

THE BOARD OF THE PENSION PROTECTION FUND

Guidance in relation to contingent assets

2012/2013

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1 INTRODUCTION

1.1 Pension Protection Fund (“PPF”) recognition of contingent assets - General

1.1.1 In accordance with its statutory objectives under section 175(5) of the Pensions Act 2004, the Board of the Pension Protection Fund (the “**Board**”) publishes each year a “determination” of the pension protection levy (the “**Determination**”), setting out the rules by which the scheme based and risk based levies for that year will be calculated for every eligible scheme. The Determination includes details of how contingent assets are recognised for the relevant levy year. Further details are contained in the Contingent Asset Appendix to the Determination.

1.1.2 The Determination for the 2012/13 levy year was published on 13 December 2011 and is available, together with the Appendices at:

<http://pensionprotectionfund.org.uk/levy/Pages/PensionProtectionLevy.aspx>

1.1.3 This guidance seeks to assist schemes and their advisors as to how to put in place a contingent asset pursuant to Part G of the Determination and the Contingent Asset Appendix. A contingent asset is an asset that will produce cash for a pension scheme if certain events happen, in particular where the sponsoring employer suffers an insolvency event. They must reduce the risk that an insolvency event results in a claim on the PPF, or reduce the size of a claim if one occurs. The types of contingent asset arrangements that are recognised by the Board are:

- (a) Guarantees given by parent/group companies and undertakings (Type A);
- (b) Security over cash, real estate and securities (Type B); and
- (c) Letters of credit or bank guarantees (Type C).

1.1.4 Full information on recognised contingent asset arrangements can be found in the Determination and in the Contingent Asset Appendix, together with checklists of the documents which must be submitted in relation to each form of contingent asset arrangement.

1.1.5 The definitive rules on calculating of the levy are set out in the Determination for that year, and in the event of any conflict between this guidance and the Determination, the Determination will prevail. This guidance may be further updated and expanded from time to time in the light of, for example, issues arising, or queries received by the Pension Protection Fund.

1.2 Sources of information

1.2.1 This guidance should be read alongside the following documents, all of which are available through the pension protection levy section of the Pension Protection Fund's website at <http://www.pensionprotectionfund.org.uk/>, save for the certificates, which are available via Exchange on the Pensions Regulator's website <http://www.thepensionsregulator.gov.uk>

- (a) standard form agreements for contingent assets;

- (b) certificates for notifying the Pension Protection Fund;
- (c) the 2012/13 Determination (published on 13 December 2011) and the Appendices;
- (d) the Board's previous Determinations;
- (e) the Levy Practice Guidance, which contains details on the amendment and replacement of contingent assets;
- (f) any FAQs in relation to contingent assets added to the PPF website; and
- (g) the Board's consultation documents, including the 2012/12 Levy Consultation published in September 2011.

1.2.2 You are advised to read all of this information in full before taking action in relation to new contingent assets or certifying any such assets to the Board. The person submitting the contingent asset certificate on Exchange will be required to declare that they are aware of this guidance.

1.2.3 References to trustees in this guidance include references to managers, except where the context requires otherwise.

1.2.4 In the case of sectionalised schemes, all references to a scheme in this document should be taken to apply to the relevant section.

1.2.5 All dates and times are measured by GMT or, if it is in force at the relevant time, BST.

1.3 **Changes to the contingent asset regime from 2012/13**

1.3.1 As stated in the Board's recent consultation on the Pension Protection Levy, the Board has implemented a number of changes with effect from 2012/13 to the contingent asset regime. In summary, these are:

- (a) a limited relaxation of the "associate" requirement in respect of guarantors (see 5.5.1 below and paragraph 4(4) of the Contingent Asset Appendix for full details);
- (b) a new certification requirement as to the strength of Type A guarantors (see 5.2.3, 5.2.4 and 5.2.5 below);
- (c) certain limited relaxations as to the manner in which Type A contingent assets must be certified on Exchange, (see 3.1.4 below); and
- (d) some changes to the manner of recognition of contingent assets for multi-employer schemes (see 5.10.1 below).

1.3.2 In addition, the Guidance as a whole has been streamlined. The substantive detail on contingent assets is contained in the Contingent Asset Appendix, to which the Guidance should be regarded as an accompaniment rather than a substitute. Please note that the Guidance does **not** contain all the requirements as to contingent assets; an attempt to submit a contingent asset by reference only to the Guidance will not result in all the Board's requirements having been identified or complied with.

- 1.3.3 Detailed information on the exercise of the Board's discretionary powers in relation to the amendment and replacement of contingent assets has also been included in Chapter 9 of the Guidance. This information was formerly contained in the Board's Levy Practice Guidance.
- 1.3.4 Examples of the contingent asset certificates that will be produced by Exchange, at the end of the submission process, are at Appendix 2 of this Guidance.

2 RECOGNISING CONTINGENT ASSETS

2.1 Use of standard form documents

2.1.1 For levy recognition, a contingent asset agreement must be in the PPF standard form in force at the date of execution of the agreement. This reduces the enforceability risk to and the administrative burden on the Board (and hence the administration levy). Trustees (or a person authorised by them) must certify that the contingent assets for which they seek credit are in the Board's standard form and are legally valid, binding and enforceable.

2.1.2 A full list of the PPF's standard form agreements in Word format can be found at:

<http://pensionprotectionfund.org.uk/levy/riskreduction/Pages/ContingentAssets.aspx>

2.1.3 The Trustees will need to provide a legal opinion, prepared by an appropriately qualified person, addressing the matters referred to in 8.1.3 below.

2.1.4 The agreement should then be completed (with legal advice) to include the parties involved, details of any underlying assets charged etc. prior to execution by the parties.

2.1.5 It is the reader's responsibility to obtain legal advice before using any of the PPF's standard form documents. You should not rely on this guidance or other documents provided by the PPF. The Board accepts no responsibility to trustees or any other person for the efficacy of the standard documentation or for any legal effects that such documentation may have if used in any circumstances.

2.2 Changes to standard form documents

2.2.1 Changes that, in the opinion of the Board, would have a materially detrimental effect on the rights of the trustees by comparison with the standard forms are not permitted.

2.2.2 Companies and trustees are free to agree changes which are not materially detrimental, e.g. name and address of the guarantor, changes which are minor or reflect the legal form of the contingent asset provider or which enhance the position of the trustees. Please see paragraph 2.2.5 below in this regard. Please note that the Board will not provide prior confirmation on an individual basis of the acceptability or otherwise of any particular proposed variation to the standard form documentation. It will be a matter for the trustees and their legal advisers to satisfy themselves, prior to making their contingent asset submissions, that the proposed variations do not have a materially detrimental effect as compared with the standard form, rather than the Board providing any such confirmation.

2.2.3 Where changes have been made to the standard form, the trustees must ensure that:

(a) the Board receives a clear statement of the changes;

(b) a legal opinion is obtained which confirms why the changes do not have

a materially detrimental effect on the rights of the trustees as compared with the standard form; and

- (c) a comparison against the standard form is provided, where any changes have been made beyond selecting options and inserting party details (see 3.2.1(a) below).

2.2.4 The Board will then consider whether the changes are in fact materially detrimental as compared with the standard form. The requirement that any variations from the standard form must not be materially detrimental to the rights of the trustees is quite deliberately a stringent test in order to ensure fairness between schemes. If the document is negotiated between the parties, with the result that some changes are made which benefit the trustees and some are materially detrimental to the trustees, the trustees' legal adviser will not be able to give the confirmation required and the contingent asset cannot be recognised.

2.2.5 For the avoidance of doubt, a single materially detrimental change will mean that the contingent asset cannot be recognised even if there may be materially beneficial changes which the parties involved believe outweigh the negative change. Furthermore, the requirement is that the variations are not materially detrimental **from the standard form**; the fact that the agreement might represent a more favourable position for the trustees than no agreement at all is not relevant.

2.2.6 Parties cannot "mix and match" provisions from different versions of the same standard form.

2.3 **Sanctions**

It is a criminal offence under section 195 of the Pensions Act 2004 for a person knowingly or recklessly to provide materially false or misleading information to the Board in circumstances in which that person intends or could reasonably be expected to know that it would be used by the Board for the purposes of exercising its statutory functions, including calculation of the pension protection levies.

3 PROCEDURE FOR RECOGNITION OF NEW CONTINGENT ASSETS

3.1 Submitting documents via Exchange

- 3.1.1 Trustees (or their authorised representative) will need to submit, via Exchange, details of the contingent asset using the appropriate certificate by no later than **5pm on 30 March 2012**. They should begin the process of putting in place a new contingent asset as early as possible, to ensure that this deadline is met.
- 3.1.2 Each certificate requires various details of the contingent asset to be filled in and the trustees must certify a number of statements relating to the benefit resulting from the agreement. The legal opinion should provide the basis for certification (see chapter 4 below). Failure to correctly certify each statement will result in the contingent asset being rejected.
- 3.1.3 The 2012/13 Determination strengthens the Board's powers in relation to contingent assets of questionable value. It provides that the Board will not recognise a contingent asset where to do so would provide a recognition through the levy that is not proportionate given the actual risk reduction. The Board has always had the ability to reject a contingent asset if it did not appear to the Board to reduce the risk of compensation being payable; the new provision is an extension of that, giving us the ability to reject in cases where risk might be reduced but not to the extent that the full levy recognition would imply.
- 3.1.4 To meet this aim, for Type A contingent assets trustees will now be required to certify that they have no reason to believe that each guarantor, as at the date of the certificate, could not meet its full commitment under the contingent asset. This requirement will apply to both **new and re-certified** Type A contingent assets.
- 3.1.5 Detailed guidance on the specific certification requirements for each contingent asset type can be found at paragraphs 30 – 47 of the Contingent Asset Appendix.

