

**UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION**

**THE PETITION**

of

**NATIONAL WESTMINSTER BANK Plc**, a public company registered in England and Wales under the Companies Acts with the registered number 929027 and with its registered office at 135 Bishopsgate, London, EC2M 3UR;

and

**NATWEST MARKETS Plc**, a public company registered in Scotland under the Companies Acts with the registered number SC090312 and with its registered office at 36 St Andrew Square, Edinburgh, EH2 2YB;

for

Sanction of a ring-fencing transfer scheme under Part VII of, and Schedule 12 to, the Financial Services and Markets Act 2000 and under which the customer derivatives business of National Westminster Bank Plc is to be transferred to NatWest Markets Plc

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## HUMBLY SHEWETH:

### Introduction

#### *The Petitioners*

- 1.1.1 The first petitioner, National Westminster Bank Plc (“**NatWest**”), is a public company which is limited by shares and is registered in England and Wales, under the Companies Acts, with the registered number 929027.
- 1.1.2 NatWest’s registered office is at 135 Bishopsgate, London.
- 1.2 NatWest is a member of the group of companies (“**the RBS Group**”), of which The Royal Bank of Scotland Group plc (“**RBSG**”) is the parent company and members of which are referred to in this application as “**RBS Group Companies**”.
- 1.3 NatWest is “*a UK authorised person*”, within the meaning of sections 31 and 105(8) of the Financial Services and Markets Act 2000 (“**FSMA**”).
- 1.4.1 The second petitioner, NatWest Markets Plc (“**NWM Plc**”), is a public company which is limited by shares and is registered in Scotland, under the Companies Acts, with the registered number SC090312.
- 1.4.2 NWM Plc’s registered office is at 36 St Andrew Square, Edinburgh.
- 1.5 With effect from 29th April 2018, NWM Plc’s name was changed from “*The Royal Bank of Scotland plc*” to “*NatWest Markets Plc*”.
- 1.6 NWM Plc is also a UK authorised person.
- 1.7 As at the date of this application, NWM Plc is the indirect parent company of NatWest.
- 1.8 NatWest and NWM Plc are together referred to in this application as “**the Companies**”.

#### *This Application, the Scheme and the Ring-Fencing Provisions*

- 2.1 In this application, the Petitioners seek jointly an order (“**the Sanction Order**”) sanctioning a “*ring-fencing transfer scheme*” (“**the Scheme**”), under Part VII of, and Schedule 12 to, FSMA (“**Part VII**”).
- 2.2.1 The final hearing of this application, at which the Sanction Order is to be sought, is referred to in this application as “**the Sanction Hearing**”.
- 2.2.2 The first hearing of this application, at which the first order is to be sought (“**the First Order**”), is referred to in this application as “**the First Hearing**”.
- 2.3.1 The Scheme is one of the legal processes for implementing the proposals of the RBS Group to alter its operating structure (“**the RBS Group Ring-Fencing Proposals**”), so that it complies with the “*Ring-Fencing Provisions*” of FSMA.
- 2.3.2 The Ring-Fencing Provisions are addressed at Statements 26 to 32.

- 2.4.1 In outline, the overall purpose of the Ring-Fencing Provisions is to separate, by 1st January 2019, the core retail banking services of large United Kingdom (“UK”) banks from their investment and international banking activities.
- 2.4.2 Again in outline, the underlying aim of the Ring-Fencing Provisions is to protect the core retail banking services on which customers rely from risks associated with activities which are carried on outside the “ring-fence”.
- 2.5.1 As set out at Statement 30.9, the Scheme is to be made for one of the purposes of a ring-fencing transfer scheme which are set out in section 106B(3) of FSMA.
- 2.5.2 In outline, the purpose of the Scheme is to enable NatWest to carry on activities only within the ring-fence.

#### *The Scheme and the Transferring Business*

- 3.1 The Scheme is to provide for the transfer to NWM Plc of that part of NatWest’s operations which comprises its “*Customer Derivatives Business*”, namely entering into certain interest rate and foreign exchange derivative transactions.
- 3.2 That business is referred to in the Scheme and this application as “**the Transferring Business**”.
- 3.3.1 Those derivative transactions which the Transferring Business is to include at the time the Scheme becomes effective (“**the Effective Time**”) are referred to in the Scheme, and this application, as “**the Transferring Derivative Transactions**” and are described at Statement 39.
- 3.3.2 However, the Transferring Derivative Transactions are not to include, *inter alia*, those derivative transactions in respect of which counterparties of NatWest have exercised rights under the Scheme to elect that those derivative transactions are to remain with NatWest.
- 3.3.3 Those rights under the Scheme are referred to in this application and the Scheme as “**the Opt-Out Rights**” and are described at Statement 41.
- 3.3.4 The Opt-Out Rights are to be exercised by what is referred to in the Scheme as “**the Opt-Out Date**”.
- 3.4.1 The Transferring Business is also not to include certain other categories of assets and liabilities at the Effective Time, which are referred to in the Scheme and this application as “**Excluded Assets**” and “**Excluded Liabilities**” and which are described at Statement 46.
- 3.4.2 The Excluded Assets and the Excluded Liabilities are together referred to in this application as “**the Excluded Business**”.

- 3.5 That part of NatWest’s operations which is not to be transferred by the Scheme is referred to in this application and the Scheme as “**the NatWest Remaining Business**”.
- 3.6.1 Counterparties under existing contracts with, as well as customers of, NatWest are referred to in this application as “**Counterparties**”.
- 3.6.2 Those Counterparties who are part of the Transferring Business are referred to in this application as “**the Transferring Counterparties**”.
- 3.6.3 Those Counterparties who are not to be within the Transferring Business are referred to in this application as “**the Remaining Counterparties**”.
- 3.6.4 Some Counterparties will be both Transferring Counterparties and Remaining Counterparties.
- 3.6.5 The existing counterparties, and customers, of NWM Plc are referred to in this application as “**the Existing NWM Plc Counterparties**”.
- 3.7 The Scheme is set out in full in the Appendix and is summarised at Statements 38 to 57.

#### *Authority to make the Application and Jurisdiction*

- 4.1 The Petitioners make this application jointly under Part VII and, in particular, section 107(2)(c) of FSMA.
- 4.2 In addition, the Petitioners make this application, in accordance with sections 107(2A) and (2B) of FSMA, with the consent of the Prudential Regulation Authority (“**the PRA**”).
- 4.3 The PRA is, under FSMA, one of the two regulators of authorised persons in the UK.
- 4.4 This Court has jurisdiction over this application and over the Scheme, under section 107(3)(b) and section 107(4)(b) of FSMA.
- 4.5 As set out in Statements 1.1 and 1.4, NatWest has its registered office in England and NWM Plc has its registered office in Scotland.
- 4.6 As has been accepted in, *inter alia*, every application to this Court under Part VII, the reference in section 107(4) of FSMA to “*in Scotland*” is an abbreviated one to a company which is registered in Scotland.

#### *The Main RFTS*

- 5.1 The Scheme is a sequel to another ring-fencing transfer scheme (“**the Main RFTS**”), which was the principal legal process for implementing the RBS Group Ring-Fencing Proposals.

- 5.2 In outline, the Main RFTS provided primarily for the transfer from what is now NWM Plc of its personal and business banking businesses and commercial banking businesses to another RBS Group Company.
- 5.3.1 The name of that RBS Group Company, which was the transferee under the Main RFTS, was then Adam & Company PLC and has, since 29th April 2018, been The Royal Bank of Scotland plc (“**RBS plc**”).
- 5.3.2 RBS plc is a public company, which is limited by shares and is registered in Scotland, with the registered number SC083026 and its registered office at 36 St Andrew Square, Edinburgh.
- 5.3.3 RBS plc is also a UK authorised person and remains, at the date of this application, also an indirect subsidiary of NWM Plc.
- 5.4 In addition, the Main RFTS provided for the transfer to NatWest of what is referred to as “*the Covered Bonds Business*”, together with some other business and certain immovable property which comprised offices and branch premises in England and Wales and Scotland.
- 5.5 The Main RFTS was sanctioned by this Court on 22nd March 2018 and, following further procedure in this Court, became effective on 30th April 2018.
- 5.6 The Covered Bonds Business is addressed at Statement 13 in the context of NatWest’s present operations.
- 5.7 The Main RFTS is otherwise addressed at Statements 34 and 35.

*The RBS Group Ring-Fencing Proposals*

- 6.1 In addition to the Scheme and the Main RFTS, the RBS Group Ring-Fencing Proposals include a reorganisation of the corporate structure of the RBS Group (“**the Legal Entity Reorganisation**”).
- 6.2 The Legal Entity Reorganisation is described at Statement 36.
- 6.3 In order to permit a significant part of the Legal Entity Reorganisation, NWM Plc has also made an application to this Court for the confirmation of a reduction of its share capital and of the cancellation of its share premium account and of its capital redemption reserve (together “**the NWM Plc Reduction**”).
- 6.4.1 It is intended that confirmation of the NWM Plc Reduction is to be sought in the course of this process.
- 6.4.2 Subject to the confirmation of this Court, the NWM Plc Reduction is expected to become effective as soon as reasonably practicable following its confirmation and before the Sanction Hearing.

- 6.5.1 For completeness, ring-fencing transfer schemes by two of the four other principal banking groups in the UK (namely, Barclays and Lloyds) have now been sanctioned by the Companies Court.
- 6.5.2 It is reasonably expected that ring-fencing transfer schemes by HSBC and Santander will be sanctioned by the Companies Court within a month of this application being made.
- 6.5.3 Those other applications and ring-fencing transfer schemes (together “**the Companies Court Schemes**”) proceeded broadly in parallel with the Main RFTS.

#### *Ancillary*

- 7.1 In this application, all references to statutory provisions are to those of FSMA, unless otherwise indicated.
- 7.2 Similarly, all references to Statements, Schedules and Appendices are to those of, or to, this application, unless otherwise indicated.
- 7.3 In this application, a ring-fencing transfer scheme under Part VII is referred to as “**an RFTS**”.
- 7.4 In this application, a banking business transfer scheme under Part VII is referred to as “**a banking scheme**” and an insurance business transfer scheme under Part VII is referred to as “**an insurance scheme**”.
- 7.5 A glossary of the defined terms which are used in this application is included in Schedule IV.
- 7.6 So far as material to this application, and in addition to the Ring-Fencing Provisions, Schedule III sets out those provisions which are referred to in this application, including those of: (i) FSMA; (ii) the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the “**RAO**”); and (iii) the Financial Services and Markets Act 2000 (Control of Business Transfers) (Requirements on Applicants) Regulations 2001 (“**the COBTRA Regulations**”).

#### **NatWest - Share Capital, Constitutional Matters and Authorisation**

- 8.1 At the date of this application, the issued ordinary share capital of NatWest is (i) £1,678,177,493 divided into 1,678,177,493 ordinary shares of £1 each, and (ii) £140,000,000 divided into 140,000,000 non-cumulative preference shares of £1 each, all of which are fully paid up.
- 8.2 All of the ordinary shares are beneficially owned by NatWest Holdings Limited (“**NWH**”), except for two which are registered in the name of N.C. Head Office Nominees Limited, as nominee for NWH.
- 8.3.1 At the date of this application, NWH remains a direct subsidiary of NWM Plc.

- 8.3.2 As described at Statement 36.11, the whole share capital of NWH is to be transferred to RBSG in the course of this application.
- 8.3.3 That transfer will be implemented by the NWM Plc Reduction and will form part of the Legal Entity Reorganisation.
- 8.4 There is nothing in NatWest’s articles of association which would prevent that company entering into the Scheme.
- 8.5.1 NatWest has been granted permission by the PRA, under Part 4A, to carry on, in the UK, business which is regulated under FSMA, including the accepting of deposits, within the meaning of Chapter II of Part II of the RAO.
- 8.5.2 Such a permission is defined in section 55A(5) as a “**Part 4A Permission**”.
- 8.5.3 Accordingly, NatWest is a PRA-authorized person under section 2B(5) and a UK-authorized person for the purposes of sections 105(8) and 106B(6).
- 8.6 For completeness, the conduct of NatWest’s operations is also regulated by the Financial Conduct Authority (“**the FCA**”).
- 8.7 The PRA and the FCA are together referred to in this application as “**the Regulators**”.

## **NatWest’s Operations**

### *Overview*

- 9.1 NatWest is one of the main operating RBS Group Companies.
- 9.2.1 The operations of the RBS Group in the UK and elsewhere in the world, including Europe, the United States of America and Asia, comprise the provision of a range of financial services.
- 9.2.2 In outline, those financial services include retail and commercial banking, debt financing, risk management and investment services to major corporations and financial institutions.
- 9.2.3 The operations of the RBS Group comprise four principal business divisions, which are referred to as “*Franchises*” and each of which is recorded in a “*reportable segment*” which is referred to in the “*RBSG Annual Report and Accounts 2017*”.
- 9.2.4 Those Franchises are “*the Commercial and Private Banking Franchise*”, “*the Personal and Business Banking Franchise*”, “*the RBS International Franchise*” and the “*NatWest Markets Franchise*”.
- 9.2.5 The NatWest Markets Franchise comprises the currencies, rates and financing operations of the RBS Group.
- 9.3 NatWest’s main operations form part of all of those Franchises, except the RBS International Franchise, and comprise personal, private and business banking and commercial banking services.

- 9.4 NatWest has, at the date of this application, approximately 13.6 million Counterparties.
- 9.5.1 The first of NatWest’s business areas is the personal and business banking business area, which forms part of the Personal and Business Banking Franchise.
- 9.5.2 That personal business area includes providing bank accounts, overdrafts, credit cards, mortgages, loans, insurance and investment opportunities to Counterparties.
- 9.5.3 The business banking area includes providing business bank accounts, business saving accounts and business loans and finance to Counterparties, including “*start-ups*” and existing businesses with an annual turnover of up to £2 million.
- 9.6 The second business area is the private banking area, which forms part of the Commercial and Private Banking Franchise.
- 9.7 The third business area is the provision of commercial banking services, which forms part of the Commercial and Private Banking Franchise.
- 9.8 In addition to those three business areas, NatWest operates part of the NatWest Markets Franchise.
- 9.9 For completeness, NatWest’s present operations also include the “*Mentor Business*” which comprises consulting services in environmental and health and safety matters.

*NatWest’s Part of the NatWest Markets Franchise*

- 10.1 This Statement describes that part of NatWest’s operations which forms part of the NatWest Markets Franchise and of which the Customer Derivatives Business forms part.
- 10.2.1 In outline, that part of NatWest’s operations includes entering into derivative transactions with corporate, and institutional, Counterparties for interest rate and foreign exchange derivatives.
- 10.2.2 Some of those Counterparties are smaller companies.
- 10.3.1 A derivative transaction generally involves “*structured*” payments.
- 10.3.2 That means that the amounts payable under that transaction are linked to the performance of an underlying “*reference item*”, such as an interest or foreign currency rate, the value of a pool of securities or the level of an index.
- 10.4.1 Those derivative transactions include “*over-the-counter (“OTC”) derivatives*”.
- 10.4.2 OTC derivatives are types of privately negotiated, bilateral transactions, as opposed to being executed on an exchange.
- 10.4.3 The Transferring Business is to comprise only NatWest’s OTC derivative transactions, which comprise the “*Customer Derivatives Business*”.

- 10.5.1 For completeness, NatWest's part of the NatWest Markets Franchise also includes, at present, NatWest entering into transactions for "*cleared derivatives*".
- 10.5.2 In outline, a cleared derivative is a derivative which has been "*centrally*" cleared.
- 10.5.3 That means that a central counterparty ("**a CCP**") has been contractually interposed between the parties to that derivative.
- 10.5.4 That means, in turn, if one of those parties defaults, the CCP can manage the default in a way which reduces risk to the financial system.
- 10.6.1 However, NatWest's cleared derivative transactions are not to form part of the Transferring Business.
- 10.6.2 That is because those cleared derivative transactions have matured or they will shortly mature, or be transferred to NWM Plc contractually, outside of the Scheme.
- 10.7.1 Finally, the NatWest Markets Franchise also includes what are referred to as "*Stapled Hedge/Loan Arrangements*" with Counterparties.
- 10.7.2 In outline, a Stapled Hedge/Loan Arrangement is one under which NatWest provides lending facilities to the Counterparty and also enters into one, or more, derivative transactions with the Counterparty in order to "*hedge*" risks which arise for the lending facilities, such as a floating interest rate.
- 10.7.3 The lending and derivative transactions may be linked in legal, or only commercial, terms.

*The Contractual Arrangements for the Transferring Derivative Transactions*

- 11.1 The contractual arrangements for NatWest's derivative transactions and, in particular, its OTC derivative transactions are addressed in outline in this Statement.
- 11.2.1 The contractual terms of some of those derivative transactions are set out in one of the 1992, or 2002, versions of "*the master agreements*" which are published by the International Swaps and Derivatives Association, Inc. ("**the ISDA Master Agreements**") and which have been entered into by NatWest and the Counterparty.
- 11.2.2 The ISDA Master Agreements are governed by English law.
- 11.2.3 In practice, the ISDA Master Agreements are subject to agreed amendments between NatWest and the Counterparty.
- 11.2.4 The ISDA Master Agreements may also include what is referred to as "*a Credit Support Annex*" or a "*Margin Supplement*", either of which sets out the terms for the provision, and holding, of "*collateral*" for the derivative transactions under that ISDA Master Agreement.
- 11.2.5 That collateral is a "*title transfer financial collateral arrangement*" within the meaning of the Financial Collateral Arrangements (No. 2) Regulations 2003 (as amended, "**the Financial Collateral Regulations**").

- 11.2.6 That collateral may be used for all derivative transactions which have been entered into under the ISDA Master Agreements.
- 11.2.7 In addition to that collateral, the obligations of Counterparties under derivative transactions may also be secured by rights in security, under the general law, in favour of NatWest.
- 11.2.8 Those obligations of Counterparties may also be supported by other legal rights in NatWest's favour which have the same functional effect as a right in security.
- 11.3 The individual terms of each derivative transaction which is governed by an ISDA Master Agreement are set out in what is called a "*short-form confirmation*".
- 11.4.1 The contractual terms of certain other derivative transactions are set out in what is called a "*long-form confirmation*".
- 11.4.2 A long-form confirmation provides that the transaction is to operate, as if it were governed by one of the ISDA Master Agreements, subject again to any agreed amendments to the published form.
- 11.5.1 In cases where a Counterparty enters into only one interest rate derivative transaction with NatWest, instead of negotiating an ISDA Master Agreement with that Counterparty, the contractual terms of that derivative transaction may be governed by a set of standard, standalone terms ("**the RBS Standalone Derivative Terms**").
- 11.5.2 The RBS Standalone Derivative Terms will include the particular terms of the derivative transaction.
- 11.6.1 In addition, certain other derivative transactions which have been executed on an "*electronic trading platform*", which is referred to as "*the Agile Markets System*", are subject to a further set of standard terms.
- 11.6.2 Those terms are published by NWM Plc, or NatWest, and are referred to as "*the Agile Markets Terms of Business*".
- 11.6.3 In outline, the Agile Markets Terms of Business apply to the use by Counterparties of the Agile Markets System in order to enter into foreign exchange and money market transactions.
- 11.6.4 Where NatWest and a Counterparty have entered into an ISDA Master Agreement, the Agile Markets System will issue an electronic confirmation which is called an "*Agile Markets Short-Form Confirmation*" and sets out the terms of that transaction, which will be governed by that ISDA Master Agreement.
- 11.6.5 Where NatWest and a Counterparty have not entered into an ISDA Master Agreement, the Agile Markets System will issue an "*Agile Markets Long-Form Confirmation*" which provides that each derivative transaction executed via the Agile Markets System is to operate, as if it were governed by the 2002 published version of the ISDA Master Agreement.

- 11.7 Where any derivative transaction is governed by an ISDA Master Agreement, the RBS Standalone Derivative Terms or a long-form confirmation, that derivative transaction may give rights to the parties, in prescribed circumstances, to terminate that transaction, under an event of default or termination event, or to require further collateral.
- 11.8.1 Those circumstances may include what is referred to in the ISDA Master Agreements as a “*Merger Without Assumption*”.
- 11.8.2 In outline, that termination provision is triggered by a transfer by one party of all, or substantially all, of its assets to a transferee, where that transferee does not also assume liability for the derivative transactions governed by the ISDA Master Agreement.
- 11.9.1 Those circumstances may also include what is referred to in the ISDA Master Agreement as “*a Credit Event Upon Merger*”.
- 11.9.2 Again in outline, that term includes a transfer by one party of a substantial part of its assets to another entity in two sets of circumstances.
- 11.9.3 The first set is where the transferee has assumed liability for the derivative transactions governed by the ISDA Master Agreement, but the credit-worthiness of the transferee immediately after that transfer of assets is materially weaker than the credit-worthiness of the transferor immediately before the transfer.
- 11.9.4 The second set of circumstances is where the transferor retains liability for the derivative transactions governed by the ISDA Master Agreement and the transferor has a materially weaker credit-worthiness immediately after the transfer of its assets than immediately before the transfer.
- 11.10.1 For completeness, those circumstances may also include a termination provision, which is “*triggered*” by any material reduction (otherwise “*downgrade*”) in the credit rating which has been assigned to one of the parties to it by one or more credit rating agencies.
- 11.10.2 That type of provision may also be triggered by a transfer to a lower rated transferee.
- 11.11.1 For completeness, the contractual arrangements for NatWest’s derivative transactions also include what are referred to in the Scheme, and this application, as “**Ancillary Documents**”.
- 11.11.2 In outline, the Ancillary Documents include first of all what are referred to in the ISDA Master Agreements as “*Credit Support Documents*”, and any other guarantees.
- 11.11.3 The Ancillary Documents also include any documents referred to in the Scheme as “**ISDA Protocol Agreements**”. Those agreements are used to effect modifications to an ISDA Master Agreement.

- 11.11.4 The Ancillary Documents also include any “*ISDA/FIA EMIR Reporting Delegation Agreements*”. Those are standard form agreements under which a delegate is appointed to report, on the client's behalf, required data to a trade repository or to the European Securities and Markets Authority.

*The NatWest Treasury Business*

- 12.1 In addition to its parts of the relevant Franchises, including the NatWest Markets Franchise, NatWest’s operations also include its own “*Treasury Business*” (“**the NatWest Treasury Business**”).
- 12.2 From later in 2018, the NatWest Treasury Business will also be operated by NatWest for those parts of the RBS Group which are to be within the ring-fence and are described at Statement 36.8.
- 12.3.1 In outline, the NatWest Treasury Business involves the raising of short term and long term funds for NatWest, the hedging of its market exposures and the management of liquidity.
- 12.3.2 Those activities are undertaken in order to be able to comply with the regulatory requirements to which it is subject.
- 12.3.3 Those requirements are described at Statement 16 and, more fully in Schedule II.
- 12.4 The fund-raising element of the NatWest Treasury Business includes the issue by NatWest of notes, bonds, warrants, certificates and other securities.
- 12.5 In order to hedge exposures, including those under the Covered Bonds, the NatWest Treasury Business also includes entering into OTC derivative contracts which are governed by the same types of agreements as those transactions in NatWest’s part of the NatWest Markets Franchise.
- 12.6 The NatWest Treasury Business is not to transfer to NWM Plc as part of the Transferring Business.

*The Covered Bonds Business*

- 13.1 In addition, the NatWest Treasury Business now include the Covered Bonds Business, which was transferred to NatWest under the Main RFTS.
- 13.2 The Covered Bonds Business comprises the operation of “*the Covered Bond Programme*”, which has been admitted to “*the register of covered bonds*” under the Regulated Covered Bonds Regulations 2008.
- 13.3.1 In outline, the Covered Bond Programme is an arrangement, under which a series of debt securities (“**the Covered Bonds**”) have been issued.
- 13.3.2 The Covered Bonds are traded only on the London Stock Exchange and are held in clearing systems.

- 13.4.1 NatWest is the issuer under the Covered Bond Programme and performs other functions under it.
- 13.4.2 Those functions include, through the NatWest Treasury Business, which is described at Statement 12.1, those of “*interest rate swap provider*” and “*covered bond swap provider*”.
- 13.5 The outstanding series of the Covered Bonds remain those listed in the Main RFTS, with the exception of the “*Series 4*” Covered Bonds which did not transfer under the Main RFTS, and which have been repaid in full.
- 13.6 NWM Plc carries out the functions of arranger or underwriter of, dealer in, or holder of Covered Bonds.
- 13.7 As part of the NatWest Treasury Business, the Covered Bonds Business is not to transfer to NWM Plc as part of the Transferring Business.

*The RBS Group Employees and the RBS Group Pension Schemes*

- 14.1 The RBS Group has approximately 52,120 employees in the UK and approximately 19,000 elsewhere (“**the RBS Group Employees**”).
- 14.2 NatWest employs approximately 46,500 of the RBS Group Employees, approximately 45,000 in the UK and approximately 1,500 elsewhere.
- 14.3.1 Until 1st May 2018, NWM Plc employed approximately 47,370 of the RBS Group Employees, approximately 47,000 in the UK and approximately 370 elsewhere.
- 14.3.2 The vast majority of those employees were transferred to NatWest on that date.
- 14.4 The RBS Group operates several defined benefit pension schemes for the RBS Group Employees, as well as several defined contribution schemes (“**the RBS Pension Schemes**”).
- 14.5.1 The main RBS Pension Scheme is the Main Section of The Royal Bank of Scotland Group Pension Fund (“**the Main Section**”).
- 14.5.2 The Main Section had, as at April 2017, approximately 213,800 members and approximately 20,500 active members.
- 14.5.3 NatWest, NWM Plc and RBS plc are all participating employers in the Main Section.
- 14.6.1 As set out in the “*RBSG Annual Report and Accounts 2017*”, the Main Section had a statutory funding deficit at 31st December 2015 of £5,800 million.
- 14.6.2 That deficit was reduced by a contribution by NatWest into the Main Section of £4,200 million in March 2016.
- 14.7.1 On 17th April 2018, RBSG issued an announcement (“**an RNS**”) that it had entered into a Memorandum of Understanding (“**a MoU**”) with the trustee of the Main Section.

