

## CONSUMER CREDIT REGULATION: INTERIM CHANGES TO THE ACCA RULEBOOK

### APPENDIX

2.3

# The Chartered Certified Accountants' Designated Professional Body Regulations 2001

## **Amended 1 March 2014 January 2013**

The Council of the Association of Chartered Certified Accountants, in exercise of all the powers conferred on it by bye-laws 6 and 27 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

### **Chapter 1 Citation**

#### **1. Citation, commencement and application**

##### *(1) Citation*

These regulations may be cited as The Chartered Certified Accountants' Designated Professional Body Regulations 2001. The Association is a designated professional body under Part XX of the Financial Services and Markets Act 2000 ('the Act') and is required, under section 332(3) of that Act, to make rules relating to carrying on regulated activities that may be carried on by members and firms without breaching the general prohibition.

##### *(2) Commencement*

These regulations as amended as set out herein shall come into force on the following dates:

- (a) regulations concerning activities related to regulated mortgage contracts on 31 October 2004;
- (b) regulations concerning insurance mediation activities related to contracts of long-term care insurance on 31 October 2004;
- (c) regulations concerning all other insurance mediation activities on 14 January 2005;
- (d) regulations concerning regulated home purchase plans, regulated home reversion plans and rights under personal pension plans on 6 April 2007;
- (e) regulations concerning the revised minimum levels of professional indemnity insurance for firms carrying on insurance mediation activities on 1 March 2009;
- (f) regulations concerning credit-related regulated activities on 1 April 2014;**
- (fg) all other regulations on 1 January 2005.**

##### *(3) Application*

- (a) These regulations shall apply to all members and firms.
- (b) A firm shall not be eligible to undertake any regulated activities pursuant to these Regulations if it is an authorised person (i.e. a firm cannot be regulated by a designated professional body and at the same time be authorised by the FCA).
- (c) These regulations shall apply to exempt regulated activities carried on in, into or from the United Kingdom.

*(4) Approval by the FCA*

These Chartered Certified Accountants' Designated Professional Body Regulations 2001 have been approved by the FCA under section 332(5) of the Act.

## **Chapter 2 Interpretation**

### **2. Interpretation**

#### *(1) Definitions*

In these regulations, unless the context otherwise requires:

*Act* means the Financial Services and Markets Act 2000;

*Admissions and Licensing Committee* means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

*agent*, in relation to a person, means any person (including an employee) who acts on that person's behalf;

*Appeal Committee* means a committee of individuals having the constitution, powers and responsibilities set out in The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014;

*appointed representative* means a person (other than an authorised person) who is employed by an authorised person (his principal) under a contract for services which requires or permits him to carry on a regulated activity of a kind to which Section 39 of the Act applies;

*associate*, in relation to a person, shall be construed as follows:

(a) in relation to an individual, "associate" means:

- (i) that individual's spouse or minor child or step-child;
- (ii) any body corporate of which that individual is a director; and
- (iii) any employee or partner of that individual;

(b) in relation to a body corporate, "associate" means:

- (i) any body corporate of which that body is a director;
- (ii) any body corporate in the same group as that body; and
- (iii) any employee or partner of that body or of any body corporate in the same group;

(c) in relation to a Scottish partnership, or a partnership constituted under the law of any other country or territory in which a partnership is a legal person, "associate" means:

- (i) any body corporate of which the partnership is a director;
- (ii) any employee of or partner in the partnership; and
- (iii) any person who is an associate of a partner in the partnership; and

(d) in relation to a partnership constituted under the law of England and Wales or Northern Ireland, or the law of any other country or territory in which a partnership is not a legal person, "associate" means any person who is an associate of any of the partners;

*Association* means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

*authorised person* means a person who is authorised by the FCA under section 31(1) of the Act;

*authorised unit trust scheme* means a unit trust scheme declared by an order of the FCA for the time being in force to be an authorised unit trust scheme for the purposes of the Act;

*broker funds arrangement* means an arrangement between a firm and a life office (or operator of a regulated collective investment scheme) under which the life office (or operator of the regulated collective investment scheme) agrees to establish a separate fund whose composition may be determined by instructions from the firm and in which it is possible for more than one client to invest;

*capital redemption contracts* means (in relation to a class of contract of insurance) capital redemption contracts where effected or carried out by a person who does not carry on a banking business, and otherwise carries on the regulated activity of effecting or carrying out contracts of insurance, as specified in paragraph VI of Part II of Schedule 1 to the Regulated Activities Order (Contracts of long-term insurance);

*charges* means any fee or charge levied by the firm to a client in connection with investment business exempt regulated activities;

*client* means any person to whom a firm provides public practice accountancy services under these regulations including a potential client and an indirect client but does not include a trust beneficiary;

*collective investment scheme* means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income, which are not excluded by the Financial Services and Markets Act (Collective Investment Schemes) Order 2001;

*company* includes any body corporate;

*Consumer Credit sourcebook* means the specialist sourcebook for credit-related regulated activities in the FCA's handbook of rules and guidance;

*contract of insurance* means:

- (1) (in relation to a specified investment) the investment, specified in article 75 of the Regulated Activities Order (Contracts of insurance), which is rights under a contract of insurance in (2).
- (2) (in relation to a contract) (in accordance with article 3(1) of the Regulated Activities Order (Interpretation)) any contract of insurance which is a long-term insurance contract or a general insurance contract, including:
  - (a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are:
    - (i) effected or carried out by a person not carrying on a banking business;
    - (ii) not effected merely incidentally to some other business carried on by the person effecting them; and
    - (iii) effected in return for the payment of one or more premiums;
  - (b) tontines;
  - (c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who:
    - (i) does not carry on a banking business; and
    - (ii) otherwise carries on the regulated activity of effecting or carrying out contracts of insurance;
  - (d) contracts to pay annuities on human life;
  - (e) contracts of a kind referred to in article 1(2)(e) of the Consolidated Life Directive (collective insurance etc); and
  - (f) contracts of a kind referred to in article 1(3) of the Consolidated Life Directive (social insurance);

but does not include a funeral plan contract or a contract which would be a funeral plan contract but for the exclusion in article 60 of the Regulated Activities Order;

in this definition, "annuities on human life" does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged, or who have been engaged, in any particular profession, trade or employment, or of the dependants of such persons;

*contract of long-term care insurance* means a contract of long-term care insurance specified in Article 1(4) of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003;

*contract of long-term insurance* means a contract of long-term insurance specified in Part II of Schedule 1 to the Regulated Activities Order;

*controller* means, in relation to any company, a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 10 per cent or more of the rights to vote on all, or substantially all, matters at general meetings of the company or another company of which it is a subsidiary;

*Council* means the Council of the Association from time to time and includes any duly authorised committee of Council;

*credit broking* has the meaning given by article 36A of the Regulated Activities Order;

*credit information services* has the meaning given by article 89A of the Regulated Activities Order;

*credit-related regulated activity* means any of the following activities specified in Part 2 or 3A of the Regulated Activities Order (Specified Activities):

- (a) *entering into a regulated credit agreement as lender*
- (b) *exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement*

