

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE FINANCIAL SERVICES AUTHORITY
AND
THE INSTITUTE OF CHARTERED ACCOUNTANTS 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland to take any action which would otherwise be prohibited by law. In addition, the FSA recognises that a complainant has a right to request a review by the Independent Examiner if a complaint is not put before the Investigation Committee, or in the event of a finding of no prima-facie case by the Investigation Committee.

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 person authorised by the FSA who is engaged in public practice and is (a) an individual who is a member of the Institute of Chartered Accountants of Scotland and 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 is subject to the rules of the Institute of Chartered Accountants of Scotland;

“client” means:

Any person an exempt professional firm provides services to under the arrangements of the Institute of Chartered Accountants of Scotland as a Designated Professional Body.

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:

- any shareholder in, or officer of, a body corporate which is a client unless he or she is, separately, a client of the firm;
- 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 firm;

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

“complaint” means any fact or matter brought to the attention of the Institute of Chartered Accountants of Scotland which indicates that a firm or member may become liable to disciplinary action as set out in the Institute Disciplinary Byelaws”;

“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 has rights or interests which are derived from, or are otherwise attributable to, the use of any such services by other persons; or who has 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland without breaching the general prohibition;

“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 without undue delay;

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

"member" in relation to the Institute of Chartered Accountants of Scotland means a person subject to rules of the Institute of Chartered Accountants 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants 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;

"**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 Institute of Chartered Accountants of Scotland related to a member's conduct of exempt regulated activities as contained in the Institute of Chartered Accountants of Scotland's Designated Professional Body Handbook or referred to in the Handbook;

"**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.

PART 2 : EXEMPT PROFESSIONAL FIRMS

SECTION 3 : PROVISION OF INFORMATION ABOUT EXEMPT PROFESSIONAL FIRMS

3.1 Objective

3.1.1 The Institute of Chartered Accountants of Scotland and the FSA respectively recognise that an objective of the Act is the provision of an appropriate level of protection for the interests of clients and further recognise that the Institute of Chartered Accountants of Scotland has an obligation to co-operate with the FSA in order to enable the FSA to perform its functions under Part XX.

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 Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland under Part XX 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 Institute of Chartered Accountants 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 under the Act.

3.1.4 The FSA and the Institute of Chartered Accountants of Scotland will hold liaison meetings at least once a year unless otherwise agreed.

3.2 Gateways Regulations

3.2.1 The FSA and the Institute of Chartered Accountants 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland reasonable cause to believe that the interests of clients are or may be at risk;
- (iii) information giving the Institute of Chartered Accountants 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; and

- (iv) information giving the Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland will supply the FSA with a report about its firms and members as at the end of December, to include the number of exempt professional firms, the number of members 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 Institute of Chartered Accountants 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 information which may become available about the exempt regulated activities carried on in different areas of accountancy practice.

3.6 Periodic statements and committee minutes covering exempt professional firms

- 3.6.1 Upon request, the Institute of Chartered Accountants of Scotland will provide the FSA with a copy of any periodic or occasional statements required under the Institute of Chartered Accountants of Scotland's rules or a committee minute relating to a firm's conduct of exempt regulated activities.

3.7 Information on investigations and disciplinary proceedings

- 3.7.1 The FSA will notify the Institute of Chartered Accountants of Scotland before the FSA commences an investigation into the activities of an exempt professional firm or a member performing functions in relation to exempt regulated activities.

SECTION 4 : PROVISION OF INFORMATION ABOUT THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND, ITS RULES, SYSTEMS AND PROCEDURES

4.1 Information about the Institute of Chartered Accountants of Scotland's regulatory functions

4.1.1 Within 4 months of the end of December each year, the Institute of Chartered Accountants of Scotland should provide the FSA with a report about how the Institute of Chartered Accountants 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 Notice of intended changes to DPB Rules

4.2.1 The Institute of Chartered Accountants of Scotland acknowledges that any changes to rules made under section 332(3) require the approval of the FSA.

4.2.2 The Institute of Chartered Accountants of Scotland should provide the FSA with reasonable notice of any proposed rule changes in so far as they affect its members' conduct of exempt regulated activities.

4.3 Notice of FSA policy initiatives affecting the Institute of Chartered Accountants of Scotland's members carrying on the conduct of exempt regulated activities

4.3.1 The FSA will provide the Institute of Chartered Accountants of Scotland with 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 Institute of Chartered Accountants of Scotland's members.

