

ANNEX 1 - Proposal to remove the role of the reporting accountant

We propose to amend the SRA Accounts Rules to reflect this change:

Rule 1: The overarching objective and underlying principles

1.1

The purpose of these rules is to keep *client money* safe. This aim must always be borne in mind in the application of these rules.

1.2

You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the *SRA Code of Conduct* in relation to the effective financial management of the *firm*, and in particular must:

(a)

keep other people's money separate from money belonging to *you* or *your firm*;

(b)

keep other people's money safely in a *bank* or *building society* account identifiable as a *client account* (except when the rules specifically provide otherwise);

(c)

use each *client's* money for that *client's* matters only;

(d)

use money held as *trustee* of a *trust* for the purposes of that *trust* only;

(e)

establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules;

(f)

keep proper accounting records to show accurately the position with regard to the money held for each *client* and *trust*;

(g)

account for *interest* on other people's money in accordance with the rules;

(h)

co-operate with the SRA in checking compliance with the rules; and

(i)

ensure that the COFA facilitates, monitors and reports on compliance with these rules as required by the Handbook and in particular that material failures to comply with these rules are reported to the SRA as soon as reasonably practicable~~deliver annual accountant's reports as required by the rules.~~

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Rule 32: Delivery of accountant's reports

- 32.1 The SRA may impose a condition requiring the delivery of an accountant's report by you under rule 9 of the SRA Authorisation Rules or regulation 7 of the SRA Practising Regulations. Subject to rule 32.2 below, accountant's reports shall be prepared and delivered in accordance with these rules. ~~If you have, at any time during an accounting period, held or received client money, or operated a client's own account as signatory, you must deliver to the SRA an accountant's report for that accounting period within six months of the end of the accounting period. This duty extends to the directors of a company, or the members of an LLP, which is subject to this rule.~~
- 32.2 A decision to impose a condition requiring the delivery of an accountant's report may specify, among other things, that Part 6 and rule 50 of these rules and appendices 4 and 5 to these rules shall apply with such additions and modifications as may be prescribed in that decision. ~~In addition the SRA may require the delivery of an accountant's report in circumstances other than those set out in rule 32.1 above if the SRA has reason to believe that it is in the public interest to do so.~~
- 32.3 Rules 33 to 45 make additional provisions which apply when a person is required to deliver an accountant's report under rule 32.1 above.

~~Guidance notes~~

~~(f)~~

~~Examples of situations under rule 32.2 include:~~

~~(a)~~

~~when no report has been delivered but the SRA has reason to believe that a report should have been delivered;~~

~~(b)~~

~~when a report has been delivered but the SRA has reason to believe that it may be inaccurate;~~

~~(c)~~

~~when your conduct gives the SRA reason to believe that it would be appropriate to require earlier delivery of a report (for instance three months after the end of the accounting period);~~

~~(d)~~

~~when your conduct gives the SRA reason to believe that it would be appropriate to require more frequent delivery of reports (for instance every six months);~~

~~(e)~~

~~when the SRA has reason to believe that the regulatory risk justifies the imposition on a category of firm of a requirement to deliver reports earlier or at more frequent intervals;~~

~~(f)~~

~~when a condition on a solicitor's practising certificate requires earlier delivery of reports or the delivery of reports at more frequent intervals.~~

~~(ii)~~

~~For accountant's reports of limited scope see rule 8 (liquidators, trustees in bankruptcy, Court of Protection deputies and trustees of occupational pension schemes), rule 9 (joint accounts) and rule 10 (operation of a client's own account). For exemption from the obligation to deliver a report, see rule 5 (persons exempt from the rules).~~

~~(iii)~~

~~The requirement in rule 32 for a registered foreign lawyer to deliver an accountant's report applies only to a registered foreign lawyer practising in one of the ways set out in paragraph (vi)(C) of the definition of "you" in the Glossary.~~

~~(iv)~~

~~The form of report is dealt with in rule 44.~~

~~(v)~~

~~When client money is held or received by an unincorporated practice, the principals in the practice will have held or received client money. A salaried partner whose name appears in the list of partners on a firm's letterhead, even if the name appears under a separate heading of "salaried partners" or "associate partners", is a principal.~~

