

Statutory Document Number: 345/02



FINANCIAL SUPERVISION COMMISSION
(FINANCIAL RESOURCES AND COMPLIANCE
REPORTING) REGULATORY CODE

The following Code is issued by the Financial Supervision Commission in exercise of the powers conferred on it by section 6 of the Investment Business Act 1991, and all other powers enabling it in that behalf. All correspondence relating to this Code should be addressed initially to the Financial Supervision Commission.

Made by the Financial Supervision Commission on 17th May 2002

Approved by Tynwald on 18th June 2002

Coming into operation on 1st September 2002

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Financial Resources and Reporting Regulatory Code



FINANCIAL SUPERVISION COMMISSION (FINANCIAL RESOURCES AND COMPLIANCE REPORTING) REGULATORY CODE 2002

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 Financial Resources and Reporting Regulatory Code

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INVESTMENT BUSINESS ACTS 1991 TO 1993

**FINANCIAL SUPERVISION COMMISSION
(FINANCIAL RESOURCES AND COMPLIANCE REPORTING)
REGULATORY CODE 2002**

Approved by Tynwald 18th June 2002

Coming into operation 1st September 2002

In exercise of the powers conferred on the Financial Supervision Commission ("the Commission") by section 6 of the Investment Business Act 1991^(a), and of all other enabling powers, the following Code is hereby made:

Citation, commencement, revocation, interpretation and application

1. (1) This Code may be cited as the Financial Supervision Commission (Financial Resources and Compliance Reporting) Regulatory Code 2002 and shall come into operation on 1st September 2002.

(2) The Financial Supervision Commission (Financial Resources and Reporting) Regulatory Code^(b) is revoked, and the public documents mentioned in column 1 of Schedule 6 are revoked to the extent specified in column 3 of that Schedule.

(3) The definitions in paragraph 10 of the Financial Supervision Commission (General Requirements) Regulatory Code^(d) shall apply in respect of this Code.

(4) In this Code -

"the Act" means the Investment Business Act 1991;

"annual financial declaration" means the declaration contained within Schedule 4;

"compliance statement" means the statement contained within Schedule 5;

^(a) 1991 c.18

^(b) GC 397/91, as amended by GC 96/92, SD 155/96 and SD 410/00

^(d) GC 402/91, as amended by GC 101/92, SD 155/96 and SD 410/00

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“designated stocks” means those included in the FT/S&P Actuaries World Index;

“experienced investor fund” has the meaning given in the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999^(e);

“limited transactions” means:

- (a) any transaction relating exclusively to a life policy or a pension contract; and

Guidance note

The term “life policy” includes standalone critical illness policies.

- (b) any transaction relating exclusively to units or shares in:
- (i) collective investment schemes authorised in the Island in accordance with section 3 of the Financial Supervision Act 1988^(f); and
 - (ii) collective investment schemes which are international collective investment schemes within the meaning of section 11 of the Financial Supervision Act 1988 (apart from experienced investor funds or professional investor funds); and
 - (iii) collective investment schemes authorised in accordance with the United Kingdom Financial Services and Markets Act 2000 or regulated in another jurisdiction acceptable to the Commission;

Guidance note

The Commission regards any scheme qualifying as a UCITS as falling within the scope of b(iii) above.

- (c) the submission on behalf of a client of an application to purchase or subscribe for securities on the occasion of their admission to dealings on the London Stock Exchange (or other stock exchange recognised by the Commission) provided that any acceptance or allotment will be in the name of the client or his nominee (not being the licenceholder or a connected person of the licenceholder) and that any payment accompanying the submission is a payment by the client and not by the licenceholder;

“professional investor fund” has the meaning given in the Financial Supervision (Professional Investor Fund) (Exemption) Order 1999^(g);

“related company” shall be construed in accordance with section 32 of the Banking Act 1998^(h);

^(e) SD 603/99

^(f) 1988 c.16

^(g) SD 602/99

^(h) 1998 c.4

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“subsidiary” shall be construed in accordance with section 1 of the Companies Act 1974⁽ⁱ⁾.

(5) Subject to sub-paragraphs (6) and (7) this Code shall apply to all holders of investment business licences issued in accordance with section 3 of the Act, with the exception of holders of category 5 investment business licences.

(6) The provisions of paragraphs 3(2) and 21 shall not apply to the holder of a category 1 investment business licence (as defined in paragraphs 11 and 12) issued under section 3 of the Act.

(7) The provisions of paragraph 20 shall not apply to the holder of a category 2, 3 or 4 investment business licence (as defined in paragraphs 13, 14, 15, 16 and 17) issued under section 3 of the Act.

General requirements

2. (1) A licenceholder shall ensure that it maintains adequate financial resources to meet its investment business commitments and to withstand the risks to which its business is subject. It shall ensure that at all times it is able to meet its liabilities as they fall due and, without prejudice to the generality of this statement, that it meets, where applicable, the two specific and independent requirements contained in paragraph 3.

(2) A licenceholder shall immediately inform the Commission by e-mail, telephone, facsimile or other equivalent means if at any time it has reason to believe that its financial resources have or will fall below 110% of the minimum net tangible asset requirement or the expenditure based requirement contained in paragraph 3, as appropriate. The Commission must be provided with a full explanation of the circumstances, and details of the steps that the licenceholder is taking or has taken to remedy the situation and prevent a breach from occurring.

(3) Notwithstanding sub-paragraph (2), a licenceholder must immediately inform the Commission by e-mail, telephone, facsimile or other equivalent means if at any time it has reason to believe it is or will be in breach of the minimum net tangible asset requirement. The Commission must be provided with a full explanation of the circumstances of the breach or potential breach and details of the steps that the licenceholder is taking or has taken to remedy the breach and prevent it from recurring.

Guidance note

For the purposes of paragraphs 2(2) and (3) if the licenceholder informs the Commission by telephone it must then provide full details in a permanent form within 24 hours of the telephone call.

Specific requirements

3. (1) Net tangible assets must exceed the minimum net tangible asset requirement.
- (2) Liquid capital must exceed the expenditure based requirement at all times.

