

GN35: Investment-Related Business Activities

Classification

Practice Standard

MEMBERS ARE REMINDED THAT THEY MUST ALWAYS COMPLY WITH THE PROFESSIONAL CONDUCT STANDARDS (PCS) AND THAT GUIDANCE NOTES IMPOSE ADDITIONAL REQUIREMENTS UNDER SPECIFIC CIRCUMSTANCES

Legislation or Authority

Financial Services and Markets Act 2000

Application

Members of the Faculty or Institute of Actuaries who are principals of an actuarial firm which satisfies the Financial Services Authority's definition of an Authorised Professional Firm

Author

Professional Affairs Board

Status

Approved under Due Process (Technical Amendment)

<i>Version</i>	<i>Effective From</i>
1.0	1 December 2001
2.0	1 October 2003

Definitions

Defined terms appear in italics when used in this Guidance Note:

Reference

Definition

actuarial firm	a firm (including a sole practitioner) which carries on actuarial work and is managed or controlled (or both) by individuals who are members of the Institute and who are entitled to practise the profession of actuary (typically a consulting firm)
APF	a firm (including a sole practitioner) that satisfies the <i>FSA</i> 's definition of an Authorised Professional Firm (set out in the Glossary of definitions section of the <i>FSA</i> 's Handbook)
DPB	a Designated Professional Body under Part XX of <i>FSMA2000</i>
FSA	the Financial Services Authority

FSA's APF exemptions	the disapplications and modifications of the <i>FSA's Handbook</i> that apply to an <i>APF</i> in respect of or when undertaking non-mainstream regulated activity (as defined in Chapter 5 of <i>PROF</i>)
FSMA2000	the Financial Services and Markets Act 2000
principal	a sole practitioner; a partner of a partnership; a member of a limited liability partnership; or a director of a company
PROF	the <i>FSA's Professional Firms Sourcebook</i>

1 Background

- 1.1 Certain investment-related business activities undertaken by *actuarial firms* are regulated activities under *FSMA2000*. This generally includes advice given to clients on particular investments (including savings, pensions, annuities and other long-term insurance products) and arranging the acquisition or disposal of investments on behalf of clients.
- 1.2 *Actuarial firms* which carry out regulated activities must either:
- a) become authorised persons under the Financial Services and Markets Act 2000 by applying to the *FSA* for permission to carry on regulated activities
- or
- b) apply to the Institute for a *DPB* licence if they meet the criteria in its *DPB* handbook.
- 1.3 Firms that are managed or controlled by Fellows (or in some cases *Affiliates*) of the Institute may apply for a licence from the Institute, which is a *DPB*. The exact requirements are set out in the Institute's *DPB* handbook. A *DPB* licence permits the relevant firm to undertake, without the need for authorisation by the *FSA*, the limited range of regulated activities set out in the handbook, where this is incidental to its professional services. These are called exempt regulated activities. Many *actuarial firms* are expected to find that a majority, if not all, of the regulated activity they wish to undertake for those clients that are:
- a) trustees of occupational pension schemes
- or
- b) companies

would satisfy the definition of exempt regulated activity. This Guidance Note does not apply to the *principals* of firms which are not authorised firms and which obtain a *DPB* licence.

- 1.4 Firms which intend to undertake either a wider range of regulated activities or regulated activities for a wider range of clients than those allowed by a *DPB* licence (e.g. fund management or pension advice for individuals), or which have decided to become authorised persons anyway, have to apply for authorisation from the *FSA*.
- 1.5 An *FSA* authorised firm that is both managed and controlled by members of the Institute may satisfy the *FSA*'s definition of an *APF*, in which case it can avail itself of the *FSA*'s *APF* exemptions when undertaking non-mainstream regulated activity. Non-mainstream regulated activity is defined in Chapter 5 of *PROF*, by reference to regulated activity which firms with a *DPB* licence may carry out under rules made by the Institute under section 332(3) FSMA 2000. These rules are set out in the Institute's *DPB* handbook. Non-mainstream regulated activity for an *APF* is equivalent to exempt regulated activity for a *DPB* licensed firm.
- 1.6 The full definition of an *APF* is set out in the *FSA*'s Handbook. However it is understood that:
 - a) a firm in which a majority of the partners, members (in the case of a limited liability partnership), managing committee members or directors are Fellows (or in some cases Affiliates) of the Institute (so it is managed by actuaries) and that has a majority of the ownership of the firm in the hands of such members of the Institute (so it is controlled by actuaries), is likely to satisfy the definition;and
 - b) generally any firm that was authorised, or capable of being authorised, by the Institute as a Recognised Professional Body prior to 1 December 2001 would satisfy the *APF* definition unless either its management or its control has changed.
- 1.7 The management and control rules referred to in paragraph 1.5 relate to members of the Institute because the Faculty is not a *DPB*. Some firms may need one or more of their *principals* or shareholders who are not members of the Institute (for example, those who are Fellows of the Faculty) to become Affiliates of the Institute in order to satisfy the *FSA*'s requirement for management and control.

2 Requirement

- 2.1 The Institute considers that it is necessary for the protection of the interests of clients of *APFs* which:
 - a) derive their *APF* status from the Institute in its capacity as a *DPB*;and

- b) conduct non-mainstream regulated activity,

that such *APFs* should comply when doing so with the requirements of either:

- c) the *FSA's Handbook* without the disapplications or modifications for non-mainstream regulated activities;

or

- d) the *DPB Handbook*.

2.2 It is therefore a requirement that any member of the Institute or Faculty who is a *principal* of such an *APF* should ensure that, before the firm makes use of the *FSA's APF exemptions*, it obtains an *APF* licence from the Institute. Details of the licence and how to obtain it are set out in the Institute's *DPB* handbook. *APFs* that wish to make use of the *FSA's APF exemptions* are required to pay a licence fee to the Institute and to become subject to the disciplinary arrangements under the Institute's *DPB* handbook.

2.3 The requirements set out in 2.2 do not apply where the firm derives *APF* status from a *DPB* other than the Institute of Actuaries.

2.4 It is recognised that some *APFs* may not seek to make use of the *FSA's APF exemptions*, preferring to comply with the *FSA's* full rules even when undertaking non-mainstream regulated activity. Such firms do not need to apply for a licence from the Institute.

2.5 It is the responsibility of each *principal* who is a member of the Institute or Faculty to ascertain that the firm is an *APF* before

- a) it obtains an *APF* licence from the Institute,

and

- b) it makes use of the *FSA's APF exemptions*.

If there is doubt as to the status of the firm which cannot be removed by consultation with the *FSA*, the firm is advised to take legal advice before operating as an *APF*.