- (c) credit broking
- (d) debt adjusting
- (e) debt counselling
- (f) debt collecting
- (g) debt administration
- (h) entering into a regulated consumer hire agreement as owner
- (i) exercising, or having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement
- (j) providing credit information services
- (k) providing credit references
- (l) operating an electronic system in relation to lending
- (m) agreeing to carry on a regulated activity so far as relevant to any of the activities in (a) to (l);

debt adjusting has the meaning given by article 39D(1) and (2) of the Regulated Activities Order;

debt administration has the meaning given by article 39G(1) and (2) of the Regulated Activities Order;

debt collecting has the meaning given by article 39F(1) and (2) of the Regulated Activities Order;

debt counselling has the meaning given by article 39E(1) and (2) of the Regulated Activities Order;

*derivative* means an investment falling within any of articles 83, 84 or 85 of the Regulated Activities Order;

*designated investment* means a security or a contractually based investment (other than a funeral plan contract and a right to or interest in a funeral plan contract), that is, any of the following investments, specified in Part III of the Regulated Activities Order (Specified Investments):

- (a) life policy (subset of article 75 (Contracts of insurance));
- (b) share (article 76);
- (c) debenture (article 77);
- (d) government and public security (article 78);
- (e) warrant (article 79);
- (f) certificate representing certain securities (article 80);
- (g) unit (article 81);
- (h) stakeholder pension scheme (article 82(1)) and personal pension scheme (article 82(2));
- (i) option (article 83);
- (j) future (article 84);
- (k) contract for differences (article 85);
- (l) regulated mortgage contracts (article 88);
- (m) regulated home reversion plans (article 88A);
- (n) regulated home purchase plans (article 88B);
- (o) rights to or interests in investments in (a) to (k) (article 89);

*designated investment business* means any of the activities, specified in Part II of the Regulated Activities Order (Specified Activities) which are carried on by way of business;

*designated professional body* has the meaning given by section 326 of the Act;

*distance contract* means any contract for financial services, the making or performance of which constitutes or is part of a regulated activity, concluded under an organised distance sales or service provision scheme run by the contractual provider of the service, who, for the purpose of that contract, makes exclusive use (directly or through an intermediary) of one or more means of distance communication up to and including the time at which the contract is concluded;

*Distance Marketing Directive* means the Distance Marketing of Consumer Financial Services Directive 2002/65/EC;

*employee* means an individual who is employed in connection with the firm's exempt regulated activities under a contract of service or under a contract for services such that he is held out as an employee or consultant of the firm and includes an appointed representative of the firm;

*execution-only client*, in relation to the effecting of a transaction by a firm, means a person with or for whom that transaction is effected in circumstances in which the firm can reasonably assume that the client is not relying upon the firm to advise him on or to exercise any judgement on his behalf as to the merits of or the suitability for him of the

transaction and where that person has agreed in writing that the firm has not provided and is not responsible for providing him with investment advice or for exercising any judgement on his behalf as to the merits of or the suitability for him of the transaction and has reasonably concluded that the client can be expected to understand the risks involved in the transaction, and execution-only shall be construed accordingly;

*exempt person* means a person who is exempt under sections 38 and 39 of the Act;

*exempt regulated activities* means a regulated activity which may, as a result of Part XX of the Act (Provision of Financial Services by Members of the Professions), be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition;

*FCA* means the Financial Conduct Authority;

*Financial Services Register* means the record maintained by the FCA, which includes a record of unauthorised persons that carry on, or are proposing to carry on, insurance mediation activity;

*firm* means a sole practice, partnership or body corporate including a limited liability partnership that satisfies the eligibility requirements for carrying on exempt regulated activities;

*funeral plan contract* means the investment, specified in articles 59(2), 60 and 87 of the Regulated Activities Order which come into force on 1 January 2002, which is in summary, rights under a contract under which:

- (a) a person (“the customer”) makes one or more payments to another person (“the provider”); and
- (b) the provider undertakes to provide, or secure that another person provides, a funeral in the United Kingdom for the customer (or some other person who is living at the date when the contract is entered into) on his death;

unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month; but excluding certain contracts under which sums paid will be applied towards a contract of insurance or will be held on trust;

*general prohibition* means the prohibition imposed by section 19 of the Act which states that no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is:

- (a) an authorised person; or
- (b) an exempt person;

*group*, in relation to a body corporate, means the body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

*holding company* has the meaning given by section 736 of the Companies Act 2006;

*indirect client* means, where a client is known to be acting as agent, an identified principal who would be a client if he were dealt with direct;

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

- (a) dealing in investments as agent in the manner specified by article 21 of the Regulated Activities Order;
- (b) arranging (bringing about) deals in investments in the manner specified by article 25(1) of the Regulated Activities Order;
- (c) making arrangements with a view to transactions in investments in the manner specified by article 25(2) of the Regulated Activities Order;
- (d) assisting in the administration and performance of a contract of insurance within article 39A of the Regulated Activities Order;
- (e) advising on investments in the manner specified by article 53 of the Regulated Activities Order;
- (f) agreeing to carry on a regulated activity in (a) to (e) within article 64 of the Regulated Activities Order;

*investment trust savings scheme* means a dealing service dedicated to the securities of a particular investment trust or of investment trusts within a particular marketing group (and references to an investment trust savings scheme include references to securities to be acquired through that scheme);

*ISA* means an account which is a scheme of investment satisfying the conditions prescribed by the Individual Savings Accounts Regulations 1998 (SI 1998/1870) or any regulations amending or replacing them;

*means of distance communication* means (in accordance with Article 2(e) of the Distance Marketing Directive) any means used for the distance marketing of a service between parties which does not involve the simultaneous physical presence of those parties;

*member* means an individual admitted to membership of the Association pursuant to the bye-laws;

*officer* means, in relation to a firm which is a partnership, a partner, and in relation to a firm which is a limited liability partnership, a member, and in relation to a firm which is a company, a director or company secretary; and in relation to

the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

*open-ended investment company* means a collective investment scheme which satisfies both the property condition and the investment condition:

- (a) the property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate ("BC") having as its purpose the investment of its funds with the aim of:
  - (i) spreading investment risk; and
  - (ii) giving its members the benefit of the results of the management of those funds by or on behalf of that body;
- (b) the investment condition is that, in relation to BC, a reasonable investor would, if he were to participate in the scheme:
  - (i) expect that he would be able to realise, within a period appearing to him reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, BC held by him as a participant in the scheme); and
  - (ii) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements;

*operating an electronic system in relation to lending* has the meaning given by article 36H of the Regulated Activities Order;

*packaged product* means a life policy, personal pension scheme, stakeholder pension scheme, a unit in a regulated collective investment scheme, or an investment trust savings scheme;

*pension fund withdrawals* means in relation to a decision of a client in respect of a personal pension scheme, to defer the purchase of an annuity and to take:

- (a) income withdrawals within the meaning of section 630 of the Income and Corporation Taxes Act 1988, as amended by section 58 and Schedule 11 of the Finance Act 1995; or
- (b) payments made under interim arrangements in accordance with section 28A of the Pension Schemes Act 1993, as inserted by section 143 of the Pensions Act 1995;

and, in respect of an election to make pension fund withdrawals, a reference in these regulations to a client, an investor or a policyholder includes, after that person's death, his surviving spouse and/or anyone who is, at that time, his dependant;

*pension transfer* means any transaction by a client resulting from a decision to:

- (a) opt out of or not join an occupational pension scheme of which a client is a current member, or which he is, or at the end of a waiting period will become eligible to join, in order to enter into a personal pension policy or stakeholder pension scheme; or
- (b) make a payment into a personal pension scheme or stakeholder pension scheme of accrued pension benefits under an occupational pension scheme;

