

**THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND & WALES**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND**

**THE INSTITUTE OF CHARTERED ACCOUNTANTS IN IRELAND**

**Designated Professional Body Handbook**

**2004**

(This includes all amendments to the Handbook up to 1 April 2013, as notified to firms.)

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## HOW DOES THE HANDBOOK WORK?

### A GUIDE TO THE HANDBOOK

The *Handbook* provides full details of the *Institutes'* licensing arrangements. This includes the agreement between the *firm* and the *Institute* for a *licence* (Part 2), the regulated activities that can be conducted under a *licence* (Part 3) and how regulated work should be conducted (Part 4). Licensed *firms* will need to familiarise themselves with the whole *Handbook* but the following provides a guide for any *firm* on how to use the *Handbook* to answer some key questions.

(Note, throughout the *Handbook*, words in italics are defined terms and the definitions are in Part 9.)

#### **Do I need a licence?**

Whether a *licence* is needed (or *FCA* authorisation) will depend on the type of activities undertaken and the way they are carried out. Part 3 with its schedules will be key to assisting *firms*.

The *regulated activities* that a *licensed firm* can undertake are known as “*exempt regulated activities*”. However, to be an *exempt regulated activity*, consideration is needed of how the activity is carried out. If the *regulated activity* does not derive from or is not complimentary to another non regulated (professional) activity provided to that *client*, then *FCA* authorisation is needed. An *exempt regulated activity* cannot be provided in isolation to other *professional services* in respect of a particular *client*.

Schedule 1 lists the activities which can only be undertaken by *FCA* authorised *firms*.

Schedule 2 is guidance on the *regulated activities* that can be provided by *licensed firms*.

Schedule 3 provides further guidance on conducting business in an incidental manner.

Schedule 4 identifies work that is not regulated and can be undertaken by any *firm*.

Schedule 5 provides guidance on corporate finance activities.

Schedule 6 provides guidance on insurance activities.

Schedule 7 provides guidance on home finance (ie mortgage) business.

Schedule 8 provides guidance on professional services in relation to HMRC investigations.

Schedule 9 assists in situations where there is no specific example in the above schedules.

#### **Do I need authorisation from the Financial Conduct Authority?**

Schedule 1 of Part 3 identifies the *regulated activities* that can only be undertaken by an *FCA* authorised *firm* and so cannot be conducted by a *licensed* or unregulated *firm*. In addition if a *firm* wants to undertake *exempt regulated activities* in a way that is not complementary to or arising out of another professional activity it will need *FCA* authorisation (see schedule 3 of Part 3).

#### **What regulated activities can I do under a licence?**

Schedule 2 to Part 3 provides guidance on what a *licensed firm* can do. The schedule is divided in to tables according to the type of *investment*. Schedule 9 contains a flowchart that indicates how the other schedules can be used to check whether an activity can be undertaken by a *licensed firm*.

**I may be involved in corporate finance/insurance/mortgage business/taxation investigations.  
How can I check whether these activities are regulated?**

Schedules 5, 6, 7 and 8 to Part 3 deal with these specific areas.

**How do I get a licence?**

Part 2 sets out the eligibility criteria for a *licence* and how to apply. There are specific requirements for professional indemnity insurance in respect of insurance related activities in clause 2.07 and in note 3 at the end of Part 2.

**Can my firm have a licence if a non-member is a principal?**

Part 5 deals with this situation. Such *principals* may need to become an *affiliate* and this Part provides the relevant rules.

**What does it cost?**

Part 6 outlines the fees charged by the *Institutes*. The amounts are not shown here as these are provided on an annual basis by the *Institute*.

**What do I have to do to comply with the rules?**

A *licensed firm* must only conduct *exempt regulated activities* which are described in Part 3 of the *Handbook*.

Part 4 contains the Conduct of Business Code which a *licensed firm* must follow when conducting *exempt regulated activities*.

The Code includes requirements and guidance on agreements with clients (4.02), status disclosure (4.03), an annual compliance review (4.04), complaints resolution and compensation arrangements (4.07 – 4.10), accounting for commission (4.15) and advising and arranging insurance contracts (4.16-4.18).

Schedule 1 contains suggested wordings for disclosure of information to *clients*. Schedule 2 provides guidance for a demands and needs statement which a *firm* must provide to *clients* if they advise on or arrange insurance contracts (4.18).

An *exempt regulated activity* must be conducted on the basis that it is incidental to the *firms'* other *professional services* as required by Part 3.

**Where can I get further help?**

There is further guidance (including application forms and current fee details) on many relevant issues on the *Institutes'* websites.

[www.icaew.com/dpb](http://www.icaew.com/dpb)

[www.carb.ie](http://www.carb.ie)

[www.icas.org.uk](http://www.icas.org.uk)

## PART 1

### INTRODUCTION

- 1 The Financial Services and Markets Act 2000 (the *Act*) provides for the designation of certain professional bodies. This enables them to provide arrangements through which *firms* may take advantage of an exemption from the general prohibition on carrying on activities that are regulated under the *Act*, thus dispensing with the need for authorisation from the *FCA*. Such authorisation would otherwise be necessary when *firms* supply *professional services* to clients and in providing those services are involved in carrying on *regulated activities*.
- 2 The Institutes of Chartered Accountants are *Designated Professional Bodies* under the *Act* and so *firms licensed* by an *Institute* can enjoy the exemption as set out in this *Handbook*. The exemption can be obtained as a *licence* from an *Institute* on application. This allows *firms* to provide *exempt regulated activities* that are appropriate to a professional practice, provided that the service is part of a wider service to the *client*. It should be understood that under no circumstances can a *firm* provide any other kind of *regulated activity*, unless they are an 'authorised' person or an *appointed representative* under the *Act*. (But note that a *firm* cannot be *licensed* and authorised by the *FCA* simultaneously.) It is on this basis that the references in the *Handbook* are generally to '*exempt regulated activity*' rather than '*regulated activity*'.
- 3 The *licence* issued by an *Institute* to a *firm* permits a large range of services in respect of *client* companies whose securities are not publicly traded. In addition a *firm* may use its skills and *client* knowledge to facilitate all steps in an *investment* transaction other than, in a number of situations, the selection of a particular *investment* product. A recommendation can only be given in respect of non-investment insurance contracts (such as fee protection insurance, professional indemnity insurance) and in respect of shares that are not and are not expected to be admitted for dealing on a stock exchange. *Licensed firms* may review (generically) a *client's* investment position and objectives, and then act as the *client's* agent in consultation with an *FCA* authorised person. The *licensed firm* is permitted to explain and fully discuss the advice with the *client* and may give the *client* its own views (disapproving or approving) on the authorised person's recommendations so long as it does not substitute its own investment recommendations.
- 4 The scope of activities permitted to *licensed firms* is derived from statutory instruments made under the *Act*. A *firm* is allowed to carry on those activities set out in the *Regulated Activities Order* which are not specifically prohibited by the Non-Exempt Activities Order. (Only *firms* authorised by the *FCA* can conduct activities which are subject to the prohibitions.) The effects of these prohibitions are set out in Schedule 1 to Part 3 of this *Handbook*. In addition some other activities are only permitted within certain constraints and these are in Part 4. *Firms* need to be aware that the breach of any of the regulations in Part 3, including undertaking the prohibited activities in Schedule 1, may be a criminal offence under the *Act*.
- 5 The *FCA* has published, as part of its Handbook of rules and guidance, a section dedicated to professional *firms*; the Professional Firms Sourcebook. The requirements of that sourcebook as they affect the *Designated Professional Body* arrangements have been incorporated into this *Handbook*. Copies of the sourcebook can be obtained from the Financial Conduct Authority's website: [www.fca.org.uk](http://www.fca.org.uk) .
- 6 A *licensed firm* may also be an *appointed representative* of a person authorised by the *FCA*. If so, the scope of the work it conducts is limited by the terms of the *appointed representative* agreement. However, the *firm* should always bear in mind the need to act in the best interests of the *client*.

## **Insurance Mediation Directive**

- 7 This *Handbook* sets out the way in which a *firm* may conduct *insurance mediation activities* under the Insurance Mediation Directive.
- 8 In allowing that such activities to be conducted under a *licence* from the *Institute*, the *Handbook* applies certain requirements which meet the criteria laid down in the Directive for the regulation of insurance business.
- 9 Part 2 and Part 4 of the *Handbook* contain references to the professional indemnity insurance requirements laid down under the Directive and state that *firms* must appear on the *Financial Services Register* maintained by the *FCA* for those conducting *insurance mediation activities*. Part 3 outlines the scope of insurance activities that are regulated and whether they can be conducted under a *licence* from the *Institute* or require authorisation from the *FCA* and Part 4 contains the conduct of business requirements.

### **Important points to note about the DPB licence**

- 10 A *Designated Professional Body licence* grants a *firm* an exemption from the general prohibition, thus dispensing with the need for authorisation by the *FCA* provided the *licensed firm* fully complies with Part 3 of this *Handbook*. It is not an authorisation under the *Act*.
- 11 A breach of the Part 3 Regulations may attract criminal sanctions.
- 12 A service may only be provided in a manner incidental to the activity of the *firm* generally, and which arises out of, or is complementary to, another *professional service* provided to a specific *client*.

### **What a DPB licensed firm can do**

- 13 Part 3 of the *Handbook* identifies the activities which a *DPB licensed firm* can conduct and those activities which can only be conducted by an *FCA* authorised *firm*. The main activities that a *DPB licensed firm* can undertake are as follows:
  - a advise on the sale or purchase of shares which are not admitted to dealing, nor to be admitted to dealing, on any exchange (e.g. listed company shares).
  - b advise on the sale (but not purchase) of shares which are admitted to, or to be admitted to dealing on any exchange (e.g. listed company shares).
  - c arrange the purchase of shares.
  - d explain, evaluate and agree or disagree with the advice given by a *permitted third party* (including that given by independent financial advisers and mortgage brokers), but not substitute the *firm's* own recommendation.
  - e advise on and/or arrange contracts of general insurance.
  - f help *clients* with insurance claims handling.
  - g contact an independent financial adviser to introduce a *client* for pension advice.
  - h contact an insurance broker to introduce a *client* for general insurance advice.

This list is not comprehensive and reference should be made to the detailed provisions in Part 3.

## **Territorial Scope**

- 14 It should be noted that the general prohibition only applies in relation to activities carried on 'in the United Kingdom'. This *Handbook* only applies to such activities. Therefore *firms* in *Ireland* which have *clients* resident in the United Kingdom may find that services provided to those *clients* are within the scope of the *Act*.
- 15 Even if the services themselves are not provided in the United Kingdom, a communication regarding these or the relevant *investments* may constitute a financial promotion subject to the *Act*.
- 16 Where a *licensed firm* wishes to provide insurance services in another European Union Member State, it must apply to the *FCA* to secure "passporting" rights. See the note at the end of Part 2 of the *Handbook* and also Part 8.

## **Transitional arrangements**

17 Amendments have been made to this handbook as follows:

- 31 October 2004 to deal with *regulated mortgage contracts*.
- 14 January 2005 to deal with *contracts of insurance*.
- 6 April 2007 to deal with *regulated home reversion plans, regulated home purchase plans* and rights under a *personal pension scheme*.
- 1 March 2009 increase in the euro amount for PII
- 1 July 2009 to deal with regulated sale and rent back agreements
- 1 January 2011 changes to eligibility criteria to be licensed.
- 1 April 2013 to deal with changes from FSA to FCA
- 1 April 2013 to make changes following the Institute of Chartered Accountants of Scotland's adoption of new Rules
- 1 April 2013 to make changes following the Institute of Chartered Accountants Ireland's adoption of new regulations

## **Changes to the Handbook**

18 Changes to the Handbook will be notified to *firms* in the DPB Update, any successor publication or through the *Institutes'* journals.

## **Key legislation**

19 The following are the key items of legislation referred to in the *Handbook*:

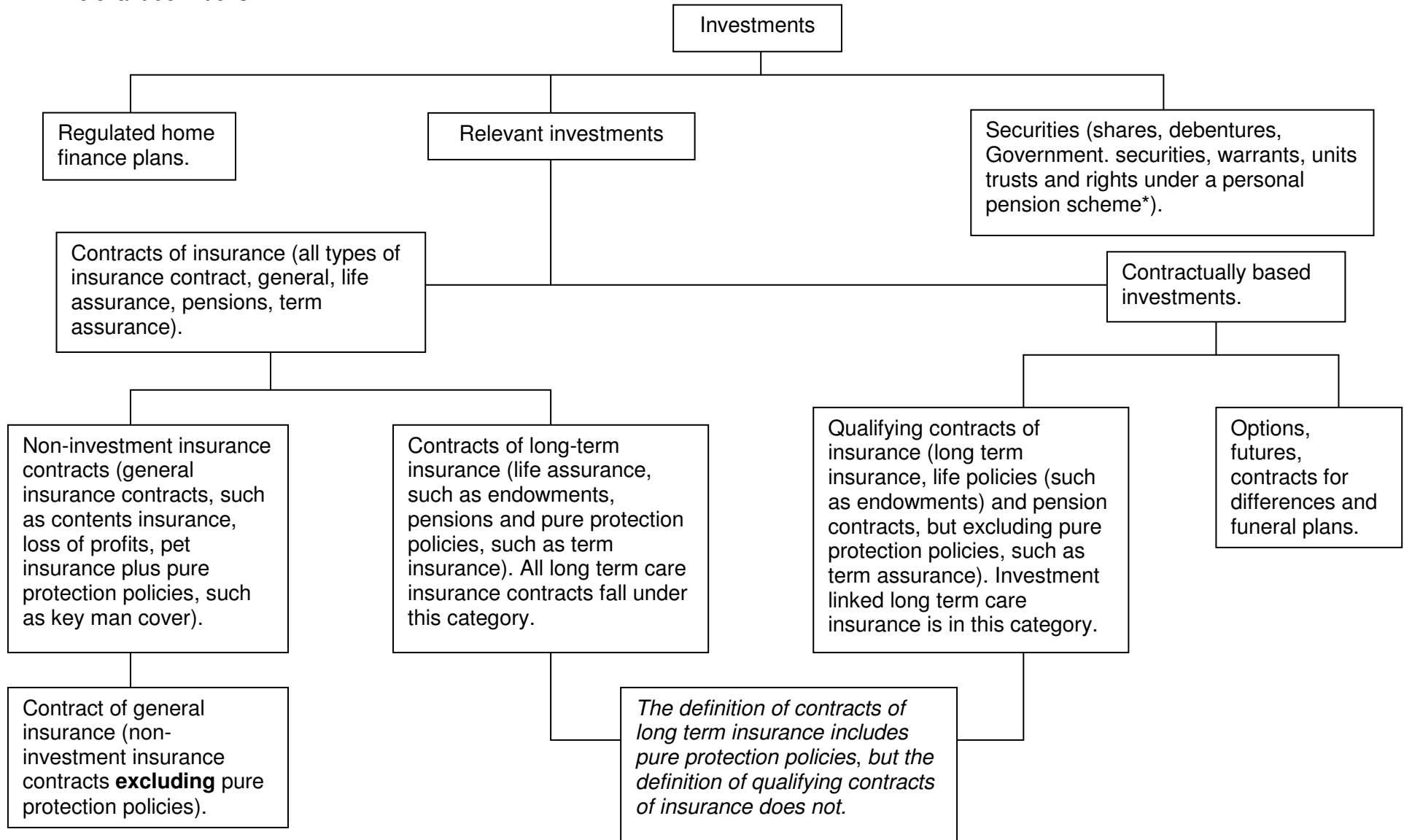
- The Financial Services and Markets Act 2000 (as amended).
- The Financial Services and Markets Act 2000 Regulated Activities Order SI 2001/544. To date this has been amended by SI 2001/3544, SI 2002/682, SI 2002/1310, SI 2002/1776, SI 2002/1777, SI 2003/1475, SI 2003/1476, SI 2003/2822, SI 2004/1610, SI 2004/2737, SI 2005/593, SI 2005/1518, SI 2005/2114, SI 2006/196, SI 2006/2383 and SI 2009/1342.
- The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order SI 2001/1227. To date this has been amended by SI 2001/3650, SI 2002/682, SI 2002/1777, SI 2003/1475, SI 2003/1476, SI 2004/2737, SI 2006/1969, SI 2006/2383 and SI 2009/1342.
- The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order SI 2001/1177. To date this has been amended by SI 2003/1475 and SI 2003/1476, SI 2005/922, SI 2006/1969, SI 2006/2383 and SI 2009/1342.

- The Financial Services and Markets Act 2000 (Financial Promotions) Order SI 2005/1529, SI 2006/1969 and SI 2009/1342.

The legislation is available from [www.legislation.gov.uk](http://www.legislation.gov.uk).

## TYPES OF INVESTMENT WHICH ARE REGULATED

The legislation uses a number of definitions of *investments*. These are defined in Part 9 of the *Handbook*. The following chart provides a brief overview of those definitions. When in doubt about how an *investment* term is used in the *Handbook*, please refer to this chart and the relevant definitions.





\* This is in addition to the regulation of any underlying life assurance contract, which is a “*qualifying contract of insurance*” and which forms the basis of many *personal pension schemes*.

However, “rights under a *personal pension scheme*” is considerably wider. A *personal pension scheme* now describes the vehicle in which the investment sits and includes Self-Invested Personal Pension schemes. The rights include some or all of the rights to:

- make payments to the scheme,
- withdraw sums from the scheme in certain circumstances,
- transfer value to another scheme,
- place property into the scheme,
- receive benefits from the capital or income of the assets in the scheme
- instruct the scheme operator on the assets to buy or sell for the scheme,
- instruct the scheme operator to switch funds,
- appoint a manager,
- instruct the scheme operator to borrow money to purchase assets.

## PART 2

### TERMS AND CONDITIONS FOR A LICENCE

#### Purpose

- 2.01 These terms and conditions apply to all *firms licensed* by the *Institute* to provide *exempt regulated activities* under Part XX of the *Act*. The obligations of a *firm* set out in this *Handbook* are jointly and severally the obligations of the *principals* of that *firm*.
- 2.02 Words in italics used in this Part are defined in Part 9 of the *Handbook*.

#### Eligibility

- 2.03 A *firm* shall satisfy the *Institute* on application and at any time thereafter that:
- a the principal business of the *firm* is the provision of *professional services*;
  - b each *principal* in the *firm* who is not a *member* or a *member* of a body which is a *designated professional body* or a *firm licensed* under these terms and conditions by an *Institute*, is registered for audit work by the licensing *Institute* or is an *affiliate* as set out in Part 5 of this *Handbook*;
  - c the *firm* complies with the *PII Regulations*;
  - d there is no reason for the *Institute* to believe that it would not be appropriate for the *firm* to hold a *licence*; and
  - e there is no direction under section 328 of the *Act* applicable to the *firm* or an order against it under section 329 of the *Act* that the exemption from the general prohibition does not apply to the *firm*.

Where a licensed *firm*, because of its structure, would not be subject to any form of practice review by one of the *Institutes*, as a condition of becoming licensed, the *Institutes* may require a review of the *professional services* provided by the *firm*.

#### Application

- 2.04 A *firm* shall apply for a *licence* in the manner decided by the *Institute*. The application must include the following:
- a a declaration by the *firm* that it agrees to be bound by the provisions of the *Handbook*, including these terms and conditions, and will ensure that it complies with them at all times;
  - b a declaration by the *firm* that it will deal with the *Institute* in an open and co-operative manner and inform the *Institute* promptly about anything concerning the *firm* as required by these terms and conditions;
  - c an acknowledgement by the *firm* that none of the *Institute*, its officers, staff, members of its *Council* or *Committees*, the *Disciplinary Scheme*, their servants or agents can be held liable to the *firm* in damages for any act or omission arising out of the performance of any of their functions under the *Act*, or connected with the granting of a *licence*, the enforcement of its terms and conditions or the monitoring of compliance with those terms in any respect, unless the act or omission is shown to have been in bad faith;

- d an acknowledgement that the *Institute* or its agents may make enquiries of or about the *firm* as the *Institute* or its agents deems necessary;
- e an acknowledgement that the *Institute* may publish, in such manner as it may determine, information about the *firm's licence*;
- f an acknowledgement that the *Institute* may disclose information about the *firm* as set out in clause 2.16; and
- g an undertaking that the *firm* shall discharge its duties under clause 2.06 and 2.07.

### **Rights of a firm and of a licensed firm**

- 2.05 In accordance with Part 7 of this *Handbook*, a *firm* or a *licensed firm* may apply for a review of any decision to refuse an application, grant a *licence* with conditions, withdraw a *licence* or only allow it to continue with conditions or restrictions.

### **Duties of the licensed firm**

- 2.06 A *licensed firm* must conduct *exempt regulated activities* only as permitted by Part 3 of this *Handbook*.

- 2.07 A *licensed firm* must:

- a at all times comply with Part 4 of this *Handbook* and be able to satisfy the *Institute* as to such compliance on request;
- b deal with the *Institute* or its agents in an open and co-operative manner;
- c appoint a *Contact Partner* who will:
  - i) correspond with the *Institute* in relation to the activities governed by these terms and conditions;
  - ii) give an annual declaration of the *firm's* compliance with its responsibilities under this *Handbook* in the form from time to time determined by the *Institute*;
  - iii) from time to time supply the *Institute* or its agents with information as required;
  - iv) ensure that an annual compliance review is undertaken as required under Part 4 of this *Handbook*; and
  - v) be the individual whose name will appear on the *Financial Services Register* for *insurance mediation activities*.

In the case of a sole practitioner, that person will be the *contact partner*.

- d inform the *Institute* as soon as practicable but not later than ten *business days* after the occurrence of any of the following:
  - i) the *firm* no longer complies with the *PII Regulations*;
  - ii) any other changes which do or might affect a *firm's* eligibility to be *licensed*; and
  - iii) any change of:
    - 1 the *firm's registered address*;
    - 2 the name or trading names of the *firm*;
    - 3 the address(es) of the *firm's* offices;
    - 4 any of the *firm's principals*;
    - 5 the name or principal business address of any of the *firm's principals*; or
    - 6 the name of the *contact partner*;

- e pay any of the charges required by the *Institute*, as listed in Part 6 of this *Handbook*, within 30 days from the date such charge is issued. Such charges may be levied at any time, including after the termination of the *licence* provided they relate to a period before the date of termination;
- f comply with the regulations of the *Chartered Accountants' Compensation Scheme*;
- g pay any levy within 30 days of the date it is issued (whether a periodic contribution or special levy), towards the funding of the *Chartered Accountants' Compensation Scheme* as the *Institute* may decide. This includes levies raised after the *firm's licence* has ceased but excludes levies relating to claims in respect of services provided by any *licensed firm* wholly after the date of termination of the *firm's licence*;
- h respond, when required, to enquiries made by the *Institute* or its agent(s) (whether by writing, visiting the *firm's* offices, using a periodic return, or any other method) about the *firm's* application, its activities as a *licensed firm*, or any of its *client* records;
- i subject itself and all its *principals* to any monitoring, inspection or review process specified by the *Institute*;
- j inform the *Institute* in writing within ten *business days* of the situation arising if the *firm* cannot, or expects not to be able to, fulfil one or more of the responsibilities set out in this clause. The notification must state what has happened and the action that the *firm* proposes to take;
- k send any notice or other document to be served on the *Institute* in the manner set out in Part 9 of this *Handbook*, or as last notified to the *firm*;
- l if appropriate, comply with the Distance Marketing Regulations made by the Treasury (see Part 8 of this *Handbook* for guidance); and
- m before it engages in any *exempt regulated activity* in relation to a *contract of insurance*, have in place professional indemnity insurance equivalent to at least €1,120,200 for each claim and €1,680,300 per annum for all claims. This requirement does not apply where the only activity in relation to a *contract of insurance* that the *licensed firm* undertakes is an introduction of a *client* to a *permitted third party*.

Further guidance on professional indemnity insurance is provided at the end of this Part. Note the limits in sub-para (m) were revised with effect for policies commencing or renewing on or after 1 March 2009. Prior to this the limits were €1m for each claim and €1.5m per annum for all claims.

