#### CAPITAL RESOURCES FOR SMALL FIRMS INSTRUMENT 2006

# **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):
  - (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance); and
  - (4) section 340 (Appointment of auditors and actuaries).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

#### Commencement

- C. Annexes A to C to this instrument come into force on 6 October 2006.
- D. Annex D to this instrument comes into force on 1 January 2007.

## **Amendments to the Handbook**

- E. The Integrated Prudential sourcebook (PRU) is amended in accordance with Annex A to this instrument.
- F. The Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) is amended in accordance with Annex B to this instrument.
- G. The Supervision manual (SUP) is amended in accordance with Annexes C and D to this instrument.

## Citation

H. This instrument may be cited as the Capital Resources for Small Firms Instrument 2006.

By order of the Board 27 July 2006

### Annex A

# Amendments to the Integrated Prudential sourcebook (PRU)

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

...

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

	Item	Additional explanation
1.		
3.	Reserves (Notes 1 and 2)	
4.	Interim net profits (Notes 1 and 2)	
•••		
6.	General/ collective provisions (Note 1)	These are provisions that a <i>firm</i> carrying on <i>mortgage lending</i> or <i>mortgage administration</i> holds against potential losses that have not yet been identified but which experience indicates are present in the <i>firm</i> 's portfolio of assets. Such provisions must be freely available to meet these unidentified losses wherever they arise. <u>Subject to Note 1</u> , <del>G</del> general/collective provisions must be verified by external auditors and disclosed in the <i>firm</i> 's annual report and accounts.
•••		

# Notes

- In general, small insurance intermediaries which only carry on insurance mediation activities in relation to non investment insurance contracts and small mortgage intermediaries, may be Reserves must be audited and interim net profits, general and collective provisions must be verified by the firm's external auditor unless the firm is exempt from the requirement to appoint an auditor under provisions of Part VII of the Companies Act 1985 relating to the audit of accounts (section 249A (Exemptions from audit)). If so, the firm may include unaudited reserves and unverified interim net profits in the calculation of its capital resources.
- 2 Mortgage lenders and mortgage administrators to which the Companies Act 1985 applies are required to appoint an auditor under that Act (section 249B (Cases where exemptions not available)). These *firms* will only be able to include audited reserves and verified interim net profits in the calculation of its capital resources.

### Annex B

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

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

Chapter 3: Financial resources for Securities and Futures Firms which are not Investment Firms

. . .

Calculation of relevant annual expenditure

- 3-73(2) R Subject to (3), and (4) and (5) below, a *firm* must calculate its *relevant* annual expenditure with reference to the *firm's* most recent audited annual financial statements submitted to the FSA, as follows:
  - (a) ...

Absence of audited annual financial statements

- 3-73(3) R If a firm does not have audited annual financial statements, it must:
  - (a) where it has just commenced trading or has not been authorised long enough to have submitted *audited annual financial* statements to the FSA (or to the FSA's predecessor), base its relevant annual expenditure on budgeted or other accounts which it submitted to the FSA (or to the FSA's predecessor) as part of its application; or
  - (b) ...

...

# **Recent authorisation**

3-73(5) R If a firm has not been authorised long enough to have prepared annual financial statements after authorisation, it must base its relevant annual expenditure on budgeted or other accounts which it submitted to the FSA as part of its application.

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Appendix 1 – Glossary of Terms for IPRU(INV) 3

. . .

annual accounting reference date

means the date as at which the *audited* annual financial statements are prepared as initially notified by the firm to the FSA or as subsequently notified under rule 3-31 for all other purposes and which may not be more than 55 weeks since the previous annual accounting reference date or, if applicable, the date on which the firm commenced trading;

. .

audited annual financial statements

means statements drawn up in accordance with Schedule 4 to the Companies Act 1985 or, where applicable,

international accounting standards as at the firm's annual

accounting reference date together with and, where

required, an auditor's report thereon;

auditor's report

means a report drawn up in the format required by the *Supervision manual* which a *firm* must submit to the *FSA* in conjunction with the *firm's audited annual financial* 

statements:

. . .

reporting statement

means any one or more of the following types of report as

required by the  $Supervision\ manual$ :

(a) audited annual financial statements;

(b) ...

