

Insurance Distribution Directive implementation

– Feedback and near-final rules for CP17/23, CP17/32, CP17/33, CP17/39 and near-final rules for CP17/07

Policy Statement

PS18/1

January 2018

This relates to

In this Policy Statement we report on the main issues arising from:

- Consultation Paper 17/32
Quarterly Consultation 18
- Consultation Paper 17/33
Insurance Distribution Directive Implementation – Consultation Paper 3
- Consultation Paper 17/39
Quarterly Consultation 19

and publish near-final rules.

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How to navigate this document onscreen



returns you to
the contents list



takes you to helpful
abbreviations

Contents

1	Overview	3
2	Approach to the delegated acts	8
Part I:		
	Requirements for life insurance distribution business	10
3	Inducements	11
4	Suitability and appropriateness	13
5	Information and product disclosure	15
Part II:		
	Requirements for all insurance distribution business and consequential changes	19
6	Conflicts of interest	20
7	Product oversight and governance	22
8	Perimeter Guidance	28
9	Regulatory processes	31
10	Additional changes to the Handbook	33
Part III:		
	Quarterly consultations CP17/32 and CP17/39	36
11	Feedback to CP17/32 and CP17/39	37
Annex 1:		
	List of non-confidential respondents to CP17/33	39
Annex 2:		
	List of non-confidential respondents to CP17/39	41
Annex 3:		
	Abbreviations in this document	42
Appendix 1:		
	Near-final rules	

1 Overview

Introduction

- 1.1** This Policy Statement (PS) sets out our response to the feedback received to Consultation Paper 17/33 (CP17/33)¹, which was the third of 3 consultation papers (CPs) on the Insurance Distribution Directive (IDD).² CP17/33 and this PS cover a number of matters including our approach to:
- the IDD delegated acts for product governance and additional requirements for insurance-based investment products (IBIPs)³
 - regulatory processes, and areas dependent on Her Majesty's Treasury's (the Treasury's) consultation on changes to UK legislation to transpose the IDD⁴
- 1.2** In addition, this PS covers:
- feedback on certain matters deferred from the second CP, CP17/23
 - feedback to the IDD-related aspects of Quarterly Consultation 18, CP17/32, and of Quarterly Consultation 19, CP17/39
 - the potential for the IDD application date to be delayed
- 1.3** The instrument included in Appendix 1 provides the full set of the near-final rules for all of our CPs in which we consulted on changes to implement the IDD. The instrument includes some minor changes to the near-final rules from the first 2 PSs.
- 1.4** The Treasury recently published the legislation that allows us to transpose the IDD in full.⁵ We have taken account of the statutory instrument in this paper and the handbook instrument in Appendix 1 but, as it is not yet finalised, we cannot publish our final rules in this PS. Publishing near-final rules now gives firms more time to implement the changes they need to make for the IDD. We will finalise the rules as soon as the legislation is finalised and do not expect to make any changes to the near-final rules.

1 CP17/33, Insurance Distribution Directive Implementation – Consultation Paper 3, September 2017: <https://www.fca.org.uk/publication/consultation/cp17-33.pdf>

2 The other CPs are CP17/7, Insurance Distribution Directive Implementation – Consultation Paper 1, March 2017: www.fca.org.uk/publication/consultation/cp17-07.pdf and CP17/23, Insurance Distribution Directive Implementation – Consultation Paper 2, July 2017: <https://www.fca.org.uk/publication/consultation/cp17-23.pdf>. The PSs for the first two CPs are PS17/21, Insurance Distribution Directive implementation – Feedback to CP17/7 and near-final rules, September 2017: www.fca.org.uk/publication/policy/ps17-21.pdf and PS17/27, Insurance Distribution Directive implementation – Feedback to CP17/23 and near-final rules, December 2017: <https://www.fca.org.uk/publication/policy/ps17-27.pdf>.

3 The Level 1 directive is supported by Level 2 delegated acts, which take the form of directly-applicable Regulations. These set out more detailed requirements that expand on the provisions in the Level 1 directive.

4 The Treasury, Transposition of the Insurance Distribution Directive, 27 February 2017: <https://www.gov.uk/government/consultations/transposition-of-the-insurance-distribution-directive>.

5 The Treasury, Transposition of the Insurance Distribution Directive, 15 January 2018: <https://www.gov.uk/government/consultations/transposition-of-the-insurance-distribution-directive>



Who does this affect?

- 1.5** This PS will interest insurance and reinsurance companies, intermediaries, other firms and customers in the insurance market, and bodies representing these groups. It will also be of interest to designated professional bodies and their members.
- 1.6** Customers have a clear interest in financial markets that operate fairly and transparently. This includes the way in which firms implement the new requirements of the IDD, for example the rules about conduct of business and information disclosure.

Context

- 1.7** The IDD replaces the Insurance Mediation Directive (IMD). It aims to enhance consumer protection when buying insurance (including non-investment insurance, life insurance and IBIPs) and to support competition between insurance distributors by creating a level playing field.
- 1.8** We need to change various parts of our Handbook to implement the IDD in the UK. We proposed primarily to introduce the minimum standards of the IDD into our Handbook through intelligent copy-out.⁶ However, in some cases we proposed changes that go beyond the IDD minimum requirements by:
- applying the IDD standards to a wider range of firms or business than required by the directive, so that we promote effective competition in the interests of consumers, by achieving consistency of regulatory standards and avoiding arbitrage
 - maintaining standards above the IDD minimum requirements to preserve existing UK regulatory standards
 - introducing standards above the IDD minimum requirements as a result of policy decisions, particularly the decision to align with Markets in Financial Instruments Directive II (MiFID II)
- 1.9** In this PS we summarise:
- our approach to the IDD delegated acts (Chapter 2)
 - changes to our requirements related to the distribution of IBIPs⁷ and wider life insurance business:
 - inducements (Chapter 3)
 - suitability and appropriateness (Chapter 4)
 - information and product disclosure (Chapter 5)

⁶ An 'intelligent copy out' approach means adhering closely to the wording of the IDD when drafting the relevant provisions in the Handbook, but using alternative wording where appropriate to align with UK law and practice.

⁷ An IBIP is an insurance product that offers a maturity or surrender value that is exposed to market fluctuations. Examples include endowment policies and insurance bonds. The IBIP definition in the IDD excludes most term life assurance, non-investment insurance and pension products.

- changes to our rules to implement requirements in the IDD that apply to life and non-investment insurance business, including:
 - conflicts of interest (Chapter 6)
 - product oversight and governance (Chapter 7)
 - Perimeter Guidance (Chapter 8)
 - regulatory processes (Chapter 9)
- additional changes to the Handbook (Chapter 10)
- feedback to quarterly consultations CP17/32 and CP17/39 (Chapter 11)

Potential application date delay

- 1.10** On 20 December 2017, the European Commission (the Commission) proposed delaying the application date of the IDD to 1 October 2018.⁸ The Commission is also preparing to postpone the application of two delegated regulations adopted under the IDD. The European Parliament and the Council will need to agree on the new application date before the delay is formally adopted and published in the Official Journal of the European Union. Under this proposal, firms would have until 1 October 2018 to implement the new IDD requirements.
- 1.11** We recognise that, in the event of a delay, firms may be in a position to comply with the IDD early. We believe that, in general terms, the IDD provides consumer protection that is similar to, or greater than, our current requirements and that, as a result, firms should be able to comply early if they choose to do so.
- 1.12** We have, therefore, included a formal transition period in our near-final rules (see GEN TP4) to clarify that firms may adopt some or all of the new IDD requirements early if they so choose. This transitional provision requires firms to have regard to whether the new requirements are similar in purpose to our current rules, and provide consumer protection that is similar to, or greater than, our current rules. It also requires firms to keep a clear record of their decision to comply early, including whether this relates only to a specific requirement or all IDD requirements. If the delay is not ultimately agreed by the European Parliament and the Council, we will remove this transitional provision from our final rules. In the near-final rules instrument at Appendix 1 we have included the various dates (including those in relation to when provisions will come into force) in square brackets. This due to uncertainty over the delay to the IDD as the Commission proposal has not yet been confirmed. If the transposition date of the IDD is also delayed then that may delay when we make our final rules and so when the transitional provision would come into force.

⁸ New application date for the Insurance Distribution Directive:
https://ec.europa.eu/info/law/insurance-distribution-directive-2016-97-eu/upcoming_en

Summary of feedback and our response

The third IDD CP, CP17/33

- 1.13** We received 45 responses to CP17/33, most of which supported our proposals or asked for further guidance. In general, we are implementing the consultation proposals with only minor changes.
- 1.14** Some of our changes are necessary to reflect amendments made, after we published CP17/33, in relation to the implementation of MiFID II. We have also decided to make some changes from the approach on which we consulted following consideration of the consultation feedback and ongoing discussions at EU level. These changes relate to matters including the rules for inducements and for mandatory occupational pension arrangements.
- 1.15** While most respondents agreed with our proposals, we received a range of feedback in relation to 2 particular policy proposals, to:
- apply the conflicts of interest requirements to general insurers
 - improve alignment with MiFID II product governance requirements by applying additional rules to manufacturers of insurance products
- 1.16** We believe that it is appropriate to continue with the overall approach on which we consulted, but we are making some changes to the product governance rules in light of the feedback received.

The second IDD CP, CP17/23

- 1.17** A number of proposals in CP17/23 – including those related to conflicts of interest, inducements and product governance – were subject to additional proposals in CP17/33. As we needed to consider the rules in light of feedback to CP17/33, we did not include near-final rules or a detailed response to feedback for these matters in PS17/27. Instead, we have taken this feedback into consideration in this PS and in the near-final rules included in the appendix.

Quarterly consultations CP17/32 and CP17/39

- 1.18** We also consulted on some additional IDD-related matters in quarterly consultations, and summarise feedback in this PS. The CPs included proposals for:
- consequential amendments to some FCA forms
 - changes to the Enforcement Guide (EG)
 - other miscellaneous changes to implement the IDD
- 1.19** We did not receive any feedback to CP17/32. We received 1 response to CP17/39. We will make the rules on which we consulted.

Equality and diversity considerations

- 1.20** We have considered the equality and diversity issues that may arise from the measures in this PS. Overall, we do not consider that they adversely impact any of the groups with protected characteristics, i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

Next steps

- 1.21** We intend to publish final rules once the Treasury's legislation is in force. Firms affected by these rules will need to ensure compliance by the application date specified in these final rules, depending on the outcome of the proposed delay.

2 Approach to the delegated acts

- 2.1** In this chapter we summarise the feedback we received in relation to our proposed approach to replicating the IDD delegated acts in the Handbook.

Our proposals

- 2.2** The IDD empowers the Commission to adopt delegated acts related to the product oversight and governance requirements and in relation to the distribution of IBIPs.⁹ Both delegated acts take the form of directly-applicable regulations. The requirements will apply directly to those firms within the scope of the regulations regardless of their implementation in the UK. In this paper we refer to the delegated acts as the 'product governance regulation' and the 'IBIP regulation'.
- 2.3** Due to the links between the IDD provisions and the regulations, we proposed to reproduce the provisions of the regulations in our Handbook. This should assist firms by setting out all the requirements in one place. We also proposed to apply provisions from the regulations as rules for firms conducting insurance distribution business that is not within scope of the IDD or the directly-applicable regulations but to which our existing rules apply.

Feedback received

- 2.4** 29 respondents provided feedback on these proposals, with most offering support for the approach on which we consulted. Two respondents disagreed with the proposals, citing the costs of regulation as the reason.
- 2.5** Two respondents commented specifically on the proposal to apply requirements drawn from the regulations as rules for firms that are not within scope of the regulations. They said that we should only go beyond the directive minimum where there is a need to protect customers and that we should avoid creating distortions with other European Economic Area (EEA) markets.

Our response

We are proceeding with the approach on which we consulted. We will replicate the product governance and IBIP regulations in the Handbook and apply the provisions as rules for firms that are not within scope of the regulations but to which our rules apply.

⁹ The regulation related to product oversight and governance is available here: http://ec.europa.eu/finance/docs/level-2-measures/idd-delegated-regulation-2017-6218_en.pdf.
The regulation related to the distribution of IBIPs is available here: http://ec.europa.eu/finance/docs/level-2-measures/idd-delegated-regulation-2017-6229_en.pdf.

Our existing rules already apply to firms which would not be within scope of the regulations, with the aim of creating a level playing field for firms distributing insurance in the UK. We consider that it is important to take this approach to ensure appropriate levels of consumer protection for all insurance distribution, and to promote competition by applying similar requirements across the sector.



Part I: Requirements for life insurance distribution business

3 Inducements

3.1 This chapter summarises the feedback we received in relation to our proposed approach to the inducements requirements of the IDD, including those in the IBIP regulation.

Our proposals

3.2 Our overall approach as originally outlined in CP17/23 and reiterated in CP17/33 was to:

- apply the inducements rules in Chapter 2.3A of the Conduct of Business Sourcebook (COBS), rather than our existing rules in COBS 2.3, to firms distributing IBIPs
- copy out the IDD requirements relating to the detrimental impact test, alongside the MiFID II quality enhancement provisions in COBS 2.3A
- maintain the existing requirements in COBS 2.3, without change, for life insurance business other than IBIPs
- retain the Retail Distribution Review rules (including where amended by PS17/14¹⁰), including COBS 6.1A on adviser charging

3.3 In CP17/33, we also proposed:

- To reproduce within COBS 2.3A the relevant provisions on inducements from the IBIP regulation, and to apply these requirements as rules for firms which are subject to our existing rules but not within scope of the IDD. We also proposed to 'translate' some words and phrases used in the IBIP regulation into Glossary terms as part of a new COBS 1.3.
- To align the inducements rules for IBIPs with the MiFID II requirements in COBS 2.3A where MiFID II includes relevant additional detail compared to the IDD. We proposed in particular to do this for certain record-keeping obligations, sales involving more than one distributor firm and ongoing assessments that firms must make to ensure that inducements enhance the quality of services. However, we proposed not to apply all of the COBS 2.3A record-keeping obligations to IBIPs, and instead to continue to rely on the high-level requirements within Chapters 3 and 9 of the Senior Management Arrangements, Systems and Controls sourcebook (SYSC).
- A change to COBS 6.1A regarding minor non-monetary benefits. To make sure that this properly reflected the wording of the IDD inducements test for IBIPs, we proposed to include a 'detrimental impact' test.

10 PS17/14, Markets in Financial Instruments Directive II Implementation – Policy Statement II, July 2017
<https://www.fca.org.uk/publication/policy/ps17-14.pdf>

- Not to apply certain of the COBS 2.3A MiFID II-based requirements relating to investment research.

Feedback received

- 3.4** We received 17 responses to these proposals. Most supported our proposed approach but 2 respondents disagreed with it; 1 disagreeing with the regulatory burden of disclosing broker earnings, the other providing no reason.
- 3.5** After the consultation closed, we received an email about the application of the rules for acceptable minor non-monetary benefits for retail clients and the position of professional clients.

Our response

We are making near-final rules in line with our proposed approach. We indicated in PS17/27 that we were still considering whether it is possible for the rules for IBIPs (COBS 2.3A) to apply only the MiFID II-derived high-level requirement that inducements must enhance the quality of the service. In light of clarifications from ongoing European transposition work in relation to the IDD, we have decided to apply this high-level requirement. To provide further detail to help firms meet the rule, we also propose to reproduce some of the provisions from the IBIP Regulation. In general, we would expect that firms meeting the MiFID II standard would also meet the IDD standard. This will provide a single standard across business to which COBS 2.3A applies, including IDD and MiFID II business. However, European transposition work in relation to the IDD is continuing and we may need to take this into account when making our final rules.

In relation to the question about minor non-monetary benefits, there are differences in approach in MiFID II and the IDD, with MiFID business subject to greater restrictions. We consider it is appropriate to reflect this difference in our rules in light of the different protection needs for retail and professional clients. We have, however, proposed a minor change to the rules to clarify the position. We have also made a minor change to allow firms to receive or make payments or benefits which enable or are necessary for the distribution of an IBIP (e.g. regulatory levies or legal fees). This aligns with existing rules and MiFID II. We have considered whether these changes will have any impact on the costs and benefits we set out in Annex 2 of CP17/23 and CP17/33, and have concluded that it will not. In the CPs we said we didn't expect the proposed rules to generate additional significant costs and the minor changes we are making to the near-final rules will not alter this position. The amended rules aim to ensure a similar degree of consumer protection as those on which we consulted, thus we expect any changes to the level of expected benefits to be minimal.

4 Suitability and appropriateness

- 4.1** This chapter summarises the feedback we received about our proposed approach to the suitability and appropriateness requirements of the IDD, including those in the IBIP regulation.

Our proposals

- 4.2** In CP17/33, we proposed to :
- reproduce the relevant parts of the IBIP regulation in our Handbook and to apply them as rules for firms which are subject to our rules but to which the IDD doesn't apply directly, when they distribute IBIPs
 - provide guidance on SYSC 9.1.2AR (consulted on in CP17/23) to clarify the interaction of this rule with the record retention period specified in the IBIP regulation
 - update our guidance on assessing suitability at COBS 9A.2.21G to include IBIPs, in order to clarify that the suitability test includes consideration of the type, characteristics and frequency of transactions
 - amend COBS 2.4 (and guidance in COBS which cross-refers to that chapter) to include a rule to enable firms subject to the COBS 9A or COBS 10A requirements to rely on a suitability test or an appropriateness test conducted by another firm

Feedback received

- 4.3** We received 17 responses to these proposals. Most supported our proposed approach but 5 respondents disagreed with the proposals. They said that the proposed rules didn't clarify whether the requirement to conduct an appropriateness test applies where customers top-up existing policies or switch to a fund deemed complex within an existing product. Respondents said the IDD requirements were not intended to be retrospective or to apply the appropriateness test to existing policies.

Our response

We are making near-final rules in line with our proposed approach. This includes our approach to record-keeping standards which we highlighted in PS17/27.

We confirm that the rules on the application of the appropriateness test are intended to apply to new contracts with effect from the IDD application date. In general terms, fund switches and exercise of existing contractual options won't trigger those requirements. The application



provisions apply the rules only where a firm is carrying out insurance distribution activities in relation to an IBIP.

We said in PS17/27 that we will engage with any firms concerned about the impact of the IDD on the basic advice regime. Firms that have not yet come forward but which have concerns should contact us using the contact details on page 2.

We are retaining the 5-year minimum term for retention of records about suitability and appropriateness. As well as the minimum term for record retention, the IBIP regulation requires firms to hold the records for at least the duration of the relationship between the firm and the customer, which may be longer than 5 years.

The IBIP regulation provides more detail on the range of products to be considered non-complex and we will copy these requirements into our rules. The European Insurance and Occupational Pensions Authority (EIOPA) has also published guidelines to help determine if a product is complex or non-complex.¹¹ We indicated in PS17/27 that we would consider these guidelines and how they may be taken into account in our assessment of the market. We intend to cross-refer to the guidelines in our rules to allow firms to take account of and follow this guidance.

¹¹ EIOPA guidelines on IBIPs that incorporate a structure which makes it difficult for the customer to understand the risks involved, October 2017: https://eiopa.europa.eu/Publications/Reports/Final_Report_IDD_guidelines_execution_only.pdf.

5 Information and product disclosure

- 5.1** This chapter sets out the feedback we received relating to the information disclosure requirements on which we consulted in CP17/33 and our response to it.

Additional disclosures

Our proposals

- 5.2** There are several existing FCA rules that are not replicated in the IDD or the IBIP regulation. Our general approach has been to maintain current levels of consumer protection where our rules contain additional obligations or greater detail than the IDD. We, therefore, proposed in CP17/33 to introduce rules to make sure they continue to apply to life insurance distribution.

Feedback received

- 5.3** Most of the 17 responses we received agreed with our proposals. No respondents disagreed, but some asked us to clarify our expectations on a number of points:
- whether the disclosures apply to top-ups, switches and other customer-exercised contractual options where a new contract results
 - whether the requirement to provide a single disclosure of costs and charges for the IBIP and advice would be helpful for customers
 - if the annual cost disclosures required by the rules apply only where a firm is providing ongoing insurance distribution activities
 - whether the requirement to disclose 'all costs and charges' can be met by the provision of prescribed disclosure documents (the Key Features Documents and the Key Features illustrations, or the Packaged Retail and Insurance-based Investment Products (PRIIPs) Key Information Document (KID) together with disclosure of any cost of advice and/or arranging activities)

Our response

We are making near-final rules in line with our proposed approach. In response to the requests for clarification:

- The requirements apply where a firm is carrying on 'insurance distribution activities'. This is a defined term covering activities such as advising on investments, and assisting in the administration and performance of a contract of insurance. Firms will need to comply with the disclosure rules where they conduct these activities – including in relation to a customer topping up an existing contract, making a fund switch or exercising other contractual options.
- Aggregated costs and charges disclosure can benefit customers

by allowing them to see the total charges for an IBIP, taking account of the cost of advice, and enable them to take an informed decision about whether to proceed. Firms are also obliged to provide an itemised breakdown of charges, when this is requested by a customer. They could consider providing this breakdown proactively, if they determine it is important to the customer's ability to understand the product and service. In addition, under the adviser charging rules in COBS, distributor firms must provide customers with information about the firm's charging structure before a personal recommendation is provided. Customers should, therefore, be provided with information on the cost of the advice service and the total charges for the recommended IBIP, taking account of the cost of advice.

- Annual cost disclosures are only required where firms are carrying on insurance distribution activities. However, firms are also subject to requirements, in COBS 16, to provide customers with periodic reports which include information on product charges.
- As explained in PS17/27, we consider that, where prescribed disclosure documents, such as the PRIIPs KID, set out all relevant costs and charges they can be adequate to meet requirements under COBS rules. However, where there are costs and charges associated with the distribution of a life policy which are not included in a KID (or if the KID is not required for a product) then firms will need to make separate disclosures.

Communicating in good time

Our proposals

- 5.4** A number of disclosures are required to be provided to customers 'in good time' before providing a service or before the conclusion of the contract. We proposed to introduce Handbook guidance to help firms consider what this means in practice. This guidance encourages firms to consider the amount of time a customer will need to read and understand information taking into account the urgency of the situation and the relative complexity of the product or service in question.

Feedback received

- 5.5** Eighteen respondents provided feedback. While all welcomed guidance on this point, 3 said that it would be better to add greater certainty, perhaps based on the minimum time needed by different customer groups, or with a minimum number of working days, for customers to read information. One respondent suggested that we provide some examples of good practice.
- 5.6** Some responses to CP17/23 are also relevant to this discussion. We did not provide feedback to them in PS17/27 as the issue was subject to further consultation in CP17/33. In particular:
- one respondent said that the rules on the timing of disclosure vary, requiring disclosure 'in good time' in some cases and 'in good time before conclusion of the contract' in others

- another respondent asked if the disclosures required by COBS 6.1ZA would need to be provided 'in good time before the provision of investment services or ancillary services', in line with MiFID II disclosure requirements, since the IDD and MiFID II rules appear in the same chapter

Our response

We are taking forward the guidance on which we consulted. We note the requests for more detailed guidance setting more specific expectations or good practice standards but believe this would be inappropriate. Additional detail could reduce flexibility for firms and would go further than in other sectors, such as for MiFID II, which have the same guidance as we are introducing without including more detail.

In response to the consultation feedback to CP17/23:

- Where the wording varies, firms must take account of the guidance we have introduced to consider the customer's need for sufficient time to read and understand the information.
- The timing rules align with those in MiFID II.

Mandatory occupational pension arrangements

Our proposals

5.7 In CP17/33 we consulted on implementing Article 22(5) of the IDD in our rules. This sets out information disclosure requirements for an insurance distributor when an employee becomes a member of a mandatory occupational pension arrangement, without having taken an individual decision to join it. We asked for comments on our proposal to include this requirement in our rules.

5.8 The IDD does not define what would qualify as a mandatory occupational pension arrangement. We, therefore, also asked respondents to consider what current or future arrangements in the UK may fall within scope of the IDD.

Feedback received

5.9 Eight of the 12 responses received in relation to our proposed approach agreed with it. Other respondents made suggestions to help improve the clarity of expectations:

- Some said that, if workplace pensions used for auto-enrolment are within scope of the rules, this should be clearly stated. Another option suggested was to require providers to state in their product disclosure material if products are within scope of the requirement.
- One respondent said firms would need to complete a demands and needs assessment to comply with the rule and asked how individualised this would need to be where firms have no direct contact with the individuals joining the scheme.

5.10 We received 4 responses to our question about which UK arrangements could fall within scope of the rule. One said that they expect very few arrangements to do so



and another said that it is difficult to assess the impact of the rule without a clearer definition. Two respondents said that, if workplace pensions are seen to fall into scope, the extra regulatory costs may lead firms to switch to using trust-based schemes which are not subject to the same requirement.

Our response

In light of the feedback received, ongoing discussions at EU level and following further consideration, we are not including additional rules to implement Article 22(5) which, we understand from EU discussions, was intended to operate as an exemption rather than an additional requirement. Where pension arrangements caught by the IDD are within our rules, we are applying the relevant IDD requirements without this exemption.

We have considered whether this is likely to have any impact on the costs and benefits we set out in Annex 2 of CP17/33. Although in CP17/33 we said we did not expect the Article 22(5) requirements to apply widely in the UK, firms would have incurred costs considering it and whether it had an impact on their business, so costs to the industry should be lower as a result of our decision. Making the rules on which we consulted could also have led to consumer harm if it added unnecessary costs which were passed on to customers or if firms were led to provide inappropriate disclosures. We do not consider that the change will have a significantly different impact on mutual societies.

European transposition work in relation to the IDD is continuing and we may need to take this activity into account when making our final rules.

Part II: Requirements for all insurance distribution business and consequential changes

6 Conflicts of interest

- 6.1** In this chapter, we respond to the feedback we received in relation to our proposed approach to implement the conflicts of interest requirements of the IDD, including those in the IBIP regulation.
- 6.2** As we consulted on rule changes in CP17/33 that introduced significant additional requirements to those on which we consulted in CP17/23, we did not include near-final rules in PS17/27. In this PS we set out our approach in relation to feedback received to both CP17/23 and CP17/33.

Our proposals

- 6.3** In CP17/23 we proposed to implement the IDD requirements in relation to conflicts of interest to all types of insurance, rather than just to IBIP business. The basis for this proposal was to maintain the current scope of our rules and existing consumer protections.
- 6.4** Where the MiFID II requirements go beyond the IDD Level 1 requirements (for example, in relation to the disclosure of conflicts) we proposed to level up to the MiFID II requirements to create a level playing field of consumer protections and to avoid competitive distortions. We, therefore, proposed to apply relevant existing rules in SYSC 10 (as amended following MiFID II implementation) to firms carrying on insurance distribution.
- 6.5** Where the IDD requirements go beyond those in MiFID II or our current rules, we proposed to copy out those requirements. For example, this includes the IDD requirement that the arrangements put in place to prevent conflicts of interest should be proportionate to the activities performed, the insurance products sold and the type of distributor.
- 6.6** For insurers, we proposed to include a new section in SYSC 3 dealing with the conflicts of interest requirements. We proposed to implement the IDD minimum requirements and that the rules should apply to all types of insurance, rather than IBIP business only, as is the case with insurance intermediaries.
- 6.7** In CP17/33, we proposed, for firms to which the IBIP regulation applies directly, to reproduce the relevant provisions of the IBIP regulation in SYSC 3 for insurers and in SYSC 10 for other firms. For firms that are not directly subject to the IBIP regulation, we proposed to take the following approach:
- For insurers to which the IBIP regulation doesn't apply directly, we proposed to apply the IBIP regulation requirements as rules in SYSC 3.
 - For insurance distributors to which the IBIP regulation doesn't apply directly, we proposed to rely on the existing provisions in SYSC 10 (as amended for MiFID II), as these are similar to the requirements in the IBIP regulation. However, we amended the SYSC 10 provisions, where necessary, to align them more closely to the requirements in the IBIP regulation.

- 6.8** We also proposed to retain existing requirements in SYSC 10 that go beyond the IDD requirements. In particular, in relation to identifying conflicts of interest, we proposed to retain an example of a type of conflict not included in the IBIP regulation (SYSC 10.1.4R(4) covers situations where the firm carries on the same business as the client; this is replicated in SYSC 10.1.4CR (3) for insurance intermediaries).

Feedback received

- 6.9** We received 22 responses to these proposals. The majority were supportive; however, 3 respondents disagreed with our proposed approach, on the basis that the relevant articles in the IDD apply to IBIPs and not general insurance. They felt that the associated risks were likely to be different across these products and, therefore, may not warrant a common approach across all firms. They also requested practical examples of, or FCA guidance on, the application of these requirements to general insurance.
- 6.10** Respondents to CP17/23 commented on a number of matters which were subject to further consultation in CP17/33. We committed in PS17/27 to address this feedback in this PS. While most of these points have been covered above, feedback also covered the potential lack of clarity of the proportionality principle introduced by the IDD and the potential difficulty for firms to evidence compliance with the new rule.

Our response

We are making near-final rules in line with our proposed approach.

As previously indicated, our overall approach is to maintain the current scope of our rules and existing consumer protections. We believe that the benefits of a consistent consumer protection and regulatory regime are significant and outweigh concerns expressed regarding applying the same rules to different types of firms. We do not consider there is a need for further guidance at this time, as it should be clear to general insurance firms what the conflicts rules require and how they apply to them.

In developing these rules, we have taken into account the application of final rules which implement MiFID II. In particular, the MiFID II delegated act provisions apply as rules to common platform firms when carrying on non-MiFID business. Given that these provisions are similar to the existing rules in SYSC 10 and the IBIP regulation, we have amended our approach in relation to the application of the SYSC 10 rules to common platform firms.

Feedback to CP17/23

We have drafted our near-final rules to address issues of clarity wherever possible. As we indicated in PS17/27, the proportionality principle introduced by the IDD is a requirement which goes beyond MiFID II and our current rules and is most appropriately dealt with by copy out into our rules as proposed. Firms must consider how to apply the rules in the context of their own business model, and we will monitor this as part of ongoing supervision.

7 Product oversight and governance

- 7.1** In this chapter, we respond to the feedback we received in relation to our proposed approach to implement the IDD product governance requirements.
- 7.2** As we consulted on rule changes in CP17/33 that introduced significant additional requirements to those on which we consulted in CP17/23, we did not include near-final rules in PS17/27. In this PS we set out our approach in relation to feedback received to both CP17/23 and CP17/33.

Our proposals

- 7.3** In CP17/23 we consulted on introducing rules to implement the high-level measures in Article 25 of the IDD. We also proposed to apply these requirements to firms which may not be within scope of the Directive.
- 7.4** In CP17/33 we proposed to reproduce the product governance regulation in our Handbook. As part of this, we also proposed to amend the definition of manufacturing on which we first consulted in CP17/23.
- 7.5** We also consulted on introducing new guidance drawn from the product governance regulation and existing FCA guidance, the Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD).¹²
- 7.6** While the IDD and MiFID II product governance requirements are similar, the MiFID II requirements go further than the IDD in a number of areas. We proposed to improve alignment between the two by introducing requirements based on the additional MiFID II provisions, adapted where necessary for firms conducting different types of insurance business.

Feedback received

- 7.7** We received 32 responses in relation to our proposals for product governance. Most respondents were in favour of the proposals or requested further guidance but 8 raised concerns.
- 7.8** The concerns focused on our proposals to increase alignment with MiFID II product governance requirements. In particular, they related to the following requirements:
- Firms must make available information about the target market assessment to distributors, where the IDD only requires manufacturers to make available to distributors all appropriate information on the product and the product approval

¹² Responsibilities of Providers and Distributors for the Fair Treatment of Customers:
https://www.handbook.fca.org.uk/handbook/document/rppd/RPPD_Full_20160321.pdf.

process, and information regarding the identified target market.¹³ Respondents were concerned that the information may contain commercially-sensitive information.

- Firms must consider whether product charging structures are compatible with the needs, objectives and characteristics of the target market.

7.9 Respondents said these requirements are not needed for insurance as the risk to consumer detriment is higher for MiFID II products. Some respondents also said that the costs would be disproportionately high for insurance, particularly for mutual societies and simpler products, and that the benefits we outlined in the cost-benefit analysis were insufficient to justify the additional costs.

7.10 Some respondents questioned whether the MiFID II-derived requirements are consistent with the IDD provision that product governance processes should be proportionate and appropriate for the insurance sector. It was noted that, going beyond the IDD minimum requirements puts the UK out of line with other regulators in the EEA.

7.11 In relation to mutual societies, 1 respondent disagreed with our statement in the Compatibility Statement that these proposals would have no significantly different impact on mutual societies, particularly in relation to mutual societies offering cash plans and smaller with-profits mutual societies.

7.12 Some respondents said the draft rules appeared to apply to individual contracts of insurance as agreed by customers, rather than at a product level. One respondent said that we didn't fully reflect Article 3 of the product governance regulation in the definitions of 'manufacturer' and 'manufacturing'. Another respondent suggested that these definitions are broad and, from a practical point of view, consideration should be given to limit the number of parties defined as manufacturers of a product.

7.13 We received a number of responses that asked for more guidance on the following matters:

- identification of the target market and the granularity required
- product and scenario testing, particularly for situations where it is common to see a product sold via a long distribution chain
- to what extent firms dealing with mass market, 'vanilla' products should follow the rules
- how manufacturer firms bringing new products to the market can comply with the guidance that they should make sure distributors have the necessary knowledge, experience or competence to understand the product and the target market
- the requirement that manufacturers must make available all appropriate information on products and the product approval process to distributors
- whether the FCA expects product manufacturers to liaise with the next link in the chain and not firms further down the chain, whose identity the manufacturer does not necessarily know

13 The product governance regulation adds further detail to explain these requirements.

- expectations in situations where distributors have a role in product manufacturing will greatly assist firms to navigate and manage the requirements
- whether a distributor firm that is regarded as a 'co-manufacturer' for the product governance rules should be subject only to rules for distributor firms in other respects
- the information that distributors should share with manufacturers to assist in product reviews
- the information that distributor firms should include in the written document of product distribution arrangements that they make available to their relevant staff, and what our expectations are for them to make the information available

7.14 Some responses to CP17/23 are also relevant to this discussion. We did not provide feedback to them in PS17/27 as the issue was subject to further consultation in CP17/33. While most of these points have been covered above, feedback also covered the application of the product governance rules to contracts distributed prior to application of the IDD and to bespoke contracts developed for a single customer.

7.15 We also received some comments to clarify the application of some of the rules:

- It was suggested that PROD 1.4.5R could imply that the rules apply to contracts of large risk (with some firms making the same point as in feedback to the previous CPs that the definition of large risks needs to be updated).
- In relation to the guidance in PROD 4.4 that manufacturer firms should communicate contractual 'breakpoints' to the customer, it was suggested that, where an intermediary is involved, they will be in contact with the customer.
- There were some incorrect cross-references and terms in the rules on which we consulted.

Our response

In general we are making near-final rules following the approach on which we consulted.

MiFID II alignment

In relation to our proposal to improve alignment with MiFID II:

- Information about the target market assessment: We believe that this requirement should place distributors in a better position to understand the product, together with any groups of consumers for whom it is less likely to be suitable. The information should assist distributors in designing distribution strategies and with their new obligation to provide relevant information to manufacturers to assist in product reviews. After considering the feedback, we have updated the rule to clarify that firms may assess whether there is commercially-sensitive data which they may elect not to provide, while still ensuring that adequate information is made available.

- Assessment of product charging structures: The IDD minimum product governance requirements mean firms must have processes to make sure product design takes account of the objectives, interests and characteristics of customers, doesn't adversely affect customers and prevents or mitigates customer detriment. We consider that the additional requirement to consider charging structures adds further detail to these high-level requirements. Firms will already incur costs to meet the minimum IDD requirements and any additional costs for this further provision should be relatively low. Even where firms offer low-price products or serve low-income consumers they must still provide an appropriate product that is compatible with the needs, objectives and characteristics of the target market. It is important that less affluent consumers (including those served by mutual societies) are not subject to lower standards. We, therefore, believe that the rules shouldn't apply in a different way to mutual societies.

Proportionality

Firm product approval processes should be appropriate and proportionate. The processes may be tailored to reflect the nature of the product. For example, simpler, mass market products may not require the same level of disclosure or the same approval processes as more complicated products developed for a smaller target market.

We believe that the rules derived from MiFID II are consistent with the high-level requirements in the IDD. We don't think they will put UK firms at a competitive disadvantage compared to those in other EEA Member States. We also view these rules as important to provide appropriate levels of consumer protection and to ensure a level playing field with MiFID II products.

The impact on mutual societies

Section 138K of the Financial Services and Markets Act 2000 requires the FCA to set out its opinion of whether the impact of proposed rules, or rule changes, on mutual societies will be significantly different from the impact on other authorised persons. In CP17/33 we stated that we don't expect the proposals to have a significantly different impact on mutual societies. One respondent challenged this statement because of the costs that would be incurred by mutual societies, which tend to be small. We have considered this again but still believe that the rules will not have a significantly different impact for mutual societies compared to other firms of similar size.

Definitions

To clarify that the product governance rules apply at product level, the near-final rules in this PS use the term 'insurance product' rather than the term 'contract of insurance', which was used in the draft rules in CP17/33.

We reproduced Article 3 of the product governance regulation in full but in PROD 1.4.3EU rather than the definitions of 'manufacture' and 'manufacturing'. This doesn't change the applicability of the provisions

and we consider this the appropriate way to reproduce the provisions in our Handbook.

The definitions are intentionally broad and all firms with a role in product manufacture should agree their role and responsibilities in the written agreement required by Article 3(4) of the product governance regulation and PROD 4.2.13EU or PROD 4.2.14R, as appropriate.

Additional guidance

In general, we are not developing additional guidance at this time. We understand that EIOPA is considering the development of guidelines for product governance and we think it is better to wait for that.

We can confirm our policy position on some of the questions posed, however, as follows.