~~(vi)~~

~~In the case of an incorporated practice, it is the company or LLP (i.e. the recognised body or licensed body) which will have held or received client money. The recognised body/licensed body and its directors (in the case of a company) or members (in the case of an LLP) will have the duty to deliver an accountant's report, although the directors or members will not usually have held client money.~~

~~(vii)~~

~~Assistant solicitors, consultants and other employees do not normally hold client money. An assistant solicitor or consultant might be a signatory for a firm's client account, but this does not constitute holding or receiving client money. If a client or third party hands cash to an assistant solicitor, consultant or other employee, it is the sole principal or the partners (rather than the assistant solicitor, consultant or other employee) who are regarded as having received and held the money. In the case of an incorporated practice, whether a company or an LLP, it would be the recognised body or licensed body itself which would be regarded as having held or received the money.~~

~~(viii)~~

~~If, exceptionally, an assistant solicitor, consultant or other employee has a client account (as a trustee), or operates a client's own account as signatory, the assistant solicitor, consultant or other employee will have to deliver an accountant's report. The assistant solicitor, consultant or other employee can be included in the report of the practice, but will need to ensure that his or her name is added, and an explanation given.~~

~~(ix)~~

~~If a cheque or draft is made out to you, and in the course of practice you endorse it over to a client or employer, you have received (and paid) client money. You will have to deliver an accountant's report, even if no other client money has been held or received.~~

~~(x)~~

~~Rule 32 does not apply to a solicitor or registered European lawyer, employed as an in-house lawyer by a non-solicitor employer, who operates the account of the employer or a related body of the employer.~~

~~(xi)~~

~~When only a small number of transactions is undertaken or a small volume of client money is handled in an accounting period, a waiver of the obligation to deliver a report may sometimes be granted. Applications should be made to the Information Directorate.~~

~~(xii)~~

~~If a firm owns all the shares in a recognised body or licensed body which is an executor, trustee or nominee company, the firm and the recognised body/licensed body may deliver a single accountant's report (see rule 28.1(b)).~~

Rule 33: Accounting periods

The norm

33.1

An "accounting period" means the period for which *your* accounts are ordinarily made up, except that it must:

(a)

begin at the end of the previous *accounting period*; and

(b)

cover twelve months.

Rules 33.2 to 33.5 below set out exceptions.

First ~~and resumed~~ reports

33.2

~~If you are under a duty to deliver your first report, t~~The accounting period for your first report must begin on the date of the decision under 32.1 above, or such other date as may be specified by the SRA when you first held or received client money (or operated a client's own account as signatory), and may cover less than twelve months.

~~33.3~~

~~If you are under a duty to deliver your first report after a break, the accounting period must begin on the date when you for the first time after the break hold or received client money (or operated a client's own account as signatory), and may cover less than twelve months.~~

Change of accounting period

33.4

If you change the period for which your accounts are made up (for example, on a merger, or simply for convenience), the *accounting period* immediately preceding the change may be shorter than twelve months, or longer than twelve months up to a maximum of 18 months, provided that the *accounting period* shall not be changed to a period longer than twelve months unless the SRA receives written notice of the change before expiry of the deadline for delivery of the accountant's report which would have been expected on the basis of your old *accounting period*.

Final reports

33.5

If you for any reason stop holding or receiving *client money* (and operating any *client's* own account as signatory) during a period in which you are required to deliver an accountant's report under rule 32.1, you must deliver a final report. The *accounting period* must end on the date upon which you stopped holding or receiving *client money* (and operating any *client's* own account as signatory), and may cover less than twelve months.

Guidance notes

(i)

In the case of persons joining or leaving a continuing partnership, any accountant's report for the firm as a whole will show the names and dates of the principals joining or leaving. For a person who did not previously hold or receive client money, etc., and has become a principal in the firm, the report for the firm will represent, from the date of joining, that person's first report for the purpose of rule 33.2. For a person who was a principal in the firm and, on leaving, stops holding or receiving client money, etc., the report for the firm will represent, up to the date of leaving, that person's final report for the purpose of rule 33.5 above.

