

**INSURANCE MEDIATION AND
MORTGAGE MEDIATION, LENDING AND ADMINISTRATION
(PRUDENTIAL PROVISIONS) INSTRUMENT 2004**

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);
 - (3) section 139 (Miscellaneous ancillary matters);
 - (4) section 149 (Evidential provisions);
 - (5) section 156 (General supplementary powers);
 - (6) section 157(1) (Guidance);
 - (7) section 214 (General); and
 - (8) section 341 (Access to books etc.).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

[commencement provisions on the next page]

Commencement

C. This instrument (except Annex I) comes into force as indicated in this table.

Annex	Date
A. COND	1 February 2004
B. PRU	31 October 2004 (in part) and 14 January 2005 (in part) (see note 1)
C. CASS	14 January 2005
D. AUTH	31 October 2004 (in part) and 14 January 2005 (in part) (see notes 1 and 2)
E. AUTH	1 February 2004
F. SUP	31 October 2004 (in part) and 14 January 2005 (in part) (see notes 1 and 2)
G. Glossary	as for the provision in which a term is used
H. Miscellaneous	31 October 2004 (in part) and 14 January 2005 (in part) (see note 1)
Note 1 To the extent that a provision relates to: (1) the regulated activities of: (a) arranging (bringing about) regulated mortgage contracts (article 25A(1) of the Regulated Activities Order); (b) making arrangements with a view to regulated mortgage contracts (article 25A(2) of that Order); (c) advising on regulated mortgage contracts (article 53A of that Order); (d) administering a regulated mortgage contract (article 61(2) of that Order); (e) entering into a regulated mortgage contract (article 62(1) of that Order); and (f) agreeing to carry on a regulated activity in (a) to (e); and (2) any regulated activity in relation to a long-term care insurance contract; it comes into force on 31 October 2004. Otherwise, it comes into force on 14 January 2005. Note 2 To the extent that a provision in AUTH 5, SUP 13 and SUP 14 relate to passporting rights under the Insurance Mediation Directive, it comes into force on 14 January 2005.	

Commencement and expiry of Annex I

- D. Part 1 of Annex I comes into force on 31 October 2004 and ceases to have effect on 14 January 2005.
- E. Part 2 of Annex I comes into force on 1 February 2004 and ceases to have effect on 14 January 2005.

Amendments to the Handbook

- F. (1) COND is amended in accordance with Annex A to this instrument.
- (2) PRU is made by inserting the provisions in Annex B to this instrument.
- (3) CASS is made by inserting the provisions in Annex C to this instrument.
- (4) AUTH is amended in accordance with Annex D to this instrument (AUTH 2, AUTH 5, AUTH 7 and AUTH App 1).
- (5) AUTH is further amended in accordance with Annex E to this instrument (AUTH App 5, the perimeter guidance).
- (6) SUP is amended in accordance with Annex F to this instrument.
- (7) The Glossary is amended in accordance with Annex G to this instrument.
- (8) PRIN, SYSC, CASS, ENF, and COMP are amended in accordance with Annex H to this instrument.
- (9) PRU and AUTH are amended in accordance with Annex I to this instrument.

Citation

- G. This instrument may be cited as the Insurance Mediation and Mortgage Mediation, Lending and Administration (Prudential Provisions) Instrument 2004.

By Order of the Board
15 January 2004

Annex A

Amendments to the Threshold Conditions sourcebook

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

2.2.1 Table: Paragraph 2, Schedule 6 to the Act.

- (1) Subject to sub-paragraph (3), ~~If~~ if the person concerned is a body corporate constituted under the law of any part of the United Kingdom –
 - (a) its head office, and
 - (b) if it has a registered office, that office, must be in the United Kingdom.
- (2) If the person concerned has its head office in the United Kingdom but is not a body corporate, it must carry on business in the United Kingdom.
- (3) If the regulated activity concerned is an insurance mediation activity, sub-paragraph (1) does not apply.
- (4) If the regulated activity concerned is an insurance mediation activity, the person concerned –
 - (a) if he is a body corporate constituted under the law of any part of the United Kingdom, must have its registered office, or if it has no registered office, its head office, in the United Kingdom;
 - (b) if he is a natural person, is to be treated for the purposes of sub-paragraph (2), as having his head office in the United Kingdom if his residence is situated there.
- (5) “Insurance mediation activity” means any of the following activities –
 - (a) dealing in rights under a contract of insurance as agent;
 - (b) arranging deals in rights under a contract of insurance;
 - (c) assisting in the administration and performance of a contract of insurance;
 - (d) advising on buying or selling rights under a contract of insurance;
 - (e) agreeing to do any of the activities specified in sub-paragraph (a) to (d).
- (6) Paragraph (5) must be read with –
 - (a) section 22;
 - (b) any relevant order under that section; and
 - (c) Schedule 2.

2.2.2 G *Threshold condition 2 (1) and (2)* (Location of offices), implements the requirements of article 6 of the *Post BCCI Directive* and *threshold condition 2(3) and (4)* implements article 2.9 of the *Insurance Mediation Directive*, although the *Act* extends ~~this condition~~ *threshold condition 2* to *firms* which are outside the scope of the *Single Market Directives* and the *UCITS Directive*.

2.2.3 G Neither the *Post BCCI Directive*, the *Insurance Mediation Directive* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FSA* will judge each application on a case-by-case basis, the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:

...

...

2.5.7 G In determining whether a *firm* will satisfy and continue to satisfy *threshold condition 5* in respect of having competent and prudent management and exercising due skill, care and diligence, relevant matters, as referred to in *COND 2.5.4G(2)*, may include, but are not limited to whether:

...

(10) the *firm* has in place the appropriate *money laundering* prevention systems and training, including identification, record-keeping and internal reporting procedures (see *ML*); ~~and~~

(11) where appropriate, the *firm* has appointed auditors and actuaries, who have sufficient experience in the areas of business to be conducted (see *SUP 3.4* (Auditors' qualifications) and *SUP 4.3.8G* to *SUP 4.3.13G* (Appointed actuary's qualifications)); and

(12) in the case of an *insurance intermediary*:

(a) a reasonable proportion of the *persons* within its management structure who are responsible for the *insurance mediation activity*; and

(b) all other *persons* directly involved in its *insurance mediation activity*;

demonstrate the knowledge and ability necessary for the performance of their duties; and

(c) all the *persons* in its management structure and any staff

directly involved in *insurance mediation activity* are of good
repute (see *PRU 9.1.8 (Knowledge, ability and good repute)*).

Annex B

Integrated Prudential sourcebook

The following text is made.

In this Annex, all the text is new and is not underlined.

Transitional provisions

1 Table

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
1	<i>PRU 9.2.7R</i>		<p><i>PRU 9.2.7R</i> (Requirement to hold professional indemnity insurance) does not apply in respect of acts or omissions occurring before:</p> <p>(1) 31 October 2004 (in relation to <i>mortgage mediation activity</i>); and</p> <p>(2) 14 January 2005 (in relation to <i>insurance mediation activity</i>).</p>	From 31 October 2004	31 October 2004
2	<i>PRU 9.3.53R</i> and <i>PRU 9.3.57R(3)</i>		A <i>firm</i> is not required to include goodwill in its intangible assets until 14 January 2008.	From 31 October 2004 until 14 January 2008	31 October 2004

9.1 Responsibility for insurance mediation activity

Application

- 9.1.1 R This section applies to a *firm* with *Part IV permission* to carry on *insurance mediation activity*.

Purpose

- 9.1.2 G The main purpose of *PRU 9.1.3R*, *9.1.8R* and *9.1.10R* is to implement in part the provisions of the *Insurance Mediation Directive* as these apply to *firms* regulated by the *FSA*.

Responsibility for insurance mediation activity

- 9.1.3 R An *insurance intermediary*, other than a *sole trader*, must allocate the responsibility for the *firm's insurance mediation activity* to a *director* or *senior manager*.

- 9.1.4 R The *firm* may allocate the responsibility for its *insurance mediation activity* under *PRU 9.1.3R* to an *approved person* (or *persons*) performing:

- (1) a *governing function*; or
- (2) the *apportionment and oversight function*; or
- (3) the *significant management (other business operations) function*.

- 9.1.5 G (1) Typically an *insurance intermediary* will appoint a *person* performing a *governing function* to direct its *insurance mediation activity*. Where this responsibility is allocated to a *person* performing another function, the *person* performing the *apportionment and oversight function* with responsibility for the apportionment of responsibilities under *SYSC 2.1.1R* must ensure that the *firm's insurance mediation activity* under *PRU 9.1.3R* is appropriately allocated.

- (2) The descriptions of *significant influence functions*, other than the *required functions*, do not extend to activities carried on by an *insurance intermediary* with *permission* only to carry on *insurance mediation activity* and whose principal purpose is to carry on activities other than *regulated activities* (see *SUP 10.1.21R*). In this case, the *firm* may allocate the responsibility for the *firm's insurance mediation activity* under *PRU 9.1.3R* to one or more of the *persons* performing the *apportionment and oversight function* who will be required to be an *approved person*.

- (3) In the case of a *sole trader*, the *sole trader* will be responsible for the *firm's insurance mediation activity*.
- 9.1.6 G Where a *firm* has appointed an *appointed representative* to carry on *insurance mediation activity* on its behalf, the *person* responsible for the *firm's insurance mediation activity* will also be responsible for the *insurance mediation activity* carried on by an *appointed representative*.
- 9.1.7 G The *FSA* will specify in the *FSA Register* the name of the *persons* to whom the responsibility for the *firm's insurance mediation activity* has been allocated under *PRU 9.1.3R* by inserting after the relevant *controlled function* the words “(insurance mediation)”.
- Knowledge, ability and good repute
- 9.1.8 R An *insurance intermediary* must establish on reasonable grounds that:
- (1) a reasonable proportion of the *persons* within its management structure who are responsible for *insurance mediation activity*; and
 - (2) all other *persons* directly involved in its *insurance mediation activity*;
- demonstrate the knowledge and ability necessary for the performance of their duties; and
- (3) all the *persons* in its management structure and any staff directly involved in *insurance mediation activity* are of good repute.
- 9.1.9 G In determining a *person's* knowledge and ability under *PRU 9.1.8R(1)* and (2), the *firm* should have regard to matters including, but not limited to, whether the *person*:
- (1) has demonstrated by experience and training to be able, or that he will be able, to perform his duties related to the *firm's insurance mediation activity*; and
 - (2) satisfies the relevant requirements of the *FSA's* Training and Competence sourcebook (*TC*).
- 9.1.10 R In considering a *person's* repute under *PRU 9.1.8R(3)*, the *firm* must ensure that the *person*:
- (1) has not been convicted of any serious criminal offences linked to crimes against property or other crimes related to financial activities (other than spent convictions under the Rehabilitation of Offenders Act 1974 or any other national equivalent); and

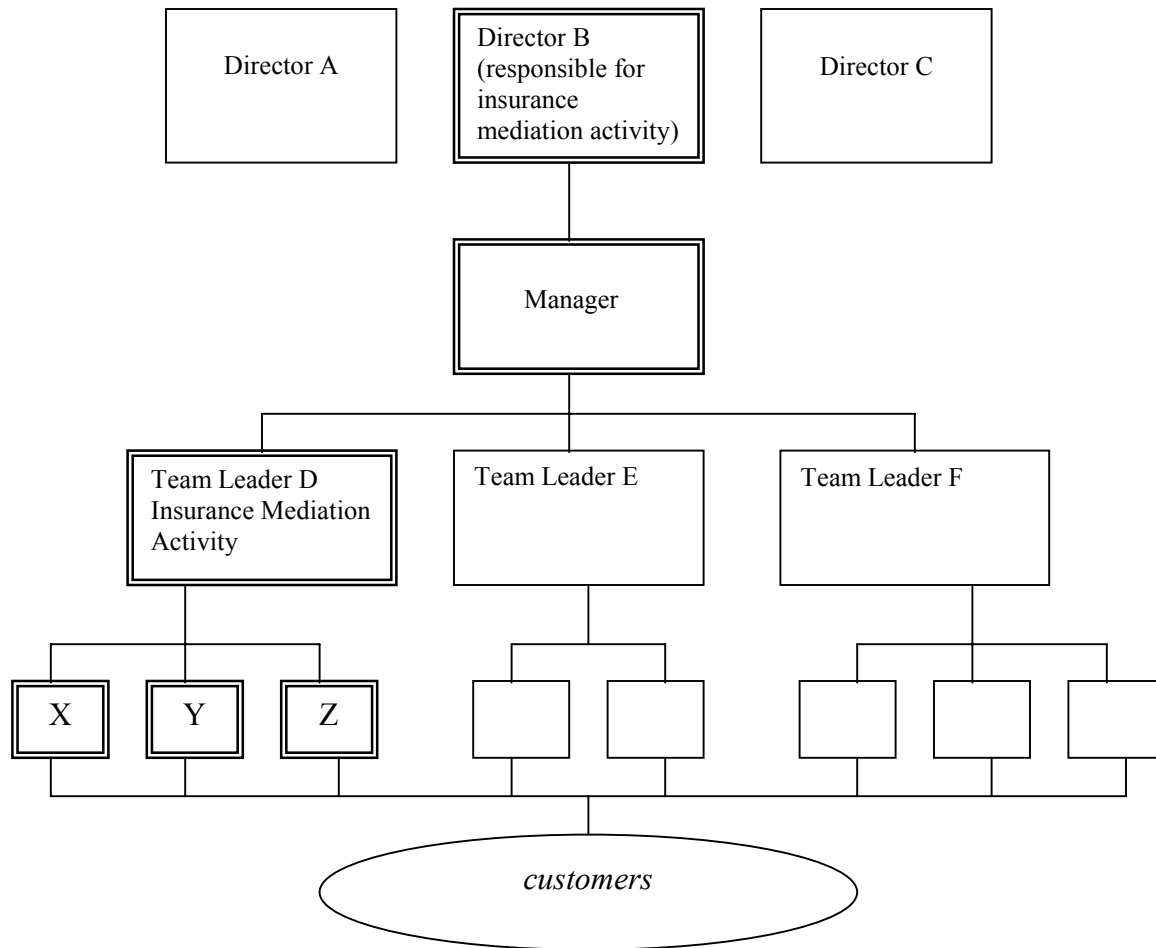
(2) has not been adjudged bankrupt (unless the bankruptcy has been discharged);

under the law of any part of the *United Kingdom* or under the law of a country or territory outside the *United Kingdom*.

- 9.1.11 G For the purposes of *PRU* 9.1.10R(1), the *firm* should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.
- 9.1.12 G *Firms* are reminded that *Principle 3* requires *firms* to take reasonable care to organise and control their affairs responsibly and effectively. *Principle 3* is amplified in *SYSC* 3.1.1R which requires *firms* to take reasonable care to establish and maintain such systems and controls as are appropriate to its business. A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (*SYSC* 3.2.13G). This includes the assessment of an individual's honesty and competence. In addition, *TC* lists some general, high level commitments to training and competence which every *firm* should make and fulfil.
- 9.1.13 G *PRU* 9 Ann 1G gives an example of how the *FSA* would expect *firms* to comply with the requirements in *PRU* 9.1.3R, 9.1.4R, 9.1.8R and 9.1.10R.

PRU 9 Ann 1G:

Example of the application of *PRU* 9.1.3R, 9.1.4R, 9.1.8R and 9.1.10R



1. The *FSA* expects the *firm* to allocate to Director B the responsibility for its *insurance mediation activity* (*PRU* 9.1.3R and 9.1.4R). Director B needs to be an *approved person* (the knowledge and ability requirements in *PRU* 9.1.8R(1) and the good repute requirement in 9.1.8R(3) will be met through the fit and proper test for *approved persons* in *FIT*).
2. The *firm* must ensure that the Manager and Team Leader D are of good repute (*PRU* 9.1.8R(3)).
3. The *firm* must ensure that either the Manager or Team Leader D (or both) demonstrate the knowledge and ability necessary for the performance of their duties (*PRU* 9.1.8R(1)).
4. The *firm* must ensure that X, Y and Z demonstrate the knowledge and ability necessary for the performance of their duties and are of good repute (*PRU* 9.1.8R(2) and (3) and *PRU* 9.1.10R).

Note that the *firm* may be subject to other *FSA* requirements which are not illustrated in this diagram.

9.2 Professional indemnity insurance requirements for insurance and mortgage mediation activities

Application

- 9.2.1 R (1) This section applies to a *firm* with *Part IV permission* to carry on any of the activities in (2) unless (3), (4), (5) or (6) applies.
- (2) The activities are:
- (a) *insurance mediation activity*;
 - (b) *mortgage mediation activity*.
- (3) (a) In relation to *insurance mediation activity*, this section does not apply to a *firm* if another *authorised person* which has net tangible assets of more than £10 million provides a comparable guarantee.
- (b) If the *firm* is a member of a *group* in which there is an *authorised person* with net tangible assets of more than £10 million, the comparable guarantee must be from that *person*.
- (c) A ‘comparable guarantee’ means a written agreement on terms at least equal to those in *PRU 9.2.10R* to finance the claims that might arise as a result of a breach by the *firm* of its duties under the *regulatory system* or civil law.
- (4) In relation to *mortgage mediation activity*, this section does not apply to a *firm* if:
- (a) it has net tangible assets of more than £1 million; or
 - (b) the comparable guarantee provisions of (3) apply (as if the *firm* was carrying on *insurance mediation activity*) but substituting £1 million for £10 million in (a) and (b).
- (5) In relation to all the activities in (2), this section does not apply to:
- (a) an *insurer*; or
 - (b) a *managing agent*; or

- (c) a *firm* to which *IPRU(INV)* 13.1.4(1)R (Financial resource requirements for personal investment firms: requirement to hold professional indemnity insurance) applies.
 - (6) In relation to *mortgage mediation activity*, this section does not apply to an *authorised professional firm*:
 - (a) which is subject to *IPRU(INV)* 2.3.1 R (Professional indemnity insurance requirements for authorised professional firms); and
 - (b) whose *mortgage mediation activity* is incidental to its main business.
- 9.2.2 G The definition of *insurance mediation activity* is any of several activities ‘in relation to a *contract of insurance*’ which includes a contract of reinsurance. This section, therefore, applies to a reinsurance intermediary in the same way as it applies to any other *insurance intermediary*.
- Purpose
- 9.2.3 G The purposes of this section are to:
- (1) implement article 4.3 of the *Insurance Mediation Directive* in so far as it requires *insurance intermediaries* to hold professional indemnity insurance, or some other comparable guarantee, against any liability that might arise from professional negligence; and
 - (2) meet the *regulatory objectives* of consumer protection and maintaining market confidence by ensuring that *firms* have adequate resources to protect themselves, and their *customers*, against losses arising from breaches in its duties under the *regulatory system* or civil law.
- 9.2.4 G Any breach in the duty of a *firm* or of its agents under the *regulatory system* or civil law can give rise to claims being made against the *firm*. Professional indemnity insurance has an important role to play in helping to finance such claims. In so doing, this section amplifies *threshold condition 4* (Adequate resources). This *threshold condition* provides that a *firm* must have, on a continuing basis, resources that are, in the opinion of the *FSA*, adequate in relation to the *regulated activities* that the *firm* carries on.
- 9.2.5 G Under *Principles 3* and *4* a *firm* is required to take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems and to maintain adequate financial resources. Under *Principle 9* a *firm* is obliged to take reasonable care to ensure the

suitability of its *advice on investments* and discretionary decisions for any *customer* who is entitled to rely upon its judgement.

- 9.2.6 G Although financial resources and appropriate systems and controls can generally mitigate operational risk, professional indemnity insurance has a role in mitigating the risks a *firm* faces in its day to day operations, including those arising from not meeting the legally required standard of care when *advising on investments*. The purpose of this section is to ensure that a *firm* has in place the type, and level, of professional indemnity insurance necessary to mitigate these risks.

Requirement to hold professional indemnity insurance

- 9.2.7 R A *firm* must take out and maintain professional indemnity insurance that is at least equal to the requirements of *PRU 9.2.10R* from:

- (1) an *insurance undertaking* authorised to transact professional indemnity insurance in the *EEA*; or
- (2) a *person* of equivalent status in:
 - (i) a *Zone A country*; or
 - (ii) the Channel Islands, Gibraltar, Bermuda or the Isle of Man.

- 9.2.8 G A *firm* whose *Part IV permission* covers more than one *regulated activity* within the scope of this section will need to comply with the professional indemnity insurance requirements for each of these activities. However, this does not necessarily mean that the *firm* should purchase two or more separate *contracts of insurance*. It could, for example, purchase one contract that covers all of its activities, but which contains separate *limits of indemnity* and excesses for each individual activity.

- 9.2.9 G A non-*EEA firm* (such as a captive insurance company outside the *EEA*) will be able to provide professional indemnity insurance only if it is authorised to do so in one of the countries or territories referred to in *PRU 9.2.7R(2)*. The purpose of this provision is to balance the level of protection required for the *policyholder* against a reasonable level of flexibility for the *firm*.

Terms to be incorporated in the insurance

- 9.2.10 R In relation to the activities referred to in *PRU 9.2.1R(2)*, the contract of professional indemnity insurance must incorporate terms which make provision for:

- (1) cover in respect of claims for which a *firm* may be liable as a result of the conduct of itself, its *employees* and its *appointed representatives* (acting within the scope of their appointment);
- (2) the minimum *limits of indemnity* as set out in *PRU 9.2.13R* (in relation to *insurance mediation activity*) and *PRU 9.2.15R* (in relation to *mortgage mediation activity*);
- (3) an excess as set out in *PRU 9.2.17R* to *PRU 9.2.22R*;
- (4) appropriate cover in respect of legal defence costs;
- (5) continuous cover in respect of claims arising from work carried out from the date on which the *firm* was given *Part IV permission* in relation to any of the activities referred to in (2); and
- (6) cover in respect of *Ombudsman* awards made against the *firm*.

9.2.11 G In relation to *PRU 9.2.10R(1)*, a *firm* should be aware that it is responsible for the conduct of all of its *employees*. The *firm's employees* include, but are not limited to, its *partners, directors*, individuals that are self-employed or operating under a contract hire agreement and any other individual that is employed in connection with its business.

9.2.12 G In relation to *PRU 9.2.10R(1)*, a *firm* should be aware that it is responsible for the conduct of all of its *appointed representatives*.

Minimum limits of indemnity: insurance mediation activity

9.2.13 R In relation to *insurance mediation activity*, the minimum *limits of indemnity* referred to in *PRU 9.2.10R(2)* are:

- (1) for a single claim, €1 million; and
- (2) in aggregate, €1.5 million or, if higher, 10% of annual income (see *PRU 9.3.42R*) up to €30 million.

9.2.14 R If a *policy* is denominated in any currency other than euros, a *firm* must take reasonable steps to ensure that the *limits of indemnity* are, when the *policy* is effected and at *renewal*, at least equivalent to those required in *PRU 9.2.13R*.

Minimum limits of indemnity: mortgage mediation activity

9.2.15 R In relation to *mortgage mediation activity*, the minimum *limit of indemnity* referred to in *PRU 9.2.10R(2)* is the higher of 10% of annual income (see *PRU 9.3.42R*) up to €1 million, and:

- (1) for a single claim, £100,000; or
- (2) in aggregate, £500,000.

Excess

9.2.16 R In this section, "*client assets*" includes a *document* only if it has value, or is capable of having value, in itself (such as a bearer instrument).

9.2.17 R For a *firm* which does not hold *client money* or other *client assets*, the excess referred to in *PRU 9.2.10R(3)* is not more than the higher of:

- (1) £2,500; and
- (2) 1.5% of annual income (see *PRU 9.3.42R*).

9.2.18 R For a *firm* which holds *client money* or other *client assets*, the excess referred to in *PRU 9.2.10R(3)* is not more than the higher of:

- (1) £5,000; and
- (2) 3% of annual income (see *PRU 9.3.42R*).

Policies covering more than one firm

9.2.19 R If a *policy* provides cover to more than one *firm*, then in relation to *PRU 9.2.13R*, *PRU 9.2.14R* and *PRU 9.2.15R*:

- (1) the *limits of indemnity* must be calculated on the combined annual income (see *PRU 9.3.42R*) of all the *firms* named in the *policy*; and
- (2) each *firm* named in the *policy* must have the benefit of the minimum *limits of indemnity* as required in *PRU 9.2.13R* or *PRU 9.2.15R*.

Additional capital

9.2.20 R If a *firm* seeks to have an excess which is higher than the limits in *PRU 9.2.17R* (for a *firm* not holding *client money* or other *client assets*) or *PRU 9.2.18R* (for a *firm* holding *client money* or other *client assets*), it must hold additional capital as calculated in *PRU 9.2.21R* or *PRU 9.2.22R* (as appropriate).

9.2.21 R Table: Calculation of additional capital for firm not holding client money or other client assets (£000's)

Income		Excess obtained up to and including:												
		2.5	5	10	15	20	25	30	40	50	75	100	150	200+
More than	Up to													
0	100	0	5	9	12	14	17	19	23	26	33	39	50	59
100	200	0	7	12	16	19	22	25	30	34	43	51	64	75
200	300	0	7	12	16	20	24	27	32	37	47	56	71	84
300	400	0	0	12	16	21	24	28	34	39	50	60	77	91
400	500	0	0	11	16	21	24	28	34	40	53	63	81	96
500	600	0	0	10	16	20	24	28	35	41	54	65	84	100
600	700	0	0	0	15	20	24	28	35	41	55	67	87	104
700	800	0	0	0	14	19	24	28	35	42	56	68	89	107
800	900	0	0	0	13	18	23	27	35	42	56	69	91	109
900	1,000	0	0	0	0	17	22	27	34	41	57	70	92	111
1,000	1,500	0	0	0	0	0	21	26	34	41	57	71	97	118
1,500	2,000	0	0	0	0	0	0	0	30	38	56	71	98	121
2,000	2,500	0	0	0	0	0	0	0	24	33	53	69	99	126
2,500	3,000	0	0	0	0	0	0	0	0	28	50	68	101	130
3,000	3,500	0	0	0	0	0	0	0	0	0	47	67	101	132
3,500	4,000	0	0	0	0	0	0	0	0	0	43	65	101	133
4,000	4,500	0	0	0	0	0	0	0	0	0	39	62	101	134
4,500	5,000	0	0	0	0	0	0	0	0	0	0	58	99	134
5,000	6,000	0	0	0	0	0	0	0	0	0	0	54	97	133
6,000	7,000	0	0	0	0	0	0	0	0	0	0	0	91	131
7,000	8,000	0	0	0	0	0	0	0	0	0	0	0	84	126
8,000	9,000	0	0	0	0	0	0	0	0	0	0	0	75	120
9,000	10,000	0	0	0	0	0	0	0	0	0	0	0	0	113
10,000	100,000	0	0	0	0	0	0	0	0	0	0	0	0	0
100,000	n/a	0	0	0	0	0	0	0	0	0	0	0	0	0

9.2.22 R Table: Calculation of additional capital for firm holding client money or other client assets (£000's)

Income		Excess obtained up to and including:											
		5	10	15	20	25	30	40	50	75	100	150	200+
More than	Up to												
0	100	0	4	7	9	12	14	18	21	28	34	45	54
100	200	0	7	11	14	17	20	25	29	38	46	59	70
200	300	0	7	11	14	17	20	25	30	40	49	64	77
300	400	0	0	9	13	16	19	25	30	40	50	67	81
400	500	0	0	0	11	14	18	24	29	40	51	68	83
500	600	0	0	0	8	12	15	22	28	40	51	69	85
600	700	0	0	0	0	9	13	20	26	39	50	69	86
700	800	0	0	0	0	6	10	17	24	38	49	69	87
800	900	0	0	0	0	0	7	15	22	36	48	69	87
900	1,000	0	0	0	0	0	0	12	19	34	47	68	87
1,000	1,500	0	0	0	0	0	0	0	16	32	45	67	86
1,500	2,000	0	0	0	0	0	0	0	0	18	34	59	81
2,000	2,500	0	0	0	0	0	0	0	0	0	19	48	71
2,500	3,000	0	0	0	0	0	0	0	0	0	6	37	64
3,000	3,500	0	0	0	0	0	0	0	0	0	0	26	55
3,500	4,000	0	0	0	0	0	0	0	0	0	0	14	45
4,000	4,500	0	0	0	0	0	0	0	0	0	0	1	33
4,500	5,000	0	0	0	0	0	0	0	0	0	0	0	21
5,000	6,000	0	0	0	0	0	0	0	0	0	0	0	8
6,000	7,000	0	0	0	0	0	0	0	0	0	0	0	0
7,000	8,000	0	0	0	0	0	0	0	0	0	0	0	0
8,000	9,000	0	0	0	0	0	0	0	0	0	0	0	0
9,000	10,000	0	0	0	0	0	0	0	0	0	0	0	0
10,000	100,000	0	0	0	0	0	0	0	0	0	0	0	0
100,000	n/a	0	0	0	0	0	0	0	0	0	0	0	0

9.2.23 G *PRU 9.3.52R* sets out the items which are eligible to contribute to the capital resources of a *firm* for the purposes of *PRU 9.2.20R*.

9.3 Capital resources for insurance and mortgage mediation activity and mortgage lending and administration

Application

- 9.3.1 R (1) This section applies to a *firm* with *Part IV permission* to carry on any of the activities in (2) unless any of *PRU 9.3.4R* to *PRU 9.3.11R* applies.
- (2) The activities are:
- (a) *insurance mediation activity*;
 - (b) *mortgage mediation activity*;
 - (c) *entering into a regulated mortgage contract* (that is, *mortgage lending*);
 - (d) *administering a regulated mortgage contract* (that is, *mortgage administration*).
- 9.3.2 G As this section applies only to a *firm* with *Part IV permission*, it does not apply to an *incoming EEA firm* (unless it has a *top-up permission*). An *incoming EEA firm* includes a *firm* which is passporting into the *United Kingdom* under the *IMD* (see *AUTH 5.4.2AG*, in relation to *branches*, and *AUTH 5.5.3G*, in relation to *cross border services*).
- 9.3.3 G The definition of *insurance mediation activity* refers to several activities ‘in relation to a *contract of insurance*’ which includes a contract of reinsurance. This section, therefore, applies to a reinsurance intermediary in the same way as it applies to any other *insurance intermediary*.
- Application: banks, building societies, insurers and friendly societies
- 9.3.4 R This section does not apply to:
- (1) a *bank*; or
 - (2) a *building society*; or
 - (3) a solo consolidated *subsidiary* of a *bank* or a *building society*; or
 - (4) an *insurer*; or
 - (5) a *friendly society*.

- 9.3.5 G The capital resources of *firms* within *PRU* 9.3.4R are calculated in accordance with the appropriate *IPRU*.
- Application: firms carrying on designated investment business only
- 9.3.6 R This section does not apply to a *firm* whose *Part IV permission* is limited to *regulated activities* which are *designated investment business*.
- 9.3.7 G A *firm* which carries on *designated investment business*, and no other *regulated activity*, may disregard this section. For example, a *firm* with *permission* limited to *dealing in investments as agent* in relation to *securities* is only carrying on *designated investment business* and *IPRU(INV)* will apply. However, if its *permission* is varied to enable it to arrange motor insurance as well, this activity is not *designated investment business* so the *firm* will be subject to the higher of the requirements in this section and *IPRU(INV)* (see *PRU* 9.3.24R).
- Application: credit unions
- 9.3.8 R This section does not apply to:
- (1) a ‘small *credit union*’, that is one with:
 - (a) assets of £5 million or less; and
 - (b) a total number of members of 5,000 or less (see *CRED* 8.3.14R); or
 - (2) a *credit union* whose *Part IV permission* includes *mortgage lending* or *mortgage administration* (or both) and no other activities in *PRU* 9.3.1R(2).
- 9.3.9 G For *credit unions* to which this section applies, the capital requirements will be the higher of the requirements in this section and in *CRED* (see *PRU* 9.3.25R).
- Application: professional firms
- 9.3.10 R (1) This section does not apply to an *authorised professional firm*:
- (a) whose main business is the practice of its profession; and
 - (b) whose *regulated activities* in *PRU* 9.3.1R(2) are incidental to its main business.
- (2) A *firm's* main business is the practice of its profession if the proportion of income it derives from professional fees is, during its

annual accounting period, at least 50% of the *firm's* total income (a temporary variation of not more than 5% may be disregarded for this purpose).

- (3) Professional fees are fees, commissions and other receipts receivable in respect of legal, accountancy or actuarial services provided to clients but excluding any items receivable in respect of *regulated activities*.

Application: Lloyd's managing agents

9.3.11 R This section does not apply to a *managing agent*.

9.3.12 G The reason for excluding *managing agents* from the provisions of this section is twofold: first, a *member* will have accepted full responsibility for those activities under the *Society's managing agent* agreement. Secondly, the *member* is itself subject to capital requirements which are equivalent to those applying to an *insurer* (to which this section is also disappplied – see *PRU 9.3.4R(4)*).

Application: social housing firms

9.3.13 G There are special provisions for a *social housing firm* when it is carrying on *mortgage lending* or *mortgage administration* (see *PRU 9.3.26R*).

Purpose

9.3.14 G This section amplifies *threshold condition 4* (Adequate resources) by providing that a *firm* must meet, on a continuing basis, a basic solvency requirement (*PRU 9.3.20R*) and a minimum capital resources requirement (*PRU 9.3.21R*). This section also amplifies *Principle 4* which requires a *firm* to maintain adequate financial resources by setting out capital requirements for a *firm* according to the *regulated activity* or *activities* it carries on.

9.3.15 G Capital has an important role to play in protecting consumers and complements the roles played by professional indemnity insurance (see *PRU 9.2* (Professional indemnity insurance)) and *client money* protection (see the *client money rules* including, in particular, those in *CASS 5* (Client money and mandates: insurance mediation activity)). Capital provides a form of protection for situations not covered by a *firm's* professional indemnity insurance and it provides the funds for the *firm's* PII excess, which it has to pay out of its own finances. The relationship between the *firm's* capital and its excess is set out in *PRU 9.2.17R*.

9.3.16 G More generally, having adequate capital gives the *firm* a degree of resilience and some indication to consumers of creditworthiness,

substance and the commitment of its owners. It reduces the possibility of a shortfall of funds and provides a cushion against disruption if the *firm* ceases to trade.

- 9.3.17 G There is a greater risk to consumers, and a greater adverse impact on market confidence, if a *firm* holding *client money* or other *client* assets fails. For this reason, the capital resources *rules* in this section clearly distinguish between *firms* holding *client* assets and those that do not.

Purpose: social housing firms

- 9.3.18 G *Social housing firms* undertake small amounts of mortgage business even though their main business consists of activities other than *regulated activities*. Their *mortgage lending* is only done as an adjunct to their primary purpose (usually the provision of housing) and is substantially different in character to that done by commercial lenders. Furthermore, they are *subsidiaries* of local authorities or registered social landlords which are already subject to separate regulation. The *FSA* does not consider that it would be proportionate to the risks involved with such business to impose significant capital requirements for these *firms*. *PRU* 9.3.26R therefore simply provides that, where their *Part IV permission* is limited to *mortgage lending* and *mortgage administration*, their net tangible assets must be greater than zero.

- 9.3.19 G A registered social landlord is a non-profit organisation which provides and manages homes for rent and sale for people who might not otherwise be able to rent or buy on the open market. It can be a housing association, a housing society or a non-profit making housing company. The Housing Corporation, which was set up by Parliament in 1964, funds homes built by registered social landlords from money received from central government.

Capital resources: general rules

- 9.3.20 R A *firm* must at all times ensure that it is able to meet its liabilities as they fall due.
- 9.3.21 R A *firm* must at all times maintain capital resources equal to or in excess of its relevant capital resources requirement.

Capital resources: UK GAAP

- 9.3.22 R A *firm* must recognise an asset or liability, and measure its amount, in accordance with the relevant *UK* generally accepted accounting principles unless a *rule* requires otherwise.

Capital resources: client assets

- 9.3.23 R In this section, "*client assets*" includes a *document* only if it has value, or is capable of having value, in itself (such as a bearer instrument).

Capital resources requirement: firms carrying on regulated activities including designated investment business

- 9.3.24 R The capital resources requirement for a *firm* carrying on *regulated activities*, including *designated investment business*, is the higher of:

- (1) the requirement which is applied by this section according to the activity or activities of the *firm* (treating the relevant *rules* as applying to the *firm* by disregarding its *designated investment business*); and
- (2) the financial resource requirement which is applied by *IPRU(INV)*.

Capital resources requirement: credit unions

- 9.3.25 R The capital resources requirement for a *credit union* to which this section applies (see *PRU 9.3.8R*) is the higher of:

- (1) the requirement which is applied by *PRU 9.3.30R* (Capital resources requirement: mediation activity only) treating that *rule* as applying to the *credit union* by disregarding activities which are not *insurance mediation activity* or *mortgage mediation activity*; and
- (2) the amount which is applied by *CRED 8* (Capital requirements).

Capital resources requirement: social housing firms

- 9.3.26 R The capital resources requirement for a *social housing firm* whose *Part IV permission* is limited to carrying on the *regulated activities* of:

- (1) *mortgage lending*; or
- (2) *mortgage administration* (or both);

is that the *firm's* net tangible assets must be greater than zero.

- 9.3.27 G If a *social housing firm* is carrying on *mortgage lending* or *mortgage administration* (and no other *regulated activity*), its net tangible assets must be greater than zero. However, if it carries on *insurance mediation activity*, or *mortgage mediation activity*, there is no special provision and *PRU 9.3.24R* or *PRU 9.3.30R* applies to it as appropriate.

Capital resources requirement: application according to regulated activities

9.3.28 R Unless any of *PRU 9.3.24R* to *PRU 9.3.26R* applies (*firms* carrying on *designated investment business*, *credit unions* and *social housing firms*), the table in *PRU 9.3.29R* specifies the provisions for calculating the capital resources requirement for a *firm* according to the *regulated activity* or *activities* it carries on.

9.3.29 R Table: Application of capital resources requirements

	Regulated activities	Provisions
1.	(a) <i>insurance mediation activity</i> ; or (b) <i>mortgage mediation activity</i> (or both); and no other <i>regulated activity</i> .	<i>PRU 9.3.30R</i>
2.	(a) <i>mortgage lending</i> ; or (b) <i>mortgage lending</i> and <i>mortgage administration</i> ; and no other <i>regulated activity</i> .	<i>PRU 9.3.31R</i> to <i>PRU 9.3.36E</i>
3.	<i>mortgage administration</i> ; and no other <i>regulated activity</i> .	<i>PRU 9.3.37R</i> to <i>PRU 9.3.38R</i>
4.	<i>insurance mediation activity</i> ; and (a) <i>mortgage lending</i> ; or (b) <i>mortgage administration</i> (or both).	<i>PRU 9.3.39R</i>
5.	<i>mortgage mediation activity</i> ; and (a) <i>mortgage lending</i> , or (b) <i>mortgage administration</i> (or both).	<i>PRU 9.3.40R</i>
6.	Any combination of <i>regulated activities</i> not within rows 1 to 5.	<i>PRU 9.3.41R</i>

Capital resources requirement: mediation activity only

9.3.30 R (1) If a *firm* (carrying on the activities in row 1 of the table in *PRU 9.3.29R*) does not hold *client money* or other *client* assets in relation to its *insurance mediation activity* or *mortgage mediation activity*, its capital resources requirement is the higher of:

- (a) £5,000; and
- (b) 2.5% of the annual income (see *PRU 9.3.42R*) from its *insurance mediation activity* or *mortgage mediation activity* (or both).

- (2) If a *firm* (carrying on the activities in row 1 of the table in *PRU 9.3.29R*) holds *client money* or other *client* assets in relation to its *insurance mediation activity* or *mortgage mediation activity*, its capital resources requirement is the higher of:
- (a) £10,000; and
 - (b) 5% of the annual income (see *PRU 9.3.42R*) from its *insurance mediation activity* or *mortgage mediation activity* (or both).

Capital resources requirement: mortgage lending and administration (but not mortgage administration only)

- 9.3.31 R (1) The capital resources requirement of a *firm* (carrying on the activities in row 2 of the table at *PRU 9.3.29R*) is the higher of:
- (a) £100,000; and
 - (b) 1% of:
 - (i) its total assets plus total undrawn commitments; less:
 - (ii) loans excluded by *PRU 9.3.33R* plus intangible assets (see Note 1 in the table in *PRU 9.3.53R*).
- (2) Undrawn commitments in (1)(b)(i) means the total of those amounts which a borrower has the right to draw down from the *firm* but which have not yet been drawn down, excluding those under an agreement:
- (a) which has an original maturity of up to one year; or
 - (b) which can be unconditionally cancelled at any time by the lender.

9.3.32 G When considering what is an undrawn commitment, the *FSA* takes into account an amount which a borrower has the right to draw down, but which has not yet been drawn down, whether the commitment is revocable or irrevocable, conditional or unconditional.

9.3.33 R When calculating total assets for the purposes of *PRU 9.3.31R*, the *firm* may exclude a loan which has been transferred to a third party only if it meets the following conditions:

- (1) the loan must have been transferred in a legally effective manner by one of the following means:
 - (a) novation; or
 - (b) legal or equitable assignment; or
 - (c) sub-participation; or
 - (d) declaration of trust; and
- (2) the lender:
 - (a) retains no material economic interest in the loan; and
 - (b) has no material exposure to losses arising from it.

- 9.3.34 E
- (1) When seeking to rely on the condition in *PRU 9.3.33R(2)*, a *firm* should ensure that the loan qualifies for the ‘linked presentation’ accounting treatment under Financial Reporting Standard 5 (Reporting the substance of transactions) issued in April 1994, and amended in December 1994 and September 1998 (if applicable to the *firm*).
 - (2) Compliance with (1) may be relied upon as tending to establish compliance with *PRU 9.3.33R(2)*.

9.3.35 G *PRU 9.3.34E* is aimed at those *firms* which report according to FRS 5. Other *firms* which report under other standards, including International Accounting Standards, need not adopt FRS 5 in order to meet the condition in *PRU 9.3.33R(2)*.

- 9.3.36 E
- (1) When seeking to rely on the condition in *PRU 9.3.33R(2)*, a *firm* should not provide material credit enhancement in respect of the loan unless it deducts the amount of the credit enhancement from its capital resources before meeting its capital resources requirement.
 - (2) Credit enhancement includes:
 - (a) any holding of subordinated loans or notes in a transferee that is a special purpose vehicle; or
 - (b) over collateralisation by transferring loans to a larger aggregate value than the *securities* to be issued; or

- (c) any other arrangement with the transferee to cover a part of any subsequent losses arising from the transferred loan.
- (3) Contravention of (1) may be relied upon as tending to establish contravention of *PRU 9.3.33R(2)*.

Capital resources requirement: mortgage administration only

9.3.37 R The capital resources requirement of a *firm* (carrying on the activities in row 3 of the table in *PRU 9.3.29R*), which has all or part of the *regulated mortgage contracts* that it administers on its balance sheet, is the amount which is applied to a *firm* by *PRU 9.3.31R*.

9.3.38 R The capital resources requirement of a *firm* (carrying on the activities in row 3 of the table in *PRU 9.3.29R*), which has all the *regulated mortgage contracts* that it administers off its balance sheet, is the higher of:

- (1) £100,000; and
- (2) 10% of its annual income (see *PRU 9.3.42R* and *PRU 9.3.48R*).

Capital resources requirement: insurance mediation activity and mortgage lending or mortgage administration

9.3.39 R The capital resources requirement for a *firm* (carrying on the activities in row 4 of the table in *PRU 9.3.29R*) is the sum of the requirements which are applied to the *firm* by:

- (1) *PRU 9.3.30R*; and
- (2) (a) *PRU 9.3.31R*; or
(b) if, in addition to its *insurance mediation activity*, the *firm* carries on only *mortgage administration* and has all the assets that it administers off balance sheet, *PRU 9.3.38R*.

Capital resources requirement: mortgage mediation activity and mortgage lending or mortgage administration

9.3.40 R (1) If a *firm* (carrying on the activities in row 5 of the table in *PRU 9.3.29R*) does not hold *client money* or other *client* assets in relation to its *mortgage mediation activity*, the capital requirement is the amount applied to a *firm*, according to the activities carried on by the *firm*, by:

- (a) *PRU 9.3.31R*; or

- (b) if, in addition to its *mortgage mediation activity*, the *firm* carries on only *mortgage administration* and has all the assets that it administers off balance sheet, *PRU 9.3.38R*.
- (2) If a *firm* (carrying on the activities in row 5 of the table in *PRU 9.3.29R*) holds *client money* or other *client* assets in relation to its *mortgage mediation activity*, the capital resources requirement is:
- (a) the amount calculated under (1); plus
 - (b) the amount which is applied to a *firm* by *PRU 9.3.30R(2)*.

Capital resources requirement: other combinations of activities

9.3.41 R The capital resources requirement for a *firm* (carrying on the activities in row 6 of the table in *PRU 9.3.29R*) is the amount which is applied to a *firm* by *PRU 9.3.39R*.

Annual income

9.3.42 R *PRU 9.3.43R* to *PRU 9.3.50R* contain provisions relating to the calculation of annual income for the purposes of:

- (1) *PRU 9.2.13R(2)*, *PRU 9.2.15R*, *PRU 9.2.17R(2)* and *PRU 9.2.18R(2)* (all concerning the *limits of indemnity* for professional indemnity insurance); and
- (2) *PRU 9.3.30R(1)(b)* and (2)(b), and *PRU 9.3.38R(2)*.

9.3.43 R ‘Annual income’ is the annual income given in the *firm*’s most recent annual financial statement from the relevant *regulated activity* or *activities*.

9.3.44 R For a *firm* which carries on *insurance mediation activity* or *mortgage mediation activity*, annual income in *PRU 9.3.43R* is the amount of all brokerage, fees, *commissions* and other related income (for example, administration charges, overrides, profit shares) due to the *firm* in respect of or in relation to those activities.

9.3.45 G The purpose of *PRU 9.3.44R* is to ensure that the capital resources requirement is calculated on the basis only of brokerage and other amounts earned by a *firm* which are its own income.

9.3.46 R If a *firm* is a *principal*, its annual income includes amounts due to its *appointed representative* in respect of activities for which the *firm* has accepted responsibility.

9.3.47 G If a *firm* is a *network*, it should include the relevant income due to all of its *appointed representatives* in its annual income.

Annual income for mortgage administration

9.3.48 R For the purposes of *PRU* 9.3.38R(2) (Mortgage administration only) annual income is the sum of:

(1) revenue (that is, *commissions*, fees, net interest income, dividends, royalties and rent); and

(2) gains;

arising in the course of the ordinary activities of the *firm*, less profit:

(a) on the sale or termination of an operation;

(b) arising from a fundamental reorganisation or restructuring having a material effect on the nature and focus of the *firm's* operation; and

(c) on the disposal of fixed assets, including *investments* held in a long-term portfolio.

Annual income: periods of less than 12 months

9.3.49 R If the *firm's* most recent annual financial statement does not cover a 12 *month* period, the annual income is taken to be the amount in the statement converted, proportionally, to a 12 *month* period.

Annual income: no financial statement

9.3.50 R If the *firm* does not have an annual financial statement, the annual income is to be taken from the forecast or other appropriate accounts which the *firm* has submitted to the *FSA*.

The calculation of a *firm's* capital resources

9.3.51 R (1) A *firm* must calculate its capital resources only from the items in *PRU* 9.3.52R from which it must deduct the items in *PRU* 9.3.53R.

(2) If the *firm* is subject to *IPRU(INV)* or *CRED*, the capital resources are the higher of:

(a) the amount calculated under (1); and

(b) the financial resources calculated under *IPRU(INV)* or the capital calculated under *CRED* 8 (Capital requirements).

9.3.52 R Table: Items which are eligible to contribute to the capital resources of a firm

	Item	Additional explanation
1.	Share capital	This must be fully paid and may include: <ol style="list-style-type: none"> (1) ordinary <i>share</i> capital; or (2) preference <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within two years).
2.	Capital other than <i>share</i> capital (for example, the capital of a <i>sole trader</i> , <i>partnership</i> or <i>limited liability partnership</i>)	The capital of a <i>sole trader</i> is the net balance on the <i>firm's</i> capital account and current account. The capital of a <i>partnership</i> is the capital made up of the <i>partners'</i> : <ol style="list-style-type: none"> (1) capital account, that is the account: <ol style="list-style-type: none"> (a) into which capital contributed by the <i>partners</i> is paid; and (b) from which, under the terms of the <i>partnership</i> agreement, an amount representing capital may be withdrawn by a <i>partner</i> only if: <ol style="list-style-type: none"> (i) he ceases to be a <i>partner</i> and an equal amount is transferred to another such account by his former <i>partners</i> or any <i>person</i> replacing him as their <i>partner</i>; or (ii) the <i>partnership</i> is otherwise dissolved or wound up; and (2) current accounts according to the most recent financial statement.
3.	Audited reserves	These are the audited accumulated profits retained by the <i>firm</i> (after deduction of tax, dividends and proprietors' or <i>partners'</i> drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a <i>parent undertaking</i> .
4.	Interim net profits	If a <i>firm</i> seeks to include interim net profits in the calculation of its capital resources, the profits have to be verified by the <i>firm's</i> external auditor, net of tax, anticipated dividends or proprietors' drawings and other appropriations.

5.	Revaluation reserves	
6.	General provisions	These are provisions that a <i>firm</i> carrying on <i>mortgage lending</i> or <i>mortgage administration</i> holds against potential losses that have not yet been identified but which experience indicates are present in the <i>firm's</i> portfolio of assets. Such provisions must be freely available to meet these unidentified losses wherever they arise. General provisions must be verified by external auditors and disclosed in the <i>firm's</i> annual report and accounts.
7.	Subordinated loans	Subordinated loans must be included in capital on the basis of the provisions in <i>PRU 9.3.56R</i> and <i>PRU 9.3.57R</i> .

9.3.53 R Table: Items which must be deducted from capital resources

1	<i>Investments</i> in own shares
2	Intangible assets (Note 1)
3	Interim net losses (Note 2)
4	Excess of drawings over profits for a <i>sole trader</i> or a <i>partnership</i> (Note 2)
Notes	
1.	Intangible assets are the full balance sheet value of goodwill (but not until 14 January 2008 - see transitional provision 2), capitalised development costs, brand names, trademarks and similar rights and licences.
2.	The interim net losses in row 3, and the excess of drawings in row 4, are in relation to the period following the date as at which the capital resources are being computed.

Personal assets

9.3.54 R In relation to a *sole trader's firm* or a *firm* which is a *partnership*, the *sole trader* or a *partner* in the *firm* may use personal assets to meet the requirements of *PRU 9.3.20R* or *PRU 9.3.21R*, or both, to the extent necessary to make up any shortfall in meeting those requirements, 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.

9.3.55 G The purpose of *PRU 9.3.54R* is to enable a *sole trader* or a *partner* to use any personal assets, including property, to meet the capital requirements of this section, but only to the extent necessary to make up a shortfall. The requirements are the solvency requirement (*PRU 9.3.20R*) and the capital resources requirement (*PRU 9.3.21R*).

