitalise' (or treat as if capitalised) is a business decision between the *firm* and the debtor. However for~~ For the purposes of consistency in reporting arrears cases the following reporting criteria should be used where a *firm* has capitalised the loan (or treated as if capitalised) and reset the monthly payment:

(i) such an arrears case should continue to be included as an arrears case until the loan has been 'fully performing' (see (ii) below) for a period of six consecutive months (any temporary increase in arrears during this qualifying period has the effect of requiring six consecutive months of ~~fully performing~~ full performance after such an event). Until that time ~~it~~ the balance of the loan should be included in the table and be allocated to the arrears band applicable at each reporting date as if 'capitalisation' had not taken place;

(ii) …

Where a 'capitalisation' case becomes fully performing but later the debtor defaults again, this

subsequent default should be regarded as a new default and the amount of arrears should be the amount arising from this new default. That is, the previously capitalised arrears should not be reinstated as current arrears.

For **overdrafts,** the amount to be treated as in arrears or past due is:

(i) any amount borrowed and/or outstanding in excess of the overdraft limit for that account (whether explicitly agreed with the debtor or otherwise);

(ii) the whole amount of any balance outstanding (regardless of whether within the overdraft limit or not) where no credit has been received into the account in the previous 90 days; and

(iii) the whole amount of any balance outstanding (regardless of whether within the overdraft limit or not) where the *firm* has determined that a default has occurred and/or where an impairment or provision charge has been raised and/or where formal demand for repayment has been made.

All amounts to include interest and fees and/or other charges. Do not include interest accrued but not yet payable.

For **credit cards** (and equivalent revolving credit facilities) the amount to be treated as in arrears or past due is:

(i) any amount outstanding above the agreed card limit (as advised to the customer);

(ii) any amount of the minimum monthly payments due which has not been met by credits to the account (on a cumulative basis, where the latest credit is applied to extinguish the earliest minimum payment due);

(iii) the whole amount of any balance outstanding (regardless of whether within limit or not) where no credit has been received to the account; and

(iv) the whole amount of any balance outstanding (regardless of whether within limit or not) where the *firm* has determined that a default has occurred and/or where an impairment or provision charge has been raised) and/or where formal demand for repayment has been made.

All amounts to include interest and fees and other charges. Do not include interest accrued but not yet payable.

Column B rows 12-26

Include here the ~~amount of any payments that~~ balance of all accounts where a counterparty has failed to make payments when they were contractually due and where these are now overdue by at least 90 days.

For overdrafts and other revolving credit facilities**,** the amount to be treated as in arrears and/or past due is:

(i) any amount borrowed and/or outstanding in excess of the overdraft limit for that account (whether explicitly agreed with the debtor or otherwise);

(ii) the whole amount of any balance outstanding (regardless of whether within limit or not)

where no credit has been received to the account in the previous 90 days ; and

(iii) the whole amount of any balance outstanding (regardless of whether within limit or not) where the firm has determined that a default has occurred and/or where an impairment or provision charge has been raised) and/or where formal demand for repayment has been made.

All amounts to include interest and fees and other charges due but not paid (unless incorporated in a balance that is within the agreed limit). Do not include interest accrued but not yet payable.

Column C rows 12-26

Past due: 'o/w impaired' is shorthand for 'of which impaired'. The terms 'impaired' and 'impairment' here, and in other places in FSA015, should be consistent with that used in the *firm's* statutory Annual Accounts. Where the firm's accounts are compiled under UK GAAP the terms should be equated to 'general provisions' and 'specific provisions'.

Include here the ~~amount by which~~ balances of any *exposures* in column B which are also deemed to be impaired.

If impaired exposures are reported in column C, we would usually expect the balances to be reported in columns N and/or P.

Column D rows 12-26

'Other impaired' refers to impaired *exposures* which have no past due element.

Include here the ~~amount by which~~ balances of any *exposures* which, whilst not past due, are deemed to be impaired.

Column E rows 12-26

For unsecured *exposures* and partially secured *exposures* (where the collateral held does not cover the entire *exposure*) enter ~~Enter~~ the total gross value, before deduction of impairment charges, of *exposures* ~~against~~ which ~~impairment charges have been made~~ have been classified as impaired (i.e. included in columns C and D) and for which either ~~where~~ no collateral is held or where collateral is held but is insufficient to cover the entire *exposure*. ~~against the *exposure*; i.e. report~~ Report here loans which are included in columns C and D because they are impaired, reporting the ~~amount of the loan which is unsecured. Report the unsecured amount of the loan, irrespective of the impaired amount~~ balance owed, less the realisable value of the security held, for each loan.