- 14.7.2 The MoU facilitates, *inter alia*, the necessary changes which are to be made to the Main Section to align those RBS Group Companies which are participating employers under the Main Section with the requirements of the Ring-Fencing Provisions.
- 14.7.3 The MoU provides for, *inter alia*, the additional funding contributions that will be required to be made by the RBS Group to the Main Section.
- 14.7.4 Those contributions are to include pre-tax contributions of (i) £2 billion which is to be paid in the second half of 2018 and (ii) up to £1.5 billion which is to be paid from 1st January 2020 and is to be linked to future distributions by RBSG to its shareholders.
- 14.7.5 The MoU includes confidential material. Accordingly, it is proposed that the MoU will be disclosed only to the reporter who is to be appointed to this application.
- 14.8 For completeness, the AA Section of the RBS Group Pension Fund already complies with the Ring-Fencing Provisions and so no restructuring was necessary.

### **NatWest's Financial Position**

- 15.1 The latest audited accounts for NatWest are its annual accounts to 31st December 2017 (“**the NatWest 2017 Accounts**”).
- 15.2 The NatWest 2017 Accounts showed that, as at 31st December 2017, NatWest and its own subsidiaries had total assets of approximately £340,843 million, total liabilities of approximately £324,476 million and owners' equity of approximately £16,286 million.
- 15.3.1 The liabilities in the NatWest 2017 Accounts include provisions of £632 million in respect of liabilities for payment protection insurance.
- 15.3.2 For completeness, the NatWest 2017 Accounts include no provision in respect of residential mortgage backed securities.
- 15.4 Since 31st December 2017, there has been no adverse change, which would be material in the context of the Scheme, in the financial position of NatWest.
- 15.5 As at 1st May 2018, NatWest has the following credit ratings, namely A- from Fitch Ratings Inc. (“**Fitch**”), A3 (for senior unsecured debt)/A2 (for deposits) from Moody's Investors Service (“**Moody's**”) and BBB+ from Standard & Poor's Financial Services LLC (“**S&P**”).

### **NatWest's Prudential Regulatory Compliance**

#### *The Overall Regulatory Capital and Leverage Regime*

- 16.1 NatWest is required to comply with the prudential regulatory capital, leverage and liquidity regimes, under FSMA, for an authorised firm and, in effect, banks.
- 16.2 Those regimes are now set out primarily in the Capital Requirements Regulation of the European Council and Parliament for credit institutions and investment firms

(Regulation (EU) No 575/2013) (“**the CRR**”) and the revised Capital Requirements Directive (Directive 2013/36/EU) (“**the CRD IV Directive**”).

- 16.3 The CRR and the CRD IV Directive are together called “**CRD IV**” by banks and the PRA.
- 16.4.1 As is stated at Recitals 1 and 10 to the CRR, CRD IV implements in the EU the international standards for banking regulation, which are generally called “*Basel III*”.
- 16.4.2 Accordingly, there is no reason to infer that the substance of CRD IV will be affected by the UK’s leaving the European Union.
- 16.5 In addition to complying with the CRR, NatWest is also required to comply with the detailed rules which are set out in the PRA Rulebook, including the PRA’s “*Rulebook for CRR Firms*”, which primarily implements the CRD IV Directive in the UK.
- 16.6 Those rules include “*Fundamental Rule 4*” of the PRA’s Rulebook for CRR Firms, namely that “*a firm must at all times maintain adequate financial resources*”.
- 16.7 Fundamental Rule 4 is amplified by that part of the Rulebook for CRR Firms which is entitled “*Internal Capital Adequacy Assessment*” (“**the ICAA**”).
- 16.8 Paragraph 2.1 of the ICAA requires that “*a firm must at all times maintain overall financial resources, including own funds and liquidity resources, which are adequate both as to amount and quality, to ensure that there is no significant risk that its liabilities cannot be met as they fall due*”.
- 16.9 A bank must also ensure that the processes, strategies and systems which it uses are comprehensive and enable it to identify and manage those risks which might affect its ability to meet its liabilities, as they fall due.
- 16.10 In addition, a bank must conduct appropriate “*stress and scenario tests*”.
- 16.11 The detailed rules of the regulatory capital and leverage regimes now comprise five elements. They are more conveniently described at Schedule II.
- 16.12 In addition, the CRR imposes liquidity requirements, which are amplified by an EU Commission Delegated Regulation (EU 2015/61) (“**the Liquidity Regulation**”).

#### *NatWest’s Compliance with the Regulatory Regimes*

- 17.1 NatWest complies with all of the regulatory capital and leverage requirements to which it is subject.
- 17.2 In particular, NatWest had, as at 31st December 2017, a CET1 Ratio of 23.5 per cent.
- 17.3.1 In outline, NatWest itself is not required at present to comply on a “*standalone basis*” with those liquidity requirements which are described at paragraph 8 of Schedule II.
- 17.3.2 In outline, the PRA has waived those requirements until 31st December 2018.

- 17.3.3 Instead, the PRA treats NatWest, along with RBS plc, NWM Plc, Ulster Bank Limited and Coutts & Company, as “*a single liquidity sub-group*”.
- 17.4.1 For completeness, the RBS Group failed to pass “*stress tests*” which were carried out by the Bank of England in 2016, on the basis of the consolidated audited accounts to 31st December 2015.
- 17.4.2 That failure led to the RBS Group agreeing with the PRA a plan which has improved its stress resilience, which involves, primarily, a further reduction in the RBS Group’s operations.
- 17.4.3 The RBS Group was not required to take action to improve its capital position as a result of the equivalent stress tests in 2017, partly as a result of having significantly improved its capital position since the end of 2016.

### **NWM Plc - Share Capital, Constitutional Matters and Authorisation**

- 18.1 At the date of this application, the issued ordinary share capital of NWM Plc is £6,608,516,810 divided into 6,608,516,810 ordinary shares of £1 each, all of which are fully paid up.
- 18.2 All of those ordinary shares are registered in the name of, and beneficially owned by, RBSG, except for two which are registered in the name of N.C. Head Office Nominees Limited, as nominee for RBSG.
- 18.3.1 In addition to the ordinary shares, NWM Plc has issued 47,400,000 Category II non-cumulative US dollar preference shares of US\$0.01 each.
- 18.3.2 All of those preference shares are held and beneficially owned by RBSG.
- 18.4.1 The NWM Plc Reduction will include a reduction of NWM Plc’s share capital from 6,608,516,810 ordinary shares of £1 each to 399,516,810 ordinary shares by a cancellation of 6,209 million ordinary shares.
- 18.5.1 In addition, the NWM Plc Reduction will include the cancellation of NWM Plc’s share premium account and capital redemption reserve.
- 18.5.2 As at 3rd May 2018, the credit balance on the share premium account was approximately £27,692 million.
- 18.5.3 As at 3rd May 2018, the credit balance on the capital redemption reserve was approximately £0.1 million.
- 18.5.4 The NWM Plc Reduction is to include a return of capital to RBSG.
- 18.5.5 The return of capital is to comprise cash and the transfer of the shares in NWH.
- 18.5.6 In addition, the NWM Plc Reduction is to result in the creation of additional distributable reserves.

- 18.6 There is nothing in NWM Plc's articles of association which would prevent that company from entering into the Scheme.
- 18.7 NWM Plc is also "a PRA-authorized person", within the meaning of section 2B(5).
- 18.8 For completeness, the conduct of NWM Plc's operations is also regulated, under FSMA, by the FCA.

## **NWM Plc's Operations**

### *Overview*

- 19.1 NWM Plc's operations were very significantly reduced by the Main RFTS, as set out at Statement 34.
- 19.2 However, NWM Plc remains one of the main operating RBS Group Companies.
- 19.3 As said at Statement 9.2, the operations of the RBS Group comprise four Franchises.
- 19.4.1 NWM Plc's present operations are now primarily limited to NWM Plc's part of the fourth of the Franchises, namely the NatWest Markets Franchise.
- 19.4.2 NWM Plc's business which forms part of that Franchise is referred to in this application as "**the NatWest Markets Business**".
- 19.5 For completeness, most of NWM Plc's parts of the Personal and Business Banking Franchise and the Commercial and Private Banking Franchise, were transferred to RBS plc under the Main RFTS, as set out at Statement 34.
- 19.6 In addition, NWM Plc now operates a treasury business ("**the NWM Plc Treasury Business**").

### *The NatWest Markets Business*

- 20.1 The NatWest Markets Business comprises the currencies, rates and financing operations which NWM Plc carries on.
- 20.2 In outline, the NatWest Markets Business includes, first of all, NWM Plc entering into transactions with corporate, and institutional, customers for OTC derivatives.
- 20.3 As set out at Statement 11 for NatWest, the terms of those derivative transactions into which NWM Plc enters are set out in one of either of the ISDA Master Agreements, as amended, long-form confirmations and NWM Plc's standard terms and conditions, for that kind of derivative transaction.
- 20.4 As also set out at Statement 11, the ISDA Master Agreements, as amended, may give rights to the parties, in prescribed circumstances, either to terminate those contracts, under an event of default or termination event, or to require further collateral.
- 20.5 Those circumstances may include a downgrade in the credit rating of one of the parties.

- 20.6 As set out at Statement 34.8, those rights were preserved in the Main RFTS.
- 20.7 However, the legal due diligence exercise which is described in Statement 37.1 did not identify any circumstances which would give rights to terminate, or require further collateral, for any Existing NWM Plc Counterparties in consequence of the Scheme.
- 20.8 The NatWest Markets Business also includes certain other businesses, which need to be described in this application only in outline.
- 20.9.1 The NatWest Markets Business also includes entering into securities lending and “repo transactions”.
- 20.9.2 In outline, a repo transaction is the sale of securities for current delivery and the agreement to repurchase those securities at a later date.
- 20.9.3 The NatWest Markets Business also includes entering into contractual arrangements with, *inter alia*, stock exchanges, clearing houses, depositories and payment settlement systems.
- 20.10 Again in outline, the NatWest Markets Business also includes the lending which is recorded in NWM Plc’s records as being within the NatWest Markets Franchise.
- 20.11 Again in outline, the NatWest Markets Business also includes NWM Plc’s prime brokerage business and its electronic trading facilities, which relate to access to, and trading on, electronic trading platforms.
- 20.12 Finally, the NatWest Markets Business includes the debt capital markets business, where NWM Plc acts as arranger, or underwriter of debt security issues by third parties.

*NWM Plc’s Treasury Business*

- 21.1.1 In addition to the NatWest Markets Business, NWM Plc operates the NWM Plc Treasury Business which is to be for its own requirements.
- 21.1.2 Until later in 2018, the NWM Plc Treasury Business will also be operated by NWM Plc for certain other parts of the RBS Group.
- 21.2.1 Again in outline, the NWM Plc Treasury Business deals with the raising of short term and long term funds for NWM Plc, the hedging of its market exposures and the management of liquidity.
- 21.2.2 These activities are undertaken in order to be able to comply with the regulatory requirements to which it is subject.
- 21.2.3 Those requirements have been described at Statement 16 and Schedule II.
- 21.3 The fund-raising element of the NWM Plc Treasury Business includes the issue by NWM Plc of notes and other securities.

- 21.4 In order to hedge exposures, the NWM Plc Treasury Business also includes entering into OTC derivative contracts, which are governed by the same master agreements as the derivative contracts in the NatWest Markets Franchise.

*The CPB Business and the PBB Business*

- 22.1 Until the Main RFTS became effective on 30th April 2018, NWM Plc's operations also included parts of the Personal and Business Banking Franchise and the Commercial and Private Banking Franchise.
- 22.2.1 What was NWM Plc's part of the Personal and Business Banking Franchise is referred to in this application as "**the PBB Business**".
- 22.2.2 What was NWM Plc's part of the Commercial and Private Banking Franchise is referred to in this application as "**the CPB Business**".
- 22.2.3 As referred to at Statement 19.5, almost all of the PBB Business and a substantial part of the CPB Business were transferred to RBS plc under the Main RFTS, except in both cases for specified assets and liabilities.
- 22.3 In outline, the PBB Business comprised the provision of current accounts, savings accounts, retail mortgages, debit and credit cards and loans to personal customers or small, or medium sized, enterprises.
- 22.4 The CPB Business included "*the Lending Business*", "*the Trade Finance Business*", "*the Multi-Option Facilities Business*", "*the Government Schemes Business*" and "*the Cash and Payments Business*".
- 22.5.1 Certain assets and liabilities were excluded from the transfers of the PBB Business and the CPB Business and remain part of NWM Plc's operations.
- 22.5.2 Some of the exclusions were necessary to comply with the Ring-Fencing Provisions, which are explained primarily at Statement 29.
- 22.5.3 In outline, the Ring-Fencing Provisions will generally prevent RBS plc from carrying on certain activities or entering into arrangements with certain categories of counterparty.
- 22.5.4 Other exclusions had a commercial rationale.
- 22.5.5 In outline, those exclusions included NWM Plc's membership of payment and other schemes, arrangements to which the only parties were RBS Group Companies, intellectual property rights, arrangements in connection with computers and IT networks, and taxation rights and liabilities.

*The Previous Transfers*

- 23.1 NWM Plc acquired some of its remaining operations as the transferee under several previous transfers which were sanctioned, or approved, by this Court ("**the Previous Transfers**").

- 23.2 The first of those Previous Transfers was a banking scheme in 2011 and the other three were cross-border mergers under the Companies (Cross-Border Mergers) Regulations 2007.

## **NWM Plc's Financial Position and Creditors**

### *The Financial Position*

- 24.1 The latest audited accounts for NWM Plc are its annual accounts to 31st December 2017 (“**the NWM Plc 2017 Accounts**”), which preceded the Main RFTS.
- 24.2 The NWM Plc 2017 Accounts showed that, as at 31st December 2017, NWM Plc and its own subsidiaries had, on a consolidated basis, total assets of approximately £726,237 million, total liabilities of approximately £690,977 million, and “**total equity**” (otherwise net assets) of approximately £35,260 million.
- 24.3 The liabilities in the NWM Plc 2017 Accounts included provisions of £418 million in respect of liabilities for “*payment protection insurance*” and of £1,560 million in respect of liabilities for “*residential mortgage backed securities*”.
- 24.4.1 Since 31st December 2017, there has, subject to one possible exception, been no adverse change, which would be material in the context of the Scheme, in the financial position of NWM Plc or in that of the RBS Group, from their financial positions which were shown in the NWM Plc 2017 Accounts.
- 24.4.2 In particular, the absence of any such change is consistent with the financial information which is included in the RBS Group’s “*Interim Management Statement*” for the period from 1st January 2018 to 31st March 2018.
- 24.4.3 That possible exception is that, for completeness, one of the credit rating agencies, namely Moody’s, has downgraded NWM plc’s credit ratings.
- 24.5.1 As at 1st May 2018, NWM Plc has the following long-term senior credit ratings, namely (i) BBB+ from Fitch, (ii) Baa2 (both for senior unsecured debt and deposits) from Moody’s and (iii) BBB+ from S&P.
- 24.5.2 From 31st December 2017 until 4th April 2018, NWM plc had with Moody’s the credit rating of A3 (for senior unsecured debt) and A2 (for deposits).

## **NWM Plc's Prudential Regulatory Compliance**

- 25.1 NWM Plc also complies with all of the regulatory capital and leverage requirements to which it is subject.
- 25.2 In particular, NWM Plc had, at 31st December 2017, a CET1 Ratio of 14.7 per cent, which was significantly above the minimum requirement which is set out in the CRR and is described further at Schedule II to these submissions.
- 25.3 The RBS Group also complies with the liquidity requirements which are described at Statement 16.

- 25.4 As described at Statement 17.3, NWM Plc itself is not required to comply on a “*standalone basis*” with those liquidity requirements until the end of 2018.

## **The Background to the Scheme and the Ring-Fencing Provisions**

### *Overview*

- 26.1 As was the case with the Main RFTS, the regulatory, and commercial, background to the Scheme is the requirement of the RBS Group to comply with the Ring-Fencing Provisions.
- 26.2 The overall purpose of the Ring-Fencing Provisions is to keep retail banking, and in particular deposit taking, independent of other activities which are perceived to carry significantly more risk and are carried on in the same group of companies.

### *Ring-Fencing Provisions*

- 27.1 The Ring-Fencing Provisions are defined in section 106B(8), which is within Part VII and which was introduced by the Financial Services (Banking Reform) Act 2013.
- 27.2 So defined, the Ring-Fencing Provisions comprise the “*Ring-Fencing Rules*” and the duty which is imposed as a result of section 142G.
- 27.3 The Ring-Fencing Rules are, in turn, defined in section 142H(3) as being the Rules made by the PRA under section 142H.

### *Section 142G Duty*

- 28.1 In outline, section 142G provides that a Ring-Fenced Body which carries on an “**Excluded Activity**” is to be taken as having contravened a requirement, or a prohibition, imposed by the appropriate Regulator, namely the PRA.
- 28.2 A Ring-Fenced Body is defined, in turn, in section 142A as a UK institution which carries out one or more “**Core Activities**” in relation to which it has a Part 4A Permission.
- 28.3.1 Core Activities are, in turn, defined in section 142B as the regulated activity of accepting deposits, whether carried on in the UK or elsewhere, unless it is carried on in circumstances specified by H.M. Treasury.
- 28.3.2 In accordance with the power in sections 142A(2)(b), 142B(2), 142F and 428(3), H.M. Treasury has made the Financial Services and Markets Act 2000 (Ring-Fenced Bodies and Core Activities) Order 2014 (“**the Core Activities Order**”).
- 28.3.3 The Core Activities Order has been amended by the Financial Services and Markets Act 2000 (Ring-Fenced Bodies, Core Activities, Excluded Activities and Prohibitions) Order 2016 (“**the 2016 Order**”).
- 28.4.1 The regulated activity of dealing in investments as principal, whether carried on in the UK or elsewhere, is specified in section 142D to be an excluded activity, unless it is carried on in circumstances specified by H.M. Treasury.

- 28.4.2 In accordance with the powers in sections 142D, 142E and 142F, H.M. Treasury has made the Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014 (“**the Excluded Activities Order**”).
- 28.4.3 Article 1(3) of the Excluded Activities Order provides that most of its provisions come into force on 1st January 2019.
- 28.4.4 The Excluded Activities Order has also been amended by the 2016 Order.
- 28.5.1 In outline, the general prohibition in the Excluded Activities Order will, subject to specified exceptions, prevent a Ring-Fenced Body from entering into certain types of derivative transactions.
- 28.5.2 Examples of such derivative transactions are set out at Schedule VI.
- 28.6.1 However, and again in outline, the exceptions which are defined in the Excluded Activities Order include those categories of derivative transactions which are more straightforward and are perceived to carry less risk.
- 28.6.2 Those categories include simple interest rate swaps, currency swaps and foreign exchange forward purchases and foreign exchange swap transactions.
- 28.6.3 Those exceptions are also subject to limits on the aggregate risk which is attributable to the transactions.
- 28.7.1 Again in outline, the exceptions which are defined in the Excluded Activities Order include what are in effect transitional ones for, *inter alia*, derivative transactions which would otherwise be prohibited but which are entered into prior to 1 January 2019 and will mature before 1st January 2021.
- 28.7.2 Those transitional exceptions are referred to in the Scheme and this application as “**Grandfathering**”.
- 28.8.1 For completeness, section 142E provides that H.M. Treasury may, by order, prohibit Ring-Fenced Bodies from entering into transactions of a specified kind, or with persons falling within a specified class.
- 28.8.2 In outline, the Excluded Activities Order also prohibits, subject to specified exceptions, including those under Grandfathering, a Ring-Fenced Body from incurring exposures to “*relevant financial institutions*” (“**RFIs**”).
- 28.8.3 The prohibition includes exposures under certain derivative transactions which would otherwise be permitted.
- 28.8.4 In outline, RFIs comprise most financial institutions, other than, for example, building societies.
- 28.9 Accordingly, the implications of those Ring-Fencing Provisions for the Customer Derivatives Business are different for those Counterparties who are not RFIs and for those who are RFIs.

- 28.10.1 As regards first those Counterparties who are not RFIs, the Customer Derivatives Business includes derivative transactions which are prohibited and are not permitted under the Excluded Activities Order, including where they would otherwise be permitted under Grandfathering.
- 28.10.2 The Customer Derivatives Business also includes derivative transactions which are with those Counterparties and which are permitted under the Excluded Activities Order, without reliance on the transitional exception under Grandfathering.
- 28.10.3 In addition, the Customer Derivatives Business includes derivative transactions which are with those Counterparties and which are permitted only under Grandfathering.
- 28.11.1 As regards those Counterparties who are RFIs, the Customer Derivatives Business includes derivative transactions which are prohibited and not permitted including where they would otherwise be permitted under Grandfathering.
- 28.11.2 In addition, the Customer Derivatives Business includes derivative transactions which are with those Counterparties and which are permitted only under Grandfathering.

#### *The Ring-Fencing Rules*

- 29.1 The Ring-Fencing Rules are made, under section 142H, by the PRA, as the appropriate Regulator.
- 29.2 In outline, the Ring-Fencing Rules are to require a Ring-Fenced Body to make arrangements to ensure the effective provision of services and facilities that it requires for the carrying on of the Core Activities.
- 29.3 The Ring-Fencing Rules are also to require a Ring-Fenced Body to make provision for what are called “*Group Ring-Fencing Purposes*”.
- 29.4 Again in outline, section 142H defines Group Ring-Fencing Purposes as ensuring as far as reasonably practicable (i) that the carrying on of the Core Activities is not affected by acts, or omissions, of other members of its group and (ii) that a Ring-Fenced Body is able to take decisions independently and is not dependent on resources which would cease to be available on the insolvency of another member of the group.

#### *A Ring-Fencing Transfer Scheme*

- 30.1 Section 106B(1) defines a ring-fencing transfer scheme.
- 30.2 So far as material to the Scheme, that definition has three components.
- 30.3.1 The first component is that the scheme is one under which part of the business carried on by a UK authorised person is to be transferred to “*another body*”, as transferee.
- 30.3.2 That component is set out in section 106B(1)(a).

- 30.4.1 The second component of the definition of a ring-fencing transfer scheme is that the scheme is to be made for one or more of the purposes mentioned in section 106B(3) (“**the Statutory Purposes**”).
- 30.4.2 That component is set out in section 106B(1)(b).
- 30.5.1 The first of the Statutory Purposes is that of enabling a UK authorised person to carry on Core Activities as a Ring-Fenced Body in compliance with the Ring-Fencing Provisions.
- 30.5.2 That Statutory Purpose is referred to in section 106B(3)(a).
- 30.6.1 The second of the Statutory Purposes is that of enabling the transferee to carry on Core Activities as a Ring-Fenced Body in compliance with the Ring-Fencing Provisions.
- 30.6.2 That Statutory Purpose is referred to in section 106B(3)(b).
- 30.7.1 The third of the Statutory Purposes is that of making provision in connection with the implementation of proposals that would involve a body corporate, whose group includes the body corporate to whose business the scheme relates, becoming a Ring-Fenced Body while one or more other members of its group are not Ring-Fenced Bodies.
- 30.7.2 That Statutory Purpose is referred to in section 106B(3)(c).
- 30.8.1 The fourth of the Statutory Purposes is that of making provision in connection with the implementation of proposals that would involve a body corporate, whose group includes the transferee, becoming a Ring-Fenced Body while one or more other members of the transferee’s group are not Ring-Fenced Bodies.
- 30.8.2 That Statutory Purpose is referred to in section 106B(3)(d).
- 30.9.1 The Statutory Purpose for which the Scheme is to be made is the first, namely that in section 106B(3)(a) of enabling a UK authorised person, that is the transferor, to carry on Core Activities as a Ring-Fenced Body in compliance with the Ring-Fencing Provisions.
- 30.9.2 As set out in the description of the Scheme at Statements 38 to 57, the effect of the Scheme is to leave NatWest, the transferor under the Scheme, as a Ring-Fenced Body.
- 30.9.3 For completeness, the word “*purpose*” in section 106B(3), correctly interpreted, means “*principal purpose*”.
- 30.10.1 The third component of the definition of a ring-fencing transfer scheme is that the scheme is not “*an excluded scheme*”, as defined in section 106B(4), or “*an insurance business transfer scheme*”, as defined in section 105(1).

- 30.10.2 In outline, an excluded scheme is one which either concerns the business of a building society, or that of a credit union, or involves a compromise or arrangement by a public company under Part 27 of the Companies Act 2006.
- 30.10.3 That third component of the definition of a ring-fencing transfer scheme is set out in section 106B(1)(c).

### *Section 109A*

- 31.1 Further requirements for sanction of an RFTS are set out in section 109A(1).
- 31.2 Section 109A(1) provides, in effect, that an application for sanction of an RFTS must be accompanied by a report on the scheme, which is called “*a scheme report*”.
- 31.3 Section 109A(2) provides, in effect, that a scheme report may be made only by a person who appears to the PRA to have the skills necessary and is approved by the PRA.
- 31.4 Such a person has been called “*the Skilled Person*” by the PRA and banks, including the RBS Group.
- 31.5 Section 109A(3) provides that a scheme report must be in a form which has been approved by the PRA.
- 31.6 Section 109A(4) provides that a scheme report must state whether persons other than the transferor are likely to be adversely affected by the RFTS and, if so, whether the adverse effect is likely to be greater than is reasonably necessary to achieve whichever of the purposes mentioned in section 106B(3) is relevant to the RFTS.
- 31.7 The meaning of the word “*likely*”, in its context in section 109A(4), is not straightforward. “*Likely*” may have its primary meaning of more probable than not or it may have the alternative meaning of a “*realistic prospect*”.
- 31.8 In addition, and correctly interpreted in their context in section 109A(4)(b), the words “*reasonably necessary*” mean something between highly desirable and essential.
- 31.9.1 More generally, it is implicit in section 109A that a scheme report must state the opinion of the Skilled Person on those matters to which section 109A(4) specifically refers.
- 31.9.2 Those matters have been called “*the Statutory Question*” by the PRA and banks, including the RBS Group.
- 31.10 Section 109A(5) provides, in effect, that the PRA must consult with the FCA before approving the Skilled Person and the form of the scheme report.
- 31.11 The requirement for a scheme report, which must in particular answer the Statutory Question, is a significant difference between an RFTS and a banking scheme.

### *The Regulators’ Guidance*

- 32.1 In addition, each of the Regulators has published final guidance on the practical application of the Ring-Fencing Provisions.
- 32.2 The PRA has issued “*a PRA Statement of Policy*” which is entitled “*The implementation of ring-fencing; the PRA’s approach to ring-fencing transfer schemes*”.
- 32.3 The FCA has issued its “*Finalised Guidance 16/1: Guidance on the FCA’s approach to the implementation of ring-fencing and ring-fencing schemes*”.

