

**FINANCIAL STABILITY AND MARKET CONFIDENCE SOURCEBOOK
INSTRUMENT 2010**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 119 (The code);
 - (b) section 121 (Codes: procedure);
 - (c) section 131B (Short selling rules);
 - (d) section 149 (Evidential provisions);
 - (e) section 156 (General supplementary powers);
 - (f) section 157(1) (Guidance); and
 - (g) section 165B(6) (Safeguards etc in relation to exercise of power under section 165A).
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 6 August 2010.

Making the Financial Stability and Market Confidence sourcebook (FINMAR)

- D. The Financial Services Authority makes the rules and gives the guidance in Annex A to this instrument.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex B
Threshold Conditions (COND)	Annex C
Market Conduct sourcebook (MAR)	Annex D

Notes

- F. In Annex A to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of the reader but do not form part of the legislative text.

Citation

- G. This instrument may be cited as the Financial Stability and Market Confidence Sourcebook Instrument 2010.
- H. The sourcebook in Annex A to this instrument (including its schedules) may be cited as the Financial Stability and Market Confidence sourcebook (or FINMAR).

By order of the Board
22 July 2010

Annex A

Financial Stability and Market Confidence sourcebook (FINMAR)

Insert the following new sourcebook after The Fit and Proper test for Approved Persons (FIT) in the block of the Handbook titled “High Level Standards”. The text is all new and is not underlined, except where otherwise stated.

1 Gathering financial stability information

1.1 Application, purpose and scope

Application

- 1.1.1 G *FINMAR 1 is relevant to authorised persons and unauthorised persons, in particular persons whose activities are or may be relevant to the stability of one or more aspects of a relevant financial system.*

Purpose

- 1.1.2 G (1) Section 165B(6) (Statement of policy) of the *Act* requires the *FSA* to prepare and publish a statement of policy on the *financial stability information power*. The purpose of *FINMAR 1* is to set out the *FSA’s* statement of policy on the exercise of the *financial stability information power* and the *overseas financial stability information power* contained in sections 165A and 169A of the *Act*.

(2) The Treasury has approved this statement of policy in accordance with section 165B(7) of the *Act*.
- 1.1.3 G Determining whether to impose a *financial stability information requirement* involves different considerations from the exercise of other *FSA* powers. The *guidance* in this chapter relates only to the imposition of *financial stability information requirements*.

Scope of the powers

- 1.1.4 G The *financial stability information power* and the *overseas financial stability information power* are exercisable in relation to the categories of *person* set out in section 165A(2) of the *Act* (interpreted in accordance with the rest of that section).
- 1.1.5  Table: section 165A(2) of the *Act*

Section 165A of the <i>Act</i> applies to:	
(a)	a person who has a legal or beneficial interest in any of the assets of a relevant investment fund;

(b)	a person who is responsible for the management of a relevant investment fund;
(c)	a person (a “service provider”) who provides any service to an authorised person;
(d)	a person prescribed by an order made by the Treasury or any person of a description prescribed by such an order (and see also section 165C);
(e)	a person who is connected with a person to whom this section applies as a result of any of the above paragraphs.

- 1.1.6 G The *FSA* may impose a *financial stability information requirement* on a *person* within the categories set out in *FINMAR 1.1.5UK* only to the extent that it considers that the information or document is or might be relevant to the stability of one or more aspects of the *UK financial system*. The *persons* within these categories may include:
- (1) a vehicle for collective investment, whether or not it is regulated, (including vehicles often referred to as “hedge funds” and “structured investment vehicles” or off-balance sheet vehicles used for investment) and its managers;
 - (2) a provider of a service to an *authorised person*, such as a software supplier or the provider of a liquidity facility, where the risk to the stability of one or more aspects of the *UK financial system* relates to the provision of the service;
 - (3) a large scale proprietary trader or investor who trades large volumes of *financial instruments* that are traded on *UK regulated markets* or *UK MTFs*, for example *overseas* corporate entities; and
 - (4) a *person* who manages investments for a single family (whether or not the investments are held within a trust), for example a family office.

1.2 Financial stability information powers

Introduction

- 1.2.1 G The *FSA* has a *regulatory objective* of contributing to the protection and enhancement of *UK financial stability*. Section 250 of the Banking Act 2009 imposes a duty on the *FSA* to collect information that it thinks is, or may be, relevant to the stability of individual financial institutions or to one or more aspects of the *UK financial system*.
- 1.2.2 G Some information relevant to *UK financial stability* will be accessible to the *FSA*:

- (1) through *authorised persons*' regular reports to the *FSA*; or
- (2) from other *UK* or international authorities;
- (3) through information gathered by the *FSA* under other information gathering powers, such as section 165 of the *Act* or section 250(2) of the Banking Act 2009.

1.2.3 G The *FSA* may use the *financial stability information power* to gather additional information relevant to *UK* financial stability. The information may relate to the exercise of the *FSA*'s functions, or the *FSA* may collect the information in order to disclose it to another *person* or authority, for example the Bank of England or the Treasury. Information relevant to financial stability may be held by an *authorised person* or by an *unauthorised person*.

