

THE PROFESSIONAL FIRMS (INSURANCE MEDIATION) INSTRUMENT 2004

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 156 (General supplementary powers);
 - (3) section 157(1) (Guidance); and
 - (4) section 332(1) (Rules in relation to persons to whom the general prohibition does not apply).
- B. The provisions of the Act listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 14 January 2005, except to the extent that a provision (other than in PROF 7.2) relates to a long-term care insurance contract or a regulated mortgage contract, in which case it comes into force on 31 October 2004.

Amendments to the Professional firms sourcebook

- D. The Professional firms sourcebook is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Professional Firms (Insurance Mediation) Instrument 2004.

By Order of the Board
15 January 2004

Annex

Amendments to the Professional firms sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section of text is inserted, the place where it goes is indicated and it is not underlined.

1.1.1 R This sourcebook applies as follows:

- (1) ...
- (2) ...
- (3) *PROF 6* applies to every *designated professional body* and to any *person* who requests the Treasury to make an order under section 326(1) of the Act (Designation of professional bodies); ~~and~~
- (4) *PROF 7* applies to every *designated professional body* and every *exempt professional firm* that is carrying on, or proposing to carry on, *insurance mediation activity*.

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1.1.4 G This sourcebook outlines:

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) the implications for an *authorised professional firm* that carries on *non-mainstream regulated activities*; ~~and~~
- (6) the arrangements made by the *FSA* for complying with its obligations under the *IMD* in relation to:
 - (a) maintaining a record of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance mediation activity*; and
 - (b) *exempt professional firms* that wish to passport under the *IMD*.

...

1.1.6 G The *rules and guidance* in this sourcebook are intended to:

- (1) ...
- (2) promote public understanding of the *financial system* by ensuring that the *clients* of an *exempt professional firm* are made aware that the firm is not an *authorised person*; ~~and~~

- (3) enable the *FSA* to use its resources in an efficient and effective way in the collection of information relevant to its duty to keep itself informed under section 325 of the *Act* (Authority's general duty); and
- (4) explain the background to and the arrangements made by the *FSA* for:
- (a) the registration of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, *insurance mediation activity*; and
 - (b) *authorised professional firms* and *exempt professional firms* that wish to exercise their *EEA right* under the *IMD* to establish a *branch* or provide *cross border services* in another *EEA State*.

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PROF 2 Ann 2

Status of exempt professional firm G

- 1 Table: Non Exempt activities orders under section 327(6) of the Act (see *PROF* 2.1.9G)

As at ~~21 March 2002~~^{31 October 2004}, the Treasury had made the following orders under section 327(6):

The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227), as amended by: article 3 of the Financial Services and Markets Act 2000 (Miscellaneous Provisions) Order 2001 (SI 2001/3650); article 7 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2002 (SI 2002/682); article 3 of the Financial Services and Markets Act 2000 (Commencement of Mortgage Regulation) (Amendment) Order 2002 (SI 2002/1777); article 24 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No1) Order 2003 (SI 2003/1475), and article 16 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No2) Order 2003 (SI 2003/1476).

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- 3.1.2 G The *FSA* keeps itself informed in a number of ways. A *designated professional body* has a duty under section 325(4) of the *Act* to cooperate with the *FSA*. Article 94 of the *Regulated Activities Order* requires each *designated professional body* to provide the *FSA* with the information it needs to maintain a public record of *persons* that are registered with the *FSA* to conduct *insurance mediation activity*. The *FSA* has made arrangements ~~envisages it will make arrangements~~

with each of the *designated professional bodies* about the information they provide to it, to include information about:

- (1) ...
- ...
- (4) supervisory activity; ~~and~~
- (5) the activities **carried on by exempt professional firms, the risks arising from them and how they are mitigated, for example by monitoring activity or training and competence arrangements;** ~~and~~
and
- (6) the names and addresses of each of their exempt professional firms that carry on, or are proposing to carry on, insurance mediation activity, together with the details of the individuals within the management of the exempt professional firms who are responsible for the insurance mediation activity and, where relevant, the passporting information required by the FSA for the purposes of paragraph 25 of Schedule 3 to the Act (EEA Passport Rights).