⁽ⁱ⁾ 1974 c.30

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(3) The minimum net tangible asset requirement and the expenditure based requirement are set out below, and the licenceholder shall maintain appropriate procedures and controls to monitor these requirements on an on-going basis.

	Minimum Net Tangible Assets	Expenditure Based Requirement (No. of months' expenditure)
Category 1		
(sole traders)	£5,000	N/A
(partnerships and companies)	£10,000	N/A
Category 2		
group (a)	£15,000	3 months
group (b)	£30,000	3 months
Category 3		
group (a)	£50,000	3 months
group (b)	£75,000	3 months
Category 4	£175,000	3 months

(4) The expenditure based requirement shall be determined by reference to the annual audited expenditure. Where the relevant audited financial statements are for a period other than a year, the annual audited expenditure shall be calculated on a proportional basis in accordance with paragraph 9(5).

(5) Professional indemnity insurance cover appropriate to the licenceholder's business must be maintained at all times and details of the arrangements currently in force, including renewal date, limits of cover, excess and exclusions, must be filed with the Commission annually together with the compliance statement at Schedule 5. The licenceholder shall notify the Commission of any claims or changes to the arrangements within one month of the event.

Guidance note

The Commission would normally expect professional indemnity insurance to be maintained to the following minimum levels:

- a) *£250,000 in aggregate or 3 times total revenue whichever is the greater (see sub-paragraph 9(2) - category 1 licenceholders;*
- b) *£500,000 in aggregate or 3 times total revenue whichever is the greater (see sub-paragraph 9(2) - category 2, 3 and 4 licenceholders;*
- c) *the excess claim for all licenceholders should not exceed £5,000 plus 0.75% of the aggregate cover in excess of £1million.*

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Net tangible assets

4. (1) Net tangible assets comprises capital and reserves adjusted for the items set out in sub-paragraphs (3) and (4). Capital and reserves are to be based on balance sheets prepared so as to give a true and fair view in accordance with accounting principles generally accepted in the UK or International Accounting Standards. Historical cost accounting, as modified at the option of the licenceholder by the inclusion of investments at net realisable value and of certain fixed assets at revalued amounts in accordance with sub-paragraph (2), must be applied. No current asset may be included in the balance sheet at a value in excess of its net realisable value.

(2) A licenceholder may include freehold and leasehold land and buildings at a valuation in excess of historical cost in its calculation of net tangible assets provided that the assets are included in the licenceholder's latest audited statutory accounts at the revalued amount. For this purpose the value of the property shall be taken as its open market value on an existing use basis, if it has been valued by a qualified surveyor or valuer within the preceding 18 months, and in other cases as its net book value. The Commission may require evidence of the valuation or request that a valuation be carried out at the licenceholder's expense.

(3) The following items shall be deducted from capital and reserves to calculate net tangible assets:

- (a) goodwill and other intangible fixed assets;
- (b) any shortfall in attributable net tangible assets of a subsidiary or related company, compared with the book value of the investment in that subsidiary or related company, computed in accordance with sub-paragraph (1).

Guidance note

The above shortfall is the accumulated losses of the subsidiary or related company not the net liability figure. Provision should be made for this deficiency or (in the case of a related company) the portion attributable to the licenceholder, as well as deducting the full book value of the investment.

- (4) Qualifying subordinated loans shall be added to capital and reserves.

Liquid capital

5. (1) Liquid capital is equal to net tangible assets adjusted for the items set out in sub-paragraphs (2), (3) and (4).

(2) The following items shall be deducted from net tangible assets (unless already deducted in accordance with sub-paragraph 4(3)) to calculate liquid capital:

- (a) tangible fixed assets;
- (b) fixed asset investments;

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Guidance Note

Where an adjustment has been made to the book value of an investment in a subsidiary or related company in calculating the net tangible assets as required by sub-paragraph 4(3) only the adjusted amount should be deducted to avoid double counting, but where there is a deficiency of net tangible assets in a subsidiary or related companies, this must not be added back.

- (c) the amount by which the market value less the investment adjustment is lower than the book value of current asset investments. This calculation is to be provided to the Commission;
 - (d) stocks, except for stocks of investments which should be treated in the same way as sub-paragraph (c);
 - (e) debtors including prepaid expenses other than those debtors set out in sub-paragraph (3) of this sub-paragraph or those which have already been deducted in accordance with paragraph 4(3);
 - (f) in the case of creditors arising from purchases of investments outstanding for 30 or more days from contractual settlement date, the extent (if any) to which the market value of the underlying investments exceeds the amount of each creditor;
 - (g) the amount of any payment made in advance for purchases of investments for which delivery has been outstanding for more than 5 working days.
- (3) The debtors which need not be deducted from net tangible assets referred to in sub-paragraph (2)(e) are set out below:
- (a) debtors arising from sales of investments outstanding for thirty days or more from contractual settlement date, in which case each debtor shall be included at the lower of its book value and the market value of the underlying investments, but only if the licenceholder retains control of the relevant documents of title;
 - (b) other debtors outstanding for less than thirty days from due date;
 - (c) investment management and advisory fees relating to the previous three months, which have been properly accrued as receivable provided that they have been invoiced or otherwise charged to clients and provided that there is no reason to doubt that payment will be made;
 - (d) prepaid expenses to the extent that the period of the prepayment does not exceed three calendar months;
 - (e) where the licenceholder is a category 4 investment business licenceholder, debtors outstanding for less than 3 calendar months if those debtors are category 2 or category 3 investment business licenceholders;

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- (f) tax refunds, including VAT, agreed with and confirmed in writing by the Assessor of Income Tax or Customs and Excise Division of the Treasury, as appropriate, and due within 3 months. A copy of the letter of confirmation must be provided to the Commission.

Guidance note

Expenses recoverable from funds, for example initial set-up costs which are being amortised, are not an allowable debtor in accordance with sub-paragraph 5(3) and must be deducted in accordance with sub-paragraph 5(2)(e). Additionally, amounts due from group companies are not allowable debtors unless they are a debtor to which sub-paragraph 5(3) applies.