*PEP* means a plan which is a scheme of investment satisfying the conditions prescribed by the Personal Equity Plan Regulations 1989 (SI 1989/469);

*permitted third party* means in relation to a regulated activity, an authorised person with permission under Part IV of the Act to carry on that activity or an exempt person who is an exempt person in relation to that activity but in relation to packaged products does not include the regulated life office or operator of the regulated collective investment scheme in question, or an appointed representative of either; and in the case of any reference to the firm acting as disclosed agent where the permitted third party has confirmed to the firm that the client is or will be treated by the authorised person as its customer;

*personal pension policy* means a right to benefits obtained by the making of contributions to a personal pension scheme;

*personal pension scheme* means:

- (a) (in relation to a specified investment) the investment specified in article 82(2) of the Regulated Activities Order (Rights under a pension scheme) which is rights under a personal pension scheme in (b);
- (b) (in relation to a scheme) (in accordance with 3(1) of the Regulated Activities Order) a pension scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people:
  - (i) on retirement;

- (ii) on having reached a particular age; or
- (iii) on termination of service in an employment;

*plan manager* means in relation to:

- (a) a group PEP, the PEP manager;
- (b) a group ISA, the ISA manager;
- (c) a group savings plan, the person primarily responsible for that group savings plan;

*practising certificate* means any practising certificate relating to the United Kingdom issued by the Association only to members pursuant to The Chartered Certified Accountants' Global Practising Regulations 2003;

**providing credit references** has the meaning given by article 89B of the Regulated Activities Order;

*public practice accountancy services* means services within the definition of public practice contained in The Chartered Certified Accountants' Global Practising Regulations 2003:

- (a) which do not constitute carrying on a regulated activity, and
- (b) the provision of which is supervised and regulated by a designated professional body;

*Regulated Activities Order* means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (Statutory Instrument 2001 No. 544) as amended;

*regulated activity* means an activity included in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

*regulated collective investment scheme* means an authorised unit trust scheme, a recognised scheme or a United Kingdom OEIC;

**regulated consumer hire agreement** has the meaning given by article 60N of the Regulated Activities Order;

**regulated credit agreement** has the meaning given by article 60B of the Regulated Activities Order;

*regulated home purchase plan* means an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

- (a) the arrangement is one under which a person (the "home purchase provider") buys a qualifying interest in land (other than timeshare accommodation) in the United Kingdom;
- (b) where the undivided share of a qualifying interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in (c) below as beneficial tenants in common;
- (c) the arrangement provides for the obligation of an individual or trustees (the "home purchaser") to buy the interest bought by the home purchase provider over the course of or at the end of a specified period; and
- (d) the home purchaser (if he is an individual) or an individual who is a beneficiary of a trust (if the home purchaser is a trustee), or a related person, is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling during that period, and intends to do so;

in the context of a *regulated home purchase plan*:

"administering" means either or both of:

- (i) notifying the home purchaser of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
- (ii) taking any necessary steps for the purposes of collecting or recovering payments due under the plan from the home purchaser;

but a person is not to be treated as administering a regulated home purchase plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan or to require that such action is or is not taken;

"qualifying interest" in land means:

- (i) in relation to land in England or Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;
- (ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant's right over or interest in a property subject to a lease;
- (iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

"timeshare accommodation" has the meaning given by section 1 of the Timeshare Act 1992;

“related person” in relation to the home purchaser or, where the home purchaser is a trustee, a beneficiary of the trust, means:

- (i) that person’s spouse or civil partner;
- (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationships between husband and wife; or
- (iii) that person’s parent, brother, sister, grandparent or grandchild;

for the purposes of (d) above, the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;

*regulated home reversion plan* means an arrangement comprised in one or more instruments or agreements, in relation to which the following conditions are met at the time it is entered into:

- (a) the arrangement is one under which a person (the “plan provider”) buys all or part of a qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the “reversion seller”);
- (b) the reversion seller (if he is an individual) or an individual who is a beneficiary of the trust (if the reversion seller is a trustee), or a related person, who is entitled under the arrangement to occupy at least 40% of the land in question as or in connection with a dwelling, and intends to do so; and
- (c) the arrangement specifies one or more qualifying termination events, on the occurrence of which that entitlement will end;

in the context of a *regulated home reversion plan*:

“administering” means any of:

- (i) notifying the reversion seller of changes in payments due under the plan, or of other matters of which the plan requires him to be notified; and
- (ii) taking any necessary steps for the purposes of making payments to the reversion seller under the plan; and
- (iii) taking any steps for the purposes of collecting or recovering payments due under the plan from the reversion seller;

but a person is not to be treated as administering a regulated home reversion plan merely because he has, or exercises, a right to take action for the purposes of enforcing the plan (or to require that such action is or is not taken);

“qualifying interest” in land means:

- (i) in relation to land in England or Wales, is to an estate in fee simple absolute or a term of years absolute, whether subsisting at law or in equity;
- (ii) in relation to land in Scotland, is to the interest of an owner in land or the tenant’s right over or interest in a property subject to a lease;
- (iii) in relation to land in Northern Ireland, is to any freehold estate or any leasehold estate, whether subsisting at law or in equity;

“timeshare accommodation” has the meaning given by section 1 of the Timeshare Act 1992;

“related person” in relation to the reversion seller or, where the reversion seller is a trustee, a beneficiary of the trust, means:

- (i) that person’s spouse or civil partner;
- (ii) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationships between husband and wife; or
- (iii) that person’s parent, brother, sister, grandparent or grandchild;

“qualifying termination event”, in relation to a person’s entitlement to occupy land, means:

- (i) the person becomes resident in a care home;
- (ii) the person dies;
- (iii) the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement;

for the purposes of (b) above, the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys;

*regulated mortgage contract* means:

- (a) (in relation to a contract) (in accordance with article 61(3) of the Regulated Activities Order) a contract which, at the time it is entered into, meets the following conditions:
  - (i) a lender provides credit to an individual or to trustees (the “borrower”); and
  - (ii) the obligation of the borrower to repay is secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom, at least 40% of which is used, or is intended to be used, as or in connection with a dwelling by the borrower or (in the case of credit provided to trustees) by an individual who is a beneficiary of the trust, or by a person who is in relation to the borrower or (in the case of credit provided to trustees) a beneficiary of the trust:
    - (aa) that person’s spouse; or
    - (bb) a person (whether or not of the opposite sex) whose relationship with that person has the characteristics of the relationship between husband and wife; or
    - (cc) that person’s parent, brother, sister, child, grandparent or grandchild;
- (b) (in relation to a specified investment) the investment, specified in article 88 of the Regulated Activities Order, which is rights under a regulated mortgage contract within (a);

*regulatory system* means the arrangements for regulating a firm under the Act including these regulations;

*securities* means investments falling within articles 76 to 81 of the Regulated Activities Order;

*share* means an investment falling within article 76 of the Regulated Activities Order;

*soft commission agreement* means an agreement in any form, the terms of which permit a firm to receive certain goods or services from another person in return for transacting investment business with or through that other person;

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

*stakeholder pension scheme* means:

- (a) (in relation to a specified investment) the investment specified in article 82 of the Regulated Activities Order (Rights under a stakeholder pension scheme) which is rights under a stakeholder pension scheme in (b);
- (b) (in relation to a scheme) a scheme established in accordance with Part I of the Welfare Reform and Pensions Act 1999 and the Stakeholder Pension Schemes Regulations 2000;

*subsidiary* has the meaning given by section 736 of the Companies Act 2006;

*trustee appointment* means an appointment as a trustee, personal representative, donee of a power of attorney, receiver appointed by the Court of Protection, curator bonis, tutor or judicial factor;

*United Kingdom* means the United Kingdom of Great Britain and Northern Ireland;

*United Kingdom OEIC* has the meaning as defined in the Open-ended Investment Companies (Investment Companies with Variable Capital) Regulations 1996.