- The guidance that manufacturer firms should make sure distributors have the necessary knowledge, experience or competence to understand the product and the target market isn't intended to stop manufacturers selecting distributors who don't have experience with a particular product. Instead, the manufacturer should consider what knowledge, competence or training is needed by distributors in order to meet the guidance.
- Where a distributor firm is regarded as a 'co-manufacturer' for the product governance rules, they must still follow the other rules for distributors, including the distributor product governance rules.
- Where an intermediary is regarded as a 'co-manufacturer' for the purposes of the product governance rules, they will need to ensure that the product review process takes appropriate account of any direct distribution they undertake. Firms that distribute products they manufacture may wish to consider the distributor product governance rules to assess whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate. Firms that both manufacture and distribute their own products will need to consider other FCA rules relevant for distributors including, for example, those relating to systems and controls in SYSC or conduct requirements in COBS or the Insurance Conduct of Business Sourcebook (ICOBS).
- When a manufacturer is carrying out a review of a product, they should consider what information is needed and which other firms in the distribution chain to approach to ask for it. Where the distribution chain is long, we would still expect manufacturers to be able to find out which firms distribute their products if they need the information. For example, if they need additional data that can't be supplied by the firms with which they deal directly, they could ask those firms to gather it.

Feedback to CP17/23

In relation to the comments received in CP17/23:

- The rules only apply to new products manufactured after application of the IDD, or to significant adaptations of existing products after application of the IDD.
- Article 3 of the product governance regulation, reproduced in PROD 1.4.3EU, confirms that distributor firms shouldn't be considered to be manufacturing in relation to tailor-made contracts at the request of a single customer.

The near-final rules included in this PS include changes from the version provided for consultation which address points covered above. We have noted the feedback in relation to the Solvency II definition of large risks; but this can only be changed at EU level.

8 Perimeter Guidance

- 8.1** In CP17/33, we consulted on some changes to the Perimeter Guidance manual (PERG) that were necessary to reflect the changes brought about by the IDD. We also included some changes that were necessary to reflect the amended scope of the regulated activity of advising on investments. In this chapter, we discuss the feedback received on those changes.
- 8.2** In addition, there have been changes to the draft of the UK legislation on which we based our proposed guidance in CP17/33. Those changes have affected the drafting of Article 33B of the Regulated Activities Order (RAO). This chapter discusses the changes we will make to the PERG guidance as a result.

Response to feedback

- 8.3** We received 20 responses to the proposals for PERG guidance. Most respondents either supported the proposals or suggested that additional guidance would be helpful.
- 8.4** In particular, 6 respondents suggested that additional guidance would be helpful on the new exemption for the mere provision of information in Article 33B RAO. Respondents asked what 'mere provision of information' meant, and what the 'additional steps' were that would take an activity outside the scope of the exemption. In particular, respondents gave examples of situations where information might be given to a customer, and asked whether these would be caught by the exemption. The examples often involved the introducer either: (1) seeking to recommend products or persuade customers to enter into them; or (2) providing some sort of tailored quote or personalised information.
- 8.5** One respondent asked about the proposed guidance in PERG 5.6.4DG about the meaning of 'potential policyholder', stating that it would not apply where information was provided in relation to an existing policy. The respondent asked how it applied where an insurance policy was being upgraded or amended and a person was providing information only in relation to an upgrade or amendment.
- 8.6** One respondent suggested that the fact that the reference to 'remuneration' had been removed from Recital 11 meant that our guidance in PERG 5.11.6(3)G needed to change.

Our response

In general, we are proposing to make guidance following the approach on which we consulted. We have set out below where we are intending to make changes. We will continue to monitor the questions of interpretation that arise around the perimeter, to see if any common issues arise that would merit further perimeter guidance.

Article 33B – mere provision of information

In relation to the new exemption in Article 33B of the RAO, we provided an outline of the activity at PERG 5.6.4BG. We have also sought to apply the exemption, where appropriate, to PERG 5.15 which provides illustrative examples to help show whether an activity is regulated. We appreciate the helpful feedback around common situations where the exemption could come into play.

At this stage, we think that the guidance on which we consulted is adequate to make sure that PERG is consistent with the IDD and gives an appropriate outline of the perimeter. We think the examples raised by respondents are likely to be outside the new exemption. It seems clear from the Treasury's consultation that the intention behind the exemption isn't to capture situations where the information provider is also seeking to persuade or influence the customer into purchasing a product. The context in which the information is provided will always be important. Where the person providing the information is also doing or saying anything that, when taken together with the provision of information, could be taken as seeking to persuade a customer to take out a product, or to do business with an insurer, they will generally be outside of Article 33B. We would usually view the provision of tailored, personalised quotes as clearly involving additional steps to the mere provision of information. We will amend our example in PERG 5.15 about telemarketers, as it seems unlikely that they would be providing information without also seeking to persuade or influence the recipient.

As regards the comment around the guidance in PERG 5.6.4DG about the meaning of 'potential policyholder', we will remove that guidance. Now that rights to and interests in contracts of insurance are no longer within scope of the exemption (see 'Changes to UK Legislation' below), there is unlikely to be any situation where information is provided in relation to an existing contract, which would (absent the exemption) constitute arranging. Where an existing policyholder is looking to renew a contract or enter into a different contract, they will be a 'potential policyholder' in relation to that new contract.

By way of business

As regards the comment on PERG 5.11.6G(3), we will make the changes necessary to reflect the amended wording of Recital 11 to the IDD. We do not, however, feel that the substance of the guidance itself needs to be changed. PERG 5.11.6(3) discusses the application of the by way of business test to group companies. Feedback pointed out that the words 'for remuneration' had been removed from the recital, meaning that remuneration should perhaps no longer form part of the by way of business test. However, the concept of the service being provided for remuneration is now built into the IDD definitions of insurance intermediary, ancillary insurance intermediary and reinsurance intermediary. Remuneration is also now expressly defined. We are, therefore, comfortable with the concept of services being performed for remuneration still forming part of the by way of business test.



Changes to the UK legislation

8.7 The UK legislation that will implement the IDD has changed since the draft on which we based our proposed guidance for consultation. For the regulatory perimeter, and the guidance in PERG, the relevant changes are to Article 33B of the RAO. Those changes are:

- the Article 33B exemption now only applies to information provided to, or about, 'insurance intermediaries' and 'reinsurance intermediaries' (as well as insurers), and not to 'ancillary insurance intermediaries'
- the exemption now does not apply to information about rights to or interests in contracts of insurance – only to information about contracts of insurance themselves

8.8 We have, therefore, made changes to the proposed PERG guidance on which we consulted to reflect those changes.

9 Regulatory processes

- 9.1** This chapter summarises the feedback we received to our proposals in CP17/33 about amendments to various regulatory processes required to implement IDD requirements. Our proposals related to the registration of insurance intermediaries, passporting and professional firms. This chapter is relevant to all insurance distributors.

Our proposals

- 9.2** In CP17/33 we proposed various amendments to our Handbook:
- Registration (including Appointed Representatives (ARs)) – we noted that the authorisation process will remain substantively the same and that there is no requirement for firms that are already registered under the IMD to re-register. In relation to ARs, we proposed amendments to Chapter 12 of the Supervision manual (SUP) to reflect the IDD registration requirements, including a requirement on the principal firm to collect the additional information from the AR that is required by the IDD. We also said we would consider whether any further changes were required, including to the AR notification forms.
 - Passporting – we proposed to make changes to SUP to reflect the IDD requirements in relation to passporting. This included amending the relevant forms in SUP 13 to reflect the additional IDD requirements for information to be provided by a firm in a passporting notification.
 - Professional Firms – we proposed to make various changes to our Professional Firms sourcebook (PROF) to make sure the relevant provisions of ICOBS and COBS that implement the IDD are applied to authorised professional firms (APFs). This was to align with the changes that had been proposed to ICOBS 1 Annex 1 in CP17/7, and those proposed to COBS 18.11 in CP17/33. We proposed to continue our existing approach of applying a more limited range of rules in ICOBS and COBS to the non-mainstream regulated activities of APFs, and of these rules only applying to APFs where their professional body does not have an equivalent requirement to implement the IDD.

Feedback received

- 9.3** No respondents objected to our specific proposals in these areas, although we were asked whether there would be any further changes to the AR forms.
- 9.4** One respondent asked for clarification regarding whether pensions are within scope of the IDD and, therefore, covered by its passporting arrangements.



Our response

In this PS we set out near-final rules in line with the draft rules on which we consulted in CP17/33.

In response to the requests for clarification:

Registration/ARs

We have decided that no further changes are required to implement the registration requirements of the IDD, including to the AR notification forms. However, we believe that it is appropriate to amend the declarations made by all principal firms, including those carrying on IDD business, when they notify us of appointments or changes of ARs. We plan to amend the AR notification forms to require the principal to confirm that they have complied with their regulatory obligations in respect of ARs, including those in SUP 12. We intend to consult on this proposed change in a future quarterly consultation paper.

Passporting

As we explained in PS17/27, where a pension takes the legal form of an insurance contract, such as an insurance-based group personal pension or a contract-based pension scheme, it will be within scope of the IDD (carrying forward the position under IMD). The carrying on of distribution activities for such pensions will be subject to certain requirements of the IDD (as was the case under the IMD).

A passport under the IDD will allow a firm to carry on activities within the scope of the directive in relation to contracts of insurance (including pensions that take the legal form of an insurance contract) in the Member States to which the passport applies (again, as was the case under the IMD).

10 Additional changes to the Handbook

- 10.1** This chapter sets out how we will implement consequential changes to the Handbook following our implementation of the IDD, an additional change to the rules in SYSC and changes to the application of ICOBS to third-party processors (TPPs).

Consequential changes to the Handbook

Our proposals

- 10.2** We consulted on various changes to the Handbook, which consist of aligning existing provisions with the new terms used to implement the IDD.

Feedback received

- 10.3** We received 18 responses in relation to this, all of which agreed with our proposals.

Our response

We will make near-final rules taking forward the proposals on which we consulted.

Additional changes to SYSC

Our proposals

- 10.4** We also proposed a change to SYSC to implement an IDD requirement that firms must approve, implement and regularly review their procedures for professional and organisational requirements.

Feedback received

- 10.5** Twenty respondents commented on our proposals to update SYSC. All responses supported the approach, though 1 said that the relevant IDD article should apply to insurance and reinsurance undertakings only, not insurance intermediaries.

Our response

We will make near-final rules on the basis on which we consulted in CP17/33.

Under the SYSC 1 Annex 1 application provisions, SYSC 2 and 3, including the new rules, apply to insurers, managing agents and the Society of Lloyd's, so the rules will not apply to insurance intermediaries.

The application of ICOBS to third-party processors

Our proposals

- 10.6** In CP17/23 we consulted on changes for how the ICOBS rules on remuneration disclosures applies to TPPs.

Feedback received

- 10.7** We did not receive any comments about these proposals.

Our response

Remuneration disclosure by an insurer

We consulted on a modification to ICOBS 1 Annex 1 paragraph 1.1 which would have required a TPP to disclose the same type of information about the nature of remuneration received by its employees, as insurers would in relation to their employees (i.e. under ICOBS 4.3.-6R).¹⁴

We no longer think it is necessary for customers to receive this level of information. We think it is sufficient to require disclosure of remuneration information about the employees of the insurer (as required by the IDD). This includes TPPs (as the definition of employee includes an agent), so the insurer will need to disclose details about the remuneration of any TPPs it uses.

Remuneration disclosure by an intermediary

A TPP carrying on insurance distribution activities for an insurer (or intermediary) will itself be an insurance intermediary for IDD purposes. So TPPs will need to meet the ICOBS remuneration disclosure requirements applicable to intermediaries. Separately if the TPP's principal is itself an intermediary, these disclosure requirements also apply to that principal firm.

Our consultation set out our intention to preserve the existing position that a TPP does not need to disclose its identity to the customer. The FCA's view is that, whilst TPPs need to make the disclosures required, as a matter of interpretation (of ICOBS 4.3.-7R), they do not need to disclose their identity when making the remuneration disclosure. For the avoidance of doubt, we have added new guidance in ICOBS Annex 1 to set out this view.

For example, where accurate, a TPP working for an insurer could use a statement along the following lines (to capture the requirements on both insurer and TPP without disclosing the TPP's identity):

'Employees and businesses who work for [insurer] are remunerated in various different ways for selling insurance contracts. Employees receive a basic salary and also receive a bonus based on a number of factors, including the achievement of sales and quality targets.'

¹⁴ See page 46 of CP17/23 and the relevant rules in the Appendix of draft Handbook text.

Businesses which work for the insurer on an outsourced basis receive a fee and also additional payments based on a number of factors, including the achievement of sales and quality targets.’

We have considered whether this approach is likely to have any impact on the costs and benefits we set out in Annex 2 of CP17/23 and have concluded that it will not. This is because we have already accounted for the additional costs associated with making the disclosures in our cost-benefit analysis in CP17/7. The costs arise from making changes to documentation, which would need to be made anyway. We do not consider that changes to the specific wording will affect these costs. Nor do we consider that the change will lead the rules to have a significantly different impact on mutual societies.

Demands and needs requirements for connected travel insurance providers

- 10.8** In PS17/21 we confirmed that the rules in ICOBS 5.2 would apply to providers of connected travel insurance (CTI). These rules implement the IDD requirements on identifying and specifying customer demands and needs, and ensuring that products offered are consistent with those demands and needs. We have subsequently become aware that the near-final rules set out in PS17/21 did not adequately reflect that position. We are amending ICOBS 5.2.1R to make clear that the rules apply to CTI providers. We have also amended ICOBS 5.3 to make clear that CTI providers who offer advice do not need to provide a personalised recommendation explaining why the product recommended best meets the customer's needs. They will, however, need to ensure that the advice they give is suitable.



Part III: Quarterly consultations CP17/32 and CP17/39

11 Feedback to CP17/32 and CP17/39

- 11.1** This chapter sets out the feedback we received to matters on which we consulted in the quarterly consultations CP17/32 and CP17/39.

CP17/32: Consequential changes to forms within the Handbook

Our proposals

- 11.2** In CP17/32 (Quarterly Consultation Number 18) we proposed to make consequential changes to a number of forms in SUP and also the associated Handbook SUP annex relating to the implementation of the IDD. These include changes to references to:

- The 'Insurance Mediation Directive' or 'IMD'. We proposed to change these so that they refer to the 'Insurance Distribution Directive' or 'IDD' respectively.
- 'Insurance mediation' and 'Insurance mediation activities'. We proposed to change these to 'insurance distribution' and 'insurance distribution activities' respectively.

Feedback received

- 11.3** We received no feedback in relation to these proposals.

Our response

We will implement the proposals as set out in CP17/32.

CP17/39: IDD-related changes to the Enforcement Guide

Our proposals

- 11.4** In CP17/39 (Quarterly Consultation Number 19) we consulted on changes to our Enforcement Guide (EG) due to enforcement requirements under the IDD. We proposed only minimal changes, as we are using existing enforcement policies and procedures, including the use of our investigatory and sanctioning powers and penalty policy, for the wider scope of the IDD.
- 11.5** The powers required to enforce the obligations under IDD are contained within FSMA and we will, therefore, follow our existing policies and procedures as explained in the Decision Procedure and Penalties manual (DEPP) and EG. For breaches of IDD requirements we proposed to use our current enforcement policies and procedures, including investigatory and sanctioning powers, and to apply our current penalty policy as described in DEPP 6. We did not propose any changes to DEPP as we considered that relevant requirements under the IDD are covered by our current policies and procedures. However, there are some limited changes to be made in EG to reflect the IDD.

11.6 We proposed to change EG by:

- Updating references from IMD to IDD.
- Signposting sections 203A and 204B of FSMA which will enable us to agree enhanced supervision for EEA firms and allow the same treatment of UK firms within the EEA in particular cases. We proposed to insert a new section EG 3.8B which described the existence of this type of cooperation.

Feedback received

11.7 We received 1 response in relation to these proposals. The respondent agreed with our proposals.

Our response

We will implement the proposals as set out in CP17/39.

CP17/39: Other miscellaneous IDD-related changes

Our proposals

11.8 In CP17/39 we also proposed further changes as part of IDD implementation. These include changes to:

- the Variation of Permission application form (at SUP 6 Annex 5D) to cover information required by the IDD
- SUP 15.3.11R which will require firms to notify us where they are aware of a breach of any directly applicable EU regulation made under the IDD

Feedback received

11.9 We received 1 response in relation to these proposals. The respondent agreed with our proposals.

Our response

We will implement the proposals as set out in CP17/39.

Annex 1: List of non-confidential respondents to CP17/33

Agria Pet Insurance Limited

Association of British Insurers (ABI)

Association of Financial Mutuals (AFM)

Association of Mortgage Intermediaries (AMI)

AXA UK Group

Brevent Insurance Services Limited

British Insurance Brokers' Association (BIBA)

Broker Network

Capita Insurance & Benefits Services

CityNet Law Solicitors

Create Solutions Ltd

I'm Insured.com Limited

International Underwriting Association (IUA)

Investment & Life Assurance Group (ILAG)

Jardine Lloyd Thompson Group plc (JLT)

Larksway Investments Limited

Legal & General Group

Life Insurance Corporation of India

London and International Insurance Brokers' Association (LIIBA)

Malcolm Lee Consulting Limited

National Franchised Dealers Association (NFDA)

Openwork

Personal Investment Management and Financial Advice Association (PIMFA)



Simplyhealth

Skipton Building Society

Society of Lloyd's

Society of Pension Professionals (SPP)

Tenet Group Limited

The Lloyd's Market Association (LMA)

The Pensions Advisory Service (TPAS)

threesixty Services LLP

UK Finance

Virgin Money plc

Willis Limited

Your Life Solutions

Annex 2: List of non-confidential respondents to CP17/39

AXA UK Group

Annex 3: Abbreviations in this document

APF	Authorised professional firm
AR	Appointed representative
COBS	Conduct of Business Sourcebook
CP	Consultation Paper
the Commission	European Commission
CTI	Connected Travel Insurance
DEPP	Decision Procedure and Penalties manual
EEA	European Economic Area
EG	Enforcement Guide
EIOPA	European Insurance and Occupational Pensions Authority
EU	European Union
FCA	Financial Conduct Authority
IBIP	Insurance-based investment product
ICOBs	Insurance Conduct of Business Sourcebook
IDD	Insurance Distribution Directive
IMD	Insurance Mediation Directive
KID	Key Information Document
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive II
PERG	Perimeter Guidance manual
PRIIPs	Regulation on Packaged Retail and Insurance-based Investment Products
PROD	Product Intervention and Product Governance sourcebook

PROF	Professional Firms sourcebook
PS	Policy Statement
RAO	Regulated Activities Order
RPPD	The Responsibilities of Providers and Distributors for the Fair Treatment of Customers
SUP	Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls
the Treasury	Her Majesty's Treasury
TPP	Third-party processor

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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Appendix 1: Near-final rules

INSURANCE DISTRIBUTION DIRECTIVE INSTRUMENT 2018

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 55U (Applications under this Part);
 - (b) section 60 (Application for approval);
 - (c) section 137A (The FCA’s general rules);
 - (d) section 137B (FCA general rules: clients’ money, right to rescind, etc);
 - (e) section 137R (Financial promotion rules);
 - (f) section 137T (General supplementary powers);
 - (g) section 138C (Evidential provisions);
 - (h) section 138D (Action for damages);
 - (i) section 139A (Power of the FCA to give guidance);
 - (j) section 250 (Modification or waiver of rules);
 - (k) section 332 (Rules in relation to persons to whom the general prohibition does not apply);
 - (l) section 395 (The FCA’s and PRA’s procedures); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [1 October 2018] except:
- (1) Annex A (Glossary) Part 1 which comes into force on [23 February 2018];
 - (2) Annex G (General Provisions) Part 1 which comes into force on [23 February 2018]; and
 - (3) Annex U (Perimeter Guidance) Part 1 which comes into force on [23 February 2018].

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Principles for Business (PRIN)	Annex B

(1)	(2)
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Threshold Conditions	Annex D
The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)	Annex E
Training and Competence sourcebook (TC)	Annex F
General Provisions (GEN)	Annex G
Fees manual (FEES)	Annex H
Prudential sourcebook for Mortgage and Home Finance firms, and Insurance Intermediaries (MIPRU)	Annex I
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex J
Conduct of Business sourcebook (COBS)	Annex K
Insurance: Conduct of Business sourcebook (ICOBS)	Annex L
Client Assets sourcebook (CASS)	Annex M
Product Intervention and Product Governance sourcebook (PROD)	Annex N
Supervision manual (SUP)	Annex O
Dispute Resolution: Complaints sourcebook (DISP)	Annex P
Compensation sourcebook (COMP)	Annex Q
Credit Unions sourcebook (CREDS)	Annex R
Professional Firms sourcebook (PROF)	Annex S

E. The Financial Conduct Authority confirms and remakes in the Glossary of definitions:

- (1) The defined expressions “Financial Promotion Order” and “Regulated Activities Order”.
- (2) To the extent that they appear in the Glossary of definitions, the defined expressions relating to any other legislation referred to in the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (SI 2018/XXXX).

Amendments to material outside the Handbook

- F. The Enforcement Guide (EG) is amended in accordance with Annex T to this instrument.
- G. The Perimeter Guidance manual (PERG) is amended in accordance with Annex U to this instrument.

Notes

- H. In this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

European Union Legislation

- I. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the electronic Official Journal of the European Union is deemed authentic.

Citation

- J. This instrument may be cited as the Insurance Distribution Directive Instrument 2018.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

Part 1: Comes into force on [23 February 2018]

Insert the following new definitions in the appropriate alphabetical positions. The text in this section is not underlined.

<i>IDD</i>	Insurance Distribution Directive, Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast). [Note: See http://eur-lex.europa.eu/eli/dir/2016/97/oj]
<i>IDD IPID Regulation</i>	Commission Implementing Regulation (EU) 2017/1469 of 11 August laying down a standardised presentation format for the insurance product information document. [Note: See http://eur-lex.europa.eu/eli/reg_impl/2017/1469/oj]
<i>IDD Regulation</i>	Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017, supplementing the <i>IDD</i> of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products.
<i>IDD POG Regulation</i>	Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017, supplementing the <i>IDD</i> of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors.

Part 2: Comes into force on [1 October 2018]

For “*IMD*”, substitute “*IDD*” in the following definitions in the paragraphs indicated. The new text is not shown as underlined and the deleted is not shown as struck through.

<i>EEA authorisation</i> (a)	two instances
<i>EEA firm</i> (e)	three instances
<i>top-up cover</i>	two instances

For “*Insurance Mediation Directive*”, substitute “*IDD*” in the following definitions. The new text is not shown as underlined and the deleted is not shown as struck through.

<i>EEA authorisation</i> (a)	one instance
<i>EEA right</i> (b)(i)	one instance
<i>Single Market Directives</i> (d)	one instance

For “*mediation*”, substitute “*distribution*” in the following definitions. The new text is not shown as underlined and the deleted is not shown as struck through.

<i>category B3 firm</i> (a)	one instance (first line of (a) only)
<i>charge</i> (2)(b)	one instance
<i>client money</i> (2)	one instance
<i>commission</i> (b)	one instance
<i>connected contract</i> (g)	one instance
<i>exempt insurance intermediary</i> (a)	one instance
(b)	one instance
(c)	one instance
<i>group policy</i> (b)(ii)	one instance
<i>third party processor</i> (1)	one instance
(2)	one instance
<i>UK insurance intermediary</i>	one instance

Insert the following new definitions in the appropriate alphabetical positions. The text in this section is not underlined.

customer’s best interests rule *ICOBS 2.5.-1R.*

IDD ancillary insurance intermediary

any natural or legal person, other than a credit institution or an investment firm who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met:

- (a) the principal professional activity of that natural or legal person is other than *insurance distribution*;
- (b) the natural or legal person only distributes certain insurance products that are complementary to a good

or service; and

- (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity.

[Note: article 2(1)(4) of the *IDD*]

- IDD insurance intermediary*
- (a) as defined in article 2(1)(3) of the *IDD*, any natural or legal person, other than an *IDD insurance undertaking* or an *IDD reinsurance undertaking* or their employees and other than an *IDD ancillary insurance intermediary* who, for *remuneration*, takes up or pursues the activity of *insurance distribution*; or
 - (b) an *IDD ancillary insurance intermediary*.

[Note: article 2(1)(3) and (4) of the *IDD*]

IDD insurance undertaking an undertaking as defined in article 13(1) of the *Solvency II Directive*.

[Note: article 2(1)(6) of the *IDD*]

IDD insurance undertaking an undertaking as defined in article 13(1) of the *Solvency II Directive*.

[Note: article 2(1)(6) of the *IDD*]

IDD reinsurance intermediary any natural or legal person, other than an *IDD reinsurance undertaking* or its employees who, for *remuneration*, takes up or pursues the activity of *reinsurance distribution*.

[Note: article 2(1)(5) of the *IDD*]

IDD reinsurance undertaking an undertaking as defined in article 13(4) of the *Solvency II Directive*.

[Note: article 2(1)(7) of the *IDD*]

insurance based investment product a contract of insurance which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:

- (a) non-life insurance products as listed in Annex I to Directive 2009/138/EC (Classes of non-life insurance);
- (b) life insurance contracts where the benefits under the

contract are payable only on death or in respect of incapacity due to injury, sickness or disability;

- (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
- (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider.

[Note: article 2(1)(17) of the *IDD*]

insurance distribution

(as defined in article 2(1) of the *IDD*) the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

The following shall not be considered to constitute insurance distribution:

- (a) the provision of information on an incidental basis in the context of another professional activity where the provider does not take any additional steps to assist in concluding or performing an insurance contract;
- (b) the management of claims of an *IDD insurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims;
- (c) the mere provision of data and information on potential policyholders to an *IDD insurance intermediary* or *IDD insurance undertaking* where the provider does not take any additional steps to assist in the conclusion of an insurance contract;

- (d) the mere provision of information about an insurance product, an *IDD insurance intermediary* or an *IDD insurance undertaking* to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance contract; and
- (e) (in *MIPRU* 5), the services of an *IDD ancillary insurance intermediary* where all the following conditions are met:
 - (i) the insurance is complementary to the good or service supplied by a provider, where such insurance covers:
 - (A) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or
 - (B) damage to, or loss of, baggage and other risks linked to travel booked with that provider;
 - (ii) the amount of the premium paid for the insurance product does not exceed EUR 600 calculated on a pro rata annual basis; and
 - (iii) by way of derogation from (ii), where the insurance is complementary to a service referred to in (i) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.

[Note: articles 1(3), 2(1)(1) and 2(2) of the *IDD*]

insurance distribution activity any of the following *regulated activities* carried on in relation to a *contract of insurance* or rights to or interests in a *life policy*:

- (a) *dealing in investments as agent* (article 21);
- (b) *arranging (bringing about) deals in investments* (article 25(1));
- (c) *making arrangements with a view to transactions in investments* (article 25(2));
- (d) *assisting in the administration and performance of a contract of insurance* (article 39A);

- (e) *advising on investments (except P2P agreements)* (article 53(1));
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

insurance distributor an *insurance intermediary* or *insurer*.

[Note: article 2(1)(8) of the *IDD*]

insurance product information document the standardised presentation format as specified in the *IDD IPID Regulation* and in *ICOBS 6 Annex 3R* paragraph 1.1R.

IPID *insurance product information document*.

IPID information (in *ICOBS*) the *IDD* information to be included in the *IPID* as required by *ICOBS 6 Annex 3R*, paragraph 2.1R.

primary place of business (in relation to *insurance distribution activity*) the location from where the main business is managed.

reinsurance distribution (as defined in article 2(1)(2) of the *IDD*) the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by an *IDD reinsurance undertaking* without the intervention of an *IDD reinsurance intermediary*.

The following shall not be considered to constitute *reinsurance distribution*:

- (a) the provision of information on an incidental basis in the context of another professional activity where the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- (b) the management of claims of an *IDD reinsurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims;
- (c) the mere provision of data and information on potential policyholders to an *IDD reinsurance intermediary* or *IDD reinsurance undertaking* where the provider does not take any additional steps to assist in the conclusion of a reinsurance contract; and
- (d) the mere provision of information about a reinsurance product, an *IDD reinsurance intermediary* or an *IDD reinsurance undertaking* to potential policyholders where the provider does not take any additional steps

to assist in the conclusion of a reinsurance contract.

[Note: article 2(1)(2) and article 2(2) of the *IDD*]

relevant details

for a *UK firm* exercising an *EEA right* derived from the *IDD*, the details listed in regulation 17D of the *EEA Passport Rights Regulations*.

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

branch

...

- (d) (in relation to an ~~IMD~~ IDD *insurance intermediary*):
- (i) a place of business which is a part of an ~~IMD~~ insurance intermediary IDD insurance intermediary, not being the principal place of business, which has no separate legal personality and which provides ~~insurance mediation~~ insurance distribution for which the ~~IMD insurance intermediary~~ IDD insurance intermediary has been registered;
 - (ii) for the purposes of the ~~Insurance Mediation Directive~~ IDD, all the places of business set up in the same *EEA State* by an ~~IMD~~ insurance intermediary IDD insurance intermediary with headquarters in another *EEA State* are to be regarded as a single *branch*;
 - (iii) an agency or permanent presence of an *IDD insurance intermediary* in a *Host State* that is equivalent to a *branch* is to be regarded as a *branch*, unless the intermediary lawfully sets up such permanent presence in another legal form.

[Note: articles 2(1)(12) and 6(1) of the *IDD*]

- (e) (in relation to an ~~IMD~~ IDD *reinsurance intermediary*):
- (i) a place of business which is a part of an ~~IMD~~ reinsurance intermediary IDD reinsurance intermediary, not being the principal place of business, which has no separate legal personality and which provides ~~reinsurance mediation~~ reinsurance distribution for which

the ~~IMD~~ IDD reinsurance intermediary has been registered;

- (ii) for the purposes of the ~~Insurance Mediation Directive~~ IDD, all the places of business set up in the same *EEA State* by an ~~IMD reinsurance intermediary~~ IDD reinsurance intermediary with headquarters in another *EEA State* are to be regarded as a single *branch*;
- (iii) an agency or any permanent presence of an *IDD reinsurance intermediary* in the territory of a *Host State* that is equivalent to a *branch* is to be regarded as a *branch*, unless the intermediary lawfully sets up such permanent presence in another legal form.

[Note: articles 2(1)(12) and 6(1) of the *IDD*]

close links

...

- (2) (except where (1) applies and except in *SUP* 3 (Auditors), ~~and~~ *SUP* 4 (Actuaries) and *SUP* 12.4.8CR (Close links)) (in accordance with paragraph 3(2) in Schedule 6 to the *Act* (Close links)) the relationship between a *person* (“A”) and another *person* (“CL”) which exists if:

...

- (3) ...

- (4) (in *SUP* 12.4.8CR (Close links)) a situation in which two or more *persons* are linked by:

- (a) participation which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;
- (b) control which means the relationship between a parent undertaking and a subsidiary undertaking as set out in article 1 of Directive 83/349/EEC, or a similar relationship between any *person* and an undertaking.

A situation in which two or more *persons* are permanently linked to one and the same *person* by a control relationship is also to be regarded as constituting a close link between such *persons*.

[Note: article 2(1)(13) of the *IDD*]

consumer

...

- (7) (in the definitions of *cross-border dispute*, *domestic dispute*, *sales contract* and *service contract*, and in DISP 1.1.10-BR, DISP 1.1A.42R, DISP 2.7.3R and DISP 2.7.9AR) has the meaning in regulation 3 of the *ADR Regulations*, which is an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft, or profession.

[Note: article 4(1) of the *ADR Directive*]

contracts of large risks (in ~~ICOB~~ *ICOB*S and *PROD*) *contracts of insurance* covering risks within the following categories, in accordance with article 13(27) of the *Solvency II Directive*:

...

[Note: article 13(27) of the *Solvency II Directive* and article 2(1)(16) of the *IDD*]

customer

- (A) in the *PRA Handbook* Rulebook:

...

- (B) in the *FCA Handbook*:

- (1) (except in relation to SYSC 19F.2, *ICOB*S, a *credit-related regulated activity*, *MCOB 3A*, an *MCD credit agreement*, *CASS 5*, and *PRIN* in relation to *MiFID* or equivalent third country business, DISP 1.1.10-BR, *PROD 1.4* and *PROD 4*) a *client* who is not an *eligible counterparty* for the relevant purposes.

...

- (3) (in relation to SYSC 19F.2, *ICOB*S, DISP 1.1.10-BR, *PROD 1.4* and *PROD 4*) a *person* who is a *policyholder*, or a prospective *policyholder*, but (except in *ICOB*S 2 (general matters) and (in respect of that chapter) *ICOB*S 1 (application)) excluding a *policyholder* or prospective *policyholder* who does not make the arrangements preparatory to him concluding the conclusion of the contract of insurance.

- (3A) (in relation to *ICOB*S 2 (General matters) and in respect of that chapter also *ICOB*S 1 (Application)) a *person* who is a *policyholder*, or a prospective *policyholder*.

...

director

- (1) ...

- (a) ...

- (b) ...
- (c) (in *SYSC*, *MIPRU* 2 (~~Insurance mediation Responsibility for insurance distribution and MCD credit intermediation activity: responsibility, knowledge, ability and good reputation~~), *SUP* 10A (FCA Approved persons) and *SUP* 10C (FCA senior management regime for approved persons in relevant authorised persons) a *partnership*;
- (d) ...
- ...

distribute (1) (in relation to *PROD* 1.1.3R, *PROD* 1.3 and *PROD* 3) offering, recommending or *selling* an *investment* or providing an *investment service* to a *client*.

[Note: recital 15 to the *MiFID Delegated Directive*]

(2) (in relation to *PROD* 1.4 and *PROD* 4) advising on or proposing a *contract of insurance* to a *customer*.

distributor (1) (in relation to *PROD* 1.1.3R, *PROD* 1.3 and *PROD* 3) a *firm* which offers, recommends or *sells investments* or provides *investment services* to *clients*.

[Note: recital 15 to the *MiFID Delegated Directive*]

(2) (in relation to *PROD* 1.4 and *PROD* 4) a *firm* which advises on or proposes *contracts of insurance* which it does not *manufacture*.

durable medium (a) paper; or

(b) any instrument which enables the recipient to store information addressed personally to ~~him or her~~ the recipient in a way accessible for future reference and for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored. ~~In particular, durable medium covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes internet sites, unless such sites meet the criteria specified in the first sentence of this paragraph.~~ (In relation to the *equivalent business of a third country investment firm*, *MiFID optional exemption business* or *collective portfolio management*, if the relevant *rule* derives from the *MiFID Org Regulation* or implements the *UCITS Directive*, the *UCITS implementing Directive* or the *UCITS implementing Directive No 2*) the instrument used must be:

(i) appropriate to the context in which the business is to be carried on; and

- (ii) specifically chosen by the recipient when offered the choice between that instrument and paper.

In ICOBS and in COBS in relation to life policies:

- (iii) the instrument used must be appropriate in the context of the business conducted between the insurance distributor and (for ICOBS) the customer or (for COBS) the client; and
- (iv) the customer (for ICOBS) or client (for COBS) must be given the choice between information on paper and the instrument used, and must specifically choose the latter medium.

For the purposes of this definition, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the *firm* and the *client* is, or is to be, carried on if there is evidence that the *client* has regular access to the internet. The provision by the *client* of an e-mail address for the purposes of the carrying on of that business is sufficient.

[Note: article 2(f) of, and Recital 20 to, the *Distance Marketing Directive*, ~~article 2(12) of the *Insurance Mediation Directive*~~ articles 2(1)(18), 23(4) and 23(6) of the *IDD*, article 4(1)(62) of *MiFID* and article 3(1) of the *MiFID Org Regulation*, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

establishment conditions

(in relation to the establishment of a *branch* in the *United Kingdom*) the conditions specified in paragraph 13 of Schedule 3 to the *Act* (EEA Passport Rights), which are that:

- (a) if the *firm* falls within paragraph (a), (b), (c), (d) or (f) in the definition of “*EEA firm*”;
- (b) if the *firm* falls within paragraph (e) in the definition of “*EEA firm*”:
 - (i) ~~the *EEA firm* has given its *Home State regulator* notice of its intention to establish a *branch* in the *United Kingdom*;~~
 - (ii) ~~the *FCA* or *PRA* (as the case may be) appropriate *UK regulator* has received notice (“a *regulator’s notice consent notice*”) from the firm’s *Home State regulator* *Home State regulator* that it has given the firm consent to establish a *branch* in the *United Kingdom*;~~
 - (ii) the consent notice is:

- (A) given in accordance with the *IDD*;
- (B) identifies the activities to which the consent relates;
and
- (C) includes such other information as may be
prescribed; and

- (iii) ~~The EEA firm's Home State regulator has informed it that the regulator's notice has been sent to the *FCA* or *PRA* (as the case may be); and the *EEA firm* has been informed of the *applicable provisions* or one month has elapsed, beginning with the date on which the *appropriate UK regulator* received the consent notice.~~
- (iv) ~~one month has elapsed beginning with the date on which the EEA firm's Home State regulator informed the *firm* that it had sent the regulator's notice to the *FCA* or *PRA* (as the case may be).~~

...

fee

- (1) (except in *ICOBS* and, in relation to a *life policy*, in *COBS 6.1ZA*)
any payment or *remuneration* offered or made by a *client* to a *firm*
in connection with *designated investment business* or with any
other business of the *firm*, including (where applicable) any *mark-*
up or *mark-down*;
- (2) (in *ICOBS* and, in relation to a *life policy*, in *COBS 6.1ZA*))
remuneration payable directly by a *customer* in relation to
insurance distribution activities carried on for the *customer* that is
not:
 - (a) a commission of any kind, that is the *remuneration* included
in the *insurance premium*; or
 - (b) any other type of *remuneration* (i.e. that is not directly
payable by the *customer*), including an economic benefit of
any kind or any other financial or non-financial advantage or
incentive offered or given in connection with the *insurance*
contract.

[Note: article 19(1)(e)(i),(ii) and (iii) of the *IDD*]

[*Editor's note*: the next amendment is dependent on legislative amendments to section 137R of the Financial Services and Markets Act 2000 to take account of article 17(2) of the *IDD* being made and will only be made once the amending legislation has been made.]

*financial
promotion*

...

- (4) (in *ICOBS* and in relation to a *life policy*, in *COBS* 3.2.1R(3) and 4.3.1R), in addition to (1), any marketing communication within the meaning of article 17(2) of the *IDD*.

[Note: articles 10 and 11 of the *MCD*; and article 17(2) of the *IDD*]

Amend the following as shown.

Home State

...

