

## **Contingent Asset Appendix**

### ***General***

1. This is an Appendix to the Board's determination under Section 175(5) of the Pensions Act 2004 in respect of the 2011/12 Levy Year. For the avoidance of doubt, Rule A1.2(10) applies to this Appendix so that in a case of a Segregated Scheme, each segregated section shall be treated as if it were a separate Scheme for the purposes of these Rules, and where a Segregated Part of a Scheme has been created on or before 31 March 2011, each of the Segregated Part(s) and the remainder of the Scheme shall be treated as if it were a separate Scheme for the purposes of these Rules. References to Schemes shall be construed accordingly.
2. For the purposes of calculating RBL under the Rules, one or more current Contingent Assets shall be taken into account where the provisions of Rule D2 of the Rules are met; and amended, cancelled and replaced Contingent Assets may be taken into account only as provided for in Rule D3.
3. A contingent asset must be either a Type A Contingent Asset, a Type B Contingent Asset or a Type C Contingent Asset.

### ***Definitions and Interpretation***

4. For the purposes of this Appendix:
  - (1) References to an agreement being in "Acceptable Form" mean that the agreement is in the relevant Standard Form, subject only to:
    - (a) completion of blanks and other choices and variations explicitly contemplated by the relevant Standard Form; and
    - (b) other variations which are notified to the Board by 5pm on 31 March 2011 and which do not, in the opinion of the Board, have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form.
  - (2) "Acceptable Financial Institution" means a financial institution 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 or its applicable successor, either directly or on the basis of rights in European Union law; and
    - (c) Is domiciled in a Nominated Jurisdiction.

- (3) "Associated Party" means a party which is an "associate" within the meaning set out in section 435 of the Insolvency Act 1986 or, as the case may be, the Insolvency (Northern Ireland) Order 1989.
- (4) The "Certifier" means the person who Submits any certificate under this Appendix.
- (5) An "Employer's Associate" in this Appendix means an associate within the meaning of section 435 of the Insolvency Act 1986 (or, as the case may be, the Insolvency (Northern Ireland) Order 1989) of one or more of the Scheme Employers.
- (6) A "Nominated Jurisdiction" means any state which is a member of the European Union or the Organisation for Economic Co-operation and Development, or Hong Kong. For these purposes, 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) Each of the Channel Islands
  - (b) The Isle of Man
  - (c) Gibraltar
  - (d) Bermuda
- (7) The "Standard Confirmations" are each of:
  - (a) The Certifier is authorised by or on behalf of the trustees of the Scheme to complete the certificate.
  - (b) The Certifier is aware of the "Guidance in relation to contingent assets" published by the Board on its website.
  - (c) The information contained within the certificate is complete and accurate, and the trustees of the scheme/section undertake to notify the Board promptly if the terms of the Contingent Asset are amended in any respect, the Contingent Asset is terminated or any of the information in the certificate otherwise ceases to be true and correct on or before 31 March 2012.
  - (d) The Certifier is aware that it is a criminal offence under section 195 of the Act for any person knowingly or recklessly to provide false or misleading information to the Board in circumstances in which the person providing the information intends or could reasonably be expected to know, that it would be used by the Board for the purposes of exercising its functions.
- (8) The "Standard Form", in relation to any agreement creating a Contingent Asset, means the Board's standard form of agreement for the relevant asset type as published on its website on or prior to, and still current as at, the date of execution of the agreement.

- (9) Any reference to a legal opinion upon the basis of which declarations are to be made means a legal opinion whose authorship, form and content are considered by the Board to be satisfactory having regard to its published guidance on contingent assets (including an opinion as to foreign law where that is necessary in the circumstances).

5. The table below sub-divides Type A Contingent Assets and Type B Contingent Assets into 5 sub-types (referred to below as A(a), A(b) etc) based on the form of liability cap within the relevant agreement, and defines "Cap Value" and "Maximum Guaranteed Amount" for this Appendix.

Sub Type	Maximum Guaranteed Amount	Cap Value
(a)	A fixed monetary sum (and the maximum amount must be so fixed in the case of a Centralised Scheme as defined in Rule E4.2(4))	that fixed monetary sum
(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 in this Appendix as G%) on the date on which any liability under the Contingent Asset arose, calculated on the basis set out in Section 179, were a valuation to be conducted as at that date	the amount by which G% of the Protected Liabilities exceeds the amount of the Scheme's assets, determined in accordance with Rule A6.1 (but for this purpose taking account of deficit-reduction contributions to the extent set out in Rule D1); or, if such amount is negative, zero
(c)	The lower of (i) the amount for (b) above and (ii) a fixed monetary sum (referred to in this Appendix as £H)	the lower of (i) the amount for (b) above and (ii) £H
(d)	The entire aggregate liability, on the date on which any liability under the Contingent Asset arose, of every employer (within the meaning set out in Section 318 of the Act) in relation to the Scheme, were debts under Section 75(2) of the Pensions Act 1995 to have become due from each such employer on that date	the amount by which 155% of the Protected Liabilities exceeds the Scheme's assets, determined in accordance with Rule A6.1 (but for this purpose taking account of deficit-reduction contributions to the extent set out in Rule D1); or, if such amount is negative, zero
(e)	The lower of (i) the amount for (d) above and (ii) a fixed monetary sum (referred to in this Appendix as £H)	the lower of (i) the amount for (d) above; and (ii) £H

### **What is a Type A Contingent Asset**

6. Subject to paragraphs 28 and 29 of this Appendix, a Type A Contingent Asset is a guarantee in Acceptable Form and governed by the laws of England and Wales which (without prejudice to any additional requirements stipulated in this Appendix) fulfils the following conditions:
  - (a) The guarantor is an Employer's Associate; and
  - (b) The guarantor is domiciled in a Nominated Jurisdiction.
7. The value to be ascribed to a type A Contingent Asset is the Cap Value.