### **Obligations, duties and rights of the Institute**

- 2.08 The *Institute* will deal fairly, openly and promptly with *licensed firms*. Service by the *Institute* of any notice or other document which complies with clause 2.09 will be deemed to be prompt.
- 2.09 Any notice or other document to be served on the *firm* under this contract will be delivered by hand, sent by fax, or posted:
  - a if delivered by hand, it must be handed to a representative of the *firm* and service will take effect immediately;
  - b if sent by fax, it must be sent to the latest fax number given by the *firm* to the *Institute* and service will take effect on sending; or

- c if sent by post, it must be sent to the latest *registered address* given by the *firm* to the *Institute* and service will take effect two *business days* after posting.
  - d If sent by email, it must be sent to the latest email address notified by the addressee and service will take effect immediately.
- 2.10 At the request of a *firm* or a *licensed firm*, any decision to refuse an application, grant a *licence* with conditions, withdraw a *licence* or only allow it to continue with conditions or restrictions shall be reviewed under Part 7 of the *Handbook*.
- 2.11 The *Institute* has a duty to:
- a consider an application for a *licence* having regard to the information supplied under clause 2.04 together with such other information as it considers necessary and:
    - i) grant the *licence*;
    - ii) grant the *licence* subject to restrictions or conditions, or
    - iii) reject the application;

save that it may, with good reason, postpone consideration of the application but must advise the *firm* accordingly;
  - b consider whether a *licence* should be withdrawn;
  - c impose restrictions or conditions on a *licensed firm* as it considers appropriate;
  - d consider the information provided under clause 2.07j and the remedial action planned by the *licensed firm*;
  - e grant to the *licensed firm* a dispensation, of no more than 90 days, from the requirement to comply with sections 2.03b to 2.03e or 2.07a where, in response to a written request, it considers it reasonable to do so having regard to the public interest and the interests of any *client*;
  - f review the returns and reports made and submitted under this Part of the *Handbook*, and investigate failures to make or submit such returns or reports;
  - g make such enquiries as it considers appropriate about an applicant for a *licence*, a *licensed firm*, or a *licensed firm's* records concerning its *clients* (whether by requesting information in writing, visiting a *firm's* offices, using a periodic return, or any other method);
  - h publish, in any manner it considers appropriate, information about a *firm's licence*;
  - i impose charges as set out in paragraphs 6.02, 6.03 and 6.07 of Part 6 of this *Handbook*; and
  - j notify the *FCA* of the name and address of the *licensed firm* and the name of the *contact partner* for inclusion within the *Financial Services Register* and any changes to this information as notified by the *licensed firm*.
- 2.12 The *Institute* may, in its discretion, but subject to the statutory limitations on it, make changes to this *Handbook* as and when it deems necessary and this contract shall be varied accordingly. Such variation shall have effect from the date notified by the *Institute*.
- 2.13 The *Institute* may, in its absolute discretion, impose any charge, as laid down in paragraphs 6.04, 6.05, 6.06, 6.08 and 6.10 of Part 6 of this *Handbook*, and as notified by it from time to

time. For the avoidance of doubt, failure to agree a charge under paragraph 6.05 may result in a referral under clause 2.16.

- 2.14 The *Institute* may delegate the performance of any of its responsibilities to Committees, staff or other agents and may issue directions or guidance as it deems necessary.
- 2.15 The *Institute* may, in discharging any of its responsibilities, consider any information including disciplinary findings, orders, pending investigations, regulatory matters concerning a *firm* or a *licensed firm* or any of its *principals*, shareholders, or staff. Previous disciplinary findings, convictions, decisions, sentences or judgements (including criminal and civil court decisions) shall be conclusive proof for the purposes of this *Handbook*.
- 2.16 The *Institute* reserves the right to pass information about a *firm* to any *Institute* Committee, the *Disciplinary Scheme*, the *FCA*, the Treasury, other *Designated Professional Bodies*, Recognised Supervisory Bodies, or Recognised Professional Bodies to enable any such body to discharge its functions, or if otherwise required to do so by law.

#### **Effective date and term of the licence**

- 2.17 The *licence* will be effective from the date notified by the *Institute* and will remain in place until it is withdrawn by the *Institute*, surrendered by the *firm* or until the *firm* ceases to exist.

#### **Withdrawal of a licence by the Institute**

- 2.18 The *Institute* may withdraw the *licence* if a *firm* fails to satisfy the *Institute* that it has complied or will continue to comply with its obligations under this contract within thirty days of the *Institute* serving on it a written notice demanding such satisfaction.
- 2.19 The *Institute* will have the right to withdraw the *licence* of a *licensed firm* without notice if the *FCA* makes a direction under section 328 of the *Act* that is applicable to the *licensed firm* or an order against it under section 329 of the *Act* that the exemption from the general prohibition shall not apply.

#### **Surrender of a licence by a firm**

- 2.20 A *firm* may surrender its *licence* by notifying the *Institute* in writing.

#### **Consequences of withdrawal or surrender of a licence**

- 2.21 On withdrawal or surrender of a *licence* to conduct activities under Part XX of the *Act*, the *firm* has continuing obligations to deal with enquiries or complaints in relation to any act or omission during the period of the *licence* and to pay any levy or other charges raised in respect of that period.
- 2.22 If a *firm* is no longer *licensed*, disciplinary action may still be taken against it by the *Institute* for any failure to comply with this *Handbook* during the period of the *licence*, or for any failure to comply with a provision of the *Handbook* that has a continuing effect.

#### **Notes to Part 2**

1. Nothing in this *Handbook* will give any person a right to enforce any provision of this *Handbook* that the person would not have had but for the Contracts (rights of third parties) Act.
2. **Insurance activities in other EU Countries**

If the *firm* wishes to exercise the right conferred by Article 6 of the *IMD* to establish a branch conducting *insurance mediation activities* or undertake *insurance mediation activities* in another EEA State an appropriate application must be made directly to the *FCA*. The *FCA*'s Supervision Manual, SUP 13, "Exercise of passport rights by UK firms", contains details of the process to be followed. A *licensed firm* proposing to provide such services must comply with the applicable provisions of the *Act*, as laid down in the *FCA*'s Professional Firms' Sourcebook, Chapter 7. (See Part 8 for guidance.)

### 3. Professional indemnity insurance requirements under the Insurance Mediation Directive

All *firms* have to comply with the *Institute's* professional indemnity insurance (PII) requirements. These specify the amount of PII that a *firm* should have. In addition, the Insurance Mediation Directive (*IMD*) requires, for activities conducted by a *licensed firm* that relate to insurance, PII equivalent to at least €1,120,200 per claim and €1,680,300 in total.

This is not in addition to the PII already required. It is merely that, if needed, the amount of PII may need increasing from that required by the *Institute*.

Some *licensed firms* will already have PII in excess of the *IMD* limits and so need take no further action. Other *licensed firms* may need to increase the sum insured. This would normally be achieved by increasing the total sum insured to the *IMD* limits. It may be possible to obtain an extension of cover. In this case the *licensed firm* may have, for example £500,000 of PII. Then, only in respect of claims relating to *insurance mediation activities*, the sum insured is increased to the *IMD* limits. If necessary, *licensed firms* should discuss with their broker or insurer the need for any changes to the sum insured.

*Licensed firms* only need to consider these *IMD* limits if they are undertaking *insurance mediation activities* (see Part 3 of the *Handbook*, schedule 2). If no *insurance mediation activity* is undertaken, or the only activity is introducing (see item 3 on schedules 2B and 2C of Part 3 of the *Handbook*) then there is no need to consider this issue, the PII held by *licensed firms* under the *Institute's* PII requirements will be sufficient.

It is unlikely that *licensed firms* would be able to obtain PII denominated in euros. A *licensed firm* only needs to consider whether its sum insured matches the *IMD* limits at the point of renewal. There is no need to consider future exchange rates and try and forecast the sterling amount that will always exceed the *IMD* limits throughout the period of the PII policy. *Licensed firms* who start negotiations well in advance of the policy renewal date should consider what the exchange rate may be at the point of renewal. If the exchange rate used in the calculation was current at any time in the one-month period before the date of renewal this will be acceptable. *Licensed firms* should document their calculations and the source of the exchange rate used.

## PART 3

### REGULATED ACTIVITIES (INVESTMENT BUSINESS) REGULATIONS

The Regulations in this Part are the rules made in compliance with section 332(3) of the *Act* which, together with the relevant definitions in Part 9 of the *Handbook*, have been approved by the *FCA* for the purposes of section 332(5) of the *Act*.

These regulations apply to *regulated activities* carried on by a *licensed firm* which, if carried on in accordance with these Regulations, are *exempt regulated activities*.

These Regulations govern the scope of the *exempt regulated activities* which may be carried out by *licensed firms*. Guidance in the form of a non-exhaustive list of common activities has been included in schedule 2 and contains the most likely examples of such activities.

Schedule 5 to this part of the *Handbook* provides additional guidance on corporate finance activities and whether or not those activities are *regulated activities*.

Schedule 6 provides additional guidance on conducting activities relating to *contracts of insurance* and whether or not those activities are *regulated activities*.

Schedule 7 provides additional guidance on activities relating to mortgage contracts and whether or not those activities are *regulated activities*.

Schedule 8 provides guidance for *firms* who may be involved in providing professional services in respect of HMRC investigations that may involve insurance.

These Regulations also embody the requirements of the *Act* that:

- a provision of services in the course of carrying out *exempt regulated activities* must be incidental to the provision of *professional services*; and
- b the *exempt regulated activities* must arise out of or be complementary to the provision of a *professional service* to the *client* in question.

A *licensed firm* that carries on a *regulated activity* in breach of these Regulations which contain all the requirements of section 327 of the *Act* may be in breach of the general prohibition under the *Act* and committing a criminal offence. In addition, a breach of these Regulations amounts to a matter that leaves a *member, affiliate, or firm* open to regulatory and/or disciplinary action by the *Institute*.

Regulations are printed in bold type. Guidance to assist *licensed firms* is printed in light type.

**3.01 Words in italics used in these Regulations are defined in Part 9 of the *Handbook*.**

**3.02 No *member* or *affiliate* or may undertake or agree to undertake or hold themselves out as carrying on *exempt regulated activities* unless they are a *principal* in or employed by a *firm licensed by a Designated Professional Body*.**

**3.03 No *firm* may be *licensed* to undertake or agree to undertake *exempt regulated activities* if there is a direction under section 328 of the *Act* applicable to the *firm* or an order against it under section 329 of the *Act* that the exemption from the general prohibition does not apply to the *firm*.**



- 3.04** A *licensed firm* may not carry on any *regulated activities* that are prohibited under these Regulations unless it is permitted to do so as an *appointed representative* of a person authorised by the *FCA*.
- 3.05** The following Regulations apply to *regulated activities* carried on by a *licensed firm* which, if carried on in accordance with these Regulations, are *exempt regulated activities*.
- 3.06** *Firms* which undertake *exempt regulated activities* under the terms of a *licence* granted by the *Institute* shall comply with all requirements specified in the *Handbook*.
- 3.07** Subject to regulations 3.08 and 3.09, in the course of providing *professional services*, a *licensed firm* may carry out any *regulated activity* that is not prohibited by schedule 1 to these Regulations or by any Order made by the Treasury under Section 327(6) of the *Act*.

The *Institute* considers that schedule 1 (as amended from time to time) to these regulations will cover relevant activities prohibited by statutory provisions. It reserves the right to amend schedule 1 to narrow the range of activities permitted to *members* or *affiliates* or, particularly to deal with any orders made by the Treasury under Section 327(6) of the *Act*.

The *Institute* considers that the activities described in schedule 2 will be within the scope of the activities allowed to a *licensed firm*, if they are conducted in accordance with Regulations 3.08 (in an incidental manner) and 3.09 (arising out of or complementary to another service) and the other requirements of this Part. A *licensed firm* should take legal advice or advice from the *Institute* or the *FCA* if it wishes to undertake other activities that may be *regulated activities* within the meaning of the *Act* and which are not in Schedule 2. Schedule 4 provides examples of activities that are not considered to be *regulated activities*.

**3.08** The *regulated activities* must be provided in a manner which is incidental to the provision of other *professional services*.

Schedule 3 contains guidance on how to determine whether the activities are carried on in an incidental manner. The *Institute* will have regard to the guidance in determining whether any activity has been carried on in accordance with this Regulation. *Licensed firms* are reminded that the interpretation of the *Act's* provisions as to incidentality is a matter for the Court.

- 3.09** A *licensed firm* may not provide any *regulated activity* to a *client* unless:
- a the *regulated activity* provided to that *client* arises out of, or is complementary to, one or more *professional services* which are provided at that time (or earlier) to that *client* and which are not *regulated activities*; or
  - b the *licensed firm* has been engaged in accordance with paragraph 4.02 of the *Handbook* to provide one or more *professional services* that are not *regulated activities*, and the *regulated activity* is complementary to those other *professional services*.

The exemption for *firms* to carry out *regulated activities* is only available if those activities arise out of or, are complementary to, one or more *professional services* which are not themselves *regulated activities*. When any set of services, such as auditing, accounting or taxation, are provided to a *client* the services will not necessarily be provided in a particular order. The *regulated activity* can still be provided to the *client* even though it is the first service as long as the *licensed firm* is in a position to demonstrate that the intention was to provide a series of services which includes other *professional services*.

While the provisions of this Regulation must be considered in respect of *regulated activities* relating to all types of *investments*, *licensed firms* may find that certain types of insurance are unlikely to be provided on a complementary basis. It may be difficult to envisage a situation whereby, for example, domestic insurance or pet insurance is recommended in a manner which is complementary to and arising out of another *professional service*.

**3.10 For the purposes of this Part only, ‘client’ has the extended meaning given to it by section 328(8) of the Act.**

The extended definition of ‘*client*’ includes not just those who have used the services (including *exempt regulated activities*) of the *licensed firm* but also those persons who:

- a are or may be contemplating doing so;
- b have rights or interests which are derived from or otherwise attributable to the use of such services by other persons; or
- c have rights or interests that may be adversely affected by the use of such services by other persons acting on their behalf or who are in a fiduciary capacity in relation to them.

This allows *firms* to discuss a range of services with potential *clients* and to contemplate providing *exempt regulated activities* from the outset of providing related *professional services*. This wider definition does not apply to the word ‘*client*’ used elsewhere in the *Handbook*.

**3.11 If a *licensed firm* receives commission (or other benefit) because of acting for or giving advice to a *client*, in the course of *exempt regulated activities*, the *licensed firm* must account for the commission (or other benefit) to the *client* in writing.**

Accounting to the *client* means remitting the commission to the *client* or dealing with it on the *client's* instructions having informed the *client* that he or she has the right to require the *licensed firm* to remit the commission to him or her. If a *client* has indicated that the *licensed firm* may retain the commission or other benefit, the *licensed firm* must obtain the express written consent of the *client*. In securing the consent of the *client*, the *client* must also be clear as to the amount and frequency of the commission or benefit. Blanket disclosure within the terms of engagement is not sufficient to secure the informed consent of the *client*. Until the *client's* instructions are received, any commission should be dealt with in accordance with the *Institute's Clients' Money Regulations*.

## LIST OF PROHIBITED ACTIVITIES

Items 1 to 13 of this schedule are derived from the Non-Exempt Activities Order 2001 (see page 7). Item 14 is from section 21 of the *Act*.

## Regulated Activities Order article no.

- 1 No *licensed firm* can carry on the following types of *regulated activity*:
- |   |  |        |
|---|--|--------|
| a | accepting deposits;  | 5      |
| b | issuing electronic money;  | 9B     |
| c | effecting or carrying out <i>contracts of insurance</i> as principal;  | 10     |
| d | dealing in (that is buying, selling, subscribing for or underwriting) <i>securities</i> or <i>contractually based investments</i> as principal and as a business activity; | 14     |
| e | establishing, operating or winding up a collective investment scheme;  | 51(1)a |
| f | acting as a trustee of an authorised unit trust;   | 51(1)b |
| g | acting as the depository or sole director of an open-ended investment company;   | 51(1)c |
| h | establishing, operating or winding up a stakeholder or <i>personal pension scheme</i> ;  | 52     |
| i | providing basic advice on stakeholder products;  | 52B    |
| j | managing the underwriting capacity of a Lloyd's syndicate as a managing agent;   | 57     |
| k | acting as a provider of a funeral plan contract;   | 59     |
| l | advising a person to become a member of a particular Lloyd's syndicate (unless such advice is an endorsement of the advice of a <i>permitted third party</i> ).            | 56     |
- 2 No *licensed firm* may agree to carry on any of the activities listed under paragraphs (c), (e), (f), (h), (i), or (j) of paragraph 1 above.
- 3 Unless a *licensed firm* is included in the *Financial Services Register* it cannot:
- |   |   |             |
|---|---|-------------|
| a | deal in the sale or purchase of rights under a <i>contract of insurance</i> as agent, or arrange deals in such contracts; | 21 or<br>25 |
| b | assist in the administration and performance of a <i>contract of insurance</i> ; or                                       | 39A         |
| c | give advice relating to a transaction for the sale or purchase of rights under a <i>contract of insurance</i> .           | 53          |
- 4 No *licensed firm* may manage, or agree to manage, assets belonging to other persons (in so far as management consists of buying or subscribing for a *security* or *contractually based investment*) unless all routine or day to day decisions are taken by or in accordance with the advice of a *permitted third party*. 37
- 5 No *licensed firm* may give or agree to give any advice which: 53
- |   |  |  |
|---|--|--|
| a | is given to an individual (or his agent) unless the individual acts:   |  |
|   | i) in connection with the carrying on of a business by himself or by an undertaking of which he is, or would become as a result of the transaction, a controller; or   |  |
|   | ii) in his capacity as a trustee of an occupational pension scheme;  |  |
| b | consists of a recommendation to buy or subscribe for a particular <i>security</i> or <i>contractually based investment</i> ; and   |  |
| c | relates to a transaction which would be made:  |  |
|   | i) with a person acting in the course of carrying on the business of buying, selling, subscribing for or underwriting the particular <i>security</i> or <i>contractually based investment</i> (whether as principal or agent); |  |
|   | ii) on a <i>public market</i> ; or   |  |
|   | iii) in response to an invitation to subscribe for a particular <i>security</i> or <i>contractually based investment</i> which is, or is to be, admitted for dealing on a <i>public market</i> . (See note 5.)                 |  |

	Regulated Activities Order article no.
6	No <i>licensed firm</i> may give or agree to give any advice which consists of a recommendation to a member of a <i>personal pension scheme</i> (or his agent) to dispose of any rights or interests that the member has in or under the scheme. 53
7	No licensed firm can recommend an individual to enter into a particular regulated mortgage contract as a borrower. 53A
8	No licensed firm may enter (or agree to enter) into a regulated mortgage contract as a lender or administer (or agree to administer) a regulated mortgage contract unless: 61 and 66 (6A)
	a this is in the licensed firm's capacity as a trustee or personal representative; and
	b the borrower is a beneficiary under the trust, will or intestacy.
9	No licensed firm can recommend an individual to enter into a particular regulated home reversion plan as a reversion seller or plan provider (see definition of regulated home reversion plan for an explanation of these two terms). 53(B)
10	No licensed firm may enter (or agree to enter) into a regulated home reversion plan as a provider or administer (or agree to administer) a regulated home reversion plan unless: 63B and 66(6B)
	a this is in the licensed firm's capacity as a trustee or personal representative; and
	b the borrower is a beneficiary under the trust, will or intestacy.
11	No licensed firm can recommend an individual to enter into a particular regulated home purchase plan as a home purchaser or potential home purchaser. 53(C)
12	No licensed firm may enter (or agree to enter) into a regulated home purchase plan as a provider or administer (or agree to administer) a regulated home purchase plan unless: 63F and 66(6C)
	a this is in the licensed firm's capacity as a trustee or personal representative; and
	b the borrower is a beneficiary under the trust, will or intestacy.
13	No licensed firm can recommend an individual to enter into a particular regulated sale and rent back agreement as an agreement seller or potential agreement seller or an agreement provider or potential agreement provider. 53(D)
14	No licensed firm may enter (or agree to enter) into a regulated sale and rent back agreement as an agreement provider or administer (or agree to administer) a regulated sale and rent back agreement unless: 63(J) and 66(6D)
	a this is in the licensed firm's capacity as a trustee or personal representative; and
	b the borrower is a beneficiary under the trust, will or intestacy.
15	Paragraphs 3c, 5, 6, 7, 9 11 and 13 do not apply if the advice endorses a corresponding recommendation given to the individual by a <i>permitted third party</i> .
16	No <i>licensed firm</i> may, in the course of business, communicate or approve an <i>investment</i> advertisement or other financial promotion.

### Guidance

- Reference to the particular article in the RAO is a reference to the Regulated Activities Order 2001 (as amended). Each article also contains various exclusions. If the terms of the exclusion are met the activity is not a *regulated activity*. A number of these are dealt with in schedule 4 to Part 3 of the *Handbook*.

- 2 This schedule may be revised from time to time.
- 3 Schedule 5 provides guidance on whether corporate finance activities are *regulated activities*. Schedules 6 and 7 provide guidance on insurance and mortgage related activities and whether they are *regulated activities*.
- 4 Nothing in the above prevents a *firm* accepting a *security* in lieu of fees.
- 5 Paragraph 5 above essentially deals with advice to an individual to buy a listed company share (or a share that is to be listed) or other *contractually based investment* where the contract is directly with the product provider (e.g. an insurance company) or another entity which is acting in the course of business in buying or selling the investment. This therefore also prevents advice being given to buy units in a collective investment scheme or to acquire rights under a *personal pension scheme*.
- 6 All *licensed firms* are included on the *Financial Services Register*.
- 7 A controller is, in broad terms, someone with a 10% shareholding in the business or who is able to exercise a significant influence over its management.
- 8 Mortgage contracts entered into before 31 October 2004 are not regulated. Any *firm* may administer such contracts provided the terms of the mortgage are not varied on or after 31 October 2004 to such an extent that a new contract is entered into which is a *regulated mortgage contract*.
- 9 Home reversion plans and home purchase plans entered into before 6 April 2007 are not regulated. Any *firm* may administer such contracts provided the terms of the contract are not varied on or after 6 April 2007 to such an extent that a new contract is entered into which is a *regulated home reversion plan* or *regulated home purchase plan* as the case may be.
- 10 Sale and rent back agreements entered into before 1 July 2009 are not regulated. Any *firm* may administer such contracts provided the terms of the contract are not varied on or after 1 July 2009 in such a way as to vary the obligations of the agreement seller or the agreement provider under that agreement.
- 11 The exemptions available under Part XX of the *Act* do not extend to making financial promotions, including any *investment* advertisement. While a financial promotion is not a *regulated activity*, only an entity authorised by the *FCA* can make or approve a financial promotion. However, the Financial Promotions Order 2001 (as amended) contains a number of exemptions, and compliance with the requirements of these exemptions will mean that a *firm* is not making a financial promotion.

## GUIDANCE ON REGULATED ACTIVITIES THAT MAY BE PROVIDED BY A LICENSED FIRM

The *Institutes*, as *Designated Professional Bodies*, are committed to co-operating with the FCA to ensure that the spirit of the *Act* is maintained, in the public interest, by the *Designated Professional Body* arrangements. Consequently, this schedule will be reviewed and revised as appropriate if greater clarity is needed to ensure that *regulated activities* performed by *licensed firms* do not exceed those which it is appropriate for *licensed firms* under the *Designated Professional Body* arrangements to engage in.

The schedule is divided into four tables:

- 2A Activities relating to *securities* (including rights under *personal pension schemes*) and *contractually based investments*, except *qualifying contracts of insurance*.
- 2B Activities relating to *qualifying contracts of insurance* (e.g. long term insurance contracts and pension contracts).
- 2C Activities relating to *non-investment insurance contracts* (such as *contracts of general insurance* and pure protection insurance) excluding *qualifying contracts of insurance*.
- 2D Activities relating to *regulated home finance plans*.

Although an activity may relate to rights under a *personal pension scheme* (table 2A) which are within a *qualifying contract of insurance* (table 2B) the restrictions on a *licensed firm* are the same.

The *Institute* considers that the activities described in each table, if conducted in an incidental manner, and if they are complementary to, or arise out of, another *professional service* and are conducted in accordance with the other requirements of the *Handbook* will be within the scope of the activities allowed to a *licensed firm*. A *licensed firm* can take its own legal advice as to the availability of the exemptions in the *Act* in relation to specific transactions as the examples are not exhaustive. The *licensed firm* should also take legal advice if it wishes to undertake other activities that may be *regulated activities* within the meaning of the *Act* and which are not on the list.