1.2.4 G When the *FSA* seeks additional information from an *authorised person* or an *unauthorised person* it may not in all cases be necessary to exercise statutory information-gathering powers. However, the *FSA* will use its statutory powers if it believes it is appropriate to do so and, in urgent cases, it may be appropriate for the *FSA* to exercise these powers without delay.

Financial stability information power

1.2.5 G The *FSA* may use the *financial stability information power* to require a *person* to provide:

- (1) specified information or documents; or
- (2) information or documents of a specified description;

that the *FSA* considers are or may be relevant to the stability of the *UK financial system*.

[Note: Section 165A of the *Act*]

Overseas financial stability information power

1.2.6 G The *FSA* may exercise the *overseas financial stability information power* at the request of an *overseas regulator* to require a *person* to provide:

- (1) specified information or documents; or
- (2) information or documents of a specified description;

that the *FSA* considers are or may be relevant to the stability of a *relevant financial system* operating in the country or territory of the *overseas regulator*.

[Note: Section 169A of the *Act*]

- 1.2.7 G If the *overseas regulator* is a *competent authority* and the request relates to an obligation of the *FSA* under *EU* law, the *FSA* will take into account whether it is necessary to exercise the *overseas financial stability information power* to comply with that obligation.
- 1.2.8 G In deciding whether to exercise the *overseas financial stability information power*, the *FSA* may take into account in particular:
- (1) whether corresponding assistance would be given to a *UK* regulatory authority in the country or territory of the *overseas regulator*; and
 - (2) whether it is otherwise appropriate in the public interest to give the assistance sought.
- 1.2.9 G The *FSA* may decide not to exercise the *overseas financial stability information power* unless the *overseas regulator* undertakes to make such contribution towards the cost to the *FSA* of its exercise as the *FSA* considers appropriate.
- 1.2.10 G *FINMAR* 1.2.8G and *FINMAR* 1.2.9G do not apply if the *FSA* considers that it must use the *overseas financial stability information power* to comply with an obligation upon the *FSA* under *EU* law.

1.3 Providing notice before imposing a financial stability information requirement

Giving notice

- 1.3.1 G The *FSA* will give a *person* a notice in writing if it proposes to impose a *financial stability information requirement* unless the *FSA* is satisfied that information or documents are required without delay. The notice will include:
- (1) the reasons why the *FSA* proposes to impose the *financial stability information requirement*; and
 - (2) the time period in which the *person* may make representations to the *FSA* in respect of the proposal.

Right to make representations

- 1.3.2 G The notice referred to in *FINMAR* 1.3.1G will specify a reasonable period in which to make representations. In determining the period for representations the *FSA* will take into account:
- (1) the nature, type and number of documents likely to be required;
 - (2) the reasons for imposing the requirement;

- (3) whether the *person* is likely to wish to seek legal advice;
 - (4) whether the *person* is an *authorised person*;
 - (5) any cost implications for the *person*.
- 1.3.3 G The *FSA* will generally invite the recipient of a notice to make representations in writing to the address provided in the notice. The *FSA* will consider a request by a *person* to make oral representations and will take into account:
- (1) whether oral representations would be likely to:
 - (a) improve the *FSA* 's understanding of the representations;
 - (b) be more convenient or less costly than written representations; and
 - (c) assist the *FSA* in making a decision more quickly; and
 - (2) as in other cases, and in accordance with the Disability Discrimination Act 1995, any reason relating to the disability of the person which would mean that they could not otherwise have a fair hearing.
- 1.3.4 G Once the period for making representations has expired the *FSA* will determine within a reasonable period whether to impose the *financial stability information requirement*.
- 1.3.5 G If the *FSA* does not receive any representations during the period specified in the notice it will determine whether to impose the *financial stability information requirement* based on the information available to it.

1.4 Imposing a financial stability information requirement without prior notice

- 1.4.1 G If the *FSA* proposes to impose a *financial stability information requirement* and is satisfied that it is necessary for the information or documents covered by a *financial stability information requirement* to be provided or produced without delay, the *FSA* may impose the *financial stability information requirement* on a *person* without taking the steps described in *FINMAR* 1.3 (see section 165B (4) of the *Act*).
- 1.4.2 G The *FSA* will determine whether to impose a *financial stability information requirement* without prior notice based on the facts of each case and after taking into account the information before it concerning:
- (1) the nature of the risk to financial stability and whether the risk appears to be increasing rapidly;

- (2) the extent of the risk to financial stability;
- (3) whether it is fair to impose the requirement without notice; and
- (4) whether the information sought may lead to prompt action by the *FSA*.

1.4.3 G A *person* who receives a *financial stability information requirement* without prior notice should consider whether to contact the *FSA* concerning the requirement. The *person* should raise any proposal to make representations with the *FSA* at the earliest opportunity.

