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).

<table>
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<tr>
<td>Glossary of definitions</td>
<td>Annex B</td>
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<td>Threshold Conditions (COND)</td>
<td>Annex C</td>
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<td>Market Conduct sourcebook (MAR)</td>
<td>Annex D</td>
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</tbody>
</table>

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 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 (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 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 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

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

1.2 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 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 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 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 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 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 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 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 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 The FSA will give a person notice in writing if it decides to impose a financial stability information requirement. The notice will describe the
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 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 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 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 \textit{FINMAR} 2.2.3R on P’s behalf, he must:

1. provide disclosure or ongoing disclosure as required under \textit{FINMAR} 2.2.1R or \textit{FINMAR} 2.2.3R of P’s position; and

2. clearly identify the 	extit{person} on whose behalf he is making the disclosure.

2.4.4 R Where a \textit{discretionary investment manager} manages investments for more than one \textit{person}, he must provide disclosure or ongoing disclosure under \textit{FINMAR} 2.2.1R or \textit{FINMAR} 2.2.3R in respect of the aggregate \textit{net short position} of all the portfolios managed by him.

2.4.5 R Where a \textit{person} whose investments are managed by a \textit{non-discretionary investment manager} has a \textit{disclosable short position}, the \textit{person} must make any disclosures required under \textit{FINMAR} 2.2.1R or \textit{FINMAR} 2.2.3R in respect of his position.

2.4.6 G A \textit{person} whose investments are managed by a \textit{non-discretionary investment manager} and who has a \textit{disclosable short position} may authorise his \textit{non-discretionary investment manager} to make any disclosures required by \textit{FINMAR} 2.2.1R or \textit{FINMAR} 2.2.3R on his behalf in respect of his position.

2.4.7 R Where a \textit{non-discretionary investment manager} has been authorised by a \textit{person} to make any disclosures required by \textit{FINMAR} 2.2.1R or \textit{FINMAR} 2.2.3R on that \textit{person}’s behalf, he must:

1. provide disclosure or ongoing disclosure as required under \textit{FINMAR} 2.2.1R or \textit{FINMAR} 2.2.3R of the \textit{person}’s position; and

2. clearly identify the \textit{person} on whose behalf he is making the disclosure.

Groups

2.4.8 R Where one or more \textit{companies} in a group is required to disclose a \textit{disclosable short position}, each \textit{company} must make a separate disclosure of its own position unless \textit{FINMAR} 2.4.9G applies.

2.4.9 G One \textit{company} in a group may make a disclosure of a \textit{disclosable short position} held by one or more \textit{companies} in the group, provided that the disclosure clearly states the name of the \textit{company} or of each of the \textit{companies}, as the case may be, which holds a \textit{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 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 The purpose of FINMAR 3 is to provide guidance on assessing Condition 2 under section 7(3) of the Banking Act.

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

Introduction

3.2.1 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.

3.2.2 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:

(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 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 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 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 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 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 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.

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 *Act* have been exercised by the FSA to make the *rules*, statements of policy and guidance in *FINMAR*:

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</table>

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.

**disclosure**

disclosure of a *disclosable short position* which:

(a) is 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% of the issued capital of a *company*; and

(b) includes the name of the *person* who has the *disclosable short position*, the amount of the *disclosable short position* and the name of the *company* in relation to which the *person* has that position.

**FINMAR**

the Financial Stability and Market Confidence sourcebook.

**financial stability information power**

the FSA’s power under section 165A of the Act (Authority’s power to require information: financial stability) which, in summary, is a power to require a *person* to provide information or documents relevant to the stability of one or more aspects of the UK financial system.

**financial stability information requirement**

a requirement imposed on a *person* by the FSA using the financial stability information power or the overseas financial stability information power.

**ongoing disclosure**

disclosure of a *disclosable short position* which:

(a) is 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 net *short position* of 0.25%, 0.35%, 0.45% and 0.55% of the issued capital of a *company* and each 0.1% threshold thereafter; and

(b) includes the name of the *person* who has the *disclosable short position*, the amount of the *disclosable short position* and the name of the *company* in relation to which the *person* has that position.