- (4) Qualifying secured liabilities may be added to net tangible assets to calculate liquid capital.

Investment adjustments

6. The following percentages shall be applied to calculate the investment adjustment required by sub-paragraph 5(2)(c) unless otherwise agreed in writing by the Commission:

(a)	Certificates of Deposit and UK Treasury Bills	0%
(b)	Quoted floating rate and index-linked securities	5%
(c)	Quoted fixed rate securities	10%
(d)	Units in collective investment schemes authorised or recognised in the Island or in the UK or in any scheme qualifying as a UCITS	15%
(e)	Designated stocks	20%
(f)	Investments traded on a recognised investment exchange not covered above, and units in international collective investment schemes (apart from those in experienced investor funds, professional investor funds or exempt international collective investment schemes)	30%
(g)	Other current asset investments	100%

Qualifying secured liabilities

7. (1) A liability secured against freehold or leasehold land and buildings, where the property is the sole security for the liability, may be treated as a qualifying secured liability to the extent of the lower of:

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- (a) the total of the secured liability due more than one year after the balance sheet date; or
- (b) 80% of the value of the property on which the liability is secured.

(2) For the purposes of sub-paragraph (1) the value of the property shall be taken as its open market value on an existing use basis, if it has been valued by a qualified surveyor or valuer within the preceding 18 months, and in other cases as its net book value. The Commission may require evidence of the valuation or request that a valuation be carried out at the licenceholder's expense.

Qualifying subordinated loans

8. (1) A loan to a licenceholder may be treated as a qualifying subordinated loan for the purposes of this Code provided that it is in the same form as the 'model' subordinated loan agreement issued by the Commission.

(2) The amount to be treated as a qualifying subordinated loan for the purposes of this Code shall be limited to three times net tangible assets before adding back any amount in respect of subordinated loans.

Annual audited expenditure

9. (1) Annual audited expenditure shall be based on the latest available audited financial statements and shall be deemed to be the higher of:

- (a) total revenue less profit before appropriations or (in the case of a licenceholder making a loss) plus loss before appropriations;
- (b) one half of total revenue.

(2) If it appears to the Commission that the amount of annual expenditure under sub-paragraph (1) does not take account of the current operating costs of the licenceholder, the Commission may require the amount of the expenditure to be increased or permit it to be reduced by such amount as, to the best of its judgment, appears to the Commission to be necessary to take account of such costs and it shall give notice in writing to the licence holder accordingly.

Guidance note

A licenceholder must also consider the potential requirement in relation to the latest period for which financial information is available, in order to avoid the possibility of a breach occurring when the annual audited financial statements are formally approved. In the case of a licenceholder's first period of account, the expenditure based requirement should be computed on the basis of the best available estimates for the period concerned.

(3) Total revenue for the purposes of this paragraph shall be equal to turnover less cost of sales. The items included in cost of sales for this purpose shall be limited to the following:

- (a) where turnover includes the gross value of investments sold, the cost of investments sold;

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- (b) commission paid to third parties (including related companies), but only where this is directly attributable to commission earned by the licenceholder and included in total revenue.

Guidance note

For the avoidance of doubt, turnover includes:

- commissions receivable;
- investment management or advisory fees;
- interest and dividends receivable;
- other income.

'Netting off' is not permitted under any circumstances, for example, interest payable must not be "netted off" against interest receivable. Interest payable must be treated as an expense.

For the purposes of sub-paragraph (3)(b) an explanation will be required of how the commission paid to third parties is directly attributable to commission earned by the licenceholder.

- (4) The following items shall not be included in cost of sales:
- (a) commission paid to employees or related companies;
 - (b) fees paid to related companies or third parties for administration, custodial or management services.

Guidance note

Paragraph 9(4) is not intended to apply in respect of commissions and fees payable (either to third parties or related companies) provided that such fees and commissions are directly attributable to commissions and fees receivable that are included within total revenue.

(5) Profit or loss before appropriations shall be equal to profit or loss before tax and before the following items:

- (a) all forms of profit-related bonuses payable to employees including directors and partners or proprietors;
- (b) exceptional and extraordinary items, except where such items arise in the ordinary course of business, in accordance with UK accounting standards as applied in the UK and as adopted by the UK Accounting Standards Board, International Accounting Standards or any other accounting standards approved by the Commission.

(6) Where the financial statements used to calculate annual audited expenditure in accordance with sub-paragraph (1) are for a period other than one year the calculation of annual audited expenditure shall be equal to:

$$\frac{\text{(annual audited expenditure in accordance with sub-paragraph (1))} \times 12}{\text{length of period of financial statements in months.}}$$

Categories of licenceholder

10. The Commission shall determine in which category a licenceholder will be included.

Category 1 group (a)

11. (1) Category 1 group (a) licenceholders are persons who do not control money or other assets belonging to investment business clients and whose investment business activities are restricted to advising on, arranging and effecting limited transactions.

Guidance note

Persons acting as investment advisers to managers or trustees of occupational pension schemes or collective investment schemes will require to be licensed in accordance with category 2 unless they have discretionary powers of investment, in which case they will require to be licensed in accordance with category 3, and for these purposes Small Self-Administered Schemes and Group Personal Pension Plans are not deemed to be occupational pension schemes.

(2) Category 1 group (a) licenceholders are permitted to have custody of life assurance or pensions policy documents in the name of the client or his nominee or of certificates evidencing the client's title to units or shares in collective investment schemes for no longer than two working days, providing:

- (a) they are in the course of transmission to or from a client, and;
- (b) the licenceholder maintains records in accordance with paragraph 4.9 of the Financial Supervision Commission (Clients' Investments) Regulatory Code.

Guidance note

The records referred to at sub-paragraph 11(2)(b) must include records of the dates of receipt and despatch of the documents.