**(2) Interpretation**

- (a) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.
- (b) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.
- (c) Any reference to a statutory provision shall include where the context permits the subordinate legislation made from time to time under that provision and any reference to a statutory provision or to regulations shall include that provision or, as the case may be, regulations as from time to time modified or re-enacted so far as such modification or re-enactment applies or is capable of applying to such reference.
- (d) The Interpretation Act 1978 shall apply to these regulations in the same way as it applies to an enactment.

## **Chapter 3 Eligibility**

### **3. Eligibility to carry on regulated activities**

Subject to regulation 1(3) the following eligibility criteria must be met in order for firms to carry out any of the activities permitted by regulation 4(1).

*(1) Sole practitioners*

A sole practitioner will only be eligible to carry on regulated activities where:

- (a) he is a member; and
- (b) he holds a practising certificate; and
- (c) the main business of his practice is the provision of public practice accountancy services; and
- (d) he is practising otherwise than in partnership.

*(2) Partnerships*

A partnership will only be eligible to carry on regulated activities where:

- (a) at least one of the partners in the firm is a member and each partner who is not a member is:
  - (i) a member of another designated professional body and is entitled to practise accountancy and is subject to the regulations of the Association; or
  - (ii) entitled to practise accountancy and is subject to the regulations of the Association; and
- (b) the partners who are members of the Association or of another designated professional body (if any) manage or control the firm; and
- (c) the main business of the partnership is the provision of public practice accountancy services; and
- (d) each partner who is a member holds a practising certificate.

Where this regulation is being applied in connection with a Limited Liability Partnership, the reference to partner or partners should be construed as referring to a member or members of the Limited Liability Partnership.

*(3) Companies*

A company will only be eligible to carry on regulated activities where:

- (a) at least one director and controller is a member and each director who is not a member is:
  - (i) a member of another designated professional body and is entitled to practise accountancy and is subject to the regulations of the Association; or
  - (ii) entitled to practise accountancy and is subject to the regulations of the Association; and
- (b) the directors who are members of the Association or of another designated professional body (if any) manage or control the firm; and
- (c) its main business is the provision of public practice accountancy services; and
- (d) each director who is a member holds a practising certificate.

**Note on applicability of these regulations to members of the Association of Authorised Public Accountants**

**The Association of Authorised Public Accountants (AAPA) is not a designated professional body for the purposes of the Act, and AAPA members are therefore not eligible to carry on exempt regulated activities. Consequently, these regulations are not of application to AAPA members, save for any provisions concerning the handling of client monies linked to exempt regulated activities, or execution-only business which AAPA members are obliged to observe.**

*(4) Undertakings*

Partners or directors who are not members of the Association shall be required to provide undertakings to be bound by the regulations of the Association, under regulations 3(2)(a) and 3(3)(a), in a manner prescribed by the Association and shall be accompanied by the appropriate administration fee.

*(5) Incidental manner*

In order for a firm to qualify as carrying on regulated activities in an incidental manner:

- (a) the main activity of the firm must be the provision of public practice accountancy services other than regulated activities;
- (b) the carrying on of the regulated activities must not be isolated from other activities of the firm so that it is in effect a separate business;
- (c) the firm must not carry on, or hold itself out as carrying on, a regulated activity other than one which is allowed by these rules or one in relation to which the firm is an exempt person;
- (d) regulated activities should arise out of or be complementary to the provision by the firm of a particular professional service to a particular client;

- (e) the firm should disclose to an existing client or a potential client that the firm is an accountancy firm which may only carry on a limited range of investment business activities;
- (f) the firm must not receive from a person other than its client any pecuniary reward or other advantage, for which it does not account to its client (see 6 below), arising out of its carrying on of regulated activities;
- (g) the carrying on of regulated activities is within the scope of the general ethical code and the rules governing the profession; and
- (h) the firm must not hold out that the exempt regulated activities are carried out on a stand alone basis separate from the main activity of the firm.

*(6) Receipt of any pecuniary reward or other advantage*

- (a) Regulation 3(5)(f) requires that any pecuniary reward or other advantage arising out of carrying on exempt regulated activities can only be retained where the member or firm accounts to the client for that pecuniary reward or other advantage. “Accounts to the client” means remitting any pecuniary reward or advantage to the client; or informing the client of the pecuniary reward or advantage and that he has the right to require the firm to pay the amount concerned to the client, thus allowing offsetting of the amount against any fees charged to the client; or obtaining the client’s informed consent, in writing, that the firm may retain the particular reward or advantage in question.
- (b) In securing the consent of the client, the client must be informed clearly of the nature of the pecuniary reward or advantage, including its amount and frequency, and that the client has the right to require the firm to pay the amount concerned to the client. Even if the client consents, the client must be informed each time a pecuniary reward or advantage is received.
- (c) It is not considered sufficient for firms in, say, the letter of engagement to make a general disclosure regarding the receipt of any pecuniary reward or advantage, or to obtain a client’s general consent to the firm’s retention of such pecuniary reward or advantage.
- (d) Firms should agree with clients the manner in which any fee or reward is going to be dealt with. Firms are also reminded of the requirements of disclosure of such fee or reward, under the Code of Ethics and Conduct.

*(7) Other restrictions*

- (a) A firm with a branch (or branches) or office (or offices) outside the United Kingdom shall be eligible to undertake exempt regulated activities in the UK from its UK branch (or branches) or office (or offices) (subject to the requirements of other relevant regulations).
- (b) A member or firm shall not be eligible to undertake any activity specified in any Order made under the Financial Services and Markets Act 2000 (Professions)(Non-Exempt Activities) Order 2001, as amended from time to time or any other Order made by the Treasury under section 327(6) of the Act.
- (c) Where the FCA exercises its powers under sections 328 and 329 of the Act, members or firms cannot undertake the activity or activities specified in the direction or order.

**The powers of the FCA**

*(1) Directions*

**Section 328 of the Act enables the FCA to issue a direction that the exemption from the general prohibition under section 327(1) of the Act does not apply either to a class of person or to a specific regulated activity. The direction must be in writing.**

*(2) Orders*

**Section 329 of the Act enables the FCA to make an order that the exemption from the general prohibition under section 327(1) does not apply if it appears to the FCA that the person to whom the order will apply is not a fit and proper person to carry on exempt regulated activities.**

**The powers of the FCA detailed above may be used separately, or in addition to, the Association’s disciplinary procedures.**

## Chapter 4 Scope

### 4. Scope

#### (1) Exempt regulated activities

Subject to regulations 4(2) and 4(3), all firms that are eligible to conduct regulated activities under regulation 3 may carry on, or agree to carry on, any of the activities set out in this regulation (but no other activity constituting regulated activities).

