THE BOARD OF THE PENSION PROTECTION FUND

Guidance in relation to Contingent Assets

Type A Contingent Assets: Guarantor strength

2018/2019

This draft document will be published in final form as part of guidance on Type A contingent assets following publication of revised Standard form documents in mid-January 2018.

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1 This Guidance Note

1.1 This Guidance Note is published alongside the Board's Levy Rules for 2018/19, in order to provide schemes with information as to the Board's requirements for certifying guarantor strength in respect of Type A Contingent Assets.

1.2 This Guidance Note should be read in conjunction with the Levy Rules and the Contingent Asset Appendix, and will be amalgamated into full guidance on Type A Contingent Assets.

2. The Guarantor Strength certification

2.1 Rule G2.3(2) of the Determination provides that a contingent asset must appear to the Board to reduce the risk of compensation being payable in the event of an insolvency event occurring in respect of an employer in relation to the scheme, and that the contingent asset must reduce the risk of compensation being payable to an extent that is reasonably consistent with the levy reduction secured (the "Risk Reduction Test").

2.2 To support Rule G2.3(2), trustees must certify on Exchange a fixed cash sum (the "Realisable Recovery"[1]), whether or not the underlying contingent asset agreement contains a fixed sum. Requiring trustees to certify a fixed amount is intended to provide clarity as to the value which the Board will ultimately put on the contingent asset if recognised in the levy calculation. Trustees must also certify whether or not the underlying agreement includes a limitation by reference to a percentage of s179 liabilities, and if so, what that percentage is.

2.3 Broadly speaking the amount which should be certified is the lower of:

- Any cap in the underlying agreement itself that is defined by reference to a fixed amount, and
- An amount no greater than that which the trustees are reasonably satisfied that each certified guarantor could meet if called upon to do so.

2.4 Trustees (or their authorised representatives) are required to certify (the 'Certification') that

- *"The Trustees, having made reasonable enquiry into the financial position of the certified guarantor, are reasonably satisfied that the Certified Guarantor, as at the date of the certificate, could meet in full the Realisable Recovery certified (and where this certificate covers multiple Certified Guarantors, that they can each meet in full the Realisable Recovery certified), having taken account of the likely impact of the immediate insolvency of all of the relevant employers (other than the Certified Guarantor where that Certified Guarantor is also an Employer)".*

2.5 For the 2018/19 levy year onwards, our rules have changed so that where there are multiple Certified Guarantors, those guarantors are no longer required to each be able to meet the certified Realisable Recovery in full. It is acceptable for Certified Guarantors to each certify an individual Realisable Recovery. If this course of action is chosen, a separate contingent asset certificate must be Submitted for each Certified Guarantor so that the Realisable Recovery in respect of that guarantor can be captured, and if all the other relevant Levy Rules are met the aggregate Realisable Recovery certified for the scheme will be taken into

[1] "Realisable Recovery" is defined in paragraph 4(15) of the 2018/19 Contingent Asset Appendix

account for the levy. If the guarantors all remain able, individually, to meet the total Realisable Recovery, then a single certification may be made in respect of them all.

2.6 We have made the above change in recognition that the previous requirement may have obliged schemes to certify by reference to what the weakest guarantor could provide rather than by what each guarantor could independently provide. It is designed therefore to give schemes the flexibility to tailor their contingent asset arrangements by reference to the support each guarantor can genuinely provide, without needing to enter into multiple agreements to do so.

2.7 The levy benefit in respect of each guarantor will be based on the certified Realisable Recovery, with each individual guarantor component being applied against the scheme's underfunding in decreasing order of strength, with the extent of levy recognition subject to the overall cap selected in the underlying agreement.

3 Certification – general points

3.1 When assessing the guarantor's position, the certification expressly requires the trustees to take account of the impact of the insolvency of the employer(s) on the guarantor's resources. This is intended to focus trustees' minds on the key issue of what the guarantor would be able to pay in the event that the scheme employer became insolvent.