When using the following tables, you should consider whether the activity shown in the first column is being undertaken in respect of the *investment* shown in the heading. The examples in the second column may assist in deciding whether the activity can be conducted by a *licensed firm*.

It may also be necessary to consider the elements of a transaction to see if an *exempt regulated activity* (i.e. one that a *licensed firm* can carry out) is being carried on. For example a *client* may ask for advice in connection with a rights issue of a listed company in which the *client* already owns shares. Although the *licensed firm* can advise the *client* not to take up the rights issue, it cannot give a positive recommendation to accept the rights offer. If the *client* decides to take up the rights offer, then the *licensed firm* can carry out the *client's* instructions and arrange the deal.

*Licensed firms* should consider carefully any involvement they may have in advising on long term care insurance. Such contracts take a number of forms. Pure protection contract which are not linked to any underlying *investment* are non-investment insurance contracts (see chart on page 8) and are therefore covered in table 2C. However, other long term care contracts may be set up as immediate annuities or insurance contracts linked to investment bonds. These are dealt with in table 2B as *qualifying contracts of insurance*. *Licensed firms* must be aware that specific advice can only be given to *clients* on pure protection long term care contracts. In advising *clients* about long term care options, consideration may be needed of *investment* products, on which *licensed firms* are not permitted to advise.

*Licensed firms* should note the following important points:

- 1 the main activity that *licensed firms* are likely to undertake is advising *clients*. *Licensed firms* have a valuable role to play in advising *clients* on the merits of particular *investments* (but they cannot advise a *client* to purchase a particular *investment* if prohibited by schedule 1). The provision of the advice must stay within the confines of this *Handbook*.
- 2 *licensed firms* should only undertake to provide those services that they are competent to provide (see paragraph 4.05 in Part 4 of the *Handbook*).
- 3 The following tables are not an exhaustive list of all the activities that a *licensed firm* can undertake.

To assist in determining if a *licensed firm* can carry out a particular activity or whether it needs no authorisation or authorisation from the *FCA* a flowchart is provided at schedule 9. *Licensed firms* should still consider the need for legal advice.





**Activities that a licensed firm can undertake**

Activities relating to:

- *securities* such as shares and rights under a *personal pension scheme*;
- *contractually based investments*, such as futures and options, but not *qualifying contracts of insurance*.

This table does not apply to *regulated home finance plans* nor to *contracts of insurance* of any description.

Unless otherwise stated, the comments within the second column apply to all of the *investments* shown above.

Activities	Illustrations/comments
The activities below are contained in the <i>Regulated Activities Order</i> (RAO) and the appropriate article number is given.	This column provides further illustration or explanation of what a <i>licensed firm</i> can do in respect of the activities in the first column and the <i>investments</i> described above. These activities can only be undertaken in accordance with the requirements of Parts 3 and 4 of the <i>Handbook</i> .
1. Dealing* in <i>investments</i> as agent for a <i>client</i> (RAO article 21).	Implementing <i>investment</i> plans in co-operation with <i>permitted third parties</i> .
2. Making arrangements for a person to deal* (RAO article 25).	<ul style="list-style-type: none"> <li>• A <i>licensed firm</i> can, on the instruction of a <i>client</i>, arrange with a <i>permitted third party</i> or unauthorised person the buying, selling or subscribing for or underwriting of these types of <i>investment</i>. (A <i>licensed firm</i> can only advise on the transaction in certain limited circumstances as outlined in paragraph 6 on advice but an unlicensed <i>firm</i> cannot.)</li> <li>• Advice to a <i>client</i> leads to the arranging for the disposal of a <i>client's investment</i> (to provide funds for other purposes).</li> <li>• Arranging the transfer of shares for valuable consideration, for example – husband to wife and around the family.</li> <li>• Arranging for the sale or purchase of any shares, provided that in the case of shares which are, or will be traded on a <i>public market</i>, no advice has been given.</li> <li>• Making the arrangements for a company to issue shares, which brings about the transaction or make arrangements in which investors participate. (Arranging for the company to issue shares per se is not a regulated activity, however bringing the parties together could become a <i>regulated activity</i>.)</li> <li>• Arranging an equity for debt exchange for a company with financial problems to increase stability.</li> <li>• Arranging to make payments into or to place property into a <i>personal pension scheme</i>, including a self-invested <i>personal pension scheme</i> at the request of the <i>client</i>, where no advice has been given. (A <i>licensed firm</i> cannot recommend the acquisition or disposal of any rights in such a scheme.)</li> </ul>

### Activities that a licensed firm can undertake

Activities	Illustrations/comments
3. Managing <i>investments</i> (RAO article 37, but see schedule 1).	<p>A <i>licensed firm</i> can make decisions:</p> <ul style="list-style-type: none"> <li>• to sell or not to sell such existing <i>investments</i>;</li> <li>• concerning <i>investment</i> strategy such as the mix of different types of <i>securities</i>;</li> <li>• to appoint or remove an external fund manager;</li> <li>• which do not concern the acquisition of a particular <i>security</i> or <i>contractually based investment</i>.</li> </ul> <p><i>Licensed firms</i> cannot, if managing <i>investments</i>, exercise discretion in connection with buying or subscribing for such <i>investments</i> unless:</p> <ul style="list-style-type: none"> <li>• all routine or day to day decisions are taken by a <i>permitted third party</i> with permission to manage <i>investments</i>; or</li> <li>• the decision to buy or subscribe is taken in accordance with the advice of a <i>permitted third party</i> who is permitted to give advice in relation to that activity.</li> </ul>
4. Safeguarding and administration (RAO article 40).	<p><i>Licensed firms</i> can look after share certificates or other documents of title, arrange for the collection of dividends, act as the addressee to receive documents relating to the <i>investment</i>, etc.</p>
5. Sending dematerialised instructions (RAO article 45).	<p>An example would be sending instructions through the Crest system.</p>
6. Advising (RAO article 53). (Advising in this context is making a recommendation to buy, sell or subscribe for an investment, or to exercise a right to buy, sell or subscribe.)	<ul style="list-style-type: none"> <li>• Explaining and evaluating <i>investment</i> advice and offering alternatives (unless the prohibition in schedule 1, paragraph 5 applies).</li> <li>• Explaining the advice received from a <i>permitted third party</i>.</li> <li>• Identifying unsuitable advice.</li> <li>• Endorsing a <i>permitted third party's</i> advice.</li> <li>• Advising on disposals (unless the prohibition in schedule 1, paragraph 6 concerning personal pension plans applies).</li> <li>• In the course of tax advice or planning, the selection of realisable <i>investments</i> that have unrealised capital gains that may give an opportunity a transaction equivalent to 'bed and breakfast type' arrangement.</li> <li>• Advising on the purchase of shares provided the shares are not, nor will be traded on a <i>public market</i>.</li> </ul> <p>Note - a <i>licensed firm</i> cannot recommend an individual to buy or subscribe for certain types of <i>investments</i>, such as those which are, or are to be, admitted to dealing on a public market or rights in</p>

### Activities that a licensed firm can undertake

Activities	Illustrations/comments
	<i>personal pension schemes</i> . See schedule 1, paragraph 5. A <i>licensed firm</i> cannot recommend the disposal of any rights in a <i>personal pension scheme</i> .
7. Advice on Lloyd's syndicates (RAO article 56).	Note - this article only applies to advice in respect of membership of a Lloyd's syndicate. A <i>licensed firm</i> can advise a person to continue in or cease to be a member of a particular Lloyd's syndicate, but must not give any advice about joining a particular Lloyd's syndicate.
8. Agreeing to carry on any of the above activities (RAO article 64).	A <i>licensed firm</i> can agree to carry on any of the activities noted in the first column to the same extent that it can carry them on.

\* 'Dealing' and 'deal' in this context mean buying, selling, subscribing for or underwriting a particular *investment*.

**Activities that a licensed firm can undertake**

Activities relating to:

- *qualifying contracts of insurance* only (e.g. long term insurance contracts and pension contracts).

It does not apply to general insurance, pure protection policies, *securities* or *regulated home finance plans*.

Unless otherwise stated, the comments within the second column apply to all of the *investments* shown above.

Activities	Illustrations/comments
The activities below are contained in the <i>Regulated Activities Order</i> (RAO) and the appropriate article number is given.	This column provides further illustration or explanation of what a <i>licensed firm</i> can do in respect of the activities in the first column and the <i>investments</i> described above. These activities can only be undertaken in accordance with the requirements of Parts 3 and 4 of the <i>Handbook</i> .
1. Dealing* in <i>investments</i> as agent for a <i>client</i> (RAO article 21).	Implementing <i>investment</i> planning in co-operation with <i>permitted third parties</i> .
2. Making arrangements for a person to deal* (RAO article 25).	<ul style="list-style-type: none"> <li>• A <i>licensed firm</i> can, on the instruction of a <i>client</i>, arrange with a <i>permitted third party</i> or unauthorised person the buying, selling, subscribing for or underwriting of a <i>qualifying contract of insurance</i>. A <i>licensed firm</i> can advise on the transaction in certain limited circumstances as outlined in paragraph 5 below on advice but an unlicensed <i>firm</i> cannot.</li> <li>• Advice to a <i>client</i> from a <i>permitted third party</i> leads to the <i>licensed firm</i> arranging for the disposal of a <i>qualifying contract of insurance</i> (to provide funds for other purposes).</li> </ul>
3. Introducing <i>clients</i> to <i>permitted third parties</i> (part of RAO article 25, arranging).	A <i>licensed firm</i> can pass <i>client</i> details to an independent financial adviser or an insurance company, with the <i>client's</i> consent, for the adviser to contact the <i>client</i> , provided that the terms of the ethical guide are followed, with regard to independence and objectivity, in addition to the <i>Handbook</i> .

**Activities that a licensed firm can undertake**

Activities	Illustrations/comments
4. Assisting in the Administration and Performance of a <i>contract of insurance</i> (RAO article 39A).	<p><i>Licensed firms</i> can assist <i>clients</i> with regard to claims and can:</p> <ul style="list-style-type: none"> <li>• notify a claim to the insurer on behalf of the <i>client</i>;</li> <li>• assist in the completion of the claim form;</li> <li>• negotiate with the insurer on behalf of the <i>client</i>.</li> </ul>
5. Advising (RAO article 53). (Advising in this context is making a recommendation to enter into or sell a <i>qualifying contract of insurance</i> , or to exercise a right to do so.)	<ul style="list-style-type: none"> <li>• Explaining and evaluating insurance advice given by a <i>permitted third party</i>.</li> <li>• Identifying unsuitable advice.</li> <li>• Endorsing a <i>permitted third party's</i> advice.</li> <li>• Advising on disposals (however, as stated in Schedule 1, paragraph 6 a <i>licensed firm</i> cannot advise on the disposal of rights in a personal pension contract).</li> </ul> <p>Note - <i>licensed firms</i> cannot recommend an individual to take out a <i>qualifying contract of insurance</i>. See Schedule 1, paragraph 5.</p>
6. Agreeing to carry on any of the above activities (RAO article 64).	A <i>licensed firm</i> can agree to carry on any of the activities noted in the first column to the same extent that it can carry them on.

\* 'Dealing' and 'deal' in this context mean buying, selling, subscribing for or underwriting a particular *investment*.

**Activities that a licensed firm can undertake**

Activities relating to:

- non-investment insurance contracts (such as *contracts of general insurance* and pure protection insurance) excluding *qualifying contracts of insurance* which are dealt with in table 2B.

It does not apply to life insurance, *securities* or *regulated home finance plans*.

Unless otherwise stated, the comments within the second column apply to all of the *investments* shown above.

Activities	Illustrations/comments
The activities below are contained in the <i>Regulated Activities Order</i> (RAO) and the appropriate article number is given.	This column provides further illustration or explanation of what a <i>licensed firm</i> can do in respect of the activities in the first column and the <i>investments</i> described above. These activities can only be undertaken in accordance with the requirements of Parts 3 and 4 of the <i>Handbook</i> .
1. Dealing* in <i>investments</i> as agent for a <i>client</i> (RAO article 21).	Participating in insurance planning in co-operation with <i>permitted third parties</i> .
2. Making arrangements for a person to deal* (RAO article 25).	A <i>licensed firm</i> can, on the instruction of a <i>client</i> , arrange with a <i>permitted third party</i> the buying, selling, subscribing for or underwriting of such <i>contracts of insurance</i> (a <i>licensed firm</i> can also advise on the transaction as outlined in paragraph 5 below on advice, but an unlicensed <i>firm</i> cannot).
3. Introducing <i>clients</i> to <i>permitted third parties</i> (part of RAO article 25, arranging).	A <i>licensed firm</i> can pass <i>client</i> details to an independent financial adviser or an insurance company for that adviser to contact the <i>client</i> , provided the terms of the ethical guide are followed, with regard to independence and objectivity, in addition to the <i>Handbook</i> .
4. Assisting in the administration and performance of a <i>contract of insurance</i> (RAO article 39A).	<p><i>Licensed firms</i> can assist <i>clients</i> with regard to claims and can:</p> <ul style="list-style-type: none"> <li>• notify a claim to the insurer on behalf of the <i>client</i>;</li> <li>• assist in the completion of the claim form;</li> <li>• negotiate with the insurer on behalf of the <i>client</i>.</li> </ul>

### Activities that a licensed firm can undertake

Activities	Illustrations/comments
5. Advising (RAO article 53). (Advising in this context is making a recommendation to enter into or sell a non-investment insurance contract or to exercise a right to do so.)	Note - a <i>licensed firm</i> can advise on <i>contracts of insurance</i> except <i>qualifying contracts of insurance</i> . A <i>licensed firm</i> can: <ul style="list-style-type: none"> <li>• advise a <i>client</i> on the purchase of a particular <i>contract of insurance</i>;</li> <li>• explain and evaluating advice and offering alternatives;</li> <li>• explain the advice received from a <i>permitted third party</i>;</li> <li>• identify unsuitable advice and offering alternatives;</li> <li>• endorse a <i>permitted third party's</i> advice.</li> </ul>
6. Agreeing to carry on any of the above activities (RAO article 64).	A <i>licensed firm</i> can agree to carry on any of the activities noted in the first column to the same extent that it can carry them on.

\* 'Dealing' and 'deal' in this context mean buying, selling, subscribing for or underwriting a particular *investment*.

**Activities that a licensed firm can undertake**

Activities relating to:

- *regulated home finance plans only.*

Unless otherwise stated, the comments within the second column apply to all of the *investments* shown above.

<b>Activities</b>	<b>Illustrations/comments</b>
The activities below are contained in the <i>Regulated Activities Order (RAO)</i> and the appropriate article number is given.	This column provides further illustration or explanation of what a <i>licensed firm</i> can do in respect of the activities in the first column and the <i>investments</i> described above. These activities can only be undertaken in accordance with the requirements of Parts 3 and 4 of the <i>Handbook</i> .
1. Making arrangements for a person to deal* (RAO article 25A, 25B, 25C, 25E).	<ul style="list-style-type: none"> <li>• Making arrangements for a <i>client</i> to enter into a <i>regulated home finance plan</i>. This may include helping the <i>client</i> with the application form and sending this to the lender, providing confirmation of income, etc.</li> <li>• Making arrangements for a <i>client</i> to enter into an overdraft which is secured by way of a first charge on the <i>client's</i> residence.</li> </ul> <p>If the arrangements are made on the advice of a <i>permitted third party</i>, or if the <i>client</i> has not requested any advice from the <i>firm</i>, and in both cases, the <i>firm</i> accounts for any commission, etc which arises, the above activities can be undertaken by unlicensed <i>firms</i>, however, the details are shown here for completeness. (See schedule 4, list B, service 8 for details.)</p>
2. Advising (RAO article 53A, 53B, 53C, 53D). (Advising in this context is making a recommendation to enter into, or vary the terms of, a <i>regulated home finance plan</i> .)	<ul style="list-style-type: none"> <li>• Advising on the variation of terms of an existing <i>regulated home finance plan</i>, provided the advice is not tantamount to entering into a new <i>regulated home finance plan</i>.</li> <li>• Explaining and evaluating advice given by a <i>permitted third party</i> about a <i>regulated home finance plan</i> which would include a secured overdraft.</li> <li>• Identifying unsuitable advice.</li> <li>• Endorsing a <i>permitted third party's</i> advice.</li> </ul> <p>Note - a <i>licensed firm</i> cannot recommend an individual to enter into a <i>regulated home finance plan</i>. See Schedule 1 paragraph 7.</p>

\* 'Dealing' and 'deal' in this context mean buying, selling, subscribing for or underwriting a particular *investment*.



## GUIDANCE ON THE MEANING OF “IN AN INCIDENTAL MANNER”

Part 3 of the *Handbook* refers to the provision of *regulated activities* “in an incidental manner”.

- 1 The concept of incidentality is required by the Investment Services Directive which exempts from its requirements “persons providing an *investment* service where that service is provided in an incidental manner in the course of a professional activity” (Article 2.2(c)).
- 2 The focus is on how the *regulated activity* relates to the *professional service* from the standpoint of the *firm*. It is the sum of the individual transactions comprising the service which falls to be assessed, in relation to the professional activity of the *firm*.
- 3 In order for a *firm* to satisfy the *Institute* as to its provision of *regulated activities* in an incidental manner it should be able to show that:
  - a it is mainly concerned with providing *professional services* other than *regulated activities*; and
  - b the provision of the *regulated activities* is not isolated from the *firm’s* other activities such that there is in effect a separate business (this would however not exclude a *licensed firm* from operating specialist departments within it).
- 4 The test in 3(b) is not quantitative but relates to the manner in which the services are presented. This can be assessed by reference to questions such as:
  - a Does the *licensed firm* fully accept that in providing a *regulated activity* it is within the scope of the general ethical code or rules governing the profession?
  - b Is the *regulated activity* provided in conjunction with the professional activities of the *licensed firm*?
  - c Is it the policy of the *licensed firm* to endeavour to provide a full range of services to its *clients*, where these services are appropriate?
  - d In terms of the way the *regulated activities* are managed by the *licensed firm*, is it clear that the activity is not on a stand-alone basis, separate from the main activities of the *licensed firm*?
  - e Is the provision of *regulated activities* managed on a day-to-day basis by people who are *members* (or affiliated and subject to the rules) of a *Designated Professional Body*?
  - f Are the offices dealing with the *regulated activity* in the same locations as the offices from which the main *professional services* are provided?
- 5 Each of the questions listed may carry more or less weight depending on the facts of the particular case.

## GUIDANCE ON WORK THAT IS NOT A REGULATED ACTIVITY

The following lists are of types of professional work that are not *regulated activities*. List A is of services that are not *regulated activities*. List B is of services that have the appearance of *regulated activities* but are not because of exclusions or the specific definitions of *regulated activities* in the *Regulated Activities Order*. Neither list is exhaustive but list B includes those exclusions that are particularly relevant to *firms*.

### **By way of business test**

In addition to considering whether the *firm* is conducting a *regulated activity*, the *firm* should also consider whether the activities are being conducted "by way of business". This test is laid down under the "Carrying on regulated activities by way of business Order" and provides that an activity is only a *regulated activity* if it is conducted "by way of business".

The test is not the same for all types of *investment*.

### **Contracts of insurance**

In respect of activities relating to *contracts of insurance*, if no remuneration is received, the activity is not undertaken "by way of business". Whilst the test itself with regard to remuneration is clear cut, remuneration may take many forms and includes the receipt of commission. If a commission or fee is received, the *firm* may be conducting the activity by way of business. The *firm* would then consider other elements of the test.

Only if the *firm* is satisfied that no remuneration of any kind is received (and the activity in question relates to a *contract of insurance*) can the *firm* treat the activity as not regulated without considering other factors. A fee for an *insurance mediation activity* that is paid by the receipt of commission will be regarded as remuneration and so the activity will be done by way of business. Even if the *firm* rebates the commission to the *client* or offsets the commission against fees, this would be regarded as remuneration.

If the *firm* receives remuneration, then it can consider other factors. An activity which is sufficiently rare to be regarded as a one-off and where the remuneration received was not unduly substantial to the *firm*, may also be regarded as not being undertaken "by way of business".

### **Other types of investments (including regulated home finance plans)**

For other types of *investments*, remuneration is not necessarily the deciding or only factor. Even if no remuneration is received, it is possible that the *firm* is conducting the activity by way of business. However, if the activity is a "one-off" it may be conducted in a manner which is not "by way of business".

Factors which should be included in the *firm's* consideration and which may indicate that the activity is conducted "by way of business", and therefore regulated, are whether:

- remuneration is received;
- the activity is conducted frequently for that *client*;
- the activity is a one-off situation for that *client* but conducted frequently by the *firm*;
- the *firm* carries on other similar *regulated activities*;
- any remuneration received is significant in quantum for the *firm*, even if the advice is an isolated incident for both the *client* and the *firm*; or
- the *firm* advertises that it can conduct that type of activity.

*Firms* should also consider whether similar activities will arise in future and if so, whether the *firm* may undertake further work. A general willingness to involve itself in a *regulated activity* may mean that the occurrence is the first in an activity which may become frequent. In such circumstances, the *firm* should regard itself as conducting the activity "by way of business".

## List A

### **The following professional services are not regulated activities:**

- 1 Audit (whether or not governed by the Audit Regulations).
- 2 Acting as a reporting accountant.
- 3 Preparation of financial statements.
- 4 Bookkeeping and similar services.
- 5 Payroll preparation.
- 6 Tax compliance work.
- 7 Tax advisory work involving no more than generic *investment* advice.
- 8 Work that requires an insolvency licence.
- 9 Holding office as a company secretary.
- 10 Providing company secretarial services to a company.
- 11 Advising on the availability of grants and assisting with applications for grants.
- 12 Preparation of cash flow/profit projections to support a loan application, even if it is for a *regulated mortgage contract*.
- 13 Advising on the value of an asset, including shares.
- 14 Advising on the cancellation of *contracts of insurance* (such as general insurance contracts and pure protection insurance) but not *qualifying contracts of insurance*.
- 15 Providing a reference on behalf of a *client* in support of a mortgage application.
- 16 Advising on obtaining an unsecured overdraft.
- 17 Administration work for a *client's* pension scheme (e.g. calculating pension deductions for the payroll and paying over to the insurance company).

**Professional services that are not regulated activities due to exclusions or the specific definitions of regulated activities in the Regulated Activities Order**

In this section, the term "*investment*" means the type of *investment* noted in the second column. The third column provides examples and commentary.