3.2 Documents to be submitted by post

- 3.2.1 Trustees (or their authorised representatives) will also need to send (depending on the type of arrangement being used – see 3.2.2 below) hard copies of the following documents to the Board by no later than **5pm on 30 March 2012**:
- (a) certified copy of the legal agreement;
 - (b) legal opinion covering certain matters set out in the agreement (with an overseas legal opinion if required – see 8.1.7 below);
 - (c) comparison document showing changes from the standard form (or, if no changes, confirmation of this via the legal opinion or a letter);
 - (d) copy of the contingent asset certificate;
 - (e) evidence that the corporate benefit to the guarantor from entering into the agreement has been established (e.g. confirmation from the relevant directors, board minutes or in the legal opinion); and

(f) valuations and other documents (where required by the certificate).

3.2.2 The exact documents to be sent will depend on the form of the contingent asset. Previously the Guidance has contained checklists setting out what should be sent in relation to each arrangement. These checklists can be found in the Contingent Asset Appendix, at:

- (a) Paragraph 32 – Type A arrangements;
- (b) Paragraph 35 – Type B(i) arrangements;
- (c) Paragraph 39 – Type B(ii) arrangements;
- (d) Paragraph 42 – Type B(iii) arrangements;
- (e) Paragraph 45 – Type C(i) arrangements; and
- (f) Paragraph 48 – Type C(ii) arrangements.

3.2.3 All hard copy documents must be sent to:

Director of Legal - Re Contingent Asset
Ref [*insert pension scheme/section registration number*]
The Pension Protection Fund
Knollys House
17 Addiscombe Road
Croydon
Surrey
CR0 6SR

3.2.4 A suggested form of covering letter is included in this Guidance. If contingent assets in respect of more than one scheme/section are included in the same package, they should be clearly identifiable as such.

3.3 **Certified copies – requirements**

3.3.1 A certified copy is a photocopy of the original executed agreement which has been certified as a true copy of the original, usually by the legal advisers.

3.3.2 Trustees can certify a copy of the agreement themselves, by stating “I certify that this is a true and complete copy of the original document” followed by (in block capitals) their signature, name and the capacity in which they are signing, and the date on which the certificate is given.

3.3.3 If counterpart agreements have been signed, the Board would prefer a certified copy of **one counterpart only** with the additional signature pages attached.

3.4 **Declaration**

3.4.1 The trustees (or their authorised representatives) providing the certificate must declare that they are aware of this guidance and, so far as they are aware, this guidance has been followed in putting the contingent asset in place and certifying it to the Board.

3.4.2 Please note the new requirement, with effect from 2012/13, relating to Type A guarantor strength. This is discussed in more detail at 5.3.1 to 5.3.5 below.

3.5 **Next steps**

3.5.1 Once the Board receives the relevant documents, it will:

- (a) acknowledge receipt of the submission in writing;
- (b) check whether the submission contains all the required documents and content, and meets the conditions for recognition. This may involve making further enquiries of the scheme; and
- (c) write to the trustees and/or advisers to confirm whether the contingent asset will be recognised for levy purposes.

3.5.2 When confirming whether or not the contingent asset is accepted or rejected, the Board will not provide individual confirmation of the acceptability or otherwise of any qualifications to opinions or variations to documents. For any contingent assets that are rejected, the letter notifying the scheme of the rejection will include some of the reasons for rejection but may not be a comprehensive list of all the deficiencies in the contingent asset.

3.5.3 The fact that a contingent asset is recognised does not imply that the Board has reviewed the documents in detail and does not rule out a future review.

3.5.4 If you have any queries about your submission please call the PPF Stakeholder Support Team on 08456002541.

3.6 **Subsequent changes to information contained in the certificate**

3.6.1 Trustees must notify the Board if the information in the certificate changes during the levy year up until 31 March 2013. The levy may then be recalculated in light of the notified changes.

4 PROCEDURE FOR RECOGNITION OF EXISTING CONTINGENT ASSETS

4.1 Introduction

4.1.1 The Board will recognise, for 2012/13, contingent assets that were accepted for the 2011/12 levy year provided the contingent asset is recertified on Exchange no later than 5pm on 30 March 2012 and the other conditions in paragraph G2.5 of the Determination are met.

4.1.2 The information required by the Board on re-certification will, in particular, depend on:

- (a) whether the contingent asset itself has been amended since the previous submission;
- (b) whether the scheme's contingent asset position in general has changed; and
- (c) whether any documents are specified in the Determination and Contingent Asset Appendix as being required on recertification (such as an updated valuation).

4.1.3 If the contingent asset is to be amended, Trustees should record any amendments to via a deed of amendment prepared in the usual accepted form, in the same way as an amendment to any other deed would be documented. For the avoidance of doubt, re-executing the agreement will be regarded as a new contingent asset submission, not an amendment to the previous contingent asset.

4.1.4 The submission of a Type C contingent asset which is on the same terms as, and replaces, the previous recognised arrangement (under the "evergreen" provisions) which is due to expire should be treated as re-certification rather than as a new contingent asset.

4.1.5 Paragraphs G2.6 and G2.7 of the Determination provide further details about the recognition of existing contingent assets for levy year 2012/13. Specific details about the re-certification requirements can be found at paragraphs 30 – 47 of the Contingent Asset Appendix.

4.1.6 Where the contingent asset has been amended, or where any other documents are being provided to the Board, a certified copy of the amended contingent asset agreement along with a copy of the recertification certificate itself and any relevant supporting documents, should be posted to the Board at the address given at 3.2.3 above. As with new contingent assets, the deadline is no later than **5pm on 30 March 2012**.

4.1.7 Subsequent changes to the certificate should be notified to the Board as per 3.6.1 above.

4.2 Legal opinion

4.2.1 A new or revised formal legal opinion is not generally necessary, but trustees should provide one if they have reason to believe the legal position may have changed since the original opinion was given, such as might prevent the trustees from giving the relevant certifications on Exchange unless the opinion is updated. For example, if a Type A guarantor is replaced, a new

opinion dealing with the capacity of the new guarantor to enter into the agreement will be necessary.

4.2.2 The Board will accept a "short-form" new opinion which simply refreshes the previous opinion.

4.3 **Declaration**

4.3.1 Trustees must also:

- (a) declare that they are aware of this Guidance and, so far as they are aware, that Guidance has been followed in putting the contingent asset in place and certifying it to the Board; and
- (b) provide the form of certification set out at 5.2.5 below.
- (c) Contingent assets that were not recognised for 2011/12
- (d) Where a contingent asset was not recognised by the Board for 2011/12 for any reason (whether this was through it not being submitted at all, or whether it was submitted and rejected), it **cannot** be submitted via the recertification procedure for 2012/13. It must instead be submitted as a **new contingent asset**.
- (e) The above remains the case even if the contingent asset was recognised by the Board for a levy year prior to 2011/12. However, schemes are able to submit pre-existing documentation rather than entering into a fresh agreement, so long as all the requirements for a new contingent asset submission for 2012/13 are met.

5 TYPE A CONTINGENT ASSETS

5.1 Introduction

5.1.1 Where a Type A guarantee is in place, and depending on the amount guaranteed, the risk based levy may be based wholly or partly on the insolvency risk of the guarantor rather than on that of the participating employer(s) (see 5.8 and 5.9 below).

5.2 Strength of Type A contingent assets

5.2.1 The Board's policy in respect of Type A contingent assets, when putting in place the contingent asset regime, was that such contingent assets reduce the risk of PPF compensation being paid by replacing the insolvency risk of the scheme with the insolvency risk of the (more stable) guarantor. However, this policy would be undermined if guarantors were, as a matter of fact, unable to meet their guaranteed obligations, as in these circumstances the risk of PPF compensation would either not be reduced at all, or would not be reduced to an extent that is implied by the risk-switch between guarantors and employers that is recognised in the levy.

5.2.2 The Board has been made aware by stakeholders of concerns that Type A contingent assets are being put in place by guarantors with insufficient ability to meet the guarantee if called upon, but which (by virtue of having little or no trading history) have very favourable failure scores (such as service companies). The Board is concerned that the Type A contingent asset regime is being used in the expectation of offering significant levy reductions, but without a corresponding risk reduction. The Determination has always contained a rule that a contingent asset must appear to the Board to reduce the risk of compensation being payable from the Board in the event of an insolvency event occurring in respect of an employer in relation to the scheme. In order to meet the concerns raised by stakeholders and to ensure fairness to all levy payers, the Board is therefore introducing a new rule in the Determination (Rule G2.3(2)) which provides that contingent assets must reduce the risk of compensation being payable to an extent that is proportionate to the levy reduction secured. The reduction in levy, if any, should be consistent with any reduction in the risk of compensation being payable.

5.2.3 To support this new rule, the Board is introducing a requirement for trustees to certify on Exchange as to the strength of the guarantor. The form of certification is set out in 5.2.5 below.

5.2.4 The wording of the certification is intentionally different to that in Rule G2.3(2). The Board is not requiring schemes to certify as to Rule G2.3(2) being met, because the Board recognises that schemes and their advisors may in some cases find it difficult to assess the levy reduction afforded by a contingent asset. Such an assessment would require access to an actuarial model that can transform the assets and liabilities of the pension scheme in the way described in the Transformation Appendix of the Determination (in effect revaluing assets and liabilities at average values for the five years to 30 March and then applying a stress to them). The Board further recognises that even if the effect on the levy invoice can be assessed, it would remain a matter of discretion of the Board as to whether or not the levy reduction is consistent when compared with the strength of the guarantor, and that

trustees should not be expected to certify as to this. Therefore, the Board has put in place a different certification requirement which provides a more limited indication of guarantor strength, and which is expected to be within the capacity of trustees (in conjunction with assistance from their advisors (see paragraph 8.1.4 below) and the guarantor itself) to provide. It should be noted that, because of its limited nature, being able to provide a certification may not mean that the PPF regards the contingent asset as acceptable.