3.2 The Board may apply an adjustment to the guarantor's levy band to reflect the impact of the amount that it is guaranteeing on its gearing. The focus of trustees should continue to be on the amount which they consider the guarantor can realistically afford to pay towards the Realisable Recovery. However, certifying the largest Realisable Recovery which they consider possible may impact on the guarantor's levy band.

3.3 A different Realisable Recovery can be certified year on year. This enables trustees to take a sensible on-going view of the guarantor's financial position and the scheme's funding position.

3.4 The certification is designed to allow trustees to take a rounded view of whether it is reasonable to believe the Realisable Recovery could be met by the guarantor, without having to obtain absolute certainty as to the guarantor's ability to do so. Trustees need to be comfortable (ie, rather than certain) that the guarantor could meet its full commitment under the guarantee if called upon to do so.

3.5 Trustees should take proportionate steps to assess the capability of the guarantor to meet any sum that may fall due under the guarantee. What is proportionate will depend on their individual scheme's circumstances, the size of the guarantee being given and its potential levy impact (where the levy impact is above £100,000 consideration must include a guarantor strength report), and the complexity of intra-group arrangements. Trustees should consider whether they have sufficient expertise on their board to know what information is required from the guarantor and to assess the information received. In particular, they should be able to demonstrate that they have challenged assertions made by the guarantor and, where appropriate, obtained third party professional advice to support their view. The extent to which professional advice is necessary will depend on the circumstances.

3.6 We strongly recommend that trustees keep comprehensive records and evidence of the basis for their certification so that they can provide this at a later stage if

required by the Board.

4 What does the Board consider is required for certification?

4.1 The circumstance in which the guarantee would be called on is most likely to be where the employer(s) to the scheme has suffered an insolvency event. Trustees should therefore take account of the likely impact of the insolvency of the employer whose liabilities are being guaranteed[2], assuming that were to occur in the near future.

4.2 Without limitation, the impact of employer insolvency could include effects such as: the diminution in value of the employer(s) shares or investments held directly or indirectly by the guarantor, the loss of inter-company debts owed by the employer(s), the impact of a cross guarantee or the loss of an important supplier (the insolvent employer) to the group.

4.3 At its most basic, this means that Trustees must not attribute value to investments in the sponsoring employer (or businesses controlled by it) in their assessment of the guarantor unless they can be confident that value would survive an insolvency. In particular the Board considers that trustees should normally assume a nil return on the value of any employer shareholding held by the guarantor, as it is unlikely that a return would be achievable in practice.

4.4 The Board has seen instances where trustees have certified guarantors whose principal assets were investments in the very companies being guaranteed and which were, therefore, of no value. In other cases, we have also seen substantial value attributed to intercompany loans or receivables whose value would be questionable on the employer's insolvency.

4.5 Where the guarantor and employer are part of a group of companies, the indirect effect of an employer's insolvency should also be considered, in particular whether the employer's insolvency could also lead to the insolvency of the guarantor. For example, where the group as a whole is reliant on an employer for a considerable part of its revenue or assets, trustees need to take this into account and think about whether the guarantor could actually meet the Realisable Recovery if that employer failed. They should think about all the circumstances in which an employer might fail, including those where other group members also fail.

4.6 Where trustees are considering a guarantor which is also an employer in a multi-employer scheme, they should consider the impact on the guarantor of the insolvencies of the other scheme employers. In particular, trustees should consider whether the guarantor would be able to meet the other employers' obligations to the scheme in addition to its own. This is particularly relevant where the guarantor's own business is dependent on the continued operation of one or more of the other employers. Trustees should therefore ensure they understand the group structure and analyse the interdependency of trading within the group.

4.7 If a guarantor which is also a scheme employer would be likely to cease trading as result of paying the guaranteed amount, trustees must assess whether it could

[2] Where a guarantor guarantees the liabilities of multiple employers, then the combined effect of their multiple insolvencies should be considered. Where the guarantor guarantees the liabilities of employers in more than one scheme, then the combined effect of their insolvencies should also be considered, unless it would be particularly difficult for trustees in the circumstances to obtain information about the employers in other schemes. Trustees, when considering the amount to certify as the Realisable Recovery, should also take into account the amount the guarantor is guaranteeing to other schemes.

pay the guaranteed amount on its winding-up alongside other costs such as its own share of the section 75 debt to the scheme.

