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PART 1 — PRE APRIL 2008 POWERS OF THE PENSIONS REGULATOR TO PIERCE THE CORPORATE VEIL

A. Contribution notices

The Pensions Regulator may serve a contribution notice on an employer under, or persons connected or associated with an employer under, a funded tax approved defined benefit pension scheme where the person is a party to an act or a deliberate failure to act and the Pensions Regulator is of the opinion that the main purpose or one of the main purposes of the act or failure was:

> to prevent the recovery of the whole or any part of a debt which was or might become due from the employer in relation to the scheme under Section 75 of the Pensions Act 1995 or otherwise than in good faith to prevent such a debt becoming due or compromise or otherwise settle such a debt or to reduce the amount of such a debt which would otherwise become due; and

> the Pensions Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.

There is useful authority in a case involving the T&N Retirement Benefits Scheme where the court held that an administrator’s decision to cause the company in administration to cease to participate at a time when:

> it resulted in a lesser debt becoming due under Section 75 than

> would have been due if participation had continued and a future cessation occurred,

was a decision taken in good faith and thus, the court suggested, on a non-binding basis, could not give rise to a contribution notice.

B. Financial support directions

The Pensions Regulator may issue a financial support direction against an employer under, or persons connected or associated with an employer under, a funded tax approved defined benefit scheme where:

> the employers in relation to the defined benefit scheme are “insufficiently resourced” to meet their respective shares of the obligations of the scheme, or

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1 Section 38 of the Pensions Act 2004.
2 See Appendix 2 for a description of when a person is connected or associated.
3 [2004] 75 PBLR.
4 The changes in the Pensions Bill currently before Parliament propose the removal of this ‘good faith’ exception.
5 Section 43 of the Pensions Act 2004.
6 See Appendix 2 for a description of when a person is connected or associated.
The Pensions Regulator (Financial Support Directions etc) Regulations 2005 (the “FSD Regulations”), which came into force on 1 September 2005, provide that “insufficiently resourced” is where:

- the value of “resources of an employer” is less than
- 50% of the estimated Section 75 debt in relation to the scheme, and
- another associated or connected person\(^8\) has sufficient resources which, when added to those of the employer, result in aggregate resources of at least 50% of the estimated Section 75 debt.

The “resources of an employer” is defined in the FSD Regulations as the employer’s value excluding relevant pensions scheme related balances and any subordinated liabilities together with any related fair value differences. This is further explained by a 3 stage formula set out in the regulations, which is summarised in Appendix 1 to this note.

Consideration would need to be given to the amount of the employer’s resources for the purpose of the FSD Regulations in comparison with the estimated share of the buy-out deficit recoverable from each employer.

Unless an employer is a service company, if the resources of each employer were at least equal to 50% of the share of the estimated buy-out deficit statutory debt arising under Section 75 of the Pensions Act 1995 recoverable from the employer in question, the Pensions Regulator would not have the power to issue a financial support direction.

Where the employer:

- is a service company, or

the Pensions Regulator may, under a financial support direction, require other group companies:

- to be jointly and severally liable for the employer’s obligations to the scheme, or
- to accept liability,

\(^7\) In summary, a service company is defined in Section 44(2) of the Pensions Act 2004 as being a company within a group of companies the turnover of which, as shown in its latest available accounts, is derived solely or principally from amounts charged for the provision of services of employees of that company to other members of the group. It is also necessary for the company to be a company within the meaning of Section 735(1) of the Companies Act 1985 (normally a company formed and registered under that Act or under one of the previous UK Companies Acts as distinct from an overseas company).

\(^8\) The Pensions Bill changes currently before Parliament propose that this test be changed so that the 50% resources threshold can be met by adding the resources of more than one connected or associated person (who are connected or associated with each other) to those of the employer.
if he is of the opinion that it is reasonable to impose the requirements of the direction on that person.

In deciding whether it is reasonable to impose the requirements of a financial support direction on a particular person, the Pensions Regulator must have regard to such matters as it considers relevant including:

> the relationship which the person has or has had with the employer – for example is it a parent company of the employer;

> the value of any benefits received directly or indirectly by that person from the employer – for example has the person received assets or dividends or shared common security or cash flow arrangements or gained tax advantages;

> any connection or involvement which the person has or has had with the scheme, for example was it a trustee or employer of the scheme;

> the financial circumstances of the person; and

> such other matters as are prescribed by Regulations.

