

Appendix 4 to the Board's determination under Section 175(5) of the Pensions Act 2004 in respect of the financial year 1 April 2007 – 31 March 2008

Contingent assets

General

1. For the purposes of determining the value of U in paragraph 18 of the Schedule to the Determination, one or more contingent assets shall be taken into account if and to the extent that the Board is satisfied that –
 - (a) The appropriate certificate or certificates or equivalent information (“contingent asset certificates”) have been provided as required by paragraph 29 of the Schedule, and in conformity with the notes accompanying the relevant form of certificate or, as the case may be, request by the Board for equivalent information;
 - (b) Satisfactory supporting documents have been provided to the Board, at or before 5.00 pm on 30 March 2007, in the manner called for by the notes accompanying the relevant form of certificate including where relevant and without limitation a legal opinion satisfactory to the Board; and
 - (c) The contingent asset or assets which are the subject of the certificate or certificates fulfil the conditions set out in paragraphs 2 to 5 of this Appendix.
2. A contingent asset must be a Type A asset, a Type B asset or a Type C asset.
3. A contingent asset must comprise or result from an arrangement which becomes or became effective no later than 1 April 2007 or in the case of a new scheme the date on which the new scheme becomes an eligible scheme if later and which may reduce the risk of compensation being payable from the Pension Protection Fund in the event of an insolvency event occurring in respect of an employer in relation to the scheme (“the scheme employer”), and without prejudice to the more specific provisions set out below, may only be taken into account to the extent that it appears to the Board to have that effect.
4. Where one or more contingent assets was recognised by the Board for the purposes of calculating a scheme's risk based levy for the year 1 April 2006 – 31 March 2007, then the Board shall not give that scheme credit for contingent assets for the levy year 1 April 2007 – 31 March 2008 unless the requirements of paragraph 18 are satisfied.

Types of contingent asset

5. For the purposes of the following paragraphs, references to an agreement being “in appropriate form” mean:
 - (a) If the agreement was executed on or after 11 September 2006, in one of the forms for the relevant asset type attached as Annexes E – G, subject to

such variations as that form and the appropriate contingent asset certificate permit; or

(b) If the agreement was executed prior to 11 September 2006, in one of the forms for the relevant asset type as published by the Board on or prior to, and still current as at, the date of execution, subject to such variations as that form and the appropriate contingent asset certificate permit.

6. A Type A asset is a guarantee in appropriate form which (without prejudice to any additional requirements stipulated in the appropriate contingent asset certificate or the accompanying notes) fulfils the following conditions –

(a) The guarantor is an associate, within the meaning of section 435 of the Insolvency Act 1986, of one or more of the scheme employers; and

(b) The guarantor is domiciled in a state which is a member of the Organisation for Economic Co-operation and Development.

7. A Type B asset is one of the following, in appropriate form, in relation to which the mortgagor or chargor is an associate within the meaning of section 435 of the Insolvency Act 1986 of one or more of the scheme employers, and which (without prejudice to any additional requirements stipulated in the appropriate contingent asset certificate or the accompanying notes) is irrevocably available to the trustees or managers of the scheme upon the insolvency of the scheme employer(s):

(a) Cash in sterling deposited in a bank account and subject to a first priority legal mortgage or fixed charge in favour of the trustees or managers of the scheme;

(b) Real estate situated in England, Wales, Scotland or Northern Ireland and subject to a first priority legal mortgage or fixed charge in favour of the trustees or managers of the scheme; or

(c) Securities in which the scheme is permitted to invest by its trust deed and rules (but disregarding any restrictions in relation to employer-related investments) held by a custodian which satisfies the criteria for a custodian set out in the relevant contingent asset certificate and where the owner's interest under the relevant custodian agreement and the securities themselves are subject to a first priority legal mortgage or fixed charge in favour of the trustees or managers of the scheme.

8. A Type C asset is a letter of credit or bank guarantee in favour of the trustees of the scheme in appropriate form, in relation to which the purchaser identified in the contingent asset certificate is an associate within the meaning of section 435 of the Insolvency Act 1986 of one or more of the scheme employers, and which (without prejudice to any additional requirements stipulated in the appropriate contingent asset certificate or the accompanying notes) is given by a counterparty that:

- (a) Has a current Moody's credit rating of Aa3 or better, or a current Standard and Poor's credit rating of AA- or better, or a current Fitch credit rating of AA- or better;
- (b) Has been regulated and approved for business by the Financial Services Authority, either directly or on the basis of rights in European Union law; and
- (c) Is domiciled in a state which is a member of the Organisation for Economic Co-operation and Development.