(3) Notwithstanding the definition of limited transactions, category 1 group (a) licenceholders may arrange deals in UK listed securities, including investment trusts provided that:

- (a) the licenceholder's function is restricted to passing an order on behalf of a client for execution by a member of the London Stock Exchange with whom the licenceholder has entered into a written agreement whereby the London Stock Exchange member accepts full financial responsibility if the client fails to fulfil its obligations to settle the contract; and
- (b) before undertaking such transactions, the licenceholder must obtain written consent from the Commission, who may require evidence of the existence of the written agreement referred to above; and
- (c) the licenceholder maintains adequate professional indemnity insurance to cover the consequences of any errors or omissions in transmission instructions to the stockbroker to buy or sell securities.

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(4) Licenceholders who have not entered into a written agreement as defined in sub-paragraph (3) and who bear the credit risk of such transactions will not be permitted to be licensed in accordance with category 1.

Category 1 group (b)

12. Category 1 group (b) consists of tied agents being persons:

- (a) who sell the products of one product company only, or more than one product company where those product companies are within the same group, and that company is, or all those group companies are, as appropriate, authorised either in the Island or the United Kingdom;
- (b) who control money belonging to investment business clients and in respect of whom the Commission has been provided with an indemnity in respect of clients' monies in an acceptable form signed by the product company which the agent represents.

Guidance note

In the case of tied agents in relation to whom the Commission has not been provided with an indemnity as in paragraph 12(b), then the Commission expects the agency agreement between the agent and the product company(ies) to specify that the tied agent must not receive or control clients' money.

Category 2 group (a)

13. (1) Category 2 group (a) licenceholders are persons who:

- (a) (i) advise on and make arrangements with a view to clients dealing in investments other than limited transactions and who do not control money or other assets belonging to investment business clients; or
- (ii) may control money and other assets belonging to investment business clients, but who do not do so on a discretionary basis, and who restrict their activities to advising on and arranging or effecting limited transactions;
- (b) carry out any of the following functions in relation to regulated foreign collective investment schemes:-
 - (i) acting as share distributor;
 - (ii) share registration;
 - (iii) accounting services;

Guidance note

For the purposes of sub-paragraph 13(1)(b) "regulated foreign collective investment schemes" are those which are established and operated in a jurisdiction other than the Island which, in the opinion of the Commission, provides adequate investor protection. The Commission considers that UCITS schemes offer such protection.

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- (c) who act as investment adviser to the managers or trustees of occupational pension schemes or collective investment schemes whether such schemes are established in the Island or elsewhere.

Guidance note

For the purposes of paragraph 13(1)(c) Small Self-Administered Schemes and Group Personal Pension Plans are not deemed to be occupational pension schemes.

(2) Category 2 group (a) licenceholders who operate under paragraph 13(1)(a)(i) are permitted to have custody of life assurance or pensions policy documents in the name of the client or his nominee or of certificates evidencing the client's title to units or shares in collective investment schemes for no longer than two working days, providing:

- (a) they are in the course of transmission to or from a client, and;
- (b) the licenceholder maintains records in accordance with paragraph 4.9 of the Financial Supervision Commission (Clients' Investments) Regulatory Code.

Guidance note

The records referred to at sub-paragraph 13(2)(b) must include records of the dates of receipt and despatch of the documents.

(3) Notwithstanding the definition of limited transactions, category 2 group (a) licenceholders who operate under paragraph 13(1)(a)(i) may arrange deals in UK listed securities, including investment trusts provided that:

- (a) the licenceholder's function is restricted to passing an order on behalf of a client for execution by a member of the London Stock Exchange with whom the licenceholder has entered into a written agreement whereby the London Stock Exchange member accepts full financial responsibility if the client fails to fulfil its obligations to settle the contract; and
- (b) before undertaking such transactions, the licenceholder must obtain written consent from the Commission, who may require evidence of the existence of the written agreement referred to above; and
- (c) the licenceholder maintains adequate professional indemnity insurance to cover the consequences of any errors or omissions in transmission instructions to the stockbroker to buy or sell securities.

(4) Licenceholders who have not entered into a written agreement as defined in sub-paragraph (3) and who bear the credit risk of such transactions will not be permitted to be licensed in accordance with paragraph 13(1)(a)(i).

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Category 2 group (b)

14. Category 2 group (b) licenceholders are persons who manage international collective investment schemes, apart from experienced investor funds or professional investor funds, but only in certain limited circumstances where the manager is administered by a third party fund administrator which is licensed in accordance with section 3 of the Investment Business Act 1991 and subject to the regulatory requirements for category 4 investment businesses.

Category 3 group (a)

15. (1) Category 3 group (a) licenceholders are persons who may control money or other assets belonging to investment business clients and who can do so on a discretionary basis, and who:

- (a) make arrangements with a view to clients dealing in investments, with no restrictions as to categories of investments, and/or
- (b) deal for clients in such investments as agent for execution by a member of the London Stock Exchange or other recognised investment exchange; and/or
- (c) are professional dealers, dealing as principals in such investments.

(2) Except as provided in paragraph 14, licenceholders who manage international collective investment schemes (apart from professional investor funds and/or experienced investor funds) or more than one exempt international collective investment scheme.

Category 3 group (b)

16. Category 3 group (b) licenceholders are persons who:

- (a) manage authorised collective investment schemes, and/or;
- (b) manage or administer professional investor funds and/or experienced investor funds, and/or;
- (c) administer managed portfolio managers, and/or;
- (d) act as investment manager with discretionary powers of investment to collective investment schemes, or occupational pension schemes whether the schemes are established in the Island or elsewhere, and/or;
- (e) undertake other investment business apart from that included in categories 1, 2, 3 group (a), 4 and 5.

Category 4

17. Category 4 licenceholders are persons providing administrative services to managers of authorised and/or international collective investment schemes including experienced investor funds and professional investor funds.

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Accounting records - licenceholder's own business

18. (1) Every licenceholder, if it is incorporated in the Island, shall keep and maintain adequate accounting records in the Island as are necessary to show and explain the licenceholder's own transactions, assets and liabilities.

(2) Such records shall:

- (a) accurately disclose the financial position of the licenceholder at any time;
- (b) enable the financial statements and returns required by this Code to be prepared within a reasonable time at any given date in accordance with the specific requirements of the Code;
- (c) enable the licenceholder to demonstrate its continuing compliance with its minimum net tangible assets and expenditure based requirements.

