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.

<table>
<thead>
<tr>
<th>Annex</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. COND</td>
<td>1 February 2004</td>
</tr>
<tr>
<td>B. PRU</td>
<td>31 October 2004 (in part) and 14 January 2005 (in part) (see note 1)</td>
</tr>
<tr>
<td>C. CASS</td>
<td>14 January 2005</td>
</tr>
<tr>
<td>D. AUTH</td>
<td>31 October 2004 (in part) and 14 January 2005 (in part) (see notes 1 and 2)</td>
</tr>
<tr>
<td>E. AUTH</td>
<td>1 February 2004</td>
</tr>
<tr>
<td>F. SUP</td>
<td>31 October 2004 (in part) and 14 January 2005 (in part) (see notes 1 and 2)</td>
</tr>
<tr>
<td>G. Glossary</td>
<td>as for the provision in which a term is used</td>
</tr>
<tr>
<td>H. Miscellaneous</td>
<td>31 October 2004 (in part) and 14 January 2005 (in part) (see note 1)</td>
</tr>
</tbody>
</table>

**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);

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

Amended by Addendum
8 December 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 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

<table>
<thead>
<tr>
<th>(1)</th>
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<th>(5)</th>
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<td>Material to which the transitional provision applies</td>
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<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
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<tr>
<td>1</td>
<td><em>PRU</em> 9.2.7R</td>
<td><em>PRU</em> 9.2.7R (Requirement to hold professional indemnity insurance) does not apply in respect of acts or omissions occurring before:</td>
<td>From 31 October 2004</td>
<td>31 October 2004</td>
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<td></td>
<td></td>
<td>(1) 31 October 2004 (in relation to <em>mortgage mediation activity</em>); and</td>
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<td></td>
<td></td>
<td>(2) 14 January 2005 (in relation to <em>insurance mediation activity</em>).</td>
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<td>2</td>
<td><em>PRU</em> 9.3.53R and <em>PRU</em> 9.3.57R(3)</td>
<td>A <em>firm</em> is not required to include goodwill in its intangible assets until 14 January 2008.</td>
<td>From 31 October 2004 until 14 January 2008</td>
<td>31 October 2004</td>
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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.
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) 13.1.4R (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 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 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 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 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 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).
### Table: Calculation of additional capital for firm not holding client money or other client assets (£000’s)

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

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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 disapplied – 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

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

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Additional explanation</th>
</tr>
</thead>
</table>
| 1. Share capital | This must be fully paid and may include:  
(1) ordinary share capital; or  
(2) preference share capital (excluding preference shares redeemable by shareholders within two years). |
| 2. Capital other than share capital (for example, the capital of a sole trader, partnership or limited liability partnership) | The capital of a sole trader is the net balance on the firm's capital account and current account.  
The capital of a partnership is the capital made up of the partners':  
(1) capital account, that is the account:  
(a) into which capital contributed by the partners is paid; and  
(b) from which, under the terms of the partnership agreement, an amount representing capital may be withdrawn by a partner only if:  
(i) he ceases to be a partner and an equal amount is transferred to another such account by his former partners or any person replacing him as their partner; or  
(ii) the partnership 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 firm (after deduction of tax, dividends and proprietors’ or partners’ drawings) and other reserves created by appropriations of share premiums and similar realised appropriations. Reserves also include gifts of capital, for example, from a parent undertaking. |
| 4. Interim net profits | If a firm seeks to include interim net profits in the calculation of its capital resources, the profits have to be verified by the firm’s external auditor, net of tax, anticipated dividends or proprietors’ drawings and other appropriations. |
5. Revaluation reserves

6. General provisions

These are provisions that a firm carrying on mortgage lending or mortgage administration holds against potential losses that have not yet been identified but which experience indicates are present in the firm’s 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 firm’s annual report and accounts.

7. Subordinated loans

Subordinated loans must be included in capital on the basis of the provisions in PRU 9.3.56R and PRU 9.3.57R.

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

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Investments in own shares</td>
</tr>
<tr>
<td>2</td>
<td>Intangible assets (Note 1)</td>
</tr>
<tr>
<td>3</td>
<td>Interim net losses (Note 2)</td>
</tr>
<tr>
<td>4</td>
<td>Excess of drawings over profits for a sole trader or a partnership (Note 2)</td>
</tr>
</tbody>
</table>

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.
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

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:

\[ \text{four times} (a - b - c); \]

where:

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

**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

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

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 R(2)(c), 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
<table>
<thead>
<tr>
<th>5.5.1</th>
<th>R</th>
<th>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).</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.5.2</td>
<td>G</td>
<td>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</td>
</tr>
<tr>
<td>5.5.3</td>
<td>R</td>
<td>A firm must, except to the extent permitted by CASS 5.5, hold client money separate from the firm's money.</td>
</tr>
</tbody>
</table>
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.
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.
Firms are reminded that the mandate rules do not apply to an incoming EEA firm with respect to its passported activities. The application of the mandate rules is also dependent on the location from which the activity is undertaken.

Purpose

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

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

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).
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).

<table>
<thead>
<tr>
<th>Investment type</th>
<th>Qualification</th>
</tr>
</thead>
</table>
| 1. Negotiable debt security                         | (a) Remaining term to maturity of 5 years or less; and  
(b) The issuer or investment 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. |
| (including a certificate of deposit)                 |                                                                                                                                                                                                             |
| 2. A repo in relation to negotiable debt security    | As for 1 above and where the credit rating of the counterparty also meets the criteria in 1.                                                                                                                 |
| 3. Bond funds                                        | (a) An authorised fund or a recognised scheme 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 authorised fund or a recognised scheme;  
(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. Derivatives                                       | 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 even 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

<table>
<thead>
<tr>
<th>Handbook Reference</th>
<th>Subject of Record</th>
<th>Contents of Record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>CASS 4.5.5R</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td>Not specified</td>
</tr>
<tr>
<td>CASS 5.1.1R(4)</td>
<td>Record of election of compliance with CASS 5.1 to 5.6 provisions</td>
<td>Record of compliance with CASS 5.1 to 5.6 provisions on client money</td>
<td>Not specified</td>
<td>Not specified</td>
</tr>
<tr>
<td>CASS 5.2.3R(2)</td>
<td>Holding client money as agent</td>
<td>The terms of the agreement</td>
<td>Not specified</td>
<td>Six years</td>
</tr>
<tr>
<td>CASS 5.4.4R(2)</td>
<td>Adequacy of systems and controls</td>
<td>Written confirmation of adequate systems and controls from its auditor</td>
<td>Not specified</td>
<td>Not specified</td>
</tr>
<tr>
<td>CASS 5.5.64R</td>
<td>Client money calculation</td>
<td>Whether the firm calculates its client money requirements according to CASS 5.5.67R or CASS 5.5.68R</td>
<td>Not specified</td>
<td>Not specified</td>
</tr>
<tr>
<td>CASS 5.5.84R</td>
<td>Transactions and commitments for client money</td>
<td>Explanation of the firm's transactions and commitments for client money</td>
<td>Not specified</td>
<td>Three years</td>
</tr>
<tr>
<td>CASS 5.7.6R</td>
<td>Mandates</td>
<td>Records of adequate</td>
<td>Not specified</td>
<td>Not specified</td>
</tr>
<tr>
<td>Handbook Reference</td>
<td>Matter to be Notified</td>
<td>Contents of Notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
</tr>
<tr>
<td>---------------------</td>
<td>-----------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>--------------------------------------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>CASS 4.4.33R</td>
<td>…</td>
<td>…</td>
<td>…</td>
<td></td>
</tr>
<tr>
<td>CASS 5.5.61R</td>
<td>Failure of bank, broker or settlement agent</td>
<td>Full details including whether it intends to make good any shortfall that may have arisen in the amounts involved</td>
<td>As soon as the firm becomes aware</td>
<td>Immediately</td>
</tr>
<tr>
<td>CASS 5.5.76R</td>
<td>Inability to perform the calculation required by CASS 5.5.63R</td>
<td>Inability to perform the calculation</td>
<td>Inability to perform the calculation</td>
<td>Immediately</td>
</tr>
<tr>
<td>CASS 5.5.77R</td>
<td>Inability to make good any shortfall identified by CASS 5.5.63R</td>
<td>Inability to make good any shortfall in client money</td>
<td>Inability to make good any shortfall</td>
<td>Immediately</td>
</tr>
<tr>
<td>CASS 5.5.78</td>
<td>Inability to comply with</td>
<td>Inability to comply with</td>
<td>Inability to comply with</td>
<td>As soon as reasonably</td>
</tr>
<tr>
<td>Handbook Reference</td>
<td>Matter to be Notified</td>
<td>Contents of Notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------</td>
<td>-------------------------</td>
<td>---------------</td>
<td>--------------</td>
</tr>
<tr>
<td>CASS 5.5.70R; CASS 5.5.72R; CASS 5.5.73R; CASS 5.5.74R; CASS 5.5.75R</td>
<td>the requirements in CASS 5.5.70R; CASS 5.5.72R; CASS 5.5.73R; CASS 5.5.74R; CASS 5.5.75R</td>
<td>the requirements of the rules listed</td>
<td>the requirements of the rules listed</td>
<td>practical</td>
</tr>
</tbody>
</table>
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 and activities relating to entering into or administering 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.
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 are 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)).