9. The maturity date of a Type C asset shall be:

- (a) In the case of a Type C contingent asset in the prescribed form labelled "Type C(i)", not earlier than 31 March 2008; and
- (b) In the case of a Type C contingent asset in the prescribed form labelled "Type C(ii)", not earlier than five days after the last "Planned Contribution" (as defined in the standard form of Type C(ii) asset) is due.

10. In the case of a Type A or a Type B asset, the maximum amount guaranteed or secured may be:

- (a) A fixed monetary sum (and the maximum amount must be so fixed in the case of a scheme to which paragraph 39 of the Schedule to the Determination applies);
- (b) The lowest non-negative amount which, when added to the assets of the scheme, would result in the scheme being funded at a given percentage level (referred to below as G%) on the date on which any liability under the Type A or Type B asset arose, calculated on the basis set out in section 179 of the Pensions Act 2004, were a valuation to be conducted as at that date;
- (c) The lower of (i) the lowest non-negative amount which, when added to the assets of the scheme, would result in the scheme being funded at a given percentage level (referred to below as G%) on the date on which any liability under the Type A or Type B asset arose, calculated on the basis set out in section 179 of the Pensions Act 2004, were a valuation to be conducted as at that date, and (ii) a fixed monetary sum (referred to below as £H);
- (d) The entire aggregate liability, on the date on which any liability under the Type A or Type B asset arose, of every employer (within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the scheme, were a debt under Section 75(2) of the Pensions Act 1995 to have become due on that date; or
- (e) The lower of (i) the entire aggregate liability, on the date on which any liability under the Type A or Type B asset arose, of every employer (within

the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder) in relation to the scheme, were a debt under Section 75(2) of the Pensions Act 1995 to have become due on that date; and (ii) a fixed monetary sum (referred to below as £H).

11. The value of a Type A or a Type B asset for the purposes of this Appendix shall be as follows, provided that the value of a Type B asset shall not in any event exceed, as the case may be, the amount of the cash deposited, the value of the real estate, or the value of the securities, in each case as shown in the contingent asset certificate and meeting the requirements in relation to valuation specified in the notes to the relevant certificate, and provided further that the value shall never be less than zero:

- (a) In a case falling within paragraph 10(a) above, that fixed monetary sum;
- (b) In a case falling within paragraph 10(b) above, the amount by which G% of the protected liabilities of the scheme exceeds the amount of its assets, determined in accordance with paragraph 10 of the Schedule (but for this purpose taking account of deficit-reduction contributions to the extent set out in paragraph 28 of the Schedule);
- (c) In a case falling within paragraph 10(c) above, the lower of (i) the amount by which G% of the protected liabilities of the scheme exceeds the amount of its assets, determined in accordance with paragraph 10 of the Schedule (but for this purpose taking account of deficit-reduction contributions to the extent set out in paragraph 28 of the Schedule), and (ii) £H;
- (d) In a case falling within paragraph 10(d) above, the amount by which 125% of the protected liabilities of the scheme exceeds the amount of its assets, determined in accordance with paragraph 10 of the Schedule (but for this purpose taking account of deficit-reduction contributions to the extent set out in paragraph 28 of the Schedule);
- (e) In a case falling within paragraph 10(e) above, the lower of (i) the amount by which 125% of the protected liabilities of the scheme exceeds the amount of its assets, determined in accordance with paragraph 10 of the Schedule (but for this purpose taking account of deficit-reduction contributions to the extent set out in paragraph 28 of the Schedule); and (ii) £H.

12. In the case of a Type C(i) asset, the letter of credit or bank guarantee must be for a fixed monetary amount, and the value of such an asset for the purposes of this Appendix shall be that amount. In the case of a Type C(ii) asset, the letter of credit or bank guarantee must be for a fixed monetary amount which reduces upon the making of Planned Contributions (as defined in the standard form of Type C(ii) asset), and the value of such an asset for the purposes of this Appendix shall be the amount of the letter of credit or bank guarantee as at 1 April 2007.