### **The RBS Group Ring-Fencing Proposals and the Main RFTS**

#### *The RBS Group Ring-Fencing Proposals*

- 33.1 The RBS Group is implementing the Ring-Fencing Provisions by the RBS Group Ring-Fencing Proposals, which are primarily to comprise, in addition to the Main RFTS, the Legal Entity Reorganisation and the Scheme itself.
- 33.2 The RBS Group Ring-Fencing Proposals envisage the RBS Group having what can be called a “*wide ring-fence*”.
- 33.3 That structure means that the ring-fenced part of the RBS Group will include not only Core Activities but also “*Permitted Activities*” which involve “*Permitted Products*”.
- 33.4 First of all, the ring-fenced business of the RBS Group is to include the PBB Business and the CPB Business, most of which have already been transferred to RBS plc by the Main RFTS.
- 33.5 The main reason for adopting that structure is that the business which was transferred under the Main RFTS was on a computerised “*banking platform*” which could be transferred to RBS plc, avoiding any requirement for the transferring counterparties to have new sort codes and account details, causing disruption to them.
- 33.6 In addition, the ring-fenced business of the RBS Group is to include NatWest’s operations, excluding necessarily the Transferring Business which comprises Excluded Activities.

#### *The Main RFTS*

- 34.1 In accordance with the structure of the ring-fenced business of the RBS Group, the Main RFTS transferred to RBS plc almost all of the PBB Business and a substantial part of the CPB Business, except in each case for specified assets and liabilities, which are described in outline at Statement 22.
- 34.2 In addition, the Main RFTS transferred to NatWest the Covered Bonds Business and the Mentor Business.
- 34.3 However, and as said at Statement 13.6, the Main RFTS did not transfer certain of NWM Plc’s functions under the Covered Bond Programme, including its role as dealer in, or holder of, Covered Bonds.

- 34.4 Most of the assets and liabilities which were to transfer under the Main RFTS transferred with effect from 30th April 2018.
- 34.5.1 Certain assets and liabilities, which are not governed by the law of one of the UK jurisdictions (“a UK law”) and the intended transfer of which under the Main RFTS would not be recognised by their governing law were not transferred with effect from that time.
- 34.5.2 Instead, those assets and liabilities are to be held by NWM Plc either on trust for RBS plc or subject to a contractual duty to account for them.
- 34.6 The general effect of the Main RFTS was that the assets and liabilities which were transferred under it were to be treated as if they had always been held by, or made with RBS plc or NatWest instead of NWM Plc.
- 34.7 In addition, and in order to amplify its general effect, the Main RFTS, and the order of this Court which sanctioned it, provided expressly, under section 112A, that the Main RFTS was, put broadly, not to give rise to any right to terminate, or modify, any legal relationship in any way.
- 34.8.1 The Main RFTS, and the order which sanctioned it, also included an exception for those contractual arrangements which are in the NatWest Markets Business and might have given rights to terminate, or require further collateral, in the event that a credit rating downgrade of NatWest Markets Plc occurred.
- 34.8.2 Those rights were preserved by the Main RFTS and, in accordance with section 112A, the order which sanctioned it.
- 34.9.1 As said at Statement 24.4.3 the transfer by the Main RFTS was followed by such a credit rating downgrade by one of the credit rating agencies.
- 34.9.2 As described in Statement 24.5, as at the date of this application, NWM Plc has the following long-term senior credit ratings, (i) BBB+ from Fitch, (ii) Baa2 from Moody’s and (iii) BBB+ from S&P.
- 34.9.3 From 31st December 2017 until 4th April 2018, NWM Plc had with Moody’s the credit rating of A3 (for senior unsecured debt) and A2 (for deposits).
- 34.10.1 The other exceptions to the general effect of the Main RFTS comprised, *inter alia*, a series of ten amendments.
- 34.10.2 These amendments applied to the assets and liabilities which were transferred and to certain assets and liabilities which were not transferred. Most of the amendments were intended to avoid the risk of the Main RFTS adversely affecting the position of any of the transferring counterparties.
- 34.10.3 Those amendments which are the basis for the equivalent amendments in the Scheme are described briefly in the rest of this Statement.

- 34.11 The first of those amendments restricts rights of set-off which RBS plc would otherwise have had in consequence of the Main RFTS, and permits transferring counterparties who may be affected to withdraw an existing deposit with RBS plc or a deposit transferred from NWM Plc.
- 34.12 The second of those amendments restricts the application of rights in security.
- 34.13 The third of those amendments restricts what are called “*cross-default rights*”.
- 34.14.1 The fourth of those amendments in effect “*split*” those rights in security which were transferred to RBS plc but continued to secure both assets which were also transferred and those which remained.
- 34.14.2 RBS plc holds such “*Shared Security*” in trust for itself, NatWest and NWM Plc.
- 34.14.3 For completeness, RBS plc, NatWest and NWM Plc entered into, outside of the Main RFTS, an “*Intercreditor Agreement*”, regulating their respective rights to the Shared Security and their enforcement.
- 34.15.1 The fifth of the amendments amended “*stapled*” arrangements, which were similar to those which are referred to at Statement 10.7.
- 34.15.2 Those arrangements were amended so that RBS plc became a party to the extent they relate to assets which were transferred and NWM Plc remained a party to the extent they relate to assets which remained.
- 34.16.1 The sixth of those amendments disapplied “*customer netting*” and set-off rights which would otherwise have permitted debts owed by other RBS Group Companies to be set-off against debts owed to the “*RFB Sub-group*” which is referred to at Statement 36.4.
- 34.16.2 Those rights would have resulted in an infringement of the PRA Rulebook by RBS plc, as a Ring-Fenced Body.
- 34.17.1 For completeness, the Main RFTS includes a power for its amendment with the sanction of this Court.
- 34.17.2 No application for such amendment has been made following the sanction of the Main RFTS and none is intended to be made.
- 34.18.1 For completeness, the Main RFTS was supplemented, in commercial terms, by an undertaking which was given to this Court by RBS plc.
- 34.18.2 In outline, that undertaking mitigated the adverse effect, in relation to the Financial Services Compensation Scheme, which the Main RFTS might have had on deposits which were transferred under it.
- 34.18.3 As the Transferring Business includes no deposits which are protected by that compensation scheme, the Scheme is not to be amplified by such an undertaking.

- 35.1 As required by section 109A, a scheme report was prepared for the Main RFTS by Oliver Grundy, FCA, a senior partner of Deloitte LLP, which firm was until 2015 the auditors of the RBS Group.
- 35.2 In particular, that report included Mr Grundy's answer to the Statutory Question as applied to the Main RFTS.
- 35.3 In outline, that answer included the conclusion that the Main RFTS would not affect the sustainability (that is in financial terms) of the RBS Group Companies who are party to the Main RFTS.
- 35.4.1 For completeness, Mr Grundy concluded that the one matter in respect of which an adverse effect was likely concerned those remaining counterparties of NWM Plc, who might be adversely affected by a weakening of NWM Plc's credit rating and who might not have contractual rights to require NWM Plc to provide collateral.
- 35.4.2 However, that adverse effect was not likely to be greater than was reasonably necessary to achieve the purpose of the Main RFTS.
- 35.5.1 Mr Grundy also prepared a supplementary report on the Main RFTS.
- 35.5.2 In that supplementary report, Mr Grundy, *inter alia*, confirmed his answer to the Statutory Question.
- 35.6 As described at Statement 59, Mr Grundy has also prepared a scheme report on this Scheme.
- 35.7 Since the Main RFTS, there has been no adverse change in NWM Plc's financial position which would be material in the context of this Scheme, except that, for completeness, Moody's has downgraded NWM Plc's credit ratings as said at Statement 24.4.

### **The RBS Group Ring-Fencing Proposals - The Legal Entity Reorganisation and the NWM Plc Reduction**

- 36.1 In addition to the Main RFTS, the Legal Entity Reorganisation and the Scheme are the two main processes which will implement the RBS Group Ring-Fencing Proposals.
- 36.2 The Scheme will proceed broadly in parallel with the NWM Plc Reduction.
- 36.3 In outline, the Legal Entity Reorganisation is to involve the creation of four new sub-groups within the RBS Group.
- 36.4 The first of the sub-groups ("**the RFB Sub-Group**") is to contain all of those RBS Group Companies, primarily NatWest and RBS plc, which are to carry on Core Activities.

- 36.5 The second of the sub-groups is to contain NWM Plc, and those RBS Group Companies which are its own subsidiaries, all of which are to carry on Excluded Activities after the Scheme.
- 36.6.1 The third of the sub-groups is to contain The Royal Bank of Scotland International Limited in Jersey, and those RBS Group Companies which are its own subsidiaries, as well as certain other RBS Group Companies outside the ring-fence.
- 36.6.2 All the members of that third sub-group are to carry on their respective banking businesses, which include Excluded Activities or activities which are carried on outside of the UK.
- 36.7.1 The fourth sub-group is to include RBS AA Holdings (UK) Ltd which is to be a holding company.
- 36.7.2 That company will own assets which are not permitted to be held by the RFB Sub-Group but do not belong specifically to the second, or third, sub-group.
- 36.8.1 NWH is the parent of what will be the RFB Sub-Group, which is to include those operating RBS Group Companies which are to be the Ring-Fenced Bodies of the RBS Group.
- 36.8.2 Those Ring-Fenced Bodies are to include, primarily, NatWest, RBS plc and, in Northern Ireland, Ulster Bank Limited. Those companies were transferred to NWH on 1st January 2017.
- 36.9.1 For completeness, the RFB Sub-Group is also to include Coutts & Company and Ulster Bank Ireland DAC (“**UBI**”).
- 36.9.2 UBI is incorporated, and a licensed bank, in the Republic of Ireland. It is the bank through which the RBS Group conducts retail and commercial banking business in that country.
- 36.9.3 UBI will not itself be a Ring-Fenced Body, as that term is limited to an entity which is incorporated in the UK.
- 36.9.4 However, UBI will be required to comply with the Ring-Fencing Provisions, as it will be part of the RFB Sub-Group.
- 36.10 The RFB Sub-Group will be created by the interposition of NWH as a direct subsidiary of RBSG. NWH is, at the date of this application, a direct subsidiary of NWM Plc.
- 36.11.1 NWH will be transferred by NWM Plc to RBSG by the NWM Plc Reduction.
- 36.11.2 In commercial terms, the NWM Plc Reduction will also transfer NatWest and RBS plc out of the indirect ownership of NWM Plc.

- 36.11.3 The NWM Plc Reduction is anticipated to become effective as soon as reasonably practicable following the confirmation of the NWM Plc Reduction and, therefore, before this Scheme is sanctioned or becomes effective.
- 36.12 In March 2018, RBSG, through NWH, injected regulatory capital of approximately £8.1 billion into RBS plc, including £5.8 billion of CET1 Capital.
- 36.13.1 For completeness, a reduction of NWH's share premium account was confirmed by the Companies Court on 14th June 2017.
- 36.13.2 The purpose of that reduction was to create a reserve in the accounting records of NWH which would be available for distribution to the sole shareholder of NWH.
- 36.14.1 In addition, the RBS Group Ring-Fencing Proposals are to include the transfer, or termination, of most guarantees to third parties, intra-group guarantees and credit lines and capital support arrangements.
- 36.14.2 Those arrangements are between the RFB Sub-Group and those banks within the RBS Group which are to sit outside the ring-fence and which are to carry on Excluded Activities.
- 36.15 As regards the RFB Sub-Group, those guarantees, credit lines and capital support arrangements will be replaced by ones from other members of that sub-group.
- 36.16.1 NWM Plc and NatWest will also enter into, outside of the Scheme, a "*Shared Security and Duty to Account Agreement*".
- 36.16.2 In outline, the Shared Security and Duty to Account Agreement will, *inter alia*, include the principles for the Intercreditor Agreement which is referred to at Statement 52.6.
- 36.17 Diagrams showing, in simplified form, the structures of the RBS Group before, and after, the Legal Entity Reorganisation are set out in Schedule V.

### *The Diligence*

- 37.1 NWM Plc has undertaken a legal due diligence exercise in respect of NatWest's Customer Derivatives Business in an attempt to identify how the Scheme might adversely affect Transferring Counterparties and Remaining Counterparties and how any such effects could be mitigated.
- 37.2.1 That legal due diligence exercise was, in turn, based very closely on the very extensive diligence for derivative transactions which preceded the Main RFTS.
- 37.2.2 That diligence was, in turn, based largely on that which preceded each of the Previous Transfers.

## **The Scheme**

### *Overview*

- 38.1 The Scheme is set out in the Appendix. An outline of the main terms of the Scheme, and of its legal effect, is set out in this Statement and in Statements 39 to 57.
- 38.2.1 The overall structure and content of the Scheme are similar to those of the Main RFTS.
- 38.2.2 The structure and content of the Main RFTS were themselves based on those of a banking scheme.
- 38.3 Like the Main RFTS, the Scheme is, in reality, compulsory.
- 38.4.1 However, the Scheme is far smaller in scale, variety of banking products, and economic significance, than the Main RFTS.
- 38.4.2 Despite its smaller scale, the Transferring Business and the derivative transactions which it involves are also more complicated than the business which was transferred by the Main RFTS.
- 38.5 The Effective Time will be 00.01 hours on 13th August 2018 or such later date as NatWest and NWM Plc may agree in writing with each of the Regulators.
- 38.6 The Scheme will lapse, if it does not become effective on, or before, 31st December 2018, or such later date as the Court may allow on the application of NatWest and NWM Plc.
- 38.7 In fact, it is envisaged that, if the Scheme is sanctioned at the Sanction Hearing on 31st July 2018, the Effective Time is expected to be 13th August 2018.
- 38.8 That period between the Sanction Hearing and the Effective Time is thought sufficient to enable necessary adjustments within the computer systems of the RBS Group to be made and communications to be issued.
- 38.9 The consideration for the Transferring Business will be its fair market value, unless agreed otherwise in writing between NWM Plc and NatWest before the Sanction Hearing.
- 38.10 The Scheme is to be governed by Scots law.
- 38.11 NatWest and, if only for completeness, NWM Plc submit to the jurisdiction of this Court in respect of the Scheme.
- 38.12 For completeness, the Scheme is not subject to any legal condition.

*The Transferring Business, the Transferring Assets and the Transferring Liabilities*

- 39.1 As said at Statement 3.1, the Transferring Business is to comprise the Customer Derivatives Business which NatWest carries on, at the Effective Time, within the NatWest Markets Franchise.
- 39.2.1 In particular, the Transferring Business is to include what is referred to in the Scheme as “**the Transferring Derivative Transactions**”.

- 39.2.2 The Transferring Derivative Transactions are to comprise NatWest’s OTC derivative transactions at the Effective Time, subject to the exercise of Opt-Out Rights and also to the exclusions described at Statements 40.17 and 46.2.
- 39.2.3 The Transferring Derivative Transactions are described at Statement 40 and the Opt-Out Rights are described more fully at Statement 41.
- 39.3 The Transferring Business is also to include those rights, and obligations, of NatWest which are referred to in the Scheme as “**the Transferring Assets**” and “**the Transferring Liabilities**”.
- 39.4.1 The Transferring Assets are, first of all, to include the rights under what are referred to in the Scheme as “**the Transferring Arrangements**”, which are described at Statement 43.
- 39.4.2 The other Transferring Assets are, in turn, described at Statement 44.
- 39.5 The Transferring Liabilities are described at Statement 45.
- 39.6 The Transferring Business is also not to include the Excluded Assets and Excluded Liabilities, which are described at Statement 46.
- 39.7 The Scheme defines “**Assets**” in the widest terms as comprising rights and interests of every description and held in every capacity.
- 39.8 The Scheme also defines “**Liabilities**” in the widest terms, as comprising liabilities and obligations of all kinds, whether present, future, contingent or ascertained and whether incurred jointly or as surety, and before or after the Effective Time.
- 39.9 The Scheme also includes a definition of an “**Arrangement**”, again in the widest terms, as comprising any contract, offer, invitation or commitment, in each case to which NatWest is a party.
- 39.10.1 In addition, the Scheme includes a definition of “**a Right in Security**” which is given an extended meaning in the Scheme, including security, quasi-security, guarantees and other rights having a similar economic effect.
- 39.10.2 However, a Right in Security does not include any arrangement for collateral, under the Financial Collateral Regulations, such as the Credit Support Annex or Margin Supplement, which are referred to in Statement 11.2.4.
- 39.10.3 Such collateral arrangements are referred to in the Scheme as “**a Title Transfer Collateral Arrangement**” and its exclusion from the defined concept of a Right in Security is referred to at Statement 52.7.3.
- 39.10.4 Title Transfer Collateral Arrangements are more conveniently excluded from the defined concept of a Right in Security as they involve the transfer of ownership of the collateral, subject only to a personal obligation to re-transfer it or an equivalent asset.
- 39.10.5 The implications of the Scheme for collateral are described at Statement 42.

- 39.11 Similarly, the Scheme includes a definition of “**an Encumbrance**”, which is as widely defined as a Right in Security.

*The Transferring Derivative Transactions*

- 40.1.1 As is said at Statement 39.2.2, the Transferring Derivative Transactions are to be those OTC derivative transactions into which NatWest has entered at the Effective Time, subject to the exclusions described in this Statement and Statement 46.2 and subject also to the exercise of Opt-Out Rights.
- 40.1.2 All of the Transferring Derivative Transactions are to be ones entered into by NatWest within the NatWest Markets Franchise, rather than the NatWest Treasury Business.
- 40.2 The Transferring Derivative Transactions are governed by four different categories of agreements.
- 40.3.1 The first category is to comprise an ISDA Master Agreement, together with one of the types of confirmation which are described at Statement 11 and any related Title Transfer Collateral Arrangements.
- 40.3.2 Those types of confirmations include the confirmations which are described at Statement 11.3 and which are referred to in the Scheme as “**ISDA Short-Form Confirmations**”.
- 40.3.3 Those confirmations also include Agile Markets Short-Form Confirmations which are issued under the Agile Markets Terms of Business and are described at Statement 11.6.
- 40.4 The second category of agreement is to comprise the confirmations which are described at Statement 11.4 and which are referred to in the Scheme as “**ISDA Long-Form Confirmations**”.
- 40.5 The third category of agreement is to comprise the Agile Markets Long-Form Confirmations which are described at Statement 11.6.5.
- 40.6 The final category of agreement is to comprise the RBS Standalone Derivatives Terms which are described at Statement 11.5.
- 40.7.1 The Scheme is to divide the OTC derivative transactions into two principal categories.
- 40.7.2 Those two principal categories are “**Eligible Derivative Transactions**” and “**Ineligible Derivative Transactions**”.
- 40.8.1 Eligible Derivative Transactions are to include, first of all, those derivative transactions where the Counterparty is not classified by NatWest as an RFI and in respect of which NatWest has determined that it could be a counterparty under the Ring-Fencing Provisions, other than by the application of Grandfathering.
- 40.8.2 In addition, Eligible Derivative Transactions are also to include those derivative transactions where the Counterparty is again not classified by NatWest as an RFI and

which are referred to in the Scheme as “**Grandfathered Interest Rate Derivative Transactions**”.

- 40.8.3 In outline, Grandfathered Interest Rate Derivative Transactions are to be “**Interest Rate Derivative Transactions**”, to which NatWest could be a counterparty under the Ring-Fencing Provisions, by the application of Grandfathering.
- 40.8.4 Interest Rate Derivative Transactions are, in turn, referred to in the Scheme as those derivative transactions under which one or more structured payments are to be made between the parties, and the amount of a payment is linked to movements in one or more underlying interest rates.
- 40.9.1 Eligible Derivative Transactions are also to include what are referred to in the Scheme as “**RFI Eligible Derivative Transactions**”.
- 40.9.2 In outline, an RFI Eligible Derivative Transaction is to be a derivative transaction where the Counterparty is classified by NatWest as an RFI and to which Grandfathering is to apply, but excluding any derivative transactions which are referred to in the Scheme as a “**Prohibited FX Derivative Transactions**”.
- 40.9.3 In outline, a Prohibited FX Derivative Transaction is to be an “*FX Transaction*”, a “*Currency Option Transaction*” or a derivative transaction which NatWest determines has the essential characteristics of either of those kinds of derivative transactions.
- 40.10 In addition to the other criteria which are described at Statements 40.8.1 to 40.9.3, Eligible Derivative Transactions are to comprise only those derivative transactions which are entered into prior to the Opt-Out Date.
- 40.11.1 Ineligible Derivative Transactions are to comprise those derivative transactions which are not Eligible Derivative Transactions.
- 40.11.2 In outline, Ineligible Derivative Transactions are to comprise those derivative transactions which NatWest could not retain, as a Ring-Fenced Body, under the Ring-Fencing Provisions.
- 40.11.3 In particular, the effect of the Scheme’s particular definition of Eligible Derivative Transactions is that Ineligible Derivative Transactions are to include derivative transactions to which Grandfathering would apply and which are Prohibited FX Derivative Transactions.
- 40.11.4 The reason why those foreign exchange derivative transactions are to be Ineligible Derivative Transactions under the Scheme is that, in outline, replicating the systems, resources and processes, which NatWest would require to deal with them, would be too complex and too expensive for the number of those derivative transactions.
- 40.12.1 As at 28 February 2018, an initial analysis indicated that there were approximately 9,000 Eligible Derivative Transactions and 8,600 Ineligible Derivative Transactions.

- 40.12.2 As at 28 February 2018, an initial analysis indicated that there were approximately 760 Counterparties with only Eligible Derivative Transactions, 410 Counterparties with only Ineligible Derivative Transactions and 90 Counterparties with both Eligible Derivative Transactions and Ineligible Derivative Transactions.
- 40.13 Against that background of the Scheme’s division of derivative transactions into Eligible Derivative Transactions and Ineligible Derivative Transactions, the Transferring Derivative Transactions are to comprise three categories.
- 40.14 The first category is to comprise the Ineligible Derivative Transactions.
- 40.15.1 The second category of Transferring Derivative Transactions is to comprise those Eligible Derivative Transactions in respect of which a Counterparty has not exercised (or has withdrawn) their Opt-Out Rights.
- 40.15.2 The Opt-Out Rights are significant to the number of Transferring Derivative Transactions.  
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- 40.15.2 Accordingly, it is more convenient to describe them separately in the next Statement.  
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- 40.16.1 The third category of the Transferring Derivative Transactions is to comprise those derivative transactions which are entered into after the Opt-Out Date.
- 40.16.2 Those derivative transactions which are entered into with NatWest after the Opt-Out Date are referred to in the Scheme as “**the Post Opt-Out Date Derivative Transactions**”.
- 40.17.1 In addition, the Transferring Derivative Transactions are not to include a further category of derivative transactions at the Effective Time, which are referred to in the Scheme as “**the Excluded Derivative Transactions**”.
- 40.17.2 The Excluded Derivative Transactions are to comprise those derivative transactions which mature on, or before, 31st August 2018.
- 40.17.3 The reason for their exclusion from the Transferring Business is that NatWest will have begun the process for any settlement on maturity.
- 40.17.4 It is, therefore, more convenient, in operational terms, for those Excluded Derivative Transactions to remain with NatWest.

*The Opt-Out Rights*

- 41.1 It would be commercially more convenient, in terms of the RBS Group Ring-Fencing Proposals, for the Eligible Derivative Transactions also to be transferred to NWM Plc.
- 41.2.1 However, transferring those Eligible Derivative Transactions might have an adverse effect on certain Counterparties.
- 41.2.2 The Opt-Out Rights are intended to mitigate any such potential adverse effect.

- 41.3 Accordingly, the Opt-Out Rights are to be given by the Scheme to two categories of Counterparty with Eligible Derivative Transactions.
- 41.4.1 The first category is to comprise those Counterparties with only Eligible Derivative Transactions and with no Ineligible Derivative Transactions or Post Opt-Out Date Derivative Transactions.
- 41.4.2 Those Counterparties in that category may exercise their Opt-Out Rights in respect of all of their Eligible Derivative Transactions.
- 41.4.3 Those Counterparties who are in that category and exercise their Opt-Out Rights are referred to in the Scheme as “**the Category 1 Counterparties**”.
- 41.4.4 For completeness, the Category 1 Counterparties might also have Excluded Derivative Transactions.
- 41.5.1 When a Category 1 Counterparty has exercised their Opt-Out Rights, none of their Eligible Derivative Transactions and their Category 1 Arrangements will transfer as part of the Transferring Business.
- 41.5.2 The Arrangements which will continue to govern those Eligible Derivative Transactions will be the existing Arrangements at the Effective Time, which are referred to in the Scheme as “**the Category 1 Arrangements**”.
- 41.6.1 However, NatWest will not enter into any further derivative transactions with the Category 1 Counterparty under the Category 1 Arrangements.
- 41.6.2 In addition, Category 1 Counterparties will not be permitted to make any material amendments to their Category 1 Arrangements.
- 41.6.3 The communications which are described at Statement 65 are to inform the Category 1 Counterparty sufficiently of those matters.
- 41.7.1 The second category of Counterparty, to whom the Opt-Out Rights are to be given, is to comprise those Counterparties with (i) one or more Eligible Derivative Transactions, and (ii) one or more Ineligible Derivative Transactions.
- 41.7.2 Those Counterparties who are in that category may also exercise their Opt-Out Rights in respect of only their Eligible Derivative Transactions.
- 41.7.3 Those Counterparties who are in that category and who exercise their Opt-Out Rights are referred to in the Scheme as “**the Category 2 Counterparties**”.
- 41.7.4 For completeness, Category 2 Counterparties might also have Excluded Derivative Transactions and/or Post Opt-Out Date Derivative Transactions.
- 41.8 Those Eligible Derivative Transactions in respect of which each Category 2 Counterparty has exercised their Opt-Out Rights and any Excluded Derivative Transactions of that Category 2 Counterparty are together referred in the Scheme to as “**the Remaining Derivative Transactions**”.

