

LATE SUBMISSION OF REPORTS INSTRUMENT 2002

Powers exercised

A. The Financial Services Authority amends the Enforcement manual, Decision making manual, Supervision manual, Lloyds sourcebook, Interim prudential sourcebook for investment business and Credit Unions sourcebook in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 138 (General rule-making power);

(2) section 156 (General supplementary powers);

(3) section 157(1) (Guidance);

(4) section 210 (Statements of policy);

(5) section 318 (Exercise of powers through Council); and

(6) section 395(5) (The Authority's procedures).

B. The provisions of the Act relevant to rules and listed above are specified for the purposes of section 153(2) of the Act (Rule-making instruments).

Commencement

C. This instrument comes into force as follows:

(1) the amendments in Annexes C, D, E and F come into force on 18 April 2002;

(2) the remainder comes into force on 11 April 2002.

Amendments to the Handbook

D. The Enforcement manual is amended in accordance with the Annex A to this instrument.

E. The Decision making manual is amended in accordance with Annex B to this instrument.

F. The Supervision manual is amended in accordance with Annex C to this instrument.

G. The Lloyds sourcebook is amended in accordance with Annex D to this instrument.

H. The Interim prudential sourcebook for investment business is amended in accordance with Annex E to this instrument.

I. The Credit Unions sourcebook is amended in accordance with Annex F to this instrument.

Citation

I. This instrument may be cited as the Late Submission of Reports Instrument 2002.

By order of the Board
21 March 2002

ANNEX A

1. In the transitional provisions of ENF, delete all the text and insert the following:

Transitional provisions

1. Table Transitional provisions applying to the Enforcement manual

(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>ENF 13 Ann 1G</i>	G	<p>(1) Paragraph (2) applies to every <i>firm</i> except a <i>firm</i> which becomes <i>authorised</i> after 1 December 2001.</p> <p>(2)</p> <p>(a) Except for a <i>firm</i> within (b), the sum of all the annual fees invoiced for the period 1 April 2001 to 31 March 2002 (or any part for which the <i>firm</i> was authorised) by the <i>firm's previous regulator</i> or <i>regulators</i> is to be treated as the annual fee payable by the <i>firm</i>.</p> <p>(b) In the case of a <i>firm</i> which was formerly regulated by</p>	Until the <i>FSA</i> has fully invoiced the <i>firm</i> in respect of its annual fee for the period 1 April 2002 to 31 March 2003	<i>Commencement</i>

			a <i>recognised professional body</i> in respect of the carrying on of investment business under the Financial Services Act 1986, the annual fee last invoiced by the <i>firm's recognised professional body</i> is to be treated as the annual fee payable by the <i>firm</i> .		
2	<i>ENF</i>	G	<i>GEN</i> contains some transitional provisions that apply throughout the <i>Handbook</i> and which are designed to ensure a smooth transition at <i>commencement</i> .	From <i>commencement</i>	(Various dates)

2. Amend ENF 13.5 as follows (underlining indicates new text, striking through indicates deleted text):

ENF 13.5.1G Amend the two introductory sentences preceding ENF 13.5.1G (1) as follows:

This section sets out the *FSA's* policy and procedures in relation to financial penalties for late submission of reports. It applies specifically to reporting by *firms* required under all *rules* (not including the *listing rules*) which require *firms* to report to the *FSA* on a periodic basis. It also applies to periodic reporting by *firms* required by the provisions specified in (6) and (7). ~~the various types of reports and other *documents* (references in *ENF* 13.5 to 'reports' include these other *documents*), including annual *controllers'* reports, annual *close link* reports, compliance reports, financial reports, accounts and balance sheets, *actuaries'* and *auditors'* reports, and certificates and~~

statements that must be submitted to the *FSA* in accordance with: The following is a list of the main periodic reporting rules (the list may not be comprehensive) and those other provisions:

ENF 13.5.1G (3)

Amend as follows:

(3) ~~*IPRU(FSOC) 3.1(8)R*~~, *IPRU(FSOC) 3.1(7)R*, ~~*IPRU(FSOC) 3.2(5)R*~~ (Management and control), *IPRU(FSOC) 5.1(2)R*, and *IPRU(FSOC) 5.2(2)R*, and *IPRU(FSOC) 5.2(3)R* (Prudential reporting);