Subordinated loans

9.3.56 R In row 7 in the table at *PRU 9.3.52R*, subordinated debt must not form part of the capital resources of the *firm* unless it meets the following conditions:

- (1) (for a *firm* which carries on *insurance mediation activity* or *mortgage mediation activity* (or both) but not *mortgage lending* or *mortgage administration*) it has an original maturity of:
 - (a) at least two years; or
 - (b) it is subject to two years' notice of repayment;
- (2) (for all other *firms*) it has an original maturity of:
 - (a) at least five years; or
 - (b) it is subject to five years' notice of repayment;
- (3) the claims of the subordinated creditors must rank behind those of all unsubordinated creditors;
- (4) the only events of default must be non-payment of any interest or principal under the debt agreement or the winding up of the *firm*;
- (5) the remedies available to the subordinated creditor in the event of non-payment or other default in respect of the subordinated debt must be limited to petitioning for the winding up of the *firm* or proving the debt and claiming in the liquidation of the *firm*;
- (6) the subordinated debt must not become due and payable before its stated final maturity date except on an event of default complying with (4);
- (7) the agreement and the debt are governed by the law of England and Wales, or of Scotland or of Northern Ireland;
- (8) to the fullest extent permitted under the rules of the relevant jurisdiction, creditors must waive their right to set off amounts

they owe the *firm* against subordinated amounts owed to them by the *firm*;

- (9) the terms of the subordinated debt must be set out in a written agreement or instrument that contains terms that provide for the conditions set out in (1) to (8); and
- (10) the debt must be unsecured and fully paid up.

9.3.57 R (1) This *rule* applies to a *firm* which:

- (a) carries on:
 - (i) *insurance mediation activity*; or
 - (ii) *mortgage mediation activity* (or both); and
- (b) in relation to those activities, holds *client money* or other *client assets*;

but is not carrying on *mortgage lending* or *mortgage administration*.

- (2) In calculating its capital resources under *PRU* 9.3.51R(1), the *firm* must exclude any amount by which the aggregate amount of its subordinated loans and its redeemable preference *shares* exceeds the amount calculated under (3).
- (3) The calculation for (2) is:

four times (a – b – c);

where:

- a = items 1 to 5 in the Table at *PRU* 9.3.52R;
- b = the *firm's* redeemable preference *shares*; and
- c = the amount of its intangible assets (but not goodwill until 14 January 2008 - see transitional provision 2).

9.3.58 G If a *firm* wishes to see an example of a subordinated loan agreement which would meet the conditions in *PRU* 9.3.56R, it should refer to the *FSA* website (www.fsa.gov.uk).

9.4 Insurance undertakings and mortgage lenders using insurance or mortgage mediation services

Application

9.4.1 R This section applies to a *firm* with a *Part IV permission* to carry on:

- (1) *insurance business*; or
- (2) *mortgage lending*;

and which uses, or proposes to use, the services of another person consisting of:

- (a) *insurance mediation*; or
- (b) *insurance mediation activity*; or
- (c) *mortgage mediation activity*.

Purpose

9.4.2 G The purpose of *PRU 9.4* is to implement article 3.6 of the *Insurance Mediation Directive* in relation to *insurance undertakings*. The provisions of this section have been extended to *mortgage lenders* in relation to *insurance mediation activity*, and to *insurance undertakings* and *mortgage lenders* in relation to *mortgage mediation activity*, to ensure that *firms* using these services are treated in the same way and to ensure that *clients* have the same protection. To avoid the loss of protection where an intermediary itself uses the services of an *unauthorised person*, *PRU 9.4.4R* has the effect of ensuring that each person in the chain of those providing services is authorised.

9.4.3 G *PRU 9.4* supports the more general duties in *Principles 2* and *3*, and *SYSC 3.1.1R*.

Use of intermediaries

9.4.4 R A *firm* must not use, or propose to use, the services of another person consisting of:

- (1) *insurance mediation*; or
- (2) *insurance mediation activity*; or
- (3) *mortgage mediation activity*;

unless the conditions in *PRU 9.4.5R* and *PRU 9.4.7R* are satisfied.

- 9.4.5 R The first condition in *PRU 9.4.4R* is that the person, in relation to the activity:
- (1) has *permission*; or
 - (2) is an *exempt person*; or
 - (3) is an *exempt professional firm*; or
 - (4) is registered in another *EEA State* for the purposes of the *IMD*; or
 - (5) in relation to *insurance mediation activity*, is not carrying this activity on in the *EEA*; or
 - (6) in relation to *mortgage mediation activity*, is not carrying this activity on in the *United Kingdom*.
- 9.4.6 E (1) A *firm* should:
- (a) before using the services of the intermediary, check:
 - (i) the *FSA Register*; or
 - (ii) in relation to *insurance mediation* carried on by an *EEA firm*, the register of its *Home State regulator*;
 for the status of the person; and
 - (b) use the services of that person only if the relevant register indicates that the person is registered for that purpose.
- (2) (a) Compliance with (1)(a)(i) and (b) may be relied on as tending to establish compliance with:
- (i) *PRU 9.4.5R(1)*; or
 - (ii) in relation to *insurance mediation activity*, also *PRU 9.4.5R(2)* and (3).
- (b) Compliance with (1)(a)(ii) and (b) may be relied on as tending to establish compliance with *PRU 9.4.5R(4)*.
- 9.4.7 R The second condition in *PRU 9.4.4R* is that the *firm* takes all reasonable steps to ensure that the person in *PRU 9.4.5R* in relation to the activity, is not, directly or indirectly, carrying out the activity as a consequence of the activities of another person which contravene section 19 of the *Act* (The general prohibition).
- 9.4.8 R In order to comply with *PRU 9.4.7R*, a *firm* may rely on a confirmation provided by the other person in writing if:

- (1) the confirmation is provided by a person within *PRU 9.4.5R*;
- (2) the *firm* checked that this is the case; and
- (3) the *firm* is not aware that the confirmation is inaccurate and has no grounds for reasonably being aware that the confirmation is inaccurate.

9.4.9 G The *FSA Register* can be accessed through the *FSA* website under the link www.fsa.gov.uk/register.

Annex C

Amendments to the Client Assets sourcebook

In the following table only, underlining indicates new text.

CASS Transitional Provisions

(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
...
<u>3</u>	<u>CASS 5.1 to CASS 5.6</u>	<u>R</u>	<u>In CASS 5.1 to CASS 5.6 an <i>insurance undertaking</i> (when acting as such) with whom a <i>firm</i> conducts <i>insurance mediation activity</i> may be treated by the <i>firm</i> as its <i>client</i>.</u>	<u>14 January 2005 for 12 months</u>	<u>14 January 2005</u>
<u>4</u>	<u>CASS 5.1 to CASS 5.6</u>	<u>R</u>	<u>Money held by a <i>firm</i> in accordance with an agreement made under CASS 5.2.3R may be kept in a <i>client bank account</i>.</u>	<u>14 January 2005 for 12 months</u>	<u>14 January 2005</u>
...

In the remainder of this Annex, all the text is new and is not underlined, except for new text inserted in schedules 1 and 2 to CASS which is underlined.

Insert the following new chapter as Chapter 5.

Client money and mandates: insurance mediation activity

5.1 Application

- 5.1.1 R (1) *CASS 5.1 to 5.6 apply, subject to (2), (3) and CASS 5.1.3R to 5.1.6R, to a *firm* that receives or holds *money* in the course of or in connection with its *insurance mediation activity*.*
- (2) *CASS 5.1 to 5.6 do not, subject to (3), apply:*
- (a) *to a *firm* to the extent that it acts in accordance with CASS 4; or*
 - (b) *to a *firm* in carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or*
 - (c) *to an *insurance undertaking* in respect of its *permitted activities*; or*

- (d) to a *managing agent* when acting as such; or
- (e) with respect to *money* held by a *firm* which:
 - (i) is an *approved bank*; and
 - (ii) has requisite capital under article 4(4)(b) of the *IMD*;

but only when held by the *firm* in an account with itself, in which case the *firm* must notify the *client* (whether through a *client* agreement, *terms of business*, or otherwise in writing) that:

- (iii) *money* held for that *client* in an account with the *approved bank* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
 - (iv) as a result, the *money* will not be held in accordance with *CASS 5.1* to *CASS 5.6*.
- (3) A *firm* may elect to comply with:
- (a) *CASS 5.1* to *CASS 5.6* in respect of *client money* which it receives in the course of carrying on *insurance mediation activity* in respect of *reinsurance contracts*; and
 - (b) *CASS 5.1*, *CASS 5.2* and *CASS 5.4* to *CASS 5.6* in respect of *money* which it receives in the course of carrying on an activity which would be *insurance mediation activity*, and which *money* would be *client money*, but for article 72D of the *Regulated Activities Order* (Large risks contracts where risk situated outside the EEA);

but the election must be in respect of all the *firm*'s business which consists of that activity.

- (4) A *firm* must keep a record of any election in (3).

5.1.2 G A *firm* that is an *approved bank*, and relies on the exemption under *CASS 5.1.1 R(2)(e)*, should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time.

- 5.1.3 R An *authorised professional firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland must comply with the rules of its *designated professional body* as specified in CASS 5.1.4R, in force on 14 January 2005, and if it does so, it will be deemed to comply with CASS 5.2 to 5.6.
- 5.1.4 R For the purposes of CASS 5.1.3R the relevant rules are:
- (1) If regulated by the Law Society (of England and Wales);
 - (a) the Solicitors' Accounts Rules 1998; or
 - (b) where applicable, the Solicitors Overseas Practice Rules 1990;
 - (2) if regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001;
 - (3) if regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.
- 5.1.5 R Money is not *client money* when:
- (1) it becomes properly due and payable to the *firm*:
 - (a) for its own account; or
 - (b) in its capacity as agent of an *insurance undertaking* where the *firm* acts in accordance with CASS 5.2; or
 - (2) it is otherwise received by the *firm* pursuant to an arrangement made between an *insurance undertaking* and another *person* (other than a *firm*) by which that other *person* has authority to underwrite risks, settle claims or handle refunds of *premiums* on behalf of that *insurance undertaking* outside the *United Kingdom* and where the *money* relates to that business.
- 5.1.6 R In CASS 5.1 to 5.6 an *insurance undertaking* (when acting as such) with whom a *firm* conducts *insurance mediation activity* is not to be treated as a *client* of the *firm*.

Purpose

- 5.1.7 G (1) *Principle 10* (Clients' assets) requires a *firm* to arrange adequate protection for *clients'* assets when the *firm* is responsible for them. An essential part of that protection is the proper accounting and handling of *client money*. The *rules* in *CASS 5.1* to *5.6* also give effect to the requirement in article 4.4 of the *IMD* that all necessary measures should be taken to protect *clients* against the inability of an *insurance intermediary* to transfer *premiums* to an *insurance undertaking* or to transfer the proceeds of a claim or *premium* refund to the insured.
- (2) There are two particular approaches which *firms* can adopt which reflect options given in article 4.4. The first is to provide by law or contract for a transfer of risk from the *insurance intermediary* to the *insurance undertaking* (*CASS 5.2*). The second is that *clients'* *money* is strictly segregated by being transferred to *client accounts* that cannot be used to reimburse other creditors in the event of the *firm's* insolvency (*CASS 5.3* and *5.4* provide different means of achieving such segregation).
- 5.1.8 G *Firms* which carry on *designated investment business* which may, for example, involve them handling *client money* in respect of life assurance business should refer to *CASS 4* which includes provisions enabling *firms* to elect to comply solely with *CASS 4* or with *CASS 5* in respect of that business.
- 5.1.9 G *Firms* are reminded that *SUP 3* contains provisions which are relevant to the preparation and delivery of reports by auditors.
- 5.2 Holding money as agent of insurance undertaking

Introduction

- 5.2.1 G *Money* is not *client money* when a *firm* holds *money* as agent for an *insurance undertaking* to which *premiums* are, or will become, payable or from whom claims *money* or *premium* refunds are received for onward payment to the *firm's* *client*. This is because for the purposes of *CASS 5.1* to *5.6* an *insurance undertaking* with whom a *firm* transacts *insurance mediation activity* is not treated as a *client* of the *firm*. Where a *firm* acts as the agent of an *insurance undertaking* (for the purpose of receiving *premiums*, claims *money* and *premium* refunds) the *firm's* *clients* will be adequately protected because *premiums* will be treated as being received by the *insurance undertaking* when they are received by the agent and claims *money* and *premium* refunds will only be treated as received by the *client* when they are actually paid over.

- 5.2.2 G (1) Agency agreements between *insurance intermediaries* and *insurance undertakings* may be of a general kind and facilitate the introduction of business to the *insurance undertaking*. Alternatively, an agency agreement may confer on the *intermediary* contractual authority to commit the *insurance undertaking* to risk or authority to settle claims or handle *premium* refunds (often referred to as "binding authorities"). *CASS 5.2.3 R* requires that binding authorities of this kind must provide that the *intermediary* is to act as the agent of the *insurance undertaking* for the purpose of receiving and holding *premiums* (if the *intermediary* has authority to commit the *insurance undertaking* to risk), claims *monies* (if the *intermediary* has authority to settle claims on behalf of the *insurance undertaking*) and *premium* refunds (if the *intermediary* has authority to make refunds of *premiums* on behalf of the *insurance undertaking*). Accordingly such *money* is not *client money* for the purpose of *CASS 5*.
- (2) Other introductory agency agreements may also, depending on their precise terms, satisfy some or all of the requirements of the type of written agreement which will result in a transfer of risk for the purposes of *CASS 5.2*. It is desirable that an *intermediary* should, before informing its *clients* (in accordance with *CASS 5.2.3 R (3)*) that it will receive *money* as agent of an *insurance undertaking*, agree the terms of that notification with the relevant *insurance undertakings*.

Requirement for written agreement before acting as agent of insurance undertaking

- 5.2.3 R (1) A *firm* must not agree to:
- (a) *deal in investments as agent* for an *insurance undertaking* in connection with *insurance mediation activity*; or
 - (b) act as agent for an *insurance undertaking* for the purpose of settling claims or handling *premium* refunds; or
 - (c) otherwise receive *money* as agent of an *insurance undertaking*;
- unless:
- (d) it has entered into a written agreement with the *insurance undertaking* to that effect; and
 - (e) it is satisfied on reasonable grounds that the terms of the policies issued by the *insurance undertaking* to the *firm's clients* are likely to be compatible with such an agreement; and
 - (f) (i) (in the case of (a)) the agreement required by (d) expressly provides for the *firm* to act as agent of the *insurance undertaking* for the purpose of receiving *premiums* from the *firm's clients*; and

- (ii) (in the case of (b)) the agreement required by (d) expressly provides for the *firm* to act as agent of the *insurance undertaking* for the purpose of receiving and holding claims *money* (or, as the case may be, *premium* refunds) prior to transmission to the client making the *claim* (or, as the case may be, entitled to the *premium refund*) in question.
- (2) A *firm* must retain a copy of any agreement it enters pursuant to (1) for a period of at least six years from the date on which it is terminated.
 - (3) Where a *firm* holds, or is to hold, *money* as agent for an *insurance undertaking* it must ensure that it informs those of its *clients* whose transactions may be affected by the arrangement (whether in its *terms of business*, *client agreements* or otherwise in writing) that it will hold their *money* as agent of the *insurance undertaking* and if necessary the extent of such agency and whether it includes all items of *client money* or is restricted, for example, to the receipt of *premiums*.
 - (4) A *firm* may (subject to the consent of the *insurance undertaking* concerned) include in an agreement in (1) provision for *client money* received by an *appointed representative* to be held by the *representative* as agent for the *insurance undertaking* (in which event it must ensure that the *representative* provides the information to *clients* required by (3)).
- 5.2.4 G *Firms* are reminded that CASS 5.1.5R(1)(b) provides that *money* held in accordance with an agreement made under CASS 5.2.3R is not *client money* and, in accordance with the *rules* in CASS 5.5, that *money* must not be kept in a *client bank account*.
- 5.2.5 G A *firm* which provides for the protection of a *client* under CASS 5.2 is relieved of the obligation to provide protection for that *client* under CASS 5.3 or CASS 5.4 to the extent of the items of the *money* protected by the agency agreement.
- 5.2.6 G A *firm* may in accordance with CASS 5.2.3R (4), arrange for an *insurance undertaking* to accept responsibility for the *money* held by its *appointed representatives* in which event CASS 5.5.18R to CASS 5.5.25G will not apply.
- 5.2.7 G A *firm* may operate on the basis of an agency agreement as provided for by CASS 5.2.3R for some of its *clients* and with protection provided by a *client money* trust in accordance with CASS 5.3 or 5.4 for other *clients*. A *firm* may also operate on either basis for the same *client* but in relation to different transactions. A *firm* which does so should be satisfied that its administrative systems and controls are adequate and, in accordance with CASS 5.2.4G, should ensure that *money* held for both types of *client* and business is kept separate.

- 5.3 Statutory trust
- 5.3.1 G Section 139(1) of the *Act* (Miscellaneous ancillary matters) provides that *rules* may make provision which result in *client money* being held by a *firm* on trust (England and Wales and Northern Ireland) or as agent (Scotland only). *CASS 5.3.2R* creates a fiduciary relationship between the *firm* and its *client* under which *client money* is in the legal ownership of the *firm* but remains in the beneficial ownership of the *client*. In the event of failure of the *firm*, costs relating to the distribution of *client money* may have to be borne by the trust.
- 5.3.2 R A *firm* (other than a *firm* acting in accordance with *CASS 5.4*) receives and holds *client money* as trustee (or in Scotland as agent) on the following terms:
- (1) for the purposes of and on the terms of *CASS 5.3*, *CASS 5.5* and the *client money (insurance) distribution rules*;
 - (2) subject to (3), for the *clients* for whom that *money* is held, according to their respective interests in it;
 - (3) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
 - (4) after all valid claims and costs under (2) and (3) have been met, for the *firm* itself.
- 5.3.3 G (1) A *firm* which holds *client money* can discharge its obligation to ensure adequate protection for its *clients* in respect of such *money* by complying with *CASS 5.3* which provides for such *money* to be held by the *firm* on the terms of a trust imposed by the *rules*.
- (2) The trust imposed by *CASS 5.3* is limited to a trust in respect of *client money* which a *firm* receives and holds. The consequential and supplementary requirements in *CASS 5.5* are designed to secure the proper segregation and maintenance of adequate *client money* balances. In particular, *CASS 5.5* does not permit a *firm* to use *client money* balances to provide credit for *clients* (or potential *clients*) such that, for example, their *premium* obligations may be met in advance of the *premium* being remitted to the *firm*. A *firm* wishing to provide credit for *clients* may however do so out of its own funds.

5.4 Non-statutory client money trust

Introduction

- 5.4.1 G (1) *CASS 5.4* permits a *firm*, which has adequate resources, systems and controls, to declare a trust on terms which expressly authorise it, in its capacity as trustee, to make advances of credit to the *firm's clients*. The *client money* trust required by *CASS 5.4* extends to such debt obligations which will arise if the *firm*, as trustee, makes credit advances, to enable a client's *premium* obligations to be met before the *premium* is remitted to the *firm* and similarly if it allows claims and *premium* refunds to be paid to the *client* before receiving remittance of those *monies* from the *insurance undertaking*.
- (2) *CASS 5.4* does not permit a *firm* to make advances of credit to itself out of the *client money* trust. Accordingly, *CASS 5.4* does not permit a *firm* to withdraw *commission* from the *client money* trust before it has received the *premium* from the *client* in relation to the *non-investment insurance contract* which generated the *commission*.

Voluntary nature of this section

- 5.4.2 R A *firm* may elect to comply with the requirements in this section, and may do so for some of its business whilst complying with *CASS 5.3* for other parts.
- 5.4.3 R A *firm* is not subject to *CASS 5.3* when and to the extent that it acts in accordance with this section.

Conditions for using the non-statutory client money trust

- 5.4.4 R A *firm* may not handle *client money* in accordance with the *rules* in this section unless each of the following conditions is satisfied:
- (1) the *firm* must have and maintain systems and controls which are adequate to ensure that the *firm* is able to monitor and manage its *client money* transactions and any credit risk arising from the operation of the trust arrangement and, if in accordance with *CASS 5.4.2R* a *firm* complies with both the *rules* in *CASS 5.3* and *CASS 5.4*, such systems and controls must extend to both arrangements;
 - (2) the *firm* must obtain, and keep current, written confirmation from its auditor that it has in place systems and controls which are adequate to meet the requirements in (1);
 - (3) the *firm* must designate a *manager* with responsibility for overseeing the *firm's* day to day compliance with the systems and controls in (1) and the *rules* in this section;
 - (4) the *firm* (if, under the terms of the non-statutory trust, it is to handle *client money* for *retail customers*) must have and at all times maintain capital resources of not less than £50,000 calculated in accordance with *PRU 9.3.51R*; and

- (5) in relation to each of the *clients* for whom the *firm* holds *money* in accordance with *CASS 5.4*, the *firm* must take reasonable steps to ensure that its *terms of business* or other *client agreements* adequately explain, and obtain the *client's* informed consent to, the *firm* holding the *client's money* in accordance with *CASS 5.4*.
- 5.4.5 G The amount of a *firm's* capital resources maintained for the purposes of *PRU 9.3.30R* will also satisfy (in whole or in part) the requirement in *CASS 5.4.4R (4)*.
- Client money to be received under the non-statutory client money trust
- 5.4.6 R A *firm* must not receive or hold any *client money* unless it does so as trustee (or, in Scotland, as agent) and has properly executed a deed (or equivalent formal document) to that effect.
- Contents of trust deed
- 5.4.7 R The deed referred to in *CASS 5.4.6R* must provide that the *money* (and, if appropriate, *designated investments*) are held:
- (1) for the purposes of and on the terms of:
 - (a) *CASS 5.4*;
 - (b) the applicable provisions of *CASS 5.5*; and
 - (c) the *client money (insurance) distribution rules*.
 - (2) subject to (3), for the *clients* for whom that *money* is held, according to their respective interests in it;
 - (3) on *failure* of the *firm*, for the payment of the costs properly attributable to the distribution of the *client money* in accordance with (2); and
 - (4) after all valid claims and costs under (2) and (3) have been met, for the *firm* itself.
- 5.4.8 R The deed (or equivalent formal document) referred to in *CASS 5.4.6R* may provide that:
- (1) the *firm*, acting as trustee (or, in Scotland, as agent), has power to make advances or give credit to *clients* or *insurance undertakings* from *client money*, provided that it also provides that any debt or other obligation of a *client* or resulting obligation of an *insurance undertaking*, in relation to an advance or credit, is held on the same terms as *CASS 5.4.7R*;
 - (2) the benefit of a letter of credit or unconditional guarantee provided by an *approved bank* on behalf of a *firm* to satisfy any shortfall in the *firm's client money* resource (as calculated under *CASS 5.5.65R*) when compared with the *firm's client money* requirement (as calculated under *CASS 5.6.66R* or as appropriate *CASS 5.5.68R*), is held on the same terms as *CASS 5.4.7R*.

- 5.5 Segregation and the operation of client money accounts
- Application
- 5.5.1 R Unless otherwise stated each of the provisions in *CASS 5.5* applies to *firms* which are acting in accordance with *CASS 5.3* (Statutory trust) or *5.4* (Non-statutory trust).
- 5.5.2 G One purpose of *CASS 5.5* is to ensure that, unless otherwise permitted, *client money* is kept separate from the *firm's own money*. Segregation, in the event of a *firm's* failure, is important for the effective operation of the trust that is created to protect *client money*. The aim is to clarify the difference between *client money* and general creditors' entitlements in the event of the *failure* of the *firm*.
- Requirement to segregate
- 5.5.3 R A *firm* must, except to the extent permitted by *CASS 5.5*, hold *client money* separate from the *firm's money*.

Money due to a client from a firm

- 5.5.4 R If a *firm* is liable to pay *money* to a *client*, it must as soon as possible, and no later than one *business day* after the *money* is due and payable:
- (1) pay it into a *client bank account*, in accordance with CASS 5.5.5R;
or
 - (2) pay it to, or to the order of, the *client*.

Segregation

- 5.5.5 R A *firm* must segregate *client money* by either:
- (1) paying it as soon as is practicable into a *client bank account*; or
 - (2) paying it out in accordance with CASS 5.5.80R.
- 5.5.6 G The *FSA* expects that in most circumstances it will be practicable for a *firm* to pay *client money* into a *client bank account* by not later than the next *business day* after receipt.
- 5.5.7 G Where an insurance transaction involves more than one *firm* acting in a chain such that for example *money* is transferred from a “producing” broker who has received *client money* from a *retail customer* to an intermediate broker and thereafter to an *insurance undertaking*, each broker *firm* will owe obligations to its immediate *client* to segregate *client money* which it receives (in this example the producing broker in relation to the *retail customer* and the intermediate broker in relation to the producing broker). A *firm* which allows a third party broker to hold or control *client money* will not thereby be relieved of its fiduciary obligations (see CASS 5.5.34R).
- 5.5.8 R A *firm* may segregate *client money* in a different currency from that of receipt. If it does so, the *firm* must ensure that the amount held is adjusted at intervals of not more than twenty five *business days* to an amount at least equal to the original currency amount (or the currency in which the *firm* has its liability to its *clients*, if different), translated at the previous day's closing spot exchange rate.
- 5.5.9 R A *firm* must not hold *money* other than *client money* in a *client bank account* unless it is:
- (1) a minimum sum required to open the account, or to keep it open; or
 - (2) *money* temporarily in the account in accordance with CASS 5.5.16R (Withdrawal of commission and mixed remittance); or
 - (3) interest credited to the account which exceeds the amount due to *clients* as interest and has not yet been withdrawn by the *firm*.

- 5.5.10 R If it is prudent to do so to ensure that *client money* is protected (and provided that doing so would otherwise be in accordance with CASS 5.5.63R(2)(b)), a *firm* may pay into, or maintain in, a *client bank account money* of its own, and that *money* will then become *client money* for the purposes of CASS 5 and the *client money (insurance) distribution rules*.
- 5.5.11 R A *firm*, when acting in accordance with CASS 5.3 (statutory trust), must ensure that the total amount of *client money* held for each *client* in any of the *firm's client money bank accounts* is positive and that no payment is made from any such account for the benefit of a *client* unless the *client* has provided the *firm* with cleared funds to enable the payment to be made.
- 5.5.12 R If *client money* is received by the *firm* in the form of an automated transfer, the *firm* must take reasonable steps to ensure that:
- (1) the *money* is received directly into a *client bank account*; and
 - (2) if *money* is received directly into the *firm's* own account, the *money* is transferred into a *client bank account* no later than the next *business day* after receipt.
- 5.5.13 G A *firm* can hold *client money* in either a *general client bank account* (CASS 5.5.38R) or a *designated client bank account* (CASS 5.5.39R). A *firm* holds all *client money* in *general client bank accounts* for its *clients* as part of a common pool of *money* so those particular *clients* do not have a claim against a specific sum in a specific account; they only have a claim to the *client money* in general. A *firm* holds *client money* in *designated client bank accounts* for those *clients* who requested that their *client money* be part of a specific pool of *money*, so those particular *clients* do have a claim against a specific sum in a specific account; they do not have a claim to the *client money* in general unless a *primary pooling event* occurs. If the *firm* becomes insolvent, and there is (for whatever reason) a *shortfall* in *money* held for a *client* compared with that *client's* entitlements, the available funds will be distributed in accordance with the *client money (insurance) distribution rules*.

Non-statutory trust - segregation of designated investments

- 5.5.14 R (1) A *firm* which handles *client money* in accordance with the *rules* for a non-statutory trust in CASS 5.4 may, to the extent it considers appropriate, but subject to (2), satisfy the requirement to segregate *client money* by segregating or arranging for the segregation of *designated investments* with a value at least equivalent to such *money* as would otherwise have been segregated into a *client bank account*.
- (2) A *firm* may not segregate *designated investments* unless it:

- (a) takes reasonable steps to ensure that any *retail customers* whose *client money* interests may be protected by such segregation are aware that the *firm* may operate such an arrangement and have (whether through its *terms of business*, *client agreements* or otherwise in writing) an adequate opportunity to give their informed consent;
- (b) ensures that the terms on which it will segregate *designated investments* include provision for it to take responsibility for meeting any *shortfall* in its *client money* resource which is attributable to falls in the market value of a segregated *investment*;
- (c) provides in the deed referred to in *CASS 5.4.6R* for *designated investments* which it segregates to be held by it on the terms of the non-statutory trust; and
- (d) takes reasonable steps to ensure that the segregation is at all times in conformity with the range of permitted *investments*, general principles and conditions in *CASS 5*, Annex 1R.

5.5.15 G A *firm* which takes advantage of *CASS 5.5.14R* will need to consider whether its *permission* should include the *permitted activity* of *managing investments*. If the *firm* is granted a power to manage with discretion the funds over which it is appointed as trustee under the trust deed required by *CASS 5.4* then it will be likely to need a *permission to manage investments*. It is unlikely to need such a permission however if it is merely granted a power to invest but the deed stipulates that the funds may only be managed with discretion by another *firm* (which has the necessary *permission*). Such an arrangement would not preclude the *firm* holding *client money* as trustee from appointing another *firm* (or *firms*) as manager and setting an appropriate strategy and overall asset allocation, subject to the limits set out in *CASS 5*, Annex 1R. A *firm* may also need to consider whether it needs a *permission* to operate a *collective investment scheme* if any of its *clients* are to participate in the income or gains arising from the acquisition or disposal of *designated investments*.

Withdrawal of commission and mixed remittance

- 5.5.16 R (1) A *firm* may draw down *commission* from the *client bank account* if:
- (a) it has received the *premium* from the *client*; and
 - (b) this is consistent with the terms of business of the *insurance undertaking* to whom the *premium* is payable;
- and the *firm* may draw down *commission* before payment of the *premium* to the *insurance undertaking*, provided that the conditions in (a) and (b) are satisfied.
- (2) If a *firm* receives a *mixed remittance* (that is part *client money* and part other *money*), it must:

- (a) pay the full sum into a *client bank account* in accordance with CASS 5.5.5R; and
- (b) pay the *money* that is not *client money* out of the *client bank account* as soon as reasonably practicable and in any event by not later than twenty-five *business days* after the day on which the remittance is cleared.

- 5.5.17 G (1) The procedure required by CASS 5.5.16R will apply where *money* becomes due to the *firm* in respect of *fees* due from *clients* (whether to the *firm* or other professionals) and amounts in respect of *commission* which becomes due to the *firm* from an *insurance undertaking*.
- (2) *Firms* are reminded that *money* received in accordance with CASS 5.2 must not be kept in a *client bank account*. *Client money* received from a third party *premium* finance provider should however be segregated into a *client bank account*.
- (3) Where a *client* makes payments of *premium* to a *firm* in instalments, CASS 5.5.16R applies in relation to each instalment.

Appointed representatives, field representatives and other agents

- 5.5.18 R (1) A *firm* must in relation to each of its *appointed representatives, field representatives* and other agents comply with CASS 5.5.19R to CASS 5.5.21R (Immediate segregation) or with CASS 5.5.23R (Periodic segregation and reconciliation).
- (2) A *firm* must in relation to each *representative* or other agent keep a record of whether it is complying with CASS 5.5.19R to CASS 5.5.21R or with CASS 5.5.23R.
- (3) A *firm* is, but without affecting the application of CASS 5.5.19R to CASS 5.5.23R, to be treated as the recipient of *client money* which is received by any of its *appointed representatives, field representatives* or other agents.

Immediate segregation

- 5.5.19 R A *firm* must establish and maintain procedures to ensure that *client money* received by its *appointed representatives, field representatives* or other agents of the *firm* is:
- (1) paid into a *client bank account* of the *firm* in accordance with CASS 5.5.5R; or
 - (2) forwarded to the *firm*, or in the case of a *field representative* forwarded to a specified business address of the *firm*, so as to ensure that the *money* arrives at the specified business address by the close of the third *business day*.

- 5.5.20 G For the purposes of CASS 5.5.19R, the *client money* received on *business day* one should be forwarded to the *firm* or specified business address of the *firm* no later than the next *business day* after receipt (*business day* two) in order for it to reach that *firm* or specified business address by the close of the third *business day*. Procedures requiring the *client money* to be sent to the *firm* or the specified business address of the *firm* by first class post no later than the next *business day* after receipt would meet the requirements of CASS 5.5.19R.
- 5.5.21 R If *client money* is received in accordance with CASS 5.5.19R, the *firm* must ensure that its *appointed representatives, field representatives* or other agents keep *client money* (whether in the form of *premiums, claims money* or *premium* refunds) separately identifiable from any other *money* (including that of the *firm*) until the *client money* is paid into a *client bank account* or sent to the *firm*.
- 5.5.22 G A *firm* which acts in accordance with CASS 5.5.19R to CASS 5.5.21R need not comply with CASS 5.5.23R.

Periodic segregation and reconciliation

- 5.5.23 R
- (1) A *firm* must, on a regular basis, and at reasonable intervals, ensure that it holds in its *client bank account* an amount which (in addition to any other amount which it is required by these *rules* to hold) is not less than the amount which it reasonably estimates to be the aggregate of the amounts held at any time by its *appointed representatives, field representatives* and other agents.
 - (2) A *firm* must, not later than ten *business days* following the expiry of each period in (1):
 - (a) carry out, in relation to each such *representative* or agent, a reconciliation of the amount paid by the *firm* into its *client bank account* with the amount of *client money* actually received and held by the *representative* or other agent; and
 - (b) make a corresponding payment into, or withdrawal from, the account.

- 5.5.24 G (1) *CASS 5.5.23R* allows a *firm* with *appointed representatives*, *field representatives* and other agents to avoid the need for the *representative* to forward *client money* on a daily basis but instead requires a *firm* to segregate into its *client money bank account* amounts which it reasonably estimates to be sufficient to cover the amount of *client money* which the *firm* expects its *representatives* or agents to receive and hold over a given period. At the expiry of each such period, the *firm* must obtain information about the actual amount of *client money* received and held by its *representatives* so that it can reconcile the amount of *client money* it has segregated with the amounts actually received and held by its *representatives* and agents. The frequency at which this reconciliation is to be performed is not prescribed but it must be at regular and reasonable intervals having regard to the nature and frequency of the *insurance business* carried on by its *representatives* and agents. For example a period of six *months* might be appropriate for a *representative* which conducts business involving the receipt of *premiums* only infrequently whilst for other *representatives* a periodic reconciliation at *monthly* intervals (or less) may be appropriate.
- (2) Where a *firm* operates on the basis of *CASS 5.5.23R*, the *money* which is segregated into its *client bank account* is *client money* and will be available to meet any obligations owed to the *clients* of its *representatives* who for this purpose are treated as the *firm's clients*.
- 5.5.25 G A *firm* which acts in accordance with *CASS 5.5.23R* need not comply with *CASS 5.5.19R* to *CASS 5.5.21R*.
- Client entitlements
- 5.5.26 R A *firm* must take reasonable steps to ensure that it is notified promptly of any receipt of *client money* in the form of *client* entitlements.
- 5.5.27 G The 'entitlements' mentioned in *CASS 5.5.26R* refer to any kind of miscellaneous payment which the *firm* receives on behalf of a *client* and which are due to be paid to the *client*.
- 5.5.28 R When a *firm* receives a *client* entitlement on behalf of a *client*, it must pay any part of it which is *client money*:
- (1) for *client* entitlements received in the *United Kingdom*, into a *client bank account* in accordance with *CASS 5.5.5R*; or
- (2) for *client* entitlements received outside the *United Kingdom*, into any bank account operated by the *firm*, provided that such *client money* is:
- (a) paid to, or in accordance with, the instructions of the *client* concerned; or
- (b) paid into a *client bank account* in accordance with *CASS 5.5.5R* (1), as soon as possible but no later than five *business days* after the *firm* is notified of its receipt.

5.5.29 R A *firm* must take reasonable steps to ensure that a *client* entitlement which is *client money* is allocated within a reasonable period of time after notification of receipt.

Interest and investment returns

5.5.30 R (1) In relation to *retail customers*, a *firm* must, subject to (2), take reasonable steps to ensure that its *terms of business* or other *client agreements* adequately explain, and where necessary obtain a *client's* informed consent to, the treatment of interest and, if applicable, investment returns, derived from its holding of *client money* and any segregated *designated investments*.

(2) In respect of interest earned on *client bank accounts*, (1) does not apply if a *firm* has reasonable ground to be satisfied that in relation to *insurance mediation activities* carried on with or for a *retail customer* the amount of interest earned will be not more than £20 per transaction.

5.5.31 G If no interest is payable to a *retail customer*, that fact should be separately identified in the *firm's client agreement* or *terms of business*.

5.5.32 G If a *firm* outlines its *policy* on its payment of interest, it need not necessarily disclose the actual rates prevailing at any particular time; the *firm* should disclose the terms, for example, LIBOR plus or minus 'x' percentage points.

Transfer of client money to a third party

5.5.33 G CASS 5.5.34R sets out the requirements a *firm* must comply with when it transfers *client money* to another *person* without discharging its fiduciary duty owed to that *client*. Such circumstances arise when, for example, a *firm* passes *client money* to another broker for the purposes of the *client's* transaction being effected. A *firm* can only discharge itself from its fiduciary duty by acting in accordance with, and in the circumstances permitted by, CASS 5.5.80R.

5.5.34 R A *firm* may allow another *person*, such as another broker to hold or control *client money*, but only if:

- (1) the *firm* transfers the *client money* for the purpose of a transaction for a *client* through or with that *person*; and
- (2) in the case of a *retail customer*, that *customer* has been notified (whether through a *client agreement*, *terms of business*, or otherwise in writing) that the *client money* may be transferred to another *person*.

5.5.35 G In relation to the notification required by CASS 5.5.34R (2), there is no need for a *firm* to make a separate disclosure in relation to each transfer made.

5.5.36 G A *firm* should not hold excess *client money* with another broker. It should be held in a *client bank account*.

Client bank accounts

5.5.37 G The *FSA* generally requires a *firm* to place *client money* in a *client bank account* with an *approved bank*. However, a *firm* which is an *approved bank* must not (subject to *CASS 5.1.1R(2)(e)*) hold *client money* in an account with itself.

5.5.38 R (1) A *firm* must ensure that *client money* is held in a *client bank account* at one or more *approved banks*.

(2) If the *firm* is a bank, it must not hold *client money* in an account with itself.

5.5.39 R A *firm* may open one or more *client bank accounts* in the form of a *designated client bank account*. Characteristics of these accounts are that:

(1) the account holds *money* of one or more *clients*;

(2) the account includes in its title the word 'designated';

(3) the *clients* whose *money* is in the account have each consented in writing to the use of the bank with which the *client money* is to be held; and

(4) in the event of the *failure* of that bank, the account is not pooled with any other type of account unless a *primary pooling event* occurs.

5.5.40 G (1) A *firm* may operate as many *client accounts* as it wishes.

(2) A *firm* is not obliged to offer its *clients* the facility of a *designated client bank account*.

(3) Where a *firm* holds *money* in a *designated client bank account*, the effect upon either:

(a) the *failure* of a bank where any other *client bank account* is held; or

(b) the *failure* of a third party to whom *money* has been transferred out of any other *client bank account* in accordance with *CASS 5.5.34R*;

(each of which is a *secondary pooling event*) is that *money* held in the *designated client bank account* is not pooled with *money* held in any other account. Accordingly *clients* whose *money* is held in a *designated client bank account* will not share in any *shortfall* resulting from a *failure* of the type described in (a) or (b).

- (4) Where a *firm* holds *client money* in a *designated client bank account*, the effect upon the failure of the *firm* (which is a *primary pooling event*) is that *money* held in the *designated client bank account* is pooled with *money* in every other *client bank account* of the *firm*. Accordingly, *clients* whose *money* is held in a *designated client bank account* will share in any *shortfall* resulting from a *failure* of the *firm*.

5.5.41 R A *firm* may hold *client money* with a bank that is not an *approved bank* if all the following conditions are met:

- (1) the *client money* relates to one or more insurance transactions which are subject to the law or market practice of a jurisdiction outside the *United Kingdom*;
- (2) because of the applicable law or market practice of that overseas jurisdiction, it is not possible to hold the *client money* in a *client bank account* with an *approved bank*;
- (3) the *firm* holds the *money* with such a bank for no longer than is necessary to effect the transactions;
- (4) the *firm* notifies each relevant *client* and has, in relation to a *retail customer*, a *client agreement* or *terms of business* which adequately explain that:
 - (a) the *client money* will not be held with an *approved bank*;
 - (b) in such circumstances, the legal and regulatory regime applying to the bank with which the *client money* is held will be different from that of the *United Kingdom* and, in the event of a *failure* of the bank, the *client money* may be treated differently from the treatment which would apply if the *client money* were held by an *approved bank* in the *United Kingdom*; and
 - (c) if it is the case, the particular bank has not accepted that it has no right of set-off or counterclaim against *money* held in a *client bank account*, in respect of any sum owed on any other account of the *firm*, notwithstanding the *firm*'s request to the bank as required by CASS 5.5.49R; and
- (5) the *client money* is held in a designated bank account.

A firm's selection of a bank

- 5.5.42 G A *firm* owes a duty of care to a *client* when it decides where to place *client money*. The review required by CASS 5.5.43R is intended to ensure that the risks inherent in placing *client money* with a bank are minimised or appropriately diversified by requiring a *firm* to consider carefully the bank or banks with which it chooses to place *client money*. For example, a *firm* which is likely only to hold relatively modest amounts of *client money* will be likely to be able to satisfy this requirement if it selects an *authorised* UK clearing bank.
- 5.5.43 R Before a *firm* opens a *client bank account* and as often as is appropriate on a continuing basis (and no less than once in each financial year), it must take reasonable steps to establish that the bank is appropriate for that purpose.
- 5.5.44 G A *firm* should consider diversifying placements of *client money* with more than one bank where the amounts are, for example, of sufficient size to warrant such diversification.
- 5.5.45 G When considering where to place *client money* and to determine the frequency of the appropriateness test under CASS 5.5.43R, a *firm* should consider taking into account, together with any other relevant matters:
- (1) the capital of the bank;
 - (2) the amount of *client money* placed, as a proportion of the bank's capital and *deposits*;
 - (3) the credit rating of the bank (if available); and
 - (4) to the extent that the information is available, the level of risk in the investment and loan activities undertaken by the bank and its *affiliated companies*.
- 5.5.46 G A *firm* will be expected to perform due diligence when opening a *client bank account* with a bank that is authorised by an *EEA regulator*. Any continuing assessment of that bank may be restricted to verification that it remains authorised by an *EEA regulator*.

Group banks

- 5.5.47 R Subject to CASS 5.5.41R, a *firm* that holds or intends to hold *client money* with a bank which is in the same *group* as the *firm* must:
- (1) undertake a continuous review in relation to that bank which is at least as rigorous as the review of any bank which is not in the same *group*, in order to ensure that the decision to use a *group* bank is appropriate for the *client*;

- (2) disclose in writing to its *client* at the outset of the *client* relationship (whether by way of a *client agreement*, *terms of business* or otherwise in writing) or, if later, not less than 20 *business days* before it begins to hold *client money* of that *client* with that bank:
- (a) that it is holding or intends to hold *client money* with a bank in the same *group*;
 - (b) the identity of the bank concerned; and
 - (c) that the *client* may choose not to have his *money* placed with such a bank.
- 5.5.48 R If a *client* has notified a *firm* in writing that he does not wish his *money* to be held with a bank in the same *group* as the *firm*, the *firm* must either:
- (1) place that *client money* in a *client bank account* with another bank in accordance with CASS 5.5.38R; or
 - (2) return that *client money* to, or pay it to the order of, the *client*.
- Notification and acknowledgement of trust (banks)
- 5.5.49 R When a *firm* opens a *client bank account*, the *firm* must give or have given written notice to the bank requesting the bank to acknowledge to it in writing:
- (1) that all *money* standing to the credit of the account is held by the *firm* as trustee (or if relevant in Scotland, as agent) and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against *money* in that account in respect of any sum owed to it on any other account of the *firm*; and
 - (2) that the title of the account sufficiently distinguishes that account from any account containing *money* that belongs to the *firm*, and is in the form requested by the *firm*.
- 5.5.50 R In the case of a *client bank account* in the *United Kingdom*, if the bank does not provide the acknowledgement referred to in CASS 5.5.49R within 20 *business days* after the *firm* dispatched the notice, the *firm* must withdraw all *money* standing to the credit of the account and deposit it in a *client bank account* with another bank as soon as possible.
- 5.5.51 R In the case of a *client bank account* outside the *United Kingdom*, if the bank does not provide the acknowledgement referred to in CASS 5.5.49R within 20 *business days* after the *firm* dispatched the notice, the *firm* must notify the *client* of this fact as set out in CASS 5.5.53R.
- 5.5.52 G *Firms* are reminded of the provisions of CASS 5.5.41R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

Notification to clients: use of an approved bank outside the United Kingdom

- 5.5.53 R A *firm* must not hold, for a *retail customer*, *client money* in a *client bank account* outside the *United Kingdom*, unless the *firm* has previously disclosed to the *retail customer* (whether in its *terms of business*, *client agreement* or otherwise in writing):
- (1) that his *money* may be deposited in a *client bank account* outside the *United Kingdom* but that the *client* may notify the *firm* that he does not wish his *money* to be held in a particular jurisdiction;
 - (2) that in such circumstances, the legal and regulatory regime applying to the *approved bank* will be different from that of the *United Kingdom* and, in the event of a *failure* of the bank, his *money* may be treated in a different manner from that which would apply if the *client money* were held by a bank in the *United Kingdom*; and
 - (3) if it is the case, that a particular bank has not accepted that it has no right of set-off or counterclaim against *money* held in a *client bank account* in respect of any sum owed on any other account of the *firm*, notwithstanding the *firm's* request to the bank as required by CASS 5.5.49R.

5.5.54 G There is no need for a *firm* to make a separate disclosure under CASS 5.5.53R (1) and (2) in relation to each jurisdiction.

5.5.55 G *Firms* are reminded of the provisions of CASS 5.5.41R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

5.5.56 R If a *client* has notified a *firm* in writing before entering into a transaction that *client money* is not to be held in a particular jurisdiction, the *firm* must either:

- (1) hold the *client money* in a *client bank account* in a jurisdiction to which the *client* has not objected; or
- (2) return the *client money* to, or to the order of, the *client*.

5.5.57 G *Firms* are reminded of the provisions of CASS 5.5.41R (4), which sets out the notification and consents required when using a bank that is not an *approved bank*.

Notification to retail customers: use of broker or settlement agent outside the United Kingdom

5.5.58 R A *firm* must not undertake any transaction for a *retail customer* that involves *client money* being passed to another broker or *settlement agent* located in a jurisdiction outside the *United Kingdom*, unless the *firm* has previously disclosed to the *retail customer* (whether in its *terms of business*, *client agreement* or otherwise in writing):

- (1) that his *client money* may be passed to a *person* outside the *United Kingdom* but the *client* may notify the *firm* that he does not wish his *money* to be passed to a *person* in a particular jurisdiction; and
- (2) that, in such circumstances, the legal and regulatory regime applying to the broker or *settlement agent* will be different from that of the *United Kingdom* and, in the event of a *failure* of the broker or *settlement agent*, this *money* may be treated in a different manner from that which would apply if the *money* were held by a broker or *settlement agent* in the *United Kingdom*.

5.5.59 G There is no need for a *firm* to make a separate disclosure under CASS 5.5.58R in relation to each jurisdiction.

5.5.60 R If a *client* has notified a *firm* before entering into a transaction that he does not wish his *money* to be passed to another broker or *settlement agent* located in a particular jurisdiction, the *firm* must either:

- (1) hold the *client money* in a *client bank account* in the *United Kingdom* or a jurisdiction to which the *client* has not objected and pay its own *money* to the *firm's* own account with the broker, agent or counterparty; or
- (2) return the *money* to, or to the order of, the *client*.

Notification to the FSA: failure of a bank, broker or settlement agent

5.5.61 R On the *failure* of a third party with which *client money* is held, a *firm* must notify the *FSA*:

- (1) as soon as it becomes aware, of the *failure* of any bank, other broker or *settlement agent* or other entity with which it has placed, or to which it has passed, *client money*; and
- (2) as soon as reasonably practical, whether it intends to make good any *shortfall* that has arisen or may arise and of the amounts involved.

Client money calculation

5.5.62 G The purpose of the *client money* calculation is to act as a check that the amount of *client money* (and where appropriate the value of segregated *designated investments*) that is segregated at banks (and where appropriate third parties) is sufficient to meet the *firm's* obligations to its *clients*. For this purpose two, alternative, calculation methods are permitted, but a *firm* must use the same calculation method in relation to both CASS 5.3 and CASS 5.4. The first requires a *firm* to calculate its *client money* requirement by reference to individual *client money* balances. The second permits a *firm* to carry out the calculation on the basis of information in its business ledgers. In either case, the *firm* must carry out the calculation at least every 25 *business days*.

- 5.5.63 R A *firm* must, as often as is necessary to ensure the accuracy of its records and at least at intervals of not more than 25 *business days*:
- (1) check whether its *client money* resource, as determined by CASS 5.5.65R on the previous *business day*, was at least equal to the *client money* requirement, as defined in CASS 5.5.66R or CASS 5.5.68R, as at the close of business on that day; and
 - (2) ensure that:
 - (a) any *shortfall* is paid into a *client bank account* by the close of business on the day the calculation is performed; or
 - (b) any excess is withdrawn within the same time period unless CASS 5.5.9R or CASS 5.5.10R applies to the extent that the *firm* is satisfied on reasonable grounds that it is prudent to maintain a positive margin to ensure the test in (1) is satisfied having regard to any unreconciled items in its business ledgers as at the date on which the calculations are performed; and
 - (3) ensure that it includes in any calculation of its *client money* requirement (whether calculated in accordance with CASS 5.5.66R or CASS 5.5.68R) any amounts attributable to *client money* received by its *appointed representatives*, *field representatives* or other agents and which, as at the date of calculation, it is required to segregate in accordance with CASS 5.5.19R.
- 5.5.64 R A *firm* must keep a record of whether it calculates its *client money* requirement in accordance with CASS 5.5.66R or CASS 5.5.68R and may only use one method during each annual accounting period (which method must be the same in relation to both CASS 5.3 and CASS 5.4).

Client money resource

- 5.5.65 R The *client money* resource, for the purposes of CASS 5.5.63R, is:
- (1) the aggregate of the balances on the *firm's client money bank accounts*, as at the close of business on the previous *business day* and, if held in accordance with CASS 5.4, *designated investments* (valued on a prudent and consistent basis) together with *client money* held by a third party in accordance with CASS 5.5.34R;
 - (2) to the extent that *client money* is held in accordance with CASS 5.3 (statutory trust), insurance debtors (which in this case cannot include pre-funded items); and
 - (3) to the extent that *client money* is held in accordance with CASS 5.4 (non-statutory trust):

- (a) all insurance debtors (including pre-funded items whether in respect of advance *premiums*, claims, *premium* refunds or otherwise) shown in the *firm's* business ledgers as amounts due from *clients*, *insurance undertakings* and other *persons*, such debts valued on a prudent and consistent basis to the extent required to meet any shortfall of the *client money* resource compared with the *firm's client money* requirement; and
- (b) the amount of any letter of credit or unconditional guarantee provided by an *approved bank* and held on the terms of the trust (or, in Scotland, agency), limited to:
 - (i) the maximum sum payable by the *approved bank* under the letter of credit or guarantee; or
 - (ii) if less, the amount which would, apart from the benefit of the letter of credit or guarantee, be the *shortfall* of the *client money* resource compared with the *client money* requirement under CASS 5.5.66R or CASS 5.5.68R.

