These notes refer to the Financial Services (Banking Reform) Act 2013 (c.33) which received Royal Assent on 18 December 2013

FINANCIAL SERVICES
(BANKING REFORM) ACT 2013

EXPLANATORY NOTES

COMMENTARY

Part 1 – Ring-Fencing

Ring-fencing

Section 6: Ring-fencing transfer schemes

74. *Section 6* gives effect to Schedule 1, which amends Part 7 of FSMA to make provision for ring-fencing transfer schemes. Part 7 provides a mechanism for transferring, with the sanction of the court, all or part of the business of banks, insurance companies and reclaim funds, without requiring the approval of all those who may be affected by the transfer. Section 7 and Schedule 1 provide for an additional form of transfer scheme (a "ring-fencing transfer scheme"), which will enable bodies to use the procedures set out in Part 7 of FSMA to give effect to any transfers of business needed to ensure that core activities are only undertaken by ring-fenced bodies, and that no entity wishing to be a ring-fenced body carries on excluded activities.

75. *Paragraph 2*of Schedule 1 replaces the expression "authorised person concerned" with "transferor concerned", throughout Part 7, to allow for the possibility that in the case of a ring-fencing transfer scheme, the transferor may not be an authorised person.

76. *Paragraph 3* amends section 103A of FSMA (meaning of "the appropriate regulator") to provide for ring-fencing transfer schemes.

77. *Paragraph 4*amends section 106 of FSMA to exclude ring-fencing transfer schemes from banking business transfer schemes, so that the categories of scheme are separate.

78. *Paragraph 5* inserts *new section 106B* into FSMA 2000. This makes provision about ring-fencing transfer schemes. *Subsection (1)* defines "ring-fencing transfer scheme". A scheme is a ring-fencing transfer scheme if the whole or part of the business to be transferred is carried on by a UK authorised person, or by a "qualifying body" (defined in *subsection (2)*), provided the scheme is not an excluded scheme (see *subsection (4)*) and is made for the purposes set out in *subsection (3)*. The qualifying body does not have to be an authorised person.

79. *Subsection (3)* specifies the relevant purposes. These are: to enable the person transferring the business, or the person to whom it is transferred lawfully to carry on the core activities lawfully as a ring-fenced body; or to assist a corporate restructuring of the group of the transferor or of the transferee made in connection with one or more members of the group becoming ring-fenced bodies, whilst one or more other members of the group are not ring-fenced bodies. It is not necessary for the transfer scheme to take place at the same time that a member of the group becomes a ring-fenced body: it may be necessary for the corporate restructuring necessary to enable a banking group to reorganise its business to comply with ring-fencing requirements over a number of

years before those requirements come into force, and in some cases more than one transfer may be required.

80. *Subsection (4)* defines excluded schemes for the purposes of the section. An excluded scheme is a scheme in which the person transferring part of their business is a building society or credit union, or a scheme which is a compromise or arrangement to which Part 27 of the Companies Act 2006 (mergers and divisions of public companies) applies.

81. *Subsection (5)* provides that in determining whether a business transfer is a ring-fencing transfer scheme, it does not matter whether the business is carried on in the UK.

82. *Subsections (6)* to *(8)* define "UK authorised person", "building society", "credit union" and "the ring-fencing provisions" for the purposes of new section 106B.

83. *Paragraph 6* amends section 107 of FSMA (application for order sanctioning transfer scheme) to add a reference to ring-fencing transfer schemes (*sub-paragraph (2))*. It also inserts new subsection (2A), providing that no application may be made to the court for approval of a ring-fencing transfer scheme unless the PRA has consented to the application, and new subsection (2B), which requires the PRA, in deciding whether or not to approve the scheme, to have regard to the scheme report prepared in relation to ring-fencing transfer schemes under section 109A of FSMA.

84. *Paragraphs 7 and 8* make provision for a report to be prepared in relation to any ring-fencing transfer scheme by a person nominated or approved for the purpose by the PRA. The report must provide information as to whether any adverse effect the proposed scheme can be likely to have on third parties is greater than reasonably necessary to achieve the purposes of the scheme.

85. *Paragraph 9* amends section 110 of FSMA (right to participate in proceedings) to provide who is entitled to be heard before the court on any application for the approval of a ring-fencing transfer scheme. This includes any person who alleges he would be adversely affected by a transfer scheme. This right is limited under *new subsection (5)* of section 110. Such a person is not entitled to be heard on an application for the approval of a transfer scheme unless before the hearing they have filed with the court a written statement of the representations that they wish the court to consider, and served copies of the statement on the PRA and the person by whom the proposed transfer is to be made.

86. *Paragraph 10* amends section 111 of FSMA (sanction of the court for business transfer schemes), extending it to apply to ring-fencing transfer schemes, and setting out the conditions which must be satisfied before the court may make an order sanctioning a ring-fencing transfer scheme.

87. *Paragraph 11 and 12* amend sections 112 (effect of order sanctioning business transfer schemes) and 112A (rights to terminate etc.) to include references to ring-fencing transfer schemes.

88. *Paragraph 13* amends Schedule 12 of FSMA so as to insert a new Part 2B. In that new Part, *paragraph 9B* provides what certificates must be obtained in support of an application to the court for the approval of a ring-fencing transfer scheme; *paragraph 9C* determines which authority must provide a certificate as to the financial resources of the transferee and *paragraph 9D* sets out what must be certified by the home state regulator of the transferee.