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- 3.2.1 G Section 328 of the *Act* (Directions in relation to the general prohibition) gives the *FSA* power to make a direction that the exemption under section 327 of the *Act* (see *PROF* 2.1.3 G) does not apply to the extent specified in the direction. Section 328 allows the *FSA* to make a direction in relation to different classes of *person* or different descriptions of *regulated activity*. Section 325(3) of the *Act* requires the *FSA* to keep under review the desirability of exercising its powers under Part XX of the *Act* (Provision of Financial Services by Members of the Professions), including its direction powers under section 328 of the *Act*.

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- 3.2.5 G (1) The *FSA* may exercise its direction powers under section 328(6) of the *Act* in two situations, as set out in (2) and (3).
- (2) First, ~~the~~ *FSA* may exercise its direction power under section 328(6)(a) of the *Act* only if it is satisfied that it is desirable in order to protect the interests of *clients*. In considering whether it is satisfied, the *FSA* is required by section 328(7) of the *Act* to have regard, among other things, to the effectiveness of any arrangements made by a *designated professional body*:
- ~~(1)~~(a) for securing compliance with *rules* made under section 332(1) of the *Act* (see *PROF* 4.1.1 G);
 - ~~(2)~~(b) for dealing with complaints against its *members* in relation to the carrying on by them of *exempt regulated*

activities (see *PROF 4.1.4 G (2)(d)*);

in order to offer redress to *clients* who suffer, or claim

(3)(
c) to have suffered, loss as a result of misconduct by its
members in their carrying on of *exempt regulated activities* (see *PROF 4.1.4 G (2)(d)*); and

for cooperating with the *FSA* under section 325(4) of

(4)(
d) the *Act* (see *PROF 3.1.2 G*).

(3) Second, the *FSA* may exercise its direction power under section 328(6)(b) of the *Act* if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the *IMD*. For example, the *FSA* might wish to do so if it was not receiving from a *designated professional body* the information it needs to maintain the *FSA Register* (see *PROF 7.1*).

3.2.6 G Section 330 of the *Act* (Consultation) sets out procedures which the *FSA* must follow if it wishes to make a direction under section 328(6)(a) or (b). Except as specifically provided in section 330:

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3.2.7 G The directions the *FSA* has made under section 328(6)(a) are set out in *PROF 3 Ann 1G*. Directions made by the *FSA* under section 328(6)(b) of the *Act* are listed in *PROF 3 Ann 2 G* (The *FSA*'s duties and powers).

PROF 3 Ann 1 The *FSA*'s duties and powers G

PROF 1 Table: Directions made by the *FSA* under section 328(6)(a) of the *Act* (see *PROF 3.2.7G*)

As at ~~21 June 2004~~ 31 October 2004, the *FSA* had made no directions under section 328 (6)(a) of the *Act*.

Insert the following new annex after *PROF 3 Annex 1G*

PROF 3 Ann 2 The *FSA*'s duties and powers G

PROF 1 Table: Directions made by the *FSA* under section 328(6)(b) of the *Act* (see *PROF 3.2.7G*)

As at 31 October 2004, the *FSA* had made no directions under section 328(6)(b) of the *Act*.

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4.1.1 G The effectiveness of arrangements made by a *designated professional body* for securing compliance with the *rules* in this chapter is one of the factors that the *FSA* must take into account in considering whether to exercise its powers to give a direction under section 328 of the *Act* (see *PROF* 3.2.5(2)G and (3)G).

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4.1.3 R (1) An *exempt professional firm* must, before it provides a service which includes the carrying on of a *regulated activity* in the *United Kingdom*, other than an *insurance mediation activity*, with or for a *client*, disclose in writing to the *client* in a manner that is clear, fair and not misleading that it is not authorised under the *Act*.

(2) An exempt professional firm must, before it provides a service which includes the carrying on of an insurance mediation activity with or for a client, make the following statement in writing to the client in a way that is clear, fair and not misleading and no less prominent than any other information provided to the client at the same time:

“[This firm is]/[We are] not authorised by the Financial Services Authority. However, we are included on the register maintained by the Financial Services 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 [DPB]. The register can be accessed via the Financial Services Authority website at www.fsa.gov.uk/register.”

4.1.4 G (1) The *FSA* considers that material provided to satisfy *PROF* 4.1.3R(1) and (2) need not be tailored to the individual *client*. The disclosures in *PROF* 4.1.3 R(1) and (2) may be provided alongside or integrated with other material provided to a *client*. *Exempt professional firms* may therefore include the information within engagement letters or client care letters, if they wish.