Client money (client balance) requirement

5.5.66 R A *firm's client money* (*client balance*) requirement is the sum of, for all *clients*, the individual *client* balances calculated in accordance with CASS 5.5.67R but excluding any individual balances which are negative (that is, uncleared *client* funds).

5.5.67 R The individual *client* balance for each *client* must be calculated as follows:

- (1) the amount paid by a *client* to the *firm* (to include all *premiums*); plus
- (2) the amount due to the *client* (to include all claims and *premium* refunds); plus
- (3) the amount of any interest or investment returns due to the *client*;
- (4) less the amount paid to *insurance undertakings* for the benefit of the *client* (to include all *premiums*);
- (5) less the amount paid by the *firm* to the *client* (to include all claims and *premium* refunds);

and where the individual *client* balance is found by the sum ((1) + (2) + (3)) – ((4) + (5)).

Client money (accruals) requirement

5.5.68 R A *firm's client money* (accruals) requirement is the sum of the following:

- (1) all insurance creditors shown in the *firm's* business ledgers as amounts due to *insurance undertakings*, *clients* and other *persons*; plus

- (2) unearned brokerage being the amount of brokerage shown as accrued (but not shown as earned and payable) as at the date of the calculation (a prudent estimate must be used if the *firm* is unable to produce an exact figure at the date of the calculation).

5.5.69 R A *firm* which calculates its *client money* requirement on the preceding basis must in addition and within a reasonable period be able to match its *client money* resource to its requirement by reference to individual *clients* (with such matching being achieved for the majority of its *clients* and transactions).

Reconciliation of client money: frequency of reconciliation

5.5.70 R A *firm* must perform a reconciliation of the *client money* balances which it holds, or if appropriate perform the *client money* (accruals) calculation, as frequently as is necessary to ensure the accuracy of its record of *money* so held, and no less than once in every 25 *business days*.

5.5.71 G In determining whether the minimum acceptable frequency is sufficient, a *firm* should consider the risks to which the business is exposed, such as the volume of business, and where and with whom the *client money* is held.

5.5.72 R A *firm* must complete the reconciliation of *client money* within ten *business days* of the date on which the *client money* resource and *client money* requirement were determined.

Verification of banking records

5.5.73 R A *firm* must for the purpose of the calculations required by CASS 5.5.63R compare the balance on each *client bank account* as recorded by the *firm* with the balance on that account as set out on the statement or other form of confirmation issued by the bank with which that account is held.

Verification discrepancies

5.5.74 R When any discrepancy arises as a result of the verification carried out under CASS 5.5.73R, the *firm* must identify the reason for the discrepancy and correct it as soon as possible, unless the discrepancy arises solely as a result of timing differences between the accounting systems of the party providing the statement or confirmation and those of the *firm*.

5.5.75 R While a *firm* is unable to resolve a difference arising from a reconciliation, and one record or a set of records examined by the *firm* during its reconciliation indicates that there is a need to have a greater amount of *client money* than is in fact the case, the *firm* must assume, until the matter is finally resolved, that the record or set of records is accurate and pay its own *money* into a relevant account.

Failure to perform calculations

- 5.5.76 R A *firm's* must notify the *FSA* immediately if it is unable to, or does not, perform the calculation required by *CASS* 5.5.63R.
- 5.5.77 R A *firm* must notify the *FSA* immediately it becomes aware that it may not be able to make good any *shortfall* identified by *CASS* 5.5.63R by the close of business on the day the calculation is performed.
- 5.5.78 R A *firm* must notify the *FSA* as soon as possible if it is unable to comply with any of the requirements of *CASS* 5.5.70R, *CASS* 5.5.72R, *CASS* 5.5.73R, *CASS* 5.5.74R and *CASS* 5.5.75R.

Discharge of fiduciary duty

- 5.5.79 G The purpose of *CASS* 5.5.80R to *CASS* 5.5.83R is to set out those situations in which a *firm* will have fulfilled its contractual and fiduciary obligations in relation to any *client money* held for or on behalf of its *client*, in relation to the *firm's* ability to require repayment of that *money*.
- 5.5.80 R *Money* ceases to be *client money* if it is paid:
- (1) to the *client*, or a duly authorised representative of the *client*; or
 - (2) to a third party on the instruction of or with the specific consent of the *client*, but not if it is transferred to a third party in the course of effecting a transaction, in accordance with *CASS* 5.5.34R; or
 - (3) into a bank account of the *client* (not being an account which is also in the name of the *firm*); or
 - (4) to the *firm* itself, when it is due and payable to the *firm* in accordance with *CASS* 5.1.5R (1); or
 - (5) to the *firm* itself, when it is an excess in the *client bank account* as set out in *CASS* 5.5.63R (2)(b).
- 5.5.81 G
- (1) A *firm* which pays professional fees (for example to a loss adjuster or valuer) on behalf of a *client* may do so in accordance with *CASS* 5.5.80R (2) where this is done on the instruction of or with the consent of the *client*.
 - (2) When a *firm* wishes to transfer *client money* balances to a third party in the course of transferring its business to another *firm*, it should do so in compliance with *CASS* 5.5.80R and a transferee *firm* will come under an obligation to treat any *client money* so transferred in accordance with these *rules*.
 - (3) *Firms* are reminded of their obligation, when transferring *money* to third parties in accordance with *CASS* 5.5.34R, to use appropriate skill, care and judgment in their selection of third parties in order to ensure adequate protection of *client money*.

- (4) *Firms* are reminded that, in order to calculate their *client money* resource in accordance with *CASS 5.5.63R* to *CASS 5.5.65R*, they will need to have systems in place to produce an accurate accounting record showing how much *client money* is being held by third parties at any point in time. For the purposes of *CASS 5.5.63R* to *CASS 5.5.65R*, however, a *firm* must assume that *monies* remain at an intermediate broker awaiting completion of the transaction unless it has received confirmation that the transaction has been completed.

- 5.5.82 R When a *firm* draws a cheque or other payable order to discharge its fiduciary duty under *CASS 5.5.80R*, it must continue to treat the sum concerned as *client money* until the cheque or order is presented and paid by the bank.
- 5.5.83 R For the purposes of *CASS 5.1.5R*, if a *firm* makes a payment to, or on the instructions of, a *client*, from an account other than a *client bank account*, until that payment has cleared, no equivalent sum will become due and payable to the *firm* or may be withdrawn from a *client bank account* by way of reimbursement.

Records

- 5.5.84 R A *firm* must ensure that proper records, sufficient to show and explain the *firm's* transactions and commitments in respect of its *client money*, are made and retained for a period of three years after they were made.

5.6 Client money distribution

Application

- 5.6.1 R (1) *CASS 5.6* (the *client money (insurance) distribution rules*) applies to a *firm* that in holding *client money* is subject to *CASS 5.3* (statutory trust) or *CASS 5.4* (Non-statutory trust) when a *primary pooling event* or a *secondary pooling event* occurs.
- (2) In the event of there being any discrepancy between the terms of the trust as required by *CASS 5.4.7R* (1) (c) and the provisions of *CASS 5.6*, the latter shall apply.
- 5.6.2 G (1) The *client money (insurance) distribution rules* have force and effect on any *firm* that holds *client money* in accordance with *CASS 5.3* or *CASS 5.4*. Therefore, they may apply to a *UK branch* of a non-*EEA firm*. In this case, the *UK branch* of the *firm* may be treated as if the *branch* itself is a free-standing entity subject to the *client money (insurance) distribution rules*.
- (2) *Firms* that act in accordance with *CASS 5.4* (Non-statutory trust) are reminded that the *client money (insurance) distribution rules* should be given effect in the terms of trust required by *CASS 5.4*.

Purpose

- 5.6.3 G The *client money (insurance) distribution rules* seek to facilitate the timely return of *client money* to a *client* in the event of the *failure* of a *firm* or third party at which the *firm* holds *client money*.

Failure of the authorised firm: primary pooling event

- 5.6.4 G A *primary pooling event* triggers a notional pooling of all the *client money*, in every type of *client money* account, and the obligation to distribute it.

- 5.6.5 R A *primary pooling event* occurs:

- (1) on the *failure* of the *firm*; or
- (2) on the vesting of assets in a trustee in accordance with an 'assets requirement' imposed under section 48(1)(b) of the *Act*; or
- (3) on the coming into force of a *requirement* for all *client money* held by the *firm*; or
- (4) when the *firm* notifies, or is in breach of its duty to notify, the *FSA*, in accordance with *CASS 5.5.78R*, that it is unable correctly to identify and allocate in its records all valid claims arising as a result of a *secondary pooling event*.

- 5.6.6 R *CASS 5.6.5R (4)* does not apply so long as:

- (1) the *firm* is taking steps, in consultation with the *FSA*, to establish those records; and
- (2) there are reasonable grounds to conclude that the records will be capable of rectification within a reasonable period.

Pooling and distribution

- 5.6.7 R If a *primary pooling event* occurs:

- (1) *client money* held in each *client money* account of the *firm* is treated as pooled;
- (2) the *firm* must distribute that *client money* in accordance with *CASS 5.3.2R* or, as appropriate, *CASS 5.4.7R*, so that each *client* receives a sum which is rateable to the *client money* entitlement calculated in accordance with *CASS 5.5.66R*; and
- (3) the *firm* must, as trustee, call in and make demand in respect of any debt due to the *firm* as trustee, and must liquidate any *designated investment*, and any letter of credit or guarantee upon which it relies for meeting any *shortfall* in its *client money* resource and the proceeds shall be pooled together with other *client money* as in (1) and distributed in accordance with (2).

- 5.6.8 G A *client's* main claim is for the return of *client money* held in a *client bank account*. A *client* may claim for any *shortfall* against *money* held in a *firm's* own account. For that claim, the *client* will be an unsecured creditor of the *firm*.
- Client money received after the failure of the firm
- 5.6.9 R *Client money* received by the *firm* (including in its capacity as trustee under CASS 5.4 (Non-statutory trust)) after a *primary pooling event* must not be pooled with *client money* held in any *client money* account operated by the *firm* at the time of the *primary pooling event*. It must be placed in a *client bank account* that has been opened after that event and must be handled in accordance with the *client money rules*, and returned to the relevant *client* without delay, except to the extent that:
- (1) it is *client money* relating to a transaction that has not completed at the time of the *primary pooling event*; or
 - (2) it is *money* relating to a *client*, for whom the *client money* entitlement, calculated in accordance with CASS 5.5.66R, shows that *money* is due from the *client* to the *firm* including in its capacity as trustee under CASS 5.4 (Non-statutory trust) at the time of the *primary pooling event*.
- 5.6.10 G *Client money* received after the *primary pooling event* relating to an incomplete transaction should be used to complete that transaction.
- 5.6.11 R If a *firm* receives a *mixed remittance* after a *primary pooling event*, it must:
- (1) pay the full sum into the separate *client bank account* opened in accordance with CASS 5.6.9R; and
 - (2) pay the *money* that is not *client money* out of that *client bank account* into the *firm's* own bank account within one *business day* of the *day* on which the remittance is cleared.
- 5.6.12 G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.
- Failure of a bank, other broker or settlement agent: secondary pooling events
- 5.6.13 R If both a *primary pooling event* and a *secondary pooling event* occur, the provisions of this section relating to a *primary pooling event* apply.
- 5.6.14 R A *secondary pooling event* occurs on the *failure* of a third party to which *client money* held by the *firm* has been transferred under CASS 5.5.34R.

5.6.15 R CASS 5.6.20R to CASS 5.6.31R do not apply if, on the *failure* of the third party, the *firm* repays to its *clients* or pays into a *client bank account*, at an unaffected bank, an amount equal to the amount of *client money* which would have been held if a *shortfall* had not occurred at that third party.

5.6.16 G When *client money* is transferred to a third party, a *firm* continues to owe a fiduciary duty to the *client*. However, consistent with a fiduciary's responsibility (whether as agent or trustee) for third parties under general law, a *firm* will not be held responsible for a *shortfall* in *client money* caused by a third party *failure* if it has complied with those duties.

5.6.17 G To comply with its duties, the *firm* should show proper care:

- (1) in the selection of a third party; and
- (2) when monitoring the performance of the third party.

In the case of *client money* transferred to a bank, by demonstrating compliance with CASS 5.5.43R, a *firm* should be able to demonstrate that it has taken reasonable steps to comply with its duties.

Failure of a bank

5.6.18 G When a bank *fails* and the *firm* decides not to make good the *shortfall* in the amount of *client money* held at that bank, a *secondary pooling event* will occur in accordance with CASS 5.6.20R. The *firm* would be expected to reflect the *shortfall* that arises at the *firm's* bank in the periodic *client money* calculation by reducing the *client money* resource and *client money* requirement accordingly.

5.6.19 G The *client money (insurance) distribution rules* seek to ensure that *clients* who have previously specified that they are not willing to accept the risk of the bank that has *failed*, and who therefore requested that their *client money* be placed in a *designated client bank account* as a different bank, should not suffer the loss of the bank that has *failed*.

Failure of a bank: pooling

5.6.20 R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *general client bank accounts* are held, then:

- (1) in relation to every *general client bank account* of the *firm*, the provisions of CASS 5.6.22R and CASS 5.6.26R to CASS 5.6.28G will apply;
- (2) in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of CASS 5.6.24R and CASS 5.6.26R to CASS 5.6.28G will apply; and
- (3) any *money* held at a bank, other than the bank that has *failed*, in *designated client bank accounts* is not pooled with any other *client money*.

- 5.6.21 R If a *secondary pooling event* occurs as a result of the *failure* of a bank where one or more *designated client bank accounts* are held then in relation to every *designated client bank account* held by the *firm* with the *failed* bank, the provisions of CASS 5.6.24R and CASS 5.6.26R to CASS 5.6.28G will apply.
- 5.6.22 R Money held in each *general client bank account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts*, that has arisen as a result of the *failure* of the bank, must be borne by all the *clients* whose *client money* is held in a *general client bank account* of the *firm*, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements in (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
 - (4) the *firm* must use the new *client* entitlements, calculated in accordance with (2), when performing the *client money* calculation in accordance with CASS 5.5.63R to CASS 5.5.75R.
- 5.6.23 G The term 'which should have been held' is a reference to the *failed* bank's failure (and elsewhere, as appropriate, is a reference to the other *failed* third party's failure) to hold the *client money* at the time of the pooling event.
- 5.6.24 R For each *client* with a *designated client bank account* held at the *failed* bank:
- (1) any *shortfall* in *client money* held, or which should have been held, in *designated client bank accounts* that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *designated client bank account* of the *firm* at the *failed* bank, rateably in accordance with their entitlements;
 - (2) a new *client money* entitlement must be calculated for each of the relevant *clients* by the *firm*, and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
 - (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* bank until the *client* is repaid; and
 - (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the periodic *client money* calculation, in accordance with CASS 5.5.63R to CASS 5.5.75R.

- 5.6.25 R A *client* whose *money* was held, or which should have been held, in a *designated client bank account* with a bank that has *failed* is not entitled to claim in respect of that *money* against any other *client bank account* or *client transaction account* of the *firm*.
- Client money received after the failure of a bank
- 5.6.26 R *Client money* received by the *firm* after the *failure* of a bank, that would otherwise have been paid into a *client bank account* at that bank:
- (1) must not be transferred to the *failed* bank unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* bank; and
 - (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
 - (a) on the written instruction of the *client*, transferred to a bank other than the one that has *failed*; or
 - (b) returned to the *client* as soon as possible.
- 5.6.27 R If a *firm* receives a *mixed remittance* after the *secondary pooling event* which consists of *client money* that would have been paid into a *general client bank account*, a *designated client bank account* or a *designated client fund account* maintained at the bank that has *failed*, it must:
- (1) pay the full sum into a *client bank account* other than one operated at the bank that has *failed*; and
 - (2) pay the *money* that is not *client money* out of that *client bank account* within one *business day* of the day on which the remittance is cleared.
- 5.6.28 G Whenever possible the *firm* should seek to split a *mixed remittance* before the relevant accounts are credited.
- Failure of an intermediate broker or settlement agent: pooling
- 5.6.29 R If a *secondary pooling event* occurs as a result of the *failure* of another broker or *settlement agent* to whom the *firm* has transferred *client's money* then, in relation to every *general client bank account* of the *firm*, the provisions of CASS 5.6.26R to CASS 5.6.28G and CASS 5.6.30R will apply.
- 5.6.30 R *Money* held in each *general client bank account* of the *firm* must be treated as pooled and:
- (1) any *shortfall* in *client money* held, or which should have been held, in *general client bank accounts*, that has arisen as a result of the *failure*, must be borne by all the *clients* whose *client money* is held in a *general client bank account* of the *firm*, rateably in accordance with their entitlements;

- (2) a new *client money* entitlement must be calculated for each *client* by the *firm*, to reflect the requirements of (1), and the *firm's* records must be amended to reflect the reduced *client money* entitlement;
- (3) the *firm* must make and retain a record of each *client's* share of the *client money shortfall* at the *failed* intermediate broker or *settlement agent* until the *client* is repaid; and
- (4) the *firm* must use the new *client money* entitlements, calculated in accordance with (2), when performing the periodic *client money* calculation, in accordance with *CASS 5.5.63R* to *CASS 5.5.75R*.

Client money received after the failure of a broker or settlement agent

- 5.6.31 R *Client money* received by the *firm* after the *failure* of another broker or *settlement agent*, to whom the *firm* has transferred *client money* that would otherwise have been paid into a *client bank account* at that broker or *settlement agent*:
- (1) must not be transferred to the *failed* third party unless specifically instructed by the *client* in order to settle an obligation of that *client* to the *failed* broker or *settlement agent*; and
 - (2) must be, subject to (1), placed in a separate *client bank account* that has been opened after the *secondary pooling event* and either:
 - (a) on the written instruction of the *client*, transferred to a third party other than the one that has *failed*; or
 - (b) returned to the *client* as soon as possible.

Notification on the failure of a bank, other broker or settlement agent

- 5.6.32 R The provisions of *CASS 5.5.61R* apply.

5.7 Mandates

Application

- 5.7.1 R This section applies to a *firm* (including in its capacity as trustee under *CASS 5.4*) in respect of any written authority from a *client* under which the *firm* may control a *client's assets* or liabilities in the course of, or in connection with, the *firm's insurance mediation activity*.

- 5.7.2 R *CASS 5.7* does not apply to a *firm* when:
- (1) it is carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or
 - (2) it acts in accordance with *CASS 4*.

- 5.7.3 G Mandates or similar authorities for the purpose of CASS 5.7.1 R include a *firm's* authority over a *client's* bank or *building society* account including direct debits in favour of the *firm*, and a *firm* holding a *client's* credit card details.
- 5.7.4 G *Firms* are reminded that the *mandate rules* do not apply to an *incoming EEA firm* with respect to its *passport activities*. The application of the *mandate rules* is also dependent on the location from which the activity is undertaken.
- Purpose
- 5.7.5 G The *mandate rules* apply to those *firms* that control, rather than hold, *clients'* assets or are able to create liabilities in the name of a *client*. These *rules* seek to ensure that *firms* establish and maintain records and *internal controls* to prevent the misuse of the authority granted by the *client*.
- General
- 5.7.6 R A *firm* that holds authorities of the sort referred to in CASS 5.7.1R must establish and maintain adequate records and *internal controls* in respect of its use of the mandates, which must include:
- (1) an up-to date list of the authorities and any conditions placed by the *client* or the *firm's* management on the use of them;
 - (2) a record of all transactions entered into using the authority and *internal controls* to ensure that they are within the scope of authority of the *person* and the *firm* entering into the transaction;
 - (3) the details of the procedures and authorities for the giving and receiving of instructions under the authority; and
 - (4) where the *firm* holds a passbook or similar *documents* belonging to the *client*, *internal controls*, for the safeguarding (including against loss, unauthorised destruction, theft, fraud or misuse) of any passbook or similar *document* belonging to the *client* held by the *firm*.
- Safe keeping of client's documents and other assets
- Application
- 5.8.1 R (1) CASS 5.8 applies to a *firm* (including in its capacity as trustee under CASS 5.4) which in the course of *insurance mediation activity* takes into its possession for safekeeping any *client* title *documents* (other than *documents* of no value) or other tangible assets belonging to *clients*.
- (2) CASS 5.8 does not apply to a *firm* when:

- (a) carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or
- (b) acting in accordance with *CASS 2* (Custody rules).

Purpose

- 5.8.2 G The *rules* in this section amplify the obligation in *Principle 10* which requires a *firm* to arrange adequate protection for *client's* assets. *Firms* carrying on *insurance mediation activities* may hold, on a temporary or longer basis, *client title documents* such as *policy documents* (other than *policy documents* of no value) and also items of physical property if, for example, a *firm* arranges for a valuation. The *rules* are intended to ensure that *firms* make adequate arrangements for the safe keeping of such property.

Requirement

- 5.8.3 R (1) A *firm* which has in its possession or control *documents* evidencing a *client's* title to a *contract of insurance* or other similar *documents* (other than *documents* of no value) or which takes into its possession or control tangible assets belonging to a *client*, must take reasonable steps to ensure that any such *documents* or items of property:
- (a) are kept safe until they are delivered to the *client*;
 - (b) are not delivered or given to any other *person* except in accordance with instructions given by the *client*; and that
- a record is kept as to the identity of any such *documents* or items of property and the dates on which they were received by the *firm* and delivered to the *client* or other *person*.
- (2) A *firm* must retain the record required in (1) for a period of three years after the document or property concerned is delivered to the *client* or other *person*.

CASS 5

Annex 1R

This Annex belongs to *CASS 5.5.14R*.

1. The general principles which must be followed when *client money* segregation includes *designated investments*:
 - (a) there must be a suitable spread of *investments*;

- (b) *investments* must be made in accordance with an appropriate liquidity strategy;
- (c) the *investments* must be in accordance with an appropriate credit risk policy;
- (d) any foreign exchange risks must be prudently managed.

2. Table of permitted designated investments for the purpose of CASS 5.5.14R (1).

Investment type	Qualification
1. Negotiable <i>debt security</i> (including a certificate of deposit)	(a) Remaining term to maturity of 5 years or less; and (b) The issuer or <i>investment</i> must have a short-term credit rating of A1 by Standard and Poor's, or P1 by Moody's Investor Services, or F1 by Fitch if the instrument has a remaining term to maturity of 366 days or less; or a minimum long term credit rating of AA- by Standards and Poor's, or Aa3 by Moody's Investor Services or AA- by Fitch if the instrument has a term to maturity of more than 366 days.
2. A <i>repo</i> in relation to negotiable <i>debt security</i>	As for 1 above and where the credit rating of the counterparty also meets the criteria in 1.
3. Bond funds	(a) An <i>authorised fund</i> or a <i>recognised scheme</i> or an investment company which is registered by the Securities and Exchanges Commission of the United States of America under the Investment Company Act 1940; (b) A minimum credit rating and risk rating of Aaf and S2 respectively by Standard and Poor's or Aa and MR2 respectively by Moody's Investor Services or AA and V2 respectively by Fitch.
4. Money market fund	(a) An <i>authorised fund</i> or a <i>recognised scheme</i> ; (b) A minimum credit and risk rating of Aaa and MR1+ respectively by Moody's Investor Services or AAAM by Standard and Poor's or AAA and V1+ respectively by Fitch.
5. <i>Derivatives</i>	Only for the purpose of prudently managing foreign currency risks.

3. The general conditions which must be satisfied in the segregation of *designated investments* are:

- (a) any redemption of an *investment* must be by payment into the *firm's client money bank account*;
- (b) where the credit or risk rating of a *designated investment* falls below the minimum set out in the Table, the *firm* must dispose of the *investment* as soon as possible and in any event not later than 20 *business days* following the downgrade;
- (c) where any *investment* or issuer has more than one rating, the lowest shall apply.

...

Schedule 1
Record keeping requirements

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3 Table

Handbook Reference	Subject of Record	Contents of Record	When record must be made	Retention period
<i>CASS</i> 4.5.5R	...	...	...
<u><i>CASS</i> 5.1.1R(4)</u>	<u>Record of election of compliance with <i>CASS</i> 5.1 to 5.6 provisions</u>	<u>Record of compliance with <i>CASS</i> 5.1 to 5.6 provisions on <i>client money</i></u>	<u>Not specified</u>	<u>Not specified</u>
<u><i>CASS</i> 5.2.3R(2)</u>	<u>Holding <i>client money</i> as agent</u>	<u>The terms of the agreement</u>	<u>Not specified</u>	<u>Six years</u>
<u><i>CASS</i> 5.4.4R(2)</u>	<u>Adequacy of systems and controls</u>	<u>Written confirmation of adequate systems and controls from its auditor</u>	<u>Not specified</u>	<u>Not specified</u>
<u><i>CASS</i> 5.5.64R</u>	<u><i>Client money</i> calculation</u>	<u>Whether the <i>firm</i> calculates its <i>client money</i> requirements according to <i>CASS</i> 5.5.67R or <i>CASS</i> 5.5.68R</u>	<u>Not specified</u>	<u>Not specified</u>

<u>CASS 5.5.84R</u>	<u>Transactions and commitments for client money</u>	<u>Explanation of the firm's transactions and commitments for client money.</u>	<u>Not specified</u>	<u>Three years</u>
<u>CASS 5.7.6R</u>	<u>Mandates</u>	<u>Records of adequate internal controls for mandates</u>	<u>Not specified</u>	<u>Not specified</u>
<u>CASS 5.8.3R(1)</u>	<u>Client's title to a contract of insurance</u>	<u>Identity of such documents and/or property and dates received and delivered to client</u>	<u>Not specified</u>	<u>Three years</u>

...

Schedule 2
Notification requirements

G

...

3 Table

Handbook Reference	Matter to be Notified	Contents of Notification	Trigger event	Time allowed
<u>CASS 4.4.33R</u>	...	...	...
<u>CASS 5.5.61R</u>	<u>Failure of bank, broker or settlement agent</u>	<u>Full details including whether it intends to make good any shortfall that may have arisen in the amounts involved</u>	<u>As soon as the firm becomes aware</u>	<u>Immediately</u>
<u>CASS 5.5.76R</u>	<u>Inability to perform the calculation</u>	<u>Inability to perform the calculation</u>	<u>Inability to perform the calculation</u>	<u>Immediately</u>

Handbook Reference	Matter to be Notified	Contents of Notification	Trigger event	Time allowed
	<u>required by CASS 5.5.63R</u> -			
<u>CASS 5.5.77R</u>	<u>Inability to make good any shortfall identified by CASS 5.5.63R</u>	<u>Inability to make good any shortfall in client money</u>	<u>Inability to make good any shortfall</u>	<u>Immediately</u>
<u>CASS 5.5.78</u>	<u>Inability to comply with the requirements in CASS 5.5.70R; CASS 5.5.72R; CASS 5.5.73R; CASS 5.5.74R; CASS 5.5.75R</u>	<u>Inability to comply with the requirements of the rules listed</u>	<u>Inability to comply with the requirements of the rules listed</u>	<u>As soon as reasonably practical</u>

Annex D

Amendments to the Authorisation manual

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is being inserted, the place where it goes is indicated and it is not underlined.

2.3.2 G There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 SI No 1177 and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 SI No 1476). The result is that the business element differs depending on the activity in question.

...

(2) ~~Except for the trustees of *occupational pension schemes* (for which special provision is made (see *AUTH 2.3.2(3)G*)), as stated in *AUTH 2.3.2 G(2A)* and (3), the business element is not to be regarded as satisfied for any of the *regulated activities* carried on in relation to *securities* or *contractually based investments* (or for those *regulated activities* carried on in relation to 'any property') unless a *person* carries on the business of engaging in one or more of the activities. This also applies to the *regulated activities of arranging in relation to a regulated mortgage contract and advising on regulated mortgage contracts*. This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right.~~

(2A) A *person* who carries on an *insurance mediation activity* will not be regarded as doing so by way of business unless he takes up or pursues that activity for remuneration. *AUTH 2.3.3G* gives guidance on the factors that are relevant to the meaning of 'by way of business' in section 22 of the *Act*. *AUTH App 5.4* (The business test) gives further guidance on the business element as applied to *insurance mediation activities*.

...

(4) The business element for all other *regulated activities* is that the activities are carried on by way of business. This applies to the activities of *effecting or carrying out contracts of insurance*, certain activities relating to the Lloyd's market, ~~entering as provider into a funeral plan contract~~ entering as provider into a funeral plan contract and ~~activities relating to entering into or administering regulated mortgage contracts~~ regulated mortgage contracts (see *AUTH 2.7.20G*).

...

...

Modification of certain exclusions as a result of Investment Services and Insurance Mediation Directives

- 2.5.3 G The application of certain of the exclusions considered in *AUTH 2.8 (Exclusions applicable to certain regulated activities)* and *AUTH 2.9 (Regulated activities: exclusions applicable to certain circumstances)* is modified in relation to *persons* who are subject to the *Investment Services Directive* or the *Insurance Mediation Directive*. The reasons for this and the consequences of it are explained in *AUTH 2.5.4G*, as respects the *Investment Services Directive*, and *AUTH App 5 (Insurance mediation activities)*, as respects the *Insurance Mediation Directive*.

Investment services

- 2.5.4 G ...

Insurance mediation or reinsurance mediation

- 2.5.6 G The *Insurance Mediation Directive* has in part been implemented through various amendments to the *Regulated Activities Order*. These include article 4(4A) (Specified activities: general) which precludes a *person* who, for remuneration, takes up or pursues *insurance mediation or reinsurance mediation* in relation to a risk or commitment situated in an *EEA State* from making use of certain exclusions. In other cases, some of the exclusions provided in relation to particular *regulated activities* are unavailable where the activity involves a *contract of insurance*. This is explained in more detail in *AUTH App 5 (Insurance mediation activities)*.

...

- 2.6.7 G The *Regulated Activities Order* uses a two further terms in relation to ~~*long-term contracts of insurance contracts*~~ in order to identify those contracts under which rights are treated as *contractually based investments*.

(1) ~~These contracts are described as~~ The first term is ‘qualifying contracts of insurance’ (referred to as *life policies* in the *Handbook*). ~~in order to~~ This identifies those *long-term insurance contracts* under which rights are treated as *contractually based investments*. ~~These contracts are described as ‘qualifying contracts of insurance’ (referred to as life policies in the Handbook).~~ This term does not cover *long-term insurance contracts* which are contracts of reinsurance or, if specified conditions are met, contracts under which benefits are payable only on death or incapacity.

(2) The second term is ‘*relevant investments*’. This term applies to:

- (a) contractually based investments, which includes rights under life policies, and rights to or interests in such investments under article 89 of the Regulated Activities Order (Rights to or interests in investments); and
- (b) rights under contracts of insurance other than life policies (but not rights to or interests in such rights).

This term is used in connection with the treatment, under various parts of the Regulated Activities Order, of persons carrying on insurance mediation activities (see AUTH App 5 (Insurance mediation activities) for further guidance on such activities).

...

2.7.4 G In addition, certain other activities carried on in relation to rights under certain long-term contracts of insurance are regulated activities (see AUTH 2.7.5G to AUTH 2.7.10G, AUTH 2.7.15G and AUTH 2.7.16G). This is because such rights are classified as contractually based investments. These are where the activity is carried on in relation to:

- (1) life policies, where the regulated activities concerned are:
 - (a) dealing in investments as principal (see AUTH 2.7.5G);
 - (b) managing investments (see AUTH 2.7.8G);
 - (b) safeguarding and administering investments (see AUTH 2.7.9G); and
 - (c) agreeing to carry on any of those activities (see AUTH 2.7.21G); and
- (2) rights under any contract of insurance, where the regulated activities concerned are:
 - (a) dealing in investments as agent (see AUTH 2.7.5G);
 - (b) arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments (see AUTH 2.7.7G);
 - (c) assisting in the administration and performance of a contract of insurance (see AUTH 2.7.7G);
 - (d) advising on investments (see AUTH 2.7.15G); and
 - (e) agreeing to carry on any of those activities (see AUTH 2.7.21G).

AUTH APP 5 (Insurance mediation activities) has more guidance on these regulated activities where they are insurance mediation activities.

...

2.7.6 G Both the activities of *dealing in investments as principal* and *dealing in investments as agent* are defined in terms of ‘*buying, selling, subscribing for or underwriting*’ certain investments. These *investments* are:

- (1) for dealing in investments as principal, securities or contractually based investments (except rights under a funeral plan contract);
and
- (2) for dealing in investments as agent, securities and relevant investments (except rights under a funeral plan contract).

2.7.6A G Because of the different nature of the *specified investments* ...

Arranging deals in investments and arranging regulated mortgage activities

2.7.7 G ~~[deleted]Arranging applies to arrangements that relate to securities, contractually based investments and the underwriting capacity of a Lloyd’s syndicate capacity or membership of a Lloyd’s syndicate. Arrangements relating to rights to or interests in any of these specified investments are also caught. Arranging is made up of two distinct regulated activities. Both are aimed at the person who agrees with another person that he will procure a third person to buy, sell, subscribe for or underwrite the relevant specified investments.~~

- (1) ~~The first activity is “making arrangements for another person to buy, sell, subscribe for or underwrite a particular investment”. This activity is referred to in the Handbook as arranging (bringing about) deals in investments. It is aimed at arrangements that would have the direct effect that a transaction is concluded (that is, arrangements that bring it about).~~
- (2) ~~The second activity is “making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments”. This activity is referred to in the Handbook as making arrangements with a view to transactions in investments. It is aimed at cases where it may be said that the transaction is “brought about” directly by the parties to it but where this happens in a context set up by a third party specifically with a view to the conclusion by others of transactions through the use of that third party’s facilities. This will catch the activities of persons such as exchanges, clearing houses and service companies (for example, persons who provide communication facilities for the routing of orders or the negotiation of transactions). A person may be carrying on this regulated activity even if he is only providing part of the facilities necessary before a transaction is brought about.~~

2.7.7A G ~~The Treasury has announced that it intends to bring within the scope of *regulated activities* the arranging of deals in *regulated mortgage contracts*. It has also announced that it intends to regulate the activities of insurance intermediaries. (The activity of arranging deals in *contracts of insurance* that are *contractually based investments* is already a *regulated activity* under article 25 of the *Regulated Activities Order*). These changes re expected to take effect in 2004. There are four arranging activities that are *regulated activities* under the *Regulated Activities Order*. These are:~~

- (1) *arranging (bringing about) deals in investments which are securities, relevant investments or the underwriting capacity of a Lloyd's syndicate or membership of a Lloyd's syndicate (article 25(1));*
- (2) *making arrangements with a view to transactions in investments which are securities, relevant investments or the underwriting capacity of a Lloyd's syndicate or membership of a Lloyd's syndicate (article 25(2));*
- (3) *arranging (bringing about) regulated mortgage contracts, which includes arranging for another person to vary the terms of a regulated mortgage contract entered into before 31 October 2004 (article 25A(1)); and*
- (4) *making arrangements with a view to regulated mortgage contracts (article 25A(2)).*

2.7.7B G The activity of *arranging (bringing about) deals in investments* is aimed at *arrangements* that would have the direct effect that a particular *transaction* is concluded (that is, *arrangements* that bring it about). The activity of *making arrangements with a view to transactions in investments* is aimed at cases where it may be said that the *transaction* is “brought about” directly by the parties. This is where this happens in a context set up by a third party specifically with a view to the conclusion by others of *transactions* through the use of that third party's *facilities*. This will catch the activities of *persons* such as exchanges, *clearing houses* and *service companies* (for example, *persons* who provide communication facilities for the routing of orders or the negotiation of *transactions*). A *person* may be carrying on this *regulated activity* even if he is only providing part of the *facilities* necessary before a *transaction* is brought about.

2.7.7C G Further guidance on the arranging activities as they relate to regulated mortgage contracts and contracts of insurance is in AUTH App 4.5 (Arranging regulated mortgage contracts) and AUTH App 5.6 (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance) respectively.

Assisting in the administration and performance of a contract of insurance

2.7.8A G The activity of assisting in the administration and performance of a contract of insurance is a regulated activity that is identified in the Insurance Mediation Directive. Further guidance on this activity is in AUTH App 5.7 (The regulated activities: assisting in the administration and performance of a contract of insurance)

...

2.7.15 G The regulated activity activity of advising on investments falls to be regulated only if it under article 53 of the *Regulated Activities Order* applies to advice on securities or contractually based investments – relevant investments. It does not, for example, include giving advice about deposits, rights under a general insurance contract or rights under a regulated mortgage contract or about things that are not specified investments for the purposes of the *Regulated Activities Order* (such as interests under the trusts of an *occupational pension scheme*). Giving advice on certain other specified investments is, however, regulated under other parts of the Regulated Activities Order (see AUTH 2.7.16AG and AUTH 2.7.17G(2)). Giving a person generic advice ...

2.7.16 G The advice must also be given to someone who holds specified investments or is a prospective investor (including trustees, nominees or discretionary fund managers). This requirement excludes advice given to a person who receives it in another capacity. An example of this might be a tax professional to whom advice is given to inform the practice of his profession or advice given to an employer for the purposes of setting up a group personal pension scheme. Further guidance on the meaning of advising on investments is in AUTH App 1.24 (Advising on investments).

2.7.16A G ~~[deleted] The Treasury has announced that it intends to bring within the scope of regulated activities advising a borrower on the merits of his entering into or varying the terms of a regulated mortgage contract. It has also announced that it intends to regulate the sale of insurance by insurance intermediaries. (Advising on contracts of insurance that are contractually based investments is already a regulated activity under article 53 of the Regulated Activities Order). These changes are expected to take effect in 2004.~~

Advising on regulated mortgages contracts

2.7.16B G Under article 53A of the Regulated Activities Order, giving advice to a person in his capacity as borrower or potential borrower is a regulated activity if it is advice on the merits of the person:

- (1) entering into a particular *regulated mortgage contract*; or
- (2) varying the terms of a *regulated mortgage contract*.

Advice on varying terms as referred to in (2) comes within article 53A only where the borrower entered into the *regulated mortgage contract* on or after 31 October 2004 and the variation varies the borrower's obligations under the contract. Further *guidance* on the scope of the *regulated activity* under article 53A is in *AUTH* App 4.6 (Advising on regulated mortgage contracts).

...

Activities in respect of Entering into and administering a regulated mortgage contracts

2.7.20 G ~~Entering into *Entering into* as lender, and administering a regulated mortgage contract- *administering, a regulated mortgage contract* will become are regulated activities under article 61 of the *Regulated Activities Order* (Regulated mortgage contracts) from a future date. The Treasury has announced that it expects this date to be in 2004. *Guidance* on these *regulated activities* is in *AUTH* App 4.7 (Entering into a regulated mortgage contract) and *AUTH* App 4.8 (Administering a regulated mortgage contract). These activities have not been included in Table 1 of *AUTH* 2 Ann 2G.~~

...

2.8.4 G

...

2.8.4A G *Persons* who enter as principal into transactions involving rights under a *contract of insurance* of any kind will need to consider whether they may, as a result, be carrying on the *regulated activity* of:

- (1) *arranging (bringing about) deals in investments*; or
- (2) *making arrangements with a view to transactions in investments*; or
- (3) agreeing to do (1) or (2).

2.8.4B G The possibility referred to in *AUTH* 2.8.4A G will only arise where it is not the case that the *person* who enters into the transaction as principal either:

- (1) is the only *policyholder*; or
- (2) as a result of the transaction, would become the only *policyholder*.

2.8.5 G The *regulated activity* of *dealing in investments as agent* applies to specified transactions relating to any *security* or to any ~~*contractually based investment relevant investment*~~ (apart from rights under *funeral plan contracts* or rights to or interests in such contracts). In addition, the activity is cut back by exclusions as follows.

(1) An exclusion applies to certain transactions entered into by an agent who is not an *authorised person* which depend on him dealing with (or through) an *authorised person*. It does not apply if the transaction relates to a contract of insurance. There are certain conditions which must be satisfied for the exclusion ...

...

(3) In addition, exclusions apply in specified circumstances (outlined in *AUTH 2.9 (Regulated activities: exclusions available in certain circumstances)*) where a *person* enters as agent into a transaction:

- (a) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see *AUTH 2.9.5G*);
- (b) in connection with the sale of goods or supply of services (see *AUTH 2.9.7G*);
- (c) that takes place between members of a *group* or *joint enterprise* (see *AUTH 2.9.9G*);
- (d) in connection with the sale of a *body corporate* (see *AUTH 2.9.11G*);
- (e) in connection with an employee share scheme (see *AUTH 2.9.13G*);
- (f) as an *overseas person* (see *AUTH 2.9.15G*);
- (g) as an *incoming ECA provider* (see *AUTH 2.9.18G*);
- (h) as a provider of non-motor goods or travel services where the transaction involves a general insurance contract that satisfies certain conditions (see *AUTH 2.9.19G*);
- (i) that involves a contract of insurance covering large risks situated outside the EEA (see *AUTH 2.9.19G*).

More detailed guidance on the exclusions that relate to contracts of insurance is in AUTH App 5 (Insurance mediation activities).

Arranging deals in investments and arranging regulated mortgage contracts

2.8.6 G The exclusions in relation to the *regulated activities* of arranging are of particular relevance in the context of raising corporate finance. Many of the exclusions outlined below relate to both the elements of the activity; that is, *arranging (bringing about) deals in investments* (under article 25(1) of the *Regulated Activities Order*) and *making arrangements with a view to transactions in investments* (under article 25(2) of the *Regulated Activities Order*). But several exclusions relate only to one of those activities.

- (1) Under article 26, a~~Arrangements~~ that do not or would not bring about the ~~investment~~ transaction to which they relate are excluded from article 25(1) and article 25A(1) only. A *person* will
- (2) Under article 27, s~~Simply~~ providing the means by which parties to a transaction (or possible transaction) are able to communicate with each other are excluded from article 25(2) and article 25A(2) only. This will ensure
- (3) Under article 28, a~~Arranging~~ investment transactions to which the *arranger* is to be a party arranging *deals* for another as regards any particular transaction. But where the transaction involves a *contract of insurance*, article 28 will not apply if the *person making the arrangements*:
 - (a) is the only *policyholder*; or
 - (b) as a result of the transaction, would become the only *policyholder*.

Under article 28A, a *person* is excluded from article 25A(1) and (2) if he is to enter into the contract to which the arrangements relate. The article also excludes from article 25A(1) a *person* who arranges a variation to a contract to which he is or is to become a party.

- (4) Under article 29, an ~~An unauthorised~~ *unauthorised person* who arranges investment transactions, with a view to a transaction between a third party and an *authorised person*, is excluded from article 25(1) and (2) and article 25A(1) and (2) if... unauthorised *unauthorised person* making the arrangements. The exclusion does not apply where the *investment* is a *contract of insurance*.
- (5) Under article 29A, an *unauthorised person* is excluded from the regulated activity of arranging for another *person* to vary the terms of a *regulated mortgage contract* entered into after 31 October 2004 (article 25A(1)(b)). This is if the arranging is the result of:
 - (1) anything done in the course of the administration of a *regulated mortgage contract* by an *authorised person* under article 62(a); or
 - (2) anything done by the *person making the arrangements* in connection with the administration of a *regulated mortgage contract* under article 62(b).

- (5) (6) Under article 30, a~~A~~rranging investment transactions in connection with lending on the security of ~~insurance policies~~ contracts of insurance is excluded, ~~in specified circumstances,~~ from article 25(1) and (2) but only where a person is not carrying on insurance mediation or reinsurance mediation.
- (6) (7) Under article 31, m~~M~~aking arrangements for finance (in whatever form) to be supplied
- (7) (8) Under article 32, a~~A~~rrangements the only purpose of which is
- (8) (9) Under article 33, m~~M~~aking arrangements under which *clients* will be introduced to third parties who will provide independent services (consisting of *advice* or the exercise of discretion in relation to certain investments) is excluded from article 25(2) and article 25(2A) only. The *person* to whom the introduction is made must be of a specified standing (including that of an *authorised person*). The exclusion does not apply where the arrangements relate to a contract of insurance.
- (10) Under article 33A, making arrangements for introducing persons to:
- (1) an authorised person who has permission to carry on certain regulated activities concerned with regulated mortgage contracts; or
- (2) an appointed representative who is able to carry on any of those activities without breaching the general prohibition; or
- (3) an overseas person who carries on any of those activities;
- is excluded from article 25A(2) subject to certain conditions related to the holding of client money and the disclosure of certain information.
- (9) (11) Under article 34, a~~A~~ company is not carrying on
- (10) (12) Under article 35, a~~A~~ body carrying out international securities business
- (11) (13) The following exclusions from both article 25(1) and (2) (outlined in *AUTH 2.9*) apply in specified circumstances where a *person* makes arrangements:
- (a) while acting as ~~trustee~~ trustee or personal representative (see *AUTH 2.9.3G*);

- (b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see AUTH 2.9.5G);
- (c) in connection with the sale of goods or supply of services (see AUTH 2.9.7G);
- (d) in connection with certain transactions by a *group* member or by a participator in a *joint enterprise* (see AUTH 2.9.9G);
- (e) in connection with the sale of a *body corporate* (see AUTH 2.9.11G);
- (f) in connection with an employee share scheme (see AUTH 2.9.13G);
- (g) as an *overseas person* (see AUTH 2.9.15G);
- (h) as an *incoming ECA provider* (see AUTH 2.9.18G);
- (i) as a provider of non-motor goods or services related to travel (see AUTH 2.9.19G);
- (j) involving the provision, on an incidental basis, of information to policyholders or potential policyholders about contracts of insurance (see AUTH 2.9.19G);
- (l) that involve a contract of insurance covering large risks situated outside the EEA (see AUTH 2.9.19G).

More detailed guidance on the exclusions that relate to contracts of insurance is in AUTH App 5 (Insurance mediation activities).

2.8.7 G ...
 The activities of *persons* appointed under a power of attorney are excluded, under article 38 of the *Regulated Activities Order*, from the *regulated activity of managing investments*, if specified conditions are satisfied. The exclusion only applies where a person is not carrying on insurance mediation or reinsurance mediation.

Assisting in the administration and performance of a contract of insurance

2.8.7A G Assisting in the administration and performance of a contract of insurance is excluded under article 39B where it is carried on by a person acting in the capacity of:

- (1) an expert appraiser; or
- (2) a loss adjuster acting for a relevant insurer; or
- (3) a claims manager acting for a relevant insurer.

The term 'relevant insurer' is defined in article 39B(2).

2.8.7B G The following exclusions from assisting in the administration and performance of a contract of insurance also apply to a person in specified circumstances:

- (1) while acting as trustee or personal representative (see AUTH 2.9.3G); or
- (2) in connection with the carrying on of a profession or of a business not otherwise consisting of regulated activities (see AUTH 2.9.5G); or
- (3) as an incoming ECA provider (see AUTH 2.9.18G); or
- (4) as a provider of non-motor goods or services related to travel (see AUTH 2.9.19G); or
- (5) that involve the provision, on an incidental basis, of information to policyholders or potential policyholders about contracts of insurance (see AUTH 2.9.19G(2)); or
- (6) that involve a contract of insurance covering large risks situated outside the EEA (see AUTH 2.9.19G).

...
2.8.8 G The exclusions from the regulated activity of safeguarding and administering investments are as follows.

- ...
- (4) The following exclusions (outlined in AUTH 2.9) apply in specified circumstances where a person safeguards and administers assets (or arranges for another to do so):
 - (a) while acting as trustee or personal representative (see AUTH 2.9.3G);
 - (b) in connection with the carrying on of a profession or of a business not otherwise consisting of regulated activities (see AUTH 2.9.5G);
 - (c) in connection with the sale of goods or supply of services (see AUTH 2.9.7G);
 - (d) which belong to a group member or participator in a joint enterprise (see AUTH 2.9.9G);
 - (e) in connection with an employee share scheme (see AUTH 2.9.13G);
 - (f) as an incoming ECA provider (see AUTH 2.9.18G); and

(g) that are *contracts of insurance* and, in so doing, provides information to *policyholders* or potential *policyholders* on an incidental basis in the course of his carrying on a business or profession not otherwise consisting of *regulated activities* (see *AUTH 2.9.19G(2)*).

2.8.9 G Exclusions from the *regulated activity* of *sending dematerialised instructions* apply in relation to certain types of instructions sent in the operation of the system maintained under the Uncertificated Securities Regulations 2001. The various exclusions relate to the roles played by participating issuers, settlement banks and network providers (such as Internet service providers) and to instructions sent in connection with takeover offers (as long as specified conditions are met). In addition, the following exclusions (outlined in *AUTH 2.9G*) apply in specified circumstances where a *person* sends dematerialised instructions:

(1) while acting as trustee or personal representative (see *AUTH 2.9.3G*);

(2) on behalf of a *group* member (see *AUTH 2.9.3G*);

...

...

2.8.12 G In certain circumstances, advice that takes the form of a regularly updated news or information service and advice which is given in one of a range of different media (for example, newspaper or television) is excluded from the ~~regulated activity~~ *regulated activities* of *advising on investments* and *advising on regulated mortgage contracts* (see *AUTH 7 (Periodical publications: news services and broadcasts: applications for certification)*). Advice given in the course of the administration of a *regulated mortgage contract* by an *authorised person* is also excluded subject to certain conditions. In addition,:

(1) the following exclusions (~~outlined in *AUTH 2.9*~~) apply in specified circumstances where a *person* ~~gives advice~~ is *advising on investments* or *regulated mortgage contracts*:

(1a) while acting as trustee or personal representative (see *AUTH 2.9.3G*);

(2b) in connection with the carrying on of a profession or of a business not otherwise consisting of *regulated activities* (see *AUTH 2.9.5G*); and

(c) as an *incoming ECA provider* (see *AUTH 2.9.18G*);

(2) the following exclusions apply in specified circumstances where a *person* is *advising on investments*:

(3a) in connection with the sale of goods or supply of services (see *AUTH 2.9.7G*);

- (4b) to a *group* member or participator in a *joint enterprise* (see *AUTH 2.9.9G*);
- (5c) in connection with the sale of a *body corporate* (see *AUTH 2.9.11G*);
- (6d) as an *overseas person* (see *AUTH 2.9.15G*);
- (e) that are limited to certain *contracts of insurance* covering risks to non-motor goods or related to travel (see *AUTH 2.9.19G*);
- (f) that are *contracts of insurance* covering large risks situated outside the *EEA* (see *AUTH 2.9.19G*).

More detailed *guidance* on certain of these exclusions is in *AUTH App 4 (Regulated activities connected with mortgages)* and *AUTH App 5 (Insurance mediation activities)*.

...

2.8.14G ...

Administering regulated mortgage contracts

2.8.14A G Exclusions from the *regulated activity of administering a regulated mortgage contract* are provided where *persons* arrange for administration by an *authorised person* and where *persons* administer under an agreement with an *authorised person*. These exclusions are subject to certain conditions and are explained in greater detail in *AUTH 4.8 (Administering a regulated mortgage contract)*.

...

2.9.1 G The various exclusions outlined below deal with a range of different circumstances.

- (1) Each set of circumstances described in *AUTH 2.9.3G* to *AUTH 2.9.17G* has some application to several *regulated activities* relating to ~~*securities, or contractually based investments*~~ *relevant investments* or *regulated mortgage contracts*. They have no effect in relation to the separate *regulated activities* of *accepting deposits, effecting or carrying out contracts of insurance, advising on syndicate participation at Lloyd's, managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's, or entering as provider into a funeral plan contract* ~~or any regulated activities relating to regulated mortgage contracts~~. Within each set of circumstances, the *Regulated Activities Order* ...