### **What is a Type B Contingent Asset**

8. A Type B Contingent Asset is an asset listed in paragraph 9, in Acceptable Form and governed by the laws of England and Wales except in the case of real estate situated in Scotland or Northern Ireland in which case the Contingent Asset must be governed by the laws of Scotland or Northern Ireland as the case may be, in relation to which the condition in paragraph 10 is met, subject to paragraphs 28 and 29 of this Appendix.
9. Assets permitted for this paragraph are:
  - (a) Cash in sterling deposited in a bank account held with an Acceptable Financial Institution and subject to a first priority legal mortgage or fixed charge in favour of the trustees 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 of the Scheme; or
  - (c) Securities held by a custodian which is an Acceptable Financial Institution 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 of the Scheme. The securities must be ones in which the Scheme is permitted to invest by its governing documentation (but disregarding any restrictions in relation to employer-related investments).
10. The conditions in this paragraph are as follows:
  - (1) The mortgagor or chargor is an Employer's Associate; and
  - (2) Without prejudice to any additional requirements stipulated in the appropriate Contingent Asset Certificate or the accompanying notes, the asset is irrevocably available to the trustees of the Scheme upon the insolvency of the Employer(s).
11. The value to be ascribed to a Type B Contingent Asset is the lower of:

- (1) The Cap Value; and
- (2) 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 or help files in Exchange to the relevant certificate and this Appendix.

### **What is a Type C Contingent Asset**

12. A Type C Contingent Asset is a letter of credit or bank guarantee in favour of the Scheme trustees of the Scheme in Acceptable Form and governed by the laws of England and Wales , in relation to which the purchaser identified in the Contingent Asset Certificate is an Employer's Associate and which meets the test in paragraph 13, subject to paragraphs 28 and 29 of this Appendix.
13. Without prejudice to any additional requirements stipulated in the appropriate Contingent Asset Certificate or the accompanying notes or help files in Exchange the Type C Contingent Asset must be issued by an Acceptable Financial Institution.
14. The maturity date of a Type C Contingent Asset shall be:
  - (a) In the case of a Type C Contingent Asset in the Standard Form labelled "Type C(i)", not earlier than 31 March 2012; and
  - (b) In the case of a Type C Contingent Asset in the Standard 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) Contingent Asset) is due.
15. In the case of a Type C(i) Contingent 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.
16. In the case of a Type C(ii) Contingent 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) Contingent Asset). 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 2011.

## How is RBL calculated taking into account Contingent Assets?

17. In paragraphs 17 to 27 of this Appendix:

- (a) The underfunding  $U$  of a Scheme shall be calculated under the Rules, provided however that the assets of the Scheme shall be treated as having been increased by an amount equal to the aggregate value of all Contingent Assets of Types B and/or C (but not of Type A) which fall to be taken into account in relation to that Scheme;
- (b)  $P$ ,  $R$  and  $C$  shall have the meanings give to them by, and be calculated in accordance with, the Rules;
- (c)  $P_G$  shall be the API of the guarantor in relation to a Type A Contingent Asset, calculated in accordance with Part E of the Rules as if the guarantor were an Employer;
- (d) In any case where, under the same Type A Contingent Asset, there are two or more guarantors jointly and severally liable for the same amount, then  $P_G$  in relation to that guarantee shall be calculated as if the guarantor with the lowest API (calculated in accordance with subparagraph (c) above) were the sole guarantor;
- (e) In any case where, in relation to a Type A Contingent Asset,  $P_G$  is higher than  $P$  for the relevant Scheme, then that Type A Contingent Asset shall be ignored for the purposes of calculating RBL; and
- (f) The total amount of RBL calculated in each case shall be subject to Rule C3.1 (RBL cap).

18. Where, in relation to a Scheme, one or more Contingent Assets of Type B and/or Type C, but no Contingent Assets of Type A, fall to be taken into account in accordance with this Appendix, the RBL for that Scheme shall be:

$$U \times P \times R \times C$$

19. This paragraph applies where, in relation to a Scheme, there falls to be taken into account a single Type A(a) Contingent Asset. Where this paragraph applies, the RBL for that Scheme shall be:

$$[(U - \pounds H) \times P + \pounds H \times P_G] \times R \times C \quad \text{if } \pounds H \leq U$$

$$U \times P_G \times R \times C \quad \text{if } \pounds H > U$$

where  $\pounds H$  is the fixed monetary sum guaranteed.

20. This paragraph applies where, in relation to a Scheme, there falls to be taken into account a single Type A(b) Contingent Asset. Where this paragraph applies:

- (a) if  $G$  is equal to or greater than 105, the RBL for that Scheme shall be:

$$U \times P_G \times R \times C$$

(b) if G is less than 105, the RBL for that Scheme shall be:

$$[V \times P + (U - V) \times P_G] \times R \times C \quad \text{if } V \leq U$$

$$U \times P \times R \times C \quad \text{if } V > U$$

where V, the "non guaranteed amount", is calculated as follows:

$$V = \frac{105 - G}{100} \times L$$

21. This paragraph applies where, in relation to a scheme, there falls to be taken into account a single Type A(c) Contingent Asset. Where this paragraph applies, the RBL for that Scheme shall be equal to the higher of:

- (a) the RBL which would apply if there was a single guarantee of £H, calculated in accordance with paragraph 19; and
- (b) the RBL which would apply if there was a single guarantee of G%, calculated in accordance with paragraph 20 above.