- 41.9.1 Accordingly, the effect of the exercise of Opt-Out Rights is to be that the Transferring Derivative Transactions are to comprise three categories of derivative transactions.
- 41.9.2 Those Categories are Ineligible Derivative Transactions, which are referred to at Statement 40.11, any Eligible Derivative Transactions in respect of which the Counterparty has not exercised (or has withdrawn) their Opt-Out Rights and any Post Opt-Out Date Derivative Transactions.
- 41.10 Since a Category 2 Counterparty will have both Remaining Derivative Transactions and Transferring Derivative Transactions, the consequences for such a Counterparty which are described in this Statement will follow under the Scheme.
- 41.11.1 First, none of the Remaining Derivative Transactions will transfer as part of the Transferring Business.
- 41.11.2 The Remaining Derivative Transactions will continue to be governed by the Arrangements which are in effect between the Category 2 Counterparty and NatWest at the Effective Time and which are referred to in the Scheme as “**the Category 2 Arrangements**”.
- 41.11.3 Secondly, each of the Transferring Derivative Transactions of the Category 2 Counterparty will transfer to NWM Plc.
- 41.12.1 The Transferring Derivative Transactions will be governed, with effect from the Effective Time, by what are referred to in the Scheme as “**the Replicated Arrangements**”.
- 41.12.2 The Replicated Arrangements are to be new Arrangements which are to be in the same terms as those of the Category 2 Arrangements and are to be created by the Scheme with effect from the Effective Time.
- 41.12.3 In outline, one of the reasons for having Replicated Arrangements is to enable contractual netting in relation to Transferring Derivative Transactions to operate without difficulty after the Effective Time.
- 41.13.1 For completeness, NatWest will not enter into any further derivative transactions under the Category 2 Arrangements.
- 41.13.2 In addition, Category 2 Counterparties will not be permitted to make any material economic amendments to their Category 2 Arrangements.
- 41.13.3 The communications which are described at Statement 65 are also to inform the Category 2 Counterparty sufficiently of those matters.
- 41.14.1 For completeness, Category 1 Counterparties and Category 2 Counterparties, who in either case use the Agile Markets System, which is described at Statement 11 will no longer be able to manage their Eligible Derivative Transactions via the Agile Markets System after the Effective Time.

- 41.14.2 The communications which are described in Statement 65 are also to inform those Counterparties of that matter.
- 41.15 Any future Counterparty who wishes to enter into a derivative transaction with NatWest before the Opt-Out Date will be able to exercise their Opt-Out Rights in respect of any of those new derivative transactions which constitute Eligible Derivatives Transactions.
- 41.16 As said at Statement 40.10.5, any future Counterparty who wishes to enter into a Post Opt-Out Date Derivative Transaction prior to the Effective Time will have no Opt-Out Rights in respect of any of those new derivative transactions.
- 41.17 As regards the process for exercising the Opt-Out Rights, NatWest will, after the First Hearing, give notice of the Opt-Out Rights to those Counterparties who are entitled to Opt-Out Rights.
- 41.18 Those Counterparties may exercise their Opt-Out Rights by notifying NatWest in writing on, or before, the Opt-Out Date, which will be 43 days before the Sanction Hearing and 23 days before the Section 110 Deadline.
- 41.19.1 The form of notification of exercise for all Counterparties except RFIs is to be set out at Schedule 1 to the Scheme.
- 41.19.2 The form of notification of exercise for RFIs is to be set out at Schedule 2 to the Scheme.
- 41.20 For completeness, the communications, which are described in Statement 65.1 are also to inform Counterparties of their right to terminate any of their derivative transactions at market value or, alternatively, to transfer their derivative transactions to a third party.

#### *Collateral*

- 42.1 The implications of the Scheme for any Title Transfer Collateral Arrangement which is described at Statements 11.2.4 to 11.2.6 and are under the Financial Collateral Regulations, will depend upon whether a Counterparty exercises their Opt-Out Rights.
- 42.2 For each Counterparty who does not exercise their Opt-Out Rights, any collateral which is held by NatWest will be transferred from NatWest to NWM Plc, along with all of the Transferring Arrangements for that Counterparty.
- 42.3.1 For each Category 1 Counterparty, any Title Transfer Collateral Arrangements, together with the rest of their Category 1 Arrangements, will remain with NatWest.
- 42.3.2 For each Category 2 Counterparty, the implications for collateral are set out in the remainder of this Statement.

- 42.4 In relation to Remaining Derivative Transactions, the Title Transfer Collateral Arrangements which are in effect at the Effective Time will continue to apply between the Category 2 Counterparty and NatWest.
- 42.5 In relation to the Transferring Derivative Transactions, the Title Transfer Collateral Arrangements will also be replicated by the Scheme at the Effective Time in the same terms.
- 42.6.1 Where NatWest is the “*Collateral Holder*”, under those Title Transfer Collateral Arrangements, NatWest will transfer to NWM Plc the portion of the collateral which is equal to what is referred to in the Scheme as “**the Relevant Proportion**”.
- 42.7.1 In outline, the Relevant Proportion of the collateral will be the *pro rata* amount which is attributable to the Transferring Derivative Transactions under the Title Transfer Collateral Arrangement which applies to them.
- 42.7.2 Where the collateral is made up of different types, the portion of collateral transferred will consist of a *pro rata* share of each type.
- 42.7.3 Where the Relevant Proportion does not yield a whole unit of currency (in the case of cash) or a tradeable denomination (in the case of securities), the Relevant Proportion will be rounded down to the nearest whole unit or tradeable denomination.

*The Transferring Assets – the Transferring Arrangements*

- 43.1 The Transferring Assets are, first of all, to include all of NatWest’s rights under the Transferring Arrangements.
- 43.2 The Transferring Arrangements are, in turn, to comprise all of the Arrangements within the Transferring Business.
- 43.3.1 In addition to the Transferring Derivative Transactions, the Transferring Arrangements are to include the Arrangements which govern them.
- 43.3.2 As described at Statement 11, those Arrangements may include ISDA Short-Form Confirmations, ISDA Long-Form Confirmations, RBS Standalone Derivative Terms, Agile Markets Short-Form Confirmations, Agile Markets Long-Form Confirmations, Agile Markets Terms of Business and ISDA Master Agreements.
- 43.3.3 The Transferring Arrangements are also to include any Ancillary Documents, which are described at Statement 11.11.
- 43.4 In addition, the Transferring Arrangements are to include the Title Transfer Collateral Arrangements, as described at Statements 42.5 to 42.7.
- 43.5 Subject to the exceptions described at Statements 39.10 and 52, the Transferring Arrangements are also to include all Rights in Security of which NatWest has the benefit and which are within the Transferring Business.

- 43.6.1 In addition, the Transferring Arrangements are to include one category of what is referred to in the Scheme as “**Secured Empty Arrangements**”.
- 43.6.2 The Counterparties under those Secured Empty Arrangements are referred to in the Scheme as “**Relevant Counterparties**”.
- 43.6.3 A list of Relevant Counterparties will be provided, on an electronic data stick, to the Court prior to the Sanction Hearing.
- 43.6.4 Those Secured Empty Arrangements include, *inter alia*, ISDA Master Agreements, or Agile Markets Terms of Business, which are in effect between Relevant Counterparties and NatWest, which provide for the Relevant Counterparty’s obligations to be subject to a Right in Security, but which do not govern any actual derivative transactions at the Effective Time.
- 43.6.5 It is reasonably anticipated that the Relevant Counterparties under those Secured Empty Arrangements, as opposed to other Remaining Counterparties, may enter into transactions with NWM Plc after the Effective Time.
- 43.6.6 Those future derivative transactions with NWM Plc are to be subject to the Shared Security which is described at Statement 52 and which is to be shared by NatWest and NWM Plc.
- 43.7 The Transferring Arrangements are also to include all Encumbrances to which NatWest is subject and which are within the Transferring Business.
- 43.8 However, the Transferring Arrangements are not to include any Secured Empty Arrangements with any Counterparties who are not Relevant Counterparties.
- 43.9.1 Finally, the Transferring Arrangements are to include the Stapled Hedge/Loan Arrangements.
- 43.9.2 As set out at Statement 57, the Stapled Hedge/Loan Arrangements are to be amended by the Scheme.

#### *The Other Transferring Assets*

- 44.1 The Transferring Assets are also to include what is referred to in the Scheme as “**the Transferring Goodwill**”, namely the goodwill of NatWest in connection with the Transferring Business.
- 44.2.1 The Transferring Assets are also to include “**the Transferring Records**”.
- 44.2.2 The Transferring Records are to comprise the records, however stored, of NatWest which relate wholly, or primarily, to the Transferring Business, but excluding “**the Statutory Records**” and records relating wholly, or primarily, to taxation.
- 44.2.3 The Statutory Records are those records which NatWest is required to retain by statutory provision or “*corporate governance requirement*”.

- 44.3 The Transferring Assets are also to include all cash of the Transferring Business or in the case of what is referred to in the Scheme as “**Eligible Collateral**”, what is equivalent to cash.
- 44.4.1 The Transferring Assets are also to include the benefit of “**the Transferring Claims**”.
- 44.4.2 The Transferring Claims are to comprise all claims which relate to the Transferring Business, but excluding any claim which relates to taxation, other than any claim to the extent that it relates to the transfer of taxation reliefs.

#### *The Transferring Liabilities*

- 45.1 The Transferring Liabilities are, broadly, to comprise all of NatWest’s liabilities, of every kind, which arise in connection with the Transferring Business and to the extent that they arise before, or relate to a period before, the Effective Time.
- 45.2 In particular, the Transferring Liabilities are to include all Liabilities arising under, or in connection with, the Transferring Arrangements and, if only for the avoidance of doubt, the Replicated Arrangements.

#### *Excluded Assets and Excluded Liabilities*

- 46.1 The Transferring Business, and so the Transferring Assets and the Transferring Liabilities, are not to include the Excluded Assets and the Excluded Liabilities, the principal categories of which are set out in this Statement.
- 46.2.1 First of all, the Excluded Assets and the Excluded Liabilities are to include what are referred to in the Scheme as “**Excluded Derivative Transaction Arrangements**”.
- 46.2.2 Excluded Derivative Transaction Arrangements are Arrangements which relate to any Excluded Derivative Transactions.
- 46.2.3 Excluded Derivative Transactions are, in turn, referred to in the Scheme as any derivative transactions maturing on or prior to 31st August 2018.
- 46.2.4 Those derivative transactions have already been referred to at Statement 40.17.
- 46.3.1 In addition, the Excluded Assets and the Excluded Liabilities are to include those which form part of the NatWest Treasury Business.
- 46.3.2 For completeness, this includes the roles of covered bond swap provider and interest rate swap provider under the Covered Bond Programme, which are to be referred to in the Scheme as “**the Excluded CB Swap Provider Roles**”.
- 46.4 The Excluded Assets and the Excluded Liabilities are to include any Shared Security.
- 46.5.1 The Excluded Assets and the Excluded Liabilities are also to include any Category 1 Arrangements, including any Eligible Derivative Transactions or Excluded Derivative Transactions to which those Arrangements relate.

- 46.5.2 That exclusion has already been referred to at Statement 41.4.
- 46.6.1 The Excluded Assets and the Excluded Liabilities are also to include any Category 2 Arrangements, including any Remaining Derivative Transactions to which those Arrangements relate.
- 46.6.2 Their exclusion has already been referred to at Statement 41.8.
- 46.7.1 The Excluded Assets and the Excluded Liabilities are also to include those in connection with “**the Excluded Collateralised Transactions**”.
- 46.7.2 The Excluded Collateralised Transactions are to comprise the transactions which are to be included on the data stick provided to the Court labelled “*ECT Data Stick*”.
- 46.7.3 In outline, those transactions will include certain securitised, or “*collateralised*” transactions which will remain with NatWest or which NatWest intends to transfer by contract.
- 46.8.1 The Excluded Assets and the Excluded Liabilities are also to include any “**Excluded Agency**”.
- 46.8.2 In outline, Excluded Agency is to include NatWest acting as facility agent, account bank, security agent, or security trustee.
- 46.9.1 The Excluded Assets and Excluded Liabilities are also to comprise “**the Excluded Proceedings**”.
- 46.9.2 In outline, the Excluded Proceedings are to comprise any proceedings relating to any Category 1 Arrangements and any proceedings relating to any Excluded Derivative Transactions.
- 46.10.1 The Excluded Assets and Excluded Liabilities are also to include “**Excluded Intellectual Property**”.
- 46.10.2 In outline, the Excluded Intellectual Property is to include trade marks and names including “NatWest”, other intellectual property rights of NatWest and any Arrangements for their use.
- 46.11 Those Excluded Assets and Excluded Liabilities include any Arrangements in connection with the servicing, or maintenance, of computers and IT networks.
- 46.12 The Excluded Assets and Excluded Liabilities are also to include those arising under what are referred to in the Scheme as “**Intra-Group Arrangements**”, namely any Arrangement to which the only parties are members of the RBS Group.
- 46.13 The Excluded Assets and Excluded Liabilities are also to include, again in outline, those which are in respect of an Arrangement with a person which has entered into a formal insolvency process outside of the UK.
- 46.14 The Excluded Assets are also to include the Statutory Records.

- 46.15 The Excluded Assets and Excluded Liabilities are also to include, in outline, those of NatWest which are owed to, or by, a tax authority, except for those reliefs which, in outline, relate to losses and which transfer under statute to NWM Plc.
- 46.16 The Excluded Assets and Excluded Liabilities are also to include, in outline, those which arise under any contract with any of the employees of NatWest.
- 46.17.1 Finally, the Excluded Assets and Excluded Liabilities are also to include those which NatWest and NWM Plc have agreed in writing prior to the Effective Time are to be excluded from the Scheme.
- 46.17.2 It is not intended that there be any such Excluded Assets and Excluded Liabilities and such provision is to be included in the Scheme out of caution.
- 46.18 More generally, some of the categories of Excluded Assets and Excluded Liabilities are not, or at least may not be, strictly exclusions from what would otherwise be within the Transferring Business and are included out of conventional caution.

*Residual Assets and Residual Liabilities*

- 47.1 Those Transferring Assets and Transferring Liabilities which are to transfer at the Effective Time are referred to in the Scheme as “**the Initial Transferring Assets**” and “**the Initial Transferring Liabilities**”.
- 47.2 As regards a few other Transferring Assets and Transferring Liabilities, it may not be legally possible, or commercially appropriate, for them to be transferred with effect from the Effective Time.
- 47.3 Those Transferring Assets and Transferring Liabilities are referred to in the Scheme as “**Residual Assets**” and “**Residual Liabilities**”.
- 47.4 Each of the Residual Assets and Residual Liabilities will transfer under the Scheme only on what is referred to as a “**Subsequent Transfer Date**”, as set out in Statement 47.10.
- 47.5.1 The first category of Residual Assets and Residual Liabilities is to comprise those Transferring Assets and Transferring Liabilities, whose transfer from the Effective Time, this Court declines to order.
- 47.5.2 That category of Residual Assets and Residual Liabilities would in practice comprise Transferring Assets and Transferring Liabilities, the transfer of which required a third party’s consent and in respect of which this Court did not make an order under section 112(1) overriding that requirement.
- 47.5.3 It is reasonably believed that there will in fact be no Transferring Asset or Transferring Liability, in that first category, which is, therefore, included in the Scheme out of conventional caution.

- 47.6.1 The second category of Residual Assets and Residual Liabilities is to comprise those Transferring Assets and Transferring Liabilities, which are not governed by a UK law and the intended transfer of which under the Scheme would not be recognised by their governing law as fully effective to transfer ownership, at least not without some further legal process, such as registration of the transfer.
- 47.6.2 It is also reasonably believed that there might in fact be only a limited number of Transferring Assets and Transferring Liabilities in that second category.
- 47.7.1 The third category of Residual Assets and Residual Liabilities is to comprise those Transferring Assets and Transferring Liabilities which NWM Plc and NatWest agree in writing are not to be transferred with effect from the Effective Time.
- 47.7.2 It is reasonably believed that, to the extent that NWM Plc and NatWest were to enter into any such agreement, it would relate only to a limited number of Transferring Assets or Transferring Liabilities.
- 47.7.3 That category is, therefore, to be included in the Scheme again out of conventional caution.
- 47.8.1 The fourth category of Residual Assets and Residual Liabilities is to comprise those Transferring Assets and Transferring Liabilities, for which NWM Plc does not have regulatory permission.
- 47.8.2 It is reasonably believed that there will be no Transferring Assets and Transferring Liabilities in that fourth category.
- 47.8.3 That category is again to be included in the Scheme out of conventional caution.
- 47.9 The final category of Residual Asset is to comprise any Asset, such as a right to a dividend, which is derived from a Residual Asset and arises before the Subsequent Transfer Date for that Residual Asset.
- 47.10 In broad terms, the Subsequent Transfer Date, on which the Residual Assets and Residual Liabilities will be transferred under the Scheme, will be that on which the legal impediment to their transfer has been overcome.
- 47.11 The date on which a Transferring Asset, or a Transferring Liability, transfers, whether it is the Effective Time or a Subsequent Transfer Date, is referred to in the Scheme as **“the Relevant Date”**.
- 47.12 Until the applicable Subsequent Transfer Date, NatWest will hold the Residual Assets on trust for NWM Plc, where the governing law so permits, or will be bound by a contractual obligation to account for those Residual Assets to NWM Plc.
- 47.13 In particular, Residual Assets will not be held on trust to the extent that the creation of such a trust would, among other things, not be recognised by the governing law, or would cause a breach of any Arrangement or of the Ring-Fencing Provisions.

### *Other Transfers by, and Amendment to, the Scheme*

- 48.1.1 With effect from the Relevant Date for any Transferring Asset, or Transferring Liability, all proceedings of any kind which are before any court, or tribunal, in respect of which NatWest is the claimant, pursuer or other party, which are pending at the Relevant Date and which relate to that Transferring Asset or that Transferring Liability will be continued by, or against, NWM Plc.
- 48.1.2 As said at Statement 46.9, that transfer will not apply to any Excluded Proceedings.
- 48.2 With effect from the Effective Time, there will also be transferred to NWM Plc all the transferrable rights, and transferrable obligations, of NatWest in respect of all personal data which is comprised in the Transferring Business in respect of which NatWest was the data controller immediately prior to the Effective Time.
- 48.3.1 NatWest and NWM Plc may also consent, on behalf of all other persons concerned, to any modification of, or addition to, the Scheme, or to any condition or provision which, prior to its sanction, this Court may agree or impose.
- 48.3.2 That right is subject to each of the Regulators being notified of the proposed amendment.
- 48.4.1 At any time after its sanction, NatWest and NWM Plc may apply to this Court to amend the terms of the Scheme.
- 48.4.2 That right is also subject to each of the Regulators being notified of the proposed amendment.

### **The General Effect of the Scheme and its Amplification**

#### *General Effect*

- 49.1 Subject to the exceptions which are addressed at Statements 50 to 57, the general effect of the Scheme is to be that each Transferring Asset and Transferring Liability, will, from the Relevant Date, have effect, as if they had always been held by, or made with, NWM Plc, instead of NatWest.
- 49.2 In particular, the general effect of the Scheme is to be that NWM Plc and the Transferring Counterparty will, with effect from the Relevant Date, have the same rights, and be subject to the same obligations, as NatWest and the Transferring Counterparty had, and were under, before the Relevant Date.
- 49.3 For completeness, those Transferring Assets and Transferring Liabilities are to include rights, and obligations, of payment, whether of principal or interest or any other sum.
- 49.4 The transfer of the Transferring Assets and the Transferring Liabilities will necessarily involve certain amendments to them in order for that transfer to be effective.
- 49.5 Many of those inherent amendments are, as is conventional, to be set out expressly in the Scheme.

- 49.6.1 In particular, Transferring Assets will continue to have the benefit of Rights in Security and Title Transfer Collateral Arrangements.
- 49.6.2 The Transferring Assets will also continue to be subject to Encumbrances.
- 49.7 In addition, any instruction given to NatWest by Transferring Counterparties in respect of any Transferring Asset or any Transferring Liability will remain as effective as one given to NWM Plc.

*Amplifying the General Effect*

- 50.1.1 In addition, and in order to amplify its general effect, the Scheme is to provide expressly that the transfer, under the Scheme, of the Transferring Business is, put broadly, (i) not to constitute a breach of, invalidate, or discharge any legal relationship; and (ii) not to give rise to any right to terminate, or modify, any legal relationship in any way.
- 50.1.2 That general effect is subject to the particular terms of the Scheme, including the exception which is described at Statement 50.8.
- 50.2 It is, therefore, sought to include in the Sanction Order an express direction, under sections 112(2)(a), 112(2)(c), 112(2A) and 112(2B) in respect of the Transferring Assets and Transferring Liabilities.
- 50.3 The direction is to provide that their transfer to NWM Plc shall be valid on all persons having any right in any of the Transferring Assets and Transferring Liabilities, notwithstanding any restriction which would otherwise exist, under an Arrangement or otherwise, on their transfer.
- 50.4 As regards section 112A, no right to modify, or terminate, a Transferring Asset, or a Transferring Liability, may be exercised in consequence of its transfer under the Scheme, except in so far as any direction is made to that effect by this Court, in accordance with the Scheme.
- 50.5 As said at Statement 11.10, some of the Transferring Arrangements may give rights to terminate, or require further collateral, in consequence of their transfer to NWM Plc because of its lower credit rating.
- 50.6 In those circumstances, the Transferring Counterparties under those Transferring Arrangements would have the right to terminate them, or require NWM Plc to provide further collateral.
- 50.7 Section 112A would apply to those rights unless, and to the extent that, the Sanction Order otherwise directed.
- 50.8.1 The Scheme seeks to preserve those rights of the Transferring Counterparties, which are referred to in the Scheme as “**Enforceable Rights**”.

- 50.8.2 Accordingly, it is sought that the Sanction Order includes a direction preserving Enforceable Rights.
- 50.8.3 As said at Statement 34.8.2, the Main RFTS included an equivalent reservation of rights.
- 50.9.1 For completeness, the rights which are described at Statement 11 and which would arise on a Merger Without Assumption, or a Credit Event Upon Merger, are not Enforceable Rights to which that direction is to apply.
- 50.9.2 The direction is not to apply to those rights because NatWest reasonably believes that the transfer, under the Scheme, of the Transferring Business would not constitute either a Merger Without Assumption or a Credit Event Upon Merger, in relation to the Transferring Arrangements or the Excluded Business.
- 50.9.3 The Scheme is not expected to have any material adverse effect on the financial position, and so creditworthiness, of NWM Plc, as said at Statement 61.7.
- 50.9.4 Accordingly, no such rights referred to in Statements 11.9 and 11.10 for Transferring Counterparties are expected to arise.

#### *The Other Exceptions to General Effect*

- 51.1 In addition to the Enforceable Rights, the other exceptions to the general effect of the Scheme are to include, first of all, the Replicated Arrangements, which are addressed at Statement 41.12.
- 51.2 The exceptions to the general effect of the Scheme are also to include Shared Security which is addressed at Statement 52.
- 51.3 Finally, the exceptions to the general effect of the Scheme are also to include the six amendments to the Transferring Assets and the Transferring Liabilities (“**the Amendments**”), which are addressed at Statements 53 to 57.

### **The Shared Security and the Amendments**

#### *The Shared Security*

- 52.1.1 The Shared Security is, first of all, to include a Right in Security which, before the Effective Time, secures, or is to secure, both (i) one or more of the categories of Liabilities which a Counterparty, or a Relevant Counterparty, owes, or is to owe, to NWM Plc and which are set out at Statement 52.1.2, and also (ii) one or more of the categories of Liabilities which a Counterparty, or a Relevant Counterparty, owes, or is to owe, to NatWest and which are set out at Statement 52.1.4.
- 52.1.2 The first group of categories is to comprise:
- (i) Liabilities which are within the Transferring Business;
  - (ii) Liabilities which are incurred under a Replicated Arrangement;

- (iii) future Liabilities which the Transferring Counterparty may incur to NWM Plc; and
  - (iv) future Liabilities which the Relevant Counterparty may incur to NWM Plc under a Secured Empty Arrangement of the kind which has been referred to at Statement 43.6.
- 52.1.3 Those four categories of Liabilities are referred to in the Scheme as “**Transferring Secured Liabilities**”.
- 52.1.4 The second group of categories is to comprise:
  - (i) Liabilities which are within the Excluded Business;
  - (ii) Liabilities which are within the NatWest Remaining Business;
  - (iii) future Liabilities which the Transferring Counterparty may incur to NatWest; and
  - (iv) future Liabilities which the Relevant Counterparty may incur to NatWest under a Secured Empty Arrangement of the kind which has been referred to at Statement 43.6.
- 52.1.5 Those four categories of Liabilities are referred to in the Scheme as “**Remaining Secured Liabilities**”.
- 52.2.1 As said at Statement 46.7.3, the legal title to each Shared Security is not to transfer to NWM Plc.
- 52.2.2 Instead, a trust will be constituted over the Shared Security, with effect from the Effective Time.
- 52.2.3 Under that trust, NatWest will hold that Shared Security in trust for itself and NWM Plc and as security for the relevant Transferring Secured Liabilities and Remaining Secured Liabilities.
- 52.2.4 NatWest is to be the trustee for the Shared Security in order to comply with the Ring-Fencing Provisions by avoiding NatWest being dependent upon NWM Plc, which might arise if NWM Plc were to be trustee.
- 52.3 The Shared Security will not adversely affect the rights, or position in practice, of the Transferring Counterparty who granted it.
- 52.4 In fact, the Shared Security will preserve the original position of that Transferring Counterparty under the Rights in Security and the total secured liabilities which are secured by it.
- 52.5.1 In functional terms, the Shared Security is equivalent to the Amendments in varying Transferring Assets only to the extent necessary for the Scheme to be fully and effectively carried out.

- 52.5.2 As said at Statement 34.14, the equivalent concept of a shared security in the Main RFTS was, in legal terms, the transfer of a right in security and then its amendment so that it was held by the transferee (now RBS plc) in trust for itself, NatWest and the transferor, now NWM Plc.
- 52.6 In addition, NatWest and NWM Plc will enter into, outside of the Scheme, an “*Intercreditor Agreement*”, which will regulate their respective rights to the Shared Security and their enforcement.
- 52.7.1 For completeness, the Shared Security does not apply to the Title Transfer Collateral Arrangements.
- 52.7.2 The Title Transfer Collateral Arrangements rely on bilateral contractual netting of obligations and are reasonably believed not to be suitable for a security trust mechanism.
- 52.7.3 As said at Statement 39.10, the definition in the Scheme of a Right in Security does not include the Title Transfer Collateral Arrangements.

#### *The Amendments - Overview*

- 53.1 In outline, most of the Amendments are intended to avoid the risk of the Scheme adversely affecting the position of any of the Transferring Counterparties.
- 53.2 The first to fifth Amendments restrict rights which NatWest, or NWM Plc, would, or at least might, have in consequence of the Scheme.
- 53.3 Those Amendments are conventional in a banking scheme which includes business similar to the Transferring Business.
- 53.4 The other Amendments are necessary for the Scheme to be fully and effectively carried out.
- 53.5 The Amendments take the legal form either of direct amendments to the contractual terms of a Transferring Asset, or a Transferring Liability, or of an undertaking by NWM Plc.
- 53.6 The Amendments are in addition to those amendments which are inherent in the transfer from NatWest to NWM Plc.
- 53.7 The final Amendment is strictly necessary for the Scheme to be fully and effectively carried out.
- 53.8 The Amendments are similar to those of the amendments in the Main RFTS which are described at Statement 34.