...

...

2.9.3 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

- (1) *dealing in investments as principal;*
- (2) *arranging (bringing about) deals in investments, arranging (bringing about) regulated mortgage contracts, and making arrangements with a view to enabling or facilitating transactions in investments and making arrangements with a view to regulated mortgage contracts;*
- (3) *managing investments;*
- (4) *assisting in the administration and performance of a contract of insurance;*
- ~~(4)~~(5) *safeguarding and administering investments;*
- ~~(5)~~(6) *sending dematerialised instructions; and*
- ~~(6)~~(7) *advising on investments or regulated mortgage contracts;*
- (8) *entering into regulated mortgage contracts; and*
- (9) *administering regulated mortgage contracts.*

The exclusion is, however, disapplied where a person is carrying on insurance mediation or reinsurance mediation. This is due to article 4(4A) of the Regulated Activities Order. Guidance on exclusions relevant to insurance mediation activities is in AUTH App 5 (Insurance mediation activities).

2.9.4 G A person carrying on certain *regulated activities* does not require *authorisation* in specified circumstances if he is acting in a representative capacity. The representative capacities covered by the exclusions depend on the *regulated activity* concerned but, in most cases, the focus is on *persons* who are acting as trustee or personal representative. In broad terms, the exclusions apply to specified transactions, or activities, that are part of the discharge of his general obligations by the trustee or representative when he is acting as such. Many of the exclusions require that the trustee or representative must not hold himself out as providing services consisting of the *regulated activity* in question. In addition, he must not receive remuneration that is additional to any he receives for acting in the representative capacity (although a *person* is not to be regarded as receiving additional remuneration merely because his remuneration as trustee or representative is calculated by reference to time spent). The exclusions for entering into and for administering regulated mortgage contracts, however, work on a different basis. They apply where the activity relates to a regulated mortgage contract under which the borrower is a beneficiary.

...

2.9.5 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

(2) *arranging (bringing about) deals in investments, arranging (bringing about) regulated mortgage contracts, and making arrangements with a view to enabling or facilitating transactions in investments and making arrangements with a view to regulated mortgage contracts*;

(3) *assisting in the administration and performance of a contract of insurance*;

~~(3)~~(4) *safeguarding and administering investments*; and

~~(4)~~(5) *advising on investments or regulated mortgage contracts*.

The exclusion is, however, disapplied where a person is carrying on insurance mediation or reinsurance mediation . This is due to article 4(4A) of the Regulated Activities Order. Guidance on exclusions relevant to insurance mediation activities is in AUTH App 5 (Insurance mediation activities).

...

2.9.7 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

(3) *arranging (bringing about) deals in investments and making arrangements ~~enabling or facilitating~~ with a view to transactions in investments*;

...

2.9.8 G Broadly speaking, the exclusions focus on cases where the main business of a *person* is to sell goods or supply services but where certain activities may have to be carried on for the purposes of that business which would otherwise be *regulated activities*. The exclusions are not available where the customer to whom goods are sold or services are supplied is an individual. They are also not available where what is at issue is a transaction entered into, or service provided, in relation to rights under a ~~life policy~~ contract of insurance or units in a *collective investment scheme* ...

...

2.9.9 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

(3) *arranging (bringing about) deals in investments and making arrangements ~~enabling or facilitating~~ with a view to transactions in investments*;

- ...
- 2.9.10 G These exclusions apply to intra-group dealings and activities and to dealings or activities involving participators in a *joint enterprise* which take place for the purposes of, or in connection with, the enterprise. The general principle here is that, as long as activities that would otherwise be *regulated activities* take place wholly within a *group* of companies, then there is no need for *authorisation*. The same principle applies to dealings or activities that take place wholly within a *joint enterprise* entered into for commercial purposes related to the participators' unregulated business. The exclusions in (2), (3), (4) and (7) are disappplied where they concern a *contract of insurance*. *Guidance on exclusions relevant to insurance mediation activities is in AUTH App 5 (Insurance mediation activities)*.
- 2.9.11 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:
- ...
- (3) *arranging (bringing about) deals in investments and making arrangements ~~enabling or facilitating~~ with a view to transactions in investments;*
- 2.9.12 G The exclusions only apply where the object of the transaction may reasonably be regarded as being the acquisition of day-to-day control of the affairs of a *body corporate*. Whether or not day-to-day control is at stake is a question of fact based on an objective test. The *Regulated Activities Order* contains a non-exhaustive list of circumstances in which the day-to-day control requirement will be regarded as satisfied. These include the case where it is the acquisition or disposal of at least 50 per cent of the voting shares in the *body corporate* that is at issue. Certain additional requirements must also be satisfied. These exclusions do not have effect in relation to *shares* in an *open-ended investment company*. The exclusions in (2), (3) and (4) are disappplied where they concern a *contract of insurance*. *Guidance on exclusions relevant to insurance mediation activities is in AUTH App 5 (Insurance mediation activities)*.
- 2.9.13 G This group of exclusions applies, in specified circumstance, to the *regulated activities* of:
- ...
- (3) *arranging (bringing about) deals in investments and making arrangements ~~enabling or facilitating~~ with a view to transactions in investments;*
- ...
- ...
- 2.9.15 G This group of exclusions applies, in specified circumstance, to the *regulated activities* of:
- ...

- (3) *arranging (bringing about) deals in investments, ~~and making arrangements enabling or facilitating with a view to transactions in investments, arranging (bringing about) regulated mortgage contracts and making arrangements with a view to regulated mortgage contracts;~~*
- (4) *advising on investments;*
- (5) *entering into regulated mortgage contracts;*
- ~~(5)~~ (6) *administering regulated mortgage contracts;*
- (7) *agreeing to carry on the regulated activities of managing investments, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments, safeguarding and administering investments or sending dematerialised instructions.*

...

2.9.17 G The exclusions are available, for regulated activities other than those that relate to regulated mortgage contracts, in the two broad cases set out below. For some of these regulated activities, the exclusions apply in each case. In others, they apply in only one:

...

2.9.17A G The exclusions for overseas persons who carry on certain regulated activities related to regulated mortgage contracts work in a different way. They depend on the residency of the borrower or borrowers. Guidance on these exclusions is in AUTH App 4.11 (Link between activities and the United Kingdom).

2.9.18 G

...

Insurance mediation activities

2.9.19 G

The exclusions in this group apply to certain regulated activities involving certain contracts of insurance. The exclusions and the regulated activities to which they apply are as follows.

- (1) The first exclusion of this kind relates to certain activities carried on by a provider of non-motor goods or services related to travel in connection with general insurance contracts only. The contracts must be for five years duration or less and have an annual premium of no more than €500. The contract must cover breakdown or loss of or damage to non-motor goods supplied by the provider or risks linked to travel services booked with the provider. There must not be any liability risk cover. The insurance must be complementary to the goods or services being supplied by the provider in the course of his carrying on a business or profession not otherwise consisting of regulated activities. This exclusion applies where the regulated activities concerned are:

- (a) dealing in investments as agent;
 - (b) arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;
 - (c) assisting in the administration and performance of a contract of insurance; and
 - (d) advising on investments.
- (2) The second exclusion applies where information is provided to a policyholder by a person on an incidental basis in the course of that person's profession or business that does not otherwise consist of regulated activities. This exclusion applies where the regulated activities are:
- (a) arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;
 - (b) managing investments;
 - (c) assisting in the administration and performance of a contract of insurance; and
 - (d) safeguarding and administering investments;
- (3) The third exclusion applies to certain general insurance contracts covering large risks where the risk is situated outside the EEA. This exclusion applies where the regulated activities concerned are:
- (a) dealing in investments as agent;
 - (b) arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;
 - (c) assisting in the administration and performance of a contract of insurance; and
 - (d) advising on investments.

Guidance on these and other exclusions relevant to insurance mediation activities is in AUTH App 5 (Insurance mediation activities).

...

- 2.10.5 G A person is exempt if he is an appointed representative of an authorised person. See SUP 12 (Appointed representatives). But where an appointed representative carries on insurance mediation or reinsurance mediation he will not be exempt unless he is included on the register kept by the FSA under article 93 of the Regulated Activities Order (Duty to maintain a record of unauthorised persons carrying on insurance mediation activities) (see AUTH App 5.13 (Appointed representatives)).

...

2.10.8 G The exemptions apply so as to confer *exemption* on *persons* from the *general prohibition* in respect of four distinct categories of regulated activities.

...

(3) The third category is carrying on any of those *regulated activities* relating to *securities* or ~~*contractually-based investments*~~ *relevant investments* or to ‘any property’

...

2.10.14 G The *regulated activities* that may be carried on in this way are restricted by an Order made by the Treasury under section 327(6) of the *Act* (Exemption from the general prohibition). Accordingly, under that section, a *person* may not by way of business carry on any of the following activities without *authorisation*:

...

(8) ~~entering into regulated mortgage contracts as lender or administering such contracts;~~ agreeing to do certain of the above activities.

...

2.10.15 G In addition, there are restrictions on carrying on (or agreeing to carry on) certain other *regulated activities*. These relate to *managing investments*, *advising on investments* or *regulated mortgage contracts*, ~~and *advising on syndicate participation at Lloyd’s*~~ and *entering into a regulated mortgage contract* or *administering a regulated mortgage contract*.

2.10.16 G A *person* carrying on *regulated activities* under the regime for members of the professions will be subject to rules made by the professional body designated by the Treasury. Such bodies are obliged to make rules governing the carrying on by their members of those *regulated activities* that they are able to carry on without *authorisation* under the *Act*. Where such a *person* is carrying on *insurance mediation* or *reinsurance mediation*, he must also be included on the register kept by the *FSA* under article 93 of the *Regulated Activities Order* (Duty to maintain a record of unauthorised persons carrying on insurance mediation activities) (see *AUTH* App 5.10 (Exemptions)).

...

2 Ann 2 G Regulated activities and the permission regime

1.3 G

...

(2) ...

...

Part III of the *Regulated Activities Order* (Specified investments) specifies the investments referred to at *AUTH* 2 Ann 2, 1.3G(1) ~~1.23(1)~~.

...

2 Table:

Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding entry in column 1) may be carried on
Regulated Activities [See note 1 to Table 1]	
<u>Accepting deposits</u>	
(a) <i>accepting deposits</i> (Article 5)	<i>deposit</i> (Article 74)
<u>Issuing electronic money</u>	
(aa) <i>issuing electronic money</i> (Article 9B)	<i>electronic money</i> (Article 74A)
Insurance business	
(b) <i>effecting contracts of insurance</i> (Article 10(1)) <i>carrying out contracts of insurance</i> (Article 10(2))	<i>contract of insurance</i> (Article 75) [Expanded in Table 2]
(c)	
Designated investment business [see note <u>1A and 1B 7</u> to Table 1]	
(d) <i>dealing in investments as principal</i> (Article 14) [see note 2 to Table 1]	(in relation to (d) to (l)) <i>security</i> [Expanded in Table 3] or <i>contractually based investment</i> [Expanded in Table 3]
(e) <i>dealing in investments as agent</i> (Article 21) [see notes 1B and 2 to Table 1]	
(f) <i>arranging (bringing about) deals in investments</i> (Article 25(1)) [see note 1B to Table 1] [also see <u>Sections of Table 1 headed ‘Lloyd’s market’ Section and ‘regulated mortgage activities’</u>]	
(g) <i>making arrangements with a view to transactions in investments</i> (Article 25(2)) [see note 1B to Table 1] [also see <u>Sections of Table 1 headed ‘Lloyd’s market’ Section and ‘regulated mortgage activities’</u>]	
(h) <i>managing investments</i> (Article 37) [see note 3 to Table 1]	
(i) <i>safeguarding and administering investments</i> (Article 40) [see note 3 to Table 1]	

<p>For the purpose of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</p>	
<p>(i) <i>safeguarding and administration of assets (without arranging);</i></p> <p>(ii) <i>arranging safeguarding and administration of assets</i></p> <p>(j) <i>advising on investments (Article 53) [see note 1B to Table 1] [also see Section of Table 1 headed ‘regulated mortgage activity’]</i></p> <p>For the purpose of the <i>permission</i> regime, this <i>regulated activity</i> is subdivided into:</p> <p>(i) <i>advising on investments (except pension transfers or pension opt-outs);</i></p> <p>(ii) <i>advising on pension transfers or pension opt-outs [see note 4 to Table 1]</i></p> <p>(k) <i>sending dematerialised instructions (Article 45(1))</i></p> <p>(l) <i>causing dematerialised instructions to be sent (Article 45(2))</i></p> <p>(m) <i>establishing, operating or winding up a collective investment scheme (Article 51)</i></p>	<p>security and contractually based investment [Expanded in Table 3]</p> <p>[see note 5 to Table 1]</p>
<p>For the purpose of the <i>permission</i> regime, this <i>regulated activity</i> is sub-divided into:</p>	
<p>(i) <i>establishing, operating or winding up a regulated collective investment scheme</i></p>	
<p>(ii) <i>establishing, operating or winding up an unregulated collective investment scheme</i></p>	
<p>(n) <i>acting as trustee of an authorised unit trust scheme (Article 51)</i></p>	

<p>(o) <i>acting as the depositary or sole director of an open-ended investment company</i> (Article 51)</p> <p>(p) <i>establishing, operating or winding up a stakeholder pension scheme</i> (Article 52)</p>	
<p><u>Insurance mediation activity [see note 5A to Table 1]</u></p>	
<p>(pa) <i>dealing in investments as agent</i> (Article 21)</p> <p>(pb) <i>arranging (bringing about) deals in investments</i> (Article 25(1))</p> <p>(pc) <i>making arrangements with a view to deals in investments</i> (Article 25(2))</p> <p>(pd) <i>assisting in the administration and performance of a contract of insurance</i> (article 39A)</p> <p>(pe) <i>advising on investments</i> (Article 53)</p> <p>For the purpose of the <i>permission</i> regime, this <i>regulated activity</i> is sub-divided into:</p> <p>(i) <i>advising on investments (except pension transfers or pension opt outs);</i></p> <p>(ii) <i>advising on pension transfers or pension opt outs</i> [See note 5E to Table 1]</p>	<p><i>life policy</i> [see note 5B to Table 1]</p> <p><i>pure protection contract</i> [see note 5C to Table 1]</p> <p><i>general insurance contract</i> [see note 5D to Table 1]</p> <p><i>rights to or interests in investments</i> (Article 89) in so far as they relate to a <i>life policy</i></p>
<p>The Lloyd's market [see note 6 to Table 1]</p>	
<p>(q) <i>advising on syndicate participation at Lloyd's</i> (Article 56)</p> <p>(r) <i>managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's</i> (Article 57)</p>	<p><i>membership of a Lloyd's syndicate</i> (Article 86(2))</p> <p><i>underwriting capacity of a Lloyd's syndicate</i> (Article 86(1))</p>
<p>(s) <i>arranging (bringing about) deals in investments</i> (Article 25(1))</p>	<p><i>underwriting capacity of a Lloyd's syndicate</i> (Article 86(1)), <i>membership of a Lloyd's syndicate</i> (Article 86(2)) or <i>rights to or interests in investments</i> (Article 89) in so far as they relate to <i>underwriting capacity of a Lloyd's syndicate</i> or <i>membership of a Lloyd's syndicate</i></p>
<p>(t) <i>making arrangements with a view to transactions in investments</i> (Article 25(2))</p>	
<p>Funeral plan providers [a regulated activity with effect from 1 January 2002]</p>	

(u) <i>entering as provider into a funeral plan contract (Article 59) [see Note 1A]</i>	<i>funeral plan contract (Article 87)</i>
<u>Regulated mortgage activity</u>	
(v) <i>arranging (bringing about) regulated mortgage contracts (Article 25(A)(1))</i>	<i>regulated mortgage contract (Article 88)</i>
(w) <i>making arrangements with a view to regulated mortgage contracts (Article 25(A)(2))</i>	
(x) <i>advising on regulated mortgage contracts (Article 53A)</i>	
(y) <i>entering into a regulated mortgage contract (Article 61(1))</i>	
(z) <i>administering a regulated mortgage contract (Article 61(2))</i>	

Notes to Table 1
Note 1: In addition to the <i>regulated activities</i> listed in Table 1, Article 64 of the <i>Regulated Activities Order</i> specifies that <u>agreeing to carry on a regulated activity is itself a regulated activity in certain cases. This applies in relation to all the regulated activities listed in Table 1 apart from</u> in relation to any other regulated activity other than:
<ul style="list-style-type: none"> · <i>accepting deposits (Article 5);</i> · <i>issuing electronic money (Article 9B);</i> · <i>effecting and carrying out contracts of insurance (Article 10);</i> · <i>establishing, operating or winding up a collective investment scheme (Article 51(1)(a));</i> · <i>acting as trustee of an authorised unit trust scheme (Article 51(1)(b));</i> · <i>acting as the sole depositary or sole director of an open-ended investment company (Article 51(1)(c));</i> and · <i>establishing, operating or winding up a stakeholder pension scheme (Article 52).</i> <p><i>Permission to carry on the activity of agreeing to carry on a regulated activity will be given automatically by the FSA in relation to those other regulated activities for which an applicant is given permission (other than those activities in Articles 5, 9B, 10, 51 and 52 detailed above).</i></p>

Note 1A:

Funeral plan contracts are contractually based investments. Accordingly, the following are regulated activities when carried on in relation to a funeral plan contract: (a) arranging (bringing about) deals in investments, (b) making arrangements with a view to transactions in investments, (c) managing investments, (d) safeguarding and administering investments, (e) advising on investments, (f) sending dematerialised instructions and (g) causing dematerialised instructions to be sent (as well as agreeing to carry on each of the activities listed in (a) to (g)).

However, they are not designated investment business.

Note 1B:

Life policies are contractually based investments. Where the regulated activities listed as designated investment business in (e) to (g) and (j) are carried on in relation to a life policy, these activities also count as 'insurance mediation activities'. The full list of insurance mediation activities is set out in (pa) to (pe). The regulated activities of agreeing to carry on each of these activities will, if carried on in relation to a life policy, also come within both designated investment business and insurance mediation activities.

Note 2:

For the purposes of the regulated activities of dealing in investments as principal (Article 14) and dealing in investments as agent (Article 21), the definition of contractually based investments [expanded in Table 3] excludes a funeral plan contract (Article 87) and rights to or interests in funeral plan contracts.

Note 3:

The regulated activities of managing investments (Article 37) and safeguarding and administering investments (Article 40) may apply in relation to any assets, in particular circumstances, if the assets being managed, or safeguarded and administered, include (or may include) any security or contractually based investment.

Note 4:

For the purposes of the permission regime, the activity in (j)(ii) of advising on pension transfers and pension opt-outs is carried on in respect of the following specified investments:

- unit (Article 81);
- stakeholder pension scheme (Article 82);
- life policy (explained in note 5A as defined in Article 3(1));
- rights to or interests in investments in so far as they relate to a unit, a stakeholder pension scheme or a life policy.

Note 5:

Article 4(2) of the Regulated Activities Order specifies the activities (m) to (p) for the purposes of section 22(1)(b) of the Act. That is, these activities will be regulated activities if carried on in relation to any property and are not expressed as relating to a specified investment.

Note 5A:

Where they are carried on in relation to a life policy, the activities listed as insurance mediation activities in (pa) to (pe) (as well as the regulated activity of agreeing to carry on those activities) are also designated investment business.

Note 5B:

Life policy is the term used in the *Handbook* to mean ‘qualifying contract of insurance’ (as defined in Article 3(1) of the *Regulated Activities Order*).

Note 5C:

Pure protection contract is the term used in the *Handbook* to mean a *long-term insurance contract* which is not a *life policy*.

Note 5D:

General insurance contract is the term used in the *Handbook* to mean contract of insurance within column 1 of Table 2.

Note 5E:

For the purposes of the *permission* regime, the activity in (pe)(ii) of advising on pension transfers and pension opt-outs is carried on in respect of the following specified investments:

- life policy (explained in note 5A);
- rights to or interests in investments in so far as they relate to a *life policy*.

Note 6:

Section 315 of the *Act* (The Society: authorisation and permission) states that the *Society of Lloyd’s* has *permission* to carry on the *regulated activities* referred to in that section, one of which is specified in Article 58 of the *Regulated Activities Order*. This *permission* is unique to the *Society of Lloyd’s*.

Note 7:

~~In relation to funeral plan contracts (a) managing investments, (b) safeguarding and administering investments, (c) advising on investments, (d) arranging (bringing about) deals in investments and (e) making arrangements with a view to transactions in investments (as well as agreeing to carry on each of those regulated activities) are regulated activities but they are not designated investments business.~~

...

Table 3: Securities, and contractually based investments and relevant investments [see notes 1 and 2 to Table 3]		
Security (article 3(1))	Contractually based investment (article 3(1))	Relevant investment (article 3(1))
<p><i>share</i> (Article 76)</p> <p><i>debenture</i> (Article 77)</p> <p><i>government and public security</i> (Article 78)</p> <p><i>warrant</i> (Article 79)</p> <p><i>certificate representing certain security</i> (Article 80)</p> <p><i>unit</i> (Article 81)</p> <p><i>stakeholder pension scheme</i> (Article 82)</p> <p><i>rights to or interests in investments</i> (Article 89) in so far as they relate to any of the above categories of <i>security</i></p>	<p><i>option</i> (Article 84)</p> <p>For the purpose of the <i>permission</i> regime, <i>option</i> is subdivided into:</p> <p>(i) <i>option</i> (excluding a <i>commodity option</i> and an <i>option</i> on a <i>commodity future</i>);</p> <p>(ii) <i>commodity option</i> and an <i>option</i> on a <i>commodity future</i>.</p> <p><i>future</i> (Article 85)</p> <p>For the purpose of the <i>permission</i> regime, <i>future</i> is subdivided into:</p> <p>(i) <i>future</i> (excluding a <i>commodity future</i> and a <i>rolling spot forex contract</i>);</p> <p>(ii) <i>commodity future</i>;</p> <p>(iii) <i>rolling spot forex contract</i>.</p> <p><i>contract for differences</i> (Article 86)</p> <p>For the purpose of the <i>permission</i> regime, <i>contract for differences</i> is subdivided into:</p> <p>(i) <i>contract for differences</i> (excluding a <i>spread bet</i> and a <i>rolling spot forex contract</i>);</p> <p>(ii) <i>spread bet</i>;</p> <p>(iii) a <i>rolling spot forex contract</i>)</p> <p><i>life policy</i> [see note 5B to Table 1]</p> <p><i>funeral plan contract</i> (Article 87)</p> <p>[from 1 January 2002] [see Note 1A to Table 1]</p> <p><i>rights to or interests in investments</i> (Article 89) in so far as they relate to any of the above categories of <i>contractually based investment</i>.</p>	<p><u><i>contractually based investment</i> (article 3(1))</u></p> <p><u><i>pure protection contract</i> [see note 5C to Table 1]</u></p> <p><u><i>general insurance contract</i> [see note 5D to Table 1]</u></p>

Notes to Table 3

Note 1

Security, ~~and~~ contractually based investment and relevant investment are not, in themselves, *specified investments* ~~but~~ they are defined as including a number of *specified investments* as set out in Table 3. *Relevant investments* is the term that is used to cover *contractually based investments* together with rights under a *general insurance contract* and a *pure protection contract*.

Note 2

For the purposes of the *regulated activities of dealing in investments as principal* (article 14) and *dealing in investments as agent* (article 21), the definition of *contractually based investment* excludes a *funeral plan contract* (article 87) and rights to or interests in *funeral plan contracts*.

...

5.4.1

...

G

The conditions for establishing a branch

5.4.2

Before an *EEA firm* exercises an *EEA right* to establish a *branch* in the *United Kingdom* other than under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1) Part II of Schedule 3 to the *Act* (EEA Rights). These conditions are that:

(1) ...

5.4.2A

Where an *EEA firm* exercises its *EEA right* to establish a *branch* in the *United Kingdom* under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1A) Part II of Schedule 3 to the *Act* (EEA Rights). These conditions are that:

(1) the *EEA firm* has given its *Home State regulator* notice of its intention to establish a *branch* in the *United Kingdom*;

(2) the *FSA* has received notice ("a regulator's notice") from the *EEA firm's Home State regulator* that the *EEA firm* intends to establish a *branch* in the *United Kingdom*;

(3) the *EEA firm's Home State regulator* has informed the *EEA firm* that the regulator's notice has been sent to the *FSA*; and

(4) one month has elapsed beginning with the date when the *EEA firm's Home State regulator* informed the *EEA firm* that it had sent the regulator's notice to the *FSA*.

...

The notification procedure

5.4.4

(1) ...

G

(2) Although the FSA is not required to notify the applicable provisions to an EEA firm passporting under the Insurance Mediation Directive, these provisions are set out in AUTH 5 Annex 3 G (Application of the Handbook to Incoming EEA Firms).

...

The conditions for providing cross border services into the United Kingdom

5.5.3

G Before an EEA firm exercises an EEA right to provide cross border services into the United Kingdom, the Act requires it to satisfy the service conditions, as set out in paragraph 14 of Part II of Schedule 3 to the Act. These conditions are that:

- (1) the EEA firm has given its Home State regulator notice of its intention to provide cross border services in the United Kingdom (a notice of intention);
- (2) if the EEA firm is passporting under either the Investment Services Directive or the Insurance Directives, or the Insurance Mediation Directive, the FSA has received notice (“a regulator’s notice”) from the EEA firm’s Home State regulator containing the information prescribed under regulation 3 of the EEA Passport Rights Regulations (see AUTH 5 Annex 2G); and
- (3) if the EEA firm is passporting under the Insurance Directives or the Insurance Mediation Directive, its Home State regulator has informed the EEA firm that it has sent the regulator’s notice to the FSA; and
- (4) if the EEA firm is passporting under the Insurance Mediation Directive, one month has elapsed beginning with the date when the EEA firm’s Home State regulator informed the EEA firm that it had sent the regulator’s notice to the FSA.

The notification procedure

5.5.4

G (1) Unless the EEA firm is passporting under the Insurance Mediation Directive, if the FSA receives a regulator’s notice or, where no notice is required (in the case of an EEA firm passporting under the Banking Consolidation Directive), is informed of the EEA firm’s intention to provide cross border services into the United Kingdom, the FSA will, under paragraphs 14(2)(b) and 14(3) of Part II of Schedule 3 to the Act, notify the EEA firm of the applicable provisions (if any) within two months of the day on which the FSA received the regulator’s notice or was informed of the EEA firm’s intention.

(2) Although the FSA is not required to notify the applicable provisions to an EEA firm passporting under the Insurance Mediation Directive, these provisions are set out in AUTH 5 Annex 3 G (Application of the Handbook to Incoming EEA Firms).

...

5.6.4 Under the *EEA Passport Rights Regulations*, references in section 60 of the *G Act* (applications for approval for persons to perform *controlled functions*) to "the authorised person concerned" include an *EEA firm* with respect to which the *FSA* has received a *consent notice* or *regulator's notice* under paragraph 13 of Schedule 3 to the *Act* (see *AUTH 5.4.2G(1)* and *AUTH 5.4.2A G(2)*) or a regulator's notice under paragraph 14 of that Schedule (see *AUTH 5.5.3G(2)*), and which will be the *authorised person* concerned if the *EEA firm* qualifies for *authorisation* under that Schedule.

...

AUTH 5 Annex 2

Provision of services: Contents of regulator's notice G

Table
1

Type of Firm	Para n.	Contents of consent notice regulator's notice (Regulation 2 3)
<i>Investment firm</i>	...	
<i>Insurance undertaking</i>	...	
<i>Insurance intermediary</i>	(4)	<u>that the firm intends to carry on insurance mediation or reinsurance mediation by providing services in the United Kingdom.</u>

AUTH 5 Annex 3

Application of the Handbook to Incoming EEA Firms G

Table: G
2

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...	...	

<u>PRU</u>	<p><u>PRU 9.1 (Responsibility for insurance mediation activity) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</u></p> <p><u>PRU 9.2 (Professional indemnity insurance requirements for insurance and mortgage mediation activity and mortgage lending and administration) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</u></p>	<p><u>As column (2)</u></p> <p><u>As column (2)</u></p>
<u>PRU</u>	<p><u>PRU 9.3 (Capital resources for insurance and mortgage mediation activity and mortgage lending and administration) does not apply unless the <i>firm</i> has a <i>top-up permission</i>. See <i>PRU 9.3.2G</i> for more detailed <i>guidance</i>.</u></p> <p><u>PRU 9.4 (Insurance undertakings and mortgage lenders using insurance or mortgage mediation services) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</u></p>	<p><u>As column (2)</u></p> <p><u>As column (2)</u></p>
...		

...

7.1.1 G This chapter applies to anyone involved in publishing periodicals, or in providing news services or broadcasts, who gives (or proposes to give) advice about *securities, or contractually based investments relevant investments or regulated mortgage contracts* and who wishes to determine whether he will be carrying on the *regulated-activity activities of advising on investments or advising on regulated mortgage contracts*.

...

7.1.2 G The purpose of this chapter is to provide *guidance* on:

- (1) when a *person* involved in publishing periodicals, or in providing news services or broadcasts, requires *authorisation* to carry on the ~~regulated activity~~ activities of advising on investments or advising on regulated mortgage contracts (see *AUTH 7.3* (Does the activity require authorisation)); and
- (2) if he does, whether he qualifies for the exclusion from ~~that activity~~ those activities that applies to a periodical publication, a regularly updated news or information service ...
- ...
- 7.2.1 G Advice is excluded by Article 54 of the *Regulated Activities Order* from the ~~regulated activity~~ activities of advising on investments and advising on regulated mortgage contracts if:
- (1) the advice is given in a publication or service that is in one of three formats (see *AUTH 7.4.3G* and *AUTH 7.4.4G*); and
- (2) the principal purpose of the particular format is neither to give certain advice nor to lead to (or enable) certain transactions to be carried out (see *AUTH 7.4.5G* and *AUTH 7.4.10G*).
- ...
- 7.2.2 G If a *person* would, but for the exclusion, be carrying on the ~~regulated activity~~ activities of advising on investments or advising on regulated mortgage contracts, or both, and will be doing so as a business in the *United Kingdom*
- Advising on investments and advising on regulated mortgage contracts
- ...
- 7.3.1 G Under Article 53 of the *Regulated Activities Order* (Advising on investments), advising a person is a specified kind of activity
- (1) ...
- (2) it is advice on the merits of his doing any of the following (whether as *principal* or agent):
- (a) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security* or a ~~contractually based investment~~ relevant investment; or
- ...
- 7.3.1A G Under Article 53A of the *Regulated Activities Order* (Advising on regulated mortgage contracts), advising a *person* is a specified kind of activity if :

- (1) the advice is given to the *person* in his capacity as a borrower or potential borrower; and
- (2) it is advice on the merits of his doing any of the following:
 - (a) entering into a particular *regulated mortgage contract*; or
 - (b) varying the terms of a *regulated mortgage contract* entered into by him after *mortgage day* in such a way as to vary his obligations under that contract.

- 7.3.2 G Articles 53 and 53A of the *Regulated Activities Order* contains a number of elements, all of which must be present before a *person* will require *authorisation*. For *guidance* on whether a *person* is carrying on ~~this~~ these *regulated-activity activities* see *AUTH* App 1 (Financial promotion and related activities [to be issued later]) and *AUTH* App 4 (Guidance on regulated activities connected with mortgages).
- 7.3.3 G ...
 Under Section 22 of the *Act* (Regulated activities), for an activity to be a *regulated activity* it must be carried on ‘by way of business’. There is power in the *Act* for the Treasury to change the meaning of the business-element test by including or excluding certain things. It has exercised this power (see through the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI No 2001/1177) (the *Business Order*). This has been amended by Article 18 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI No 2003/1476) as explained in *AUTH* App7.3.3AG.
- 7.3.3A G The result of the amendments made to the meaning of the business test in section 22 of the *Act* is that the ~~business element test~~ differs depending on the activity in question. Where ~~the regulated activities carried on in relation to securities or contractually based investments of advising on investments and advising on regulated mortgage contracts~~ are concerned, the business element test is not to be regarded as satisfied unless a *person* carries on the business of engaging in ~~one or more of the~~ those activities. This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right. Where the advice relates to a *contract of insurance*, the business test is not be regarded as satisfied unless the *person* carrying on the activity of giving the advice is taking up or pursuing the activity for remuneration. This is the test which will apply to the regulated activity of advising on investments. *AUTH* 2.3 (The Business element) and *AUTH* 2.4 (Link between activities and the United Kingdom) together with *AUTH* App 5.4 (The business test) provide further detail on this.

7.3.4 G In the *FSA's* view, for a *person* to be carrying on the business of *advising on investments or advising on regulated mortgage contracts* he will usually need to be doing so with a degree of regularity and for commercial purposes - that is to say, he will normally be expecting to gain some kind of a direct or indirect financial benefit. But, in the *FSA's* view or paid for by advertising. In such cases, if ~~*advice on investments*~~ *advice on securities, relevant investments or regulated mortgage contracts* is given, then in the *FSA's* view the business of *advising on investments or advising on regulated mortgage contracts* is being carried on. In addition would not be regarded as carrying on the business of advising on investments *or advising on regulated mortgage contracts* as he would be acting to prevent crime rather than in the carrying on of a business.

...

7.3.7 G But even if advice is given in the *United Kingdom*, the *general prohibition* will not be contravened if the giving of advice does not amount to the carrying on, in the *United Kingdom*, of the business of *advising on investments or advising on regulated mortgage contracts*. Also, the ~~*general prohibition*~~ *general prohibition* will not be contravened if the exclusion for *overseas persons* in Article 72 of the *Regulated Activities Order* (*Overseas persons*) applies. That..... exclusion applies in relation to the giving of advice *on securities or relevant investments* by an *overseas person* as a result of a 'legitimate approach' this will exclude any advice in a publication or service from being a *regulated activity* if it is given in response to an approach that has not been solicited in any way. It should be noted, however, that the exclusions in Article 72 only apply to the *regulated activity of advising on regulated mortgage contracts* where both the lender and the borrower are outside the *United Kingdom*. The effect of this is that, where the principal purpose of an overseas periodical publication is to offer *advice on securities or relevant investments and regulated mortgage contracts*, the exclusion for an *overseas person* who provides advice to *persons in the United Kingdom* as a result of a legitimate approach will not apply to the advice concerning *regulated mortgage contracts*.

...

7.4.2 G But the exclusion applies only if the principal purpose of the publication or service is ~~neither~~ not:

- (1) ~~to *advise on* advise on investments (that is, *securities* or *contractually based relevant investments*) or *regulated mortgage contracts*; ~~nor~~ or~~
- (2) to lead or enable *persons* to:
 - (a) *buy, sell, subscribe for or underwrite securities or contractually based investments relevant investments*; or (as the case may be)

(b) to enter as borrower into regulated mortgage contracts, or vary the terms of regulated mortgage contracts entered into by the persons to whom the advice is given as borrower.

...

7.4.3 G (1) ...

...

(3) ... this would not generally constitute the *regulated activity of advising on investments* (see *AUTH App 1.28 (Financial promotion and related activities Advice or information)* ~~{to be issued later}~~) or advising on regulated mortgage contracts (see *AUTH App 4.6.10G (Advice or information)*). So the exclusion applies to services ...

7.4.5 G The exclusion applies only if the principal purpose of the publication or service is ~~neither~~ not:

(1) to give advice on ~~investments~~ securities, relevant investments or regulated mortgage contracts (see *AUTH 7.3.1G*); or;

(2) to lead or enable *persons* to:

(a) buy, sell, subscribe for or underwrite securities or contractually based investments relevant investments or to exercise any rights conferred by *securities* or contractually based such investments; or

(b) to enter as borrower into regulated mortgage contracts, or vary the terms of regulated mortgage contracts entered into by persons to whom the advice is given as borrower.

References to leading or enabling persons to do the things mentioned in (a) or (b) are (abbreviated in AUTH 7.4.9G and AUTH 7.4.11G as leading or enabling persons 'to engage in a relevant transaction').

...

7.4.8 G Looking at the first disqualifying purpose set out in the exclusion, all the matters relevant to whether the *regulated-activity activities* of *advising on investments or advising on regulated mortgage contracts* are ~~is~~ being carried on must be taken into account (see *AUTH* App 1.24 (~~Financial promotion and related activities [to be issued later]~~ *Advising on investments*)). If the principal purpose of a publication or service is to give to *persons*, in their capacity as investors (or potential investors) ~~or as borrowers (as the case may be)~~, advice as referred to in *AUTH* 7.4.5G(1), then the publication or service will not be able to benefit from this exclusion.

7.4.9 G For the second disqualifying purpose, the focus switches to assessing whether the principal purpose of a publication or service is to lead a person to engage in a relevant transaction or enable him to do so. This disqualifying purpose is an alternative to the first. So it extends to material not covered by the first. In this respect:

(1) material in a publication or service that invites or seeks to procure *persons* to engage in a relevant transaction can be said to “lead” to those transactions even if it would not constitute the *regulated activities* of *advising on investments or advising on regulated mortgage contracts*; this includes, for example, material that consists of

(2)

In the *FSA*’s view, material will not lead or enable a *person* to engage in a relevant transaction where the material is intended merely to raise people’s awareness of matters relating to *securities*, ~~or contractually based investments~~ *relevant investments* or *regulated mortgage contracts*.

7.4.13 G The *persons* who directly benefit from the exclusion will be the *persons* who would otherwise require *authorisation* (see ■*AUTH* 7.3.9 G), that is, the *person* whose business it is to have editorial control over the content of the publication or service. The exclusion will apply regardless of the legal form of the *person* giving the advice so, for example, it will extend to ~~advice on investments~~ *advice* given by a *company* through its employees.

APPENDIX 1. FINANCIAL PROMOTION AND RELATED ACTIVITIES

1.4.22 G This will be the case provided the *financial promotion* does not identify any particular *investment* or *person* to whom introductions are to be made or identify the introducer as a *person* who carries on a *regulated activity* (typically of *making arrangements with a view to transactions in investments* under Article 25(2) of the *Regulated Activities Order* (see *AUTH App 1.33 (Introducing)*) or *making arrangements with a view to regulated mortgage contracts* under Article 25A(2) of the *Regulated Activities Order* (see *AUTH App 4.5 (Arranging regulated mortgage contracts)*). It is most likely to apply where the *financial promotion* relates to *deposits* or *contracts of insurance* which are not *contractually based investments*. The journalists' exemption in Article 20 of the *Financial Promotion Order (Communications by journalists)* may also be relevant where the introduction is made through or in a publication, broadcast or regularly updated news or information service (see *AUTH App 1.12.23G*). Article 15 (Introductions) may apply where the introduction is a *real time financial promotion* (see *AUTH App 1.12.11G*). In addition, Article 28B (Real time communications: introductions in connection with qualifying credit) may apply where an introduction that is a *real time financial promotion* relates to an agreement for *qualifying credit* (see *AUTH App 1.17.12G*).

...

1.7.2 G *Controlled activity* and *controlled investment* are defined in Schedule 1 to the *Financial Promotion Order* and are listed in *AUTH App 1.36.43* and *AUTH App 1.36.54*. Broadly speaking important to note, however, that there are certain differences between *controlled activities* and *regulated activities*; and between *controlled investments* and *specified investments*. - most notably with certain credit agreements and funeral plans. This is most notable where the *financial promotion* is about:

- (1) certain credit agreements (see *AUTH App 1.17 (Financial promotions concerning agreements for qualifying credit)*);
- (2) *funeral plan contracts* (see *AUTH App 1.16 (Financial promotions concerning funeral plans)*); and
- (3) *contracts of insurance other than life policies* (see *AUTH App 1.17A (Financial promotions concerning insurance mediation activities)*).

So, it is quite possible for ...

...

1.9.5 G The restriction in section 21 is also disapplied under section 21(5) where provided for by the Treasury by order. The Treasury made such an order on 2 April 2001 (the *Financial Promotion Order*). This contains a number of specific exemptions which are referred to in *AUTH* App 1.2 to *AUTH* app 1.15 and *AUTH* App 1.21. The *Financial Promotion Order* has been amended by:

...

(4) ... 2002 ((SI 2002/1310); ~~and~~

(5) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) (Electronic Commerce Directive) Order 2001 (SI 2002/2157); and

(6) The Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2003 (SI 2003/ 1676).

...

1.12.15 G The exemption can also be used in certain circumstances where an ~~unauthorised~~ intermediary is advertising its services as an intermediary. This is because advising on and arranging *deposits* and *contracts of insurance other than life policies* are not *controlled activities*. This means that ~~For instance~~, an unauthorised intermediary offering to find the best rates on *deposits* or ~~most competitive premiums on motor insurance~~ will not be carrying on a *controlled activity* himself. So, he may identify himself (but not any particular deposit-taker or *insurer*) in the *financial promotion* as he will not be carrying on a *controlled activity*. This is provided that the *financial promotion* does not identify any particular deposit-taker. The same considerations would apply to an *authorised* intermediary who offers to advise on the best available motor insurance.

...

1.12.25 G With this objective in mind, the exemption in article 20 (as amended by article 2 of the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment No2) Order 2001) applies to any *non-real time financial promotion* the contents of which are devised by a *person* acting as a journalist where the *financial promotion* is in:

...

(3) ...

In addition ... that the principal purpose must not be to advise on or lead or enable *persons* to buy or sell securities or ~~contractually based investments~~ *relevant investments*. See *AUTH* 7 for further guidance

...

1.13.4 G Intermediaries involved with arranging and advising on deposits ~~and contracts of insurance other than life policies~~ may be *unauthorised persons* as such activities do not amount to *regulated activities* and so do not require *authorisation* under section 19 of the *Act*. However, the combination of the exemptions in Part V together with certain of the exemptions in Part IV (such as generic promotions – see *AUTH* App 1.12.14G – and follow up communications – see *AUTH* App 1.12.10G) should mean that it will often be possible for such *persons* to avoid any need to seek approval for their *financial promotions* from an *authorised person*. Guidance on the application of these exemptions to *financial promotions* about *insurance mediation activities* is in *AUTH* App 1.17A (Financial promotions concerning insurance mediation activities).

...

1.17.1 G ~~[deleted] Section 21 will not apply to *financial promotions* concerning agreements for qualifying credit until a date in 2004 yet to be specified by the Treasury. The *FSA* will be consulting separately on *guidance* on this subject.~~

After Appendix 1.17.1G, insert the following new text.

Introduction

1.17.1A G Section 21 applies to *financial promotions* concerning agreements for *qualifying credit*. In this respect, it not only covers *financial promotions* about *regulated mortgage contracts* but also *financial promotions* about certain other types of credit agreement. This is explained in more detail in *AUTH* App 1.17.2G to *AUTH* App 1.17.3G.

Controlled investment: agreement for qualifying credit

1.17.2 G Rights under an agreement for *qualifying credit* are a *controlled investment*. *Qualifying credit* is defined in paragraph 10 of Schedule 1 to the *Financial Promotion Order* (Controlled activities) as credit provided pursuant to an agreement under which:

- (1) the lender is a *person* who carries on the *regulated activity* of *entering into a regulated mortgage contract* (whether or not he is an *authorised* or *exempt person* under the *Act*); and
- (2) the obligation of the borrower to repay is secured (in whole or in part) on land.

1.17.3 G An agreement for *qualifying credit* includes the following types of loan in addition to those that would be a *regulated mortgage contract*, but in each case only if the lender carries on the *regulated activity* of *entering into regulated mortgage contracts*:

- (1) loans secured by a second or subsequent charge;
- (2) secured loans for buy-to-let or other purely investment purposes;
- (3) loans secured on land situated outside the *United Kingdom*;
- (4) loans that include some unsecured credit such as a flexible mortgage that includes an unsecured credit card; and
- (5) commercial mortgages.

Controlled activities

1.17.4 G There are four *controlled activities* involving *qualifying credit*:

- (1) *providing qualifying credit*;
- (2) *arranging qualifying credit*;
- (3) *advising on qualifying credit*; and
- (4) *agreeing to carry on any of (1) to (3)*.

1.17.5 G *Providing qualifying credit* is a *controlled activity* under paragraph 10 of Schedule 1 to the *Financial Promotion Order*. In the *FSA's* view, 'providing' means, in this context, providing as lender; an intermediary does not 'provide' *qualifying credit*.

1.17.6 G *Arranging qualifying credit* is a *controlled activity* under paragraph 10A of Schedule 1 to the *Financial Promotion Order*; that is, making arrangements:

- (1) for another *person* to enter as borrower into an agreement for *qualifying credit*; or
- (2) for a borrower under a *regulated mortgage contract* entered into on or after 31 October 2004 to vary the terms of that contract in such a way as to vary his obligations under that contract.

This means that invitations and inducements relating to the services of mortgage arrangers will potentially be within the scope of Section 21 of the *Act*.

- 1.17.7 G *Advising on qualifying credit* will be a *controlled activity* under paragraph 10B of Schedule 1 to the *Financial Promotion Order*; that is, advising a *person* if the advice is:
- (1) given to the *person* in his capacity as a borrower or potential borrower; and
 - (2) advice on the merits of his doing any of the following :
 - (a) entering into an agreement for *qualifying credit*; or
 - (b) varying the terms of a *regulated mortgage contract* entered into by him on or after 31 October 2004 in such a way as to vary his obligations under that contract.

This means that invitations and inducements relating to the services of mortgage advisers will potentially be within the scope of Section 21 of the *Act*.

- 1.17.8 G Agreeing to carry on each of these three *controlled activities* will also be a *controlled activity* under paragraph 11 of Schedule 1 to the *Financial Promotion Order*.

Application of exemptions to financial promotions about agreements for qualifying credit

- 1.17.9 G The exemptions in Part IV of the *Financial Promotion Order* (Exempt communications: all controlled activities) will apply to *financial promotions* about *qualifying credit*. Some of the exemptions in Part VI of the *Financial Promotion Order* (Exempt communications: certain controlled activities) will also apply. Those of particular note are referred to in *AUTH* App 1.17.10G to *AUTH* App 1.17.12G.

- 1.17.10 G Article 46 (Qualifying credit to bodies corporate) exempts any *financial promotion* about *providing qualifying credit* if it is :

- (1) made to or directed at *bodies corporate* only; or
- (2) accompanied by an indication that the *qualifying credit* to which it relates is only available to *bodies corporate*.

- 1.17.11 G Article 28(4) (One off non-real time communications and solicited real time communications) sets aside the general rule that exemptions in Parts V and VI of the *Financial Promotion Order* cannot be combined by permitting the combination of Article 28 and Article 23 (Deposits: real time communications) where the *financial promotion*:

- (1) is a one-off *solicited real time financial promotion*; and
- (2) is about *providing qualifying credit*.

1.17.12 G

Article 28B (Real time communications: introductions in connection with qualifying credit) exempts a *real time financial promotion* that relates to one or more of the *controlled activities* about *regulated mortgage contracts*. The exemption is subject to the following conditions being satisfied:

- (1) the *financial promotion* must be made for the purpose of, or with a view to, introducing the recipient to a *person* ('N') who is:
 - (a) an *authorised person* who carries on the *controlled activity* to which the communication relates; or
 - (b) an *appointed representative*, where the *controlled activity* is also a *regulated activity* in respect of which the *appointed representative* is exempt; or
 - (c) an overseas person who carries on the *controlled activity* to which the communication relates; for this purpose, an 'overseas person' is a *person* who carries on any of the *controlled activities* about *qualifying credit* but does not do so, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*; and
- (2) the *person* ('M') communicating the *financial promotion*:
 - (a) must not receive any money paid by the recipient in connection with any transaction that the recipient enters into with or through N as a result of the introduction, other than money payable to M on M's own account; and
 - (b) before making the introduction, must disclose to the borrower the following information where it applies to M:
 - (i) whether M is a member of the same *group* as N;
 - (ii) details of any payment which M will receive from N, by way of fee or commission, for introducing the recipient to N; and
 - (iii) an indication of any other reward or advantage arising out of M's introducing to N.

- 1.17.13 G Introducers can check whether a *person* is an *authorised person* or an *appointed representative* by visiting the *FSA's* register at www.fsa.gov.uk. If an *authorised person* has *permission* to carry on a *regulated activity* (which can be checked on the *FSA's* register) it is reasonable, in the *FSA's* view, to conclude that the *authorised person* carries on that activity (but not a *controlled activity* which is not a *regulated activity*). The *FSA* would normally expect introducers to request and receive confirmation of other facts necessary to satisfy the condition in *AUTH* App 1.17.12G(1), prior to proceeding with an introduction.
- 1.17.14 G In the *FSA's* view, money payable to an introducer on his own account includes money legitimately due to him for services rendered to the borrower, whether in connection with the introduction or otherwise. It also includes sums payable in connection with transfer of property to an introducer (for example, a housebuilder) by a borrower. For example, Article 28B allows a housebuilder to receive the purchase price on a property that he *sells* to a borrower, whom he previously introduced to an *authorised person* or *appointed representative* to help him finance the purchase in return for a fee payable by the borrower, and still take the benefit of the exclusion. This is because the sums that the housebuilder receives in connection with the introduction and the sale of his property to the borrower are both 'payable to him on his own account'. The housebuilder could also receive a commission from the *person* introduced to.
- 1.17.15 G In the *FSA's* view, the provision of details of fees or commission referred to in *AUTH* App. 1.17.12G(2)(b)(ii) does not require an introducer to provide an actual sum to the borrower, where it is not possible to calculate the full amount due prior to the introduction. This may arise in cases where the fee or commission is a percentage of the eventual loan taken out and the amount of the required loan is not known at the time of the introduction. In these cases, it would be sufficient for the introducer to disclose the method of calculation of the fee or commission, for example the percentage of the eventual loan to be made by N.
- 1.17.16 G In the *FSA's* view, the information condition in *AUTH* App. 1.17.12G(2)(b)(iii) requires the introducer to indicate to the borrower any other advantages accruing to him as a result of ongoing arrangements with N relating to the introduction of borrowers. This may include, for example, indirect benefits such as office space, travel expenses, subscription fees. This and other relevant information may, where appropriate, be provided on a standard form basis to the borrower. The *FSA* would normally expect an introducer to keep a written record of disclosures made to the borrower under Article 33A of the *Regulated Activities Order* including those cases where disclosure is made on an oral basis only.

Interaction with the Consumer Credit Act

1.17.17 G Most credit advertisements are, with various exceptions, regulated under the Consumer Credit Act 1974. However, Article 90(3) (Consequential amendments of the Consumer Credit Act 1974) and Article 91(1) (Consequential amendments to subordinate legislation under the Consumer Credit Act 1974) of the *Regulated Activities Order* disapply the provisions of the Consumer Credit Act 1974 to any *financial promotion* other than an exempt generic communication. An exempt generic communication is a *financial promotion* that is exempt under Article 17 of the *Financial Promotion Order* (Generic promotions) (see *AUTH* App 1.12.14G (Generic promotions (Article 17))). Hence, an advertisement about credit of any kind will either be regulated under Section 21 of the *Act* or under the Consumer Credit Act 1974. Such an advertisement will only be subject to regulation under both statutes if it is about secured and unsecured lending. Typical examples showing which statute regulates particular types of credit advertisements are given in the table in *AUTH* App 1.17.18G (Table - Guide to the application of the Act and the Consumer Credit Act 1974 to credit advertisements).