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 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.
Under article 26, 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 ……

Under article 27, 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 ……

Under article 28, 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.

Under article 29, an 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 person making the arrangements. The exclusion does not apply where the investment is a contract of insurance.

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).
Under article 30, arranging investment transactions in connection with lending on the security of insurance policies 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.

Making arrangements for finance (in whatever form) to be supplied ......

Under article 32, arrangements the only purpose of which is ......

Making 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.

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.

Under article 34, a company is not carrying on ......

Under article 35, body carrying out international securities business ......

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
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 regulating 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:

(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); 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:

(a) in connection with the sale of goods or supply of services (see AUTH 2.9.7G);
(4h) 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);

(c) 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 …

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, 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;

(5) safeguarding and administering investments;

(6) sending dematerialised instructions; and

(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 representitive 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.

…
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 disapplied 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:

\[ \text{(3) arranging (bringing about) deals in investments and making arrangements enabling or facilitating with a view to transactions in investments;} \]

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 disapplied 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:

\[ \text{(3) arranging (bringing about) deals in investments and making arrangements enabling or facilitating with a view to transactions in investments;} \]

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;

(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).

...
2.10.8 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(4).
2 Table:

<table>
<thead>
<tr>
<th>Regulated activity</th>
<th>Specified investment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regulated Activities [See note 1 to Table 1]</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Accepting deposits</strong></td>
<td></td>
</tr>
<tr>
<td>(a) accepting deposits (Article 5)</td>
<td>deposit (Article 74)</td>
</tr>
<tr>
<td><strong>Issuing electronic money</strong></td>
<td></td>
</tr>
<tr>
<td>(aa) issuing electronic money (Article 9B)</td>
<td>electronic money (Article 74A)</td>
</tr>
<tr>
<td><strong>Insurance business</strong></td>
<td></td>
</tr>
<tr>
<td>(b) effecting contracts of insurance (Article 10(1))</td>
<td>contract of insurance (Article 75) [Expanded in Table 2]</td>
</tr>
<tr>
<td>(c) carrying out contracts of insurance (Article 10(2))</td>
<td></td>
</tr>
<tr>
<td><strong>Designated investment business [see note 1A and 1B to Table 1]</strong></td>
<td></td>
</tr>
<tr>
<td>(d) dealing in investments as principal (Article 14) [see note 2 to Table 1]</td>
<td>(in relation to (d) to (l)) security [Expanded in Table 3] or contractually based investment [Expanded in Table 3]</td>
</tr>
<tr>
<td>(e) dealing in investments as agent (Article 21) [see notes 1B and 2 to Table 1]</td>
<td>(in relation to (e) to (g) and (j) only) a long-term care insurance contract which is a pure protection contract</td>
</tr>
<tr>
<td>(f) arranging (bringing about) deals in investments (Article 25(1)) [see note 1B to Table 1] [also see Sections of Table 1 headed ‘Lloyd’s market’ Section and ‘regulated mortgage activities’]</td>
<td></td>
</tr>
<tr>
<td>(g) making arrangements with a view to transactions in investments (Article 25(2)) [see note 1B to Table 1] [also see Sections of Table 1 headed ‘Lloyd’s market’ Section and ‘regulated mortgage activities’]</td>
<td></td>
</tr>
<tr>
<td>(h) managing investments (Article 37) [see note 3 to Table 1]</td>
<td></td>
</tr>
<tr>
<td>(i) safeguarding and administering investments (Article 40) [see note 3 to Table 1]</td>
<td>For the purpose of the permission regime, this regulated activity is subdivided into:</td>
</tr>
<tr>
<td>(i)</td>
<td>safeguarding and administration of assets (without arranging);</td>
</tr>
<tr>
<td>(ii)</td>
<td>arranging safeguarding and administration of assets</td>
</tr>
</tbody>
</table>

(j) advising on investments (Article 53) [see note 1B to Table 1] [also see Section of Table 1 headed ‘regulated mortgage activity’]

For the purpose of the permission regime, this regulated activity is subdivided into:

(i) advising on investments (except pension transfers or pension opt-outs);

(ii) advising on pension transfers or pension opt-outs [see note 4 to Table 1]

(k) sending dematerialised instructions (Article 45(1))

(l) causing dematerialised instructions to be sent (Article 45(2))

(m) establishing, operating or winding up a collective investment scheme (Article 51)

For the purpose of the permission regime, this regulated activity is sub-divided into:

(i) establishing, operating or winding up a regulated collective investment scheme

(ii) establishing, operating or winding up an unregulated collective investment scheme

(n) acting as trustee of an authorised unit trust scheme (Article 51)

(o) acting as the depositary or sole director of an open-ended investment company (Article 51)

(p) establishing, operating or winding up a stakeholder pension scheme (Article 52)

Insurance mediation activity [see note 5A to Table 1]
(pa) dealing in investments as agent (Article 21)
(pb) arranging (bringing about) deals in investments (Article 25(1))
(pc) making arrangements with a view to deals in investments (Article 25(2))
(pd) assisting in the administration and performance of a contract of insurance (Article 39A)
(pe) advising on investments (Article 53)

For the purpose of the permission regime, this regulated activity is sub-divided into:

(i) advising on investments (except pension transfers or pension opt outs);
(ii) advising on pension transfers or pension opt outs [See note 5E to Table 1]

The Lloyd’s market [see note 6 to Table 1]

(q) advising on syndicate participation at Lloyd’s (Article 56)
(r) managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s (Article 57)
(s) arranging (bringing about) deals in investments (Article 25(1))
(t) making arrangements with a view to transactions in investments (Article 25(2))

Funeral plan providers [a regulated activity with effect from 1 January 2002]

(u) entering as provider into a funeral plan contract (Article 59) [see Note 1A]

Regulated mortgage activity

(v) arranging (bringing about) regulated mortgage contracts (Article 25(A)(1))
(w) making arrangements with a view to regulated mortgage contracts (Article 25(A)(2))

life policy [see note 5B to Table 1]
pure protection contract [see note 5C to Table 1]
general insurance contract [see note 5D to Table 1]
rights to or interests in investments (Article 89) in so far as they relate to a life policy

membership of a Lloyd’s syndicate (Article 86(2))
underwriting capacity of a Lloyd’s syndicate (Article 86(1))
underwriting capacity of a Lloyd’s syndicate (Article 86(1)), membership of a Lloyd’s syndicate (Article 86(2)) or rights to or interests in investments (Article 89) in so far as they relate to underwriting capacity of a Lloyd’s syndicate or membership of a Lloyd’s syndicate

funeral plan contract (Article 87)
regulated mortgage contract (Article 88)
(x) *advising on regulated mortgage contracts*
   (Article 53A)
(y) *entering into a regulated mortgage contract*
   (Article 61(1))
(z) *administering a regulated mortgage contract*
   (Article 61(2))

Notes to Table 1

Note 1:
In addition to the *regulated activities* listed in Table 1, Article 64 of the *Regulated Activities Order* specifies that 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 in relation to any other regulated activity other than:

- accepting deposits (Article 5);
- issuing electronic money (Article 9B);
- effecting and carrying out contracts of insurance (Article 10);
- establishing, operating or winding up a collective investment scheme (Article 51(1)(a));
- acting as trustee of an authorised unit trust scheme (Article 51(1)(b));
- acting as the sole depositary or sole director of an open-ended investment company (Article 51(1)(c)); and
- establishing, operating or winding up a stakeholder pension scheme (Article 52).