...

. . .

Appendix 43 - Guidance Notes on the financial resources and accounting treatment of soft commission agreements

1. ...

2. The FSA is of the view that it is not responsible for setting accounting policies in relation to a firm's audited annual financial statements. However, the FSA considers that it is preferable for all firms participating in "soft commission agreements" to have consistent accounting policies. Without such consistency, certain firms would have a competitive advantage in terms of their financial resources. Therefore, for the purposes of completing financial reporting statement submitted to the FSA, appropriate accounting policies should be used. The guidance and interpretations made in this Appendix should be considered in this context.

3. ...

. . .

Chapter 5: Interim Prudential Requirements for Former IMRO Firms

. . .

5.2.3(4)

(a) R ...

(c) The *liquid capital requirement* for an *ISD firm* whose *expenditure based requirement* consists of 6/52 of its *annual audited expenditure*, determined in accordance with Table 5.2.3(5)(a), is the greater of:

		(i) one quarter of its <i>annual audited expenditure</i> calculated in accordance with rule 5.2.4(1); and
		(ii)
		Annual Audited Expenditure
5.2.4(1)	R	Annual audited expenditure is:
5.2.4(2)	G	A firm's financial resources requirement will be recalculated and, where required, audited annually when its annual financial return is prepared. The firm must maintain financial resources sufficient to meet its new financial resources requirement from the date on which the annual financial return is prepared, and where required, approved by the auditor. The expenditure based requirement applicable at the accounting reference date to which the annual financial return is prepared will be that based on the previous year's figures. This will usually be the same as that used in the fourth quarter's quarterly financial return prepared to the same accounting reference date.
•••		
5.2.4(3)	<u>R</u>	A firm's annual expenditure must be audited unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 relating to the audit of accounts (section 249A

...

# TABLE 5.2.2(1) CALCULATION OF OWN FUNDS AND LIQUID CAPITAL PART I

(Exemptions from audit)).

# METHOD OF CALCULATION

A *firm* must calculate its *own funds* and *liquid capital* as shown below, subject to the detailed requirements set out in Part II.

Financial resources	Category	Part II Para
Tier 1		
(1) Paid-up share capital (excluding preference shares)	A	2
(2) Share premium account		

(3) Audited r Reserves	2A
(4) Non-cumulative preference shares	

# **PART II DETAILED REQUIREMENTS** 1 Ratios (Items 10, 11 and 15) . . . 2A Audited Reserves Note 1 A firm should keep a record ... Note 2 Reserves must be audited unless the *firm* is exempt from the provisions of Part VII of the Companies Act 1985 relating to the audit of accounts (section 249A (Exemptions from audit)). 7 Qualifying (a) ... arrangements (b) A firm which is not an ISD firm may only include qualifying (Item 13) undertakings in its calculation of liquid capital if: (i) it maintains $liquid\ capital\ equivalent\ to\ 6/52\ of\ its\ annual$ audited expenditure in a form other than qualifying undertakings; and

(ii) ...

6

8 Net trading book profits

...

## Note

(Item 14)

Non-trading book interim profits may only be included in Tier 1 of the calculation if they have been independently verified by the firm's external auditors, unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 relating to the

audit of accounts (section 249A (Exemptions from audit)).

. . .

A *firm* wishing to include interim profits in Tier 1 capital in a *financial return* should submit to the *FSA* with the *financial return* a verification report signed by its external auditor which states whether the interim results are fairly stated, unless the *firm* is exempt from the provisions of Part VII of the Companies Act 1985 relating to the audit of accounts (section 249A (Exemptions from audit)).