Guarantor strength

- 5.2.5 In order to address the Board's policy intention as set out in 5.2.2 above, from 2012/13 trustees (or their authorised representatives) will be required to certify (the "**Certification**") that "**The trustees have no reason to believe that each guarantor, as at the date of the certificate, could not meet its full commitment under the contingent asset.**"
- 5.2.6 This certification is drafted in negative form, to allow Trustees to certify where it is reasonable to believe that the amount being certified could be met by the certified guarantor, without having to obtain absolute certainty as to the ability of the guarantor to do so (which may depend on variables that are difficult to assess). Whilst trustees should remain mindful of their responsibilities not to provide materially false or misleading information, the certification (in particular given that this is the first year of the new requirements) is deliberately aimed at ensuring that trustees can certify unless there are clear grounds not to.
- 5.2.7 As to the considerations to be taken into account by trustees when giving the Certification, it is ultimately for trustees (with, where they judge it appropriate, advice) to satisfy themselves as to the appropriateness of the guarantor entering into the agreement. However, the Board recognises that trustees may wish for some further guidance as to what the Board might consider are acceptable steps for trustees to take when considering whether they can give the Certification. This Guidance sets out some factors for trustees to take into account.
- 5.2.8 Although the Board has adopted a negative certification, this does not mean that trustees should close their minds to the prospect of information that might prevent the Certification being given. The intention behind a negative test is not to provide that trustees need to take no steps to reassure themselves as to the strength of the guarantor. Rather, it is to remove from trustees any burden of having positively to confirm the financial position of the guarantor.
- 5.2.9 As to the steps that trustees should take, the Board does not generally expect trustees to undertake a covenant review on the guarantor. The Board does expect, though, that trustees should have taken proportionate and reasonable steps to reassure themselves as to whether the guarantor has sufficient value as a business. In some cases, the trustees may quite reasonably consider the issue so clear cut that they do not need to take specific active steps to review the relative values of the contingent asset and the guarantor. Conversely, there may well be cases where, if the trustees believe the guarantor does not have a material business or assets, the trustees may quite reasonably decide that they do not need to take further steps to determine that it could **not** meet the demands of the guarantee.

In other cases, the trustees may wish to consider specifically:

- (a) the value of the guarantee for levy purposes. This will generally depend on the maximum liability type of the guarantee, and the funding position of the scheme. It is not the Board's intention to require schemes to undertake considerable additional activity in order to certify a contingent asset. For that reason, it will generally be satisfactory to consider the most recent s179 valuation (or, where appropriate, details of the funding position on a s75 basis in the actuarial report) together with any existing information about how the scheme's position has changed; and
- (b) such information as is available to the trustees regarding the position of the guarantor. Whilst the Board expects trustees to use the most up to date information available to them for this purpose, it recognises that there may be a time lapse between the position as stated in that information and the date of certification. For example, the trustees may refer to the guarantor's most recent accounts (see paragraph 5.2.10(a) below).

5.2.10 The information referred to at paragraph 5.2.9(b) above might include some or all of the following:

- (a) reviewing the guarantor's most recent accounts (and considering any post-balance sheet events they are aware of that mean these may no longer reflect the guarantor's true financial position) to assess for example the net assets position or the profitability of the business;
- (b) the ability of the guarantor to borrow money;
- (c) making enquiries of the guarantor's financial director and obtaining an assurance as to the strength of the guarantor compared to what is being guaranteed;
- (d) obtaining a confirmation from the directors of the guarantor to supplement publicly available information;
- (e) where the trustees have taken some or all of the above steps and do not yet feel comfortable to provide the Certification, they may decide to require further financial information from the guarantor; and
- (f) in some cases, the liquidity of the guarantor's assets. In considering the net assets position of the guarantor it is not suggested that trustees need generally to give consideration to issues such as whether the guarantor would need to free up assets held elsewhere in the business to meet the guarantee or whether the guarantor's assets are illiquid in nature. An exception to this, though, would be where the trustees are aware that the circumstances of the guarantor give rise to particular issues in which case the trustees may wish to seek further information from the guarantor as to whether the guarantee can still reasonably be called on.

The above list of information which the trustees could look at is not intended to be exhaustive or prescriptive, and other methods and forms of information may also be appropriate depending on the circumstances.

Trustees should note that they are required to consider the guarantor's position "as at the date of the certificate". There is no specific requirement to take the likelihood of future events arising into account. In particular, the Board does not expect trustees to consider the likely impact of any future insolvency of the scheme's employer(s) on the guarantor's ability to meet its full commitment under the contingent asset. However, if trustees are aware of any particular circumstances as at the date of the certificate that indicate that the insolvency of an employer is imminent, the trustees should have regard to these circumstances when considering the guarantor's position. For the avoidance of doubt, trustees should not consider themselves able to give the Certification purely on the basis that they have attempted to obtain information about the guarantor's financial position but have been unsuccessful in doing so. The Certification is to be given on the basis of information obtained by the trustees, not on the basis of attempts to obtain this information.

- 5.2.11 The Board anticipates that for the purposes of the Certification, a covenant review would not normally be required. However, if, for example, taking some of the steps outlined above might cause a trustee to be concerned, the trustees may decide that a covenant review is appropriate.
- 5.2.12 Schemes should note that the Board will still be carrying out its own investigations as to guarantor strength; the fact that trustees feel able to provide the Certification does not mean that the contingent asset will automatically be accepted. The Board does not expect the Certification will eliminate all contingent assets where the guarantor is insubstantial. Trustees should therefore ensure that they retain information to respond to a request from the Board for evidence as to the Certification. If it appears that despite the requirement many guarantors continue to fail the Board's review, the Board may decide to be more prescriptive in future years.

Certification of a Type A contingent asset

- 5.2.13 The Board has made a change from previous years to the manner in which a Type A contingent asset has to be certified on Exchange. In previous levy years, trustees had to certify the face value of the contingent asset itself. For levy year 2012/13, trustees now have the option of certifying a lower amount than the face value of the contingent asset, or of only reporting the most substantial guarantors, if they do not feel that they can otherwise provide the certification set out at 5.2.5 above. In that event, the certification on Exchange as to guarantor strength should be interpreted as being in respect of the certified amount and certified guarantors. The Board has made this change for two reasons. First, to recognise that trustees may still have a legitimate interest in securing a guarantee for an amount higher than they know the guarantor may ultimately provide (for example, if it ensures that the guarantor, if a group company, is more likely to support the employers to avoid the guarantee being called upon). Secondly, the Board recognises that certification of contingent assets could be difficult if the agreement itself had to be formally amended every year to take into account the extent that the guarantor could offer support.
- 5.2.14 It remains open for trustees to seek to negotiate a contingent asset at a fixed or capped level that they feel is appropriate, and then to certify that level on Exchange.

5.2.15 In order to be taken into account in the risk based levy calculation for a particular year, the levy band of the scheme, after making any substitutions of the guarantor's levy band (as set out in paragraph 17 of the Contingent Asset Appendix) at the start of the levy year must be lower than the scheme's insolvency risk without such substitutions. If the contingent asset initially satisfies this condition, but no longer satisfies that condition at the start of a future levy year, then the guarantee (if re-certified) will not be taken into account in the risk based levy calculation for that levy year. However, it remains of value to the trustees and will be taken into account again in any levy year after that if the insolvency probability of the Guarantor at the start of that year is once again lower than that of the employer(s), provided that it continues to be certified.

5.3 **The Board's assessment of the strength of guarantors**

5.3.1 The Board will be performing its own analysis of guarantor strength, comparing it with the deemed value of a contingent asset for levy purposes. The Board will also, if necessary, ask for further information from schemes, including information that the trustees have previously reviewed and which has helped form the basis of their views on the guarantor's strength.

5.3.2 The Board's approach is set out in this paragraph, purely so that schemes can be better informed of the approach the Board will take, and able (should they wish to) to carry out a similar analysis. There is no requirement for schemes to do so.

5.3.3 Sections 5.7 and 5.8 below set out how the Board places a value on Type A contingent assets for levy purposes.

5.3.4 The financial information that the Board will compare this value with in the first place will be publicly available financial information, principally the net assets position of the guarantor from company accounts. Where net assets are limited a business may still have real value if it is cash generative, so profitability or like information could also be considered, as the business could either generate the sum required for the guarantee or be sold.

5.3.5 Given that this is the first year in which a test of guarantor strength has applied, it is the intention of the Board to apply its consideration in a way which gives the benefit of any doubt to schemes and their guarantors. Accordingly, the Board will not apply any discount to the net assets of guarantors in comparing them with the guarantee¹, and expects only to challenge guarantees where the net assets are somewhat below the sum guaranteed rather than applying an exact comparison. Trustees should not, however, rely upon any particular lower threshold of guarantor strength as satisfying the Board's requirements.

5.3.6 If the Board considers the guarantor to be of limited strength, the trustees must provide further evidence supporting their conclusion that the contingent asset should be recognised. The Board expects that it would make any request for further information during the first part of the summer during the relevant levy year.

¹ In principle, there are a range of reasons why net assets may not be fully realised if a guarantee is called – a point made to us in consultation

5.4 **Partial recognition of Type A contingent assets**

5.4.1 It is intended that Type A guarantees with guarantors unable to meet the value of their guarantee will, in general, be wholly rejected even where the contingent asset may be considered to have some value. Partial recognition could encourage the use of under-resourced guarantors (e.g. listing a series of guarantors, of varying substance and levy rate) on the assumption they would get at least partial credit.

5.4.2 For recertified contingent assets, whilst the Board's standard position will be as under 5.4.1 above, it recognises that there has been a change in the requirements for guarantees this year and therefore the Board may partially recognise recertified contingent assets if the circumstances justify it and there has clearly been no intention to seek to gain an unfair levy advantage. However, schemes should not assume that the Board will exercise its discretion to partially recognise a contingent asset simply because the contingent asset is unchanged from 2011/12.