13. For the purposes of calculating the contingent asset increase in relation to a single Type A asset, references to a factor r shall be to the probability of insolvency of the guarantor divided by the probability of insolvency of the employer in relation to the scheme (which in the case of a multi-employer scheme shall be taken to be P as determined in accordance with paragraphs 35 to 39 of the Schedule to the Determination), and the probability of insolvency shall be P as calculated in accordance with paragraphs 30 to 34 of the Schedule (or, in the case of the guarantor, what P would be if the guarantor were the employer in relation to the scheme). References to a factor z shall be to the amount obtained by subtracting r from 1. In any case where r is greater than or equal to 1, the guarantee in question shall be ignored for the purposes of calculating the risk-based levy. In any case where, under the same Type A asset, there are two or more guarantors jointly and severally liable for the same amount, then r and z in relation to that guarantee shall be calculated as if the guarantor with the lowest probability of insolvency (determined in accordance with the first sentence of this paragraph) were the sole guarantor.

Calculation of U taking into account contingent assets

14. Where one or more contingent assets fall to be taken into account in accordance with this Appendix, an amount F shall be calculated by expressing:

(A) the total value of all the Type B and Type C contingent assets to be taken into account plus the amount of the assets of the scheme, determined in accordance with paragraph 10 of the Schedule (but for this purpose taking account of deficit-reduction contributions to the extent set out in paragraph 28 of the Schedule, whilst ignoring any contingent assets),

as a percentage of

(B) the scheme's liabilities, determined in accordance with paragraph 9 of the Schedule.

If F is less than or equal to 104% then U shall be calculated in accordance with paragraph 15 below. If F is greater than 104% then U shall be calculated in accordance with paragraph 16 below. If there is more than one Type A contingent asset to be taken into account in relation to the same scheme then paragraph 15 or 16 (as the case may be) shall be modified in accordance with paragraph 17 below.

15. Where this paragraph applies, $U = (1.05 \times L) - S - C - ((N_A \times z) + N_B + N_C)$, where:

(a) L is the value of the scheme's liabilities, determined in accordance with paragraph 10 of the Schedule;

(b) S is the value of the scheme assets as determined in accordance with paragraph 10 of the Schedule (disregarding deficit-reduction contributions);

- (c) C is the amount of any deficit-reduction contributions falling to be taken into account in accordance with paragraph 28 of the Schedule;
- (d) N_A is the value of any Type A contingent asset to be taken into account, provided that N_A shall not exceed the greater of zero and $(1.05 \times L) - S - C - N_B - N_C$;
- (e) N_B is the total value of any Type B contingent assets to be taken into account;
- (f) N_C is the total value of any Type C contingent assets to be taken into account.

16. Where this paragraph applies, U shall be equal to:

- (a) $0.0075 \times L - (N_A \times z)$, if F exceeds 104% but does not exceed 111%; provided that for these purposes N_A shall not exceed $0.0075 \times L$;
- (b) $0.005 \times L - (N_A \times z)$, if F exceeds 111% but does not exceed 118%; provided that for these purposes N_A shall not exceed $0.005 \times L$;
- (c) $0.0025 \times L - (N_A \times Z)$, if F exceeds 118% but does not exceed 125%; provided that for these purposes N_A shall not exceed $0.0025 \times L$; and
- (d) Zero, if F exceeds 125%.

17. Where this paragraph applies, $N_A \times z$ in the relevant formula shall be replaced by $(N_{A1} \times z_1) + (N_{A2} \times z_2) + \dots + (N_{An} \times z_n)$, where:

- (a) N_{Ar} is the value of the r^{th} Type A asset, calculated in accordance with paragraph 11 above;
- (b) z_r is the factor Z relating to the r^{th} Type A asset, calculated in accordance with paragraph 13 above;
- (c) n is the number of Type A assets;
- (d) the Type A assets are arranged in ascending order of insolvency probability of the guarantor (determined in accordance with the first sentence of paragraph 13), so that asset 1 is the guarantee given by the guarantor with the lowest insolvency probability and asset n is the guarantee given by the guarantor with the highest insolvency probability;
- (e) the relevant limitation on the value of N_A set out in paragraph 15 or, as the case may be, 16 is applied to the total $N_{A1} + N_{A2} + \dots + N_{An}$; if such sum exceeds the relevant limitation, then N_{An} is reduced until the limitation is met or until N_{An} is reduced to zero if sooner, in which case $N_{A(n-1)}$ will be reduced etc.

For the avoidance of doubt this paragraph shall apply as illustrated by the examples set out in section 6.8 of the Board's guidance on contingent assets dated September 2006.

Additional condition where scheme has obtained recognition for contingent asset(s) in previous levy year

18. If, in respect of a scheme, the Board gave credit for one or more contingent assets (referred to below as the original contingent asset(s)) for the purposes of the risk based levy for the year 1 April 2006 – 31 March 2007, then, notwithstanding any other provision of this Appendix, the Board shall not take into account any contingent assets for the purposes of that scheme's levy for the year 1 April 2007 – 31 March 2008 unless either the condition set out in paragraph 19 below or the condition set out in paragraph 20 below (or both) is/are satisfied.