4.8 Where the guarantor is also an employer, the Board will consider whether it is likely that the guarantor could meet the liabilities of the other employers (which are assumed insolvent) whilst still continuing to trade.

4.9 For the avoidance of doubt, trustees are free to consider a guarantee from or in relation to an employer in a last man standing scheme. The Board will assess such guarantees in the same way as for guarantees relating to other scheme structures.

4.10 Trustees should consider the guarantor's position by reference to both its standalone position and (where part of a group) on a consolidated basis. Where the guarantor is part of a group, they should not rely solely on consolidated accounts to assess its position, but must also consider the guarantor's resources on an individual basis.

4.11 Trustees should take particular care to consider not just the guarantor's net asset value compared to the guaranteed amount, but to think carefully about the nature and location of the guarantor's assets. Where the guarantor's assets include intangible assets, such as brand value, or primarily consist of intercompany accounts and investments in employer subsidiaries, then trustees should consider whether these assets are likely to deliver any real value to the guarantor if the employer becomes insolvent, which is the time at which the guarantee will be called upon.

4.12 Trustees should also consider how readily the guarantor's assets could be realised in order to meet the Realisable Recovery if required to do so.

4.13 Trustees should take particular care when considering resources only indirectly available to the guarantor, for example if seeking to rely on a 'cross-guarantee', since the resources may be less readily obtained (or may depend on the continuing solvency of other parties, whose risk differs from the guarantor – which could give rise to a disproportionate levy benefit).[3]

4.14 The Board expects trustees to seek guarantees from companies which are independently able to meet their commitment under the guarantee. It is likely always to be inappropriate to seek to certify a guarantor whose ability to meet its full commitment under the guarantee is dependent on a cross-guarantee being provided by an employer. Any assessment of a guarantor is likely to involve an element of judgement, and trustees should exercise a degree of prudence in assumptions about the value in businesses. For example where a guarantor's value is expressed as a range, it would not be appropriate to use the higher figure. An assessment that a guarantor were valued at £50 million to £100 million would support certification at £50 million but not £80 million, since by definition the trustees could not say that were reasonably satisfied that the guarantor could

[3] Trustees would also need confirmation that both the cross-guarantor was able to meet the amount guaranteed by the guarantor, with a similarly low insolvency risk, and that the trustees' position isn't materially weaker than it would have been under a PPF standard form guarantee given by the cross-guarantor. The Board considers that it may be difficult for trustees to prove that their position is not materially weaker. Trustees in this position should provide to the Board any evidence they have which confirms that this is not the case. This may include, for example, any legal advice they have taken on this point.

meet in full a guarantee for £80 million.

4.15 The Board is not prescriptive about the information trustees should consider. As a general example, trustees could consider any available information about the guarantor's financial position, including its most recent accounts. However, the key factor is whether the information enables the trustees to consider whether the guarantor is able to meet the Realisable Recovery in the context of other commitments it has. In some cases they may wish to commission specific advice or request information from directors of the guarantor. In others existing information may suffice. What is appropriate is ultimately for the trustees to decide based on the guarantor's circumstances.

4.16 For the avoidance of doubt, trustees cannot 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, not on the basis of attempts to obtain this information. Trustees need to have adequate financial information in order to make a meaningful assessment of the guarantor's position. They should not accept the withholding of guarantor accounts, for example on the grounds of confidentiality, where those accounts are required in order for the trustees to make a meaningful assessment of the guarantor's financial position.

4.17 Intentionally or recklessly certifying falsely may be a criminal offence under section 195 of the Pensions Act 2004. If trustees innocently provide the certification incorrectly, the contingent asset may be rejected by the Board and therefore not recognised in the levy calculation. If information comes to light after a contingent asset has been accepted and used in a scheme's risk-based levy which subsequently shows that the trustees were incorrect to provide the Realisable Recovery certification as at the date of certification, the Board may review the levy calculation and disregard the contingent asset.