4.4 Annual Report of the Institute of Chartered Accountants of Scotland

4.4.1 The Institute of Chartered Accountants 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

5.1 Complaints handling arrangements concerning exempt regulated activities

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

5.1.2 The Institute of Chartered Accountants of Scotland will notify the FSA if it makes a change to its procedures as provided in the Institute of Chartered

Accountants of Scotland's Bye Laws for handling complaints about its members' conduct of exempt regulated activities.

5.2 Generic information and statistics on the Institute of Chartered Accountants of Scotland's complaints handling arrangements, operation of its compensation fund and PII arrangements.

5.2.1 Within 4 months of the end of December each year, the Institute of Chartered Accountants of Scotland will provide the FSA with information about the operation of the Institute of Chartered Accountants of Scotland's arrangements for handling complaints about the misconduct of any member of the Institute of Chartered Accountants of Scotland in relation to the member's conduct of exempt regulated activities over the preceding year.

SECTION 6 : THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND'S REGULATORY FUNCTIONS

6.1 The Institute of Chartered Accountants of Scotland's regulatory functions

6.1.1 The Institute of Chartered Accountants 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 Institute of Chartered Accountants 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 INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND (EXCEPT AUTHORISED PROFESSIONAL FIRMS)

7.1 Complaints about pre-N2 business

7.1.1 The Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland agrees that it will supervise and enforce the pensions review provisions for exempt professional firms and firms previously certified by the Institute of Chartered Accountants of Scotland under section 15 of the Financial Services Act 1986 (excluding authorised professional firms) (**'Institute of Chartered Accountants of Scotland pensions review firms'**). Schedule 7 of the FSA's Designation of Pensions Review Provisions Instrument 2001 is to be treated as applying to Institute of Chartered Accountants of Scotland pensions review firms.
- 7.2.2 Within 4 months of the end of December each year, the Institute of Chartered Accountants of Scotland will supply the FSA with a report about the Institute of Chartered Accountants of Scotland's supervision and enforcement over the preceding year of pensions review provisions which apply to Institute of Chartered Accountants of Scotland pensions review firms.

PART 4 : AUTHORISED PROFESSIONAL FIRMS

SECTION 8 : AUTHORISED PROFESSIONAL FIRMS

- 8.1 The FSA and the Institute of Chartered Accountants 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 Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland acknowledges that under Rule 2.3 of INV(PRU), an authorised professional firm must maintain adequate PII cover and the FSA acknowledges that compliance with the Institute of Chartered Accountants of Scotland's Rules on PII cover in force on 30 November 2001 is deemed compliance with Rule 2.3. The Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland will provide the FSA as soon as reasonably practicable with any relevant information which comes to its attention about authorised professional firms that is likely to be of material concern to the FSA. This information includes but is not limited to:
- (i) circumstances giving the Institute of Chartered Accountants of Scotland reasonable cause to suspect that an approved person or an authorised professional firm is not a fit and proper person;

- (ii) information giving the Institute of Chartered Accountants of Scotland reasonable cause to suspect that consumers may be at risk;
- (i) the commencement of an investigation by the Institute of Chartered Accountants 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, finds or other penalties imposed by a 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 FSA will give the Institute of Chartered Accountants of Scotland an early indication of any policy changes that are likely to have an effect on authorised professional firms.

8.5 The FSA will give the Institute of Chartered Accountants of Scotland immediately any information about an authorised professional firm that is likely to be of material concern to the Institute of Chartered Accountants 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; and
- (iii) any concerns regarding the fitness and propriety of an approved person or an authorised professional firm.

PART 5 : MISCELLANEOUS

SECTION 9 : REVIEW OF THIS MoU

9.1 The FSA and the Institute of Chartered Accountants 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 Institute of Chartered Accountants of Scotland.
- 10.2 This MoU supersedes any previous memorandum of understanding agreed between the FSA (or any of its predecessor bodies) and the Institute of Chartered Accountants of Scotland.

SECTION 11: THE SHARED INTELLIGENCE SYSTEM

- 11.1 The Institute of Chartered Accountants of Scotland confirms that it will provide information to the FSA on any disciplinary order that will enable the FSA to include the relevant names on 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 the2003

 David Kenmir
 Director, Investment Firms Division

Signed on behalf of the Institute of Chartered Accountants of Scotland on the.....
.....2003

 Ian FY Marrian
 Chief Executive and Secretary