



Institute  
and Faculty  
of Actuaries

# Guidance

The Actuary and Activities Regulated under  
FSMA 2000

by the Designated Professional Body Board

*This guide imposes no obligations upon Members over and above those embodied in the Designated Professional Body (DPB) Handbook. This guide does not constitute legal advice, nor does it necessarily provide a defence to allegations of misconduct or criminal offences. While care has been taken to ensure that it is accurate, up to date and useful, the IFoA will not accept any legal liability in relation to its contents. The defined terms used in the DPB Handbook apply to this guide.*

*This guide will be kept under review and for that reason we would be pleased to receive any comments you may wish to offer on it. Queries or comments may be directed to the DPB Manager, Institute and Faculty of Actuaries, Holborn Gate 7th Floor · 326 - 330 High Holborn · London WC1V 7PP, Tel: +44 (0) 207 6321 462.*

## **1. Purpose and Target Audience**

This guide may assist actuaries whose Firm undertakes, or wishes to undertake, investment-related activities ("Regulated Activities") which are regulated, directly or indirectly, under the Financial Services and Markets Act 2000 ("FSMA 2000").

It applies only to the United Kingdom regulatory framework which is established under FSMA 2000. An actuary whose Firm undertakes activities outside the United Kingdom must consider whether its activities fall within the scope of any other similar or analogous regulatory framework.

The Memorandum of Understanding (MoU) between the IFoA and the Financial Conduct Authority ("FCA") gives additional information. It sets out guidelines in relation to:

a) exchange of information, (b) cooperation and coordination and (c) the IFoA's role as a Designated Professional Body ("DPB") under FSMA 2000<sup>1</sup>. It can be found on the FCA Website and the "About Us" section of the IFoA website.

## **2. Overview**

This guidance is concerned with the position of Firms which undertake, or are intending to undertake, activities which are regulated under FSMA 2000<sup>1</sup>. A Firm for this purpose includes a partnership, a limited liability partnership, a sole practice or a corporate body. Such Firms have the following options in respect of undertaking Regulated Activities:-

### Route One

(i) If controlled or managed by Fellows or Associates of the IFoA<sup>2</sup>, obtain a DPB Licence from the IFoA, becoming subject to the requirements of the IFoA's DPB Handbook.

### Route Two

(ii) Obtain full authorisation directly from the FCA, becoming subject to the full requirements of the FCA Handbook.

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<sup>1</sup> The position in relation to individuals is treated separately and is not the subject of this guidance. In broad terms, an individual actuary whose Firm is authorised under FSMA 2000 will not him or herself need authorisation or exemption. He/She may however require to be approved by the FCA as the relevant individual within the Firm responsible for carrying out the activities in question (an "Approved Person")

<sup>2</sup> This guide does not address circumstances in which Firms are regulated in relation to the conduct of *Regulated Activities* by a DPB other than the IFoA. Members are advised to contact the relevant other DPB.

#### Route Three

- (iii) If controlled or managed by Fellows or Associates of the IFoA obtain authorisation directly from the FCA as an Authorised Professional Firm. The FCA Handbook provides for an alternative regulatory regime applicable to Authorised Professional Firms to the extent that they are undertaking Non-Mainstream Regulated Activities<sup>3</sup>. Before making use of this alternate regulatory regime, however, actuarial Firms must additionally obtain a licence from the IFoA and comply with relevant provisions of the IFoA's DPB Handbook.

### 3. Regulatory Perimeter

It is necessary to proceed by Routes One, Two or Three if the Firm undertakes or intends to undertake Regulated Activities.

FSMA 2000 establishes a regulatory 'perimeter' within which it is a criminal offence to carry on Regulated Activities without meeting the appropriate regulatory requirements. Broadly speaking, the regulatory perimeter is defined by reference to:

- (i) Specified types of activity (such as dealing, arranging deals, underwriting and advising); and
- (ii) Specified types of investment (such as stocks, shares, derivatives, insurance policies and rights under personal pension schemes). Thus, a person carrying on a specified activity in relation to a specified investment by way of business may be carrying on a Regulated Activity.

A Firm which undertakes professional actuarial work will not necessarily be operating within the regulatory perimeter. It is only where the Firm chooses to undertake work which involves carrying on Regulated Activities that it will bring itself within the perimeter and need to become authorised as a Regulated Firm.

### 4. Route One: DPB Licence

Route One offers actuarial Firms a proportionate compliance route which allows them to undertake certain common *Regulated Activities* for business clients which are incidental to their core professional practice and arise out of, or are complementary to, core professional services provided to a particular client. They can do so by means of a DPB Licence issued by the IFoA, without the need to obtain authorisation from the FCA.

The Schedule to this guidance sets out the types of Regulated Activities permitted under Route One.