1.17.18 G Table: Guide to application of the Act and the Consumer Credit Act 1974 to credit advertisements. This table belongs to *AUTH* App 1.17.17G

	Subject of advertising or promotion	FSMA regulated	CCA regulated
(1)	<i>regulated mortgage contracts</i>	Yes	No
(2)	other loans secured on land where the lender also enters into <i>regulated mortgage contracts</i> as lender	Yes	No
(3)	loans not secured on land whether or not the lender also enters into <i>regulated mortgage contracts</i> as lender	No	Yes
(4)	loans not secured on land but which form part of a loan product that is otherwise secured on land and where the lender enters into <i>regulated mortgage contracts</i> as lender	Yes	No

- | | | | |
|-----|--|-----|-----|
| (5) | loans as in (1), (2) or (4) but where the advertisement is subject to exemptions under the <i>Financial Promotion Order</i> other than Article 17 (Generic promotions) | Yes | No |
| (6) | loans as in (1), (2) or (4) but where the advertisement is exempt under Article 17 of the <i>Financial Promotion Order</i> (Generic Promotions) | No | Yes |
| (7) | loans with features as in (1), (2), (4) or (5) promoted in combination with other loans | Yes | Yes |

....

1.17A Financial promotions concerning insurance mediation activities

1.17A.1 G The application of section 21 of the *Act* and of exemptions in the *Financial Promotion Order* to invitations or inducements about *insurance mediation activities* will vary depending on the type of activity. The implementation of the *Insurance Mediation Directive* has not led to any changes in the definitions of a *controlled investment* or a *controlled activity* under the *Financial Promotion Order*. So:

- (1) rights under any *contract of insurance* are a *controlled investment*;
- (2) rights to or interests in rights under *life policies* are *controlled investments* but rights to or interests in rights under other *contracts of insurance* are not;
- (3) the activities of:
 - (a) *dealing in investments as agent*;
 - (b) *arranging (bringing about) deals in investments*;
 - (c) *making arrangements with a view to transactions in investments*; and
 - (d) *advising on investments*,

where they relate to *contracts of insurance*, are *controlled activities* only where the *contract of insurance* is a *life policy*;

- (4) the activity of *assisting in the administration and performance of a contract of insurance* is not a *controlled activity*.

1.17A.2 G This means that an insurance intermediary will not be *communicating a financial promotion*:

- (1) where the only activity to which the promotion relates is *assisting in the administration and performance of a contract of insurance*; or
- (2) purely by reason of his inviting or inducing *persons* to make use of his advisory or arranging services where they relate only to *general insurance contracts* or *pure protection contracts* or both.

But as regards (2), an intermediary will be *communicating a financial promotion* if he is also inviting or inducing *persons* to enter into a *contract of insurance*. This is because the making and performance of the contract by the *insurer* will be a *controlled activity* (of *effecting and carrying out a contract of insurance*). Insurance intermediaries will, however, be able to use the exemptions in Part V of the *Financial Promotion Order* (see *AUTH App 13* (Exemptions applying to financial promotions concerning deposits and certain contracts of insurance) where they promote a *general insurance contract* or a *pure protection contract*. Where an insurance intermediary is promoting *life policies*, he will be able to use any exemptions in Part VI of the *Financial Promotion Order* that apply to a *contractually based investment*.

...

1.23.3 G The *regulated activities* which are likely to be conducted in the circumstances referred to in *AUTH App 1.23.2G* are:

- (1) giving advice on certain investments (Articles 53 (Advising on investments), 53A (Advising on regulated mortgage contracts) and 56 (Advice on syndicate participation at Lloyd's) of the *Regulated Activities Order*) - for example, where the *financial promotion* is the advice;
- (2) *making arrangements with a view to transactions in investments* (Article 25(1) of the *Regulated Activities Order* (Arranging deals in investments)) or making arrangements with a view to regulated mortgage contracts (Article 25A(2) of the *Regulated Activities Order* (Arranging regulated mortgage contracts)) - for example, where the *person* concerned makes arrangements that are intended to lead to a transaction by a third party; and

- (3) agreeing to carry on either (1) or (2) (Article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity)).
- 1.23.4 G The *guidance* that follows is concerned with the *regulated activities of making arrangements with a view to transactions in and advising on investments*. *Guidance on the regulated activities of making arrangements with a view to and advising on regulated mortgage contracts* is in *AUTH App 4* (Guidance on regulated activities connected with mortgages).
- 1.24.1 G ...
 (1) ...
 (2) is advice on the merits of his (whether as principal or agent) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security* or a ~~*contractually based investment*~~ *relevant investment* or exercising any right conferred by such an *investment* to *buy, sell*, subscribe for or underwrite such an *investment*.
- 1.24.2 G ...
 (1) it must relate to an *investment* which is a *security* or a ~~*contractually based investment*~~ *relevant investment*;
 ...
- 1.25.1 G For the purposes of section 53 of the *Regulated Activities Order*, a *security* or ~~*contractually based investment*~~ *relevant investment* is any one of the following:
 (1) ...
 ...
 (11) ~~*life policies*~~ *contracts of insurance*;
 ...
- 1.25.2 G Article 53 does not apply to advice given on any of the following:
 (1) *deposit* or other *bank* or *building society* accounts;
 (2) ~~contracts of general insurance or of long term insurance which are not *contractually based investments* (for example, most pure term and permanent health insurance);~~ interests under the trusts of an *occupational pension scheme* (but rights under an *occupational pension scheme* that is a *stakeholder pension scheme* will be *securities*).

- (3) mortgages or other loans (but note that advising on *regulated mortgage contracts* is a separate *regulated activity* under Article 53A of the *Regulated Activities Order* - see the *guidance in AUTH App 4 (Regulated activities connected with mortgages)*);
- ...
- (9) ~~interests under the trusts of an *occupational pension scheme* other than a *stakeholder pension scheme*.~~[deleted]
- ...
- 1.26.4 G ...
- (1) ...
- ...
- (5) ~~*contracts of insurance*, which are *contractually based investments* - these are both products and contractual *investments*;~~ so a particular *investment* would include:
- ...
- 1.27.1 G For the purposes of Article 53, advice must be given to or directed at someone who either holds *investments* or is a prospective investor (or their agent). Where the *investment* is a risk only *contract of insurance* such as *house contents insurance*, the *policyholder* or prospective *policyholder* is regarded as an investor.
- ...
- 1.31.4 G ...
- 1.31.5 G Certain of the exclusions in the *Regulated Activities Order* that apply to the *regulated activity* of *advising on investments* are not available where the advice either relates to a *contract of insurance* or amounts to *insurance mediation* or *reinsurance mediation*. This results from the requirements of the *Insurance Mediation Directive* and is explained in more detail in *AUTH App 5 (Insurance mediation activities)*.
- ...
- 1.32.1 G Under Article 25 of the *Regulated Activities Order*, arranging deals in investments covers:
- (1) making arrangements for another *person* (whether as principal or agent) to *buy, sell*, subscribe for or underwrite a particular *investment* which is:
- (a) a *security*; or
- (b) a ~~*contractually based investment*~~ *relevant investment*;
or
- ...
- 1.32.11 G ...

1.32.12 G Where *persons* are making arrangements concerning *contracts of insurance* or are carrying on *insurance mediation or reinsurance mediation*, certain exclusions to Article 25 are not available. This results from the requirements of the *Insurance Mediation Directive* and is explained in more detail in *AUTH App 5.6 (Insurance mediation activities)*The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

1.33.5 G ...

1.33.6 G The exclusions in Articles 29 and 33 of the *Regulated Activities Order* are not available where the *investment* is a *contract of insurance*. However, certain other exclusions do apply. This results from implementation of the requirements of the *Insurance Mediation Directive* and is explained in more detail in *AUTH App 5.6 (Insurance mediation activities)* The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

...

1.36.3 G Table: Controlled activities

1.

...

9. Providing funeral plan contracts (~~with effect from 1 January 2002~~).

10. Providing qualifying credit (~~with effect from a date to be announced~~).

10A. Arranging qualifying credit etc.

10B. Advising on qualifying credit etc.

11. Agreeing to do anything in 3 to 10B above.

Annex E

Amendments to the Authorisation manual

In this Annex, all the text is new text and is not underlined.

After Appendix 4, insert the following new appendix as Appendix 5.

Appendix 5

Guidance on Insurance Mediation Activities

5.1. Application and purpose

Application

5.1.1G This appendix applies principally to any *person* who needs to know whether he carries on *insurance mediation activities* and is thereby subject to *FSA* regulation. As such it will be of relevance among others to:

- (1) insurance brokers;
- (2) insurance advisers;
- (3) *insurance undertakings*; and
- (4) other *persons* involved in the sale and administration of *contracts of insurance*, even where these activities are secondary to their main business.

Purpose of guidance

5.1.2G With effect from 14 January 2005 certain pre-contractual sales and post-contractual administration activities relating to *contracts of insurance* will become regulated by the *FSA* for the first time as part of the implementation by the *United Kingdom* of the *Insurance Mediation Directive (IMD)*.

5.1.3G The *insurance mediation activities* apply to all *contracts of insurance*, but the implementation of the *IMD* brings the mediation of *general insurance contracts* and *pure protection contracts* within the scope of *FSA* regulation for the first time.

5.1.4G The *FSA* already regulates certain activities carried on by intermediaries in relation to *life policies* (see the *guidance* contained in *AUTH 2* (Authorisation and regulated activities)). However, the changes to *FSA* regulation in force from 14 January 2005 will also potentially affect the regulatory position of *firms* already carrying on *regulated activities* in connection with *life policies* including *insurers*. These *firms* should therefore consider whether or not they need to apply for a variation of their *Part IV permission*.

5.1.5G *Insurance mediation activities* will typically be carried out by insurance and reinsurance brokers, financial advisers, agents, consultants and outsourcers. In addition, *persons* whose principal business is not *insurance mediation* may also carry on these activities and will need to consider whether they require *authorisation* or can benefit from an exclusion or exemption.

5.1.6G The purpose of this *guidance* is to help *persons* consider whether they need *authorisation* or a variation of their *Part IV permission*. Businesses new to regulation who act only as introducers of insurance business are directed in particular to *AUTH* App 5.6.2G (Article 25(1): arranging (bringing about) deals in investments) to *AUTH* App 5.6.9G (Exclusion: article 72C provision of information on an incidental basis) and *AUTH* App 5.15.6G (Flow chart: introducers) to help consider whether they require *authorisation*. This *guidance* also explains the availability to *persons* carrying on *insurance mediation activities* of certain exemptions from *FSA* regulation, including the possibility of becoming an *appointed representative* (see *AUTH* App 5.13.1G to *AUTH* App 5.13.6G (Appointed representatives)).

Effect of guidance

5.1.7G This *guidance* is issued under section 157 of the *Act* (Guidance). It is designed to throw light on particular aspects of regulatory requirements, not to be an exhaustive description of a *person's* obligations. If a *person* acts in line with the *guidance* and the circumstances contemplated by it, then the *FSA* will proceed on the footing that the *person* has complied with aspects of the requirement to which the *guidance* relates.

5.1.8G Rights conferred on third parties cannot be affected by *guidance* given by the *FSA*. This *guidance* represents the *FSA's* view, and does not bind the courts, for example, in relation to the enforceability of a contract where there has been a breach of the *general prohibition* on carrying on a *regulated activity* in the *United Kingdom* without *authorisation* (see sections 26 to 29 of the *Act* (Enforceability of Agreements)).

5.1.9G A *person* reading this *guidance* should refer to the *Act* and the various Orders that are referred to in this *guidance*. These should be used to find out the precise scope and effect of any particular provision referred to in this *guidance*. A *person* may need to seek his own legal advice.

5.1.10G The text in *AUTH* App 5.1.2G to *AUTH* App 5.1.6G, *AUTH* App 5.2.6G, *AUTH* App 5.11.2G, *AUTH* App 5.13.5G and *AUTH* App 5.13.6G relates only to the period prior to the implementation of the *Insurance Mediation Directive*, that is before 14 January 2005.

Guidance on other activities

5.1.11G A *person* may wish to carry on activities related to other forms of *investment* in connection with *contracts of insurance*, such as *advising on* and *arranging regulated mortgage contracts*. Such a *person* should also consult the *guidance* in *AUTH 2* (Authorisation and Regulated Activities), *AUTH* App 1 (Financial Promotion and Related Activities) and *AUTH* App 4 (Regulated activities connected with mortgages).

5.2. Introduction

5.2.1G This *guidance* is based on the statutory instruments made as part of implementing the *IMD* in the *United Kingdom*. This legislation includes the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (S.I. 2003/1476), which amends among others the *Regulated Activities Order*, the Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2003/1217), the *Non-Exempt Activities Order* and the *Business Order*. Other legislation that forms the basis of this *guidance* includes the Financial Services and Markets Act 2000 (Exemption) (Amendment) (No.2) Order 2003 (S.I. 2003/1675), the Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2003 (S.I. 2003/1676) and the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (S.I. 2003/1473). For ease of reference, references to the *Regulated Activities Order* below adopt the revised *Regulated Activities Order* numbering indicated in the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003.

Requirement for authorisation or exemption

5.2.2G Any *person* who carries on a *regulated activity* in the *United Kingdom* by way of business must either be an *authorised person* or exempt from the need for *authorisation*. Otherwise, the *person* commits a criminal offence and certain agreements may be unenforceable. *AUTH 2.2* (Authorisation and regulated activities) has further *guidance* on these consequences. To be *authorised*, a *person* must either:

- (1) hold a *Part IV permission* given by the *FSA* (see *AUTH 1.3* (The Authorisation Manual) and *AUTH 3* (Applications for Part IV Permission)); or
- (2) qualify for *authorisation* (see *AUTH 5* (Qualifying for Authorisation under the Act)); for example, if the *person* is an *EEA firm* or a *Treaty firm*.

Questions to be considered to decide if authorisation is required

5.2.3G A *person* who is concerned to know whether his proposed *insurance mediation activities* may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flow chart in *AUTH App 5.15.2G* (Flow chart: regulated activities related to insurance mediation – do you need authorisation?):

- (1) will the activities relate to *contracts of insurance* (see *AUTH App 5.3* (Contracts of insurance))?
- (2) if so, will I be carrying on any *insurance mediation activities* (see *AUTH App 5.5* (The regulated activities: dealing in contracts as agent) to *AUTH App 5.11* (Other aspects of exclusions))?
- (3) if so, will I be carrying on my activities by way of business (see *AUTH App 5.4* (The business test))?

- (4) if so, is there the necessary link with the *United Kingdom* (see *AUTH* App 5.12 (Link between activities and the United Kingdom))?
- (5) if so, will any or all of my activities be excluded (see *AUTH* App 5.3.7G (Connected contracts of insurance) to *AUTH* App 5.3.8G (Large risks); *AUTH* App 5.6.5G (Exclusion: article 72C provision of information on an incidental basis) to *AUTH* App 5.6.23G (Other exclusions); *AUTH* App 5.7.7G (Exclusions); *AUTH* App 5.8.24G (Exclusion: periodical publications, broadcasts and web-sites) to *AUTH* App 5.8.26G (Other exclusions); *AUTH* App 5.11 (Other aspects of exclusions) and *AUTH* App 5.12.9G to *AUTH* App 5.12.10G (Overseas persons))?
- (6) if it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under Part XX of the *Act* (see *AUTH* App 5.14.1G to *AUTH* App 5.14.4G (Professionals))?
- (7) if not, am I exempt as an *appointed representative* (see *AUTH* App 5.13 (Appointed representatives))?
- (8) if not, am I otherwise an *exempt person* (see *AUTH* App 5.14.5G (Other exemptions))?

If a *person* gets as far as question (8) and the answer to that question is “no”, that *person* requires *authorisation* and should refer to *AUTH* 3 (Application for Part IV Permission). The order of these questions considers firstly whether a *person* is carrying on *insurance mediation activities* before dealing separately with the questions "will I be carrying on my activities by way of business?" (3) and "if so, will any or all of my activities be excluded?" (5).

5.2.4G It is recognised pursuant to section 22 of the *Act* that a *person* will not be carrying on *regulated activities* in the first instance, including *insurance mediation activities*, unless he is carrying on these activities by way of business. Similarly, where a *person's* activities are excluded he cannot, by definition, be carrying on *regulated activities*. To this extent, the content of the questions above does not follow the scheme of the *Act*. For ease of navigation, however, the questions are set out in an order and form designed to help *persons* consider more easily, and in turn, issues relating to:

- (1) the new activities;
- (2) the business test; and
- (3) the exclusions.

Approach to implementation of the IMD

5.2.5G The *IMD* imposes requirements upon *EEA States* relating to the regulation of *insurance* and *reinsurance mediation*. The *IMD* defines “insurance mediation” and “reinsurance mediation” as including the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance and reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim (the text of article 2.3

IMD is reproduced in full in *AUTH* App 5.16.2G (Article 2.3 of the Insurance Mediation Directive)).

5.2.6G The *United Kingdom's* approach to implementing the *IMD* by domestic legislation is, in part, through secondary legislation, which will apply pre-existing *regulated activities* (slightly amended) in the *Regulated Activities Order* to the component elements of the *insurance mediation* definition in the *IMD* (see *AUTH* App 5.2.5G and the text of article 2.3 *IMD* in *AUTH* App 5.16.2G (Article 2.3 of the Insurance Mediation Directive)).

5.2.7G The effect of the *IMD* and its implementation described in *AUTH* App 5.2.5G to *AUTH* App 5.2.6G is to vary the application of the existing *regulated activities* set out in *AUTH* App 5.2.8G(1) to (3), (5) and (6), principally by applying these *regulated activities* to *general insurance contracts* and *pure protection contracts* and by making changes to the application of the various exclusions to these *regulated activities*. These *regulated activities* apply prior to 14 January 2005 to qualifying contracts of insurance (as defined by article 3 of the *Regulated Activities Order* and referred to in the *Handbook* as *life policies* (which includes *pension policies*)). The legislation implementing the *IMD* also introduces a new *regulated activity* set out in *AUTH* App 5.2.8G(4), which potentially applies to all *contracts of insurance*.

5.2.8G It follows that each of the *regulated activities* below potentially apply to any *contract of insurance*:

- (1) *dealing in investments as agent* (article 21 (Dealing in investments as agent));
- (2) *arranging (bringing about) deals in investments* (article 25(1) (Arranging deals in investments));
- (3) *making arrangements with a view to transactions in investments* (article 25(2) (Arranging deals in investments));
- (4) *assisting in the administration and performance of a contract of insurance* (article 39A (Assisting in the administration and performance of a contract of insurance));
- (5) *advising on investments* (article 53 (Advising on investments));
- (6) *agreeing to carry on any of the above regulated activities* (article 64 (Agreeing to carry on specified types of activity)).

5.2.9G It is the scope of the *Regulated Activities Order* rather than the *IMD* which will determine whether a *person* requires *authorisation* or exemption. However, the scope of the *IMD* is relevant to the application of certain exclusions under the *Regulated Activities Order* (see, for example, the commentary on article 67 in *AUTH* App 5.11.9G (Activities carried on in the course of a profession or non-investment business)).

Financial promotion

5.2.10G An *unauthorised person* who intends to carry on activities connected with *contracts of insurance* will need to comply with section 21 of the *Act* (Restrictions on financial promotion). This *guidance* does not cover *financial promotions* that relate to *contracts of insurance*. *Persons* should

refer to the general *guidance on financial promotion in AUTH App 1* (Financial promotion and related activities). (See in particular *AUTH App 1.17A* (Financial promotions concerning insurance mediation activities) for information on *financial promotions* that relate to *insurance mediation activities*.)

5.3. Contracts of insurance

5.3.1G A person who is concerned to know whether his proposed activities may require *authorisation* will wish to consider whether those activities relate to *contracts of insurance* or *contracts of reinsurance*, or to *insurance business* or *reinsurance business*, which is the business of effecting or carrying out *contracts of insurance* or *reinsurance* as *principal*.

Definition

5.3.2G The *Regulated Activities Order* does not attempt an exhaustive definition of a ‘contract of insurance’. Instead, article 3(1) of the order (Interpretation) makes some specific extensions and limitations to the general common law meaning of the concept. For example, article 3(1) expressly extends the concept to fidelity bonds and similar contracts of guarantee, which are not contracts of insurance at common law, and it excludes certain *funeral plan contracts*, which would generally be contracts of insurance at common law.

5.3.3G One consequence of this is that common law judicial decisions about whether particular contracts amount to ‘insurance’ or their being effected or carried out amounts to ‘insurance business’ are relevant in defining the scope of the *FSA’s authorisation* and regulatory activities.

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

5.3.5G The *Regulated Activities Order* does not define a *reinsurance* contract. The essential elements of the common law description of a *contract of insurance* are also the essential elements of a *reinsurance* contract. Whilst the *IMD* addresses insurance and *reinsurance* separately, throughout this *guidance* the term ‘contract of insurance’ (italicised or otherwise) also applies to contracts of *reinsurance*.

5.3.6G The *FSA* has consulted (in CP 150 (The Authorisation manual - consultation on draft guidance on the identification of contracts of insurance)) on draft *guidance* describing how the *FSA* identifies *contracts of insurance*.

Connected contracts of insurance

5.3.7G Article 72B of the *Regulated Activities Order* (Activities carried on by a provider of relevant goods or services) excludes from *FSA* regulation certain *regulated activities* carried on by providers of non-motor goods and services related to travel in relation to *contracts of insurance* that satisfy a number of conditions. Details about the scope of this exclusion can be found at *AUTH* App 5.11.13G to *AUTH* App 5.11.15G (Activities carried on by a provider of relevant goods or services).

Large risks

5.3.8G Large risks situated outside the *EEA* are also excluded (described in more detail at *AUTH* App 5.11.16G (Large risks)). The location of the risk or commitment may be determined by reference to the *EEA State* in which the risk is situated, defined in article 2(d) of the Second Non-Life Directive (88/357/EEC) or the *EEA State* of the commitment, defined in article 1(1)(g) of the Consolidated Life Directive (2002/83/EC). Broadly put, this is:

- (1) for insurance relating to buildings and/or their contents, the *EEA State* in which the property is situated;
- (2) for insurance relating to vehicles, the *EEA State* of registration;
- (3) for policies of four months or less duration covering travel or holiday risks, where the *policy* was taken out;
- (4) in all other cases (including those determined by reference to the *EEA State* of the commitment), the *EEA State* where the policyholder has his habitual residence, or if the policyholder is a legal person, where his establishment, to which the contract relates, is situated.

Specified investments

5.3.9G For an activity to be a *regulated activity*, it must be carried on in relation to 'specified investments' (see section 22 of the *Act* Regulated activities) and Part III of the *Regulated Activities Order* (Specified investments)). For the purposes of *insurance mediation activity*, *specified investments* include the following '*relevant investments*' defined in article 3(1) of the *Regulated Activities Order* (Interpretation):

- (1) rights under any *contract of insurance* (see article 75 (Contracts of insurance)); and
- (2) rights to or interests in *life policies* (see article 89 (Rights to or interests in investments)).

'*Relevant investments*' is the term used in articles 21 (Dealing in investments as agent), 25 (Arranging deals in investments) and 53 (Advising on investments) of the *Regulated Activities Order* to help define the types of *investment* to which the activities in each of these articles relate.

5.3.10G A person will have rights under a *contract of insurance* when he is a *policyholder*. The question of whether a person has rights under a *contract of insurance* may require careful consideration in the case of group policies (with reference to the *Glossary* definition of *policyholder*). In the

case, in particular, of *general insurance contracts* and *pure protection contracts*, the existence or otherwise of rights under such policies may be relevant to whether a *person* is carrying on *insurance mediation activities*.

5.3.11G A *person* may also have rights or interests in a *life policy* where he is not a *policyholder*, but this will again depend on the terms of the individual *policy*.

5.4. The business test

5.4.1G A *person* will only need *authorisation* or exemption if he is carrying on a *regulated activity* 'by way of business' (see section 22 of the *Act* (Regulated Activities)).

5.4.2G There is power in the *Act* for the Treasury to specify the circumstances in which a *person* is or is not to be regarded as carrying on *regulated activities* by way of business. The *Business Order* has been made using this power (partly reflecting differences in the nature of the different activities). As such, the business test for *insurance mediation activity* is distinguished from the standard test for 'investment business' in article 3 of the *Business Order*. Under article 3(4) of the *Business Order*, a *person* is not to be regarded as carrying on by way of business any *insurance mediation activity* unless he takes up or pursues that activity for remuneration. Accordingly, there are two principal elements to the business test in the case of *insurance mediation activities*:

(1) does a *person* receive remuneration for these activities?

(2) if so, does he take up or pursue these activities by way of business?

5.4.3G As regards *AUTH* App 5.4.2G(1), the *Business Order* does not provide a definition of 'remuneration', but, in the *FSA's* view, it has a broad meaning and covers both monetary and non-monetary rewards. This is regardless of who makes them. For example, where a *person* pays discounted premiums for his own insurance needs in return for bringing other business to an *insurance undertaking*, the discount would amount to remuneration for the purposes of the *Business Order*. Remuneration can also take the form of an economic benefit which the *person* expects to receive as a result of carrying on *insurance mediation activities*. In the *FSA's* view, the remuneration does not have to be provided or identified separately from remuneration for other goods or services provided. Nor is there a minimum level of remuneration.

5.4.4G As regards *AUTH* App 5.4.2G(2), in the *FSA's* view, for a *person* to take up or pursue *insurance mediation activity* by way of business, he will usually need to be carrying on those activities with a degree of regularity. The *person* will also usually need to be carrying on the activities for commercial purposes. That is to say, he will normally be expecting to gain a direct financial benefit of some kind. Activities carried on out of friendship or for altruistic purposes will not normally amount to a business. However, in the *FSA's* view:

- (1) it is not necessarily the case that services provided free of charge will not amount to a business; for example, advice (including advice available on a website) may be provided free of charge to potential *policyholders* but in the course of a business funded by commission payments; and
- (2) the 'by way of business' test may very occasionally be satisfied by an activity undertaken on an isolated occasion (provided that the activity would be regarded as done 'by way of business' in other respects, for example, because of the size of reward received or its relevance to other business activities).

5.4.5G It follows that whether or not any particular *person* is acting 'by way of business' for these purposes will depend on his individual circumstances. However, a typical example of where the applicable business test would be likely to be satisfied by someone whose main business is not *insurance mediation activities*, is where a *person* recommends or arranges specific insurance *policies* in the course of carrying on that other business and receives a fee or commission for doing so.

5.4.6G Some typical examples of where the business test is unlikely to be satisfied, assuming that there is no direct financial benefit to the arranger, include:

- (1) arrangements which are carried out by a *person* for himself, or for members of his family;
- (2) where employers provide insurance benefits for staff;
- (3) where affinity groups or clubs set up insurance benefits for members.

5.4.7G *AUTH* App 5.4.8G contains a table that summarises the main issues surrounding the business test as applied to *insurance mediation activities* and that may assist *persons* to determine whether they will need *authorisation* or exemption. The approach taken in the table involves identifying factors that, in the *FSA's* view, are likely to play a part in the analysis. Indicators are then given as to the significance of each factor to the *person's* circumstances. By analysing the indicators as a whole, a picture can be formed of the likely overall position. The table provides separate indicators for the two elements of remuneration and by way of business. As a *person* has to satisfy both elements, a clear overall indication against either element being satisfied should mean that the test is failed. This approach cannot be expected to provide a clear conclusion for everyone. But it should enable *persons* to assess the relevant aspects of their activities and to identify where changes could, if necessary, be made so as to make their position clearer. The *person* to whom the indicators are applied is referred to in the table as 'P'.

5.4.8G Table: Carrying on insurance mediation activities 'for remuneration' and 'by way of business'

Carrying on insurance mediation activities 'for remuneration' and 'by way of business'
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'For remuneration'		
Factor	Indicators that P <u>does not</u> carry on activities "for remuneration"	Indicators that P <u>does</u> carry on activities for "for remuneration"
Direct remuneration, whether received from the customer or the insurer/broker (cash or benefits in kind such as tickets to the opera, a reduction in other insurance premiums, a remission of a debt or any other benefit capable of being measured in money's worth)	P does not receive any direct remuneration specifically identified as a reward for his carrying on <i>insurance mediation activities</i> .	P receives direct remuneration specifically identified as being a reward for providing insurance mediation services.
Indirect remuneration (such as any form of economic benefit as may be explicitly or implicitly agreed between P and the insurer/broker or P's customer – including, for example, through the acceptance of P's terms and conditions or mutual recognition of the economic benefit that is likely to accrue to P). An indirect economic benefit can include expectation of making a profit of some kind as a result of carrying on <i>insurance mediation activities</i> as part of other services.	P does not obtain any form of indirect remuneration through an economic benefit other than one which is not likely to have a material effect on P's ability to make a profit from his other activities.	P obtains an economic benefit that: (a) is explicitly or implicitly agreed between P and the insurer/broker or P's customer; and (b) has the potential to go beyond mere cost recovery through fees or other benefits received for providing a package of services that includes <i>insurance mediation activities</i> but where no particular part of the fees is attributable to <i>insurance mediation activities</i> . This could include where <i>insurance mediation activities</i> are likely to: <ul style="list-style-type: none"> • play a material part in the success of P's other business activities or in P's ability to make a profit from them; or

		<ul style="list-style-type: none"> • provide P with a materially increased opportunity to provide other goods or services; or • be a major selling point for P's other business activities; or • be essential for P to provide other goods or services. <p>P charges his customers a greater amount for other goods or services than would be the case if P were not also carrying on <i>insurance mediation activities</i> for those customers and this:</p> <ul style="list-style-type: none"> • is explicitly or implicitly agreed between P and the insurer/broker or P's customer; and • has the potential to go beyond mere cost recovery.
Recovery of costs	P receives no benefits of any kind (direct or indirect) in respect of his <i>insurance mediation activities</i> beyond the reimbursement of his actual costs incurred in carrying on the activity (including receipt by P of a sum equal to the insurance premium that P is to pass on to the <i>insurer</i> or broker).	P receives benefits of any kind (direct or indirect) in respect of his <i>insurance mediation activities</i> which go beyond the reimbursement of his actual costs incurred in carrying on the activity.
"By way of business"		

Factor	Indicators that P <u>does not</u> carry on activities "by way of business"	Indicators that P <u>does</u> carry on activities "by way of business"
Regularity/ frequency	<p>Involvement is one-off or infrequent (for instance, once or twice a year) provided that the transaction(s) is not of such size and importance that it is essential to the success of P's other business activities.</p> <p>Transactions do not result from formal arrangements (for instance, occasional involvement purely as a result of an unsolicited approach).</p>	<p>Involvement is frequent (for instance, once a week).</p> <p>Involvement is infrequent but the transactions are of such size or importance that they are essential to the success of P's other business activities.</p> <p>P has formal arrangements which envisage transactions taking place on a regular basis over time (whether or not such transactions turn out in practice to be regular).</p>
Holding out	P does not hold himself out as providing a professional service that includes <i>insurance mediation activities</i> (by professional is meant not the services of a layman).	P holds himself out as providing a professional service that includes <i>insurance mediation activities</i> .
Relevance to other activities/ business	<p><i>Insurance mediation activities:</i></p> <ul style="list-style-type: none"> • have no relevance to P's other activities; or • have some relevance but could easily be ceased without causing P any difficulty in carrying on his main activities; or <p>would be unlikely to result in a material reduction in income from P's main</p>	<p><i>Insurance mediation activities:</i></p> <ul style="list-style-type: none"> • are essential to P in carrying on his main activities; or • would cause a material disruption to P carrying on his main activities if ceased; or • would be likely to reduce P's income by a material amount.

	activities if ceased.	
Commercial benefit	<p>P receives no direct or indirect pecuniary or economic benefit.</p> <p>P is a layman and acting in that capacity.</p> <p>P would not obtain materially less income from his main activities if they did not include <i>insurance mediation activities</i>.</p>	<p>P receives a direct or indirect pecuniary or economic benefit from carrying on <i>insurance mediation activities</i> – such as a fee, a benefit in kind or the likelihood of materially enhanced sales of other goods or services that P provides.</p> <p>P would obtain materially less income from his main activities if they did not include <i>insurance mediation activities</i>.</p>

5.5. The regulated activities: dealing in contracts as agent

5.5.1G Article 21 of the *Regulated Activities Order* (Dealing in investments as agent) makes dealing in *contracts of insurance* as agent a *regulated activity*. The activity is defined in terms of *buying, selling*, subscribing for or underwriting contracts as agent, that is, on behalf of another. Examples include:

- (1) where an intermediary, by accepting on the *insurance undertaking's* behalf to provide the insurance, commits an *insurance undertaking* to provide insurance for a prospective *policyholder*; or
- (2) where the intermediary agrees, on behalf of a prospective *policyholder*, to *buy* an insurance *policy*.

5.5.2G Intermediaries with delegated authority to bind *insurance undertakings* are likely to be *dealing in investments as agent*. It should be noted, in particular, that this is a *regulated activity*:

- (1) whether or not any advice is given (see *AUTH* App 5.8 (The regulated activities: advising on contracts of insurance)); and
- (2) whether or not the intermediary deals through an *authorised person* (for example, where he instructs another agent who is an *authorised person* to enter into a *contract of insurance* on his *client's* behalf).

5.5.3G There are also certain exclusions which are relevant to whether a *person* is carrying on the activity of *dealing in investments as agent* (see *AUTH* App 5.11 (Other aspects of exclusions)).

- 5.6 The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance
- 5.6.1G Article 25 of the *Regulated Activities Order* (Arranging deals in investments) describes two types of *regulated activities* concerned with arranging deals in respect of *contracts of insurance*. These are:
- (1) *arranging (bringing about) deals in investments* (article 25(1) (Arranging deals in investments));
 - (2) *making arrangements with a view to transactions in investments* (article 25(2) (Arranging deals in investments));
- Article 25(1): arranging (bringing about) deals in investments
- 5.6.2G The activity in article 25(1) is carried on only if the arrangements bring about, or would bring about, the transaction to which the arrangement relates. This is because of the exclusion in article 26 of the *Regulated Activities Order* (Arrangements not causing a deal). Article 26 excludes from article 25(1) arrangements which do not bring about or would not bring about the transaction to which the arrangements relate. In the *FSA*'s view a *person* would bring about a *contract of insurance* if his involvement in the chain of events leading to the *contract of insurance* were important enough that, without it, there would be no *policy*. Examples of this type of activity would include negotiating the terms of the *contract of insurance* on behalf of the *customer* with the *insurance undertaking* and vice versa, or assisting in the completion of a proposal form and sending it to the *insurance undertaking*. Other examples include where an *insurance undertaking* enters into a *contract of insurance* as principal or an intermediary enters into a *contract of insurance* as agent.
- Article 25(2): making arrangements with a view to transactions in investments
- 5.6.3G The activity within article 25(2) contrasts with article 25(1) in that it is not limited by the requirement that the arrangements would bring about the transaction to which they relate.
- 5.6.4G Article 25(2) may, for instance, include activities of *persons* who help potential *policyholders* fill in or check application forms in the context of ongoing arrangements between these *persons* and *insurance undertakings*. A further example of this activity would be a *person* introducing *customers* to an intermediary either for advice or to help arrange an insurance *policy*. The introduction might be oral or written. By contrast, the *FSA* considers that a mere passive display of literature advertising insurance (for example, leaving leaflets advertising insurance in a dentist's or vet's waiting room and doing no more) would not amount to the article 25(2) activity.
- Exclusion: article 72C (Provision of information on an incidental basis)
- 5.6.5G The *Regulated Activities Order* provides an important potential exclusion, however, for *persons* whose principal business is other than *insurance mediation activities*.

- 5.6.6G In broad terms, article 72C of the *Regulated Activities Order* excludes from the activities of *arranging and assisting in the administration and performance of a contract of insurance*:
- (1) activities that consist of the provision of information to the *policyholder* or potential *policyholder*;
 - (2) by a *person* carrying on any profession or business which does not otherwise consist of *regulated activities*;
 - (3) if the provision of information may reasonably be regarded as being incidental to that profession or business.
- 5.6.7G In the *FSA's* view, 'incidental' in this context means that the activity must arise out of, be complementary to or otherwise be sufficiently closely connected with the profession or business. In other words, there must be an inherent link between the activity and the firm's main business. For example, introducing dental insurance may be incidental to a dentist's activities; introducing pet insurance would not be incidental to his activities. In addition, to be considered 'incidental', in the *FSA's* view, the activity must not amount to the carrying on of a business in its own right.
- 5.6.8G This exclusion applies to a *person* whose profession or business does not otherwise consist of *regulated activities*. In the *FSA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. So, the exclusion may be of relevance to *exempt professional firms*. It might also, for example, be relied on by doctors, vets and dentists as well as many businesses in the non-financial sector, even if they have *permission* to carry on *regulated activities* or are *appointed representatives*. This is assuming that their activities for which they are seeking to use the exclusion in article 72C are limited to providing information in a way which is incidental to their main profession or business. The exclusion only extends to information given to the *policyholder* or potential *policyholder* and not to the *insurance undertaking*. An intermediary who forwards a proposal form to an *insurance undertaking* would not be able to take the benefit of the exclusion. Similarly, where a *person* does more than provide information (for example, by helping a potential *policyholder* fill in an application form), he cannot take the benefit of this exclusion. Nor does it cover the activity of advising a customer under article 53 of the *Regulated Activities Order* (Advising on investments).
- 5.6.9G The exclusion will be of assistance to introducers who would otherwise be carrying on the *regulated activity of making arrangements with a view to transactions in investments* (assuming, as mentioned in *AUTH App 5.6.8G*, that they provide information only to *policyholders* or potential *policyholders*, and not to the intermediary or *insurance undertaking* to whom they introduce these *policyholders* or potential *policyholders*). In order to assist such *introducers* determine whether or not they are likely to

require *authorisation*, a simplified flowchart is included in *AUTH* App 5.15.6G (Flow chart: introducers). Introducers may also find the *guidance* at *AUTH* App 5.9.2G (The regulated activities: agreeing to carry on a regulated activity) helpful. *AUTH* App 5.6.17G (Exclusion from article 25(2) for introducing) has *guidance* to assist *persons* determine whether their introducing activities amount to *making arrangements with a view to transactions in investments*.

Exclusion from article 25(2): arrangements enabling parties to communicate

5.6.10G Article 27 of the *Regulated Activities Order* (Enabling parties to communicate) contains an exclusion that applies to arrangements which might otherwise bring within article 25(2) those who merely provide the means by which one party to a transaction (or potential transaction) is able to communicate with other parties. Simply providing the means by which parties to a transaction (or potential transaction) are able to communicate with each other is excluded from article 25(2) only. This will ensure that *persons* such as internet service providers or telecommunications networks are excluded if all they do is provide communication facilities (and these would otherwise be considered to fall within article 25(2)).

5.6.11G In the *FSA*'s view, the crucial element of the exclusion in article 27 is the inclusion of the word 'merely'. When a publisher, broadcaster or internet website operator goes beyond what is necessary for him to provide his service of publishing, broadcasting or otherwise facilitating the issue of promotions, he may well bring himself within the scope of article 25(2). Further detailed *guidance* relating to the scope of the exclusion in article 27 is contained in *AUTH* 2.8.6G(2) (Arranging deals in investments) and *AUTH* App 1.32.6G to *AUTH* App 1.32.11G (Arranging deals in investments).

Exclusion from article 25(2): transactions to which the arranger is a party

5.6.12G Article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party) excludes from the *regulated activities* in article 25(1) and 25(2) arrangements made for or with a view to *contracts of insurance* when:

- (1) the *person* (P) making the arrangements is the only *policyholder*; or
- (2) P, as a result of the transaction, would become the only *policyholder*.

5.6.13G Market makers in traded endowment policies may be able to rely on this exclusion to avoid the need to be *authorised*. They must ensure, however, that where they are carrying on the *regulated activity* of *dealing in investments as principal* (article 14) they are also able to rely on the exclusions in articles 15 or 16 (see the *guidance* in *AUTH* 2.8.4G (Dealing in investments as principal)).

5.6.14G *Insurance undertakings* do not fall within the terms of this exclusion and so will be *arranging contracts of insurance*, in addition to *effecting and carrying out contract of insurance*.

5.6.15G In some cases, a *person* may make arrangements to enter into a *contract of insurance as policyholder* on its own behalf and also arrange that another

person become a *policyholder* under the same *contract of insurance*. If so, the *person* should be aware that the effect of the narrower exclusion in article 28 as part of implementation of the *IMD* is that he may be *arranging* on behalf of the other *policyholder*. This may be relevant, for example, to a *company* which arranges insurance for itself (not *arranging*) as well as other *companies* in a *group* or loan syndicate (potentially *arranging*).

- 5.6.16G The restriction in the scope of article 28 raises an issue where there is a trust with co-trustees, where each trustee will be a *policyholder* with equal rights and obligations. If the activities of one of the trustees include *arranging* in respect of *contracts of insurance*, that trustee could be viewed as *arranging* on behalf of his co-trustees who will also be *policyholders*. Similar issues also arise in respect of trustees *assisting in the administration and performance of a contract of insurance*. The *FSA* is of the view, however, that trustees should not be regarded as carrying on *regulated activities* where they are acting as joint *policyholders* in *arranging* or *assisting in the administration and performance of a contract of insurance*. In this respect, trustees differ from *policyholders* under a group policy, where each *person* covered under the group policy may make claims on the policy in relation to his own risks. In that situation, a *policyholder* who is providing services to other *policyholders* of *arranging* or *assisting in the administration and performance of a contract of insurance* will be carrying on a *regulated activity*.

Exclusion from article 25(2) for introducing

- 5.6.17 G Article 33 of the *Regulated Activities Order* (Introducing) excludes arrangements which would otherwise fall under article 25(2) where:
- (1) they are arrangements under which *persons* will be introduced to another *person*;
 - (2) the *person* to whom introductions are to be made is :
 - (a) an *authorised person*; or
 - (b) an *exempt person* acting in the course of business comprising a *regulated activity* in relation to which he is exempt; or
 - (c) a *person* who is not unlawfully carrying on *regulated activities* in the *United Kingdom* and whose ordinary business involves him in engaging in certain activities; and
 - (3) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to *investments* generally or in relation to any class of *investments* to which the arrangements relate;
 - (4) the arrangements do not relate to transactions relating to *contracts of insurance*.

- 5.6.18 G The effect of *AUTH* App 5.6.17G(4) is that some *persons* who, in making introductions, are *making arrangements with a view to transactions in*

investments under article 25(2) of the *Regulated Activities Order*, cannot use the introducing exclusion. This is if, in general terms, the arrangements for making introductions relate to *contracts of insurance* (AUTH App 5.6.19G has further *guidance* on when arrangements for introductions may be regarded as relating to *contracts of insurance*). However, this does not mean that all introducers whose introductions relate directly or indirectly to *contracts of insurance* will necessarily require *authorisation* if they cannot use the exclusion in article 72C of the *Regulated Activities Order* for merely passing information. For this to be the case, a *person* must first be carrying on the business of *making arrangements with a view to transactions in investments*. In the FSA's view, the following points will be relevant in determining whether this is the case.

- (1) Article 25(2) applies to ongoing arrangements made with a view to transactions taking place from time to time as a result of *persons* having taken part in the arrangements. So, they will not apply to one-off introductions or introductions that are not part of an ongoing pre-existing arrangement between introducer and introducee. An introducer who merely suggests to a *person* that he seeks advice or assistance from an *authorised person* or an *exempt person* with whom the introducer has no pre-existing agreement that anticipates introductions will be made, will not be making arrangements at all. He will simply be offering general advice or information.
- (2) The purpose of the arrangements must be for the *person* who is introduced to, in general terms, enter into a transaction to *buy* or *sell securities* or *relevant investments*. So, arrangements for introducing *persons* for advice only will not be caught (for example, introductions to a financial planner or to the publisher of an investment newsletter). In other cases, it may be likely that transactions will be entered into following the provision of advice. Provided the introducer is completely indifferent as to whether or not a *contract of insurance* may ultimately be bought (or sold) as a result of the advice given to the *person* he has introduced, the introducer will not be *making arrangements with a view to transactions in investments*. This is likely to be the case where the introducer does not receive any pecuniary reward that is linked to the volume of business done as a result of his introductions.

5.6.19G Where a person is *making arrangements with a view to transactions in investments* by way of making introductions, and he is not completely indifferent to whether or not transactions may result, it may still be the case that the exclusion in article 33 will apply. In the FSA's view, this is where:

- (1) the introduction is for independent advice on *investments* generally; and
- (2) the introducer is indifferent as to whether or not a *contract of insurance* may ultimately be bought (or sold) rather than any other type of *investment*.

This is because the arrangements for making introductions do not specifically relate to a *contract of insurance* or to any other type of *investment* but to *investments* generally. Whether or not a *person* is making arrangements for introductions for the purpose of the provision of independent advice on *investments* generally will depend on the facts in any particular case. But, in the *FSA's* view, it is very unlikely that article 33 could apply where introductions are made to a *person* for the purposes of that *person* giving advice on and then *arranging general insurance*.

5.6.20G The table in *AUTH* App 5.6.21G has examples of the application of article 33 to arrangements for making introductions.

5.6.21G Table: application of article 33 to arrangements for making introductions. This table belongs to *AUTH* App 5.6.20G.

Type of introduction	Applicability of exclusion
1 Introductions are purely for the purpose of the provision of independent advice - Introducer is completely indifferent to whether or not transactions take place after advice has been given.	Exclusion not relevant as introducer is not <i>arranging</i> under article 25(2).
2 Introduction is one-off or otherwise not part of pre-existing ongoing arrangements that envisage such introductions being made.	Exclusion not relevant as introducer is not <i>arranging</i> under article 25(2).
3 Introducer is not indifferent to whether or not transactions take place after advice has been given, but is indifferent to whether or not the transactions may involve a <i>contract of insurance</i> .	Exclusion will be available provided the introduction was made with a view to the provision of independent advice on <i>investments</i> generally.
4 Introducer is not indifferent to whether or not transactions take place after advice has been given (for example, because he expects to receive a percentage of the commission), and introductions specifically relate to <i>contracts of insurance</i> .	Exclusion is not available. If introducer is an <i>unauthorised person</i> , he will need <i>authorisation</i> or exemption as an <i>appointed representative</i> . If introducer is an <i>authorised person</i> (such as an IFA introducing to a <i>general insurance</i> broker), he will need to vary his <i>Part IV permission</i> accordingly. If introducer is an <i>appointed representative</i> , he will need to ensure that his agreement covers making such

arrangements.

Exclusion from article 25(2): arrangements for the provision of finance

5.6.22G An *unauthorised person* who makes arrangements with a view to a *person* who participates in the arrangements *buying or selling contracts of insurance* may be excluded from article 25(2) by article 32 of the *Regulated Activities Order* (Provision of finance). This is provided the sole purpose of the arrangements is the provision of finance to enable the *person* to *buy the contract of insurance*. Premium finance companies may be able to rely on this exclusion provided the arrangements they put in place, taken as a whole, have as their sole purpose the provision of finance to fund premiums.

Other exclusions

5.6.23G The *Regulated Activities Order* contains some other exclusions which have the effect of narrowing or limiting the application of *regulated activities* within article 25 by preventing certain activities from amounting to *regulated activities*. These are referred to in *AUTH App 5.11.8G* (Exclusions applying to more than one regulated activity).

5.7. The regulated activities: assisting in the administration and performance of a contract of insurance

5.7.1G The *regulated activity* of *assisting in the administration and performance of a contract of insurance* (article 39A) relates, in broad terms, to activities carried on by intermediaries after the conclusion of a *contract of insurance* and for or on behalf of *policyholders*, in particular in the event of a claim. Loss assessors acting on behalf of *policyholders* in the event of a claim are, therefore, likely in many cases to be carrying on this *regulated activity*. By contrast, claims management on behalf of certain insurers is not a *regulated activity* (see *AUTH App 5.7.7G* (Exclusions)).

5.7.2G Neither assisting in the administration nor assisting in the performance of a contract alone will fall within this activity. Generally, an activity will either amount to assisting in the administration or assisting in the performance but not both. Occasionally, however, an activity may amount to both *assisting in the administration and performance of a contract of insurance*. For example, where a *person* assists a claimant in filling in a claims form, in the *FSA's* view this amounts to assisting in the administration of a *contract of insurance*. In some instances, however, this may also amount to assisting in the performance of a *contract of insurance*. In the *FSA's* view, an example of when a *person* may be assisting in the performance of a contract is where a *person* fills in the whole or a significant part of a claims form on behalf of a claimant. This is because, by helping complete a claims form, a *person* may be assisting the *policyholder* to perform his contractual obligation to notify the *insurance undertaking* in the event of a claim and provide details of the claim in the manner and form required by the contract.

- 5.7.3G Put another way, where an intermediary's assistance in filling in a claims form is material to whether performance takes place of the contractual obligation to notify claims, it is more likely to amount to *assisting in the administration and performance of a contract of insurance*. Conversely, in the FSA's view, a *person* who merely gives pointers about how to fill in the claims form or merely supplies information in support of a claim will not be assisting in the performance of a *contract of insurance*. Instead, the *person* will only be facilitating rather than assisting in the performance of a *contract of insurance*.
- 5.7.4G More generally, an example of an activity that, in the FSA's view, is likely to amount to assisting a *policyholder* in both the administration and the performance of a *contract of insurance* is notifying a claim under a *policy* and then providing evidence in support of the claim, or helping negotiate its settlement on the *policyholder's* behalf. Notifying an *insurance undertaking* of a claim assists the *policyholder* in discharging his contractual obligation to do so (assisting in the performance); providing evidence in support of the claim or negotiating its settlement assists management of the claim (assisting in the administration).
- 5.7.5G On the other hand, where a *person* does no more than advise a *policyholder* generally about making a claim or provide evidence in support of a claim, this is unlikely to amount to both assisting in the administration and performance. Similarly, the mere collection of premiums from *policyholders* is unlikely, without more, to amount to *assisting in the administration and performance of a contract of insurance*. The collection of premiums from customers or clients at the pre-contract stage, however, may amount to *arranging* (see example in AUTH App 5.15.4G (Types of activity – are they regulated activities and, if so, why?)).
- 5.7.6G Where a *person* receives funds on behalf of a *policyholder* in settlement of a claim, in the FSA's view, the act of receipt is likely to amount to assisting in the performance of a contract. By giving valid receipt, the *person* assists the *insurance undertaking* to discharge its contractual obligation to provide compensation to the *policyholder*. He may also be assisting the *policyholder* to discharge any obligations he may have under the contract to provide valid receipt of funds, upon settlement of a claim. Where a *person* provides valid receipt for funds received on behalf of the *policyholder*, he is also likely to be assisting in the administration of a *contract of insurance* (for example, making prior arrangements relating to transmission and receipt of payment).

Exclusions

- 5.7.7G By article 39B of the *Regulated Activities Order* (Claims management on behalf of an insurer etc):
- (1) loss adjusting on behalf of a relevant insurer (see AUTH App 5.7.8G);
 - (2) expert appraisal; and

- (3) managing claims for a relevant insurer;

are also excluded from the *regulated activity of assisting in the administration and performance of a contract of insurance*. This is where the activity is carried on in the course of carrying on any profession or business (see also *AUTH* App 5.14 (Exemptions)). In determining whether they are carrying on the *regulated activity of assisting in the administration and performance of a contract of insurance*, therefore, *persons* should consider whether they are acting on behalf of the relevant insurer and not the *policyholder*.

