

**GENERAL PROVISIONS (PROHIBITION OF INSURANCE  
AGAINST FINES) INSTRUMENT 2003**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers); and
  - (3) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

**Commencement**

- C. This instrument comes into force on 1 January 2004.

**Amendments to the General provisions**

- D. GEN is amended in accordance with Annex A to this instrument.

**Amendments to the Authorisation manual**

- E. AUTH is amended in accordance with Annex B to this instrument.

**Amendment to the Enforcement manual**

- F. ENF is amended in accordance with Annex C to this instrument.

**Citation**

- G. This instrument may be cited as the General Provisions (Prohibition of Insurance Against Fines) Instrument 2003.

By Order of the Board  
18 December 2003

## Annex A

### Amendments to the General Provisions

In this Annex, underlining indicates new text. However, where a new chapter of text is being inserted, its location is stated but the text is not underlined.

#### General Provisions

##### Transitional provisions TP1

...

GEN Table: (2) Transitional provisions applying to GEN only

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: Dates in force	(6) Handbook provision: coming into force
...					
4	...				

5	<u>GEN 6.1</u>	R	<p><u>GEN 6.1 does not:</u></p> <p>(1) <u>apply to an unamended contract of insurance, first entered into on or before 24 July 2003; or</u></p> <p>(2) <u>prohibit a firm from claiming on, or making a payment under, a contract of insurance:</u></p> <p>(a) <u>in connection with a financial penalty imposed by the FSA pursuant to a warning notice issued before 25 July 2003; or</u></p> <p>(b) <u>first entered into between 25 July 2003 and 31 December 2003 in respect of a financial penalty imposed by the FSA by a final notice issued on or before 31 December 2003.</u></p> <p><u>(For these purposes only, a contract of insurance will be regarded as unamended if:</u></p> <p>(i) <u>it was amended on or before 24 July 2003; or</u></p> <p>(ii) <u>it was amended after 24 July 2003, but the amendments did not affect the duration or scope of any indemnity against a financial penalty imposed by the FSA under the Act.)</u></p>	From <u>1 January 2004</u>	<u>1 January 2004</u>
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After *GEN 5*, insert the following chapter.

## **Chapter 6:**

### **Insurance against financial penalties**

#### **Application**

GEN 6.1.1R This chapter applies to every *firm*, but only with respect to business that can be regulated under section 138 of the *Act* (General rule-making power).

GEN 6.1.2G For the purposes of *GEN 2.2.17R* (Activities covered by general rules), the chapter applies to *regulated* and *unregulated activities* carried on in the *United Kingdom* or overseas.

#### **Purpose**

GEN 6.1.3G The purpose of this section is to ensure that financial penalties are paid by the *person* on whom they are imposed.

#### **Interpretation**

GEN 6.1.4R In this chapter ‘financial penalty’ means a financial penalty that the *FSA* has imposed, or may impose, under the *Act*. It does not include a financial penalty imposed by any other body.

### **Insurance against financial penalties**

GEN 6.1.5R No *firm* may enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a financial penalty.

GEN 6.1.6R The *Society*, *managing agents* and *members' agents* must not cause or permit any *member*, in the conduct of his *insurance business* at Lloyd's, to enter into, arrange, claim on or make a payment under a *contract of insurance* that is intended to have, or has or would have, the effect of indemnifying any *person* against all or part of a financial penalty.

GEN 6.1.7G *GEN 6.1.5R* and *GEN 6.1.6R* do not prevent a *firm* or *member* from entering into, arranging, claiming on or making any payment under a *contract of insurance* which indemnifies any *person* against all or part of the costs of defending *FSA* enforcement action or any costs they may be ordered to pay to the *FSA*.

## Annex B

### Amendments to the Authorisation Manual

In this table, underlining indicates new text and striking through indicates deleted text.

AUTH 5      Annex 3

Application of the Handbook to Incoming EEA firms G

...

AUTH 2 Table: G

<b>(1) Module of Handbook</b>	<b>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</b>	<b>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</b>
...		
<del>GEN</del> <u>GEN</u>	<i>GEN</i> applies ( <i>GEN</i> 1.1, <i>GEN</i> 2.1, <i>GEN</i> 3.1, <i>GEN</i> 4.1, <del>and</del> <i>GEN</i> 5.1 and <i>GEN</i> 6.1). However, (a) <i>GEN</i> 4 does not apply to the extent that the <i>firm</i> is subject to equivalent <i>rules</i> imposed by its <i>Home State</i> ( <i>GEN</i> 4.1.1R(3)) <del>and</del> (b) <u><i>GEN</i> 6 only applies to business that can be regulated under section 138 of the <i>Act</i> (General rule-making power). It does not therefore apply if, or to the extent that, responsibility has been reserved to an <i>incoming firm's Home State regulator</i> by a European Community instrument.</u>	<i>GEN</i> 4 does not apply if the <i>firm</i> has <i>permission</i> only for <i>cross-border services</i> and does not carry on <i>regulated activities</i> in the <i>United Kingdom</i> .  Otherwise, as column (2).
...		

## Annex C

### Amendments to the Enforcement Manual

All the text in this Annex is new.

After ENF 13.1.2G insert the following.

ENF 13.1.3G To help the *FSA* to achieve this purpose (as set out in *ENF 13.1.2G*), *GEN 6* contains *rules* prohibiting a *firm* or *member* from entering into, arranging, claiming on or making a payment under a *contract of insurance* that is intended to have, or has, the effect of indemnifying any *person* against a financial penalty.