ENF 13.5.1G (4)

Amend as follows:

(4) ~~*DISP 1.1.8R*~~, *DISP 1.5.4 R* to *DISP 1.5.7 R*, (Reporting complaints to the FSA) ~~Complaint handling procedures for firms~~, ~~*DISP 1.5.11 R*~~, ~~*DISP 5.1.7 R*~~ and *DISP 5.5.1 R* (Information requirement) ~~{(Draft Financial Ombudsman Service Funding rules)}~~; and

ENF 13.5.1G (5)

Amend as follows:

(5) *LLD 3.3.1R* to *LLD 3.3.2R* (The Central Fund), and *LLD 4.3.1R* to *LLD 4.3.2R* (Capacity transfer market) and the *rules* set out in *LLD 15.2.1R* and *LLD 15.10.2R* (Reporting by the ~~*Society*~~ Society);

ENF 13.5.1G

Add, after subparagraph (5), the following subparagraphs:

(6) the reporting requirements in the pensions review provisions and *FSAVC* review provisions; that is, the provisions of the deemed scheme under the Financial Services and Markets Act 2000 (Transitional Provisions) (Review of Pensions Business) Order 2001 (SI 2001/2512); and

(7) *IPRU(INV) 4.4.2D* to *IPRU(INV) 4.4.5D* (Financial resource requirements).

ENF 13.5.1G

Add after subparagraph (7) the following paragraph:

References in ENF 13.5 to 'reports' include all the various types of reports and other documents, including annual controllers reports, annual close links reports, compliance reports, financial reports, persistency reports, accounts and balance sheets, and actuary and auditor reports that must be submitted to the FSA in accordance with the rules and other provisions specified in (1) to (7).

ENF 13.5.3G (2) Amend as follows:

(2) There may, however, be exceptional circumstances in which the FSA considers that it is appropriate not to seek a penalty, or to impose a lower penalty than the one indicated by the scale. This may be appropriate if the firm is an individual. If the person concerned is an individual, it is open to him to make representations to the FSA as to why he should not be the subject of a financial penalty, or why a lower penalty should be imposed. If he does so, the matters to which the FSA will have regard will include the matters set out in ENF 13.3.3G (3). It should be noted that an administrative difficulty such as pressure of work does not, in itself, constitute an exceptional circumstance for this purpose.

ENF 13.5.5AG Insert the following new paragraphs after ENF 13.5.5G:

ENF 13.5.5AG In applying the guidance in ENF 13.5, the FSA may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate. For the purposes of the guidance, the FSA may also treat a report as not received where the method by which it is submitted to the FSA does not comply with the prescribed method of submission.

ENF 13.5.5BG In most late reporting cases, it will not be necessary for the FSA to appoint an investigator under its powers discussed in ENF 2 since the fact of the breach will be clear. It follows that the FSA will not usually send the firm concerned a preliminary findings letter (see ENF 2.5.12 G) for late-reporting disciplinary action.

ENF 13.5.5CG A failure by a *firm* to submit a report by the due date may indicate wider problems within the *firm*, for which more serious disciplinary sanctions or other enforcement action (see ENF 11.2.3G) or both, may be appropriate.

ENF 13.5.6G

Amend as follows:

The FSA will use the decision making procedure set out in DEC 4.5.2G to DEC 4.5.6G ~~When it~~ decides whether to impose a financial penalty for the late submission of a report. It will use this procedure (whether the period of delay is more than or less than 28 *business days*, including if no submission has been made at all), ~~the FSA will use the decision making procedure set out in DEC.~~

3. Amend ENF 13 Annex 1G as follows (underlining indicates new text, striking through indicates deleted text):

ENF 13 ANN 1G Indicative scale of financial penalties for ~~returns~~ reports no more than 28 business days late (see ENF 13.5)

1 Table Indicative scale of financial penalties for ~~returns~~ reports no more than 28 business days late

Number of working business days late	Annual fees payable by firm				
	Note				
	<10K	<20K	<50K	<100K	>100K
	<u>£1 to less</u>	<u>£10,000 to</u>	<u>£20,000 to</u>	<u>£50,000 to</u>	<u>£100,000</u>
	<u>than</u>	<u>less than</u>	<u>less than</u>	<u>less than</u>	<u>or greater</u>
	<u>£10,000</u>	<u>£20,000</u>	<u>£50,000</u>	<u>£100,000</u>	