22. This paragraph applies where, in relation to a scheme, there falls to be taken into account a single Type A(d) Contingent Asset. Where this paragraph applies, the RBL for that Scheme shall be:

$$U \times P_G \times R \times C$$

23. This paragraph applies where, in relation to a scheme, there falls to be taken into account a single Type A(e) Contingent Asset. Where this paragraph applies, the RBL for that Scheme shall be equal to the higher of:

- (a) the RBL which would apply if there was a single guarantee of £H, calculated in accordance with paragraph 19 above; and
- (b) the RBL which would apply if there was a single guarantee of the full section 75 debt, calculated in accordance with paragraph 22 above.

24. This paragraph applies where, in relation to a scheme, there fall to be taken into account two or more Type A(a) Contingent Assets. Where this paragraph applies, the guarantees shall be applied in descending order of guarantor strength until either all guarantors or all of the underfunding have been exhausted. Hence:

- (a) If the sum of all the fixed amounts is less than the total underfunding U, the RBL for that Scheme shall be equal to:

$$[\text{£}H_1 \times P_{G1} + \text{£}H_2 \times P_{G2} + \dots + \text{£}H_n \times P_{Gn} + \left( U - \sum_1^n H_r \right) \times P] \times R \times C$$

where £H<sub>1</sub> ..... H<sub>n</sub> are the amounts of the guarantees and P<sub>G1</sub> ..... P<sub>Gn</sub> are the corresponding APIs of the guarantors arranged in ascending order of insolvency probability;

(b) If the sum of all the fixed amounts is equal to or exceeds the total underfunding  $U$ , the RBL for that Scheme shall be equal to:

$$[ \pounds H_1 \times P_{G_1} + \pounds H_2 \times P_{G_2} + \dots + \pounds H_{n-1} \times P_{G_{n-1}} + \left( U - \sum_1^{n-1} H_r \right) \times P_{G_n} ] \times R \times C$$

where the guarantees are arranged in order as in paragraph (a) above, and  $\sum_1^{n-1} H_r < U$  but  $\sum_1^n H_r \geq U$ .

25. This paragraph applies where, in relation to a Scheme, there fall to be taken into account two or more Type A(b) Contingent Assets and where in each case the percentage guaranteed is less than 105%. Where this paragraph applies, each guarantee shall be treated as though it had a fixed monetary value of  $(U - V_r)$  where  $V_r$  is the non guaranteed amount, calculated in accordance with paragraph 20, in relation to the  $r^{\text{th}}$  guarantee; and the RBL shall then be calculated in accordance with paragraph 24 above.
26. This paragraph applies where, in relation to a Scheme, there fall to be taken into account two or more Type A(b) Contingent Assets where the percentage guaranteed is equal to or greater than 105% in each case, or two or more or Type A(d) Contingent Assets. Where this paragraph applies the risk-based levy shall be calculated on the basis of a single Type A(d) Contingent Asset, given by a guarantor whose API is equal to the lowest API of all the guarantors.
27. If, in relation to a Scheme, there fall to be taken into account a combination of Type A Contingent Assets not covered by paragraphs 17 to 26 (inclusive) above, the Board shall calculate the RBL in a manner which in the view of the Board:
- (1) best gives effect to the approach set out in paragraphs 17 to 26 (inclusive); and
  - (2) results in the Contingent Assets being consistently treated for these purposes.

### **When shall a Contingent Asset be disregarded?**

28. Without prejudice to Rule D3, paragraph 29 applies where both:

- (1) in connection with the certification requirements specified below, and prior to the notification of the amount of the Levies to the relevant Scheme, the Board is notified of any matter relating to any Contingent Asset, including without limitation:
  - (a) that any attempt has been made to enforce or call upon the Contingent Asset; or
  - (b) that the Contingent Asset itself or any other documentation that was supplied in connection with any application for recognition of

that Contingent Asset has been amended or terminated since it was supplied to the Board;

And

- (2) it appears to the Board that either
- (a) the assets of the relevant Scheme and/or the value of the Contingent Asset itself would be overstated or
  - (b) it would not be consistent with the approach set out in the Contingent Asset Appendix and this Appendix for the contingent asset to continue to be recognised.

29. Where this paragraph 29 applies, the Board may disregard the Contingent Asset in whole or in part for the purposes of the Levies.

**What are the certification and documentary requirements for a Type A (guarantee from a parent company or other associated undertaking) Contingent Asset?**

30. The certificate must contain the following information:

(a) In respect of each guarantor which is a party to the guarantee:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Country of domicile, which must be a Nominated Jurisdiction
- Full address

(b) In respect of the guarantee:

- Date on which the guarantee came or will come into effect, which must be no later than 1 April 2011
- A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on the Section 179 Valuation basis which is guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of "Guaranteed Obligations" set out in the relevant Standard Form of guarantee; where the Contingent Asset adopts a cap of the form "the higher of [Cap1] and [Cap2]", where Cap1 is one of the five caps set out above and Cap2 is an alternative measure, the statement in the certificate must refer to Cap1 only. In the case of a Centralised Scheme, the liability cap must be a fixed sterling amount.
- Where the same guarantee has been recognised by the Board for the purposes of a previous Levy Year, a statement as to whether any amendments have been made to the guarantee since it was previously submitted to the Board and if so what those amendments are.