5.4.3 The Board will only use the power to recognise in part in exceptional circumstances for new contingent assets.

5.4.4 The following examples are intended to help clarify the circumstances in which the Board's discretion partially to recognise a contingent asset may be used:

(a) A scheme recertifies a contingent asset with maximum liability value of 105% and which has two guarantors – the holding company for the group, Nun Investment Holdings Limited, whose last accounts showed net assets of £3.6 billion and which has a failure score of 65, and Nun Admin Services, with net assets of £10,000 and a failure score of 98. Other group companies that are employers to the scheme have failure scores at or below those of Nun Investment Holdings. The scheme's funding position on a stressed and smoothed basis means the value of contingent asset is calculated to be £600million.

If recognised in the levy, Nun Admin Services' failure score would be used as the basis for the assessment of insolvency risk, cutting the levy by 90%, though there seems little basis for thinking it offers a significant reduction in risk by being a party to the guarantee. The scheme is challenged about the arrangement and is unable to provide a convincing case as to how Nun Admin would itself be able to meet a shortfall in the pension scheme of £600m. (Whilst Nun Admin Services does have the benefit of a cross-guarantee from another group business, the business concerned does not have a similarly strong failure score, so the cross-guarantee still doesn't mean that it is appropriate to reflect a guarantee from Nun Admin Services in the levy.)

The Board concludes that this contingent asset is unsatisfactory and sees no particular circumstances to justify exercising the discretion to accept the contingent asset in part: Nun Group had the opportunity to remove the valueless guarantor from the contingent asset. The general policy is to reject contingent assets in full and the arrangement concerned is precisely the sort that the policy is intended to prevent.

(b) The Multipart Scheme recertifies a contingent asset which lists as guarantors

all 16 businesses which are part of the Multipart Group, only two of which are employers to the scheme. One of the employers to the scheme is Multipart Machinetools (Mexico) SA, which has limited net assets and an uncertain trading history, and has in the past had a relatively weak failure score, has seen its failure score improve markedly.

D&B are only able to provide a year end score for the Mexican company, so that the recent improvements have an immediate effect, and mean it has the best failure score in the group. As a result, if the contingent asset were recognised in full, the levy rate for Multipart Machinetools (Mexico) SA would for the first time be used to calculate the levy. Following investigation of the circumstances, it seems clear that there was no intent to manipulate the levy, and the Board recognises the contingent asset but excluding Multipart Machinetools (Mexico) SA, so that a more substantial guarantor is used as the basis for calculating the levy.

- 5.4.5 The above example is one where the trustees could have certified the contingent asset for levy purposes at a more limited level than the underlying contract, had the scheme been aware of the issue. By not certifying the Mexican subsidiary they could avoid any risk that the contingent asset would be rejected.

Changes to guarantor strength

- 5.4.6 Schemes may be concerned that if they reduce their contingent asset cover when recertifying because of concerns about guarantor strength, they may fall foul of the Board's rules about amendment and replacement of contingent asset, in particular:

- (a) Rule G3.1, which provides that no contingent assets will be recognised unless the scheme's previous year's contingent asset cover is in place unweakened; and
- (b) Rule G3.4, which provides that where contingent asset cover is removed / reduced, the scheme should not receive any recognition for contingent assets until the scheme's position is no worse than it was prior to all the contingent assets being recognised.

- 5.4.7 Where a scheme has put in place a guarantee in all good faith but, subsequently, the guarantor's position changes, the Board appreciates that the scheme should not automatically suffer if they change their guarantors to keep in line with our requirements. More information on how the Board might exercise its discretions in such cases (in addition to the examples set out at 5.4 above) can be found at 9.3 and 9.4 below (Reduction and replacement – the Board's approach and exercise of the Board's discretion).

5.5 Requirements as to the Guarantor as Employer's Associate

- 5.5.1 The Guarantor must be an Employer's Associate (defined in paragraph 4(5) of the Contingent Asset Appendix)

- 5.5.2 For levy year 2012/13, the Board has expanded the definition of "Employer's Associate". There is now an additional way that a guarantor can be classified as an Employer's Associate for contingent asset purposes, which is to satisfy the definition in paragraph 4(5)(b) of the Contingent Asset Appendix. This new definition applies where the contingent asset is given by reason of a pre-

existing legal or commercial relationship between the guarantor/chargor/purchaser and one or more of the scheme employers, where the relationship has not been created for the purpose of enabling that person to give or pay for the contingent asset.

- 5.5.3 To fall within this new test, the Board must be satisfied both that:
- (a) the contingent Asset was given or paid for because of such an existing relationship between the person and the employer(s), and
 - (b) the person giving or paying for the contingent asset had a genuine and substantial reason for doing so regardless of any payment or other consideration received by it as a result of doing so.
- 5.5.4 As to the nature of the relationship, the Board must be satisfied that a sufficiently strong relationship exists between the employer and the guarantor. This could be evidenced, for example, via long-term contracts between the parties that recognise a sharing of the pension scheme liabilities, but is ultimately a question of fact and the appropriate evidence will depend on the individual case.
- 5.5.5 Similarly, whether or not there is a genuine and substantive reason for giving the contingent asset will depend on the individual case. If, for example, the guarantor will ultimately (through the particular relationship) bear the cost of higher levies if no contingent asset were in place, that guarantor would appear to have a genuine reason for giving the contingent asset.
- 5.5.6 Schemes should note that the Board does not necessarily expect to receive (for example) copies of contracts, but does expect that if evidence is provided by way of, for example, a letter to the Board, the writer of the letter should base their view on having seen the requisite documentation. It is acceptable to include a statement as to associateship in the Legal Opinion, on the basis that the legal advisor has had sight of the relevant documentation or confirmations from the relevant parties and can therefore provide the confirmation as a matter of fact.
- 5.6 **Liability caps**
- 5.6.1 The standard form of Type A guarantee requires the Guarantor's liability to be capped in one of five ways, to be chosen by the Guarantor. The chosen method will affect the value of the asset credited for the purposes of the risk based levy.
- 5.6.2 Full details of the caps are set out at paragraph 5 of the Contingent Asset Appendix.
- 5.6.3 A guarantee granted to the trustees of schemes or sections where the employers are not associated by a permanent community of interest ("non-associated schemes") must have a fixed cap (and not one of the other formulations) to ensure that the credit given for such assets in the levy calculation is fair.
- 5.6.4 Alternative formulations for the liability caps are not generally allowed. However, caps 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, are

acceptable. They will be valued by the Board as though only Cap 1 applies, and should be certified accordingly.

5.7 Deemed value based on liability cap

5.7.1 Paragraph 5 of the Contingent Asset Appendix specifies a deemed value for each Type A guarantee, based on whichever liability cap has been chosen to apply to that contingent asset. This deemed value is relevant for the purposes of the amendment and replacement rules described below. The deemed value of a Type A contingent asset, calculated in this way, is used to determine the extent to which it is appropriate to use the guarantor's levy rate in place of the sponsoring employer(s).

5.7.2 The deemed value is calculated based on asset and liability information (including deficit-reduction contributions) certified to the Board before the start of the relevant levy year. Valuations, (on a section 179 basis for the vast majority of schemes) are rolled forward to a consistent date on the basis published by the PPF.

5.7.3 The deemed value of the Type A guarantee is then calculated using a formula which broadly reflects the actual limit on the Guarantor's liability that would apply on the date referred to above, based on the asset and liability information referred to in paragraph 5.7.2. A guarantee of the full section 75 debt of the scheme is treated as though it guaranteed 105% funding on a s.179 basis for these purposes.

5.7.4 The concept of deemed value has always existed, primarily in respect of the amendment/release criteria for contingent assets. For 2012/13 onwards, deemed value is also applicable for schemes who have used a stressing and smoothing model for the purposes of assessing whether a guarantor is likely to meet its guaranteed obligations.

5.8 Recognition for levy purposes - single Type A guarantee

5.8.1 For levy calculation purposes, the insolvency risk of the sponsoring employer(s) will be adjusted to include some credit for the insolvency risk of the guarantor, recognising that it may be the guarantor's insolvency that would lead to a call on the Pension Protection Fund.

5.8.2 As in previous levy years, a Type A guarantee can only result in a risk switch in the levy calculation. It cannot result in a scheme which is less than 100% funded (taking into account contingent assets of Types B and C) paying zero risk based levy.

5.8.3 The formulae for 2012/13 are designed to ensure that an uncapped percentage guarantee of at least 105% funding on a section 179 basis will always result in a complete switch from employer insolvency probability to guarantor insolvency probability.

5.8.4 The insolvency risk of guarantors will be assessed using average failure scores measured on a monthly basis over a year if available, then assigned to a levy band with an associated levy rate. If fewer than 12 months data are available, the Board will use the single Failure Score as at the end of March 2012. New guarantors will be subject to the same process i.e. if the contingent asset is properly certified by 5pm on 30 March 2012, we will look at the insolvency risk of the guarantor over the previous year.

- 5.8.5 Full details of how single Type A guarantees are treated for levy purposes can be found at paragraphs 17 – 27 of the Contingent Asset Appendix.
- 5.9 **Recognition for levy purposes - multiple Type A guarantees**
- 5.9.1 The Board will, for each levy year, treat a guarantee with multiple guarantors as if it were a simple guarantee from whichever of the guarantors has the lowest probability of insolvency as at the start of the year.
- 5.9.2 Full details of how multiple Type A guarantees are treated for levy purposes can be found at paragraphs 17 – 27 of the Contingent Asset Appendix.
- 5.10 **Type A contingent assets in multi-employer schemes**
- 5.10.1 In this situation, the guarantor's levy rate will only be substituted for those employers with a higher levy rate. If any employers have a lower levy rate than the guarantor, they can carry this through to the calculation of the scheme's insolvency rate.
- 5.10.2 When carrying out this substitution, the levy rate of the guarantor will be calculated without applying the special scheme structure factors (as set out in paragraph 17 of the Contingent Asset Appendix).
- 5.10.3 Full details are set out at paragraph 17 of the Contingent Asset Appendix.