For fully secured lending (rows 13 and 17) we would usually expect a nil value in column E, unless it is known that the current realisable value of the security shows a shortfall.

Column B rows 27-31

Include here any *exposures* where payments have not been made on the date due and are now overdue and where there is little prospect for recovery of principal or interest.

Column C rows 27-31

Include here the amount ~~by which~~ of any other *exposures* which, whilst not in default, are deemed to be impaired.

Column D rows 27-31

Include here the Mark-to-market value of any impaired *exposures* included in columns B and C.

Column H: All balances (accounting) at period end

This is the total value of the on balance sheet exposures in each category, valued in line with the *firm's* accounting policies. However there will not necessarily be a direct reconciliation between column H and the firm's statutory published Balance Sheet, nor between column H and FSA001, as FSA015 does not include all asset classes (and excludes most trading book assets).

The sorts of assets that are likely to be excluded are those covered by FSA001, data elements 15-19, e.g. intangible assets, fixed assets and prepayments. In general we would not expect trade debtors to be included, unless the amount involved is large or significant, in which case it should be classified according to the debtor type.

Columns J-M

The reference to 'in periods' at columns J to M is a reference to the amount of write-offs or impairment charges since the last reported FSA015.

In completing column J there may be a difference to accounting convention as write-offs should be reported as a positive figure. On FSA015 a negative number will be taken to indicate a write-back. Similarly for columns K and L, where an impairment charge is being put though the income statement it should be reported as a positive amount. A negative number will indicate the release of an impairment charge (reduction in provision).

Column J: Write-offs net of recoveries

Enter the net amount written off during the period, after any recoveries of exposures previously written off.

The figure reported here should only relate to the amount of write-offs net of recoveries made since the last reporting period end date (i.e. in the latest quarter or half-year). Unlike the data reported on the Income Statement (FSA002) it is not a cumulative figure for the financial year to date.

Columns K and L: Charge/credit to the Income statement (P&L)

The figure reported in column K should only relate to the amount of new individual impairments or specific provisions charged to the income statement since the last reporting period end date (i.e. in the latest quarter or half-year). The figure reported in column L should only relate to the amount of new collective impairments or general provisions charged to the income statement since the last reporting period end date (i.e. in the latest quarter or half-

year). Unlike the data reported on the FSA Income Statement (FSA002) it is not a cumulative figure for the financial year to date.

~~Enter the net charge or credit to the income statement (profit & loss account) in respect of impairment charges during the period.~~ A net credit should be shown with a minus sign (not brackets). The gross charge for new impairment charges should be offset by other items including any charges made in earlier periods but now released. The charge or credit for individual impairment charges should include the charge or credit for provisions in respect of suspended interest where it is the practice of the reporting institution to show suspended interest as interest receivable in the income statement (profit and loss account).

Column M: Other Adjustments

This includes any adjustments made as a result of…..

The figure reported here should only relate to the amount of other adjustments since the last reporting period end date (i.e. in the latest quarter or half-year). Unlike the data reported on FSA Income Statement (FSA002) it is not a cumulative figure for the financial year to date.

Column N: individual impairment balance or specific provisions

Enter the total value of individual impairment balances.

Note that if all of the *firm's* provisions relate to accounts included in this *data item* this would be the total value of the individual impairment balance or provisions as detailed on the firm's financial balance sheet. If some of the impairments or provisions relate to accounts that are not included in this *data item* then this will not be the case.

In most cases we would expect that, for the current period, for each line item, the following would be true: (N+P for the previous period) – J + (K+L+M) (where J, K, L & M are for the current period) is approximately equal to (N+P for the current period).

Individual impairment balances or specific provisions are those generated following the impairment assessment of a loan on a standalone basis.

Column P: collective impairment balance or specific provision

Enter the total value of collective impairment balances.

Note that if all of the *firm's* provisions relate to accounts included in this *data item* this would be the total value of the collective impairment balance as detailed on the *firm's* financial balance sheet. If some of the provisions relate to accounts that are not included in this *data item* then this will not be the case.

Collective impairment balances or specific provision are those generated following the impairment assessment of a group of loans.

Columns L and P: collective impairments

Collective impairment charges should be applied at portfolio or product level and should be allocated to the most appropriate category for that portfolio or product.

