

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE FINANCIAL CONDUCT AUTHORITY (FCA)
AND
THE SOLICITORS REGULATION AUTHORITY
concerning:**

- 1. exempt professional firms; and**
- 2. authorised professional firms.**

PART 1: GENERAL

1. APPLICATION AND PURPOSE
2. DEFINITIONS

PART 2: EXEMPT PROFESSIONAL FIRMS

3. PROVISION OF INFORMATION ABOUT EXEMPT PROFESSIONAL FIRMS
4. PROVISION OF INFORMATION ABOUT THE SRA, ITS RULES, SYSTEMS AND PROCEDURES
5. COMPLAINTS ABOUT EXEMPT REGULATED ACTIVITIES AND ARRANGEMENTS FOR REDRESS
6. THE SRA'S REGULATORY FUNCTIONS

PART 3: AUTHORISED PROFESSIONAL FIRMS

7. AUTHORISED PROFESSIONAL FIRMS

PART 4: MISCELLANEOUS

8. REVIEW OF THIS MEMORANDUM OF UNDERSTANDING
9. DATE OF COMING INTO FORCE OF THIS MEMORANDUM OF UNDERSTANDING
10. PUBLICATION
11. THE SHARED INTELLIGENCE SYSTEM

SCHEDULE – CONTACT DETAILS

PART 1: GENERAL

SECTION 1 – APPLICATION AND PURPOSE

1.1 General Principles informing this MoU

- 1.1.1 The purpose of this memorandum of understanding (**‘MoU’**) is to provide a framework for the working relationship between the FCA and the SRA to enable both parties to discharge their respective functions under the Act concerning members carrying on exempt regulated activities and authorised professional firms. The SRA is the independent regulatory body of the Law Society of England and Wales which is a professional body designated by the Treasury under section 326(1) of the Act. This MoU is intended to promote the development of an open and consultative relationship between the FCA and the SRA.
- 1.1.2 This MoU supplements provisions of the Act and the FCA’s Handbook of Rules and Guidance. Neither the FCA nor the SRA will incur any legal liability arising solely from non-compliance with this MoU, and nothing in this MoU shall be construed as requiring the FCA or the SRA to take any action which would otherwise be prohibited by law.
- 1.1.3 The FCA and the SRA agree that information provided to the FCA by the SRA and vice versa under the information sharing provisions of this MoU and which constitutes confidential information about the affairs of the SRA may be shared by the FCA with the Ministry of Justice.

SECTION 2: DEFINITIONS AND INTERPRETATION

2.1 Definitions and Interpretation

In this MoU the following terms are used:

“the Act” means the Financial Services and Markets Act 2000;

“approved person” means a person in relation to whom the FCA has given its approval under section 59 of the Act (Approval for particular arrangements) for the performance of a controlled function;

“authorised professional firm” means a professional firm which is an authorised person;

“client” means

- (a) a person who uses, or has used, any of the services provided by anyone who is regulated by the SRA in the course of carrying on exempt regulated activities (including, where the regulated person is acting in his capacity as a trustee, a person who is, has been or may be a beneficiary of the trust); or
- (b) a person who has rights or interests which are derived from, or otherwise attributable to, the use of any such services by other persons; or
- (c) a person who has rights or interests which may be adversely affected by the use of any such services by persons acting on his behalf or in a fiduciary capacity in relation to him;

“client money” means, subject to CASS 7, money of any currency which, in the course of carrying on designated investment business, a firm holds in respect of any investment agreement entered into, or to be entered into, with or for a client, or which a firm treats as client money in accordance with the client money rules.

