Draft Financial Services (Conduct of Business) Rules 2001 (Annex E4)

These rules, dated 18 July 2001, are made by the Solicitors Regulation Authority Board, under Part II of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under section 83 of and paragraph 19 of schedule 4 to the Legal Services Act 2007, regulating the practices of:

- *authorised bodies* and *recognised sole practitioners* in any part of the world,
- *registered European lawyers* in any part of the United Kingdom, and
- *registered foreign lawyers* in England and Wales,

in carrying out "regulated activities" in, into or from the United Kingdom.

1. Purpose

(1) The Law Society is a designated professional body under Part XX ofFSMA, and *firms* may therefore carry on certain *regulated activities* without being regulated by the *FSA*.

(2) The SRA Financial Services (Scope) Rules 2001 set out the scope of the *regulated activities* which may be undertaken by *firms* which are not regulated by the *FSA*. These rules regulate the way in which *firms* carry on such exempt *regulated activities*.

2. Application

(1) Where a firm is a *licensed body*, these rules apply only in respect of the *licensed activities* of the *firm*.

(2) Apart from rule 3 (status disclosure), these rules apply to:

(a) *firms* which are not regulated by the *FSA*; and

(b) *firms* which are regulated by the *FSA* but these rules only apply to such *firms* in respect of their *non-mainstream regulated activities*.

3. Status disclosure

(1) This rule applies only to *firms* which are not regulated by the *FSA*.

(2) A *firm* shall give the *client* the following information in writing in a manner that is clear, fair and not misleading before the *firm* provides a service which includes the carrying on of a *regulated activity*

(a) a statement that the *firm* is not authorised by the *FSA*;

(aa) the name and address of the *firm*;

(b) the nature of the *regulated activities* carried on by the *firm*, and the fact that they are limited in scope;

(c) a statement that the *firm* is authorised and regulated by the Solicitors Regulation Authority; and

(d) a statement explaining that complaints and redress mechanisms are provided through the Solicitors Regulation Authority and the Legal Ombudsman;

(3) Before a *firm* provides a service which includes the carrying on of an *insurance mediation activity* with or for a *client*, it must make the following statement in writing to the *client* in a way that is clear, fair and not misleading

"[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 Solicitors Regulation Authority. The register can be accessed via the Financial Services Authority website at www.fsa.gov.uk/register."

Notes

1. Where the status disclosure relates to *insurance mediation* activities then the statement in rule 3(3) must be used. The status disclosure need not be tailored to the needs of the individual *client*.The disclosures may be provided alongside or integrated with other material provided to the *client*. These disclosures may be made in the firm's client care letter or in a separate letter.

2. Outcome 5 in Chapter 8 of the SRA Code of Conduct is that your letterhead, website and e-mails must show the words "authorised and regulated by the Solicitors Regulation Authority" which will assist in meeting the requirements of rule 3(2).

3. The provisions of rule 3(2)(d) and rule 3(3) reflect the requirements of the

outcomes in Chapter 1 of the SRA Code of Conduct in respect of complaints handling.

4. Execution of transactions

A *firm* shall ensure that where it has agreed or decided in its discretion to effect a *transaction*, it shall do so as soon as possible, unless it reasonably believes that it is in the *client's* best interests not to do so.

Note

Principle 4 sets out your duty to act in the best interests of the *client*. Accordingly, in cases where there is any doubt on the point, *firms* should ensure that transactions are effected on the best terms reasonably available.

5. Records of transactions

(1) Where a *firm* receives instructions from a *client* to effect a *transaction*, or makes a decision to effect a *transaction* in its discretion, it shall keep a record of:

(a) the name of the *client*;

(b) the terms of the instructions or decision; and

(c) in the case of instructions, the date when they were received.

(2) Where a *firm* gives instructions to another person to effect a *transaction*, it shall keep a record of:

(a) the name of the *client*;

(b) the terms of the instructions;

(c) the date when the instructions were given; and

(d) the name of the other person instructed.

Note

It is not necessary for the *firm* to make a separate record. Normal file notes or letters on the file will meet the requirements of this rule provided that they include the appropriate information. If instructions are given or received over the telephone, an appropriate attendance note would satisfy this rule.

6. Record of commissions

Where a *firm* receives commission which is attributable to *regulated activities* carried on by the *firm*, it shall keep a record of:

(a) the amount of the commission; and

(b) how the *firm* has accounted to the *client*.

Notes

1. Any *financial benefit* has to be dealt with in accordance with Outcome 15 in chapter 1 of the SRA Code of Conduct. However, *firms* should bear in mind that in the case of commissions attributable to *regulated activities*, firms must also comply with the requirements of the SRA's Financial Services (Scope) Rules 2001, rule 4 (c).