- (5) (in relation to an ~~*IMD insurance intermediary*~~ *IDD insurance intermediary* or an ~~*IMD reinsurance intermediary*~~ *IDD reinsurance intermediary*):
- (a) where the ~~*insurance intermediary*~~ *intermediary* is a natural person (P), the *EEA State* in which ~~his~~ P's residence is situated ~~and in which he carries on business~~;
- (b) where the ~~*insurance intermediary*~~ *intermediary* is a legal person, the *EEA State* in which its registered office is situated or, if under its national law it has no registered office, the *EEA State* in which its head office is situated.

[Note: article 2(1)(10) of the *IDD*]

...

Host State

...

- (7) (for an *IDD insurance intermediary* or an *IDD reinsurance intermediary*) the *EEA State*, other than its *Home State*, in which the intermediary has a permanent presence or establishment or provides services.

[Note: article 2(1)(11) of the *IDD*]

*insurance
intermediary*

a firm carrying on ~~*insurance mediation*~~ *insurance distribution* activity other than an *insurer*.

investment firm

...

- (3) (in the definition of *IDD ancillary insurance intermediary*, and in *IFPRU* and *BIPRU* 12) has the meaning in article 4(1)(2) of the *EU CRR*.

[Note: article 2(1)(4) of the *IDD*]

...

manufacture (1) (in relation to *PROD 1.3* and *PROD 3*) creating, developing, issuing and/or designing an *investment*, including when advising corporate *issuers* on the launch of new *investments*.

[Note: recital 15 to the *MiFID Delegated Directive*]

(2) (in relation to *PROD 1.4* and *PROD 4*) creating, developing, designing and/or underwriting a *contract of insurance*.

manufacturer (1) (in relation to *PROD 1.3* and *PROD 3*) a *firm* which creates, develops, issues, and/or designs *investments*, including when advising corporate *issuers* on the launch of new *investments*.

[Note: recital 15 to the *MiFID Delegated Directive*]

(2) (in relation to *ICOBS 6.-1.5R*, *ICOBS 6 Annex 3R* paragraph 1.1R, *PROD 1.4* and *PROD 4*) a *firm* which *manufactures contracts of insurance* for sale to *customers*.

*personal
recommendation*

...

[Note: article 2(1)(15) of the *IDD* and article 9 of the *MiFID Org Regulation*]

...

*protected non-
investment
insurance
mediation
distribution* ~~*insurance mediation activities*~~ *insurance distribution activities* which are covered by the *compensation scheme*, as defined in *COMP 5.7.1R*.

*reinsurance
contract* (in *COBS 21*, *ICOBS*, *CASS 1*, *CASS 5* and *COMP*) a *contract of insurance* covering all or part of a risk to which a *person* is exposed under a *contract of insurance*.

remuneration (1) (except where (2) ~~or (3) applies~~ apply) any form of remuneration, including salaries, *discretionary pension benefits* and benefits of any kind;

[Note: article 92(2) of *CRD*]

(2) ...

[Note: article 2(5) of the *MiFID Org Regulation*]

(3) (in *ICOBS* and, in relation to a *life policy*, in *COBS 6.1ZA*) any commission, *fee*, *charge* or other payment, including an economic

benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of *insurance distribution activities*.

[Note: article 2(1)(9) of the *IDD*]

service conditions

(in accordance with paragraph 14 of Schedule 3 to the *Act* (EEA Passport Rights)) the conditions that:

...

- (c) if the *firm* falls within paragraph (d), ~~(e)~~, (h) or (i) of that definition, its *Home State regulator* has informed it that the regulator's notice has been sent to the *FCA* or the *PRA* (as the case may be); and
- (d) if the *firm* falls within paragraph ~~(e)~~ (i) of that definition, one *month* has elapsed beginning with the date on which the *firm's Home State regulator* informed the *firm* that it had sent the regulator's notice to the *FCA* or the *PRA* (as the case may be).

suitability report

a report which a *firm* must provide to its *client* which, among other things, explains why the *firm* has concluded that a recommended transaction is suitable for the *client* and which is provided pursuant to:

- (a) *COBS 9.4* (Suitability reports) where the *firm* is carrying on *designated investment business* other than any *MiFID, equivalent third country or optional exemption business* or in relation to an insurance based investment product;
- (b) article 54(12) of the *MiFID Org Regulation* where the *firm* is carrying on *MiFID business*;
- (c) *GEN 2.2.22AR* and *COBS 9A.3.3EU* where the *firm* is carrying on the *equivalent business of a third country investment firm*;
- (d) *COBS 9A.1.2R* and *COBS 9A.3.3EU* where the *firm* is carrying on *MiFID optional exemption business*; or
- (e) *COBS 9A.3.2R* where the *firm* is carrying on *insurance distribution activities* in relation to an *insurance based investment product*.

UK firm

- (1) (except in *REC*) (as defined in paragraph 10 of Schedule 3 to the *Act* (EEA Passport Rights)) either a *person*:
 - (a) whose head office is in the *United Kingdom* and who has an *EEA right* to carry on activity in an *EEA State* other than the *United Kingdom*; or
 - (b) whose registered office is in the *United Kingdom* and who has an *EEA right* which derives from the *IDD* to carry on an

activity in an EEA State other than the United Kingdom.

...

website
conditions

...

[Note: article 23(5) of the *IDD*, article 3 of the *MiFID Org Regulation* and article 38(2) of the *KII Regulation*]

Delete the following definitions. The text is not shown struck through.

<i>IMD insurance intermediary</i>	(as defined in article 2(5) of the <i>IMD</i>) any natural or legal person who, for remuneration, takes up or pursues <i>insurance mediation</i> .
<i>IMD insurance undertaking</i>	(as defined in article 2(1) of the <i>Insurance Mediation Directive</i>) an undertaking which has received official authorisation in accordance with article 14 of the <i>Solvency II Directive</i> .
<i>IMD reinsurance intermediary</i>	(as defined in article 2(6) of the <i>Insurance Mediation Directive</i>) any natural or legal person who, for remuneration, takes up or pursues <i>reinsurance mediation</i> .
<i>IMD reinsurance undertaking</i>	(as defined in article 2(2) of the <i>Insurance Mediation Directive</i>) an undertaking, other than an <i>IMD insurance undertaking</i> or a non-member-country <i>insurance undertaking</i> , the main business of which consists in accepting risks ceded by an <i>IMD insurance undertaking</i> , a non-member country <i>insurance undertaking</i> or other <i>IMD reinsurance undertaking</i> .
<i>Insurance Intermediaries Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) (Insurance Intermediaries) Order 2003 (SI 2003/1476).
<i>insurance mediation</i>	(as defined in article 2(3) of the <i>IMD</i>) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when undertaken by an <i>IMD insurance undertaking</i> or an employee of an <i>IMD insurance undertaking</i> who is acting under the responsibility of the <i>IMD insurance undertaking</i> shall not be considered as <i>insurance mediation</i> . The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or

performing an insurance contract, the management of claims of an *IMD insurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *insurance mediation*.

reinsurance mediation

(as defined in article 2.4 of the *Insurance Mediation Directive*) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when undertaken by a *IMD reinsurance undertaking* or an employee of a *IMD reinsurance undertaking* who is acting under the responsibility of the *IMD reinsurance undertaking* shall not be considered as *reinsurance mediation*. The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a *IMD reinsurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *reinsurance mediation*.

Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Rules about application

...

3.2 What?

3.2.1A R *PRIN* applies with respect to the carrying on of:

...

- (3) *ancillary activities* in relation to *designated investment business*, *home finance activity*, *credit-related regulated activity*, ~~*insurance mediation activity*~~ *insurance distribution activity* and *accepting deposits*.

...

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and purpose

1.1A Application

...

- 1.1A.1 G The application of this sourcebook is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Insurer, UK ISPV</i>	Chapters 2, 3, 12 to 18, <u>19F.2</u> , 21, 22, <u>28</u>
<i>Managing agent</i>	Chapters 2, 3, 11, 12, 18, <u>19F.2</u> , 21, 22, <u>28</u>
<i>Society</i>	Chapters 2, 3, 12, 18, <u>19F.2</u> , 21, 22, <u>28</u>
Every other <i>firm</i>	Chapters 4 to 12, 18, 19D, <u>19F.2</u> , 21, 22, <u>28</u>

...

- 1.1A.1A G The application of this sourcebook to specific firms that are not *PRA-
authorised persons* is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Full-scope UK AIFM</i>	Chapters 4 to 10, 12, 18, 19B, <u>19F.2</u> , 21, 22, <u>28</u>
<i>BIPRU firm</i> (including a <i>third-country BIPRU firm</i>)	Chapters 4 to 10, 12, 18, 19C, <u>19F.2</u> , 20, 21, 22, <u>28</u>
<i>IFPRU investment firm</i> (including an <i>overseas firm</i> that would have been an <i>IFPRU investment firm</i> if it had been a <i>UK domestic firm</i>)	Chapters 4 to 10, 12, 18, 19A, <u>19F.2</u> , 20, 21, 22, <u>28</u>

- 1.1A.2 G ...

- (3) For *Solvency II* firms, the FCA considers that the requirements and ~~guidance~~ guidance in Chapters 2, 3, 12 to 18, 19F.2, 21 and 22 and 28 of SYSC are not inconsistent with:

...

...

1.4 Application of SYSC 11 to SYSC 22 and 28

What?

1.4.1 G ...

1.4.1-A G The application of each of the chapters SYSC 19F.2, SYSC 22 and SYSC 28 is set out in those chapters.

...

Actions for damages

1.4.2 R A contravention of a *rule* in SYSC 11 to SYSC 21, SYSC 22.8.1R ~~or~~ SYSC 22.9.1R or SYSC 28 does not give rise to a right of action by a *private person* under section 138D of the Act (and each of those *rules* is specified under section 138D(3) of the Act as a provision giving right to no such right of action).

1 Annex 1 Detailed application of SYSC

Part 1		Application of SYSC 2 and SYSC 3 to an insurer, a UK ISPV, a managing agent and the Society	
...			
		What?	
1.3	R	SYSC 2 and SYSC 3 apply with respect to the carrying on of:	
		(1)	<i>regulated activities</i> ;
		(2)	activities that constitute <i>dealing in investments as principal</i> , disregarding the exclusion in article 15 of the <i>Regulated Activities Order</i> (Absence of holding out etc); and
		(3)	<i>ancillary activities</i> in relation to <i>designated investment business</i> , <i>home finance activity</i> and <i>insurance mediation activity</i> <u><i>insurance distribution activity</i></u> ; and

		(4)	activities directly arising from <i>insurance risk transformation</i> ;
			except that <i>SYSC 3.3</i> applies as described in <i>SYSC 1 Annex 1 1.3AR</i> and <i>SYSC 3.2.6AR</i> to <i>SYSC 3.2.6JG</i> do not apply as described in <i>SYSC 1 Annex 1.1.4R</i> .
<u>1.3A</u>	<u>R</u>		<u><i>SYSC 3.3</i> only applies in relation to the carrying on of <i>insurance distribution activities</i>.</u>
1.4	R		<i>SYSC 3.2.6AR</i> to <i>SYSC 3.2.6JG</i> do not apply:
		(1)	...
		(2)	in relation to the following <i>regulated activities</i> :
		(a)	...
		...	
		(b)	<i>insurance mediation activity</i> <i>insurance distribution activity</i> in relation to a <i>general insurance contractor pure protection contract</i> ;
		...	
		...	
...			

...

Part 2		Application of the common platform requirements	
...			
		What?	
...			
2.8A	R	(1)	Subject to (2) and (3) and (5), in <i>SYSC 1 Annex 1 2.8R</i> , articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> (including any relevant definitions in <i>MiFID</i> , <i>MiFIR</i> and the <i>MiFID Org Regulation</i>) apply as if they were <i>rules</i> or <i>guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a <i>firm's</i> carrying on of the business set out in <i>SYSC 1 Annex 1 2.8R</i> which is not <i>MiFID business</i> or a <i>structured deposits activity</i> .

		1A	Subject to (2), and (3) and (6), articles 33 to 35 of the MiFID Org Regulation of the MiFID Org Regulation (including any relevant definitions in <i>MiFID</i> , <i>MiFIR</i> and the <i>MiFID Org Regulation</i>) apply as if they were <i>rules</i> or <i>guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm) to a <i>firm's</i> carrying on of the business set out in SYSC 10.1.1R which is not <i>MiFID business</i> or a <i>structured deposits regulated activity</i> .
		...	
		(5)	<u>The requirements in article 72 of the <i>MiFID Org Regulation</i> do not apply to a <i>firm</i> to the extent that article 19 of the <i>IDD Regulation</i> applies to the <i>firm</i>.</u>
		(6)	<u><i>SYSC 1 Annex 1 2.8AR(1A)</i> does not apply to a <i>firm</i> to the extent that articles 3 – 7 of the <i>IDD Regulation</i> are directly applicable to the <i>firm</i> (see <i>SYSC 1 Annex 1 3.1AG</i>).</u>
...			
2.8B	G		The purpose of SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR is that the <i>common platform organisational requirements</i> and the <i>common platform requirements</i> on conflicts of interest also apply when carrying on any of the activities listed in SYSC 1 Annex 1 2.8R or SYSC 10.1.1R respectively even where they do not involve <i>investment services and/or activities</i> and, where relevant, <i>ancillary services</i> (unless provided otherwise within a specific <i>rule</i>).
...			
2.9	G		The application of the provisions on the conflicts of interest in SYSC 10 is set out in SYSC 10.1.2G SYSC 10.1.4G to SYSC 10.1.1AR and SYSC 10.2.1R.
2.10	R		The provisions on record-keeping in SYSC 9 and articles 21 and 72 of the <i>MiFID Org Regulation</i> apply as set out in SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR, except that they only apply to the carrying on of <i>ancillary activities</i> that are performed in relation to:
		...	
		(3)	<i>insurance mediation activity</i> <u><i>insurance distribution activity</i></u> ;

		...	
2.11	R	The <i>common platform requirements on financial crime</i> apply as set out in SYSC 1 Annex 1.2.8R SYSC 1 Annex 1 2.8R, except that they do not apply:	
		(1)	...
		(2)	in relation to the following <i>regulated activities</i> :
		(a)	...
		(b)	insurance mediation activity <i>insurance distribution activity</i> in relation to a general insurance contractor pure protection contract;
		...	
...			
Part 3		Tables summarising the application of the common platform requirements to different types of firm	
3.1	G	...	
3.1A	G	The <i>IDD Regulation</i> is directly applicable to a firm when <u>carrying on insurance distribution in relation to insurance based investment products</u> . Articles 3 to 7 of the <i>IDD Regulation</i> are reproduced in SYSC 10.1A for information for <u>these firms</u> .	
...			
3.2-A	R	For a <i>common platform firm</i> (other than a <i>dormant account fund operator</i> not subject to <i>MiFID</i>), articles 1(2), 21 to 25, 30 to 35 and 72 of the <i>MiFID Org Regulation</i> apply to the firm's business other than <i>MiFID business</i> or <i>structured deposits regulated activities</i> as if the <i>MiFID Org Regulation</i> applied to the firm as <i>rules</i> in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.	
...			

...

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

...

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full- scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 4.4.1AR	Not applicable	Not applicable	Not applicable	Rule applies this section only to: (1)... (2) activities carried on by a <i>firm</i> whose principal purpose is to carry on activities other than <i>regulated activities</i> and which is: ... (e) a <i>firm</i> with <i>permission</i> to carry on

				<i>insurance mediation activity insurance distribution activity</i> in relation to non- investment insurance contract <i>non-</i> <i>investment</i> <i>insurance</i> <i>contracts</i> but no other <i>regulated</i> <i>activity</i> except <i>advising on</i> <i>P2P</i> <i>agreements</i> ; (2A)... ...
...				

...

Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and
---------------------	--	---	---	--

				third country firms
...				
<i>SYSC</i> 5.1.3G	...			
<u><i>SYSC</i></u> <u>5.1.3AG</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				
<i>SYSC</i> 5.1.5AEG	...			
<u><i>SYSC</i></u> <u>5.1.5BR</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>
...				

...

Provision SYSC 9	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
<i>SYSC</i>

9.1.2R				
<u>SYSC</u> <u>9.1.2AR</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>
<u>SYSC</u> <u>9.1.2BG</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
<u>SYSC</u> <u>9.1.2CEU</u>	<u>EU</u> <u>Directly</u> <u>applicable to a</u> <u>firm carrying on</u> <u>insurance</u> <u>distribution in</u> <u>relation to</u> <u>insurance based</u> <u>investment</u> <u>products</u>	<u>EU</u> <u>Directly</u> <u>applicable to a</u> <u>firm carrying</u> <u>on insurance</u> <u>distribution in</u> <u>relation to</u> <u>insurance</u> <u>based</u> <u>investment</u> <u>products</u>	<u>EU</u> <u>Directly</u> <u>applicable to</u> <u>a firm</u> <u>carrying on</u> <u>insurance</u> <u>distribution in</u> <u>relation to</u> <u>insurance</u> <u>based</u> <u>investment</u> <u>products</u>	<u>EU</u> <u>Directly</u> <u>applicable to</u> <u>a firm</u> <u>carrying on</u> <u>insurance</u> <u>distribution in</u> <u>relation to</u> <u>insurance</u> <u>based</u> <u>investment</u> <u>products</u>
<u>SYSC</u> <u>9.1.2DR</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>
...				
<u>SYSC</u> <u>9.1.6G</u>	...	...	...	...
<u>SYSC</u> <u>9.1.6A</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				

Provision SYSC 10	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full- scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, UK ISPVs, managing agents, the Society, full- scope UK AIFMs of unauthorised AIFs, MiFID
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				optional exemption firms and third country firms
<u>SYSC</u> <u>10.1.-4G</u>	<u>Guidance in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities</u>	<u>Guidance in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities</u>	<u>Guidance in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities</u>	<u>Guidance in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities</u>
<u>SYSC</u> <u>10.1.-3R</u>	<u>Rule in relation</u> <u>to insurance</u> <u>distribution</u> <u>activities</u>	<u>Rule in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities</u>	<u>Rule in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities</u>	<u>Rule in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities</u>
SYSC 10.1.-2G	...	...	...	...
...				
SYSC 10.1.2G	Guidance	Guidance	<u>Guidance in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities.</u> Otherwise, Not <u>not</u> applicable	Guidance
SYSC 10.1.3R	Rule	Rule	<u>Rule in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities.</u> Otherwise Not <u>not</u> applicable	Rule
SYSC 10.1.4R	Not applicable	Rule, <u>but not</u> <u>applicable in</u> <u>relation to</u> <u>insurance</u> <u>distribution</u> <u>activities</u>	Not applicable	Guidance - but applies as a rule in relation to the production or arrangement of investment

				research, or the production or dissemination of non-independent research, in accordance with <i>COBS</i> 12.2 <u>Not applicable in relation to insurance distribution activities</u>
SYSC 10.1.4AG	Not applicable	Not applicable	Not applicable	Guidance – but <u>not applicable in relation to insurance distribution activities</u>
<u>SYSC 10.1.4BR</u>	<u>Not applicable</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
<u>SYSC 10.1.4CR</u>	<u>Not applicable</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
...				
SYSC 10.1.6R	Not applicable	Rule	<u>Rule in relation to insurance distribution activities.</u> Otherwise, Not <u>not</u> applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment

				research, or the production or dissemination of non-independent research, in accordance with <i>COBS</i> 12.2; and (b) <u>in relation to insurance distribution activities</u>
<i>SYSC</i> 10.1.6AG	Not applicable	Not applicable	Guidance – <u>but not applicable in relation to insurance distribution activities</u>	Guidance – <u>but not applicable in relation to insurance distribution activities</u>
<u><i>SYSC</i> 10.1.6AAR</u>	<u>Not applicable</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
...				
<i>SYSC</i> 10.1.7R	Rule	Rule	<u>Rule in relation to insurance distribution activities.</u> Otherwise Not <u>not</u> applicable	Rule
<u><i>SYSC</i> 10.1.7AR</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>
<i>SYSC</i> 10.1.8R	<u>Rule in relation to insurance distribution activities.</u> Otherwise, Not <u>not</u> applicable	Rule	<u>Rule in relation to insurance distribution activities.</u> Otherwise, Not <u>not</u>	Rule

			applicable	
SYSC 10.1.8AR	Not applicable	Rule	Not applicable	Rule
...				
SYSC 10.1.9AR	Not applicable	<u>Rule in relation to insurance distribution activities.</u> Otherwise, Not not applicable	<u>Rule in relation to insurance distribution activities.</u> Otherwise, Not not applicable	Guidance - but applies as a rule in relation to <u>insurance distribution activities</u>
SYSC 10.1.10R	Not applicable	Rule	<u>Rule in relation to insurance distribution activities.</u> Otherwise, Not not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS</i> 12.2; and (b) in relation to <u>insurance distribution activities</u>
SYSC 10.1.11R	Not applicable	Rule	<u>Rule in relation to insurance distribution activities.</u> Otherwise, Not not applicable	Guidance - but applies as a rule: (a) in relation to the production or arrangement

				of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS</i> 12.2; and (b) <u>in relation to insurance distribution activities</u>
SYSC 10.1.11A G	Not applicable	Not applicable	Guidance – <u>but not applicable in relation to insurance distribution activities</u>	Guidance – <u>but not applicable in relation to insurance distribution activities</u>
<u>SYSC 10.1.11A AR</u>	Not applicable	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
<u>SYSC 10.1.11A BR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 10.1.23R to SYSC 10.1.26R	...	...	...	...
<u>SYSC 10.1A</u>	<u>EU</u> <u>Directly applicable to a firm carrying on insurance distribution in</u>	<u>EU</u> <u>Directly applicable to a firm carrying on insurance distribution in</u>	<u>EU</u> <u>Directly applicable to a firm carrying on insurance</u>	<u>EU</u> <u>Directly applicable to a firm carrying on insurance</u>

	<u>relation to insurance based investment products</u>	<u>relation to insurance based investment products</u>	<u>distribution in relation to insurance based investment products</u>	<u>distribution in relation to insurance based investment products</u>
...				

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
...		
SYSC 9		
...		
<i>SYSC 9.1.2R</i>	...	...
<u>SYSC 9.1.2AR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
<u>SYSC 9.1.2BG</u>	<u>Guidance in relation to insurance distribution activities</u>	<u>Guidance in relation to insurance distribution activities</u>
<u>SYSC 9.1.2CEU</u>	<u>EU</u> <u>Directly applicable to a firm carrying on insurance distribution in relation to insurance based investment products</u>	<u>EU</u> <u>Directly applicable to a firm carrying on insurance distribution in relation to insurance based investment products</u>
<u>SYSC 9.1.2DR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution</u>

		<u>activities</u>
...		
<u>SYSC 9.1.6AG</u>	<u>Guidance in relation to insurance distribution activities</u>	<u>Guidance in relation to insurance distribution activities</u>
SYSC 10		
<u>SYSC 10.1.-4G</u>	<u>Guidance in relation to insurance distribution activities</u>	<u>Guidance in relation to insurance distribution activities</u>
<u>SYSC 10.1.-3G</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
<u>SYSC 10.1.-2G</u>	...	...
...		
<u>SYSC 10.1.4BR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
<u>SYSC 10.1.4CR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
...		
<u>SYSC 10.1.6R</u>	Rule	Guidance – but applies as a rule in relation to: (a) the production or arrangement of investment research, or the production or dissemination of non-independent

		research, in accordance with <i>COBS 12.2</i> ; and <u>(b) insurance distribution activities</u>
<i>SYSC 10.1.6AG</i>	...	
<u><i>SYSC 10.1.6AAR</i></u>	<u>Rule in relation to <i>insurance distribution activities</i></u>	<u>Rule in relation to <i>insurance distribution activities</i></u>
...		
<u><i>SYSC 10.1.7AR</i></u>	<u>Rule in relation to <i>insurance distribution activities</i></u>	<u>Rule in relation to <i>insurance distribution activities</i></u>
<i>SYSC 10.1.8R</i>	Rule	Rule
<u><i>SYSC 10.1.8AR</i></u>	Rule	Rule
...		
<i>SYSC 10.1.9AR</i>	<u>Rule in relation to <i>insurance distribution activities</i>.</u> <u>Otherwise Not not applicable</u>	<u>Rule in relation to <i>insurance distribution activities</i>.</u> <u>Otherwise Not not applicable</u>
<i>SYSC 10.1.10R</i>	Rule	Guidance – but applies as a rule in relation to; <u>(a)</u> the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS 12.2</i> ; and <u>(b) insurance distribution</u>

		<u>activities</u>
SYSC 10.1.11R	Rule	Guidance – but applies as a rule in relation to: <u>(i) the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with COBS 12.2; and (ii) insurance distribution activities</u>
SYSC 10.1.11AG	...	
<u>SYSC 10.1.11AAR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
<u>SYSC 10.1.11ABR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
<u>SYSC 10.1A</u>	<u>EU</u> <u>Directly applicable to a firm carrying on insurance distribution in relation to insurance based investment products</u>	<u>EU</u> <u>Directly applicable to a firm carrying on insurance distribution in relation to insurance based investment products</u>
...		

...

2 Senior management arrangements

2.1 Apportionment of responsibilities

...

2.1.6 G ...

Insurance distribution activities

2.1.6A R A firm carrying on insurance distribution activities must allocate to a senior manager the function of ensuring the proper implementation of the policies and procedures approved in accordance with SYSC 3.1.11R.

[Note: second paragraph of article 10(8) of the IDD]

...

3 Systems and Controls**3.1 Systems and Controls**

...

Competent employees rule

3.1.6 R A firm ~~which is not a common platform firm~~ must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

3.1.7 R ...

3.1.7A G SYSC 28 contains rules and guidance relating to the minimum knowledge and competence requirements in relation to insurance distribution activities undertaken by a firm.

...

3.1.10 G ...

Insurance distribution activities

3.1.11 R A firm carrying on insurance distribution activities must approve, implement and regularly review its internal policies and procedures in respect of its obligations under SYSC 28.

[Note: first paragraph of article 10(8) of the IDD]

3.1.12 G SYSC 2.1.6AR prescribes how a firm must allocate the function of ensuring the proper implementation of the policies and procedures approved in accordance with SYSC 3.1.11R.

...

3.2 Areas covered by systems and controls

...

Records

...

3.2.21 G ...

3.2.21A G SYSC 28 contains *rules and guidance* relating to knowledge and competence record keeping requirements in relation to *insurance distribution activities* undertaken by a *firm*.

...

Insert the following new section after SYSC 3.2 (Areas covered by systems and controls).
The text is not underlined.

3.3 Additional requirements for insurance distribution

Application

3.3.1 R SYSC 3.3 applies to an *insurer* in the course of it carrying on any *insurance distribution activities*.

Effect of provisions marked “EU”

3.3.2 G The *IDD Regulation* is directly applicable to an *insurer* when carrying on *insurance distribution* in relation to *insurance based investment products*. Some of the articles of the *IDD Regulation* (see the provisions marked with the status letters “EU”) are reproduced in this section for those *insurers* for information only.

3.3.3 R (1) To the extent that the *IDD Regulation* does not directly apply, provisions in this section marked with the status letters ‘EU’ apply to the *insurer* as if they were *rules*.

(2) References in Column (1) to a word or phrase used in the *IDD Regulation* have, for the purpose of SYSC 3.3.3R(1) above, the meaning indicated in Column (2) of the table below:

(1)	(2)
“article 27”	SYSC 3.3.8R and SYSC 3.3.9R
“article 28”	SYSC 3.3.5R and SYSC 3.3.13R
“competent authority”	FCA
“customer”	<i>client</i>

“Directive (EU) 2016/97”	<i>IDD</i>	
“insurance based investment products”	<i>policies</i>	
“insurance distribution activities”	<i>insurance distribution activities</i>	
“insurance intermediary”	<i>insurance intermediary</i>	
“insurance undertakings”	<i>insurer</i>	
“relevant person”	any of the following:	
	(a)	a director, partner or equivalent, or manager of the <i>insurance intermediary</i> or <i>insurer</i> ;
	(b)	an employee of the <i>insurance intermediary</i> or <i>insurer</i> , as well as any other natural person whose services are placed at the disposal and under the control of the <i>insurance intermediary</i> or <i>insurer</i> and who is involved in the <i>insurance distribution activities</i> ; and
	(c)	a natural person who is directly involved in the provision of services to the <i>insurance intermediary</i> or <i>insurer</i> under an outsourcing agreement for the purpose of the carrying on by the <i>insurance intermediary</i> or <i>insurer</i> of <i>insurance distribution activities</i> .
“remuneration”	<i>remuneration</i>	
“shall”	must	

3.3.4 G The effect of SYSC 3.3.3R is that:

- (1) the provisions marked “EU” apply as *rules* to an *insurer* when carrying on *insurance distribution activities* other than *insurance distribution* in relation to *insurance based investment products*;
- (2) where SYSC 3.3.3R applies, an *insurer* is required to read the provisions marked “EU” as though the application of those

provisions (and articles 27 and 28 of the *IDD*) is not limited to the distribution of *insurance based investment products*; and

- (3) the scope of the application of the *IDD Regulation* is extended from *insurance distribution* to *insurance distribution activities*.

Identifying conflicts

3.3.5 R A *firm* must take all appropriate steps to identify conflicts of interest that arise between:

- (1) the *firm*, including its managers, employees and *appointed representatives* (or where applicable, *tied agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the *firm*; or
- (2) one *client* of the *firm* and another *client*.

[**Note:** article 28(1) of the *IDD*]

3.3.6 EU 3(1) For the purposes of identifying, in accordance with Article 28 of Directive (EU) 2016/97, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

- (a) it is distinct from the customer's or potential customer's interest in the outcome of the insurance distribution activities;
- (b) it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.

3.3.7 EU 3(2) For the purposes of the assessment pursuant to paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, the following situations:

- (a) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the customer;
- (b) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to

them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer;

- (c) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked by control to an insurance intermediary or an insurance undertaking is substantially involved in the management or development of insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

[**Note:** article 3 of the *IDD Regulation*]

Managing conflicts

- 3.3.8 R A *firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest identified under SYSC 3.3.5R from adversely affecting the interests of its *clients*.

[**Note:** article 27 of the *IDD*]

Proportionality

- 3.3.9 R The arrangements in SYSC 3.3.8R must be proportionate to the activities performed, the *policies* sold and the type of *insurance distributor* the *firm* is or uses.

[**Note:** article 27 of the *IDD*]

Conflicts policy

- 3.3.10 EU 4(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.
- Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[**Note:** article 4(1) of the *IDD Regulation*]

Contents of policy

- 3.3.11 EU 4(2) The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:

- (a) with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers;
- (b) procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer.

[**Note:** article 4(2) of the *IDD Regulation*]

- 3.3.12 EU 5(1) The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.
- The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:
- (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers;
 - (b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking;
 - (c) the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (d) measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to them by control;
 - (e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;

- (f) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2) Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[**Note:** article 5 of the *IDD Regulation*]

Disclosure of conflicts

- 3.3.13 R (1) If arrangements made under *SYSC 3.3.8R* are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must:
- (a) clearly disclose to the *client* the general nature or sources of the conflicts of interest (or both); and
 - (b) include sufficient detail in the disclosure, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the *insurance distribution activities* in the context of which the conflict of interest arises.
- (2) The disclosure must be made:
- (a) in a *durable medium*; and
 - (b) in good time before the conclusion of the *contract of insurance*.

[**Note:** article 28(2) and (3) of the *IDD*]

- 3.3.14 EU 6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to Article 28(2) of Directive (EU) 2016/97, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with Article 27 of Directive (EU) 2016/97 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

- 6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:
- (a) provide a specific description of the conflict of interest in question;
 - (b) explain the general nature and sources of the conflict of interest;
 - (c) explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
 - (d) clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

[**Note:** article 6 of the *IDD Regulation*]

Review of conflicts policy

- 3.3.15 EU 7(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[**Note:** article 7(1) of the *IDD Regulation*]

Record keeping

- 3.3.16 EU 7(2) Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise.
- Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[**Note:** article 7(2) of the *IDD Regulation*]

- 3.3.17 R A firm carrying on *insurance distribution activities* in relation to *insurance based investment products* must retain its records relating to:
- (1) suitability (*COBS 9A*); and
 - (2) appropriateness (*COBS 10A*),

for a period of at least five years.

- 3.3.18 G (1) *COBS 9A.4* and *COBS 10A.7* (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the *IDD Regulation* (and apply these requirements to *firms* not in scope of the *IDD Regulation*). They specify information which should be recorded by *firms* carrying on *insurance distribution* in relation to *insurance based investment products* and for how long the records must be retained.
- (2) For the purposes of *SYSC 3.3.17R*, a *firm* will need to consider whether the requirement in article 19 of the *IDD Regulation* (or in *COBS 9A.4.3EU* or *10A.7.2EU* for any *firm* to whom the *IDD Regulation* is not directly applicable) means that a record needs to be retained for longer than five years.
- 3.3.19 EU 19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority. The competent authority shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[**Note:** article 19(4) of the *IDD Regulation*]

Amend the following as shown.

4 General organisational requirements

...

4.4 Apportionment of responsibilities

Application

...

4.4.1A R This section applies to:

- (1) ...
- (2) activities carried on by a *firm* whose principal purpose is to carry on activities other than *regulated activities* and which is:
- (a) ...

- ...
- (e) a firm with permission to carry on ~~insurance mediation activity~~ insurance distribution activity in relation to non-investment insurance contracts but no other regulated activity (except advising on P2P agreements);
- ...

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

Competent employees rule

5.1.3 G ...

5.1.3A G SYSC 28 contains rules and guidance relating to the minimum knowledge and competence requirements in relation to insurance distribution activities undertaken by a firm.

5.1.5B R When complying with the competent employees rule, a firm must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

9 Record-keeping

9.1 General rules on record-keeping

Application to a common platform firm

9.1.-2 G For a common platform firm:

- (1) the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

Subject	Applicable rule or guidance
---------	-----------------------------

General requirements	SYSC 9.1.1AR
<u>Specific requirements for insurance distribution</u>	<u>SYSC 9.1.2AR, SYSC 9.1.2DR</u>
Guidance on record-keeping	<u>SYSC 9.1.2BG, SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6G, SYSC 9.1.6AG</u>

...

Specific requirements for the distribution of insurance based investment products

9.1.2A R A firm carrying on insurance distribution activities in relation to insurance based investment products must retain its records relating to:

- (1) suitability (COBS 9A); and
- (2) appropriateness (COBS 10A),

for a period of at least five years.

9.1.2B G (1) COBS 9A.4 and COBS 10A.7 (record keeping and retention periods for suitability and appropriateness records) reproduce certain record keeping requirements of the IDD Regulation (and apply these requirements to firms not in scope of the IDD Regulation). They specify information which should be recorded by firms carrying on insurance distribution in relation to insurance based investment products and for how long the records must be retained.

- (2) For the purposes of SYSC 9.1.2AR, a firm will need to consider whether the requirement in article 19 of the IDD Regulation (or in COBS 9A.4.3EU or COBS 10A.7.2EU for any firm to whom the IDD Regulation is not directly applicable) means that a record needs to be retained for longer than five years.

9.1.2C EU 19(4) The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority. The competent authority shall be able to access them readily, to reconstitute each element in a clear and accurate manner and to identify easily any changes, corrections or other amendments, and the contents of the records prior to such modifications.

[Note: article 19(4) of the IDD Regulation]

9.1.2D R (1) SYSC 9.1.2CEU applies as if it was a rule to firms doing insurance

distribution activities to which the *IDD Regulation* does not apply, in relation to the records for an *insurance based investment product* required in *COBS 9A.4* and *COBS 10A.7*.

- (2) Firms to whom (1) applies must read references in *SYSC 9.1.2CEU* to “the competent authority” as meaning “the *FCA*”.

...

Guidance on record-keeping

...

9.1.6 G ...

9.1.6A G SYSC 28 contains *rules and guidance* relating to knowledge and competence record keeping requirements in relation to *insurance distribution activities* undertaken by the *firm*.

...

10 Conflicts of interest

10.1 Application

Application to insurance intermediaries

10.1.-4 G (1) Subject to *SYSC 10.1.-3R*, this section applies to a *firm* carrying on *insurance distribution activities* in accordance with the tables in Part 3 of *SYSC 1 Annex 1*. Certain *rules* are disapplied where the *firm* is subject to directly applicable provisions in the *IDD Regulation* (see *SYSC 10.1.-3R*).

- (2) Where a provision in this section applies to an *insurance intermediary*, it applies in relation to the carrying on of *insurance distribution activities*.

10.1.-3 R The *rules and guidance* in the table below do not apply to a *firm* when carrying on *insurance distribution* in relation to *insurance based investment products* (see *SYSC 10.1A* for the provisions of the *IDD Regulation* on conflicts of interest).

<u>Subject</u>	<u>Rule or guidance</u>
<u>Types of conflict</u>	<u>SYSC 10.1.4R, SYSC 10.1.4AG, SYSC 10.1.4BR, SYSC 10.1.4CR(1), (2) and (5) and SYSC 10.1.5G.</u>
<u>Record of conflicts</u>	<u>SYSC 10.1.6R, SYSC 10.1.6AG, SYSC 10.1.6AAR and SYSC 10.1.6BG</u>
<u>Disclosure of conflicts</u>	<u>SYSC 10.1.8R(1)(b), (2)(b) to (2)(d) and SYSC 10.1.9AR</u>
<u>Conflicts policy</u>	<u>SYSC 10.1.10R</u>
<u>Contents of policy</u>	<u>SYSC 10.1.11R, SYSC 10.1.11AG, SYSC 10.1.11AAR and SYSC 10.1.11BG</u>

Application to a common platform firm

10.1.-2 G For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* in the table below apply:

Subject	Applicable rule or guidance
Provision of services	SYSC 10.1.2G
Identifying conflicts	SYSC 10.1.3R
Types of conflicts	SYSC 10.1.5G
Managing conflicts	SYSC 10.1.7R
Conflicts policy	SYSC 10.1.12G

- (3) SYSC 10.1.7AR (Proportionality – insurance distribution activities), SYSC 10.1.8R (Disclosure of conflicts) and SYSC 10.1.11ABR (Contents of policy) also apply in relation to the carrying on of insurance distribution activities.

...

General application

- 10.1.1 R (1) This section applies to a *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).

- (2) This section also applies to a *management company*.

[**Note:** The provisions in SYSC 10.1 also implement articles 27 and 28 of the IDD, articles 74(1) and 88 of *CRD* and as applied under the discretion in the third paragraph of article 95(2) of the *EU CRR*, *BCD* article 22 and *BCD* Annex V paragraph 1]

...