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

Note 1

Security, 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 G 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 G 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 G (1) …
(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 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 (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   G Under the *EEA Passport Rights Regulations*, references in section 60 of the *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

1 Table

<table>
<thead>
<tr>
<th>Type of Firm</th>
<th>Para n.</th>
<th>Contents of consent notice-regulator’s notice (Regulation 23)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investment firm</td>
<td>…</td>
<td></td>
</tr>
<tr>
<td>Insurance undertaking</td>
<td>…</td>
<td></td>
</tr>
<tr>
<td>Insurance intermediary</td>
<td>(4)</td>
<td>that the <em>firm</em> intends to carry on <em>insurance mediation</em> or <em>reinsurance mediation</em> by providing services in the <em>United Kingdom</em>.</td>
</tr>
</tbody>
</table>

AUTH 5 Annex 3
Application of the Handbook to Incoming EEA Firms  G

2 Table: G

<table>
<thead>
<tr>
<th>(1) Module of Handbook</th>
<th>(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</th>
<th>(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</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>PRU</td>
<td><strong>PRU 9.1</strong> (Responsibility for insurance mediation activity) does not apply unless the firm has a top-up permission.</td>
<td>As column (2)</td>
</tr>
<tr>
<td>-----</td>
<td>-------------------------------------------------------------------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td></td>
<td><strong>PRU 9.2</strong> (Professional indemnity insurance requirements for insurance and mortgage mediation activity and mortgage lending and administration) does not apply unless the firm has a top-up permission.</td>
<td>As column (2)</td>
</tr>
<tr>
<td>PRU</td>
<td><strong>PRU 9.3</strong> (Capital resources for insurance and mortgage mediation activity and mortgage lending and administration) does not apply unless the firm has a top-up permission. See <strong>PRU 9.3.2G</strong> for more detailed guidance.</td>
<td>As column (2)</td>
</tr>
<tr>
<td>PRU</td>
<td><strong>PRU 9.4</strong> (Insurance undertakings and mortgage lenders using insurance or mortgage mediation services) does not apply unless the firm has a top-up permission.</td>
<td>As column (2)</td>
</tr>
</tbody>
</table>

...  

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:
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

if he does, whether he qualifies for the exclusion from 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 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.
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. …

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 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. …

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

1. to 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 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 activities of advising on investments or advising on regulated mortgage contracts are 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 given by a company through its employees.
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).

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


...

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.
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

<table>
<thead>
<tr>
<th>Subject of advertising or promotion</th>
<th>FSMA regulated</th>
<th>CCA regulated</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) regulated mortgage contracts</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(2) other loans secured on land where the lender also enters into regulated mortgage contracts as lender</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>(3) loans not secured on land whether or not the lender also enters into regulated mortgage contracts as lender</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>(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 regulated mortgage contracts as lender</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
(5) loans as in (1), (2) or (4) but where the advertisement is subject to exemptions under the Financial Promotion Order 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 Financial Promotion Order (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
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 …
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: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

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: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

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


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 by 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'
<table>
<thead>
<tr>
<th>Factor</th>
<th>Indicators that P does not carry on activities &quot;for remuneration&quot;</th>
<th>Indicators that P does carry on activities for &quot;for remuneration&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>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)</td>
<td>P does not receive any direct remuneration specifically identified as a reward for his carrying on insurance mediation activities.</td>
<td>P receives direct remuneration specifically identified as being a reward for providing insurance mediation services.</td>
</tr>
<tr>
<td>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 insurance mediation activities as part of other services.</td>
<td>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.</td>
<td>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 insurance mediation activities but where no particular part of the fees is attributable to insurance mediation activities. This could include where insurance mediation activities are likely to: • 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</td>
</tr>
</tbody>
</table>
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 charges his customers a greater amount for other goods or services than would be the case if P were not also carrying on insurance mediation activities for those customers and this:

- 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 insurance mediation activities 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 insurer or broker). | P receives benefits of any kind (direct or indirect) in respect of his insurance mediation activities which go beyond the reimbursement of his actual costs incurred in carrying on the activity. |

"By way of business"
<table>
<thead>
<tr>
<th>Factor</th>
<th>Indicators that P does not carry on activities &quot;by way of business&quot;</th>
<th>Indicators that P does carry on activities &quot;by way of business&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regularity/ frequency</td>
<td>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. Transactions do not result from formal arrangements (for instance, occasional involvement purely as a result of an unsolicited approach).</td>
<td>Involvement is frequent (for instance, once a week). 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 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).</td>
</tr>
<tr>
<td>Holding out</td>
<td>P does not hold himself out as providing a professional service that includes insurance mediation activities (by professional is meant not the services of a layman).</td>
<td>P holds himself out as providing a professional service that includes insurance mediation activities.</td>
</tr>
</tbody>
</table>
| Relevance to other activities/business | **Insurance mediation activities:**  
- 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  
- would be unlikely to result in a material reduction in income from P’s main | **Insurance mediation activities:**  
- 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.

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

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 5.16.17G (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.

<table>
<thead>
<tr>
<th>Type of introduction</th>
<th>Applicability of exclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>Exclusion not relevant as introducer is not arranging under article 25(2).</td>
</tr>
<tr>
<td>2 Introduction is one-off or otherwise not part of pre-existing ongoing arrangements that envisage such introductions being made.</td>
<td>Exclusion not relevant as introducer is not arranging under article 25(2).</td>
</tr>
<tr>
<td>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 contract of insurance.</td>
<td>Exclusion will be available provided the introduction was made with a view to the provision of independent advice on investments generally.</td>
</tr>
<tr>
<td>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 contracts of insurance.</td>
<td>Exclusion is not available.</td>
</tr>
</tbody>
</table>

If introducer is an unauthorised person, he will need authorisation or exemption as an appointed representative.

If introducer is an authorised person (such as an IFA introducing to a general insurance broker), he will need to vary his Part IV permission accordingly.

If introducer is an appointed representative, he will need to ensure that his agreement covers making such
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 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

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Regulated under article 53 or not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>I recommend you take the ABC Insurers motor insurance policy</td>
<td>Yes</td>
</tr>
<tr>
<td>I recommend that you take out the GHI Insurers life insurance policy</td>
<td>Yes</td>
</tr>
<tr>
<td>I recommend that you do not take out the ABC Insurers motor insurance policy</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### Recommendation Regulated under article 53 or not?

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Regulated under article 53 or not?</th>
</tr>
</thead>
<tbody>
<tr>
<td>I recommend that you do not take out the GHI Insurers life insurance policy</td>
<td>Yes</td>
</tr>
<tr>
<td>I recommend that you take out either the ABC Insurers motor insurance policy or the DEF Insurers motor insurance policy</td>
<td>Yes</td>
</tr>
<tr>
<td>I recommend that you take out either the GHI Insurers life insurance policy or the JKL Insurers life insurance policy</td>
<td>Yes</td>
</tr>
<tr>
<td>I recommend that you take out (or do not take out) insurance with ABC Insurers</td>
<td>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 policy)</td>
</tr>
<tr>
<td>I recommend that you take out (or do not take out) contents insurance</td>
<td>No, unless a specific insurance policy is implied by the context</td>
</tr>
<tr>
<td>I recommend that you take out (or do not take out) life insurance</td>
<td>No, unless a specific insurance policy is implied by the context</td>
</tr>
</tbody>
</table>

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 AUTHOR 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 AUTHOR App 5.8.24G to AUTHOR App 5.8.25G (Exclusion: periodical publications, broadcasts and web-sites)); and
(2) situations involving an overseas element (see, generally, AUTHOR App 5.12 (Link between activities and the United Kingdom) and, in particular, AUTHOR 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 dis applied in connection with insurance mediation

5.11.7G Article 4(4A) of the Regulated Activities Order (Specified activities: general) dis applies 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;
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

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

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)).