Column Q: balances of loans with individual impairment

Include the total balance of any *exposures* ~~against which there is an individual impairment charge~~ that are judged to be impaired. This should be gross of impairment provisions but net of write-offs as per the statutory Annual Accounts. Loans which have been tested for impairments, but which are not classed as impaired, should not be included.

…

Retail sector

This section comprises all *Retail exposures*, including exposures to *retail SME*. Note that loans should only be reclassified between "partially secured" and "fully secured" where there has been a formal revaluation exercise carried out by the *firm* of the specific security held, i.e. excluding revaluations conducted for the purposes of re-indexing for capital calculation purposes.

10 Retail SME

...

Corporate sector

This section comprises all *corporate exposures* that are not included in retail SME. This should include *exposures* to and/or balances with non consolidated group companies as well as third parties. It should exclude quoted securities which are included in lines 27 – 30.

12 UK commercial real estate (secured and unsecured)

This will typically include any *exposures* defined by Basel as "Claims secured by commercial real estate" or "Income-producing real estate", or lending where the counterparty has been allocated to SIC code ~~70~~ 68 or 41.1 and the lending is done in the UK.

…

16 Non-UK commercial real estate

This will typically include any *exposures* defined by Basel as "exposures secured by commercial real estate" or "Income-producing real estate", or lending where the counterparty has been allocated to SIC code ~~70~~ 68 or 41.1 and the lending is done outside the UK.

Financial sector

This section comprises all *exposures* to the *financial sector*.

21 Exposures to UK financial institutions, credit institutions and insurance companies

Include *exposures* to all UK financial institutions, credit institutions (including banks) and insurance companies.

This line should include, for example, cash on deposit with UK financial institutions, money market deposits with UK banks and UK bank securities excluding quoted securities which are included in lines 27 – 30 below.

22 Exposures to non-UK financial institutions, credit institutions and insurance companies

Include exposures to all non-UK financial institutions, credit institutions (including banks) and insurance companies.

This line should include, for example, cash on deposit with non-UK financial institutions, money market deposits with non-UK banks and non-UK bank securities excluding quoted securities which are included in lines 27 – 30 below.

Non-financial institutions (including government)

~~All~~ Include all other *exposures* other than those defined above or debt instruments in the banking book.

Debt instruments (banking book)

Debt instruments quoted on a *recognised investment exchange* and held in the banking book, regardless of the issuer type, should be reported in lines 27 – 30 and not elsewhere.

27 UK collateralised debt obligations

...

28 Other UK asset backed securities

~~Comprises holding~~ Include holdings of all other *asset backed securities*, except CDOs, issued by UK entities.

29 Other UK securities

~~Comprises holding~~ Include holdings of all other securities, except those listed above, issued by UK entities. This includes UK Gilts and UK Treasury bills.

Exposures to equities are not included in FSA015 and need not be reported.

30 Other non-UK securities

~~Comprise~~ Include holdings of any securities issued by non-UK companies including non-UK CDOs and non-UK *asset backed securities*. Also include non-UK government securities.

Debt instruments should be classified according to the domicile or geographical location of the issuer.

….

Appendix 11

Proposed changes to Chapter 16 of the Supervision manual (SUP)

SUPERVISION MANUAL (REGULATORY REPORTING OF CAPITAL PLANNING BUFFERS) INSTRUMENT 2010

Powers exercised

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

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

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

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Supervision Manual (Regulatory Reporting of Capital Planning Buffers) Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

[Editor's Note: the version of the Handbook text which is being used as a base for the amendments shown below is not that consulted on in CP09/29; the changes in that CP have not been finalised at the date of this consultation.]

In this section, underlining indicates new text.

SUP 16 Annex 24R (Data items for SUP 16.12) *(see following pages)*

FSA003

Capital adequacy

	The firm completing this is subject to the capital rules for (tick one only):	
1	A UK bank or a building society	
2	A full scope BIPRU investment firm	
3	A BIPRU limited activity firm	
4	A BIPRU limited licence firm, including a UCITS investment firm	
5	If you are a full scope BIPRU investment firm, do you meet the conditions in BIPRU TP 12.1R?	
	If you are a BIPRU investment firm, are you a:	
6	BIPRU 730K firm	
7	BIPRU 125K firm (excluding UCITS investment firms)	
8	UCITS investment firm	
9	BIPRU 50K firm	
10	Do you have an investment firm consolidation waiver under BIPRU 8.4?	
11	Have you notified the FSA, at least one month in advance of the date of this report, that you intend to deduct illiquid assets?	
12	Basis of reporting Unconsolidated/Solo-consolidated/Consolidated	

If consolidated, please complete data elements 13 and 14, otherwise go straight to data element 15.