4.18 Where trustees have previously carried out a review of the guarantor that is consistent with this guidance it will generally be acceptable to update that review by reference to what factors may have changed rather than to undertake a wholly fresh exercise.

4.19 Schemes do not need to provide copies of their evidence with their contingent asset submissions unless they are providing a guarantor strength report for the purposes of the Risk Reduction Test. The Board may, though, ask for trustees' evidence later if the contingent asset is selected for detailed review, so trustees and their advisors should retain the information relied on.

5 The requirement for a Guarantor Strength Report

5.1 The Board's assessment of whether to recognise a contingent asset will, in accordance with Rule G2.3(2), involve comparing the guarantor's resources (in the event of the failure of the employer) with the deemed value of a contingent asset for levy purposes.

5.2 Since the introduction of a trustee certification requirement for the 2012/13 levy year, we have continued to see a relatively high failure rate amongst Type A contingent asset submissions on the basis that insufficient evidence to demonstrate the guarantor could meet the Realisable Recovery has been provided. In particular, we have continued to see evidence that the guarantor's position is sometimes only seriously considered by trustees post-certification after

the contingent asset has been selected for assessment.

5.3 From the 2018/19 levy year, we have therefore strengthened our requirements by introducing new rules in respect of the Risk Reduction Test and guarantor strength. These new rules provide that:

(a) Where a guarantor strength report that, in the Board's opinion, is consistent with this Guidance, is obtained by the trustees before the Measurement Time, the Risk Reduction Test will be deemed to be met.

(b) Where no such guarantor strength report is obtained, and the levy reduction that would otherwise result from the recognition of the contingent asset (assuming all other requirements are met) would be £100,000 or more, the Board has a discretion to permit the trustees to provide further information but is under no obligation to do so. When considering this discretion, one factor the Board will have regard to is the failure of the trustees to obtain a guarantor strength report prior to the Measurement Time.

5.4 The new rules outlined above amount, in effect, to a requirement for schemes over the £100,000 threshold to have obtained a guarantor strength report; the Board's discretion to accept further information from a scheme over the £100,000 threshold will take into account the trustees' failure to obtain such a report. Scheme below the threshold may also obtain a report voluntarily, so the new rules give all schemes, regardless of the possible levy reduction, the opportunity to obtain certainty as to the acceptance of their Type A contingent asset by obtaining a guarantor strength report.

5.5 These new requirements are to help ensure our Type A contingent asset regime is more risk reflective, but they reflect the assessment process that we consider schemes should already be carrying out in practice.

5.6 We also require the professional adviser preparing the guarantor strength report to include a duty of care to the Board, enabling the Board to rely on the contents of the report for the purposes of charging a levy.

5.7 The report should be prepared by a covenant adviser or other appropriate professional, with input from other advisers (for example the trustees' legal advisers) as the covenant adviser consider appropriate.

6 Key content to include in a Guarantor Strength Report

6.1 The objective of the report is to demonstrate that, in the event of the employer's insolvency, the guarantor could meet its certified Realisable Recovery in full. It is not our intention to prescribe a set of factors which should be included in the report as the factors to take into account will depend on the individual circumstances of the guarantor and the scheme. However, a list of the (non-exhaustive) issues we would expect to see covered in the report are set out below. Where the professional adviser considers that any of the issues below are not relevant, they should explain in the report why this is the case.