#### *The First and Second Amendments – Contractual Rights of Set-off*

- 54.1 The first two Amendments concern contractual rights of set-off, which NWM Plc would otherwise have had in consequence of the Scheme and which are referred to in the Scheme as “*Set-Off Rights*”.

- 54.2 The Set-Off Rights would otherwise have been available against a Transferring Counterparty, who was a creditor, or debtor, of NWM Plc under a Transferring Arrangement or a Replicated Arrangement.
- 54.3 The practical effect of the first Amendment will be that the Set-Off Rights will be restricted, with effect from the Relevant Date.
- 54.4.1 NWM Plc will have no right to set off amounts which it is owed by a Transferring Counterparty, under a Transferring Arrangement, or a Replicated Arrangement against amounts which it owes to the Transferring Counterparty under what is referred to in the Scheme as a “**NWM plc Existing Arrangement**” between NWM Plc and the Transferring Counterparty.
- 54.4.2 Similarly, NWM Plc will have no right to set off amounts which it owes to a Transferring Counterparty, under a Transferring Arrangement or a Replicated Arrangement, against amounts which the Transferring Counterparty owes to NWM Plc under a NWM plc Existing Arrangement.
- 54.5.1 Those restrictions on the Set-Off Rights will last for a period which expires three months from the Relevant Date, and are subject to two exceptions.
- 54.5.2 The first exception is where NWM Plc already has the Set-Off Rights at the Relevant Date.
- 54.5.3 The second exception is where the Set-Off Rights are later acquired by NWM Plc, otherwise than solely in consequence of the Scheme.
- 54.6 Those restrictions on Set-Off Rights are intended to prevent the Scheme, for that period, adversely affecting a Transferring Counterparty, whose position will, in commercial terms, be the same both before, and after, the Scheme.
- 54.7 In addition, a Transferring Counterparty who might be affected by these Set-Off Rights will be entitled, during that period, to request the withdrawal of all, or part, of any deposit forming part of the NWM plc Existing Arrangements, without loss of any accrued interest and without incurring any charge that would otherwise apply.

*The Third and Fourth Amendments – All Monies Rights and Consolidation Rights*

- 55.1 The third and fourth Amendments concern any Right in Security, which NWM Plc would, or might, otherwise have in consequence of the Scheme to secure all the Liabilities which are owed to it by a Transferring Counterparty.
- 55.2 Those Rights in Security of NWM Plc are referred to in the Scheme as “**All Monies Rights**” and “**Consolidation Rights**”.
- 55.3 A Right in Security which is transferred under the Scheme will be restricted with effect from the Relevant Date.

- 55.4 The Right in Security will not secure those Liabilities which the Transferring Counterparty already owes to NWM Plc at the Relevant Date under a NWM plc Existing Arrangement.
- 55.5 Equally, a Right in Security which NWM Plc already has at the Relevant Date will not secure Liabilities of the Transferring Counterparty under a Transferring Arrangement or a Replicated Arrangement.
- 55.6.1 Those restrictions are also subject to exceptions.
- 55.6.2 The first is where the Right in Security, which NWM Plc already has at the Relevant Date, is not extended in consequence of the Scheme.
- 55.6.3 The second exception is where the Right in Security is later extended otherwise than in consequence of the Scheme.
- 55.6.4 In practice, the exceptions will apply when the Right in Security provides, at the Relevant Date, that it secures all Liabilities which a Transferring Counterparty has to any member of the RBS Group.
- 55.7 Those restrictions on Rights in Security are intended to prevent the Scheme adversely affecting a Transferring Counterparty, whose position will, in commercial terms, be the same both before, and after, the Scheme.

*The Fifth Amendment – Cross-Default Rights*

- 56.1 The fifth Amendment concerns other rights which NWM Plc would, or might, otherwise have in consequence of the Scheme.
- 56.2 Those rights are referred to in the Scheme as “**Cross-Default Rights**”.
- 56.3 Those rights will be restricted with effect from the Relevant Date.
- 56.4 In outline, NWM Plc will have no right to exercise any of those rights which might otherwise be exercisable solely in consequence of the Scheme.
- 56.5 Those restrictions are subject to what are, in substance, the same exceptions as those to which the Set-Off Rights are subject.

*The Final Amendment – Stapled Hedge/Loan Arrangements*

- 57.1 The final Amendment is to apply to Stapled Hedge/Loan Arrangements.
- 57.2 With effect from the Effective Time, the Stapled Hedge/Loan Arrangements will be amended in one of two ways.
- 57.3 The first way is that NWM Plc will be a party to the Stapled Hedge/Loan Arrangements to the extent they relate to Transferring Arrangements and NatWest will remain a party to those Arrangements to the extent that they relate to Arrangements which are to remain with NatWest, including those relating to Remaining Derivative Transactions.

57.4 The second way in which the Stapled Hedge/Loan Arrangements are to be amended is that NWM Plc's rights and obligations under the Stapled Hedge/Loan Arrangement will be replaced by those under the Replicated Arrangements where the Transferring Counterparty is a Category 2 Counterparty.

### **The PRA**

58.1 Section 107(2A) provides that an application relating to a ring-fencing transfer scheme may be made only with the consent of the PRA.

58.2 Section 107(2B) provides that, in deciding whether to give consent under section 107(2A), the PRA must have regard to the report which must be prepared under section 109A on the ring-fencing transfer scheme and which is addressed at Statements 59 and 60.

58.3 The PRA has given its consent to the Scheme in a letter to NatWest and NWM Plc dated 8th May 2018.

### **The Scheme Reports**

#### *The Skilled Person and the Scheme Report*

59.1.1 In accordance with sections 109A(2) and (3), Mr Grundy has also been appointed as the Skilled Person for the Scheme, with the consent of the PRA, which is set out in the letter to NWM Plc and is dated 8th August 2017.

59.1.2 That letter refers expressly to the PRA having first consulted with the FCA.

59.2 As said at Statement 35, Mr Grundy prepared a scheme report on the Main RFTS.

59.3 Mr Grundy has prepared a scheme report on the Scheme ("**the Scheme Report**").

59.4.1 The form of the Scheme Report has also been approved by the PRA, as set out in the letter dated 4th May 2018.

59.4.2 That letter refers expressly to the PRA having first consulted with the FCA.

59.5 In particular, the Scheme Report includes a detailed answer to the Statutory Question.

59.6 In doing so, the Scheme Report adopts an interpretation of the first part of the Statutory Question which is stricter than that which is set out at Statement 31.

59.7 The overall answer to the Statutory Question is set out at Section 2 of the Scheme Report, which says:

*“save in respect of certain matters set out in Section 5, (a) persons other than the transferor are not likely to be adversely affected by the Scheme and, in relation to the matters set out in Section 5 where I have identified an Adverse Effect, (b) if they are likely to be adversely affected, the Adverse Effect is not likely to be greater than is reasonably necessary in order to achieve the specific purpose of enabling a UK*

*authorised person to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions (Section 106B(3)(a) of FSMA)”.*

59.8 The overall conclusions on the financial effects of the Scheme are set out at Sections 5.3.2, 5.4.2 and 5.5.2 of the Scheme Report, which include the following provisions:

5.5.2

*“However whilst NatWest Markets may be able to pay its obligations as they fall due, there may be other effects on counterparties during the term of the instruments. As set out in Section 3, NatWest Markets will be outside the ring-fenced sub-group and as at the date of this report, the public announcements by the credit rating agencies indicate that it is likely that NatWest Markets will have a credit rating lower than NatWest Bank.*

...

5.3.2, 5.4.2 and 5.5.2

*It is not clear when all rating changes will be made but it is likely that the Scheme will result in a negative effect for Derivative Transaction counterparties as they are being transferred to an entity which is likely to have a lower credit rating. An effect may arise in relation to the fair valuation of Derivative Transactions that counterparties may record for their financial reporting purposes. Derivative Transactions are generally fair valued for accounting purposes and such valuations contain an adjustment that takes into account the risk of default of the entity that is party to the transaction (the "Credit Valuation Adjustment" or "CVA").*

...

5.3.2

*As there may be some negative effects on certain counterparties in respect of both fair valuation and regulatory capital, and because I cannot assess whether the effect would be material to these counterparties, I have concluded that the Scheme results in an Adverse Effect for certain Derivative Transaction counterparties.*

...

5.3.2 and 5.5.2

*I have therefore assessed Part (b) of the Statutory Question. As these are Ineligible Derivative Transactions, they cannot remain in the RFB. There is a need to transfer the Derivative Transactions from NatWest Bank. I have therefore considered whether the transfers could have been made to another entity or in a manner which prevented any additional credit risk: [...]*

...

5.3.2 and 5.5.2

*Overall I am satisfied that the Adverse Effect itself is relatively limited when considering the credit risk that currently exists in comparison with the additional*

*credit risk that would be created through the Scheme. As set out above, having considered the actual nature of the Adverse Effect, the need to transfer the Ineligible Derivative Transactions, and the limited ability to transfer the Derivative Transactions into an entity other than one which has a lower rating. I have also considered the advantages and disadvantages of collateralisation and the additional mitigation offered, and the treatment of Derivative Transactions entered into after the opt-out cut-off date. I have concluded that whilst there is an Adverse Effect as a result of the Scheme, I do not consider that this is likely to be greater than is reasonably necessary in order to achieve the relevant purpose of Section 106B(3)(a).”*

59.9.1 The Scheme Report also considers the impact of the Scheme on “*hedge accounting*” at Section 5.3.3.

59.9.2 That paragraph includes the following passages:

5.3.3

*A Derivative Transaction that is an economic hedge may, if appropriate, be treated as a hedge for accounting purposes by a counterparty...*

...

*Whilst the transfer of Derivative Transactions through the Scheme does not change the future obligations, the Scheme does result in the RBS entity that is party to the transaction changing to any entity likely to have a lower credit rating. Each counterparty will need to make an assessment in respect of whether, from an accounting perspective, the Derivative Transaction can continue to be treated as an accounting hedge.*

...

*There is therefore a possibility that this could result in a “break” in hedge accounting treatment, potentially resulting in increased volatility in the financial results of the counterparty.*

...

*Whilst this issue may only apply to certain counterparties, as I cannot say that there will be no effect for any counterparty, I have concluded that this is an Adverse Effect of the Scheme and hence I have considered Part b) of the Statutory Question.*

...

5.3.3.1

*Overall I have concluded that whilst there is an Adverse Effect as a result of the Scheme, I do not consider that this is likely to be greater than is reasonably necessary in order to achieve the relevant purpose of Section 106B(3)(a).*

*Supplementary Scheme Report*

- 60.1 Although it is not required by section 109A, it is envisaged that, shortly before the Sanction Hearing, Mr Grundy will prepare a supplementary report (“**the Supplementary Scheme Report**”).
- 60.2 As said at Statement 35.5.1, Mr Grundy prepared a supplementary report for the Main RFTS.
- 60.3 It is reasonably expected that the Supplementary Scheme Report will address the carrying out of the communications exercise which is described at Statement 63.8 and objections to the Scheme, particularly those which comply with section 110(5).
- 60.4 It is further reasonably expected that the Supplementary Scheme Report will confirm that the conclusion of the Scheme Report, particularly on the Statutory Question, remains valid.

### **NWM Plc’s Financial Position and Certificate of its Adequate Financial Resources**

- 61.1 Sections 111(1) and (2)(ab), and paragraphs 9B(1)(b) and 9C of Part 2B of Schedule 12, require that, before this Court may make an order sanctioning the Scheme, the Court must be satisfied that “**the relevant authority**” has certified that, taking the Scheme into account, NWM Plc possesses, or will possess before the Scheme takes effect, “**adequate financial resources**”.
- 61.2 Paragraph 9C(2)(a) of Part 2B of Schedule 12 provides that, in the case of a PRA-authorized person, the relevant authority is the PRA.
- 61.3 As said at Statement 18.7, NWM Plc is a PRA-authorized person.
- 61.4 It is reasonably expected that the PRA is to give that certificate in the course of this process.
- 61.5 That certificate is to confirm that NWM Plc will, at the Effective Time, be sufficiently capitalised to enable it to meet its business plans and to maintain an adequate level of resources with which to satisfy its capital requirements.
- 61.6.1 In addition, it is reasonably expected that NWM Plc’s credit ratings after the Effective Time will not be materially different from the present ratings of NatWest from S&P and Fitch.
- 61.6.2 Credit ratings from Moody’s are reasonably expected to maintain the same differential currently in place.
- 61.7 It is, therefore, sufficiently clear that, other than as set out in Statement 59.8, the financial position of NWM Plc is such that the interests of those Transferring Counterparties, and those of the Existing NWM Plc Counterparties, will not be adversely affected by the Transferring Business being transferred to NWM Plc.

### **NatWest’s Post-Scheme Financial Position**

- 62.1 In addition, the Scheme should not, so far as can be reasonably ascertained and so far as they can reasonably be identified, adversely affect the interests of the Remaining Counterparties.
- 62.2 In addition, NatWest will, at the Effective Time, continue to be sufficiently capitalised to enable it to meet its business plans and to maintain an adequate level of financial resources with which to satisfy its regulatory capital and leverage requirements and its liquidity requirements.
- 62.3 In addition, it is reasonably anticipated that the Scheme will not result in any downgrading in the credit ratings which NatWest has and which are set out at Statement 15.5.

## **The Communications Exercise**

### *Overview*

- 63.1 The COBTRA Regulations do not apply to an RFTS, as they do to a banking scheme and, albeit on different terms, to an insurance scheme.
- 63.2 Accordingly, there are no statutory requirements to publish a notice in respect of this application and the Scheme, to make available a copy of a statement setting out the full terms of the Scheme or even to serve a copy of this application on the PRA.
- 63.3 However, this application is sought to be served formally on the PRA, as if the COBTRA Regulations applied, and also on the FCA.
- 63.4 In the absence of the COBTRA Regulations, the final guidance which each of the Regulators has published and which is addressed at Statement 32 includes the expectation of that Regulator on the communications exercise which would be undertaken sufficiently to publicise an RFTS.
- 63.5 In that context, paragraph 3.13 of the PRA's Statement of Policy provides that "*a key concern*" for the PRA is to satisfy itself that persons, other than the transferor, have adequate information and a reasonable time within which to determine whether or not they are adversely affected and, if adversely affected, whether to make representations to the court.
- 63.6.1 Paragraphs 1.25 to 1.30 of the FCA's Finalised Guidance provide, more fully, that there is an expectation that the firms communicate with persons likely to be adversely affected including by publications in gazettes or national newspapers.
- 63.6.2 Those persons may be wider than the customers of the transferor and transferee and are referred to in the FCA's Finalised Guidance as "*consumers*". That term is derived from section 16.
- 63.6.3 Paragraphs 1.25 to 1.30 of the FCA's Finalised Guidance are included in Schedule III.

- 63.7.1 Such communications are intended to inform those consumers how they are likely to be adversely affected so that they may consider exercising their statutory right to make representations about, or object to, the RFTS in court.
- 63.7.2 Paragraph 1.26 of the FCA’s Finalised Guidance provides that there is an expectation that the transferor and the transferee will communicate individually with adversely affected consumers.
- 63.8.1 Accordingly, NatWest and NWM Plc have informed the Regulators that they will take the steps which are set out in this Statement to publicise this application, and the Scheme, as widely as is reasonably practicable.
- 63.8.2 These steps are referred to together in this application as “**the Communications Exercise**”.
- 63.9.1 In particular, the Communications Exercise will include the steps which are set out in this Statement and are together sufficient to bring this application and the Scheme to the attention of the following persons, namely:
- (i) Transferring Counterparties;
  - (ii) Remaining Counterparties;
  - (iii) any other persons whose interests may be directly affected by the Scheme.
- 63.9.2 Neither of the Regulators has objected to those steps as being inadequate.

#### *The Notice*

- 64.1 First of all, NatWest and NWM Plc will publish a notice of the Scheme and of this application (“**the Notice**”), as would be required by paragraph 5(2) if the COBTRA Regulations did apply.
- 64.2 The Notice will be published in *The London Gazette*, *The Edinburgh Gazette* and *The Belfast Gazette* and in two national newspapers in the UK, namely the *Financial Times* (including the international editions) and *The Scotsman*, stating that this application has been made.
- 64.3 That level of publication would be what the COBTRA Regulations would have required.
- 64.4 The Notice has also been seen in advance by each of the Regulators, neither of which has objected to it.
- 64.5.1 The Notice will contain the address (including the webpage which is referred to at Statement 66.3) from which a copy of each of the following documents will be available free of charge, to any person who requests it, namely:
- (i) this application;
  - (ii) the full terms of the Scheme;

- (iii) the summary of the Scheme which is referred to at Statement 66.2;
- (iv) the Scheme Report; and
- (v) the summary of the Scheme Report; and
- (vi) any Supplementary Scheme Report, when available.

64.5.2 That is more than would have been required by paragraph 5(4) of the COBTRA Regulations.

64.6 In addition, the Notice is to refer, as is now conventional, to the practice of this Court to consider any informal objection to this application, whether in writing or in person.

64.7 The Notice is also to refer to the statutory right to be heard, provided that the provisions of section 110(5) have been complied with, as stated at Statement 67.3.

#### *The Booklets and the Covering Letters*

65.1 In addition, two versions of a booklet (together “**the Booklets**”) will be prepared for the Scheme, which will sufficiently describe the Scheme and this application, including the procedure for objecting to the Scheme.

65.2.1 The first version of the Booklet will be for Counterparties who are not RFIs.

65.2.2 The second version of the Booklet will be for Counterparties who are RFIs.

65.3.1 The Booklets will refer with sufficient clarity to the Opt-Out Rights, including the Opt-Out Date.

65.3.2 In addition, the Booklets will refer with sufficient clarity to the Replicated Arrangements, the Title Transfer Collateral Arrangements, Shared Security, the Enforceable Rights, and the Amendments.

65.4 In addition, there will be six versions of a covering letter (together “**the Covering Letters**”) for different categories of Counterparties.

65.5.1 The first version of the Covering Letters will be for Counterparties who are not RFIs.

65.5.2 The second version of the Covering Letters will be for Counterparties who are RFIs.

65.5.3 The third version of the Covering Letters will be for parties to any Proceedings which are intended to transfer to NWM Plc, and who do not have any derivative transactions at the Effective Time.

65.5.4 The fourth version of the Covering Letters will be for third parties who have provided a Right in Security in respect of Transferring Derivative Transactions or both Transferring Derivative Transactions and Remaining Derivative Transactions. They include those who have provided a Right in Security in respect of any Secured Empty Arrangement.

65.5.5 The fifth version of the Covering Letters will be for insolvency practitioners who have been appointed to Counterparties who are not RFIs.

- 65.5.6 The sixth version of the Covering Letters will be for insolvency practitioners who have been appointed to Counterparties who are RFIs.
- 65.6 A Booklet and the relevant Covering Letter will be sent by email to each of the parties referred to above for whom it is reasonably practical for NatWest to obtain a current email address from its computer systems.
- 65.7 A Booklet and the relevant Covering Letter will also be sent by post to each of the parties referred to above for whom it is reasonably practical for NatWest to obtain a current postal address from its computer systems.
- 65.8.1 For completeness, the size of the Transferring Business is sufficiently small, in terms of the present operations of NatWest, that the Remaining Counterparties are not adversely affected by it.
- 65.8.2 Similarly, the size of the Transferring Business is sufficiently small in terms of the present operations of NWM Plc that the Existing NWM Plc Counterparties are not adversely affected by the Scheme.
- 65.8.3 Those conclusions are confirmed at Section 12 of the Scheme Report.
- 65.9 Accordingly, it is not intended to send a copy of a Covering Letter and Booklet to the Remaining Counterparties or the Existing NWM Plc Counterparties or otherwise to notify them individually of the Scheme.
- 65.10 The notification to Counterparties, or future Counterparties who propose entering into any Post Opt-Out Date Derivative Transactions, which are not Excluded Derivative Transactions, will say with sufficient clarity that such Post Opt-Out Date Derivative Transactions will be Transferring Derivative Transactions.
- 65.11.1 For completeness, individual notification of a banking scheme would not be required, under the COBTRA Regulations.
- 65.11.2 However, individual notification of an insurance scheme would be required by them, subject to the court's power of waiver.

#### *Other Steps*

- 66.1 In addition to the publication of the Notice and sending the Booklets and the Covering Letters, NatWest and NWM Plc will also take, as part of the Communications Exercise, the further steps which are set out in this Statement.
- 66.2 First of all, NatWest and NWM Plc have prepared a summary of the Scheme (“**the Scheme Summary**”).
- 66.3 Secondly, RBSG has established a webpage (“**the Main Webpage**”) in connection with the Scheme.

- 66.4 NatWest and NWM Plc, through the NatWest Markets Franchise, will prominently display links on their respective webpages which automatically link to the Main Webpage.
- 66.5 The Main Webpage will include a copy of each of the following, namely:
- (i) this application;
  - (ii) the Notice;
  - (iii) the Scheme;
  - (iv) the Scheme Summary;
  - (v) the Scheme Report;
  - (vi) the summary of the Scheme Report; and
  - (vii) any Supplementary Scheme Report, when available.
- 66.6.1 The Main Webpage and its contents will also be referred to in the Notice.
- 66.6.2 The Main Webpage will also be referred to in the Booklets and the Covering Letters.
- 66.7 In addition, copies of this application, the Notice, the Scheme, the Scheme Summary, the Scheme Report, the summary of the Scheme Report and any Supplementary Scheme Report, when available, will be given to any person who requests them.
- 66.8 Thirdly, RBSG will also issue an RNS on the London Stock Exchange.
- 66.9.1 NWM Plc will also put detailed arrangements in place to deal with any objections to, or even queries on, the Scheme, which are made by telephone or email.
- 66.9.2 In particular, every objector will receive a reply, which will explain the processes for objecting, whether by means of answers or under section 110(5).
- 66.9.3 The treatment of informal objections to the Scheme is addressed further at Statement 67.
- 66.9.4 NWM Plc and NatWest will also put in place detailed arrangements to explain to Counterparties whether their derivative transactions have been classified as Eligible Derivative Transactions or Ineligible Derivative Transactions and the reasons for their classification.

### **The Deadline for Section 110 Objections**

- 67.1 Sections 110(4)(c) and (5) apply only to an RFTS.
- 67.2 Section 110(4)(c) provides, in effect, that any person, including an employee of the transferor or the transferee who alleges that he would be adversely affected by the carrying out of the RFTS, is entitled to be heard.
- 67.3 Section 110(5) provides that such a person is not entitled to be heard, unless before the sanction hearing he has lodged with the court a written statement of the

representations which he wishes the court to consider and served a copy of the statement on the PRA and the transferor.

- 67.4 Section 110(5) envisages the practice of the Companies Court for objections and attempts to limit objections in order to avoid uncertainty, or even delay, at the sanction hearing.
- 67.5 In any case, sections 110(4) and (5) create, by necessary implication, a statutory right to object to a ring-fencing transfer scheme, in this Court other than by lodging Answers to the application for its sanction.
- 67.6 As said at Statement 64.6, the practice of this Court is, in any event, to consider any informal objection to this application, whether in writing or in person.
- 67.7 In any case, it is implied in section 110(5) that the court has the power to specify a date, and time, by which the statement must be lodged (“**the Section 110 Deadline**”).
- 67.8.1 It is suggested that the appropriate Section 110 Deadline is 5pm on 11th July 2018, which is 20 days before the Sanction Hearing.
- 67.8.2 That Section 110 Deadline is fair to the Companies and any person seeking to be heard.
- 67.8.3 In particular, the proposed Section 110 Deadline is appropriate in relation to the deadline which is to apply to the exercise of the Opt-Out Rights and is, as said at Statement 41.18, to be 43 days before the Sanction Hearing.
- 67.9 A slightly longer period of 27 days prior to the sanction hearing, was fixed in the first order which was made in the application for the Main RFTS.
- 67.10 It is also appropriate for the First Order to direct that the Notice, the Booklets, the Covering Letters and all other publicity for this application and the Scheme, such as the Main Webpage, give notice of the Section 110 Deadline and the other requirements of section 110.
- 67.11.1 It is also appropriate for the First Order to direct that the Notices and other publicity give notice of the further requirement to serve a copy of the statement on the PRA and NatWest, as the transferor.
- 67.11.2 It is envisaged that the copy of the statement be served on NatWest by post at the address which is to be stated in the Notice, although the copy could also be left at that address.
- 67.12.1 For completeness, the Notice and the Main Webpage will also include a link to the portal address which the PRA is to establish in connection with the Scheme.
- 67.12.2 That portal would provide further methods of serving a Section 110 Objection on the PRA.
- 67.13 A direction to that effect was also included in the first order for the Main RFTS.

67.14 For completeness, sections 110(4) and (5), correctly interpreted, do not, in any way affect the procedure of this Court under which the formal method of objecting to this kind of application is by lodging answers to it.

### **Sanction of the Scheme**

#### *The Scheme's Compliance with the Express Statutory Requirements*

- 68.1 In all these circumstances, the Petitioners will seek the Sanction Order.
- 68.2 The Scheme is a ring-fencing transfer scheme within the meaning of section 106B(1).
- 68.3 First of all, the Scheme is one under which part of the business carried on by a UK authorised person, namely NatWest, is to be transferred to “**another body**”, as transferee, namely NWM Plc, all within section 106B(1)(a).
- 68.4.1 Secondly, the Scheme is, as required by section 106B(1)(b), to be made for one of the purposes which are mentioned in section 106B(3).
- 68.4.2 The purpose is that of enabling the transferor, NatWest, to carry on Core Activities as a Ring-Fenced Body within the Ring-Fencing Provisions.
- 68.4.3 That is the purpose referred to in section 106B(3)(a).
- 68.5 Thirdly, the Scheme is, as required by section 106B(1)(c), not “*an excluded scheme*”, as defined in section 106B(4), or an insurance scheme, as defined in section 105(1).
- 68.6 Fourthly, the PRA has given its consent to the making of this application, as required by section 107(2A).
- 68.7 Finally, the Scheme Report complies with section 109A.