31. The Certifier must confirm the Standard Confirmations and the following matters:

(a) The Guarantor(s) has/have entered into a guarantee in favour of the Scheme as detailed above.

(b) The guarantee

- is a legally binding, valid and enforceable obligation of the Guarantor(s) and where there is more than one guarantor, each guarantor is jointly and severally liable for the obligations under the guarantee;
- is in the Standard Form, subject only to variations which have been or will be notified to the Board by 5 pm on 31 March 2011 and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
- can be drawn against the liabilities to the Scheme of any of the employers listed in Schedule 1 to the guarantee, which schedule lists every undertaking which is both an Associated Party of any Guarantor and an "employer" in relation to the relevant Scheme within the meaning set out in Section 318 of the Act and regulations made thereunder; and
- on its terms, will be unconditionally available to the Scheme for so long as any actual or contingent liability of any such employers to the Scheme subsists.

(c) The declarations made in (b) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(d) The Certifier has notified the Board of any claim that has been made under the guarantee.

32. The following documents must be Submitted to the Board in hard copy in accordance with Rule D2.1:

(a) If the guarantee has not been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. generally where the guarantee is new):

- A certified copy of the guarantee.
- A blacklined document showing the changes from the Standard Form or confirmation that there are no changes to the Standard Form except for the adoption of one of the definitions of Guaranteed Obligations and the insertion of relevant details of the parties.
- A copy of the legal opinion referred to in paragraph 31(c) above.
- Unless covered in the legal opinion referred to in paragraph 31(c) above, a document providing satisfactory evidence that the benefit to the guarantor of entering into the guarantee has been considered and established.
- A printed copy of the Contingent Asset certificate.

(b) If the guarantee has been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. the scheme is re-certifying for the 2011/12 Levy Year):

- If the guarantee has been amended since the version last sent to the Board, a certified copy of the amended guarantee or amending document.
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraphs 31(b) and (c) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.
- If any documents are supplied to the Board in respect of the re-certification for the 2011/12 Levy Year (for example an amending document or updated legal opinion), a printed copy of the Contingent Asset certificate.

**What are the certification and documentary requirements for a Type B(i) (security over cash in a bank account) Contingent Asset?**

33. The certificate must contain the following information:

(a) In respect of the Chargor which has executed the security agreement and whose interest in the bank account has been charged:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the bank at which the charged account is held:

- Full name of account bank
- Ratings for the account bank published by Moodys, Standard and Poors and/or Fitch.
- Country of domicile, which must be a Nominated Jurisdiction
- Regulatory body (i.e. the UK Financial Services Authority or its applicable successor or an equivalent EU regulator)
- Full address

(c) In respect of the security agreement:

- Date on which the charge came or will come into effect, which must be no later than 1 April 2011.
- Balance on the charged account as at a date not more than 7 days prior to the date of submission of the Contingent Asset Certificate, as evidenced by a bank statement. The account must be denominated in pounds sterling.
- A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on the Section 179 Valuation basis which is guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of "Secured Liabilities" set out in the relevant Standard Form; where the Contingent Asset adopts a cap of the form "the higher of [Cap1] and [Cap2]", where Cap1 is one of the five caps set out above and Cap2 is an alternative measure, the statement in

the certificate must refer to Cap1 only. In the case of a Centralised Scheme, the liability cap must be a fixed sterling amount.

- Where the same charge has been recognised by the Board for the purposes of a previous Levy Year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are.

34. The Certifier must confirm the Standard Confirmations and the following matters:

(a) The Chargor has entered into a security agreement in respect of a bank account in favour of the scheme/section as detailed above.

(b) The security agreement

- is a legally binding, valid and enforceable obligation of the Chargor;
- has been properly registered as required by the Companies Acts 1985 and/or 2006 or any other applicable legislation<sup>1</sup>;
- is in the Standard Form subject only to variations which have been or will be notified to the Board by 5pm on 31 March 2011 and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
- creates a first priority legal mortgage or fixed charge in favour of the trustees of the Scheme over all amounts standing to the credit of the bank account referred to above, and such amounts are not subject to any prior or *pari passu* security interest; and
- secures the liability to the Scheme of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the security agreement) in respect of any of the employers listed in Schedule 1 to the security agreement, which schedule lists every undertaking which is both an Associated Party of the Chargor and an "employer" in relation to that scheme/section within the meaning set out in Section 318 of the Act and regulations made thereunder.

(c) The declarations made in (b) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(d) The credit balance on the charged account as at the date specified under "Cash balance" was as stated there, no withdrawals have been made since that date and a copy of the bank statement verifying such balance has been or will be sent to the Board by 5pm on 31 March 2011.

(e) The Certifier has notified the Board of any attempt that has been made to enforce the security created by the security agreement.

35. The following documents must be supplied to the Board in hard copy in accordance with Rule D2.1:

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<sup>1</sup> Note that this means the security must actually have been recorded in the relevant register at the point the certificate is given to the PPF

(a) If the security agreement has not been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. generally where the security agreement is new):

- A certified copy of the security agreement.
- A blacklined document showing the changes from the Standard Form, or confirmation that there are no changes to the Standard Form except for the adoption of one of the definitions of Secured Liabilities and the insertion of relevant details of the parties.
- A copy of the legal opinion referred to in paragraph 34(c) above.
- A copy of the bank statement referred to in paragraph 34(d) above.
- Unless covered in the legal opinion referred to in paragraph 34(c) above, a document providing satisfactory evidence that the benefit to the Chargor of entering into the security agreement has been considered and established.
- A printed copy of the Contingent Asset certificate.