	<b>Services</b>	<b>Types of investment</b>	<b>Examples/comments</b>
1.	<p>Generic advice – i.e. general discussion with a <i>client</i> about different types of <i>investments</i> (including pensions), but not discussions on the merits of a specific <i>investment</i>.                      (RAO article 53 refers to advice about a <u>particular investment</u>, RAO Article 53A refers to advice about a <u>particular regulated mortgage contract</u>, RAO Article 53B refers to advice about a <u>particular regulated home reversion plan</u>, RAO Article 53C refers to advice about a <u>particular regulated home purchase plan</u> and RAO Article 53D refers to advice about a <u>particular sale and rent back agreement</u>.)</p>	All types.	<p><i>Client</i> asks for advice on tax consequences of different types of pension.</p> <p>Taking a <i>client</i> through the decision trees for a stakeholder pension.</p> <p><i>Client</i> asks the <i>firm</i> to explain the differences between unit trusts and ISAs.</p> <p><i>Client</i> asks for advice about what type of <i>regulated mortgage contract</i> to have, e.g. a repayment mortgage, endowment, etc.</p> <p><i>Firm</i> suggests that a <i>client</i> should have business interruption insurance, but does not recommend a specific policy.</p>

**Professional services that are not regulated activities**

	<b>Services</b>	<b>Types of investment</b>	<b>Examples/comments</b>
2.	<p>Introducing a <i>client</i> to a <i>permitted third party</i> for the provision of independent advice.</p> <p>(RAO article 33.)</p>	<p><i>Regulated home finance plans, securities</i> (e.g. shares, unit trusts and rights under a <i>personal pension scheme</i>) and <i>contractually based investments</i> but excluding <i>qualifying contracts of insurance</i>.</p> <p>This exclusion does not apply to any <i>contract of insurance</i>.</p>	<p><i>Firm</i> introduces a <i>client</i>, who wants independent advice about the merits of buying specific shares, to a <i>permitted third party</i>.</p> <p><i>Firm</i> introduces a <i>client</i> to an independent mortgage adviser.</p> <p>Under this exclusion, introductions must only be made to entities able to give independent advice, and no comments can be made on the advice given by the <i>permitted third party</i>. There is a further exclusion for mortgage related introductions, see below.</p>
3.	<p>Introducing a <i>client</i> to a <i>permitted third party</i> authorised to undertake activities relating to <i>regulated home finance plans</i>.</p> <p>(RAO article 33A.)</p> <p>Further details about the activities which can be undertaken by an unauthorised/unlicensed <i>firm</i> in connection with <i>regulated home finance plans</i> are given in schedule 7.</p>	<p><i>Regulated home finance plans</i> only.</p>	<p>In addition to the above, introductions can be made where:</p> <ul style="list-style-type: none"> <li>• the <i>firm</i> does not handle <i>clients'</i> money in connection with <i>regulated home finance plans</i>;</li> <li>• details of any payment, commission, reward or advantage received is disclosed; and</li> <li>• if the <i>firm</i> is a <i>member</i> of the same group as the <i>firm</i> to whom the <i>client</i> is introduced, this is disclosed.</li> </ul> <p>This exclusion allows a <i>firm</i> to introduce to a mortgage lender, provided no advice is given. The <i>firm</i> must be satisfied that it complies with the ethical guide as to independence and objectivity.</p>

**Professional services that are not regulated activities**

	<b>Services</b>	<b>Types of investment</b>	<b>Examples/comments</b>
4.	<p>The provision of information.</p> <p>(RAO article 72C by way of exclusion from article 39A)</p> <p>This exclusion may only be used where the provision of information may reasonably be regarded as being incidental to the professional activities of the <i>firm</i>.</p> <p>Further details about the activities which can be undertaken by an unauthorised/unlicensed <i>firm</i> in connection with insurance are given in schedule 6.</p>	<p>All types of insurance (including general, and life and pensions).</p>	<p><i>Firms</i> without a <i>licence</i> cannot "introduce" a <i>client</i> to an insurance broker. However they can provide the <i>client</i> with information.</p> <p>A <i>firm</i> can provide the <i>client</i> with the name and contact details of an insurance broker/independent financial adviser who can provide the <i>client</i> with advice.</p> <p>A <i>firm</i> may also provide the <i>client</i> with a brochure/leaflet about the broker, or about an insurer which could include the <i>firm's</i> stamp or logo. <i>Firms</i> should ensure that they are in compliance with the ethical guide if they are providing information about an insurer.</p> <p>The <i>firm</i> can receive commission, but the <i>firm</i> must not contact the broker/independent financial adviser/insurer on the <i>client's</i> behalf, as this will then become a <i>regulated activity</i>.</p> <p>A <i>firm</i> may also provide information to <i>clients</i> to assist in claims handling.</p>

**Professional services that are not regulated activities**

	<b>Services</b>	<b>Types of investment</b>	<b>Examples/comments</b>
5.	<p>Advice, arranging a deal or dealing as agent regarding the sale or purchase of a body corporate but only if:</p> <ul style="list-style-type: none"> <li>• the object of the transaction may be reasonably regarded as the acquisition of day to day control over the affairs of the body corporate; or</li> <li>• the <i>shares</i> (together with ones already held) are 50% or more of the voting rights and the transaction is between two parties each of whom is a body corporate, a partnership, a single individual or a group of connected individuals. (RAO article 70.)</li> </ul>	<p><i>Securities.</i></p>	<p><i>Firm</i> advises a family owned company on a sale to a venture capitalist or to a company whose shares are publicly traded. This exemption applies even if the advice is about the balance of consideration between cash and publicly traded <i>securities</i>.</p>
6.	<p>A <i>firm</i> can arrange a deal in <i>investments</i>, deal as agent in <i>investments</i>, safeguard and administer <i>investments</i> or give advice, provided:</p> <ul style="list-style-type: none"> <li>• the service may <u>reasonably</u> be regarded as a <u>necessary</u> part of other <i>professional services</i>;</li> <li>• the <i>service</i> is <u>not</u> remunerated for this work separately from the other services; and</li> <li>• the business or profession does not otherwise consist of <i>regulated activities</i>.</li> </ul> <p>(RAO article 67, this exemption is known as the professional <i>firms'</i> exemption.)</p>	<p><i>Regulated home finance plans, securities</i> (e.g. shares and unit trusts) and <i>contractually based investments</i> but excluding <i>qualifying contracts of insurance</i>.</p> <p>This exclusion does not apply to any <i>contracts of insurance</i>.</p>	<p><i>Firm</i>, in valuing a <i>client's</i> share portfolio for CGT purposes, has the share certificates for checking. This does not constitute safeguarding and administering as it may be <u>reasonably</u> regarded as a <u>necessary</u> part of the tax service.</p> <p>A <i>firm</i> may be advising a <i>client</i> with cash flow problems and during the course of discussions, recommends that the <i>client</i> reduces their outgoings generally and this may include a recommendation to vary the terms of a <i>regulated mortgage contract</i>.</p> <p>(<i>Firms</i> should be careful of using this exemption as it may have to justify why it regards the transaction, which in all other respects relates to a <i>regulated activity</i>, as reasonably being a necessary part of another <i>professional service</i>.)</p>



**Professional services that are not regulated activities**

	<b>Services</b>	<b>Types of investment</b>	<b>Examples/comments</b>
7.	<p>Acting as a trustee or personal representative.</p> <p>A trustee or personal representative can undertake certain activities, subject to conditions. He or she can arrange deals with, or give advice to, a fellow trustee or beneficiary. He or she can also manage or safeguard and administer trust assets provided he or she does not hold out as providing such a service.</p> <p>This is provided that no remuneration is received over and above that for services as a trustee.</p> <p>(RAO article 66.)</p>	<p><i>Regulated home finance plans, securities (e.g. shares and unit trusts) and contractually based investments but excluding qualifying contracts of insurance.</i></p> <p>This exclusion cannot be used for any type of <i>contract of insurance</i>.</p>	<p><i>Firms</i> are sometimes approached to act as a trustee for a <i>client</i>. An individual may be appointed although it is effectively the <i>firm</i> that undertakes the work. The work will still be covered by the exclusion. Nor does the fact that the <i>firm</i> is remunerated on a time basis prevent the use of the exclusion.</p> <p>If the individual acts in a purely private capacity then the exclusion can still be used.</p> <p>Article 66 (6A) provides that a person acting as a trustee or personal representative is not subject to article 61, (the <i>regulated activity</i> of entering into a <i>regulated mortgage contract</i> as a lender or administering a <i>regulated mortgage contract</i>) where the borrower is a beneficiary under the trust or will in question.</p> <p>This allows the trustee to advance money to a beneficiary even if the loan meets the definition of a <i>regulated mortgage contract</i>.</p> <p>Similar provisions apply in Article 66 (6B), 66 (6C) and 66 (6D) in relation to <i>regulated home purchase plans, regulated home reversion plans and regulated sale and rent back agreements</i>.</p>

**Professional services that are not regulated activities**

	<b>Services</b>	<b>Types of investment</b>	<b>Examples/comments</b>
8.	<p>Making arrangements for a <i>client</i> to buy, sell, subscribe for or underwrite an <i>investment</i> with or through a <i>permitted third party</i> provided:</p> <ul style="list-style-type: none"> <li>• the transaction is on the advice of a <i>permitted third party</i>; or</li> <li>• the <i>client</i> has not requested advice on the merits of the <i>investment</i> from the <i>firm</i>, or if requested, the <i>firm</i> has refused and suggested that the <i>client</i> seek advice from a <i>permitted third party</i>.</li> </ul> <p>In both cases the <i>firm</i> must account to the <i>client</i> for any commission, etc which arises out of the transaction. (RAO article 29.)</p>	<p><i>Regulated home finance plans, securities</i> (e.g. shares, unit trusts and rights under a <i>personal pension scheme</i>) and <i>contractually based investments</i> but excluding <i>qualifying contracts of insurance</i>.</p> <p>This exclusion cannot be used for any type of <i>contract of insurance</i>.</p>	<p>A <i>firm</i> arranges a mortgage at the <i>client's</i> request, following advice given by a <i>permitted third party</i>. A <i>client</i> decides to buy or sell 'x' amount of shares in ABC Ltd. The <i>firm</i> can arrange the sale of those shares through a stockbroker.</p> <p>A <i>firm</i> arranges for a client to place an asset into a self-invested <i>personal pension scheme</i> at the client's request. No advice is given by the <i>firm</i>.</p> <p>(<i>Firms</i> should be wary of assisting a <i>client</i> in this way if the <i>firm</i> does not understand the transaction or the implications for the <i>client</i> of entering in to it.)</p>
9.	<p>Claims handling. (RAO articles 39B, 39C and 72C.)</p>	<p><i>Contracts of insurance</i> (i.e. all types of insurance, including general, life and pensions).</p>	<p><i>Firms</i> may provide information to <i>clients</i> in respect of claims where such activity is incidental to their profession or business which does not otherwise consist of regulated activities.</p> <p><i>Firms</i> may assist an insurer (but not a <i>client</i>) in the administration and performance of claims handling.</p>

**Professional services that are not regulated activities**

	<b>Services</b>	<b>Types of investment</b>	<b>Examples/comments</b>
10.	<p>Buying, selling, subscribing for or underwriting an <i>investment</i> as agent for a <i>client</i> with or through a <i>permitted third party</i> provided:</p> <ul style="list-style-type: none"> <li>the transaction is on the advice of a <i>permitted third party</i>; or</li> <li>the <i>client</i> has not requested advice on the merits of the <i>investment</i> from the <i>firm</i>, or if he did, the <i>firm</i> has refused and suggested that the <i>client</i> seek advice from a <i>permitted third party</i>.</li> </ul> <p>In both cases the <i>firm</i> must account to the <i>client</i> for any commission, etc which arises out of the transaction.</p> <p>(RAO article 22.)</p>	<p><i>Securities</i> (e.g. shares and unit trusts) and <i>contractually based investments</i> but excluding <i>qualifying contracts of insurance</i>.</p> <p>This exclusion does not apply to any <i>contract of insurance</i>.</p>	<p>Similar comments to those in paragraph 8 above apply.</p>
11.	<p>Managing <i>investments</i> under a power of attorney, provided all routine or day to day decisions relating to <i>investments</i> (which include <i>securities</i> or <i>contractually based investments</i>) are taken on behalf of the <i>firm</i> by a <i>permitted third party</i>.</p> <p>(RAO article 37.)</p>	<p><i>Securities</i> (e.g. shares and unit trusts) and <i>contractually based investments</i> but excluding <i>qualifying contracts of insurance</i>.</p> <p>This exclusion does not apply to any <i>contract of insurance</i>.</p>	<p>Applicable to those working under a power of attorney and trustees.</p>

### Guidance on work that is not a regulated activity (cont.)

In addition, because of the way that *regulated activities* are defined some activities are not regulated. These include:

- a Receiving documents about an *investment* solely for passing to the owner or as the owner directs.
- b Providing information about the value of any assets safeguarded.
- c Arranging for a company to issue its own shares is not engaging in a *regulated activity*, although arranging for a person to subscribe is a *regulated activity*.
- d Advising a company on the issue of shares is not a *regulated activity*, but advice to a potential shareholder to subscribe for the shares is.
- e Generally (except for *insurance mediation activities* conducted by way of business) transactions within a group of companies are not *investment* business.
- f Arranging for the transfer of shares for no financial consideration (for example between husband and wife).
- g Valuing *investments* where no advice is given as to the merits of buying or selling the *investment*.
- h Advising a *client* about the commercial utility of futures, options and contracts for differences, e.g. to support commercial bank borrowing or as a commercial hedging mechanism.
- i Advice to surrender an existing *regulated mortgage contract*, *regulated home purchase plan* or *regulated home reversion plan*.

## GUIDANCE ON CORPORATE FINANCE ACTIVITIES

The purpose of this schedule is to describe some common corporate finance scenarios and identify whether these are *regulated activities* or not and if so whether a *firm* needs FCA authorisation, a *DPB licence*, or are unregulated and so no authorisation or *licence* is needed.

Section A of the table refers to general situations, whilst Section B provides more detailed examples.

The analysis of many of the examples in Section B uses the sale of a body corporate exclusion (*Regulated Activities Order* (RAO) article 70) or the fact that only advice given to a person in his capacity as an investor is *investment* business advice for the purposes of the RAO (article 53).

Article 70 provides two alternative tests and a transaction must meet one of these to be excluded and so not be a *regulated activity*. The exclusion within article 70 applies to the *regulated activities* of dealing in *investments* as principal (article 14), dealing in *investments* as agent (article 21), arranging deals in *investments* (article 25) and advising on *investments* (article 53). Article 70 states that:

- a the transaction is one to acquire or dispose of shares in a body corporate (other than an open-ended investment company) or which is entered into for the purposes of such an acquisition or disposal; and
- b either:
  - i) the conditions set out in the paragraph below are met; or
  - ii) those conditions are not met, but the object of the transaction may nevertheless reasonably be regarded as being the acquisition of day to day control of the affairs of the body corporate.

The conditions in paragraph b) (i) are that:

- a the shares consist of or include 50% or more of the voting shares in the body corporate; or
- b the shares, together with any already held by the person acquiring them, consist of or include at least 50% of such shares; and

in either case, the vendor and acquirer is either a body corporate, a partnership, a single individual or a group of connected individuals.

It is not necessary for the vendor and the acquirer to be the same "type". These conditions must be met in both parts, i.e. a and b(i) or b(ii).

A group of connected individuals means:

- a in relation to the vendor, a single group of persons each of whom is:
  - i) a director or manager of the body corporate;
  - ii) a close relative of any such director or manager; or
  - iii) a person acting as trustee for any person falling within paragraphs i) or ii).
- b in relation to the acquirer, a single group of persons each of whom is:
  - i) a person who is or is to be a director or manager of the body corporate;
  - ii) a close relative of any such person; or
  - iii) a person acting as trustee for any person falling within paragraphs i) or ii).

The alternative test under article 70b (ii) relates to day to day control and can only be used where the *firm* is satisfied that it is acting for a person (which could be a group of disparate persons) who is seeking to acquire day to day control. Where a group of persons are acting together, it may be difficult to establish that they seek to possess a controlling interest (i.e. day to day control). A group of persons must be acting in concert to meet the test. The *firm* does not need to act for all of the potential shareholders, provided those it collectively represents are seeking to acquire control.

The test under 70b (ii) must therefore be considered carefully in the light of the situation faced by the *firm*. The table cannot always provide definitive guidance as to whether the article 70 exclusion can be applied, but does indicate where it may be considered.

No distinction is made in the table between shares that are or will be traded on a *public market* and those which are not, unless stated.

For an activity to be undertaken by a *licensed firm* the activity must be complementary to or arising out of another *professional service* to that *client*. If this condition is not met, *FCA* authorisation would be required.

(N/a in the table indicates that the particular form of *licence/authorisation* is not needed.)

### Guidance on Corporate Finance Activities

Situation	Client and activity	Can be done without authorisation or a licence	Can be done under a DPB licence	Requires FCA authorisation
<b>Section A</b>				
<b>General</b>				
1. Company formation.	Advising on and arranging the formation of a company	Yes. Provided no advice is given to a prospective purchaser of shares.	N/a	N/a
2. Valuations.	Providing a valuation of shares for a client.	Yes, provided no advice is given as to whether to sell or purchase the shares.		
3. Issuing shares.	Advice and assistance to a company to issue shares	Yes. Company secretarial services and advice on the issue of shares is not regulated. If the <i>firm</i> becomes involved in bringing the parties together, then this is the <i>regulated activity</i> of arranging. See example 4 and more detailed example 10 below.	N/a	N/a
4. Company sells 10% of its shares for a financial consideration.	a) Arranging the transaction for either party	No	Yes.	N/a
	b) Advising either party on the sale or purchase.	No	Yes, provided the shares being offered are not, nor will be traded on a <i>public market</i> when <i>FCA</i> authorisation is required when advising the purchaser. Advice can be given to the vendor.	Yes, where advice is given to the purchaser, even if the shares being offered are, or will be traded on a <i>public market</i>

### Guidance on Corporate Finance Activities

Situation	Client and activity	Can be done without authorisation or a licence	Can be done under a DPB licence	Requires FCA authorisation
5. Advising and arranging for a reorganisation of shareholding amongst family members, for no valuable consideration.	Advising and arranging for either party.	Yes. Where there is no consideration involved, there is no <i>regulated activity</i> .	N/a	N/a
<b>Section B</b>				
<b>Takeovers</b>				
6. Company A makes a cash take-over bid for company B.	a) Advice to company A.	Yes. Sale of a body corporate exclusion will apply.	N/a.	N/a.
	b) Arranging the transaction for company A.	Yes. Sale of a body corporate exclusion will apply.	N/a.	N/a.
	c) Advice to shareholders of B.	Yes, if the sale of a body corporate exclusion is met.	Yes, if the sale of a body corporate exclusion does not apply.	N/a.
	d) Arranging the transaction for the shareholders of B.	Yes, if the sale of a body corporate exclusion is met.	Yes, if the sale of a body corporate exclusion does not apply.	N/a.
7. Company A makes a take-over bid for company B, but company A issues shares to fund the acquisition.	a) Advice to company A.	Yes. Sale of body corporate exclusion applies and advice on the issue of shares is not a <i>regulated activity</i> .	N/a.	N/a.
	b) Arranging the transaction for company A.	Yes. The sale of a body corporate exclusion applies to the issue of shares.	N/a.	N/a.



### Guidance on Corporate Finance Activities

Situation	Client and activity	Can be done without authorisation or a licence	Can be done under a DPB licence	Requires FCA authorisation
	c) Advice to shareholders of B.	Yes, if the sale of a body corporate exclusion is met. The exclusion will also extend to the advice given on whether the vendor should accept cash or shares.	Yes, if the sale of a body corporate exclusion does not apply. If the shares being offered are or will be traded on a <i>public market</i> and the exclusion does not apply, then <i>FCA</i> authorisation is required.	<i>FCA</i> authorisation is needed if the sale of a body corporate exclusion does not apply and the shares being offered to B as consideration are or will be traded on a <i>public market</i> .
	d) Arranging the transaction for the shareholders of B.	Yes, if the sale of a body corporate exclusion is met.	Yes, if the sale of a body corporate exclusion does not apply.	N/a.
	e) Advice to company B.	Yes. The company is not an investor and therefore the advice is not a <i>regulated activity</i> .	N/a.	N/a.
8. Management buy-outs, buy in, etc.	a) Advice to the purchasing team. b) Arranging the transaction for the purchasing team. c) Advice to the vendors. d) Arranging the transaction for the vendors.	See the answers given under scenario 6, the purchasers would be treated as "company A", even if they were not a company.	See scenario 6.	See scenario 6.

### Guidance on Corporate Finance Activities

Situation	Client and activity	Can be done without authorisation or a licence	Can be done under a DPB licence	Requires FCA authorisation
9. Management buy-outs using a new company (Newco) as a vehicle for the purchase.	a) Advice to the purchasing team.	<p>Yes - advice on the issue of shares in Newco is not a <i>regulated activity</i>.</p> <p>Advice on the acquisition of shares in Newco relates to the vehicle through which to make the buy-out and therefore exclusion 70 applies. Alternatively, exclusion 70 could apply in its own right.</p> <p>The transaction is likely to meet exclusion 70 b (ii) as the buy out team will be acting collectively.</p>	N/a.	N/a.
	b) Arranging for the team.	<p>Yes - arranging the issue of shares, as well as the acquisition of the shares by the team is likely to meet exclusion 70 on the same basis as in 9a above.</p>	N/a.	N/a.
	c) Advising Newco on the purchase of Target and arranging the purchase.	<p>Yes - exclusion 70 applies to both advising and arranging.</p>	N/a.	N/a.

### Guidance on Corporate Finance Activities

Situation	Client and activity	Can be done without authorisation or a licence	Can be done under a DPB licence	Requires FCA authorisation
<b>Rights Issue</b> 10. Company makes a rights issue.	a) Advising the company.	Yes, advice on the issue of shares is not a <i>regulated activity</i> .	N/a.	N/a.
	b) Arranging for the issue of shares.	Company secretarial services can be undertaken but if the arranging goes further than that and brings the parties to the transaction together, this becomes a <i>regulated activity</i> .	Yes. However, if a financial promotion is issued, this may require approval or issue by an <i>FCA authorised firm</i> . (A <i>DPB licensed firm</i> cannot approve financial promotions or issue them unless an exclusion in the Financial Promotions Order applies.)	Yes, if a financial promotion is involved which does not meet any exclusion in the Financial Promotions Order and approval of the promotion is not sought from another authorised <i>firm</i> .
	c) Advising the shareholders to take up the rights issue.	No. As the advice to an investor is a <i>regulated activity</i> .	Yes, unless the shares are or will be traded on a <i>public market</i> .	Yes, if the shares are or will be traded on a <i>public market</i> .
11. Company wants to go public.	a) Advice to the company.	Yes. As the company is not an investor, it is not a <i>regulated activity</i> .	N/a.	N/a.
	b) Advice to the existing shareholders to sell.	No. As this is advice to an investor, this is a <i>regulated activity</i> .	Yes, as advice to sell can be given under a <i>licence</i> .	N/a.

### Guidance on Corporate Finance Activities

Situation	Client and activity	Can be done without authorisation or a licence	Can be done under a DPB licence	Requires FCA authorisation
	c) Arranging for the flotation.	Company secretarial services can be undertaken but if the arranging goes further than that and brings the parties to the transaction together, this becomes a <i>regulated activity</i> .	May be able to do under a DPB <i>licence</i> , but may be blocked by the regulations of an exchange. If a financial promotion is involved, this may require issue or approval by an <i>FCA authorised firm</i> .	Yes, if a financial promotion is involved which does not meet any exclusions within the Financial Promotions Order and approval of the promotion is not sought from another authorised <i>firm</i> .
	d) Advising potential shareholders to subscribe.	No - advice to subscribe is a <i>regulated activity</i> .	No, advice to subscribe for a share that will be listed is a <i>regulated activity</i> , which requires <i>FCA</i> authorisation.	Yes.
<b>Company re-structuring</b> 12. The re-structuring involves setting up a group and therefore the creation of new companies.	a) Advice to the company.	Yes - advice on the issue of shares is not a <i>regulated activity</i> .	N/a.	N/a.
	b) Arranging for the company.	Yes – arranging for the parent to subscribe is a <i>regulated activity</i> , but falls under exclusion 70.	N/a.	N/a.

### Guidance on Corporate Finance Activities

Situation	Client and activity	Can be done without authorisation or a licence	Can be done under a DPB licence	Requires FCA authorisation
13. The restructuring involves de-merging company A into a number of separate companies (B and C).	a) Advising company A.	Yes, advice on the issue of shares in B and C is not a <i>regulated activity</i> .	N/a.	N/a.
	b) Advice to the prospective shareholders in B and C, who are the current shareholders in A.	Yes, if the sale of a body corporate exclusion is met. If not, advice to acquire shares in B and C is a <i>regulated activity</i> .	Yes, unless the shares are or will be traded on a <i>public market</i> . If they can be and no exclusion applies, then <i>FCA</i> authorisation is required.	<i>FCA</i> authorisation is needed if the sale of a body corporate exclusion does not apply and the shares are or will be traded on a <i>public market</i> .
	c) Arranging for the issue of shares in companies B and C to the shareholders in company A.	Yes, this could fall under the sale of a body corporate exclusion. Company secretarial services can also be undertaken which would cover providing administrative assistance to the companies in issuing the shares.  If not, arranging would be a <i>regulated activity</i> .	Yes, unless a financial promotion requires approval. A <i>licensed firm</i> could arrange for the issue of shares even if they are or will be traded on a <i>public market</i> , provided no advice has been given, see b above.	Yes, even if the shares are or will be traded on a <i>public market</i> , advice has been given to those acquiring the shares and exclusion 70 did not apply.
14. Two companies (A and B) merge into a third (C).	a) Advice to the shareholders of A and B.	Yes, if the sale of a body corporate exclusion is met.	Yes. If the sale of a body corporate exclusion does not apply.	N/a.
	b) Advice to C.	Yes, acquiring companies A and B would come under the sale of a body corporate exclusion.	N/a.	N/a.