Note: The Pensions Regulator may consider other matters such as the status of the scheme.

It is, perhaps, worth repeating the words of the Pensions Minister when the legislation was being debated in Parliament:

“For example, joint and several liability for pension liabilities could be applied across the whole company group, so that the debt in the event that the scheme should wind up in the future could be claimed against any member of the group. Alternatively the ultimate parent company in the group, whether or not participating in the scheme, could agree to meet the withdrawing employer’s pension liabilities if the scheme were to wind up in the future”.

Examples of how the Regulator’s powers might be used include:

Example 1:

> a group (G) buys a trading company (C) from another group. C has a defined benefit scheme under which accrual has already stopped.

> G runs the newly acquired company as an independent entity with no assets or liabilities transferred to other group companies but C subsequently becomes insolvent with the pension scheme in deficit on a wind-up basis.

To date nothing has been prescribed.
In determining whether an FSD should be issued the Pensions Regulator would take account of the fact that C has made no profit, no assets have been transferred from C to G or any other members of the group and no liabilities have transferred from G or any other members of the group to C.

In all the circumstances of this example, the guidance would suggest it would not be reasonable for the Pensions Regulator to issue an FSD.

Example 2:

A holding company (A), with three separate subsidiaries, (B) (C) and (D) requires a further subsidiary – company X.

Company X has a final salary pension scheme which is funded on an on-going basis in line with the scheme specific funding requirements and is merged with company B involving a transfer of employees and assets to create a single entity XB.

XB becomes the principal employer to the final salary pension scheme and then subsequently goes into liquidation.

In these circumstances the Pensions Regulator would consider the relationship which each of A, C and D had with XB including the issue of control, whether they received any benefits from XB, and their connection with XB’s scheme.

In this example, if A, C and D have been receiving benefits from XB and have control of it, the Pensions Regulator may consider it reasonable to issue an FSD.

Where a person does not comply with a financial support direction, the Pensions Regulator may issue a contribution notice requiring that person to pay a specified amount to the pension scheme.

The notice may only be issued if the Pensions Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.

The Pensions Regulator must have regard to whether:

- that person has taken reasonable steps to secure compliance with a financial support direction;
- the relationship between that person and the employer;
- their relationship with the parties to any arrangements put in place in accordance with the financial support direction;
- any connection or involvement which the person has or has had with the scheme;
the financial circumstances of the person; and

such other matters as may be prescribed by Regulations⁹.

The amount of the sum specified in the notice will be, where no debt is then due under Section 75, the amount which the Pensions Regulator estimates to be the amount of the debt under Section 75 which would become due if a debt were to become due under that section.

The sum specified in the notice will then be treated as a debt due from the person to the trustees or managers of the scheme. However the notice may specify that the person to whom it has been issued is jointly and severally liable for the debt with any other persons specified in the note to whom corresponding contributions have been issued.

⁹ To date nothing has been prescribed.
PART 2 — PENSIONS ACT 1995, SECTION 75: NEW REGULATIONS EFFECTIVE FROM 6 APRIL 2008

The new Employer Debt Regulations were laid before Parliament on 14 March and are expected to come into force on 6 April 2008.

A. Minor changes to trigger events

The current trigger events for a section 75 debt are:

> employer ceasing to have active members in pension scheme (an employment cessation event) – typically applies where share sale of that employer (or its parent) but pension scheme left with retained group or where sale of assets of that employer and it has no remaining business post sale;

> insolvency event applies to employer (as defined);

> pension scheme starts to wind up.

These concepts are unchanged although the detail of the first event is slightly changed. A new concept of a grace period of up to 12 months is introduced where an employer runs out of employees but intends to hire new ones.

The existing exception where all employers terminate simultaneously is retained.

B. No change to basic calculation method

On an employment cessation event, the basic method for calculating the debt is A/B x C where:

> A is the departing employer’s liabilities on the buy-out basis;

> B is the liabilities of all current employers on the buy-out basis; and

> C is the pension scheme deficit (i.e. total scheme liabilities less total scheme assets) on the buy-out basis.

This method ensures that the departing employer pays its share of “orphan” liabilities – i.e. those not referable to it or another current employer.