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?

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
<table>
<thead>
<tr>
<th>Type of contract of insurance</th>
<th>Regulated activities an appointed representative can carry on</th>
</tr>
</thead>
<tbody>
<tr>
<td>General insurance contract</td>
<td>• Dealing in investments as agent;</td>
</tr>
<tr>
<td></td>
<td>• Arranging;</td>
</tr>
<tr>
<td></td>
<td>• Assisting in the administration and performance of a</td>
</tr>
<tr>
<td></td>
<td>contract of insurance;</td>
</tr>
<tr>
<td></td>
<td>• Advising on investments; and</td>
</tr>
<tr>
<td></td>
<td>• Agreeing to carry on these regulated activities</td>
</tr>
<tr>
<td>Pure protection contract</td>
<td>• Arranging;</td>
</tr>
<tr>
<td></td>
<td>• Advising on investments; and</td>
</tr>
<tr>
<td></td>
<td>• Agreeing to carry on these regulated activities</td>
</tr>
<tr>
<td>Life policy (note that this</td>
<td>• Arranging;</td>
</tr>
<tr>
<td>already has effect prior to</td>
<td>• Advising on investments; and</td>
</tr>
<tr>
<td>14 January 2005)</td>
<td>• Agreeing to carry on these regulated activities</td>
</tr>
</tbody>
</table>

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 (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 disapplied 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 disapplied 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?
Are you, or will you be, carrying on a regulated activity that involves insurance mediation?

NO

Will you be carrying on these regulated activities by way of business?

NO

Are you, or will you be, carrying on a regulated activity in the United Kingdom?

NO

Are your activities excluded in full under the Regulated Activities Order?

YES

Are your activities exempt under Part XX of the Act because you are a member of the professions?

NO

Are you an exempt person under section 38 or 39 of the Act?

YES

Authorisation not required

NO

Are you a firm established in another EEA State which has obtained registration in that state in relation to the regulated activity?

YES

Apply for Part IV permission from the FSA under Part IV of the Act.

NO

Contact the Home State regulator, who will then contact the FSA, with a view to your authorisation under Schedule 3 of the Act (see AUTH 5).

Authorisation required

Where relevant, obtain exemption under the Act as an appointed representative (section 39).

YES Consult articles 21, 25, 39A and 53 of the Regulated Activities Order and AUTH App 5.5 to 5.11

YES Consult section 22 of the Act and AUTH App 5.4

YES Consult section 418 of the Act and AUTH App 5.12

NO Consult Part II of the Regulated Activities Order and AUTH App 5.3.7G to 5.3.8G, 5.6.5G to 5.6.23G, 5.7.7G, 5.8.24G to 5.8.26G, 5.11, and 5.12.9G to 5.12.10G

NO Consult Part XX of the Act, the Non-Exempt Activities Order and AUTH App 5.14.1G to 5.14.2G

NO Consult the Exemption Order, the Appointed Representatives Regulations and AUTH App 5.13
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 5.6.7G*, *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?

<table>
<thead>
<tr>
<th>Type of activity</th>
<th>Is it a regulated activity?</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>MARKETING AND EFFECTING INTRODUCTIONS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passive display of information - for example, medical insurance brochures in doctor’s surgery (whether or not remuneration is received for this activity)</td>
<td>No.</td>
<td>Merely displaying information does not constitute making arrangements under article 25(2) (see <em>AUTH App 5.6.4G</em>).</td>
</tr>
<tr>
<td>Recommending a broker/insurance undertaking and providing customer with contact details (whether by phone, fax, e-mail, face-to-face or any other means of communication)</td>
<td>Yes, but article 72C may be available.</td>
<td>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 <em>AUTH App 5.6.5G</em> to <em>AUTH App 5.6.9G</em>). Generally, this will not amount to advice under article 53 unless there is an implied recommendation of a particular <em>policy</em> (see <em>AUTH App 5.8.4G</em>), in which case article 72C would not be available.</td>
</tr>
<tr>
<td>Activity</td>
<td>Relevant Article</td>
<td>Notes</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Providing an insurance undertaking/broker with contact details of customer</td>
<td></td>
<td>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 policyholder or potential policyholder.</td>
</tr>
<tr>
<td>Marketing on behalf of insurance undertaking to intermediaries only (for example, broker consultants)</td>
<td></td>
<td>Yes. This amounts to work preparatory to the conclusion of contracts of insurance 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 policyholder or potential policyholder only.</td>
</tr>
<tr>
<td>Telemarketing services (that is, companies specialising in marketing an insurance undertaking’s products/services to prospective customers)</td>
<td></td>
<td>Yes. This amounts to introducing and/or other work preparatory to the conclusion of contracts of insurance and so constitutes making arrangements under article 25(2). This could also involve article 25(1) arranging where the telemarketing company actually sells a particular policy and could involve advising on investments. 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 advising on investments.</td>
</tr>
</tbody>
</table>

**PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Relevant Article</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discussion with client about need for insurance generally/need to take out a particular type of insurance</td>
<td></td>
<td>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 arranging. If so, article 72C might be of application (see AUTH App 5.6.5G to AUTH App 5.6.9G).</td>
</tr>
<tr>
<td>Advising on the level of cover needed</td>
<td></td>
<td>Generally, no. Article 72C available if needed. Not enough, of itself, to constitute making arrangements under article 25(2), but you...</td>
</tr>
<tr>
<td>Activity</td>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Pre-purchase questioning in the context of filtered sales</td>
<td>Yes</td>
<td>Subject to Article 72 C exclusion where available.</td>
</tr>
<tr>
<td>(intermediary asks a series of questions and then suggests several</td>
<td></td>
<td>This will constitute <em>arranging</em> although article 72C may be of application (see AUTH App 5.6.5G to AUTH App 5.6.9G).</td>
</tr>
<tr>
<td>policies which suit the answers given)</td>
<td></td>
<td>If there is no express or implied recommendation of a particular <em>policy</em>, this activity will not amount to advice under article 53 (see AUTH App 5.8.15G to AUTH App 5.8.19G).</td>
</tr>
<tr>
<td>Explanation of the terms of a particular <em>policy</em> or comparison of</td>
<td>Possibly</td>
<td>Article 72C available.</td>
</tr>
<tr>
<td>the terms of different policies</td>
<td></td>
<td>This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve advising on investments (see AUTH App 5.8.8G (Advice or information)). Where the explanation is provided to the potential <em>policyholder</em>, and does not involve advising on investments, article 72C may be of application (see AUTH App 5.6.5G to AUTH App 5.6.9G), and where information is provided by a professional in the course of a profession, article 67 may apply (see AUTH App 5.11.9G to AUTH App 5.11.12G).</td>
</tr>
<tr>
<td>Advising that a customer take out a particular <em>policy</em></td>
<td>Yes</td>
<td>This amounts to advice on the merits of a particular <em>policy</em> under article 53 (see AUTH App 5.8.4G to AUTH App 5.8.5G).</td>
</tr>
<tr>
<td>Advising that a customer does not take out a particular <em>policy</em></td>
<td>Yes</td>
<td>This amounts to advice on the merits of a particular <em>policy</em> under article 53 (see AUTH App 5.8.4G to AUTH App 5.8.5G).</td>
</tr>
<tr>
<td>Advice by journalists in newspapers, broadcasts etc.</td>
<td>Generally, no because of the article 54 exclusion.</td>
<td>Article 54 provides an exclusion for advice given in newspapers etc (see AUTH App 5.8.24G to AUTH App 5.8.25G).</td>
</tr>
<tr>
<td>Giving advice to a customer in relation to his <em>buying</em> a consumer</td>
<td>Not necessarily but depends on the circumstances</td>
<td>Where the advice relates specifically to the merits of the consumer product, it is possible that references to the</td>
</tr>
<tr>
<td>Activity Description</td>
<td>Yes/No/Possibly</td>
<td>Additional Information</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------</td>
<td>-----------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Compulsory secondary purchase and/or a benefit that comes with buying the product</td>
<td></td>
<td>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 regulated activity.</td>
</tr>
<tr>
<td><strong>ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Providing information to customer who fills in application form</td>
<td>Possibly</td>
<td>This activity may amount to <em>arranging</em> although the exclusions in article 67 (see AUTH App 5.11.9G to AUTH App 5.11.12G) and article 72C (see AUTH App 5.6.5G to AUTH App 5.6.9G) may be of application.</td>
</tr>
<tr>
<td>Helping a potential <em>policyholder</em> fill in an application form</td>
<td>Yes</td>
<td>This activity amounts to <em>arranging</em>. Article 72C will not apply because this activity goes beyond the mere provision of information to a <em>policyholder</em> or potential <em>policyholder</em> (see AUTH App 5.6.5G to AUTH App 5.6.9G).</td>
</tr>
<tr>
<td>Receiving completed proposal forms for checking and forwarding to an insurance undertaking (for example, an administration outsourcing service provider that receives and processes proposal forms)</td>
<td>Yes</td>
<td>This amounts to <em>arranging</em>. Article 72C does not apply because this activity goes beyond the mere provision of information to a <em>policyholder</em> or potential <em>policyholder</em> (see AUTH App 5.6.5G to AUTH App 5.6.9G).</td>
</tr>
<tr>
<td>Assisting in completion of proposal form and sending to insurance undertaking</td>
<td>Yes</td>
<td>This activity amounts to <em>arranging</em>. Article 72C does not apply because this activity goes beyond the mere provision of information (see AUTH App 5.6.5G to AUTH App 5.6.9G).</td>
</tr>
<tr>
<td><strong>NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Negotiating terms of <em>policy</em> on behalf of customer with the insurance undertaking</td>
<td>Yes</td>
<td>This activity amounts to <em>arranging</em> (see AUTH App 5.6.2G).</td>
</tr>
<tr>
<td>Negotiating terms of <em>policy</em> on behalf of insurance undertaking with the customer and signing proposal form on his behalf</td>
<td>Yes</td>
<td>These activities amount to both <em>arranging</em> and <em>dealing in investments as agent</em>.</td>
</tr>
<tr>
<td>Concluding a <em>contract of insurance</em> on insurance</td>
<td>Yes</td>
<td>A person carrying on this activity will be <em>dealing in investments as agent</em>. He will</td>
</tr>
<tr>
<td>Company’s behalf, for example, motor dealer who has authority to conclude insurance contract on behalf of insurance undertaking when selling a car</td>
<td>Also be arranging (as the article 28 exclusion only applies in the limited circumstances envisaged under article 28(3)) (see AUTH App 5.6.12G).</td>
<td></td>
</tr>
<tr>
<td>Agreeing, on behalf of a prospective policyholder, to buy a policy.</td>
<td>Yes.</td>
<td>A person who, with authority, enters into a contract of insurance on behalf of another is dealing in investments as agent under article 21, and will also be arranging.</td>
</tr>
<tr>
<td>Providing compulsory insurance as a secondary purchase</td>
<td>Yes. It will amount to dealing in investments as agent or arranging.</td>
<td>The fact that the insurance is secondary to the primary product does not alter the fact that arranging the package involves arranging the insurance.</td>
</tr>
</tbody>
</table>

