

ROLLS BUILDING FINANCIAL LIST INITIATIVE CONSULTATION DOCUMENT

APPENDICES

APPENDIX 1

Draft Civil Procedure Rule

PART X – FINANCIAL LIST

Scope of this Part and interpretation

X.1

(1) This Part applies to Financial List claims.

(2) In this Part and Practice Direction X ‘Financial List claim’ means any claim which:

(a) relates to loans, project finance, banking transactions, derivatives and complex financial products, financial benchmarks, capital or currency controls, bank guarantees, bonds, debt securities, private equity deals, hedge fund disputes, sovereign debt, or clearing and settlement; and is

(i) for more than £50 million or equivalent; or

(ii) is ordered into the list;

or which

(b) requires particular expertise in the financial markets; or

(c) raises issues of general importance to the financial markets.

‘Financial markets’ for these purposes include the fixed income markets (covering repos, bonds, CDs, debt securities and commercial paper generally), the equity markets, the derivatives

markets, the FX markets, and the commodities markets. Cases of insurance and re-insurance and professional negligence fall within the list where the case raises points which particularly affect the financial markets.

Specialist list

X.2

(1) The Financial List is a single specialist list. Claims in the Financial List may be commenced in the Commercial Court or the Chancery Division in London.

(2) The Chancellor and the judge in charge of the commercial list shall have joint overall responsibility for all Financial List Claims.

Application of the Civil Procedure Rules

X.3

These Rules and their practice directions apply to claims in the Financial List unless this Part or a practice direction provides otherwise.

Proceedings in the Financial List

X.4

(1) All Financial List claims will be allocated to a designated judge at the time of the first case management conference. The designated judge will be a Financial List judge, being a judge of the Chancery Division or the Commercial Court who has been authorised to try Financial List Claims.

(2) Rule 30.5 applies to claims in the Financial List, except that a Financial List judge may order a claim to be transferred to any other specialist list.

(3) Part 58.5-13 and 58.15 shall apply to claims in the Financial List in the same manner as they apply to claims in the commercial list.

APPENDIX 2

Draft Practice Direction

PRACTICE DIRECTION X – FINANCIAL LIST

This practice direction supplements Part X

Contents of this Practice Direction	
Title	
General	
Starting proceedings in the Financial List	
Applications before proceedings are issued	
Transferring proceedings to or from the Financial List	
Proceedings in the Financial List	

General

1.1

This practice direction applies to Financial List claims.

1.2

All proceedings in the Financial List, including any appeal from a judgment, order or decision of a master or district judge before the proceedings were transferred to the financial list, will be heard or determined by a Financial List judge, except that –

(1) another judge of the Queen's Bench Division or Chancery Division may hear urgent applications if no Financial List judge is available; and

(2) unless the court otherwise orders, any application relating to the enforcement of a Financial List judgment or order for the payment of money will be dealt with by the allocated judge unless he directs it to be dealt with by a master of the Queen's Bench Division or of the Chancery Division or a district judge.

1.3

Provisions in other practice directions which refer to a master or district judge are to be read, in relation to claims in the Financial List, as if they referred to a Financial List judge.

1.4

The Admiralty and Commercial Registry in the Royal Courts of Justice is the administrative office of the court for all proceedings in the Financial List commenced in the Commercial Court and the Chancery Registry in the Royal Courts of Justice is the administrative office of the court for all proceedings in the Financial List commenced in the Chancery Division, save where otherwise stated in the applicable procedural Guide.

Starting proceedings in the Financial List

2.1

Claims in the Financial List must be issued in either the Chancery Registry or the Admiralty and Commercial Registry.

2.2

The claim form issued in the Admiralty and Commercial Registry must be marked in the top right hand corner 'Queen's Bench Division, Commercial Court, Financial List' and a claim form issued in the Chancery Division must be marked in the top right hand corner "Chancery Division, Financial List'.

2.3

A claimant starting proceedings in the Financial List, other than an arbitration claim, must use practice form N1CC(FL) for Part 7 claims issued in the Commercial Court, practice form N1(CHFL) for Part 7 claims issued in the Chancery Division, practice form N208(CCFL) for Part 8 claims issued in the Commercial Court or practice form N208(CHFL) for Part 8 claims issued in the Chancery Division.

Applications before proceedings are issued

3.1

A party who intends to bring a claim in the Financial List must make any application before the claim form is issued to a Financial List judge.

3.2

The written evidence in support of such an application must state that the claimant intends to bring proceedings in the Financial List.

3.3

If the Financial List judge hearing the application considers that the proceedings should not be brought in the Financial List, he may adjourn the application to be heard by a master or by a judge who is not a Financial List judge.

Transferring proceedings to or from the Financial List

4.1

If an application is made to a judge other than Financial List judge to transfer proceedings to the Financial List, the other court may –

- (1) adjourn the application to be heard by a Financial List judge; or
- (2) dismiss the application.