That is unchanged but there are more provisions as to the detail of the calculation which should enable actuaries to give the requisite section 75 certificate more readily. Helpfully, some of these provisions apply to pre 6 April 2008 trigger events.

An important improvement (for the employer) is that any transfer-out of an employer’s liabilities (not including “orphan” liabilities) to another scheme within 12 months after the trigger event automatically reduces the section 75 debt if the employer so notifies the Trustee. Previously this reduction only applied if an AWA (see below) was entered into (requiring Trustee consent and Pensions Regulator approval). Some trust deeds enable a transfer-out without Trustee consent.
and, even if Trustee consent to the transfer-out is required, this is often likely to be a way of reducing the section 75 debt that is acceptable to the Trustee. In deal terms there is then likely to be more focus on requiring a purchaser to establish a suitable scheme so that such a transfer can be made.

C. Ways of reducing or eliminating the section 75 debt

The current methods are:

> override added to scheme trust deed and rules (trustee consent needed usually but a significant minority of schemes have evergreen overrides already added); or

> “approved withdrawal agreement” (an AWA) under which the obligation to pay most or all of the debt is in effect assigned to (usually) one of the remaining employers (referred to in the legislation as the “guarantor”) to be paid when the scheme winds up or ceases to have active members or when the Pensions Regulator determines. This was used rarely in practice because of the difficulty of satisfying the prescribed financial test (which required the “guarantor” to be “more likely” to be able to satisfy the debt than the departing employer).

Existing scheme overrides will cease to apply except where:

> a transaction is considered before 14 March 2008 by the board of directors of a party to the (sale) agreement or a connected or associated person of that party – usually that will equate to the employer or a group company of the employer;

> it is entered into on the basis that the scheme override will apply;

> the sale agreement is signed before 6 April 2009;

> the employment cessation event (normally Completion) takes place before 6 April 2009.

The loss of existing scheme overrides for employers whose schemes have these (and where this transitional provision does not apply) will normally increase the amount of the section 75 debt that is triggered.

New scheme overrides (called scheme apportionment arrangements) will be possible subject to trustee consent provided a prescribed funding test is met. The test may require the trustee to recalculate the scheme’s technical provisions.

The approved withdrawal agreement method is retained in a broadly similar way but the difficult financial test (the “more likely” test) has been removed. In addition, a new “withdrawal agreement” route is prescribed which, although it requires trustee consent, does not require Pensions Regulator approval.
We have experience of negotiating scheme overrides and approved withdrawal agreements under the existing regime. If anything the new Regulations should mean that these are potentially available more often from 6 April 2008 – i.e. that their use should not be blocked because of a technical hurdle. But the continued need for Trustee consent (and for AWAs, Pensions Regulator approval) means that if it is proposed not to pay a section 75 debt in full but rather to use one of these mechanisms, early engagement with the Trustee (and if appropriate the Pensions Regulator) will be necessary. Although it is possible to apply, before the trigger event, to the Regulator for a suspension of the debt that would otherwise arise on the trigger event, so that agreement can be reached on reduction after the event, this is not normally in the employer’s interest as its negotiating position is likely to be prejudiced by the event having already taken place.

D. “Former employers”

A pitfall is that the scope of “former employers” has been widened. It will be important to check whether, once an employer has ceased to participate, it remains a “former employer”, and exposed to the contingent debt of future section 75 events under the pension scheme.
PART 3 — “MATERIAL DETRIMENT” TEST FROM 14 APRIL 2008

A. The April 2008 announcements

The Government announced in April 2008 that the Pensions Regulator was to be given new powers with effect from 14 April 2008. The policy reason for this was a concern that some transactions involving the transfer of pension liabilities potentially prejudice pension scheme members and a desire for the Pensions Regulator to be able to require parties to those transactions to make contributions to such schemes. Examples include the transfer of the pension scheme to a non insurance company pension provider and the removal of the operating business from the sponsoring employer with the pension scheme remaining behind.

The unusual result of this was a change in legislation but without the changes being known. In an effort to reassure, the Pensions Regulator made a simultaneous announcement to the effect that “during” the period until legislation was passed, it would not exercise the new powers except in specified situations (see Appendix 3). Some of these specified situations are clearly linked to the policy intent but others are unhelpfully broad in their wording (see further below).