### Guidance on Corporate Finance Activities

Situation	Client and activity	Can be done without authorisation or a licence	Can be done under a DPB licence	Requires FCA authorisation
15. Company wishes to do a share buy back.	a) Advice to the company.	Yes, as not a <i>regulated activity</i> .	N/a.	N/a.
	b) Advice to the shareholders.	No, advice to an investor to sell is a <i>regulated activity</i> .	Yes.	N/a.
<b>Trade investment</b> 16. Company A makes a trade <i>investment</i> in company B (i.e. less than a controlling stake).	a) Advising company A.	No, advice to invest is a <i>regulated activity</i> .	Yes, but advice could not be given to an individual if company B was listed.	N/a.
	b) Advising shareholders of B.	No, advice to an investor to sell is a <i>regulated activity</i> .	Yes, advice on the sale of shares can be provided under a DPB <i>licence</i> .	N/a.

### GUIDANCE ON INSURANCE MEDIATION ACTIVITIES

The following are examples of activities which a *firm* may be involved in which could amount to *insurance mediation activities*.

The table identifies whether the activity is regulated under the terms of the *Regulated Activities Order* (RAO) and if so, whether it can be conducted by a *licensed firm* or only an *FCA* authorised *firm* with the appropriate permission category. The table also looks at whether the activity is remunerated in any way or meets the other requirements for not being conducted “by way of business”. If the activity is not conducted “by way of business” it is not a *regulated activity*. (See Part 3, Schedule 4 for information on the “by way of business” test.)

This table is not exhaustive and is simplified to demonstrate the most common situations. These may not match the specific circumstances which a *firm* has to consider and reference should be made to the other schedules in this Part of the *Handbook* for further guidance.

	<b>Activity</b>	<b>RAO reference/comment</b>	<b>Is this regulated as an insurance mediation activity?</b>	<b>Who can undertake this work?</b>
1.	Discussing with <i>client</i> about need for insurance generally.	Generic advice.	No.	<i>Any firm.</i>
2.	Discussing with <i>client</i> about need to take out a particular type of insurance, e.g. key man, life insurance medical cover, etc.	Generic advice.	No.	<i>Any firm.</i>
3.	Discussing with <i>client</i> about which particular broker/insurer to use (but not the particular insurance contract).	Generic advice,	No.	<i>Any firm.</i>

### Guidance on Insurance Mediation Activities

	<b>Activity</b>	<b>RAO reference/comment</b>	<b>Is this regulated?</b>	<b>Who can undertake this work?</b>
4.	<p>Handing over an insurance broker's/insurer's leaflets in the office. The leaflet may contain a proposal form and the <i>firm's</i> details. The <i>firm</i> may receive commission from the insurance broker/insurer. (The insurance in question must be incidental to the <i>firm's</i> business.)</p> <p>The <i>firm</i> does not recommend a particular policy.</p>	<p>Potentially introducing, RAO article 25 arranging, but excluded under the provision of information exclusion (RAO article 72C).</p>	No.	Any <i>firm</i> .
5.	<p>Sending out a mailshot to <i>clients</i> enclosing an insurance broker's/insurer's leaflet on a particular policy, but the <i>firm</i> does not endorse or recommend the policy. The leaflet may contain a proposal form and the <i>firm</i> may receive commission from the insurance broker/insurer. (The insurance in question must be incidental to the <i>firm's</i> business.)</p>	<p>Potentially introducing, RAO article 25 arranging, but excluded under the provision of information exclusion (RAO article 72C, provided the insurance in question is related to the <i>firm's</i> business).</p>	No.	Any <i>firm</i> .



### Guidance on Insurance Mediation Activities

	<b>Activity</b>	<b>RAO reference/comment</b>	<b>Is this regulated?</b>	<b>Who can undertake this work?</b>
6.	Recommending to a <i>client</i> that he/she contact a named insurance broker/insurer. The <i>firm</i> can provide the <i>client</i> with the contact details of the insurance broker/insurer. Commission or remuneration may be received. However, no direct contact is made between the <i>firm</i> and the insurance broker/insurer in respect of introducing the individual <i>client</i> . (The insurance in question must be incidental to the <i>firm's</i> business.)	Introducing, RAO article 25 arranging, but excluded under the provision of information exclusion (RAO article 72C, provided the insurance in question is related to the <i>firm's</i> business).	No.	Any <i>firm</i> .
7.	Introducing a <i>client</i> to a broker/insurer, where the <i>firm</i> contacts the broker/insurer.	Introducing, RAO article 25, arranging	Yes, if it is conducted "by way of business". No, if it is not conducted "by way of business", for example, if no remuneration of any kind is received.	The <i>regulated activity</i> can be undertaken by a <i>licensed firm</i> or an <i>FCA authorised firm</i> .
8.	Introducing a <i>client</i> to a broker/insurer for insurance advice (e.g. personal pension advice) where the <i>firm</i> contacts the broker/insurer. Commission or remuneration for the introduction is received.	Introducing RAO article 25, arranging.	Yes.	A <i>licensed firm</i> or an <i>FCA authorised firm</i> .

### Guidance on Insurance Mediation Activities

	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
9.	Introducing a <i>client</i> to a broker for independent <i>investment</i> advice where the broker is contacted by the <i>firm</i> . However, the introduction is not with regard to any particular type of <i>investment</i> , such as an introduction for advice on insurance contracts or on pensions. Commission or remuneration for the introduction is received.	Introducing, RAO article 25 “arranging”, but as the introduction does not specifically relate to <i>contracts of insurance</i> , the exclusion under RAO article 33 can be used.	No.	<i>Any firm.</i>
10.	Advising a <i>client</i> on the selection of a particular policy.	Advising, RAO article 53.	Yes.	<i>A licensed firm</i> can advise on the selection of a particular <i>contract of general insurance</i> or pure protection policy, but only an <i>FCA</i> authorised <i>firm</i> can advise on the selection of <i>qualifying contracts of insurance</i> (e.g. life and pensions contracts).
11.	Advising on the level of cover needed.	Professional service.	No.	<i>Any firm.</i>
12.	Explaining the terms of a contract recommended by an independent financial adviser or insurer.	Professional service.	No.	<i>Any firm.</i>

### Guidance on Insurance Mediation Activities

	<b>Activity</b>	<b>RAO reference/comment</b>	<b>Is this regulated?</b>	<b>Who can undertake this work?</b>
13.	Commenting on, agreeing or disagreeing with the specific advice given by an independent financial adviser or insurer.	Advising, RAO article 53.	Yes.	<p><i>A licensed firm</i> can comment on the advice given by a <i>FCA</i> authorised <i>firm</i> and can make its own specific recommendations on the selection of a particular <i>contract of general insurance</i> or pure protection policy.</p> <p>Only an <i>FCA</i> authorised <i>firm</i> can advise on the selection of <i>qualifying contracts of insurance</i> (e.g. life and pensions contracts).</p>
14.	Completing a proposal form for a <i>client</i> .	Arranging, RAO article 25.	<p>Yes, if it is conducted “by way of business”.</p> <p>No, if it is not conducted “by way of business”, for example, if no remuneration of any kind is received.</p>	The <i>regulated activity</i> can be undertaken by a <i>licensed firm</i> or an <i>FCA</i> authorised <i>firm</i> .
15.	Providing information to the <i>client</i> who fills in the proposal form.	Professional service.	No.	<i>Any firm</i> .
16.	Providing information directly to the insurer, at the insurer’s request on the financial position of the <i>client</i> , such as turnover and profits when the <i>client</i> is applying for loss of profits insurance.	Professional service	No	<i>Any firm</i>

### Guidance on Insurance Mediation Activities

	<b>Activity</b>	<b>RAO reference/comment</b>	<b>Is this regulated?</b>	<b>Who can undertake this work?</b>
17.	Sending the proposal form to an insurance broker/insurer.	Arranging, RAO article 25.	Yes, if it is conducted “by way of business”. No, if it is not conducted “by way of business”, for example, if no remuneration of any kind is received.	The <i>regulated activity</i> can be undertaken by a <i>licensed firm</i> or an <i>FCA authorised firm</i> .
18.	Paying the initial premium on behalf of the <i>client</i> (regardless of whether this is dealt with through the <i>firm’s</i> own bank account or where the <i>client’s</i> cheque is forwarded to the insurer/broker directly).	Arranging RAO article 25.	Yes, if it is conducted “by way of business”. No, if it is not conducted “by way of business”, for example, if no remuneration of any kind is received.	The <i>regulated activity</i> can be undertaken by a <i>licensed firm</i> or an <i>FCA authorised firm</i> .
19.	Calculating the pension deductions as part of a payroll service.	Professional service.	No.	<i>Any firm.</i>
20.	Paying the premium as part of a payroll service after the policy is set up. (See example 18 above with regard to the initial premium.)	Professional service.	No.	<i>Any firm.</i>
21.	Acting as a post-box for the receipt of policy documentation for passing on to the <i>client</i> .	Professional service.	No.	<i>Any firm.</i>

### Guidance on Insurance Mediation Activities

	<b>Activity</b>	<b>RAO reference/comment</b>	<b>Is this regulated?</b>	<b>Who can undertake this work?</b>
22.	Assisting the <i>client</i> with claims by notifying the claim to the insurer.	Performance and administration RAO article 39A.	Yes, if it is conducted “by way of business”. No, if it is not conducted “by way of business”, for example, if no remuneration of any kind is received.	The <i>regulated activity</i> can be undertaken by a <i>licensed firm</i> or <i>FCA authorised firm</i> .
23.	Assisting the <i>client</i> with claims by completing claim form.	Performance and administration RAO article 39A.	Yes, if it is conducted “by way of business”. No, if it is not conducted “by way of business”, for example, if no remuneration of any kind is received.	The <i>regulated activity</i> can be undertaken by a <i>licensed firm</i> or <i>FCA authorised firm</i> .
24.	Providing information for the <i>client</i> to complete a claim form.	Professional service.	No.	<i>Any firm</i> .
25.	Negotiating the settlement of a claim with the insurer on behalf of the <i>client</i> .	Performance and administration RAO article 39A.	Yes, if it is conducted “by way of business”. No, if it is not conducted “by way of business”, for example, if no remuneration of any kind is received.	The <i>regulated activity</i> can be undertaken by a <i>licensed firm</i> or <i>FCA authorised firm</i> .

### Guidance on Insurance Mediation Activities

	<b>Activity</b>	<b>RAO reference/comment</b>	<b>Is this regulated?</b>	<b>Who can undertake this work?</b>
26.	Assisting the <i>client</i> with supporting arguments over the quantum of a claim, where the <i>firm</i> has provided the quantum, e.g. for loss of profits claim.	Professional service.	No.	<i>Any firm.</i>
27.	Acting as an expert witness for a <i>client</i> or insurer, but not providing any other service which may amount to the performance and administration of a <i>contract of insurance</i> .	Professional service.	No.	<i>Any firm.</i>
28.	Arranging (or managing) contracts of insurance under a Power of Attorney and commission retained by the <i>firm</i> from the insurer.	Arranging RAO article 25.	Yes.	<i>A licensed firm or an FCA authorised firm.</i>

### GUIDANCE ON HOME FINANCE BUSINESS ACTIVITIES

The following are examples of activities which a *firm* may be involved in, which relate to *regulated home finance plans* or loans and could amount to *regulated activities*. Home finance plans discussed in this section are the regulated ‘products’ of mortgages, home reversion plans and home purchase plans, the most notable example of which are Islamic ‘mortgages’.

The table identifies the activity, where appropriate the reference to the *Regulated Activities Order (RAO)* and if it is a *regulated activity*, whether the activity can be conducted by a *licensed firm* or only an *FCA* authorised *firm* with the appropriate permissions category. The table does not consider whether the activity is conducted “by way of business”. If the activity is not conducted “by way of business” it is not a *regulated activity*. (See Part 3, Schedule 4 for information on the “by way of business” test.)

This table is not exhaustive and is simplified to demonstrate the common situations. These may not match the specific circumstances which a *firm* has to consider and reference should be made to the other schedules in this Part of the *Handbook* for further guidance.

Guidance on home finance business activities				
	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
1.	Discussing with and recommending to a <i>client</i> about the need for a home finance plan or loan.	Generic advice.	No.	Any <i>firm</i> .
2.	Discussing with and recommending to a <i>client</i> about the type of mortgage to obtain (endowment, repayment, etc).	Generic advice.	No.	Any <i>firm</i> .
3.	Discussing with and recommending to <i>client</i> about which particular lender (which provides a range of home finance plans) to go to.	Generic advice. (Note, a <i>firm</i> cannot provide advice under this paragraph with advice under paragraph 2 and rely on the advice being "generic" if the two taken together results in a recommendation of a specific mortgage.)	No.	Any <i>firm</i> .
4.	Discussing with and recommending to <i>client</i> about which particular lender (which provides only one type of <i>regulated home finance plan</i> ) to contact.	RAO article 53A/B/C/D(1) advice. (As the lender has only one <i>regulated home finance plan</i> to offer, the recommendation of the lender will effectively result in the recommendation of a specific mortgage.)	Yes.	An <i>FCA</i> authorised <i>firm</i> .

Guidance on home finance business activities				
	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
5.	Providing the <i>client</i> with leaflets or information about <i>regulated home finance plans</i> , but not recommending a particular <i>regulated home finance plan</i> .	Generic advice	No.	Any <i>firm</i> .
6.	Contacting a mortgage broker, who provides independent advice, to introduce a <i>client</i> for home finance business.	Arranging, but excluded by RAO article 33 (introductions for independent advice).	No.	Any <i>firm</i> .
7.	Contacting a lender to introduce a <i>client</i> for home finance business. The <i>firm</i> does not handle money relating to the home finance plan and makes certain disclosures required by RAO article 33A exclusion. (See list B, schedule 4 to this Part, example 3.) The <i>firm</i> should ensure that in doing so, it does not recommend a specific <i>regulated home finance plan</i> . See 4 above. The <i>firm</i> may also be able to use RAO article 29A.	Arranging, but excluded by RAO article 33A (introductions for home finance business). May also be excluded by RAO article 29A (arranging deals with an authorised person) where no advice is given by the <i>firm</i> .	No.	Any <i>firm</i> , subject to compliance with the Code of Ethics.
8.	Contacting a lender to introduce a <i>client</i> for home finance business. The <i>firm</i> handles clients' money.	RAO article 25A/B/C/E(2) arranging a mortgage contract. (If the introduction is not for independent advice and the <i>firm</i> handles clients' money, neither RAO article 33 or RAO article 33A exclusions can be used.)	Yes.	A <i>licensed firm</i> or an <i>FCA authorised firm</i> .
9.	Providing a cash flow forecast for a <i>client</i> to support a home finance plan application.	Professional service.	No.	Any <i>firm</i> .
10.	Providing a reference for a <i>client</i> to support a home finance plan application.	Professional service.	No.	Any <i>firm</i> .
11.	Recommending a <i>client</i> to take out a specific <i>regulated home finance plan</i> .	RAO article 53A, 53B, 53C or 53D, the provision of advice.	Yes.	An <i>FCA authorised firm</i> .



Guidance on home finance business activities				
	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
12.	Recommending a <i>client</i> to <u>vary</u> the terms of an existing <i>regulated home finance plan</i> .	RAO article 53A, 53B, 53C or 53D, the provision of advice.	Yes.	A <i>licensed firm</i> or an <i>FCA authorised firm</i> .
13.	Recommending a <i>client</i> to take out a specific unsecured overdraft.	Not a <i>regulated mortgage contract</i> as not secured on the borrower's home.	No.	Any <i>firm</i> .
14.	Recommending a <i>client</i> to take out a specific overdraft secured on his home.	RAO article 53A, the provision of advice. (If secured by a first charge, such an overdraft is likely to be a <i>regulated mortgage contract</i> .)	Yes.	An <i>FCA authorised firm</i> .
15.	Advising a <i>client</i> to surrender a <i>regulated home finance plan</i> .	Professional service.	No.	Any <i>firm</i> .
16.	Commenting on, agreeing or disagreeing with the advice given in respect of a specific <i>regulated home finance plan</i> by a mortgage broker or lender.	RAO article 53A, 53B, 53C or 53D, the provision of advice.	Yes	A <i>licensed firm</i> , provided the <i>firm</i> does not <i>recommend</i> a specific alternative <i>regulated mortgage contract</i> . An <i>FCA authorised firm</i> .
17.	Explaining the terms of a <i>regulated home finance plan</i> offer to a <i>client</i> .	Professional service.	No.	Any <i>firm</i> .
18.	Providing the <i>client</i> with information to complete a <i>regulated home finance plan</i> application form.	Professional service.	No	Any <i>firm</i> .
19.	Assisting the <i>client</i> by completing a <i>regulated home finance plan</i> application form.	Arranging, although it may be excluded by RAO article 29 (arranging with an authorised person) if the transaction is on the advice of an authorised person, ie you cannot complete an application form on a speculative basis, but you can if the client has been advised to enter into the contract by an authorised person.	Yes, but an unauthorised <i>firm</i> can use the exclusion in RAO article 29, see previous column.	A <i>licensed firm</i> or an <i>FCA authorised firm</i> .

Guidance on home finance business activities				
	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
20.	Acting as an intermediary between the <i>client</i> and the lender to put in place a <i>regulated home finance plan</i> , but where no advice is given to the <i>client</i> .	Arranging, but excluded by RAO article 29 (arranging with an authorised person).	Yes, but an unauthorised <i>firm</i> can use the exclusion in RAO article 29, see item 19.	Any <i>firm</i> .
21.	Acting as an intermediary between the <i>client</i> and the lender to advise on and put in place a <i>regulated home finance plan</i> .	RAO article 25A/B/C/E(2) arranging and RAO article 53A/B/C/D advising. (Where advice is given, a <i>firm</i> cannot use RAO article 29A exclusion and therefore the arranging is a <i>regulated activity</i> .)	Yes.	An <i>FCA</i> authorised <i>firm</i> .

## GUIDANCE ON PROFESSIONAL SERVICES IN RELATION TO HMRC INVESTIGATIONS

**Methods of providing service**

Many *firms* act for their *clients* in dealing with investigations by the HMRC. They will assist a *client* in establishing the relevant facts and in presenting these to the appropriate authority. Resolving the matter with the HMRC is a professional service. It could be undertaken on behalf of a *client* (or a third party such as an insurer). Any *firm* can do this, as it is not a *regulated activity*.

In some cases, a *client* has an insurance contract (commonly known as fee protection or professional expenses insurance) that pays for the *firm's* costs. In this case the *firm*, as well as dealing with the HMRC, may also deal with the insurer on behalf of the *client*, such as notifying the start of an investigation to the insurer. This is the *regulated activity* of claims handling and unless the *firm* is *DPB licensed* or *FCA* authorised it will not be able to do this.

When considering the following table, many *firms* will probably take the view that what they do is not insurance related, but they should bear in mind the following features of an insurance contract:

- one party, A, will make one or more payments to another party, B;
- so that B will pay A money or provide a service to it;
- in response to a defined event happening to A;
- the occurrence of which is uncertain (either as to timing or even if it will occur); and
- the event is adverse to the interests of A (as tax investigations are likely to be).

Contrast this with the situation where a *firm* agrees to provide a service (e.g. prepare a set of accounts) for a fixed fee. In this case the defined event, preparation of the accounts, will take place, there is no uncertainty and the event is unlikely to be adverse. It is just that the *firm* is willing to quote a fixed fee as, based on past experience, it can estimate with reasonable accuracy the likely costs of the task.

However, the situation can be even more complicated if a *firm* is insured (i.e. it is the only policy holder and insured party) and *clients* have no direct rights against the insurer, but can require the *firm*, if necessary, to make a claim against the contract for their benefit. In this situation the *firm* is not undertaking a *regulated activity* as it is not recommending, selling or arranging an insurance contract on a *client's* behalf.

The following table sets out whether or not a *firm* is undertaking a regulated insurance activity. The examples are not exhaustive and are simplified to demonstrate the most common circumstances. These may not match the specific circumstances which a *firm* has to consider and reference should be made to the other schedules in this Part of the *Handbook* for further guidance.

### Guidance on professional services in relation to HMRC investigations

	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
1.	A <i>firm</i> offers a service of dealing with tax investigations as and when requested by a <i>client</i> , which is paid for in full by the <i>client</i> at the time of delivery of the service. (There is no contract with an insurance company.)	The <i>firm</i> is providing a professional service.	No.	<i>Any firm.</i>
2.	A <i>firm</i> agrees, for a fixed fee, to deal with a <i>client's</i> tax affairs (as agreed with the <i>client</i> , e.g. preparation and submission of a personal or business tax return) and to deal with any minor technical or routine queries arising from <u>that</u> tax return. (There is no contract with an insurance company.)	<p>The HMRC asks a very specific question that can usually be answered from the <i>firm's</i> files, such as the detailed breakdown of an amount in the financial statements. These are commonly known as 'aspect' enquiries. While these are likely to vary in complexity, from a cost perspective, these are not sufficiently substantial for <i>firms</i> to usually consider the use of an insurance contract.</p> <p>The fee charged needs to represent a genuine estimate of dealing with an average number of enquiries that the <i>firm</i> expects to receive. The <i>firm</i> would retain discretion and could refuse to deal with some enquiries on the grounds that the subject of the enquiry is too complex and not covered by the fee.</p>	No.	<i>Any firm.</i>
3.	As above, but a <i>client</i> decides to pay only for the preparation and submission and then to pay the <i>firm</i> to deal with subsequent enquiries if these arise, i.e. as in 1 above. (There is no contract with an insurance company.)	The <i>firm</i> is providing a professional service.	No.	<i>Any firm.</i>

### Guidance on professional services in relation to HMRC investigations

	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
4.	<p><i>Firm</i> offers a service (either as part of another service and so not paid for directly and provided to all <i>clients</i>, or as a separate fee so only provided to those <i>clients</i> that request it) to deal with any HMRC enquiries that arise during the period of service, for no additional fee. (There is no contract with an insurance company.)</p>	<p>This is effectively an insurance contract. The <i>firm</i> has agreed to deal with any issue that may arise.</p>	<p>Yes, if the arrangement constitutes an insurance contract.</p>	<p>Can only be undertaken by a <i>FCA</i> authorised insurance company.</p>
5.	<p><i>Firm</i> insures itself (for all or selected <i>clients</i>) with an insurance company, in the event that a <i>client</i> calls on the service of dealing with an HMRC investigation. The <i>clients</i> are not the insured party, the <i>firm</i> is. (<i>Firm</i> may or may not make a specific charge to the <i>client</i> for the provision of this service.)</p>	<p>The <i>firm</i> is not recommending to its <i>clients</i> a particular insurance contract, nor arranging one on their behalf. The <i>firm</i> is insuring itself, not its <i>clients</i>. The <i>clients</i> are not policyholders and have no rights against the insurer, although they may have the right to require the <i>firm</i> to make a claim on the insurer.</p> <p>So that the arrangement with the client cannot be construed as an insurance contract, the following should also be considered:</p> <p>a the contract between the <i>firm</i> and the <i>client</i> must require:</p> <ul style="list-style-type: none"> <li>• the <i>firm</i>, at its discretion, to carry out work if an investigation occurs;</li> <li>• the <i>client</i> to be liable for the <i>firm's</i> fees, whether or not an insurance claim succeeds;</li> <li>• the <i>firm</i> to make the insurance claim and to credit any proceeds against the <i>client's</i> liability for fees; and</li> </ul>	<p>No, the <i>client</i> is only acquiring an <u>interest in</u> an insurance contract, not <u>rights under</u> a contract.</p>	<p>Any <i>firm</i>.</p>