1.5 Imposing a requirement

Deciding to impose a requirement

1.5.1 G In deciding whether to impose a *financial stability information requirement* the *FSA* will:

- (1) review the material before it;
- (2) consider any representations received from the proposed recipient of the requirement; and
- (3) take into account:
 - (a) the nature and extent of the risks to financial stability;
 - (b) whether the information is more readily available from another source, taking into account the likely time and cost implications of seeking information from that source;
 - (c) whether the information may assist the *FSA* in fulfilling its functions, for example if the information relates to the exercise of the *FSA*'s statutory powers.

1.5.2 G A decision to impose the *financial stability information requirement* will be taken by a member of *FSA* staff at the appropriate level of seniority.

Scope of the requirement

1.5.3 G The information and documents specified will be appropriate for each case. They may be defined broadly, for example information relating to a trading strategy and its execution, or in a more limited way, for example a contract documenting a particular trade.

Notice of a financial stability information requirement

1.5.4 G The *FSA* will give a *person* notice in writing if it decides to impose a *financial stability information requirement*. The notice will describe the

information and documents to which the requirement relates and include the *FSA*'s reasons for imposing the requirement.

Requiring documents to be verified or authenticated

- 1.5.5 G The *FSA* may, where it is reasonable to do so, require a *person* subject to a *financial stability information requirement* to provide:
- (1) verification of any information; or
 - (2) authentication of any document;
- that the *person* provides to the *FSA* in accordance with that requirement.
- 1.5.6 G When deciding whether to require verification or authentication the *FSA* will take into account the circumstances of each case, including:
- (1) the type of information or documents required and whether there is a particular need for the information to be exactly accurate;
 - (2) the likely additional cost to the *person* providing the information or documents;
 - (3) the extent to which verification or authentication may improve the quality or reliability of the information or documents; and
 - (4) the nature of any previous communications between the *person* and the *FSA*.
- 1.5.7 G The *FSA* may, where it is reasonable to do so, require the information or documents to be verified or authenticated in any manner. Examples of verification or authentication include:
- (1) a signed declaration by an officer or employee of a *body corporate*;
 - (2) a declaration by a commissioner for oaths that a copy of a document is a true copy of the original; and
 - (3) a declaration by the *person's* accountant or auditor that the information provided appears to be accurate.

2 Short selling

2.1 Application and purpose

Application

- 2.1.1 R This chapter applies to all *persons* who:
- (1) engage, or are intending to engage, in short selling in relation to

relevant financial instruments; or

- (2) have engaged in short selling in relation to *relevant financial instruments* where the resulting short position is still open.

Purpose

- 2.1.2 G The purpose of this chapter is to set out *rules* and provide *guidance* in relation to short selling in order to promote the *FSA*'s statutory objectives of:
- (1) maintaining confidence in the *UK financial system*; and
- (2) contributing to the protection and enhancement of the stability of the *UK financial system*.

2.2 Disclosure of disclosable short positions

Disclosure during a rights issue period

- 2.2.1 R A *person* who has a *disclosable short position* must provide *disclosure* of his position where:
- (1) the position relates, directly or indirectly, to *securities* which are:
- (a) the subject of a *rights issue*;
- (b) admitted to trading on a *prescribed market* in the *United Kingdom*; and
- (c) issued by:
- (i) a *UK company*; or
- (ii) a *non-UK company* for whom the *UK prescribed market* is the sole or main venue for trading the *securities*; and
- (2) the *disclosable short position*:
- (a) is reached or exceeded, or the position falls below a *disclosable short position*, during a *rights issue period*; or
- (b) has been reached or exceeded immediately before the beginning of the *rights issue period* and has not fallen below a *disclosable short position* at the time the *rights issue period* commences.
- 2.2.2 G For the purposes of *FINMAR* 2.2.1R(1)(c)(ii), a *UK prescribed market* is the main venue for trading *securities* of a *company* where the volume of the *securities* traded on that market in the 12-month period immediately

preceding the beginning of the *company's rights issue period* is greater than the volume of the *securities* traded on any other market, whether in the *United Kingdom* or elsewhere.

Disclosure of a short position in a UK financial sector company

- 2.2.3 R A *person* who has a *disclosable short position* in a *UK financial sector company* must provide *ongoing disclosure* of his position.
- 2.2.4 G Where a *UK financial sector company* is in a *rights issue period*, a disclosure under *FINMAR 2.2.3R* is sufficient to satisfy the disclosure requirement in *FINMAR 2.1.1R*.

2.3 Calculation of net short position

Preliminary

- 2.3.1 G This section contains provisions relating to the calculation of a *net short position* for the purposes of determining whether a *person* has a *disclosable short position*.
- 2.3.2 R A *net short position* is the position remaining after deducting a long position (if any) that a *person* holds in relation to the issued capital of a *company* from a short position in relation to the issued capital of that *company*, where the value of the long and short positions is calculated in accordance with the provisions below.
- 2.3.3 R The calculation of a *net short position* must take account of any form of economic interest, whether by virtue of a long or short position, in the issued capital of the *company*.
- 2.3.4 R A *net short position* must be calculated on the basis of the position held at midnight at the end of each day that a *person* has the *net short position*.