13 For consolidated reporting, provide

	A		B
Group reference		Group name	- -

14 For consolidated reporting, provide details of all other FSA authorised firms included in this consolidated report.

	A	B
FRN		Name - -
		- -
		- -
		- -

		A Capital resources for all other purposes	B Capital resources omitting Stage C
15	Total capital after deductions		
16	Total tier one capital after deductions		
17	Core tier one capital		
18	Permanent share capital		
19	Profit and loss account and other reserves		
20	Interim net losses		
21	Eligible partnership, LLP or sole trader capital		
22	Share premium account		
23	Externally verified interim net profits		
24	Other tier one capital		
25	Perpetual non-cumulative preference shares subject to limit		
26	Innovative tier one instruments subject to limit		

27	Deductions from tier one capital	
28	Investments in own shares	
29	Intangible assets	
30	Excess on limits for non innovative tier one instruments	
31	Excess on limits for innovative tier one instruments	
32	Excess of drawings over profits for partnerships, LLPs or sole traders	
33	Net losses on equities held in the available-for-sale financial asset category	
34	Material holdings	
35	Total tier two capital after deductions	
36	Upper tier two capital	
37	Excess on limits for tier one capital transferred to upper tier two capital	
38	Upper tier two capital instruments	
39	Revaluation reserve	
40	General/collective provisions	
41	Surplus provisions	
42	Lower tier two capital	
43	Lower tier two capital instruments	
44	Excess on limits for lower tier two capital	
45	Deductions from tier two capital	
46	Excess on limits for tier two capital	
47	Other deductions from tier two capital	
48	Deductions from total of tiers one and two capital	

49	Material holdings	
50	Expected loss amounts and other negative amounts	
51	Securitisation positions	
52	Qualifying holdings	
53	Contingent liabilities	
54	Reciprocal cross-holdings	
55	Investments that are not material holdings or qualifying holdings	
56	Connected lending of a capital nature	
57	Total tier one capital plus tier two capital after deductions	
58	Total tier three capital	
59	Excess on limits for total tier two capital transferred to tier three capital	
60	Short term subordinated debt	
61	Net interim trading book profit and loss	
62	Excess on limit for tier three capital	
63	Unused but eligible tier three capital (memo)	
64	Total capital before deductions	
65	Deductions from total capital	
66	Excess trading book position	
67	Illiquid assets	
68	Free deliveries	
69	Base capital resources requirement	

70	**Total variable capital requirement**	
71	Variable capital requirement for UK banks and building societies	
72	Variable capital requirement for full scope BIPRU investment firms	
73	Variable capital requirement for BIPRU limited activity firms	
74	Variable capital requirement for BIPRU limited licence firms	
75	Variable capital requirement for UCITS investment firms	
76	Variable capital requirements to be met from tier one and tier two capital	
77	Total credit risk capital component	
78	Credit risk calculated by aggregation for UK consolidation group reporting	
79	Credit risk capital requirements under the standardised approach	
80	Credit risk capital requirements under the IRB approach	
81	Under foundation IRB approach	
82	Retail IRB	
83	Under advanced IRB approach	
84	Other IRB exposures classes	
85	Total operational risk capital requirement	
86	Operational risk calculated by aggregation for UK consolidation group reporting	
87	Operational risk basic indicator approach	
88	Operational risk standardised/alternative standardised approaches	
89	Operational risk advanced measurement approaches	
90	Reduction in operational risk capital requirement under BIPRU TP 12.1	
91	Counterparty risk capital component	

92	Capital requirements for which tier three capital may be used	
93	Total market risk capital requirement	
94	Market risk capital requirement calculated by aggregation for UK consolidation group reporting	
95	Position, foreign exchange and commodity risks under standardised approaches (TSA)	
96	Interest rate PRR	
97	Equity PRR	
98	Commodity PRR	
99	Foreign currency PRR	
100	CIU PRR	
101	Other PRR	
102	Position, foreign exchange and commodity risks under internal models (IM)	
103	Concentration risk capital component	
104	Fixed overhead requirement	
105	Capital resources requirement arising from capital floors	
106	Surplus (+) / Deficit (-) of own funds	
107	Solvency ratio (%)	
108	Individual Capital Guidance - total capital resources	
109	Individual Capital Guidance - general purpose capital	
142	Capital Planning Buffer	
143	Draw Down of Capital Planning Buffer	
110	Surplus/(deficit) total capital over ICG	
111	Surplus/(deficit) general purposes capital over ICG	
144	Surplus/(deficit) total capital over ICG and Capital Planning Buffer	