(3) The accounting records shall in particular contain:

- (a) entries from day to day of all sums of money received and expended by the licenceholder whether on its behalf or on behalf of others, and the matters in respect of which the receipt and expenditure takes place;
- (b) a record of all income and expenditure of the licenceholder, explaining its nature;
- (c) a record of all assets and liabilities of the licenceholder, including any guarantees, contingent liabilities, indemnity commissions or other financial commitments;
- (d) entries from day to day of all purchases and sales of assets on the licenceholder's own account.

19. (1) The licenceholder shall preserve its accounting records for a minimum of six years from the date on which they are made.

(2) Where a licence is surrendered or revoked, the former licenceholder shall preserve its accounting records for a minimum of six years from the date of surrender or revocation and the method and location of storage should be agreed with the Commission in advance.

Preparation of financial statements and returns by category 1 licenceholders

20. This paragraph only applies to category 1 licenceholders.

(1) The licenceholder shall notify the Commission of its annual accounting reference date.

(2) The licenceholder shall in each year prepare an annual financial declaration in the form set out in Schedule 4 signed by the proprietor where the licenceholder is a sole trader, or otherwise by at least 2 directors or all partners.

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(3) The annual financial declaration should be submitted to the Commission within one month of the accounting reference date.

(4) Where the licenceholder prepares annual financial statements which are audited in accordance with any statute in the Island or elsewhere, a copy of the signed audited statements shall be submitted to the Commission within 4 months of the accounting reference date.

Preparation of financial returns by category 2, 3 and 4 licenceholders

21. This paragraph only applies to category 2, 3 and 4 licenceholders.

(1) The licenceholder shall notify the Commission of its annual accounting reference date, and shall prepare interim and annual financial returns which shall as a minimum include:

- (a) a statement of financial resources, which shall be signed and approved by two directors or all partners of the licenceholder, and in the case of the annual financial resources statement, by the auditor; and
- (b) an unconsolidated balance sheet which shows a true and fair view of the state of affairs of the licenceholder at the balance sheet date, which shall be signed and approved by two directors or all partners of the licenceholder; and
- (c) an unconsolidated profit and loss account which shows a true and fair view of the profit or loss of the licenceholder for the period covered by the financial returns; and
- (d) a statement of any changes in accounting policies together with a statement explaining the effects thereof.

(2) Category 2 and category 3 group (a) licenceholders shall prepare interim financial returns in accordance with sub-paragraph (1) at six monthly intervals, and the balance sheet date should coincide for one of these interim returns with the licenceholder's annual reporting date.

(3) Category 3 group (b) and category 4 licenceholders shall provide interim financial returns in accordance with sub-paragraph (1) at three monthly intervals, and the balance sheet date should coincide for one of these interim returns with the licenceholder's annual reporting date.

(4) For the purposes of sub-paragraphs (2) and (3), the profit and loss account shall be unconsolidated, in respect of each interim period and shall not be cumulative. These interim returns, which need not be audited, should be submitted to the Commission within one month of the end of the accounting period under review.

(5) The licenceholder shall prepare an annual financial return in accordance with sub-paragraph (1) which shall be submitted to the Commission within four months of the accounting reference date. The annual financial return shall include unconsolidated annual financial statements, which shall be subject to audit in accordance with the Financial Supervision Commission (Audit Requirements) Regulatory Code⁽ⁱ⁾, and a signed copy shall be submitted to the Commission, together (in the case of incorporated licenceholders) with a signed copy of the annual statutory report and accounts.

⁽ⁱ⁾ GC 401/91, as amended by GC 100/92, SD 155/92 and SD 98/97

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(6) The annual financial statements required by sub-paragraph (5) shall be reconciled to the financial statements submitted as part of the interim financial returns, as required by sub-paragraphs (2) and (3). A reconciliation showing any differences and the reasons for them shall be provided to the Commission together with the annual financial statements.

(7) The financial returns required in accordance with sub-paragraphs 21(1) (a), (b) and (c) shall be prepared in the format in Schedules 1, 2 and 3 respectively but the financial statements required in accordance with sub-paragraphs 21 (b) and (c) may be prepared to show greater detail than is required by the Schedules.

(8) Except in the case of the first accounting period, comparative figures for the immediately preceding period shall be included in the interim and annual financial statements required by sub-paragraphs 21 (b) and (c).

(9) The financial statements shall be prepared in accordance with accounting principles generally accepted in the UK or International Accounting Standards.

(10) A statement of all significant accounting policies shall be included in the annual statutory report and accounts, together with any further information needed to give a true and fair view of the financial position and results, in particular a statement of any contingent liabilities, showing the nature of the contingencies and where possible estimates of their financial effect.

(11) If a licenceholder has any subsidiaries, then the Commission shall be provided with their annual statutory reports and accounts within four months of their accounting reference dates.

Compliance statement

22. Licenceholders shall submit a compliance statement to the Commission at 12 monthly intervals. This statement must be received by the Commission within one month of the end of the licenceholder's accounting reference date. The compliance statement shall be in the format set out in Schedule 5 and signed:

- (a) by the proprietor, where the licenceholder is a sole trader; or
- (b) otherwise by at least two directors or all partners.

Change in accounting reference date

23. A licenceholder may change its annual accounting reference date provided that the Commission agrees in writing to such a change before it is made.

Notification requirements

24. A licenceholder shall give notice to the Commission immediately where it has reason to believe that:

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- (a) it will be unable to submit a financial return; or
- (b) it will be unable to comply or unable to demonstrate compliance with any part of this Code, as a result of failure in accounting systems.