B. Draft legislation now published

Draft legislation for the new powers has only now (20 October) been laid before Parliament in the form of additions to the current Pensions Bill. These powers are to be exercised in accordance with a new Pensions Regulator Code of Practice which itself must be approved by Parliament – no draft has yet been published but a draft bullet point list of example problem transactions has been. This is similar to the list of specified situations in the April 2008 announcement.

There is plenty of scope for amendment to the draft provisions following parliamentary debate. Legislation and a final Code of Practice are likely to be some months away.

C. Potential scope of draft legislation

Despite the relatively confined policy intent, the draft language of the Pensions Bill is widely drawn. So, once it and the Code of Practice have been finalised, parties to transactions which could fall within the wide scope of the provisions and who do not want to risk Regulator action will need either to rely on the Code of Practice or make a formal clearance application to the Pensions Regulator in advance. But, because the Pensions Bill and the Code of Practice once finalised are to apply retrospectively to 14 April 2008, it is important to continue to consider these new Pensions Regulator powers for current transactions and any which take place before the Pensions Bill and the Code of Practice have been finalised.

11 The DWP announcement stated “The particular focus of the Government’s attention is the launch of new business models which, among other features, may look to sever the link between the employer and the pension scheme in order to operate well-funded occupational pension schemes for profit.”

12 We believe that this is intended to mean in respect of acts or failures to act which occur during the intervening period although that is not the language used.
The draft Bill and draft bullet point list of example problem transactions published by the Regulator indicate which types of transaction are likely to need careful consideration and also help to flesh out the April 2008 Pensions Regulator announcement as to the situations in which its commitment not to exercise its new powers in the intervening period would not apply. We have not included the draft bullet point list in this note as it is in draft and may change and the Pensions Regulator’s stated position is that the April 2008 announcement remains in force. It is however worth noting one example from the list which expands on what “splitting the assets from the operating company” might mean – see Appendix 4.

The real difficulty here is the difference between the stated policy intent and the breadth of the powers as drafted. If the Code of Practice once finalised reflects the policy intent then it will be much easier to take a more relaxed view in many commercial transactions. Until that time, a party’s appetite for risk will determine whether to proceed as normal by relying on the stated policy intent or to seek advance Pensions Regulator clearance.

D. Framework of new power

The new power is described as an extension of the Pensions Regulator’s existing power to issue “contribution notices” and in legislative terms what is proposed are amendments to section 38 of the Pensions Act 2004, being the section dealing with contribution notices.

These are to be contrasted with the Regulator’s power to issue financial support directions, dealt with under section 43. There are also some less significant changes to the financial support directions regime – see footnotes 4 and 8 above.

The existing contribution notice regime is an anti-avoidance regime in relation to section 75 debts – i.e. the debts due from employers under section 75 of the Pensions Act 1995 where an employer ceases to participate in a pension scheme (e.g. on a sale where the pension scheme is retained by the seller’s group), on employer insolvency or on scheme winding-up. A contribution notice allows the Pensions Regulator, provided it considers that it is reasonable in accordance with specified conditions to do so, to require the employer or any connected or associated person of the employer (see below) who has been party to or knowingly assisted in the avoidance to make a payment equal to the section 75 debt to the scheme. The section 75 debt due by an employer is that employer’s share of the total scheme deficit calculated on the buy-out basis; as a rule of thumb, actuaries will tend to value liabilities on a buy-out basis as up to 1.4 times the liabilities calculated on an accounting basis although this ratio can vary materially from scheme to scheme and by reference to prevailing market conditions.

E. Extension of contribution notice regime – “material detriment” test

The same structure as the existing contribution notice regime for avoidance of section 75 debts is adopted – i.e. the amount required to be paid is up to the employer’s share of the section 75 scheme deficit, any connected or associated person (including individual directors) of the employer who is party to or knowingly assists in the act or failure to act can be required to pay, individual directors can be made personally liable and the look back period is 6 years.
The key point is the new trigger for application of the contribution notice regime which has nothing to do with section 75 avoidance. So, although in the past one could conclude that, in the absence of a section 75 debt situation, section 38 could be ignored, that is no longer the case. The trigger looks solely at the consequence of a person’s act or failure to act and not the purpose. The draft test is as follows:

“For the purposes of section 38 the material detriment test is met in relation to an act or failure if the Regulator is of the opinion that the act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise).”