Requirements only apply if a service is provided

- 10.1.2 G (1) The requirements in this section only apply where a service is provided by a *firm*. The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

[**Note:** recital 46 to the *MiFID Org Regulation*]

- (2) For the avoidance of doubt, a reference to “service” in this section includes all insurance distribution activities.

Identifying conflicts

- 10.1.3 R A *firm* must take all appropriate steps to identify and to prevent or manage conflicts of interest between:

- (1) the *firm*, including its managers, employees and *appointed representatives* (or where applicable, *tied agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the *firm*; or

- (2) one *client* of the *firm* and another *client*,

that arise or may arise in the course of the *firm* providing any service referred to in SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the *firm*'s own remuneration and other incentive structures.

[**Note:** article 23(1) of *MiFID* and articles 27 and 28(1) of the IDD]

Types of conflicts

10.1.4

- 10.1.4A G Other *firms* (except *common platform firms*, ~~and~~ *UCITS management companies* and insurance intermediaries) should take account of the *rule* on the types of conflicts (see SYSC 10.1.4 R) in accordance with SYSC 1

Annex 1 3.3R.

10.1.4B R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of carrying on *insurance distribution activities* and whose existence may damage the interests of a *client* (“A”), a *firm* must assess whether:

- (1) the *firm* or a *relevant person*, or a *person* directly or indirectly linked by control to the *firm*; or
- (2) (in the case of conflicts between A and another *client*) the other *client*,

has an interest in the outcome of the *insurance distribution activities*, which meets the following criteria:

- (3) it is distinct from A’s interest in the outcome of the *insurance distribution activities*; and
- (4) it has the potential to influence the outcome of the activities to the detriment of A.

10.1.4C R For the purpose of carrying out the assessment in SYSC 10.1.4BR, a *firm* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by control to the *firm*:

- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
- (2) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interest of the *client*;
- (3) carries on the same business as the *client*;
- (4) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service; or
- (5) is substantially involved in the management or development of *policies*, in particular where such a *person* has an influence on the pricing of those *policies* or their distribution costs.

...

Record of conflicts

10.1.6 R A *management company* and an *insurance intermediary* must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that *firm* in which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or, in the case of an ongoing service or activity, may arise.

[**Note:** article 20(1) of the *UCITS implementing Directive*]

- 10.1.6A G Other *firms* (other than *common platform firms* and insurance intermediaries) should also take account of the *rule* on records of conflicts (see SYSC 10.1.6R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R).
- 10.1.6A R An insurance intermediary must ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in SYSC 10.1.6R.
- 10.1.6B G A *firm* (other than a *common platform firm* and an insurance intermediary) should ~~ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in SYSC 10.1.6R~~ read SYSC 10.1.6AAR as if “should” appeared in that rule instead of “must”.

Managing conflicts

- 10.1.7 R A *firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in SYSC 10.1.3R from adversely affecting the interests of its *clients*.

[**Note:** article 16(3) of *MiFID* and article 27 of the IDD]

Proportionality – insurance distribution activities

- 10.1.7A R Where a *firm* carries on insurance distribution activities, the arrangements in SYSC 10.1.7R must be proportionate to the activities performed, the policies sold and the type of insurance distributor the *firm* is or uses.

[**Note:** article 27 of the *IDD*]

Disclosure of conflicts

- 10.1.8 R (1) If arrangements made by a *firm* under SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the following to the *client* before undertaking business for the *client*:
- (a) the general nature or sources of conflicts of interest, or both; and
 - (b) the steps taken to mitigate those risks.
- (2) The disclosure must:
- (a) be made in a *durable medium*;

- (b) clearly state that the organisational and administrative arrangements established by the *firm* to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the *client* will be prevented;
- (c) include specific description of the conflicts of interest that arise in the provision of insurance distribution activities, investment services or ancillary services;
- (d) explain the risks to the *client* that arise as a result of the conflicts of interest; and
- (e) include sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the service in the context of which the conflict of interest arises.

(3) This *rule* does not apply to the extent that SYSC 10.1.21R applies.

[**Note:** article 23(2) and (3) of *MiFID* and article 28(2) and (3) of the *IDD*]

10.1.8A R ~~The obligation in SYSC 10.1.8R(2)(a) does not apply to a *firm* when carrying on insurance mediation activity. [deleted]~~

...

10.1.9A R A *firm* must treat disclosure of conflicts pursuant to SYSC 10.1.8R as a measure of last resort to be used only where the effective organisational and administrative arrangements established by the *firm* to prevent or manage its conflicts of interest in accordance with SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.

Conflicts policy

- 10.1.10 R
- (1) A *management company* and an insurance intermediary must establish, implement and maintain an effective *conflicts of interest policy* that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
 - (2) Where the *management company* or insurance intermediary is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

[**Note:** article 18(1) of the *UCITS implementing Directive*]

Contents of policy

- 10.1.11 R (1) The *conflicts of interest policy* must include the following content:
- (a) it must identify in accordance with SYSC 10.1.3R, ~~and SYSC 10.1.4R~~, SYSC 10.1.4BR and SYSC 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the *management company* or insurance intermediary, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and
 - (b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (2) The procedures and measures provided for in paragraph (1)(b) must:
- (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the *management company* and of the *group* to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients*; ~~and~~
 - (aa) (for an insurance intermediary) be designed to ensure that the insurance distribution activities are carried out in accordance with the best interests of the client and are not biased due to conflicting interests of the insurance intermediary or another client; and
 - (b) include, for an insurance intermediary, where appropriate, the following, and for a management company, such of the following as are necessary and appropriate for the management company to ensure the requisite degree of independence:
 - (i) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;
 - (ii) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
 - (iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged

in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

- (iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities; ~~and~~
 - (v) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate services or activities where such involvement may impair the proper management of conflicts of interest; and
 - (vi) (for insurance intermediaries) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.
- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a *management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).
- (4) If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (2)(aa), an insurance intermediary must adopt such alternative measures and procedures as are necessary and appropriate.
- (5) The procedures and measures provided for in paragraph (1)(b) must be appropriate to an insurance intermediary's size and activities, the group to which it may belong and to the risk of damage to the interests of the client.

[Note: articles 18(2), 19(1) and 19(2) of the *UCITS implementing Directive*]

- 10.1.11 A G Other firms (except common platform firms, ~~and~~ UCITS management companies and insurance intermediaries) should take account of the rules relating to *conflicts of interest policies* (see SYSC 10.1.10R and SYSC 10.1.11R) in accordance with SYSC 1 Annex 1.3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.
- 10.1.11 AA R An insurance intermediary must assess and periodically review, on at least an annual basis, the conflicts of interest policy established in accordance with SYSC 10.1.10R and SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).

- 10.1.11 AB R A common platform firm, in relation to its insurance distribution activities, must:
- (1) take into account the factors set out in SYSC 10.1.4BR(4) and SYSC 10.1.4CR(5) when complying with article 33 of the MiFID Org Regulation (as applied as a rule by SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)); and
 - (2) include the measure set out in SYSC 10.1.11R(2)(b)(vi) in the list of measures to be adopted, where necessary, when complying with article 34 (3) of the MiFID Org Regulation (as applied as a rule by SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)).
- 10.1.11 B G ~~A firm (other than a common platform firm and an insurance intermediary) should assess and periodically review, on an at least an annual basis, the conflicts of interest policy established in accordance with SYSC 10.1.10R and SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest) read SYSC 10.1.11AAR as if “should” appeared in that rule instead of “must”.~~

...

After SYSC 10.1 (Application) insert the following new section SYSC 10.1A. The text is not underlined.

10.1A IDD Regulation – Conflicts of interest

Application

- 10.1A.1 G The *IDD Regulation* is directly applicable to a *firm* when carrying on *insurance distribution* in relation to *insurance based investment products*. The relevant articles relating to conflicts of interest are set out in this section for information only.

Identifying conflicts

- 10.1A.2 EU 3(1) For the purposes of identifying, in accordance with Article 28 of Directive (EU) 2016/97, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

- (a) it is distinct from the customer's or potential customer's interest in the outcome of the insurance distribution activities;
- (b) it has the potential to influence the outcome of the distribution activities to the detriment of the customer.

Insurance intermediaries and insurance undertakings shall proceed in the same way for the purposes of identifying conflicts of interest between one customer and another.

3(2) For the purposes of the assessment pursuant to paragraph 1, insurance intermediaries and insurance undertakings shall take into account, by way of minimum criteria, the following situations:

- (a) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the customer;
- (b) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked to them by control has a financial or other incentive to favour the interest of another customer or group of customers over the interest of the customer;
- (c) the insurance intermediary or insurance undertaking, a relevant person or any person directly or indirectly linked by control to an insurance intermediary or an insurance undertaking is substantially involved in the management or development of insurance-based investment products, in particular where such a person has an influence on the pricing of those products or their distribution costs.

[**Note:** article 3 of the *IDD Regulation*]

Conflicts policy

- 10.1A.3 EU 4(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall be expected to establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to their size and organisation and the nature, scale and complexity of their business.

Where the insurance intermediary or insurance undertaking is a member of a group, the policy shall also take into account any circumstances, of which the insurance intermediary or insurance undertaking is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[**Note:** article 4(1) of the *IDD Regulation*]

Contents of policy

- | | | |
|---------|----|--|
| 10.1A.4 | EU | <p>4(2) The conflicts of interest policy established in accordance with paragraph 1 shall include the following content:</p> <ul style="list-style-type: none"> (a) with reference to the specific insurance distribution activities carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more customers; (b) procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the customer. |
|---------|----|--|

[**Note:** article 4(2) of the *IDD Regulation*]

- | | | |
|---------|----|--|
| 10.1A.5 | EU | <p>5(1) The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.</p> <p>The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include, where appropriate, the following:</p> <ul style="list-style-type: none"> (a) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more customers; (b) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services, to customers whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the insurance intermediary or insurance undertaking; (c) the removal of any direct link between payments, including remuneration, to relevant persons engaged in one activity and payments, including remuneration, to different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities; (d) measures to prevent or limit any person from exercising inappropriate influence over the way in which insurance distribution activities are carried out by the insurance intermediary or insurance undertaking or their managers or employees or any person directly or indirectly linked to |
|---------|----|--|

them by control;

- (e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate insurance distribution activities where such involvement may impair the proper management of conflicts of interest;
- (f) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

5(2) Where insurance intermediaries and insurance undertakings can demonstrate that the measures and procedures referred to in paragraph 1 are not appropriate to ensure that the insurance distribution activities are carried out in accordance with the best interest of the customer and are not biased due to conflicting interests of the insurance intermediary, the insurance undertaking or another customer, insurance intermediaries and insurance undertakings shall adopt adequate alternative measures and procedures for that purpose.

[**Note:** article 5 of the *IDD Regulation*]

Disclosure of conflicts

- | | | |
|---------|----|--|
| 10.1A.6 | EU | <p>6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to Article 28(2) of Directive (EU) 2016/97, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with Article 27 of Directive (EU) 2016/97 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.</p> <p>6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:</p> <ul style="list-style-type: none"> (a) provide a specific description of the conflict of interest in question; (b) explain the general nature and sources of the conflict of interest; (c) explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks; |
|---------|----|--|

- (d) clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

[**Note:** article 6 of the *IDD Regulation*]

Review of conflicts policy

- 10.1A.7 EU 7(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with Article 4 and take all appropriate measures to address any deficiencies.

[**Note:** article 7(1) of the *IDD Regulation*]

Record keeping

- 10.1A.8 EU 7(2) Insurance intermediaries and insurance undertakings shall keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a customer has arisen or, in the case of an ongoing service or activity may arise.
- Senior management of the insurance intermediary or insurance undertaking shall receive on a frequent basis, and at least annually, written reports on the situations referred to in the first subparagraph.

[**Note:** article 7(2) of the *IDD Regulation*]

Amend the following as shown.

13 Operational risk: systems and controls for insurers

...

13.3 Other related Handbook sections

...

- 13.3.1A G The following is a non-exhaustive list of *rules* and *guidance* in the *Handbook* that are relevant to a *firm*'s management of operational risk:

- (1) *COBS* contains *rules* and *guidance* that can relate to the management of operational risk; for example, *COBS* 2 (Conduct of business obligations), *COBS* 4 (Communicating with clients, including financial promotions), *COBS* 6 (Information about the

firm, its services and remuneration), *COBS 7* (Insurance ~~mediation~~ distribution), *COBS 9* (Suitability (including basic advice) (other than MiFID and insurance based investment products)), *COBS 9A* (Suitability (MiFID and insurance based investment products provisions)), *COBS 10A* (Appropriateness (for non-advised services) (MiFID and insurance based investment products provisions)), *COBS 11* (Dealing and managing), *COBS 12* (Investment research), *COBS 14* (Providing product information to clients) and *COBS 19* (Pensions: supplementary provisions).

After SYSC 19F.1 (MiFID remuneration incentives) insert the following new section SYSC 19F.2. The text is not underlined.

19F Remuneration and performance management of sales staff

...

19F.2 IDD remuneration incentives

Application

- 19F.2.1 R This section applies to *insurance distributors* carrying on *insurance distribution activities* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

[**Note:** article 7(2) of the *IDD*]

Remuneration and the customer's best interests

- 19F.2.2 R (1) *Insurance distributors* must not:
- (a) be *remunerated*; or
 - (b) *remunerate* or assess the performance of their *employees*,

in a way that conflicts with their duty to comply with the customer's best interests rules (*ICOBS 2.5.-1R*, in relation to a *non-investment insurance contract*, or *COBS 2.1.1R*, in relation to a *life policy*).
- (2) In particular, an *insurance distributor* must not make any arrangements by way of *remuneration*, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend a particular *contract of insurance* to a *customer* when the *insurance distributor* could offer a different *insurance contract* which would better meet the *customer's* needs.

[**Note:** article 17(3) of the *IDD*]

...

After SYSC 27 (Senior managers and certification regime: Certification regime) insert the following new chapter SYSC 28. The text is not underlined.

- 28 Insurance distribution: specific knowledge, ability and good repute requirements**
- 28.1 Minimum knowledge, ability and good repute requirements for carrying out insurance distribution activities**
- Application
- 28.1.1 R This chapter applies to a *firm* with *Part 4A permission* to carry on *insurance distribution activities*.
- 28.1.2 R In this chapter, relevant employees are employees or other *persons*:
- (1) directly involved in the carrying on of the *firm's insurance distribution activities*; or
 - (2) within the management structure responsible for the *firm's insurance distribution activities*; or
 - (3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).
- [**Note:** article 10(1) and the fifth paragraph of article 10(2) of the *IDD*]
- 28.1.3 R In this chapter 'employee':
- (1) is not restricted to an individual working under a contract of employment; and
 - (2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the *firm*, under an arrangement between the *firm* and a third party; and
 - (3) also includes *appointed representatives* and their employees.
- 28.1.4 G *Rules* specified in sections SYSC 28.2 (knowledge and ability), SYSC 28.4 (record-keeping) and SYSC 28.5 (other requirements to consider) relate to the requirements in:
- (1) SYSC 3.1.6R;
 - (2) SYSC 5.1.1R;
 - (3) SYSC 3.2.20R, SYSC 9.1.1R and SYSC 9.1.1AR;
 - (4) TC 4.2 (Specified requirements for firms carrying on insurance

- distribution activities); and
- (5) article 22 of the *AIFMD level 2 regulation*.

28.2 Knowledge and ability requirements

Knowledge and ability requirements

- 28.2.1 R (1) A *firm* must ensure that it and each relevant employee possesses appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.
- (2) A *firm* must ensure that it and each relevant employee complies with continued professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.
- (3) A *firm* must ensure that each relevant employee completes a minimum of 15 hours of professional training or development in each 12 *month* period.
- (4) For the purposes of (3), a *firm* must take into account the:
- (a) role and activity carried out by the relevant employee within the *firm*; and
- (b) type of distribution and the nature of the products sold.

[**Note:** article 10(1) and the first, second and fourth paragraphs of article 10(2) of the *IDD*]

- 28.2.2 G Training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.

[**Note:** recital 29 to the *IDD*]

- 28.2.3 R A *firm* must, including in relation to the relevant employee, demonstrate compliance with the following professional knowledge and competence requirements:

- (1) for *general insurance contracts*:
- (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies;
- (b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;

- (c) minimum necessary knowledge of claims handling;
 - (d) minimum necessary knowledge of complaints handling;
 - (e) minimum necessary knowledge of assessing customer needs;
 - (f) minimum necessary knowledge of the insurance market;
 - (g) minimum necessary knowledge of business ethics standards;
and
 - (h) minimum necessary financial competence;
- (2) for insurance-based investment products as defined at article 2(1)(17) of the *IDD* (which in summary says that it is an insurance product which offers a maturity or surrender value, and where the maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. This excludes products such as non-investment insurance and certain life insurance):
- (a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
 - (b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;
 - (c) minimum necessary knowledge of financial risks borne by policyholders;
 - (d) minimum necessary knowledge of policies covering life risks and other savings products;
 - (e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;
 - (f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
 - (g) minimum necessary knowledge of the insurance market and the saving products market;
 - (h) minimum necessary knowledge of complaints handling;
 - (i) minimum necessary knowledge of assessing customer needs;
 - (j) conflict of interest management;

- (k) minimum necessary knowledge of business ethics standards; and
- (l) minimum necessary financial competence; and
- (3) for *long-term insurance contracts*:
 - (a) minimum necessary knowledge of policies including the terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
 - (b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;
 - (c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;
 - (d) minimum necessary knowledge of insurance and other relevant financial services markets;
 - (e) minimum necessary knowledge of complaints handling;
 - (f) minimum necessary knowledge of assessing consumer needs;
 - (g) conflict of interest management;
 - (h) minimum necessary knowledge of business ethics standards; and
 - (i) minimum necessary financial competence.

[**Note:** article 10(2) last paragraph and annex I of the *IDD*]

28.3 Good reputation

Good reputation requirements

- 28.3.1 R A *firm* (other than a *connected travel insurance intermediary*) must ensure that all the *persons* in its management structure and any staff directly involved in *insurance distribution activities* are of good reputation.

[**Note:** article 10(3) paragraphs 1 to 3 of the *IDD*]

- 28.3.2 G This includes but is not limited to those natural persons:
- (1) that are directly involved in *insurance distribution activities*; or

- (2) within the management structure responsible for *insurance distribution activities*; or
- (3) within the management structure responsible for any staff directly involved in *insurance distribution activities*.

[**Note:** article 10(3) paragraphs 1 and 3 of the *IDD*]

28.3.3 R An *IDD ancillary insurance intermediary* must ensure that natural persons working in the *firm*, responsible for ancillary *insurance distribution activities*, are of good repute.

[**Note:** article 10(3) paragraph 4 of the *IDD*]

28.3.4 R In considering a *person's* repute the *firm* must at a minimum ensure that the *person*:

- (1) has a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities; and
- (2) has not previously been declared bankrupt,

unless they have been rehabilitated in accordance with national law.

[**Note:** article 10(3) paragraph 1 of the *IDD*]

28.3.5 G (1) In the *United Kingdom* the following *persons* will be considered to have been rehabilitated:

- (a) in relation to a serious criminal offence, where the conviction is considered 'spent' under the Rehabilitation of Offenders Act 1974;
- (b) in relation to bankruptcy, where the bankruptcy has been discharged.

(2) References to "serious criminal offences" are not restricted to offences considered to have been committed in or under the law of the *United Kingdom*.

(3) A *firm* should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.

28.3.6 G A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (see *SYSC 3.2.13G* and *SYSC 5.1.2G*). This includes, among other things, the assessment of an individual's honesty.

28.4 Record-keeping requirements

Record-keeping requirements

28.4.1 R A *firm* must:

- (1) establish, maintain and keep appropriate records to demonstrate compliance with this chapter; and
- (2) be in a position to provide to the *FCA*, on request, the name of the person responsible for the record-keeping requirement in (1).

[**Note:** article 10(8) last paragraph of the *IDD*]

28.4.2 R A *firm* must:

- (1) make an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 *month* period;
- (2) retain that record for not less than 3 years after the relevant employee stops carrying on the activity; and
- (3) be in a position to provide any version of the record to the *FCA* on request.

[**Note:** article 10(2) second paragraph of the *IDD*]

28.4.3 R A *firm* must not prevent a relevant employee from obtaining a copy of the records relating to that relevant employee which are maintained by the *firm* for the purposes of SYSC 28.4.1R and SYSC 28.4.2R.

28.5 Other requirements to consider

28.5.1 G In addition to the requirements in SYSC 28:

- (1) *firms* may have to take into account and comply with the requirements in the Training and Competence sourcebook (*TC*);
- (2) article 22 of the *AIFMD level 2 regulation* and the *competent employees rules* (SYSC 3.1.6R and SYSC 5.1.1R) set out a high-level competence requirement which every *firm* has to comply with; and
- (3) it may be that the effect of the *rules* referred to in (1) and (2) is that *firms* have to meet requirements additional to those in SYSC 28.

Amend the following as shown.

Sch 1 Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
SYSC 9.1.1AR	...	...	...	...
<u>SYSC 9.1.2AR</u> , <u>SYSC 3.3.6R</u>	<u>Suitability or appropriateness in relation to an insurance based investment product</u>	(1) <u>In relation to suitability:</u> (a) <u>why the recommendation is considered suitable; and</u>	(1) <u>From the date of:</u> (a) <u>recommendation; and</u>	<u>5 years</u>
		(b) <u>client information for suitability report and suitability report.</u>	(b) <u>the suitability report.</u>	
		(2) <u>In relation to appropriateness, client information obtained in making assessment of appropriateness and the appropriateness assessment.</u>	(2) <u>Date of assessment.</u>	

...				
<u>SYSC 28.4.1R</u>	<u>Arrangements made to demonstrate compliance with knowledge, ability and good reputation requirements in relation to the carrying out of insurance distribution activities.</u>	<u>As required to demonstrate compliance.</u>	<u>As required to demonstrate compliance.</u>	<u>As required to demonstrate compliance.</u>
<u>SYSC 28.4.2R</u>	<u>Matters dealing with knowledge and competence and completed continued professional training and development in relation to the carrying out of insurance distribution activities.</u>	<u>The firm must record the professional training or development completed by each relevant employee in each 12 month period.</u>	<u>As required to demonstrate compliance.</u>	<u>As required to demonstrate compliance but at least 3 years after the relevant employee stops carrying on the activity.</u>

[*Editor's note*: this Annex is dependent on legislative amendments to paragraph 2B of Schedule 6 (Threshold conditions) to the Financial Services and Markets Act 2000 which will substitute 'mediation' with 'distribution' in paragraphs (4) and (5).]

Annex D

Amendments to the Threshold Conditions (COND)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 The threshold conditions

...

2.2 Location of offices

Paragraph 2B of Schedule 6 to the Act

2.2.1A UK ...

- (4) If A is seeking to carry on, or is carrying on, an insurance ~~mediation~~ distribution activity -

...

- (5) "Insurance ~~mediation~~ distribution activity" means any of the following activities -

...

...

...

2.2.2 G Paragraph 2B(1) of Schedule 6 to the *Act* implements article 7(1)(d) of the *UCITS Directive*, paragraphs 2B(1) to 2B(23) of Schedule 6 to the *Act* implement article 5(4) of *MiFID*, paragraph 2B(4) of Schedule 6 to the *Act* implements article ~~2.9~~ 2(1)(10) of the ~~*Insurance Mediation Directive*~~ *IDD* and paragraph 2B(7) of Schedule 6 to the *Act* implements article 8(1)(e) of *AIFMD*, although the *Act* extends the *threshold condition* set out in paragraph 2B of Schedule 6 of the *Act* to *authorised persons* that are not *PRA-authorised persons* who are outside the scope of these *Single Market Directives*.

2.2.3 G Neither the *UCITS Directive*, *MiFID*, the ~~*Insurance Mediation Directive*~~ *IDD*, *AIFMD* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FCA* will judge each application on a case-by-case basis,

the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:

...

...

2.5 Suitability

...

Paragraph 3D to Schedule 6 of the Act

2.5.1C UK ...

...

2.5.6 G Examples of the kind of particular considerations to which the *FCA* may have regard when assessing whether a *firm* will satisfy, and continue to satisfy, this *threshold condition* include, but are not limited to, whether:

(1) ...

...

(18) in the case of a *firm* that carries on insurance ~~mediation~~ distribution activity:

(a) ~~a reasonable proportion of the persons~~ employees or other persons within its management structure who are responsible for the ~~insurance mediation activity~~ firm's insurance distribution activities; and

(b) ~~all employees or other persons~~ directly involved in its ~~insurance mediation activity~~ the carrying on of the firm's insurance distribution activities; and

(ba) employees or other persons responsible for the supervision of a relevant employee acting in the capacity as set out in (b),

demonstrate the appropriate knowledge and ability ~~necessary for the performance of~~ in order to complete their tasks and perform their duties adequately (see competent employee rule and SYSC 28 (Insurance distribution: specific knowledge; ability and good repute requirements)); and

(c) all the *persons* in the *firm's* management structure and any staff directly involved in insurance ~~mediation~~ distribution activity are of good repute (see ~~MPRU~~

~~2.3.1R (Knowledge and ability and good repute SYSC
28.3 (Good repute)); and~~

- (d) natural persons working in the *firm*, responsible for
ancillary *insurance distribution activities* are of good
repute (see SYSC 28.3.3R); and

...

...

Annex E

Amendments to The Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 General

...

1.2 Introduction

...

1.2.4A G (1) ...

(2) Where the function relates to:

(a) ...

(b) business outside the scope of the *MiFID* business of an *incoming EEA firm*, for example ~~*insurance mediation activities*~~ *insurance distribution activities* in relation to *life policies*; or

(c) ...

...

...

...

1.2.4C G Under article 10(1) and (2) of the *IDD* appropriate knowledge and ability is reserved to the *firm's Home State* (see *SUP* 13A Annex 2G).

Annex F

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and Purpose

1.1 Who, what and where?

Who and what?

1.1.1 R ...

1.1.1A R The application of this sourcebook is modified for a ~~MiFID investment firm and a third country investment firm~~ by the provisions in TC 4.1 where its ~~employee carries on an activity in TC App 1 which is also an activity in TC 4.1.2R~~;

(1) a MiFID investment firm and a third country investment firm by the provisions in TC 4.1 where its employee carries on an activity in TC App 1 which is also an activity in TC 4.1.2R; and

(2) a firm carrying on insurance distribution activities by the provisions in TC 4.2.

...

After TC 4.1 (Specified requirements for MiFID investment firms and for third country investment firms) insert the following new section TC 4.2. The text is not underlined.

4.2 Specified requirements for firms carrying on insurance distribution activities

4.2.1 R For a *firm* which carries on *insurance distribution activities* the *rules and guidance* set out in column 1 of the table in TC 4.2.5R below are amended as set out in column 2.

4.2.2 R TC 4.2.1R is limited as set out in TC App 2 and TC App 3.

4.2.3 R In this section, and the provisions in column 1 of TC 4.2.5R, relevant employees are employees and other *persons*:

(1) directly involved in the carrying on of the *firm's insurance distribution activities*; or

- (2) within the management structure responsible for the *firm's insurance distribution activities*; or
- (3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

4.2.4 R In TC 4.2 'employee':

- (1) is not restricted to an individual working under a contract of employment; and
- (2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the *firm*, under an arrangement between the *firm* and a third party; and
- (3) also includes *appointed representatives* and their employees.

4.2.5

R

Column 1	Column 2	
Relevant rules or guidance	Amendments either extending the scope, or adding and/or replacing rules and guidance in Column 1	
TC 2.1.1R(1)	<p>The provision is amended by adding after TC 2.1.1R(1):</p> <p>'A <i>firm</i> must ensure that a relevant employee's appropriate knowledge and ability includes the requirements set out in SYSC 28.2.3R and is appropriate to the:</p> <p>(a) role and activity carried out by the relevant employee within the <i>firm</i>; and</p> <p>(b) type of distribution and the nature of the products sold.'</p>	
TC 2.1.15R; TC 2.1.17R; TC 2.1.24R and TC 2.1.25R	<p>The <i>rules</i> apply as if references to <i>retail investment advisers</i> included 'relevant employees'.</p>	
TC 2.1.15R	(1)	For <i>firms</i> whose relevant employees are not also <i>retail investment advisers</i> , the <i>rule</i> applies as if '35 hours' was a reference to '15 hours'.
	(2)	<p>The <i>rule</i> is amended by adding at the end:</p> <p>'Where the relevant employee is also a <i>retail investment adviser</i>, the minimum 35 hours appropriate continued professional development requirement in TC 2.1.15R must include a minimum 15 hours covering the</p>

		requirements in SYSC 28.2.3R.’
TC 2.1.16G		For relevant employees acting in that capacity, the <i>guidance</i> is replaced by the following: ‘To meet the requirements in TC 2.1.15R (as modified by TC 4.2.5R) a relevant employee’s continued training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.’
TC 2.1.18G, TC 2.1.19G, and TC 2.1.23G		The <i>guidance</i> applies as if references to <i>retail investment advisers</i> included ‘relevant employees’.
TC 2.1.24R		The rule is amended by adding after TC 2.1.24R(2): ‘the <i>firm</i> must be in a position to make available to the <i>FCA</i> , on request, the name of the <i>person</i> responsible for this record keeping requirement.’
TC 3.1.1R		The provision is amended by adding after TC 3.1.1R(3): ‘a <i>firm</i> must keep an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 <i>month</i> period,
	(a)	for not less than 3 years after the relevant employee stops carrying out the activity; and
	(b)	the <i>firm</i> must be in a position to provide any version of the record to the <i>FCA</i> on request.’

4.2.6 R Where the relevant employee is also a *retail investment adviser* the *rules* and *guidance* in TC 4.2.5R apply as follows (unless otherwise stated in TC 4.2.5R):

- (1) the unamended *TC rules* and *guidance* in column 1 of TC 4.2.5R apply in relation to the *person* when acting in the capacity of a *retail investment adviser*; and
- (2) the amended *TC rules* and *guidance* in column 2 apply in relation to the *person* when acting in the capacity of a relevant employee.

4.2.7 G *Rules* and *guidance* in this section relate to the requirements in SYSC 28 (Minimum knowledge and competence requirements for carrying out

insurance distribution activities).

Amend the following as shown.

TP 1 Designated Investment Business: Assessments of competence before commencement

1.1	R	(1)	...
		...	
1.1A	G	Notwithstanding <i>TC</i> TP 1 1.1R ₂ :	
		(1)	a <i>firm</i> is subject to <i>SYSC</i> 5.1.5ABR in respect of such an <i>employee</i> and should have regard to the guidelines <i>ESMA</i> has issued specifying the criteria for the assessment of knowledge and competence. The <i>ESMA</i> guidelines can be found at: https://www.esma.europa.eu/document/guidelines-assessment-knowledge-and-competence ; and
		(2)	<u>a <i>firm</i>, in relation to its <i>insurance distribution activities</i>, is subject to <i>SYSC</i> 28 (<i>Insurance distribution: specific knowledge requirements</i>) in respect of such an <i>employee</i>.</u>

Annex G

Amendments to the General Provisions (GEN)

Part 1: Comes into force on [23 February 2018]

After GEN TP 3 (Transitional Provision in relation to the Alternative Investment Fund Managers Directive Instrument 2013) insert the following new Transitional Provision, TP 4. The text is not underlined.

TP 4 Transitional Provision on early compliance with the Insurance Distribution Directive applying across the Handbook

Transitional Provision on early compliance with the Insurance Distribution Directive applying across the Handbook.

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	Not applicable	G	The purpose of this transitional provision is to enable a <i>firm</i> to elect to comply early with one or more provisions implementing the Insurance Distribution Directive (<i>IDD</i>).	From [23 February 2018 up to and including 30 September 2018]	Not applicable
2	<i>Rules</i> that will be amended or deleted by the Insurance Distribution Directive Instrument 2018 (other than forms in Annex O (SUP) part 2)	R	<p>If a <i>firm</i> elects to comply with:</p> <p>(1) a <i>rule</i> made, or amended by, the Insurance Distribution Directive Instrument 2018 other than a form in Annex O (SUP) part 2; or</p> <p>(2) a provision of the <i>IDD</i> <i>IPID Regulation</i>, the <i>IDD POG Regulation</i> or the <i>IDD Regulation</i> ,</p>	From [23 February 2018 up to and including 30 September 2018]	Already in force

			<p>then the <i>firm</i>:</p> <p>(3) must comply with that made, amended or draft provision as if it was a <i>rule</i> currently in force; and</p> <p>(4) need not comply with the <i>rule</i> in column (2) that it will replace (if any).</p>		
3	Not applicable	G	<p>In considering which new provision (or set of provisions) is replacing a current <i>rule</i> (or set of current <i>rules</i>), a <i>firm</i> should have regard to whether the new provisions are similar in purpose and provide similar or greater <i>consumer</i> protection. If a <i>firm</i> elects to comply with some but not all new provisions that replace a current <i>rule</i>, that current <i>rule</i> will continue to apply to the <i>firm</i>.</p>	From [23 February 2018 up to and including 30 September 2018]	Not applicable
4	Not applicable	G	<p>A <i>firm</i> should make and retain a record of:</p> <p>(1) any election it makes for the purpose of this transitional provision; and</p> <p>(2) the new and replaced provisions to which that election relates,</p> <p>in accordance with the <i>firm</i>'s general record keeping obligations.</p>	From [23 February 2018 up to and including 30 September 2018]	Not applicable

...

Amend the following as shown.

Sch 1 Record keeping requirements

Record keeping requirements

- 1.1 G ~~There are no record keeping requirements in GEN. [deleted]~~
- 1.2 G The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record keeping requirements.
- 1.3 G It is not a complete statement of those requirements and should not be relied on as if it were.
- 1.4 G

<u>Handbook reference</u>	<u>Subject of record</u>	<u>Contents of record</u>	<u>When record must be made</u>	<u>Retention period</u>
<u>GEN TP 4, row 4G</u>	<u>An election to comply early with the Insurance Distribution Directive (IDD)</u>	<u>The election and the new and replaced provisions to which that election relates</u>	<u>In accordance with the <i>firm's</i> general record keeping obligations</u>	<u>In accordance with the <i>firm's</i> general record keeping obligations</u>

Part 2: Comes into force on [1 October 2018]

In this Annex striking through indicates deleted text and underlining indicates new text.

4 Statutory status disclosure

...

4.3 Letter disclosure

...

- 4.3.1B G An example for *GEN 4.3.1AG* would be where a letter covers business for which the *FCA* is the *competent authority* under the ~~*Insurance Mediation Directive*~~ *IDD* and under *MiFID*.

...

Exception: use of third party processors in home finance and insurance ~~mediation~~ distribution activities

4.3.6 R ...

- (2) Where an *appointed representative* has outsourced ~~*insurance mediation activities*~~ *insurance distribution activities* other than *advising on life policies* or *home finance mediation activities* to a *third party processor*, *GEN 4.3.1R* does not apply to that *third party processor* when acting as such, so long as the *appointed representative's principal* ensures that the *third party processor* and its *employees* comply with that *rule* as if it was the *appointed representative* and they were the *employees* of the *appointed representative*.
- (3) Where an *appointed representative* of a *firm* is carrying on:
- (a) ~~*insurance mediation activities*~~ *insurance distribution activities* other than *advising on life policies*; or
- (b) *home finance mediation activities*;

which have been outsourced to it by the *firm*, *GEN 4.3.1R* does not apply to the *firm* when the *appointed representative* is carrying on the outsourced activities, so long as the *firm* ensures that the *appointed representative* and its *employees* comply with that *rule* as if it was the *firm* and they were *employees* of the *firm*.

...

Annex H

Amendments to the Fees manual (FEES)

In this Annex striking through indicates deleted text and underlining indicates new text.

3 Application, Notification and Vetting Fees

...

3 Annex Authorisation fees payable 1R

...

Part 2 – Complexity groupings not relating to *credit-regulated activities*

Straightforward cases	
Activity grouping	Description
...	
A.19	General insurance mediation <u>distribution</u>
...	

...

Part 6 – Change of legal status

...	
(2) which is to:	
...	
(e)	have the individuals within the <i>firm</i> that are responsible for insurance mediation activity <u>insurance distribution activity</u> perform the same role for the applicant.

...

...

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

4.2.7K R ...

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

Fee-block	Tariff base	Calculation where trading data are not available
...		
A19. General insurance mediation <u>distribution</u>	...	
...		

...

4 Annex 5R Periodic fees for designated professional bodies payable in relation to the period 1 April 2017 to 31 March 2018

...

Notes Note

(4) The *Financial Services Register* includes details of *exempt professional firms* carrying out ~~insurance mediation activity~~ insurance distribution activity.

...

4 Annex 11AR Definition of annual income for the purposes of calculating fees in fee blocks A.13, A.14, A.18, A.19 and B. Service Companies, Recognised Investment Exchanges and Benchmark Administrators

Annual income definition
...
<p>Where the relevant fee-block is fee-block A.19</p> <p>For the purposes of calculating annual income for fee-block A.19, also include the following:</p> <p>(g) in relation to any activities in (a), for any insurance mediation activity <u>insurance distribution activity</u> carried out by the <i>firm</i> for which it receives payment from the <i>insurer</i> on a basis other than that in (a), the amount of <i>premiums</i> receivable on its <i>contracts of insurance</i> multiplied by 0.07;</p> <p>PLUS:</p> <p>(h) if the <i>firm</i> is an <i>insurer</i> in relation to the activities in (a), the amount of</p>

premiums receivable on its *contracts of insurance* multiplied by 0.07, excluding those *contracts of insurance* which:

- result from ~~*insurance mediation activity*~~ *insurance distribution activity* by another *firm*, where payment has been made by the *insurer* to the *firm* under (a); or
- are not *general insurance contracts* or *pure protection contracts*.

AND

(i) for the purposes of calculating annual income for fee-block A.19:- the provision in the *UK* of the *regulated activities* specified in *FEES 4 Annex 1A Part 1* as belonging to the relevant fee block includes the provision of activities that would have been ~~*insurance mediation activity*~~ *insurance distribution activity* in relation to *general insurance contracts* or *pure protection contracts* if they had been carried on after 13 January 2005 or, in relation to *connected travel insurance contracts*, from 1 January 2009; - a reference to a “*firm*” includes a reference to any *person*, including a *connected travel insurance intermediary*, who carried on activities which would be ~~*insurance mediation activity*~~ *insurance distribution activity* (in respect of *general insurance contracts* or *pure protection contracts*) if they had been carried on after 13 January 2005 or, in relation to *connected travel insurance contracts*, from 1 January 2009. Guidance on the interpretation of this definition is presented in *FEES 4 Annex 13G*.