(b) If the security agreement has been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. the scheme is re-certifying for the 2011/12 Levy Year):

- A copy of the bank statement referred to in paragraph 34(d) above
- If the security agreement has been amended since the version last sent to the Board, a certified copy of the amended security agreement or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraphs 34(b) and (c) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.
- If any documents are supplied to the Board in respect of the re-certification for the 2011/12 Levy Year (for example an amending document or updated legal opinion), a printed copy of the Contingent Asset certificate.

**What are the certification and documentary requirements for a Type B(ii) Contingent Asset?**

36. In paragraphs 36 to 39:

(1) A "Local Charge" means:

(a) for real estate located in England, Wales and Northern Ireland a first priority legal mortgage or fixed charge; and

(b) for real estate located in Scotland, a first ranking standard security.

(2) The "Local Registration Requirement" means:

(a) for real estate located in England and Wales, has been properly registered as required by the Land Registration Acts 1925-1986, the Land Registration Act 2002, the Companies Acts 1985 and/or 2006 (each as amended from time to time) and/or any other applicable legislation;

(b) for real estate located in Northern Ireland, has been properly registered as required by the Land Registration Act (Northern Ireland) 1970, the Companies (Northern Ireland) Order 1986 (each as amended from time to time) and/or any other applicable legislation; and

(c) for real estate located in Scotland, has been properly registered as required by the Land Register of Scotland or recorded in the General Register of Sasines (as appropriate) and the charge created thereby has been registered under the Companies Acts 1985 and/or 2006 (as amended from time to time) and/or any other applicable legislation.

(3) The "Relevant Agreement" means a security agreement in respect of real estate located in England, Wales or Northern Ireland and a standard security in respect of real estate located in Scotland.

37. The certificate must contain the following information:

(a) In respect of the Chargor which has executed the Relevant Agreement and whose interest in the property has been charged:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the security:

- Date on which the Relevant Agreement came or will come into effect, which must be no later than 1 April 2011.
- A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on a Section 179 Valuation basis which is guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of "Secured Liabilities" set out in the relevant Standard Form; where the Contingent Asset adopts a cap of the form "the higher of [Cap1] and [Cap2]", where Cap1 is one of the five caps set out above and Cap2 is an alternative measure, the statement in the certificate must refer to Cap1 only. In the case of a Centralised Scheme, the liability cap must be a fixed sterling amount.
- Where the same charge has been recognised by the Board for the purposes of a previous Levy Year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are.

(c) In respect of the real estate which is the subject of the security:

- A statement as to whether any of the property is occupied by the chargor, any of the employers listed in Schedule 1 to the Relevant Agreement or by any Associated Party of any of them.
- The value of the property as stated in a valuation, and the date of that valuation. Where the security has not previously been recognised by the Board for the purposes of the Levies, the valuation date must not be more than three months prior to the date of the certificate. Otherwise the valuation date must not be more than fifteen months prior to the date of the certificate. If the property, or any part of it, is occupied by the Chargor or any of the employers covered by the Relevant Agreement or an associate of any of them, then the property or the relevant part must be valued on a vacant possession basis. Otherwise, the property must be valued on a market value basis. For these purposes 'vacant possession' and 'market value' shall have the meanings given to them in the RICS 'red book'. What constitutes a valuation for these purposes shall be determined in accordance with the contingent asset guidance published by the Board.
- The date of a certificate of title obtained by the Scheme trustees, which shall not be earlier than 7 days prior to the effective date of the Relevant Agreement.

38. The Certifier must confirm the Standard Confirmations and the following matters:

(a) The Chargor has entered into a Relevant Agreement in respect of real estate in favour of the scheme/section as detailed above.

(b) The real estate in question is in England and Wales, Northern Ireland or Scotland, specifying which of those countries it is in.

(c) The Relevant Agreement

- is a legally binding, valid and enforceable obligation of the Chargor;
- meets the relevant Local Registration Requirement<sup>2</sup>;
- is in the Standard Form subject only to variations which have been or will be notified to the Board by 5pm on 31 March 2011 and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
- creates a Local Charge in favour of the trustees of the Scheme over the real estate referred to above, and such property is not subject to any prior or *pari passu* security interest; and
- secures the liability to the Scheme of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the Relevant Agreement) in respect of any of the employers listed in Schedule 1 to the Relevant Agreement,
- Schedule 1 to the Relevant Agreement lists every undertaking which is both an Associated Party of the Chargor and an "employer" in relation to that Scheme within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder

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<sup>2</sup> Note that this means the security must actually have been recorded in the relevant registers at the point the certificate is given to the Board

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(e) The trustees have obtained a valuation of the property that is the subject of the Relevant Agreement, as at the date specified above. Where this security has not previously been recognised by the Board for the purposes of the Levies, the valuation date is not more than three months prior to the date of the certificate. Otherwise the valuation date is not more than fifteen months prior to the date of the certificate. The valuation has been prepared by a chartered surveyor who is a member of the Royal Institute of Chartered Surveyors (RICS) and has appropriate indemnity cover in place. The valuation has been prepared on a market value basis, except to the extent any of the property is occupied by the Chargor or any of the employers listed in Schedule 1 to the Relevant Agreement (or by any Associated Party of any of them), in which event the property or part of the property so occupied has been valued on a vacant possession basis. The valuation includes allowance for any encumbrances recorded in the certificate of title referred to in (f) below.