### COLLECTION OF PREMIUMS

| Collection of cheque for premium from the customer at the pre-contract stage. | Yes (as part of arranging). | This activity is likely to form part of arranging. But the mere collection/receipt of premiums from the customer is unlikely, without more, to amount to arranging. |
| Collection of premiums at post-contract stage | No. | 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. |

### MID-TERM ADJUSTMENTS AND ASSIGNMENTS

| Solicitors or licensed conveyancers discharging client instructions to assign contracts of insurance. | Not where article 67 applies. | As the assignment of rights under a contract of insurance (as opposed to the creation of new contracts of insurance) does not fall within the IMD, article 67 is of potential application (see AUTH App 5.11.9G to AUTH App 5.11.12G). |
| Making mid-term adjustments to a policy, for example, property manager notifies changes to the names of the leaseholders registered as “interested parties” in the policy in respect of the property. | Yes. | Assuming the freeholder (as policyholder) is obliged under the terms of the policy to notify the insurance undertaking of changes to the identity of the leaseholders, the property manager is likely to be assisting in the administration and the performance of the contract of insurance. |

### TRADED ENDOWMENT POLICIES (“TEPs”)

| Making introductions for the | Yes, unless article 72C applies. | Making introductions for these purposes is |
purposes of selling TEPs | arranging unless article 72C applies (see AUTH App 5.6.5G to AUTH App 5.6.9G). The exclusions in article 29 (Arranging deals with or through authorised persons) and 33 (Introducing) no longer apply to arranging contracts of insurance.

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 authorisation in respect of arranging they may be able to rely upon article 28 (see AUTH 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 contract of insurance. In the FSA’s view, the provision of information in these circumstances is more akin to facilitating performance of a contract of insurance rather than assisting in the performance (see AUTH App 5.7.3G to AUTH App 5.7.5G). |
| Completion of claim form on behalf of insured | Potentially. | This activity amounts to assisting in the administration of a contract of insurance. Whether this activity amounts to assisting in the administration and performance of a contract of insurance will depend upon whether a person’s assistance in filling in a claims form is material to whether performance of the contractual obligation to notify a claim takes place (see AUTH App 5.7.2G to AUTH App 5.7.3G). |
| Notification of claim to insurance undertaking and helping negotiate its settlement on the policyholder’s behalf | Yes. | This activity amounts to assisting in the administration and performance of a contract of insurance (see 5.7.4G). |

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

**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.

Do you do any more than provide information to potential policyholders - for example, by providing information to the insurance undertakings, or helping a person fill in the application form?

Yes

No

Do you receive any remuneration for providing information (for example, by passing on leaflets to potential policyholders)?

Yes

No

Do you provide this information by way of business (see AUTH App5.4)?

Yes

No

Is the activity incidental to your main business or profession?

Yes

No

Does your business otherwise consist of carrying on regulated activities?

Yes

No

You are not caught by regulation

You are caught by regulation and require authorisation or exemption

You are not caught by regulation

You are caught by regulation and require authorisation or exemption
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?
Are you carrying on a regulated activity by way of business? See AUTH App 5.4

Yes →

Do you carry on such activity from a permanent place of business maintained in the UK? See AUTH App 5.12.4G

No →

Are you treated as carrying on regulated activities in the UK under section 418 of the Act? See AUTH App 5.12.6G

No →

Are you treated as carrying on regulated activities in the UK because of the nature of your activities? See AUTH App 5.12.7G

No →

Are your activities excluded in full by the exclusion for large risks located outside of the EEA? See AUTH App 5.3.8G and AUTH App 5.11.12G

Yes →

Are your activities otherwise excluded in full under the Regulated Activities Order? See AUTH App 5.2.3G(5) for relevant sections

No →

Are you an exempt person e.g. an appointed representative? See AUTH App 5.13

No →

FSA authorisation required

Yes →

FSA authorisation not required

Registered EEA based firms - Passporting rights. See AUTH App 5.12.13G to AUTH App 5.12.13G

UK based firms - Part IV permission. See AUTH App 5.12.10G

Non EEA based firms - Part IV permission. See AUTH App 5.12.11G
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 …

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, 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.

What the governing functions include

10.6.3 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.

10.6.4B 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 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 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)
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.

Significant management (other business operations) function (CF17)

**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.

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**).

Investment adviser function (CF21)

(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)

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**)

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

...  