The Pensions Regulator is required to act reasonably and have regard where relevant to specified factors. In addition, there is a statutory defence for those who have given due consideration to the act or failure to act and reasonably concluded that no material detriment would result – we expect that this will, if enacted as drafted, only be useful in limited situations.

**F. Transactions likely to require careful consideration**

We would say that the following types of transaction in particular are transactions where consideration should be given to the risk of the Pensions Regulator exercising this new contribution notice power. Consideration should be given to applying for clearance from the Pensions Regulator to seek confirmation that such power would not be used in relation to the transaction in question:

- an employer or its subsidiary granting security over assets, giving a guarantee, or incurring or increasing debt, in each case of a material amount in the context of the size of its pension scheme whether or not as part of a takeover or sale/purchase;
- an employer exiting a pension scheme (e.g. on sale or demerger) without paying a section 75 debt;
- distribution of capital by the employer either intra group or to ultimate shareholders of a material amount in the context of the size of its pension scheme;
- migration of an employer or its parent or group to an overseas jurisdiction;
- a significant change towards return seeking investments in pension scheme investment strategy;
- a pension scheme merger;
- an exercise to encourage deferred members to transfer-out their benefits from the scheme.

To repeat the point made above, the real difficulty here is the difference between the stated policy intent and the breadth of the powers as drafted. If the Code of Practice once finalised
reflects the policy intent then it will be much easier to take a more relaxed view in many commercial transactions. Until that time, a party’s appetite for risk will determine whether to proceed as normal by relying on the stated policy intent or to seek advance Pensions Regulator clearance.

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November 2008

Should you wish to discuss the issues raised in this note in more detail, please contact Charles Cameron (charles.cameron@slaughterandmay.com) or Sandeep Maudgil (sandeep.maudgil@slaughterandmay.com) in the Pensions & Employment group or your usual Slaughter and May contact.

This note is not intended to provide legal advice. Further legal advice should be taken in relation to any specific situation.
APPENDIX 1
FORMULAE FOR CALCULATING THE “RESOURCES OF THE EMPLOYER” IN THE PENSIONS REGULATOR (FINANCIAL SUPPORT DIRECTIONS ETC) REGULATIONS 2005

A. The 3 stages

1. **Stage 1**

Stage 1 = (NA +/- P) + Se

Where:

- **NA** = the net assets of the employer (being the aggregate of assets less liabilities) from the latest statutory accounts;
- **P** = the relevant pension scheme related balances meaning the assets or liabilities included in the latest statutory accounts which relate to the scheme;
- **Se** = the subordinated liabilities meaning any liability included in the latest statutory accounts which in a winding up of the employer would rank behind the unsecured creditors.

2. **Stage 2**

Stage 2 = Stage 1 + the identified FVD

Where **FVD** = the fair value difference meaning the difference between the fair value of an asset or liability at the calculation date and the value in the latest statutory accounts.

3. **Stage 3**

Stage 3 = Stage 2 + the identified EVD

Where **EVD** = the entity value difference meaning the difference between the employer value at the calculation date and the aggregate of that employer’s net assets as set out in the latest statutory accounts and any identified FVD.

B. Points to note on the 3 stages

1. If the Stage 3 value is at least 50% of the estimated buy-out deficit in relation to the Scheme, then the employer will not be “insufficiently resourced” and the Pensions Regulator will not have scope to issue a financial support direction.

2. Please note the above is the summary of the steps set out in the FSD Regulations.

3. It is also worth emphasising that calculations under any of the 3 stages will only be accepted by the Pensions Regulator if:

   > they have been approved by the board of directors of the employer in question and supported by a statutory declaration signed on behalf of the board by a director to the
effect that, in the board’s opinion, the calculation of value fairly reflects the value of the resources of the employer at the calculation date as calculated in accordance with the FSD Regulations;

> it is accompanied by appropriate supporting evidence; and

> it is accompanied by a report from a reporting accountant to the effect that, in the opinion of the reporting accountant, the calculation of the value of the resources of the employer has been compiled in accordance with the underlying assumptions and calculations accompanying the statutory declaration and that the calculation is consistent with the provisions of the FSD Regulations.
APPENDIX 2
CONNECTED AND ASSOCIATED PERSONS

1. A contribution notice may be served on a person who is connected with, or an associate of, an employer under a defined benefits occupational pension scheme. A contribution notice may be served on such a person in relation to any act or failure to act which occurred in the six years preceding the Regulator’s determination to issue the notice.