4.2

If a financial list judge orders proceedings to be transferred to the Financial List –

- (1) he will order them to be transferred to the Royal Courts of Justice; and
- (2) he may give case management directions.

4.3

An application by a defendant, including a Part 20 defendant, for an order transferring proceedings from the Financial List should be made promptly and normally not later than the first case management conference.

4.4

A party applying to a Financial List judge to transfer a claim to the Financial List must give notice of the application to the court in which the claim is proceeding, and the Financial List judge will not make an order for transfer until it is satisfied that such notice has been given.

Proceedings in the Financial List

5.1

Practice Direction 58.5-14 shall apply to claims in the Financial List in the same manner as it applies to claims in the commercial list.

5.2

Appendix A of Practice Direction 58 shall apply to claims in the Financial List, the “Registry” being the Admiralty and Commercial Registry for claims commenced in the Commercial Court and the Chancery Registry for claims commenced in the Chancery Division.

5.2

Proceedings in the Financial List will be conducted in accordance with the guidance set out in the Admiralty and Commercial Courts Guide, save where otherwise stated therein or in Part X or this Practice Direction.

Financial List Forms

N1(CCFL) Claim form (Part 7, Commercial Court)

N1(CHFL) Claim form (Part 7, Chancery Division)

Available on the [forms page](#).

N9(CCFL) Acknowledgement of service (Part 7, Commercial Court)

N9(CHFL) Acknowledgement of service (Part 7 Chancery Division)

Available on the [forms page](#).

N1C (CC) Notes for defendant

Available on the [forms page](#).

N208(CCFL) Claim form (Part 8, Commercial Court)

N208(CHFL) Claim form (Part 8, Chancery Division)

Available on the [forms page](#).

N210(CCFL) Acknowledgement of service (Part 8 Commercial Court)

N210(CHFL) Acknowledgement of service (Part 8, Chancery Division)

Available on the [forms page](#).

N208C(CC) Notes for defendant (Part 8)

Available on the [forms page](#).

N211(CCFL) Claim form (Part 20, Commercial Court)

N211(CHFL) Claim form (Part 20, Chancery Division)

Available on the [forms page](#).

N213(CCFL) Acknowledgement of service (Part 20, Commercial Court)

N213(CHFL) Acknowledgement of service (Part 20, Chancery Division)

Available on the [forms page](#).

N211C(CC) Notes for Part 20 defendant

Available on the [forms page](#).

N244(CCFL) Application Notice (Commercial Court)

N244(CHFL) Application Notice (Chancery Division)

Available on the [forms page](#).

N265(CCFL) Standard Disclosure (Commercial Court)

N265(CHFL) Standard Disclosure (Chancery Division)

Available on the [forms page](#).

APPENDIX 3

GUIDE TO THE FINANCIAL LIST

Issued [*date*]

By authority of [...]

Contents

[]

General

Introduction

1. This is the general guide to the Financial List. The Financial List is a specialist list set up to handle claims related to the financial markets. It is situated in the Rolls Building in London and operates as a joint initiative involving the Chancery Division and the Commercial Court.
2. The objective of the Financial List is to ensure that cases which would benefit from being heard by judges with particular expertise in the financial markets or which raise issues of general importance to the financial markets are dealt with by judges with suitable expertise and experience.
3. Cases in the Financial List will be managed and heard by specialist judges so as to provide fast, efficient and high quality dispute resolution of claims related to the financial markets.

Jurisdiction

4. Claims in the Financial List may be commenced in the Commercial Court or the Chancery Division but the Financial List itself operates as a single list. The Chancellor of the High Court and the judge in the charge of the Commercial Court have joint overall responsibility for the Financial List.

5. CPR Part X defines the kinds of claims which may be brought in the Financial List. The definition involves three criteria. The first criterion relates to the subject matter of the claim and limits claims to those where the value is more than £50 million or equivalent. The second criterion and third criteria are intended to ensure that the cases in the list are appropriate matters for the specialist list to handle. They provide that cases must either require particular expertise in the financial markets or raise issues of general importance to the financial markets. The definition also allows for other cases meeting the first criterion to be transferred into the list.

Financial List judges

6. Cases in the Financial List will be dealt with by specialist Financial List judges. Financial List judges are judges of the Chancery Division and the Commercial Court who have been authorised as such to hear and determine Financial List claims.
7. Case management in the Financial List will be carried out by judges. That applies to claims issued in the Chancery Division as well as the Commercial Court.

Users' Committee

8. The Financial List has a Users' Committee which provides a forum in which the court can listen and respond to matters raised by litigators and others concerned with the financial markets. Membership of the committee includes the Financial List judges, representatives of regulatory bodies, general counsel and senior-in house litigation counsel, accountancy firms, City bodies, Market Associations dealing with financial matters, solicitors firms, COMBAR and the Chancery Bar Association. Anyone having views concerning the improvement of financial markets litigation is invited to make his or her views known to the committee, preferably through the relevant professional representative on the committee or its secretary.