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%;

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:
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
An 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

<table>
<thead>
<tr>
<th>Event triggering a notification</th>
<th>Requirement reference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Notifications from a controller or proposed controller of a UK domestic firm other than a UK insurance intermediary</strong></td>
<td><strong>When</strong></td>
</tr>
<tr>
<td>1 …</td>
<td>…</td>
</tr>
<tr>
<td><strong>Notifications from a controller or proposed controller of a UK insurance intermediary</strong></td>
<td><strong>SUP 11.3.2G</strong></td>
</tr>
<tr>
<td>1. A person proposing to become a controller</td>
<td><strong>SUP 11.3.6G</strong></td>
</tr>
<tr>
<td>2. An existing controller proposing to reduce his control</td>
<td><strong>SUP 11.3.2G</strong></td>
</tr>
<tr>
<td>3. When a change in control actually takes place</td>
<td><strong>SUP 11.3.16G</strong></td>
</tr>
<tr>
<td><strong>Notification from a UK domestic firm other than a UK insurance intermediary relating to a change in control</strong></td>
<td><strong>SUP 11.4.2A R</strong></td>
</tr>
<tr>
<td>1. When a firm becomes aware that a person is becoming or ceasing to be a controller or parent undertaking</td>
<td><strong>SUP 11.4.7R</strong></td>
</tr>
<tr>
<td>2. 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</td>
<td><strong>SUP 11.6.1G</strong></td>
</tr>
<tr>
<td><strong>Notification from a UK insurance intermediary relating to a change in control</strong></td>
<td><strong>SUP 11.6.1G</strong></td>
</tr>
<tr>
<td>1 …</td>
<td>…</td>
</tr>
</tbody>
</table>
3. When a change in control actually takes place or, although a notification has been submitted, is not, after all, going to take place

... ... ... 

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:

(α) (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

(β) (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
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 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).

(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) 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 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 …

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:**

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
</table>
| ... | Controllers - proposed change of control notification from a UK insurance intermediary | When acquiring control:  
(1) the name of the firm;  
(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;  
(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 | (1) a person acquiring control or ceasing to have control;  
(2) a person becoming or ceasing to be a parent undertaking | 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 |
(4) any other information of which the FSA would reasonably expect notice, including information which could have a material impact on any of the approval requirements in section 186(2) of the Act and any relevant supporting documentation.

The notification need only contain as much of the information the firm is able to provide, having made reasonable enquiries from persons and other sources as appropriate.

When reducing control:

(1) name of the controller; and

(2) details of the extent of control (if any) which the controller will have following the change in control.

| SUP 11.6.2R to SUP 11.6.5R | … | … | After submitting a notification under SUP 11.4.2R or SUP 11.4.2A R and until the change in control occurs, … | … |
A change in control previously notified under \textit{SUP} 11.4.2R, \textit{SUP} 11.4.2A R or \textit{SUP} 11.4.4R taking place; …

The fact of:

(1) …

(4) a controller, who is authorised in another EEA State as an ISD investment firm or BCD credit institution or under the \textit{Insurance Directives} or the \textit{Insurance Mediation Directive}, ceasing to be so authorised (registered in the case of an IMD insurance intermediary)

The firm becoming aware of:

(1) …

(4) a controller, who is authorised in another EEA State as an ISD investment firm or BCD credit institution or under the \textit{Insurance Directives} or the \textit{Insurance Mediation Directive}, ceasing to be so authorised (registered in the case of an IMD insurance intermediary)

---

Schedule 4
Powers exercised
G
1 Table
The following powers and related provisions in the \textit{Act} have been exercised by the \textit{FSA} to make the rules in \textit{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:

<table>
<thead>
<tr>
<th>Definition</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>administering a regulated mortgage contract</td>
<td>the regulated activity, specified in article 61(2) of the Regulated Activities Order, which is in summary: administering a regulated mortgage contract where the contract was entered into after 31 October 2004.</td>
</tr>
<tr>
<td>advising on regulated mortgage contracts</td>
<td>the regulated activity, specified in article 53A of the Regulated Activities Order, which is in summary: advising a person if the advice: (a) is given to the person in his capacity as a borrower or potential borrower; and (b) is advice on the merits of his: (i) entering into a particular regulated mortgage contract; or (ii) varying the terms of a regulated mortgage contract entered into by him after 31 October 2004 in such a way as to vary his obligations under that contract.</td>
</tr>
<tr>
<td>arranging (bringing about) regulated mortgage contracts</td>
<td>the regulated activity, specified in article 25A(1) of the Regulated Activities Order, which is in summary: making arrangements for another person to: (a) enter into a regulated mortgage contract as borrower; or (b) vary the terms of a regulated mortgage contract entered into by him as borrower after 31 October 2004. (see also arranging (in relation to regulated mortgage contracts) and making arrangements with a view to regulated mortgage contracts.)</td>
</tr>
<tr>
<td>assisting in the administration and performance of a contract of insurance</td>
<td>the regulated activity, specified in article 39A of the Regulated Activities Order (Assisting in the administration and performance of a contract of insurance) of assisting in the administration and performance of a contract of insurance.</td>
</tr>
</tbody>
</table>
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.

The rules in CASS 5.6 (Client money distribution).

Commercial customer

Contracts of large risks

(d) 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;

(c) 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) balance sheet total: € 6.2 million;

(ii) net turnover: €12.8 million;

(iii) average number of employees during the financial year: 250.

Distance Marketing Directive

Entering into a regulated mortgage contract

ICOB

IMD

IMD insurance intermediary

IMD insurance undertaking


the regulated activity, specified in article 62(1) of the Regulated Activities Order, which is in summary: entering into a regulated mortgage contract as lender.

the Insurance: Conduct of Business sourcebook.

Insurance Mediation Directive.

(as defined in article 2(5) of the IMD) any natural or legal person who, for remuneration, takes up or pursues insurance mediation.

(as defined in article 2(1) of the IMD) an undertaking which has received official authorisation in accordance with article 6.
of the Consolidated Life Directive or article 6 of the First Non-Life Directive.

**IMD reinsurance intermediary** (as defined in article 2(6) of the IMD) any natural or legal person who, for remuneration, takes up or pursues reinsurance mediation.

**IMD reinsurance undertaking** (as defined in article 2(2) of the IMD) an undertaking, other than an IMD insurance undertaking or a non-member-country insurance undertaking, the main business of which consists in accepting risks ceded by an IMD insurance undertaking, a non-member country insurance undertaking or other IMD reinsurance undertaking.

**Insurance intermediary** a firm carrying on insurance mediation activity.


**insurance mediation** (as defined in article 2(3) of the IMD) 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 IMD insurance undertaking or an employee of an IMD insurance undertaking who is acting under the responsibility of the IMD 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 IMD insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.

**[insurance mediation activity]** any of the following regulated activities carried on in relation to a contract of insurance or rights to or interests in a life policy:

(a) dealing in investments as agent (article 21);
(b) arranging (bringing about) deals in investments (article 25(1));
(c) making arrangements with a view to transactions in investments (article 25(2));
(d) assisting in the administration and performance of a contract of insurance (article 39A);
(e) advising on investments (article 53);
(f) agreeing to carry on a regulated activity in (a) to (e)
Insurance Mediation Directive


limit of indemnity

(in PRU 9.2 (Professional indemnity insurance requirements for insurance and mortgage mediation activities)) the sum available to indemnify a firm in respect of each claim made under its professional indemnity insurance.

long-term care insurance contract

(as defined in article 1 of the Insurance Intermediaries Order) a contract of insurance in respect of which the following conditions are met:

(a) the purpose (or one of the purposes) of the policy is to protect the policyholder 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 policyholder (except that the contract may give the policyholder the option to surrender the policy); and

(d) the benefits under the contract are capable of being paid throughout the life of the policyholder.

making arrangements with a view to regulated mortgage contracts

the regulated activity, specified in article 25A(2) of the Regulated Activities Order, which is in summary: making arrangements with a view to a person who participates in the arrangements entering into a regulated mortgage contract as borrower.

(see also arranging (in relation to regulated mortgage contracts) and arranging (bringing about) regulated mortgage contracts.)

MOB

the Mortgages: Conduct of Business 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.
mortgage administrator  a firm with permission (or which ought to have permission) for administering a regulated mortgage contract.

mortgage adviser  a firm with permission (or which ought to have permission) for advising on regulated mortgage contracts.

mortgage arranger  a firm with permission (or which ought to have permission) for arranging (see also arranging (bringing about) regulated mortgage contracts and making arrangements with a view to regulated mortgage contracts).

mortgage intermediary  a firm with permission (or which ought to have permission) to carry on mortgage mediation activity.

mortgage lender  a firm with permission (or which ought to have permission) for entering into a regulated mortgage contract.