Profits on the sale of capital items or arising from other activities which are not directly related to the *investment business* of the *firm* may also be included within the calculation of *liquid capital*, but (unless the firm is exempt as above) only if they can be separately verified by the *firm's* auditors. In such a case, such profits can form part of the *firm's* Tier 1 capital as audited profits.

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# Table 5.2.3(5)(a) EXPENDITURE BASED REQUIREMENT PART I

## CALCULATION OF REQUIREMENT

A firm's expenditure based requirement is a fraction of its annual audited expenditure determined in accordance with Part II of this Table.

# PART II FRACTIONS

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- 5.7.1(5) R If the *firm* notifies the *FSA* under *rule* 5.7.1(4) that it will not apply the rules in this section, it must:
  - (a) ...
  - (d) make a note in its audited financial statements that it is not subject to regulatory consolidated capital requirements.

...

Appendix 1 (Interpretation)

Glossary of Terms for Chapter 5 (Former IMRO Firms)

annual <del>audited</del> expenditure has the meaning given in rule 5.2.4(1) (Determination).

qualifying capital item means that part of a firm's capital which has the

following characteristics:

(a) ...

(c) its amount is determined by the management of the firm and verified by independent auditors (unless the firm is exempt from the provisions of Part VII of the Companies Act 1985 relating to the audit of accounts (section 249A (Exemptions from audit)), and is made known to, and is monitored by, FSA.

Chapter 13: Financial Resources Requirements for Personal Investment Firms

. . .

## Calculation

13.10.2 R A Category B firm's own funds must be calculated in accordance with table 13.10(2).

Table 13.10(2)

This table forms part of *rule* 13.10.2

OWN FUNDS			
Companies	Sole Traders: Partnerships		
Paid-up <i>share</i> capital (excluding preference <i>shares</i> redeemable by shareholders within 2 years)			
Share premium account			
Audited # Retained profits (see 13.10.2AR) and <i>verified</i> interim net profits (Note 1)			
Note 1			

#### Note 1

Retained profits must be audited and interim net profits must be verified

by the *firm's* external auditor, unless the *firm* is exempt from the provisions of Part VII of the Companies Act 1985 relating to the audit of accounts (section 249A (Exemptions from audit)).

13.10.2A R For the purpose of calculating a *Category B firm's own funds*, the following adjustments apply to <del>audited</del> retained profits or, (for non-corporate entities), current accounts figures:

(1) ...

...

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#### Annex C

# Amendments to the Supervision manual (SUP)

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

- 3.1.1A G For the avoidance of doubt, this chapter does not apply to the following firms if they do not hold client money or client assets and do not appoint an auditor under or as a result of a statutory provision other than in the Act:
  - (1) *authorised professional firms*;
  - (2) <u>energy market participants, including oil market participants, to</u> whom *IPRU(INV)* 3 does not apply;
  - (3) exempt insurance intermediaries;
  - (4) insurance intermediaries not subject to SUP 3.1.2R(10);
  - (5) *investment management firms*;
  - (6) *mortgage administrators*;
  - (7) *mortgage intermediaries*;
  - (8) *mortgage lenders*;
  - (9) personal investment firms, including small personal investment firms;
  - (10) securities and futures firms; and
  - (11) *service companies*.
- 3.1.2 R Applicable sections (see *SUP* 3.1.1R)