**Guidance on professional services in relation to HMRC investigations**

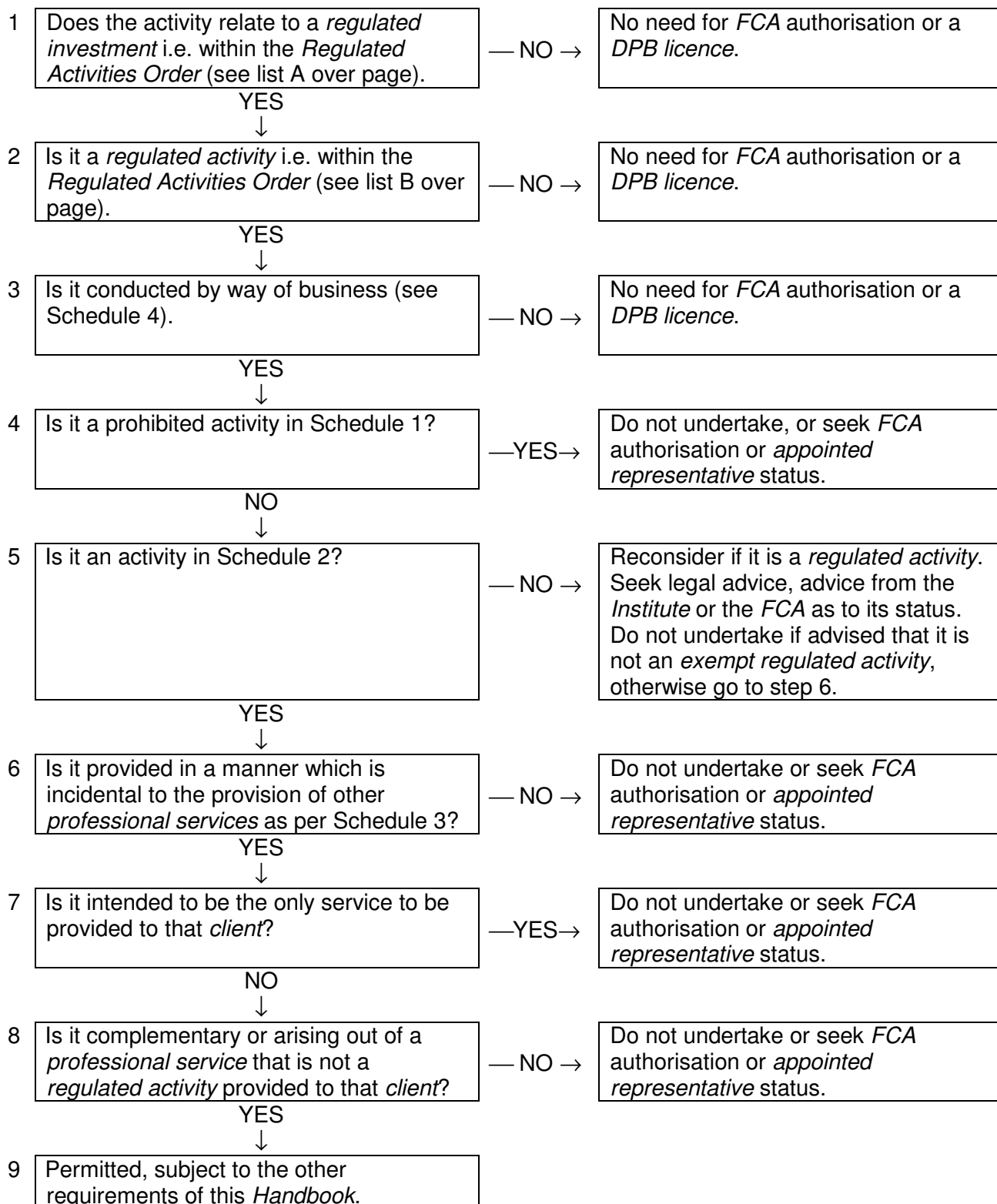
	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
		<ul style="list-style-type: none"> <li>• the <i>client</i> to pay the fees if (and to the extent that) they are not covered by the proceeds of the insurance claim.</li>   <li>b the <i>firm</i> has agreed with the insurance company that only the <i>firm</i> has an insurable interest under the contract.</li>   <li>c the nature of the agreement is clear to the <i>client</i>, e.g. in promotional material, it would be advisable to use wording such as:                       “We can provide a service to assist you with tax investigations. To provide you with extra security, the <i>firm</i> is insured in respect of the charges for such work.”</li>   <li>By retaining discretion in its arrangements with the <i>client</i>, as noted above, the <i>firm</i> may not have an insurable interest in the contract with the insurer, which is a key feature of an insurance contract. Therefore, in considering this point and the totality of the arrangements, the <i>firm</i> and the insurer need to satisfy themselves that the specific arrangements do not constitute an insurance contract between the <i>firm</i> (or the insurer) and the <i>firm's</i> clients, and only constitute such a contract between the <i>firm</i> and the insurer. In reaching their conclusions each particular</li> </ul>		

## Guidance on professional services in relation to HMRC investigations

	Activity	RAO reference/comment	Is this regulated?	Who can undertake this work?
		arrangement needs to be looked at on its own specific facts, and the <i>firm</i> and the insurer should make this assessment with regard to the FCA's guidance on what constitutes an insurance contract which is contained in an appendix to the authorisation sourcebook of the FCA's handbook.		
6.	A <i>firm</i> sends a <i>client</i> a 3rd party's leaflet (e.g. from an insurer or broker) about fee protection insurance which the <i>client</i> returns to the 3rd party if the <i>client</i> wants to purchase the insurance. The <i>firm</i> enters its own details on the leaflet and so receives commission from the 3rd party. The <i>client</i> will be the insured party.	The <i>firm</i> is providing information to <i>clients</i> about fee protection insurance. This is an excluded activity under article 72C of the <i>Regulated Activities Order</i> . There is no <i>regulated activity</i> provided the <i>firm</i> does not make a recommendation.	No.	Any <i>firm</i> , but a <i>firm</i> that is not FCA authorised or DPB licensed cannot handle claims.
7.	A <i>firm</i> sends a <i>client</i> a 3rd party's leaflet (e.g. from an insurer or broker) but in this case for the <i>client</i> to return to the <i>firm</i> . The <i>firm</i> passes details to the insurer, together with the <i>client's</i> premium. The <i>firm</i> does not make a recommendation but does receive commission. The <i>client</i> will be the insured party.	The <i>client</i> is benefiting from the 'bulk-buying' power of the <i>firm</i> . The <i>firm</i> is arranging fee protection insurance on a <i>client's</i> behalf. It is the <i>regulated activity</i> of arranging (RAO article 25).	Yes.	The <i>firm</i> would need to be FCA authorised or DPB licensed. It would therefore be able to handle any claim and it could, if it wanted, make a recommendation to the <i>client</i> .
8.	A <i>firm</i> recommends a specific insurance contract to a <i>client</i> , collects premiums and deals with claims. The <i>client</i> will be the insured party.	The <i>client</i> is benefiting from the 'bulk-buying' power of the <i>firm</i> but in doing so the <i>firm</i> is advising (RAO article 53) arranging (RAO article 25) and performing and administering (RAO article 39A) fee protection insurance for the <i>client</i> .	Yes.	The <i>firm</i> would need to be FCA authorised or DPB licensed, but in either case would have to be able to justify the particular contract selected.

**GUIDANCE TO ASSIST ON DECIDING WHETHER AN ACTIVITY CAN BE UNDERTAKEN WITHIN THE SCOPE OF THE DESIGNATED PROFESSIONAL BODY ARRANGEMENTS**

*Firms* may find this flowchart of assistance in order to determine whether they can carry on an activity. The references to ‘schedules’ are to schedules in this Part of the *Handbook*.



NOTE: In cases of doubt seek legal advice or advice from the *Institute* or the *FCA*. List A (*regulated investments*) and list B (*regulated activities*) are essentially the article headings in *Regulated Activities Order*. The Order should be referred to for a fuller explanation of each.



### List A - Regulated investments

RAO article	Investment
74	Deposits
75	Rights under <i>contracts of insurance</i> (e.g. general insurance, life and pensions contracts)
76	Shares
77	Instruments creating or acknowledging indebtedness (e.g. debentures)
78	Government and public securities
79	Instruments giving entitlement to <i>investments</i> (e.g. warrants)
80	Certificates representing certain <i>securities</i>
81	Units in a collective investment scheme
82	Rights under a stakeholder or <i>personal pension scheme</i>
83	Options
84	Futures
85	Contracts for differences
86	Lloyds syndicate capacity and syndicate membership
87	Funeral plan contracts
88	<i>Regulated mortgage contracts</i>
88A	<i>Regulated home reversion plans</i>
88B	<i>Regulated home purchase plans</i>
88C	<i>Regulated sale and rent back agreements</i>
89	Rights to or interests in <i>investments</i>

The *Regulated Activities Order* does not distinguish between *investments* listed on a *public market* and any other *investment*.

### List B - Regulated activities

RAO article	Activity
5	Accepting deposits
9	Issuing electronic money
10	Effecting and carrying out contracts of insurance
14	Dealing in <i>investments</i> as principal
21	Dealing in <i>investments</i> as agent
25	Arranging deals in <i>investments</i> (including some introductions)
25A	Arranging <i>regulated mortgage contracts</i>
25B	Arranging <i>regulated home purchase plans</i>
25C	Arranging <i>regulated home reversion plans</i>
25E	Arranging <i>regulated sale and rent back agreements</i>
37	Managing <i>investments</i>
39A	Assisting in the administration and performance of a <i>contract of insurance</i> (e.g. claims handling for a <i>client</i> )
40	Safeguarding and administering <i>investments</i>
45	Sending dematerialised instructions
51	Establishing (operating or winding up) a collective investment scheme
52	Establishing (operating or winding up) a stakeholder or <i>personal pension scheme</i>
53	Advising on buying, selling or subscribing for, or exercising a right to buy, sell or subscribe for, an <i>investment</i>
53A	Advising on entering into, or varying the terms of, a <i>regulated mortgage contract</i>
53B	Advising on entering into, or varying the terms of, a <i>regulated home purchase plan</i>
53C	Advising on entering into, or varying the terms of, a <i>regulated home reversion plan</i>
53D	Advising on entering into, or varying the terms of, a <i>regulated sale and rent back agreement</i>

56 - 58	Advising on Lloyd's membership, managing Lloyd's syndicates underwriting capacity and arranging deals in <i>contracts of insurance</i> written at Lloyd's
59	Entering as provider into a funeral plan contract
61	Entering into a <i>regulated mortgage contract</i> as a lender
61J(2)	Administering a <i>regulated mortgage contract</i>
63B	Entering into a <i>regulated home reversion plan</i> as plan provider
63B(2)	Administering a <i>regulated home reversion plan</i>
63F	Entering into a <i>regulated home purchase plan</i> as home purchase provider
63F(2)	Administering a <i>regulated home purchase plan</i>
63J	Entering into a <i>regulated sale and rent back agreement</i> as an agreement provider
63J(2)	Administering a <i>regulated sale and rent back agreement</i>
64	Agreeing to carry on a specified activity (except those in articles 51 or 52)

## PART 4

### CONDUCT OF BUSINESS CODE

This Code applies to all *licensed firms* in their provision to *clients* of *exempt regulated activities*. Where the particular requirements of the Code only apply to certain types of *investments*, this is specified within the text.

*Licensed firms* may find it easier to apply the code to all their professional activities (except services provided in accordance with the Audit or Insolvency Regulations). This then avoids the need to assess when work changes from unregulated activities to *exempt regulated activities*.

Where the Code requires information to be provided in writing, the information must be provided in a durable medium and in the language of the EU State of the *client*, or any other language agreed by the *firm* and the *client*.

The Code is printed in bold type. To assist *licensed firms* guidance is also given which is printed in light type.

Guidance is also provided in Part 3 of the *Handbook* about the type of *regulated activities* that *licensed firms* may undertake and the context within which such work should be conducted.

#### Interpretation

**4.01 Words in italics used in this Part are defined in Part 9 of this *Handbook*.**

#### Agreement with clients

**4.02 A *licensed firm* shall ensure that it is in full agreement with its *clients* as to the nature, scope and terms of the *exempt regulated activities* which are or may be provided and that it retains evidence of this agreement.**

- a A *licensed firm* should decide on the nature of the evidence it needs of the agreement depending on the particular circumstances. For example, if it is arranging a transaction on behalf of a *client*, it will need to obtain specific written instructions. See 4.20.
- b If an engagement letter is used, it is agreed if:
  - i) the *client* signs it. This is by far the clearest way of making sure that the *client* confirms the terms on which the *licensed firm* will act; or
  - ii) the *client* receives it before the *licensed firm* starts to act, and the *client* does not object to the terms.
- c Engagement letters sent by a sole practitioner could draw the *client's* attention to the arrangements for continuing the practice if the sole practitioner cannot run it.
- d The *client* should not be put under pressure by the *licensed firm* to accept terms of engagement that may not be in accordance with his or her wishes.
- e It is good practice for *licensed firms* to ensure from time to time as appropriate that the *client* is aware of and understands the terms of the engagement, particularly if the *client* only carries out occasional transactions with the *licensed firm*.
- f If the terms of the engagement become out-of-date, amendments should be agreed. Any previously issued engagement letter should be amended or a new letter issued. Terms of engagement should be regularly reviewed.

- g *Licensed firms* should note that a *client* does not include successor organisations to the original *client*. For example, if a *licensed firm* advises on a management buy-out, the resulting new company is a new *client*, and new instructions and terms of engagement should be agreed.
- h A *licensed firm* can, in certain circumstances, make a financial promotion to *clients*. Schedule 1 to this Part includes a suggested paragraph for engagement letters to permit *firms* to do this.
- i Schedule 1 to this Part includes suggested paragraphs for an engagement letter on terms of engagement, complaint resolution and compensation arrangements.
- j Schedule 1 to this Part also contains material on what a *licensed firm* may state about its *exempt regulated activities* in any brochure that describes its activities.

### **Status disclosure**

**4.03 A *licensed firm* shall ensure that *clients* are aware of its status under the Act. This should be communicated to the *client* in writing and should contain the following details, which must be clear, fair and not misleading and no less prominent than any other information:**

- a the name and address of the *firm*;
- b statement that the *firm* is not authorised by the Financial Conduct Authority;
- c guidance as to the nature of the *exempt regulated activities* carried out by the *licensed firm* and the fact that they are limited in scope;
- d a statement that the *firm* is *licensed* for these activities by the *Institute*;
- e if applicable, details of any holding that any insurance undertaking or parent of an insurance undertaking may have in the *firm* which amounts to more than 10% of the voting rights or of the capital of the *firm*; or
- f if applicable, details of any holding, directly or indirectly, that the *firm* may have which represents more than 10% of the voting rights or of the capital in an insurance undertaking.

**Where the *firm* is or is likely to conduct *insurance mediation activities*, the disclosures required under paragraphs b and d must be made using the wording contained in Schedule 1 to this Part, paragraph 4.03b.**

These disclosures can be made within the terms of engagement or in other material supplied to the *client*. Schedule 1 of this Part includes suggested paragraphs for an engagement letter.

There is no requirement for a *licensed firm* to have a legend on its letterhead, but Schedule 1 to this Part includes a specimen legend for use by a *licensed firm* if it wishes.

### **Compliance**

**4.04 A *licensed firm* shall review, at least once a year, how effectively it is complying with this Handbook.**

The annual compliance review consists of a number of parts. The first part covers a *licensed firm's* obligations in relation to:

- a competence;

- b professional indemnity insurance; and
- c continuing eligibility.

The second part of the review involves confirming that the requirements of Part 3 of this *Handbook* have been complied with. The final part is to check that the work was completed in accordance with the *licensed firm's* procedures. *Client* files should be selected and reviewed to make sure that the procedures had been followed.

It is relatively easy to decide on an annual basis what is necessary for the first part. The second and third parts involve judgements as to what is needed in terms of the number and frequency of reviews, particularly in relation to the number and choice of *client* files to be reviewed. *Licensed firms* should consider factors such as:

- a The services provided to *clients*. A pure audit *client* is less likely to be provided with *exempt regulated activities* than a tax *client*;
- b Who provides the services? If a single *principal* or employee provides all the services to a *client* there may be a greater risk that *exempt regulated activities* have been carried on;
- c Where there has been a change in ownership in the *client*.

Some *licensed firms* will select files for these reasons and then a further sample.

One approach is simply to decide that the work of each *principal* and senior employee should be reviewed each year. For many *firms* this may be the easiest procedure to adopt. In deciding how often to review someone's work, *licensed firms* should consider factors similar to those used when deciding on the frequency of the *client* review.

As far as the work of those *principals* and senior employees who only provide audit or insolvency services is concerned, the review should keep in mind the possibility that *regulated activities* may have been undertaken.

Some *licensed firms* have well-defined procedures to control the quality of work. This would be another factor in deciding how often the work of individual *principals* and senior employees is reviewed. However, if the work of all *principals* and senior employees is not reviewed each year, at the very least it should be covered over a three-year period.

Whatever approach a *licensed firm* adopts for *client* reviews, it should be ready to justify that approach when requested by the *Institute*.

The compliance review, and *client* reviews carried out as part of that review, are likely to vary in formality according to the size of the *licensed firm*. However, every *licensed firm* should be able to provide written evidence of its review in sufficient detail to identify the extent of work undertaken and, where appropriate, the issues arising, any action to be taken and the outcome of that action. The written record of the review can then be used to plan future reviews and, without identifying which *clients'* affairs were reviewed, could be used as a basis to let others in the *licensed firm* know the results of the review.

All *principals* and employees should be informed of the lessons to be learnt from the monitoring exercise at the earliest opportunity. If changes are necessary, they should be carried out as soon as possible.

There is no need for the *licensed firm* to conduct the review itself. Some *licensed firms* may find it more practical and cost-effective to use a service provided by, for example, the *Institute*, another *licensed firm* or training organisation. Using an external reviewer does not reduce the *licensed firm's* responsibility for the review or for ensuring that any necessary action is taken.

A review could identify situations where *clients* need extra services, or where the current services are not provided efficiently.

Sole practitioners may also benefit if another *firm* carries out this exercise. This could highlight practical ways for a *licensed firm* to improve procedures and to deliver a better service to *clients*.

### **Competence**

**4.05 A licensed firm shall carry out work covered by the Handbook with a clear understanding of the legislative framework and must not undertake or continue such work which it is not competent to perform unless it obtains such advice and assistance as will enable it to comply with this Handbook.**

### **Record keeping**

**4.06 A licensed firm shall ensure that it has appropriate records of work undertaken on behalf of clients.**

Records should evidence the work undertaken on behalf of *clients* under these requirements, plus any specific instructions from the *client*. The papers should document matters that are important in arriving at the conclusion or output of a particular assignment, and record the reasoning on all significant matters that require the exercise of judgement. This will assist in demonstrating that the *licensed firm* has only provided *exempt regulated activities* to a *client* that are incidental to and arise out of or are complementary to other *professional services* provided to that *client*.

The records do not have to be on paper but could instead be held on microfilm or on computers. Whatever method of storage is used, the *licensed firm* must keep a mechanism for gaining access to those records

It is likely that the *Institute* will only be satisfied if the *licensed firm* keeps records relating to work performed under these requirements for at least 6 years. *Licensed firms* should bear in mind that some legislation requires records to be retained for longer.

### **Complaints resolution**

**4.07 A licensed firm shall ensure that all clients are notified in writing of the name of a senior person within the firm to be contacted in the event of a complaint and of their right to complain to the Institute.**

**4.08 If a licensed firm receives a complaint from a client or a former client concerning services covered by this Handbook it must immediately instigate an investigation by a principal.**

**4.09 If following such an investigation the licensed firm is of the opinion that the complaint is justified in whole or in part it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, providing information, returning books or documents, reduction or repayment of fees, or otherwise.**

A complaint may be a prelude to a claim that will need to be referred to professional indemnity insurers. It is essential that an assessment is made of any complaint when it is received. In the event that a complaint is considered to be a potential claim the *licensed firm's* insurers/brokers should be notified at once.

A complaint may arise from different sources, such as consumer organisations and others acting on behalf of a *client*. *Firms* should ensure that their procedures can be properly applied, regardless of the source of the complaint.

Where a complaint has to be referred to insurers it will be essential, if cover is not to be affected, to act in accordance with advice offered by the insurers.

*Firms* should consider the use of alternative dispute resolution methods and discuss any proposals to settle complaints or claims with their professional indemnity insurers.

Where complaints which have not been assessed as potential insurance claims are concerned any concession made should be accompanied by a phrase such as "As a gesture of goodwill and without admission of liability we are prepared....".

Details of the complaint resolution procedure can be included within the terms of engagement or in any other material supplied to the *client* (see 4.02).

Further guidance can be found in the Institute of Chartered Accountants in England & Wales' "The duty on *firms* to investigate complaints - guidance on how to handle or avoid them" at [icaew.com/regulations](http://icaew.com/regulations).

### **Compensation arrangements**

**4.10 A licensed firm shall ensure that *clients* are advised in writing of the compensation arrangements.**

The suggested paragraphs for an engagement letter at Schedule 1 to this Part include a paragraph providing this notification.

### **Best interests of the client**

**4.11 A licensed firm shall carry out its engagements under this Part in what it reasonably regards as the best interests of the *client*.**

Where appropriate a *licensed firm* should take into account the motivation of the *client* who should be made aware of the consequences of the *investment* under discussion. A *licensed firm* may consider it appropriate to document this in a letter to the *client* or in a file note.

### **Disclosure of information from/to third parties**

**4.12 A licensed firm must ensure that any information, provided by a *permitted third party* for the *client*, or by the *client* for a *permitted third party* is passed to the appropriate party as soon as is reasonably practicable.**

In particular, *firms* should ensure that information provided by an insurer or lender or any other *permitted third party*, such as key facts statements in respect of mortgages are passed promptly to the *client*.

### **Safekeeping of the client's property**

**4.13 If a licensed firm receives any property relating to an *investment* from the *client*, other than money (which is governed by the *Institute's Clients' Money Regulations*), details of receipt and storage location should be recorded. A licensed firm should take all reasonable steps to ensure that such property is kept safely.**

**4.14 Where such property is passed to a third party on the *client's* instructions, such instructions should be obtained in writing and an acknowledgement of the receipt of the property should be obtained from the third party.**

A *licensed firm* should issue a receipt for such property and also record the return of the property to the *client*.

A *licensed firm* should ensure that it maintains appropriate insurance cover for any property held. Records can be maintained in any form which is appropriate and need not be consolidated into a central register.

### **Accounting for commission**

**4.15 If a *licensed firm* receives commission (or other benefit) because of acting for or giving advice to a *client*, in the course of *exempt regulated activities* the *licensed firm* must account for the commission (or other benefit) to the *client* in writing.**

Accounting to the *client* means remitting the commission to the *client* or dealing with it on the *client's* instructions having informed the *client* that he or she has the right to require the *licensed firm* to remit the commission to him or her. If a *client* has indicated that the *licensed firm* may retain the commission or other benefit, the *licensed firm* must obtain the express written consent of the *client*. In securing the consent of the *client*, the *client* must also be clear as to the amount and frequency of the commission or benefit. Blanket disclosure within the terms of engagement is not sufficient to secure the informed consent of the *client*. Until the *client's* instructions are received, any commission should be dealt with in accordance with the *Institute's Clients' Money Regulations*.

### **Giving advice on and arranging contracts of insurance.**

Note: Paragraphs 4.16, 4.17 and 4.18 apply to activities relating to *contracts of insurance*. A *licensed firm* may arrange for any type of insurance contract to be put into place, but can only recommend to a *client* the purchase of a *contract of general insurance*, or pure protection policies. The *firm* cannot recommend the purchase of a life contract or a pension contract but can arrange to put such a contract into place without giving advice or where a *permitted third party* has given the advice.

**4.16 Where a *licensed firm* recommends a specific *contract of insurance* (except *qualifying contracts of insurance* which cannot be recommended by *licensed firms*) to a *client*, the *firm* must advise the *client* in writing whether:**

- a the advice is on the basis of a fair analysis of the market; or**
- b that the *firm* is under a contractual obligation to conduct *insurance mediation activities* exclusively with one or more insurance undertakings; or**
- c the *firm* is not under a contractual obligation to conduct *insurance mediation activities* exclusively with a limited number of insurance undertakings and does not give advice based on a fair analysis of the market;**

**Where the advice is not given on the basis of a fair analysis of the market, the *firm* must, on the *client's* request, provide the *client* with a list of the insurance undertakings from which the *firm* makes its selection. *Clients* must be advised in writing of their right to request this information.**

*Firms* must also consider their obligations under the ethical guide to act with objectivity. Therefore, if advice is given which falls within b or c above, the *firm* should carefully consider whether the *client's* needs will be met.

A fair analysis of the market requires the *licensed firm* to consider a sufficiently large number of contracts available in the relevant sector or sectors of the market to be able to give advice or information which is adequate to meet the *client's* needs.