Number of working business days late	Annual fees payable by firm				
	Note				
22-28	400	800	2000	4000	6000
15-21	300	600	1500	3000	4500
8-14	200	400	1000	2000	3000
1-7	100	200	500	1000	1500

Note

1. For this purpose, the annual fee payable by the *firm* is the annual fee for the most recent financial year for which the *FSA* has fully invoiced the *firm* before the date on which the relevant report first became late.

2. Where the *firm* first becomes *authorised* after 1 December 2001, and at the time the report first becomes late the *firm* has not previously been fully invoiced by the *FSA* for an annual fee, the annual fee of the *firm* will be treated as less than £10,000.

ANNEX B

Amend DEC 4.5.2G as follows (underlining indicates new text, striking through indicates deleted text):

DEC 4.5.2G (2) Amend as follows:

(2) not directly involved in the day-to-day supervision of the *firm* concerned, or in establishing the evidence on which the decision is based.

Amend DEC Appendix 1 as follows:

DEC Appendix 1.4.2G In sub-paragraph (3), replace the full stop with “; or” and insert after that sub-paragraph a new sub-paragraph:

(4) cases involving disciplinary action for late submission of a report as referred to in *ENF* 13.5.

ANNEX C

1. Amend SUP 15 as follows (underlining indicates new text, striking through indicates deleted text):

SUP 15.7.5R

Amend as follows:

Table Methods of notification

Method of delivery

1. *Post to the appropriate published address in SUP 15.7.6R of the FSA for postal submissions of notifications*
2. *Leaving the notification at the appropriate published address in SUP 15.7.6R of the FSA for hand delivery of notifications and obtaining a ~~time-stamped~~ dated receipt*
3. *Electronic mail to an address for the *firm's* usual supervisory contact at the *FSA* and obtaining an electronic confirmation of receipt*
4. *Hand delivery to the *firm's* usual supervisory contact at the *FSA**
5. *Fax to a fax number for the *firm's* usual supervisory contact at the *FSA*, followed by delivery by one of the methods 1- 4 in this table within five *business days* after the date of the faxed notification*

15.7.6R

Re-designate the paragraph as guidance and amend as follows:

The current published address of the FSA address for a written postal submission or hand delivery of notifications to the FSA is:

(1) The Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

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

(2) The Financial Services Authority

Sutherland House

108-114 Dundas Street

Edinburgh EH3 5DQ

if the *firm's* usual supervisory contact at the *FSA* ~~operates from~~ is based in Edinburgh

2. Amend SUP 16 as follows (underlining indicates new text, striking through indicates deleted text):

SUP 16.3.6R Amend as follows:

~~Unless a *rule* in this chapter states otherwise, a~~ A periodic report required to be submitted under this chapter, or under any other rule, must be submitted in writing in accordance with ~~SUP 16.3.7R~~ to SUP 16.3.10RG, ~~unless:~~

(1) a contrary intention appears; or

(2) the report is required under the *listing rules*.

SUP 16.3.7R Amend as follows:

~~A report required under this chapter must~~ A written report must:

(1) give the *firm's FSA* firm reference number; and

(2) if submitted in paper form, be submitted with the cover sheet contained in *SUP* 16 Ann 13R.

SUP 16.3.9R

Amend as follows:

Table Method of submission of reports (see *SUP* 16.3.8R)

Method of delivery

1. *Post* to the ~~appropriate published~~ address ~~in *SUP* 16.3.10R~~ of the *FSA* for postal submission of reports

2. Leaving the report at the ~~appropriate published~~ address ~~in *SUP* 16.3.10R~~ of the *FSA* for hand delivery of reports and obtaining a ~~time stamped~~ dated receipt

3. Electronic mail to an address for the *firm's* usual supervisory contact at the *FSA* and obtaining an electronic confirmation of receipt