6 TYPE B CONTINGENT ASSETS

6.1 Introduction

6.1.1 Type B contingent assets comprise security granted by a company (the **Chargor**) to the trustees of the pension scheme. The assets must comprise one of the types listed at paragraph 9 of the Contingent Asset Appendix, and will only be taken into account where the trustees have the first priority charge over the asset and there are no prior or pari passu security interests.

6.1.2 One issue that has caused some concern in previous years is whether contingent assets (particularly of Type B) fall foul of the statutory restrictions on employer-related investments. Ultimately this is a question of statutory interpretation and trustees should seek their own advice. However the Board's interpretation is that contingent assets of the types it will recognise for levy purposes do not constitute an investment of scheme assets/resources of the scheme by the trustees, and that therefore the restrictions are not relevant.

6.2 Security over cash (Type B(i))

6.2.1 Full details of the certification and documentation requirements are contained in paragraphs 33 – 35 of the Contingent Asset Appendix.

6.3 Security over land (Type B(ii))

6.3.1 In giving credit for the risk based levy, the Board will use a market value basis, except that land (or any part of it) which is occupied by the Chargor, any of the employers covered by the security, or any of their associates, will be valued on a vacant possession basis. In particular, the vacant possession basis must not include the value of the Chargor's business (if any). The trustees must therefore ensure that the valuation they provide is prepared on the appropriate basis, as a valuation wholly or partly on the wrong basis will result in the contingent asset being rejected.

6.3.2 Full details of the certification and documentation requirements, can be found at paragraphs 36- 39 of the Contingent Asset Appendix.

6.4 Security over securities (Type B(iii))

6.4.1 Full details of the certification and documentation requirements are contained in paragraphs 40 – 42 of the Contingent Asset Appendix.

6.5 Liability caps

6.5.1 Type B security agreements require the Chargor's aggregate liability to be capped in one of five ways to be selected by the Chargor. The liability caps are the same as those for Type A guarantees, and are set out at paragraph 5 of the Contingent Asset Appendix.

6.5.2 The recovery upon enforcement of a Type B security will be limited by the value of the underlying assets over which the security is granted. Both the liability cap and the value of the underlying assets will affect the value of the contingent asset credited for the purposes of the risk based levy.

- 6.5.3 Security over assets granted in favour of the trustees of schemes or sections where the employers are not associated by a permanent community of interest ("non-associated schemes") must have a fixed cap (and not one of the other formulations) to ensure that the credit given for such assets in the levy calculation is fair.
- 6.5.4 Alternative formulations for the liability cap are not generally permissible. However, caps of the form "the higher of [Cap1] and [Cap2]", where Cap1 is one of the five caps referred to above and Cap2 is an alternative measure, are acceptable. They will be valued by the Board as though only Cap1 applies, and should be certified accordingly.

Requirements as to the Chargor as Employer's Associate.

- 6.5.5 The Chargor must be an Employer's Associate, as defined in paragraph 4(4) of the Contingent Asset Appendix. Further information about the Board's requirements is as set out in respect of Type A contingent assets, at paragraph 5.5 above.

6.6 Deemed value based on liability cap

- 6.6.1 The value of Type B contingent assets for the purposes of the levy calculation is based on the liability cap and the value of the underlying assets. Further details are located at paragraph 5 of the Contingent Asset Appendix.
- 6.6.2 The deemed maximum liability is calculated based on asset and liability information (including deficit-reduction contributions) certified to the Board prior to the start of the relevant levy year. Valuations, which will be on a section 179 basis for the vast majority of schemes, are rolled forward to a consistent date, on the basis published by the Pension Protection Fund.
- 6.6.3 The deemed maximum liability under the Type B security is then calculated as the actual limit on the Chargor's liability that would apply on the date referred to above, based on the asset and liability information referred to in the preceding paragraph. A limit equal to the full section 75 debt of the scheme is converted to a deemed percentage funding level on a s.179 basis for these purposes. For the levy year 2012/13, any such limit based on the full s.75 debt is treated as though it was based on 155% funding on a s.179 basis.

- 6.6.4 The deemed liability limit under a single Type B contingent asset is not affected by the existence of any other contingent assets.

6.7 Deemed value based on liability cap and value of underlying assets

- 6.7.1 The value of the Type B contingent asset taken into account for the purposes of the levy will be the lower of (a) the deemed value of the liability cap and (b) the actual value of the underlying charged assets, based on the bank statement/valuation (as appropriate) provided to the Board. No adjustment is made to the value as per the bank statement or valuation to take account of any accrual of interest or fluctuations in value since the valuation date.

6.8 Recognition for levy purposes

- 6.8.1 Where there is more than one Type B contingent asset, the values are simply added together for the purposes of the levy.

- 6.8.2 Full details of how Type B guarantees are recognised for levy purposes can be found at paragraphs 17 and 18 of the Contingent Asset Appendix.
- 6.9 **Release of underlying assets where oversecured**
- 6.9.1 Each standard form of security agreement contains a provision permitting the chargor to request that some of the assets are released from the security. Following such a request, the trustees must release assets to the extent their value exceeds the assumed value of the liability cap. Clearly it will be more feasible to release assets that are easily divisible, such as a proportion of the cash in a charged bank account or part of a portfolio of securities, than indivisible assets such as real estate.
- 6.9.2 The standard form documents do not require the chargor to "top up" the assets if their value falls or if the actual funding situation deteriorates (even if some of the assets have previously been released under the provision described above). However trustees are free to negotiate such "top-up" arrangements in addition to the standard terms. If the contingent asset arrangement is not "topped-up" the next year's levy will reflect the deterioration in the funding position. If a "top-up" arrangement is put in place, the next year's levy will reflect this "topped-up" position.

7 TYPE C CONTINGENT ASSETS

7.1 Introduction

- 7.1.1 Type C contingent assets are letters of credit or bank guarantees issued to the trustees for an amount in sterling.
- 7.1.2 The Board has published two Type C forms: Types C(i) and C(ii). Each can form the basis of a letter of credit or a bank guarantee. It is not possible to "mix and match" elements from each form.
- 7.1.3 Type C(i) arrangements contain "evergreen" provisions allowing a demand if they are not renewed or replaced. Type C(ii) arrangements have a fixed term but must support a defined schedule of deficit-reduction contributions.
- 7.1.4 Both forms aim to prevent deterioration in the scheme's funding level. The evergreen Type C(i) will remain in place until replaced by cash in the scheme. The value of the letter of credit may be reduced if the scheme funding position improves. There is no obligation on the employer to make deficit-reduction contributions.
- 7.1.5 Type C(ii) arrangements have a fixed term chosen by the parties. The employer must make deficit-reduction contributions via a pre-prepared schedule (as well as regular contributions under the scheme's schedule of contributions). Each contribution reduces the value of the asset by an equivalent amount so that at the end of the term the total deficit-reduction contributions made will equal the initial value. A demand may be made under the asset if any planned contribution is missed or an insolvency event occurs.

7.2 Format

- 7.2.1 The certification and documentation requirements for Type C guarantees are set out in paragraphs 43-48 of the Contingent Asset Appendix.

Requirements as to the Purchaser as Employer's Associate.

- 7.2.2 The purchaser of the Type C contingent asset must be an Employer's Associate, as defined in paragraph 4(4) of the Contingent Asset Appendix. Further information about the Board's requirements is as set out in respect of Type A contingent assets, at paragraph 5.5 above.

7.3 Recognition for levy purposes

- 7.3.1 Where there is more than one Type C contingent asset, the values are simply added together for the purposes of the levy.

Full details of how Type C guarantees are recognised for levy purposes can be found at paragraphs 17 and 18 of the Contingent Asset Appendix.

8 LEGAL OPINIONS

8.1 Key Requirements

- 8.1.1 As the Board's standard form agreements are governed by English law, the appropriately qualified person to give the legal opinion will usually be a solicitor holding a current practising certificate for England and Wales (subject to 8.1.6 below), and holding professional indemnity insurance in accordance with the Solicitor's Indemnity Insurance Rules.
- 8.1.2 The legal opinion must be addressed to, and given by a solicitor formally appointed by, the trustees. It should not be provided by an in-house solicitor.
- 8.1.3 The legal opinion must specifically address certain statements which the trustees are required to give in relation to the benefit to be obtained from the contingent asset. These statements vary according to the type of contingent asset being used. Full details of these statements can be found at paragraphs 31, 34, 38, 41, 44 and 47 of the Contingent Asset Appendix.
- 8.1.4 Where the guarantor/chargor/purchaser is an Employer's Associate by virtue of paragraph 4(5)(b) of the Contingent Asset Appendix, in order to demonstrate that the test in the Contingent Asset Appendix has been met it is acceptable to include a statement as to associateship in the Legal Opinion, on the basis that the legal advisor has had sight of the relevant documentation or confirmations from the relevant parties and can therefore provide the confirmation as a matter of fact.
- 8.1.5 The legal opinion must address whether schedule 1 in each of the Board's standard form agreements lists every undertaking which is both an Associated Party of any guarantor and an "Employer" (see 5.5.1 above). However, the Board will not reject a legal opinion if it does not address this point provided that it receives an officer's certificate confirming that schedule 1 lists all such undertakings.
- 8.1.6 Where the contingent asset involves security over property situated in Scotland or Northern Ireland, a legal opinion from appropriately qualified lawyers from those jurisdictions is needed.
- 8.1.7 Where a Type A or B guarantor is domiciled outside England and Wales, an overseas legal opinion is needed, covering:
- (a) the guarantor's capacity to enter into the agreement;
 - (b) recognition by the overseas jurisdiction of the choice of law clause in the agreement;
 - (c) enforceability of English judgments in that jurisdiction; and
 - (d) the absence of conflict with local law.
 - (e) Trustees must obtain an English legal opinion (or an opinion under 8.1.6) alongside the overseas opinion. The English opinion must cross-refer to and rely on the overseas opinion for matters of foreign law.
 - (f) Where a Type C contingent asset is issued by overseas banks/insurance companies, no overseas legal opinion is required. An English legal

opinion is still required, although appropriate assumptions in relation to the overseas jurisdiction can be made.