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Paragraph 21

SCHEDULE 1**BALANCE SHEET FORMAT**

A FIXED ASSETS

- a) Intangible assets
- b) Tangible assets
 - Property
 - Other tangible fixed assets
- c) Investments
 - Investments in group and related companies
 - Other listed and unlisted fixed asset investments

TOTAL FIXED ASSETS

A

B CURRENT ASSETS

- a) Stocks, debtors and prepayments
 - Stocks of investments
 - Other stocks
 - Debtors arising from sales of investments
 - within 30 days of settlement date
 - outside 30 days of settlement date
 - Other debtors due within 30 days
 - Other debtors due outside 30 days
 - Accrued investment management fees relating
 - to the previous three months
 - relating to the previous three months
 - Prepaid expenses for the following
 - 3 months
 - Other prepaid expenses
 - Tax refunds due and confirmed in writing
 - Amounts due from group companies
 - Amounts due from partners or proprietors
 - Payments in advance

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- b) Investments
- Certificates of Deposit and UK Treasury Bills
 - Quoted floating rate and index-linked securities
 - Quoted fixed rate securities
 - Units in collective investment schemes
 - Designated stocks
 - Other investments traded on a recognised investment exchange
 - Other current asset investments
- c) Cash at bank and in hand
- Cash due within 90 days
 - Other cash

TOTAL CURRENT ASSETS B

C CURRENT LIABILITIES

- Creditors arising from purchases of investments due within 30 days of settlement date
- Creditors arising from purchases of investments due after 30 days of settlement date
- Qualifying secured liabilities
- Other creditors due within one year

TOTAL CURRENT LIABILITIES (C)

D NET CURRENT ASSETS / (LIABILITIES) B-(C)=D

E
CURRENT LIABILITIES

TOTAL ASSETS LESS
A+D=E

F CREDITORS DUE AFTER MORE THAN ONE YEAR

- Qualifying subordinated loans
- Other creditors
- Qualifying secured liabilities

(F)

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G PROVISIONS FOR LIABILITIES AND CHARGES

- a) Pensions and similar obligations
- b) Taxation, including deferred taxation
- c) Other provisions (including any provision for indemnity commission claw back) (G)

H TOTAL ASSETS LESS TOTAL LIABILITIES

 E-(F)-(G) =H

I CAPITAL AND RESERVES

- Ordinary share capital
- Preference share capital
- Other share capital
- Share premium account
- Profit and loss account
- Revaluation reserve
- Other reserves

TOTAL SHARE CAPITAL AND RESERVES

 I

 (Equal to H)

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Paragraph 21**SCHEDULE 2****PROFIT AND LOSS ACCOUNT FORMAT****INCOME**

Profit/loss on dealing as principal			x
Turnover			
Commissions receivable, separately identifying any commissions received on indemnity terms	x		
Investment management or advisory fees	x		
Interest and dividends receivable	x		
Other revenue		x	
Total turnover		<hr/>	x
Less:			
Cost of sales - commissions paid to employees/related companies		(x)	
Cost of sales - other		(x)	x
Total revenue		<hr/>	x

EXPENSES

Profit related bonuses		x	
Administration, custodial and management expenses:			
Payable to group companies	x		
Payable to third parties	x		
Interest charged and chargeable	x		
Exceptional items	x		
Other expenditure (itemised)	x		
Total expenses			(x)
Profit/loss on ordinary activities before taxation		<hr/>	x
Taxation			(x)
Profit/loss on ordinary activities after taxation		<hr/>	x

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Extraordinary items	(x)
Profit/loss after extraordinary items	<u>x</u>
Appropriations of profit	(x)
	<u>x</u>
Balance of profit and loss account brought forward	x
Balance of profit and loss account carried forward	<u><u>x</u></u>

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Paragraph 21**SCHEDULE 3****FINANCIAL SUPERVISION COMMISSION****FINANCIAL RESOURCES STATEMENT**

Licenceholder name: _____

Licenceholder category: _____

INTERIM/ANNUAL*

As at _____ (date)

This statement is approved as being accurate in all material aspects to the best of the licenceholder's knowledge and belief.

Approved by: _____

 (The proprietor where the licenceholder is a sole trader, or otherwise by at least two directors or all partners)

Auditor's approval: _____

(For annual statement only)

Dated: _____* *Delete as appropriate*

For FSC use only:

Date received:

Checked by:

Checked date:

Follow up required:

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PART A(1) – CALCULATION OF NET TANGIBLE ASSETS

CAPITAL AND RESERVES (para 4(1)) £_____

LESS:

Goodwill and other intangible fixed assets
(para 4(3)(a)) (£_____)

Any shortfall in attributable net tangible assets
of subsidiary or related company (para 4(3)(b)) (£_____)

Sub total (£_____)

ADD:

Qualifying subordinated loans (paras 4(4) and 8(1)) £_____
(Note limitation imposed by para 8(2))

Sub total £_____

NET TANGIBLE ASSETS £_____

110% OF MINIMUM NET TANGIBLE ASSET REQUIREMENT £_____
See para 2(2) and insert as appropriate

MINIMUM NET TANGIBLE ASSET REQUIREMENT £_____
See para 3(3) and insert as appropriate

SURPLUS/(SHORTFALL) ABOVE (UNDER) MINIMUM £_____

Note:

A separate amount must be shown for each adjusting item arising in accordance with paragraph 4.

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Part A (2) – CALCULATION OF LIQUID CAPITAL**NET TANGIBLE ASSETS** £ _____

LESS:

Tangible fixed assets (para 5(2)(a)) (£ _____)

Fixed asset investments (para 5(2)(b)) (£ _____)

 Amount by which market value less investment
 adjustment is lower than book value of current asset
 investments, including stocks of investments
 (para 5(2)(c)) (£ _____)
Stocks and work in progress (except for stocks of
investments) (para 5(2)(d)) (£ _____)Disallowed debtors, accrued income and prepayments
(see Part A(3) below for calculation) (para 5(2)(e)) (£ _____)Valuation adjustment for creditors outstanding for 30
days or more after settlement date (para 5(2)(f)) (£ _____)

Valuation adjustment for advance settlement (para 5(2)(g)) (£ _____)

 Sub total (£ _____)

ADD:

 Qualifying secured liabilities (para 5(4))
 (supply justification to Commission) £ _____

 Sub total £ _____
LIQUID CAPITAL £ _____

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Part A(3) CALCULATION OF DISALLOWED DEBTORS AND LOANS

(paras 5(2)(e) and 5(3))