5.7.8G A 'relevant insurer' for the purposes of article 39B means:

- (1) an *authorised person* who has *permission for effecting and carrying out contracts of insurance*; or
- (2) a member of the Society of Lloyd's or the members of the Society of Lloyd's taken together; or
- (3) an *EEA firm* that is an *insurer*; or
- (4) a reinsurer, being a *person* whose main business consists of accepting risks ceded by a *person* falling under (1), (2) or (3) or a *person* who is established outside the *United Kingdom* and who carries on the activity of *effecting and carrying out contracts of insurance*.

So, a *person* whose activities are excluded under article 12 of the *Regulated Activities Order* (Breakdown insurance) will not be a relevant insurer for these purposes and any *person* who performs loss adjusting or claims management on behalf of such a *person* will not be able to use the exclusion in article 39B.

5.8. The regulated activities: advising on contracts of insurance

5.8.1G Article 53 of the *Regulated Activities Order* (Advising on Investments) makes advising on *contracts of insurance* a *regulated activity*. This covers advice which is both:

- (1) given to a *person* in his capacity as an insured or potential insured, or as agent for an insured or a potential insured; and
- (2) advice on the merits of the insured or his agent:
 - (a) *buying, selling*, subscribing for or underwriting a particular *contract of insurance*; or
 - (b) exercising any right conferred by a *contract of insurance* to *buy, sell*, subscribe for or underwrite a *contract of insurance*.

5.8.2G For advice to fall within article 53, it must:

- (1) relate to a particular *contract of insurance* (that is, one that a *person* may enter into);

- (2) be given to a *person* in his capacity as an investor or potential investor;
- (3) be advice (that is, not just information); and
- (4) relate to the merits of a *person buying, selling*, subscribing for or underwriting (or exercising any right to do so) a *contract of insurance* or rights to or interests in *life policies*.

5.8.3G Each of these aspects is considered in greater detail in the table in *AUTH* App 5.8.5G. Where an activity is identified as not amounting to *advising on investments* it could still form part of another *regulated activity*. This will depend upon whether a *person's* activities, viewed as a whole, amount to *arranging*. Additionally, it should be borne in mind that the provision of advice or information may involve the communication of a *financial promotion* (see *AUTH* App 1 (Financial promotion and related activities)).

Advice must relate to a particular contract of insurance

5.8.4G Advice about *contracts of insurance* will come within the *regulated activity* in article 53 of the *Regulated Activities Order* only if it relates to a particular *contract of insurance*. So, generic or general advice will not fall under article 53. In particular:

- (1) advice would come within article 53 if it took the form of a recommendation that a *person* should *buy* the ABC Insurers motor insurance;
- (2) advice would not relate to a particular contract if it consists of a recommendation only that a *person* should take out insurance of a particular class without identifying any particular *insurance undertaking*, or with ABC Insurers provided that the kind of insurance is not specified (either expressly or by implication): a recommendation only that a *person* should *buy* insurance from ABC Insurers could amount to advice if a specific insurance *policy* would be implied from the context;
- (3) the table in *AUTH* App 5.8.5G identifies several typical recommendations and indicates whether they will be regarded as advice under article 53.

5.8.5G Table: typical recommendations and whether they will be regulated as advice on *contracts of insurance* under article 53 of the *Regulated Activities Order*. This table belongs to *AUTH* App 5.8.4G

Recommendation	Regulated under article 53 or not?
I recommend you take the ABC Insurers motor insurance <i>policy</i>	Yes
I recommend that you take out the GHI Insurers life insurance <i>policy</i>	Yes

Recommendation	Regulated under article 53 or not?
I recommend that you do not take out the ABC Insurers motor insurance <i>policy</i>	Yes
I recommend that you do not take out the GHI Insurers life insurance <i>policy</i>	Yes
I recommend that you take out either the ABC Insurers motor insurance <i>policy</i> or the DEF Insurers motor insurance <i>policy</i>	Yes
I recommend that you take out either the GHI Insurers life insurance <i>policy</i> or the JKL Insurers life insurance <i>policy</i>	Yes
I recommend that you take out (or do not take out) insurance with ABC Insurers	Possibly (depending on whether or not the circumstances relating to the recommendation, including the range of possible products, is such that this amounts to an implied recommendation of a particular <i>policy</i>)
I recommend that you take out (or do not take out) contents insurance	No, unless a specific insurance policy is implied by the context
I recommend that you take out (or do not take out) life insurance	No, unless a specific insurance policy is implied by the context

Advice given to a person in his capacity as an investor or potential investor

5.8.6G For the purposes of article 53, advice must be given to a *person* in his capacity as an investor or potential investor (which, in the context of *contracts of insurance*, will mean as *policyholder* or potential *policyholder*). So, article 53 will not apply where advice is given to *persons* who receive it as:

- (1) an adviser who will use it only to inform advice given by him to others; or
- (2) a journalist or broadcaster who will use it only for journalistic purposes.

5.8.7G Advice will still be covered by article 53 even though it may not be given to any particular *policyholder* (for example, advice given in a periodical publication or on a website).

Advice or information

- 5.8.8G In the *FSA's* view, advice requires an element of opinion on the part of the adviser. In effect, it is a recommendation as to a course of action. Information, on the other hand, involves statements of facts or figures.
- 5.8.9G In general terms, simply giving information, without making any comment or value judgement on its relevance to decisions which a *person* may make, is not advice. In this respect, it is irrelevant that a *person* may be providing information on a single *contract of insurance* or on two or more. This means that a *person* may provide information on a single *contract of insurance* without necessarily being regarded as giving advice on it. *AUTH* App 5.8.11G has *guidance* on the circumstances in which information can assume the form of advice.
- 5.8.10G In the case of article 53, information relating to *buying or selling contracts of insurance* may often involve one or more of the following:
- (1) an explanation of the terms and conditions of a *contract of insurance*, whether given orally or in writing or by providing leaflets and brochures;
 - (2) a comparison of the features and benefits of one *contract of insurance* compared to another;
 - (3) the production of pre-purchase questions for a *person* to use in order to exclude options that would fail to meet his requirements; such questions may often go on to identify a range of *contracts of insurance* with characteristics that appear to meet the *person's* requirements and to which he might wish to give detailed consideration (pre-purchase questioning is considered in more detail in *AUTH* App 5.8.15G to 5.8.19G (Pre-purchase questioning (including decision trees)));
 - (4) tables that compare the costs and other features of different *contracts of insurance*;
 - (5) leaflets or illustrations that help *persons* to decide which type of *contract of insurance* to take out;
 - (6) the provision, in response to a request from a *person* who has identified the main features of the type of *contract of insurance* he seeks, of several leaflets together with an indication that all the *contracts of insurance* described in them have those features.
- 5.8.11G In the *FSA's* opinion, however, such information is likely to take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation. Examples of situations where information provided by a *person* (P) might take the form of advice are given below.
- (1) P may provide information on a selected, rather than balanced and neutral, basis that would tend to influence the decision of a *person*. This may arise where P offers to provide information about *contracts of insurance* that contain features specified by the *person*, but then exercises discretion as to which complying *contract of insurance* to offer to that *person*.

- (2) P may, as a result of going through the sales process, discuss the merits of one *contract of insurance* over another, resulting in advice to enter into a particular one. In contrast, advice on how to complete an application form, without an explicit or implicit recommendation on the merits of *buying* or *selling* the *contract of insurance*, whilst ‘advice’ in the general sense of the word, is not, in the view of the *FSA*, advice within the meaning of article 53. Such advice may, however, amount to *arranging* (for which see *AUTH* App 5.6.1G to 5.6.4G (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance)).

Advice must relate to the merits (of buying or selling a contract of insurance)

- 5.8.12G Advice under article 53 relates to the advantages and disadvantages of *buying, selling*, subscribing for or underwriting a particular *contract of insurance*. It is worth noting that, in this context, ‘*buying*’ and ‘*selling*’ are defined widely under article 3 of the *Regulated Activities Order* (Interpretation). ‘*Buying*’ includes acquiring for valuable consideration, and ‘*selling*’ includes surrendering, assigning or converting rights under a *contract of insurance*.
- 5.8.13G The requirements imposed by the *IMD* (see *AUTH* App 5.2.5G (Approach to implementation of the *IMD*) and the text of article 2.3 *IMD* in *AUTH* App 5.16.1G (Article 2.3 of the Insurance Mediation Directive)) are narrower than the scope of the *Regulated Activities Order* (see *AUTH* App 5.2.7G (Approach to implementation of the *IMD*)). This is that, unlike the *Regulated Activities Order*, they do not relate to the assignment of *contracts of insurance*. This is of relevance to, amongst others, *persons* involved in the ‘second-hand’ market for *contracts of insurance* such as traded endowment policies and certain viatical instruments (that is, arrangements by which a terminally ill person can obtain value from his *life policy*) (see also *AUTH* App 5.6.12G (Exclusion from article 25(2): transactions to which the arranger is a party). *Persons* advising on or arranging assignments of these *contracts of insurance* are therefore potentially carrying on *regulated activities* although they may be able to take the benefit of article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business) in certain circumstances (see *AUTH* App 5.11.9G to 5.11.12G (Activities carried on in the course of a profession or non-investment business)).
- 5.8.14G Generally speaking, advice on the merits of using a particular *insurance undertaking*, broker or adviser in their capacity as such, does not amount to advice for the purpose of article 53. It is not advice on the merits of *buying* or *selling* a particular *contract of insurance* (unless, in the circumstances, the advice amounts to an implied recommendation of a particular *policy*).

Pre-purchase questioning (including decision trees)

- 5.8.15G Pre-purchase questioning involves putting a sequence of questions in order to extract information from a *person* with a view to facilitating the selection by that *person* of a *contract of insurance* or other product that

meets his needs. A decision tree is an example of pre-purchase questioning. The process of going through the questions will usually narrow down the range of options that are available.

5.8.16G A key issue for those *firms* proposing to use pre-purchase questioning is whether the specific questioning used may amount to advice. There are two main aspects:

- (1) advice must relate to a particular *contract of insurance* (see *AUTH* App 5.8.4G (Advice must relate to a particular contract of insurance)); and
- (2) the distinction between information and advice (see *AUTH* App 5.8.8G to *AUTH* App 5.8.11G (Advice or information)).

Whether or not pre-purchase questioning in any particular case is advising on *contracts of insurance* will depend on all the circumstances. The process may involve identifying one or more particular *contracts of insurance*. If so, to avoid advising on *contracts of insurance*, the critical factor is likely to be whether the process is limited to, and likely to be perceived by the *person* as, assisting the *person* to make his own choice of product which has particular features which the *person* regards as important. The questioner will need to avoid providing any judgement on the suitability of one or more products for that *person* and in this respect should have regard to the factors set out in *AUTH* App 5.8.2G to *AUTH* App 5.8.4 G (Advice must relate to a particular contract of insurance) and the table in *AUTH* App 5.8.5G. See also *AUTH* App 5.8.12G to *AUTH* App 5.8.14G (Advice must relate to the merits (of *buying* or *selling* a contract of insurance)) for other matters that may be relevant.

5.8.17G The potential for variation in the form, content and manner of pre-purchase questioning is considerable, but there are two broad types. The first type involves providing questions and answers which are confined to factual matters (for example, the amount of the cover). In the *FSA*'s view, this does not itself amount to advising on *contracts of insurance*, if it involves the provision of information rather than advice. There are various possible scenarios, including the following:

- (1) the questioner may go on to identify one or more particular *contracts of insurance* which match features identified by the pre-purchase questioning; provided these are selected in a balanced and neutral way (for example, they identify all the matching *contracts of insurance* available without making a recommendation as to a particular one) this need not involve advising on *contracts of insurance*;
- (2) the questioner may go on to advise a *person* on the merits of one particular *contract of insurance* over another; this would be advising on *contracts of insurance*.

5.8.18G The second type of pre-purchase questioning involves providing questions and answers incorporating opinion, judgement or recommendation. There are various possible scenarios, including the following:

- (1) the pre-purchase questioning may not lead to the identification of any particular *contract of insurance*; in this case, the questioner has

provided advice, but it is generic advice and does not amount to advising on *contracts of insurance*;

- (2) the pre-purchase questioning may lead to the identification of one or more particular *contracts of insurance*; the key issue then is whether the advice can be said to relate to a particular *contract of insurance* (see further *AUTH* App 5.8.4G (Advice must relate to a particular contract of insurance)).

5.8.19G In the case of *AUTH* App 5.8.18G(2) and similar scenarios, the *FSA* considers that it is necessary to look at the process and outcome of pre-purchase questioning as a whole. It may be that the element of advice incorporated in the questioning can properly be viewed as generic advice if it were considered in isolation. But although the actual advice may be generic, the process has ended in identifying one or more particular *contracts of insurance*. The combination of the generic advice and the identification of a particular or several particular *contracts of insurance* to which it leads may well, in the *FSA*'s view, cause the questioner to be advising on *contracts of insurance*. Factors that may be relevant in deciding whether the process involves advising on *contracts of insurance* may include:

- (1) any representations made by the questioner at the start of the questioning relating to the service he is to provide;
- (2) the context in which the questioning takes place;
- (3) the stage in the questioning at which the opinion is offered and is significant;
- (4) the role played by the questioner who guides a *person* through the pre-purchase questions;
- (5) the outcome of the questioning (whether particular *contracts of insurance* are highlighted, how many of them, who provides them, their relationship to the questioner and so on);
- (6) whether the pre-purchase questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party, and all that the questioner has done is help the *person* understand what the questions or options are and how to determine which option applies to his particular circumstances.

Medium used to give advice

5.8.20G With the exception of:

- (1) periodicals, broadcasts and other news or information services (see *AUTH* App 5.8.24G to *AUTH* App 5.8.25G (Exclusion: periodical publications, broadcasts and web-sites)); and
- (2) situations involving an overseas element (see, generally, *AUTH* App 5.12 (Link between activities and the United Kingdom) and, in particular, *AUTH* App 5.12.8G (Where is insurance mediation carried on?));

the use of the medium itself to give advice should make no material difference to whether or not the advice is caught by article 53.

- 5.8.21G Advice can be provided in many ways including:
- (1) face to face;
 - (2) orally to a group;
 - (3) by telephone;
 - (4) by correspondence (including e-mail);
 - (5) in a publication, broadcast or web-site; and
 - (6) through the provision of an interactive software system.
- 5.8.22G Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problem. The same principles apply as with a paper version (see *AUTH* App 5.8.15G to *AUTH* App 5.8.19G (Pre-purchase questioning (including decision trees))).
- 5.8.23G Advice in publications, broadcasts and web-sites is subject to a special regime (see *AUTH* App 5.8.24G (Exclusion: periodical publications, broadcasts and web-sites) and *AUTH* 7 (Periodical publications, news services and broadcasts: applications for certification).
- Exclusion: periodical publications, broadcasts and web-sites
- 5.8.24G An important exclusion from advising on *contracts of insurance* relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54 of the *Regulated Activities Order* (Advice given in newspapers etc)). The exclusion applies if the principal purpose of the publication or service taken as a whole (including any advertising content) is neither to give advice of a kind mentioned in article 53 (Advising on investments) or article 53A (Advising on regulated mortgage activities) nor to lead or enable *persons* to *buy, sell*, subscribe for or underwrite *relevant investments* or, as borrower, to enter into or vary the terms of a *regulated mortgage contract*.
- 5.8.25G This is explained in greater detail, together with the provisions on the granting of certificates by the *FSA* on the application of the proprietor of a periodical publication or news or information service or broadcast, in *AUTH* 7 (Periodical publications, news services and broadcasts: applications for certification).
- Other exclusions
- 5.8.26G The *Regulated Activities Order* contains other limited exclusions which have the effect of preventing certain activities from amounting to advice on *contracts of insurance*. These are referred to in *AUTH* App 5.11.8G (Exclusions applying to more than one regulated activity) to *AUTH* App 5.11.16G (Large risks).
- 5.9 The Regulated Activities: agreeing to carry on a regulated activity

5.9.1G Under article 64 of the *Regulated Activities Order* (Agreeing to carry on specified kinds of activity), in addition to the *regulated activities* of:

- (1) *dealing in investments as agent*;
- (2) *arranging (bringing about) deals in investments*;
- (3) *making arrangements with a view to transactions in investments*;
- (4) *assisting in the administration and performance of a contract of insurance*; and
- (5) *advising on investments*;

agreeing to do any of these things is itself a *regulated activity*. In the *FSA*'s opinion, this activity concerns the entering into of a legally binding agreement to provide the services to which the agreement relates. So, a *person* is not carrying on a *regulated activity* under article 64 merely because he makes an offer to do so.

5.9.2G To the extent that an exclusion applies in relation to a *regulated activity*, 'agreeing' to carry on an activity within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order* (Specified activities: general). So, for example, a vet can, without carrying on a *regulated activity*, enter into an agreement with an *insurance undertaking* to distribute marketing literature provided that the vet can rely on the exclusion in article 72C (Provision of information on an incidental basis) in relation to the activity of distributing the literature (see also *AUTH* App 5.6.6G and *AUTH* App 5.6.9G (Exclusion: article 72C (Provision of information on an incidental basis))). However, to be able to rely on the exclusion in article 72C, the vet must not be viewed as providing information to the *insurance undertaking*. More specifically, an unauthorised *introducer* can enter into standing arrangements with *insurance undertakings* or brokers to make introductions, provided that these arrangements do not envisage subsequent provision of information to these *insurance undertakings* or brokers with a view to *arranging (bringing about) deals in investments* or *making arrangements with a view to transactions in investments*.

5.10 Renewals

5.10.1G It must be emphasised that activities which concern invitations to renew *policies* and the subsequent effecting of renewal of *policies* are likely to fall within *insurance mediation activity*. Those considering the need for *authorisation* or variation of their *permissions* will wish to consider whether a process of tacit renewal operates: that is, where a *policyholder* need take no action if he wishes to maintain his insurance cover by having his *policy* 'renewed'. This process will typically result in the issue of a new *contract of insurance*, not an extension of the period of the existing one. It may involve the activities of *advising on investments*, *arranging* and *dealing in investments as agent*. More specifically, preparing a 'tacit renewal' letter on behalf of an *insurance undertaking* is likely to amount to *arranging*. Where it contains a recommendation to renew existing cover this is likely to constitute *advising on investments* (under article 53

of the *Regulated Activities Order*. If the contract takes effect on the date stipulated in the renewal letter, a contract is concluded with the effect that the letter writer may be *dealing in investments as agent*. The process may also involve a regulated activity under article 64 (*Agreeing to carry on a regulated activity*).

5.11 Other aspects of exclusions

5.11.1G This part of the *guidance* deals with:

- (1) exclusions which are disapplied where the *regulated activity* relates to *contracts of insurance*;
- (2) exclusions which are disapplied where a *person* carries on *insurance mediation*;
- (3) the following exclusions applying to more than one *regulated activity*:
 - (a) activities carried on in the course of a profession or non-investment business (article 67 (Activities carried on in the course of a profession or non-investment business));
 - (b) activities carried on by a provider of relevant goods or services (article 72B (Activities carried on by a provider of relevant goods or services)); and
 - (c) *large risks* (article 72D (Large risks contracts where risk situated outside the EEA)).

5.11.2G There are a number of 'pre-*IMD*' exclusions that have the effect of restricting the scope of the *regulated activities* referred to in this *guidance*. Several of these are disapplied or modified as part of implementation of the *IMD*.

Exclusions disapplied where activities relate to contracts of insurance

5.11.3G The exclusions outlined in (1) to (7) have been available to intermediaries (and in some cases *insurance undertakings*) acting in connection with *life policies*. In essence, however, from 14 January 2005 the following exclusions do not apply if they concern transactions relating to *contracts of insurance*:

- (1) *dealing in investments as agent* with or through *authorised persons* (article 22 of the *Regulated Activities Order* (Deals with or through authorised persons));
- (2) *arranging* transactions to which the *arranger* is to be a party, where the *arranger* enters into or is to enter into the transaction:
 - a) as agent for another *person*; or
 - b) as *principal*, unless the *arranger* is the only *policyholder* or will, as a result of the transaction, become the only *policyholder* (article 28 (Arranging transactions to which the arranger is a party));

- (3) arranging deals with or through *authorised persons* (article 29 (Arranging deals with or through authorised persons));
- (4) introducing (article 33 (Introducing));
- (5) activities carried on in connection with the sale of goods and supply of services (article 68 (Activities carried on in connection with the sale of goods and supply of services));
- (6) *groups* and *joint enterprises* (article 69 (Groups and joint enterprises)) (see *AUTH* App 5.11.6G); and
- (7) activities carried on in connection with the sale of a *body corporate* (article 70 (Activities carried on in connection with the sale of a body corporate)).

5.11.4G It follows from the restrictions placed on the exclusions listed in *AUTH* App 5.11.3G that, as of 14 January 2005:

- (1) *unauthorised persons* who:
 - (a) introduce clients or customers to an independent financial adviser with a view to a transaction;
 - (b) deal as agent on behalf of their clients or customers with or through an *authorised person*; or
 - (c) arrange for their clients or customers to enter into a transaction with or through an *authorised person*,

will not be able to rely on articles 29 or 33 to avoid the need for *authorisation* where the transaction relates to a *contract of insurance*;
- (2) *unauthorised persons* may, however, be able to rely on the exclusion for the provision of information on an incidental basis in article 72C to continue to avoid the need for *authorisation* (see *AUTH* App 5.6.5G to *AUTH* App 5.6.9G (Exclusion: article 72C (Provision of information on an incidental basis)));
- (3) *authorised persons* who themselves introduce clients or customers to others for the purposes of *buying* or *selling* any kind of *contract of insurance* are likely to require a variation of their *Part IV permission*, as neither article 33 nor generally, article 72C (see *AUTH* App 5.6.5G to *AUTH* App 5.6.9G (Exclusion: article 72C (Provision of information on an incidental basis))) will apply where this activity amounts to *arranging*.

5.11.5G *Insurance undertakings* are referred to *PRU* 9.4 (Insurance undertakings and mortgage lenders using insurance or mortgage mediation services) as regards their obligations relating to the use of intermediaries generally.

5.11.6G The removal of the exclusion for *groups* and *joint enterprises* in article 69 of the *Regulated Activities Order* (Groups and joint enterprises) may have implications for *companies* providing services for:

- (1) other members of its *group*; or
- (2) other participants in a *joint enterprise* of which it is a participant.

Such *companies* might typically provide risk or treasury management or administration services which may include *regulated activities* relating to a *contract of insurance*. If so, such *companies* will need *authorisation* or exemption if they conduct the activities by way of business (see *AUTH* App 5.4 (The business test)). This is unless another exclusion applies.

Exclusions disapplied in connection with insurance mediation

5.11.7G Article 4(4A) of the *Regulated Activities Order* (Specified activities: general) disapplies certain exclusions where a *person*, for remuneration, takes up or pursues *insurance mediation* (as defined in article 2.3 of the *IMD* (see *AUTH* App 5.2.5G (Approach to implementation of the *IMD*) and *AUTH* App 5.16.2 (Article 2.3 of the Insurance Mediation Directive)) in relation to a risk or commitment located in an *EEA* state. The relevant exclusions which are disapplied are:

- (1) arrangements in connection with lending on the security of insurance policies (article 30 of the *Regulated Activities Order* (Arranging transactions in connection with lending on the security of insurance policies));
- (2) activities carried on by trustees, nominees and personal representatives (article 66 (Trustees, nominees and personal representatives)); and
- (3) activities carried on in the course of a profession or non-investment business (article 67 (Activities carried on in the course of a profession or non-investment business)) (This exclusion is considered in further detail in *AUTH* App 5.11.9G to 5.11.12G (Activities carried on in the course of a profession or non-investment business)).

Exclusions applying to more than one regulated activity

5.11.8G Chapter XVII of the *Regulated Activities Order* (Exclusions applying to several specified kinds of activity) contains various exclusions applying to several kinds of activity. Three exclusions of relevance in relation to *contracts of insurance* are dealt with in this section and a fourth, *overseas persons*, in *AUTH* App 5.12 (Link between activities and the United Kingdom).

Activities carried on in the course of a profession or non-investment business

5.11.9G Article 67 excludes from the activities of *dealing as agent, arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments* and *advising on investments*, any activity which:

- (1) is carried on in the course of carrying on any profession or business which does not otherwise consist of the carrying on of *regulated activities* in the *United Kingdom*; and
- (2) may reasonably be regarded as a necessary part of other services provided in the course of that profession or business.

In the *FSA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business.

- 5.11.10G Although the article 67 exclusion is disapplied (by article 4(4A) of the *Regulated Activities Order* (Specified investments: general)) when a *person* takes up or pursues *insurance mediation* or *reinsurance mediation* as defined by articles 2.3 and 2.5 of the *IMD*, there may be cases where a *person* is not carrying on activities that amount to *insurance mediation*. For example, where a *person's* activities amount simply to the provision of information on an incidental basis in the context of another professional activity, these may fall outside the scope of article 2.3 *IMD* (see *AUTH* App 5.16.2G (Article 2.3 of the Insurance Mediation Directive)) and the exclusion in article 67 may then operate to exclude these activities. Also, it is possible that a professional *person's* activities may not amount to a *regulated activity* at all. For example, a doctor who provides a medical report to an *insurer* may be regarded as making arrangements with a view to providing an expert medical opinion rather than with a view to transactions in *contracts of insurance*. In such cases, article 67 will not be needed.
- 5.11.11G Article 67 may also apply to activities relating to assignments of insurance policies, as, in the *FSA's* view, article 2.3 of the *IMD* applies essentially to the creation of new *contracts of insurance* and not the assignment of rights under existing policies. As such, where a solicitor or licensed conveyancer arranges an assignment of a *contract of insurance*, the exclusion in article 67 remains of potential application. For similar reasons, trustees advising on or arranging assignments of *contracts of insurance* may, in certain circumstances, be able to rely on the exclusions in article 66 of the *Regulated Activities Order*.
- 5.11.12G For article 67 to apply in these cases, in addition to *AUTH* App 5.11.9G(1) and (2), the activity in question must not be remunerated separately from other services (article 67(2) of the *Regulated Activities Order*).

Activities carried on by a provider of relevant goods or services

- 5.11.13G Article 72B (see also *AUTH* App 5.3.7G (Connected contracts of insurance)) may be of relevance to *persons* who supply non-motor goods or provide services related to travel in the course of carrying on a profession or business which does not otherwise consist of carrying on *regulated activities*. In the *FSA's* view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. For example, a travel agent might carry on *insurance mediation activities* in

relation to some *contracts of insurance* that satisfy the conditions of the article 72B and some that do not. The former contracts will be excluded from regulation even though the travel agent must seek *authorisation* or become an *appointed representative* to be permitted to *sell* the latter contracts. The exclusion applies to *insurance mediation activities* when carried on in relation to 'connected contracts of insurance'. In broad terms, a 'connected contract of insurance' is a *contract of insurance* which:

- (1) is not a contract of long-term insurance (as defined by article 3 of the *Regulated Activities Order* (Interpretation));
- (2) has a total duration (including rights to renewal) of five years or less;
- (3) has an annual premium (or the equivalent of annual premium) of €500 or less;
- (4) covers the risk of:
 - (a) breakdown, loss of, or damage to, non-motor goods supplied by the provider; or
 - (b) damage to, or loss of, baggage and other risks linked to travel booked with the provider ('travel risks');
- (5) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract);
- (6) is complementary to the non-motor goods being supplied or service being provided by the provider; and
- (7) is of such a nature that the only information that a *person* requires in order to carry on one of the *insurance mediation activities* is the cover provided by the contract.

5.11.14G In the *FSA's* view, the liability risks referred to in *AUTH* App 5.11.13G(5) cover risks in relation to liabilities that the *policyholder* might have to others (that is, third party claims). Many *policies* will provide this sort of cover and so fall outside the scope of the exclusion. For example, a *policy* that covers the cost of unauthorised calls made when a mobile telephone is stolen includes 'liability risks' and would not be a 'connected contract of insurance'. By contrast, travel *policies* which provide cover in respect of the *policyholder's* personal liability while travelling may fall within the exclusion by virtue of *AUTH* App 5.11.13G(5), where sold as part of a package by travel agents and other providers of services related to travel.

5.11.15G In the *FSA's* view, the condition in *AUTH* App 5.11.13G(7) is likely to be satisfied where the *insurance mediation activities* relate to a standard form *contract of insurance*, the terms of which (other than the cost of the premium) are not subject to negotiation.

Large risks

5.11.16G Article 72D (Large risks contracts where risk situated outside the EEA) provides an exclusion for large risks situated outside the *EEA*. Broadly speaking, these are risks relating to:

- (1) railway rolling stock, aircraft, ships, goods in transit, aircraft liability and shipping liability;
- (2) credit and suretyship where relating to the *policyholder's* commercial or professional liability;
- (3) risks relating to land vehicles, fire and natural forces, property damage, motor vehicle liability;
- (4) certain financial loss where the *policyholder* is a business of a certain size.

For a fuller definition of *contracts of large risks* see the definition in the *Glossary*.

5.12 Link between activities and the United Kingdom

Introduction

5.12.1G Section 19 of the *Act* (The general prohibition) provides that the requirement to be *authorised* under the *Act* only applies in relation to *regulated activities* which are carried on 'in the *United Kingdom*'. In many cases, it will be quite straightforward to identify where an activity is carried on. But, when there is a cross-border element, for example because a *customer* is outside the *United Kingdom* or because some other element of the activity happens outside the *United Kingdom*, the question may need careful consideration. *AUTH* App 5.15.8G (Flow chart: am I carrying on regulated activities in the United Kingdom?) has a flow chart setting out the questions a *person* needs to consider in determining whether or not his *regulated activities* are carried on 'in the *United Kingdom*'.

5.12.2G Even if a *person* concludes that he is not carrying on a *regulated activity* in the *United Kingdom*, he will need to ensure that he does not contravene other provisions of the *Act* that apply to *unauthorised persons*. These include the controls on *financial promotion* (section 21 (Financial promotion) of the *Act*) (see *AUTH* App 1 (Financial promotion and related activities)), and on giving the impression that a *person* is *authorised* (section 24 (False claims to be authorised or exempt)).

5.12.3G The table in *AUTH* App 5.12.4G is a very simplified summary of territorial issues relating to overseas insurance intermediaries carrying on the business of *insurance mediation activities* in or into the *United Kingdom* for remuneration.

5.12.4G Table: territorial issues relating to overseas insurance intermediaries carrying on insurance mediation activities in or into the United Kingdom

	Needs Part IV permission	Schedule 3 EEA passport rights available	Overseas persons exclusion available
Registered <i>EEA</i> -based intermediary with <i>UK</i> branch	No	Yes	No

	Needs Part IV permission	Schedule 3 EEA passport rights available	Overseas persons exclusion available
(registered office or head office in another <i>EEA State</i>)			
Registered <i>EEA</i> -based intermediary with no <i>UK</i> branch providing <i>cross-border services</i>	No	Yes	Potentially available [see Note 1]
Third country intermediary operating from branch in <i>UK</i>	Yes	No	No
Third country intermediary providing services in (or into) <i>UK</i>	Yes unless <i>overseas persons</i> exclusion applies	No	Potentially available

Note 1. This does not, however, affect the *firm's authorisation* under Schedule 3 to the *Act* (see *AUTH* App 5.12.13G to *AUTH* App 5.12.14G (Passporting)).

Where are insurance mediation activities carried on?

- 5.12.5G *Persons* carrying on *insurance mediation activities* from a registered office or head office in the *United Kingdom* will clearly be carrying on *regulated activities* in the *United Kingdom*. However, a *person* may be considered to be carrying on *regulated activities* in the *United Kingdom* even where not carrying on the activity from a registered office or head office in the *United Kingdom*. This is explained further in *AUTH* App 5.12.5G to *AUTH* App 5.12.7G.
- 5.12.6G In determining the location of an activity, and hence whether it is carried on in the *United Kingdom*, various factors need to be taken into account in turn, notably:
- (1) section 418 of the *Act* (Carrying on regulated activities in the United Kingdom);
 - (2) the nature of the activity; and
 - (3) the *overseas persons* exclusion (see *AUTH* App 5.12.9G to *AUTH* App 5.12.10G (Overseas persons)).
- 5.12.7G Section 418 of the *Act* extends the meaning that ‘carry on regulated activity in the United Kingdom’ would normally have by setting out additional cases in which a *person* who would not otherwise be regarded as carrying on the activity in the *United Kingdom* is to be regarded as doing so. Each of the following cases thus amounts to carrying on a *regulated activity* in the *United Kingdom*:
- (1) where a *UK*-based *person* carries on a *regulated activity* in another *EEA State* in the exercise of rights under a *Single Market Directive*;

- (2) where a UK-based *person* carries on a *regulated activity* and the day-to-day management of the activity is the responsibility of an establishment in the *United Kingdom*;
- (3) where a *regulated activity* is carried on by a *person* who is not based in the *United Kingdom* but is carried on from an establishment maintained by him in the *United Kingdom*;
- (4) where an *electronic commerce activity* is carried on with or for a *person* in an *EEA State* from an establishment in the *United Kingdom*.

In each of these cases it is irrelevant where the *person* with whom the activity is carried on is situated.

- 5.12.8G Otherwise, where the cases in *AUTH* App 5.12.7G (1) to (4) do not apply, it is necessary to consider further the nature of the activity in order to determine where *insurance mediation* is carried on. *Persons* that arrange *contracts of insurance* will usually be considered as carrying on the activity of *arranging* in the location where these activities take place. As for dealing activities, the location of the activities will depend on factors such as where the acceptance takes place, which in turn will depend on the method of communication used. In the case of advising, this is generally considered to take place where the advice is received.

Overseas persons

- 5.12.9G Article 72 of the *Regulated Activities Order* (Overseas persons) provides a potential exclusion for *persons* with no permanent place of business in the *United Kingdom* from which *regulated activities* are conducted or offers to conduct *regulated activities* are made. Where these *persons* carry on *insurance mediation activities* in the *United Kingdom*, they may be able to take advantage of the exclusions in article 72 of the *Regulated Activities Order*. In general terms, these apply where the *overseas person* either:

- (1) deals or arranges deals with or through *authorised* or exempt *persons* only; or
- (2) enters into deals with (or on behalf of) a *person* in the *United Kingdom* or gives advice on investments in the *United Kingdom*, in each case as a result of a 'legitimate approach'.

A 'legitimate approach', for the purposes of (2), is one that results from an unsolicited approach by a *person* (for example, a *customer*) or otherwise is a result of an approach by, or on behalf of, an *overseas person* which complies with the restriction on *financial promotion* under section 21 of the *Act* (see *AUTH* App 1.3.1G (Financial promotion)).

- 5.12.10G The *overseas person* exclusion is available to *persons* who do not have a permanent place of business in the *United Kingdom* and so is of relevance to third country intermediaries (that is, non *EEA*-based intermediaries) who carry on *insurance mediation activities* in, or into, the *United Kingdom* (for example with or through *authorised* insurance brokers and *insurance undertakings* operating in the Lloyd's market).

How should persons be authorised?

5.12.11G *UK-based persons* must obtain *Part IV permission* in relation to their *insurance mediation activities* in the *United Kingdom* as one of the following:

- (1) a *body corporate* whose registered office is situated in the *United Kingdom*;
- (2) a *partnership* or unincorporated association whose head office is situated in the *United Kingdom*;
- (3) an individual (that is, a sole trader) whose residence is situated in the *United Kingdom*.

The *United Kingdom* will, in each case, be the *Home State* for the purposes of the *IMD* for insurance or reinsurance intermediaries (see further in connection with the *E-Commerce Directive* in *AUTH* App 5.12.15G to *AUTH* App 5.12.17G (*E-Commerce Directive*)).

5.12.12G Non-*UK-based persons* wishing to carry on *insurance mediation activities* in the *United Kingdom* must:

- (1) qualify for *authorisation* by exercising passport rights (see section 31 (Authorised persons) and schedule 3 (EEA passport rights) to the *Act* and *AUTH* App 5.12.13G to *AUTH* App 5.12.14G (Passporting)); or
- (2) make use of the *overseas persons* exclusion (which then has the effect that activities are deemed not to be *regulated activities* carried on in the *United Kingdom*); or
- (3) seek *Part IV permission*.

Passporting

5.12.13G The effect of the *IMD* is that any *EEA-based insurance intermediaries* must first be registered in their home *EEA State* before carrying on *insurance mediation* in that *EEA State* or other *EEA States*. For these purposes, an *EEA-based insurance intermediary* is either:

- (1) a legal *person* with its registered office or head office in an *EEA State* other than the *United Kingdom*; or
- (2) a natural *person* resident in an *EEA State* other than the *United Kingdom*.

Registered *EEA-based insurance intermediaries* wishing to establish branches in the *United Kingdom* or provide services on a cross-border basis into the *United Kingdom* can do so by notifying their *Home State regulator* which in turn notifies the *FSA*. This enables the intermediary to acquire passporting rights under Schedule 3 to the *Act* (EEA passporting rights) (see Schedule 3(13) and (14) of the *Act* as amended by the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003). *AUTH* 5 (Qualifying for authorisation under the Act) has general guidance on the exercise of passporting rights by *EEA firms*.

5.12.14G On the other hand, non-*EEA-based insurance intermediaries* wishing to establish a branch in the *UK* for the purpose of carrying on *insurance mediation activities* may only do so with *Part IV permission*.

E-Commerce Directive

- 5.12.15G The *E-Commerce Directive* removes restrictions on the cross-border provision of services by electronic means, introducing a *country of origin* approach to regulation. This requires *EEA States* to impose certain requirements on the outward provision of such services and to lift them from inward providers. The *E-Commerce Directive* defines an e-commerce service (termed an *information society service*) as any service, normally provided for remuneration, at a distance, by electronic means, and at the individual request of the recipient of the service. So, for example, it includes services provided over the internet, by solicited e-mail, and interactive digital television. Further *guidance* is contained in *ECO*.
- 5.12.16G The *E-Commerce Directive* does not remove the *IMD* requirement for persons taking up or pursuing *insurance mediation* for remuneration to be registered in their *Home State*. Nor does it remove the requirement for *EEA*-based intermediaries to acquire passporting rights in order to establish branches in the *United Kingdom* (see *AUTH* App 5.12.7G (Where is insurance mediation carried on?) in relation to *electronic commerce activity* carried on from an establishment in the *United Kingdom*) or provide services on a cross-border basis into the *United Kingdom* where the relevant activity is carried on in the *United Kingdom*. An example of *electronic commerce activity* provided on a cross-border basis into the *United Kingdom* could be a recommendation in a (solicited) e-mail from an *EEA*-based intermediary to a *UK*-based customer to *buy* a particular *contract of insurance*.
- 5.12.17G Put shortly, the *E-Commerce Directive* relates to services provided into the *United Kingdom* from other *EEA States* and from the *United Kingdom* into other Member States. In broad terms, such cross-border insurance mediation services provided by an *EEA firm* into the *United Kingdom* (via *electronic commerce activity* or distance means) will generally be subject to *IMD* registration in, and conduct of business regulation of, the intermediary's *EEA State* of origin. By contrast, insurance mediation services provided in the *United Kingdom* will be subject to *UK* conduct of business regulation, although the requirement for registration will again depend upon the intermediary's *EEA State* of origin.
- 5.13 Appointed representatives
- What is an appointed representative?
- 5.13.1G Section 39 of the *Act* (Exemption of appointed representatives) exempts *appointed representatives* from the need to obtain *authorisation*. An *appointed representative* is a *person* who is party to a contract with an *authorised person* which permits or requires him to carry on certain *regulated activities* (see *Glossary* for full definition). *SUP 12* (Appointed representatives) contains *rules* and *guidance* relating to *appointed representatives*.

5.13.2G A *person* who is an *authorised person* cannot be an *appointed representative* (see section 39(1) of the *Act* (Exemption of appointed representatives)).

Business for which an appointed representative is exempt

5.13.3G An *appointed representative* can carry on only those *regulated activities* which are specified in the *Appointed Representatives Regulations*. With effect from 14 January 2005, the *regulated activities* set out in the table in *AUTH App 5.13.4G* will be included in those regulations. As set out in the table, the *insurance mediation activities* that can be carried on by an *appointed representative* differ depending on the type of *contracts of insurance* in relation to which the activities are carried on.

5.13.4G Table: insurance mediation activities able to be carried on by an appointed representative. This table belongs to 5.13.3G

Type of contract of insurance	Regulated activities an appointed representative can carry on
<i>General insurance contract</i>	<ul style="list-style-type: none"> • <i>Dealing in investments as agent;</i> • <i>Arranging;</i> • <i>Assisting in the administration and performance of a contract of insurance;</i> • <i>Advising on investments;</i> and • <i>Agreeing to carry on these regulated activities</i>
<i>Pure protection contract</i>	<ul style="list-style-type: none"> • <i>Arranging;</i> • <i>Advising on investments;</i> and • <i>Agreeing to carry on these regulated activities.</i>
<i>Life policy</i> (note that this already has effect prior to 14 January 2005)	<ul style="list-style-type: none"> • <i>Arranging;</i> • <i>Advising on investments;</i> and • <i>Agreeing to carry on these regulated activities</i>

Persons who are not already appointed representatives

5.13.5G A *person* who is not already an *appointed representative* may wish to become one in relation to the *regulated activities* specified in the *Appointed Representatives Regulations* (see table in *AUTH App 5.13.4G*). If so, he must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities* and who accepts responsibility for the *appointed representative's* actions when acting for him. *SUP 12.4* (What must a firm do when it appoints an appointed representative?) and *SUP 12.5* (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made. In particular, an *appointed representative* will not be able to commence an *insurance mediation activity* until he is included on the *FSA Register* for such activities.

Persons who are already appointed representatives

5.13.6G Where a *person* is already an *appointed representative* and he proposes to carry on, with effect from 14 January 2005, any *insurance mediation activities*, he will need to consider the following matters.

- (1) He must become *authorised* if his proposed *insurance mediation activities* include activities that do not fall within the table in *AUTH* App 5.13.4G (for example, *dealing as agent in pure protection contracts*) and he wishes to carry on these activities. The *Act* does not permit any *person* to be exempt for some activities and *authorised* for others. He will, therefore, need to apply for *permission* to cover all the *regulated activities* that he proposes to carry on from 14 January 2005.
- (2) If he proposes to carry on other *regulated activities* specified in the *Appointed Representatives Regulations* in relation to *contracts of insurance* (see the table in *AUTH* App 5.13.4G), he may be able to do so as an *appointed representative* bearing in mind the following.
 - (a) He will need to be appointed by an *authorised person* prepared to accept responsibility for his *insurance mediation activities* when acting for him. The *authorised person* must have *permission* to carry on these *regulated activities*.
 - (b) If these *insurance mediation activities* are to be carried on for the same *authorised person* who has already appointed him for his other *regulated activities*, the contract between them will need to be amended to reflect the additional activities. Other amendments to the contract will be required (see *SUP* 12.5.6A R).
 - (c) The effect of amendments to the *Appointed Representatives Regulations* is that an *appointed representative* cannot commence an *insurance mediation activity* until he is included on the *FSA Register* as carrying on such activities.
 - (d) An *appointed representative* would be entitled to have more than one principal subject to certain restrictions. In relation to *non-investment insurance contracts* (*general insurance contracts* and *pure protection contracts*), an *appointed representative* may have an unlimited number of *principals*. In relation to *regulated mortgage contracts* and *designated investment business*, an *appointed representative* is limited in the number of *principals* he may have. In any case where an *appointed representative* has multiple *principals*, those *principals* are required to enter into a multiple- principal agreement (see *SUP* 12.4.5D R to 12.4.5G G (Appointment of an appointed representative (other than an introducer appointed representative))).
 - (e) If the activities of the *appointed representative* are limited to introducing, he should consider the specific *Handbook* provisions relating to *introducer appointed representatives* (see *SUP* 12 (What must a firm do when it appoints an appointed representative?)).

5.14 Exemptions

Professionals

- 5.14.1G *Professional firms* (broadly firms of solicitors, accountants and actuaries) may carry on *insurance mediation activities* in the course of their professional activities. *Exempt professional firms* carrying on *insurance mediation activities* may continue to be able to use the *Part XX exemption* to avoid any need for *authorisation*. *PROF 2* (Status of exempt professional firm) contains *guidance* on the *Part XX exemption*. They will, however, need to be shown on the *FSA Register* as carrying on *insurance mediation activities*, in order to benefit from this exemption. The task of registration is the responsibility of the *designated professional bodies* who will need to inform the *FSA* both of member firms carrying on *insurance mediation activities* and individuals within firms' management responsible for these activities.
- 5.14.2G *Professional firms* with practices that involve acting for claimants in litigation against *insurance undertakings* are likely to be carrying on the regulated activity of *assisting in the administration and performance of a contract of insurance*. *Exempt professional firms* whose practices contain a material element of such activity should consider whether they can continue to take advantage of the *Part XX exemption* to avoid any need for *authorisation*, having regard to the relevant provisions of the *Act*, in particular section 327 (Exemption from the general prohibition) and the *guidance* in *PROF 2.1.14* (Exempt regulated activities).
- 5.14.3G *Professional firms* should be aware of the disapplication of the exclusions for trustees (article 66) and activities carried on in the course of a profession or non-investment business (article 67) outlined in *AUTH App 5.11.7G* (Exclusions disappplied in connection with insurance mediation) where their activities would amount to *insurance mediation*. Where they do not, they will still be able to rely upon article 67. Otherwise, the *Non-exempt Activities Order* imposes limitations on the extent to which *professional firms* can give advice to individuals. In particular, a *professional firm* cannot recommend to a *private client* that he *buy a life policy*, unless he is endorsing a corresponding recommendation given to the *client*. The recommendation he endorses must be one given by an *authorised person* permitted to advise on *life policies*, or an *exempt person* for these purposes. No such restrictions apply, however, in relation to *contracts of insurance* other than *life policies*.
- 5.14.4G *Professional firms* relying (prior to 14 January 2005) on the exclusions in articles 29 (Arranging deals with or through authorised persons) and 33 (Introducing) when introducing clients to *authorised persons* in connection with the purchase of *life policies* are directed to *AUTH App 5.11.3G* (Exclusions disappplied where activities relate to contracts of insurance). More generally, as indicated in *AUTH App 5.6.8G*, the article 72C exclusion (Provision of information on an incidental basis) is potentially available to unauthorised *professional firms* including *exempt professional firms*. This may be relevant to *professional firms* arranging *contracts of insurance* for clients on an individual basis.

Other exemptions

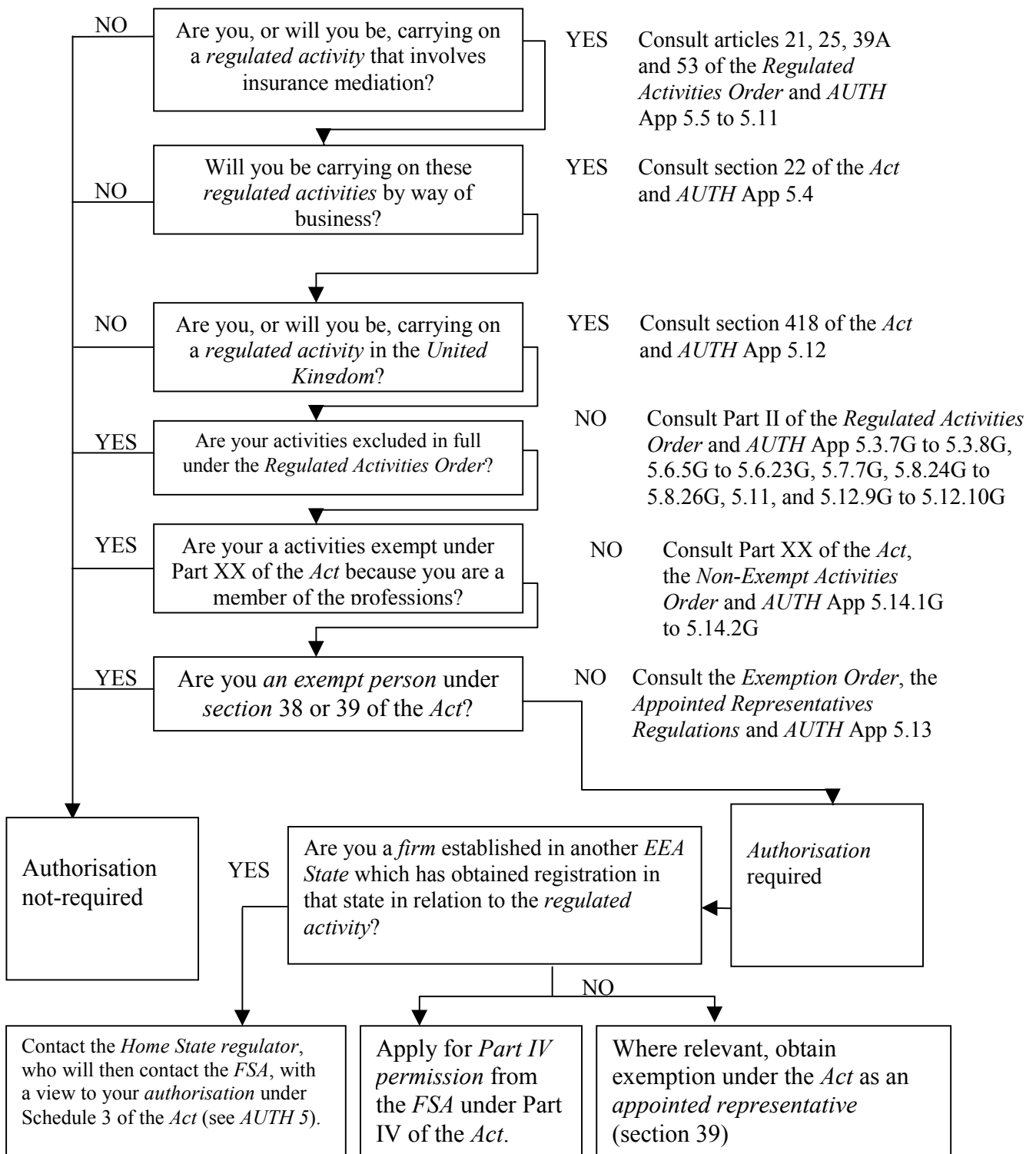
5.14.5G In addition to certain named *persons* exempted by the *Exemption Order* from the need to obtain *authorisation*, the following bodies are exempt in relation to *insurance mediation activities* that do not relate to *life policies*:

- (1) local authorities but not their subsidiaries;
- (2) registered social landlords in England and Wales within the meaning of Part I of the Housing Act 1996 but not their subsidiaries;
- (3) housing associations or other bodies corporate registered by Scottish Homes but not their subsidiaries;
- (4) the Housing Corporation;
- (5) Scottish Homes;
- (6) The Northern Ireland Housing Executive.

5.15 Illustrative tables

5.15.1G This flow chart sets out the matters a *person* will need to consider to see if he will need *authorisation* for carrying on *insurance mediation activities*. It is referred to in *AUTH App 5.2.3G* (Questions to be considered to decide if authorisation is required).

5.15.2G Flow chart: regulated activities related to insurance mediation activities – do you need authorisation?