In relation to designated investments, contracts of long-term insurance, contracts of long-term care insurance, regulated mortgage contracts, regulated home reversion plans and regulated home purchase plans, firms may carry on:

- (a) dealing as agent in investments within article 21 to the Regulated Activities Order:
  - (i) as disclosed agent for a named client where the transaction is carried out with or through a permitted third party; or
  - (ii) where the client is an execution-only client except in respect of pension transfer or opt-out business and pension fund withdrawals; or
- (b) making arrangements within articles 25 (investments deals), 25A (regulated mortgage contracts), 25B (regulated home reversion plans) and 25C (regulated home purchase plans) of the Regulated Activities Order where:
  - (i) the firm acts as disclosed agent for a named client and the arrangements are carried out with or through a permitted third party; or
  - (ii) the arrangements are made in consequence of advice given in relation thereto by a permitted third party which if obtained by the firm has been obtained by it acting as disclosed agent for a named client; or
  - (iii) the client is an execution-only client except in respect of pension transfer or opt-out business and pension fund withdrawals; or
  - (iv) the arrangements are for the disposal of a packaged product by or for a personal representative; or
  - (v) the transaction involves the acquisition or disposal of an investment by accepting an offer or responding to an invitation made to the public or to the holders of securities of any body corporate or any class thereof or by exercising any right conferred by an investment to acquire, dispose of or convert an investment; or
- (c) managing investments within article 37 of the Regulated Activities Order where:
  - (i) that activity is performed on a non-discretionary basis;
  - (ii) the firm or an officer or employee of the firm holds a trustee appointment and acts on a discretionary basis; and
    - (aa) no remuneration is received for the discretionary management of the investments in addition to the remuneration which the firm or the officer or employee of it may receive in connection with their acting pursuant to the trustee appointment; or
    - (bb) any decisions to buy, sell, subscribe for or underwrite a particular investment are taken in accordance with the advice of a permitted third party which, if obtained by the firm, has been obtained by him or it having disclosed the basis on which he or it is acting; or
- (d) advising within article 53 (investments), article 53A (regulated mortgage contracts), article 53B (regulated home reversion plans) and article 53C (regulated home purchase plans) of the Regulated Activities Order where:
  - (i) such advice constitutes the advice of a permitted third party and, if obtained by the firm, has been obtained by it acting as disclosed agent for a named client; or
  - (ii) in the case of investments the advice does not relate to listed securities; or
  - (iii) such advice concerns the disposal of a packaged product for a personal representative; or
  - (iv) such advice constitutes a recommendation not to buy or subscribe for investments, or a recommendation to vary the terms of, not to buy or not to subscribe for regulated mortgage contracts, regulated home reversion plans and regulated home purchase plans, or relates to the disposal of investments other than rights under a personal pension scheme or relates to the acquisition of investments issued by an unquoted company; or
  - (v) such advice constitutes advice to clients to seek further information or clarification from the authorised person; or
  - (vi) such advice constitutes advice to clients on the merits of advice given by an appropriately authorised or exempt person provided no recommendation is made that the client purchases a particular investment or regulated mortgage contract, regulated home reversion plans and regulated home purchase plans, other than that recommended by the authorised or exempt person; or

- (e) the provision of any designated investment business to:
  - (i) an issuer, holder or owner of investments with regard to the offer, issue, underwriting, repurchase, exchange or redemption of, or the variation of the terms of, the investments, or any related matter; or
  - (ii) any company or partnership which relates to the manner in which, or the terms on which, or the persons by whom, any business, activities or undertakings relating to it, or any associate, are to be financed, structured, managed, controlled, regulated or reported upon; or
  - (iii) any company in connection with a proposed or actual take-over by or on behalf of that company or its holding company or subsidiary or a merger, de-merger, re-organisation or reconstruction involving any investments issued by such a company; or
  - (iv) any shareholder or prospective shareholder of a company established or to be established for the purpose of effecting a take-over.

In relation to contracts of insurance other than contracts of long-term insurance and contracts of long-term care insurance, firms may carry on the following insurance mediation activities provided they have first complied with regulation 4(3):

- (f) dealing as agent in the manner specified by article 21 of the Regulated Activities Order; or
- (g) making arrangements in the manner specified by article 25 of the Regulated Activities Order; or
- (h) assisting in the administration and performance of contracts of insurance within article 39A of the Regulated Activities Order; or
- (i) advising in the manner specified by article 53 of the Regulated Activities Order.

In relation to credit-related regulated activities, firms may carry on the following activities:

- (j) entering into a regulated credit agreement as lender
- (k) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement
- (l) credit broking
- (m) debt adjusting
- (n) debt counselling
- (o) debt administration
- (p) providing credit information services
- (q) agreeing to carry on a regulated activity so far as relevant to any of the activities in (j) to (p).

*(2) Prohibited activities*

No firm may carry out any activity that relates to:

- (a) accepting deposits of a kind specified by article 5 of the Regulated Activities Order;
- (b) effecting and carrying out contracts of insurance as specified by article 10 of the Regulated Activities Order;
- (c) dealing as principal in investments within the meaning of article 14 of the Regulated Activities Order;
- (d) establishing, operating or winding up a collective investment scheme; acting as a trustee of an authorised unit trust scheme or acting as the depositary or sole director of an open-ended investment company as specified within article 51 of the Regulated Activities Order;
- (e) establishing, operating or winding up a personal pension scheme or stakeholder pension scheme within article 52 of the Regulated Activities Order;
- (f) recommendations to buy or subscribe for securities or contractually based investments which are admitted to dealing on an exchange or other market within article 53 of the Regulated Activities Order;
- (g) advising on the merits of entering into a regulated mortgage contract within article 53A, a regulated home reversion plan within article 53B and a regulated home purchase plan within article 53C of the Regulated Activities Order;
- (h) advising on the merits of entering into or varying the terms of a contract of long-term insurance, a contract of long-term care insurance or other insurance-based investment in the manner specified by article 53 of the Regulated Activities Order;
- (i) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's as specified under article 57 of the Regulated Activities Order;
- (j) entering as provider into a funeral plan contract within article 59 of the Regulated Activities Order;
- (k) entering into or administering a regulated mortgage contract, regulated home reversion plans and regulated home purchase plans within articles 61, 63B and 63F of the Regulated Activities Order;
- (l) advising a person to become a member of a particular Lloyd's syndicate;

- (m) holding, or receiving, any money belonging to a client in the course of carrying on exempt regulated activities for a client which is not immediately due and payable on demand to the firm for its own account;
- (n) acting as a personal pension scheme or stakeholder pension scheme manager;
- (o) managing investments as a plan manager of a PEP or an ISA;
- (p) carrying on the activity of safeguarding and administering assets within article 40 of the Regulated Activities Order;
- (q) carrying on any investment activity relating to derivatives;
- (r) promoting, issuing or approving any investment advertisements;
- (s) undertaking any business involving pension transfers and pension fund withdrawals;
- (t) entering into a broker funds arrangement;
- (u) sponsoring or advising on issues of securities on the Stock Exchange, Alternative Investment Market (AIM) or Off Exchange (OFEX);
- (v) issuing electronic money;
- (w) providing basic advice on stakeholder products;  
(x) debt collecting;  
(y) entering into a regulated consumer hire agreement as owner;  
(z) exercising, of having the right to exercise, the owner's rights and duties under a regulated consumer hire agreement;  
(za) providing credit references;  
(zb) operating an electronic system in relation to lending.