**4.17 Before making a recommendation, a *licensed firm* must take reasonable steps to ensure that the recommendation made is suitable for the *client's* demands and needs. Where the policy recommended does not meet the demands and needs because there is no such policy available in the market, this should be disclosed to the *client*.**

**The *firm* must:**

- a consider relevant information already held;**
- b obtain appropriate information about the *client*, any relevant existing insurance, identify the *client's* demands and needs and explain to the *client* what the *client* needs to disclose in respect of that insurance; and**
- c assess the *client's* demands and needs, which should include consideration of the level of cover, the relevance of any exclusions, excesses, limitations and conditions.**

#### **Demands and needs statement**

**4.18 Where the *firm* makes a recommendation or is arranging a *contract of insurance* it must provide the *client* with a written demands and needs statement before the contract is concluded. This must include the following:**

- a details of the demands and needs of the *client*;**
- b confirmation of any recommendation made; and**
- c the reasons for any recommendation.**

The statement must be in writing but if the *client* requests it orally or if the cover is required immediately, the oral statement should be followed by written confirmation after the contract is in place.

Where no advice has been given but the *firm* is arranging a contract, the demands and needs statement need only identify the contract requested by the *client*, confirm that no advice has been given and state that the *firm* is undertaking the arrangement at the *client's* specific request.

Where the *firm* is introducing the *client* to a *permitted third party*, but taking no further part in arranging the contract, a demands and needs statement need not be provided to the *client*.

Further guidance on the demands and needs statement is at Schedule 2 to this Part.

#### **Seeking advice from a permitted third party**

The remaining paragraphs in this Part apply to all types of *investments*.

**4.19 When seeking advice from a *permitted third party* on behalf of a *client*, a *licensed firm* should:**

- a satisfy itself that the *permitted third party* will provide independent advice;**
- b supply the *permitted third party* with *client* information it reasonably requests in order to advise the *client*;**
- c satisfy itself that any information supplied to the *permitted third party* is complete and accurate;**

- d ensure that any risk warnings are passed to the *client* as soon as is practicable; and
- e ensure that the *client* is aware of the respective responsibilities of the *licensed firm* and the *permitted third party*.

Not all *permitted third parties* provide independent financial advice - some are linked to a product provider and so only advise on a limited number of options. A *client's* interests will not be best served unless independent advice is obtained.

A *licensed firm* may already hold information about the *client*, for example with regard to taxation. However, the *licensed firm* may need to secure further information from the *client* on such matters as investment objectives. It is in relation to the latter type of information that the *licensed firm* should be satisfied that the information is complete and accurate. This would usually be achieved by receiving the *client's* corroboration of the information.

A *licensed firm* can comment on the advice given by a *permitted third party* and agree with the recommendation made. It can disagree with the recommendation but cannot make an alternative recommendation unless this *Handbook* allows it. See Part 3.

### **Arranging deals in investments**

“Dealing” is used in the *Regulated Activities Order* to mean buying, selling, subscribing for or underwriting an *investment*.

See also 4.18 concerning demands and needs statements for arranging *contracts of insurance*.

#### **4.20 A licensed firm arranging a deal in an investment on behalf of a client must have written instructions from the client specifying the transaction to be effected.**

A *licensed firm* should seek written instructions from the *client* before it undertakes the transaction. Where these cannot reasonably be obtained, the *licensed firm* may decide to complete the transaction in advance of receiving written instructions if it is confident that such instructions will be received shortly.

#### **4.21 A licensed firm should not arrange a deal in an investment on behalf of a client if it considers that the transaction would be materially detrimental to the client's interests unless it has advised the client of its reservations and the client has confirmed in writing that it still wants the licensed firm to arrange the deal.**

A *licensed firm* can in its absolute discretion, after considering all the implications for the *client*, still decline to arrange the deal.

#### **4.22 Where the deal is arranged through a permitted third party the licensed firm should ensure that the client is aware of the respective responsibilities of the licensed firm and the permitted third party.**

### **Dealing in investments as agent**

#### **4.23 A licensed firm who deals in investments as a client's agent must have written instructions from the client specifying the transaction to be effected.**

A *licensed firm* should seek written instructions from the *client* before it undertakes the transaction. Where these cannot reasonably be obtained before the transaction is effected, the *licensed firm* may decide to complete the transaction in advance of receiving written instructions. This is provided the *licensed firm* is confident that it will receive the written instructions in due course.

Regulation 4.23 does not apply to *regulated home finance plans*, which cannot be arranged as agent by any party.

**4.24 A licensed firm should not deal in investments as a client's agent if it considers that the transaction would be materially detrimental to the client's interests unless it has advised the client of its reservations and the client has confirmed in writing that it still wants the licensed firm to deal.**

A *licensed firm* can in its absolute discretion, after considering all the implications for the *client*, still decline to deal.

**4.25 Where a licensed firm agrees to act as agent for a client it must be satisfied that it has no conflict of interest with the client. On the discovery of any conflict, the firm shall make the client aware of it and its nature and extent, and resolve it if possible. Otherwise the licensed firm should cease acting for the client unless the client instructs otherwise in writing. If disclosure of the conflict would breach the confidentiality of another client the licensed firm should cease to act without divulging the nature and extent of the conflict.**

### **Managing investments**

There are no specific additional requirements in respect of managing *investments* that are not already dealt with above in the sections on advising, arranging and dealing. Please also refer to item 3 in table 2A of schedule 2 to Part 3 of the *Handbook*.

## SUGGESTED PARAGRAPHS FOR AN ENGAGEMENT LETTER AND SPECIMEN LETTERHEAD LEGEND

Some elements of the Code require specific disclosures to be made to the *client*. This schedule provides suitable paragraphs and a specimen letterhead legend. In the case of 4.03b below, the wording must be used in respect of *insurance mediation activities*.

**Engagement letters**

<b><u>Code</u></b>	<b><u>Suggested paragraph</u></b>
4.02	“If for any reason, I am unable to run my practice, I have made arrangements for the continuation of services to clients. [If it wishes, a firm could include the name of the alternate.]”
4.03	(a) “If, during the provision of professional services to you, you need advice on investments, we may have to refer you to someone who is authorised by the Financial Conduct Authority, as we are not. However, as we are licensed by the [Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland], we may be able to provide certain investment services where these are complementary to or arise out of the professional services we are providing to you. Such services may include [where known, specify the nature of any activities].”
4.03	(b) Statement required by the <i>FCA</i> for <i>insurance mediation activities</i> .  “[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 Institute of Chartered Accountants in England and Wales/The Institute of Chartered Accountants of Scotland/The Institute of Chartered Accountants in Ireland]. The register can be accessed via the Financial Conduct Authority website at <a href="http://www.fca.org.uk/register">www.fca.org.uk/register</a>  The requirement that the statement must be in the specified terms will not prevent minor changes to the text provided this does not alter the meaning of the statement. The <i>FCA</i> has indicated that alterations such as including the name of the <i>firm</i> would be acceptable. <i>Firms</i> should consider carefully changes of a more substantial nature and obtain clearance from the <i>FCA</i> where this could affect the meaning of the statement.
4.07	“If you would like to talk to us about how we could improve our service to you, or if you are unhappy with the service you are receiving, please let us know by telephoning [state name of principal].  We will carefully consider any complaint as soon as we receive it and do all we can to explain the position to you. If we do not answer your complaint to your satisfaction, you may of course take up the matter with the Institute.”
4.10	“In the unlikely event that we cannot meet our liabilities to you, you may be able to claim compensation under the Chartered Accountants’ Compensation Scheme.”
4.20	“Following our meeting on [state date] we confirm that you have asked us to [buy][sell] for you [state investment] at [state price or terms]. We are not offering and have not

offered you any advice on this transaction nor exercised any judgement on your behalf.”

### **Financial promotions**

A *licensed firm* cannot make a financial promotion, ie an inducement to the *client* to take up a *regulated activity* unless it is either approved by an *FCA* authorised firm or the promotion is permitted under one of the many exemptions in the Financial Promotions Order.

For a *licensed firm* to provide a proper service to a *client* it may be necessary to call the *client* without specific permission to discuss an aspect of the *exempt regulated activities* that the *firm* can provide to the *client*. As the *firm* is taking the initiative, this is an “unsolicited” promotion and as it is verbal, it is a “real time” communication. The Financial Promotions Order provides a specific exemption to allow *licensed firms* to make unsolicited real-time promotions to their *clients*, provided they have previously been engaged to provide *professional services* to that *client* and either the services being discussed are incidental to other *professional services* or the *client* requests that the *firm* contacts him in this way. To make it clear to the *client* that this may happen, a suitable paragraph for an engagement letter would be:

“To enable us to provide you with a proper service there may be occasions when we will need to contact you without your express permission concerning investment business matters. For example it may be in your interests to sell a particular investment and we would wish to inform you of this. We may therefore contact you in such circumstances. [We would however only do so in our office hours of .... ]. We shall of course comply with any restrictions you may wish to impose which you notify to us in writing.”

### **Letterhead legend**

There is no requirement to use a letterhead legend but the following are offered as examples. Care should be taken in abbreviating the name of the *Institute* to just initials as this may not be understood by *clients* or potential *clients*.

“Regulated by the [Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland] for a range of investment business activities.”

The combined audit and *licensed firm* legend would then be:

“Registered to carry on audit work in the UK and Ireland and regulated for a range of investment business activities by the [Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland].”

### **Brochures**

The Financial Promotions Order deals with the advertising of *investment services* and products. Any such promotion has to be either made by a person authorised by the *FCA* or approved by such a *firm*. A brochure (a ‘non-real time financial promotion’) describing a *licensed firm’s regulated activities* is a financial promotion.

However the Financial Promotions Order allows a *licensed firm* to advertise its *exempt regulated services* without approval from an authorised *firm*. This is provided the brochure includes the following statement from the Financial Promotions Order:

“This [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of investment services to clients because we are members of the [Institute of Chartered Accountants in England and

Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland]. We can provide these investment services if they are an incidental part of the professional services we have been engaged to provide."

The requirement that the statement must be in the specified terms will not prevent minor changes to the text provided this does not alter the meaning of the statement. The *FCA* has indicated that alterations such as replacing "we" with the name of the *firm* or "because" with "as" or (where relevant) "members of" with "licensed by the" would be acceptable. *Firms* should consider carefully changes of a more substantial nature and obtain clearance from the *FCA* where this could affect the meaning of the statement.

The financial promotion may also set out the *exempt regulated activities* which the *licensed firm* is able to offer its *clients*, provided it is clear that these are the incidental services to which the statement relates.

This exemption should enable *licensed firms* to issue brochures, websites and other non-real time financial promotions without any need for approval by an authorised person provided the financial promotion is only about *exempt regulated activities*.

It is not necessary for the description of the activities to be set out in one place or adjacent to the statement. A brochure or website, for example, may contain details of the activities in various places so long as it is made clear that they will be incidental *investment* activities as referred to in the statement (which, as a result, needs to be set out only once in the brochure or website).

**GUIDANCE ON THE DEMANDS AND NEEDS STATEMENT  
FOR INSURANCE MEDIATION ACTIVITIES**

This guidance is only applicable to *contracts of insurance*.

A demands and needs statement must be given to a *client* where a *firm* recommends and/or arranges a *contract of insurance*. Under the scope of the *DPB licence*, a *licensed firm* cannot recommend *qualifying contracts of insurance* (i.e. life and pensions contracts), but can arrange such contracts where no advice is given.

The information should be provided in writing, but can be given orally on the *client's* request or if the cover is required immediately, but in either case, it should be followed up with a written version.

The following guidance provides suggested information which may need to be provided to the *client* under paragraphs 4.16, 4.17 and 4.18 of the *Handbook*. The headings are not an exhaustive list and the examples given under the headings merely highlight the type of information to be provided and do not cover the range of insurance contracts on which a *firm* may advise. This guidance does not include the disclosures on the status of the *firm* which are dealt with in schedule 1.

**Content of demands and needs statement**

**When a recommendation is made**

1. **Confirm whether a recommendation has been made and identify the policy and insurer recommended.**

“I/We recommend that you take out [identify the type] insurance with [name] insurer, the details of which are provided in the policy summary documentation enclosed/which will be provided by the insurer.”

2. **Confirm whether a recommendation is based on a fair analysis of the market.**

“I/we have reviewed the market for [identify type of insurance] and our recommendation is based on a fair analysis of the market.”

Paragraph 4.16 of Part 4 refers to the disclosures that must be made if the *firm* does not select a policy based on a fair analysis of the market. Although there may be situations where only a restricted sector of the market is considered, in most instances, *firms* will have difficulty in complying with the ethical guide and in meeting the *client's* needs if a fair analysis is not undertaken.

3. **Identify the demands and needs of the client.**

The demands and needs identified must be tailored to the *client* and the type of insurance recommended.

“In providing this recommendation, I/we have considered the following demands and needs which I/we have identified in our discussions with you:”

Then list the various demands and needs that you identified, such as:

- a why the particular type of insurance is required, for example to meet statutory obligations, to provide cover in the event of damage to a property, to mitigate the risks to the *client* by providing cover for loss of profits in the event of temporary closure of the business, etc;
- b the *client's* personal and/or business circumstances (a copy of *client* details held by the *firm* can be provided to the *client*, but this is not a requirement);

- c the reasons for suggested levels of cover and excess levels, including reference to estimated value of assets and affordability, etc;
- d the *client's* existing insurance arrangements and insurance history;
- e particular demands and needs discussed with the *client*, e.g. a wish to insure with a household name, particular policy terms required, particular risks identified (such as high value assets).

4. **Identify the reasons for the recommendation, linking these with the demands and needs of the client.**

“The reasons for my/our recommendation are as follows:

- a This policy meets your demands and needs as identified above and in particular, [provides the cover I/we have identified as being required by you] [falls within your budget,] [the limitations and conditions of the policy are acceptable to you];
- b The insurance company chosen [has a good reputation in the market place] [offers a competitive premium when compared with others offering similar cover] [has a lower excess than others] [provides an introductory no claims bonus] [offers a high standard of customer care in claims handling] [is market leader in this field] [offers the particular terms [specify] that you are seeking];
- c The policy does not meet your following needs [specify]. However, I/we still recommend the policy as [there is no policy available which currently meets all of your demands and needs, in particular, it has not been possible to identify a contract which meets your requirement for [specify]. The contract recommended meets your other requirements [specify] to a high level.]”

**When an insurance contract is arranged**

If the *firm* has not made a recommendation, but is asked by the *client* to arrange a *contract of insurance*, the following disclosures should be made to the *client*. The proposal form completed by the *client* may also give additional “generic” demands and needs information which can be drawn to the *client's* attention.

“I/we confirm that I/we are arranging a [type of insurance] policy of insurance with [name] insurer at your request. I/we have not recommended this policy and are carrying out your instructions in this regard.

The policy provides [insert details of amount of cover] insurance against [insert brief details of risks insured] and the insurance company has been chosen by you.”



## PART 5

### REGULATIONS (INVESTMENT BUSINESS) GOVERNING AFFILIATES

The *Institute* may grant a *licence* to a *firm* which has a *principal* (an individual or a corporate body) who is not a *member*, a *member* of another *Designated Professional Body* or a *licensed firm* if that individual or body corporate is granted *affiliate* status by the *licensing Institute*. That status does not confer membership of the *Institute* nor entitle the individual or body corporate to use the title 'chartered accountant'. However, it does mean that an *affiliate* is bound by the same rules and regulations as govern a *member* of the *Institute*.

Regulations are printed in bold type. Guidance to assist *licensed firms* is printed in light type.

- 5.01 Words in italics used in these *affiliate* regulations are defined in Part 9 of the *Handbook*.**
- 5.02 *Affiliate* status does not give the *affiliate* any rights other than those contained in these *affiliate* Regulations. Neither the *affiliate* nor his *licensed firm* shall make any public representation that the *affiliate* has any rights other than those contained in these *affiliate* regulations.**
- 5.03 A *person* must apply for *affiliate* status in the manner decided by the *Institute*. To carry out its responsibilities under these *affiliate* regulations, the *Institute* may make any enquiries necessary to assess the eligibility of the applicant.**
- 5.04 The *Institute* may grant *affiliate* status if it is satisfied that the applicant:**
- a is a fit and proper person to be granted *affiliate* status;**
  - b has agreed to comply with these *affiliate* regulations and the *Handbook*;**
  - c has agreed to comply with the obligations and liabilities of a *member* and to be bound by the *Charter*, the *Bye-laws* and Regulations issued by the *Institute* as in force from time to time;**
  - d has agreed to observe and uphold any guidance issued by the *Institute*, including any ethical guidance; and**
  - e has agreed to provide the *Institute* with all the information it needs.**
- 5.05 The *Institute* may, on receiving an application for *affiliate* status:**
- a grant *affiliate* status;**
  - b reject the application;**
  - c grant *affiliate* status with restrictions or conditions; or**
  - d postpone consideration of the application.**

#### Withdrawal of affiliate status

- 5.06 The *Institute* may in its sole discretion withdraw *affiliate* status if the *affiliate*:**
- a is in the opinion of the *Institute* no longer a fit and proper person;**

- b fails to pay on time any fines or costs ordered by any Committee, panel or tribunal of the *Institute* or the *Disciplinary Scheme*;
- c has a disciplinary order made against him by any Committee, panel or tribunal of the *Institute* or the *Disciplinary Scheme*;
- d fails to pay the annual subscription within 30 days of the date of a notice to renew *affiliate* status; or
- e fails or ceases to comply with any of the Regulations contained in this Part of the *Handbook* and, in the circumstances, the *Institute* considers that withdrawal is justified.

#### Cessation of affiliate status

##### 5.07 *Affiliate* status will cease if:

- a subject to regulation 5.08, the *licensed firm* in which the *affiliate* is a *principal* ceases to hold a *licence*;
- b subject to regulation 5.08, the *affiliate* ceases to be a *principal* in the *licensed firm* to which the grant of *affiliate* status related;
- c the *affiliate* is an individual and has a bankruptcy order made against him;
- d the *affiliate* is a body corporate incorporated in the United Kingdom and one of the following occurs in relation to it:
  - i) a voluntary arrangement under Part I of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 is approved;
  - ii) an Administration Order under Part II of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 is made;
  - iii) an administrative receiver is appointed;
  - iv) a winding-up order is made;
  - v) a resolution is passed for a creditors' voluntary winding-up;
  - vi) a resolution is passed for a members' voluntary winding-up;
  - vii) a creditors' meeting under Section 95 of the Insolvency Act 1986 or Article 81 of the Insolvency (Northern Ireland) Order 1989 is held;
- e the *affiliate* is a limited liability partnership incorporated in the United Kingdom and an event occurs which appears to the *Institute* to have the same effect as one of the events in regulation 5.07d; or
- f the *affiliate* is a body corporate (including a limited liability partnership) from outside the United Kingdom and an event occurs which appears to the *Institute* to have the same effect as one of the events in regulation 5.07d.

##### 5.08 *Affiliate* status will not cease under regulation 5.07a or 5.07b if:

- a the *licensed firm* in which the *affiliate* is a *principal* merges with or is acquired by another *licensed firm* with a *licence* from the *Institute*; or

- b the *affiliate* leaves the *licensed firm* in which he is a *principal* and immediately becomes a *principal* in another *licensed firm* with a *licence* from the *Institute*;

provided that the *Institute* is informed within ten *business days* of the event. Otherwise, disciplinary action may be taken and *affiliate* status withdrawn.

#### Changes in circumstances

- 5.09 An *affiliate* must inform the *Institute* in writing within ten *business days* of any changes relevant to matters considered by the *Institute* under regulation 5.04.

#### Review of regulatory decisions

- 5.10 An *affiliate* may apply for a review of a decision made under regulation 5.06 in accordance with the procedures set out in Part 7 of the *Handbook*.

#### Implementing decisions

- 5.11 Any decision made under regulation 5.05 will come into effect as soon as notice of it is served on the applicant for *affiliate* status. Any decision made under regulation 5.06 will come into effect ten *business days* after notice of it is served on the *affiliate*, except if the *affiliate* has applied for a review in accordance with the procedures set out in Part 7 of the *Handbook*, in which case the decision will be postponed until a decision made by the *Panel* has been put into effect.

#### Serving notice

- 5.12 A notice or other document to be served on an *affiliate* under these *affiliate* regulations will be delivered by hand, sent by fax or posted.
- a If delivered by hand, it must be handed to the *affiliate* and service will take effect immediately.
  - b If sent by fax, it must be sent to the latest fax number given by the *affiliate* to the *Institute* and service will take effect on sending.
  - c If sent by post, it must be sent to the latest address given by the *affiliate* to the *Institute* and service will take effect two *business days* after posting.
  - d If sent by email, it must be sent to the latest email address notified by the addressee and service will take effect immediately.

#### Fees

- 5.13 *Affiliates* must pay a fee each year in addition to the *licensed firm's* annual fee. The first annual fee for *affiliate* status is due when an application is made for such status, together with an application fee.
- 5.14 The amount of the fees for *affiliate* status will be determined by the *Institute* from time to time.

#### Disciplinary arrangements

- 5.15 The disciplinary provisions of the *Institute* that apply to a *member* also apply to an *affiliate*.

- 5.16 An *affiliate* shall be liable to disciplinary action for any failure to observe and uphold any guidance issued by the *Institute*, including any ethical guidance.**
- 5.17 An *affiliate* will remain liable to disciplinary action under these *affiliate* regulations for any acts or omissions relating to the obligations in this *Handbook* during the period in which *affiliate* status was held, regardless of any subsequent cessation of such status.**

## PART 6

### LIST OF CHARGES

- 6.01 Words in italics used in this Part of the *Handbook* are defined in Part 9 of the *Handbook*.
- 6.02 A charge is payable on submission of an application for a *licence* by a *firm*. If the application is not accepted, the charge may be returned, less an element deducted to cover administration costs.
- 6.03 A charge is payable each year by a *licensed firm*.
- 6.04 A charge is payable by a *licensed firm* where the *Institute* has performed additional work, for example in:
- obtaining information for or about the *licensed firm*;
  - collecting any charges due under this Part;
  - responding to enquiries or complaints regarding the *firm*;
  - reviewing the continuation of the *licensed firm's licence*; or
  - visiting the *firm* where the *Institute's* agent has had to make a second or subsequent visit to the *firm* as a result of an earlier visit.
- The scale will be at a fixed level.
- 6.05 Charges may be raised where the *licensed firm* agrees that it has breached any provision of the *Handbook*.
- 6.06 A charge made under 6.03, 6.04 or 6.05 may be levied at any time, including after the termination of the *licence* provided it relates to the period before the date of termination.
- 6.07 A *Chartered Accountants' Compensation Scheme* levy is payable as a periodic or special levy.
- 6.08 Levies may be raised after a *firm's licence* has ceased provided they relate to claims for services provided by any *licensed firm* wholly before the date of cessation.
- 6.09 Charges and levies are reviewed periodically by the *Institute* and details of current charges and levies are available from the *Institute*.
- 6.10 The *Institute* can, in its absolute discretion, order a *firm* to contribute to the costs of a review requested under clause 2.10, 5.10 or 5.27 of the *Handbook* or an appeal requested under paragraph 7.04.

## PART 7

### REVIEW AND APPEAL PROCESS

At the request of a *firm* or a *licensed firm* a decision to refuse an application, grant it with conditions, withdraw a *licence* or only allow it to continue with conditions or restrictions may be reviewed by the *Institute* using the following process.

The same process may be used against a decision to reject an application for *affiliate* status, to grant the application with restrictions or conditions or to withdraw *affiliate* status.

**7.01 Words in italics used in this Part of the *Handbook* are defined in Part 9 of the *Handbook*.**

#### Review

**7.02 A *firm* may apply to the *Institute* in writing for a review of a decision to:**

- a reject an application for a *licence*;**
- b grant an application for a *licence* with conditions or restrictions;**
- c impose restrictions or conditions on a *firm* that already has a *licence*; or**
- d withdraw a *licence*;**

**within ten *business days* of the service of notice of the *Institute's* decision.**

**7.03 As soon as possible after the *firm* applies for a review a *Panel* must meet and consider the matter afresh. The *Panel* can consider any new material put forward by the *firm* and may make any order the *Institute* could have made under this *Handbook*. The *Panel* may, in addition, order a firm to contribute to the costs of the review.**

Costs are likely to be awarded if, for example, the *firm* fails to attend when it said it would, does not send in further material it has promised, or the application for review has no merit and/or is frivolous or vexatious.