#### *The Appropriateness of Sanctioning the Scheme*

- 69.1 In addition, it is appropriate, in all the circumstances, that this Court sanctions the Scheme, in accordance with section 111(3).
- 69.2 In particular, the Scheme is not likely to adversely affect any right or reasonable interest, of any of the following persons, so far as can reasonably be ascertained and in so far as they can reasonably be identified, namely:
- (i) Transferring Counterparties;
  - (ii) Remaining Counterparties;
  - (iii) Existing NWM Plc Counterparties; and
  - (iv) other persons whose interests may be affected by the Scheme.
- 69.3 In addition, the Scheme should not, so far as can reasonably be ascertained, adversely affect any right, or reasonable interest, of any other person.

- 69.4 In particular, the Scheme should not adversely affect any right, or reasonable interest, of the RBS Group Employees, including the employees of NatWest or NWM Plc, or of the RBS Pension Schemes, including the Main Section.
- 69.5 In addition, the overall answer in the Scheme Report to the Statutory Question is in the negative.
- 69.6.1 Since the Scheme should not, so far as can reasonably be ascertained, adversely affect any right, or reasonable interest, of any other person, it is sought that the order sanctioning the Scheme also includes specific provisions under sections 112(2)(a), 112(2)(c) and 112(2A).
- 69.6.2 Those provisions are for the transfer under the Scheme of the Transferring Assets, and the Transferring Liabilities, notwithstanding that those Assets and those Liabilities of NatWest would, or might, not otherwise be capable of being transferred.
- 69.7 For completeness, no circumstances exist to justify any order under section 112A, except as regards the Enforceable Rights.

### **The Reporter**

- 70.1.1 The Companies also seek the appointment of a Reporter to the process and the remit to him.
- 70.2 Mr B. H. Moore, solicitor, Edinburgh, is suggested as an appropriate Reporter.
- 70.3 Mr Moore was appointed as Reporter on the Main RFTS, in place of his partner, Michael Livingston, who had become ill.
- 70.4 In addition, Mr Moore was appointed by order dated 10th May 2018 to be the reporter on the NWM Plc Reduction.
- 70.5 In addition, Mr Moore is willing, and able, to act as Reporter on terms acceptable to the parties.

### **The Period of Notice**

- 71.1 As set out in Statement 64.2, it is sought to advertise this application outside Europe, namely in the international editions of the *Financial Times*.
- 71.2 Accordingly, the period of notice for lodging Answers is, under Rule of Court 14.6(1)(c), one of 42 days from the last date on which the application is intimated, served and advertised.
- 71.3 That period is broadly equivalent to the period which is referred to in the FCA's published guidance.

### **General**

- 72 This application is made under FSMA, and in particular Part VII, and under the Rules of Court, in particular Rules 14.5 and 14.6(1)(c).

**MAY IT THEREFORE** please your Lordships:

- (i) to order intimation on the Walls, in common form, of this petition for the sanction of a ring-fencing transfer scheme (“**the Scheme**”) which is under Part VII of the Financial Services and Markets Act 2000 (“**FSMA**”) and under which the customer derivatives business of National Westminster Bank Plc (“**NatWest**”) is to be transferred to NatWest Markets Plc (“**NWM Plc**”);
- (ii) to order a notice (“**the Notice**”) of this application and of the Scheme to be advertised once in each of *The Edinburgh Gazette*, *The London Gazette* and *The Belfast Gazette*, and in each of the following newspapers, namely the *Financial Times* (including the international editions) and *The Scotsman*;
- (iii) to order service in common form of a copy of each of this petition, including the Scheme, and the Notice (as defined in Statement 64.1) on The Prudential Regulation Authority (“**the PRA**”) and The Financial Conduct Authority, both of which are designed in Schedule I;
- (iv) to authorise all parties claiming an interest to lodge Answers to this petition, if so advised, within 42 days after that intimation, service and the last of those advertisements;
- (v) to direct, under sections 110(4) and (5) of FSMA, that any person claiming to be adversely affected by the carrying out of the Scheme and wishing to be heard, in person, or in writing, on this application and on the Scheme, (a) lodge, by post or in person, with this Court a written statement of the representations which he wishes this Court to consider no later than 5pm on the day which is 20 days before the hearing at which an order sanctioning the Scheme is to be sought and (b) before that time, serve a copy of that statement on the PRA and on NatWest;
- (vi) to direct that the Notice which is referred to in paragraph (ii) of this prayer, and all other notifications of, and communications for, the Scheme and this application, give notice of that deadline for lodging that statement and that further requirement for serving that statement on the PRA and NatWest;
- (vii) to appoint Mr B.H. Moore, solicitor, of Quatermile One, 15 Lauriston Place, Edinburgh EH3 9EP as reporter to the process; and to remit the process to the reporter to report on the facts and circumstances set out in the petition and the regularity of the proceedings;  
and upon resuming consideration of this petition, with or without answers,
- (viii) to pronounce an order, under section 111 of FSMA, sanctioning the Scheme;
- (ix) to pronounce an order, under section 112(1)(a) of FSMA, transferring to NWM Plc, with effect from the time on which the Scheme takes effect (“**the Effective Time**”),

that part of the undertaking, property and liabilities to which the Scheme applies which part is defined in the Scheme as the “**Transferring Business**”;

- (x) to pronounce an order, under section 112(1)(a) of FSMA, transferring to NWM Plc, with effect from “**the Effective Time**” (as defined in the Scheme), all rights, benefits, liabilities and obligations of NatWest under, or in connection with, the “**Transferring Assets**” and the “**Transferring Liabilities**” (as defined in the Scheme), which order shall not become effective in respect of any “**Residual Assets**” and “**Residual Liabilities**” of NatWest (as defined in the Scheme) until the relevant “**Subsequent Transfer Date**” (as defined in the Scheme);
- (xi) to pronounce an order, under sections 112(2)(a), 112(2)(c), 112(2A) and 112(2B) of FSMA, that the transfer shall be valid and binding on all persons having an interest, or right, in any of the Transferring Assets or the Transferring Liabilities (or both), notwithstanding any restriction on transferring or otherwise dealing with the same, and that that transfer shall take effect as if: (a) there were no requirement to obtain the consent of any person; and (b) there were no contravention of, or interference with, any such right or interest;
- (xii) to pronounce an order, under section 112A(2) of FSMA, that any “**Enforceable Rights**” (as defined in the Scheme) which arise in consequence of the Scheme becoming effective will be enforceable in accordance with their respective terms;
- (xiii) to pronounce an order, under section 112(1)(c) of FSMA, for the continuation by, or against, NWM Plc of “**Proceedings**”, (as defined in the Scheme and so excluding what are there defined as “**Excluded Proceedings**”) pending by, or against, NatWest on the Effective Time, as provided for in the Scheme, except that that order shall not become effective in the case of any Proceedings which relate solely to Residual Assets or Residual Liabilities (or both) until the relevant Subsequent Transfer Date, and provided that, in relation to such Proceedings, NatWest and NWM Plc do not agree otherwise before the Effective Time or Subsequent Transfer Date;
- (xiv) to allow NWM Plc and NatWest to apply, under section 112(1)(d) of FSMA, for any orders in relation to such incidental, consequential and supplementary matters as are necessary to secure that the Scheme shall be fully and effectively carried out;
- (xv) to order NWM Plc, under section 112(10) of FSMA, to deposit two certified copies of the order pronounced under section 111 of FSMA with the PRA within 10 days of the making of that order;
- (xvi) to order advertisement of the order to be pronounced under section 111 of FSMA (a) in each of *The Edinburgh Gazette*, *The London Gazette* and *The Belfast Gazette*, and (b) in each of the following newspapers, namely the *Financial Times* (including the international editions) and *The Scotsman*; and

- (xvii) to decern (whether ad interim or otherwise); or to do further or otherwise in the premises as your Lordships consider appropriate.

**ACCORDING TO JUSTICE ETC**

**SCHEDULE I**  
**Schedule for Service**

Service in Common Form is sought upon:

The Prudential Regulation Authority, Bank of England, Threadneedle Street, London, EC2R 8AH; and

The Financial Conduct Authority, 25 The North Colonnade, London, E14 5HS.

## SCHEDULE II

### Detail of the Regulatory Capital, Leverage Regime and Liquidity Regime

#### *Overview - The Five Elements*

- 1 The detailed regulatory capital and leverage requirements for a bank now comprise five elements.

#### *The First Element - The Pillar 1 Requirements*

- 2.1 The first element is what is conventionally called “*the Pillar 1 Requirements*”, which is set out in Article 92 of the CRR.
- 2.2 A key part of those requirements is the bank’s “*common equity tier 1 capital*” (“**the CET1 Capital**”), which represents the bank’s core regulatory capital and reserves.
- 2.3 In outline, CET1 Capital comprises ordinary share capital, any associated share premium account and certain other reserves, including retained profit, after deduction of certain other items, including goodwill and other intangible items.
- 2.4.1 The ratio of a bank’s CET1 Capital to what is called its “*total risk exposure amount*” is called the “*common equity tier 1 capital ratio*” (“**the CET1 Ratio**”).
- 2.4.2 The calculation of the total risk exposure amount includes primarily the value of the bank’s “*risk weighted assets*” (“**RWAs**”).
- 2.5.1 Again, in outline, RWAs comprise the bank’s total assets, weighted according to the risks to which the assets might be subject.
- 2.5.2 That weighting adjusts the value of each asset for risk by multiplying it by a factor.
- 2.5.3 Assets with a low risk, such as government securities, are multiplied by a low factor and assets with a high risk, such as unquoted equity investments, are multiplied by a high factor.
- 2.6 Since 1st January 2014, the minimum CET1 Ratio which is required by Article 92(1) of the CRR has been 4.5 per cent, expressed as a percentage of the total risk exposure amount.
- 2.7 A bank’s CET1 Ratio is required to be published annually as what are conventionally called “*Pillar 3 Disclosures*”.
- 2.8 The CET1 Ratio is generally recognised by financial analysts as the most important, publicly available measure of the financial strength of a bank.
- 2.9 In addition to imposing the minimum CET1 Ratio, the Pillar 1 Requirements also include a requirement to hold an overall minimum of “*Tier 1 Capital*” and a minimum of “*Capital*”, which also includes “*Tier 2 Capital*”.

- 2.10** Tier 1 Capital comprises both CET1 Capital and what is called “*Additional Tier 1 Capital*”.
- 2.11** In outline, Additional Tier 1 Capital comprises certain capital instruments which are perpetual and meet detailed requirements, especially for “*loss absorbency*”.
- 2.12** Again, in outline, Tier 2 Capital comprises certain other capital instruments which are mostly dated and meet certain other detailed requirements, especially for loss absorbency.
- 2.13.1** A bank is required to hold total Capital which is equal to at least 8 per cent of its total risk exposure amount (“**the Total Capital Ratio**”).
- 2.13.2** The Total Capital Ratio is required to include Tier 1 Capital which is equal to at least 6 per cent of the bank’s total risk exposure amount, with the rest permitted to comprise Tier 2 Capital.
- 2.13.3** Of that Tier 1 Capital, Additional Tier 1 Capital is permitted to be up to 1.5 per cent of the bank’s total risk exposure amount and CET1 Capital is required to be equal to at least 4.5 per cent of its total risk exposure amount.

*The Second Element - the Pillar 2a Requirements*

- 3.1** The second element of the detailed regulatory capital requirements is conventionally called “*the Pillar 2a Requirements*”.
- 3.2** In outline, the Pillar 2a Requirements are set out in Article 104 of the CRD IV and the PRA Rulebook, particularly Rules 3.1 and 3.2 of the ICAA.
- 3.3** The Pillar 2a Requirements together require a bank to hold additional capital for risks which are specific to its business and which are not sufficiently addressed by the Pillar 1 Requirements.
- 3.4** At least 56 per cent of the Pillar 2a Requirements is required to comprise CET1 Capital, with no more than 44 per cent comprising Additional Tier 1 Capital and no more than 25 per cent comprising Tier 2 Capital.
- 3.5** The PRA confirms the Pillar 2a Requirements of a bank by issuing to it “*Total Capital Requirements*”.
- 3.6** The individual Pillar 2a Requirements are regarded by the PRA as confidential, unless disclosure is required by law.
- 3.7.1** The PRA published a policy statement in December 2017 (“*Pillar 2a capital requirements and disclosure*”).
- 3.7.2** That statement provided that, with effect from 1st January 2018, a bank is expected to disclose its “*Total Capital Requirements*” or, where a Pillar 2A capital requirement has not yet been set, the total Pillar 1 and Pillar 2A guidance.

### *The Third Element - the Capital Buffers*

- 4.1** In addition to the Pillar 1 Requirements and the Pillar 2a Requirements, the third element of the regulatory capital requirements comprises the additional “*Capital Buffers*” for banks (together “**the CRD IV Buffers**”), which are imposed by Title VII - Chapter 4 of the CRD IV and by the Capital Buffers section of the PRA Rulebook.
- 4.2** In particular, the CRD IV Buffers include “*the combined buffer requirement*” which comprises “*the capital conservation buffer*”, “*the counter-cyclical capital buffer*”, “*the systemic risk buffer*” and “*the G-SII [Globally Systemically Important Institutions] buffer*”.
- 4.3** The combined buffer is being implemented in stages up to 1st January 2019, with the exception of the systemic risk buffer, which is expected to apply later in 2019. The PRA expects to announce the first systemic risk buffer rates in early 2019 and to apply them three months after the date of the announcement.
- 4.4.1** A key feature of the combined buffer requirement is that any failure to meet it leads to restrictions on certain payments by a bank; those restrictions are intended to restore the bank’s CET1 Capital.
- 4.4.2** Those payments include cash dividends and cash bonuses to employees.
- 4.5** In outline, the restrictions apply when the CET1 Capital falls below the aggregate of the Pillar 1 Requirements and the Pillar 2a Requirements and the requirements of the combined buffer.
- 4.6** In that event, the aggregate payments are restricted to “*a maximum distributable amount*” (“**the MDA**”).
- 4.7.1** Again, in outline, the MDA is calculated on the amount of the after-tax profit for the relevant period which has not been included in the CET1 Capital and which is multiplied by a factor.
- 4.7.2** That factor ranges from 0 to 0.6, depending on the shortfall of the CET1 Capital against the combined buffer requirement.
- 4.8.1** From 1st January 2018, the capital conservation buffer has increased from 1.25 per cent of their total risk exposure amount to 1.875 per cent of such amount.
- 4.8.2** From 1st January 2019, the capital conservation buffer is to increase to 2.5 per cent of the total risk exposure amount.
- 4.9.1** In outline, the counter-cyclical capital buffer is a buffer of variable amount, which is based on rates to be applied by national regulators to a bank’s geographic exposures.
- 4.9.2** The rate for exposures in the UK is set by the Financial Policy Committee of the Bank of England according to its determination of whether there is excessive credit growth.

- 4.10.1** In June 2017, that Committee announced that, with effect from 27th June 2018, the counter-cyclical capital buffer for the UK would be 0.5 per cent of RWAs. It was fixed at zero following the Brexit Referendum.
- 4.10.2** The Committee also announced in November 2017 that, with effect from 28th November 2018, the counter-cyclical capital buffer for the UK would be increased to 1 per cent of RWAs.
- 4.10.3** The Committee further agreed to reconsider the adequacy of a 1 per cent counter-cyclical buffer for use during the final half of 2018, in light of the evolution of how the overall risk environment had developed.
- 4.11.1** Again in outline, the systemic risk buffer will apply in 2019. The PRA expects to announce the first systemic risk buffer rates in early 2019 and apply them three months after the date of the announcement.
- 4.11.2** The systemic risk buffer can be used to mitigate risks to the financial system and the “*real economy*” of a member state which are not covered by the requirements of the CRR.
- 4.12.1** The systemic risk buffer will require to be met from CET1 Capital.
- 4.12.2** The systemic risk buffer will apply to the Ring-Fenced Sub-Group of the RBS Group and will, accordingly, not apply to NWM Plc.
- 4.13** Again, in outline, the globally systemically important institutions buffer is being phased in until 1st January 2019 and applies to banking groups which are of such importance that they are subject to more intensive regulation.
- 4.14** The globally systemically important institutions buffer also requires to be met from only CET1 Capital and will comprise between 1 and 3.5 per cent of its total risk exposure amount.
- 4.15.1** The globally systemically important institutions buffer, which is subject to annual review, has been set for the RBS Group at 1 per cent of its total risk exposure amount.
- 4.15.2** However, that rate is being phased in until 1st January 2019.
- 4.16** For completeness, a banking group which is subject to both the systemic risk buffer and the globally systemically important institutions buffer is required to comply only with the higher of them.

#### *The Fourth Element - the PRA Buffer*

- 5.1** The fourth element of the regulatory capital requirements is what is conventionally called “*the Pillar 2b Requirement*” or “*the PRA Buffer*”.

- 5.2.1 In outline, the PRA Buffer is an additional capital requirement, which the PRA can impose in connection with risks which it thinks are not sufficiently covered by the Pillar 1 Requirements and the Pillar 2a Requirements and the CRD IV Buffers.
- 5.2.2 Those risks include ones arising from changes in economic conditions or ones arising from the management of the banking group.
- 5.3 The PRA Buffer applies to the RBS Group and on a consolidated basis.
- 5.4 The PRA Buffer is regarded by the PRA as confidential, unless disclosure is required by law.

*The Fifth Element - the minimum leverage requirements*

- 6.1 The final element of the regulatory capital requirements, under the PRA Rulebook, comprises “*the minimum leverage ratio requirements*” for financial institutions.
- 6.2 Those requirements include first of all “*a minimum leverage requirement*” ratio of 3.25 per cent which applies, on a consolidated basis, to major UK banking groups, including the RBS Group.
- 6.3 The “*Leverage Ratio*” is the ratio of Tier 1 Capital to “*total exposure measures*”, expressed as a percentage of them.
- 6.4.1 In outline, “*total exposure measures*” are the sum of the “*exposure values*” of certain assets and off-balance sheet items, subject to certain deductions, particularly those relating to certain claims on central banks.
- 6.4.2 Exposure values are, in turn, determined in accordance with applicable accounting policies and, *inter alia*, CRR.
- 6.5 As at 31st December 2017, the leverage exposures of the RBS Group were £679,120 million.
- 6.6.1 The minimum leverage ratio requirements also include “*an additional leverage ratio buffer*”, which applies to those banking groups which are required to maintain a globally systemically important institutions buffer.
- 6.6.2 The additional leverage ratio buffer is calibrated at 35 per cent of a banking group’s globally systemically important institutions buffer.
- 6.7 Finally, the minimum leverage ratio requirements include “*a counter-cyclical leverage ratio buffer*”, which is calibrated at 35 per cent of a bank’s counter-cyclical buffer.

*The Proposals for More Stringent Regulatory Requirements*

- 7.1 Finally, it is useful to mention briefly the further changes which have been proposed to the regulatory regime and which, if implemented, will make them even more stringent.

- 7.2 In outline, a banking group, such as the RBS Group, will also be required to comply with “*a minimum requirement for own funds and eligible liabilities*” (“**MREL**”).
- 7.3 From 1st January 2019, the MREL for a globally systemically important banking group will be the higher of 16 per cent of RWAs and 6 per cent of leverage exposures.
- 7.4 From 1st January 2022, the MREL for such a banking group will be the higher of (i) twice the Pillar 1 Requirements and the Pillar 2a Requirements and (ii) the higher of twice the applicable leverage ratio requirement and 6.75 per cent of its leverage exposures.
- 7.5 In addition, individual MRELS will be set for all relevant institutions within the RBS Group.

### *The Liquidity Regulation*

- 8.1 In addition, liquidity requirements are imposed on a bank, or a banking group, by the CRR, as amplified by the Liquidity Regulation.
- 8.2 Since 1st January 2018, the Liquidity Regulation requires a bank or “*a Banking Group*” to hold liquid assets which are equal to 100% of its projected net cash outflows during a “*stressed scenario*” over a period of 30 days.
- 8.3 That percentage is called the “*Liquidity Coverage Ratio*”.
- 8.4.1 In addition to the requirements of the Liquidity Regulation, the PRA may impose additional liquidity guidance for risks which it determines are not captured, or not fully captured, under the Liquidity Regulation.
- 8.4.2 That additional guidance is referred to as “*Pillar 2 guidance*”.
- 8.4.3 Other than the publicly disclosed liquidity coverage ratios which include high quality liquid assets held to cover, amongst other things, Pillar 2 risks, the PRA expects that firms will not provide any further details of their Pillar 2 guidance, unless disclosure is required by law.

**Schedule III**  
**Statutory Provisions**

**FINANCIAL SERVICES AND MARKETS ACT 2000**

***Part 1A The Regulators***

**2B The PRA's general objective**

(5) In this Act “PRA-authorised person” means an authorised person who has permission—

- (a) given under Part 4A, or
- (b) resulting from any other provision of this Act,

to carry on regulated activities that consist of or include one or more PRA-regulated activities (see section 22A).

[...]

***Part III Authorisation and Exemption***

**31 Authorised persons**

(1) The following persons are authorised for the purposes of this Act—

- (a) a person who has a Part IV permission to carry on one or more regulated activities;
- (b) an EEA firm qualifying for authorisation under Schedule 3;
- (c) a Treaty firm qualifying for authorisation under Schedule 4;
- (d) a person who is otherwise authorised by a provision of, or made under, this Act.

(2) In this Act “authorised person” means a person who is authorised for the purposes of this Act.

***Part 4A Permission to carry on Regulated Activities***

**55A Application for permission**

(5) A permission given by the appropriate regulator under this Part or having effect as if so given is referred to in this Act as “a Part 4A permission”.

***Part VII Control of Business Transfers***

**105 Insurance business transfer schemes**

(1) A scheme is an insurance business transfer scheme if it—

- (a) satisfies one of the conditions set out in subsection (2);
- (b) results in the business transferred being carried on from an establishment of the transferee in an EEA State; and
- (c) is not an excluded scheme.

[...]

(8) “UK authorised person” means a body which is an authorised person and which—

- (a) is incorporated in the United Kingdom; or
- (b) is an unincorporated association formed under the law of any part of the United Kingdom.

### **106B Ring-fencing transfer scheme**

(1) A scheme is a ring-fencing transfer scheme if it—

- (a) is one under which the whole or part of the business carried on—
  - (i) by a UK authorised person, or
  - (ii) by a qualifying body,

is to be transferred to another body (“the transferee”),

- (b) is to be made for one or more of the purposes mentioned in subsection (3), and
- (c) is not an excluded scheme or an insurance business transfer scheme.

[...]

(3) The purposes are—

- (a) enabling a UK authorised person to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
- (b) enabling the transferee to carry on core activities as a ring-fenced body in compliance with the ring-fencing provisions;
- (c) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the body corporate to whose business the scheme relates becoming a ring-fenced body while one or more other members of its group are not ring-fenced bodies;
- (d) making provision in connection with the implementation of proposals that would involve a body corporate whose group includes the transferee becoming a ring-fenced body while one or more other members of the transferee's group are not ring-fenced bodies.

(4) A scheme is an excluded scheme for the purposes of this section if—

- (a) the body to whose business the scheme relates is a building society or credit union,  
or
- (b) the scheme is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.

[...]

(6) “UK authorised person” has the same meaning as in section 105.

[...]

(8) “The ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.

### **107 Application for order sanctioning transfer scheme**

[...]

(2) An application may be made by–

- (a) the transferor concerned;
- (b) the transferee; or
- (c) both.

[(2A) An application relating to a ring-fencing transfer scheme may be made only with the consent of the PRA.

(2B) In deciding whether to give consent, the PRA must have regard to the scheme report prepared under section 109A in relation to the ring-fencing transfer scheme.]

(3) The application must be made–

- (a) if [the transferor concerned] and the transferee are registered or have their head offices in the same jurisdiction, to the court in that jurisdiction;
- (b) if [the transferor concerned] and the transferee are registered or have their head offices in different jurisdictions, to the court in either jurisdiction;
- (c) if the transferee is not registered in the United Kingdom and does not have his head office there, to the court which has jurisdiction in relation to [the transferor concerned].

(4) “Court” means–

- (a) the High Court; or
- (b) in Scotland, the Court of Session.

### **109A Scheme reports: ring-fencing transfer schemes**

- (1) An application under section 106B in respect of a ring-fencing transfer scheme must be accompanied by a report on the terms of the scheme (a “scheme report”).
- (2) A scheme report may be made only by a person—
  - (a) appearing to the PRA to have the skills necessary to enable the person to make a proper report, and
  - (b) nominated or approved for the purpose by the PRA.
- (3) A scheme report must be made in a form approved by the PRA.
- (4) A scheme report must state—
  - (a) whether persons other than the transferor concerned are likely to be adversely affected by the scheme, and
  - (b) if so, whether the adverse effect is likely to be greater than is reasonably necessary in order to achieve whichever of the purposes mentioned in section 106B(3) is relevant.
- (5) The PRA must consult the FCA before—
  - (a) nominating or approving a person under subsection (2)(b), or
  - (b) approving a form under subsection (3).

### **110 Right to participate in proceedings**

[...]

- (4) The following are also entitled to be heard—
  - (a) the PRA,
  - (b) where the transferee is an authorised person, the FCA, and
  - (c) any person (“P”) (including an employee of the transferor concerned or of the transferee) who alleges that P would be adversely affected by the carrying out of the scheme.
- (5) P is not entitled to be heard by virtue of subsection (4)(c) unless before the hearing P has—
  - (a) filed (in Scotland, lodged) with the court a written statement of the representations that P wishes the court to consider, and
  - (b) served copies of the statement on the PRA and the transferor concerned.

### **111 Sanction of the court for business transfer schemes**

- (1) This section sets out the conditions which must be satisfied before the court may make an order under this section sanctioning an insurance business transfer scheme, a banking business transfer scheme, a reclaim fund business transfer scheme or a ring-fencing transfer scheme.
- (2) The court must be satisfied that—
  - (a) in the case of an insurance business transfer scheme or a banking business transfer scheme, the appropriate certificates have been obtained (as to which see Parts I and II of Schedule 12);
  - (aa) in the case of a reclaim fund business transfer scheme, the appropriate certificate has been obtained (as to which see Part 2A of that Schedule);
  - (ab) in the case of a ring-fencing transfer scheme, the appropriate certificates have been obtained (as to which see Part 2B of that Schedule);
  - (b) the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred (or will have it before the scheme takes effect).
- (3) The court must consider that, in all the circumstances of the case, it is appropriate to sanction the scheme.