2. The record could be a letter or bill of costs provided the information is clear.

7. Safekeeping of clients' investments

(1) Where a *firm* undertakes the *regulated activity* of safeguarding and administering investments, the *firm* must operate appropriate systems, including the keeping of appropriate records, which provide for the safekeeping of *assets* entrusted to the *firm* by *clients* and others.

(2) Where such *assets* are passed to a third party:

(a) an acknowledgement of receipt of the property should be obtained; and

(b) if they have been passed to a third party on the *client's* instructions, such instructions should be obtained in writing.

8. Packaged products – execution-only business

If a *firm* arranges for a *client* on an *execution-only* basis any *transaction* involving a *packaged product*, the *firm* shall send the *client* written confirmation to the effect that:

(a) the *client* had not sought and was not given any advice from the *firm* in connection with the transaction; or

(b) the *client* was given advice from the *firm* in connection with that *transaction* but nevertheless persisted in wishing the *transaction* to be effected;

and in either case the *transaction* is effected on the *client's* explicit instructions.

8A. Insurance mediation activities

Where a *firm* undertakes *insurance mediation activities* for a *client*, it must comply with

appendix 1 to these rules.

9. Retention of records

Each record made under these rules shall be kept for at least six years.

Note

The six years shall run from the date on which the relevant record has been made.

10. Waivers

(1) In any particular case or cases the SRA shall have power to waive in writing any of the provisions of these rules, but shall not do so unless it appears that:

(a) compliance with them would be unduly burdensome having regard to the benefit which compliance would confer on investors; and

(b) the exercise of the power would not result in any undue risk to investors.

(2) The Council shall have power to revoke any waiver.

11. Commencement

These rules come into force on 1 December 2001.

12. Interpretation

(1) The interpretation of these rules is governed by rule 8(1) – (4) of the SRA Financial Services (Scope) Rules 2001.

(2) In these rules:

"***execution-only***" (transaction) means a *transaction* which is effected by a *firm* for a *client* where the *firm* assumes on reasonable grounds that the *client* is not relying on the *firm* as to the merits or suitability of that *transaction*;

Notes

1. Whether a transaction is "execution only" will depend on the existing relationship between the *client* and the *firm* and the circumstances surrounding that transaction. Generally, a transaction will be "execution-only" if the *client* instructs the *firm* to effect it without having received advice from the *firm*. Even though this is the case, however, the transaction may still not qualify as "execution only" because, in view of the relationship, the *client* may reasonably expect the *firm* to indicate if the transaction is inappropriate. In any event, a *firm* may be negligent

(and possibly in breach of Principle 4) if it fails to advise on the appropriateness or otherwise.

2. A transaction will also be "*execution-only*" if the firm has advised the *client* that the transaction is unsuitable, but the *client* persists in wishing the transaction to be carried out. In those circumstances it is good practice (and in some cases a requirement) for the *firm* to confirm in writing that its advice has not been accepted, and that the transaction is being effected on an "*execution-only*" basis.

3. Where the *transaction* involves a *packaged product*, there is a specific requirement to confirm in writing the "*execution-only*" nature of a transaction (see Rule 8 above).

"***insurance undertaking***" means an undertaking, whether or not an insurer, which carries on insurance business.

"***Insurer***" means a firm with permission to effect or carry out *contracts of insurance* (other than a bank)

"***non-mainstream regulated activity***" means a *regulated activity* of a *firm* regulated by the *FSA* in relation to which the conditions in the Professional Firms Sourcebook (5.2.1R) are satisfied.

(3) These rules are to be interpreted in the light of the guidance notes.

APPENDIX 1: Insurance Mediation Activities

1. Disclosure of information

(1) Where a *firm* undertakes *insurance mediation activities* for a *client*, it must take reasonable steps to communicate information to the *client* in a way that is clear, fair and not misleading.

(2) Where a *firm* recommends a *contract of insurance* (other than a *life policy*) to a *client*, the *firm* must inform the *client* whether the *firm* has given advice on the basis of a fair analysis of a sufficiently large number of *insurance contracts* available on the market to enable the *firm* to make a recommendation in accordance with professional criteria regarding which *contract of insurance* would be adequate to meet the *client's* needs.

(3) If the *firm* does not conduct a fair analysis of the market, the *firm* must:

(a) advise the *client* whether the *firm* is contractually obliged to conduct *insurance mediation activities*in this way;

(b) advise the *client* that the *client* can request details of the *insurance undertakings* with which the *firm* conducts business; and

(c) provide the *client* with such details on request.

(4) The information referred to in paragraphs 1(2) and 1(3) above must be provided to the client on paper or on any other durable medium available and accessible to the *client*.