- (g) Where a Type C contingent asset is used by a UK bank/insurance company, the Board does not require the legal advisers to investigate its capacity to enter into the agreement. A legal opinion is still required, although appropriate assumptions about capacity can be made.
- (h) Where a party to the agreement is domiciled overseas, advice from lawyers qualified in the relevant jurisdiction may be necessary.
- (i) Overseas opinions can be provided by an appropriately qualified in-house lawyer or an adviser to a party other than the trustees. Where an overseas opinion is provided regarding a party domiciled overseas, the Board must see evidence that it is standard practice in the former jurisdiction for lawyers to provide such opinions.

8.2 Limiting liability in legal opinions

- 8.2.1 The Board recognises that law firms may, as a matter of market practice, seek to limit their liability in various ways. The Board will not reject a legal opinion simply on the basis that liability is limited, and does not undertake to review all or any legal opinions supplied to it in detail.
- 8.2.2 However, if the Board believes that a particular limitation is inconsistent with market practice or professional rules and guidance, or is otherwise unreasonable, then the Board may enter into discussions and investigation with the trustees as to whether the trustees' certification should properly have been given based on the opinion.
- 8.2.3 The Board will reject an English legal opinion if, in breach of the SRA Indemnity Insurance Rules and rule 1.8 of the SRA Code of Conduct, the firm giving the opinion tries to limit its liability below the minimum level of cover required by the Solicitors' Indemnity Rules (as at date of writing this is currently £2 million for partnerships, £3 million for LLPs and other bodies corporate).
- 8.2.4 An overall financial cap on liability is otherwise acceptable, if consistent with 8.2.2 and 8.2.3 above.
- 8.2.5 Legal opinions should not be expressed to be limited in purpose to the risk based levy calculation. The point of the opinion is to provide the trustees with comfort as to the binding nature of the contingent asset agreement.
- 8.2.6 The opinion should be addressed to the trustees, and may seek to exclude third parties. Liability to the Board cannot be excluded, however, although it may be subject to the same limitations (e.g. financial cap) as liability to the trustees.

8.3 Legal opinions – sample wording

- 8.3.1 Please note that the Board will not provide a standard legal opinion template. The following examples should not be seen as standard wording but are simply intended to clarify some of the Board's requirements. They are in no way exhaustive or intended to cover all contingencies. It would be

impracticable to produce standard forms of legal opinion to cover the many potential situations in which contingent assets might be put in place.

8.3.2 **Limitation of liability clauses**

The following examples of liability exclusion are acceptable as they do not try to exclude liability to the Board:

"Notwithstanding the previous paragraph a copy of this opinion may be delivered to the PPF Board for its own use in connection with the assessment of the Scheme's PPF levy. For the avoidance of doubt, this opinion does not purport to exclude liability to the PPF Board, whether arising pursuant to section 161 of the Pensions Act 2004 or otherwise."

"Our opinion is given for the benefit of the trustees and may be relied on by the PPF Board but may not be relied on by any other person. This opinion may not be disclosed to any person other than the PPF Board and those persons (such as auditors or regulatory authorities) who, in the ordinary course of business of the trustees have access to their papers or records or are entitled by law to see them and on the basis that those persons will make no further disclosure."

The following examples of liability exclusion are unacceptable as they aim to exclude disclosure and/or liability to the Board:

"This opinion is addressed to you solely for your own benefit in relation to the Guarantee given by the Guarantor for the purpose of reducing the risk based levy payable by the Plan, and except with our prior written consent, is not to be transmitted or disclosed to or used or relied upon by any other person or used or relied upon by you for any other purpose."

This fails as it is restricted solely to reducing the risk based levy and, although it may be disclosed to the Board, liability to the Board is still excluded.

"This opinion is given for the benefit of the persons to whom it is addressed in their respective capacities as stated. It may not be relied on by or distributed or disclosed to any other person nor may it be relied on, in any other context, nor is it to be quoted or made public in any way without our prior written consent."

This excludes liability, and prohibits disclosure, to the Board.

"This opinion is addressed to you personally. It may not be relied upon by anyone else without our prior written consent. Without prejudice to the foregoing, we acknowledge that a copy of this letter will be sent to the Board of the Pension Protection Fund."

Disclosure to the Board is granted but liability is excluded without separate written consent from the legal advisers.

8.3.3 **Certificate confirmation**

This wording is perhaps the simplest way of meeting the Board's requirements as it includes the statements that the trustees are required to certify in relation to a single Type A guarantee provided by a single

guarantor. Obviously the wording must be adapted by anyone giving a legal opinion for another type of contingent asset to reflect the matters which must be certified for other contingent asset types. Where there are material changes, the legal opinion must state why each change is not considered materially detrimental.

"On the basis of, and subject to, the foregoing and the matters set out in [X] below and any matters not disclosed to us, and having regard to such considerations of English law in force as at the date of this letter as we consider relevant, we are of the opinion that the Guarantee:

(a) is a legally binding, valid and enforceable obligation of the Guarantor;

(b) is in the Pension Protection Fund's required form for such documents (as published on its website as at the date of this letter), subject only to [*example of difference*], which does not have a materially detrimental effect on the rights of the trustees of the Plan as compared with the required form [*for the following reasons*] [*insert reasons why changes are not materially detrimental compared with required form*];

(c) can be drawn against the liabilities to the Plan of any of the employers listed in Schedule 1 to the Guarantee, which schedule lists every undertaking which is identified by the company secretary as both an Associated Party and an "employer" in relation to the Plan within the meaning set out in section 318 of the Pensions Act 2004 and regulations made thereunder; and

(d) on its terms, will be unconditionally available to the Plan for so long as any actual or contingent liability of any such employers to Plan subsists."

8.3.4 Employer's Clause

This example can be used with the officer's certificate for employer's clause at 8.3.5 below:

"We are of the opinion that the Guarantee can be drawn against the liabilities to the Plan of any of the employers listed in Schedule 1 to the Guarantee. We express no opinion as to whether Schedule 1 to the Agreement lists every undertaking which is both an Associated Employer of the Guarantor and an "employer" in relation to the Plan within the meaning set out in section 318 of the Pensions Act 2004 and regulations made thereunder but refer you to the certificate signed by [] of [] [director/company secretary] dated [] which confirms the same."

8.3.5 Officer's Certificate for Employer's Clause

This example can be used with the employers clause at 8.3.4 above:

"I confirm that the attached schedule of employers for the Scheme lists every undertaking which is both an Associated Employer of the Guarantor and an "employer" in relation to the Plan within the meaning set out in section 318 of the Pensions Act 2004 and regulations made thereunder."

8.3.6 Officer's Certificate

The following is an example officer's certificate which may be used as referred to in 8.3.4 above.

"I, [] Company Secretary and Director of the Company certify that:

1. I am duly authorised to give this certificate;
2. the Company has the necessary power to guarantee and to incur the liabilities specified in the Guarantee;
3. no borrowing limit of the Company will be exceeded by entering into the Guarantee;
4. the board of directors of the Company have duly authorised [] and [] to execute the Guarantee and all other documentation to be entered into by the Company pursuant to the terms of the Guarantee;
5. the individuals specified in 4 above were at the time of execution of the documentation referred to above and remain duly appointed directors of the Company;
6. both (1) the board of directors and (2) the shareholders of the Company have resolved that the granting of the Guarantee is for the commercial benefit of the Company; and
7. the resolutions giving the authorisations referred to above were validly passed at a properly convened meeting of the board of directors of the Company and at a properly convened meeting of the shareholders of the Company respectively, such resolutions contain declarations of interest by the directors of the Company sufficient to comply with section 177 of the Companies Act 2006 and the articles of association of the Company and all such board and shareholder resolutions are in full force and effect at the date hereof and have not been amended, varied or altered."

8.3.7 **Unconditionally available**

The following wording is acceptable to the Board:

"On its terms the Guarantee does not:

- contain any express condition, other than a failure by one or more Companies to pursue the Guaranteed Obligations, which are required to be satisfied prior to a demand being made on the Company under the terms of the Guarantee; or
- impose any time limits for the duration of the terms of the Guarantee and the obligations of the company thereunder."

8.3.8 **Assumptions**

The Board will not accept assumptions contained in the legal opinion regarding the guarantor's capacity to enter into the contingent asset agreement, unless the guarantor is domiciled overseas and there is an overseas legal opinion which addresses the capacity of the party to execute the agreement.

8.4 Caveats in the legal opinion

8.4.1 The following qualifications, in relation to property, are also unacceptable to the Board:

"The Security Interest constituted by the Security Agreement will be void against a purchaser for value insofar as the security comprises security over registered land or a second or subsequent security over unregistered land unless the Security Agreement is registered pursuant to the Land Registration Act or as the case may be the Land Charges Act 1972."

Where the opinion confirms the security agreement has been properly registered under the Land Registration Acts 1925-1986, the Land Registration Act 2002, the Companies Acts 1985 and/or 2006 and/or any other applicable legislation, subject to the qualifications in respect of the opinion, this qualification is unacceptable.

"The Security Interest constituted by the Security Agreement will be void against a purchaser for value unless the Security Agreement together with the prescribed particulars as detailed in sections 395-397 of the Companies Act 1985 are filed at Companies House against the Chargor within the prescribed period."