Long and short positions

- 2.3.5 R A 'long position' is the total of:
- (1) the number of *shares* a *person* holds in a *company*; and
 - (2) any exposure, calculated on a delta-adjusted basis, to the issued capital of the *company* the *person* has through his holding of *financial instruments* which will result in the *person* making a profit, whether directly or indirectly, if there is an increase in the price or value of the *shares* of the *company*.
- 2.3.6 R A 'short position' is the total of:
- (1) the number of *shares* in a *company* that a *person* has sold where the *person* has borrowed or needs to borrow or purchase *shares* to settle

the transaction and the *shares* have not yet been returned to the lender, or borrowed and returned to the lender, or purchased, as the case may be; and

- (2) any exposure, calculated on a delta-adjusted basis, to the issued capital of the *company* the *person* has through his holding of *financial instruments* which will result in the *person* making a profit, whether directly or indirectly, if there is a decrease in the price or value of the *shares*.

Calculating short positions: particular cases

- 2.3.7 R For the purposes of calculating a *net short position* when a *company* is in a *rights issue period*:
- (1) a long position in the nil paid rights cannot be deducted from a short position in relation to the *company*; and
 - (2) any short position in the nil paid rights must be taken into account.
- 2.3.8 G Where a *person* has an economic exposure to the issued capital of a *company* by virtue of his interest in a basket, index or exchange traded fund, the value of the exposure to the *company* should be included in the calculation of his *net short position*.

2.4 Responsibility for disclosure

Discretionary and non-discretionary managers

- 2.4.1 R Where a *person* has appointed one or more *discretionary investment managers* to manage some or all of his investments, the *person* must make any disclosures required under *FINMAR 2.2.1R* or *FINMAR 2.2.3R* in respect of any *disclosable short position*, unless *FINMAR 2.4.2G* applies.
- 2.4.2 G Where a *person* (“P”) has appointed:
- (1) a *discretionary investment manager* to manage some or all of his investments, P may authorise that *discretionary investment manager* to make any disclosures required by *FINMAR 2.2.1R* or *FINMAR 2.2.3R* on P’s behalf in relation to the investments managed by that *discretionary investment manager*;
 - (2) more than one *discretionary investment manager* to manage some or all of his investments, P may authorise another *person* (such as the *operator* of an *AUT*, *ICVC* or any other fund) to make any disclosures required by *FINMAR 2.2.1R* or *FINMAR 2.2.3R* on P’s behalf.
- 2.4.3 R Where a *discretionary investment manager* or another *person* has been authorised by a *person* (“P”) to make any disclosures required by *FINMAR*

2.2.1R or *FINMAR* 2.2.3R on P's behalf, he must:

- (1) provide *disclosure* or *ongoing disclosure* as required under *FINMAR* 2.2.1R or *FINMAR* 2.2.3R of P's position; and
- (2) clearly identify the *person* on whose behalf he is making the disclosure.

- 2.4.4 R Where a *discretionary investment manager* manages investments for more than one *person*, he must provide *disclosure* or *ongoing disclosure* under *FINMAR* 2.2.1R or *FINMAR* 2.2.3R in respect of the aggregate *net short position* of all the portfolios managed by him.
- 2.4.5 R Where a *person* whose investments are managed by a *non-discretionary investment manager* has a *disclosable short position*, the *person* must make any disclosures required under *FINMAR* 2.2.1R or *FINMAR* 2.2.3R in respect of his position.
- 2.4.6 G A *person* whose investments are managed by a *non-discretionary investment manager* and who has a *disclosable short position* may authorise his *non-discretionary investment manager* to make any disclosures required by *FINMAR* 2.2.1R or *FINMAR* 2.2.3R on his behalf in respect of his position.
- 2.4.7 R Where a *non-discretionary investment manager* has been authorised by a *person* to make any disclosures required by *FINMAR* 2.2.1R or *FINMAR* 2.2.3R on that *person's* behalf, he must:
- (1) provide *disclosure* or *ongoing disclosure* as required under *FINMAR* 2.2.1R or *FINMAR* 2.2.3R of the *person's* position; and
 - (2) clearly identify the *person* on whose behalf he is making the disclosure.

Groups

- 2.4.8 R Where one or more *companies* in a group is required to disclose a *disclosable short position*, each *company* must make a separate disclosure of its own position unless *FINMAR* 2.4.9G applies.
- 2.4.9 G One *company* in a group may make a disclosure of a *disclosable short position* held by one or more *companies* in the group, provided that the disclosure clearly states the name of the *company* or of each of the *companies*, as the case may be, which holds a *disclosable short position*.

Editor's Note: The following chapter (FINMAR 3) replaces COND 3, which is deleted. Changes from the text of COND 3 are indicated by underlining (new text) and striking through (deleted text).