Issue	Points to consider
Can the guarantor still trade after the disposal of assets required to meet the guarantee?	Asset disposals may impact both the guarantor's and the wider group's ongoing businesses. Where the sale of core business assets would mean the guarantor ceases

	trading, trustees should consider whether other creditors would exist.
Are there restrictions on the use of undrawn finance facilities and cash balances post-employer insolvency?	An understanding of group cash pooling arrangements, and capacity to draw on unused facilities on employer insolvency, may be needed. For example, a positive cash balance in the guarantor's accounts may not be accessible on employer insolvency where the funder could set off the guarantor's cash on the employer's insolvency. An extreme case we reviewed involved the employers already having negative cash balances at the outset while solvent which would eliminate the guarantor's cash even before insolvency takes place.
What is the impact of inter-company balances?	Trustees should appreciate the often complex interaction between group companies and how funds flow around the group. They should consider obtaining an inter-company balance matrix to assess whether intercompany debts held by the guarantor would in fact be collectable once insolvencies occur within the group.
Where EBITDA multiples or similar measures are used in company valuations, how was the multiple chosen and is it reasonable?	This may involve considering the effect of employer insolvency, the level of debt in the company being assessed, the level of market activity and comparable deals. We have challenged multiples for subsidiaries "that could be disposed of to meet the claim" which gave little reflection of any change in the market's perception of a group on employer insolvency, the speed with which a business may need to be sold or which otherwise appeared unreasonable.
What are the guarantor's funding and borrowing sources, treasury arrangements if used, security structure, cross-guarantee obligations and funding defaults?	Trustees should consider whether the employer's insolvency would cause any cross default across the group and the impact of this on the ability to move cash around to satisfy the guarantee claim. Such a default could also impact whether undrawn facilities remain in place as mentioned above.
Are asset valuations appraised on a basis appropriate for the circumstances to support the amount attributed to specific assets?	Are there any restrictions on value to be taken account of, such as stock retention of title? We have seen valuations that assume that highly specialised assets could be sold without assessing whether a market would exist or what impact the circumstances of the sale would have on price.
Where the guarantor cannot trade without the employer, is an estimated outcome statement (EOS) needed?	An EOS would consider realisable asset values on insolvency to assess the value the guarantee claim will receive. Sensible

	assumptions should be made about the asset realisation process including time scales and likely achievable price, together with the level of applicable costs. Although it is rare to conclude a guarantee would be met in full where the guarantor ceases trading, we have seen cases where this conclusion is justified.
What value of investments in group subsidiaries and other group assets can be relied on?	Due diligence will include a full breakdown and stress testing of the asset on the sale basis required to discharge the guarantee. We have seen examples of assessments simply based on carrying value in accounts or taking little account of the need to sell in a restricted timescale.
Can the guarantor control the income stream of connected parties required to meet the Realisable Recovery?	Trustees may need to assess the ability to obtain value where this flows from other group companies to the guarantor. We have seen situations where trustees appear to have relied on consolidated accounts without considering where value actually lies in the group, or on broad assumptions that other group companies will deliver value if required. Trustees should consider whether group companies have the legal ability, or cash liquidity, to make payments back to the guarantor. We have also seen value attributed to group companies which are subsidiaries of employers assumed insolvent – and who if they remained trading might be used for the benefit of the employer's creditors.
Is the view that the guarantor could meet the guarantee dependent on an assumption about a recovery from the insolvent employer?	The Board recognises guarantees whose existence reduces risk. A recovery from the employer which would be available in any event to the pension scheme does not provide additional value.
What would happen to the value of assets held within the group in a group-wide insolvency scenario?	Trustees should think carefully about how such a scenario would be viewed by the market. In particular, they should consider the impact on the realisable value of the guarantor or wider group's assets in a 'fire sale' scenario.
What is the scheme structure? For example is it sectionalised?	Trustees should consider whether the scheme structure would impact on the guarantor's ability to meet its obligations under the agreement.
Is the guarantor reliant, wholly or partially, on group cash pooling arrangements?	Trustees should think carefully about the extent to which the guarantor may be competing with other entities for a share of these funds on employer insolvency and the amount it could realistically expect to obtain in practice.

Are there any planned group activities in the coming levy year, for example a restructuring?	While the trustees may consider the guarantor's positon to be currently robust, they should consider the impact of any planned corporate transactions or restructurings, in particular whether this would affect the flow of funds around the group or result in the guarantor taking on liabilities from elsewhere, or whether a financially strong entity is being sold out of the group which may remove access to a key resource from the guarantor.

