

MEMORANDUM OF UNDERSTANDING BETWEEN

THE FINANCIAL SERVICES AUTHORITY

AND

THE LAW SOCIETY OF SCOTLAND,

A PROFESSIONAL BODY DESIGNATED BY THE TREASURY UNDER

SECTION 326(1) of the FINANCIAL SERVICES AND MARKETS ACT 2000 AND

A FORMER RECOGNISED PROFESSIONAL BODY UNDER THE FINANCIAL

SERVICES ACT 1986,

concerning

- 1. exempt professional firms;**
- 2. pre-N2 business conducted by firms certified by the Law Society of
Scotland under section 15 of the FINANCIAL SERVICES ACT 1986; and**
- 3. authorised professional firms.**

Coming into force on

.....2003

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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 Financial Services Authority (**‘the FSA’**) and the Law Society of Scotland, to enable both parties to discharge their respective functions under the Act concerning members carrying on exempt regulated activities, pre-N2 business and authorised professional firms. This MoU is intended to promote the development of an open and consultative relationship between the FSA and the Law Society of Scotland.
- 1.1.2 This MoU supplements provisions of the Act and the FSA’s Handbook of Rules and Guidance. Neither the FSA nor the Law Society of Scotland will incur any legal liability arising solely from non-compliance with this MoU, and nothing in this MoU shall be construed as requiring the FSA or the Law Society of Scotland to take any action which would otherwise be prohibited by law. In addition, the FSA recognises that the Scottish Legal Services Ombudsman provides a complainant with the right to complain to the Ombudsman against any finding of the Law Society of Scotland.
- 1.1.3 The FSA and the Law Society of Scotland agree that information provided to the FSA by the Law Society of Scotland and vice versa under the information sharing provisions of this MoU and which constitutes confidential information about the affairs of the Law Society of Scotland may be shared by the FSA with the Scottish Legal Services Ombudsman.

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;

“authorised professional firm” means a professional firm which is authorised by the FSA;

“client” means

- (a) a person who uses, or has used, any of the services provided by a member of the Law Society of Scotland in the course of carrying on exempt regulated activities (including, where the member of the Law Society of

Scotland 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 COB 9.3, 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.

“COB” means the Conduct of Business Sourcebook in the FSA’s Handbook of Rules and Guidance;

"complaint" means any expression of dissatisfaction, whether written or oral, received by the Law Society of Scotland that it is empowered to deal with under the Solicitors (Scotland) Act 1980;

“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 and is licensed by the Law Society of Scotland to carry on incidental investment business under its rules;

"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 Scotland without breaching the general prohibition;

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

“INV(PRU)” means the Interim Prudential Sourcebook for Investment Business in the FSA’s Handbook of Rules and Guidance;

"member" in relation to the Law Society of Scotland means a person who is entitled to carry on the practice of that profession and, in practising it, is subject to rules of the Law Society of Scotland;

"**Part XX**" means Part XX of the Act;

"**pensions review provision**" means any (or part of any) enactment, subordinate legislation or other instrument or provision (including guidance in writing or other legible form) which (or to the extent that it) provides for, or relates to, the conduct of a review into, or the taking of other steps with respect to

- (a) the selling, between 29th April 1988 and 30th June 1994, by persons who were at the time
 - (i) persons certified by the Law Society of Scotland under the Financial Services Act 1986, or
 - (ii) appointed representatives of such persons (within the meaning of that Act), of rights in, or interests under, personal pension schemes; or
- (b) the selling, by such persons between 29th April 1988 and 15th August 1999, of rights in, or interests under, free standing additional voluntary contributions schemes;

and references to "selling" rights or interests also include

- (a) the giving of advice to acquire rights or interests, and
- (b) the making of arrangements for another person to acquire, or with a view to another person acquiring, rights or interests;

"**PII**" means professional indemnity or professional liability insurance;

"**pre-N2 business**" means investment business undertaken before 1 December 2001 by a person certified by the Law Society of Scotland pursuant to section 15 of the Financial Services Act 1986;