3 Banking Act 2009

3.1 Application and purpose

Application

3.1.1 G *FINMAR 3 is relevant to firms subject to the powers in Parts 1 to 3 of the Banking Act 2009 (the Banking Act), that is, UK incorporated firms with a Part IV permission to carry on the regulated activity of accepting deposits, other than credit unions, firms with a Part IV permission to effect or carry out contracts of insurance and any other class of institution specified in secondary legislation.*

Purpose

3.1.2 G *The purpose of FINMAR 3 is to provide guidance on assessing Condition 2 under section 7(3) of the Banking Act.*

3.1 Assessing Condition 2 under section 7(3) of the Banking Act 2009

3.2

Introduction

3.1.1 G The Banking Act 2009 (~~the Banking Act~~) introduces new powers for HM Treasury, the Bank of England and the FSA to deal with failing banks. The powers, which are set out in Parts 1 to 3 of that Act, can be used to deal with UK incorporated firms with a Part IV permission to carry on the regulated activity of accepting deposits, other than credit unions, firms with a Part IV permission to effect or carry out contracts of insurance and any other class of institution specified in secondary legislation. In relation to building societies, the main tools in the Act are applied with modifications. In this section the term “bank” is used to refer to those firms that are potentially subject to the powers in Parts 1 to 3 of the Banking Act. The powers are defined in the Banking Act, and referred to in this section as the “stabilisation powers”. The Banking Act contains powers to enable HM Treasury to extend the application of the stabilisation powers to credit unions by secondary legislation.

3.1.2 G Section 7 of the Banking Act sets out the two conditions that must be met before a stabilisation power can be exercised in respect of a bank:

3.2.2

(1) Condition 1 is that the bank is failing, or is likely to fail, to satisfy the *threshold conditions*.

- (2) Condition 2 is that, having regard to timing and other relevant circumstances, it is not reasonably likely that (ignoring the stabilisation powers) action will be taken by or in respect of the bank that will enable it to satisfy the *threshold conditions*.

~~3.1.3~~
3.2.3 G The Banking Act provides that the *FSA* is to treat Conditions 1 and 2 as met if satisfied that they would be met but for financial assistance provided by either HM Treasury or the Bank of England (disregarding ordinary market assistance offered by the Bank on its usual terms).

Assessing Condition 1

~~3.1.4~~
3.2.4 G The matters the *FSA* will take into account in assessing whether a bank is failing or is likely to fail to satisfy the *threshold conditions* are described in *COND 2.1* to *COND 2.5*. The options available to the *FSA* in the case of a breach of the *threshold conditions* are outlined in Chapter 8 of the *Enforcement Guide* and *SUP 7.2*. These tools are available to the *FSA* at any time, and so may be used before or in conjunction with the stabilisation tools provided by the Banking Act.

Assessing Condition 2

~~3.1.5~~
3.2.5 G The Banking Act provides that in considering the test in Condition 2, the *FSA* should ignore the stabilisation powers. The purpose of this limitation is to make clear that in making its assessment, the *FSA* is not considering whether the stabilisation powers could successfully resolve the situation, but is considering whether alternative measures might provide for this instead.

Timing

~~3.1.6~~
3.2.6 G In assessing Condition 2, the *FSA* will consider the timeframe during which any actions taken by or in relation to the bank are likely to be available and to have effect. In the view of the *FSA*, the purpose of the reference to timing in Condition 2 is to require the *FSA* to consider whether a return to full compliance is likely to occur within a reasonable period of time. The following is a non-exhaustive list of factors the *FSA* may consider:

- (1) the extent of any loss, or risk of loss, or other adverse effect on *consumers*. The more serious the loss or potential loss or other adverse effect, the more likely it is that the *FSA* will consider that remedial action will be needed urgently;
- (2) the seriousness of any suspected breach of the requirements of the *Act* or the *rules* and the steps that need to be taken to correct that breach;
- (3) the risk that the bank's conduct or business presents to the stability of the UK financial system and to confidence in that system;
- (4) the likelihood that remedial action that could be taken by or in relation to the bank will take effect before *consumers*, or market

confidence or financial stability suffers significant detriment.

- 3.1.7
3.2.7 G If the *FSA* is satisfied that the breach of *threshold conditions* is likely to be temporary and to be rectified within a reasonable time, the *FSA* is unlikely to conclude that Condition 2 has been met.