Procedure in the Financial List

CPR Part X and Practice Direction

9. Proceedings in the Financial List are governed by the Civil Procedure Rules. Part X relates to the Financial List and the applicable Practice Direction is PD X.

Designated judges and allocation

10. Proceedings in the Financial List will have a designated judge assigned to them at the time of the first case management conference. The designated judge will normally deal with all subsequent pre-trial case management conferences and other hearings. Normally, all applications in the case, other than applications for interim payment, will be determined by the designated judge and he or she will be the trial judge.
11. The responsibility for assigning designated judges will be that of the Judge in Charge of the Commercial List and the Chancellor. Four weeks prior to the date fixed for the first Case Management Conference, the Claimant should write to them briefly identifying the key issues in the case and any matters considered relevant to judge allocation, including whether and, if so, why, it is considered to be more appropriate for a Commercial Court or a Chancery Division Financial List judge, bearing in mind that the standard procedure will be identical for all cases in the Financial List. If practicable, this should be a joint letter agreed to by all parties. If not, the other parties should write with their own comments three weeks prior to the date for the first Case Management Conference.

Applicability of other procedural guides

12. The Financial List will adopt a unified procedure, irrespective of whether the case was issued in the Chancery Division or the Commercial Court. This guide is the primary source of guidance for proceedings in the Financial List. For matters not dealt with in this

guide nor in CPR Part X or Practice Direction X, the Admiralty and Commercial Court Guide (ACCG) will apply. For any other issues not dealt with in those sources, the Chancery Guide will apply.

13. References in the ACCG to the Commercial List or the Commercial Court shall be treated as referring to the Financial List for Financial List claims. References in the ACCG to Forms shall be treated as referring to the equivalent approved Financial List Forms. References in the ACCG to interlocutory hearings being on Fridays and to trial days not including Fridays apply only to Financial List claims proceedings in the Commercial Court. Sections D.4 and N and O of the ACCG shall not apply to Financial List claims.

Transfers

14. Cases may be transferred into and out of the Financial List, if appropriate, in accordance with CPR Part 30.

Market test cases

15. The Financial List will conduct a pilot Financial Markets Test Case Scheme, to facilitate the resolution of market issues in relation to which immediately relevant authoritative English law guidance is needed without the need for a dispute between the parties to the proceedings. The pilot is governed by CPR Practice Direction 51[*].

General Arrangements

Issuing proceedings in the Financial List

16. Proceedings in the Financial List will be issued in the Rolls Building. They may be issued in the Commercial Court or the Chancery Division.

Arrangements for listing

17. Arrangements for listing of cases in the Financial List will be made by [TBA]

Contact

18. [*contact details: Rolls Building counters, secretary of FL Users' Committee, etc.*]

APPENDIX 4

Draft Practice Direction on Test Cases

PRACTICE DIRECTION 51[*] – FINANCIAL MARKETS TEST CASE SCHEME

This Practice Direction supplements various CPR rules.

Contents of this Practice Direction

General	Paragraph 1
The Test Case Scheme	Paragraph 2

1) **General**

(1) This Practice Direction is made under rule 51 of the Civil Procedure Rules (CPR). It provides for a pilot of the Financial Markets Test Case Scheme, to-

- (a) operate from [***date***];
- (b) operate in the Financial List of the Chancery Division and the Commercial Court;
- (c) apply to claims started on or after [***date***].

(2) Where the provisions of this Practice Direction conflict with the provisions of other provisions of the CPR or other Practice Directions, this Practice Direction shall take precedence

2) **The Financial Markets Test Case Scheme**

(1) Financial Markets Test Case Scheme - general

- (a) The Financial Markets Test Case Scheme applies to a claim started in the Financial List which raises market issues in relation to which

immediately relevant authoritative English law guidance is needed (“a qualifying claim”).

- (b) In such cases the Financial Markets Test Case Scheme enables the qualifying claim to be determined without the need for a dispute between the parties to the proceedings.

(2) Proceedings in the Financial Markets Test Case Scheme

- (a) Where there is a qualifying claim a person who is actively in business in the relevant market may, by mutual agreement, issue proceedings against another person who is actively in business in the relevant market provided that other person has opposing interests as to how the English law issue(s) raised by the qualifying claim should be resolved.

- (b) The claim form must be marked in the top right hand corner Financial List, Financial Markets Test Case Scheme.

- (c) Proceedings will be conducted in accordance with the procedure applicable to Financial List claims save that:

- (1) For proceedings to be allowed to proceed to trial or summary determination the judge hearing the first case management conference or summary application must be satisfied that it is a qualifying claim, that it is a claim which can be satisfactorily determined as a test case and that the arguments of all those with opposing interests in relation to the issues in question will be properly put before the court by those represented. In appropriate cases a relevant trade body or association may be joined as a party or otherwise allowed to be represented to ensure that this is done.

- (2) The parties will seek to agree the facts.

- (3) The general rule will be that there shall be no order as to costs.