(ii)

When a partnership splits up, it is usually appropriate for the books to be made up as at the date of dissolution, and for an accountant's report to be delivered within six months of that date. If, however, the old partnership continues to hold or receive client money, etc., in connection with outstanding matters, accountant's reports will continue to be required for those matters; the books should then be made up

on completion of the last of those matters and a report delivered within six months of that date. The same would be true for a sole practitioner winding up matters on retirement.

(iii)

When a practice is being wound up, you may be left with money which is unattributable, or belongs to a client who cannot be traced. It may be appropriate to apply to the SRA for authority to withdraw this money from the client account - see rule 20.1(k) and guidance note (vi)(a) to rule 20.

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[no changes to rules 34.1-34.3]

34.4

~~Written notice of disqualification must be left at or sent by recorded delivery to the address of the accountant shown on an accountant's report or in the records of the accountant's professional body. If sent through the post, receipt will be deemed 48 hours (excluding Saturdays, Sundays and Bank Holidays) after posting.~~

34.5

~~An accountant's disqualification may be notified to any firm likely to be affected and may be printed in the Society's Gazette or other publication.~~

Guidance note

(i)

It is not a breach of the rules for you to retain an outside accountant to write up the books of account and to instruct the same accountant to prepare the accountant's report. However, the accountant will have to disclose these circumstances in the report - see the form of report in Appendix 5.

Rule 35: Reporting accountant's rights and duties - letter of engagement

35.1

If you are required to deliver an accountant's report under rule 32.1, you must ensure that the reporting accountant's rights and duties are stated in a letter of engagement incorporating the following terms:

"In accordance with rule 35 of the SRA Accounts Rules 2011, you are instructed as follows:

(a)

I/this firm/this company/this limited liability partnership recognises that, if during the course of preparing an accountant's report:

(i)

you discover evidence of fraud or theft in relation to money

(A)

held by a solicitor (or registered European lawyer, or registered foreign lawyer, or recognised body, or licensed body, or employee of a solicitor or registered European lawyer, or manager or employee of a recognised body or licensed body) for a client or any other person (including money held on trust), or

(B)

held in an account of a client, or an account of another person, which is operated by a solicitor (or registered European lawyer, registered foreign lawyer, recognised body, licensed body, employee of a solicitor or registered European lawyer, or manager or employee of a recognised body or licensed body); or

(ii)

you obtain information which you have reasonable cause to believe is likely to be of material significance in determining whether a solicitor (or registered European lawyer, or registered foreign lawyer, or recognised body, or licensed body, or employee of a solicitor or registered European lawyer, or manager or employee of a recognised body or licensed body) is a fit and proper person

(A)

to hold money for clients or other persons (including money held on trust), or

(B)

to operate an account of a client or an account of another person,

you must immediately give a report of the matter to the Solicitors Regulation Authority in accordance with section 34(9) of the Solicitors Act 1974 or article 3(1) of the Legal Services Act 2007 (Designation as a Licensing Authority) (No. 2) Order 2011 as appropriate;

(b)

you may, and are encouraged to, make that report without prior reference to me/this firm/this company/this limited liability partnership;

(c)

you are to report directly to the Solicitors Regulation Authority should your appointment be terminated following the issue of, or indication of intention to issue, a qualified accountant's report, or following the raising of concerns prior to the preparation of an accountant's report;

(d)

you are to deliver to me/this firm/this company/this limited liability partnership with your report the completed checklist required by rule 43 of the SRA Accounts Rules 2011; to retain for at least three years from the date of signature a copy of the completed checklist; and to produce the copy to the Solicitors Regulation Authority on request;

(e)

you are to retain these terms of engagement for at least three years after the termination of the retainer and to produce them to the Solicitors Regulation Authority on request; and

(f)

following any direct report made to the Solicitors Regulation Authority under (a) or (c) above, you are to provide to the Solicitors Regulation Authority on request any further relevant information in your possession or in the possession of your firm.

To the extent necessary to enable you to comply with (a) to (f) above, I/we waive my/the firm's/the company's/the limited liability partnership's right of confidentiality. This waiver extends to any report made, document produced or information disclosed to the Solicitors Regulation Authority in good faith pursuant to these instructions, even though it may subsequently transpire that you were mistaken in your belief that there was cause for concern."