Other relevant circumstances

- 3.1.8
3.2.8 G In general the *FSA* will be concerned to determine whether any remedial action that could be taken by or in relation to the bank will be effective. This will include an assessment of both how likely it is that the action will be taken, and if it is, the impact it will have on the bank's compliance with the *threshold conditions*. Circumstances that the *FSA* may take into account include but are not limited to:

- (1) where the *FSA*'s concerns relate to adequacy of liquidity:
 - (a) the availability of market funding to banks generally and any specific circumstances of the bank that may impact on its ability to access the market on terms which are generally available;
 - (b) whether the bank's current funding structure is adequate and viable; whether the primary sources of funding continue to be available, given current market sentiment, and whether they would still be viable if market sentiment was to change;
 - (c) the maturity profile of the bank's existing funding and the availability of funding from the market to replace maturing funding as the need arises;
 - (d) whether liquidity problems call into question adequacy of capital;
 - (e) the bank's credit rating and the likelihood and impact of any potential downgrade;
 - (f) the availability and terms of liquidity support from group *companies*, existing funders and central banks;
- (2) where the *FSA*'s concerns relate to capital:
 - (a) the availability of capital from the market for banks in general and any specific circumstances of the bank that may impact on its ability to access the market on terms which are generally available;
 - (b) potential sources of capital and the nature of and terms on which capital may be obtained;
 - (c) the success of any recent attempts by the bank to raise capital

on the open market;

- (d) the willingness of existing significant institutional investors to provide or assist in a strategic solution to the bank;
- (3) where the *FSA*'s concerns relate to the adequacy of non-financial resources or suitability, the *FSA* will take into account the factors identified in *COND* 2.4 and 2.5, and other *Handbook* provisions referred to in those chapters. In assessing Condition 2, the circumstances of each case are likely to be different, but the *FSA* will be concerned to establish the likelihood of achieving a return to full compliance with the *threshold conditions*, and the timescale in which a return to compliance will be effected;
- (4) the prospects of the bank securing a material and relevant transaction with a third party, for example a sale of the bank itself or of all or part of its business. In relation to any transaction, the *FSA* will have regard to factors including but not limited to:
- (a) the status of any ongoing negotiations;
 - (b) the level of interest expressed and the credibility of potential counterparties;
 - (c) practical constraints related to the bank itself, for example, management engagement, availability of relevant information and severability of infrastructure;
 - (d) the sources, availability and firmness of financing for any transaction;
 - (e) the need for shareholder approval, merger clearances or other consents;
 - (f) the suitability of the counterparty and the stability of the relevant parties following completion of any transaction.

~~3.1.9~~
3.2.9

G When assessing whether the bank will return to compliance with *threshold condition* 4 (adequate resources) the *FSA* will also assess the reasons behind the likely or actual failure of compliance. Serious failures of management, systems or internal controls may in themselves call into question the adequacy of the bank's non-financial resources (*threshold condition* 4) or suitability (*threshold condition* 5). Therefore, in assessing whether a bank is reasonably likely to satisfy the *threshold conditions* in the future, the *FSA* will be concerned to ensure that any such failures have been adequately addressed.

Schedule 1 Record keeping requirements

Sch 1.1 G There are no record-keeping requirements in *FINMAR*.

Schedule 2 Notification requirements

Sch 2.1 G There are no notification requirements in *FINMAR*.

Schedule 3 Fees and other required payments

Sch 3.1 G There are no requirements for fees in *FINMAR*.

Schedule 4 Powers Exercised

Sch 4.1	G	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> , statements of policy and guidance in <i>FINMAR</i> :
		Section 131B (Short selling rules)
		Section 157(1) (Guidance)
		Section 165B(6) (Safeguards etc in relation to exercise of power under section 165A)

Schedule 5 Rights of action for damages

Sch 5.1 G There are no rules in *FINMAR*.

Schedule 6 Rules that can be waived

Sch 6.1 G There are no rules in *FINMAR*.

Annex B

Amendments to the Glossary of definitions

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

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

<i>disclosure</i>	disclosure of a <i>disclosable short position</i> which: <ul style="list-style-type: none"> (a) is made on a <i>RIS</i> by no later than 3.30pm on the <i>business day</i> following the day on which the position reaches, exceeds or falls below a <i>disclosable short position</i> of 0.25% of the issued capital of a <i>company</i>; and (b) includes the name of the <i>person</i> who has the <i>disclosable short position</i>, the amount of the <i>disclosable short position</i> and the name of the <i>company</i> in relation to which the <i>person</i> has that position.
<i>FINMAR</i>	the Financial Stability and Market Confidence sourcebook.
<i>financial stability information power</i>	the <i>FSA</i> 's power under section 165A of the <i>Act</i> (Authority's power to require information: financial stability) which, in summary, is a power to require a <i>person</i> to provide information or documents relevant to the stability of one or more aspects of the <i>UK financial system</i> .
<i>financial stability information requirement</i>	a requirement imposed on a <i>person</i> by the <i>FSA</i> using the <i>financial stability information power</i> or the <i>overseas financial stability information power</i> .
<i>ongoing disclosure</i>	disclosure of a <i>disclosable short position</i> which: <ul style="list-style-type: none"> (a) is made on a <i>RIS</i> by no later than 3.30pm on the <i>business day</i> following the day on which the position reaches, exceeds or falls below a <i>net short position</i> of 0.25%, 0.35%, 0.45% and 0.55% of the issued capital of a <i>company</i> and each 0.1% threshold thereafter; and (b) includes the name of the <i>person</i> who has the <i>disclosable short position</i>, the amount of the <i>disclosable short position</i> and the name of the <i>company</i> in relation to which the <i>person</i> has that position.
<i>overseas financial stability information power</i>	the <i>FSA</i> 's power under section 169A of the <i>Act</i> (Support of overseas regulator with respect to financial stability) which, in summary, is a power exercisable at the request of an <i>overseas regulator</i> to require a <i>person</i> to provide information or documents relevant to the stability

