

**EMPLOYERS' LIABILITY INSURANCE: DISCLOSURE BY INSURERS (NO 3)  
INSTRUMENT 2013**

**WHEREAS:**

- A. The Authority has, in accordance with Article 5 of the Designation Order, appointed persons to exercise functions referred to in Article 5(1) of the Designation Order, which include the function of the Financial Conduct Authority of making rules, giving guidance and issuing codes.
- B. By virtue of Article 5(3)(a) of the Designation Order the persons appointed may discharge the relevant functions as if they were the governing body of the Financial Conduct Authority.
- C. By virtue of Article 7(1) of the Designation Order this Instrument shall be treated as if it had been made by the Financial Conduct Authority acting through its governing body.
- D. Article 2(1)(c) of the Early Commencement Order commenced certain of the Financial Conduct Authority's rule making and other powers for the purposes specified in Part 3 of the Schedule to that Order.

**Interpretation**

- 1 In this Instrument (including the Recitals):
  - (1) "Designation Order" means the Financial Services Act 2012 (Transitional Provisions) (Rules and Miscellaneous Provisions) Order 2013 (SI 2013/161);
  - (2) "Early Commencement Order" means the Financial Services Act 2012 (Commencement No. 1) Order 2013 (SI 2013/113);
  - (3) "the 2000 Act" means the Financial Services and Markets Act 2000;
  - (4) "the 2012 Act" means the Financial Services Act 2012;
  - (5) "the Authority" means the Financial Services Authority; and
  - (6) "Financial Conduct Authority" means the body corporate referred to in section 1A of the 2000 Act as amended by section 6 of the 2012 Act.

**Rules etc. made, given or amended by the Financial Conduct Authority**

- 1. In accordance with Article 2(1) of the Early Commencement Order and in the exercise of the powers and related provisions specified in paragraph 2, the Financial Conduct Authority makes, amends, issues, gives, or imposes each provision in the Annex to this Instrument.
- 2 The Financial Conduct Authority makes, amends, issues, gives or imposes the provisions in the Annex to this Instrument in exercise of the following powers and related provisions of the 2000 Act, as amended by the 2012 Act:
  - (1) Section 137A (The FCA's general rules);
  - (2) Section 137T (General supplementary powers); and
  - (3) Section 139A (Power of the FCA to give guidance).

- 3 The rule-making powers in paragraph 2 are specified for the purpose of section 138G (Rule-making instruments) of the 2000 Act, as amended by the 2012 Act.

**Commencement: Financial Conduct Authority**

- 4 The Financial Conduct Authority directs that this Instrument comes into force on 1 April 2013.

**Amendments to the Handbook**

- 5 The Insurance: Conduct of Business sourcebook (ICOBS) of the FCA's Handbook of rules and guidance is amended in accordance with the Annex to this Instrument.

**Citation**

- 6 This Instrument may be cited as the Employers' Liability Insurance: Disclosure by Insurers (No 3) Instrument 2013.

**By order of the persons appointed under Article 5 of the Designation Order to discharge specified functions of the Financial Conduct Authority as if they were its governing body**

19 March 2013

## Annex

## Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

## TP 1 Transitional Provisions

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9A	R	(1)	For the purposes of <i>ICOBS</i> 8.4.4R(1)(a), to the extent that a <i>firm</i> is unable to include information required under <i>ICOBS</i> 8.4.4R(2)(b)(ii) solely because of a failure by a third party outside the <i>firm's</i> control, then provided that the <i>firm</i> has used, and continues to use, best endeavours to obtain that information, other than refusing to provide cover to an employer solely because it has not provided the information requested, the <i>firm</i> will be deemed to comply with the requirements in <i>ICOBS</i> 8.4.4R(2)(b)(ii) and the corresponding parts of <i>ICOBS</i> 8 Annex 1.
		(2)	For the purposes of <i>ICOBS</i> 8.4.4R(1)(b) and (1)(c), a <i>firm</i> must treat references to compliance with <i>ICOBS</i> 8.4.4R(1)(a), <i>ICOBS</i> 8.4.4R(2) and <i>ICOBS</i> 8 Annex 1 as if TP 9AR did not apply.
9B	G		The effect of TP 9AR(1) is that a <i>firm</i> will not be in breach of the requirements to include relevant information on its register to the extent that it is unable to obtain that information from third parties over which it does not exercise control. However, in order to be able to rely on this provision the <i>firm</i> will need to be able to demonstrate that it has used its best endeavours to obtain the information from the third party over the relevant time period and continues to do so, other than by refusing to provide cover to that employer solely for failure to provide relevant information. The effect of TP 9AR(2) is that even though the <i>firm</i> may not be regarded as being in breach of the underlying requirements in <i>ICOBS</i> 8.4.4R(1)(a), the <i>director's certificate</i> and report prepared by an auditor will need to be addressed at the level of compliance of the register as if TP 9AR(1) did not provide any transitional relief from the <i>firm</i> being in breach.
			TP 9AR(1) and (2) and 9BG apply until 1 April <del>2013</del> <u>2014</u> .