In addition to the prohibition on firms from carrying out any of the above activities, firms may not agree to carry on any activity contained in regulation 4(2).

This list will be reviewed from time to time and will be revised as necessary.

*(3) Special requirements for firms intending to carry on, or agree to carry on, insurance mediation activity*

A firm wishing to carry on insurance mediation activity (i.e. the activities set out in regulations 4(1)(a), (b) and (d) in relation to insurance-based investments and the activities set out in regulations 4(1)(f) to (i)) must:

- (a) effect professional indemnity insurance with minimum limits of indemnity<sup>1</sup> equivalent (at the time the policy is effected or renewed) to 1,120,200 euros in relation to each and every claim and 1,680,300 euros in the aggregate per year for all claims, except where the activity comprises providing information to a policyholder or potential policyholder or a permitted third party in the context of making arrangements with a view to transactions in the manner specified by article 25(2) of the Regulated Activities Order;
- (b) where the firm is not a sole practitioner, nominate an individual or individuals within the management of the firm who will be responsible for such activities;
- (c) ensure that a reasonable proportion of the persons within the management structure of the firm who are responsible for insurance mediation activity and all other persons directly involved in insurance mediation activity demonstrate the knowledge and ability necessary for the performance of their duties;
- (d) where the firm intends to establish a branch in, or provide cross border services to, another state of the European Economic Area (EEA), satisfy the conditions in paragraph 19 or 20 (as appropriate) of Part III of Schedule 3 to the Act;
- (e) satisfy the conditions that no person within the management structure of the firm or within the staff directly involved in insurance mediation activity is an undischarged bankrupt or has a criminal conviction for any serious offences relating to financial activities or crimes against property;
- (f) register with the Association for insurance mediation activity; and
- (g) before carrying on such activities, ensure that the following details appear on the Financial Services Register and have been updated, as informed by the firm to the Association:
  - (i) the firm's name and address;
  - (ii) details of the individuals referred to within regulation 4(3)(b); and
  - (iii) where relevant, each EEA state in which the firm has established a branch or is providing cross border services under the Insurance Mediation Directive.

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<sup>1</sup> Article 4(7) of the Insurance Mediation Directive requires the limits of indemnity to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.

A firm which undertakes insurance mediation activity and whose details do not appear on the Financial Services Register will be committing a criminal offence. While the Association will pass a firm's details to the FCA as part of its regulatory obligations, it is the firm's responsibility to ensure that its details appear on the Financial Services Register and are correct and up to date.

*(4) Activities which do not constitute insurance mediation activity*

The following activities do not constitute insurance mediation activity and, as such, firms are free to carry on such activities as they do not fall within the Designated Professional Body Regulations:

- (a) advising in general terms on the need for or level of insurance cover or providing information to the policyholder or potential policyholder of a general nature on insurance products, while making no recommendation of particular contracts of insurance;
- (b) carrying on insurance mediation activity where all of the following conditions are met:
  - (i) the principal activity of the person is other than insurance mediation activity;
  - (ii) the contract of insurance is not a contract of long-term insurance;
  - (iii) the contract of insurance has a total duration (or would have a total duration were any right to renew conferred by the contract exercised) of five years or less;
  - (iv) the contract of insurance has an annual premium (or, where the premium is paid otherwise than by way of annual premium, the equivalent of an annual premium) of 500 euros or less, or the equivalent amount in other currency;
  - (v) the insurance covers non-motor goods or travel insurance;
  - (vi) the contract of insurance does not cover any liability risks (except, in the case of a contract which covers travel risks, where that cover is ancillary to the main cover provided by the contract);
  - (vii) the insurance is complementary to the non-motor goods or service supplied by any provider; and
  - (viii) the contract of insurance is of such a nature that the only information needed is the cover provided;
- (c) carrying on insurance mediation activity not by way of business. The "by way of business" test comprises two elements:
  - (i) whether the person receives remuneration for the activity (whether monetary, non-monetary or in the form of an expectation of economic benefit);
  - (ii) whether the person pursues the activity with a degree of regularity or for commercial purposes.

## **Chapter 5 Conduct of business regulations**

### **5. Independence**

*(1) Inducements*

A firm must take reasonable steps to ensure that neither it nor any of its agents offers, gives, solicits or accepts any inducement which is likely significantly to conflict with any duties of the recipient or the recipient's employer owed to clients in connection with the firm's exempt regulated activities.

*(2) Material interest*

Where a firm has a material interest in a transaction to be entered into with or for a client or a relationship which gives rise to a conflict of interest in relation to such a transaction, the firm must not knowingly advise in relation to that transaction unless it takes reasonable steps to ensure fair treatment for the client.

*(3) Arrangements with third parties*

- (a) A firm must not enter into any soft commission agreement whereunder a firm which deals in securities on an advisory basis receives goods or services in return for an assurance that not less than a certain amount of such business will be put through or in the way of another person.
- (b) A firm may only accept an appointment as another person's appointed representative where the appointing organisation is itself, and at all times continues to be, free from any restriction which may result in the firm being constrained or induced to recommend to a client transactions in some investments but not others, with some persons but not others, or through the agency of some persons but not others, unless constrained by law.
- (c) A firm may only advise in relation to the disposal of packaged products as an independent intermediary and, for the avoidance of doubt, to the extent such activities constitute exempt regulated activities.

## 6. Relations with clients

### (1) Fair and clear communications

- (a) A firm must avoid any representation to a client that it is authorised under the Act or regulated by the FCA or that the regulatory protections provided by the Act are available. Where a firm is conducting insurance mediation activity, it is particularly important that the client understands that the firm's inclusion on the Financial Services Register is not the same as being authorised under the Act.
- (b) A firm may make a communication with another person which is designed to promote the provision of exempt regulated activities only if it can show that it believes on reasonable grounds that the communication is fair and not misleading.
- (c) A firm must take reasonable steps to ensure that any agreement, written communication, notification or information which it gives or sends to a client to whom it provides exempt regulated activities is presented fairly and clearly.
- (d) A firm must ensure that the client receives sufficient information about any recommended investment so that he has an adequate basis on which to accept or reject the recommendations. The firm must make clear that it will supply the client with more detailed information if he so requires.

### (2) Clients' rights

- (a) A firm must not, in any written communication or agreement, seek to exclude or restrict any duty or liability to a client which it has under the Act, or under the regulatory system.
- (b) Similarly, unless it is reasonable to do so in the circumstances, a firm must not, in any written communication or agreement, seek to exclude or restrict:
  - (i) any other duty to act with the skill, care and diligence which is owed to a client in connection with the provision to him of exempt regulated activities; or
  - (ii) any liability owed to a client for failure to exercise the degree of skill, care and diligence which may reasonably be expected of it in the provision of exempt regulated activities.
- (c) A firm must not seek unreasonably to rely on any provision seeking to exclude or restrict any such duty or liability.

### (3) Charges

The amount a firm charges to a client for the provision of exempt regulated activities must not be unreasonable in the circumstances.