"**Pre-N2 Misconduct Order**" means The Financial Services and Markets Act 2000 (Transitional Provisions and Savings) (Civil Remedies, Discipline, Criminal offences etc.) Order 2001;

"**PROF**" means the Professional Firms Sourcebook in the FSA'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 Law Society of Scotland and in practising it is subject to its rules; or
- (b) a person (not being an individual) which is managed and controlled by one or more individuals each of whom:

- (i) is entitled to practise the profession regulated by the Law Society of Scotland; and
- (ii) in practising it is subject to the rules of the Law Society of Scotland;

"**proceedings**" means any process or hearing in a court of civil or criminal jurisdiction;

"**rule**" means any rule, direction, guidance made or issued by the Law Society of Scotland or the Law Society of Scotland's Code of Conduct, which relates to a member's conduct of exempt regulated activities;

"**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;

"**TC**" means the Training and Competence Manual in the FSA's Handbook of Rules and Guidance.

2.2 The Interpretation Act 1978 applies for the purpose of interpreting this MoU.

PART 2 : EXEMPT PROFESSIONAL FIRMS

SECTION 3 : PROVISION OF INFORMATION ABOUT EXEMPT PROFESSIONAL FIRMS

3.1 Overriding Objective

3.1.1 The Law Society of Scotland and the FSA respectively recognise that the overriding objective under Part XX is the provision of an appropriate level of protection for the interests of clients and an appropriate level of regulation for exempt regulated activities.

3.1.2 The FSA'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 Ch. 3.2 of PROF to keep itself informed about the way in which The Law Society of Scotland 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 Law Society of Scotland 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 Law Society of Scotland’s regulatory functions’**); and

(ii) its duty to co-operate by the sharing of information and in other ways with the FSA, to enable the FSA to fulfil its duties and to keep under review the desirability of exercising its powers under Part XX.

3.1.4 The FSA and the Law Society of Scotland 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 FSA and the Law Society of Scotland 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 FSA

3.3.1 The Law Society of Scotland will inform the FSA immediately if it becomes aware that any matter likely to be of material concern to the FSA may have arisen in relation to:

(i) exempt regulated activities;

(ii) exempt professional firms;

(iii) members performing functions in relation to exempt regulated activities.

3.3.2 Matters likely to be of material concern to the FSA include but are not limited to:

(i) information giving the Law Society of Scotland 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 Law Society of Scotland reasonable cause to believe that the interests of clients are or may be at risk;
- (iii) information giving the Law Society of Scotland 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;
- (iv) information giving the Law Society of Scotland reasonable cause to believe that a person may have committed a criminal offence that the FSA has power to investigate under the Act.

3.4 Annual Return of Information about Firms

3.4.1 Within 4 months of the end of December each year, the Law Society of Scotland will supply the FSA with a report about its firms and members over the preceding year, to include the number of exempt professional firms, the number of individuals carrying on exempt regulated activities, the total number of firms, the number of sole practitioners and the number of members in practice.

3.5 Information about exempt regulated activities

3.5.1 Within 4 months of the end of December each year, the Law Society of Scotland should provide the FSA with a report about the range and scope of exempt regulated activities carried on by its members over the preceding year, including any information which is available about the exempt regulated activities carried on in different areas of Scottish legal practice.

3.6 Periodic statements and committee minutes covering exempt professional firms

3.6.1 Upon request, the Law Society of Scotland will provide the FSA with a copy of any periodic or occasional statements required under the Law Society of Scotland'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 FSA will notify the Law Society of Scotland whenever the FSA 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 Law Society of Scotland will inform the FSA 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 LAW SOCIETY OF SCOTLAND, ITS RULES, SYSTEMS AND PROCEDURES

4.1 Information about the Law Society of Scotland’s regulatory functions

- 4.1.1 Within 4 months of the end of December each year, the Law Society of Scotland should provide the FSA with a report about how the Law Society of Scotland has exercised its regulatory functions over the past year and how it plans to exercise its regulatory functions for the forthcoming year commencing 1 January.