...

4 Annex 13G Guidance on the calculation of tariffs set out in FEES 4 Annex 1AR Part 3

Table 1	
...	
(3)	<i>Firms</i> should only include revenue streams that relate to <i>regulated activities</i> which are carried on ‘in the <i>United Kingdom</i> ’. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example because a client is outside the <i>United Kingdom</i> or because some other element of the activity happens outside the <i>United Kingdom</i> , the question may arise as to where the activity is carried on. <i>PERG 2.4</i> generally and <i>PERG 4.11</i> regarding activities relating to <i>regulated mortgage contracts</i> , <i>PERG 5.12</i> regarding activities relating to <i>insurance mediation activities</i> <u><i>insurance distribution activities</i></u> and <i>PERG 14.6</i> regarding <i>home reversion plans</i> and <i>home purchase plans</i> describe the legislation that is relevant to this question and gives the <i>FCA</i> ’s views on various scenarios.
...	

...

5 Financial Ombudsman Service Funding

...

5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for 2017/18

...

Compulsory jurisdiction - general levy

Industry block	Tariff base	General levy payable by firm
...		
17 - General insurance mediation <u>distribution</u> (excluding <i>firms</i> in blocks 13, 14 & 15)
...		

...

6 Financial Services Compensation Scheme Funding

6.1 Application

...

- 6.1.7A G In order to allocate a share of the amount of *specific costs* and *compensation costs* to be funded by an individual *participant firm*, the funding arrangements are split into ten *classes*: the investment provision *class*; the life distribution and pensions intermediation *class*; the home finance intermediation *class*, the investment intermediation *class*; the general insurance ~~intermediation~~ distribution *class*; the deposit acceptor's contribution *class*; the insurers - life contribution *class*; the insurers - general contribution *class*; the home finance providers and administrators' contribution *class* and the debt management claims *class*. The *permissions* held by a *participant firm* determine into which *class*, or *classes*, it falls.

...

6.6 Incoming EEA firms

- 6.6.1 R If an *incoming EEA firm*, which is an ~~IMD insurance intermediary~~ IDD insurance intermediary, an *MCD mortgage credit intermediary* or *MiFID investment firm*, is a *participant firm*, the *FSCS* must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and

the extent of the compensation coverage provided by the firm's *Home State* scheme.

...

6 Annex Financial Services Compensation Scheme - annual levy limits 2R

This table belongs to *FEES* 6.3.5R and *FEES* TP 2.5.2R

Class	Levy Limit (£ million)
...	
B2: General insurance intermediation <u>distribution</u>	...
...	
C2: Life <u>distribution</u> and pensions intermediation	...
...	

6 Annex Financial Services Compensation Scheme - classes 3AR

This table belongs to *FEES* 6.4.7AR and *FEES* 6.5.6AR

...

	General Insurance
...	
Class B2	General Insurance Intermediation <u>Distribution</u>
...	

	Life and Pensions
...	
Class C2	Life <u>Distribution</u> and Pensions Intermediation
...	

...

...

6 Annex **Classes participating in the retail pool and applicable limits**
5R

This table belongs to *FEES* 6.5A.1R.

Class	Attributable costs for this class in excess of levy limit allocated to the retail pool?	Retail pool levy limit (£ million)	Retail pool compensation costs levy or specific costs levy allocated to this class?
...			
...
Life <u>distribution</u> and pensions intermediation			
...			
...			
General insurance intermediation <u>distribution</u>			

...

Annex I

**Amendments to the Prudential sourcebook for Mortgage and Home Finance Firms,
and Insurance Intermediaries (MIPRU)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

For “*Insurance Mediation Directive*”, substitute “*IDD*” in the following provision. The new text is not shown as underlined and the deleted is not shown as struck through.

4.1.2G	one instance
--------	--------------

For “*mediation*”, substitute “*distribution*” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

1.1.1R(1)	one instance
2.1.1R	one instance
2.2.2R	one instance
2.2.3G(1)	one instance
2.2.3G(1B)	two instances
2.2.3G(2)	two instances
2.2.3G(3)	one instance
2.2.4G	three instances
3.1.1R(1A)(a)	one instance
3.1.1R(3)	one instance
3.1.2G	one instance
3.2.2G	two instances
3.2.4R(5), second line	one instance
4.1.1R(1)	one instance
4.1.3G	one instance
4.2.10R(1)(a)	one instance
4.2.10R(4)	one instance
4.2.20R, heading	one instance
4.2.20R	two instances
4.4.8R(1)(a)(i)	one instance

**2 Insurance Responsibility for insurance distribution and MCD ~~mediation~~
~~credit intermediation activity: responsibility, knowledge, ability and good~~
~~repute~~**

2.1 Application and purpose

...

Purpose

2.1.2 G The main purpose of this chapter is to implement in part the provisions of

the *Insurance Mediation Directive* IDD and the *MCD* as these apply to ~~firms regulated by the appropriate regulator.~~

2.2 Allocation of the responsibility for insurance ~~mediation~~ distribution activity or MCD credit intermediation activity

Responsibility for insurance ~~mediation~~ distribution activity or MCD credit intermediation activity

- 2.2.1 R A *firm*, other than a sole trader, must allocate the responsibility for the *firm's* ~~insurance mediation activity~~ insurance distribution activity or *MCD credit intermediation activity* to a director or senior manager.

[**Note:** Article 3(1), fourth paragraph, of the *Insurance Mediation Directive* article 3(1), eighth paragraph of the IDD and article 29(4)(a), first sentence, of the *MCD*.]

...

- 2.2.5 G The *FCA* will specify in the *Financial Services Register* the name of the *persons* to whom the responsibility for the *firm's* ~~insurance mediation activity~~ insurance distribution activity or *MCD credit intermediation activity* has been allocated by inserting after the relevant controlled function the words “(insurance ~~mediation~~ distribution)” or “(MCD intermediation)”. In the case of a *sole trader*, the *FCA* will specify in the *Financial Services Register* the name of the sole trader as the ‘contact person’ in the *firm*.

[*Editor's note:* The provisions in MIPRU 2.3 are moved to SYSC in a new section SYSC 28 (Insurance distribution: specific knowledge, ability and good reputation requirements.)]

2.3 Knowledge, ability and good reputation [deleted]

- 2.3.1 R A *firm* (other than a ~~connected travel insurance intermediary~~) must ~~establish on reasonable grounds that:~~
- (1) ~~a reasonable proportion of the persons within its management structure who are responsible for insurance mediation activity; and~~
 - (2) ~~all other persons directly involved in its insurance mediation activity;~~
- ~~demonstrate the knowledge and ability necessary for the performance of their duties; and~~
- (3) ~~all the persons in its management structure and any staff directly involved in insurance mediation activity are of good reputation.~~

~~[Note: Article 4(1) and (2) of the *Insurance Mediation Directive*]~~

- 2.3.2 G ~~In determining a *person's* knowledge and ability, the *firm* should have regard to matters including, but not limited to, whether the:~~
- ~~(1) has demonstrated by experience and training that he is able or will be able to perform his duties related to the *firm's insurance mediation activity*; and~~
 - ~~(2) satisfies the relevant requirements in the *FCA's Training and Competence sourcebook* and the *Senior Management Arrangements, Systems and Controls sourcebook*.~~
- 2.3.4 G ~~The *firm* should give particular consideration to offences of dishonesty, fraud, financial crime or other offences under legislation relating to banking and financial services, companies, insurance and consumer protection.~~
- 2.3.5 G ~~*Firms* are reminded that *Principle 3* requires *firms* to take reasonable care to organise and control their affairs responsibly and effectively. *Principle 3* is amplified by the *rule* which requires *firms* to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1R and SYSC 4.1.1R). A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (SYSC 3.2.13G and SYSC 5.1.2G). This includes the assessment of an individual's honesty and competence. In addition, the *competent employees rule* (SYSC 3.1.6R and SYSC 5.1.1R) sets out a high level competence requirement which every *firm* should follow.~~

3 Professional indemnity insurance

3.1 Application and purpose

Application

- 3.1.1 R ...
- (5) This chapter does not apply to:
- ...
- (d) an *exempt CAD firm* to which IPRU(INV) 9.2.5R (Initial capital and professional indemnity insurance requirements - exempt CAD firms that are also ~~IMD~~ IDD insurance intermediaries) applies.
- ...

...

Purpose

- 3.1.3 G The purposes of this chapter are to:
- (1) implement ~~article 4.3~~ articles 10(4) and 10(5) of the *Insurance Mediation Directive* IDD in so far as it requires *insurance intermediaries* to hold professional indemnity insurance, or some other comparable guarantee, against any liability that might arise from professional negligence; and

...

...

3.2 Professional indemnity insurance requirements

- 3.2.1 R ...

[~~Note: Article 4(3)~~ articles 10(4) and 10(5) of the *Insurance Mediation Directive* IDD]

...

Minimum limits of indemnity: insurance intermediary

- 3.2.7 R If the *firm* is an *insurance intermediary*, then the minimum *limits of indemnity per year* are:

- (1) for a single claim, ~~€1,120,200~~ €1,250,000; and
- (2) in aggregate, the higher of:
 - (a) ~~€1,680,300~~ €1,850,000; and
 - (b) ~~or, if higher, an amount equivalent to 10% of annual income up to~~ (this amount being subject to a maximum of £30 million).

[~~Note: Article 4(3)~~ articles 10(4) and 10(5) of the *Insurance Mediation Directive* IDD]

- 3.2.7A G ~~Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.~~
- Article 10(7) of the *IDD* requires *EIOPA* to review the *limits of indemnity* every five years to take into account changes in the European index of consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the *limits of indemnity* will be subject to further adjustments that

will apply to *firms* in accordance with the regulatory technical standards adopted under article 10(7) of the *IDD*.

[Note: The regulatory technical standards adopted under article 10(7) of the *IDD* will be available on *EIOPA*'s website at: <https://eiopa.europa.eu/>]

...

4 Capital resources

...

4.2 Capital resources requirements

...

- 4.2.8 G If a *social housing firm* is carrying on *home financing* or *home finance administration* (and no other *regulated activity*), its net tangible assets must be greater than zero. However, if it carries on ~~*insurance mediation activity*~~ *insurance distribution activity* or *home finance mediation activity*, there is no special provision and the capital resources requirement for *firms* carrying on *designated investment business*, ~~or *mediation activities*~~ *insurance distribution activity* or *home finance mediation activity* only applies to it as appropriate.

...

Capital resources requirement: *insurance distribution activity* or *home finance mediation activity* only

- 4.2.11 (1) If a *firm* carrying on ~~*insurance mediation activity*~~ *insurance distribution activity* or *home finance mediation activity* (and no other *regulated activity*) does not hold *client money* or other *client* assets in relation to these activities, its capital resources requirement is the higher of:
- (a) ...
 - (b) 2.5% of the *annual income* from its ~~*insurance mediation activity*~~ *insurance distribution activity* or *home finance mediation activity* (or both).
- (2) If a *firm* carrying on ~~*insurance mediation activity*~~ *insurance distribution activity* or *home finance mediation activity* (and no other *regulated activity*) holds *client money* or other *client* assets in relation to these activities, its capital resources requirement is the higher of:
- (a) ...
 - (b) 5% of the *annual income* from its ~~*insurance mediation activity*~~ *insurance distribution activity* or *home finance mediation activity* (or both).

...

Capital resources requirement: home finance mediation activity and home financing or home finance administration

- 4.2.21 R (1) ...
- (2) If the *firm* holds *client money* or other *client* assets in relation to its *home finance mediation activity*, the capital resources requirement is:
- (a) ...
- (b) the amount which is applied to a *firm* carrying on ~~*insurance mediation activity*~~ *insurance distribution activity* or *home finance mediation activity* (and no other *regulated activity*) that holds *client money* or other *client* assets in relation to these activities (see *MIPRU* 4.2.11R(2)).

...

4.3 Calculation of annual income

...

- 4.3.3 R For a *firm* which carries on ~~*insurance mediation activity*~~ *insurance distribution activity* or *home finance mediation activity*, *annual income* is the amount of all brokerage, fees, *commissions* and other related income (for example, administration charges, overrides, profit shares) due to the *firm* in respect of or in relation to those activities. But it does not include income generated from carrying on any *home finance mediation activity* for:

...

...

4.4 Calculation of capital resources

...

Subordinated loans

- 4.4.7 R A subordinated debt must not form part of the capital resources of the *firm* unless it meets the following conditions:
- (1) (for a *firm* which carries on ~~*insurance mediation activity*~~ *insurance distribution activity*, *home finance mediation activity* (or both) but not *home financing* or *home finance administration*) it has an original maturity of:

(a) ...

...

...

...

5 Insurance ~~undertakings~~ distributors and home finance providers using insurance distribution or home finance mediation services

5.1 Application and purpose

Application

5.1.1 R This chapter applies to a *firm* with a *Part 4A permission* to carry on:

(1) *insurance business*; or

(1A) *insurance distribution activity*; or

(2) *home financing*;

(3) ~~and which uses, or proposes to use, the services of another person consisting of:~~ [deleted]

(a) ~~*insurance mediation*~~; or

(b) ~~*insurance mediation activity*~~; or

(c) ~~*home finance mediation activity*~~.

Purpose

5.1.2 G The purpose of this chapter is to implement article ~~3.6~~ 16 of the ~~*Insurance Mediation Directive*~~ IDD in relation to *insurance undertakings* and insurance intermediaries. The provisions of this chapter have been extended to *home finance providers* in relation to ~~*insurance mediation distribution activity*~~, and to *insurance undertakings* and *home finance providers* in relation to *home finance mediation activity*, to ensure that *firms* using these services are treated in the same way and to ensure that *clients* have the same protection. To avoid the loss of protection where an intermediary itself uses the services of an *unauthorised person*, this chapter also ensures that each ~~person~~ person in the chain of those providing services is authorised.

...

5.2 Use of intermediaries

5.2.1 R A *firm* must not use, or propose to use, the services of another ~~person~~ person consisting of:

- (1) *insurance ~~mediation~~ distribution*; or
- (1A) *reinsurance distribution*; or
- (2) *insurance ~~mediation~~ distribution activity*; or
- (3) *home finance mediation activity*;

unless MIPRU 5.2.2R is satisfied.

[**Note:** ~~Article 3(6)~~ article 16 of the *Insurance Mediation Directive* IDD]

5.2.1-A **R** MIPRU 5.2.1R does not apply to a firm carrying on an insurance distribution activity if it uses or proposes to use the services of a person consisting of home finance mediation activity. In that case, MIPRU 5.2.2R does not need to be satisfied.

...

5.2.2 **R** For the purposes of MIPRU 5.2.1R, the ~~person~~ person, in relation to the activity must:

...

- (4) be registered in another *EEA State* for the purposes of the *Insurance Mediation Directive* IDD; or
- (5) in relation to ~~insurance mediation activity~~ *insurance distribution activity*, not be carrying this activity on in the *EEA*; or

...

[**Note:** ~~Article 3(6)~~ article 16 of the *Insurance Mediation Directive* IDD]

- 5.2.3 **E** (1) A firm should:
- (a) before using the services of the intermediary, check:
 - (i) the *Financial Services Register*; or
 - (ii) in relation to ~~insurance mediation~~ *insurance distribution or reinsurance distribution* carried on by an *EEA firm*, the register of its *Home State regulator*;

for the status of the ~~person~~ person; and
 - (b) use the services of that ~~person~~ person only if the relevant register indicates that the ~~person~~ person is registered for that purpose.
- (2) (a) Checking the *Financial Services Register* before using the services of the intermediary and using the services of that

~~person~~ person only if the *Financial Services Register* indicates that the ~~person~~ person is registered for that purpose may be relied on as tending to establish that:

- (i) the ~~person~~ person, in relation to the activity, has *permission*; or
 - (ii) the ~~person~~ person, in relation to ~~*insurance mediation*~~ *insurance distribution* activity, ~~also~~ is an *exempt person* or an *authorised professional firm*.
- (b) In relation to ~~*insurance mediation*~~ *insurance distribution or reinsurance distribution* carried on by an *EEA firm*, checking the register of the *firm's Home State regulator* and using the services of the *EEA firm* only if the register indicates that the *firm* is registered for that purpose may be relied on as tending to establish that the *firm* is registered for the purposes of the *Insurance Mediation Directive* IDD.

...

Annex J

**Amendments to the Interim Prudential sourcebook for Investment Businesses
(IPRU(INV))**

In this Annex, underlining indicates new text and striking through indicates deleted text.

9 Financial resources requirements for an exempt CAD firm

...

9.2 GENERAL REQUIREMENTS

...

Initial capital and professional indemnity insurance requirements - exempt CAD firms that are not ~~IMD~~ IDD insurance intermediaries

- 9.2.4 R (1) An exempt CAD firm which is not an ~~IMD insurance intermediary~~ IDD insurance intermediary must have:

...

...

Initial capital and professional indemnity insurance requirements - exempt CAD firms that are also ~~IMD~~ IDD insurance intermediaries

- 9.2.5 R (1) An exempt CAD firm that is also an ~~IMD insurance intermediary~~ IDD insurance intermediary must comply with the professional indemnity insurance requirements at least equal to those set out in IPRU(INV) 9.2.4R(1)(b) (except that the minimum *limits of indemnity* are at least EUR ~~1,120,200~~ 1,250,000 for a single claim and EUR ~~1,680,300~~ 1,850,000 in aggregate) and in addition has to have:

...

[**Note:** article 31(2) of the *CRD* and articles 10(4) and 10(5) of the *IDD*]

...

- 9.2.5A G ~~Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* every five years to take into account movements in European consumer prices. These *limits* will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.~~
Article 10(7) of the *IDD* requires *EIOPA* to review the *limits of indemnity* every five years to take into account changes in the European index of consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the

limits of indemnity will be subject to further adjustments that will apply to firms in accordance with the regulatory technical standards adopted under article 10(7) of the *IDD*.

[**Note:** The regulatory technical standards adopted under article 10(7) of the *IDD* will be available on *EIOPA*'s website at: <https://eiopa.europa.eu/>]

...

13 Financial Resource Requirements for Personal Investment Firms

13.1 APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

...

Requirement to hold professional indemnity insurance

13.1.5 R ...

[**Note:** ~~Article 4(3)~~ articles 10(4) and 10(5) of the *Insurance Mediation Directive IDD*]

...

Limits of indemnity

13.1.10 R If the *firm* is an ~~*IMD insurance intermediary*~~ *IDD insurance intermediary*, whether or not it is also an *exempt CAD firm*, the appropriate minimum *limits of indemnity* per year are no lower than:

(1) EUR ~~1,120,200~~ 1,250,000 for a single claim against the *firm*; and

(2) EUR ~~1,680,300~~ 1,850,000 in the aggregate.

[**Note:** ~~Article 4(3)~~ articles 10(4) and 10(5) of the *Insurance Mediation Directive IDD*]

...

13.1.12 R If the *firm* is both an ~~*IMD*~~ *IDD insurance intermediary* and an *exempt CAD firm* that maintains professional indemnity insurance under *IPRU(INV)* 13.1A.4(1)(b), the appropriate additional *limits of indemnity* to *IPRU(INV)* 13.1.10R per year are no lower than:

...

13.1.13 R If the *firm* is not an ~~*IMD*~~ *IDD insurance intermediary* or an *exempt CAD firm*, then the following *limits of indemnity* apply:

...

- 13.1.14 G ~~Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* to be reviewed every five years to take into account movements in European consumer prices. These *limits* will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.~~

Article 10(7) of the *IDD* requires *EIOPA* to review the *limits of indemnity* every five years to take into account changes in the European index of consumer prices and to develop draft regulatory technical standards to adapt the base amount in euro by the percentage change in that index. Therefore, the *limits of indemnity* will be subject to further adjustments that will apply to *firms* in accordance with the regulatory technical standards adopted under article 10(7) of the *IDD*.

[Note: The regulatory technical standards adopted under article 10(7) of the *IDD* will be available on *EIOPA*'s website at: <https://eiopa.europa.eu/>]

...

Limits of indemnity - additional requirements

- 13.1.19 R In addition to the specific requirements in *IPRU(INV)* 13.1.9R to 13.1.13R, the policy must make provision for the following:

- (1) for a *firm* with relevant income of more than ~~£6,000,000~~ £10,000,000, the aggregate limit identified in the table below:

Relevant income is (£)		Minimum aggregate <i>limit of indemnity</i>
more than	up to	(£)
6,000,000	7,000,000	1,150,000
7,000,000	8,000,000	1,300,000
8,000,000	9,000,000	1,450,000
9,000,000	10,000,000	1,600,000
...

...

...

13.1A Capital resources and professional indemnity insurance requirements for an exempt CAD firm

...

- 13.1A.3 R (1) A *firm* which is not an ~~*IMD insurance intermediary*~~ *IDD insurance*

intermediary must have:

...

...

- 13.1A.4 R (1) A *firm* that is also an ~~IMD insurance intermediary~~ IDD insurance intermediary must have professional indemnity insurance at least equal to the limits set out in *IPRU(INV)* 13.1.10R and in addition must have:

...

...

...

13.13 CAPITAL RESOURCES REQUIREMENT FOR AN EXEMPT CAD FIRM AND A CATEGORY B FIRM

...

- 13.13.3 R ...

...

Table 13.13.3(2)(b)(ii)

This table forms part of *IPRU-INV* 13.13.3R.

Activity	Provision	Fixed amount
Insurance mediation activity <u>Insurance distribution activity</u> or home finance mediation activity	<i>MIPRU</i> 4.2.11R(1)(a) (<i>firm</i> not holding <i>client money</i> or <i>assets</i>)	£5,000
	<i>MIPRU</i> 4.2.11R(2)(a) (<i>firm</i> holding <i>client money</i> or <i>assets</i>)	£10,000
...		

...

13.14 CALCULATION OF ANNUAL INCOME FOR AN EXEMPT CAD FIRM AND A CATEGORY B FIRM

...

- 13.14.6 G A *firm* should not include in its *annual income* those amounts due to it that are used in the calculation of its capital resources requirement under *MIPRU* 4.2.11R (Capital resources requirement: insurance

distribution activity or home finance mediation activity only) or *MIPRU*
~~4.2.19R~~ 4.2.20R (Capital resources requirement: insurance ~~mediation~~
distribution activity and home financing, or home finance administration).

...

Annex K

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise indicated.

After COBS 1.2 (Markets in Financial Instruments Directive) insert the following new section COBS 1.3. The text is not underlined.

1.3 Insurance distribution

References in COBS to the IDD Regulation

- 1.3.1 G (1) This sourcebook contains a number of provisions which transpose the *IDD*.
- (2) In order to help *firms* which are subject to the requirements of the *IDD* to understand the full extent of those requirements, this sourcebook also reproduces a number of provisions of the directly applicable *IDD Regulation*, marked with the status letters “EU”. The authentic provisions of the *IDD Regulation* are directly applicable to *firms* carrying on *insurance distribution* in relation to *insurance based investment products*.
- (3) This sourcebook does not reproduce the *IDD Regulation* in its entirety. A *firm* to which provisions of the *IDD Regulation* applies should refer to the electronic version of the Official Journal of the European Union for:
- (a) the authentic version of the applicable articles of the *IDD Regulation*; and
- (b) a comprehensive statement of its obligations under the *IDD Regulation*.
- 1.3.2 G In some cases, this sourcebook applies provisions of the *IDD Regulation* to *firms* as if those provisions were *rules*.
- 1.3.3 R (1) Where this sourcebook applies provisions of the *IDD Regulation* as if they were *rules*, (2) applies to enable *firms* to correctly interpret and understand the application of those provisions.
- (2) In this sourcebook, a word or phrase found in a provision marked “EU” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
-----	-----

“advice”	<i>personal recommendation</i>
“article 20(1) of Directive (EU) 2016/97”	<i>COBS 9A.2.3AR or COBS 7.3.4R</i>
“article 30(1) of Directive (EU) 2016/97”	<i>COBS 9A.2.1R and COBS 9A.2.16R</i>
“article 30(2) of Directive (EU) 2016/97”	<i>COBS 10A.2.1R and COBS 10A.2.2R</i>
“article 30(3)(a) (ii) of Directive (EU) 2016/97	<i>COBS 10A.4.1R(2A)</i>
“article 14(1) of this Regulation”	<i>COBS 9A.3.3AEU</i>
“article 185 of Directive 2009/138/EC”	relevant <i>rules</i> in <i>COBS 13</i> , <i>COBS 14</i> and <i>COBS 16.6</i> which are followed by a “ Note: ” referring to article 185 of Solvency II
“competent authority”	<i>FCA</i>
“customer” and “potential customer”	<i>client</i>
“Directive (EU) 2016/97”	<i>IDD</i>
“durable medium”	<i>durable medium</i>
“financial instrument”	<i>financial instrument</i> and (if the context requires) <i>designated investment</i> and <i>structured deposit</i>
“insurance based investment product”	<i>insurance based investment product</i>
“insurance distribution”	<i>insurance distribution activities</i>
“insurance intermediary” and “intermediary”	<i>insurance intermediary</i>
“insurance product”	<i>life policy</i>
“insurance undertaking” and “undertaking”	<i>insurer</i>
“shall”	<i>must</i>

- (3) In this sourcebook, where a reproduced provision of an article of the *IDD Regulation* refers to another part of the *IDD Regulation*, that

other provision must also be read with reference to the table in (2).

- 1.3.4 G *Firms* to which provisions of the *IDD Regulation* are applied as if they were *rules* should use the text of any preamble to the relevant provision marked “EU” to assist in interpreting any such references or cross-references.

Interpretation – “in good time”

- 1.3.5 G (1) Certain provisions in this sourcebook which implement *IDD* require *firms* to provide *clients* with information “in good time”. There are also other provisions in this sourcebook which require information to be provided “in good time”, for example, *COBS* 6.1ZA.19AR.
- (2) In determining what constitutes the provision of information “in good time”, a *firm* should take into account, having regard to the urgency of the situation, the *client’s* need for sufficient time to read and understand the information before taking an investment decision.
- (3) A *client* is likely to require more time to review information given on a complex or unfamiliar product or service, or a product or service a *client* has no experience with, than a *client* considering a simpler or more familiar product or service, or where the *client* has relevant prior experience.

Amend the following as shown.

1 Annex 1 Application (see COBS 1.1.2R)

Part 1: What?

Modifications to the general application of COBS according to activities

1.	Eligible counterparty business	
1.1	R	The <i>COBS</i> provisions shown below do not apply to <i>eligible counterparty business</i> <u>except, where the <i>eligible counterparty business</i> is in scope of the <i>IDD</i>, those provisions which implement the <i>IDD</i> continue to apply.</u>
</		

		COBS 10		Appropriateness (for non-MiFID <u>and non-insurance based investment products</u> non-advised services) (<u>non-MiFID and non-insurance based investment products provisions</u>)
		COBS 10A		Appropriateness (for non-advised services) (MiFID <u>and insurance based investment products</u> provisions)
		...		
...				
6.	Use of third party processors in life insurance mediation <u>distribution</u> activities			
6.1	R	If a <i>firm</i> (or its <i>appointed representative</i> or, where applicable, its <i>tied agent</i>) outsources <i>insurance mediation activities</i> <u><i>insurance distribution activities</i></u> to a <i>third party processor</i> :		
		...		
...				
Part 2: Where?				
Modifications to the general application according to location				
...				
Part 3: Guidance				
1.	The main extensions, modifications and restrictions to the general application			
...				
1.3	G	In particular, certain chapters of this sourcebook apply only to <i>firms</i> in relation to their <i>MiFID</i> , <i>equivalent third country</i> or <i>optional exemption business</i> <u>and, in some of these chapters, specified <i>insurance distribution activities</i></u> (sometimes only in relation to <i>insurance based investment products</i>) while others apply only to <i>firms' designated investment business</i> which is not <i>MiFID</i> , <i>equivalent third country</i> or <i>optional exemption business</i> <u>or, in some of these chapters, certain <i>insurance distribution activities</i></u> .		
...				
4.	Insurance Mediation Directive <u>Insurance Distribution Directive</u> : effect on territorial scope			

4.1	G	The Insurance Mediation Directive's <u>IDD's</u> scope covers most firms carrying on most types of insurance mediation <u>insurance distribution in relation to risks and commitments located in an EEA State</u> .	
4.1A	G	The <u>rules</u> in this sourcebook within the Directive's scope are those relating to <u>life policies that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis</u> . The <u>rules implementing that implement the minimum information and other requirements in articles 12 and 13 1(4), 17, 18, 19, 20, 21, 23, 24(1) to (3) and (6), 29, and 30 of the Directive IDD</u> are set out in:	
		(1)	<u>COBS 2.1.1R, COBS 2.2A and COBS 2.3A (Conduct of business obligations);</u>
		(2)	<u>COBS 4 (Communicating with clients, including financial promotions);</u>
		(3)	<u>COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions));</u>
		(4)	<u>COBS 7 (Insurance mediation distribution); and</u>
		(5)	<u>COBS 8 (Client agreements);</u>
		(6)	<u>COBS 9 (Suitability (including basic advice) (other than MiFID and insurance based investment products provisions)) and COBS 9A (Suitability (MiFID and insurance based investment products provisions));</u>
		(7)	<u>COBS 10A (Appropriateness (for non-advised services));</u>
		(8)	<u>COBS 14.2 (Providing product information to clients); and</u>
		(9)	<u>COBS 16A.2 (General client reporting and record keeping requirements).</u>
4.1B	G	A Member State is entitled to impose additional requirements within the <u>IDD's</u> scope in the 'general good' (see recital 52 to, and article 22 of, the <u>IDD</u>).	
4.2	G	In the <u>FCA's</u> view, the responsibility for these minimum requirements rests with the <u>Home State</u> , but a <u>Host State</u> is entitled to impose additional requirements within the Directive's scope in the 'general good'. The <u>IDD</u> places responsibility for requirements in this sourcebook within the Directive's scope (both minimum and additional requirements) on the <u>Home State</u> , except:	
		(1)	<u>in relation to business conducted through a branch, in which case the responsibility rests with the EEA State in which the branch is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis) (see recital 22 to, and article 7(2) of, the IDD).</u>

			So <i>firms</i> operating under the freedom of establishment in the <i>UK</i> must adhere to the requirements in the <i>UK</i> , regardless of the habitual residence of the customer (other than in the situations described in (2)); and
		(2)	where a Member State has:
		(a)	<u>introduced the stricter requirements in article 29(3) of the <i>IDD</i>; or</u>
		(b)	<u>introduced requirements which have not made use of the derogation in article 30(3) of the <i>IDD</i> to allow <i>firms</i> not to carry out an appropriateness assessment in relation to a non-advised sale of an <i>insurance based investment product</i>.</u>
			<u><i>firms</i> concluding contracts with customers having their habitual residence or establishment in that Member State must adhere to the more onerous requirements in (a) or (b) in force in that State.</u>
4.3	G	Accordingly, the general <i>rules</i> on territorial scope are <u>not</u> modified so that by the <i>IDD</i> except:	
		(1)	for a <i>UK firm</i> providing <i>passported activities</i> through a <i>branch</i> in another <i>EEA State</i> under the Directive, the <i>rules</i> implementing the Directive's minimum requirements apply but the territorial scope of the additional <i>rules</i> within the Directive's scope is not modified;
		(2)	for an <i>EEA firm</i> providing <i>passported activities</i> under the Directive in the <i>United Kingdom</i>, the <i>rules</i> implementing the Directive's minimum requirements do not apply, but the additional <i>rules</i> within the Directive's scope have their unmodified territorial scope unless the <i>Home State</i> imposes measures of like effect. (See recital 19 and article 12(5) of the <i>Insurance Mediation Directive</i>)
		(2)	<u>for <i>insurance distribution</i> business carried on by <i>insurers</i>:</u>
		(a)	<u>minimum and additional requirements apply to a <i>UK firm</i> unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Host State regulator</i>; and</u>
		(b)	<u>paragraphs (1), (3), (4) and 4.4G, below, apply in the same way unless the responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the <i>firm's Home State regulator</i>.</u>
		(3)	<u>for a <i>UK firm</i> concluding contracts with customers having their habitual residence or establishment another Member State, it must comply with the requirements of that Member State falling within 4.2G(2);</u>
		(4)	<u>for an <i>EEA firm</i> providing <i>passported activities</i> in the <i>United</i></u>

			<u>Kingdom under the <i>IDD</i> the rules in <i>COBS</i> which give effect to article 29(3) apply, where the <i>client</i> has their habitual residence or establishment in the <i>UK</i>, when it is operating under the freedom to provide services.</u>
4.4	G	<u>An <i>EEA firm</i> acting as the principal of an <i>appointed representative</i> carrying on <i>insurance distribution activities</i> from an establishment in the <i>UK</i> is required to ensure that its <i>appointed representative</i> complies with this sourcebook.</u>	
5.	Solvency II Directive: effect on territorial scope		
5.1	G	The <i>Solvency II Directive</i> ’s scope covers <i>long-term insurers</i> . The rules in this sourcebook within the Directive <i>Solvency II Directive</i> ’s scope are the cancellation rules (<i>COBS 15</i>) and those rules requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>contract of insurance</i> . The Directive <i>Solvency II Directive</i> specifies minimum information and cancellation requirements and permits <i>EEA States</i> to adopt additional information requirements that are necessary for a proper understanding by the <i>policyholder</i> of the essential elements of the commitment.	
5.2	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive <i>Solvency II Directive</i> provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant rules in this sourcebook apply. Those rules do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other rules, in particular the <i>financial promotion rules</i> , is not affected since the Directive <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the ‘general good’. (See articles 156, 180, 185 and 186 of the <i>Solvency II Directive</i>)	
6.	Distance Marketing Directive: effect on territorial scope		
...			
6.5	G	In the <i>FCA</i> ’s view:	
		(1)	the ‘country of origin’ basis of the Directive is in line with that of the <i>Electronic Commerce Directive</i> and the <i>IDD</i> ; (See recital 6 of the <i>Distance Marketing Directive</i>)
		...	
		(3)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Insurance Mediation Directive</i> , the minimum information and other requirements in the <i>Insurance Mediation Directive</i> continue to be those applied by the ‘Home State’, but the minimum requirements in the <i>Distance Marketing Directive</i> and any additional pre-contract information requirements are applied on a

			‘country of origin’ basis. (The basis for this is that the <i>Insurance Mediation Directive</i> was adopted after the <i>Distance Marketing Directive</i> and is not expressed to be subject to it.) [deleted]
7.	Electronic Commerce Directive: effect on territorial scope		
...			
7.4	G	In the <i>FCA</i> ’s view, the Directive’s effect on the territorial scope of this sourcebook (including the use of the ‘insurance derogation’):	
		(1)	is in line with the <i>Distance Marketing Directive</i> <u>and the <i>IDD</i></u> ; and
		(2)	overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
7.5	G	The ‘derogations’ in the Directive may enable other <i>EEA States</i> to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 19 of the <i>Insurance Mediation Directive</i> <i>IDD</i> , recital 6 of the <i>Distance Marketing Directive</i> , article 3 and Annex of the <i>Electronic Commerce Directive</i>)	
...			

...

2 Conduct of business obligations

2.1 Acting honestly, fairly and professionally

The client’s best interests rule

- 2.1.1 R (1) A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *client* (the *client’s best interests rule*).
- (2) This *rule* applies:
- (a) in relation to *designated investment business* carried on for a *retail client*; ~~and~~
 - (b) in relation to *MiFID*, *equivalent third country* or *optional exemption business*, for any *client*; and
 - (c) in relation to *insurance distribution*, for any *client*.

...

[**Note:** article 24(1) of *MiFID*, article 17(1) of the *IDD* and article 14(1)(a) and (b) of the *UCITS Directive*]

...

2.2 **Information disclosure before providing services (~~non-~~ other than MiFID provisions and insurance distribution)**

Application

2.2.-1 R ...

(2) This section applies in relation to *designated investment business* (other than *MiFID*, *equivalent third country or optional exemption business* or insurance distribution activities), carried on for a *retail client*:

(a) in relation to a *derivative*, a *warrant*, a *non-readily realisable security*, a *P2P agreement*, or *stock lending activity*, but as regards the matters in *COBS 2.2.1R(1)(b)* only; and

(b) in relation to a *retail investment product*, but as regards the matters in *COBS 2.2.1R(1)(a)* and (d) only.

2.2.-1A G *COBS 2.2A* (Information disclosure before providing services (MiFID provisions and insurance distribution)) contains the information disclosure requirements applying to a *firm* carrying on *MiFID*, *equivalent third country or optional exemption business* and insurance distribution activities.

...

2.2A **Information disclosure before providing services (MiFID and insurance distribution provisions)**

Application

2.2A.1 R This section applies to a *firm*:

(1) in relation to its *MiFID*, *equivalent third country or optional exemption business*;

(2) carrying on insurance distribution activities in relation to:

(a) an insurance based investment product for any client; and/or

(b) any other life policy for a retail client but as regards the matters in COBS 2.2A.2R(1)(a) and (d) only.

Information disclosure in good time

2.2A.2 R (1) A *firm* must provide appropriate information in good time to a *client* with regard to:

(a) the *firm* and its services;

- (b) (for financial instruments) the financial instruments and, proposed investment strategies and execution venues;
- (c) execution venues (for insurance based investment products) the distribution of insurance based investment products including at least appropriate guidance on, and warnings of, the risks associated with the insurance based investment product or in respect of particular investment strategies proposed; and
- (d) all costs and related charges.

[**Note:** article 24(4) of *MiFID* and article 29(1)(b) of the *IDD*]

- (2) That information may be provided in a standardised format.

2.2A.2A R For an insurance based investment product, a firm must provide the information in good time prior to the conclusion of the contract.

[**Note:** first paragraph of article 29(1) of the *IDD*]

2.2A.3 R (1) A firm must provide the information required by this section in a comprehensible form in such a manner that a client is reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument or life policy that is being offered and, consequently, to take investment decisions on an informed basis.

- (2) That information may be provided in a standardised format.

[**Note:** article 24(5) of *MiFID* and last paragraph of article 29(1) the *IDD*]

Related rules

2.2A.4 G A firm to which the rule on providing appropriate information (*COBS* 2.2A.2R) applies should also consider the rules on disclosing information about a firm, its services, costs and associated charges, and financial instruments and life policies in *COBS* 6.1ZA, *COBS* 9A.3, *COBS* 14.3 and *COBS* 14.3A.