[No change to rules 35.2 to rule 36]

Rule 37: Place of examination

37.1

[If you are required to deliver an accountant's report under rule 32.1, unless](#) there are exceptional circumstances, the place of examination of *your* accounting records, files and other relevant documents must be *your* office and not the office of the accountant. This does not prevent an initial electronic transmission of data to the accountant for examination at the accountant's office with a view to reducing the time which needs to be spent at *your* office.

Rule 38: Provision of details of bank accounts, etc.

38.1

[If you are required to deliver an accountant's report under rule 32.1](#), the accountant must request, and *you* must provide, details of all accounts kept or operated by *you* in connection with *your* practice at any *bank*, *building society* or other financial institution at any time during the *accounting period* to which the report relates. This includes *client accounts*, *office accounts*, accounts which are not *client accounts* but which contain *client money*, and *clients'* own accounts operated by *you* as signatory.

Rule 39: Test procedures

39.1

[If you are required to deliver an accountant's report under rule 32.1](#), the accountant must examine *your* accounting records (including statements and passbooks), *client* and *trust* matter files selected by the accountant as and when appropriate, and other relevant documents, and make the following checks and tests:

(a)

confirm that the accounting system in every office complies with:

(i)

rule 29 - accounting records for client accounts, etc;

(ii)

rule 30 - accounting records for clients' own accounts;

and is so designed that:

(A)

an appropriate client ledger account is kept for each *client* (or other person for whom *client money* is received, held or paid) or *trust*;

(B)

the client ledger accounts show separately from other information details of all *client money* received, held or paid on account of each *client* (or other person for whom *client money* is received, held or paid) or *trust*; and

(C)

transactions relating to *client money* and any other money dealt with through a *client account* are recorded in the accounting records in a way which distinguishes them from transactions relating to any other money received, held or paid by *you*;

(b)

make test checks of postings to the client ledger accounts from records of receipts and payments of *client money*, and make test checks of the casts of these accounts and records;

(c)

compare a sample of payments into and from the *client accounts* as shown in *bank* and *building society* or other financial institutions' statements or passbooks with *your* records of receipts and payments of *client money*, including paid cheques;

(d)

test check the system of recording *costs* and of making transfers in respect of *costs* from the *client accounts*;

(e)

make a test examination of a selection of documents requested from *you* in order to confirm:

(i)

that the financial transactions (including those giving rise to transfers from one client ledger account to another) evidenced by such documents comply with Parts 1 and 2 of the rules, rule 27 (restrictions on transfers between clients) and rule 28 (executor, trustee or nominee companies); and

(ii)

that the entries in the accounting records reflect those transactions in a manner complying with rule 29;

(f)

subject to rule 39.2 below, extract (or check extractions of) balances on the client ledger accounts during the *accounting period* under review at not fewer than two dates selected by the accountant (one of which may be the last day of the *accounting period*), and at each date:

(i)

compare the total shown by the client ledger accounts of the liabilities to the *clients* (and other persons for whom *client money* is held) and *trusts* with the cash account balance; and

(ii)

reconcile that cash account balance with the balances held in the *client accounts*, and accounts which are not *client accounts* but in which *client*

money is held, as confirmed direct to the accountant by the relevant *banks*, *building societies* and other financial institutions;

(g)

confirm that reconciliation statements have been made and kept in accordance with rule 29.12 and 29.17(a);

(h)

make a test examination of the client ledger accounts to see whether payments from the *client account* have been made on any individual account in excess of money held on behalf of that *client* (or other person for whom *client money* is held) or *trust*;

(i)

check the office ledgers, office cash accounts and the statements provided by the *bank*, *building society* or other financial institution for any *office account* maintained by *you* in connection with the practice, to see whether any *client money* has been improperly paid into an *office account* or, if properly paid into an *office account* under rule 17.1(b) or rule 19.1, has been kept there in breach of the rules;

(j)

check the accounting records kept under rule 29.17(d) and 29.19 for *client money* held outside a *client account* to ascertain what transactions have been effected in respect of this money and to confirm that the *client* has given appropriate instructions under rule 15.1(a);

(k)

make a test examination of the client ledger accounts to see whether rule 29.10 (accounting records when acting for both lender and borrower) has been complied with;