Actuarial Firms, which undertake only certain limited types of Regulated Activity, may seek

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<sup>3</sup> Please see the definition of non-mainstream regulated activity at 6(iii) of this document.

to undertake such activities by means of a DPB Licence, issued by the IFoA as a DPB<sup>4</sup> in terms of its DPB Handbook. A Firm which chooses to proceed by the DPB Licence route (a "DPB Firm") may undertake certain limited types of Regulated Activity, known as "Exempt Regulated Activities"<sup>5</sup> without being subject to the full weight of FCA regulation.

In order to be eligible for a DPB Licence from the IFoA, a Firm must be controlled or managed, or both, by IFoA members. This may also include sole practitioners. The requirement is either control or management by Fellows or Associates of the IFoA.

DPB Firms may undertake certain limited types of Regulated Activity. In broad terms, DPB Firms may undertake a range of Regulated Activities for business clients, including insurance companies and trustees of UK approved occupational pension schemes. DPB Firms may not however, generally, advise individuals about a particular investment. The types of Regulated Activity which are permitted, and those which are not, are set out in the IFoA's DPB Handbook.

The Schedule to this Guidance sets out a list of the types of Regulated Activities, which may be undertaken by DPB Firms.

There are additional restrictions applicable to DPB Firms, as set out in the IFoA's DPB Handbook. These include the following:

- (i) The DPB Firm may carry on, or hold itself out as carrying on, Regulated Activities only in accordance with the rules set out in the DPB Handbook.
- (ii) Such activities must be carried on in a manner, which is incidental to the provision of the Firm's core professional services (its "Relevant Professional Services"). In assessing whether activities are 'incidental' for this purpose, the FCA considers it relevant to take into account:
  - (1) the scale of Regulated Activity in proportion to other Relevant Professional Services provided;
  - (2) whether and to what extent Regulated Activities are held out as separate services; and
  - (3) the impression given of how the Firm provides Regulated Activities, for example through its advertising or other promotions of its services.
- (iii) In providing a particular Relevant Professional Service to a particular client, the DPB Firm may carry on only those Regulated Activities which arise out of, or are complementary to, the provision of that service by the Firm to that client.
- (iv) In relation to certain types of Regulated Activity which relate to contracts of insurance or to rights or interests in life policies (referred to as "Insurance Mediation Activity"), the

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<sup>4</sup> FSMA 2000 makes special provision in respect of Firms whose principal activity is the provision of particular types of professional services ("Relevant Professional Services"). These are services the provision of which is supervised and regulated by a DPB such as the IFoA

<sup>5</sup> See <http://www.legislation.gov.uk/ukpga/2000/8/part/XX>

DPB Firm may also need to ensure, before carrying on the relevant activity, that its name and details are contained in the FCA's public register of Firms undertaking Insurance Mediation Activity.

- (v) Further, for a Regulated Activity to be treated as an Exempt Regulated Activity, the DPB Firm must account to its client for (or hold to its order) any pecuniary reward or other advantage received from anyone other than its client.
- (vi) A DPB Firm cannot also hold an FCA authorisation to undertake Regulated Activities. Indeed, when it undertakes Exempt Regulated Activities, such a Firm must disclose to its client that it is not authorised by the FCA. The manner in which such disclosures are made is prescribed by the Professional Firms Sourcebook contained within the FCA Handbook (the "PROF Sourcebook"). DPB Firms must also have regard to part 3 of the DPB Handbook regarding "Status Disclosures".
- (vii) Finally, a DPB Firm must not undertake any financial promotion unless it is approved by an authorised person (who is authorised by the FCA to undertake regulated activities under FSMA2000 as set out in the FCA Handbook) or the communication is exempt from the requirement to be approved by an authorised person under the Financial Promotion Order.

## **5. Route Two: Full FCA Authorisation**

A Firm may instead choose to obtain full authorisation directly from the FCA.

Firms in this category are subject to the full weight of FCA regulatory requirements, as set out in the handbook of rules and guidance produced by the FCA under FSMA 2000 (the "FCA Handbook"). These include the FCA's full prudential and reporting requirements.

A Firm may act as an appointed representative of a fully authorised Firm. This allows the appointed representative to undertake work in relation to regulated activities without itself requiring to be directly authorised by the FCA.

## **6. Route Three: Authorised Professional Firm**

- (i) If the Firm is either (a) a sole practice where the practitioner is a Fellow or Associate of the IFoA, or (b) a Firm which is controlled or managed by one or more Fellows or Associates of the IFoA, it is entitled to be treated by the FCA as an "Authorised Professional Firm". This confers certain benefits under the FCA authorisation route, which are explained below.
- (ii) In common with other businesses which hold an FCA authorisation, Authorised Professional Firms are subject to the supervision and enforcement powers of the FCA and have to comply with and observe the FCA Handbook.
- (iii) To the extent that an Authorised Professional Firm is carrying on what are known as Non-Mainstream Regulated Activities, various parts of the FCA Handbook are disapplied or modified in relation to those activities. Details of those disapplications and modifications are set out in the PROF Sourcebook. The broad intention however is to

create a level playing field between Authorised Professional Firms, authorised by the FCA, and DPB Firms, operating under a licence issued by the IFoA. It is intended that Non-Mainstream Regulated Activities are equivalent to the limited activities, which may be undertaken by a DPB Firm under licence from the IFoA. The intended effect is that an equivalent proportionate regulatory regime will apply in relation to these activities under both Route One (DPB Licence) and Route Three (Authorised Professional Firm).