Where the opinion confirms the security agreement has been properly registered under the Land Registration Acts 1925-1986, the Land Registration Act 2002, the Companies Acts 1985 and/or 2006 and/or any other applicable legislation, subject to the qualifications in respect of the opinion, this qualification is unacceptable.

"We express no opinion in respect of... the priority of any Security Interest created by the Security Agreement, as to the nature of the Security Interest created thereby (whether fixed or floating), as to the registration requirements in respect of the Security Assets...."

Where the opinion confirms the security agreement has been properly registered and creates a first priority legal mortgage or fixed charge, this qualification is unacceptable.

9 AMENDMENT AND REPLACEMENT OF CONTINGENT ASSETS

9.1 Policy background

9.1.1 As pension liabilities are a long-term risk for the Board, the standard form Type A and B agreements are indefinite in duration. Although letters of credit and bank guarantees usually have a fixed term, the standard form Type C(i) agreement contains "evergreen" provisions whereby it may be called on if not renewed or replaced. Equally Type C(ii) agreements need only last for as long as the schedule of deficit reduction contributions they guarantee.

9.1.2 The Board also recognises that an improvement in a scheme's funding position should enable a contingent asset provider to reduce its cover by the equivalent value.

9.1.3 In each of the above cases, the overall long term funding enhancement associated with the arrangement will be (very broadly) constant, whether because the contingent asset remains in place itself or it has been replaced by another contingent asset or cash in the scheme.

9.1.4 Policy justifications behind the above approach include:

(a) Although the levy for individual schemes is calculated based on measures of short term underfunding and insolvency risk, that measure is scaled so that each scheme makes a contribution in respect of future years' risk as well. The PPF therefore considers it is fair within the current system only to include, in the calculation of assets at the measurement date, contingent assets that are expected to be in place for the long term (as, of course, are the assets in the scheme already). To take a simple example, consider a scheme which has a weak employer, but benefits from a fixed term guarantee from a strong parent. If, shortly after the expiry of the guarantee, the employer becomes insolvent, is abandoned by the parent and the PPF takes over the scheme, then the scheme will have substantially underpaid for the risk it posed to the PPF over the preceding years.

(b) The PPF seeks more generally to encourage behaviours which remove long-term risk from the system, to the benefit of the wider community of eligible schemes.

9.2 Reduction and replacement - Standard form agreements

9.2.1 Contingent asset agreements are private agreements between the providers and trustees. The schedules to each agreement allow contingent assets to be reduced or replaced using the specified formulas, subject to certain conditions. The providers and trustees are therefore able (as a matter of contract) to cancel or amend the agreements at any time, where this is consistent with the trustees' duties to the scheme beneficiaries. These provisions will automatically be available to providers of contingent assets when they enter into a standard form agreement.

9.3 Reduction and replacement – the Board's approach

9.3.1 The PPF recognises that removal, reduction or replacement of contingent assets may in some cases be entirely appropriate and not lead to any, or any significant, increase in risk. A broad outline of such "acceptable changes" is

set out at 9.4.3 below. However, other changes by voluntary actions of the parties are regarded as “unacceptable changes”.

9.3.2 Arguably, where a contingent asset that was expected to be in place for the long term is subject to an unacceptable change, the PPF should “claw back” at least part of the levy reductions related to that contingent asset for every year since the asset was put in place. However this would be a rather extreme approach, as well as being administratively difficult to achieve. Instead, the approach of the PPF in the Determinations up to and including that for 2012/13 has been (very broadly) as follows:

- (a) where an unacceptable change occurs in the middle of a levy year, the levy for that year will be recalculated as if the contingent asset in question had never been in place during that year
- (b) where an unacceptable change occurs between levy years, no credit at all will be given for any contingent assets in the latter year (even if there remain some contingent assets with value which would otherwise satisfy the recognition requirements)
- (c) where an unacceptable change takes place, the scheme may not be given credit for any contingent assets in future years until the position has at least been restored to that which prevailed before the unacceptable change occurred.

9.3.3 Full details of the Board’s approach can be found at paragraphs G3.1 – G3.5 of the Determination.

9.4 **Reduction and replacement – exercise of the Board’s discretion**

9.4.1 In practice, it is very difficult to specify in advance all of the possible circumstances in which parties might legitimately want to make changes to their contingent asset arrangements, and the impact which such changes ought to have on the levy. The PPF has become aware of isolated examples in which the conditions in previous Determinations have hindered or prevented entirely appropriate actions.

9.4.2 The Board has discretion therefore to give full or partial recognition, even if the conditions are not satisfied. Broadly, the Board may do so if it considers the trustees’ acted reasonably, and there was no materially detrimental effect on the scheme. The basic non-recognition rule continues to apply to unacceptable changes.

9.4.3 Full details about this discretion are at paragraph G3.3 of the Determination. However the broad principles on which the PPF intends to exercise this discretion are as follows:

- (a) Any change made within the standard form agreements is likely to be acceptable. So, in circumstances where the guarantor in respect of a Type A contingent asset puts forward a “Proposal” as defined in the standard form guarantee, and under the terms of the agreement the Trustees may not unreasonably withhold their consent to the Proposal, then the Proposal is very likely to be an acceptable change. The fact that the trustees may have been content to do this on shorter notice than the standard form anticipates would not generally affect this analysis.

- (b) A fall in the market value of a piece of land charged in a Type B(ii) asset or the securities charged in a Type B(iii), taken alone, does not trigger specific action under Rule D3 of the Determination (though of course it may result in a direct reduction in the levy credit each time the contingent asset value is used in the levy). Analogous changes in value resulting from actions entirely outside the control of the parties to the contingent asset agreement are very likely to be acceptable changes. However, the PPF regards the following as being within the control of the parties and therefore potentially unacceptable changes:
- (i) a decision by a contingent asset provider not to continue to provide the asset on grounds of cost – e.g. where a Type C(i) asset is not renewed on expiry, or a charge is released in order to improve the balance sheet of the chargor; or
 - (ii) a decision by trustees not to enforce rights available to them – e.g. where a Type C(i) asset is not renewed and the trustees elect not to claim under the “evergreen” provisions.
- (c) Where there are multiple contingent assets, the PPF will look at all the assets together, comparing the overall position after the change with that before.
- (d) If a guarantor in respect of a Type A guarantee is replaced, this will usually be an acceptable change if the new guarantor is at least as strong as the old one. Strength will primarily be assessed based on the likely ability of the guarantor to meet the guaranteed obligations (as compared with the old guarantee) but may where appropriate have regard to failure scores or risk indicators provided by D&B, as at a date within five days on either side of the date of replacement.
- (e) If a liability cap is amended upwards within the same cap type (e.g. a guarantee of a 100% funding level on a s179 basis is changed to a guarantee of 105%) this will usually be acceptable.
- (f) If a liability cap type is changed (e.g. a £10m cap is converted to a cap guaranteeing 100% funding on a s179 basis), the actual monetary value of the cap as at the point of the change will be calculated and if the monetary value remains the same or increases the change will usually be acceptable. Examples of acceptable and unacceptable changes are detailed at 9.6 below.
- (g) Replacement of a Type A guarantee with a Type B or C contingent asset of equal monetary value will usually be an acceptable change; changes in the opposite direction will usually not be.
- (h) Where the actual funding level (including Type B and C contingent assets) of the scheme reaches a specified level, it will usually be acceptable to release any Type B or C contingent assets to the extent they bring the funding level above that point. It should be noted that this test is more stringent than that set out in the standard form agreements themselves; where a change is made outside the terms of the agreement, but funding is below the top of the taper, the PPF will

take into account all the circumstances of the case – including the other factors set out in this section – when determining whether the change is acceptable.

- (i) Where the aggregate funding level is not so high as to satisfy the test in (h) above, it will usually only be acceptable to reduce Type B and C cover if and to the extent there has been an at least equal improvement in the actual funding level of the scheme since the contingent asset was put in place.
- (j) The value associated with any liability cap as at a particular date will be estimated by the PPF based on whatever funding data appears to it most appropriate – typically the type of asset and liability data used for the levy.
- (k) Extending the list of companies whose pensions obligations are secured by the contingent asset to include new employers will usually be acceptable (and will be necessary to enable the trustees to give the required certification each year). Removal of a company from coverage is likely only to be acceptable if it has ceased to be an employer within the statutory definition set out in section 318 of the Pensions Act 2004.

9.5 **Advance notification of proposed changes to the Board**

9.5.1 Although the above paragraphs cover most of the issues that typically arise where contingent assets are amended, removed or replaced, the PPF recognises that in unusual cases the parties involved may want to seek an advance indication from the PPF as to how it would treat a specific transaction for levy purposes. The PPF will endeavour to provide such an indication, provided that comprehensive information about the anticipated transaction and the trustees' rationale for agreeing to it are provided in good time. The PPF will aim to respond to such requests within 20 working days, meaning that requests will need to be received by the end of February 2012 in respect of transactions planned to take place before the 30 March 2012 deadline.

9.6 **Examples of acceptable changes**

- 9.6.1 A guarantee of the full s75 debt given by Supermarket Ltd is released and replaced by a guarantee in the same terms given by Supermarché S.A. On the date of the change, the s75 is estimated at £500m. For levy purposes the PPF uses 105% funding on a transformed s179 basis as a proxy, for levy purposes, since this is the point of a full risk switch. Supermarket Ltd has a UK failure score for which the associated PPF probability of insolvency is 0.5% and net assets of £400m, whilst Supermarché S.A. has a French failure score for which the associated PPF probability of insolvency is 0.3% and net assets of £2billion.
- 9.6.2 A Type C(i) letter of credit for £10m issued by Bank A expires and is replaced by a Type C(i) bank guarantee for £20m issued by Bank B (Banks A and B must of course both satisfy the recognition requirements as to credit rating, domicile, regulation etc).
- 9.6.3 Based on the most recent s179 valuation (dated 31 January 2009 and as at 31 July 2008) and applying the PPF roll-forward methodology, the scheme is

150% funded (without taking into account any contingent assets) as at 31 March 2009. All existing Type B and C contingent assets are released with effect from 31 March 2009.