(f) The Scheme trustees have obtained a certificate of title from an appropriately qualified person and dated not more than 7 days prior to the effective date of the Relevant Agreement which confirms that the Chargor has good and marketable title to the property that is the subject of the Relevant Agreement and records any material encumbrances to that property. Having made appropriate enquiries the Certifier is satisfied that, as at the date of the certificate, there are no matters affecting the title to the property which were not disclosed in the certificate of title referred to above, or that to the extent there are any such matters, they have been allowed for in the valuation of the property referred to above.

(g) Insurance in relation to the property which meets the requirements of the Relevant Agreement is in place and all premiums have been paid.

(h) The Certifier has notified the Board of any attempt that has been made to enforce the security created by the Relevant Agreement.

39. The following documents must be supplied to the Board in hard copy in accordance with Rule D2.1:

(a) If the Relevant Agreement has not been accepted by the Board as satisfying its requirements in relation to the previous Levy Year (i.e. generally where the Relevant Agreement is new):

- A certified copy of the Relevant Agreement.
- A blacklined document showing the changes from the Standard Form or confirmation that there are no changes to the Standard Form except for the adoption of one of the definitions of Secured Liabilities and the insertion of relevant details of the parties.
- A copy of the legal opinion referred to in paragraph 38(d) above.
- A copy of the valuation referred to in paragraph 38(e) above
- A copy of the certificate of title referred to in paragraph 38(f) above

- Unless covered in the legal opinion referred to in paragraph 38(d) above, a document providing satisfactory evidence that the benefit to the Chargor of entering into the Relevant Agreement has been considered and established.
- A printed copy of the Contingent Asset certificate.

(b) If the Relevant Agreement has been accepted by the Board as satisfying its requirements in relation to the previous Levy Year (i.e. the Scheme is re-certifying for the Relevant Year):

- If the Relevant Agreement has been amended since the version last sent to the Board, a certified copy of the amended Relevant Agreement or amending document.
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraphs 38(c) and (d) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.
- If a new valuation has been obtained, a copy of that valuation.
- If a new certificate of title has been obtained, a copy of that certificate of title.
- Where a property has been substituted in accordance with the Relevant Agreement, the document effecting the substitution and the legal opinion, valuation and certificate of title relating to the replacement property. These documents must comply with the relevant requirements set out in this Appendix and in the Board's guidance. The valuation date must be no more than three months prior to the date of the certificate. The certificate of title must be no more than 7 days prior to the effective date of the agreement effecting the substitution.
- If any documents are supplied to the Board in respect of the re-certification for the 2011/12 Levy Year (for example an amending document, updated legal opinion or new valuation), a printed copy of the Contingent Asset certificate.

**What are the certification and documentary requirements for a Type B(iii) (security over securities) Contingent Asset?**

40. The certificate must contain the following information:

(a) In respect of the Chargor which has executed the security agreement and whose interest in the securities has been charged:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the custodian holding the charged securities:

- Full name of custodian
- Ratings for the custodian published by Moodys, Standard and Poors and/or Fitch.
- Country of domicile, which must be a Nominated Jurisdiction
- Regulatory body (i.e. the UK Financial Services Authority or its applicable successor or an equivalent EU regulator)
- Full address

(c) In respect of the security agreement:

- Date on which the charge came or will come into effect, which must be no later than 1 April 2011.
- Date and value of the latest valuation of the charged securities. The valuation must be provided by the Custodian save that, to the extent the securities are unquoted, the Custodian may rely on a valuation provided by an appropriately qualified third party valuer. The valuation must be as at a date not more than one month prior to the date of the certificate, except that for unquoted securities this limit is extended to three months. If the securities are a mixture of quoted and unquoted, the date of the oldest element of the valuation must be stated. Securities issued by, or by reference to, undertakings which are the Chargor or any employer covered by the security agreement or 'associates' of any of them must be excluded for the purposes of valuing the securities.
- A statement as to the form of liability cap which applies, including (if relevant) the percentage funding level on a s179 basis guaranteed and/or the fixed sterling amount. The liability cap must be in one of the five forms specified in the definition of "Secured Liabilities" set out in the relevant Standard Form; where the Contingent Asset adopts a cap of the form "the higher of [Cap1] and [Cap2]", where Cap1 is one of the five caps set out above and Cap2 is an alternative measure, the statement in the certificate must refer to Cap1 only. In the case of a Centralised Scheme, the liability cap must be a fixed sterling amount.
- Where the same charge has been recognised by the Board for the purposes of a previous Levy Year, a statement as to whether any amendments have been made to the charge since it was previously submitted to the Board and if so what those amendments are.

41. The Certifier must confirm the Standard Confirmations and the following matters:

(a) The Chargor has entered into a security agreement in respect of certain securities owned by the Chargor and held by the Custodian in favour of the scheme/section as detailed above.