- (iv) The IFoA has imposed certain requirements applicable to the principals of actuarial Firms, which are authorised under Route Three as Authorised Professional Firms. Under APS D1, (Investment related business activities for authorised professional firms)<sup>6</sup> members of the IFoA must ensure that their Firms comply with these requirements.
- (v) The effect of APS D1 is that an actuarial Firm which is regulated by the FCA as an Authorised Professional Firm must obtain a licence from the IFoA (an "APF Licence") before making use of any of the disapplications or modifications which would otherwise be available to it as an Authorised Professional Firm under the FCA Handbook, to the extent that it is undertaking Non-Mainstream Regulated Activities.
- (vi) The conditions and requirements attached to an "APF Licence" are set out in the IFoA's DPB Handbook. In broad terms, however, actuarial Firms operating under an APF Licence are required to comply with the DPB Handbook, as applicable to Authorised Professional Firms. This includes in particular professional indemnity insurance requirements. Such Firms, operating under an APF Licence, are also subject to the disciplinary procedures set out in the DPB Handbook.
- (vii) Firms that do not obtain an APF licence cannot make use of any of the FCA exemptions and will be subject to the full FCA regulatory regime.

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<sup>6</sup> <http://www.actuaries.org.uk/regulation/pages/professional-standards-directory>

## Schedule

The below outlines common examples of activities which fall within the definition of Regulated Activities permitted under Route 1 (DPB Licence route). Members should consult the DPB Handbook for the definitive position on any specific queries concerning Regulated Activities. Members should also refer to Compliance Bulletins as issued from time to time<sup>7</sup>.

### 1. **Regulated Activities permitted for business clients**<sup>8</sup>

#### 1.1 Advice on (including recommending) any particular investment.

Examples of such permitted activities include the following:-

- 1.1.1 Advice on pooled investment fund contracts or units in a collective investment scheme;
- 1.1.2 Advice on a pooled vehicle as part of a segregated portfolio;
- 1.1.3 Advice on additional voluntary contribution contracts given to trustees of occupational pension schemes;
- 1.1.4 Advice on insured scheme contracts for occupational pension schemes (including executive pension plans);
- 1.1.5 Advice on immediate or deferred annuities for trustees of occupational pension schemes;
- 1.1.6 Advice given to trustees on suitable policies to be used by an occupational pension scheme for occupational income drawdown;
- 1.1.7 Advice on policies to receive a forced external transfer of a divorce credit given to trustees of occupational pension schemes;
- 1.1.8 Advice on UK gilts (or strips) in the context of matching the liabilities of an occupational pension scheme or insurance company;
- 1.1.9 Advice on the merits of different options and/or futures to manage a pension scheme's or insurance company's exposure to a particular risk; and
- 1.1.10 Advice to trustees of an occupational scheme or to an insurance company on securities issued by an insurance company as a result of demutualisation.

#### 1.2 Arranging deals in investments.

Examples of such permitted activities include:-

- 1.2.1 Arranging any investment arising from advice given in the examples above;

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<sup>7</sup> <http://www.actuaries.org.uk/regulation/pages/dpb-handbook>

<sup>8</sup> Except where the Regulated Activity relates to investments which will be purchased by individuals, for example, group personal pension and stakeholder pension schemes, where investment will be made by individual employees

- 1.2.2 Portfolio restructuring, including the obtaining of tenders for programmed package trades in securities;
  - 1.2.3 Arranging a transfer of assets from one occupational pension scheme or insurance company to another as part of a bulk transfer or merger; and
  - 1.2.4 Arranging a transfer of assets from one investment manager to another investment manager on behalf of an occupational pension scheme or insurance company.
- 1.3 Dealing in investments as agent for a client on the client's instructions.
- 2. **Regulated Activities permitted for business clients, where the Regulated Activity relates to investments which are or will be purchased by individual(s)<sup>9</sup>:**
  - 2.1 Arranging a suitable investment (e.g. personal pension, group personal pension or stakeholder pension) for the business client to make available to a specified group of individuals.
- 3. **Regulated Activities permitted for clients who are individuals:**
  - 3.1 Advice to the extent that it is limited to commenting on and/or endorsing and/or advising against any investment recommendation of an FCA Authorised third party made to the individual, but does not involve the DPB Firm recommending any other particular investment.
  - 3.2 Arranging for individuals to join or leave a Group Personal Pension Plan.

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<sup>9</sup> For example, group personal pension and stakeholder pension schemes, where investment will be made by individual employees. The regulated activity of "advising" is not included in this section since advice to an employer on selecting a contract-based pension product such as a GPP is not regulated work as the advice is not being given to the holder of the investment (see Section 53 of the Regulated Activities Order).