7 Professional advisers' duty of care

7.1 The Board needs to be able to place reliance on the guarantor strength report produced for levy purposes. The Board's intention in seeking a duty of care is not to seek to create an absolute liability in the event of the failure of a guarantor to meet its obligations, but rather to protect the Board against the risk of the report being negligently produced. The Board's concern, in respect of the possible loss, is the levy reduction that would be inappropriately granted for the year to which the report pertains if a report was not produced to proper standards.

7.2 With this is mind, this Guidance Note specifies that wording substantially in the following form as required statements for advisers to include in their report:

- "*This Guarantor Strength Report is for the purposes of the consideration by [name of trustees] of the financial strength of [name of guarantor/s] in respect of a Type A Contingent Asset to be certified by [name of trustees], and is to be provided to the Board of the PPF".*
- *"We accept a duty of care to the PPF in relation to the Guarantor Strength Report and acknowledge that the Guarantor Strength Report may be relied upon by the PPF for the purpose of calculating the PPF levy for [name of scheme]. We are providing this Guarantor Strength Report on the basis that it will not be relied on by the Board of the PPF for any other purpose, acknowledging that nothing in this report purports to exclude liability to the Board of the PPF in the event of the Board of the PPF undertaking any actions or proceedings pursuant to Schedule 6 of the Pensions Act 2004".*
- *"We confirm that we have taken into account the Board's published Guidance in relation to Contingent Assets when preparing this Guarantor Strength Report".*

7.3 This Guidance Note also requires that advisors confirm that they have apropriate professional indemnity cover in place. This cover should be appropriate given the nature of the work in producing a Guarantor Strength Report. The following wording is suggested (which may need to be modified for individual circumstances):

- *"We confirm that [name of adviser] has insurance cover of £[ ] in place in respect of the advice given in this Guarantor Strength Report, and that it is our understanding that this cover is appropriate in respect of the production of a Guarantor Strength Report. We confirm that the level of £[ ] is at or above any relevant specified minimum required as a matter of*

professional conduct".

7.4 If the Guarantor Strength Report seeks to place a financial limit on liability to the Board, any limit should be set at or above the level of levy reduction that would apply if the contingent asset were accepted. The following form of words should be used:

- *"The duty of care accepted at paragraph [x] above is subject to a limit of liability of [£], which is at or above the level of levy reduction that would apply if the contingent asset were accepted. For the avoidance of doubt, nothing in this Letter is intended to exclude or restrict any liability that cannot be excluded or restricted by law or regulations."*

7.5 If the guarantor strength report seeks to place a temporal limit on liability to the Board, a limit is permissible in line with the common six-year limit on liabilities. The following form of words should be used:

- *The duty of care at paragraph [x] above is accepted on the basis that no action or proceedings shall be commenced by the Board of the PPF in connection with any levy reduction granted as a result of this Guarantor Strength Report beyond the expiry of six years from the date of this Guarantor Strength Report".*

7.6 Where an adviser relies upon a report from a third party adviser, it should either accept a duty of care in relation to that third party report or indicate that that report contains a similar clause.

8 Timeframe for submitting Guarantor Strenth Report

8.1 For the 2018/19 Levy Year, the Contingent Asset Appendix specifies that the guarantor strength report must be provided to the Board before the Measurement Time (which is 5.00pm on 29 March 2018). Where no report is received from a scheme over the reporting threshold, our standard approach will be to reject the scheme's contingent asset.

8.2 We consider the above approach to be reasonable on the basis that we expect the professional advisers of schemes likely to be over the reporting threshold to have produced an estimate of the levy benefit to be gained from submitting the contingent asset in advance of certification. However, we also recognise that there may exceptionally be cases where an estimate may not ultimately be accurate, for example where Experian identify information which means an employer or guarantor's score should be retrospectively recalculated, and this information results in the levy benefit ultimately exceeding the threshold.