(b) The security agreement:

- is a legally binding, valid and enforceable obligation of the Chargor;
- has been properly registered as required by the Companies Acts 1985 and/or 2006 (as amended from time to time) or any other applicable legislation<sup>3</sup>;

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<sup>3</sup> Note that this means the security must actually have been recorded in the relevant register at the point the certificate is given to the Board

- is in the Standard Form subject only to variations which have been or will be notified to the Board by 5pm on 31 March 2011 and which do not have a materially detrimental effect on the rights of the trustees as compared with the Standard Form;
- creates a first priority legal mortgage or fixed charge in favour of the trustees of the Scheme over the relevant securities and the Chargor's rights under its custody agreement with the Custodian named above, and such amounts are not subject to any prior or *pari passu* security interest; and
- secures the liability to the Scheme of, and can be enforced upon the occurrence of an Insolvency Event (as defined in the security agreement) in respect of any of the employers listed in Schedule 1 to the security agreement, which schedule lists every undertaking which is both an Associated Party of the Chargor and an "employer" in relation to the Scheme within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(c) The declarations made in (b) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(d) The securities which are the subject of the security agreement are securities in which the Scheme trustees would be permitted to invest pension fund assets recognising any restrictions on investment contained within the Scheme governing documentation (but ignoring any restriction on employer-related investments).

(e) The Custodian has provided a valuation of the securities subject to the security agreement as at the date specified above. The valuation has been prepared in accordance with the Statement of Recommended Practice on Financial Reporting for Pension Schemes. Securities issued by, or by reference to, any undertaking which is the Chargor or any of the employers listed in Schedule 1 to the security agreement or an Associated Party of any of them have been valued at zero for the purposes of the valuation.

(f) The Certifier has notified the Board of any attempt that has been made to enforce the security created by the security agreement.

42. The following documents must be supplied to the Board in hard copy in accordance with Rule D2.1:

(a) If the security agreement has not been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. generally where the security agreement is new):

- A certified copy of the security agreement.
- A blacklined document showing the changes from the Standard Form or confirmation that there are no changes to the Standard Form except for the adoption of one of the definitions of Secured Liabilities and the insertion of relevant details of the parties.
- A copy of the legal opinion referred to in paragraph 41(c) above.
- A copy of the valuation referred to in paragraph 41(e) above.

- Unless covered in the legal opinion referred to in paragraph 41(c) above, a document providing satisfactory evidence that the benefit to the Chargor of entering into the security agreement has been considered and established.
- A printed copy of the Contingent Asset certificate.

(b) If the security agreement has been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. the scheme is re-certifying for the 2011/12 Levy Year):

- A copy of the valuation referred to in paragraph 41(e) above
- If the security agreement has been amended since the version last sent to the Board, a certified copy of the amended security agreement or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraphs 41(b) and (c) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.
- If any documents are supplied to the Board in respect of the re-certification for the 2011/12 Levy Year (for example an amending document, updated legal opinion or new valuation), a printed copy of the Contingent Asset certificate.

**What are the certification and documentary requirements for a Type C(i) (letter of credit or bank guarantee, evergreen version) Contingent Asset?**

43. The certificate must contain the following information:

(a) In respect of the purchaser:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the counterparty

- Full name of counterparty
- Ratings for the counterparty published by Moodys, Standard and Poors and/or Fitch. The counterparty must be rated at least Aa3 by Moodys and/or AA- by Standard and Poors and/or AA- by Fitch.
- Country of domicile, which must be a Nominated Jurisdiction
- Regulatory body (i.e. the UK Financial Services Authority or its applicable successor or an equivalent EU regulator)
- Full address

(c) In respect of the letter of credit/bank guarantee:

- Date on which the letter of credit/bank guarantee came or will come into effect, which must be no later than 1 April 2011
- Date on which the letter of credit/bank guarantee will expire, which must be no earlier than 31 March 2012
- Face value of letter of credit/bank guarantee. The instrument must be denominated in sterling

44. The Certifier must confirm the Standard Confirmations and the following matters:

(a) The Counterparty has provided a letter of credit/bank guarantee (type C(i) - "evergreen" version) in favour of the Scheme as detailed above.

(b) The letter of credit/bank guarantee:

- is a legally binding, valid and enforceable obligation of the Counterparty;
- is in the Standard Form subject only to variations which have been or will be notified to the Board by 5 pm on 31 March 2011 and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
- on its terms, will be unconditionally available to the Scheme until the expiry date stated above; and
- can be drawn, *inter alia*, upon the occurrence of an Insolvency Event (as defined in the letter of credit/bank guarantee) in respect of, any of the employers listed in Schedule 1 to the letter of credit/bank guarantee, which schedule lists every undertaking which is both an Associated Party of the Purchaser and an "employer" in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(c) The declarations made in (b) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(d) If any contractual documents other than the letter of credit/bank guarantee were previously supplied to the Board in support of an application for recognition of the letter of credit/bank guarantee, those contractual documents remain in force without amendment or, if this is not the case, he/she has notified the Board of any changes.

(e) The Certifier has notified the Board of any attempt that has been made to call upon the letter of credit/bank guarantee.

45. The following documents must be supplied to the Board in hard copy in accordance with Rule D2.1:

(a) If the letter of credit/bank guarantee has not been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. generally where the letter of credit/bank guarantee is new):

- A certified copy of the letter of credit/bank guarantee.

- A blacklined document showing the changes from the Pension Protection Fund's Standard Form or confirmation that there are no changes to the Standard Form except for the insertion of the Total L/C Amount or Total Guaranteed Amount and the relevant details of the parties.
- A copy of the legal opinion referred to in paragraph 44(c) above.
- Unless covered in the legal opinion referred to in paragraph 44(c) above, a document providing satisfactory evidence that the benefit to the purchaser of entering into the letter of credit/bank guarantee has been considered and established.
- A printed copy of the Contingent Asset certificate.