...

2.3 Inducements relating to business other than MiFID, equivalent third country or optional exemption business and insurance based investment products

...

Application

2.3.-1A R This section does not apply to:

- (1) giving advice, or providing services, to an employer in connection with a *group personal pension scheme* or *group stakeholder pension scheme* where that scheme is a *qualifying scheme*; ~~or~~
- (2) a *firm* in relation to *MiFID, equivalent third country or optional exemption business* (but see *COBS 2.3A* (Inducements relating to *MiFID, equivalent third country or optional exemption business* and insurance based investment products)); or
- (3) a firm carrying on an insurance distribution activity in relation to an insurance based investment product.

...

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance based investment products

Application

- 2.3A.1 R This section applies to a *firm*:
- (1) in relation to its *MiFID, equivalent third country or optional exemption business*; and
 - (2) carrying on insurance distribution activities in relation to an insurance based investment product.

Relationship with the adviser charging, product provider and platform service provider rules in COBS 6.1A, COBS 6.1B and COBS 6.1E

- 2.3A.2 G A *firm* which makes a *personal recommendation* to a *retail client* in the *United Kingdom* in relation to:
- (a) a *retail investment product* in the course of carrying on *MiFID, equivalent third country or optional exemption business* with or for that *client*; or
 - (b) an insurance based investment product.

is also required to comply with the *rules* in *COBS 6.1A* (Adviser charging and remuneration).

...

- 2.3A.4 G Where:
- (1) the *firm*:
 - (a) is a *retail investment product* provider or a *platform service provider*; and
 - (b) carries on *MiFID, equivalent third country or optional*

exemption business, or carries on insurance distribution activities, in relation to those activities; and

(2) the *client* is a *retail client* in the *United Kingdom*,

the *firm* is required to comply with the *rules* in this section and in COBS 6.1B (Retail investment product provider, operator of an electronic system relating to lending, and platform service provider requirements relating to adviser charging and remuneration) and, where relevant, COBS 6.1E (Platform services: platform charges using a platform service for advising).

Rules on inducements ~~relating to the provision of investment services and ancillary services~~

2.3A.5 R (1) Except where COBS 2.3A.6R applies, a *firm* must not:

(1) (a) pay to or accept from any party (other than the *client* or a *person* on behalf of the *client*) any fee or commission ~~in connection with the provision of an investment service or an ancillary service;~~ or

(2) (b) provide to or receive from any party (other than the *client* or a *person* on behalf of the *client*) any non-monetary benefit,

(2) (1)(a) and (b) only apply in relation to fees, commissions or non-monetary benefits paid or accepted, or provided or received, in connection with:

(a) the provision of an *investment service* or an *ancillary service*; or

(b) the distribution of an insurance based investment product or an ancillary service.

[**Note:** article 24(9) of *MiFID*, articles 22(3), 29(2) and 29(3) of the *IDD*]

2.3A.6 R (1) COBS 2.3A.5R does not apply to:

(a) a fee, commission or non-monetary benefit which:

(i) is designed to enhance the quality of the relevant service to the *client* (see COBS 2.3A.8R and, also for an insurance based investment product, COBS 2.3A.9AEU); and

(ii) does not impair compliance with the *firm's* duty to act honestly, fairly and professionally in the best interests of the *client*;

(b) a payment or benefit which enables or is necessary for the provision of an *investment service*, or the distribution of an insurance based investment product, by the *firm*, such as custody costs, settlement and exchange fees, regulatory levies or

legal fees and which, by its nature, cannot give rise to conflicts with the *firm's* duty to act honestly, fairly and professionally in the best interests of the *client*; or

- (c) (in relation to MiFID, equivalent third country or optional exemption business) third party *research* received in accordance with COBS 2.3B (see COBS 2.3B.3R).
- (2) Where a *firm* pays, provides, accepts or receives, a fee, commission or non-monetary benefit which falls within (1)(a), the *firm* must clearly disclose to the *client*:
 - (a) the existence and nature of the payment or benefit; and
 - (b) the amount of the payment or benefit or, where the amount cannot be ascertained, the method for calculating that amount.
- (3) That information must be disclosed:
 - (a) prior to the provision of the relevant service; and
 - (b) in a manner that is comprehensive, accurate and understandable (see also COBS 2.3A.10R (Disclosure of payments or benefits received from, or paid to, third parties)).
- (4) Where applicable, a *firm* must inform a *client* of the mechanisms for transferring to the *client* the fee, commission, monetary or non-monetary benefit received in relation to the provision of the relevant service.

[**Note:** article 24(9) of *MiFID*, article 22(3) and 29(3) of the *IDD*]

- 2.3A.7 E A *firm* which fails to comply with COBS 2.3A.5R is to be regarded as not fulfilling its obligations in relation to:
- (1) conflicts of interest (see SYSC 3.3 (for *insurers* and *managing agents*) and SYSC 10 (for other *firms*)); and
 - (2) acting honestly, fairly and professionally in accordance with the best interests of its *clients* (see COBS 2.1.1R).

[**Note:** article 24(9) of *MiFID*, article 29(2) and 29(3) of the *IDD*]

Fees, commissions or non-monetary benefits which are designed to enhance the quality of a service

- 2.3A.8 R (1) For the purposes of COBS 2.3A.6R(1)(a)(i), a fee, commission or non-monetary benefit is designed to enhance the quality of the relevant service to a *client* only if:
- (a) it is justified by the provision of an additional or higher level service to the *client* and is proportional to the level of

inducements received;

- (b) it does not directly benefit the recipient *firm*, its *shareholders* or *employees* without tangible benefit to the *client*;
 - (c) it is justified by the provision of an ongoing benefit to the *client* in relation to an ongoing inducement; and
 - (d) the provision of the service by the *firm* to the *client* is not biased or distorted as a result of the fee, commission or non-monetary benefit.
- (2) A *firm* must fulfil these conditions on an ongoing basis as long as the *firm* continues to pay or receive the fee, commission or non-monetary benefit.

[**Note:** article 11(2) and (3) of the *MiFID Delegated Directive*]

- 2.3A.9 R A fee, commission or non-monetary benefit may be justified for the purposes of COBS 2.3A.8R(1)(a) where, for example, the *firm* provides:
- (1) *restricted advice* on, and access to, a wide range of suitable *financial instruments or insurance based investment contracts* including an appropriate number of *financial instruments or insurance based investment contracts* from third party product providers having no close links with the *firm*; or
 - (2) *restricted advice* combined with:
 - (a) an offer to the *client*, at least on an annual basis, to assess the continuing suitability of the *financial instruments or insurance based investment contracts* in which the *client* has invested; or
 - (b) another ongoing service that is likely to be of value to the *client* such as advice about the suggested optimal asset allocation of the *client*; or
 - (3) access, at a competitive price, to a wide range of *financial instruments or insurance based investment contracts* that are likely to meet the needs of the *client*, including an appropriate number of *financial instruments or insurance based investment contracts* from third party product providers having no close links with the *firm*, together with either the provision of added-value tools, such as objective information tools helping the *client* to take investment decisions or enabling the *client* to monitor, model and adjust the range of *financial instruments or insurance based investment contracts* in which they have invested, or providing periodic reports of the performance and costs and charges associated with the *financial instruments or insurance based investment contracts*.

[**Note:** article 11(2) of the *MiFID Delegated Directive*]

Additional requirements for the assessment of inducements: insurance based investment products

- 2.3A.9A EU 8(1) An inducement or inducement scheme shall be considered to have a detrimental impact on the quality of the relevant service to the customer where it is of such a nature and scale that it provides an incentive to carry out insurance distribution activities in a way that is not in compliance with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.
- 8(2) For the purposes of assessing whether an inducement or inducement scheme has a detrimental impact on the quality of the relevant service to the customer, insurance intermediaries and insurance undertakings shall perform an overall analysis taking into account all relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer, and any organisational measures taken by the insurance intermediary or insurance undertaking carrying out distribution activities to prevent the risk of detrimental impact.
- They shall, in particular, consider the following criteria:
- (a) whether the inducement or inducement scheme could provide an incentive to the insurance intermediary or insurance undertaking to offer or recommend a particular insurance product or a particular service to the customer despite the fact that the insurance intermediary or insurance undertaking would be able to offer a different insurance product or service which would better meet the customer's needs;
 - (b) whether the inducement or inducement scheme is solely or predominantly based on quantitative commercial criteria or whether it takes into account appropriate qualitative criteria, reflecting compliance with applicable regulations, the quality of services provided to customers and customer satisfaction;
 - (c) the value of the inducement paid or received in relation to the value of the product and the services provided;
 - (d) whether the inducement is entirely or mainly paid at the moment of the conclusion of the insurance contract or extends over the whole term of that contract;
 - (e) the existence of an appropriate mechanism for reclaiming the inducement in case the product lapses or is surrendered at an early stage or in case the interests of the customer have been harmed;

(f) the existence of any form of variable or contingent threshold or any other kind of value accelerator which is unlocked by attaining a target based on volume or value of sales.

2(2) 'inducement' means any fee, commission, or any non-monetary benefit provided by or to such an intermediary or undertaking in connection with the distribution of an insurance-based investment product, to or by any party except the customer involved in the transaction in question or a person acting on behalf of that customer;

2(3) 'inducement scheme means a set of rules governing the payment of inducements, including the conditions under which the inducements are paid.

[**Note:** articles 2(2), 2(3) and 8 of the *IDD Regulation*]

2.3A.9B R COBS 2.3A.14AEU applies as if it was a rule to firms in relation to insurance distribution activities to which the IDD Regulation does not apply.

Disclosure of payments or benefits received from, or paid to, third parties

...

2.3A.12 R (1) Where inducements are received by the *firm* on an ongoing basis in relation to an *investment service* provided or in relation to the distribution of an insurance based investment product to a *client*, the *firm* must inform, at least annually, that *client* about the actual amount of payments or benefits received.

(2) For these purposes, minor non-monetary benefits may be described in a generic way.

[**Note:** article 11(5)(c) of the *MiFID Delegated Directive*]

2.3A.13 R In implementing the requirements of COBS 2.3A.10R to COBS 2.3A.12R, a *firm* must take into account the costs and charges rules set out:

(1) (for MiFID, equivalent third country or optional exemption business) in article 24(4)(c) of MiFID and article 50 of the MiFID Org Regulation (see COBS 6.1ZA.11R to COBS 6.1ZA.13R and COBS 6.1ZA.14EU); and

(2) (for insurance based investment products) in COBS 6.1ZA.11R to COBS 6.1ZA.13R and COBS 6.1ZA.15AR.

[**Note:** article 11(5) of the *MiFID Delegated Directive*]

2.3A.14 R Each *firm* involved in a distribution channel which provides an *investment service* ~~or, an ancillary service~~ or distributes an insurance based investment

product must comply with its obligations to make disclosures to its *clients*.

[**Note:** article 11(5) of the *MiFID Delegated Directive*]

...

Inducements relating to the provision of independent advice, restricted advice and portfolio management services to retail clients in the United Kingdom

- 2.3A.15 R (1) This *rule* applies where a *firm* provides a *retail client* in the *United Kingdom* with:
- (a) *independent advice*; or
 - (b) *restricted advice*; or
 - (c) *portfolio management services*.
- (2) The *firm* must not accept any fees, commission, monetary or non-monetary benefits which are paid or provided by:
- (a) any third party; or
 - (b) a *person* acting on behalf of a third party,
- in relation to the provision of the relevant service to the *client*.
- (2 A) Where the *firm* provides *independent advice* or *restricted advice*, the *rule* in (2) applies in connection with:
- (a) the *firm's business of advising*; or
 - (b) any other related service, where 'related service' has the same meaning as in *COBS* 6.1A.6R.
- (3) Paragraph (2) does not apply to:
- (a) acceptable minor non-monetary benefits (see *COBS* 2.3A.19R in relation to the provision of *investment services* and *COBS* 6.1A.5AR in relation to the distribution of an *insurance based investment product*); or
 - (b) ...

...

Inducements relating to the provision of independent advice and portfolio management services to retail clients outside the United Kingdom or to professional clients

- 2.3A.16 R (1) This *rule* applies where a *firm* provides *independent advice* or *portfolio management services* to:

- (a) a *retail client* outside the *United Kingdom*; or
 - (b) (for investment services) a professional client.
- (2) In relation to the provision of the relevant service to the *client*, the *firm* must not:
- (a) ...
 - (b) accept any non-monetary benefits other than acceptable minor non-monetary benefits (see *COBS 2.3A.19R* and, in relation to the distribution of an insurance based investment product, COBS 6.1A.5AR) or third party *research* received in accordance with *COBS 2.3B* (see *COBS 2.3B.3R*),
- where these are paid or provided by any third party or a *person* acting on behalf of a third party.

...

...

Record keeping: inducements

...

- 2.3A.35 G In relation to the distribution of an *insurance based investment product*, a *firm* should refer to SYSC 3 (for insurers and managing agents) and SYSC 9 (for other *firms*) for its obligations in relation to record keeping.

...

2.4 Agent as client and reliance on others

...

2.4.5 ...

Reliance on other insurance distributors

- 2.4.5A R Where a *firm* carrying on *insurance distribution activities* in relation to an *insurance based investment product* is required to perform an appropriateness assessment under *COBS 10A*, it may rely upon:
- (1) a suitability assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing suitability in *COBS 9A* or equivalent requirements in another *EEA State*; or
 - (2) an appropriateness assessment performed by another *firm*, if that other *firm* was subject to the requirements for assessing appropriateness in *COBS 10A.2* or equivalent requirements in another *EEA State*.

in performing that assessment.

[Note: article 30(2) of the *IDD*]

Reliance on others: other situations

- 2.4.6 R (1) This *rule* applies if the applicable rule on reliance on other investment firms or insurance distributors (*COBS* 2.4.4R and *COBS* 2.4.5AR) does not apply.

...

...

4 Communicating with clients, including financial promotions

4.1 Application

...

- 4.1.4 G (1) In *COBS* 4.3.1R, the defined term “*financial promotion*” includes;
- (a) in relation to *MiFID*, *equivalent third country or optional exemption business*, all communications that are marketing communications within the meaning of *MiFID*; and
 - (b) in relation to *insurance distribution*, all communications that are marketing communications within the meaning of *IDD*.

...

...

4.2 Fair, clear and not misleading communications

The fair, clear and not misleading rule

- 4.2.1 R (1) A *firm* must ensure that a communication or a *financial promotion* is fair, clear and not misleading.
- (2) This *rule* applies to:
- (a) a communication by the *firm* to a *customer* in relation to *designated investment business* which is not *MiFID*, *equivalent third country or optional exemption business*, other than a *third party prospectus*;
 - (aa) a communication to an *eligible counterparty* that is in relation to:
 - (i) *MiFID or equivalent third country business*; other than a *third party prospectus*; or

(ii) insurance distribution;

(ab) ...

(b) a *financial promotion communicated* by the *firm* that is not:

(i) an *excluded communication*;

(ii) a *non-retail communication*;

(iii) a *third party prospectus*; and

(c) a *financial promotion* approved by the *firm*.

(3) As part of complying with (1), a *firm* must take into account the nature of the *client*.

[**Note:** article 24(3) and article 30(1) of *MiFID*, article 17(2) of the *IDD* and article 77 of the *UCITS Directive*]

4.2.2 G ...

[**Note:** article 30(1) of *MiFID* and recital 65 to the *MiFID Org Regulation*, article 17(2) of the *IDD*]

...

4.3 Financial promotions to be identifiable as such

4.3.1 R (1) A *firm* must ensure that a *financial promotion* addressed to a *client* is clearly identifiable as such.

[**Note:** article 24(3) of *MiFID*, article 17(2) of the *IDD* and article 77 of the *UCITS Directive*]

...

(3) ...

(e) ~~to the extent that it relates to a pure protection contract that is a long term care insurance contract.~~ [deleted]

(4) In the case of a marketing communication that relates to:

(a) a *UCITS scheme* or an *EEA UCITS scheme*, or

(b) insurance distribution,

(2) and (3) do not limit the application of this *rule*.

...

6 Information about the firm, its services and remuneration

6.1 Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)

Application

- 6.1.1 R (1) This section applies to a *firm* that carries on *designated investment business*, other than *MiFID*, *equivalent third country* or *optional exemption business* or insurance distribution activities, for a *retail client*.

...

...

6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)

Application

- 6.1ZA.1 R (1) Subject to (2) and (3), this section applies to a *firm*:
- (a) in relation to its *MiFID*, *equivalent third country* or *optional exemption business*; and
 - (b) carrying on insurance distribution activities.
- (2) *COBS* 6.1ZA.16R does not apply to a *firm* in respect of its *MiFID optional exemption business*.
- (3) Where a *firm* is carrying on insurance distribution activities for a professional client only those rules which implement the requirements of the *IDD* apply.

- 6.1ZA.1A G For the purposes of *COBS* 6.1ZA.1R(3) if a *rule* implements a requirement of the *IDD*, a note (“**Note:**”) follows the *rule* indicating which provision is being implemented.

...

Information about a firm and its services: MiFID business

- 6.1ZA.5 EU ...

...

Information about a firm and its services: insurance distribution

- 6.1ZA.7A R A *firm* carrying on insurance distribution activities must provide a retail client with the following general information, if relevant:

- (1) the name and address of the *firm*, and the contact details necessary to enable a *client* to communicate effectively with the *firm*;
- (2) the methods of communication to be used between the *firm* and the *client* including, where relevant, those for the sending and reception of orders;
- (3) a statement of the fact that the *firm* is authorised and the name of the *competent authority* that has authorised it;
- (4) if the *firm* is acting through an *appointed representative* a statement of this fact specifying the *EEA State* in which that *appointed representative* is registered;
- (5) the nature, frequency and timing of the reports on the performance of the service to be provided by the *firm* to the *client* in accordance with the *rules* on reporting to *clients* on the provision of services (*COBS* 16 or *COBS* 16A in relation to an *insurance based investment product*);
- (6) (a) a description, which may be provided in summary form, of (as applicable) the *conflicts of interest policy*, SYSC 3.3.1EU (applied by SYSC 3.3.3R) or the policy required by article 4(1) of the *IDD Regulation*; and
 (b) if not included in the information provided under (a), when a *material interest* or conflict of interest may or does arise, the manner in which the *firm* will ensure fair treatment of the *client*;
- (7) at any time that the *client* requests it, further details of the *conflicts of interest policy*.

The timing of these disclosures is governed by *COBS* 6.1ZA.19AR.

Status disclosure general information: insurance distribution

6.1ZA.7 B R In good time before the conclusion of a *life policy* and, if necessary, on its amendment:

- (1) a *firm* must provide the *client* with at least the following information:
 - (a) its identity, address and whether it is an *insurance intermediary* or an *insurance undertaking*;
 - (b) whether it provides a *personal recommendation* about the insurance products offered;
 - (c) the procedures allowing *clients* and other interested parties to register *complaints* about the *firm* with the *firm* and the

Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *clients*; and

- (2) an *insurance intermediary* must also provide the *client* with the following information:
- (a) the fact that it is included in the *Financial Services Register* (or if it is not on the *Financial Services Register*, the register in which it has been included) and the means for verifying this;
 - (b) whether it has a direct or indirect holding representing 10% or more of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
 - (c) whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*; and
 - (d) whether it is representing the *client* or is acting for and on behalf of the *insurer*.

[**Note:** articles 18 and 19(1)(a) and (b) of the *IDD*]

6.1ZA.7 R Where an *insurance intermediary* proposes or advises on a *life policy*, in
C good time before the conclusion of a *life policy* and, if necessary, on its amendment, an *insurance intermediary* must provide the *client* with at least information on whether the *firm*:

- (1) gives a *personal recommendation* on the basis of a fair and personal analysis; or
- (2) is under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*, in which case it must provide the names of those *insurance undertakings*; or
- (3)
 - (a) is not under a contractual obligation to conduct *insurance distribution* exclusively with one or more *insurance undertakings*; and
 - (b) does not give a *personal recommendation* on the basis of a fair and personal analysis,

in which case it must provide its *client* with the name of those *insurance undertakings* with which the *insurance intermediary* may and does conduct business.

[**Note:** article 19(1)(c) of the *IDD*]

- 6.1ZA.7 D R If an *insurance intermediary* informs a *client* that it gives a *personal recommendation* on the basis of a fair and personal analysis, it must give that *personal recommendation* on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a *personal recommendation* in accordance with professional criteria, regarding which *life policy* would be adequate to meet the *client's* needs.

[**Note:** article 20(3) of the *IDD*]

Information about a firm's portfolio management service: MiFID business

6.1ZA.8 ...

Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business

6.1ZA.9 ...

6.1ZA.1
0 ...

Information concerning safeguarding of client money: insurance distribution

- 6.1ZA.1 0A R (1) Where a *firm* doing *insurance distribution activities* holds *client money* for a *retail client* and has elected to comply with the *client money chapter*, it must provide that *client* with the information specified in:

(a) COBS 6.1.7R; or

(b) (if it is a *firm* doing *MiFID*, *equivalent third country* or *optional exemption business*) COBS 6.1ZA.9EU and COBS 6.1.7R(1)(e);

in relation to that *client money*.

(2) For the purposes of COBS 6.1ZA.10AR(1)(b), COBS 1.2.3R applies except 'funds' should be read as meaning *client money* that a *firm* receives or holds for, or on behalf of, a *client* in the course of, or in connection with, its *insurance distribution activities*.

(3) The timing of this disclosure is governed by COBS 6.1ZA.19AR.

...

Information about costs and associated charges: MiFID and insurance distribution

- 6.1ZA.1 1 R ~~COBS 2.2A.2R requires a *firm* to~~ must provide a *client* with at least the following information about all costs and related charges (see also COBS

2.2A.2R). That information must include:

- (1) (as applicable) information relating to:
 - (a) both *investment services* and *ancillary services*; and
 - (b) the distribution of an *insurance based investment product*;
- (2) where relevant, the cost of any *investment advice*;
- (3) the cost of the *financial instrument* or *insurance based investment product* recommended or marketed to the *client*;
- (4) information on how the *client* may pay; and
- (5) details of any third party payments.

[**Note:** article 24(4)(c) of *MiFID*, article 29(1)(c) of the *IDD*]

- 6.1ZA.1 R 2
- (1) A *firm* must aggregate the information about costs and charges required by *COBS 2.2A.2R* and *COBS 6.1ZA.11R*, where those costs and charges are not caused by the occurrence of underlying market risk. This is to allow the *client* to understand the overall cost, and the cumulative effect on the return, of the investment.
 - (2) A *firm* must provide the *client* with an itemised breakdown of the costs and charges information required by (1) and *COBS 6.1ZA.11R* when requested by the *client*.
 - (3) The information must, where applicable, be provided to the *client* on a regular basis, and at least annually, during the life of the investment.

[**Note:** article 24(4) of *MiFID*, second paragraph of article 29(1) of the *IDD*]

- 6.1ZA.1 R 3
- (1) A *firm* must provide the information required by *COBS 6.1ZA.11R* and *COBS 6.1ZA.12R* in a comprehensible form in such a manner that the *client* is reasonably able to understand the nature and risks of the *investment service* and of the specific type of *financial instrument* or *insurance based investment product* that is being offered and, consequently, to take investment decisions on an informed basis.
 - (2) That information may be provided in a standardised format.

[**Note:** article 24(5) of *MiFID*, third paragraph of article 29(1) of the *IDD*]

Costs and associated charges disclosure: MiFID

6.1ZA.1 EU ...
4

6.1ZA.1 G ...

Costs and associated charges disclosure: insurance distribution

6.1ZA.1 R In addition to the information specified by COBS 2.2A.2R and COBS
5A 6.1ZA.11R, a firm carrying on insurance distribution activities must provide
a retail client with the following information on costs and associated
charges, if applicable:

- (1) the total price to be paid by the client in connection with the life
policy or the insurance distribution activity, including all related fees,
commissions, charges and expenses, and all taxes payable via the
firm or, if an exact price cannot be indicated, the basis for the
calculation of the total price so that the client can verify it. The
commissions charged by the firm must be itemised separately in
every case;
- (2) if any part of the total price referred to in (1) is to be paid in or
represents an amount of foreign currency, an indication of the
currency involved and the applicable currency conversion rates and
costs;
- (3) notice of the possibility that other costs, including taxes, related to
transactions in connection with the life policy or the insurance
distribution activity may arise for the client that are not paid via the
firm or imposed by it; and
- (4) the arrangements for payment or other performance.

The timing of this disclosure is governed by COBS 6.1ZA.19AR.

Remuneration received by firm disclosure: insurance intermediaries

6.1ZA.1 R In good time before the conclusion of the life policy and, if necessary, on its
5B amendment, an insurance intermediary must provide the client with
information:

- (1) on the nature of the remuneration received in relation to the life
policy;
- (2) about whether in relation to the life policy it works on the basis of:
 - (a) a fee, that is remuneration paid directly by the client; or
 - (b) a commission of any kind, that is the remuneration included
in the premium; or
 - (c) any other type of remuneration, including an economic
benefit of any kind offered or given in connection with the
contract; or
 - (d) on the basis of a combination of any type of remuneration set

out above in (a), (b) and (c).

[Note: article 19(1)(d) and (e) of the *IDD*]

Remuneration of employees disclosure: insurers

6.1ZA.1 R In good time before the conclusion of a *life policy* an *insurance undertaking*
5C must provide its *client* with information on the nature of the *remuneration*
received by its *employees* in relation to the *life policy*.

[Note: article 19(4) of the *IDD*]

General remuneration disclosure: insurance distributors

6.1ZA.1 R The *remuneration* referred to in this section includes *remuneration* that is
5D not guaranteed or which is contingent on meeting certain targets.

6.1ZA.1 G The information required to be disclosed by *COBS* 6.1ZA.15BR and *COBS*
5E 6.1ZA.15CR includes the type of the *remuneration* and, taking into account
the clear, fair and not misleading *rule* (*COBS* 4.2.1R), should also include
the source of the *remuneration*.

6.1ZA.1 G When considering what information to provide about the *remuneration*, a
5F *firm* should include all *remuneration* which the *insurance intermediary* or
the *employee* of an *insurance undertaking*, receives or may receive in
relation to the distribution of the *life policy*. This includes *remuneration*:

- (1) provided indirectly by the *insurer* or another *firm* within the
distribution chain; or
- (2) provided by way of a bonus (whether financial or non-financial) paid
to the *firm* by the *insurer* or another *firm*, or provided by the *firm* to
its *employees*, where this bonus is contingent on the achievement of
a target to which the distribution of the particular *life policy* could
contribute. For example, this can include cash bonuses paid for
achieving a sales target and additional annual leave for achieving a
high customer service score on sales calls, profit share arrangements,
overrides or other enhanced commissions.

6.1ZA.1 R If any payments, other than ongoing *premiums* and scheduled payments, are
5G made by the *client* under the *life policy* after its conclusion, a *firm* must
make the disclosures required by *COBS* 6.1ZA.14AR or *COBS*
6.1ZA.14BR, for each such payment.

[Note: articles 19(3) and (5) of the *IDD*]

6.1ZA.1 G Examples of the type of payments made are those for mid-term adjustments,
5H administration fees and cancellation fees.

Insurance distributors fee disclosure: additional requirements

6.1ZA.1 R (1) Where a *fee* is payable in relation to a *life policy*, the *firm* must

5I inform its *client* of the amount of the *fee*.

(2) The information in (1) must be given before the *client* incurs liability to pay the *fee*, or before conclusion of the *life policy*, whichever is earlier.

(3) To the extent that it is not possible for an amount to be given, a *firm* must give the basis for its calculation.

[Note: articles 19(2) and (5) of the *IDD*]

6.1ZA.1 R The *fee* disclosure requirement extends to all such *fees* that may be charged
5J during the life of a *policy*.

[Note: article 19(3) of the *IDD*]

Information about costs and charges of different services or products: MiFID business

6.1ZA.1 R ...
6

Cross selling requirements where insurance is the primary product

6.1ZA.1 R When offering a non-insurance ancillary product or service as part of a
6A package or the same agreement with a *life policy*, a *firm* must:

(1) inform the *client* whether it is possible to buy the different components separately and, if so, must provide the *client* with an adequate description of:

(a) the different components;

(b) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with the components taken separately; and

(2) provide the *client* with separate evidence of the costs and charges of each component.

[Note: article 24(1) and (2) of the *IDD*]

Cross selling requirements where insurance is the ancillary product

6.1ZA.1 R When offering a *life policy* ancillary to and as part of a package or in the
6B same agreement with a non-insurance product or service, a *firm* must offer the *client* the option of buying the non-insurance goods or services separately.

6.1ZA.1 R *COBS* 6.1ZA.16BR does not apply where the non-insurance product or
6C service is any of the following:

- (1) investment services or activities; or
- (2) a credit agreement as defined in point 3 of article 4 of the MCD which is:
 - (a) an MCD credit agreement; or
 - (b) an exempt MCD credit agreement; or
 - (c) a CBTL credit agreement; or
 - (d) a credit agreement referred to in articles 72G(3B) and (4) of the Regulated Activities Order; or
- (3) a payment account as defined in regulation 2(1) of the Payment Accounts Regulations.

[Note: article 24(3) of the *IDD*]

6.1ZA.1 6D **R** COBS 6.1ZA.16AR to COBS 6.1ZA.16CR do not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

[Note: article 24(5) of the *IDD*]

6.1ZA.1 6E **G** In addition to the rules in COBS 6.1ZA.16AR and 6.1ZA.16BR firms should still comply with the other rules in COBS relating to the offer and sale of insurance products that form part of the package or agreement, such as COBS 2.5 (Optional additional products).

[Note: article 24(6) of the *IDD*]

Timing of disclosure: MiFID business

...

Medium of disclosure: MiFID business

...

Timing of disclosure: specified rules for insurance distribution

6.1ZA.1 9A **R** (1) A firm must provide a client with the information required by COBS 6.1ZA.7AR, COBS 6.1ZA.10AR and COBS 6.1ZA.15AR in good time before the provision of the insurance distribution activity concerned unless otherwise provided by this rule.

(2) A firm may instead provide that information immediately after starting to provide the insurance distribution activity concerned if:

- (a) the firm was unable to comply with (1) because, at the request of the client, the agreement was concluded using a

means of distance communication which prevented the *firm* from doing so; and

- (b) in any case where the *rule* on voice telephony communications (*COBS* 5.1.12R) does not otherwise apply, the *firm* complies with that *rule* in relation to the *retail client*, as if that *client* were a *consumer*.

Medium of disclosure: insurance distribution

- 6.1ZA.1 9B R Where this section requires an *insurance distributor* to provide information to *clients* in relation to a *life policy* it must do so in accordance with *COBS* 7.4 (Means of communication to clients), unless *COBS* 6.1ZA.18AR(2) applies.

[**Note:** article 23 of the *IDD*]

Keeping the client up to date: MiFID business

...

Keeping the client up to date: insurance distribution

- 6.1ZA.2 0A R (1) A *firm* carrying on *insurance distribution activities* must notify a *client* in good time about any material change to the information provided in relation to an *insurance distribution activity* under this section which is relevant to a service that the *firm* is providing to that *client*.
- (2) A *firm* must provide this notification in a *durable medium* if the information to which it relates was given in a *durable medium*.

Existing clients: MiFID business

...

Compensation information: MiFID business

...

Record keeping: information about the firm and compensation information for MiFID business and insurance distribution

- 6.1ZA.2 3 G *Firms* are reminded of the general record-keeping requirements in *SYSC* 3.2 (for *insurers* and *managing agents*) and *SYSC* 9 (for other *firms*).

6.1A Adviser charging and remuneration

...

Acceptable minor non-monetary benefits

- 6.1A.5A R (1) For the purposes of *COBS* 6.1A.4R(2), a *firm* or its *associate* may solicit or accept minor non-monetary benefits which meet the requirements of:
- (a) *COBS* 2.3A.15R, in relation to the provision of *investment services*; or
 - (b) ~~*COBS* 6.1A.5AR(2)~~ paragraph (2), in relation to other business.
- (2) An acceptable minor non-monetary benefit is one which:
- (a) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way;
 - (b) is capable of enhancing the quality of service provided to the *client*;
 - (c) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;
 - (d) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and
 - (e) consists of:
 - (i) information or documentation relating to a specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*, that is generic in nature or personalised to reflect the circumstances of an individual *client*;
 - (ii) written material from a third party that is commissioned and paid for by a corporate *issuer* or potential *issuer* to promote a new issuance by the company, or where the third party *firm* is contractually engaged and paid by the *issuer* to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any *firms* wishing to receive it, or to the general public;
 - (iii) participation in conferences, seminars and other training events on the benefits and features of a

specific *retail investment product* or a service provided in the course of carrying on related *designated investment business*; and

- (iv) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under (iii).
- (v) research relating to an issue of *shares, debentures, warrants* or *certificates representing certain securities* by an *issuer*, which is:
 - (A) produced:
 - (1) prior to the issue being completed; and
 - (2) by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and
 - (B) made available to prospective investors in the issue; or
- (vi) research that is received so that the *firm* may evaluate the research provider's research service, provided that:
 - (A) it is received during a trial period that lasts no longer than three *months*;
 - (B) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;
 - (C) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and
 - (D) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record of how the conditions in (A) to (C) were satisfied for each such trial period.

- 6.1A.5B G *COBS 2.3A.8R sets out the conditions to be met if a fee, commission or non-monetary benefit is designed to enhance the quality of the service to a client in relation to MiFID, equivalent third country or optional exemption business or the distribution of an insurance based investment product. For the purposes of COBS 2.3A.19R(2) and COBS 6.1A.5AR(2), those conditions are also likely to be relevant to firms considering whether a fee, commission or non-monetary benefit is capable of enhancing the quality of the service to a client in relation to the restriction in COBS 6.1A.4R(2).*

[**Note:** articles 24(7) and (8) of *MiFID* refer to minor non-monetary benefits that are capable of enhancing the quality of service provided to the *client*]

...

7 **Insurance ~~mediation~~ distribution**

7.1 **Application**

- 7.1.1 R This chapter applies to a *firm* carrying on ~~*insurance mediation*~~ *insurance distribution activities* in relation to a *life policy*, but only if the *State of the commitment* is an *EEA State*.

[**Note:** articles 1 ~~and 12 (4) and (5)~~ , 20(1) and 23 of the ~~*Insurance Mediation Directive*~~ *IDD*]

COBS 7.2 (Information to be provided by an insurance intermediary) is deleted in its entirety. The deleted text is not shown.

7.2 **Information to be provided by an insurance intermediary** [deleted]

After the deleted COBS 7.2 (Information to be provided by an insurance intermediary) insert the following new section COBS 7.3. The text is not underlined.

7.3 **Additional insurance distribution obligations**

Demands and needs

- 7.3.1 R (1) Prior to the conclusion of a *life policy*, a *firm* must specify, on the basis of the information obtained from the *client*, the demands and needs of that *client*.
- (2) The details must be modulated according to the complexity of the *life policy* proposed and the type of *client*.

- (3) A statement of the demands and needs must be communicated to the *client* prior to the conclusion of a *life policy*.
- (4) This *rule* and *COBS 7.3.4R* do not apply when a *firm* makes a *personal recommendation* in relation to a *life policy*.

[**Note:** first paragraph of article 20(1) and article 20(2) of the *IDD*]

7.3.2 G *Firms* are reminded that they are obliged to take reasonable steps to ensure that a *personal recommendation* is suitable for, and consistent with the insurance demands and needs of, the *client* and that, whenever a *personal recommendation* relates to a *life policy*, a *suitability report* is required (see *COBS 9* or *9A*).

7.3.3 G A *firm* may obtain information from the *client* in a number of ways including, for example, by asking the *client* questions in person or by way of a questionnaire prior to any *life policy* being proposed.

7.3.4 R When proposing a *life policy* a *firm* must ensure it is consistent with the *client's* insurance demands and needs.

[**Note:** recital 44 to, and second paragraph of article 20(1) of, the *IDD*]

7.3.5 R The sale of a *life policy* must always be accompanied by a demands and needs test on the basis of information obtained from the *client*.

[**Note:** recital 44 to, and article 20(1) of, the *IDD*]

Distribution of connected contracts through exempt persons

7.3.6 R (1) Where an *insurance distributor* is distributing through a *person* relying on the connected contracts exemption in article 72B of the *Regulated Activities Order*, the *insurance distributor* must ensure that the requirements in (2) are met.

(2) The requirements referred to in (1) are:

- (a) *SYSC 19F.2* (Remuneration and insurance incentives)
- (b) *COBS 4* (Communicating with clients, including fair financial promotions);
- (c) *COBS 2.1.1R* (client's best interests);
- (d) *COBS 6.1ZA.7AR(1)(a)* and (c) (Status disclosure general information: insurance distribution);
- (e) *COBS 7.3.1R* to *COBS 7.3.5R* (Additional insurance distribution obligations: demands and needs); and
- (f) *COBS 6.1ZA.16AR* to *6.1ZA.16DR* (cross-selling).

[**Note:** article 1(4) of the *IDD*]

- 7.3.7 G To comply with the relevant chapter of *SYSC* or *Principle 3*, an *insurance distributor* will need to have appropriate arrangements in place to ensure compliance with *COBS 7.3.6R*.

After *COBS 7.3* (Additional insurance distribution obligations) insert the following new section *COBS 7.4*. The text is not underlined.

7.4 Insurance distribution: Means of communication to clients

- 7.4.1 R This section applies to all information required to be provided to a *client* in *COBS 7.3* and where it is stated to apply in other sections or chapters.

Means of communication to customers: Non-telephone sales

- 7.4.2 R (1) A *firm* must communicate information to a *client* using any of the following:
- (a) paper; or
 - (b) a *durable medium* other than paper; or
 - (c) a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.
- (2) The *firm* must communicate the information in (1):
- (a) in a clear and accurate manner, comprehensible to the *client*;
 - (b) in an official language of the *State of the commitment* or in any other language agreed by the parties; and
 - (c) free of charge.

[**Note:** article 23(1), (2), (4) and (5) of the *IDD*]

- 7.4.3 R Where the information is communicated using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, also send the *customer* a paper copy.

[**Note:** article 23(3) of the *IDD*]

Means of communications to clients: Telephone sales

- 7.4.4 R In the case of telephone selling:
- (1) the information must be given in accordance with the distance marketing disclosure *rules* (see *COBS 5*); and

(2) if prior to the conclusion of the contract the information is provided:

(a) orally; or

(b) on a *durable medium* other than paper,

the *firm* must also provide the information to the *client* in accordance with COBS 7.4.2R and COBS 7.4.3R immediately after the conclusion of the *life policy*.