Notes

1. Paragraph 1(1) covers all communications with the *client*, including oral statements and telephone calls.

2. Indicative behaviours arising in respect of chapter 6 (Your Client and Introductions to third parties) of the SRA Code of Conduct provides that you ought not in connection with *regulated activities* have any *arrangement* with other persons under which you could be constrained to recommend to *clients* or effect for them (or refrain from doing so) transactions in some *investments* but not others, or with some persons but not others, or through the agency of some persons but not others; or to introduce or refer *clients* or other persons with whom the firm deal to some persons but not others. However, these provisions do not apply to arrangements in connection with *regulated mortgage contracts*, *general insurance contracts* or *pure protection contracts*.

3. Paragraphs 1(2) and 1(3) apply to *contracts of insurance* other than *life policies*. Firms who are not authorised by the FSA are not allowed to recommend the *buying* of *life policies*, but they can make recommendations and advise on other *contracts of insurance*.

4. Reference to a durable medium in paragraph 1(4) is to a form that allows for the storage of information to be reproduced without changes. This includes floppy disks, CD-roms, DVDs and hard drives where emails are stored

2. Suitability

(1) Before a *firm* recommends a *contract of insurance* (other than a *life policy*) the *firm* must take reasonable steps to ensure that the recommendation is suitable to the *client's* demands and needs by:

(a) considering relevant information already held;

(b) obtaining details of any relevant existing insurance;

(c) identifying the *client's* requirements and explaining to the *client* what the *client* needs to disclose;

(d) assessing whether the level of cover is sufficient for the risks that the *client* wishes to insure; and

(e) considering the relevance of any exclusions, excesses, limitations or conditions.

(2) Where the *firm* recommends a *contract of insurance* that does not meet the needs of the *client* because there is no such contract available in the market, this should be disclosed to the *client*.

3. Demands and needs statement

(1) Where a *firm* recommends a *contract of insurance* (other than a *life policy*) or arranges a *contract of insurance*, the *firm* must, before the *contract* is finalised, provide the client with a written demands and needs statement that:

(a) sets out the *client's* demands and needs on the basis of the information provided by the *client*;

(b) where a recommendation has been made, explains the reason for recommending that *contract of insurance*;

(c) reflects the complexity of the *insurance contract* being proposed; and

(d) is on paper or on any other durable medium available and accessible to the *client*.

(2) Where a *firm* arranges a *contract of insurance* on an execution-only basis, the demands and needs statement need only identify the *contract of insurance* 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.

(3) The requirement in paragraph 3(1) to provide the *client* with a written demands and needs statement before the contract is finalised will not apply in the following circumstances:

(a) where the *firm* acts on the renewal or amendment of a *contract of insurance* other than a *life policy* if the information given to the *client* in relation to the initial contract is still accurate and up-to-date. If the information previously disclosed has changed, the *firm* must draw the attention of the *client* to the matters which have changed before the renewal or amendment takes place;

(b) where the information is provided orally at the request of the *client*;

(c) where immediate cover is required;

(d) where the *contract* is concluded by telephone; or

(e) where the *firm* is introducing the *client* to an *authorised person* or an *exempt person* and taking no further part in arranging the *contract of insurance*.

save that in (b), (c) and (d) above the information contained in the written demands and needs statement must be provided to the *client* immediately after the conclusion of the *contract of insurance*.

Notes

1. Reference to a durable medium in paragraph 3(l)(d) is to a form that allows for the storage of information and allows the information to be reproduced without changes. This includes floppy disks, CD-Roms, DVDs and hard drives where emails are stored.

2. Paragraph 2 and 3(l) apply to *contracts of insurance* other than *life policies*. Firms who are not authorised by the *FSA* are not allowed to recommend the buying of *life policies*, but they can make recommendations and advise on other *contracts of insurance*.

4. Exclusion for large risks

Paragraphs 1 – 3 above do not apply where a *firm* carries on *insurance mediation activities* for commercial *clients* in relation to *contracts of insurance* covering risks within the following categories:

(a) railway rolling stock, aircraft, ships (sea, lake, river and canal vessels), goods in transit, aircraft liability and liability of ships (sea, lake, river and canal vessels);

(b) credit and suretyship, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;

(c) land vehicles (other than railway rolling stock), fire and natural forces, other damage to property, motor vehicle liability, general liability, and miscellaneous financial loss, in so far as the policyholder exceeds the limits of at least two of the following three criteria:

(i) balance sheet total: €6.2 million;

(ii) net turnover: €12.8 million;

(iii) average number of employees during the financial year: 250.

5. Notification of establishment and services in other Member States

If a *firm* wishes to exercise the right conferred by Article 6 of the Insurance Mediation Directive to establish a branch or provide cross-border services in another EEA state an appropriate application must be made directly to the FSA. The Rules under the FSA's Supervision Manual, SUP 13, Exercise of Passport Rights by UK firms, contain details of the applicable process. A firm proposing to provide such services must comply with the applicable provisions of the Act, as laid down in the FSA's Professional Firms' Sourcebook Chapter 7 as amended from time to time.