2. A financial support direction may be served on a person, other than an individual, who is connected with, or an associate of, an employer under a defined benefits occupational pension scheme. A financial support direction may be served on a person who satisfied this description at any time during the 12 months preceding the Regulator’s determination to issue the direction.

3. A person is a connected person of an employer if:

   (A) he is a director or shadow director of an employer or an associate of such a director or shadow director;

   (B) he is an associate of the employer.

4. The term “associate” is given the definition used in section 435 of the Insolvency Act 1986, which is as follows:

435 Meaning of “associate”

(1) For the purposes of this Act any question whether a person is an associate of another person is to be determined in accordance with the following provisions of this section (any provision that a person is an associate of another person being taken to mean that they are associates of each other).

(2) A person is an associate of an individual if that person is-

   (a) the individual’s husband or wife or civil partner,

   (b) a relative of-

      (i) the individual, or

      (ii) the individual’s husband or wife or civil partner, or

   (c) the husband or wife or civil partner of a relative of-

      (i) the individual, or

      (ii) the individual’s husband or wife or civil partner.
(3) A person is an associate of any person with whom he is in partnership, and of the husband or wife or civil partner or a relative of any individual with whom he is in partnership; and a Scottish firm is an associate of any person who is a member of the firm.

(4) A person is an associate of any person whom he employs or by whom he is employed.

(5) A person in his capacity as trustee of a trust other than-

   (a) a trust arising under any of the second Group of Parts or the Bankruptcy (Scotland) Act 1985, or

   (b) a pension scheme or an employees’ share scheme (within the meaning of the Companies Act),

is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person.

(6) A company is an associate of another company-

   (a) if the same person has control of both, or a person has control of one and persons who are his associates, or he and persons who are his associates, have control of the other, or

   (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate.

(7) A company is an associate of another person if that person has control of it or if that person and persons who are his associates together have control of it.

(8) For the purposes of this section a person is a relative of an individual if he is that individual’s brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating-

   (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of any person as his child, and

   (b) an illegitimate child as the legitimate child of his mother and reputed father;

and references in this section to a husband or wife include a former husband or wife and a reputed husband or wife and references to a civil partner include a former civil partner and a reputed civil partner.
(9) For the purposes of this section any director or other officer of a company is to be treated as employed by that company.

(10) For the purposes of this section a person is to be taken as having control of a company if-

(a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions, or

(b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it;

and where two or more persons together satisfy either of the above conditions, they are to be taken as having control of the company.

(11) In this section “company” includes any body corporate (whether incorporated in Great Britain or elsewhere); and references to directors and other officers of a company and to voting power at any general meeting of a company have effect with any necessary modifications.
APPENDIX 3
EXTRACT FROM APRIL 2008 PENSIONS REGULATOR ANNOUNCEMENT

> moving the employer or pension scheme to another jurisdiction;

> splitting the operating company from the pension scheme without appropriate mitigation for the pension scheme;

> splitting the assets from the operating company without appropriate mitigation for the pension scheme;

> transferring scheme assets and liabilities to another scheme which did not have adequate support from an employer;

> running a scheme for profit without adequate account being taken of member interests;

> business models in which risk is predominantly borne by scheme members, but high investment returns would benefit investors.
APPENDIX 4
EXTRACT FROM DRAFT BULLET POINT LIST RE NEW CODE OF PRACTICE

“The severing of employer support for the scheme so that employer support is removed, substantially reduced or becomes nominal.”

“Employer support” is a product of:

(i) the scheme obligations of the employer or any other person, and
(ii) the likelihood of recovery in full for the scheme under the scheme obligations so that if either or both of (i) and (ii) is reduced there is an overall reduction in employer support.”

“Scheme obligation” means a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to:

(a) the scheme, or
(b) any relevant transferee scheme in respect of any persons who were members of the scheme before the relevant time.”
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