[**Note:** article 23(7) of the *IDD*]

Amend the following as shown.

8 Client agreements (non-MiFID provisions)

8.1 Client agreements: non-MiFID designated investment business

Application

8.1.1 R (1) This chapter applies to a *firm* in relation to *designated investment business* carried on for a *retail client*.

...

(2) COBS 8.1.4R and COBS 8.1.5R also apply to a *firm* carrying on insurance distribution in relation to insurance based investment products for a professional client.

...

...

Record keeping: client agreements

8.1.4 R (1) A *firm* must establish a record that includes the document or documents agreed between it and a *client* which set out the rights and obligations of the parties, and the other terms on which it will provide services to the *client*.

...

[**Note:** article 30(4) of the *IDD*]

8.1.5 R For the purposes of this chapter, a *firm* may incorporate the rights and duties of the parties into an agreement by referring to other documents or legal texts.

[**Note:** article 30(4) of the *IDD*]

- 8.1.6 G When considering its approach to client agreements, a *firm* should be aware of other obligations in the *Handbook* which may be relevant. These include the *fair, clear and not misleading rule*, the *rules* on disclosure of information to a *client* before providing services, the *rules* on distance communications (principally in *COBS* 2.2, 5, 6 and 13) and the provisions on record keeping (principally in *SYSC* 3, for *insurers* and *managing agents*, and *SYSC* 9, for other *firms*).

...

9 **Suitability (including basic advice) (~~non-~~ other than MiFID provisions and insurance based investment products)**

9.1 **Application and purpose provisions**

Application

- 9.1.1 R This chapter applies to a *firm* which:
- (a) makes a *personal recommendation* to a *retail client* in relation to a *designated investment*; or
 - (b) *manages investments* of a *retail client* of the *firm*;
 - (c) manages the assets of an *occupational pension scheme*, *stakeholder pension scheme* or *personal pension scheme*,
- other than in relation to its *MiFID*, *equivalent third country* or *optional exemption business* or to an insurance based investment product.

- 9.1.1A G *COBS* 9A contains suitability requirements which apply in respect of insurance based investment products, or in respect of a *firm's MiFID*, *equivalent third country* or *optional exemption business* involving the provision of *investment advice* or *portfolio management*.

Providing basic advice on a stakeholder product

- 9.1.2 R If a *firm* to which this chapter applies makes a *personal recommendation* in relation to a *stakeholder product*, ~~other than in the course of MiFID or equivalent third country business~~, it may choose to give *basic advice* under the *rules* in section 9.6 of this chapter instead of the *rules* in the remainder of this chapter.

...

Life policies for professional clients

- 9.1.5 R If the *firm* makes a *personal recommendation* to a *professional client* to take out a *life policy* which is not an insurance based investment product, this chapter applies, but only those *rules* which implement the

requirements of the *Insurance Mediation Directive* IDD.

9.1.6 G If a *rule* implements a requirement of the *Insurance Mediation Directive* IDD, a Note (“**Note:**”) follows the *rule* indicating which provision is being implemented. ~~COBS 7 (Insurance mediation) 2.1 (acting honestly fairly and professionally), COBS 2.6 (additional insurance distribution obligations, COBS 4 (communicating with clients), COBS 6 (information about the firm, its services and remuneration) and COBS 14 (product information) contains~~ contain further *rules* implementing the *Insurance Mediation Directive* IDD.

9.1.7 G The effect of these application ~~rules~~ and the fact that the *Insurance Mediation Directive* ~~does not apply to an insurer (unless it is involved in mediation activities)~~ is that this chapter ~~does not apply~~ applies to an *insurer* when it is making a *personal recommendation* to a *professional client* ~~to take out a life policy~~. [deleted]

...

9.1.9 G ~~COBS 7 (Insurance mediation) 6.1ZA~~ contains requirements relating to the basis on which certain recommendations may be made, including requirements relating to fair analysis and range and scope.

9.2 Assessing suitability

Assessing suitability: the obligations

- 9.2.1 R (1) A *firm* must:
- (a) take reasonable steps to ensure that a *personal recommendation*, or a decision to trade, is suitable for its *client*; and
 - (b) ensure that any life policy proposed is consistent with the client’s insurance demands and needs.
- (2) When making the *personal recommendation* or *managing a client’s investments*, the *firm* must obtain the necessary information regarding the *client’s*:
- (a) knowledge and experience in the investment field relevant to the specific type of *designated investment* or service;
 - (b) financial situation; and
 - (c) investment objectives,
- so as to enable the *firm* to make the recommendation, or take the decision, which is suitable for ~~him~~ the client and for a *life policy*, to propose a contract that is consistent with the client’s insurance

demands and needs.

[**Note:** ~~article 12(2) of the Insurance Mediation Directive~~ recital 44 to, and second paragraph of article 20(1), of the IDD]

9.2.1A G A client's insurance demands and needs are those which would need to be obtained under COBS 7.3 where a contract is sold without the provision of a personal recommendation.

...

9.2.7 G Although a *firm* may not be permitted to make a *personal recommendation* or take a decision to trade because it does not have the necessary information, its *client* may still ask the *firm* to provide another service such as, for example, to arrange a deal or to deal as agent for the *client*. If this happens, the *firm* should ensure that it receives written confirmation of the instructions. The *firm* should also bear in mind the *client's best interests rule* and any obligation it may have under the *rules* relating to appropriateness when providing the different service (see COBS 10, Appropriateness (for non-advised services)) and COBS 10A, Appropriateness (for non-advised services) (MiFID and insurance based investment products provisions)).

...

9.4 Suitability reports

...

9.4.2 R If a *firm* makes a *personal recommendation* in relation to a *life policy*, it must provide the *client* with a *suitability report*.

[**Note:** ~~article 12(3) of the Insurance Mediation Directive~~ first and third paragraphs of article 20(1) of the IDD]

9.4.3 R The obligation to provide a *suitability report* does not apply:

...

(3) ~~to any personal recommendation by a friendly society for a small life policy sold by it with a premium not exceeding £50 a year or, if payable weekly, £1 a week; [deleted]~~

(4) if the *personal recommendation* is to increase a regular *premium* to an existing contract;

...

Timing

9.4.4 R A *firm* must provide the *suitability report* to the *client*:

- (1) in the case of a *life policy*, before the contract is concluded ~~unless the necessary information is provided orally or immediate cover is necessary~~; or
- (2) in the case of a *personal pension scheme* or *stakeholder pension scheme* that is not a *life policy*, where the *rules* on cancellation (*COBS 15*) require notification of the right to cancel, no later than the fourteenth day after the contract is concluded; or
- (3) in any other case, when or as soon as possible after the transaction is effected or executed.

[**Note:** article 12(3) of the *Insurance Mediation Directive* first and third paragraphs of article 20(1) of the *IDD*]

9.4.5 R If, ~~in respect of a *life policy*, the *firm* gives necessary information orally or gives immediate cover~~, it must provide a *suitability report* to the *client* ~~in a *durable medium* immediately after the contract is concluded.~~
[deleted]

[**Note:** article 13(2) of the *Insurance Mediation Directive*]

9.4.6 R In the case of telephone selling of a *life policy* (when the only contact between a *firm* and its *client* before conclusion of a contract is by telephone), the *suitability report* must: be given in accordance with *COBS 7.4*.

- (1) ~~comply with the distance marketing disclosure rules (*COBS 5.1*);~~
- (2) ~~be provided immediately after; and~~
- (3) ~~be in a *durable medium*.~~

[**Note:** article 13(3) of the *Insurance Mediation Directive* article 23(7) of the *IDD*]

Contents

9.4.7 R The *suitability report* must, at least:

- (1) specify, on the basis of the information obtained from the *client*, the *client's* demands and needs;
- (2) explain why the *firm* has concluded that the recommended transaction is suitable for the *client* having regard to the information provided by the *client*; ~~and~~
- (3) explain any possible disadvantages of the transaction for the *client*; and
- (4) in the case of a *life policy*, include a personalised recommendation explaining why a particular *life policy* would best meet the *client's*

demands and needs.

[**Note:** ~~article 12(3) of the Insurance Mediation Directive~~ first and third paragraphs of article 20(1) of the IDD]

- 9.4.8 ~~G~~ R ~~A firm should must give the client such details as are appropriate~~ ensure the details are modulated according to the complexity of the transaction or the proposed contract of insurance and the type of client.

[**Note:** ~~article 12(3) of the Insurance Mediation Directive~~ article 20(2) of the IDD]

- 9.4.8A R Where a friendly society has given a personal recommendation on a small life policy in COBS 9.2.9R(2), the suitability report must include, at least, the information required by COBS 9.4.7R(1) and (4).

[**Note:** first and third paragraphs of article 20(1) of the IDD]

Means of communication (life policies)

- 9.4.9 R If a firm is providing a suitability report in the course of ~~insurance mediation activity~~ insurance distribution activity, the information must be provided: in accordance with COBS 7.4.

- (1) ~~in a durable medium which is available and accessible to the client;~~
- (2) ~~in a clear and accurate manner, comprehensible to the client; and~~
- (3) ~~in an official language of the State of the commitment in which the contract of insurance is made or in any other language agreed by the parties.~~

[**Note:** ~~article 13 of the Insurance Mediation Directive~~ article 23 of the IDD]

...

9.6 Special rules for giving basic advice on a stakeholder product

...

- 9.6.18A R (1) A firm providing basic advice on a stakeholder product that is a life policy must, in addition to providing the statement of demands and needs required under COBS 7.3.1R, provide the client with a personalised explanation of why a particular life policy would best meet the client's demands and needs.
- (2) The details must be modulated according to the complexity of the life policy proposed and the type of client.
- (3) The information in (1) must be provided in accordance with COBS 7.4.

[Note: third paragraph of article 20(1) and 20(2) of the IDD]

...

9 Annex Basic advice initial disclosure information 1R

This Annex belongs to COBS 9.6.5R(1)

Information that comprises the following:	
...	...
[Note: in respect of 1, 2, 4, 5, and 6, Articles 12 and 13 of the Insurance mediation directive and in respect of 7, Article <u>article</u> 10 of the Investors compensation directive]	

...

9A Suitability (MiFID and insurance based investment products provisions)

9A.1 Application and purpose

...

Application

- 9A.1.1 R This chapter applies to a *firm* which provides:
- (1) investment advice or portfolio management in the course of MiFID, equivalent third country or optional exemption business; or
 - (2) investment advice in relation to an insurance based investment product.

Effect of provisions marked “EU” for third country investment firms and MiFID optional exemption firms

- 9A.1.2 R Provisions in this chapter marked “EU” and including a Note (‘Note:’) referring to the MiFID Org Regulation apply in relation to *MiFID optional exemption business* as if they were *rules*.
- 9A.1.3 G The effect of GEN 2.2.22AR is that provisions in this chapter marked “EU” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Effect of provisions marked “EU” for the firms distributing insurance based investment products

- 9A.1.4 R Provisions in this chapter marked “EU” and including a Note (‘Note:’) referring to the IDD Regulation apply as if they were *rules* in relation to insurance distribution activities to which the IDD Regulation does not

apply.

9A.2 Assessing suitability

Assessing suitability: the obligations

- 9A.2.1 R When providing *investment advice* or *portfolio management* a firm must:
- (1) obtain the necessary information regarding the *client's*:
 - (a) knowledge and experience in the investment field relevant to the specific type of *financial instrument*, *insurance based investment product* or service;
 - (b) financial situation including his ability to bear losses; and
 - (c) investment objectives including his risk tolerance,
 so as to comply with (2);
 - (2) only recommend *investment services*, ~~and~~ *financial instruments* and insurance based investment products, as applicable, or take ~~the decision~~ decisions to trade, which ~~is~~ are suitable for the *client* and, in particular, in accordance with the client's risk tolerance and ability to bear losses.

[**Note:** first paragraph of article 25(2) of *MiFID*, first paragraph of article 30(1) of the *IDD*]

- 9A.2.2 G *Firms* should undertake a suitability assessment not only when making a *personal recommendation* to buy a *financial instrument* or an insurance based investment product but for all decisions whether to trade, including making any *personal recommendations* about whether or not to buy, hold or sell an investment.

[**Note:** recital 87 to the *MiFID Org Regulation*]

...

- 9A.2.3A R When proposing an *insurance based investment product* a firm must ensure it is consistent with the *client's* insurance demands and needs.

[**Note:** recital 44 to, and second paragraph article 20(1) of, the *IDD*]

Assessing the extent of the information required: MiFID business

...

Assessing the extent of the information required: insurance based investment products

9A.2.4A	EU	<p>9(1) <u>For the purposes of providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, insurance intermediaries or insurance undertakings shall determine the extent of the information to be collected from the customer or potential customer in light of all the features of the advice to be provided to the customer or potential customer.</u></p> <p>9(2) <u>Without prejudice to the fact that, in accordance with Article 20(1) of Directive (EU) 2016/97, any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:</u></p> <ul style="list-style-type: none"> (a) <u>it meets the customer's or potential customer's investment objectives, including that person's risk tolerance;</u> (b) <u>it meets the customer's or potential customer's financial situation, including that person's ability to bear losses;</u> (c) <u>it is such that the customer or potential customer has the necessary knowledge and experience in the investment field relevant to the specific type of product or service.</u> <p>17(3) <u>Where information required for the purposes of Article 30(1) or (2) of Directive (EU) 2016/97 has already been obtained pursuant to Article 20 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall not request it anew from the customer.</u></p>
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[Note: articles 9(1) and (2) and 17(3) of the *IDD Regulation*]

Professional clients: MiFID business

...

Obtaining information about knowledge and experience: MiFID business

...

Obtaining information about knowledge and experience: insurance based investment products

9A.2.6A	EU	<p>17(1) <u>For the purposes of Article 30(1) and (2) of Directive (EU) 2016/97, the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the</u></p>
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following, to the extent appropriate to the nature of the customer, and the nature and type of product or service offered or demanded, including their complexity and the risks involved:

- (a) the types of service, transaction, insurance-based investment product or financial instrument with which the customer or potential customer is familiar;
- (b) the nature, number, value and frequency of the customer's or potential customer's transactions in insurance-based investment products or financial instruments and the period over which they have been carried out;
- (c) the level of education, and profession or relevant former profession of the customer or potential customer.

[Note: article 17(1) of the *IDD Regulation*]

Obtaining information about a client's financial situation: MiFID business

...

Obtaining information about a client's financial situation: insurance based investment products

- 9A.2.7A EU 9(3) The information regarding the customer's or potential customer's financial situation, including that person's ability to bear losses, shall include, where relevant, information on the source and extent of the customer's or potential customer's regular income, assets, including liquid assets, investments and real property and the regular financial commitments. The level of information gathered shall be appropriate to the specific type of product or service being considered.

[Note: article 9(3) of the *IDD Regulation*]

Obtaining information about a client's investment objectives: MiFID business

...

Obtaining information about a client's investment objectives: insurance based investment products

- 9A.2.8A EU 9(4) The information regarding the customer's or potential customer's investment objectives, including that person's risk tolerance, shall include, where relevant, information on the length of time for which the customer or potential customer wishes to hold the investment, that person's preferences regarding risk taking, the risk profile, and the purposes of the investment. The level of information gathered shall be appropriate to the specific type of product or service being considered.

[Note: article 9(4) of the *IDD Regulation*]

Reliability of information: MiFID business

...

Reliability of information: insurance based investment products

<u>9A.2.9A</u>	<u>EU</u>	<u>10</u>	<p><u>Insurance intermediaries and insurance undertakings shall take reasonable steps to ensure that the information collected about customers and potential customers for the purposes of the assessment of suitability is reliable. Such steps shall include, but shall not be limited to, the following:</u></p> <ul style="list-style-type: none"> <u>(a) ensuring that customers are aware of the importance of providing accurate and up-to-date information;</u> <u>(b) ensuring that all tools, such as risk assessment profiling tools or tools to assess a customer's knowledge and experience, employed in the suitability assessment process are fit-for-purpose and are appropriately designed for use with their customers, with any limitations identified and actively mitigated through the suitability assessment process;</u> <u>(c) ensuring that questions used in the process are likely to be understood by the customers and to capture an accurate reflection of the customer's objectives and needs and the information necessary to undertake the suitability assessment;</u> <u>(d) taking steps, as appropriate, to ensure the consistency of customer information, such as considering whether there are obvious inaccuracies in the information provided by the customer.</u>
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[Note: article 10 of the *IDD Regulation*]

Maintaining adequate and up-to-date information: MiFID business

...

Discouraging the provision of information: MiFID business

...

Discouraging the provision of information: insurance based investment products

<u>9A.2.11</u> <u>A</u>	<u>EU</u>	<u>17(2)</u>	<p><u>The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of Article 30(1) and (2) of Directive (EU) 2016/97.</u></p>
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[Note: article 17(2) of the *IDD Regulation*]

Reliance on information: MiFID business

...

Reliance on information: insurance based investment products

<u>9A.2.12</u> <u>A</u>	<u>EU</u>	<u>17(4)</u> <u>The insurance intermediary or insurance undertaking shall be entitled to rely on the information provided by its customers or potential customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.</u>
----------------------------	-----------	---

[Note: article 17(4) of the *IDD Regulation*]

Insufficient information: MiFID business

...

Insufficient information: insurance based investment products

<u>9A.2.13</u> <u>A</u>	<u>EU</u>	<u>9(5)</u> <u>Where the insurance intermediary or insurance undertaking does not obtain the information required under Article 30(1) of Directive (EU) 2016/97, the insurance intermediary or insurance undertaking shall not provide advice on insurance-based investment products to the customer or potential customer.</u>
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[Note: article 9(5) of the *IDD Regulation*]

Insufficient information: MiFID business and insurance based investment products

<u>9A.2.14</u>	<u>G</u>	Although a <i>firm</i> may not be permitted to provide <i>investment advice</i> or take a decision to trade because it does not have the necessary information, its <i>client</i> may still ask the <i>firm</i> to provide another service such as, for example, to arrange a deal or to deal as agent for the <i>client</i> . If this happens, the <i>firm</i> should ensure that it receives written confirmation of the instructions. The <i>firm</i> should also bear in mind the <i>client's best interests rule</i> and any obligation it may have under the <i>rules</i> relating to appropriateness when providing the different service (see <i>COBS 10A</i> (Appropriateness (for non-advised services) (<u>MiFID and insurance based investment products</u> provisions)))).
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Identifying the subject of a suitability assessment: MiFID business

...

Identifying the subject of a suitability assessment: insurance based investment products

9A.2.15 EU
A

- 13 With regard to group insurance the insurance intermediary or insurance undertaking shall establish and implement a policy as to who shall be subject to the suitability assessment in case an insurance contract is concluded on behalf of a group of members and each individual member cannot take an individual decision to join. Such a policy shall also contain rules on how that assessment will be done in practice, including from whom information about knowledge and experience, financial situation and investment objectives shall be collected.
- The insurance intermediary or insurance undertaking shall record the policy established pursuant to the first paragraph.

[**Note:** article 13 of the *IDD Regulation*]

...

Bundled packages: MiFID business and insurance based investment products

- 9A.2.16 R Where a *firm* provides ~~a *personal recommendation*~~ *investment advice* recommending a package of services or products bundled pursuant to COBS 6.1ZA.16R (for MiFID business) or COBS 6.1ZA.16AR to COBS 6.1ZA.16ER (for *insurance based investment products*), the *firm* must ensure that the overall bundled package is suitable for the *client*.

[**Note:** second paragraph of article 25(2) of *MiFID* and second paragraph of article 30(1) of the *IDD*]

- 9A.2.17 G When considering the suitability of a particular *financial instrument* or *insurance based investment product* which is linked directly or indirectly to any form of loan, mortgage or *home reversion plan*, a *firm* should take account of the suitability of the overall transaction. The *firm* should have regard to any applicable suitability *rules* in *MCOB*.

Switching: MiFID business

...

Switching: insurance based investment products

9A.2.18 EU
A

- 9(7) When providing advice that involves switching between underlying investment assets, insurance intermediaries and insurance undertakings shall also collect the necessary information on the customer's existing underlying investment assets and the recommended new investment assets and shall undertake an analysis of the expected costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are expected to be greater than the costs.

[**Note:** article 9(7) of the *IDD Regulation*]

Adequate policies and procedures: MiFID business

...

Unsuitability: MiFID business

...

Unsuitability: insurance based investment products

9A.2.20 <u>A</u>	<u>EU</u>	<u>9(6)</u>	<u>When providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.</u>
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[**Note:** article 9(6) of the *IDD Regulation*]

Guidance on assessing suitability: MiFID business and insurance based investment products

- | | | | |
|---------|---|------|--|
| 9A.2.21 | G | (1) | A transaction may be unsuitable for a <i>client</i> due to the risks of the associated <i>financial instruments</i> , the type of transaction, the characteristics of the order or the frequency of the trading. |
| | | (1A) | <u>An insurance based investment product may be unsuitable for a <i>client</i> due to the risks of the underlying investment assets, the type or characteristics of the product or the frequency of switching of underlying investment assets.</u> |
| | | (2) | A series of transactions, each of which are suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the <i>client</i> . |
| | | (3) | In the case of <i>portfolio management</i> , a transaction might be unsuitable if it would result in an unsuitable portfolio. |

[**Note:** recital 88 to the *MiFID Org Regulation*, recital 9 to the *IDD Regulation*]

...

Investments subject to restrictions on retail distribution: MiFID business and insurance based investment products

- | | | | |
|---------|---|-----|--|
| 9A.2.22 | G | (1) | <i>Firms</i> should note that restrictions and specific requirements apply to the retail distribution of certain <i>financial instruments</i> <u><i>investments</i></u> : |
| | | (a) | ... |

...

- (2) A *firm* should be satisfied that an exemption is available before recommending a ~~financial instrument~~ an investment subject to a restriction on distribution to a *retail client*, noting in particular that a *personal recommendation* to invest will generally incorporate a *financial promotion*.
- (3) In addition to assessing whether the promotion is permitted, a *firm* giving advice on a ~~financial instrument~~ an investment subject to a restriction on distribution should comply with their obligations in COBS 9A and ensure any *personal recommendation* is suitable for its *client*.
- (4) In considering its obligations under COBS 9A, a *firm* purchasing a ~~financial instrument~~ an investment subject to a restriction on distribution on behalf of a *retail client* as part of a discretionary management agreement should exercise particular care to ensure the transaction is suitable and in the *client's* best interests, having regard to the *FCA's* view that such ~~financial instruments~~ investments pose particular risks of inappropriate distribution.
- (5) A restriction on promotion does not affect a transaction where there has been no prior communication with the *client* in connection with the investment by the *firm* or a person connected to the *firm*. Nonetheless, if promotion of a ~~financial instrument~~ an investment to a *retail client* would not have been permitted, then the discretionary manager's decision to purchase it on behalf of the *retail client* should be supported by detailed and robust justification of his assessment of suitability.

Automated or semi-automated systems: MiFID business

...

Automated or semi-automated systems: insurance based investment products

9A.2.24	<u>EU</u>	<u>12</u>	<u>The insurance intermediary's or insurance undertaking's responsibility to perform the suitability assessment in accordance with Article 30(1) of Directive (EU) 2016/97 shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system.</u>
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[Note: article 12 of the IDD Regulation]

...

9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability: MiFID business

...

Explaining the reasons for assessing suitability: insurance based investment products

9A.3.1A	EU	11	<u>Insurance intermediaries and insurance undertakings shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of insurance-based investment products in accordance with Article 30(1) of Directive (EU) 2016/97. Insurance intermediaries and insurance undertakings shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.</u>
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[Note: article 11 of the *IDD Regulation*]

Suitability reports: MiFID business and insurance based investment products

- 9A.3.2 R (1) [deleted]
- (2) When providing *investment advice* to a retail client, a *firm* must, before the transaction is concluded, provide the *client* with a *suitability report* in a *durable medium*:
- (a) specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the *client*;
 - (b) (for an insurance based investment product):
 - (i) specifying, on the basis of the information obtained from the *client*, the *client's* demands and needs; and
 - (ii) including a personalised recommendation explaining why a particular *insurance based investment product* would best meet the *client's* demands and needs.

The details in (i) and (ii) must be modulated according to the complexity of the *contract of insurance* proposed and the type of *client*.
- (3) Where the ~~agreement to buy or sell a *financial instrument* transaction~~ is concluded using a means of distance communication which prevents the prior delivery of the *suitability report*, the *firm* may provide the *suitability report* in a *durable medium* immediately after the *client* is bound by ~~any such agreement~~ the transaction, provided both the following conditions are met:
- (a) the *client* has consented to receiving the *suitability report* without undue delay after the conclusion of the transaction; and

- (b) the *firm* has given the *client* the option of delaying the transaction in order to receive the *suitability report* in advance.

...

[**Note:** second, third and fourth paragraphs of article 25(6) of, and recital (82) to, *MiFID*; article 20(1), article 20(2), second paragraph of article 22(1) and second and third paragraphs of article 30(5) of the *IDD*]

9A.3.2A R Where a *firm* makes a *personal recommendation* to a *professional client* on an *insurance based investment product* it must, prior to the conclusion of the contract, provide to the client the information in *COBS* 9A.3.2R(2)(b) in accordance with *COBS* 7.4.

[**Note:** article 20(1) and 20(2) of the *IDD*]

Providing a suitability report: MiFID business

...

Providing a suitability report: insurance based investment products

<u>9A.3.3A</u>	<u>EU</u>	<p><u>14(1)</u> <u>When providing advice on the suitability of an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall provide a statement to the customer (suitability statement) that includes the following:</u></p> <ul style="list-style-type: none"> <u>(a) an outline of the advice given;</u> <u>(b) information on how the recommendation provided is suitable for the customer, in particular how it meets:</u> <ul style="list-style-type: none"> <u>(i) the customer's investment objectives, including that person's risk tolerance;</u> <u>(ii) the customer's financial situation, including that person's ability to bear losses;</u> <u>(iii) the customer's knowledge and experience.</u> <p><u>14(2)</u> <u>Insurance intermediaries and insurance undertakings shall draw customers' attention to, and shall include in the suitability statement, information on whether the recommended insurance-based investment products are likely to require the customer to seek a periodic review of their arrangements.</u></p> <p><u>14(3)</u> <u>Where an insurance intermediary or insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the subsequent statements after the initial service is established may be limited to changes in the services or</u></p>
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underlying investment assets, and/or the circumstances of the customer without repeating all the details contained in the first statement.

[**Note:** article 14(1) to (3) of the *IDD Regulation*]

...

Periodic assessments: MiFID business and insurance based investment products

9A.3.6 R A *firm* must:

(1) in relation to an *insurance based investment product*, at least in good time prior to the conclusion of the contract;

(2) otherwise, in good time before it provides its *investment advice*;

inform the *client* whether it will provide the *client* with a periodic assessment of the suitability of the *financial instruments* or the *insurance based investment products* recommended to the *client*.

[**Note:** article 24(4)(a)(iii) of *MiFID*, article 29(1)(a) of the *IDD*]

9A.3.7 G *COBS* 9A.3.6R supplements *COBS* 2.2A.2R (information disclosure before providing services (*MiFID* provisions and insurance distribution)).

Periodic assessments: MiFID business

9A.3.8 ...

9A.3.9 ...

Periodic assessments: insurance based investment products

9A.3.10 EU 14(4) Insurance intermediaries and insurance undertakings providing a periodic assessment of suitability shall review, in accordance with the best interests of their customers, the suitability of the recommended insurance-based investment products at least annually. The frequency of this assessment shall be increased depending on the characteristics of the customer, such as the risk tolerance, and the nature of the recommended insurance-based investment product.

[**Note:** article 14(4) of the *IDD Regulation*]

9A.4 Record keeping and retention periods for suitability records

Record keeping: MiFID business and insurance based investment products

- 9A.4.1 G A *firm* to which SYSC 9 applies is required to keep orderly records of its business and internal organisation (see SYSC 9; (General rules on record-keeping)). The records may be expected to reflect the different effect of the requirements in this chapter depending on whether the *client* is a *retail client* or a *professional client*; for example, in respect of information about the *client* which the *firm* must obtain and whether the *firm* is required to provide a *suitability report*.
- 9A.4.2 G A *firm* should refer to SYSC 3.2 and SYSC 3.3 (for *insurers* and *managing agents*) and SYSC 9 (for other *firms*) for its obligations in relation to record keeping.

[Note: article 16(7) of *MiFID*]

Retention of records: insurance based investment products

- 9A.4.3 EU 19(1) Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with Article 30(1) and (2) of Directive (EU) 2016/97. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.

[Note: article 19(1) of the *IDD Regulation*]

Record-keeping obligations for the assessment of suitability: insurance based investment products

- 9A.4.4 EU 19(2) In the case of an assessment of suitability undertaken in accordance with Article 30(1) of Directive (EU) 2016/97, the record shall further include the following:
- (a) the result of the suitability assessment;
 - (b) the recommendation made to the customer and the statement provided in accordance with Article 14(1) of this Regulation;
 - (c) any changes made by the insurance intermediary or insurance undertaking with regard to the suitability assessment, in particular any change to the customer's risk tolerance;
 - (d) any changes to the underlying investment assets.

[Note: article 19(2) of the *IDD Regulation*]

...

10 **Appropriateness (for non-MiFID and non-insurance based investment products non-advised services) (non-MiFID and non-insurance based investment products provisions)**

...

10A **Appropriateness (for non-advised services) (MiFID and insurance based investment products provisions)**

10A.1 **Application**

...

Application

10A.1.1 R This chapter applies to a *firm* which:

(1) provides *investment services* in the course of *MiFID* or *equivalent third country business*; or

(2) carries on *insurance distribution* in relation to an *insurance based investment product*,

other than ~~making~~ when the *firm* makes a *personal recommendation* or ~~carrying~~ carries out *portfolio management*.

...

Effect of provisions marked EU

10A.1.3 R The effect of *GEN 2.2.22AR* is that provisions in this chapter marked “EU” and including a Note (**‘Note:’**) referring to the *MiFID Org Regulation* also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

10A.1.4 R Provisions in this chapter marked “EU” and including a Note (**‘Note:’**) referring to the *IDD Regulation* apply as if they were *rules* to *firms*, to whom the *IDD Regulation* does not apply, when doing *insurance distribution*.

10A.2 **Assessing appropriateness: the obligations**

10A.2.1 R ~~When providing a service to which this chapter applies, a~~ A *firm* must ask the *client* to provide information regarding that *client*’s knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded to enable the *firm* to assess whether the service

or product envisaged is appropriate for the *client*.

[**Note:** article 25(3) of *MIFID*, first paragraph of article 30(2) of the *IDD*]

- 10A.2.1 G A firm carrying on insurance distribution is also required to comply with the requirements in COBS 7.3 (additional insurance distribution obligations: demands and needs).

[**Note:** first paragraph of article 30(2) of the *IDD*]

Bundled packages: MiFID business and insurance based investment products

- 10A.2.2 R Where a bundle of services or products is envisaged pursuant to *COBS* 6.1ZA.16R (for MiFID business) or *COBS* 6.1ZA.16AR to *COBS* 6.1ZA.16E (for *insurance based investment products*), the assessment made pursuant to *COBS* 10A.2.1R must consider whether the overall bundled package is appropriate.

[**Note:** article 25(3) of *MiFID*, first paragraph of article 30(2) of the *IDD*]

Assessing a client's knowledge and experience: MiFID business

...

Assessing a client's knowledge and experience: insurance based investment product

- 10A.2.3 EU 15 Without prejudice to the fact that, in accordance with Article 20(1) of Directive (EU) 2016/97, any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall determine whether the customer has the necessary knowledge and experience in order to understand the risks involved in relation to the service or product proposed or demanded when assessing whether an insurance service or product distributed in accordance with Article 30(2) of Directive (EU) 2016/97 is appropriate for the customer.

[**Note:** article 15 of the *IDD Regulation*]

Information regarding a client's knowledge and experience: MiFID business

...

Information regarding a client's knowledge and experience: insurance based investment products

- 10A.2.4 EU 17(1) For the purposes of Article 30(1) and (2) of Directive (EU) 2016/97, the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the following, to the extent appropriate to the nature of the customer, and the nature and

type of product or service offered or demanded, including their complexity and the risks involved:

- (a) the types of service, transaction, insurance-based investment product or financial instrument with which the customer or potential customer is familiar;
- (b) the nature, number, value and frequency of the customer's or potential customer's transactions in insurance-based investment products or financial instruments and the period over which they have been carried out;
- (c) the level of education, and profession or relevant former profession of the customer or potential customer.

17(3) Where information required for the purposes of Article 30(1) or (2) of Directive (EU) 2016/97 has already been obtained pursuant to Article 20 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall not request it anew from the customer.

[Note: article 17(1) and (3) of the *IDD Regulation*]

Discouraging the provision of information: MiFID business

...

Discouraging the provision of information: insurance based investment products

10A.2.5
A

EU 17(2) The insurance intermediary or insurance undertaking shall not discourage a customer or potential customer from providing information required for the purposes of Article 30(1) and (2) of Directive (EU) 2016/97.

[Note: article 17(2) of the *IDD Regulation*]

Reliance on information: MiFID business

...

Reliance on information: insurance based investment products

10A.2.6
A

EU 17(4) The insurance intermediary or insurance undertaking shall be entitled to rely on the information provided by its customers or potential customers unless it is aware or ought to be aware that the information is manifestly out of date, inaccurate or incomplete.

[Note: article 17(4) of the *IDD Regulation*]

Use of existing information: MiFID business and insurance based investment products

...

Knowledge and experience: MiFID business and insurance based investment products

...

Increasing the client's understanding: MiFID business and insurance based investment products

...

No duty to communicate firm's assessment of knowledge and experience: MiFID business and insurance based investment products

- 10A.2.1 G If a *firm* is satisfied that the *client* has the necessary experience and
0 knowledge in order to understand the risks involved in relation to the product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in COBS 9A (MiFID and insurance based investment products provisions).

10A.3 Warning the client

- 10A.3.1 R (1) If a *firm* considers, on the basis of information received to enable it to assess appropriateness, that the product or service is not appropriate for the *client*, the *firm* must warn the *client*.

(2) This warning may be provided in a standardised format.

[**Note:** article 25(3) of *MiFID*, second paragraph of article 30(2) of the IDD]

- 10A.3.2 R (1) If the *client* does not provide the information to enable the *firm* to assess appropriateness, or if the *client* provides insufficient information regarding their knowledge and experience, the *firm* must warn the *client* that the *firm* is not in a position to determine whether the service or product envisaged is appropriate for the *client*.

(2) This warning may be provided in a standardised format.

[**Note:** article 25(3) of *MiFID*, third paragraph of article 30(2) of the IDD]

...

10A.4 Assessing appropriateness: when it need not be done due to type of investment

- 10A.4.1 R (1) A *firm* is not required to ask its *client* to provide information or assess appropriateness if either (a) or (aa), and both (b) and (c), are met:

- (a) the service:
 - (i) only consists of execution or reception and transmission of *client* orders, with or without *ancillary services*, excluding *ancillary service* (2) in section B of Annex I to *MiFID* (granting of credits or loans), where the relevant credits or loans do not comprise existing credit limits of loans, current accounts and overdraft facilities of *clients*;
 - (ii) relates to particular *financial instruments* (see paragraph (2)); and
 - (iii) is provided at the initiative of the *client*; or
 - (aa) the *insurance distribution* activity:
 - (i) relates to particular types of *insurance based investment products* (see (2A)); and
 - (ii) is carried out at the initiative of the *client*; and
 - (b) the *client* has been clearly informed (whether in a standardised format or not) that, in the provision of ~~this~~ the service or *insurance distribution* activity, the *firm* is not required to assess the appropriateness of the *financial instrument* or service or *insurance based investment product* provided or offered and that therefore the *client* does not benefit from the protection of the *rules* on assessing appropriateness; and
 - (c) the *firm* complies with its obligations in relation to conflicts of interest.
- (2) The *financial instruments* referred to in (1)(a)(ii) are any of the following:
- (a) shares in companies admitted to trading on:
 - (i) a *regulated market*; or
 - (ii) an equivalent third country market; or
 - (iii) an *MTF*,

except shares that embed a derivative and *units* in a collective investment undertaking that is not a *UCITS*; or
 - (b) bonds or other forms of securitised debt admitted to trading on:
 - (i) a *regulated market*; or

- (ii) an equivalent third country market; or
- (iii) an *MTF*,

except those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or

- (c) *money-market instruments*, excluding those that embed a derivative or incorporate a structure which makes it difficult for the *client* to understand the risk involved; or
- (d) shares or *units* in a *UCITS*, excluding structured *UCITS* as referred to in the second subparagraph of article 36(1) of the *KII Regulation*; or
- (e) *structured deposits*, excluding those that incorporate a structure which makes it difficult for the *client* to understand the risk of return or the cost of exiting the product before term; or
- (f) other non-complex *financial instruments*.

(2A) The *insurance based investment products* referred to in (1)(aa) are:

- (a) *insurance based investment products* which only provide investment exposure to *financial instruments* referred to in (2) and do not incorporate a structure which makes it difficult for the *client* to understand the risks involved; or
- (b) other non-complex *insurance based investment products*.

(3) ...

[**Note:** article 25(4) of *MIFID*, article 30(3) of the *IDD*]

...

~~Non-complex~~ Other non-complex financial instruments

...

Other non-complex insurance based investment products

10A.4.3	EU	16	<p><u>An insurance-based investment product shall be considered as non-complex for the purposes of Article 30(3)(a)(ii) of Directive (EU) 2016/97 where it satisfies all of the following criteria:</u></p> <ul style="list-style-type: none"> <u>(a) it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs;</u> <u>(b) it does not incorporate a clause, condition or trigger that allows</u>
---------	----	----	--

the insurance undertaking to materially alter the nature, risk, or pay-out profile of the insurance-based investment product;

- (c) it provides options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;
- (d) it does not include any explicit or implicit charges which have the effect that, even though there are technically options to surrender or otherwise realise the insurance-based investment product, doing so may cause unreasonable detriment to the customer because the charges are disproportionate to the cost to the insurance undertaking;
- (e) it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

[**Note:** article 16 of the *IDD Regulation*]

10A.5 Assessing appropriateness: guidance

The initiative of the client: MiFID business and insurance based investment products

- 10A.5.1 G A service should be considered to be provided, or carried out, at the initiative of a *client* (see *COBS* 10A.4.1R(1)(a)(iii) and (aa)(ii)), unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument*, insurance based investment product or specific transaction.