[mortgage mediation activity] (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 regulated activities:

(a) arranging (bringing about) regulated mortgage contracts (article 25A(1));

(b) making arrangements with a view to regulated mortgage contracts (article 25A(2));

(c) advising on regulated mortgage contracts (article 53A);

(d) agreeing to carry on a regulated activity in (a) to (c) (article 64).]

non-investment insurance contract  a contract of insurance which is a general insurance contract or a pure protection contract but which is not a long-term care insurance contract.

protected non-investment insurance mediation  insurance mediation activities which are covered by the compensation scheme, as defined in COMP 5.6.1R.

regulated mortgage activity  any of the following activities specified in Part II of the Regulated Activities Order (Specified Activities):

(a) arranging (bringing about) regulated mortgage contracts (article 25A(1));

(b) making arrangements with a view to regulated mortgage contracts (article 25A(2));

(c) advising on regulated mortgage contracts (article 53A);

(d) entering into a regulated mortgage contract (article 61(1));

(e) administering a regulated mortgage contract (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.
regulated mortgage contract

(a) (in relation to a contract) (in accordance with article 61(3) of the Regulated Activities Order) a contract which, at the time it is entered into, meets the following conditions:

(i) a lender provides credit to an individual or to trustees (the ‘borrower’); and

(ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom, 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 person who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:

(A) that person’s spouse; or

(B) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or

(C) that person’s parent, brother, sister, child, grandparent or grandchild.

(b) (in relation to a specified investment) the investment, specified in article 88 of the Regulated Activities Order, which is rights under a regulated mortgage contract within (a).

reinsurance contract

(in ICOB, CASS 5 and COMP) a contract of insurance covering all or part of a risk to which a person is exposed under a contract of insurance.

reinsurance mediation

(as defined in article 2.4 of the IMD) 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.

These activities when undertaken by a IMD reinsurance undertaking or an employee of a IMD reinsurance undertaking who is acting under the responsibility of the IMD reinsurance undertaking shall not be considered as reinsurance 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 a reinsurance contract, the management of claims of a IMD reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation.

**relevant investment**

(in accordance with article 3(1) of the Regulated Activities Order (Interpretation)):

(a) a contractually based investment;

(b) a pure protection contract;

(c) a general insurance contract;

(d) rights to or interests in an investment falling within (a).

**renewal**

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.

**retail customer**

(in accordance with the meaning of ‘consumer’ in article 2(d) of the Distance Marketing Directive an individual who is acting for purposes which are outside his trade, business or profession.

**social housing firm**

(in PRU 9.3 (Capital resources for insurance and mortgage mediation activity and mortgage lending and administration)) a wholly-owned subsidiary of:

(a) a local authority; or

(b) a registered social landlord;

which carries on non-profit regulated activities in connection with housing.

**UK insurance intermediary**

a UK domestic firm which has Part IV permission to carry on insurance mediation activity but no other regulated activity.

**Part 2: Amended definitions**

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

**advising on investments**

the regulated activity, specified in article 53 of the Regulated Activities Order (Advising on investments), which is in summary: advising a person if the advice is:

(a) given to the person 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):

(i) buying, selling, subscribing for or underwriting a particular investment which is a security or contractually based investment-relevant
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.
commission

any form of commission, including a benefit of any kind, offered or given in connection with:

(a) designated investment business; or

(b) insurance mediation activity in connection with a non-investment insurance contract.

contracts of insurance

(1) …

(2) …

(a) …

…

(e) contracts of a kind referred to in article 1(2)(e) of the First Consolidated Life Directive (Collective insurance etc); and

(f) contracts of a kind referred to in article 1(3) of the First Consolidated Life Directive (Social insurance);

controller

(1) (in accordance with section 422 of the Act (Controller)) (in relation to a firm or other undertaking ("A") other than an UK insurance intermediary) (in accordance with section 422 of the Act (Controller)) a person who falls within any of the following cases; the cases are where the person:

(a) holds 10% or more of the shares in A; or

(b) is able to exercise significant influence over the management of A through his shareholding in A; or

(c) holds 10% or more of the shares in a parent undertaking ("P") of A; or

(d) is able to exercise significant influence over the management of P through his shareholding in P; or

(e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A; or

(f) is able to exercise significant influence over the management of A through his voting power in A; or

(g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or

(h) is able to exercise significant influence over the management of P through his voting power in P;

(2) (in relation to an UK insurance intermediary) (in accordance with article 17 of the Insurance Intermediaries Order) a person who would fall within
(1) if 20% were substituted for 10%;

in (1) and (2) of this definition:

(i) "the person" means:

...
(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), or (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*. 

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(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.

(6) (in relation to a market) …

(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;
(ivii) making arrangements with a view to transactions in investments;
(vii) managing investments;
(viii) safe custody and administering investments;
(viiiix) sending dematerialised instructions;
(viiiix) causing dematerialised instructions to be sent;
(ixi) 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;
(xiiix) establishing, operating or winding up a stakeholder pension scheme;
(xiiix) advising on investments;
(xiv) advising on regulated mortgage contracts;
(xvii) entering into a regulated mortgage contract;
(xviii) administering a regulated mortgage contract;
(xivw) 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)] 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 passported 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;
(d) the Insurance Mediation Directive; and
(e) (from 13 February 2004) the UCITS Directive.

**specified investment**
any of the following investments specified in Part III of the Regulated Activities Order (Specified Investments):

…

(o) funeral plan contract (article 87);

(oa) regulated mortgage contract (article 61(3);

…

**top-up cover**
cover provided by the compensation scheme for claims against an incoming EEA firm (which is a credit institution, an IMD insurance intermediary, an IMD reinsurance intermediary or an ISD investment firm) in relation to the firm’s passported activities and in addition to, or due to the absence of, any the cover provided by the firm’s Home State compensation scheme, (see COMP 14 (Participation by EEA firms)).
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 depositaries 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
<table>
<thead>
<tr>
<th>Q1</th>
<th>What do I need to do in order to receive compensation?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>In order to receive compensation:</td>
</tr>
<tr>
<td></td>
<td>(1) you must be an <em>eligible claimant</em>;</td>
</tr>
<tr>
<td></td>
<td>(2) you must have a <em>protected claim</em>;</td>
</tr>
<tr>
<td></td>
<td>(3) you must be claiming against a <em>relevant person</em>;</td>
</tr>
<tr>
<td></td>
<td>(4) the <em>relevant person</em> must be in default.</td>
</tr>
<tr>
<td></td>
<td>COMP 4.2-3</td>
</tr>
<tr>
<td></td>
<td>COMP 5.2-56</td>
</tr>
<tr>
<td></td>
<td>COMP 6.2.1R</td>
</tr>
<tr>
<td></td>
<td>COMP 6.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q2</th>
<th>How much compensation will I be offered?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A2</td>
<td>This depends on whether your <em>protected claim</em> is:</td>
</tr>
<tr>
<td></td>
<td>(1) a <em>claim</em> for a <em>protected deposit</em>; or</td>
</tr>
<tr>
<td></td>
<td>(2) a <em>claim</em> under a <em>protected contract of insurance</em>; or</td>
</tr>
<tr>
<td></td>
<td>(3) a <em>claim</em> in connection with <em>protected investment business</em>; or</td>
</tr>
<tr>
<td></td>
<td>(4) a <em>claim</em> in connection with <em>protected non-investment insurance mediation</em>.</td>
</tr>
<tr>
<td></td>
<td>COMP 5.3</td>
</tr>
<tr>
<td></td>
<td>COMP 5.4</td>
</tr>
<tr>
<td></td>
<td>COMP 5.5</td>
</tr>
<tr>
<td></td>
<td>COMP 5.6</td>
</tr>
<tr>
<td></td>
<td>Different limits apply to different types of <em>claim</em>.</td>
</tr>
<tr>
<td></td>
<td>COMP 10.2.3R</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q3</th>
<th>How will the FSCS calculate the compensation that is offered to me?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A3</td>
<td>Again, this will depend on whether your <em>protected claim</em> is:</td>
</tr>
<tr>
<td></td>
<td>(1) a <em>claim</em> for a <em>protected deposit</em>;</td>
</tr>
<tr>
<td></td>
<td>(2) a <em>claim</em> under a <em>protected contract of insurance</em>; or</td>
</tr>
<tr>
<td></td>
<td>(3) a <em>claim</em> in connection with <em>protected investment business</em>; or</td>
</tr>
<tr>
<td></td>
<td>(4) a <em>claim</em> in connection with <em>protected non-investment insurance mediation</em>.</td>
</tr>
<tr>
<td></td>
<td>COMP 12.2.1R, 12.3.1R and 12.4.1R</td>
</tr>
<tr>
<td></td>
<td>COMP 12.2.1R, 12.3.2-4R and 12.4.9R – 12.5.2R</td>
</tr>
<tr>
<td></td>
<td>COMP 12.2.1R, 12.3.5-6R and 12.4.2-8R</td>
</tr>
</tbody>
</table>

... 