8.3 In the above circumstances, we may choose to exercise our discretion to accept a late guarantor strength report. Factors we may take into account are likely to include where a scheme provides evidence to demonstrate (a) that it had obtained an estimate of the levy benefit in advance which showed that the reporting threshold would not be met, (b) that the estimate was based on reasonable assumptions, and (c) that the scheme trustees therefore had reasonable grounds for assuming that it would not be necessary to obtain a guarantor strength report. We expect that cases falling into this category will however be unusual. For example, where we consider that the estimate was unrealistic and that it should have been clear the reporting threshold might be exceeded, we may decide not to recognise the scheme's contingent asset in the levy calculation. We would, for example, suggest that if the scheme identifies that it is close to the threshold it

would be appropriate to obtain a report. In the event that a scheme does become aware of a change in circumstances that means the levy benefit would be above the threshold, we expect the scheme to act promptly to commission a report and to notify us.

9 The Board's assessment of guarantor strength reports

9.1 Submitted reports will be assessed on a pass/fail basis by the Board, to confirm whether they had been obtained by the certification deadline and whether they meet the provisions of this Guidance Note.

9.2 For schemes that do not provide a guarantor strength report meeting the requirements, the Board expects to:

(a) Select a proportion of contingent assets for detailed review.

(b) Where the Board requires further information, it will ask trustees to justify in detail that the guarantor would genuinely be able to pay a sum up to the level of the Realisable Recovery certified, assuming the employer is insolvent.

(c) Evaluate that detailed information with input from an external financial advisor experienced in insolvency and pensions, together with other information available to it, to determine whether the contingent asset's recognition in the levy would be reasonably consistent with the risk reduction offered.

9.3 A key issue that the Board will consider is whether meeting the Realisable Recovery would be likely to trigger the insolvency of the guarantor, because this would reduce the likelihood that the guarantee could be satisfied. For example, where the sale of the guarantor's assets to meet the Realisable Recovery would mean that the guarantor was unable to continue its business, in reality the guarantor's resources may be used to meet its own liabilities. In this situation, the likelihood of the scheme receiving payment in full under the guarantee would be reduced, and consequently there would be no real reduction in risk to the Board.

9.4 The Board therefore expressly considers, where a guarantor is also an employer, whether it could meet its certified obligations in respect of the other guaranteed employers while continuing to trade or, in the event it ceased trading, whether it could meet both its own section 75 debt and the Realisable Recovery.

9.5 The Board does not intend to provide further details about how it will select cases for further investigation of guarantor strength (which may include an element of random testing). The focus of trustees and advisers should be on whether the guarantor is good for the Realisable Recovery, not whether it is good enough to escape detailed scrutiny.

9.6 In carrying out its detailed assessment, the Board may:

(a)Use financial data regarding the guarantor.

(b) Assess the guarantor by reference to its accounts on both a standalone and a consolidated basis.

(c)Consider which assets of the guarantor are intangible or illiquid assets, and whether they can be realised for value.

9.7 This is not an exhaustive list and we may consider other appropriate information

in making our assessment. The Board expects to use the analysis that the trustees have done as the basis for assessing the guarantors, provided that this provides sufficient evidence as to the value of the guarantor. In particular, trustees should be aware that the higher the Realisable Recovery certified, the higher the threshold for providing satisfactory evidence will be to demonstrate that, in the circumstances, the guarantor could meet that sum.

10 Partial recognition of Type A contingent assets

10.1 Type A guarantees with guarantors unable to meet the Realisable Recovery will, in general, be wholly rejected even where the contingent asset may be considered to have some value. If the Board were to partially recognise a contingent asset for less than the value (or not all the guarantors) that had been certified, this could encourage the use of under-resourced guarantors (e.g. listing a series of guarantors of varying substance and levy rate) on the assumption that the scheme would get at least partial credit.

10.2 The Board may partially recognise a recertified or new contingent asset if all the circumstances justify it and if 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 the previous levy year.

10.3 The Board's intention is that it will only partially recognise a contingent asset in exceptional circumstances. It is not a mechanism to enable schemes which have certified at an unrealistic level to have a second opportunity to secure recognition in circumstances where they could reasonably have been expected to have certified a lower Realisable Recovery at the outset.