#### Appeal

**7.04 A *firm* may appeal against a decision of the *Panel* on the grounds that it:**

- a was wrong in law, specifically that it incorrectly interpreted the *Act* or any other relevant statute;**
- b wrongly interpreted any relevant Part of this *Handbook* or *Bye-law*;**
- c did not comply with its procedures;**
- d made a decision which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made;**
- e had not considered available evidence which could reasonably have led the *Panel* to make a different decision; or**
- f had exceeded its powers or failed to exercise them properly.**

**7.05** A *firm* wishing to appeal shall give notice in writing to the *Institute* within ten days of service of the *Panel's* decision, giving details of its grounds for appeal. On receiving this notice of appeal, the matter will be referred to the *Appeal Committee*.

**7.06** On an appeal under regulation 7.05, the *Appeal Committee* will, as soon as practicable, consider the evidence that was before the *Panel* and may in its discretion receive fresh evidence under regulation 7.04(e).

**7.07** On any appeal the *Appeal Committee* may:

- a confirm, alter or overturn any decision of the *Panel*, either in whole or in part;
- b order that the *Institute* reconsider the matter;
- c dismiss the appeal; or
- d make any other decision it considers appropriate.

**7.08** The *Appeal Committee* may also order a *firm* to contribute to the costs of the appeal.

Costs are likely to be awarded if, for example, the *firm* fails to attend when it said it would, does not send in further material it has promised, or the application for appeal has no merit and/or is frivolous or vexatious.

## PART 8

### GUIDANCE ON PASSPORTING FOR INSURANCE MEDIATION ACTIVITIES

Where a *licensed firm* wishes to conduct *insurance mediation activities* or establish a branch conducting *insurance mediation activities* in another EEA State it must give notice to the *FCA* of its intention to conduct such activities in the format specified by the *FCA*. The information to be given to the *FCA* includes details about the activities to be provided in the EEA State.

The *FCA*'s Supervision Manual, chapter 13, "Exercise of passport rights by UK firms", contains details of the process to be followed.

The Supervision Manual also specifies the timescales in which the *FCA* must deal with the notice and notify the EEA state.

*Licensed firms* cannot make use of the passporting arrangements for *insurance mediation activities* without following this procedure. Similar provisions are not available to *licensed firms* for other types of *investment* business.

### GUIDANCE ON THE DISTANCE MARKETING DIRECTIVE

The Treasury has implemented the EU's Distance Marketing Directive through the Financial Services (Distance Marketing) Regulations 2004 (DM Regulations), which is a statutory instrument, 2004 number 2095.

The DM Regulations apply to contracts made exclusively through distance communication, i.e. where contact with the *client* is only by letter, telephone, email or any other communication which is not face to face, until after the point at which the contract is concluded. The contract must concern a financial service and be with a private *client* (an individual who is not acting for the purposes of his/her trade, business or profession).

The term financial service is any service of a banking, credit, insurance, personal pension, *investment* or payment nature. If the activity is a *regulated activity* and concerns the provision of a specific contract by the *licensed firm*, it will be a financial service under the DM Regulations. An introduction to an independent financial adviser or insurance broker is not subject to these regulations.

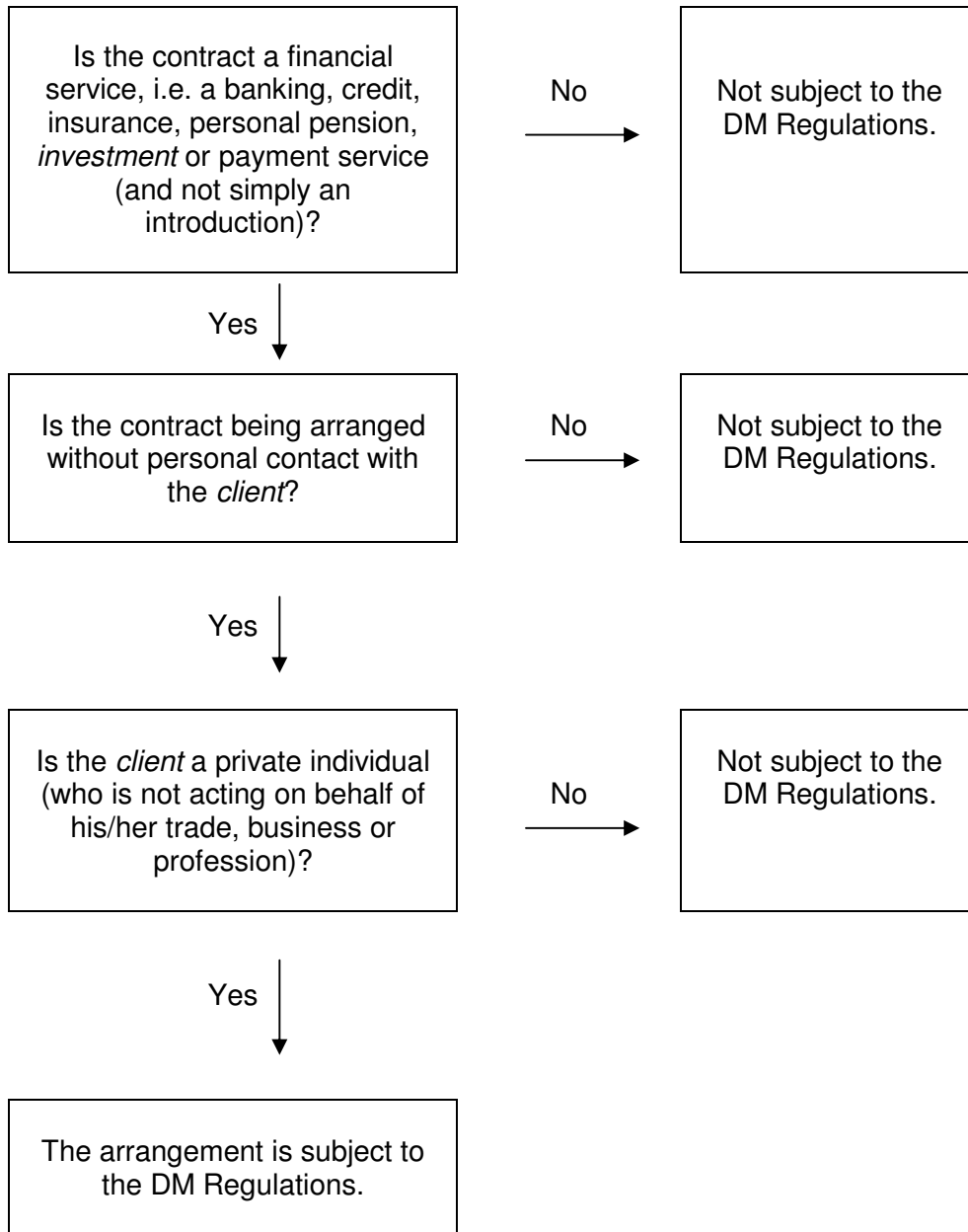
The *Institutes* have chosen not to make their own distance marketing regulations and therefore the DM Regulations apply directly to *licensed firms* (see following chart). The DM Regulations require firms to provide pre-contract information and cancellation rights.

Copies of the DM Regulations are available on the HMSO website, [www.hmso.gov.uk](http://www.hmso.gov.uk).

*Licensed firms* should refer to the full text of the DM Regulations for details of their obligations (if appropriate).



**FLOWCHART TO DETERMINE WHETHER THE DISTANCE MARKETING REGULATIONS APPLY**



**PART 9**  
**INTERPRETATION AND DEFINITIONS**

**Interpretation**

Words and expressions have the meanings given by the *Act* and the Interpretation Act 1978 unless defined below.

In each Part words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. Headings do not affect the interpretation of these Regulations or *Handbook*. These Regulations and *Handbook* will be governed by, and interpreted in accordance with, the law of the country of the *licensing Institute*.

Any references to legislation, regulations, requirements, *bye-laws*, rules, *Handbook* or other documents, will apply to any re-enactment, re-issue or amendment.

Any notice or document may be served on the licensing *Institute* by sending it to the appropriate address as follows:

The Institute of Chartered Accountants in England and Wales	Professional Conduct Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ.
The Institute of Chartered Accountants of Scotland	CA House, 21 Haymarket Yards, Edinburgh, EH12 5BH.
The Institute of Chartered Accountants in Ireland	Chartered Accountants Regulatory Board, The Linenhall, 32-38 Linenhall Street, Belfast, BT1 8BG.

or as otherwise notified to *licensed firms*.

**Definitions**

In each Part of this *Handbook*, unless the context otherwise requires, the following words and phrases have the meaning shown next to them whenever they appear in *italics*.

Act	The Financial Services and Markets Act 2000.
Affiliate	<ul style="list-style-type: none"> <li>• A person granted affiliate status by the Institute of Chartered Accountants in England and Wales for the purpose of these <i>Designated Professional Body</i> arrangements.</li> <li>• A person granted affiliate status by the Institute of Chartered Accountants in Ireland for the purpose of these <i>Designated Professional Body</i> arrangements.</li> <li>• An individual granted Affiliate status by the Institute of Chartered Accountants of Scotland under Rule 2.2.1 or a Firm under Rule 2.2.2 of the ICAS Rules for the purposes of these <i>Designated Professional Body</i> arrangements.</li> </ul>
Appeal Committee	<ul style="list-style-type: none"> <li>• The Appeal Committee appointed under the <i>Bye-laws</i> of the Institute of Chartered Accountants in England and Wales.</li> <li>• The Appeal Tribunal of the Institute of Chartered Accountants of Scotland appointed under the Discipline and Appeal Tribunals</li> </ul>

	Regulations.
	<ul style="list-style-type: none"> <li>• The Quality Assurance Appeal Committee appointed under the Public Practice Regulations issued under the Bye-laws of the Institute of Chartered Accountants in Ireland. .</li> </ul>
Appointed representative	A person or <i>firm</i> appointed in accordance with section 39 of the <i>Act</i> .
Business day	A day when banks are generally open for business (excluding weekends) in England, Wales, Scotland or Northern Ireland (as appropriate).
Bye-laws	The Bye-laws of the particular <i>Institute</i> . (The <i>Bye-laws</i> of the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants in Ireland include their Principal and their Disciplinary Bye-laws.)
Charter	<ul style="list-style-type: none"> <li>• The Royal Charter of 11 May 1880 and the Supplemental Royal Charter of 21 December 1948 granted to the Institute of Chartered Accountants in England and Wales.</li> <li>• The Royal Charter of 23 October 1854 and the Supplementary Royal Charters of 28 May 1951 with amendments incorporated into it, which were made in 1992, 2006 and 2012 granted to the Institute of Chartered Accountants of Scotland.</li> <li>• The Royal Charter of 14 May 1888 and the Charter Amendment Acts 1966 granted to the Institute of Chartered Accountants in Ireland.</li> </ul>
Chartered Accountants' Compensation Scheme	The scheme established and maintained by the <i>Institutes</i> for paying compensation for loss suffered in the circumstances set out in the scheme.
Client	<p>Any person a <i>firm</i> provides services to under these <i>Designated Professional Body</i> arrangements.</p> <p>In relation to a deceased client, the personal representatives of the estate are regarded as clients as are the trustees of a trust or pension scheme. However, this definition of a client does not include:</p> <ul style="list-style-type: none"> <li>• any shareholder in, or officer of, a body corporate which is a client unless he or she is, separately, a client of the <i>firm</i>;</li> <li>• where services are provided for an estate, trust or pension scheme, any person interested or potentially interested in that estate, trust or pension scheme unless that person is, separately, a client of the <i>firm</i>.</li> </ul>
Clients' Money Regulations	<ul style="list-style-type: none"> <li>• The Clients' Money Regulations of the Institute of Chartered Accountants in England and Wales.</li> <li>• The Clients' Money Regulations of the Institute of Chartered Accountants of Scotland</li> <li>• The Public Practice Regulations, Chapter 9, issued under the Bye-laws of the Institute of Chartered Accountants in Ireland.</li> </ul>
Contact partner	<p>An individual appointed by a <i>firm</i> to ensure that the <i>firm</i> has procedures and practices that enable it to comply with its obligations under this <i>Handbook</i>.</p> <p>The role of the contact partner is to be responsible for ensuring that the <i>firm</i> complies with the <i>Handbook</i>. The contact partner should be of sufficient seniority and influence within the <i>firm</i> to ensure that others will act on their instructions.</p> <p>Where one or more of the <i>principals</i> of the <i>firm</i> is an individual, one of those individuals should be the contact partner.</p>

Contract of general insurance

Any *contract of insurance* which falls within Part I of Schedule 1 to the *Regulated Activities Order*:

- a Accident;
- b Sickness;
- c Land vehicles;
- d Railway rolling stock;
- e Aircraft;
- f Ships;
- g Goods in transit;
- h Fire and natural forces;
- i Damage to property;
- j Motor vehicle liability;
- k Aircraft liability;
- l Liability of ships;
- m General liability;
- n Credit;
- o Suretyship;
- p Miscellaneous financial loss;
- q Legal expenses;
- r Assistance (for persons in difficulty while away from home).

Contract of insurance

Any contract of insurance which is a *contract of long-term insurance* or a *contract of general insurance* and includes:

- 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 a *regulated activity* of the kind specified by Article 10(1) or (2) of the *Regulated Activities Order*;
- 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*).

Contract of long term

Any *contract of insurance* which falls within Part II of Schedule 1 to the

insurance	<i>Regulated Activities Order</i> and includes specified types of contract under the following headings: <ul style="list-style-type: none"> <li>a life and annuity contracts;</li> <li>b marriage and birth contracts;</li> <li>c linked long-term contracts;</li> <li>d permanent health contracts;</li> <li>e tontines;</li> <li>f capital redemption contracts;</li> <li>g pension fund management;</li> <li>h collective insurance;</li> <li>i social insurance.</li> </ul>
Contractually based investment	<ul style="list-style-type: none"> <li>a A <i>qualifying contract of insurance</i> (i.e. a long term insurance contract other than a pure protection policy, but including a pension policy).</li> <li>b An option, future or contract for differences.</li> <li>c Funeral plan contracts.</li> <li>d Rights to or interests in any of the above.</li> </ul>
Council	<ul style="list-style-type: none"> <li>a The Council of the Institute of Chartered Accountants in England and Wales under Clause 2 of the Supplemental Charter of that <i>Institute</i>.</li> <li>b The Council of the Institute of Chartered Accountants of Scotland under <i>Rule 11</i> of that <i>Institute</i>.</li> <li>c The Council of the Institute of Chartered Accountants in Ireland under paragraph 3 of the Charter Amendment Acts 1966 of <i>Ireland</i>.</li> </ul>
Designated Professional Body (DPB)	A body designated by HM Treasury under section 326 of the <i>Act</i> .
Disciplinary Scheme	Any investigation and discipline scheme in which the <i>Institute</i> participates which is established for the purposes of the independent investigation of matters concerning members and firms.
Exempt regulated activities	The <i>regulated activities</i> a <i>licensed firm</i> is allowed to conduct under these <i>Designated Professional Body</i> arrangements.
Firm	<ul style="list-style-type: none"> <li>a A partnership;</li> <li>b A limited liability partnership;</li> <li>c A <i>member</i> who is a sole practitioner; or</li> <li>d A body corporate;</li> </ul> carrying on the profession of accountancy.
FCA	Financial Conduct Authority
Financial Services Register	The record maintained by the <i>FCA</i> of those persons that carry on, or are proposing to carry on, <i>insurance mediation activities</i> . This can be found at <a href="http://www.fca.org.uk/register">www.fca.org.uk/register</a>
Handbook	All or any Part of the <i>Designated Professional Body Handbook</i> as amended from time to time.
IMD	The Insurance Mediation Directive.
Insurance mediation activity	Any of the following activities, specified in the <i>Regulated Activities Order</i> which is carried on in relation to a <i>contract of insurance</i> : <ul style="list-style-type: none"> <li>a dealing in <i>investments</i> as agent (Article 21);</li> </ul>

	<ul style="list-style-type: none"> <li>b arranging (arranging deals in <i>investments</i> (Article 25.1);</li> <li>c making arrangements with a view to transactions in <i>investments</i> (Article 25.2);</li> <li>d assisting in the administration and performance of a <i>contract of insurance</i> (Article 39A);</li> <li>e advising on <i>investments</i> (Article 53); or</li> <li>f agreeing to carry on a <i>regulated activity</i> in a to e above.</li> </ul>
Institute	<ul style="list-style-type: none"> <li>• The Institute of Chartered Accountants in England and Wales.</li> <li>• The Institute of Chartered Accountants of Scotland.</li> <li>• The Institute of Chartered Accountants in Ireland, operating as Chartered Accountants Ireland. The functions of the Institute of Chartered Accountants in Ireland under this <i>Handbook</i> are carried out by the Chartered Accountants Regulatory Board established in accordance with the provisions of Principal Bye-law 41.</li> </ul> <p>The term <i>Institutes</i> means all or any of them.</p>
Investment	An asset, right or interest falling within the <i>Regulated Activities Order</i> .
Investment exchange	An investment exchange which is declared by a recognition order for the time being in force to be a recognised investment market.
Ireland	For the avoidance of any doubt a reference to Ireland in this <i>Handbook</i> a reference to Ireland does not include Northern Ireland.
Licence	A licence granted under Part 2 of this <i>Handbook</i> and licensed and licensing should be construed accordingly.
Licensed firm	A <i>firm</i> licensed under Part 2 of this <i>Handbook</i> that by agreeing to the terms of the <i>licence</i> is a <i>member</i> of the <i>Institute</i> for the purposes of section 325(2) of the <i>Act</i> .
Member	A member of an <i>Institute</i> but not including an <i>affiliate</i> .
Panel	<ul style="list-style-type: none"> <li>• A panel of the Review Committee of the Institute of Chartered Accountants in England and Wales.</li> <li>• The review panel consisting of both accountants and non-accountants drawn from members of the Public Practice Committee of the Institute of Chartered Accountants of Scotland.</li> <li>• The review panel consisting of both accountants and non-accountants drawn from members of the Quality Assurance Review Committee appointed under the Public Practice Regulations issued under the Bye-laws of the Institute of Chartered Accountants in Ireland.</li> </ul>
Permitted third party	<p>A third party who is:</p> <ul style="list-style-type: none"> <li>• a person authorised by the Financial Conduct Authority to carry out <i>regulated activities</i> under the <i>Act</i>; or</li> <li>• an <i>appointed representative</i> acting in the course of a business for which he is exempt.</li> </ul>
Personal pension scheme	<p>A 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:</p> <ul style="list-style-type: none"> <li>a on retirement;</li> <li>b on having reached a particular age; or</li> <li>c on termination of service in an employment.</li> </ul>

“Rights under a *personal pension scheme*” are regulated as “*securities*”. This is in addition to the regulation of any underlying life assurance contract which is a “*qualifying contract of insurance*” and which forms the basis of many *personal pension schemes*.

However, “rights under a *personal pension scheme*” is a wider concept. A *personal pension scheme* now describes the vehicle in which the investment sits and includes Self-Invested Personal Pension schemes (SIPPs). The rights include some or all of the rights to:

- make payments to the scheme;
- withdraw sums from the scheme in certain circumstances;
- transfer value to another scheme;
- place property into the scheme;
- receive benefits from the capital or income of the assets in the scheme;
- instruct the scheme operator on the assets to buy or sell for the scheme;
- instruct the scheme operator to switch funds;
- appoint a manager; and
- instruct the scheme operator to borrow money to purchase assets.

PII Regulations

- The Professional Indemnity Insurance Regulations of the Institute of Chartered Accountants in England and Wales.
- The Public Practice Regulations, Part 4, of the Institute of Chartered Accountants of Scotland
- The Public Practice Regulations, Chapter 7, of the Institute of Chartered Accountants in Ireland.

Principal

A sole practitioner, a partner (including a salaried partner), member of a limited liability partnership or director in a *firm*. A director includes a shadow director under relevant company legislation.

Professional services

Services provided by a *firm* that are subject to the rules of the *Institute* through the operation of the *Charter, Bye-laws, Rules*, ethical guidance, training requirements, disciplinary codes and other regulations.

Public market

An *investment exchange* or any other market to which an *investment* is admitted for dealing. (Please note that OFEX would be regarded as a *public market*.)

Qualifying contract of insurance

A life policy other than a pure protection policy and including a pension contract. It is a contract of long-term insurance but excludes:

- a a reinsurance contract; or
- b a contract in respect of which the following conditions are met:
  - i) The benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
  - ii) The contract has no surrender value, or the consideration consists of a single premium and the surrender value does not exceed that premium; and
  - iii) The contract makes no provision for its conversion or extension in a manner which could result in it ceasing to comply with any of the above conditions.

Registered address

The address of a *firm* registered with the *Institute* as the principal place of business.

Regulated activity

An activity that falls within the specified activities of *the Regulated Activities*

*Order.*

Regulated Activities  
Order

Statutory Instrument 2001 No 544, as amended.

Regulated home finance  
plan

- *Regulated home purchase plan*
- *Regulated home reversion plan*
- *Regulated mortgage contract*
- *Regulated sale and rent back agreement*

The term 'regulated home finance plan' means all or any of the above. References to a lender in the Handbook also include, where appropriate, a "home purchase provider", "plan provider" and "agreement provider" as set out in the definitions of *regulated home purchase plan*, *regulated home reversion plan* and *regulated sale and rent back agreement* respectively.

Regulated home  
purchase plan

A home purchase plan is a regulated home purchase plan if, at the time it is entered into, the following apply:

- a the plan is one under which a person (the "home purchase provider") buys an interest or an undivided share of an interest in land (other than timeshare accommodation) in the United Kingdom;
- b where an undivided share of an interest in land is bought, the interest is held on trust for the home purchase provider and the individual or trustees mentioned in paragraph (c) as beneficial tenants in common;
- c the plan provides for the obligation of an individual or trustees (the "home purchaser") to buy the interest of 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 the 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.

Note: a home purchase plan entered into before 6 April 2007 is not a *regulated home purchase plan* unless it is varied after that date to such an extent that a new plan is created to which the above criteria apply.

Regulated home  
reversion plan

A home reversion plan is a regulated home reversion plan if, at the time it is entered into, the following apply:

- a the plan is one under which a person (the "plan provider") buys all or part of an interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustee (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*, is entitled under the plan 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 plan specifies one or more qualifying termination events, on the occurrence of which that entitlement to occupy will end.

A qualifying termination event means:

- the person becomes a resident of a care home;
- the person dies; or
- the end of a specified period of at least twenty years beginning with the day on which the reversion seller entered into the arrangement.

Note: a home reversion plan entered into before 6 April 2007 is not a



*regulated home reversion plan* unless it is varied after that date to such an extent that a new plan is created to which the above criteria apply.

Regulated mortgage contract

A mortgage contract is a regulated mortgage contract if, at the time it is entered into, the following apply:

- a the contract is one under which a person ("the lender") provides credit to an individual or to trustees ("the borrower");
- b the contract provides for the obligation of the borrower to repay to be secured by a first legal mortgage on land (other than timeshare accommodation) in the United Kingdom; and
- c at least 40% of that land 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 a *related person*.

Note: a mortgage contract entered into before 31 October 2004 is not a *regulated mortgage contract* unless it is varied after that date to such an extent that a new contract is created, to which the above criteria apply.

Regulated sale and rent back agreement

A sale and rent back agreement is a regulated sale and rent back agreement if at the time it is entered into the following apply:

- a The arrangement is one under which a person (the "agreement provider") buys all or part of the qualifying interest in land (other than timeshare accommodation) in the United Kingdom from an individual or trustees (the "agreement seller"); and
- b The agreement seller (if the agreement seller is an individual) or an individual who is the beneficiary of the trust (if the agreement seller 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 and intends to do so;

but such an arrangement is not a regulated sale and rent back agreement if it is a regulated home reversion plan.

Note: a sale and rent back agreement entered into before 1 July 2009 is not a *regulated sale and rent back agreement* unless it is varied after that date to such an extent that a new plan is created to which the above criteria apply.

Related person

- A person's spouse or civil partner;
  - A person (whether or not of the opposite sex) whose relationship with another person has the characteristics of the relationship between husband and wife; or
  - A person's parent, brother, sister, child, grandparent or grandchild.
- In the case of a person who is a trustee, a related person is a beneficiary of the trust.

Note: this definition is only used in the definitions of *regulated home purchase plan*, *regulated home reversion plan*, *regulated mortgage contract* and *regulated sale and rent back agreement*.

Rules

The Rules of the Institute of Chartered Accountants of Scotland.

Security

- Shares;
- Debentures;
- Government and public securities;
- Warrants;
- Certificates representing certain securities;
- Units in collective investment schemes;

- Rights under a *personal pension scheme*; or
- Rights to or interests in any of the above.