5.15.3G The table in *AUTH* App 5.15.4G is designed as a short, user-friendly guide but should be read in conjunction with the relevant sections of the text of this *guidance*. It is not a substitute for consulting the text of this *guidance* or seeking professional advice as appropriate (see *AUTH* App 5.1.4G to *AUTH* App 5.1.6G on the effect of this *guidance*). References in this Annex to articles are to articles of the *Regulated Activities Order*. In this table, it is assumed that each of the activities described is carried on by way of business (see *AUTH* App 5.4). Save where otherwise indicated, it is assumed that the intermediary is carrying on activities in respect of *policies* where he is not the *policyholder*. Note also that this table does not provide an exhaustive list of all of the exclusions or exemptions that are of relevance to each type of activity. For a full explanation of the exclusions and exemptions under the *Regulated Activities Order* and their applicability see generally *AUTH* App 5.3.7G to *AUTH* App 5.3.8G, *AUTH* App 5.6.5G to *AUTH* App 5.6.23G, *AUTH* App 5.7.7G, *AUTH* App 5.8.24G to *AUTH* App 5.8.26G, *AUTH* App 5.11, *AUTH* App 5.12.9G to *AUTH* App 5.12.10G, *AUTH* App 5.13 and *AUTH* App 5.14. This Table is referred to in *AUTH* App 5.7.5G (The regulated activities: assisting in the administration and performance of a contract of insurance).

5.15.4G Table: Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a <i>regulated activity</i> ?	Rationale
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MARKETING AND EFFECTING INTRODUCTIONS		
Passive display of information - for example, medical insurance brochures in doctor's surgery (whether or not remuneration is received for this activity)	No.	Merely displaying information does not constitute making arrangements under article 25(2) (see <i>AUTH</i> App 5.6.4G).
Recommending a broker/ <i>insurance undertaking</i> and providing customer with contact details (whether by phone, fax, e-mail, face-to-face or any other means of communication)	Yes, but article 72C may be available.	This will constitute making arrangements under article 25(2). But, the exclusion in article 72C will apply if all the intermediary does is supply information to the customer and the conditions of article 72C are otherwise met (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G). Generally, this will not amount to advice under article 53 unless there is an implied recommendation of a particular <i>policy</i> (see <i>AUTH</i> App 5.8.4G), in which case article 72C would not be available.

Providing an <i>insurance undertaking</i> /broker with contact details of customer	Yes.	This will constitute making arrangements under article 25(2) when undertaken in the context of regular or ongoing arrangements for introducing customers. Article 72C will not apply because the information is supplied to someone other than the <i>policyholder</i> or potential <i>policyholder</i> .
Marketing on behalf of <i>insurance undertaking</i> to intermediaries only (for example, broker consultants)	Yes.	This amounts to work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). Article 72C is not available because this activity does not involve provision of information to the <i>policyholder</i> or potential <i>policyholder</i> only.
Telemarketing services (that is, companies specialising in marketing an <i>insurance undertaking's</i> products/services to prospective customers)	Yes.	This amounts to introducing and/or other work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). This could also involve article 25(1) <i>arranging</i> where the telemarketing company actually <i>sells</i> a particular policy and could involve <i>advising on investments</i> . Article 72C will not be available where the provision of information is more than incidental to the telemarketing company's main business or where the telemarketing company is <i>advising on investments</i> .
PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE		
Discussion with client about need for insurance generally/need to take out a particular type of insurance	Generally, no. Article 72C available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to <i>arranging</i> . If so, article 72C might be of application (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G).
Advising on the level of cover needed	Generally, no. Article 72C available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you

		should consider whether, viewed as a whole, your activities might amount to making arrangements under article 25(2) (see <i>AUTH</i> App 5.8.3G). If so, article 72C might be of application (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G).
Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several policies which suit the answers given)	Yes. Subject to Article 72 C exclusion where available.	This will constitute <i>arranging</i> although article 72C may be of application (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G). If there is no express or implied recommendation of a particular <i>policy</i> , this activity will not amount to advice under article 53 (see <i>AUTH</i> App 5.8.15G to <i>AUTH</i> App 5.8.19G).
Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies	Possibly. Article 72C available.	This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve advising on investments (see <i>AUTH</i> App 5.8.8G (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i> , and does not involve <i>advising on investments</i> , article 72C may be of application (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G), and where information is provided by a professional in the course of a profession, article 67 may apply (see <i>AUTH</i> App 5.11.9G to <i>AUTH</i> App 5.11.12G).
Advising that a customer take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53 (see <i>AUTH</i> App 5.8.4G to <i>AUTH</i> App 5.8.5G).
Advising that a customer does not take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53 (see <i>AUTH</i> App 5.8.4G to <i>AUTH</i> App 5.8.5G).
Advice by journalists in newspapers, broadcasts etc.	Generally, no because of the article 54 exclusion.	Article 54 provides an exclusion for advice given in newspapers etc (see <i>AUTH</i> App 5.8.24G to <i>AUTH</i> App 5.8.25G).
Giving advice to a customer in relation to his <i>buying</i> a consumer product, where insurance is a	Not necessarily but depends on the circumstances	Where the advice relates specifically to the merits of the consumer product, it is possible that references to the

compulsory secondary purchase and/or a benefit that comes with <i>buying</i> the product		accompanying insurance may be seen to be information and not advice. If, however, the advice relates, in part, to the merits of the insurance element, then it will be <i>regulated activity</i> .
ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS		
Providing information to customer who fills in application form	Possibly. Subject to article 67 or 72C exclusions where available.	This activity may amount to <i>arranging</i> although the exclusions in article 67 (see <i>AUTH</i> App 5.11.9G to <i>AUTH</i> App 5.11.12G) and article 72C (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G) may be of application.
Helping a potential <i>policyholder</i> fill in an application form	Yes.	This activity amounts to <i>arranging</i> . Article 72C will not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G).
Receiving completed proposal forms for checking and forwarding to an <i>insurance undertaking</i> (for example, an administration outsourcing service provider that receives and processes proposal forms)	Yes.	This amounts to <i>arranging</i> . Article 72C does not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G).
Assisting in completion of proposal form and sending to <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> . Article 72C does not apply because this activity goes beyond the mere provision of information (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G).
NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE		
Negotiating terms of <i>policy</i> on behalf of customer with the <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> (see <i>AUTH</i> App 5.6.2G).
Negotiating terms of <i>policy</i> on behalf of <i>insurance undertaking</i> with the customer and signing proposal form on his behalf	Yes.	These activities amount to both <i>arranging</i> and <i>dealing in investments as agent</i> .
Concluding a <i>contract of insurance</i> on insurance	Yes.	A <i>person</i> carrying on this activity will be <i>dealing in investments as agent</i> . He will

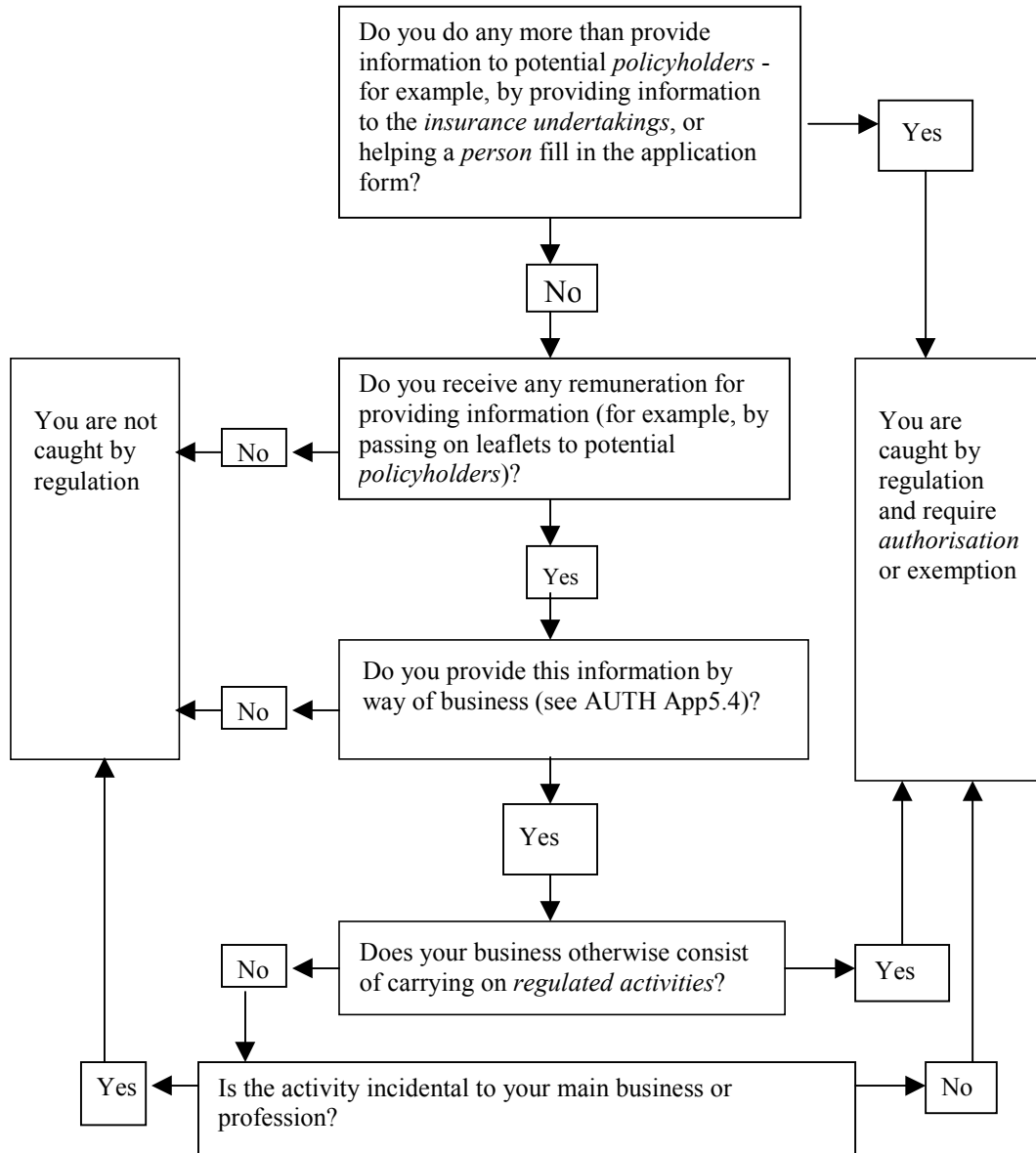
company's behalf, for example, motor dealer who has authority to conclude insurance contract on behalf of <i>insurance undertaking</i> when <i>selling</i> a car		also be <i>arranging</i> (as the article 28 exclusion only applies in the limited circumstances envisaged under article 28(3)) (see <i>AUTH</i> App 5.6.12G).
Agreeing, on behalf of a prospective <i>policyholder</i> , to <i>buy</i> a <i>policy</i> .	Yes.	A <i>person</i> who, with authority, enters into a <i>contract of insurance</i> on behalf of another is <i>dealing in investments as agent</i> under article 21, and will also be <i>arranging</i> .
Providing compulsory insurance as a secondary purchase	Yes. It will amount to <i>dealing in investments as agent</i> or <i>arranging</i> .	The fact that the insurance is secondary to the primary product does not alter the fact that arranging the package involves <i>arranging</i> the insurance.
COLLECTION OF PREMIUMS		
Collection of cheque for premium from the customer at the pre-contract stage.	Yes (as part of <i>arranging</i>).	This activity is likely to form part of <i>arranging</i> . But the mere collection/receipt of premiums from the customer is unlikely, without more, to amount to <i>arranging</i> .
Collection of premiums at post-contract stage	No.	The mere collection of premiums from <i>policyholders</i> is unlikely, without more, to amount to <i>assisting in the administration and performance of a contract of insurance</i> .
MID-TERM ADJUSTMENTS AND ASSIGNMENTS		
Solicitors or licensed conveyancers discharging client instructions to assign <i>contracts of insurance</i> .	Not where article 67 applies.	As the assignment of rights under a <i>contract of insurance</i> (as opposed to the creation of new <i>contracts of insurance</i>) does not fall within the <i>IMD</i> , article 67 is of potential application (see <i>AUTH</i> App 5.11.9G to <i>AUTH</i> App 5.11.12G).
Making mid-term adjustments to a <i>policy</i> , for example, property manager notifies changes to the names of the leaseholders registered as "interested parties" in the <i>policy</i> in respect of the property.	Yes.	Assuming the freeholder (as <i>policyholder</i>) is obliged under the terms of the <i>policy</i> to notify the <i>insurance undertaking</i> of changes to the identity of the leaseholders, the property manager is likely to be <i>assisting in the administration and the performance of the contract of insurance</i> .
TRADED ENDOWMENT POLICIES ("TEPs")		
Making introductions for the	Yes, unless article 72C applies.	Making introductions for these purposes is

purposes of <i>selling</i> TEPs		<i>arranging</i> unless article 72C applies (see <i>AUTH</i> App 5.6.5G to <i>AUTH</i> App 5.6.9G). The exclusions in article 29 (Arranging deals with or through authorised persons) and 33 (Introducing) no longer apply to arranging <i>contracts of insurance</i> .
Market makers in TEPs	Yes, although the exclusion in article 28 may apply.	Unauthorised market makers can continue to make use of the exclusions in articles 15 (Absence of holding out etc.) and 16 (Dealing in contractually based investments), where appropriate. In order to avoid the need for <i>authorisation</i> in respect of <i>arranging</i> they may be able to rely upon article 28 (see <i>AUTH</i> App 5.6.12G).
ASSISTING POLICYHOLDER WITH MAKING A CLAIM		
Merely providing information to the insured to help him complete a claim form	No.	Of itself, this is likely to amount to assisting in the administration but not the performance of a <i>contract of insurance</i> . In the <i>FSA</i> 's view, the provision of information in these circumstances is more akin to facilitating performance of a <i>contract of insurance</i> rather than assisting in the performance (see <i>AUTH</i> App 5.7.3G to <i>AUTH</i> App 5.7.5G)
Completion of claim form on behalf of insured	Potentially.	This activity amounts to assisting in the administration of a <i>contract of insurance</i> . Whether this activity amounts to <i>assisting in the administration and performance of a contract of insurance</i> will depend upon whether a <i>person</i> 's assistance in filling in a claims form is material to whether performance of the contractual obligation to notify a claim takes place (see <i>AUTH</i> App 5.7.2G to <i>AUTH</i> App 5.7.3G).
Notification of claim to <i>insurance undertaking</i> and helping negotiate its settlement on the <i>policyholder</i> 's behalf	Yes.	This activity amounts to <i>assisting in the administration and performance of a contract of insurance</i> (see 5.7.4G).
ASSISTING INSURANCE UNDERTAKING WITH CLAIMS BY POLICYHOLDERS		

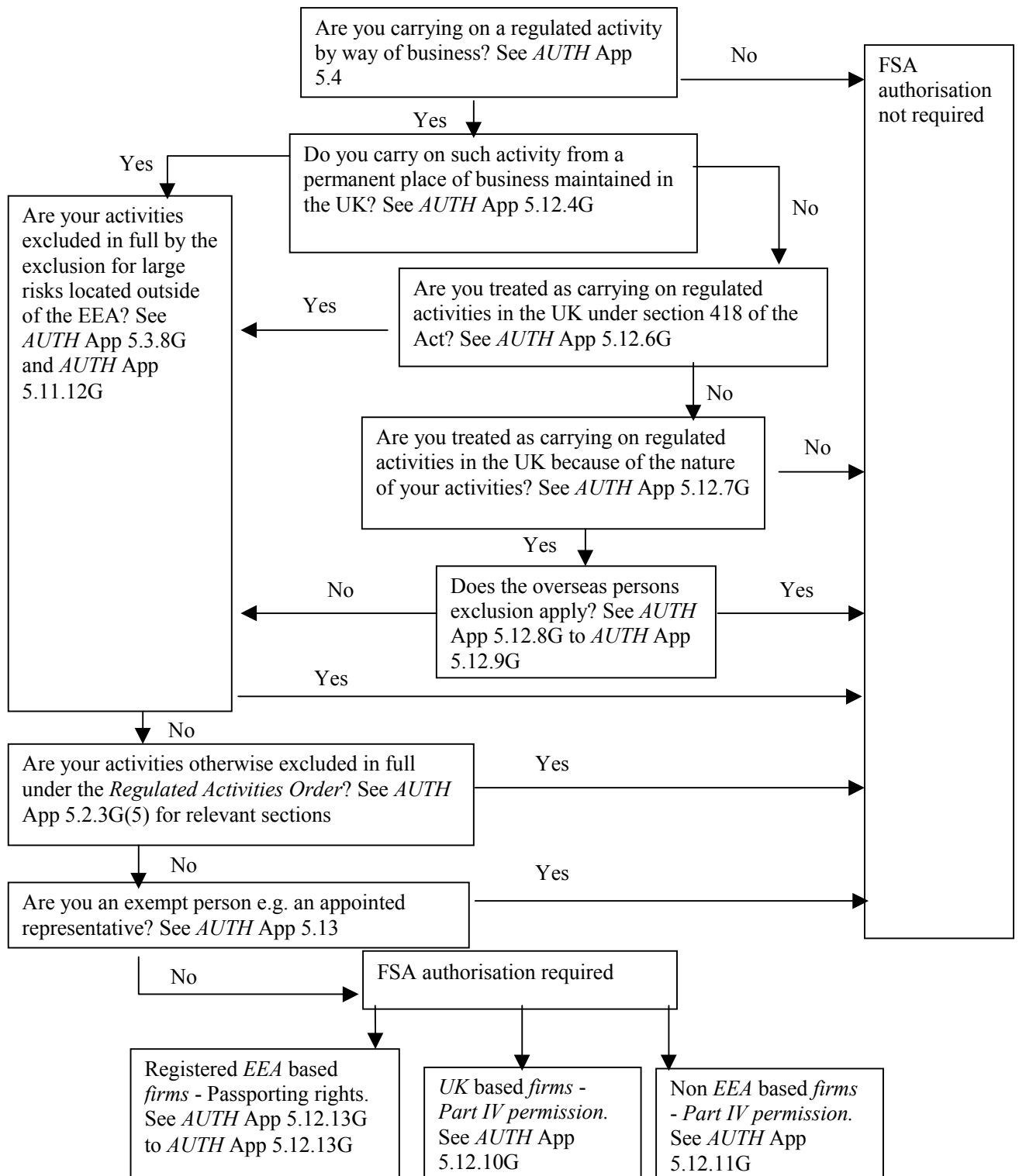
Negotiation of settlement of claims on behalf of an <i>insurance undertaking</i>	No.	Claims management on behalf of an <i>insurance undertaking</i> does not amount to <i>assisting in the administration and performance of a contract of insurance</i> by virtue of the exclusion in article 39B (see <i>AUTH App 5.7.7G</i>).
Providing information to an <i>insurance undertaking</i> in connection with its investigation or assessment of a claim	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> .
Loss adjusters and claims management services (for example, by administration outsourcing providers)	Potentially.	These activities may amount to <i>assisting in the administration and performance of a contract of insurance</i> . Article 39B excludes these activities, however, when undertaken on behalf of an <i>insurance undertaking</i> only (see <i>AUTH App 5.7.7G</i>).
Providing an expert appraisal of a claim	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> whether carried out on behalf of an <i>insurance undertaking</i> or otherwise.
Jeweller repairs customer's jewellery pursuant to a <i>policy</i> which permits the jeweller to carry out repairs	No.	This activity does not amount to <i>assisting in the administration and performance of a contract of insurance</i> . It amounts to managing claims on behalf of an <i>insurance undertaking</i> and so falls within the exclusion in article 39B (see <i>AUTH App 5.7.7G</i>).

5.15.5G The flow chart in *AUTH App 5.15.6G* sets out the matters a *person* whose introducing activities potentially amount to *making arrangements with a view to transactions in investments* will need to consider to see if he can use the exclusion in article 72C (Provision of information on an incidental basis). It is referred to in *AUTH App 5.1.6G* (Purpose of guidance) and *AUTH App 5.6.9G* (Exclusion: article 72C (Provision of information on an incidental basis)).

5.15.6G Flow chart: Introducers.



- 5.15.7G The flow chart in *AUTH* App 5.16.8G sets out the questions a *person* needs to consider in determining whether or not his *regulated activities* are carried on 'in the *United Kingdom*'.
- 5.15.8G Flow chart: am I carrying on regulated activities in the United Kingdom?



5.16.1G *AUTH* App 5.16.2G sets out the text of article 2.3 of the *Insurance Mediation Directive*. It is referred to in *AUTH* App 5.2.5G and *AUTH* App 5.2.5G (Approach to implementation of the IMD), *AUTH* App 5.11.7G (Exclusions disapplied in connection with insurance mediation) and *AUTH* App 5.11.10G (Activities carried on in the course of a profession or non-investment business).

5.16.2G Text of article 2.3 of the Insurance Mediation Directive

“ ‘Insurance mediation’ means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.”

Annex F

Amendments to the Supervision manual

- 6.4.22 G In deciding whether to cancel a *firm's Part IV permission*, the *FSA* will take into account all relevant factors in relation to business carried on under that *permission*, including whether:
- (1) there are unresolved, unsatisfied or undischarged complaints against the *firm* from any of its *customers*;
 - (2) the *firm* has complied with *COB 9.3.133R* and *CASS 5.5.80R* (Client money: discharge of fiduciary duty) and *COB 9.3.138R* (Client money: allocated but unclaimed client money) if it has ceased to hold *client money*; these *COB rules* apply to both repayment and transfer to a third party;
 - (3) ...

...

SUP 6 Ann 4 G: Additional guidance for a firm winding down (running off) its business

- 2 Table Specific guidance for firms holding client money or customer assets

1. ...

2. A *firm* must comply with *COB 9.3.133R* and *CASS 5.5.80R* (Client money: discharge of fiduciary duty), and *COB 9.3.138R* (Client money: allocated but unclaimed client money) if it is ceasing to hold *client money*. A *firm* must also cease to hold or control *custody assets* in accordance with instructions received from *clients* (including instructions set out in an agreement entered into in accordance with *COB 9.1.49R* (Custody: client agreement)). These *COB rules* apply to both repayment and transfer to a third party.

...

- 10.1.15 G ...
Appointed representatives

- 10.1.16 R The description of the following functions apply to an *appointed representative* of a *firm*, except an *introducer appointed representative*, as they apply to a *firm*:

- (1) the *governing functions*, subject to SUP 10.1.16A R;
- (2) the *customer functions* other than the *investment management function*.

- 10.1.16A R (1) SUP 10.1.16R (1) is modified in relation to an appointed representative meeting the conditions in (2) so that only one of the following governing functions:

(a) director function; or

(b) chief executive function; or

(b) partner function; or

(c) director of unincorporated association function;

applies, as appropriate, to an individual within that appointed representative who will be required to be an approved person.

(2) The conditions are that:

(a) the scope of appointment of the appointed representative includes insurance mediation activity in relation to non-investment insurance contracts but no other regulated activity, and

(b) the principal purpose of the appointed representative is to carry on activities other than regulated activities.

10.1.17 G (1) The effect of SUP 10.1.16R is that the directors (or their equivalent) and senior managers (or their equivalent) of an appointed representative must also be approved under section 59 of the Act for the performance of certain controlled functions.

(2) SUP 10.1.16R has a limited application to an appointed representative appointed by a firm to carry on insurance mediation activity or mortgage mediation activity. The description of the customer functions do not apply to such an appointed representative as these functions do not apply to a firm carrying on these regulated activities.

(3) The effect of SUP 10.1.16A R is that only one director (or equivalent) of an appointed representative to which that rule applies must be approved under section 59 of the Act for the performance of a governing function.

10.1.20 G ...

Oil market participants, service companies, and energy market participants, subsidiaries of local authorities or registered social landlords and insurance intermediaries

10.1.21 R The descriptions of significant influence functions, other than the required functions, do not extend to activities carried on by a firm whose principal purpose is to carry on activities other than regulated activities and which is:

(1) an oil market participant; or

(2) a service company; or

(3) an *energy market participant*; or

(4) a wholly owned *subsidiary* of:

(a) a local authority; or

(b) a registered social landlord; or

(5) a *firm* with *permission* to carry on *insurance mediation activity* in relation to *non-investment insurance contracts* but no other *regulated activity*.

...
10.6.1

G ...

What the governing functions include

...
10.6.3

G ...

10.6.3A

G

PRU 9.1.3R provides that an *insurance intermediary*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity*. PRU 9.1.4R (1) provides that the *firm* may allocate this responsibility to one or more of the *persons* performing a *governing function*.

10.6.3B

G

Where a *person* performing a *governing function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after the relevant *controlled function* (see PRU 9.1.7G).

...

10.7 Required functions

Apportionment and oversight function (CF8)

...
10.7.4

G ...

10.7.4A

G

PRU 9.1.3R provides that an *insurance intermediary*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity*. PRU 9.1.4R (2) provides that the *firm* may allocate this responsibility to the *person* performing the *apportionment and oversight function*.

10.7.4B

G

Where the *person* performing the *apportionment and oversight function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after this *controlled function* (see PRU 9.1.7G).

...

Money laundering reporting function (CF11)

...

- 10.7.14 G The *rules* in the *Money Laundering* sourcebook (*ML*) provide that a *firm* must have a *money laundering reporting officer* unless:
- (1) it is a *sole trader* with no *employees*; or
 - (2) its *regulated activities* are certain *insurance business* only; or
 - (3) it is an *incoming firm* providing only services into the *United Kingdom*; or
 - (4) its *regulated activities* are *insurance mediation activity* in relation to a *general insurance contract* or *pure protection contract* or *mortgage mediation activity*.
- ...
- 10.9.11 G ...
- Significant management (other business operations) function (CF17)
- ...
- 10.9.13 G ...
- 10.9.13A G *PRU 9.1.3R* provides that an *insurance intermediary*, other than a *sole trader*, must allocate to a *director* or *senior manager* the responsibility for the *firm's insurance mediation activity*. *PRU 9.1.4R(3)* provides that the *firm* may allocate this responsibility to the *person performing the significant management (other business operations) function*.
- 10.9.13B G Where the *person performing the significant management (other business operations) function* is also responsible for the *firm's insurance mediation activity*, the words “(insurance mediation)” will be inserted after this *controlled function* (see *PRU 9.1.7G*).
- ...
- 10.10.6 G ...
- Investment adviser function (CF21)
- 10.10.7 R (1) The *investment adviser function* is the function of:
- (a) *advising on investments* other than a *non-investment insurance contract*; and
 - (b) performing functions within the *customer trading function* in connection with *advising on investments* other than a *non-investment insurance contract*.
- ...
- Investment adviser (trainee) function (CF22)
- 10.10.11 R The *investment adviser (trainee) function* is the function of *advising on*

investments other than a non-investment insurance contract where the individual performing the function has not yet been assessed as competent in accordance with the *rules* in the Training and Competence sourcebook (TC).

...

Customer trading function (CF26)

10.10.16 R The *customer trading function* is the function of *dealing*, as principal or as agent, and *arranging deals in investments other than a non-investment insurance contract* with or for, or in connection with, *private customers* and *intermediate customers* where:

(1) ...

...

11.1.2 R Table Applicable sections (see SUP 11.1.1R)

	Category of firm	Applicable sections
(1)	A <i>UK domestic firm</i> other than a <i>building society</i> , or a <i>non-directive friendly society</i> or a <i>UK insurance intermediary</i>	All except SUP 11.3, SUP 11.4.2A R and SUP 11.4.4R
(1A)	A <i>building society</i>	(a) ... (b) In any other case, all except SUP 11.3, SUP 11.4.2AR and SUP 11.4.4R
(2)	A <i>non-directive friendly society</i>	...
(2A)	A <i>UK insurance intermediary</i>	all except SUP 11.3, SUP 11.4.2R, SUP 11.4.3G and SUP 11.4.4R
(3)	An <i>overseas firm</i>	All except SUP 11.3, SUP 11.4.2R, SUP 11.4.2A R, SUP 11.4.3, SUP 11.4.9G ...

...

11.2.2 G ...

11.2.2A G Part XII of the Act does not place an obligation on a controller of an UK insurance intermediary to notify the FSA where it becomes or ceases to be a parent undertaking. Nevertheless, the rule in SUP 11.4.2A R(2) requires the UK insurance intermediary to notify the FSA of parent undertakings so that the FSA can monitor the firm's continuing satisfaction of the threshold conditions, which includes consideration of its controllers and parent undertakings (see COND).

...

11.3.1 G ...
Requirement to notify a change in control

11.3.2 G Part XII of the *Act* requires a *person* (whether or not he is an *authorised person*) to notify the *FSA* in writing if he proposes to take a step which would result in his acquiring *control* or increasing or reducing his *control* over a *firm* in a way described in *SUP* 11.4.2R(1) to (4), or acquiring or reducing his *control* in a way described in *SUP* 11.4.2A R(1) and (2). Failure to notify is an offence under section 191(1) of the *Act* (Offences under this Part). An event described in *SUP* 11.4.2R(1) to (4) and *SUP* 11.4.2A R(1) to (3) is referred to in this chapter as a “change in *control*”.

...

Prior approval of acquiring or increasing control

11.3.4 G If a *person* proposes to acquire *control* or increase his *control* over a *firm* in a way described in *SUP* 11.4.2R(1) to (4) or acquire *control* in a way described in *SUP* 11.4.2A R(1), he must obtain the *FSA*’s approval before doing so. Failure to obtain approval is an offence under section 191(3) of the *Act* (Offences under this Part). The *FSA* has up to three *months* to consider whether to *approve* such a change in *control*. A *controller* or proposed *controller* should take this period into account when deciding when to give his notification.

...

Form of notification when acquiring or increasing control

11.3.7 D A notification (“notice of *control*”) given to the *FSA* by a *person* who is acquiring or increasing his *control* over a *firm*, in a way described in *SUP* 11.4.2R(1) to (4), or acquiring *control* in a way described in *SUP* 11.4.2A R(1), must :

(1) ...

...

Form of notification when reducing control

11.3.15 G A notification given to the *FSA* by a *person* who is reducing his *control* over a *firm*, in a way described in *SUP* 11.4.2R(1) to (4) or *SUP* 11.4.2A R(2), must, in accordance with section 190(4) of the *Act* (Notification):

(1) ...

- ...
- 11.4.1 G ...
Requirement to notify a change in control
- 11.4.2 R *A UK domestic firm other than a UK insurance intermediary* must notify the *FSA* of any of the following events concerning the *firm*:
- (1) ...
- 11.4.2A R *A UK insurance intermediary* must notify the *FSA* of any of the following events concerning the *firm*:
- (1) a person acquiring control;
- (2) in relation to an existing controller:
- (a) the percentage of shares held in the *firm* decreasing from 20% or more to less than 20%; or
- (b) the percentage of shares held in a *parent undertaking* of the *firm* decreasing from 20% or more to less than 20%; or
- (c) the percentage of *voting power* which it is entitled to exercise, or control the exercise of, in the *firm* decreasing from 20% or more to less than 20%; or
- d) the percentage of *voting power* which it is entitled to exercise, or control the exercise of, in a *parent undertaking* of the *firm* decreasing from 20% or more to less than 20%;
- (3) an existing *controller* becoming or ceasing to be a *parent undertaking*.
- ...
- 11.4.5 G If there is uncertainty whether a particular relationship constitutes *control*, it may be appropriate for the *firm* or *controller* or proposed *controller* to ask the *FSA* for individual *guidance* (see *SUP* 9) and to obtain its own legal advice. For example, if the *control* is to be held through a trust, then certain trustees, beneficiaries and other parties may qualify as *controllers* for the purposes of the *Act* and this chapter. Furthermore, a *person* may qualify as a *controller* if he is able to exercise 10% (20% if the *firm* is an *UK insurance intermediary*) or more of the *voting power* at a *firm's* general meeting as a result of the ability to exercise proxy votes.
- ...
- Content and timing of notification
- 11.4.7 R The notification by a *firm* under *SUP* 11.4.2R, *SUP* 11.4.2A R or *SUP* 11.4.4R must:

(1) ...

- 11.4.8 G *Principle 11* requires *firms* to be open and cooperative with the *FSA*. A *firm* should discuss with the *FSA*, at the earliest opportunity, any prospective changes of which it is aware, in *controllers'* or proposed *controllers'* shareholdings or *voting power* (if the change is material). These discussions may take place before the formal notification requirement in *SUP 11.4.2R*, *SUP 11.4.2A R* or *SUP 11.4.4R* arises. (See also *SUP 11.3.2G*.) As a minimum, the *FSA* considers that such discussions should take place before a *person*:

(1) ...

- 11.4.9 G The obligation in *SUP 11.4.2R* and *SUP 11.4.2A R(1) and (2)* applies whether or not the *controller* himself has given or intends to give a notification, in accordance with his obligations under the *Act*.

...

11.6 Subsequent notification requirements by firms
Changes in the information provided to the *FSA*

- 11.6.1 G *Firms* are reminded that *SUP 15.6.4R* requires them to notify the *FSA* if information notified under *SUP 11.4.2R*, *SUP 11.4.2A R* or *SUP 11.4.4R* was false, misleading, inaccurate, incomplete, or changes, in a material particular. This would include a *firm* becoming aware of information that it would have been required to provide under *SUP 11.5.1R* if it had been aware of it.

- 11.6.2 R After submitting a notification under *SUP 11.4.2R* or *SUP 11.4.2A R(1) and (2)* and until the change in *control* occurs (or is no longer to take place), *SUP 15.6.4R* and *SUP 15.6.5R* apply to a *UK domestic* in relation to any information its *controller* or proposed *controller* provided to the *FSA* under *SUP 11.5.1R* or *SUP 11.3.7D*.

...

Notification that the change in control has taken place

- 11.6.4 R A *firm* must notify the *FSA*:

(1) when a change in control which was previously notified under *SUP 11.4.2R*, *SUP 11.4.2A R* or *SUP 11.4.4R* has taken place; or

(2) ...

...

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

(1) ...

(4) if a *controller*, who is authorised in another *EEA State* as an *ISD*

investment firm or BCD credit institution or under the Insurance Directives or the Insurance Mediation Directive, ceases to be authorised (registered in the case of an IMD insurance intermediary).

...

SUP 11 Annex 1G Summary of notifications required in this chapter

Event triggering a notification	Requirement reference	
	When	How
Notifications from a controller or proposed controller of a UK domestic firm <u>other than a UK insurance intermediary</u>		
1 ...	...	...
<u>Notifications from a controller or proposed controller of a UK insurance intermediary</u>		
1. <u>A person proposing to become a controller</u>	<u>SUP 11.3.2G</u> <u>SUP 11.3.6G</u>	<u>SUP 11.3.7D to</u> <u>SUP 11.3.14G</u>
2. <u>An existing controller proposing to reduce his control</u>	<u>SUP 11.3.2G</u> <u>SUP 11.3.6G</u>	<u>SUP 11.3.15G</u>
3. <u>When a change in control actually takes place</u>	<u>SUP 11.3.16G</u>	<u>SUP 11.3.16G</u>
Notification from a UK domestic firm <u>other than a UK insurance intermediary</u> relating to a change in control		
1 ...	...	...
<u>Notification from a UK insurance intermediary relating to a change in control</u>		
1. <u>When a firm becomes aware that a person is becoming or ceasing to be a controller or parent undertaking</u>	<u>SUP 11.4.2A R</u> <u>SUP 11.4.7R</u> <u>SUP 11.4.8G</u>	<u>SUP 11.5.1R</u> <u>SUP 11.5.2R</u> <u>SUP 11.5.3G</u>
2. <u>When a firm becomes aware of any material inaccuracies, omissions or changes in information previously provided to the FSA either by the firm or by the controller</u>	<u>SUP 11.6.1G</u> <u>SUP 11.6.2R</u>	<u>SUP 15.7</u>

3. When a change in <i>control</i> actually takes place or, although a notification has been submitted, is not, after all, going to take place	<u>SUP 11.6.4R</u> <u>SUP 11.6.5R</u>	<u>SUP 15.7</u>
...

- ...
- 13.3.1 G ...
- The conditions for establishing a branch
- 13.3.2 G *A UK firm cannot establish a branch in another EEA State for the first time under an EEA right unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the Act are satisfied. It is an offence for a UK firm which is not an authorised person to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). These conditions are that:*
- (1) ...
- ...
- (3) (a) if the UK firm's EEA right derives from the Insurance Mediation Directive one month has elapsed beginning on the date on which the UK firm received notice that the FSA had given a consent notice as described in SUP 13.3.6 G(1) (see SUP 13.3.2A G);
- (b) in any other case:
- (a) (i) the Host State regulator has notified the UK firm (or, where the UK firm is passporting under the Insurance Directives, the FSA) of the applicable provisions; or
- (b) (ii) two months have elapsed beginning with the date on which the FSA gave the consent notice.
- 13.3.2A G If the UK firm is passporting under the Insurance Mediation Directive and the EEA State in which the UK firm is seeking to establish a branch has not notified the European Commission of its wish to be informed of the intention of persons to establish a branch in its territory in accordance with article 6(2) of that directive, SUP 13.3.2G (2) and (3) do not apply. Accordingly, the UK firm may establish the branch to which its notice of intention relates as soon as the conditions referred to in SUP 13.3.2G (1) are satisfied.
- 13.3.2B G An appointed representative appointed by a firm to carry on insurance mediation activity on its behalf may establish a branch in another EEA State under the Insurance Mediation Directive. In this case, the notice of intention in SUP 13.3.2G(1) should be given to the FSA by the firm.
- 13.3.2C G An exempt professional firm which is included in the record of unauthorised persons carrying on insurance mediation activity maintained by the FSA under article 93 of the Regulated Activities Order may establish a branch in another

EEA State under the Insurance Mediation Directive (see PROF 7.2).

...

How long will the process take?

13.3.4 G On receipt of a UK firm's notice of intention (prepared in accordance with SUP 13.3.2G (1) and SUP 13.5.1R) then:

(1) where the UK firm is passporting under the Insurance Mediation Directive:

(a) if the UK firm seeking to passport in an EEA State which wishes to be informed of the intention of persons establishing a branch in its territory (see SUP 13.3.2A G), the FSA has one month to notify the relevant Host State regulator;

(b) otherwise, the UK firm may establish a branch as soon as it satisfies the conditions referred to in SUP 13.3.2G(1);

(2) in any other case, the FSA has three months from receiving a UK firm's notice of intention to consider it and, if satisfied with the proposal, notify the relevant Host State regulator. The Host State regulator then has a further two months to notify the applicable provisions (if any) and prepare for the supervision, as appropriate, of the UK firm.

13.3.4A G The list of the EEA States that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the Insurance Mediation Directive is published on the FSA's website at www.fsa.gov.uk.

Issue of a consent notice to the Host State regulator

13.3.5 G (1) If a UK firm has given the FSA a notice of intention in the required form, then:

(a) ...

(c) if the UK firm's EEA right derives from the Insurance Mediation Directive and SUP 13.3.2G (2) applies, the FSA will give the Host State regulator a consent notice within one month of the date on which it received the UK firm's notice of intention.

(2) ...

...

13.4.1 G ...

The conditions for providing cross border services into another EEA State

13.4.2 G A UK firm cannot start providing cross border services into another EEA State under an EEA right unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the Act and, if it derives its EEA right from the Insurance Directives, paragraph 20(4B) of Part III of Schedule 3 to the Act.

It is an offence for a *UK firm* which is not an *authorised person* to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). The conditions are that:

- (1) ...
- (2) if the *UK firm* is passporting under the *Insurance Directives*, the *firm* has received written notice from the *FSA* as described in *SUP* 13.4.6 5 G;
or
- (3) if the *UK firm* is passporting under the *Insurance Mediation Directive* and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of persons to provide cross border services in its territory in accordance with article 6(2) of that directive, one month has elapsed beginning with the date on which the *UK firm* received written notice from the *FSA* as described in *SUP* 13.4.5 G (paragraph 20 (3B)(c) of Schedule 3 to the *Act*).

13.4.2A G An appointed representative appointed by a firm to carry on insurance mediation activity on its behalf may provide cross border services in another EEA State under the Insurance Mediation Directive. In this case, the notice of intention in SUP 13.4.2G(1) should be given to the FSA by the firm.

13.4.2B G An exempt professional firm which is included in the record of unauthorised persons carrying on insurance mediation activity maintained by the FSA under article 93 of the Regulated Activities Order may provide cross border services in another EEA State under the Insurance Mediation Directive (see PROF 7.2).

How long will the process take?

13.4.3 G On receipt of a *UK firm's* notice of intention (prepared in accordance with *SUP* 13.4.2(1) and *SUP* 13.5.2R) then:

- (1) ...
- ...
- (3) if the *EEA right* is derived from the *Insurance Directives*, the *FSA* has one month to consider it and, if satisfied with the proposal, notify the relevant *Host State regulator*;
- (4) if the *EEA right* is derived from the *Insurance Mediation Directive*:
 - (a) where the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of persons to provide cross border services in its territory in accordance with article 6(2) of that directive, the *FSA* has one month to notify the relevant *Host State regulator*;
 - (b) otherwise, the *UK firm* may start providing *cross border services* as

soon as it satisfies the relevant conditions (see SUP 13.4.2G).

13.4.3A G The list of the *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FSA*'s website at www.fsa.gov.uk.

13.4.4 G If a *UK firm* has given the *FSA* a notice of intention in the required form, then:

(1) ...

(2) (a) ...

(b) The issue or refusal of a *consent notice* under paragraph 20(3A) of Part III of Schedule 3 to the *Act* is the consequence of a regulatory decision, and this *consent notice* (unlike the *consent notice* for establishment of a *branch*) is not a *statutory notice* as set out in section 395 of the *Act*. As such, the *FSA* will follow the decision making procedures set out in *DEC 1* (Application, Purpose and Introduction). A *UK firm* that receives notice that the *FSA* refuses to give a *consent notice* may refer the matter to the *Tribunal* under paragraph 20(4A) of Part III of Schedule 3 to the *Act*. For procedures relating to references to the *Tribunal* see *DEC 5* (References to the *Tribunal*, publication and service of notices) or

(3) if the *UK firm*'s *EEA right* derives from the *Insurance Mediation Directive*, and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of *persons* to provide *cross border services* in its territory in accordance with article 6(2) of that directive, paragraph 20(3B)(a) of Part III of Schedule 3 to the *Act* requires the *FSA* to send a copy of the notice of intention to the *Host State regulator* within one month of receipt.

13.4.5 G When the *FSA* sends a copy of a notice of intention, or if it gives a *consent notice* to the *Host State regulator*, it must inform the *UK firm* in writing that it has done so (paragraphs 20 (3B)(b) and (4) of Schedule 3 to the *Act*).

...

13.5 Notices of intention

Specified contents: notice of intention to establish a branch

13.5.1 R A *UK firm* wishing to establish a *branch* in a particular *EEA State* for the first time under an *EEA right* must include in its notice of intention given to the *FSA*:

(1) ~~(a)~~ the information specified in *SUP 13 Ann 1R*; and

(b) if the *UK firm* is passporting under the *Insurance Directives*, the information specified in *SUP 13 Ann 2R*; or

- (2) if the *UK firm* is passporting under the *Insurance Mediation Directive*, only a statement that it intends to carry on *insurance mediation* in that State by establishing a *branch*.

Specified contents: notice of intention to provide cross border services

13.5.2 R A *UK firm* wishing to provide *cross border services* into a particular *EEA State* for the first time under an *EEA right* must include, in its notice of intention given to the *FSA*:

(1) ...

- (3) if the *UK firm* is passporting under the *Insurance Mediation Directive*, only a statement that it intends to carry on *insurance mediation* in that State by provision of *cross border services*.

...

13.6.1 G Where a *UK firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive* (see *SUP 13.6.9A G*), and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*. References to regulations in this section are to the *EEA Passport Rights Regulations*. A *UK firm* which is not an *authorised person* should note that, under regulation 18, contravention of the prohibition imposed by regulation 11(1), 13(1) or 15(1) is an offence. It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

...

13.6.9 G ...
Firms passporting under the *Insurance Mediation Directive*

13.6.9A G A *UK firm* exercising its *EEA right* under the *Insurance Mediation Directive* to establish a *branch* in another *EEA State* is not required to supply *requisite details* or relevant details. Therefore there are no *requisite details* or relevant details for changes to a *branch* established in another *EEA State* under the *Insurance Mediation Directive*.

...

13.7.1 G Where a *UK firm* is exercising an *EEA right* under the *Investment Services Directive* or *Insurance Directives* other than under the *Banking Consolidation Directive*, and is providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*. References to regulations in this

section are to the *EEA Passport Rights Regulations*. A *UK firm* which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1) or 16(1) is an offence. It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

...

13.7.10 G ...
Firms passporting under the Banking Consolidation Directive and Insurance Mediation Directive

13.7.11 G A *UK firm* providing *cross border services* under the *Banking Consolidation Directive* or Insurance Mediation Directive is not required to supply *requisite details* or relevant details. Therefore there are no *requisite details* or relevant details for changes to *cross border services* provided under the *Banking Consolidation Directive* or Insurance Mediation Directive.

...

14.2.1 G Where an *incoming EEA firm* is exercising an *EEA right*, other than under the Insurance Mediation Directive, and has established a *branch* in the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of that *branch*. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under Schedule 3 to the *Act* is to be treated as varied accordingly. All references to regulations in *SUP 14* are to the *EEA Passport Rights Regulations*.

...

Schedule 2 Notification requirements

...

SUP 2 Table:

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
... <u>SUP 11.4.2A R</u>	<u>Controllers - proposed change of control notification from a UK insurance intermediary</u>	<p><u>When acquiring control:</u></p> <p><u>(1) the name of the firm;</u></p> <p><u>(2) the name of the controller or proposed controller and, if it is a body corporate and is not an authorised person, the names of its directors and its controllers;</u></p> <p><u>(3) a description of the proposed event including the shareholding and voting power of the person concerned, both before and after the proposed event; and</u></p>	<p><u>(1) a person acquiring control or ceasing to have control;</u></p> <p><u>(2) a person becoming or ceasing to be a parent undertaking</u></p>	<p><u>As soon as the firm becomes aware that a person is proposing to take such a step that would result in the event concerned; or if the event takes place without the knowledge of the firm, 14 days of the firm becoming aware of the event concerned</u></p>

		<p><u>(4) any other information of which the <i>FSA</i> would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the <i>Act</i> and any relevant supporting documentation.</u></p> <p><u>The notification need only contain as much of the information the <i>firm</i> is able to provide, having made reasonable enquiries from <i>persons</i> and other sources as appropriate.</u></p> <p><u>When reducing <i>control</i>:</u></p> <p><u>(1) name of the <i>controller</i>; and</u></p> <p><u>(2) details of the extent of <i>control</i> (if any) which the <i>controller</i> will have following the change in <i>control</i></u></p>		
<i>SUP</i> 11.6.2R to <i>SUP</i> 11.6.5R	...	...	After submitting a notification under <i>SUP</i> 11.4.2R or <i>SUP</i> 11.4.2A R and until the change in <i>control</i> occurs, ...	...

<i>SUP 11.6.4R</i>	...	...	A change in <i>control</i> previously notified under <i>SUP 11.4.2R</i> , <u><i>SUP 11.4.2A R</i></u> or <i>SUP 11.4.4R</i> taking place; ...	...
<i>SUP 11.8.1R</i>	...	The fact of: (1) ... (4) a <i>controller</i> , who is authorised in <i>another EEA State</i> as an <i>ISD investment firm</i> or <i>BCD credit institution</i> or under the <i>Insurance Directives</i> or <u>the <i>Insurance Mediation Directive</i></u> , ceasing to be so authorised (registered in the case of an <u><i>IMD insurance intermediary</i></u>)	The <i>firm</i> becoming aware of: (1) ... (4) a <i>controller</i> , who is authorised in <i>another EEA State</i> as an <i>ISD investment firm</i> or <i>BCD credit institution</i> or under the <i>Insurance Directives</i> or <u>the <i>Insurance Mediation Directive</i></u> , ceasing to be so authorised (registered in the case of an <u><i>IMD insurance intermediary</i></u>)	...

...

Schedule 4

Powers exercised

G

1 Table

The following powers and related provisions in the *Act* have been exercised by the *FSA* to make the rules in *SUP*:

...

(15) Section 340 (Appointment)

(15A) Section 341 (Access to books etc.)

...

Annex G

Amendments to the Glossary

Part I: New definitions

Insert the following new definitions in the appropriate alphabetical position:

<i>administering a regulated mortgage contract</i>	the <i>regulated activity</i> , specified in article 61(2) of the <i>Regulated Activities Order</i> , which is in summary: administering a <i>regulated mortgage contract</i> where the contract was entered into after 31 October 2004.
<i>advising on regulated mortgage contracts</i>	the <i>regulated activity</i> , specified in article 53A of the <i>Regulated Activities Order</i> , which is in summary: advising a <i>person</i> if the advice: <ul style="list-style-type: none">(a) is given to the <i>person</i> in his capacity as a borrower or potential borrower; and(b) is advice on the merits of his:<ul style="list-style-type: none">(i) entering into a particular <i>regulated mortgage contract</i>; or(ii) varying the terms of a <i>regulated mortgage contract</i> entered into by him after 31 October 2004 in such a way as to vary his obligations under that contract.
<i>arranging (bringing about) regulated mortgage contracts</i>	the <i>regulated activity</i> , specified in article 25A(1) of the <i>Regulated Activities Order</i> , which is in summary: making arrangements for another <i>person</i> to: <ul style="list-style-type: none">(a) enter into a <i>regulated mortgage contract</i> as borrower; or(b) vary the terms of a <i>regulated mortgage contract</i> entered into by him as borrower after 31 October 2004. <p>(see also <i>arranging</i> (in relation to <i>regulated mortgage contracts</i>) and <i>making arrangements with a view to regulated mortgage contracts</i>.)</p>
<i>assisting in the administration and performance of a contract of insurance</i>	the <i>regulated activity</i> , specified in article 39A of the <i>Regulated Activities Order</i> (Assisting in the administration and performance of a contract of insurance) of assisting in the administration and performance of a contract of insurance.
<i>Business Order</i>	the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business Order) 2001 (SI 2001/1177).