### (4) Client agreements

- (a) Where a firm provides exempt regulated activities to a client, the written agreement which must be entered into before any business is conducted must set out in adequate detail the basis on which those services are provided and must include, *inter alia*, a statement of the following:
  - (i) the firm's name and address; and
  - (ii) that the firm is regulated in the conduct of exempt regulated activities by the Association (if a firm makes a reference to the FCA any such statement should not lead the client to suppose that the FCA has direct regulatory responsibility for that firm); and
  - (iii) the nature of the regulated activities provided by the firm and the fact that these are limited in scope and, where appropriate, the fact that the firm is using the services of a permitted third party; and
  - (iv) where the firm provides exempt regulated activities other than insurance mediation activity, that the firm is not an authorised person; and
  - (v) that the client will not have access to any compensation scheme in respect of the firm's services; and
  - (vi) the client's investment objectives; and
  - (vii) any restrictions on the investments which may be acquired or that there are no restrictions; and
  - (viii) the nature of the complaints and redress procedures available to clients; and
  - (ix) the basis on which the firm is to charge for its services.
- (b) Where a firm provides insurance mediation activity services, the written agreement must also provide the following information:
  - (i) the following statement in a way that is clear, fair and not misleading and no less prominent than any other information provided to the client at the same time:

“[This firm is/We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by

the Association of Chartered Certified Accountants. The register can be accessed via the Financial Conduct Authority website at [www.fca.org.uk/register](http://www.fca.org.uk/register).”;

- (ii) whether the firm has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking;
- (iii) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the firm.

- (c) Where a firm acts as a disclosed agent for a named client with or through a permitted third party or relies upon the advice of a permitted third party in acting for or advising a client, the firm must inform the permitted third party in writing of that fact and that accordingly the permitted third party will be responsible to the client in respect of its activities or advice.
- (d) (i) Where a firm is treating a client as an execution-only client it must:
  - (aa) notify the client accordingly and must obtain a written acknowledgement from the client. In addition, written evidence of specific instructions from execution-only clients must be made, including written confirmation that the client did not seek or receive advice from the firm regarding a transaction. The transaction must have been entered into on the client’s explicit instructions; and
  - (bb) have reasonably assessed and concluded that the client can be expected to understand the risks involved in the transaction.
- (ii) Copies of the written notification and acknowledgement and evidence of instructions and assessment referred to in this regulation are required to be retained for six years.

*(5) Cessation of business*

Where a firm withdraws from providing any exempt regulated activities to clients, the firm must ensure that any such business which is outstanding is properly completed or is transferred to another firm. In addition, where the interests of clients would be significantly affected by the death or incapacity of an individual within the firm, the firm must make arrangements to protect the interests of those clients in that event.

*(6) Information about the firm*

A firm may, in all its business letters, notices and other publications which relate to its exempt regulated activities, state that it is regulated to conduct exempt regulated activities by the Association. Any such statement should also comply with the requirements set out in regulation 6(4) relating to client agreements.

**Note on the use of statements on business letters, notices and other publications**

**Firms that are regulated by the Association for ~~exempt regulated investment business~~ activities may use the following statement on their professional stationery:**

**“Regulated for a range of investment business activities by the Association of Chartered Certified Accountants.”**

*(7) Information about contracts of insurance*

This regulation applies where a firm carries on insurance mediation activity.

Firms are reminded of the provisions of paragraph 10 of Code of Ethics and Conduct section B7, Activities through corporate or non-corporate organisations, which provides that firms are not permitted to enter into any association or arrangement which may adversely affect the firm’s independence. As such, firms are not permitted to enter into contractual obligations to conduct insurance mediation activity exclusively with one or more insurance undertakings.

- (a) The client must be informed of the following in relation to each contract of insurance:
  - (i) whether the advice is given based on the firm’s obligation to provide a fair analysis (see regulation 6(7)(b) below); or
  - (ii) whether even though the firm is not under a contractual obligation to conduct insurance mediation activity exclusively with one or more insurance undertakings, the firm does not give advice based on the firm’s obligation to provide a fair analysis. In that case, the firm shall, at the client’s request, provide the names of the insurance undertakings with which the firm may and does conduct business.

Where information is to be provided solely at the client’s request, a firm must inform the client that he has the right to request such information.

- (b) Where a firm informs the client that the advice is given on the basis of a fair analysis, the firm is obliged to give that advice on the basis of an analysis of a sufficiently large number of contracts of insurance available on the market, to enable the firm to make a recommendation, in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer’s needs.
- (c) Prior to the conclusion of a contract of insurance, a firm must specify, in particular on the basis of information provided by the client, the demands and needs of the client as well as the underlying reasons for any advice

given to the client on a specific contract of insurance. These details must be modulated according to the complexity of the insurance contract being proposed.

*(8) Method of communicating with client*

This regulation applies where a firm carries on insurance mediation activity.

- (a) All information to be provided to clients under this regulation 6 must be communicated:
  - (i) (aa) on paper or any other durable medium available and accessible to the client; or
    - (bb) orally, if the client requests it or where immediate cover is necessary, in which case the information shall be provided in accordance with regulation 6(8)(a)(i)(aa) immediately after the conclusion of the contract of insurance; and
  - (ii) in a clear and accurate manner, comprehensible to the client; and
  - (iii) in an official language of the Member State of the commitment or in any other language agreed with the client.
- (b) Where a firm conducts insurance mediation activity over the telephone, the prior information given to the client must comply with Article 3 of the Distance Marketing Directive. Information must then be provided to the client in accordance with regulation 6(8)(a) immediately after the conclusion of the contract of insurance.

*(9) Life policies*

When advising on the disposal of a life policy in accordance with regulation 4(1)(d)(iv), a firm must advise its client on:

- (a) the risks and costs of keeping the policy;
- (b) the various means of disposal available to the client and the advantages and disadvantages of each.

Surrendering the policy is unlikely to realise its full value. Examples of other means of disposal are selling the policy on the second-hand market, converting a joint life policy to single life, assigning the policy or making the policy paid up. If a firm is unable to fully advise its client, it should obtain the advice of a permitted third party.

*(10) Distance contracts*

While firms are unlikely to be undertaking activities within the scope of regulation 4(1) by way of a distance contract, if they do so they must comply with the provisions of the Distance Marketing Directive.

## **7. Credit-related regulated activities**

*(1) Consumer Credit Act 1974*

Members and firms shall make themselves aware of the provisions of the Consumer Credit Act 1974 and the provisions of secondary legislation made under that Act remaining in force, and shall ensure that the firm, its officers and its employees comply with all such legislation.

*(2) Consumer Credit sourcebook*

When carrying on a credit-related regulated activity or an activity connected to that regulated activity, members and firms are required to comply with the conduct provisions of the Consumer Credit sourcebook relevant to that activity and the FCA's Principles for Businesses referred to in 1.1.4G of that sourcebook as if they were authorised under the Act with a permission under Part 4A of the Act to carry on the relevant regulated activity.

## **78. Compliance procedures**

*(1) Compliance*

A firm must take reasonable steps, including the establishment and maintenance of procedures, to ensure that its officers and employees act in conformity with all regulations and regulations applicable to the conduct by the firm of exempt regulated activities.