“complaint” includes any expression of dissatisfaction;

“consumer” means a person who uses, has used, is or may be contemplating using any of the services provided by an authorised professional firm in carrying on regulated activities; who have rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or who have rights or interests which may be adversely affected by the use of any such services by persons acting on their behalf or in a fiduciary capacity in relation to them;

“exempt professional firm” means a person to whom, under section 327 of the Act, the general prohibition does not apply;

“exempt regulated activity” means a regulated activity which may, as a result of Part XX of the Act, be carried on by a member of the Law Society of England and Wales without breaching the general prohibition;

“FCA” means the Financial Conduct Authority

“Gateways Regulations” mean The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (as amended);

“immediately” is to be interpreted as meaning as soon as is reasonably practicable and without undue delay;

“IPRU-INV” means the Interim Prudential Sourcebook for Investment Business in the FCA’s Handbook of Rules and Guidance;

“member” in relation to the SRA and the Law Society of England and Wales means a person who is entitled to carry on the practice of that profession and, in practising it, is subject to rules of the SRA;

“Part XX” means Part XX of the Act;

“PII” means professional indemnity or professional liability insurance;

“PROF” means the Professional Firms Sourcebook in the FCA’s Handbook of Rules and Guidance;

“professional firm” means a person which is

- (a) an individual who is entitled to practise the profession regulated by the SRA and in practising it is subject to its rules; or
- (b) a person (not being an individual) which is managed or controlled by one or more individuals each of whom:
 - (i) is entitled to practise the profession regulated by the SRA; and
 - (ii) in practising it is subject to the rules of the SRA;

“proceedings” means any process or hearing in a court of civil or criminal jurisdiction;

“rule” means any rule, direction or guidance made or issued by the SRA and which is intended to apply to all or some of its members and includes but is not restricted to rules made under section 332 of the Act and rules of general professional conduct;

“SIS” means the Shared Intelligence System which is an “anything known” enquiry service on individuals and firms that all participating bodies use to locate information held by other regulators;

“SRA” means the independent regulatory body of the Law Society of England and Wales and is that part of the Law Society which exercises its regulatory functions. The Law Society is required by the Legal Services Act 2007 to separate its regulatory and representative functions and consequently arrangements for and the actual sharing of regulatory information must be with the SRA.

PART 2: EXEMPT PROFESSIONAL FIRMS

SECTION 3: PROVISION OF INFORMATION ABOUT EXEMPT PROFESSIONAL FIRMS

3.1 Overriding Objective

- 3.1.1 The SRA and the FCA respectively recognise that the overriding objective under Part XX is the provision of an appropriate level of protection for the interests of clients.
- 3.1.2 The FCA's duties and functions under the Act are non-delegable and include but are not limited to the following:
- (i) to comply with its duty under section 325 of the Act and PROF 3.1 to keep itself informed about the way in which the SRA supervises and regulates the carrying on of exempt regulated activities by its members;
 - (ii) to keep under review the desirability of the exercising any of its powers under section 328 of the Act (Directions) or section 329 of the Act (Orders);
 - (iii) the duty to act in a manner which is compatible with the regulatory objectives set out in the Act; and
 - (iv) monitoring and enforcement under para 6 of Schedule 1 to the Act.
- 3.1.3 The duties and functions of the SRA under the Act include but are not limited to:
- (i) the powers, duties or functions in relation to members which are or may be exercised for the purposes of supervising and regulating exempt regulated activities ('the SRA's regulatory functions'); and
 - (ii) its duty to co-operate by the sharing of information and in other ways with the FCA, to enable the FCA to fulfil its duties and to keep under review the desirability of exercising its powers under Part XX.
- 3.1.4 The FCA and the SRA will hold liaison meetings at least once a year (unless otherwise agreed) to discuss how they are jointly and separately achieving the objective of providing an appropriate level of protection for the interests of clients.

3.2 Gateways Regulations

- 3.2.1 The FCA and the SRA acknowledge that any exchange of confidential information about exempt professional firms or members performing functions in exempt professional firms is subject to the confidentiality requirements of the Act and the Gateways Regulations.