9.6.4 As at 31 March 2009, the scheme has liabilities of £100m and assets of £80m on a s179 basis. A Type C(i) contingent asset valued at £10m is put in place. As at 31 March 2010 the scheme's assets have increased to £95m and the liabilities to £105m, meaning the scheme is now over 90% funded. The Type C(i) contingent asset is released.

9.6.5 A Type B contingent asset (charge over property/cash/securities) is released but the underlying asset that was subject to the charge is then transferred into the scheme (i.e. the underlying asset changes from being a contingent asset to a tangible asset).

9.7 **Examples of unacceptable changes**

9.7.1 As for 9.6.2 above, but the sponsor can only afford a bank guarantee for £5m from Bank B (unless the funding level has improved sufficiently in the meantime).

9.7.2 As for 9.6.3 above, but the scheme is only 100% funded as at 30 March 2012 and the Type B and C contingent assets are released and replaced with parent company guarantees.

9.7.3 Supermarché S.A. guarantees the obligations of three UK subsidiaries, all of which participate in the scheme. One of the subsidiaries is in financial difficulties and Supermarché S.A. persuades the trustees to release the guarantee in relation to that subsidiary while continuing to cover the other two. In fact, assuming the subsidiary that is in financial difficulties is an associate of the guarantor and remains an employer in relation to the scheme, the guarantee will have ceased to satisfy the requirements for recognition in any case.

9.8 **Impact of future transactions on the contingent asset**

9.8.1 The parties, when entering into a contingent asset arrangement, can agree what will happen if planned future transactions take effect. They can also agree a list of circumstances in which it would be unreasonable for the trustees to withhold their consent.

9.8.2 Provided that such agreements do not have a materially detrimental effect on the scheme (compared to the standard form agreements) and the trustees take professional advice, the contingent asset will still be recognised.

APPENDIX 1: SUGGESTED FORM OF COVERING LETTER

Type A example (New Contingent Asset)

FAO: Director of Legal - Re Contingent Asset
The Board of the Pension Protection Fund
Knollys House
17 Addiscombe Road
Croydon
CRO 6SR

Our Ref:

Date:

Dear Sirs

Name of scheme:

[Name of section:]

PSR No:

Contingent asset type: Type A guarantee

We enclose the following:

- a certified copy of the Guarantee
- [A blacklined document showing the differences from the Pension Protection Fund's required form for such documentation as published on its website] or [confirmation that there are no differences from the Pension Protection Fund's required form for such documentation as published on its website except for the necessary selection of options and the insertion of details of the parties];
- a copy of the legal opinion(s) [and officer's certificate];
- Evidence that the corporate benefit of entering into the Guarantee has been considered and established by the Guarantor; and
- A copy of the contingent asset certificate.

[Note that this list is provided for the purposes of this example letter only, and is not a checklist]

We confirm that the Type [] contingent asset certificate has been submitted online to the Pensions Regulator via Exchange on [date].

In the case of any queries regarding this submission, please contact:

[name]

[postal address]

[Tel:]

[Email:]

Yours faithfully

APPENDIX 2: EXAMPLE CONTINGENT ASSET CERTIFICATES

Pension
Protection
Fund

The Pensions
Regulator

Certification of type A (guarantor) contingent assets 2012/13

Scheme name:	Scheme name
PSR number:	10000000
Certificate number:	9999
Date certified:	23 March 2012
Time certified:	4:50 PM
Printed by:	Name of scheme representative

If this contingent asset has **not** been recognised by the Board of the Pension Protection Fund for the purposes of the previous levy year, you must send the following hard copy documents to the Board:

- a copy of this certificate
- a certified copy of the guarantee
- a blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- a copy of the legal opinion and any other officer's certificate

For all new contingent assets, the Board will require evidence that the benefit to the guarantor of entering into the contingent asset agreement has been considered and established.

If this contingent asset **has** been recognised by the Board of the Pension Protection Fund for the purposes of the previous levy year, you must send the following hard copy documents to the Board.

- if the guarantee has been amended since you last sent a copy to the Board, a certified copy of the amended guarantee or the amending document
- if you are sending any hard copy documentation, a printed copy of this certificate for identification purposes.

All documents must be received by the board no later than 5pm on 30 March 2012.

Basic details	
Scheme name	Scheme name
PSR number	10000000
Type of voluntary certificate	Contingent assets – type A (guarantor)
Voluntary certificate number	9999
Levy year (to be applied to)	2012/13
Date certified	23 March 2012

Guarantor details	
Name of guarantor	Guarantor name
Type of organisation	Private limited company
Registration number	100000
Country of domicile	United Kingdom
Registered office address (or equivalent)	Building name Street name Town County AA1 9ZZ

Contingent asset details	
Effective date	20 March 2012
Guarantor's maximum liability	The lower of (a) the lowest amount (non-negative) which, when added to the assets of the scheme/section, would result in the scheme/section being funded to at least a specified percentage level on the basis set out in Section 179 of the Pensions Act 2004, were a valuation in accordance with that section to be conducted on the date on which the liability arises, and (b) a fixed amount.
Percentage	105%
Amount	£10000000.00

Certification of type B(ii) (real estate) contingent assets 2012/13 (England & Wales)

Scheme name: Scheme name
PSR number: 10000000
Certificate number: 9999
Date certified: 23 March 2012
Time certified: 4:50 PM
Printed by: Name of scheme representative

If this contingent asset has **not** been recognised by the Board of the Pension Protection Fund for the purposes of the previous levy year, you must send the following hard copy documents to the Board:

- a copy of this certificate
- a certified copy of the security agreement
- a blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- a copy of the legal opinion and any officer's certificate
- a copy of the valuation
- a copy of the certificate of title

For all new contingent assets, the Board will require evidence that the benefit to the chargor of entering into the contingent asset agreement has been considered and established.

If this contingent asset **has** been recognised by the Board of the Pension Protection Fund for the purposes of the previous levy year, you must send the following hard copy documents to the Board.

- if the account security agreement has been amended since you last sent a copy to the Board, a certified copy of the amended account security agreement or the amending document
- if a new certificate of title has been obtained, a copy of that certificate of title
- if a new valuation has been obtained, a copy of that valuation
- if you are sending hard copy documentation, a printed copy of this certificate for identification purposes.

All documents must be received by the board no later than 5pm on 30 March 2012.

Basic details	
Scheme name	Scheme name
PSR number	10000000
Type of voluntary certificate	Contingent assets – type B(ii) (real estate)
Voluntary certificate number	9999
Levy year (to be applied to)	2012/13
Date certified	23 March 2012

Chargor details	
Name of chargor	Chargor name
Type of organisation	Private limited company
Registration number	100000
Registered office address (or equivalent)	Building name Street name Town County AA1 9ZZ

Contingent asset details	
Effective date	20 March 2012
Property occupancy	Property which is the subject of the security is occupied by the chargor and/or employer(s) listed in Schedule 1 to the Security Agreement or by any party which is an "associate" (within the meaning set out in Section 435 of the Insolvency Act 1985) of any of them.
Brief description of property(ies) for identification purposes only	Description of property
Valuation date	19 February 2012
Value at that date	£900000.00
Date of certificate of title	17 March 2012
Chargor's maximum liability as set out in the security agreement	The entire aggregate liability of employers to the scheme/section from time to time, were a debt under Section 75(2) of the Pensions Act 1995 to be triggered at that time.

**Certification of type C(ii) (letter of credit/bank guarantee) contingent
assets
2012/13**

Scheme name:	Scheme name
PSR number:	10000000
Certificate number:	9999
Date certified:	23 March 2012
Time certified:	4:50 PM
Printed by:	Name of scheme representative

If this contingent asset has **not** been recognised by the Board of the Pension Protection Fund for the purposes of the previous levy year, you must send the following hard copy documents to the Board:

- a copy of this certificate
- a certified copy of the letter of credit/bank guarantee
- a blacklined document showing the changes from the Pension Protection Fund's required form or confirmation that there are no changes to the required form
- a copy of the Actuary's confirmation
- a copy of the legal opinion and any other officer's certificate

For all new contingent assets, the Board will require evidence that the benefit to the purchaser of entering into the contingent asset agreement has been considered and established.

If this contingent asset **has** been recognised by the Board of the Pension Protection Fund for the purposes of the previous levy year, you must send the following hard copy documents to the Board.

- if the letter of credit/bank guarantee has been amended since you last sent a copy to the Board, a certified copy of the amended letter of credit/bank guarantee or the amending document
- if you are sending hard copy documentation, a printed copy of this certificate for identification purposes.

All documents must be received by the board no later than 5pm on 30 March 2012.

Basic details	
Scheme name	Scheme name
PSR number	10000000
Type of voluntary certificate	Contingent assets – type C(ii) (letter of credit/bank guarantee)
Voluntary certificate number	9999
Levy year (to be applied to)	2012/13
Date certified	23 March 2012

Purchaser details	
Name of purchaser	Purchaser name
Type of organisation	Private limited company
Registration number	100000
Registered office address (or equivalent)	Building name Street name Town County AA1 9ZZ

Counterparty details	
Name of counterparty	Counterparty name
Address	Building name Street name Town County AA1 1ZZ
Country of Domicile	United Kingdom
Regulated by	Financial Services Authority
Moody's rating	Aa1
Standard & Poor's rating	AA+
Fitch Rating	AA

Instrument details	
Instrument type	Bank guarantee
Effective date	01 April 2012
Expiry date	31 March 2020
Face value	£100000000.00