## **112 Effect of order sanctioning business transfer scheme**

- (1) If the court makes an order under section 111(1), it may by that or any subsequent order make such provision (if any) as it thinks fit—
  - (a) for the transfer to the transferee of the whole or any part of the undertaking concerned and of any property or liabilities of [the transferor concerned];  
[...]
  - (c) for the continuation by (or against) the transferee of any pending legal proceedings by (or against) [the transferor concerned];
  - (d) with respect to such incidental, consequential and supplementary matters as are, in its opinion, necessary to secure that the scheme is fully and effectively carried out.
- (2) An order under subsection (1)(a) may—
  - (a) transfer property or liabilities whether or not [the transferor concerned] otherwise has the capacity to effect the transfer in question;
  - (b) make provision in relation to property which was held by [the transferor concerned] as trustee;

- (c) make provision as to future or contingent rights or liabilities of [the transferor concerned], including provision as to the construction of instruments (including wills) under which such rights or liabilities may arise;
- (d) make provision as to the consequences of the transfer in relation to any [occupational pension scheme (within the meaning of section 150(5) of the Finance Act 2004)] operated by or on behalf of [the transferor concerned].

(2A) Subsection (2)(a) is to be taken to include power to make provision in an order—

- (a) for the transfer of property or liabilities which would not otherwise be capable of being transferred or assigned;
- (b) for a transfer of property or liabilities to take effect as if there were—
  - (i) no such requirement to obtain a person's consent or concurrence, and
  - (ii) no such contravention, liability or interference with any interest or right,

as there would otherwise be (in the case of a transfer apart from this section) by reason of any provision falling within subsection (2B).

(2B) A provision falls within this subsection to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which [the transferor concerned] is entitled to the property or subject to the liabilities in question.

[...]

(10) The transferee must, if an insurance or banking business transfer scheme [or ring-fencing transfer scheme] is sanctioned by the court, deposit two office copies of the order made under subsection (1) with the [appropriate regulator] 8 within 10 days of the making of the order.

[...]

### **[112A Rights to terminate etc]**

(1) [Subsection (2) applies where (apart from that subsection) a person would be entitled, in consequence of anything done or likely to be done by or under this Part in connection with an insurance business transfer scheme[, a banking business transfer scheme or a ring-fencing transfer scheme] —

- (a) to terminate, modify, acquire or claim an interest or right; or
- (b) to treat an interest or right as terminated or modified.

(2) The entitlement—

- (a) is not enforceable in relation to that interest or right until after an order has been made under section 112(1) in relation to the scheme; and

(b) is then enforceable in relation to that interest or right only insofar as the order contains provision to that effect.

(3) Nothing in subsection (1) or (2) is to be read as limiting the scope of section 112(1).]

### ***Part 9B Ring-fencing***

#### **142A “Ring-fenced body”**

(1) In this Act “ring-fenced body” means a UK institution which carries on one or more core activities (see section 142B) in relation to which it has a Part 4A permission.

(2) But “ring-fenced body” does not include—

- (a) a building society within the meaning of the Building Societies Act 1986, or
- (b) a UK institution of a class exempted by order made by the Treasury.

(3) An order under subsection (2)(b) may be made in relation to a class of UK institution only if the Treasury are of the opinion that the exemption conferred by the order would not be likely to have a significant adverse effect on the continuity of the provision in the United Kingdom of core services.

(4) Subject to that, in deciding whether and, if so, how to exercise their powers under subsection (2)(b), the Treasury must have regard to the desirability of minimising any adverse effect that the ring-fencing provisions might be expected to have on competition in the market for services provided in the course of carrying on core activities, including any adverse effect on the ease with which new entrants can enter the market.

(5) In subsection (4) “the ring-fencing provisions” means ring-fencing rules and the duty imposed as a result of section 142G.

(6) An order under subsection (2)(b) may provide for the exemption to be subject to conditions.

(7) In this section “UK institution” means a body corporate incorporated in the United Kingdom.

#### **142B Core activities**

(1) References in this Act to a “core activity” are to be read in accordance with this section.

(2) The regulated activity of accepting deposits (whether carried on in the United Kingdom or elsewhere) is a core activity unless it is carried on in circumstances specified by the Treasury by order.

- (3) An order under subsection (2) may be made only if the Treasury are of the opinion that it is not necessary for either of the following purposes that the regulated activity of accepting deposits should be a core activity when carried on in the specified circumstances.
- (4) Those purposes are—
- (a) to secure an appropriate degree of protection for the depositors concerned, or
  - (b) to protect the continuity of the provision in the United Kingdom of services provided in the course of carrying on the regulated activity of accepting deposits.
- (5) The Treasury may by order provide for a regulated activity other than that of accepting deposits to be a core activity, either generally or when carried on in circumstances specified in the order.
- (6) An order under subsection (5) may be made only if the Treasury are of the opinion—
- (a) that an interruption of the provision of services provided in the United Kingdom in the carrying on of the regulated activity concerned could adversely affect the stability of the UK financial system or of a significant part of that system, and
  - (b) that the continuity of the provision of those services can more effectively be protected by treating the activity as a core activity.

#### **142D Excluded activities**

- (1) References in this Act to an “excluded activity” are to be read in accordance with this section.
- (2) The regulated activity of dealing in investments as principal (whether carried on in the United Kingdom or elsewhere) is an excluded activity unless it is carried on in circumstances specified by the Treasury by order.
- (3) An order under subsection (2) may be made only if the Treasury are of the opinion that allowing ring-fenced bodies to deal in investments as principal in the specified circumstances would not be likely to result in any significant adverse effect on the continuity of the provision in the United Kingdom of core services.
- (4) The Treasury may by order provide for an activity other than the regulated activity of dealing in investments as principal to be an excluded activity, either generally or when carried on in circumstances specified in the order.
- (5) An activity to which an order under subsection (4) relates—
- (a) need not be a regulated activity, and
  - (b) may be an activity carried on in the United Kingdom or elsewhere.

- (6) In deciding whether to make an order under subsection (4) in relation to any activity, the Treasury must—
- (a) have regard to the risks to which a ring-fenced body would be exposed if it carried on the activity concerned, and
  - (b) consider whether the carrying on of that activity by a ringfenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.
- (7) An order under subsection (4) may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services.

#### **142E Power of Treasury to impose prohibitions**

- (1) The Treasury may by order prohibit ring-fenced bodies from—
- (a) entering into transactions of a specified kind or with persons falling within a specified class;
  - (b) establishing or maintaining a branch in a specified country or territory;
  - (c) holding in specified circumstances shares or voting power in companies of a specified description.
- (2) In deciding whether to make an order under this section imposing a prohibition, the Treasury must—
- (a) have regard to the risks to which a ring-fenced body would be exposed if it did the thing to which the prohibition relates, and
  - (b) consider whether the doing of that thing by a ring-fenced body would make it more likely that the failure of the body would have an adverse effect on the continuity of the provision in the United Kingdom of core services.
- (3) An order under this section may be made only if the Treasury are of the opinion that the making of the order is necessary or expedient for the purpose of protecting the continuity of the provision in the United Kingdom of core services.
- (4) An order under this section may in particular—
- (a) provide for any prohibition to be subject to exemptions specified in the order
  - (b) provide for any exemption to be subject to conditions specified in the order.

### **142F Orders under section 142A, 142B, 142D or 142E**

- (1) An order made under section 142A, 142B, 142D or 142E may—
  - (a) authorise or require the making of rules by a regulator for the purposes of, or for purposes connected with, any provision of the order;
  - (b) authorise the making of other instruments by a regulator for the purposes of, or for purposes connected with, any provision of the order;
  - (c) refer to a publication issued by a regulator, another body in the United Kingdom or an international organisation, as the publication has effect from time to time.
- (2) If the order confers powers on a regulator or authorises or requires the making of rules or other instruments by a regulator, the order may also—
  - (a) impose conditions on the exercise of any power conferred on the regulator;
  - (b) impose consultation requirements on the regulator;
  - (c) make the exercise of a power by the regulator subject to the consent of the Treasury.

### **142G Ring-fenced bodies not to carry on excluded activities or contravene prohibitions**

- (1) A ring-fenced body which—
  - (a) carries on an excluded activity or purports to do so, or
  - (b) contravenes any provision of an order under section 142E,is to be taken to have contravened a requirement imposed on the body by the appropriate regulator under this Act.
- (2) The contravention does not—
  - (a) make a person guilty of an offence;
  - (b) make a transaction void or unenforceable;
  - (c) (subject to subsection (3)) give rise to any right of action for breach of statutory duty.
- (3) In such cases as the Treasury may specify by order, the contravention is actionable at the suit of a person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (4) In this section “the appropriate regulator” means—
  - (a) in relation to a ring-fenced body which is a PRA-authorized person, the PRA;
  - (b) in relation to any other ring-fenced body, the FCA.

## 142H Ring-fencing rules

- (1) In the exercise of its power to make general rules, the appropriate regulator must in particular make rules—
  - (a) requiring a ring-fenced body to make arrangements to ensure the effective provision to the ring-fenced body of services and facilities that it requires in relation to the carrying on of a core activity, and
  - (b) making provision for the group ring-fencing purposes applying to ring-fenced bodies and to authorised persons who are members of a ring-fenced body's group.
- (2) Section 142E(1)(c) does not affect the power of the appropriate regulator to make general rules imposing restrictions on the extent of the shares or voting power that a ring-fenced body may hold in another company, except where a restriction on the extent of the shares or voting power that the ring-fenced body may hold in the company is imposed by order under section 142E(1)(c).
- (3) General rules that are required by this section or make provision falling within subsection (2) are in this Act referred to as “ring-fencing rules”.
- (4) The “group ring-fencing purposes” are—
  - (a) ensuring as far as reasonably practicable that the carrying on of core activities by a ring-fenced body is not adversely affected by the acts or omissions of other members of its group;
  - (b) ensuring as far as reasonably practicable that in carrying on its business a ring-fenced body—
    - (i) is able to take decisions independently of other members of its group, and
    - (ii) does not depend on resources which are provided by a member of its group and which would cease to be available to the ring-fenced body in the event of the insolvency of the other member;
  - (c) ensuring as far as reasonably practicable that the ring-fenced body would be able to continue to carry on core activities in the event of the insolvency of one or more other members of its group.
- (5) Ring-fencing rules made for the group ring-fencing purposes must include—
  - (a) provision restricting the power of a ring-fenced body to enter into contracts with other members of its group otherwise than on arm's length terms;
  - (b) provision restricting the payments that a ring-fenced body may make (by way of dividend or otherwise) to other members of its group;

- (c) provision requiring the disclosure to the appropriate regulator of information relating to transactions between a ring-fenced body and other members of its group;
- (d) provision requiring a ring-fenced body to ensure that its board of directors (or if there is no such board, the equivalent management body) includes to a specified extent—
  - (i) members who are treated by the rules as being independent of other members of the ring-fenced body’s group,
  - (ii) members who are treated by the rules as being independent of the ring-fenced body itself, and
  - (iii) non-executive members;
- (e) provision requiring a ring-fenced body to act in accordance with a remuneration policy meeting specified requirements;
- (f) provision requiring a ring-fenced body to act in accordance with a human resources policy meeting specified requirements;
- (g) provision requiring arrangements made by the ring-fenced body for the identification, monitoring and management of risk to meet specified requirements;
- (h) such other provision as the appropriate regulator considers necessary or expedient for any of the purposes in subsection (4).

(6) The reference in subsection (5)(e) to a remuneration policy is a reference to a policy about the remuneration of officers, employees and other persons who (in each case) are of a specified description.

(7) The reference in subsection (5)(f) to a human resources policy is a reference to a policy about the appointment and management of officers, employees and other persons who (in each case) are of a specified description.

(8) In this section—

“the appropriate regulator” means—

- (a) in relation to a PRA-authorized person, the PRA;
- (b) in relation to any other authorized person, the FCA;

***Part XXX Supplemental***

**428. Regulations and orders**

[...]

(3) Any statutory instrument made under this Act may—

- (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate; and
- (b) make different provision for different cases.

## ***Schedules***

### **Schedule 12 TRANSFER SCHEMES: CERTIFICATES**

#### **9B. Appropriate certificates**

(1) For the purposes of section 111(2) the appropriate certificates, in relation to a ring-fencing transfer scheme, are—

- (a) a certificate given by the PRA certifying its approval of the application,
- (b) a certificate under paragraph 9C, and
- (c) if sub-paragraph (2) applies, a certificate under paragraph 9D.

[...]

#### **9C. Certificate as to financial resources**

(1) A certificate under this paragraph is one given by the relevant authority and certifying that, taking the proposed transfer into account, the transferee possesses, or will possess before the scheme takes effect, adequate financial resources.

(2) “Relevant authority” means—

- (a) if the transferee is a PRA-authorized person with a Part 4A permission or with permission under Schedule 4, the PRA;
- (b) if the transferee is an EEA firm falling within paragraph 5(a) or (b) of Schedule 3, its home state regulator;
- (c) if the transferee does not fall within paragraph (a) or (b) but is subject to regulation in a country or territory outside the United Kingdom, the authority responsible for the supervision of the transferee's business in the place in which the transferee has its head office;
- (d) in any other case, the FCA.

(3) In sub-paragraph (2), any reference to a transferee of a particular description includes a reference to a transferee who will be of that description if the proposed ring-fencing transfer scheme takes effect.

**FINANCIAL SERVICES AND MARKETS ACT 2000 (EXCLUDED ACTIVITIES  
AND PROHIBITIONS) ORDER 2014**

**Article 1**

[...]

(3) The other provisions of this Order come into force on 1st January 2019.

**Article 21**

A ring-fenced body does not carry on an excluded activity or contravene a prohibition imposed by this Order by holding or selling any investments on or after 1st January 2019 provided that—

- (a) the investment in question was created or acquired by the ring-fenced body before 1st January 2019, and
- (b) the period remaining until the investment matures is less than two years at 1st January 2019.

**FINANCIAL SERVICES MARKETS ACT 2000 (REGULATED ACTIVITIES)  
ORDER 2001**

**5. Accepting deposits**

(1) Accepting deposits is a specified kind of activity if—

- (a) money received by way of deposit is lent to others; or
- (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on money received by way of deposit.

(2) In paragraph (1), “deposit” means a sum of money, other than one excluded by any of articles 6 to 9A, paid on terms—

- (a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property (other than currency) or services or the giving of security.

(3) For the purposes of paragraph (2), money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if—

- (a) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;

- (b) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (c) without prejudice to sub-paragraph (b), it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise.

**THE FINANCIAL SERVICES AND MARKETS ACT 2000 (CONTROL OF BUSINESS TRANSFERS) (REQUIREMENTS ON APPLICANTS) REGULATIONS 2001**

**5. Transfer of a banking business**

- (1) An applicant under section 107 of the Act for an order sanctioning a banking business transfer scheme (“the scheme”) must comply with the following requirements.
- (2) A notice stating that the application has been made must be published—
  - (a) in the London, Edinburgh and Belfast Gazettes; and
  - (b) in two national newspapers in the United Kingdom.
- (3) The notice mentioned in paragraph (2) must—
  - (a) be approved by the Authority prior to its publication; and
  - (b) contain the address from which the statement mentioned in paragraph (4) may be obtained.
- (4) A statement setting out the terms of the scheme must be given free of charge to any person who requests it.
- (5) Copies of the application and the statement mentioned in paragraph (4) must be given free of charge to the Authority.

**THE FINANCIAL COLLATERAL ARRANGEMENTS (No. 2) REGULATIONS 2003**

**Reg. 3 Interpretation**

“title transfer financial collateral arrangement” means an agreement or arrangement, including a repurchase agreement, evidenced in writing, where—

- (a) the purpose of the agreement or arrangement is to secure or otherwise cover the relevant financial obligations owed to the collateral-taker;
- (b) the collateral-provider transfers legal and beneficial ownership in financial collateral to a collateral-taker on terms that when the relevant financial obligations are discharged the collateral-taker must transfer legal and beneficial ownership of equivalent financial collateral to the collateral-provider; and

(c) the collateral-provider and the collateral-taker are both non-natural persons;

[...]

**CAPITAL REQUIREMENTS REGULATION OF THE EUROPEAN COUNCIL AND  
PARLIAMENT FOR CREDIT INSTITUTIONS AND INVESTMENT FIRMS  
(REGULATION (EU) NO 575/2013)**

(1) The G-20 Declaration of 2 April 2009 on Strengthening of the Financial System called for internationally consistent efforts that are aimed at strengthening transparency, accountability and regulation by improving the quantity and quality of capital in the banking system once the economic recovery is assured. That declaration also called for introduction of a supplementary non-risk based measure to contain the build-up of leverage in the banking system, and the development of a framework for stronger liquidity buffers. In response to the mandate given by the G-20, in September 2009 the Group of Central Bank Governors and Heads of Supervision (GHOS), agreed on a number of measures to strengthen the regulation of the banking sector. Those measures were endorsed by the G-20 leaders at their Pittsburgh Summit of 24-25 September 2009 and were set out in detail in December 2009. In July and September 2010, GHOS issued two further announcements on design and calibration of those new measures, and in December 2010, the Basel Committee on Banking Supervision (BCBS) published the final measures, that are referred to as the Basel III framework.

(10) Having regard to work of the BCBS' Standards Implementation Group in monitoring and reviewing member countries' implementation of the Basel III framework, the Commission should provide update reports on an ongoing basis, and at least following the publication of each Progress Report by BCBS, on the implementation and domestic adoption of the Basel III framework in other major jurisdictions, including an assessment of the consistency of other countries' legislation or regulations with the international minimum standards, in order to identify differences that could raise level playing field concerns.

## **92 Own funds requirements**

(1) Subject to Articles 93 and 94, institutions shall at all times satisfy the following own funds requirements:

- (a) a Common Equity Tier 1 capital ratio of 4.5 %;
- (b) a Tier 1 capital ratio of 6 %;

- (c) a total capital ratio of 8 %.
- (2) Institutions shall calculate their capital ratios as follows:
- (a) the Common Equity Tier 1 capital ratio is the Common Equity Tier 1 capital of the institution expressed as a percentage of the total risk exposure amount;
  - (b) the Tier 1 capital ratio is the Tier 1 capital of the institution expressed as a percentage of the total risk exposure amount;
  - (c) the total capital ratio is the own funds of the institution expressed as a percentage of the total risk exposure amount.
- (3) Total risk exposure amount shall be calculated as the sum of points (a) to (f) of this paragraph after taking into account the provisions laid down in paragraph 4:
- (a) the risk weighted exposure amounts for credit risk and dilution risk, calculated in accordance with Title II and Article 379, in respect of all the business activities of an institution, excluding risk weighted exposure amounts from the trading book business of the institution;
  - (b) the own funds requirements, determined in accordance with Title IV of this Part or Part Four, as applicable, for the trading-book business of an institution, for the following:
    - (i) position risk;
    - (ii) large exposures exceeding the limits specified in Articles 395 to 401, to the extent an institution is permitted to exceed those limits;
  - (c) the own funds requirements determined in accordance with Title IV or Title V with the exception of Article 379, as applicable, for the following:
    - (i) foreign-exchange risk;
    - (ii) settlement risk;
    - (iii) commodities risk;
  - (d) the own funds requirements calculated in accordance with Title VI for credit valuation adjustment risk of OTC derivative instruments other than credit derivatives recognised to reduce risk-weighted exposure amounts for credit risk;
  - (e) the own funds requirements determined in accordance with Title III for operational risk;
  - (f) the risk weighted exposure amounts determined in accordance with Title II for counterparty risk arising from the trading book business of the institution for the following types of transactions and agreements:
    - (ii) contracts listed in Annex II and credit derivatives;
    - (iii) repurchase transactions, securities or commodities lending or borrowing transactions based on securities or commodities;

- (iv) margin lending transactions based on securities or commodities;
  - (v) long settlement transactions.
- (4) The following provisions shall apply in the calculation of the total exposure amount referred to in paragraph 3:
- (a) the own funds requirements referred to in points (c), (d) and (e) of that paragraph shall include those arising from all the business activities of an institution;
  - (b) institutions shall multiply the own funds requirements set out in points (b) to (e) of that paragraph by 12.5.

## **THE CAPITAL REQUIREMENTS DIRECTIVE (DIRECTIVE 2013/36/EU)**

### **Article 104 Supervisory powers**

- (1) For the purposes of Article 97, Article 98(4), Article 101(4) and Articles 102 and 103 and the application of Regulation (EU) No 575/2013, competent authorities shall have at least the following powers:
- (a) to require institutions to hold own funds in excess of the requirements set out in Chapter 4 of this Title and in Regulation (EU) No 575/2013 relating to elements of risks and risks not covered by Article 1 of that Regulation;
  - (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies implemented in accordance with Articles 73 and 74;
  - (c) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to this Directive and to Regulation (EU) No 575/2013 and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
  - (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
  - (e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
  - (f) to require the reduction of the risk inherent in the activities, products and systems of institutions;
  - (g) to require institutions to limit variable remuneration as a percentage of net revenues where it is inconsistent with the maintenance of a sound capital base;
  - (h) to require institutions to use net profits to strengthen own funds;

- (i) to restrict or prohibit distributions or interest payments by an institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;
  - (j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
  - (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
  - (l) to require additional disclosures.
- (2) The additional own funds requirements referred to in paragraph 1(a) shall be imposed by the competent authorities at least where,
- (a) an institution does not meet the requirement set out in Articles 73 and 74 of this Directive or in Article 393 of Regulation (EU) No 575/2013;
  - (b) risks or elements of risks are not covered by the own funds requirements set out in Chapter 4 of this Title or in Regulation (EU) No 575/2013;
  - (c) the sole application of other administrative measures is unlikely to improve the arrangements, processes, mechanisms and strategies sufficiently within an appropriate timeframe;
  - (d) the review referred to in Article 98(4) or Article 101(4) reveals that the non-compliance with the requirements for the application of the respective approach will likely lead to inadequate own funds requirements;
  - (e) the risks are likely to be underestimated despite compliance with the applicable requirements of this Directive and of Regulation (EU) No 575/2013; or
  - (f) an institution reports to the competent authority in accordance with Article 377(5) of Regulation (EU) No 575/2013 that the stress test results referred to in that Article materially exceed its own funds requirement for the correlation trading portfolio.
- (3) For the purposes of determining the appropriate level of own funds on the basis of the review and evaluation carried out in accordance with Section III, the competent authorities shall assess whether any imposition of an additional own funds requirement in excess of the own funds requirement is necessary to capture risks to which an institution is or might be exposed, taking into account the following:
- (a) the quantitative and qualitative aspects of an institution's assessment process referred to in Article 73;

- (b) an institution's arrangements, processes and mechanisms referred to in Article 74;
- (c) the outcome of the review and evaluation carried out in accordance with Article 97 or 101;
- (d) the assessment of systemic risk.

### **Article 128 Definitions**

For the purpose of this Chapter, the following definitions shall apply:

- (1) 'capital conservation buffer' means the own funds that an institution is required to maintain in accordance with Article 129;
- (2) 'institution-specific countercyclical capital buffer' means the own funds that an institution is required to maintain in accordance with Article 130;
- (3) 'G-SII buffer' means the own funds that are required to be maintained in accordance with Article 131(4);
- (4) 'O-SII buffer' means the own funds that may be required to be maintained in accordance with Article 131(5);
- (5) 'systemic risk buffer' means the own funds that an institution is or may be required to maintain in accordance with Article 133;
- (6) 'combined buffer requirement' means the total Common Equity Tier 1 capital required to meet the requirement for the capital conservation buffer extended by the following, as applicable:
  - (a) an institution-specific countercyclical capital buffer;
  - (b) a G-SII buffer;
  - (c) an O-SII buffer;
  - (d) a systemic risk buffer;

**COMMISSION DELEGATED REGULATIONS (EU) 2015/61 to supplement  
Regulation (EU) 575/2013 of the European Parliament and the Council with regard to  
liquidity coverage requirement for Credit Institutions**

### **Article 4**

#### **The liquidity coverage ratio**

- (1) The detailed liquidity coverage requirement in accordance with Article 412(1) of Regulation (EU) No 575/2013 shall be equal to the ratio of a credit institution's liquidity buffer to its net liquidity outflows over a 30 calendar day stress period and shall be

expressed as a percentage. Credit institutions shall calculate their liquidity coverage ratio in accordance with the following formula:

$$\frac{\text{Liquidity Buffer}}{\text{Net Liquidity Outflows over a 30 calendar day stress period}} = \text{Liquidity Coverage Ratio (\%)}$$

- (2) Credit institutions shall maintain a liquidity coverage ratio of at least 100 %.
- (3) By derogation from paragraph 2, credit institutions may monetise their liquid assets to cover their net liquidity outflows during stress periods, even if such a use of liquid assets may result in their liquidity coverage ratio falling below 100 % during such periods.
- (4) Where at any time the liquidity coverage ratio of a credit institution has fallen or can be reasonably expected to fall below 100 %, the requirement laid down in Article 414 of Regulation (EU) No 575/2013 shall apply. Until the liquidity coverage ratio has been restored to the level referred to in paragraph 2, the credit institution shall report to the competent authority the liquidity coverage ratio in accordance with Commission Implementing Regulation (EU) No 680/2014.
- (5) Credit institutions shall calculate and monitor their liquidity coverage ratio in the reporting currency and in each of the currencies subject to separate reporting in accordance with Article 415(2) of Regulation (EU) No 575/2013, as well as for liabilities in the reporting currency. Credit institutions shall report to their competent authority the liquidity coverage ratio in accordance with the Commission Implementing Regulation (EU) No 680/2014.

## **Article 5**

### **Stress scenarios for the purposes of the liquidity coverage ratio**

The following scenarios may be regarded as indicators of circumstances in which a credit institution may be considered as being subject to stress:

- (a) the run-off of a significant proportion of its retail deposits;
- (b) a partial or total loss of unsecured wholesale funding capacity, including wholesale deposits and other sources of contingent funding such as received committed or uncommitted liquidity or credit lines;
- (c) a partial or total loss of secured, short-term funding;

- (d) additional liquidity outflows as a result of a credit rating downgrade of up to three notches;
- (e) increased market volatility affecting the value of collateral or its quality or creating additional collateral needs;
- (f) unscheduled draws on liquidity and credit facilities;
- (g) potential obligation to buy-back debt or to honour non-contractual obligations.

[...]

## **THE PRA HANDBOOK – RULE BOOK FOR CRR FIRMS**

### **Fundamental Rule 4:**

A firm must at all times maintain adequate financial resources.

### **Internal Capital Adequacy Assessment (“ICAA”)**

#### **Overall financial adequacy rule**

2.1 A firm must at all times maintain overall financial resources, including own funds and liquidity resources, which are adequate both as to amount and quality, to ensure there is no significant risk that its liabilities cannot be met as they fall due.