**overseas financial stability information power**

the FSA’s power under section 169A of the Act (Support of overseas regulator with respect to financial stability) which, in summary, is a power exercisable at the request of an overseas regulator to require a *person* to provide information or documents relevant to the stability
of one or more aspects of the relevant financial system operating in the country or territory of that regulator.

**relevant financial instrument**

(in accordance with sections 131C(4) and 131C(5) of the Act) a financial instrument that:

(a) is admitted to trading on a regulated market or any other prescribed market in an EEA State; or

(b) has such other connection with a market in an EEA State as may be specified by the short selling rules.

**relevant financial system**

(in accordance with section 169A(5) of the Act (Support of overseas regulator with respect to financial stability)) a financial system including:

(a) financial markets and exchanges;

(b) activities that would be regulated activities if carried on in the United Kingdom; and

(c) other activities connected with financial markets and exchanges.

**short selling rules**

(in accordance with section 131B(8) of the Act) rules concerning the prohibition or disclosure of short selling in relation to relevant financial instruments.

**UK financial system**

(as defined in section 3 of the Act (Market confidence)) the financial system operating in the United Kingdom including:

(a) financial markets and exchanges;

(b) regulated activities; and

(c) other activities connected with financial markets and exchanges.

Amend the following definitions as shown.

**competent authority**

(1) …

(2) (in relation to the exercise of an EEA right and the exercise of the overseas financial stability information power) a competent authority for the purposes of the relevant Single Market Directive.

…

**disclosable short**

a net short position net short position which represents an economic
position interest of one quarter of one per cent 1% or more of the issued capital of a company company, excluding any interest held in the capacity of a market maker.

In calculating whether a holder has a disclosable short position, the holder should take into account any form of economic interest it has in the shares of the issuer, excluding any interest which he holds as a market maker in that capacity.

discretionary investment manager (in COBS, FINMAR and (in relation to firm type) in SUP 16.10 (Confirmation of standing data standing data)) a person who, acting only on behalf of a client, manages designated investments in an account or portfolio on a discretionary basis under the terms of a discretionary management agreement.

financial system (as defined in section 3 of the Act (Market confidence)) the financial system operating in the United Kingdom including:

(a) financial markets and exchanges;

(b) regulated activities; and

(c) other activities connected with financial markets and exchanges.

market maker (1) (except in COBS and FINMAR) (in relation to an investment) a person who (otherwise than in his capacity as the operator of a regulated collective investment scheme) holds himself out as able and willing to enter into transactions of sale and purchase in investments of that description at prices determined by him generally and continuously rather than in respect of each particular transaction.

(2) (in COBS) a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him.

[Note: article 4(1)(8) of MiFID]

(3) (in FINMAR) a person who, ordinarily as part of his business, deals as principal in financial instruments (whether OTC or exchange traded):

(a) to fulfil orders received from another person in response to that person’s request to trade or to hedge positions arising out of those dealings; or

(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.
net short position  (1) (except in IPRU(INV) 13 and FINMAR) a net short position which gives rise to an economic exposure to the issued share capital of a company. Any calculation of whether a person has a short position must take account of any form of economic interest in the shares of the company.

…

(3) (in FINMAR) a position which gives rise to an economic exposure to the issued capital of a company, calculated in accordance with FINMAR 2.

non-discretionary investment manager  (in FINMAR and in relation to firm type in SUP 16.10 (Confirmation of standing data standing data)) a person who, acting only on behalf of a client, manages designated investments in an account or portfolio on a non-discretionary basis under the terms of a non-discretionary management agreement.

overseas regulator  (1) (except in relation to the overseas financial stability information power) (as defined in section 195(3) of the Act (Exercise of power in support of overseas regulator)) an authority in a country or territory outside the United Kingdom:

(a) …

…

(2) (in relation to the overseas financial stability information power) (as defined in section 169A(2) of the Act (Support of overseas regulator with respect to financial stability)) an authority in a country or territory outside the United Kingdom which exercises functions with respect to the stability of the relevant financial system operating in that country or territory.

rights issue  (in LR and FINMAR) an offer to existing security holders to subscribe or purchase further securities 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 securities is due.

rights issue period  the period that commences on the date a company announces a rights issue rights issue and which ends on the date that the shares securities issued under the rights issue rights issue are admitted to trading on a prescribed market.
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  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  For the purposes of MAR 1.9.2A, "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  ... 

1.9.2D  (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]