EXPLANATORY MEMORANDUM TO THE

FINANCIAL SERVICES AND MARKETS ACT 2000 (VARIATION OF THRESHOLD CONDITIONS) (AMENDMENT) ORDER 2005

2005 No. 680

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

This instrument amends The Financial Services and Markets Act 2000 (Variation of Threshold Conditions) Order 2001 (**"the principal Order"**) so that Swiss general insurance companies are subject to existing provisions in the United Kingdom on 'close links' i.e. links with a parent or subsidiary undertaking. The instrument also sets out additional threshold conditions, including conditions relating to the treatment of regulatory capital, that a Swiss general insurance company must satisfy when authorised by the Financial Services Authority (**"FSA"**) or when applying for FSA-authorisation.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative background

4.1 Schedule 6 to the Financial Services and Markets Act 2000 (**"the Act"**) sets out threshold conditions which FSA-authorised persons, and applicants for FSA-authorisation, must satisfy under the Act. This instrument amends the principal Order to vary these threshold conditions in relation to their application to Swiss general insurance companies as defined in article 1(2) of the principal Order. Specifically, Article 2(2) of the instrument re-applies to Swiss general insurance companies the condition set out in paragraph 3 of Schedule 6 (which had previously been removed by the principal Order) so that where the company has close links with a parent or subsidiary undertaking, the FSA must be satisfied that these close links are not likely to prevent the FSA from supervising the company effectively. Article 2(3) of the instrument sets out additional threshold conditions which a Swiss general insurance company must satisfy. These include conditions requiring the company to ensure that the value of the assets of the business carried on by it in the United Kingdom does not fall below the amount of liabilities of that business, and that these assets are maintained in a manner that can be specified in FSA rules.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 This instrument is made following the two year review of the Act.

7.2 The policy objectives of the Act are to create an efficient, effective and transparent framework for financial services regulation in the United Kingdom which promotes market confidence and protects consumers.

7.3 This instrument fulfils these objectives because it should enable the FSA to undertake certain regulatory functions more effectively by upgrading the authorisation requirements applying to Swiss general insurance companies and by improving the FSA's application of capital requirements to these companies.

7.4 Swiss insurance companies conducting business in the United Kingdom are regulated in accordance with a 1989 Agreement[1] formed between Switzerland and the EU. However the 1989 Agreement does not deal with some issues. These issues fall to host states to regulate. For example, the 1989 Agreement does not deal with the issue of 'close links' and does not explicitly set out the terms on some issues relating to the application of capital requirements. This curtails the FSA's ability to supervise Swiss general insurance companies effectively. There is a risk that the FSA's effectiveness will continue to be impaired at the margin if this instrument is not made.

7.5 The original proposals for this instrument were publicly consulted on in February 2004. Following some further clarification, the proposals were supported by those who responded to the consultation.

7.5 The changes made by this instrument are not of major political or legal importance.

8. Impact

A Regulatory Impact Assessment (RIA) is available on the HM Treasury website http://www.hm-treasury.gov.uk./media/510/35/fin_ser_mark_act_gov_resp_nov04.pdf

9. Contact

Marcello Casale at HM Treasury (telephone: 020 7270 5173 or email: marcello.casale@hm-treasury.x.gsi.gov.uk) can answer any queries regarding this instrument.

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[1] The Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance, 10 October 1989 (see Council Decision 91/370/EEC and Council Directive 91/37/EEC).