(l)

for liquidators, trustees in bankruptcy, *Court of Protection deputies* and trustees of occupational pension schemes, check that records are being kept in accordance with rule 29.15, 29.17(c) and 29.20, and cross-check transactions with *client* or *trust* matter files when appropriate;

(m)

check that statements and passbooks and/or duplicate statements and copies of passbook entries are being kept in accordance with rule 29.17(b)(ii) and 29.21 (record-keeping requirements for joint accounts), and cross-check transactions with *client* matter files when appropriate;

(n)

check that statements and passbooks and/or duplicate statements, copies of passbook entries and cheque details are being kept in accordance with rule 30 (record-keeping requirements for clients' own accounts), and cross-check transactions with *client* matter files when appropriate;

(o)

for money withdrawn from *client account* under rule 20.1(j), check that records are being kept in accordance with rule 29.16, 29.17(a) and 29.22, and cross-check with *client* or *trust* matter files when appropriate;

(p)

in the case of private practice only, check that for the period which will be covered by the accountant's report the *firm* was covered for the purposes of the *SRA's* indemnity insurance rules in respect of its offices in England and Wales by:

(i)

certificates of qualifying insurance outside the assigned risks pool; or

(ii)

a policy issued by the assigned risks pool manager; or

(iii)

certificates of indemnity cover under the professional requirements of an *REL's* home jurisdiction in accordance with paragraph 1 of Appendix 3 to those rules, together with the *SRA's* written grant of full exemption; or

(iv)

certificates of indemnity cover under the professional requirements of an *REL's* home jurisdiction plus certificates of a difference in conditions policy with a qualifying insurer under paragraph 2 of Appendix 3 to those rules, together with the *SRA's* written grant of partial exemption; and

(q)

ask for any information and explanations required as a result of making the above checks and tests.

[No change to rules 39.2 to 45]

Rule 46: Waivers

46.1

The *SRA* may waive in writing in any particular case or cases any of the provisions of Part 6 of the rules, and may revoke any waiver.

Guidance note

(i)

~~Applications for waivers should be made to the Information Directorate. In appropriate cases, firms may be granted a waiver of the obligation to deliver an accountant's report (see rule 32, and guidance note (xi) to that rule). The circumstances in which a waiver of any other provision of Part 6 would be given must be extremely rare.~~

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Accountants' reports

50.4

[If you are required to deliver an accountant's report under rule 32.1](#), you must deliver an accountant's report in respect of any period during which you or your *firm (overseas)* have held or received *client money (overseas)* and you were subject to rule 50.3 above, within six months of the end of that period.

50.5

[If you are required to deliver an accountant's report under rule 32.1](#), the accountant's report must be signed by the reporting accountant, who must be an accountant qualified in England and Wales or in the overseas jurisdiction where your office is based, or by such other person as the *SRA* may think fit. The *SRA* may for reasonable cause disqualify a person from signing accountants' reports.

50.6

[If you are required to deliver an accountant's report under rule 32.1](#), the accountant's report must be based on a sufficient examination of the relevant documents to give the reporting accountant a reasonable indication whether or not you have complied with rule 50.3 above during the period covered by the report, and must include the following:

(a)

your name, practising address(es) and practising style and the name(s) of the *firm's (overseas) managers (overseas)*;

(b)

the name, address and qualification of the reporting accountant;

(c)

an indication of the nature and extent of the examination the reporting accountant has made of the relevant documents;

(d)

a statement of the total amount of money held at banks or similar institutions on behalf of clients and trusts, and of the total liabilities to clients and trusts, on any date selected by the reporting accountant (including the last day), falling within the period under review; and an explanation of any difference between the total amount of money held for clients and trusts and the total liabilities to clients and trusts;

(e)

if the reporting accountant is satisfied that (so far as may be ascertained from the examination) you have complied with rule 50.3 above during the period covered by the report, except for trivial breaches, or situations where you have been bound by a local rule not to comply, a statement to that effect; and

(f)

if the reporting accountant is not sufficiently satisfied to give a statement under (e) above, details of any matters in respect of which it appears to the reporting accountant that you have not complied with rule 50.3 above.

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