

SUBMISSION
AMENDMENTS TO ANCILLARY FUND GUIDELINES

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1. The new concept of 'minimum annual distribution percentage' is welcome, but reasonably complicated. Some worked examples in the Explanatory Statement would assist.
2. The additions to guideline 30.2 are unfortunate in my view:
 - the reference to 'status of the fund as a registered charity' is vague, and some clarification is needed as to what that is intended to cover;
 - the reference to 'perceived or actual material conflicts of interest' is also vague, and it is submitted that such matters are already dealt with by the guidelines relating to arm's length investment etc.
3. I was also hoping that the amendment would address the interaction between guideline 34 (which is an outright prohibition on non-arm's length dealing) and guidelines 36 and 41 (both of which have carve outs for deals that are 'on more favourable terms' that an arm's length deal would be). It seems to me that a Court would be likely to read down guideline 34 down by reference to the other two (more specific) guidelines, but it would surely be better to include an express carve out for deals 'on more favourable terms' in guideline 34 itself?