3.3 Matters likely to be of material concern to the FCA

- 3.3.1 The SRA will inform the FCA immediately if it becomes aware that any matter likely to be of material concern to the FCA may have arisen in relation to:
- (i) exempt regulated activities; and/or
 - (ii) exempt professional firms;
- 3.3.2 Matters likely to be of material concern to the FCA include but are not limited to:
- (i) information giving the SRA reasonable cause to believe that an exempt professional firm may no longer be a fit and proper person to carry on regulated activities in accordance with section 327(1) of the Act;
 - (ii) information giving the SRA reasonable cause to believe that the interests of clients are or may be at risk;
 - (iii) information giving the SRA reasonable cause to believe that a member carrying on functions in relation to an exempt professional firm may not be a fit and proper person to carry out the functions concerned; and

- (iv) information giving the SRA reasonable cause to believe that a person may have committed a criminal offence that the FCA has power to investigate under the Act; and
- (v) information on the prohibition by the SRA of a firm from carrying on insurance mediation activities, in order that the FCA can remove the firm from the FCA Register.

3.4 Annual Return of Information about Firms

3.4.1 Within 4 months of the end of December each year the SRA will supply the FCA with a list of its exempt professional firms to include:

- (i) the number of exempt professional firms; and
- (ii) the number of members carrying on exempt regulated activities in the relevant exempt professional firms.

3.5 Information about exempt regulated activities

3.5.1 Within 4 months of the end of December each year the SRA should provide the FCA with a report about the range and scope of exempt regulated activities carried on by its exempt professional firms, including information about the exempt regulated activities carried on in different areas of legal practice.

3.6 Periodic statements and committee minutes covering exempt professional firms

3.6.1 Upon reasonable request, the SRA will provide the FCA with a copy of any periodic or occasional statements required under the SRA's rules or a committee minute relating to a member's conduct of exempt regulated activities.

3.7 Information on investigations and disciplinary proceedings

3.7.1 The FCA will notify the SRA immediately when the FCA commences an investigation into the activities of an exempt professional firm or a member performing functions in relation to exempt regulated activities.

3.7.2 The SRA will inform the FCA immediately if it commences an investigation or makes a referral for disciplinary proceedings in relation to apparent breaches of rules made under section 332 of the Act.

SECTION 4: PROVISION OF INFORMATION ABOUT THE SRA, ITS RULES, SYSTEMS AND PROCEDURES

4.1 Information about the SRA's regulatory functions

4.1.1 Within 4 months of the end of December each year, the SRA should provide the FCA with a report about how the SRA has exercised its regulatory functions over the past year and how it intends to exercise its regulatory functions for the forthcoming year commencing 1 January.

4.2 Notice of intended changes to DPB Rules

4.2.1 The SRA acknowledges that any changes to rules made under section 332(3) require the approval of the FCA.

4.2.2 The SRA should provide the FCA with reasonable notice of any proposed rule changes relating to any of the following matters in so far as they affect its members' conduct of exempt regulated activities:

- (i) arrangements and procedures for handling complaints from clients about members;
- (ii) mandatory PII requirements; and

(iii) training, competence and qualification requirements.

4.3 Notice of FCA policy initiatives affecting those regulated by the SRA from carrying on the conduct of exempt regulated activities

4.3.1 The FCA agrees that the SRA should receive an early indication of any policy initiatives or proposed consultations which are likely to have an effect on the exempt regulated activities carried on by those regulated by the SRA.

4.4 Annual Report of the SRA

4.4.1 The SRA should provide the FCA with a copy of its annual report as soon as it is available.

SECTION 5: COMPLAINTS ABOUT THE CONDUCT OF EXEMPT REGULATED ACTIVITIES AND INFORMATION ABOUT ARRANGEMENTS FOR REDRESS

5.1 Complaints handling arrangements concerning exempt regulated activities

5.1.1 The SRA will maintain appropriate and effective arrangements for handling complaints from clients and third parties about members' conduct of exempt regulated activities.

5.1.2 The SRA will notify the FCA if it makes significant changes to its procedures for handling complaints about its members' conduct of exempt regulated activities.