145	Surplus/(deficit) general purposes capital over ICG and Capital Planning Buffer	
	MEMORANDUM ITEMS	
112	Value of portfolio under management - UCITS investment firms	
	Prudential filters	
113	Unrealised gains on available-for-sale assets	
114	Unrealised gains (losses) on investment properties	
115	Unrealised gains (losses) on land and buildings	
116	Unrealised gains (losses) on debt instruments held in the available for sale category	
117	Unrealised gains (losses) on cash flow hedges of financial instruments	
118	Unrealised gains (losses) on fair value financial liabilities	
119	Defined benefit asset (liability)	
120	(Deficit reduction amount) if used	
121	Deferred acquisition costs (deferred income) (DACs/DIRs)	
	Minority interests	
122	Minority interests included within capital resources	
123	of which: innovative tier one instruments	
	Profits	
124	Profits not externally verified at the reporting date but subsequently verified	
125	Total capital after deductions after profits have been externally verified	
	Allocation of deductions between tier one and two capital	
126	Material insurance holdings excluded from allocation	
127	Allocated to tier one capital	
128	Allocated to tier two capital	

	Firms on the IRB/AMA approaches	
129	Total capital requirement under pre-CRD rules	
130	Total credit risk capital component under pre-CRD	
131	Expected loss amounts - wholesale, retail and purchased receivables	
132	Expected loss amounts - equity	
133	Total value adjustments and provisions eligible for the "EL less provisions" calculation under IRB	
134	Total deductions from tier 1 and tier 2 capital according to pre-CRD rules	

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

…

FSA003 – Capital adequacy

…

142A Capital Planning Buffer

Enter the amount of the *capital planning buffer* that the *FSA* considers the *firm* should hold. This amount can be determined from information provided in the most recent letter the *firm* has received from the *FSA* setting out the amount and quality of the *capital planning buffer* the *firm* should hold over and above the level of capital recommended as its *ICG* (as described in *BIPRU* 2.2.12BG).

If no *capital planning buffer* has been set, *firms* should enter 0 here.

143A Draw Down of Capital Planning Buffer

Enter the cumulative amount of *capital planning buffer* which the *firm* has used up to and including the current regulatory reporting period .

An entry into this cell does not constitute notice as set out in *BIPRU* 2.2.23G. As set out in *BIPRU* 2.2.23AG the *FSA* may separately ask a *firm* to continue reporting on the use of its *capital planning buffer* over and above the reporting requirements set out in *SUP* 16 Annex 24R.

If no amount of the *capital planning buffer* has been used, *firms* should enter 0 here

144A Surplus/(deficit) total capital over ICG and capital planning buffer

This is the amount in data element 15A (total capital resources) less the amount in data element 108A (individual capital guidance – total capital resources) and less the amount in data element 142A (capital planning buffer). However, if no *ICG* has been set and data element 108A is 0, this should also be 0.

145A Surplus/(deficit) general purpose capital over ICG and capital planning buffer

This is the amount in data element 57A (total tier one capital plus tier two capital after deductions) less the amount in data element 109A (individual capital guidance – general purpose capital) and less the amount in data element 142A (capital planning buffer). However, if no *ICG* has been set and data element 109A is 0, this should also be 0.

Appendix 12

Proposed changes to the approved persons regime in the Supervision manual (SUP)

SUPERVISION MANUAL (AMENDMENT NO X) INSTRUMENT 2010

Powers exercised

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

(1) section 59 (Approval for particular arrangements);
(2) section 138 (General rule-making power); and
(3) section 156 (General supplementary powers).

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

Commencement

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

Amendments to the Handbook

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

Citation

E. This instrument may be cited as the Supervision Manual (Amendment No X). Instrument 2010.

By order of the Board
[*date*]

Annex

Amendments to the Supervision manual (SUP)

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

10.9 Significant management functions

Application

10.9.1 R *SUP* 10.9 applies only to a *firm* which:

(1) under *SYSC* 2.1.1R, or *SYSC* ~~4.4.4G~~ 4.1.1R, apportions a significant responsibility, within the description of the *significant management function,* to a *senior manager* of a significant business unit; or

(2) undertakes *proprietary trading.*

…

PUB REF: 002316

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