Loans owing to licenceholder (including group loans) (£_____)

Total debtors, accrued income & prepayments (£_____)

ADD BACK:

Valuation adjustment for debtors arising from sales of
investments outstanding for more than 30 days(para 5(3)(a)) £_____Other debtors outstanding for less than
30 days from due date (para 5(3)(b)) £_____Investment management advisory fees for previous
3 months if invoiced (para 5(3)(c)) £_____

Prepaid expenses for 3 months or less (para 5(3)(d)) £_____

Category 2 &3 licenceholder debtors outstanding for less
than 3 months (para 5(3)(e)) £_____

Tax refunds due within 3 months (para 5(3)(f)) £_____

Debtors previously deducted in calculating net tangible assets £_____

Total add back		£_____

DISALLOWED DEBTORS & LOANS		(£_____)

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PART B – CALCULATION OF EXPENDITURE BASED REQUIREMENT**CALCULATION OF ANNUAL AUDITED EXPENDITURE**

Note: Annual audited expenditure and expenditure based requirement should be calculated using latest audited accounts (except as otherwise agreed by the Commission).

TURNOVER £ _____

LESS: Cost of sales limited to:

Cost of investments sold (para 9(3)(a)) (£ _____)

Commissions and fees directly attributable
to commissions/fees earned (para 9(3)(b)) (£ _____)

TOTAL REVENUE £ _____

Either: **LESS:** Profit before appropriations (para 9(5)) (£ _____)

Or: **ADD:** Loss before appropriations (para 9(5)) £ _____

ANNUAL AUDITED EXPENDITURE £ _____

CALCULATION OF EXPENDITURE BASED REQUIREMENT

A. Annual audited expenditure x $\frac{1}{4}$ £ _____

B. $\frac{1}{2}$ total revenue x $\frac{1}{4}$ £ _____

EXPENDITURE BASED REQUIREMENT
(larger of A & B) £ _____

(pro-rata, if appropriate, in accordance with para 9(6))

SATISFACTION OF FINANCIAL RESOURCE REQUIREMENT

LIQUID CAPITAL £ _____

LESS EXPENDITURE BASED REQUIREMENT
(Larger of A & B) £ _____

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SURPLUS/(SHORTFALL) OF LIQUID CAPITAL £

110% OF EXPENDITURE BASED REQUIREMENT (para 2(2)) £

NB: Liquid capital must exceed the expenditure based requirement at all times

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Paragraph 20**SCHEDULE 4*****CATEGORY 1 INVESTMENT BUSINESSES*****ANNUAL FINANCIAL DECLARATION**

Name of licenceholder _____

Date for which declaration is made _____

***A** In the case of a sole trader

I certify to the best of my knowledge and belief that I can meet my liabilities both personal and those relating to my business activities as they fall due.

I am aware that any false declaration may result in immediate suspension or other disciplinary action being taken against me.

***B** In the case of a partnership or incorporated business

We certify to the best of our knowledge and belief that the *partnership(and all partners)/company can meet its/their liabilities as they fall due.

We are aware that any false declaration may result in immediate suspension or other disciplinary action being taken against the *partners/partnership/company.

*** Delete as applicable**

Signature _____

Name (Print) _____

Position _____

Date _____

Signature _____

Name (Print) _____

Position _____

Date _____

Paragraph 22

SCHEDULE 5

FINANCIAL SUPERVISION COMMISSION

COMPLIANCE STATEMENT

Licenceholder name: _____

Licenceholder category: _____

12 month period from _____ to _____

This statement is approved as being accurate in all material aspects to the best of the licenceholder's knowledge and belief.

Approved by: _____

(The proprietor where the licenceholder is a sole trader, or otherwise by at least two directors or all partners)

Dated: _____

For FSC use only:
Date received:
Checked by:
Checked date:
Follow up required:

NOTES FOR COMPLETION OF THIS STATEMENT

1. All investment business licenceholders, apart from category 5 licenceholders are required to submit a compliance statement to the Commission at twelve monthly intervals. This statement must be received by the Commission within one month of the end of the licenceholder's accounting reference date.
2. To reflect the fact that compliance is primarily the responsibility of the licenceholder's Board (or equivalent), the answers to the questions must be approved by the proprietor where the licenceholder is a sole trader or otherwise by at least two directors or all partners.
3. Evidence of the renewal of the licenceholder's professional indemnity insurance (including details of the level of cover, excess and exclusions) should be submitted together with the next following compliance statement.
4. Where the answer to a question calls for further detail or other information, this should be submitted together with this statement as an attachment.

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The following questions should be answered with a Yes or NO. The compliance statement is intended for all categories of investment business licenceholder, apart from category 5. If a particular question is inapplicable to the licenceholder (e.g. Clients' Money Regulatory Code) both YES and NO should be deleted and the reason for this stated. The guidance notes should be studied before answering the questions.

1. Legislation	
1.1 Are you satisfied that the licenceholder has conducted its investment business at all times in accordance with the Investment Business Acts 1991 - 1993, and the Financial Supervision Act 1988 (where appropriate)?	YES / NO If NO give details
1.2 Are you satisfied that the licenceholder has conducted its investment business at all times in accordance with the Financial Supervision Commission Investment Business Regulatory Codes, the Anti-Money Laundering Code and with due consideration of the Anti-Money Laundering Guidance Notes?	YES / NO If NO give details
<i>Guidance note</i> <i>Each of the Codes should be considered in relation to the licenceholder's business before answering this question.</i>	
2. Licence Conditions /Directions	
2.1 Has the licenceholder complied with all licence conditions?	YES / NO If NO give details
2.2 Has the licenceholder complied with recommendations or directions issued by the FSC (if any)?	YES / NO