	of one or more aspects of the <i>relevant financial system</i> operating in the country or territory of that regulator.
<i>relevant financial instrument</i>	(in accordance with sections 131C(4) and 131C(5) of the <i>Act</i>) a <i>financial instrument</i> that: <ul style="list-style-type: none"> (a) is admitted to trading on a <i>regulated market</i> or any other <i>prescribed market</i> in an <i>EEA State</i>; or (b) has such other connection with a market in an <i>EEA State</i> as may be specified by the <i>short selling rules</i>.
<i>relevant financial system</i>	(in accordance with section 169A(5) of the <i>Act</i> (Support of overseas regulator with respect to financial stability)) a financial system including: <ul style="list-style-type: none"> (a) financial markets and exchanges; (b) activities that would be <i>regulated activities</i> if carried on in the <i>United Kingdom</i>; and (c) other activities connected with financial markets and exchanges.
<i>short selling rules</i>	(in accordance with section 131B(8) of the <i>Act</i>) rules concerning the prohibition or disclosure of short selling in relation to <i>relevant financial instruments</i> .
<i>UK financial system</i>	(as defined in section 3 of the <i>Act</i> (Market confidence)) the financial system operating in the <i>United Kingdom</i> including: <ul style="list-style-type: none"> (a) financial markets and exchanges; (b) <i>regulated activities</i>; and (c) other activities connected with financial markets and exchanges.

Amend the following definitions as shown.

<i>competent authority</i>	(1) ...
	(2) (in relation to the exercise of an <i>EEA right</i> <u>and the exercise of the overseas financial stability information power</u>) a competent authority for the purposes of the relevant <i>Single Market Directive</i> .
	...
<i>disclosable short</i>	a net short position <u>net short position</u> which represents an economic

<i>position</i>	<p>interest of one quarter of one per cent <u>1%</u> or more of the issued capital of a company <u>company</u>, excluding any interest held in the capacity of a <u>market maker</u>.</p> <p>In calculating whether a holder has a <i>disclosable short position</i>, the holder should take into account any form of economic interest it has in the shares of the <i>issuer</i>, excluding any interest which he holds as a market maker in that capacity.</p>
<i>discretionary investment manager</i>	<p>(in <i>COBS</i>, <i>FINMAR</i> and (in relation to <i>firm type</i>) in <i>SUP</i> 16.10 (Confirmation of <i>standing data</i> <u>standing data</u>)) a <i>person</i> who, acting only on behalf of a <i>client</i>, manages <i>designated investments</i> in an account or portfolio on a discretionary basis under the terms of a discretionary management agreement.</p>
<i>financial system</i>	<p>(as defined in section 3 of the Act (Market confidence)) the financial system operating in the <i>United Kingdom</i> including:</p> <ul style="list-style-type: none"> (a) financial markets and exchanges; (b) <i>regulated activities</i>; and (c) other activities connected with financial markets and exchanges.
<i>market maker</i>	<p>(1) (except in <i>COBS</i> and <i>FINMAR</i>) (in relation to an <i>investment</i>) a <i>person</i> who (otherwise than in his capacity as the <i>operator</i> of a <i>regulated collective investment scheme</i>) holds himself out as able and willing to enter into transactions of sale and purchase in <i>investments</i> of that description at prices determined by him generally and continuously rather than in respect of each particular transaction.</p> <p>(2) (in <i>COBS</i>) a <i>person</i> who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling <i>financial instruments</i> against his proprietary capital at prices defined by him.</p> <p>[Note: article 4(1)(8) of <i>MiFID</i>]</p> <p>(3) <u>(in <i>FINMAR</i>) a <i>person</i> who, ordinarily as part of his business, deals as principal in <i>financial instruments</i> (whether <i>OTC</i> or exchange traded):</u></p> <ul style="list-style-type: none"> <u>(a) to fulfil orders received from another <i>person</i> in response to that <i>person's</i> request to trade or to hedge positions arising out of those dealings; or</u> <u>(b) in a way that ordinarily has the effect of providing liquidity on a regular basis to the financial markets on both bid and offer sides of the market in comparable size.</u>