(b) If the letter of credit/bank guarantee has been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. the scheme is re-certifying for the 2011/12 Levy Year):

- If the letter of credit/bank guarantee has been amended since the version last sent to the Board, a certified copy of the amended letter of credit/bank guarantee or amending document.
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraphs 44(b) and (c) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.
- If any documents are supplied to the Board in respect of the re-certification for the 2011/12 Levy Year (for example an amending document or updated legal opinion), a printed copy of the Contingent Asset certificate.

**What are the certification and documentary requirements for a Type C(ii) (letter of credit or bank guarantee to support a defined schedule of deficit reduction contributions) Contingent Asset**

46. The certificate must contain the following information:

(a) In respect of the purchaser:

- Full name
- Type of organisation (legal form)
- Company registration number (if applicable)
- Charities number (if applicable)
- Full address

(b) In respect of the counterparty

- Full name of counterparty
- Ratings for the counterparty published by Moodys, Standard and Poors and/or Fitch. The counterparty must be rated at least Aa3 by Moodys and/or AA- by Standard and Poors and/or AA- by Fitch.
- Country of domicile, which must be a Nominated Jurisdiction
- Regulatory body (i.e. the UK Financial Services Authority or its applicable successor or an equivalent EU regulator)

- Full address

(c) In respect of the letter of credit/bank guarantee:

- Date on which the letter of credit/bank guarantee came or will come into effect, which must be no later than 1 April 2011
- Date on which the letter of credit/bank guarantee will expire, which must be no earlier than 5 days after the last "Planned Contribution" is due (see below)
- Face value of letter of credit/bank guarantee. The instrument must be denominated in sterling. The face value of the instrument must be stated as at 1 April 2011, i.e. after any reduction as a result of Planned Contributions having been made prior to that date.

47. The Certifier must confirm the Standard Confirmations and the following matters:

(a) The Counterparty has provided a letter of credit/bank guarantee (type C(ii) – to support a defined schedule of deficit reduction contributions) in favour of the Scheme as detailed above.

(b) The Scheme benefits from an undertaking to make a defined schedule of deficit-reduction contributions to the Scheme (the "Planned Contributions"). The aggregate amount of the outstanding Planned Contributions is at least equal to the face value of the letter of credit/bank guarantee stated above, and all of the Planned Contributions will become payable no later than 5 days prior to the expiry date of the letter of credit/bank guarantee stated above. The trustees of the Scheme have received confirmation in writing from the Scheme Actuary dated not more than 30 days prior to the date this Contingent Asset was first certified to the Board stating that, based on then current circumstances including the level of committed regular contributions, all of the Planned Contributions were expected to constitute deficit-reduction contributions.

(c) The letter of credit/bank guarantee:

- is a legally binding, valid and enforceable obligation of the Counterparty
- is in the Standard Form subject only to variations which have been or will be notified to the Board by 5 pm on 31 March 2011 and which do not have a materially detrimental effect on the rights of the Scheme trustees as compared with the Standard Form;
- on its terms, will be unconditionally available to the Scheme until the expiry date stated above; and
- can be drawn, *inter alia*, upon a failure to pay any of the Planned Contributions or upon the occurrence of an Insolvency Event (as defined in the letter of credit/bank guarantee) in respect of, any of the employers listed in Schedule 1 to the letter of credit/bank guarantee, which schedule lists every undertaking which is both an Associated Party of the Purchaser and an "employer" in relation to that scheme/section within the meaning set out in Section 318 of the Pensions Act 2004 and regulations made thereunder.

(d) The declarations made in (c) above are given on the basis of a legal opinion received from an appropriately qualified person and are made subject only to the assumptions and qualifications specified in that opinion.

(e) If any contractual documents other than the letter of credit/bank guarantee were previously supplied to the Board in support of an application for recognition of the letter of credit/bank guarantee, those contractual documents remain in force without amendment or, if this is not the case, he/she has notified the Board of any changes.

(f) The Certifier has notified the Board of any attempt that has been made to call upon the letter of credit/bank guarantee.

48. The following documents must be supplied to the Board in hard copy in accordance with Rule D2.1:

(a) If the guarantee has not been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. generally where the guarantee is new):

- A certified copy of the letter of credit/bank guarantee.
- A blacklined document showing the changes from the Standard Form or confirmation that there are no changes to the Standard Form except for the insertion of the Total L/C Amount or Total Guaranteed Amount and the relevant details of the parties.
- A copy of the actuary's confirmation referred to in paragraph 47(b) above.
- A copy of the legal opinion referred to in paragraph 47(d) above.
- Unless covered in the legal opinion referred to in paragraph 47(d) above, a document providing satisfactory evidence that the benefit to the purchaser of entering into the letter of credit/bank guarantee has been considered and established.
- A printed copy of the Contingent Asset certificate.

(b) If the guarantee has been accepted by the Board as satisfying its requirements in relation to a previous Levy Year (i.e. the scheme is re-certifying for the 2011/12 Levy Year):

- If the letter of credit/bank guarantee has been amended since the version last sent to the Board, a certified copy of the amended letter of credit/bank guarantee or amending document
- If a new legal opinion has been obtained, a copy of that legal opinion. There is no general requirement to obtain an updated legal opinion but the trustees may wish to do so prior to making the declarations in paragraphs 47(c) and (d) above, and should do so if they have reason to believe that the legal position might have changed since the original opinion was given. See also the contingent asset guidance for more details.
- If any documents are supplied to the Board in respect of the re-certification for the 2011/12 Levy Year (for example an amending document or updated legal opinion), a printed copy of the Contingent Asset certificate.