#### **Overall Pillar 2 rule**

3.1 A firm must have in place sound, effective and comprehensive strategies, processes and systems:

- (1) to assess and maintain on an ongoing basis the amounts, types and distribution of financial resources, own funds and internal capital that it considers adequate to cover:
  - (a) the nature and level of the risks to which it is or might be exposed;
  - (b) the risk in the overall financial adequacy rule in 2.1; and
  - (c) the risk that the firm might not be able to meet the obligations in Part Three of the CRR in the future;
- (2) that enable it to identify and manage the major sources of risk referred to in (1) including the major sources of risk in each of the following categories where they are relevant to the firm given the nature and scale of its business:
  - (a) credit and counterparty risk;
  - (b) market risk;

- (c) liquidity risk;
- (d) operational risk;
- (e) concentration risk;
- (f) residual risk;
- (g) securitisation risk, including the risk that the own funds held by a firm in respect of assets which it has securitised are inadequate having regard to the economic substance of the transaction including the degree of risk transfer achieved;
- (h) business risk;
- (i) interest rate risk in the non-trading book;
- (j) risk of excessive leverage;
- (k) pension obligation risk; and
- (l) group risk.

3.2 As part of its obligations under the overall Pillar 2 rule in 3.1, a firm must identify separately the amount of common equity tier one capital, additional tier one capital and tier two capital and each category of capital (if any) that is not eligible to form part of its own funds which it considers adequate for the purposes described in the overall Pillar 2 rule.

**STATEMENT OF POLICY: THE IMPLEMENTATION OF RING-FENCING: THE PRA’S APPROACH TO RING-FENCING TRANSFER SCHEMES**

3.13 Transfers may have both positive and negative effects on persons other than the transferor. A key concern for the PRA will be to satisfy itself that persons other than the transferor have adequate information and a reasonable time within which to determine whether or not they are adversely affected and, if adversely affected, whether to make representations to the court. When reaching its view, the PRA will act in a way it considers most appropriate to advancing its own statutory objectives. The FCA also has a particular interest in the publication and notification of customers and the PRA will engage closely with the FCA on this.

**FINALISED GUIDANCE 16/1: GUIDANCE ON THE FCA’S APPROACH TO THE IMPLEMENTATION OF RING-FENCING AND RING-FENCING SCHEMES**

1.25 Some respondents have asked for flexibility in the way that they communicate to customers, so that the firms can elect the most appropriate form, method and scope of communications with their customers. They have also questioned the need to communicate with all adversely affected ‘consumers’, rather than the customers of the transferee/transferor. Some have specifically questioned the current expectation in our guidance that the skilled person assess that the summary of the scheme report that is available to customers is clear, fair,

and not misleading. Others queried whether it would be necessary for different summaries of the scheme report to be prepared, acknowledging that there may be different audiences, including customers.

1.26 Currently, our guidance reflects an expectation that firms communicate with persons likely to be adversely affected by the scheme in one or more ways, including publications in gazettes or national newspapers, or individually to adversely affected ‘consumers’. Such communications are intended to inform those consumers how they are likely to be adversely affected so that they may consider exercising their statutory right to make representations, or object, against the scheme in the court.

1.27 We do not consider it necessary to revise the wording of the guidance on this point, as it already provides a degree of flexibility to firms. We support a flexible approach to communication, as long as firms are able to explain their communications plan and demonstrate why their proposal is appropriate. For example, this should include appropriate methods of communication with vulnerable customers or groups of consumers with protected characteristics under equality legislation. We expect that the court will want to be satisfied that the firm has proposed an adequate communication plan.

1.28 As discussed above, there may be circumstances where the individuals likely to be adversely affected are wider than direct customers of the transferee/transferor (e.g. counterparties). Firms should sensibly consider all groups of persons that are likely to be adversely affected, and whether and how they should communicate with them.

1.29 We consider it to be reasonable for the skilled person to assess that the summary (as drafted by the firm) of the scheme report is clear, fair, and not misleading, particularly in light of consumers’ rights to be heard by the court and that the summary represents the skilled person’s opinion on highly complex business restructurings.

1.30 We generally expect firms to produce a summary of the scheme report that can be understood by persons likely to be adversely affected, including customers. In our view, it should be for firms to assess whether it is necessary to prepare more than one version of the summary, depending on the circumstances of their scheme and the different persons adversely affected.

## **RULES OF THE COURT**

### **First order in petitions**

#### **14.5**

(1) Subject to paragraph (2), on a petition on being lodged, the court shall, without a motion being enrolled for that purpose, pronounce an interlocutor for such intimation, service and advertisement as may be necessary.

(2) Where a petitioner seeks-

- (a) to dispense with intimation, service or advertisement on any person, or
- (b) any interim order,

he shall apply by motion for such order as appears appropriate.

(3) On disposing of a motion under paragraph (2), the court shall make such order as it thinks fit.

### **Period of notice for lodging answers**

#### **14.6**

(1) Subject to any other provision in these Rules, the period of notice for lodging answers to a petition shall be-

- (a) in the case of service, intimation or advertisement within Europe, 21 days from whichever is the later of the date of execution of service, the giving of intimation or the publication of the advertisement;
- (b) in the case of service or intimation furth of Europe under rule 16.2(2)(d) or (e) (service by an huissier etc. or personally), 21 days from whichever is the later of the date of execution of service or the giving of intimation;
- (c) in the case of service or intimation furth of Europe other than under sub-paragraph (b), or advertisement furth of Europe, 42 days from whichever is the later of the date of execution of service, the giving of intimation or the publication of the advertisement;
- (d) in the case of service by advertisement under rule 16.5 (service where address of person is not known), 6 months from the date of publication of the advertisement.

[...]

## **Schedule IV**

### **Defined Terms**

<b>“2016 Order”</b>	has the meaning given in Statement 28.3.3;
<b>“adequate financial resources”</b>	has the meaning given in Statement 61.1;
<b>“All Monies Rights”</b>	has the meaning given in Statement 55.2;
<b>“Amendments”</b>	has the meaning given in Statement 51.3;
<b>“Ancillary Documents”</b>	has the meaning given in Statement 11.11.1;
<b>“another body”</b>	has the meaning given in Statement 68.3;
<b>“Arrangement”</b>	has the meaning given in Statement 39.9;
<b>“Assets”</b>	has the meaning given in Statement 39.7;
<b>“banking scheme”</b>	has the meaning given in Statement 7.4;
<b>“Booklets”</b>	has the meaning given in Statement 65.1;
<b>“Category 1 Arrangements”</b>	has the meaning given in Statement 41.5.2;
<b>“Category 1 Counterparties”</b>	has the meaning given in Statement 41.4.3;
<b>“Category 2 Arrangements”</b>	has the meaning given in Statement 41.11.2;
<b>“Category 2 Counterparties”</b>	has the meaning given in Statement 41.7.3;
<b>“CCP”</b>	has the meaning given in Statement 10.5.3
<b>“CET1 Capital”</b>	has the meaning given in paragraph 2.2 of Schedule II;
<b>“CET1 Ratio”</b>	has the meaning given in paragraph 2.4.1 of Schedule II;
<b>“COBTRA Regulations”</b>	has the meaning given in Statement 7.6;
<b>“Communications Exercise”</b>	has the meaning given in Statement 63.8.2;
<b>“Companies”</b>	has the meaning given in Statement 1.8;
<b>“Companies Court Schemes”</b>	has the meaning given in Statement 6.5.3;
<b>“Consolidation Rights”</b>	has the meaning given in Statement 55.2;
<b>“Core Activities”</b>	has the meaning given in Statement 28.2;
<b>“Core Activities Order”</b>	has the meaning given in Statement 28.3.2;
<b>“Covered Bonds”</b>	has the meaning given in Statement 13.3.1;
<b>“Covering Letters”</b>	has the meaning given in Statement 65.4;

<b>“Counterparties”</b>	has the meaning given in Statement 3.6.1;
<b>“CPB Business”</b>	has the meaning given in Statement 22.2.2;
<b>“CRD IV”</b>	has the meaning given in Statement 16.3;
<b>“CRD IV Buffers”</b>	has the meaning given in paragraph 4.1 of Schedule II;
<b>“CRD IV Directive”</b>	has the meaning given in Statement 16.2;
<b>“Cross-Default Rights”</b>	has the meaning given in Statement 56.2;
<b>“CRR”</b>	has the meaning given in Statement 16.2;
<b>“Effective Time”</b>	has the meaning given in Statement 3.3.1;
<b>“Eligible Collateral”</b>	has the meaning given in Statement 44.3;
<b>“Eligible Derivative Transactions”</b>	has the meaning given in Statement 40.7.2;
<b>“Encumbrance”</b>	has the meaning given in Statement 39.11;
<b>“Enforceable Rights”</b>	has the meaning given in Statement 50.8.1;
<b>“Excluded Activities Order”</b>	has the meaning given in Statement 28.4.2;
<b>“Excluded Activity”</b>	has the meaning given in Statement 28.1;
<b>“Excluded Agency”</b>	has the meaning given in Statement 46.8.1;
<b>“Excluded Assets”</b>	has the meaning given in Statement 3.4.1;
<b>“Excluded Business”</b>	has the meaning given in Statement 3.4.2;
<b>“Excluded CB Swap Provider Roles”</b>	has the meaning given in Statement 46.3.2;
<b>“Excluded Collateralised Transactions”</b>	has the meaning given in Statement 46.7.1;
<b>“Excluded Derivative Transaction Arrangements”</b>	has the meaning given in Statement 46.2.1;
<b>“Excluded Derivative Transactions”</b>	has the meaning given in Statement 40.17.1;
<b>“Excluded Intellectual Property”</b>	has the meaning given in Statement 46.10.1;
<b>“Excluded Liabilities”</b>	has the meaning given in Statement 3.4.1;
<b>“Excluded Proceedings”</b>	has the meaning given in Statement 46.9.1;
<b>“Existing NWM Plc Counterparties”</b>	has the meaning given in Statement 3.6.5;
<b>“FCA”</b>	has the meaning given in Statement 8.6;
<b>“Financial Collateral Regulations”</b>	has the meaning given in Statement 11.2.5;
<b>“First Hearing”</b>	has the meaning given in Statement 2.2.2;

<b>“First Order”</b>	has the meaning given in Statement 2.2.2;
<b>“Fitch”</b>	has the meaning given in Statement 15.5;
<b>“FSMA”</b>	has the meaning given in Statement 1.3;
<b>“Grandfathered Interest Rate Derivative Transactions”</b>	has the meaning given in Statement 40.8.2
<b>“Grandfathering”</b>	has the meaning given in Statement 28.7.2;
<b>“ICAA”</b>	has the meaning given in Statement 16.7;
<b>“Ineligible Derivative Transactions”</b>	has the meaning given in Statement 40.7.2;
<b>“Initial Transferring Assets”</b>	has the meaning given in Statement 47.1;
<b>“Initial Transferring Liabilities”</b>	has the meaning given in Statement 47.1;
<b>“insurance scheme”</b>	has the meaning given in Statement 7.4;
<b>“Interest Rate Derivative Transactions”</b>	has the meaning given in Statement 40.8.3;
<b>“Intra-Group Arrangements”</b>	has the meaning given in Statement 46.12;
<b>“ISDA Long-Form Confirmations”</b>	has the meaning given in Statement 40.4;
<b>“ISDA Master Agreements”</b>	has the meaning given in Statement 11.2.1;
<b>“ISDA Protocol Agreements”</b>	has the meaning given in Statement 11.11.3;
<b>“ISDA Short-Form Confirmations”</b>	has the meaning given in Statement 40.3.2;
<b>“Legal Entity Reorganisation”</b>	has the meaning given in Statement 6.1;
<b>“Liabilities”</b>	has the meaning given in Statement 39.8;
<b>“Liquidity Regulation”</b>	has the meaning given in Statement 16.12;
<b>“Main RFTS”</b>	has the meaning given in Statement 5.1;
<b>“Main Section”</b>	has the meaning given in Statement 14.5.1;
<b>“Main Webpage”</b>	has the meaning given in Statement 66.3;
<b>“MDA”</b>	has the meaning given in paragraph 4.6 of Schedule II;
<b>“Moody’s”</b>	has the meaning given in Statement 15.5;
<b>“MoU”</b>	has the meaning given in Statement 14.7.1;
<b>“MREL”</b>	has the meaning given in paragraph 7.2 of Schedule II;
<b>“NatWest”</b>	has the meaning given in Statement 1.1.1;
<b>“NatWest 2017 Accounts”</b>	has the meaning given in Statement 15.1;

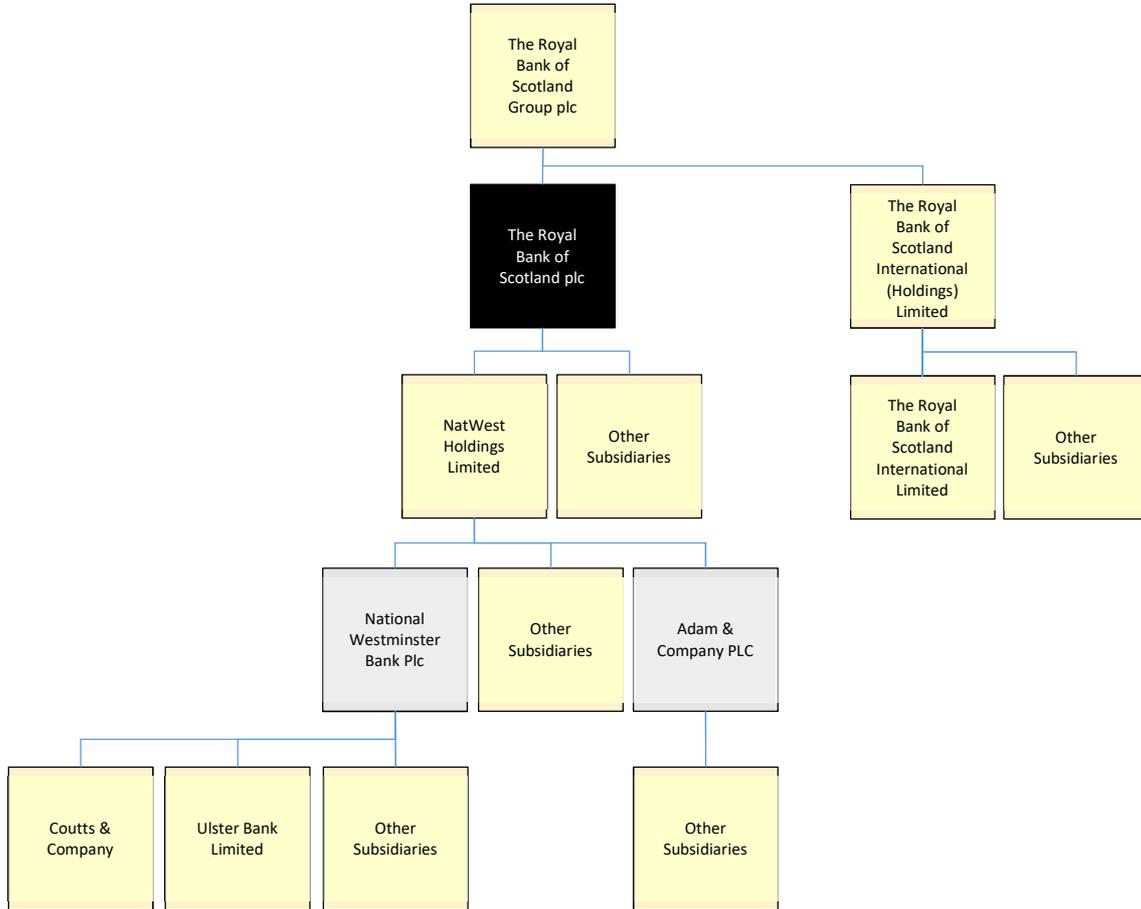
<b>“NatWest Markets Business”</b>	has the meaning given in Statement 19.4.2;
<b>“NatWest Remaining Business”</b>	has the meaning given in Statement 3.5;
<b>“NatWest Treasury Business”</b>	has the meaning given in Statement 12.1;
<b>“Notice”</b>	has the meaning given in Statement 64.1;
<b>“NWH”</b>	has the meaning given in Statement 8.2;
<b>“NWM Plc”</b>	has the meaning given in Statement 1.4.1;
<b>“NWM Plc 2017 Accounts”</b>	has the meaning given in Statement 24.1;
<b>“NWM Plc Existing Arrangement”</b>	has the meaning given in Statement 54.4.1;
<b>“NWM Plc Reduction”</b>	has the meaning given in Statement 6.3;
<b>“NWM Plc Treasury Business”</b>	has the meaning given in Statement 19.6;
<b>“Opt-Out Date”</b>	has the meaning given in Statement 3.3.4;
<b>“Opt-Out Rights”</b>	has the meaning given in Statement 3.3.3;
<b>“OTC”</b>	has the meaning given in Statement 10.4.1;
<b>“Part 4A Permission”</b>	has the meaning given in Statement 8.5.2;
<b>“Part VII”</b>	has the meaning given in Statement 2.1;
<b>“PBB Business”</b>	has the meaning given in Statement 22.2.1;
<b>“Post Opt-Out Date Derivative Transactions”</b>	has the meaning given in Statement 40.16.2;
<b>“PRA”</b>	has the meaning given in Statement 4.2;
<b>“Previous Transfers”</b>	has the meaning given in Statement 23.1;
<b>“Prohibited FX Derivative Transactions”</b>	has the meaning given in Statement 40.9.2;
<b>“RAO”</b>	has the meaning given in Statement 7.6;
<b>“RBSG”</b>	has the meaning given in Statement 1.2;
<b>“RBS Group”</b>	has the meaning given in Statement 1.2;
<b>“RBS Group Companies”</b>	has the meaning given in Statement 1.2;
<b>“RBS Group Employees”</b>	has the meaning given in Statement 14.1;
<b>“RBS Group Ring-Fencing Proposals”</b>	has the meaning given in Statement 2.3.1;
<b>“RBS Pension Schemes”</b>	has the meaning given in Statement 14.4;
<b>“RBS plc”</b>	has the meaning given in Statement 5.3.1;
<b>“RBS Standalone Derivative Terms”</b>	has the meaning given in Statement 11.5.1;

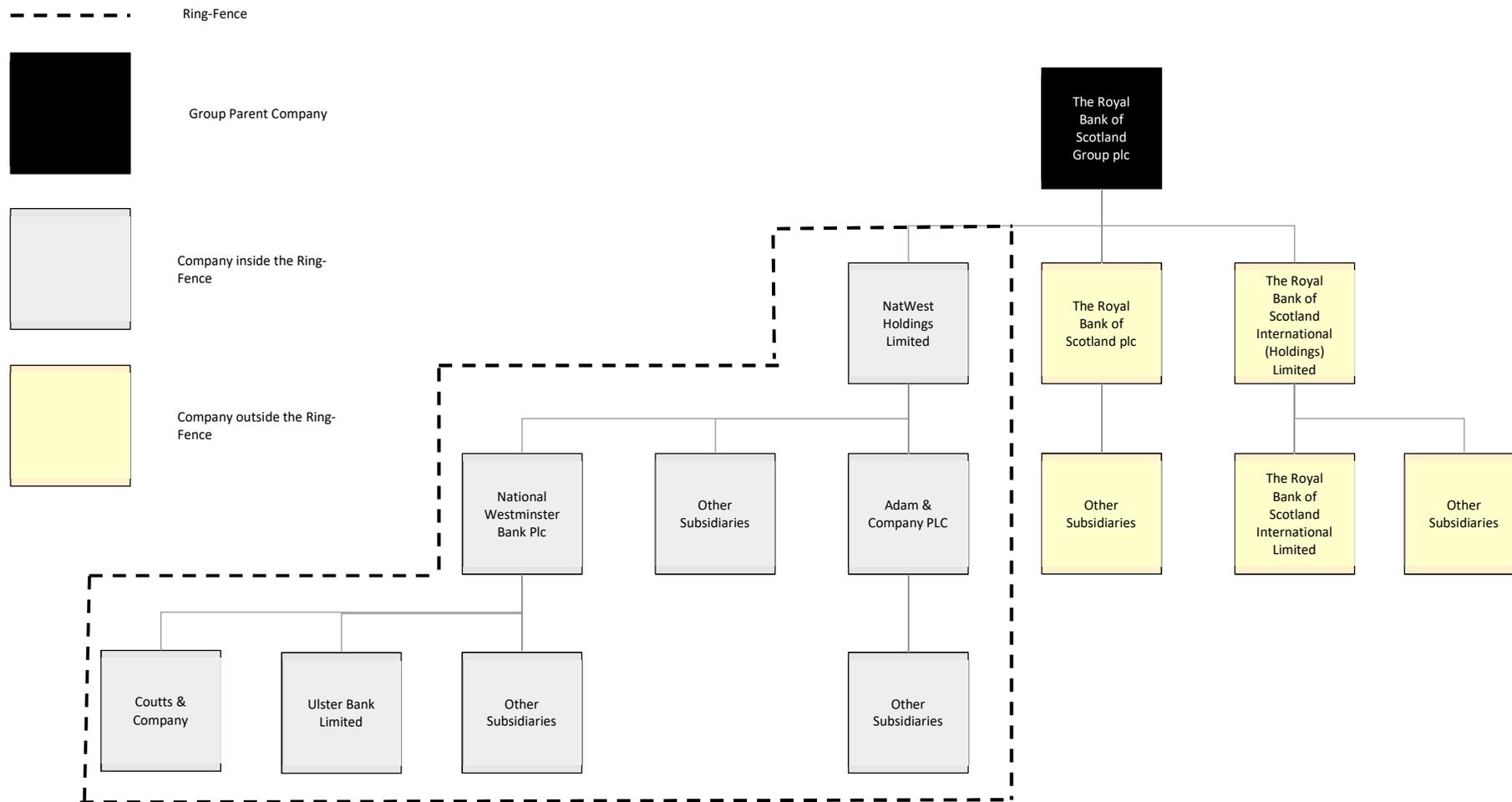
<b>“Regulators”</b>		has the meaning given in Statement 8.7;
<b>“relevant authority”</b>		has the meaning given in Statement 61.1
<b>“Relevant Counterparties”</b>		has the meaning given in Statement 43.6.2;
<b>“Relevant Date”</b>		has the meaning given in Statement 47.11;
<b>“Relevant Proportion”</b>		has the meaning given in Statement 42.6.1;
<b>“Remaining Counterparties”</b>		has the meaning given in Statement 3.6.3;
<b>“Remaining Transactions”</b>	<b>Derivative</b>	has the meaning given in Statement 41.8
<b>“Remaining Secured Liabilities”</b>		has the meaning given in Statement 52.1.5;
<b>“Replicated Arrangements”</b>		has the meaning given in Statement 41.12.1
<b>“Residual Assets”</b>		has the meaning given in Statement 47.3;
<b>“Residual Liabilities”</b>		has the meaning given in Statement 47.3;
<b>“RFB Sub-Group”</b>		has the meaning given in Statement 36.4;
<b>“RFIs”</b>		has the meaning given in Statement 28.8.2;
<b>“RFI Transactions”</b>	<b>Eligible Derivative</b>	has the meaning given in Statement 40.9.1
<b>“RFTS”</b>		has the meaning given in Statement 7.3;
<b>“Right in Security”</b>		has the meaning given in Statement 39.10.1;
<b>“RNS”</b>		has the meaning given in Statement 14.7.1;
<b>“RWAs”</b>		has the meaning given in paragraph 2.4.2 of Schedule II;
<b>“S&amp;P”</b>		has the meaning given in Statement 15.5;
<b>“Sanction Hearing”</b>		has the meaning given in Statement 2.2.1;
<b>“Sanction Order”</b>		has the meaning given in Statement 2.1;
<b>“Scheme”</b>		has the meaning given in Statement 2.1;
<b>“Scheme Report”</b>		has the meaning given in Statement 59.3;
<b>“Scheme Summary”</b>		has the meaning given in Statement 66.2;
<b>“Section 110 Deadline”</b>		has the meaning given in Statement 67.7;
<b>“Secured Empty Arrangements”</b>		has the meaning given in Statement 43.6.1;
<b>“Statutory Purposes”</b>		has the meaning given in Statement 30.4.1;
<b>“Statutory Records”</b>		has the meaning given in Statement 44.2.2;
<b>“Subsequent Transfer Date”</b>		has the meaning given in Statement 47.4;

<b>“Supplementary Scheme Report”</b>	has the meaning given in Statement 60.1;
<b>“Title Transfer Collateral Arrangement”</b>	has the meaning given in Statement 39.10.3;
<b>“Total Capital Ratio”</b>	has the meaning given in paragraph 2.13.1 of Schedule II;
<b>“total equity”</b>	has the meaning given in Statement 24.2;
<b>“Transferring Arrangements”</b>	has the meaning given in Statement 39.4.1;
<b>“Transferring Assets”</b>	has the meaning given in Statement 39.3;
<b>“Transferring Business”</b>	has the meaning given in Statement 3.2;
<b>“Transferring Claims”</b>	has the meaning given in Statement 44.4.1;
<b>“Transferring Counterparties”</b>	has the meaning given in Statement 3.6.2;
<b>“Transferring Derivative Transactions”</b>	has the meaning given in Statement 39.2.1;
<b>“Transferring Goodwill”</b>	has the meaning given in Statement 44.1;
<b>“Transferring Liabilities”</b>	has the meaning given in Statement 39.3;
<b>“Transferring Records”</b>	has the meaning given in Statement 44.2.1;
<b>“Transferring Secured Liabilities”</b>	has the meaning given in Statement 52.1.3;
<b>“UBI”</b>	has the meaning given in Statement 36.9.1;
<b>“UK”</b>	has the meaning given in Statement 2.4.1; and
<b>“a UK law”</b>	has the meaning given in Statement 34.5.1.

## Schedule V

### Diagrams of the RBS Group before, and after, the Legal Entity Reorganisation





**Schedule VI**  
**Examples of prohibited derivative transactions**

Prohibited derivative transactions include: -

- (i) simple interest rate swaps, caps and collars that reference RBS or NatWest Base Rate, dual rate swaps, discount swaps, base rate geared collars, value collars, constant maturity swaps, trigger swaps, inflation linked derivatives and certain European options, and swaptions; and
- (ii) foreign exchange time options, contingent forwards, ratio forwards, bonus forwards and target knock-out forwards.

**APPENDIX**  
**The Scheme**