SECTION 6: THE SRA'S REGULATORY FUNCTIONS

6.1 The SRA's regulatory functions

6.1.1 The SRA will co-operate with the FCA, to the extent that it may reasonably be required, in respect of any review the FCA may undertake of the SRA's regulatory functions that come within the FCA's remit.

PART 3: AUTHORISED PROFESSIONAL FIRMS

SECTION 7: AUTHORISED PROFESSIONAL FIRMS

- 7.1 The FCA and the SRA acknowledge that confidential information about the activities of authorised professional firms or approved persons may only be disclosed between themselves where the SRA or the FCA considers that such disclosure is in the public interest or is otherwise permitted under the Gateways Regulations.
- 7.2 The SRA acknowledges that under Rule 2.3 of IPRU (INV) an authorised professional firm must maintain adequate PII cover and that compliance with the Solicitors' Indemnity Insurance Rules from time to time in force which deal with PII cover is deemed compliance with Rule 2.3. The SRA will inform the FCA as soon as reasonably practicable if it makes any changes to the PII arrangements which apply to authorised professional firms.
- 7.3 The SRA will provide the FCA immediately with relevant information which comes to its attention about authorised professional firms that is likely to be of material concern to the FCA. This information includes but is not limited to:
- (i) circumstances giving the SRA reasonable cause to believe that an approved person or an authorised professional firm is not a fit and proper person;
 - (ii) information giving the SRA reasonable cause to believe that consumers may be at risk;
 - (iii) details of circumstances where the SRA has exercised its powers of intervention;
 - (iv) details of any referral of an authorised professional firm to the Solicitors Disciplinary Tribunal
 - (v) any adverse findings, fines or other penalty imposed by the Solicitors Disciplinary Tribunal;
 - (vi) circumstances which give rise to a reasonable suspicion that money laundering or financial crime has taken place in connection with the carrying on of regulated activities by an authorised professional firm;
 - (vii) information on the prohibition by the SRA of an authorised professional firm from carrying on non-mainstream regulated activity.
- 7.4 The SRA acknowledges that under CASS 7.1.15R, an authorised professional firm must comply with the rules of the SRA concerning client money. Within 4 months of the end of December each year, the SRA will provide a report to the FSA about the SRA's supervisory functions in relation to its client money rules over the preceding year, to include any action taken following the exercise of its supervisory functions in relation to an authorised professional firm.
- 7.5 The FCA will give the SRA an early indication of any policy changes that are likely to have an effect on authorised professional firms.
- 7.6 The FCA will give the SRA immediately any information about an authorised professional firm that is likely to be of material concern to the SRA. This information includes but is not limited to:
- (i) the commencement of any investigation;
 - (ii) the results of any disciplinary or enforcement action; and
 - (iii) any concerns regarding the fitness and propriety of an approved person or an authorised professional firm.

PART 4: MISCELLANEOUS

SECTION 8: REVIEW OF THIS MoU

8.1 The FCA and the SRA will review this MoU regularly and consult each other with a view to improving its effectiveness and to resolve any difficulties.

SECTION 9: DATE OF COMING INTO FORCE OF THIS MoU

9.1 This MoU will come into effect when signed by both parties.

9.2 This MoU supersedes any previous memorandum of understanding agreed between the FCA (or any of its predecessor bodies) and the SRA (or the Law Society of England and Wales).

SECTION 10: PUBLICATION

10.1 The FCA and the SRA agree to publish this MoU on their respective websites.

SECTION 11: THE SHARED INTELLIGENCE SERVICE

11.1 The SRA confirms that it will provide information to the FCA on the outcome of any disciplinary proceedings that will enable the FCA to include the relevant names on the SIS.

SCHEDULE

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Signed on behalf of the Financial Conduct Authority

on 28th of March 2013

Christopher Woolard

Director, Policy, Risk and Research Division

Signed on behalf of the Solicitors Regulation Authority

on 27th of March 2013

Richard Collins

Executive Director