<i>net short position</i>	<p>(1) (except in <i>IPRU(INV)</i> 13 <u>and <i>FINMAR</i></u>) a net short position which gives rise to an economic exposure to the issued <i>share</i> capital of a company. Any calculation of whether a <i>person</i> has a short position must take account of any form of economic interest in the <i>shares</i> of the company.</p> <p>...</p> <p>(3) <u>(in <i>FINMAR</i>) a position which gives rise to an economic exposure to the issued capital of a <i>company</i>, calculated in accordance with <i>FINMAR</i> 2.</u></p>
<i>non-discretionary investment manager</i>	(in <i>FINMAR</i> and in relation to <i>firm type</i> in <i>SUP</i> 16.10 (Confirmation of <i>standing data</i> <u><i>standing data</i></u>)) a <i>person</i> who, acting only on behalf of a <i>client</i> , manages <i>designated investments</i> in an account or portfolio on a non-discretionary basis under the terms of a non-discretionary management agreement.
<i>overseas regulator</i>	<p>(1) <u>(except in relation to the <i>overseas financial stability information power</i>) (as defined in section 195(3) of the <i>Act</i> (Exercise of power in support of overseas regulator)) an authority in a country or territory outside the <i>United Kingdom</i>:</u></p> <p>(a) ...</p> <p>...</p> <p>(2) <u>(in relation to the <i>overseas financial stability information power</i>) (as defined in section 169A(2) of the <i>Act</i> (Support of overseas regulator with respect to financial stability)) an authority in a country or territory outside the <i>United Kingdom</i> which exercises functions with respect to the stability of the <i>relevant financial system</i> operating in that country or territory.</u></p>
<i>rights issue</i>	(in <i>LR</i> and <i>FINMAR</i>) an offer to existing <i>security</i> holders to subscribe or purchase further <i>securities</i> in proportion to their holdings made by means of the issue of a renounceable letter (or other negotiable document) which may be traded (as “nil paid” rights) for a period before payment for the <i>securities</i> is due.
<i>rights issue period</i>	the period that commences on the date a <i>company</i> announces a rights issue <u><i>rights issue</i></u> and which ends on the date that the <i>shares</i> <u><i>securities</i></u> issued under the rights issue <u><i>rights issue</i></u> are admitted to trading on a <i>prescribed market</i> .

Annex C

Amendments to the Threshold Conditions (COND)

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

1.1.1 G *COND* applies to every *firm*, except that:

...

- (3) *threshold conditions* 3, 4 and 5 do not apply to a *Swiss General Insurance Company*; and
- (4) *COND* 2.6 (Additional conditions) is only relevant to *non-EEA insurers*; and.
- (5) ~~*COND* 3.1 is only relevant to *firms* falling within the scope of the *Banking Act 2009* (see *COND* 3.1.1G).~~ [deleted]

...

COND 3 is deleted in its entirety. The deleted text is not shown struck through.

3 **Banking Act 2009** ~~[deleted]~~ This chapter has been moved to FINMAR 3

Annex D

Amendments to the Market Conduct sourcebook (MAR)

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

1.9 Market abuse (misleading behaviour) and market abuse (distortion)

...

1.9.2A E ~~Failure by a person to give adequate disclosure that he has reached or exceeded a *disclosable short position* where:~~

(1) ~~that position relates, directly or indirectly, to *securities* which are the subject of a rights issue; and~~

(2) ~~the *disclosable short position* is reached or exceeded during a *rights issue period*;~~

~~is *behaviour* which, in the opinion of the *FSA*, is *market abuse (misleading behaviour)*. [deleted]~~

1.9.2B R ~~For the purposes of *MAR* 1.9.2AE, "adequate disclosure" means disclosure made on a *RIS* by no later than 3.30pm on the *business day* following the date on which the *disclosable short position* is reached or exceeded. The disclosure must include the name of the person who has the *disclosable short position*, the *disclosable short position* and the name of the *issuer* of the *qualifying instruments*. [deleted]~~

Short selling in relation to financial sector companies

1.9.2C E ...

1.9.2D E (1) ~~Failure by a person who has a *disclosable short position* in a *UK financial sector company* to provide adequate ongoing disclosure of their position is *behaviour* which, in the opinion of the *FSA*, is *market abuse (misleading behaviour)*. [deleted]~~

(2) ~~In (1), "adequate ongoing disclosure" means disclosure made on a *RIS* by no later than 3.30pm on the *business day* following the day on which the position reaches, exceeds or falls below a *disclosable short position* of 0.25%, 0.35%, 0.45% and 0.55% of the issued share capital of the company and each 0.1% threshold thereafter. [deleted]~~

(a) [deleted]

(b) [deleted]

(2A) ~~The disclosure referred to in (1) must include the name of the person who has the position, the amount of the *disclosable short position*~~

~~and the name of the company in relation to which it has that position.
[deleted]~~

- (3) ~~For the avoidance of doubt, changes in a *disclosable short position* between the thresholds referred to in (2) do not need to be disclosed under this section. For example, an increase from 0.25% to 0.31% of the issued share capital of the company does not need to be disclosed. [deleted]~~
- (4) ~~For the avoidance of doubt, (1) applies during a *rights issue period*.
[deleted]~~
- (5) [deleted]