(2) The *FSA* considers that it is important that *clients* understand the implications for them of receiving services from an *exempt professional firm* that is not authorised under the *Act*. It is also important that clients understand the implications of the difference between authorisation under the *Act* and being on the register maintained by the *FSA*, so that the exempt professional

firm can conduct insurance mediation activity, in relation to which activity the regulatory protections established by the Act for the benefit of consumers will not apply. The FSA therefore expects *designated professional bodies* to make rules covering the information to be provided to *clients*. These rules should require *exempt professional firms* to make a disclosure to *clients* containing the following elements:

- (a) where the exempt professional firm conducts a regulated activity other than an insurance mediation activity, a statement that the exempt professional firm is not an authorised person;
 - (b) the nature of the *regulated activities* carried on by the *exempt professional firm*, and the fact that they are limited in scope;
 - (c) a statement that the *exempt professional firm* is regulated for these *regulated activities* by the *exempt professional firm's designated professional body*, identifying the *designated professional body* concerned; ~~and~~
 - (d) the nature of the complaints and redress mechanisms available to *clients* in respect of these *regulated activities*; and
 - (e) where the regulated activity consists of insurance mediation activity, the statement contained at PROF 4.1.3 R (2).
- (3) *Exempt professional firms* should also ensure that any statement that makes reference to the FSA does not lead a *client* to suppose that the FSA has direct regulatory responsibility for the *exempt professional firm*. This could be a breach of PROF 4.1.2 R. This consideration is particularly important in relation to insurance mediation activity, where clients may well fail to appreciate the difference between authorisation under the Act and being included on the register maintained by the FSA so as to permit the exempt professional firm to carry on insurance mediation activity.

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5.3 Reference to other sourcebooks and manuals

Introduction

- 5.3.1 G The parts of the *Handbook* in which the provisions are disapplied or modified in relation to *authorised professional firms* when carrying on *non-mainstream regulated activities* include those described in PROF 5.3.1AG to PROF 5.3.79G.

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Insurance: Conduct of Business sourcebook

- 5.3.10 G (1) ICOB 1.2.10 R provides that ICOB does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, except for:
- (a) ICOB 2.2 (Clear, fair and not misleading communication);
 - (b) ICOB 3 (Financial promotion);
 - (c) ICOB 4.2.2R in relation to the information for customers in table ICOB 4.2.8R items numbered (8), (9) and Note 4 covering complaints and compensation; and
 - (d) those sections in ICOB which implement articles 12 and 13 of the IMD, unless:
 - (i) the designated professional body of the firm has made rules which implement articles 12 and 13 of the IMD;
 - (ii) those rules have been approved by the FSA under section 332(5) of the Act; and
 - (iii) the firm is subject to the rules in the form in which they were approved.
- (2) ICOB 1.2.11 G (2) provides that the effect of ICOB 1.2.10R(4) is that if the relevant designated professional body of an authorised professional firm does not make rules implementing articles 12 and 13 of the IMD applicable to authorised professional firms those authorised professional firms will need to comply with those sections of ICOB which implement articles 12 and 13 of the IMD, namely ICOB 4.1 to 4.4 (but not 4.2.20G to 4.2.28G), and ICOB 4.8.

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Insert the following new PROF Chapter 7

Professional firms

Insurance mediation activity

- 7.1 Register of persons carrying on *insurance mediation activity*
Background
- 7.1.1 G The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (SI 2003/1476) implements in part the provisions of the *IMD* and amends the *Regulated Activities Order*.
The FSA's obligation to maintain a record
- 7.1.2 G Article 93 of the amended *Regulated Activities Order* requires the

FSA to maintain an up-to-date record of every *unauthorised person*, whether an *appointed representative* or an *exempt professional firm* that carries on, or is proposing to carry on, *insurance mediation activity* and to whom the *general prohibition* does not apply in relation to the carrying on of such an activity. In relation to *exempt professional firms* the *general prohibition* does not apply by virtue of section 327 of the *Act*.

- 7.1.3 G The *FSA* is not to include an *exempt professional firm* in the register relating to *unauthorised persons* if:
- (1) under a direction given by the *FSA* under section 328(1) of the *Act*, section 327(1) of the *Act* does not apply in relation to the carrying on by it of *insurance mediation activity*; or
 - (2) the *FSA* has made an order under section 329(2) of the *Act* disapplying section 327(1) of the *Act* in relation to the carrying on by the *exempt professional firm* of *insurance mediation activity*.