(1) Ca	ategory of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1)	Authorised professional firm which is required by IPRU(INV) 2.1.2R to comply with chapters 3, 5, 10 or 13 of IPRU(INV) and which has an auditor appointed under or as a result of a statutory provision other than in the Act (Note 1)	SUP 3.1 – SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8 – SUP 3.10
(7)	Investment management firm, personal investment firm (other than a small personal investment firm), UCITS management company, or securities and futures firm (Note 3) which, in each case, has an auditor	SUP 3.1 – SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8 – SUP 3.10

	appointed under or as a result of a statutory provision other than in the <u>Act</u>		
(7A)	Investment management firm, personal investment firm (other than a small personal investment firm), or securities and futures firm not within (7) to which either or both of CASS 2 (Client assets) and CASS 4 (Client money and mandates: designated investment business) applies	<u>SUP 3.1 –</u> <u>SUP 3.7</u>	<u>SUP 3.1, SUP</u> <u>3.2, SUP 3.8,</u> <u>SUP 3.10</u>
<u>(7B)</u>	UCITS management company	<u>SUP 3.1 –</u> <u>SUP 3.7</u>	<u>SUP 3.1, SUP</u> <u>3.2, SUP 3.8 –</u> <u>SUP 3.10</u>
•••			
(9)	Mortgage lender which has an auditor appointed under or as a result of a statutory provision other than in the Act	SUP 3.1 – SUP 3.7	SUP 3.1, SUP 3.2, SUP 3.8
•••			

..

# Limited application for certain types of firm and their auditors

- 3.2.4 G SUP 3.1.1.R and SUP 3.1.2R limit the application of this chapter in relation to:
  - (1) authorised professional firms to which COB 9.1 (Custody) and COB 9.3 (Client money) do not apply or which are not required by IPRU(INV);
  - (2) *oil market participants*, and *energy market participants*, to whom *IPRU(INV)* 3 does not apply;
  - (3) small personal investment firms;
  - (4) service companies;
  - (5) exempt insurance intermediaries;
  - (6) insurance intermediaries not subject to SUP 3.1.2R(!0)
  - (7) mortgage intermediaries; and
  - (8) *mortgage administrators.*

Such *firms* are not required, under this chapter, to appoint an auditor because *SUP 3.3* (Appointment of auditors) does not apply. If such *firms* appoint an

auditor under or as a result of a statutory provision other than in the *Act*, for example, under the Companies Act 1985, *SUP* 3.7 (Notification of matters raised by auditor) and *SUP* 3.8 (Rights and duties of all auditors) nevertheless apply to help the *FSA* discharge its functions under the *Act*. See *SUP* 3.1.2R, Note 4, for further clarification concerning *insurance intermediaries* and those which qualify as *exempt insurance intermediaries*. [deleted]

Insurance intermediaries and their auditors

3.2.5 G It is the responsibility of an *insurance intermediary's* senior management to determine, on a continuing basis, whether the *insurance intermediary* is an *exempt insurance intermediary* for the purposes of this requirement and to appoint an auditor if management determines the *firm* is no longer exempt. *SUP* 3.7 (amplified by *SUP* 15) sets out what a *firm* should consider when deciding whether it should notify the *FSA* of matters raised by its auditor.

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16.7.21 R Financial reports required from service companies (see SUP 16.7.20R)

Report	Frequency	Due Date		
Annual audited financial statements (Note 1)	Annually	6 months after the firm's accounting reference date		
Note $1 = A$ firm need only submit this report to the FSA if the report was				
audited as a result of a statutory provision other than the Act.				

..

16.7.25 R Financial reports required from a *securities and futures firm* which is category A or B firm or a broad scope firm (see *SUP* 16.7.24R)

Report	Frequency	Due Date
Audited annual financial statements (Note 5A)	Annually	3 months after the firm's accounting reference date
Audited accounts of any subsidiary unless the rules in this chapter require that subsidiary to submit accounts to the FSA (Note 5A)	Annually	3 months after the firm's accounting reference date

Note 5A = A *firm* need only submit this report to the *FSA* if the report was audited as a result of a statutory provision other than the Act.