[CASS	the Client Assets sourcebook.] ¹
<i>client money (insurance) distribution rules</i>	the <i>rules</i> in CASS 5.6 (Client money distribution).
<i>commercial customer contracts of large risks</i>	(in <i>ICOB</i> and CASS 5) a <i>customer</i> who is not a <i>retail customer</i> . (in <i>ICOB</i>) <i>contracts of insurance</i> covering risks within the following categories, in accordance with article 5(d) of the <i>First Non-Life Directive</i> :
	(a) <i>railway rolling stock, aircraft, ships</i> (sea, lake, river and canal vessels), <i>goods in transit, aircraft liability and liability of ships</i> (sea, lake, river and canal vessels);
	(b) <u><i>credit and suretyship, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;</i></u>
	(c) <u><i>land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle liability, general liability, and miscellaneous financial loss, in so far as the policyholder exceeds the limits of at least two of the following three criteria:</i></u>
	(i) balance sheet total: € 6.2 million;
	(ii) net turnover: €12.8 million;
	(iii) average number of <i>employees</i> during the financial year: 250.
<i>Distance Marketing Directive</i>	the Directive of the Council and Parliament of 23 September 2002 on distance marketing of consumer financial services (No 2002/65/EC).
<i>entering into a regulated mortgage contract</i>	the <i>regulated activity</i> , specified in article 62(1) of the <i>Regulated Activities Order</i> , which is in summary: entering into a <i>regulated mortgage contract</i> as lender.
<i>ICOB</i>	the Insurance: Conduct of Business sourcebook.
<i>IMD</i>	<i>Insurance Mediation Directive</i> .
<i>IMD insurance intermediary</i>	(as defined in article 2(5) of the <i>IMD</i>) any natural or legal person who, for remuneration, takes up or pursues <i>insurance mediation</i> .
<i>IMD insurance undertaking</i>	(as defined in article 2(1) of the <i>IMD</i>) an undertaking which has received official authorisation in accordance with article 6

¹ The definition of ‘Client Assets sourcebook’ (CASS) was made in December 2003 in the Client Assets Sourcebook Instrument 2003 and came into force on 1 January 2004.

	of the <i>Consolidated Life Directive</i> or article 6 of the <i>First Non-Life Directive</i> .
<i>IMD reinsurance intermediary</i>	(as defined in article 2(6) of the <i>IMD</i>) any natural or legal person who, for remuneration, takes up or pursues <i>reinsurance mediation</i> .
<i>IMD reinsurance undertaking</i>	(as defined in article 2(2) of the <i>IMD</i>) an undertaking, other than an <i>IMD insurance undertaking</i> or a non-member-country <i>insurance undertaking</i> , the main business of which consists in accepting risks ceded by an <i>IMD insurance undertaking</i> , a non-member country <i>insurance undertaking</i> or other <i>IMD reinsurance undertaking</i> .
<i>insurance intermediary</i>	a <i>firm</i> carrying on <i>insurance mediation activity</i> .
<i>Insurance Intermediaries Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) (Insurance Intermediaries) Order 2003 (SI 2003/1476).
<i>insurance mediation</i>	<p>(as defined in article 2(3) of the <i>IMD</i>) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.</p> <p>These activities when undertaken by an <i>IMD insurance undertaking</i> or an employee of an <i>IMD insurance undertaking</i> who is acting under the responsibility of the <i>IMD insurance undertaking</i> shall not be considered as <i>insurance mediation</i>.</p> <p>The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an <i>IMD insurance undertaking</i> on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as <i>insurance mediation</i>.</p>
<i>[insurance mediation activity</i>	<p>any of the following <i>regulated activities</i> carried on in relation to a <i>contract of insurance</i> or <i>rights to or interests in a life policy</i>:</p> <ul style="list-style-type: none"> (a) <i>dealing in investments as agent</i> (article 21); (b) <i>arranging (bringing about) deals in investments</i> (article 25(1)); (c) <i>making arrangements with a view to transactions in investments</i> (article 25(2)); (d) <i>assisting in the administration and performance of a contract of insurance</i> (article 39A); (e) <i>advising on investments</i> (article 53); (f) <i>agreeing to carry on a regulated activity</i> in (a) to (e)

(article 64).]²

<i>Insurance Mediation Directive</i>	the European Parliament and Council Directive of 9 December 2002 on insurance mediation (No 2002/92/EC).
<i>limit of indemnity</i>	(in <i>PRU</i> 9.2 (Professional indemnity insurance requirements for insurance and mortgage mediation activities)) the sum available to indemnify a <i>firm</i> in respect of each claim made under its professional indemnity insurance.
<i>long-term care insurance contract</i>	(as defined in article 1 of the <i>Insurance Intermediaries Order</i>) a <i>contract of insurance</i> in respect of which the following conditions are met: (a) the purpose (or one of the purposes) of the <i>policy</i> is to protect the <i>policyholder</i> against the risk of becoming unable to live independently without assistance in consequence of a deterioration of mental or physical health, injury, sickness or other infirmity; (b) benefits under the contract are payable in respect of: (i) services, (ii) accommodation, or (iii) goods, which are (or which is) necessary or desirable due to a deterioration of mental or physical health, injury, sickness or other infirmity; (c) the contract is expressed to be in effect until the death of the <i>policyholder</i> (except that the contract may give the <i>policyholder</i> the option to surrender the <i>policy</i>); and (d) the benefits under the contract are capable of being paid throughout the life of the <i>policyholder</i> .
<i>making arrangements with a view to regulated mortgage contracts</i>	the <i>regulated activity</i> , specified in article 25A(2) of the <i>Regulated Activities Order</i> , which is in summary: making arrangements with a view to a <i>person</i> who participates in the arrangements entering into a <i>regulated mortgage contract</i> as borrower. (see also <i>arranging</i> (in relation to <i>regulated mortgage contracts</i>) and <i>arranging (bringing about) regulated mortgage contracts</i> .)
<i>MCOB</i>	the <i>Mortgages: Conduct of Business</i> sourcebook.

² The definition of ‘insurance mediation activity’ was made in September 2003 in the *Mortgage Firms and Insurance Intermediaries (Application Fees) (No 1) Instrument 2003* and came into force on 1 November 2003.

<i>mortgage administrator</i>	a firm with <i>permission</i> (or which ought to have <i>permission</i>) for <i>administering a regulated mortgage contract</i> .
<i>mortgage adviser</i>	a firm with <i>permission</i> (or which ought to have <i>permission</i>) for <i>advising on regulated mortgage contracts</i> .
<i>mortgage arranger</i>	a firm with <i>permission</i> (or which ought to have <i>permission</i>) for <i>arranging</i> (see also <i>arranging (bringing about) regulated mortgage contracts and making arrangements with a view to regulated mortgage contracts</i>).
<i>mortgage intermediary</i>	a firm with <i>permission</i> (or which ought to have <i>permission</i>) to carry on <i>mortgage mediation activity</i> .
<i>mortgage lender</i>	a firm with <i>permission</i> (or which ought to have <i>permission</i>) for <i>entering into a regulated mortgage contract</i> .
<i>[mortgage mediation activity</i>	(as defined in article 26 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment)(No. 1) Order 2003 (SI 2003/1475)) any of the following <i>regulated activities</i> : <ul style="list-style-type: none"> (a) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25A(1)); (b) <i>making arrangements with a view to regulated mortgage contracts</i> (article 25A(2)); (c) <i>advising on regulated mortgage contracts</i> (article 53A); (d) <i>agreeing to carry on a regulated activity in (a) to (c)</i> (article 64).]³
<i>non-investment insurance contract</i>	a <i>contract of insurance</i> which is a <i>general insurance contract</i> or a <i>pure protection contract</i> but which is not a <i>long-term care insurance contract</i> .
<i>protected non-investment insurance mediation</i>	<i>insurance mediation activities</i> which are covered by the <i>compensation scheme</i> , as defined in COMP 5.6.1R.
<i>regulated mortgage activity</i>	any of the following activities specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities): <ul style="list-style-type: none"> (a) <i>arranging (bringing about) regulated mortgage contracts</i> (article 25A(1)); (b) <i>making arrangements with a view to regulated mortgage contracts</i> (article 25A(2)); (c) <i>advising on regulated mortgage contracts</i> (article 53A); (d) <i>entering into a regulated mortgage contract</i> (article 61(1)); (e) <i>administering a regulated mortgage contract</i> (article

³ The definition of ‘mortgage mediation activity’ was made in September 2003 in the Mortgage Firms and Insurance Intermediaries (Application Fees) (No 1) Instrument 2003 and came into force on 1 November 2003.

	61(2));
<i>regulated mortgage contract</i>	<p>(f) <i>agreeing to carry on a regulated activity</i> in (a) to (e) (article 64).</p> <p>(a) (in relation to a contract) (in accordance with article 61(3) of the <i>Regulated Activities Order</i>) a contract which, at the time it is entered into, meets the following conditions:</p> <p>(i) a lender provides credit to an individual or to trustees (the ‘borrower’); and</p> <p>(ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the <i>United Kingdom</i>, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a <i>person</i> who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:</p> <p>(A) that <i>person</i>’s spouse; or</p> <p>(B) a <i>person</i> (whether or not of the opposite sex) whose relationship with that <i>person</i> has the characteristics of the relationship between husband and wife; or</p> <p>(C) that <i>person</i>’s parent, brother, sister, child, grandparent or grandchild.</p> <p>(b) (in relation to a <i>specified investment</i>) the <i>investment</i>, specified in article 88 of the <i>Regulated Activities Order</i>, which is rights under a <i>regulated mortgage contract</i> within (a).</p>
<i>reinsurance contract</i>	(in <i>ICOB</i> , <i>CASS 5</i> and <i>COMP</i>) a <i>contract of insurance</i> covering all or part of a risk to which a <i>person</i> is exposed under a <i>contract of insurance</i> .
<i>reinsurance mediation</i>	<p>(as defined in article 2.4 of the <i>IMD</i>) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.</p> <p>These activities when undertaken by a <i>IMD reinsurance undertaking</i> or an employee of a <i>IMD reinsurance undertaking</i> who is acting under the responsibility of the <i>IMD reinsurance undertaking</i> shall not be considered as <i>reinsurance mediation</i>.</p> <p>The provision of information on an incidental basis in the</p>

	context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a <i>IMD reinsurance undertaking</i> on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as <i>reinsurance mediation</i> .
<i>relevant investment</i>	(in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)): <ul style="list-style-type: none"> (a) a <i>contractually based investment</i>; (b) a <i>pure protection contract</i>; (c) a <i>general insurance contract</i>; (d) rights to or interests in an <i>investment</i> falling within (a).
<i>renewal</i>	carrying forward a contract, at the point of expiry and as a successive or separate operation of the same nature as the preceding contract, between the same contractual parties.
<i>retail customer</i>	(in accordance with the meaning of ‘consumer’ in article 2(d) of the <i>Distance Marketing Directive</i> an individual who is acting for purposes which are outside his trade, business or profession.
<i>social housing firm</i>	(in <i>PRU 9.3</i> (Capital resources for insurance and mortgage mediation activity and mortgage lending and administration)) a wholly-owned <i>subsidiary</i> of: <ul style="list-style-type: none"> (a) a local authority; or (b) a registered social landlord; which carries on non-profit <i>regulated activities</i> in connection with housing.
<i>UK insurance intermediary</i>	a <i>UK domestic firm</i> which has <i>Part IV permission</i> to carry on <i>insurance mediation activity</i> but no other <i>regulated activity</i> .

Part 2: Amended definitions

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

<i>advising on investments</i>	the <i>regulated activity</i> , specified in article 53 of the <i>Regulated Activities Order</i> (Advising on investments), which is in summary: advising a <i>person</i> if the advice is: <ul style="list-style-type: none"> (a) given to the <i>person</i> in his capacity as an investor or potential investor, or in his capacity as agent for an investor or a potential investor; and (b) advice on the merits of his doing any of the following (whether as principal or agent): <ul style="list-style-type: none"> (i) <i>buying, selling</i>, subscribing for or underwriting a particular <i>investment</i> which is a <i>security</i> or <u><i>contractually based investment relevant</i></u>
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investment (that is, any designated investment, funeral plan contract, pure protection contract, general insurance contract or right to or interest in a funeral plan contract; or

- (ii) exercising any right conferred by such an investment, other than a pure protection contract or a general insurance contract, to buy, sell, subscribe for or underwrite such an investment.

arranging

- (a) (except in relation to a regulated mortgage contract.) arranging (bringing about) deals in investments, making arrangements with a view to transactions in investments or agreeing to carry on ~~any~~ either of those regulated activities.
- (b) (in relation to a regulated mortgage contract) arranging (bringing about) regulated mortgage contracts, making arrangements with a view to regulated mortgage contracts or agreeing to carry on either of those regulated activities.

arranging (bringing about) deals in investments

the regulated activity, specified in article 25(1) of the *Regulated Activities Order*, which is in summary: making arrangements for another person (whether as *principal* or agent) to buy, sell, subscribe for or underwrite a particular investment which is:

- (a) a designated investment; or
- (b) a funeral plan contract; or
- (c) the underwriting capacity of a Lloyd's syndicate; or
- (d) membership of a Lloyd's syndicate; or
- (da) a pure protection contract; or
- (db) a general insurance contract; or
- (e) rights to or interests in investments in (b), (c) or (d).

branch

- (a) (in relation to a credit institution):

...

- (d) (in relation to an IMD insurance intermediary):

(i) a place of business which is a part of an IMD insurance intermediary, not being the principal place of business, which has no separate legal personality and which provides insurance mediation for which the IMD insurance intermediary has been registered;

(ii) for the purposes of the Insurance Mediation Directive, all the places of business set up in the same EEA State by an IMD insurance intermediary with headquarters in another EEA State are to be regarded as a single branch.

- (e) (in relation to an *IMD reinsurance intermediary*):
- (i) a place of business which is a part of an *IMD reinsurance intermediary*, not being the principal place of business, which has no separate legal personality and which provides *reinsurance mediation* for which the *IMD reinsurance intermediary* has been registered;
 - (ii) for the purposes of the *Insurance Mediation Directive*, all the places of business set up in the same *EEA State* by an *IMD reinsurance intermediary* with headquarters in another *EEA State* are to be regarded as a single *branch*.
- client*
- (1) (except in *ML*, in *PROF*; in relation to a regulated mortgage contract) any person with or for whom a firm conducts or intends to conduct *designated investment business* or any other *regulated activity*; and:
 - ...
 - (4) (in relation to a regulated mortgage contract, except in *ML* and *PROF*) the individual or trustee who is the borrower or potential borrower under that contract.
- client money*
- (1) (in *COB* and *CASS 2 to 4*) subject to the *client money rules*, ...
 - (2) (in *CASS 5*) subject to the *client money rules*, money of any currency which, in the course of carrying on *insurance mediation activity*, a firm holds on behalf of a *client* or which a firm treats as *client money* in accordance with the *client money rules*;
 - (3) (in *PRU 9*):
 - (a) in relation to an *insurance intermediary* when acting as such, money which is *client money* in (2);
 - (b) in relation to a *mortgage intermediary* when acting as such, money of any currency which in the course of carrying on *mortgage mediation activity*, the firm holds on behalf of a *client*, either in a bank account or in the form of cash.
- client money rules*
- (a) (in *CASS* and *COB*) *CASS 4.1 to 4.3*;
 - (b) (in *CASS 5*) *CASS 5.1 to 5.5*.
- COB*
- the Conduct of Business sourcebook.

<i>commission</i>	<p>any form of commission, including a benefit of any kind, offered or given in connection with;</p> <p>(a) <u>designated investment business; or</u></p> <p>(b) <u>insurance mediation activity in connection with a non-investment insurance contract.</u></p>
<i>contracts of insurance</i>	<p>(1) ...</p> <p>(2) ...</p> <p style="padding-left: 20px;">(a) ...</p> <p style="padding-left: 20px;">...</p> <p>(e) contracts of a kind referred to in article 1(2)(e) of the <u>First Consolidated Life Directive</u> (Collective insurance etc); and</p> <p>(f) contracts of a kind referred to in article 1(3) of the <u>First Consolidated Life Directive</u> (Social insurance);</p> <p>...</p>
<i>controller</i>	<p>(1) (in accordance with section 422 of the Act (Controller)) (in relation to a <i>firm</i> or other <i>undertaking</i> ("A") <u>other than an UK insurance intermediary</u>) (in accordance with section 422 of the Act (Controller)) a <i>person</i> who falls within any of the following cases; the cases are where the <i>person</i>:</p> <p style="padding-left: 20px;">(a) holds 10% or more of the shares in A; or</p> <p style="padding-left: 20px;">(b) is able to exercise significant influence over the management of A through his shareholding in A; or</p> <p style="padding-left: 20px;">(c) holds 10% or more of the shares in a <i>parent undertaking</i> ("P") of A; or</p> <p style="padding-left: 20px;">(d) is able to exercise significant influence over the management of P through his shareholding in P; or</p> <p style="padding-left: 20px;">(e) is entitled to exercise, or control the exercise of, 10% or more of the <i>voting power</i> in A; or</p> <p style="padding-left: 20px;">(f) is able to exercise significant influence over the management of A through his <i>voting power</i> in A; or</p> <p style="padding-left: 20px;">(g) is entitled to exercise, or control the exercise of, 10% or more of the <i>voting power</i> in P; or</p> <p style="padding-left: 20px;">(h) is able to exercise significant influence over the management of P through his <i>voting power</i> in P;</p> <p>(2) <u>(in relation to an UK insurance intermediary) (in accordance with article 17 of the Insurance Intermediaries Order) a person who would fall within</u></p>

(1) if 20% were substituted for 10%;

in (1) and (2) of this definition:

(i) "the person" means:

...

customer

- (1) (except in *COB 3*, *ICOB*, *MCOB 3* and *CASS 5*) a *client* who is not a *market counterparty*.
- (2) (in *COB 3* and *MCOB 3*) a *person* in (1) or a *person* who would be such a *person* if he were a *client*.
- (3) (in *ICOB*) a *person* who is a *policyholder*, or a *prospective policyholder*, of a *policy* other than a *reinsurance contract*.
- (4) (in *CASS 5*) a *client*.

dealing in investments as agent

the *regulated activity*, specified in article 21 of the *Regulated Activities Order* (Dealing in investments as agent), which is in summary: *buying, selling, subscribing for or underwriting designated investments, pure protection contracts or general insurance contracts* as agent.

designated investment business

any of the following activities, specified in Part II of the *Regulated Activities Order* (Specified Activities), which is carried on by way of business:...

- (b) *dealing in investments as agent* (article 21), but only in relation to *designated investments*;

...

director

- (1) (except in *CIS*) (in relation to any of the following (whether constituted in the *United Kingdom* or under the law of a country or territory outside it)):
 - (a) an unincorporated association;
 - (b) a *body corporate*;
 - (c) (in *SYSC*, *PRU 9.1 (Responsibility for insurance mediation activity)* and *SUP 10 (Approved persons)*) a *partnership*;
 - (d) (in *SYSC* and *SUP 10 (Approved persons)*) a *sole trader*;

...

EEA authorisation

(in accordance with paragraph 6 of Schedule 3 to the *Act* (EEA Passport Rights))

- (a) in relation to an *IMD insurance intermediary* or an *IMD*

reinsurance intermediary, registration with its Home State regulator under article 3 of the Insurance Mediation Directive;

(b) in relation to any other EEA firm, authorisation granted to an EEA firm by its Home State regulator for the purpose of the relevant Single Market Directive.

EEA firm

(in accordance with paragraph 5 of Schedule 3 to the Act (EEA Passport Rights)) any of the following, if it does not have its ~~head-office~~ relevant office in the United Kingdom:

- (a) an investment firm (as defined in article 1(2) of the *Investment Services Directive*) which is authorised (within the meaning of article 3) by its Home State regulator;
- (b) a credit institution (as defined in article 1 of the *Banking Consolidation Directive*) which is authorised (within the meaning of article 4) by its Home State regulator;
- (c) a financial institution (as defined in article 1 of the *Banking Consolidation Directive*) which is a subsidiary of the kind mentioned in article 19 and which fulfils the conditions in articles 18 and 19;
- (d) an undertaking pursuing the activity of direct insurance (within the meaning of article 1 of the *First Life Directive* or of the *First Non-Life Directive*) which has received authorisation under article 6 from its Home State regulator;
- (e) an IMD insurance intermediary or an IMD reinsurance intermediary (as defined in article 2 of the IMD) which has registered under article 3 of that directive with its Home State regulator;
- (f) a management company (as defined in article 1a of the *UCITS Directive*) which has been authorised under article 5 of that directive by its Home State regulator.

in this definition, relevant office means:

(i) in relation to a firm falling within sub-paragraph (e), which has a registered office, its registered office;

(ii) in relation to any other firm falling within any other paragraph, its head office.

EEA right

(in accordance with paragraph 7 of Schedule 3 to the Act (EEA Passport Rights)) the entitlement of a person to establish a branch or provide services in an EEA State other than that in which he has his ~~head-office~~ relevant office:

- (a) in accordance with the Treaty as applied in the European Economic Area; and

(b) subject to the conditions of the relevant *Single Market Directive*.

in this definition, relevant office means:

(i) in relation to a *person* who has a registered office and whose entitlement is subject to the conditions of the *Insurance Mediation Directive*, his registered office; and

(ii) in relation to any other *person*, his head office.

energy market participant

a *firm*:

(a) whose *permission*:

(i) includes a *requirement* that the *firm* must not carry on any *designated investment business* other than *energy market activity*;

(ii) does not include a *requirement* that it comply with *IPRU(INV) 5* (Investment management firms) or 13 (Personal investment firms); and

(b) which is not an *authorised professional firm, bank, building society, credit union, friendly society, ICVC, insurer, ISD investment firm, media firm, oil market participant, service company, insurance intermediary, mortgage administrator, mortgage intermediary, mortgage lender, incoming EEA firm* (without a *top-up permission*), or *incoming Treaty firm* (without a *top-up permission*).

establishment conditions

(in relation to the establishment of a *branch* in the *United Kingdom*) the conditions specified in paragraph 13 of Schedule 3 to the *Act* (EEA Passport Rights), which are that:

(a) if the *firm* falls within paragraph (a), (b), (c), ~~(d)~~ or (f) in the definition of "*EEA firm*":

(i) ...

(b) if the *firm* falls within paragraph (e) in the definition of "*EEA firm*":

(i) the *EEA firm* has given its *Home State regulator* notice of its intention to establish a *branch* in the *United Kingdom*;

(ii) the *FSA* has received notice ("a regulator's notice") from the *firm's Home State regulator* that the *firm* intends to establish a *branch* in the *United Kingdom*;

(iii) the *EEA firm's Home State regulator* has informed it that the regulator's notice has been sent to the *FSA*; and

(iv) one *month* has elapsed beginning with the date on which the *EEA firm's Home State regulator* informed the *firm* that it had sent the regulator's notice to the *FSA*.

Home State

(1)

...

(5) (in relation to an *IMD insurance intermediary* or an *IMD reinsurance intermediary*):

(a) where the *insurance intermediary* is a natural person, the Member State in which his residence is situated and in which he carries on business;

(b) where the *insurance intermediary* is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated.

~~(5)~~ (6) (in relation to a market) ...

~~(6)~~ (7) (in relation to a *Treaty firm*) ...

making arrangements with a view to transactions in investments

the *regulated activity*, specified in article 25(2) of the *Regulated Activities Order* (Arranging deals in investments), which is in summary: making arrangements with a view to a *person* who participates in the arrangements *buying, selling, subscribing for or underwriting* any of the following *investments* (whether as *principal* or as agent):

(a) a *designated investment*; or

(b) a *funeral plan contract*; or

(c) the *underwriting capacity of a Lloyd's syndicate*; or

(d) *membership of a Lloyd's syndicate*; or

(e) *rights to or interests in investments* in (b), (c) or (d); or

(f) a *pure protection contract*; or

(g) a *general insurance contract*.

oil market participant

a *firm*:

(a) whose permission:

(i) includes a *requirement* that the firm must not carry on any *designated investment business* other than *oil market activity*; and

(ii) does not include a *requirement* that it comply with *IPRU(INV) 5* (Investment management firms) or *13* (Personal investment firms); and

(b) which is not an *authorised professional firm, bank, building society, credit union, friendly society, ICVC, insurer, ISD investment firm, media firm, service company, insurance intermediary, mortgage administrator, mortgage intermediary, mortgage lender, incoming EEA firm* (without a *top-up permission*), or *incoming Treaty firm* (without a *top-up*

permission).

overseas person

(in accordance with article 3(1) of the *Regulated Activities Order (Interpretation)*) a *person* who:

(a) carries on any of the following *regulated activities*:

(i) *dealing in investments as principal*;

(ii) *dealing in investments as agent*;

(iii) *arranging (bringing about) deals in investments*;

(iv) *arranging (bringing about) regulated mortgage contracts*;

(v) *making arrangements with a view to regulated mortgage contracts*;

(~~vi~~) *making arrangements with a view to transactions in investments*;

(~~vii~~) *managing investments*;

(~~viii~~) *safe custody and administering investments*;

(~~ix~~) *sending dematerialised instructions*;

(~~x~~) *causing dematerialised instructions to be sent*;

(~~xi~~) *establishing, operating or winding up a collective investment scheme*;

(~~xii~~) *acting as trustee of an authorised unit trust scheme*;

(~~xiii~~) *acting as the depositary or sole director of an open-ended investment company*;

(~~xiv~~) *establishing, operating or winding up a stakeholder pension scheme*;

(~~xv~~) *advising on investments*;

(~~xvi~~) *advising on regulated mortgage contracts*;

(~~xvii~~) *entering into a regulated mortgage contract*;

(~~xviii~~) *administering a regulated mortgage contract*;

(~~xix~~) *agreeing to carry on those regulated activities, disregarding the exclusion in article 72 of the *Regulated Activities Order (Overseas persons)*; but*

(b) does not carry on any such activity, or offer to do so, from a permanent place of business maintained by him in the *United Kingdom*.

participant firm

(1) (except in *COMP 13*) a *firm* or a *member* other than:

(a) in accordance with section 213(10) of the *Act* (The compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons) an *incoming EEA firm*

which is:

(i) a *credit institution*;

(ii) an *ISD investment firm*;

[(iii) a *UCITS management company*; ~~or~~

(iv)]⁴ both (i) and (ii); or

(v) an *IMD insurance intermediary* or an *IMD reinsurance intermediary* which is neither (i) or (ii);

in relation to its *passport activities*, unless it has *top-up cover*;

premium

...

(1) (except in *ICOB* and *CASS 5*) ...

(2) (except in *ICOB* and *CASS 5*) ...

(2A) (in *ICOB* and *CASS 5*) as in (1) and (2) except that 'insurance undertaking' is substituted for 'insurer' (except where 'insurer' is used in the heading to *SUP 16.8*).

primary pooling event

...

(1) (in *CASS 4*) an event that occurs in the circumstances described in ~~*COB 9.5.5R*~~ *CASS 4.4.5R* (Failure of the authorised firm: primary pooling event).

(2) (in *CASS 5*) an event that occurs in the circumstances described in *CASS 5.6.5R* (Failure of the authorised firm: primary pooling event).

regulated activity

(in accordance with section 22 of the *Act* (The classes of activity and categories of investment)) any of the following activities specified in Part II of the *Regulated Activities Order* (Specified Activities):

(a) ...

...

(ga) *arranging (bringing about) regulated mortgage contracts* (article 25A(1));

(gb) *making arrangements with a view to regulated*

⁴ The text in square brackets was made in the Collective Investment Schemes (UCITS Amending Directive) Instrument 2003 but will not to come into force until 13 February 2004.

- mortgage contracts (article 25A(2));
- (h) ...
- (ha) assisting in the administration and performance of a contract of insurance (article 39A);
- ...
- (pa) advising on regulated mortgage contracts (article 53A);
- (q) ...
- ...
- (sa) entering into a regulated mortgage contract (article 61(1));
- (sb) administering a regulated mortgage contract (article 61(2));
- (t) ...
- secondary pooling event* (1) (in CASS 4) an event that occurs in the circumstances described in ~~COB 9.5.14R~~ CASS 4.4.14R (Failure of a bank, intermediate broker, settlement agent or OTC counterparty: secondary pooling events).
- (2) (in CASS 5) an event that occurs in the circumstances described in CASS 5.6.14R (Failure of a bank, other broker or settlement agent: secondary pooling events).
- service conditions* (in accordance with paragraph 14 of Schedule 3 to the Act (EEA Passport Rights)) the conditions that:
- (a) the *firm* has given its *Home State regulator* notice of its intention to provide services in the *United Kingdom*;
- (b) if the *firm* falls within paragraph (a), ~~(d)~~, (e) or (f) in the definition of "*EEA firm*", the *FSA* has received notice from the *firm's Home State regulator* containing such information as may be prescribed; ~~and~~
- (c) if the *firm* falls within paragraph (d) or (e) of that definition, its *Home State regulator* has informed it that the regulator's notice has been sent to the *FSA*; and
- (d) if the *firm* falls within paragraph (e) of that definition, one month has elapsed beginning with the date on which the *firm's Home State regulator* informed the *firm* that it had sent the regulator's notice to the *FSA*.
- Single Market Directives* (as defined in paragraph 1 of Schedule 3 to the Act (EEA Passport Rights)):
- (a) the *Banking Consolidation Directive*;;
- (b) the *Insurance Directives* ~~and~~;
- (c) the *Investment Services Directive*;

<i>specified investment</i>	<p>(d) <u>the Insurance Mediation Directive; and</u></p> <p>(e) <u>(from 13 February 2004) the UCITS Directive.</u></p> <p>any of the following <i>investments</i> specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments):</p> <p>...</p> <p>(o) <i>funeral plan contract</i> (article 87);</p> <p>(oa) <u><i>regulated mortgage contract</i> (article 61(3));</u></p> <p>...</p>
<i>top-up cover</i>	<p>cover provided by the <i>compensation scheme</i> for <i>claims</i> against an <i>incoming EEA firm</i> (which is a <i>credit institution</i>, <u>an <i>IMD insurance intermediary</i>, an <i>IMD reinsurance intermediary</i> or an <i>ISD investment firm</i></u>) in relation to the <i>firm's passported activities</i> and in addition to, <u>or due to the absence of, any the</u> cover provided by the <i>firm's Home State</i> compensation scheme, (see <i>COMP 14</i> (Participation by EEA firms)).</p>

Annex H

Amendments to the Principles for Businesses, Senior Management Arrangements, Systems and Controls, Client Assets sourcebook, Enforcement manual and Compensation sourcebook

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

Amendments to the Principles for Businesses

- 1.1.2 G ...
- Accepting deposits and issuing electronic money, ~~general insurance business and certain long term insurance business~~
- 1.1.3 G The *Principles* apply with respect to *regulated activities* generally, but, in applying the *Principles* with respect to *accepting deposits* and issuing electronic money, ~~general insurance business and long term insurance business involving pure protection contracts or reinsurance contracts~~, the *FSA* will proceed only in a *prudential context*. That is to say, in this context, the *FSA* would not expect to exercise the powers brought into play by a contravention of a *Principle* unless the contravention amounted to a serious or persistent violation which had implications for confidence in the *financial system*, or for the fitness and propriety of the *firm* or for the adequacy of the *firm's* financial resources.
- ...
- 3.2.1 R *PRIN* applies with respect to the carrying on of:
- (1) ...
- ...
- (3) *ancillary activities* in relation to *designated investment business*, *regulated mortgage activity* and *insurance mediation activity*.
- ...

Amendments to the Senior Management Arrangements, Systems and Controls

1.1.2 G ...

What?

1.1.3 R SYSC 2 and SYSC 3 apply with respect to the carrying on of:

(1) *regulated activities*;

(2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc); and

(3) *ancillary activities* in relation to *designated investment business*, *regulated mortgage activity* and *insurance mediation activity*.

...

Appendix 1

Matters reserved to a Home State regulator

(see SYSC 1.1.1R(1)(b) and SYSC 1.1.1R(1)(c))

...

1.1.2 G The *Single Market Directives* and the *Treaty* (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the *Home State regulator*. To summarise, the *FSA*, as *Host State regulator*, is entitled to impose requirements with respect to activities carried on within the *United Kingdom* if these can be justified in the interests of the ‘general good’ and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the *Single Market Directives*:

(1) the *Single Market Directives* expressly reserve responsibility for the prudential supervision of an *ISD investment firm*, *BCD credit institution* or passporting *insurance undertaking* to the *firm’s Home State regulator*. The *IMD* reaches the same position without expressly referring to the concept of prudential supervision. Accordingly, the *FSA*, as *Host State regulator*, is entitled to regulate only the conduct of the *firm’s* business within the *United Kingdom*;

(2) ...

Amendments to the Client Assets sourcebook

4.1 Application and purpose

Application

- 4.1.1 R This section (the *client money rules*) applies to a *firm* that receives or holds *money* from, or on behalf of, a *client* in the course of, or in connection with:
- (1) its *designated investment business*; ~~except where CASS 4.1.2R otherwise provides~~; or
 - (2) in the circumstances set out in CASS 4.1.1A R, *insurance mediation activity*;
- except where CASS 4.1.2R applies.
- 4.1.1A R A firm that receives or holds money to which this section applies and money in respect of which CASS 5.1 applies, may elect to comply with the provisions of this section CASS 4 in respect of all such money and if it does so CASS 4 applies as if all such money were money that the firm receives and holds in the course of or in connection with its designated investment business.
- 4.1.2 R The *client money rules* do not apply with respect to:
- (1) ...
 - ...
 - (3) ...
 - (a) ...
 - (b) ... ; ~~or~~
 - (4) *money* held by *depositories* which are regulated by COB 11 ;
 - (5) client money held by a firm which:
 - (a) receives or holds client money in relation to contracts of insurance; but which
 - (b) in relation to such client money elects to act in accordance with CASS 5.1 to 5.6.
- 4.1.2A R A firm should make and retain a written record of any election which it makes under CASS 4.1.1A R or CASS 4.1.2R (5).
- 4.1.2B G (1) A firm which receives and holds client money in respect of life assurance business in the course of its designated investment business may:

(a) in accordance with CASS 4.1.1 A R elect to comply with CASS 4 in respect of such *client money* and in doing so avoid the need to comply with CASS 5.1 to 5.6 which would otherwise apply to the *firm* in respect of *client money* received in the course of its *insurance mediation activity*; or

(b) in accordance with CASS 4.1.2R (5), elect to comply with CASS 5.1 to 5.6 in respect of such *client money*.

(2) These options are available to a *firm* irrespective of whether it also receives and holds *client money* in respect of other parts of its *designated investment business*. A *firm* may not however choose to comply with CASS 5.1 to 5.6 in respect of *client money* which it receives and holds in the course of any part of its *designated investment business* which does not involve an *insurance mediation activity*.

...

Money that is not client money: ‘opt outs’ for any business (including ISD business) other than insurance mediation activity

4.1.8 G The ‘opt out’ provisions provide a *firm* with the option of allowing an *intermediate customer* or *market counterparty* to choose whether their *money* is subject to the *client money rules* (unless the *firm* is conducting *insurance mediation activity*).

4.1.9 R Subject to CASS 4.1.11R, *money* is not *client money* when a *firm* (other than a sole trader) holds that *money* on behalf of, or receives it from, a *market counterparty* or an *intermediate customer*, other than in the course of *insurance mediation activity*, and the *firm* has obtained written acknowledgement from the *market counterparty* or *intermediate customer* that:

- (1) the *money* will not be subject to the protections conferred by the *client money rules*;
- (2) as a consequence, this *money* will not be segregated from the *money* of the *firm* in accordance with the *client money rules* and will be used by the *firm* in the course of its own business; and
- (3) the *market counterparty* or *intermediate customer* will rank only as a general creditor of the *firm*.

‘Opt-outs’ for non-ISD business

4.1.10 G For a *firm* whose business is not governed by the *ISD* or the *IMD*, it is possible to ‘opt out’ on a one-way basis. However, in the case of certain non-*ISD investment firms* that undertake ‘*ISD type*’ business from a *branch* in the *United Kingdom*, article 5 of the *ISD* requires the *FSA* not to treat this business any more favourably than business of an *ISD investment firm*. Therefore all *ISD* and ‘*ISD type*’ business should comply with the *client money rules* or be ‘opted out’ on a two-way basis.

- 4.1.11 R *Money is not client money if a firm, in respect of designated investment business which is not a core investment service, a non-core investment service, or a listed activity or insurance mediation activity :*
- (1) holds it on behalf of or receives it from a *market counterparty* who is not an *authorised person* or an *intermediate customer* who is not an *authorised person*; and
 - (2) has sent a separate written notice stating the matters set out in *CASS* 4.1.9R (1) to (3).

Amendments to the Enforcement manual

- 3.5.19 G Some relevant Community obligations which the *FSA* may need to consider are those under the following Directives:
- (1) ~~the *Banking Directive* EC 2000/12/EC *Banking Consolidation Directive*;~~
 - (2) ~~the *Insurance Directives*;~~
 - (3) ~~the *Investment Services Directive*;~~
 - (4) the *Insurance Mediation Directive*.
- 3.5.20 G Each of these Directives imposes general obligations on the *relevant EEA competent authorities* to cooperate and collaborate closely in discharging their functions under the Directives relating to the *authorisation* (“*registration*” in the case of *IMD insurance intermediaries* and *IMD reinsurance intermediaries*) and supervision of *credit institutions*, *insurance undertakings*, ~~and *investment firms*, *IMD insurance intermediaries* and *IMD reinsurance intermediaries*.~~

...

Amendments to the Compensation sourcebook

Text in square brackets was made in the Collective Investment Schemes (UCITS Amending Directive) Instrument 2003 but will not to come into force until 13 February 2004.

- 1.3.3 G Table

Q1	What do I need to do in order to receive compensation?	
A1	In order to receive compensation:	
	(1) you must be an <i>eligible claimant</i> ;	COMP 4.2-3
	(2) you must have a <i>protected claim</i> ;	COMP 5.2-56
	(3) you must be claiming against a <i>relevant person</i> ;	COMP 6.2.1R
	(4) the <i>relevant person</i> must be <i>in default</i> .	COMP 6.3
	...	
Q2	How much compensation will I be offered?	
A2	This depends on whether your <i>protected claim</i> is:	
	(1) a <i>claim</i> for a <i>protected deposit</i> ; or	COMP 5.3
	(2) a <i>claim</i> under a <i>protected contract of insurance</i> ; or	COMP 5.4
	(3) a <i>claim</i> in connection with <i>protected investment business</i> ; or	COMP 5.5
	(4) a <i>claim</i> in connection with <i>protected non-investment insurance mediation</i> .	COMP 5.6
	Different limits apply to different types of <i>claim</i> .	COMP 10.2.3R
Q3	How will the FSCS calculate the compensation that is offered to me?	
A3	Again, this will depend on whether <i>your protected claim</i> is :	
	(1) a <i>claim</i> for a <i>protected deposit</i> ;	COMP 12.2.1R, 12.3.1R and 12.4.1R
	(2) a <i>claim</i> under a <i>protected contract of insurance</i> ; or	COMP 12.2.1R, 12.3.2-4R and 12.4.9R – 12.5.2R
	(3) a <i>claim</i> in connection with <i>protected investment business</i> ; or	COMP 12.2.1R, 12.3.5-6R and 12.4.2-8R
	(4) a <i>claim</i> in connection with <i>protected non-investment insurance mediation</i> .	COMP 12.4.17R – 18R
	

...

1.4.1

G *Incoming EEA firms* which are conducting *regulated activities* in the *United Kingdom* under a *BCD*, *IMD* or *ISD* passport are not required to participate in the *compensation scheme* in relation to those *passport activities*. *Incoming EEA firms* which are conducting business under a *BCD*, *IMD* or *ISD* passport may apply to obtain the cover of, or ‘top up’ into, the compensation scheme if there is no level or scope of cover provided by the *incoming EEA firm’s Home State* compensation scheme or if the level or scope of the cover is less

than that provided by the *compensation scheme*. This is covered by COMP 14.

...

- 4.3.6 R *A person who comes within COMP 4.2.2R is eligible to claim compensation in respect of a liability subject to compulsory insurance if the claim is:*
- (1) a claim under a protected contract of insurance; or*
 - (2) a claim in connection with protected non-investment insurance mediation.*

...

- 5.2.1 R *A protected claim is:*
- (1) a claim for a protected deposit (see COMP 5.3); or*
 - (2) a claim under a protected contract of insurance (see COMP 5.4); or*
 - (3) a claim in connection with protected investment business (see COMP 5.5);
or*
 - (4) a claim in connection with protected non-investment insurance mediation (see COMP 5.6).*

...

- 5.5.2 R ...

5.6 Protected non-investment insurance mediation

- 5.6.1 R *Protected non-investment insurance mediation is an insurance mediation activity where the investment concerned is a non-investment insurance contract, provided that the condition in COMP 5.6.2 R is satisfied.*

- 5.6.2 R *COMP 5.6.1R only applies if the protected non-investment insurance mediation was carried on from:*
- (1) an establishment of the relevant person in the United Kingdom; or*
 - (2) a branch of a UK firm established in another EEA State in the exercise of an EEA right derived from the IMD.*

...

- 6.2.2 G *An incoming EEA firm, which is a credit institution, an IMD insurance intermediary, an IMD reinsurance intermediary or an ISD investment firm, and its appointed representatives are not relevant persons in relation to the firm's passported activities, unless it has top-up cover. (See definition of "participant firm").*

...

- 6.3.4 R For *claims* arising in connection with *protected investment business* or *protected non-investment insurance mediation*, the *FSCS* has the additional power to determine that a *relevant person* is *in default* if it is satisfied that a *protected claim* exists, and:
- (1) the *FSCS* is satisfied that the *relevant person* cannot be contacted at its last place of business and that reasonable steps have been taken to establish a forwarding or current address, but without success; and
 - (2) there appears to the *FSCS* to be no evidence that *the relevant person* will be able to meet claims against it.

...

- 8.2.4 R For *claims* made in connection with *protected investment business* or *protected non-investment insurance mediation*, the *FSCS* may disregard a defence of limitation where the *FSCS* considers that it would be reasonable to do so.

- 8.2.5 R For *claims* made in connection with *protected investment business* or *protected non-investment insurance mediation*, if a *relevant person*, incorporated as a *company*, has been dissolved with the result that its liability to the claimant has been extinguished by operation of law, the *FSCS* must treat the claim, for the purposes of paying compensation, as if the *relevant person* had not been dissolved.

...

- 10.2.3 R Table

Type of claim	Level of cover	Maximum payment
<u>Protected non-investment insurance mediation</u>	(1) where the <i>claim</i> is in respect of a <i>liability subject to compulsory insurance</i> : 100% of <i>claim</i>	<u>Unlimited</u>
	(2) In all other cases:	<u>Unlimited</u>
	100% x first £2000	
	90% of the remainder of the <i>claim</i>	

...

- 12.3.6 R ...

Protected non-investment insurance mediation

- 12.3.7 R For a *claim* made in connection with *protected non-investment insurance mediation*, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of *determination of default*.

...

- 12.4.16 R ...
Protected non-investment insurance mediation
- 12.4.17 R The FSCS may pay compensation for any claim made in connection with protected non-investment insurance mediation only to the extent that the FSCS considers that the payment of compensation is essential in order to provide the claimant with fair compensation.
- ...
- 12.4.18 R The FSCS may decide to reduce the compensation that would otherwise be payable for a claim made in connection with protected non-investment insurance mediation if it is satisfied that:
- (1) there is evidence of contributory negligence by the claimant; or
- (2) payment of the full amount would provide a greater benefit than the claimant might reasonably have expected or than the benefit available on similar contracts with other relevant persons; and
- it would be inequitable for FSCS not to take account of (1) or (2).
- ...
- 13.2.14 G *Incoming EEA firms* which obtain cover or 'top up' under the provisions of COMP 14 are *firms* whose *Home State* scheme provides no or limited compensation cover in the event that they are determined to be in default. Under COMP 13.7, the FSCS is required to consider whether *incoming EEA firms* should receive a discount on the amount that they would otherwise pay as their share of the levy, to take account of the availability of their *Home State* cover. The amount of any discount is recoverable from the other members of the *incoming EEA firm's contribution group*.
- ...
- 13.7.1 R If an *incoming EEA firm*, which is a *BCD credit institution*, an IMD insurance intermediary, an IMD reinsurance intermediary or ISD investment firm, is a *participant firm*, the FSCS must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the *firm's Home State* scheme.
- ...
- 14.1.2 R This chapter also applies to an *incoming EEA firm* which is a *credit institution*, ~~or an ISD investment firm~~ (or both), an IMD insurance intermediary, an IMD reinsurance intermediary [or a *UCITS management company*].

- 14.1.3 G This chapter provides supplementary *rules and guidance* for an *incoming EEA firm* which is a *credit institution, an IMD insurance intermediary, an IMD reinsurance intermediary* or an *ISD investment firm*. It reflects in part the implementation of the Deposit Guarantee Directive and Investors Compensation Directive. This sourcebook applies in the usual way to an *incoming EEA firm* which is exercising *EEA rights* under the *Insurance Directives*. Such a firm is not affected by the *Deposit Guarantee Directive* or the *Investors Compensation Directive*.
- 14.1.4 G An *incoming EEA firm*, which is a *credit institution, an IMD insurance intermediary, an IMD reinsurance intermediary* or an *ISD investment firm*, is not a *participant firm* in relation to its *passported activities* unless it obtains the cover of, or ‘tops up’ into, the *compensation scheme*. This reflects section 213(10) of the Act (the compensation scheme) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons). If an *incoming EEA firm* also carries on non-*passported activities* for which the *compensation scheme* provides cover, it will be a *participant firm* in relation to those activities and will be covered by the *compensation scheme* for those activities in the usual way.
- 14.1.5 G In relation to an *incoming EEA firm’s passported activities*, its *Home State* compensation scheme must provide compensation cover in respect of business within the scope of the *Deposit Guarantee Directive and Investors Compensation Directive*, whether that business is carried on from a *UK branch* or on a *cross border services* basis. [(For a *UCITS management company*, this is only for certain *passported activities*)]. *Insurance mediation activity relating to non-investment insurance contracts is not within the scope of the Deposit Guarantee Directive and Investors Compensation Directive.*
- 14.1.6 G If ~~there the scope or level of~~ is no cover provided by the incoming EEA firm’s Home State or the scope or level of cover is less than that provided by the *compensation scheme*, this chapter enables the *firm* to obtain cover or ‘top-up’ cover from the *compensation scheme* for its *passported activities* carried on from a *UK branch*, up to the *compensation scheme’s* limits (set out in COMP 10). This reflects section 214(5) of the Act (General) and regulation 3 of the *Electing Participants Regulations* (Persons who may elect to participate). If the *firm* ‘tops up’ and then becomes insolvent, the *Home State* compensation scheme will pay compensation up to the limit and scope of the *Home State* compensation scheme, with the *FSCS* paying compensation for the additional amount in accordance with the provisions in this sourcebook (COMP 12.4.1R and COMP 12.4.4R).
- ...
- 14.2.3 G A notice under COMP 14.2.1R should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:

- (1) the *firm* must be a *credit institution, an IMD insurance intermediary, an IMD reinsurance intermediary* or an *ISD investment firm*;
- (2) ...
- (3)

Schedule 2

Notification requirements

...

2 Table:

...

COMP 14.2.1R	Application by ... eligible inward passporting <i>EEA firm</i> to top-up <u>obtain</u> <u>top-up cover</u> into <i>compensation</i> <i>scheme</i>	The <i>firm's</i> ... decision that it wishes to top- up <u>obtain top-</u> <u>up cover</u> into UK scheme
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Annex I

Amendments to the Prudential sourcebook and to the Authorisation manual

The following text is inserted as indicated (and is not underlined).

Part 1

Integrated Prudential sourcebook

After 9.2.1R, insert the following.

Commencement provisions

- 9.2.1A G
- (1) In summary, the provisions relating to *regulated mortgage contracts* and *long-term care insurance contracts* come into effect on 31 October 2004 and the provisions relating to *insurance mediation activity* come into effect on 14 January 2005. For convenience, both sets of provisions are published in the on-line version of the *Handbook* as from 31 October 2004.
 - (2) Further *guidance* is given on these commencement provisions, and their statutory background, in *AUTH 1.2.7G* and *AUTH 1.2.8G*.
 - (3) This provision (*PRU 9.2.1AG*), and the *guidance* in *AUTH*, will be deleted from the text of the on-line version of the *Handbook* on 14 January 2005.

...

After 9.3.1R, insert the following.

Commencement provisions

- 9.3.1A G
- (1) In summary, the provisions relating to *regulated mortgage contracts* and *long-term care insurance contracts* come into effect on 31 October 2004 and the provisions relating to *insurance mediation activity* come into effect on 14 January 2005. For convenience, both sets of provisions are published in the on-line version of the *Handbook* as from 31 October 2004.
 - (2) Further *guidance* is given on these commencement provisions, and their statutory background, in *AUTH 1.2.7G* and *AUTH 1.2.8G*.

- (3) This provision (*PRU 9.3.1AG*), and the *guidance* in *AUTH*, will be deleted from the text of the on-line version of the *Handbook* on 14 January 2005.

...

Commencement provisions

- 9.4.1A G (1) In summary, the provisions relating to *mortgage* mediation activity come into effect on 31 October 2004 and the provisions relating to *insurance mediation* and *insurance mediation activity* come into effect on 14 January 2005. For convenience, both sets of provisions are published in the on-line version of the *Handbook* as from 31 October 2004.
- (2) Further *guidance* is given on these commencement provisions, and their statutory background, in *AUTH 1.2.7G* and *AUTH 1.2.8G*.
- (3) This provision (*PRU 9.4.1AG*), and the *guidance* in *AUTH*, will be deleted from the text of the on-line version of the *Handbook* on 14 January 2005.

Part 2

Authorisation manual

After 1.2.6G, insert the following.

Activities related to regulated mortgage contracts and insurance mediation activities

- 1.2.7 G In this manual, various references are made to provisions concerning activities related to *regulated mortgage contracts* and to *insurance mediation activities*. Broadly speaking, the provisions concerning activities related to *regulated mortgage contracts* will come into effect on 31 October 2004 and those concerning *insurance mediation activities* will come into effect on 14 January 2005. The exception to this is that the provisions concerning *insurance mediation activities*, so far as they relate to *long-term care insurance contracts*, come into effect on 31 October 2004. These changes to the scope of *regulated activities* result from:
- (1) the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.1) Order 2003 (SI 2003/1475);
and

- (2) the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476).

The commencement date for these provisions is explained in greater detail in *AUTH* 1.2.8G to *AUTH* 1.2.10G.

1.2.8G

Table: Commencement dates for provisions concerning insurance mediation activities and activities related to regulated mortgage contracts

	Provisions relevant to ...	Commence on ...
1.	The following <i>regulated activities</i> and their associated exclusions, so far as relevant to <i>general insurance contracts</i> and <i>pure protection contracts</i> (other than <i>long-term care insurance contracts</i>): (1) <i>dealing in investments as agent</i> ; (2) <i>arranging (bringing about) deals in investments</i> ; (3) <i>making arrangements with a view to transactions in investments</i> ; (4) <i>advising on investments</i> ; (5) agreeing to do any of the activities in (1) to (4).	14 January 2005
2.	The <i>regulated activities</i> and their associated exclusions referred to in 1(1) to (5) so far as relevant to <i>long-term care insurance contracts</i> .	31 October 2004
3.	The <i>regulated activity of assisting in the administration and performance of a contract of insurance</i> , other than a <i>long-term care insurance contract</i> , and its associated exclusions.	14 January 2005
4.	The <i>regulated activity of assisting in the administration and performance of a contract of insurance</i> that is a <i>long-term care insurance contract</i> , and its associated exclusions.	31 October 2004
5.	The following <i>regulated activities</i> and their associated exclusions: (1) <i>arranging (bringing about) regulated mortgage contracts</i> ; (2) <i>making arrangements with a view to regulated mortgage contracts</i> ; (3) <i>advising on regulated mortgages contracts</i> ; (4) <i>entering into a regulated mortgage-contract</i> ; (5) <i>administering a regulated mortgage-contract</i> ; (6) agreeing to do any of the activities in (1) to (5).	31 October 2004

Appointed representatives and professional firms

- 1.2.9 G References to *regulated activities* in provisions relating to *appointed representatives* and to the *Part XX exemption* for members of a *designated professional body* are subject to similar commencement dates as in *AUTH 1.2.8G*.

EEA firms

- 1.2.10 G The changes in *AUTH 5* (Qualifying for authorisation under the Act) result from the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003 (SI 2003/1473). These changes come into effect on 14 January 2005.
- 1.2.11 G This provision (*AUTH 1.2.11G*), and the *guidance* in *AUTH 1.2.7G* to *AUTH 1.2.10G*, will be deleted from the text of the on-line version of the *Handbook* on 14 January 2005.