Provision of information to the *FSA*

- 7.1.4 G Article 94 of the *Regulated Activities Order* obliges a *designated professional body* to provide the *FSA* with the information it needs to maintain the record referred to in *PROF* 7.1.2G of every *unauthorised person* that carries on, or proposes to carry on, *insurance mediation activity* and keep it up to date. This information needs to include the details referred to in *PROF* 7.1.7 G. This is the responsibility of the *designated professional body* and not each *exempt professional firm*.

Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227)

- 7.1.5 G (1) The attention of *exempt professional firms* is drawn to the significance of The Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227), as amended by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476). The effect of these amendments is that *exempt professional firms* may not carry on certain *regulated activities* which relate to a *contract of insurance* in reliance on the *Part XX exemption* unless the *exempt professional firm* is included in the record of *unauthorised persons* carrying on *insurance mediation activity* maintained by the *FSA* under article 93 of the *Regulated Activities Order*.
- (2) Each *exempt professional firm* carrying on, or proposing to carry on, *insurance mediation activity* should ensure that at all material times the name of the firm and the requisite details are included in the record maintained by the *FSA*. Any such *exempt professional firm* carrying on, or proposing to carry on, *insurance mediation activity* whose name does not appear in the record maintained by the *FSA* is likely to be breaching the

general prohibition which is a criminal offence under section 23 of the *Act*.

FSA Register

7.1.6 G In order to comply with its obligations to maintain a record of *unauthorised persons* that carry on, or are proposing to carry on, *insurance mediation activity*, the *FSA* has established an appropriate record which forms part of the record maintained by the *FSA* under section 347 of the *Act*. The record maintained by the *FSA* under section 347 of the *Act* is known as the *FSA Register*. The *FSA Register* therefore contains a record of each *authorised* and *unauthorised person* that carries on, or proposes to carry on, *insurance mediation activity*.

7.1.7 G The information to be included on the record in relation to *exempt professional firms* will, as required by the *IMD*, include details of:

- (1) the name and address of each *exempt professional firm* that carries on, or is proposing to carry on, *insurance mediation activity*;
- (2) where the *exempt professional firm* is not an individual, the names of the individuals within the management of the *exempt professional firm* who are responsible for the *insurance mediation activity*; and
- (3) each *EEA State* in which the *exempt professional firm* under an *EEA right* derived from the *IMD*:
 - (a) has established a *branch*; or
 - (b) is providing *cross border services*.

FSA Website

7.1.8 G The *FSA Register* can be accessed through the *FSA* website under the link www.fsa.gov.uk/register.

7.2 Passporting under the Insurance Mediation Directive

7.2.1 G All *persons* that are on the register maintained by the *FSA* in accordance with article 3 of the *IMD*, and so permitted to conduct *insurance mediation activity*, are entitled to exercise the *EEA right* conferred upon them by article 6 of the *IMD* to establish a *branch* or provide services relating to *insurance mediation activity* in another *EEA State*. Both *authorised professional firms* and *exempt professional firms* that are so registered by the *FSA* get the benefit of these passporting rights.

7.2.2 G Any *authorised professional firm* or *exempt professional firm* that is contemplating the exercise of rights under article 6 of the *IMD* to establish a *branch* or provide services relating to *insurance mediation*

activity in another *EEA State* is referred to *SUP 13* (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both *authorised professional firms* and *exempt professional firms* are *UK firms* for the purposes of the *Handbook*, including *SUP 13*.

- 7.2.3 G A *UK firm* proposing to establish a *branch* in another *EEA State* for the first time under an *EEA right* derived from the *IMD* must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). These include the requirement that the firm must at the outset give the *FSA* a notice in the required form of its intention to establish the *branch*. *SUP 13.3.2 G* to *SUP 13.3.5 G* detail the procedure to be followed once such a notice of intention has been received by the *FSA*. *SUP 13.5.1 R* (Specified contents: notice of intention to establish a branch) and *SUP 13.6.9A G* (Firms passporting under the *IMD*) will also be relevant.
- 7.2.4 G A *UK firm* proposing to provide *cross border services* into another *EEA State* for the first time under an *EEA right* derived from the *IMD* must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). The *UK firm* must at the outset give the *FSA* a notice in the required form of its intention to provide the *cross border services* into another *EEA State*. In this instance, the relevant procedure to be followed is outlined in *SUP 13.4.2 G* to *SUP 13.4.5 G*. *SUP 13.5.2 R* (Specified contents: notice of intention to provide cross border services) and *SUP 13.7.11 G* will also be relevant.