*(2) Records*

- (a) A firm must ensure that sufficient information is recorded and retained about its exempt regulated activities as is necessary for the proper conduct of that business and to enable it to demonstrate compliance with the regulatory system, including but not limited to records:
  - (i) of the receipt of income from the client in respect of exempt regulated activities;
  - (ii) of the receipt of any pecuniary reward or advantage, from product providers or any third parties, which are adequate to demonstrate that the firm has accounted to the client for the pecuniary reward or advantage;
  - (iii) which are adequate to demonstrate that the firm has carried on only exempt regulated activities; and
  - (iv) of complaints received and action taken.

(b) Any record required to be produced by this regulation should be retained for a minimum of six years.

*(3) Complaints*

A firm must have procedures to ensure:

- (a) the proper handling of complaints from clients and third parties relevant to its compliance with the regulatory system;
- (b) that any appropriate remedial action on those complaints is promptly taken; and
- (c) where the complaint is not promptly remedied, that the client is advised of any further avenue for complaint available to him under the regulatory system;

and those procedures must include provisions to ensure that:

- (i) complaints are acknowledged within a reasonable time of their being received and in any event within 14 days;
- (ii) where a complaint has been made orally, the letter of acknowledgement states the member's understanding as to the nature of the complaint being made and invites the complainant to confirm in writing the accuracy of that statement;
- (iii) complaints are investigated by a person of sufficient experience, seniority and competence who, where possible, was not directly involved in the particular act or omission giving rise to the complaint; and
- (iv) the client is advised of the outcome of the complaint investigation.

*(4) Continuity*

Firms shall enter into a continuity agreement in accordance with regulation 11 of The Chartered Certified Accountants' Global Practising Regulations 2003.

*(5) Notification*

A firm that becomes an authorised person to conduct any regulated activities or becomes an appointed representative of another organisation should notify the Association immediately in writing of this change of status.

## **Chapter 6 Enforcement**

### **89. Enforcement**

*(1) Monitoring*

Members and firms entitled to carry out exempt regulated activities shall be subject to monitoring from the Association in accordance with regulation 14 of The Chartered Certified Accountants' Global Practising Regulations 2003.

*(2) Intervention Orders*

- (a) If it appears to the Admissions and Licensing Committee that it is desirable to take measures for the protection of investors and/or for the protection of members of the public and/or for the protection of the Association, and that:
  - (i) it is desirable to prohibit a firm from disposing of or otherwise dealing with any of its assets, or any specified assets; or
  - (ii) a firm is not fit and proper to carry on exempt regulated activities either generally or of a particular kind or to the extent to which it is or is intending to carry on that business; or
  - (iii) a firm has committed, or intends, or is likely to commit a breach of these regulations or some other act of misconduct; or
  - (iv) for more than one of these reasons;

the Admissions and Licensing Committee may make and serve on the firm concerned a written Intervention Order (an "Order").

- (b) An Order may operate for a specified period or until the occurrence of a specified event or until the firm complies with specified conditions and may, at the Admissions and Licensing Committee's discretion, come into effect either immediately on service or at such later time as the Admissions and Licensing Committee may determine.
- (c) An Order served on a firm may require the firm to take specified steps and/or may forbid the firm:
  - (i) in whole or in part, to carry on exempt regulated activities;
  - (ii) to dispose of or otherwise deal with any assets or any specified assets (whether held in the United Kingdom or outside the United Kingdom) or to act otherwise than in the manner specified in the Order;

- (iii) to enter into transactions of a specified kind or enter into them except in specified circumstances or to a specified extent;
- (iv) to solicit business from persons of a specified kind or otherwise than from such persons or in a specified country or territory; and/or
- (v) to carry on business in a specified manner or otherwise than in a specified manner.

(d) An Order shall specify:

- (i) the reasons for its issue;
- (ii) the date and time at which the Order shall come into effect;
- (iii) the period for which the Order shall operate, which may be expressed to end with the occurrence of a specified event or when the firm has complied with the requirements of the Order;
- (iv) where relevant, in regard to an Order to which regulation 9(2)(a)(iii) above applies, the act or omission which constituted or would constitute breach of the regulations and the regulation which has been or would be contravened; and
- (v) the officer of the Admissions and Licensing Committee to whom a request can be made for a stay of execution of the Order.

(e) The Admissions and Licensing Committee, or the Chairman of the Admissions and Licensing Committee acting on its behalf, may, at any time before or after an Order comes into effect, revoke the Order or vary its terms, and where the terms of an Order are varied the variation shall be effected by a new Order being served on the firm concerned.

(f) Subject to regulation 9(3) the Association shall publish the Order at or after the time it comes into effect.

*(3) Application for stay of execution*

After service of the Order, its recipient may apply to the Association for a stay of execution of the Order or any part of it and/or of its publication. The application shall be considered by the officer specified pursuant to regulation 2(d)(v) above who in his discretion may grant or refuse the stay or grant it subject to conditions.

*(4) Reference to the Appeal Committee*

A firm served with an Order may appeal against the Order in the same way and subject to the same limitations as it may appeal against any other decision of the Admissions and Licensing Committee.

The Association may appeal against the Order in the same way and subject to the same limitations as it may appeal against any other decision of the Admissions and Licensing Committee.

**910. Waivers and service**

*(1) Waivers and modifications*

- (a) A firm is entitled to apply in writing to the Admissions and Licensing Committee to waive, vary or suspend the requirements of any of these regulations in order to adapt it to the firm's circumstances or to any particular kind of business which the firm is carrying on or intends to carry on. The Admissions and Licensing Committee shall not grant the application unless it appears that compliance with it would be unduly burdensome having regard to the benefit which compliance would confer on investors and the exercise of the power would not result in any undue risk to investors.
- (b) The Admissions and Licensing Committee may grant such an application on conditions. If it does so, the applicant firm must comply with any such conditions.
- (c) Following an application under this regulation, or of its own volition, the Admissions and Licensing Committee may modify or waive any of these regulations. Where it does so, it may impose conditions and any firm which acts upon modification or waiver extended to it must comply with any such condition.
- (d) Any waiver given under this regulation shall apply for such period as the Admissions and Licensing Committee shall specify.
- (e) Any waiver or modification by the Admissions and Licensing Committee cannot vary the conditions contained in section 327(2)–(7) of the Act or the effect of a direction or Order made by the FCA under section 328 or section 329 of the Act.

*(2) Consents*

Where provided for in these regulations any consent to be given by the Admissions and Licensing Committee may be given or withheld in its absolute discretion, but if withheld the Admissions and Licensing Committee shall notify the firm of the reasons why it has been withheld.

*(3) Service*

Except as otherwise provided in these regulations, any notice or other document required or authorised by these regulations to be served on any firm may be served by leaving it at or sending it by post to the firm's address notified to the Association in accordance with these regulations.

**4011. Liability**

Neither the Association nor any of its officers or servants or agents nor any members of any committee of Council shall be liable in damages or otherwise for anything done or omitted to be done in the discharge or purported discharge of any function under the Act set out below unless the act or omission is shown to have been in bad faith. The functions referred to above are the functions of the Association so far as relating to or to matters arising out of:

- (a) the bye-laws, regulations and arrangements of the Association so far as they relate to or are applied in respect of the carrying on of exempt regulated activities or any other matters concerning the Act and/or to which the requirements in section 325(4) of the Act require the Association to comply;
- (b) the obligations with which section 325(4) of the Act requires the Association to comply;
- (c) any guidance issued by the Association in respect of any matter dealt with by such regulations as are mentioned in (a) above; or
- (d) the obligations to which the Association is subject by virtue of the Act.