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16.7.27 R Financial reports from a *securities and futures firm* which is category C or D firm or an arranger or venture capital firm (see *SUP* 16.7.26R)

Report	Frequency	Due Date
Audited annual financial statements (Note 5A)	Annually	3 months after the firm's accounting reference date
Audited accounts of any subsidiary unless the rules in this chapter require that subsidiary to submit accounts to the FSA (Note 5A)	Annually	3 months after the firm's accounting reference date

Note 5A = A firm need only submit this report to the FSA if the report was audited as a result of a statutory provision other than the Act.

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16.7.29 R Financial reports from a *securities and futures firm* which is an adviser, local or a traded options market maker (see *SUP* 16.7.28R)

Report	Frequency	Due Date
Audited annual financial statements (partnerships and bodies corporate only) (Note 1)	Annually	3 months after the firm's accounting reference date
Audited accounts of any subsidiary unless the rules in this chapter require that subsidiary to submit accounts to the FSA (Note 1)	Annually	3 months after the firm's accounting reference date

Note 1 = A firm need only submit this report to the FSA if the report was audited as a result of a statutory provision other than the Act.

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16.7.77 R Reports from a *firm* not subject to other reporting requirements in *SUP* 16.7.1G - *SUP* 16.7.75R

Report	Return (Note 1)	Frequency	Due Date
If the firm is a mortgage			

lender or mortgage administrator, annual report and audited accounts (Note 10).		
Audited consolidated statutory accounts (Notes 9 and 10)		
	the distriction	

Note 10 = A firm need only submit this report to the FSA if the report was audited as a result of a statutory provision other than the Act.

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SUP 16 Annex SUP 16 Ann 5R: Investment management firms' reporting forms and requirements applying to their completion

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Annual Financial Return

. . .

Financial Resources

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#### TIER 1

Paid up share capital (excluding preference shares) (*Item 1*) (36)

Share premium account (*Item 2*) (37)

Audited r-Reserves (Item 3) (38)

...

**Audited** Expenditure

Annual Audited Expenditure

(pro-rated where relevant to annual amount) (IPRU(INV) 5.2.4(1)(b)R)

(audited unless the *firm* is exempt from the requirement to audit accounts) (*IPRU(INV)* 5.2.4(3)R)

**Expenditure Based Requirement** 

(6/52\* or 13/52\* of Annual Audited Expenditure)

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Note: The Expenditure Based Requirement calculated above becomes effective from the date on which this Annual Financial Return is approved by the auditor. At all times throughout the period from this date until the next Annual Financial Return is approved, the Firm's Financial Resources must satisfy its Financial Resources Requirement incorporating the above Requirement. If the Firm is not required to have an auditor, then the Expenditure Based Requirement becomes effective when approved by the management of the Firm.

Declaration It is accompanied by the Annual Accounts and, if required by the rules, the report of the auditor to the FSA as required by the rules. Quarterly Financial Return Financial Resources TIER 1 Paid up share capital (excluding preference shares) (Item 1) (36)Share premium account (Item 2) (37)Audited r-Reserves (Item 3) (38)Monthly Financial Return Financial Resources TIER 1 Paid up share capital (excluding preference shares) (*Item 1*) (36)Share premium account (Item 2) (37)Audited r-Reserves (*Item 3*) (38)Consolidated Financial Resources Return for Investment Management Firms Part 1: Group Financial Resources: Audited e Consolidated reserves SUP 16 Annex 10R: Securities and Futures Firms' Reporting Forms and Requirements