4. Hand delivery to the *firm's* usual supervisory contact at the *FSA* and obtaining a dated receipt

5. Fax to the number notified by the *firm's* usual supervisory contact at the *FSA*, followed by submission by one of the methods 1-4 in this table within five *business days* after the date of the faxed submission

SUP 16.3.10R

Re-designate the paragraph as guidance and amend as follows:

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

The Financial Services Authority

PO BOX 35747

London E14 5WP

(2) ~~The current published address of the FSA for the submission of reports to the FSA~~ hand delivery of reports is:

(4a) The Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

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

(2b) The Financial Services Authority

Sutherland House

108-114 Dundas Street

Edinburgh EH3 5DQ

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

SUP 16 Annexes Except for the forms listed as exceptions below, in each form, replace the address for submission of the form (if any) with:

"see SUP 16.3 for method of submission"

Exceptions

All copies of BSD3, M1, B7, SLR1 and LR in Annex 1R and Annex
2G

ANNEX D

Amend LLD as follows

LLD 3.3.4G Add the following new guidance after LLD 3.3.3G:

3.3.4G The report referred to in *LLD 3.3.1R* must be submitted in writing in accordance with *SUP 16.3.7R* to *SUP 16.3.10G* (see *SUP 16.3.6R*).

LLD 4.3.3G Add the following new guidance after LLD 4.3.2R:

4.3.3G The report referred to in *LLD 4.3.1R* must be submitted in writing in accordance with *SUP 16.3.7R* to *SUP 16.3.10G* (see *SUP 16.3.6R*).

LLD 15.2.6AG Add the following new guidance after LLD 15.2.6R:

15.2.6AG The report referred to in *LLD 15.2.1R* must be submitted in writing in accordance with *SUP 16.3.7R* to *SUP 16.3.10G* (see *SUP 16.3.6R*).

LLD 15.10.6G Add the following new guidance after LLD 15.10.5R:

15.10.6G The copy of the accounts referred to in *LLD 15.10.5R* must be submitted in accordance with *SUP 16.3.7R* to *SUP 16.3.10G* (see *SUP 16.3.6R*).

ANNEX E

Amend IPRU(INV) as follows:

IPRU(INV) 4.4.5AD Add the following new direction after IPRU(INV) 4.4.5D:

4.4.5AD The *Society* must submit the reports in *IPRU(INV)* 4.4.2D to *IPRU(INV)* 4.4.5D in accordance with the *rules* in *SUP* 16.3 (General provision on reporting).

ANNEX F

Amend CRED as follows (underlining indicates new text, striking through indicates deleted text):

CRED 14.9.19G Amend as follows:

SUP 15.7.4R and *SUP* 15.7.5R state that the notification should be addressed to the *credit union's* usual supervisory contact at the *FSA* using one of these methods:

- (1) by post to the *FSA's* address;
- (2) self delivery to the *FSA's* address (and obtaining a ~~time-stamped~~ dated receipt);
- (3) electronic mail to an address for the *credit union's* usual supervisory contact at the *FSA* and obtaining an electronic confirmation of receipt;
- (4) hand delivery to the *credit union's* usual supervisory contact at the *FSA*;
- (5) fax number to the *credit union's* usual supervisory contact at the *FSA*, followed by submission by one of the methods in *CRED* 14.9.19G (1) – (4).

CRED 14.10.4G Amend as follows:

SUP 16.3.6R – *SUP* 16.3.13R state that a report must:

- (1) be in writing;
- (2) give the *credit union's FSA* reference number;

(3) be given to or addressed for the attention of the *credit union's* usual supervisory contact at the *FSA*;

(4) be delivered to the *FSA* by one of the following methods ~~in SUP 15.7.5R (summarised in CRED 14.9.19G)~~ .:

(a) by *post* to The Financial Services Authority, PO Box 35747, London E14 5WP;

(b) self delivery to The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS (and obtaining a dated receipt);

(c) electronic mail to an address for the *credit union's* usual supervisory contact at the *FSA* and obtaining an electronic confirmation of receipt;

(d) hand delivery to the *credit union's* usual supervisory contact at the *FSA* and obtaining a date receipt;

(e) fax to the number notified by the *credit union's* usual supervisory contact at the *FSA*, followed by one of the methods in (a) – (d) within five *business days* after the date of the faxed submission.