4.2 Provision of rules

- 4.2.1 The Law Society of Scotland will provide the FSA with a copy of its Rules which apply to members and which are in force on 1 January each year.
- 4.2.2 The Law Society of Scotland will provide the FSA with copies of all amendments to its rules as soon as it publishes them.

4.3 Notice of intended changes to DPB Rules

- 4.3.1 The Law Society of Scotland acknowledges that any changes to rules made under section 332(3) require the approval of the FSA.
- 4.3.2 The Law Society of Scotland should provide the FSA 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) arrangements and procedures for making awards as a result of a finding of inadequate professional service;
 - (iii) mandatory PII requirements; and
 - (iv) training, competence and qualification requirements.

4.4 Notice of FSA policy initiatives affecting the Law Society of Scotland’s members carrying on the conduct of exempt regulated activities

- 4.4.1 The FSA agrees that the Law Society of Scotland 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 the Law Society of Scotland's members.

4.5 Annual Report of the Law Society of Scotland

4.5.1 The Law Society of Scotland should provide the FSA with a copy of its annual report and accounts as soon as it is available.

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

5.1 Complaints handling arrangements concerning exempt regulated activities

5.1.1 The Law Society of Scotland will maintain appropriate and effective arrangements for handling complaints from clients about exempt regulated activities.

5.1.2 The Law Society of Scotland will notify the FSA if it makes a change to its procedures for handling complaints about its members conduct of exempt regulated activities.

5.2 Generic information and statistics on the Law Society of Scotland's complaints handling arrangements, operation of its guarantee fund and PII arrangements

5.2.1 By the end of December each year, the Law Society of Scotland will provide the FSA with information about the operation of the Law Society of Scotland's arrangements for handling complaints about the misconduct of any member of the Law Society of Scotland in relation to the member's conduct of exempt regulated activities, to include: the number of complaints received, the number of clients affected and the amounts of any awards for findings of inadequate professional service; details of any grants made from the Scottish solicitors guarantee fund concerning an exempt professional firm and details of any information which may become available about professional indemnity claims arising from members' conduct of exempt regulated activities.

SECTION 6 : THE LAW SOCIETY OF SCOTLAND'S REGULATORY FUNCTIONS

6.1 The Law Society of Scotland's regulatory functions

- 6.1.1 The Law Society of Scotland will co-operate with the FSA, to the extent that it may reasonably be required, in respect of any review the FSA may undertake of the Law Society of Scotland's regulatory functions.

PART 3 : PRE-N2 BUSINESS AND PENSIONS REVIEW PROVISIONS

SECTION 7 : COMPLAINTS ABOUT PRE-N2 BUSINESS; SUPERVISION AND REGULATION OF PENSIONS REVIEW PROVISIONS FOR FIRMS PREVIOUSLY CERTIFIED UNDER SECTION 15 OF THE FINANCIAL SERVICES ACT 1986 BY THE LAW SOCIETY OF SCOTLAND (EXCEPT AUTHORISED PROFESSIONAL FIRMS)

7.1 Complaints about pre-N2 business

- 7.1.1 The Law Society of Scotland acknowledges that it has obligations under the Pre-N2 Misconduct Order to deal with complaints about pre-N2 business and deal with disciplinary matters about pre-N2 business.

7.2 Supervision and regulation of pensions review provisions

- 7.2.1 The Law Society of Scotland agrees that it will supervise and enforce the pensions review provisions for exempt professional firms and firms previously certified by the Law Society of Scotland under section 15 of the Financial Services Act 1986 (excluding authorised professional firms)('Law Society of Scotland pensions review firms'), as required by the Pre-N2 Misconduct Order. Schedule 10 of the FSA's Designation of Pensions Review Provisions Instrument 2001 is to be treated as applying to Law Society of Scotland pensions review firms.
- 7.2.2 Within 4 months of the end of December each year, the Law Society of Scotland will supply the FSA with a report about the Law Society of Scotland's supervision and enforcement of pensions review provisions over the preceding year which apply to Law Society of Scotland pensions review firms.