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 *passported 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).

5.6 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

<table>
<thead>
<tr>
<th>Type of claim</th>
<th>Level of cover</th>
<th>Maximum payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protected non-investment insurance mediation</td>
<td>(1) where the claim is in respect of a liability subject to compulsory insurance: 100% of claim</td>
<td>Unlimited</td>
</tr>
<tr>
<td></td>
<td>(2) In all other cases:</td>
<td>Unlimited</td>
</tr>
<tr>
<td></td>
<td>100% x first £2000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>90% of the remainder of the claim</td>
<td></td>
</tr>
</tbody>
</table>

12.3.6 R …

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, 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 EEA firm to obtain top-up cover into compensation scheme | The firm's decision that it wishes to top-up obtain top-up cover into UK scheme |
Annex I

Amendments to the Prudential sourcebook and to the Authorisation manual

The following text is inserted as indicated (and is not underlined).

Part I

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

9.4.1AG (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

1.2.7G 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

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

<table>
<thead>
<tr>
<th>Provisions relevant to …</th>
<th>Commence on …</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The following regulated activities and their associated exclusions, so far as relevant to general insurance contracts and pure protection contracts (other than long-term care insurance contracts):</td>
<td>14 January 2005</td>
</tr>
<tr>
<td>(1) dealing in investments as agent;</td>
<td></td>
</tr>
<tr>
<td>(2) arranging (bringing about) deals in investments;</td>
<td></td>
</tr>
<tr>
<td>(3) making arrangements with a view to transactions in investments;</td>
<td></td>
</tr>
<tr>
<td>(4) advising on investments;</td>
<td></td>
</tr>
<tr>
<td>(5) agreeing to do any of the activities in (1) to (4).</td>
<td></td>
</tr>
<tr>
<td>2. The regulated activities and their associated exclusions referred to in 1(1) to (5) so far as relevant to long-term care insurance contracts.</td>
<td>31 October 2004</td>
</tr>
<tr>
<td>3. The regulated activity of assisting in the administration and performance of a contract of insurance, other than a long-term care insurance contract, and its associated exclusions.</td>
<td>14 January 2005</td>
</tr>
<tr>
<td>4. The regulated activity of assisting in the administration and performance of a contract of insurance that is a long-term care insurance contract, and its associated exclusions.</td>
<td>31 October 2004</td>
</tr>
<tr>
<td>5. The following regulated activities and their associated exclusions:</td>
<td>31 October 2004</td>
</tr>
<tr>
<td>(1) arranging (bringing about) regulated mortgage contracts;</td>
<td></td>
</tr>
<tr>
<td>(2) making arrangements with a view to regulated mortgage contracts;</td>
<td></td>
</tr>
<tr>
<td>(3) advising on regulated mortgages contracts;</td>
<td></td>
</tr>
<tr>
<td>(4) entering into a regulated mortgage-contract;</td>
<td></td>
</tr>
<tr>
<td>(5) administering a regulated mortgage-contract;</td>
<td></td>
</tr>
<tr>
<td>(6) agreeing to do any of the activities in (1) to (5).</td>
<td></td>
</tr>
</tbody>
</table>
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.
ADDENDUM

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

In this Addendum, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being replaced, the place where the change will be made is indicated and the text is not underlined or struck through.

Amend Annex B (Integrated Prudential sourcebook) to this instrument as follows:

Transitional Provisions

1 Table

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>PRU 2.7.2R</td>
<td>R</td>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>2</td>
<td>PRU 9.3.53R</td>
<td>R</td>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>

Amend Annex F (Supervision manual) to this instrument as follows:

13.4.4 G …

(2) …

(32A) if the UK firm’s EEA right derives …

Amend Annex G (Glossary of definitions) to this instrument by deleting the text for the definition of 'establishment conditions' in its entirety and replacing it with the following text:

*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) or (d) in the definition of “*EEA firm*”:

(i) the FSA has received notice ("a consent notice") from the *EEA firm’s Home State regulator* that it has given the
EEA firm consent to establish a branch in the United Kingdom;

(ii) the consent notice:

(A) is given in accordance with the relevant Single Market Directive;

(B) identifies the activities to which consent relates; and

(C) includes the other information prescribed in the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/1376); and

(iii) the EEA firm has been informed of the applicable provisions or two months have elapsed beginning with the date when the FSA received the consent notice.

(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.

Amend the definition of ‘protected non-investment insurance mediation’ in Annex G (Glossary of definitions) to this instrument as follows:

protected non-investment insurance mediation insurance mediation activities which are covered by the compensation scheme, as defined in COMP 5.67.1R
Amend Annex H (Compensation sourcebook) to this instrument to take account of FSA 2003/72 as follows:

<table>
<thead>
<tr>
<th>1.3.3</th>
<th>G</th>
<th>Table …</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A2</th>
<th>This depends on whether your <em>protected claim</em> is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>(4) a <em>claim</em> … ; or</td>
<td></td>
</tr>
<tr>
<td>(4)-(5) a <em>claim</em> in connection with <em>protected non-investment insurance mediation</em>.</td>
<td></td>
</tr>
<tr>
<td>COMP 5.6 5.7</td>
<td></td>
</tr>
<tr>
<td>…</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>A3</th>
<th>Again, this will depend on whether your <em>protected claim</em> is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>(4) a <em>claim</em> … ; or</td>
<td></td>
</tr>
<tr>
<td>(4)-(5) a <em>claim</em> in connection with <em>protected non-investment insurance mediation</em>.</td>
<td></td>
</tr>
<tr>
<td>COMP 12.4.17R – 18R 12.4.20R – 21R</td>
<td></td>
</tr>
<tr>
<td>…</td>
<td></td>
</tr>
</tbody>
</table>

Amend Annex H (Compensation sourcebook) to this instrument by deleting the text for COMP 1.4.1G in its entirety and inserting the following text:

<table>
<thead>
<tr>
<th>1.4.1</th>
<th>G</th>
<th><em>Incoming EEA firms</em> which are conducting <em>regulated activities</em> in the <em>United Kingdom</em> under a <em>BCD, IMD, ISD or UCITS Directive</em> passport are not required to participate in the <em>compensation scheme</em> in relation to those <em>passported activities</em>. They may apply to obtain the cover of, or ‘top up’ into, the <em>compensation scheme</em> if there is no cover provided by the <em>incoming EEA firm’s Home State</em> compensation scheme or if the level or scope of the cover is less than that provided by the <em>compensation scheme</em>. This is covered by COMP 14.</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Amend Annex H (Compensation sourcebook) to this instrument to take account of FSA 2003/72 as follows:

<table>
<thead>
<tr>
<th>5.2.1</th>
<th>R</th>
<th>A protected claim is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td>a claim … ;or</td>
<td></td>
</tr>
<tr>
<td>(4)</td>
<td>(5) a claim in connection with protected non-investment insurance mediation (see COMP 5.6.5.7).</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.6.1</td>
<td>R</td>
<td>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 5.7.2R is satisfied.</td>
</tr>
<tr>
<td>5.7.1</td>
<td>R</td>
<td>COMP 5.6.1 5.7.1R only applies if the protected non-investment insurance mediation was carried on from:</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>an establishment of the relevant person in the United Kingdom; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.3.7</td>
<td>R</td>
<td>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.</td>
</tr>
<tr>
<td>12.3.8</td>
<td>R</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.4.17</td>
<td>R</td>
<td>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.</td>
</tr>
<tr>
<td>12.4.20</td>
<td>R</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.4.18</td>
<td>R</td>
<td>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:</td>
</tr>
<tr>
<td>12.4.21</td>
<td>R</td>
<td>…</td>
</tr>
</tbody>
</table>

Addendum
8 December 2004