19. The first condition referred to in paragraph 18 is that, in respect of each original contingent asset:

(a) In the case of an original contingent asset of Type A or B, any amendments made to the terms of the original contingent asset on or after 1 April 2006 were made in accordance with the amendment and release provisions of the original contingent asset, that is, that under the terms of the original contingent asset, the trustees of the scheme would not have been permitted unreasonably to withhold their consent to the making of such amendments;

(b) In the case of an original contingent asset of Type C, either the original contingent asset remains in force on 1 April 2007 and has not been amended on or after 1 April 2006, or the original contingent asset has expired and the expiry and renewal provisions of the original contingent asset have been complied with, that is, that the original contingent asset has been replaced with cash or a replacement Type C contingent asset of a face value sufficient to ensure that no right to make a demand under the original Type C contingent asset arose upon its expiry.

20. The second condition referred to in paragraph 18 is that the condition set out in paragraph 4.1 of Annex G (Amendment and replacement conditions) is satisfied.

Changes during the levy year

21. If the trustees or managers of the scheme notify the Board, or if the Board otherwise becomes aware, that at some time during the financial year 1 April 2007 to 31 March 2008 the information contained in a contingent asset certificate has ceased or will cease to be true and correct, then:

(a) In a case where the terms of the instrument representing the contingent asset have been or are to be varied so as to reduce the value of the asset, or if any other step has been or is to be taken which has had or will have substantially the same effect, the Board will (subject to sub-paragraph (b) below) recalculate the risk-based levy in respect of the scheme as if the contingent asset had not existed at 31 March 2007 (that is to say, the contingent asset shall be wholly disregarded for the purposes of calculating the risk-based levy);

- (b) In a case falling within sub-paragraph (a) above, but where the reduction in the value of the asset satisfies either the condition set out in sub-paragraph (c) below or the condition set out in sub-paragraph (d) below (or both), the Board shall take no further action as a result of that reduction in value, that is, the risk based levy for the year 1 April 2007 – 31 March 2008 shall be unchanged;
- (c) The first condition referred to in sub-paragraph (b) is that:
- i. In the case of a contingent asset of Type A or B, the amendments were made in accordance with the amendment and release provisions of the contingent asset, that is, that under the terms of the contingent asset, the trustees of the scheme would not have been permitted unreasonably to withhold their consent to the making of such amendments;
 - ii. In the case of a contingent asset of Type C, the reduction provisions of the contingent asset have been complied with, that is, that any reduction in the face value of the Type C contingent asset was made in accordance with the express terms of the Type C contingent asset.
- (d) The second condition referred to in sub-paragraph (b) is that the condition set out in paragraph 4.2 of Annex G (Amendment and replacement conditions) is satisfied;
- (e) In other cases, the Board will recalculate the risk-based levy in respect of the scheme as if the contingent asset had not existed at 31 March 2007 (that is to say, the contingent asset shall be wholly disregarded for the purposes of calculating the risk-based levy), if it considers that the contingent asset would not have been taken into account if the changed circumstances had existed at 31 March 2007 and it is satisfied that in all the circumstances (including the nature of the change, the date when it has occurred or will occur, and the reasons for the change) it is appropriate for such a recalculation to be performed;
- (f) In a case where a recalculation of the risk-based levy is required, the Board will issue a revised notification of the amount of the levies in respect of the scheme.

22. For the avoidance of doubt:

- (a) A change in the value of real estate or securities comprising a Type B asset, after the date of the valuation given in the contingent asset certificate, is not a matter which falls to be notified to the Board, and will not lead to any recalculation of the risk-based levy;
- (b) A reduction in the face value of a Type C(ii) contingent asset in accordance with its terms upon the making of a Planned Contribution (as defined) shall not be regarded as a variation in the terms of that Type C(ii) contingent asset, is not a matter which falls to be notified to the Board during the levy year, and will not lead to any recalculation of the risk-based levy; and

- (c) The risk-based levy will not be recalculated if steps are taken to increase the value of a contingent asset during the financial year.

Interpretation

23. For the purposes of this Appendix, the following states shall (in addition to the full members of the organisation) be treated as members of the Organisation for Economic Co-operation and Development:

- (a) Channel Islands
- (b) Isle of Man
- (c) Gibraltar
- (d) Bermuda.