PART 4 : AUTHORISED PROFESSIONAL FIRMS

SECTION 8 : AUTHORISED PROFESSIONAL FIRMS

- 8.1 The FSA and the Law Society of Scotland acknowledge that confidential information about the post-N2 activities of authorised professional firms or approved persons may only be disclosed between themselves where the Law Society of Scotland or the FSA considers that such disclosure is in the public interest or is otherwise permitted under the Gateways Regulations.
- 8.2 The Law Society of Scotland acknowledges that under Rule 2.3 of INV(PRU), an authorised professional firm must maintain adequate PII cover and that compliance with the Law Society of Scotland's Rules on PII

cover in force on 30 November 2001 is deemed compliance with Rule 2.3. The Law Society of Scotland will inform the FSA as soon as reasonably practicable if it makes any changes to the PII arrangements which apply to authorised professional firms.

- 8.3 The Law Society of Scotland will provide the FSA with any relevant information about authorised professional firms within a reasonable time that is likely to be of material concern to the FSA. This information includes but is not limited to:
- (i) circumstances suggesting to the Law Society of Scotland that an approved person or an authorised professional firm is not a fit and proper person;
 - (ii) information that the Law Society of Scotland receives which indicates that consumers may be at risk;
 - (iii) the commencement of an investigation by the Law Society of Scotland into any activities of an authorised professional firm where those activities may also affect the firm's conduct of regulated activities;
 - (iv) details of any referral of an authorised professional firm for disciplinary proceedings;
 - (v) any adverse findings, fines or other penalty imposed by the Scottish 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.
- 8.4 The Law Society of Scotland acknowledges that under Rule 9.3.2.5 of COB, an authorised professional firm must comply with the rules of the Law Society of Scotland concerning client money. Within 4 months of the end of December each year, the Law Society of Scotland will provide a report to the FSA about the Law Society of Scotland'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.
- 8.5 The FSA will give the Law Society of Scotland an early indication of any policy changes that are likely to have an effect on authorised professional firms.
- 8.6 The FSA will immediately give the Law Society of Scotland any information about an authorised professional firm that is likely to be of

material concern to the Law Society of Scotland. This information includes but is not limited to:

- (i) the commencement of any investigation;
- (ii) the results of any disciplinary or enforcement action;
- (iii) any concerns regarding the fitness and propriety of an approved person or an authorised professional firm;
- (iv) information identified in the regulated activities of an authorised professional firm giving rise to a reasonable cause to believe that the interests of clients are or may be at risk;
- (v) information giving rise to a reasonable cause to suspect that client money may be at risk;
- (vi) information giving rise to a reasonable cause to suspect that financial crime may have been committed in connection with the regulated activities of an authorised professional firm which would be of concern in relation to the rest of the authorised professional firm's trading activities.

PART 5 : MISCELLANEOUS

SECTION 9 : REVIEW OF THIS MoU

9.1 The FSA and the Law Society of Scotland will review this MoU regularly and consult each other with a view to improving its effectiveness and to resolve any difficulties.

SECTION 10 : DATE OF COMING INTO FORCE OF THIS MoU

10.1 This MoU will come into effect when signed by the FSA and the Law Society of Scotland.

10.2 This MoU supersedes any previous memorandum of understanding agreed between the FSA (or any of its predecessor bodies) and the Law Society of Scotland.

SECTION 11 : PUBLICATION

11.1 The FSA will publish this MoU on its website.

SECTION 12: THE SHARED INTELLIGENCE SYSTEM

12.1 The Law Society of Scotland confirms that it will provide information to the FSA on the outcome of any disciplinary proceedings that will enable the FSA to include the relevant names on the SIS.

SCHEDULE – CONTACT DETAILS

Contact at the FSA: Boura Tomlinson, DPB Relationship Manager, Financial Services Authority, 25 North Colonnade, London E14 5HS. Tel: 020 7676 1000. Email: boura.tomlinson@fsa.gov.uk

Signed on behalf of the Financial Services Authority on theday of2003

David Kenmir
Director, Investment Firms Division

Signed on behalf of the Law Society of Scotland on theday of2003

Douglas R Mill
Chief Executive and Secretary