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3. Compliance	
3A Compliance Procedure	
3A.1 Does the licenceholder have, and make available to staff, written procedures incorporating rules of conduct reflecting the FSC's requirements?	YES / NO If NO give details
3A.2 Does the licenceholder have arrangements with which you are satisfied are adequate to comply with Conduct of Business Regulatory Code paragraph 6 (Responsible Conduct) and the Codes regarding your staff?	YES / NO If NO give details
Guidance note <i>Where the answer to this question is NO, the details supplied should clearly identify the areas where the arrangements are not considered fully effective and the steps taken to remedy the situation.</i>	
3A.3 Are you satisfied that the licenceholder's arrangements for ensuring compliance (including complaints procedures) as required by the Conduct of Business Regulatory Code have been effective throughout the period?	YES / NO If NO give details
Guidance note <i>If the answer to this question is NO, the instances where the compliance procedures have not been observed must be identified and details given of the action taken and the results of such action.</i>	
3B Compliance Monitoring	
3B.1 Can the licenceholder demonstrate that it carried out regular and adequate monitoring procedures relating to its staff and business?	YES / NO If NO give details

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Guidance note

In answering 3B.1 this question licenceholders should determine whether their compliance monitoring procedures include as a minimum:

- a) review of continued adequacy of written procedures, including test checks on documentation and procedures;*
- b) review of appropriateness of training material so far as it relates to compliance requirements;*
- c) review of customer complaints, their follow-up and arrangements for handling complaints;*
- d) review of arrangements in respect of Clients' Money and Clients' Investments to ensure that they are in accordance with the appropriate Codes;*
- e) review of the records maintained by the licenceholder as required by the Codes; and*
- f) review of the steps taken to ensure that advice to customers and execution of transactions with or for them are in accordance with the Conduct of Business Regulatory Code.*

Where the answer to this question is NO, the details supplied should clearly identify the areas where it is considered that monitoring procedures are inadequate and the steps taken to remedy the situation.

3B.2 Are you satisfied that adequate action has been taken to correct deficiencies?

YES / NO
If NO give details

3B.3 Has the Board (or equivalent) been made aware at regular intervals of compliance monitoring findings?

YES / NO

3C. Records of Compliance

3C.1 Is the record of occurrences which have, or may have, involved a breach of the Codes complete and accurate?

YES / NO

3C.2 Is there any material or significant matter, or matters when viewed together, revealed by such record which should be drawn to the FSC's attention?

YES / NO
If YES give details

Guidance note

The details to be supplied in answer to this question should include information on occurrences which have resulted in losses to clients or in clients being otherwise disadvantaged.

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4. Clients' Money & Clients' Investments Regulatory Codes	
4A. Clients' Money	
4A.1 Are you satisfied that the licenceholder has adequate systems of control to enable it to comply with the Clients' Money Regulatory Code?	YES / NO If NO give details
4A.2 Was the licenceholder in compliance with the Clients' Money Regulatory Code at all times during the period?	YES / NO If NO give details
4B. Clients' Investments	
4B.1 Are you satisfied that the licenceholder has adequate systems to enable it to comply with the Clients' Investments Regulatory Code?	YES / NO If NO give details
4B.2 Was the licenceholder in compliance with the Code at all times during the period?	YES / NO If NO give details
<u>Guidance note</u> <i>In answering questions 4B.1 and 4B.2 licenceholders which have been granted permission to adopt the rolling basis of reconciliation in accordance with Clients' Investments Regulatory Code paragraph 7.2 should take note of their continuing obligation to observe the condition on which that permission was granted.</i>	
4C. Reconciliations	
4C.1 Have the following been performed in the period in the manner and at the times required by the Codes:- a) Clients' Money reconciliations? b) Customer Title Document counts and reconciliations?	YES / NO YES / NO

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4C.2 Has the FSC been notified of any differences arising out of a reconciliation to which 4C.1 applies which the licenceholder has been unable to correct?	YES / NO If NO give details
5. Notification Requirements	
5.1 Has the FSC been notified of all material changes relating to the licenceholder's investment business, e.g. use of internet as delivery channel?	YES / NO If NO give details
6. Other Regulatory Action	
6.1 Has the licenceholder, its immediate or ultimate parent company (if any), during the period, and in relation to its investment business activities, been the subject of any disciplinary measures or had its affairs investigated by any regulatory body other than the FSC?	YES / NO If YES give details
<p>Guidance note The FSC expects to be informed by a licenceholder where there has been any regulatory action other than by the FSC, of the nature described in the question either affecting the licenceholder or any immediate or ultimate parent company. A copy of any report or other document relating to such action should be supplied to the FSC.</p>	
7. Completeness of Information	
7.1 Are you satisfied that all appropriate enquiries have been made of all those staff who should in the opinion of the licenceholder be consulted properly before answering the above questions?	YES / NO If NO give details
7.2 Are there any matters relating to an earlier Compliance Statement or qualification in an auditor's report which remain unresolved?	YES / NO If YES give details

Financial Resources and Reporting Regulatory Code

7.3 Has the FSC been notified of all matters which may influence the continuance of the licenceholder's licence?	YES / NO If NO give details
8. Statistics	
8.1 At the accounting reference date for this period the number of staff employed by the licenceholder was:	
8.2 The maximum indemnity commission liability of the licenceholder based on the assumption that all policies sold on an indemnity basis lapsed on the accounting reference date is:	
8.3 The average persistency rate (lapsed or cancelled policies) over the period is:	
8.4 The balance of any Clients' Money held by the licenceholder at the accounting reference date is:	
8.5 a) Number of claims made by the licenceholder on Professional Indemnity Insurance during the 12 month period covered by this compliance statement is: b) of which how many are outstanding? c) Do you consider these to be significant?	a) b) c)

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Paragraph 1(2)

SCHEDULE 6**MINOR AND CONSEQUENTIAL REVOCATIONS**

S.D. or G.C Number	Title	Extent of Revocation
G.C. 96/92	Financial Supervision Commission (Financial Resources and Reporting) (Amendment) Regulatory Code 1992	Revocation in entirety
S.D. 410/00	Collective Investment Schemes (International Schemes) (Amendment) Regulatory Code 2000	Sub-paragraph 2(2)(a)

Financial Resources and Reporting Regulatory Code

Made by the Financial Supervision Commission on this 17th day of May 2002.

E. A. Crowe *Chairman*

J. R. Aspden *Chief Executive*