Applying to their Completion

Section 6: Securities and Futures Firms: Form	and content of report				
Table Audited Annual Financial State	Table Audited Annual Financial Statements				
v .	1.2 A <i>firm's</i> audited annual financial statements must be drawn up in accordance with Schedule 4 of the Companies Act 1985 as at the <i>firm's accounting reference date</i> .				
•••					
SUP 16 Annex 11G: Guidance notes on complereporting forms	etion of securities and futures firms'				
Section 3					
Guidance Notes: standard reporting statement not ISD firms	for Securities and Futures Firms which are				
SUP 16 Ann 10R Accounting policies					
The accounting policies which are required to necessarily the same as the accounting policies statements (i.e. statutory accounts). A firm mu requirements in <i>SUP</i> 16 Ann 10R. A firm mus case.	s used in the <del>audited</del> annual financial st give particulars of any departure from the				
SUP 16 Annex 18 AR: Retail Mediation Activ	ities Return ('RMAR')				
Section D2: Financial Resources - Non-ISD Pe	ersonal Investment Firms				
Own Funds (Test 1)					
1					
3Audited $\underline{r}\underline{R}$ etained profits	RR0255				
4. Verified interim Interim profits	RR0256				
SUP 16 Annex 18 BG: Notes for Completion of the Retail Mediation Activities Return ('RMAR')					
Section D2: non-ISD personal investment firms					

# Expenditure Based Requirement (test 2)

This is a capital requirement for *personal investment firms* that are not *low resource firms*, based on a *firm's* overall audited expenditure. The Expenditure Based Requirement is calculated as a fraction of the *firm's* annual fixed costs which, for this purpose, are based upon the *firm's* annual audited expenditure and, in general terms, exclude cost items that would not be incurred were there no income. Thus staff bonuses and *partners'* profit shares (unless guaranteed) and any shared commissions are not treated as fixed costs for the purposes of the calculation.

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SUP 16 Annex 19 BG: Notes for Completion of the Mortgage Lending & Administration Return ('MLAR')

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## C1-2 CAPITAL RESOURCES

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# (3) Audited r-Reserves

Audited r-Reserves are 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 company. For *partnerships*, audited reserves include *partners*' current accounts according to the most recent financial statement. Reserves must be audited unless the *firm* is eligible to include unaudited reserves in its capital resources calculation under *PRU* 9.3.52R.

The audited reserves figure is subject to the following adjustments, where appropriate:

(a) ...

. . .

# (4) Interim net profits and partners' interim current accounts

A *firm* is not required to take into account interim net profits. However, if it does, the profits have to be verified by the *firm's* external auditors, net of tax, anticipated dividends or proprietors' drawings and other appropriations unless the *firm* is eligible to include unverified interim net profits in its capital resources calculation under *PRU* 9.3.52R.

. . .

# (6) General /collective provisions

Firms should report general/collective provisions that are held 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/collective provisions must be verified by external auditors and disclosed in the *firm*'s annual report and accounts <u>unless the *firm* is eligible to include unaudited general and collective provisions in its capital resources calculation</u> under *PRU* 9.3.52R.

. . .

Treatment of eligible capital items (listed above) in section C1:

- C1.1 Reserves: include items
- audited reserves
- revaluation reserves
- C1.2 Interim profits: include items
- externally verified interim net profits
- externally verified partners' interim current accounts

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C5 Capital requirements

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# C5.2 Total income

*Firms* should report the amount of total income in their most recent <del>audited</del> (or other) financial statements, and an estimate of income for the current reporting year.

## Annex D

# Amendment to the Supervision manual (SUP)

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

16.7.29 R Reports from a securities and futures firm which is an adviser, local or traded options market maker (see *SUP* 16.7.28R)

Report	Return	Frequency	Due date
Adequate information relating	RMAR	Half yearly	For half yearly report: 30
to the following activities:	(excluding		business days after period
	sections A,		end
(1) insurance mediation	B, C, D and		
activity;	E) (Note <del>1</del>		
	<u>2)</u>		
(2) mortgage mediation			
activity;			
(3) retail investment activity.			
Adequate information relating	MLAR	Quarterly	20 business days after
to mortgage lending and	(excluding		quarter end
mortgage administration.	A1, A2 and		
	B1) (Note 4		
	<u>2</u> )		

Note  $\pm 2$  = When giving the report required, a *firm* must use the return indicated. The *RMAR* and *MLAR* are located at *SUP* 16 Ann 18AR and Ann 19AR respectively and have the status of *rules*.