[**Note:** recital 85 to *MIFID*]

- 10A.5.2 G A service can be considered to be provided, or carried out, at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion for, or offer of, *financial instruments* or insurance based investment products made by any means and that by its very nature is general and addressed to the public or a larger group or category of *clients*.

[**Note:** recital 85 to *MIFID*]

Personalised communications: MiFID business and insurance based investment products

...

10A.6 ~~When~~ Assessing appropriateness: when a firm need not assess

appropriateness due to suitability assessment

- 10A.6.1 G A *firm* need not assess appropriateness if it is receiving or transmitting an order ~~in relation to which~~ or carrying on *insurance distribution* in relation to an insurance based investment product, for which it has assessed suitability under COBS 9A (Suitability (MiFID and insurance based investment products provisions)).
- 10A.6.2 G A *firm* may not need to assess appropriateness if it is able to rely on a recommendation made by an *investment firm* (see COBS 2.4.5G (Reliance on other investment firms: MiFID and equivalent business)) or, in relation to an insurance based investment product, made by an insurance distributor (see COBS 2.4.5AR (Reliance on other insurance distributors)).

10A.7 Record keeping and retention periods for appropriateness records

...

Record keeping: MiFID business

- 10A.7.2 EU ...

Record keeping: insurance based investment products

- 10A.7.2 EU 19(1) Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with Article 30(1) and (2) of Directive (EU) 2016/97. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.
- 19(3) In the case of an assessment of appropriateness undertaken in accordance with Article 30(2) of Directive (EU) 2016/97, the record shall further include the following:
- (a) the result of the appropriateness assessment;
 - (b) any warning given to the customer where the insurance-based investment product was assessed as potentially inappropriate for the customer, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance intermediary or insurance undertaking accepted the customer's request to proceed with

concluding the contract;

- (c) any warning given to the customer where the customer did not provide sufficient information to enable the insurance intermediary or insurance undertaking to assess the appropriateness of the insurance-based investment product, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance intermediary or insurance undertaking accepted the customer's request to proceed with concluding the contract.

[Note: article 19(1) and (3) of the *IDD Regulation*]

Record keeping: MiFID business and insurance based investment products

- 10A.7.3 G A *firm* should refer to *SYSC 3.3* (for *insurers* and *managing agents*) and *SYSC 9* (for other *firms*) for its obligations in relation to record keeping. ~~This requires~~ These provisions require records kept for the purposes of this chapter to be retained for a period of at least five years.

...

14 Providing product information to clients

...

14.2 Providing product information to clients

Providing information about PRIIPs

- 14.2.-1 G (1) ...
- ...
- (3) A *firm* that sells a *life policy* that is also a *PRIIP* must provide the ~~*Solvency II Directive information*~~, as information required by *COBS 14.2.1R(2)*. Some or all of this information may be included in a *key information document* if this is required to be provided by, and such inclusion is permitted under, the *PRIIPs Regulation*.

The provision rules for products other than PRIIPS

- 14.2.1 R A *firm* that sells:
- (1) ...
- (2) a *life policy* to a *client*, must provide:
- (a) the *Solvency II Directive information* to that *client*;
- (b) a *client* with objective and relevant information about the *policy*:

- (i) in a comprehensible form to allow the *client* to make an informed decision;
- (ii) modulated in a way that takes into account the complexity of the *policy* and the type of *client*;
- (iii) whether or not the *firm* makes a *personal recommendation*; and
- (iv) irrespective of whether the *policy* is offered as part of a package pursuant to COBS 6.1ZA.16AR to COBS 6.1ZA.16ER;
- (c) the information in (b) must be provided prior to the conclusion of the *life policy* and in accordance with COBS 7.4, rather than in accordance with the other *rules* in this section;

...

[**Note:** in respect of (2) article 185(1) of the *Solvency II Directive* and in respect of (2)(b) articles 20(1) first paragraph, 20(2), 20(4) and 23 of the *IDD*]

...

...

16A Reporting information to clients (MiFID and insurance based investment products provisions)

16A.1 Application

16A.1.1 R This chapter applies to a *firm* in relation to:

- (1) its *MiFID*, equivalent third country or optional exemption business; and
- (2) carrying on *insurance distribution activities* relating to an *insurance based investment product*.

Effect of provisions marked “EU” for third country investment firms and MiFID optional exemption firms

16A.1.2 R Provisions in this chapter marked “EU” and including a Note (‘**Note:**’) referring to the *MiFID Org Regulation* apply in relation to *MiFID optional exemption business* as if they were *rules* (see COBS 1.2.2G).

16A.1.2 G The effect of GEN 2.2.22AR is that provisions in this chapter marked “EU” also apply in relation to the *equivalent business of a third country investment firm* as if they were *rules*.

Effect of provisions marked “EU” for firms distributing insurance based investment products

- 16A.1.3 R Provisions in this chapter marked “EU” and including a Note (‘**Note:**’) referring to the *IDD Regulation* apply as if they were *rules to firms to whom the IDD Regulation* does not apply, when doing *insurance distribution*.

16A.2 General client reporting and record keeping requirements

- 16A.2.1 R (1) A *firm* must provide a *client* with adequate reports on the service provided in a *durable medium*.
- (2) The reports must include:
- (a) periodic communications to the *client*, taking into account the type and the complexity of the *financial instruments or insurance based investment products* involved and the nature of the service provided to the *client*; and
 - (b) where applicable, the costs associated with the transactions and services undertaken on behalf of the *client*.

[**Note:** article 25(6) of *MIFID*, article 30(5) of the *IDD*]

- 16A.2.2 G A *firm* should refer to *SYSC 3.2* (for *insurers* and *managing agents*) and *SYSC 9* (~~Record-keeping~~) (for other *firms*) for the requirements that apply in relation to the retention of records.

16A.3 Occasional reporting: MiFID business

...

16A.4 Periodic reporting

Provision by a firm and contents: MiFID business

...

Provision by a firm and contents: insurance based investment products

- | | | |
|----------------------------|----|--|
| <u>16A.4.2</u>
<u>A</u> | EU | <p><u>18(1)</u> Without prejudice to Article 185 of Directive 2009/138/EC of the European Parliament and of the Council, the insurance intermediary or insurance undertaking shall provide the customer with a periodic report, on a durable medium, of the services provided to and transactions undertaken on behalf of the customer.</p> <p><u>18(2)</u> The periodic report required under paragraph 1 shall provide a fair and balanced review of the services provided to and transactions</p> |
|----------------------------|----|--|

undertaken on behalf of that customer during the reporting period and shall include, where relevant, the total costs associated with these services and transactions, and the value of each underlying investment asset.

18(3) The periodic report required under paragraph 1 shall be provided at least annually.

[**Note:** article 18 of the *IDD Regulation*]

...

18 Specialist Regimes

...

18.2 Energy market activity and oil market activity

...

- 18.2.2 G The provisions of *COBS* in the table are unlikely to be relevant to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
...	
7	Insurance mediation <u>distribution</u>
...	

...

18.3 Corporate finance business

...

- 18.3.2 G The provisions of *COBS* in the table are unlikely to be relevant to any *corporate finance business* carried on by a *firm* which is *MiFID* or *equivalent third country business*:

COBS	Description
...	
7	Insurance mediation <u>distribution</u>
...	

...

18.4 Stock lending activity

...

- 18.4.2 G The provisions of *COBS* in the table are unlikely to be relevant in relation to any *stock lending activity* carried on by a *firm*:

COBS	Description
...	
7	Insurance mediation <u>distribution</u>
...	

...

18.11 Authorised professional firms

...

- 18.11.2 R *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except that:

- (1) the *fair, clear and not misleading rule* applies;
- (2) the *financial promotion rules* apply as modified below;
- (3) the rules in the following parts of *COBS* which implement the *IDD* apply in relation to *insurance distribution activities*:
 - (a) *COBS* 2.1.1R, *COBS* 2.2A and *COBS* 2.3A (Conduct of business obligations);
 - (b) *COBS* 4 (Communicating with clients, including financial promotions);
 - (c) *COBS* 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions));
 - (d) *COBS* 7 (Insurance ~~mediation~~ distribution);
 - (e) *COBS* 8 (Client agreements);
 - (f) *COBS* 9 (Suitability (including basic advice) (other than MiFID and insurance based investment products provisions)) and *COBS* 9A (Suitability (MiFID and insurance based investment products provisions));
 - (g) *COBS* 10A (Appropriateness (for non-advised services));
 - (h) *COBS* 14.2 (Providing product information to clients); and

(i) COBS 16A.2 (General client reporting and record keeping requirements),

applies but only if the *designated professional body* of the *firm* does not have rules approved by the *FCA* under section 332(5) of the *Act* that implement articles ~~12 and 13~~ 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the ~~*Insurance Mediation Directive*~~ *IDD* and that apply to the *firm*;

(4) *COBS 8.1.3R* (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and

(5) *COBS 5.2* (E-commerce) applies.

18.11.2 G For *COBS 18.11.2R(3)* if a *rule* implements a requirement of the *IDD*, a
A note (“Note:”) follows the *rule* indicating which provision is being implemented.

18.11.3 R ...

...

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)		(5)	(6)
	Material to which the transitional provision applies		Transitional provision		Transitional provision: dates in force	Handbook provisions: coming into force
...						
2.-2B	<i>COBS 2.3A</i>	R	The <i>rules</i> and <i>guidance</i> on inducements in <i>COBS 2.3A</i> :		From 3 January 2018	3 January 2018 (and in relation to an <u>insurance based investment product</u> , [1 October 2018])
			(1)	apply to fees, commission, monetary and non-monetary benefits which are paid, provided or received by a		

				<i>firm</i> in respect of:		
				(a) <u>(unless (b) applies)</u> services that are provided to a <i>client</i> on or after 3 January 2018;		
				(b) <u>(in relation to an insurance based investment product)</u> services that are provided to a <i>client</i> on or after [1 October 2018]; and		
			(2)	do not apply to fees, commission, monetary or non-monetary benefits which are paid, provided or received in respect of:		
				(a) <u>(unless (b) applies)</u> services that are provided to a <i>client</i> before 3 January 2018;		
				(b) <u>(in relation to an insurance based investment product)</u> services that are provided to a <i>client</i> on or after [1 October 2018].		
...						

...

Sch 1 Record keeping requirements

...

Sch 1.2A G (1) A *MiFID investment firm*, *third country investment firm* or *MiFID optional exemption firm* should refer to the requirements on record keeping in the *MiFID Org Regulation* and SYSC 9. In particular, Annex I to the *MiFID Org Regulation* contains a minimum list of records to be kept by those *firms* to which it applies.

[**Note:** article 72 of the *MiFID Org Regulation*]

- (2) An insurance distributor should refer to the requirements on record keeping in the *IDD Regulation* and in *SYSC 3* (for *insurers and managing agents*) or *SYSC 9* (for other *firms*).

[**Note:** article 19 of the *IDD Regulation*]

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>COBS</i> 9A.4.1G	Suitability (MiFID provisions)	<i>Client</i> information for <i>suitability</i> report	From date of <i>suitability</i> report	At least 5 years
<u><i>COBS</i> 9A.4.3EU</u>	<u>Suitability (insurance based investment products)</u>	<u><i>Client</i> information for <i>suitability</i> report - details in <i>COBS</i> 9A.4.3EU and <i>COBS</i> 9A.4.4EU</u>	<u>From date of <i>suitability</i> report</u>	<u>For whichever is the longer of 5 years or the duration of the relationship with the <i>client</i></u>
...				
<i>COBS</i> 10A.7.2EU	Appropriateness (MiFID provisions)	Records of appropriateness assessments including the results of such assessments and any warnings given to <i>clients</i>	Date of assessment	At least 5 years
<u><i>COBS</i> 10A.7.2AEU</u>	<u>Appropriateness (insurance based investment products)</u>	<u>Records of appropriateness assessments including the results of such assessments</u>	<u>Date of assessment</u>	<u>For whichever is the longer of 5 years or the duration of the relationship with the</u>

		and any warnings given to <i>clients</i> - details in <u>COBS</u> <u>10A.7.2A</u>		<u>client</u>
...				
<i>COBS</i> 16A.4.1EU	<i>Periodic statements</i> (MiFID provisions)	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	At least 5 years
<u>COBS</u> <u>16A.4.2EU</u>	<u>Periodic statements</u> (<u>insurance based investment products</u>)	A copy of a <u>periodic statement</u> sent to a <u>client</u>	From date of <u>despatch to client</u>	<u>At least 5 years</u>
...				

Annex L

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application

1.1 The general application rule

The general application rule

- 1.1.1 R This sourcebook applies to a *firm* with respect to the following activities carried on in relation to a *non-investment insurance contract* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

- (1) an ~~*insurance mediation activity*~~ *insurance distribution activity*;
- (2) *effecting and carrying out contracts of insurance*;
- (3) *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's*;
- (4) *communicating or approving a financial promotion*;

and activities connected with them.

...

1 Annex Application (see ICOBS 1.1.2R)

1

Part 1: Who?			
Modifications to the general application rule according to type of firm			
1	Third party processors		
1.1	R	(1)	This <i>rule</i> applies where a <i>firm</i> (or its <i>appointed representative</i>) ("A") has outsourced <i>insurance mediation activities</i> <u><i>insurance distribution activities</i></u> to a <i>third party processor</i> .
		...	
<u>1.2</u>	<u>G</u>	<u>(1)</u>	<u>The disclosure required of the <i>third party processor</i> under <i>ICOBS 4.3-7R</i> can be made without having to disclose the identity of the <i>third</i></u>

			<u>party processor</u> to the <i>customer</i> and therefore without breaching paragraph 1.1R(2) above.
2	Managing agents		
2.1	R	(1)	References to an <i>insurer</i> (including within the reference to <i>insurance distributor</i>) apply equally to a <i>managing agent</i> unless the context requires otherwise.
		...	
3	Authorised professional firms		
3.1	R		This sourcebook (except for <i>ICOBS</i> 4.6) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> except for:
		(1)	the provisions on communications to <i>clients</i> and <i>financial promotions</i> (see <i>ICOBS</i> 2.2);
		(2)	the e-commerce provisions (<i>ICOBS</i> 3.2);
		(3)	status <u>general information</u> disclosure requirements in relation to the complaints procedures (see <i>ICOBS</i> 4.1); and
		(4)	provisions implementing articles 12 and 13 <u>1(4), 17, 18, 19, 20, 23, and 24</u> of the <i>Insurance Mediation Directive</i> <i>IDD</i> (see <i>ICOBS</i> 2.2.2R (communication to customers and financial promotions), <i>ICOBS</i> 2.2.2AR (marketing communications), <i>ICOBS</i> 2.5.-1R (the customer's best interests rule), <i>ICOBS</i> 2.6 (Distribution of connected contracts through exempt persons), <i>ICOBS</i> 4.1 (Information about the firm, its services and remuneration), <i>ICOBS</i> 4.1A (Means of communicating to customers), <i>ICOBS</i> 4.3 (remuneration disclosure), <i>ICOBS</i> 5.2 (Demands and needs) and, <i>ICOBS</i> 5.3.3R (Advice on the basis of a fair analysis), <i>ICOBS</i> 5.3.4R (Personalised explanation), <i>ICOBS</i> 6A.1.4R (Ensuring the customer can make an informed decision) and <i>ICOBS</i> 6A.3 (Cross-selling)), except to the extent that the <i>firm</i> is subject to equivalent rules of its <i>designated professional body</i> approved by the <i>FCA</i> .
...			
4	Appointed representatives		
4.1	R	(1)	An <i>insurer</i> must ensure that its <i>appointed representative</i> complies with this sourcebook as it applies to an <i>insurance intermediary</i> .
		(2)	However, if the <i>appointed representative</i> is acting as the <i>insurer's third party processor</i> then:

		(a)	this <i>rule</i> is subject to the <i>third party processors rule</i> (see paragraph 1.1R); and
		(b)	the <i>insurer</i> is not required to ensure that the <i>appointed representative</i> complies with the <i>rules</i> in this sourcebook on commission disclosure (see <i>ICOBS 4.4</i>) or, unless they apply to an insurer, the rules on statements of demands and needs (see <i>ICOBS 5.2</i>).
4.2	G	The cancellation requirements in chapter 7 do not apply to a <i>distance contract</i> entered into by an <i>appointed representative</i> to provide mediation <u>distribution</u> services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the <i>Distance Marketing Regulations</i> apply instead.	
...			
Part 2: What?			
Modifications to the general application rule according to activities			
1	Reinsurance		
1.1	R	This sourcebook does not apply to activities carried on in relation to a <i>reinsurance contract</i> .	
		[Note: article 12(4) of the Insurance Mediation Directive <u>recital 51 to the IDD</u>]	
2	Contracts of large risks		
2.1	R	Subject to Part 3 of this Annex;	
		(1)	this sourcebook does not apply to an insurance intermediary mediating <u>a firm distributing a contract of large risks</u> ;
		(4)	where the risk is located outside the <i>European Economic Area</i> ; or
		(2)	<u>only <i>ICOBS 2</i> (General matters) and <i>ICOBS 6A.3</i> (Cross-selling) apply to a firm distributing a contract of large risks for a commercial customer where the risk is located within the <i>European Economic Area</i>; and</u>
		(3)	<u>the <i>IPID</i> requirement in <i>ICOBS 6.1.10AR</i> (How must <i>IPID</i> information be provided?) and <i>ICOBS 6 Annex 3R</i> (Providing product information by way of a standardised insurance information document) do not apply to a firm distributing a contract of large risks.</u>
		[Note: article 12(4) of the Insurance Mediation Directive <u>22(1) of the IDD</u>]	

2.2	G	<i>Principle 7 continues to apply so a firm should provide evidence of cover promptly after inception of a policy to its customer. In respect of a group policy, a firm should provide information to its customer to pass on to other policyholders and should tell the customer that he should give the information <u>should be given</u> to each policyholder.</i>
2.3	R	<i>ICOBS 6.2.3R does not apply to contracts of large risk risks.</i>
		[Note: article 184(1) of the Solvency II Directive]
...		
4		Chains of insurance intermediaries
4.1	R	Where there is a chain of <i>insurance intermediaries</i> between the <i>insurer</i> and the <i>customer</i> , this sourcebook, <u>except ICOBS 2</u> , applies only to the <u>any</u> <i>insurance intermediary</i> in contact with the <i>customer</i> .
4.2	G	<u>ICOBS 2 applies to all insurance intermediaries, including those within a chain who are not in contact with the customer.</u>
...		
Part 4: Guidance		
1		The main extensions and restrictions to the general application rule
...		
3		Insurance Mediation Directive <u>Insurance Distribution Directive</u> : effect on territorial scope
3.1	G	The Insurance Mediation Directive's <u>IDD's</u> scope covers most firms carrying on most types of insurance mediation <u>insurance distribution</u> . The rules in this sourcebook within the Directive's scope are those that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis (see ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 5.2 (Statement of demands and needs), ICOBS 5.3.3R (Advice on the basis of a fair analysis), ICOBS 6 (Product information) and ICOBS 6A.1.4R (Ensuring the customer can make an informed decision)).
3.2	G	The <u>rules in this sourcebook within the Directive's scope are those implementing the minimum information and other requirements in articles 12 and 13 1(4), 17, 18, 19, 20, 23 and 24(1) to (3) and (6) of the Directive</u> <u>IDD are set out in:</u>
		(1) <u>ICOBS 2.2.2R (communication to customers and financial promotions), ICOBS 2.2.2AR (marketing communications), ICOBS 2.5.-1R (the customer's best interests rule), ICOBS 2.6 (Distribution of connected contracts through exempt persons);</u>

		<p>(2) <u>ICOBS 4.1 (General requirements for insurance intermediaries and insurers), ICOBS 4.1A (Means of communicating to customers), ICOBS 4.3 (Remuneration disclosure);</u></p> <p>(3) <u>ICOBS 5.2 (Statement of demands Demands and needs), ICOBS 5.3.4R (Personalised explanation), and ICOBS 5.3.3R (Advice on the basis of a fair analysis); and</u></p> <p>(4) <u>ICOBS 6.1 (Providing product information to customers: general) and ICOBS 6 Annex 3R (Providing product information by way of a standardised insurance information document); and</u></p> <p>(5) <u>ICOBS 6A.1.4R (Ensuring the customer can make an informed decision) and ICOBS 6A.3 (Cross-selling).</u></p>
<u>3.2A</u>	<u>G</u>	<u>A Member State is entitled to impose additional requirements within the Directive's scope in the 'general good'. (See recital 52 to, and article 22 of, the IDD).</u>
<u>3.2B</u>	<u>G</u>	<p><u>The additional requirements within the scope of the IDD and found in this sourcebook are those that:</u></p> <p>(1) <u>deal with communication to customers and financial promotions, the customer's best interests rule and additional responsibilities of insurance distributors (see ICOBS 2.2.2R, ICOBS 2.2.2AR, ICOBS 2.5.-1R and ICOBS 2.6); and</u></p> <p>(2) <u>require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see ICOBS 4 (Information about the firm, its services and remuneration), ICOBS 5.2 (Demands and needs), ICOBS 5.3.3R (Advice on the basis of a fair analysis), ICOBS 6.1A.5R (Responsibility for producing the standardised insurance product information document), ICOBS 6.1 (Providing product information to customers: general); ICOBS 6A.1.4R (Ensuring the customer can make an informed decision) and ICOBS 6A.3 (Cross-selling)).</u></p>
<u>3.3</u>	<u>G</u>	<p>In the FCA's view, the responsibility for these minimum requirements rests with the Home State, but a Host State is entitled to impose additional requirements within the Directive's scope in the 'general good'. (See recital 19 to and article 12(5) of the Insurance Mediation Directive.</p> <p><u>The IDD places responsibility for requirements in this sourcebook within the Directive's scope (both minimum and additional requirements) on the Home State, except in relation to business conducted through a branch, in which case the responsibility rests with the EEA State in which the branch is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis) (see recital 22 to, and article 7(2) of, the IDD).</u></p> <p><u>Accordingly the general rules on territorial scope are not modified so that by the IDD except:</u></p>

		<p>(1) for a UK firm providing passported activities through a branch in another EEA State under the Directive, the rules implementing the Directive's minimum requirements apply, but the territorial scope of the additional rules within the Directive's scope is not modified;</p> <p>(2) for an EEA firm providing passported activities under the Directive in the United Kingdom, the rules implementing the Directive's minimum requirements do not apply, but additional rules within the Directive's scope have their unmodified territorial scope unless the <i>Home State</i> imposes measures of like effect; and</p> <p>(2) <u>for insurance distribution business carried on by insurers:</u></p> <p>(a) <u>minimum and additional requirements apply to a UK firm unless responsibility for any matter it covers is reserved by the Solvency II Directive to the firm's Host State regulator; and</u></p> <p>(b) <u>paragraph (1), and 3.3AG, below, apply in the same way unless the responsibility for any matter it covers is reserved by the Solvency II Directive to the firm's Home State regulator.</u></p>
		<p>(3) an EEA firm acting as the principal of an appointed representative is required to ensure that its appointed representative complies with this sourcebook as it applies to a UK firm that is an authorised person.</p>
3.3A	G	<u>An EEA firm acting as the principal of an appointed representative carrying on insurance distribution activities from an establishment in the United Kingdom is required to ensure that its appointed representative complies with this sourcebook.</u>
4		Solvency II Directive non-life business: effect on territorial scope
4.1	G	The <i>Solvency II Directive's</i> scope covers <i>insurers</i> authorised under that Directive conducting <i>general insurance business</i> .
4.2	G	The rules in this sourcebook within the Directive's <i>Solvency II Directive's</i> scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the insurance contract (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 6</i> (Product information), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 8</i> (Claims handling) except those parts of <i>ICOBS 8.2</i> (Motor vehicle liability insurers) implementing the <i>Consolidated Motor Insurance Directive</i> .
4.3	G	The Directive <i>Solvency II Directive</i> specifies minimum information requirements and permits <i>EEA States</i> to adopt additional mandatory rules. (See articles 178, 180, 183, 184 of the <i>Solvency II Directive</i> .)

4.4	G	If the <i>State of the risk</i> is an <i>EEA State</i> , the Directive <i>Solvency II Directive</i> provides that the applicable information rules shall be determined by that state. Accordingly, if the <i>State of the risk</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the risk</i> is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the Directive <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the ‘general good’. (See articles 156 and 180 of the <i>Solvency II Directive</i> .)
5	Solvency II Directive life business: effect on territorial scope	
5.1	G	The <i>Solvency II Directive</i> ’s scope covers <i>long-term insurers</i> which are <i>Solvency II firms</i> conducting <i>long-term insurance business</i> .
5.2	G	The <i>rules</i> in this sourcebook within the Directive’s scope are the cancellation <i>rules</i> (see <i>ICOBS 7</i>) and those <i>rules</i> requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the <i>contract of insurance</i> (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 4</i> (Information about the firm, its services and remuneration) , <i>ICOBS 6</i> (Product information) and <i>ICOBS 8</i> (Claims handling) except <i>ICOBS 8.2</i> (Motor vehicle liability insurers)).
...		
5.4	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the ‘general good’. (See articles 156, 180, 185 and 186 of the <i>Solvency II Directive</i> .)
...		
7	Distance Marketing Directive: effect on territorial scope	
7.1	G	In broad terms, a <i>firm</i> is within the <i>Distance Marketing Directive</i> ’s scope when conducting an activity relating to a <i>distance contract</i> with a <i>consumer</i> . The <i>rules</i> in this sourcebook within the Directive’s scope are those requiring the provision of pre-contract information (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 6</i> (Product information), and <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision)), the cancellation <i>rules</i> (see <i>ICOBS 7</i>) and the other specific <i>rules</i> implementing the Directive (see <i>ICOBS 3.1</i>).

7.2	G	In the <i>FCA's</i> view, the Directive places responsibility for requirements within the Directive's scope on the <i>Home State</i> except in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a 'country of origin' or 'country of establishment' basis). (See article 16 of the <i>Distance Marketing Directive</i> .)
...		
7.5	G	<p>In the <i>FCA's</i> view:</p> <p>(1) the 'country of origin' basis of the Directive is in line with that of the <i>E-Commerce Directive</i> and the <i>IDD</i>; (see <u>See</u> recital 6 to the <i>Distance Marketing Directive</i>.)</p> <p>(2) for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Solvency II Directive</i>, the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i> requiring pre-contract information and cancellation rules derived from the <i>Solvency II Directive</i> apply on a 'country of origin' basis rather than being based on the <i>State of the commitment</i>; (see <u>See</u> articles 4(1) and 16 of the <i>Distance Marketing Directive</i>.)</p> <p>(3) for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Insurance Mediation Directive</i>, the minimum requirements in the <i>Insurance Mediation Directive</i> continue to be those applied by the <i>Home State</i>, but the minimum requirements in the <i>Distance Marketing Directive</i> and any additional pre-contract information requirements are applied on a 'country of origin' basis. (The basis for this is that the <i>Insurance Mediation Directive</i> was adopted after the <i>Distance Marketing Directive</i> and is not expressed to be subject to it.)</p>
8		Electronic Commerce Directive: effect on territorial scope
...		
8.3	G	Conversely, a <i>firm</i> that is a national of the <i>United Kingdom</i> or another <i>EEA State</i> , carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i> , need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>E-Commerce Directive</i> .)
...		
8.5	G	Where the derogation applies, the <i>rules</i> on <i>financial promotion</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm's</i> 'country of origin' applies rules of like effect), but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>E-</i>

		<i>Commerce Directive</i> ; Annex to European Commission Discussion Paper MARKT/2541/03.)
8.6	G	In the <i>FCA</i> 's view, the Directive's effect on the territorial scope of this sourcebook (including the use of the 'insurance derogation'):
		(1) is in line with the <i>Distance Marketing Directive</i> and the <i>IDD</i> ;
		(2) overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
8.7	G	The 'derogations' in the Directive may enable other <i>EEA States</i> to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 49 <u>52</u> to the <i>Insurance Mediation Directive</i> <i>IDD</i> , recital 6 to the <i>Distance Marketing Directive</i> , article 3 of, and the Annex to, the <i>E-Commerce Directive</i> .)

2 General matters

...

2.2 Communication to clients and financial promotions

...

Clear, fair and not misleading rule

- 2.2.2 R When a *firm* communicates information, including a *financial promotion*, to a *customer* ~~or other policyholder~~, it must ~~take reasonable steps to communicate~~ ensure that it in a way that is clear, fair and not misleading.

[**Note:** article 17(2) of the *IDD*]

Marketing communications

- 2.2.2A R A *firm* must ensure that, in relation to *insurance distribution*, marketing communications are always clearly identifiable as such.

[**Note:** article 17(2) of the *IDD*]

...

The reasonable steps defence

- 2.2.5 R If, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it is fair, clear and not misleading then:
- (1) the *firm* will not contravene *ICOBS* 2.2.2R where:
- (a) the recipient is a *customer* that does not make the arrangements preparatory to the conclusion of the *contract of*

insurance; or

(b) the communication is made in relation to activities other than insurance distribution; and

(2) a contravention of the clear, fair and not misleading rule (ICOBS 2.2.2R) does not give rise to a right of action under section 138D of the Act.

2.3 Inducements

2.3.1 G (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm* that offers such inducements should consider whether doing so conflicts with its obligations under:

(a) *Principles 1* and 6 to act with integrity and treat customers fairly; and

(b) the customer's best interests rule.

...

...

2.5 Acting honestly, fairly and professionally, Exclusion exclusion of liability, conditions, and warranties, and reliance on others

The customer's best interests rule

2.5.-1 R A *firm* must act honestly, fairly and professionally in accordance with the best interests of its *customer*.

[Note: article 17(1) of the IDD]

Exclusion of liability and conditions

...

Reliance on others

2.5.3 G (1) Where it is compatible with the nature of the obligation imposed by a particular *rule*, including the *customer's best interests rule*, and with the *Principles*, in particular *Principles 1* (Integrity), 2 (Skill, care and diligence) and 3 (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.

...

Other requirements

- 2.5.4 G Firms are reminded of their obligations in SYSC 19F.2 to ensure remuneration arrangements do not conflict with their duty to act in the customer's best interests.

After ICOBS 2.5 (Acting honestly, fairly and professionally) insert the following new section ICOBS 2.6. The text is not underlined.

2.6 Distribution of connected contracts through exempt persons

- 2.6.1 R (1) Where an *insurance distributor* is distributing through a *person* relying on the connected contracts exemption in article 72B of the *Regulated Activities Order*, the *insurance distributor* must ensure that the requirements in (2) are met.
- (2) The requirements referred to in (1) are:
- (a) SYSC 19F.2 (Remuneration and insurance distribution activities);
 - (b) ICOBS 2.2.2R and ICOBS 2.2.2AR (Clear, fair and not misleading rule and marketing communications);
 - (c) ICOBS 2.5.-1R (Customer's best interests);
 - (d) ICOBS 4.1.2R(1)(a) and (c) (Status disclosure: general information provided by insurance intermediaries or insurers);
 - (e) ICOBS 5.2 (Demands and needs);
 - (f) ICOBS 6.1.5R(4) (Ensuring customers can make an informed decision: the appropriate information rule);
 - (g) ICOBS 6.1.10AR (How must IPID information be provided?); and
 - (h) ICOBS 6A.3 (Cross-selling).

[**Note:** article 1(4) of the *IDD*]

- 2.6.2 G To comply with the relevant chapter of SYSC or *Principle 3*, an *insurance distributor* will need to have appropriate arrangements in place to ensure compliance with ICOBS 2.6.1R.

Amend the following as shown.

3 Distance communications

3.1 Distance marketing

...

Guidance on the Distance Marketing Directive

- 3.1.2 G *Guidance on expressions derived from the Distance Marketing Directive and on the Directive's application in the context of ~~insurance mediation activity~~ insurance distribution activities can be found in ICOBS 3 Annex 1G.*

...

3 Annex 1G Guidance on the Distance Marketing Directive

This Annex belongs to *ICOBS 3.1.2G*

...

Q7. How does the Directive apply to insurance intermediaries services?

The *FCA* expects the *Distance Marketing Directive* to apply to *insurance intermediaries'* services only in the small minority of cases where:

- the *firm* concludes a *distance contract* with a *consumer* covering its ~~*insurance mediation activities*~~ *insurance distribution activities* which is additional to any insurance contract which it is marketing; and
- ...

Q8. Can you give examples of when the Directive would and would not apply to insurance intermediaries services?

The *rules* implementing the *Distance Marketing Directive* will not apply in the typical case where an *insurance intermediary* sells an insurance contract to a *consumer* on a one-off basis, even if the *insurance intermediary* is involved in the *renewal* of that contract and handling claims under it.

Nor will the Directive apply if an *insurance intermediary*, in its terms of business, makes clear that it does not, in conducting ~~*insurance mediation activities*~~ *insurance distribution activities*, act contractually on behalf of, or for, the *consumer*.

...

...

...

4 Information about the firm, its services, and remuneration

4.1 General requirements for insurance intermediaries and insurers

Application: who?

- 4.1.1 R ~~This section~~ chapter applies to an *insurance intermediary* and to an insurer carrying on insurance distribution activities.

Interaction with the customer's best interests rule and Principle 7

- 4.1.1A G To comply with the customer's best interests rule and Principle 7 (Communications with clients) a firm should include consideration of the information needs of the customer including:

- (1) what a customer needs in order to understand the relevance of any information provided by the firm; and
- (2) at which point in the sales process will the information be most useful to the customer to enable them to make an informed decision.

Status disclosure: general information provided by insurance intermediaries or insurers

- 4.1.2 R ~~Prior to~~ In good time before the conclusion of an initial *contract of insurance* and, if necessary, on its amendment or *renewal*; ~~;~~

- (1) a firm must provide the customer with at least the following information:
 - ~~(1)~~ its name and identity, address and whether it is an insurance intermediary or an insurance undertaking;
 - (a) whether it provides a personal recommendation about the insurance products offered;
 - (c) the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers; and
- (2) an insurance intermediary must also provide the customer with the following information:
 - ~~(2)~~ the fact that it is included in the Financial Services Register (or if it is not on the Financial Services Register, the register

- (a) in which it has been included) and the means for verifying this;
- (3) whether it has a direct or indirect holding representing ~~more than 10%~~ or more of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
- (b) ~~(4)~~ whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing ~~more than 10%~~ or more of the voting rights or capital in the *firm*; and
- (c) ~~(5)~~ ~~the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers~~
- (d) whether it is representing the customer or is acting for and on behalf of the insurer; and
- (3) paragraph (2) does not apply in relation to a connected travel insurance contract.

[~~Note: article 12(1) of the Insurance Mediation Directive~~ articles 18 and 19(1)(a) and (b) of the IDD]

Status disclosure exemption: introducers

- 4.1.3 R A *firm* whose contact with a *customer* is limited to effecting introductions (see *PERG 5.6*) need only provide its ~~name and identity~~, address and whether it is a member of the same *group* as the *firm* to which it makes the introduction.
- 4.1.4 G If a *firm* goes further than putting a *customer* in contact with another *person* (for example, by *advising him the customer* on a particular *policy* available from the *firm*) the full status disclosure requirements will apply.

Status disclosure exemption: connected travel insurance

- 4.1.5 R ~~In relation to a connected travel insurance contract, a firm need only provide the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers. [deleted]~~

Scope of service: insurance intermediaries

- 4.1.6 R (1) ~~Prior to~~ Where an insurance intermediary proposes or advises on a

contract of insurance then in good time before the conclusion of an initial contract of insurance (other than a connected travel insurance contract) and, if necessary, on its amendment or renewal; ~~a firm~~ an insurance intermediary must ~~tell~~ provide the customer with at least information on whether the firm:

- (a) ~~it gives advice~~ a personal recommendation, on the basis of a fair and personal analysis ~~of the market~~; or
- (b) ~~it is under a contractual obligation to conduct insurance mediation business~~ insurance distribution exclusively with one or more insurance undertakings, in which case it must provide the names of those insurance undertakings; or
- (c)
 - (i) ~~it is not under a contractual obligation to conduct insurance mediation business~~ insurance distribution exclusively with one or more insurance undertakings; and
 - (ii) ~~does not give advice~~ a personal recommendation on the basis of a fair and personal analysis ~~of the market~~;

in which case it must provide its customer with the name of those insurance undertakings with which the insurance intermediary may and does conduct business.

- (2) ~~A firm that does not advise on the basis of a fair analysis of the market must inform its customer that they have the right to request the name of each insurance undertaking with which the firm may and does conduct business. A firm must comply with such a request. [deleted]~~

[**Note:** ~~article 12(1) of the Insurance Mediation Directive~~ article 19(1)(c) of the IDD]

4.1.7 R ~~Prior to~~ Where the firm has given information in ICOBS 4.1.6R(1)(b) and (c), then in good time before the conclusion of an initial contract of insurance with a consumer a firm must also state whether it is giving:

- (1) a personal recommendation but not on the basis of a fair and personal analysis;
- (2) other advice on the basis of a fair analysis of the market; or
- (3) other advice not on the basis of a fair analysis of the market; or
- (4) just information.

Guidance on using panels to advise on the basis of a fair analysis

4.1.8 G (1) One way a firm may give advice on a fair analysis basis is by using 'panels' of insurance undertakings which are sufficient to enable the

firm to give advice on a fair analysis basis and are reviewed regularly.

- (2) A *firm* which provides a service based on a fair analysis of the market (or from a sector of the market) should ensure that its analysis of the market and the available contracts is kept adequately up-to-date. For example, a *firm* should update its selection of contracts if aware that a contract has generally become available offering an improved product feature, or a better *premium*, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market. A *firm* is also required to ensure that the analysis is of a sufficiently large number of *contracts of insurance* available on the market (see *ICOBS 5.3.3R*).
- (3) The panel selection criteria will be important in determining whether the panel is sufficient to meet the ‘fair analysis’ criteria. Selection should be based on product features, *premiums* and services offered to *customers*, not solely on the benefit offered to the *firm*.
- (4) Where a *firm* also provides *personal recommendations* based on a fair and personal analysis, paragraphs (1) to (3) may also be relevant to that part of the service which involves a fair analysis of the market.

Means of communication to customers

- 4.1.9 R (1) ~~All information to be provided to a *customer* in accordance with this chapter must be communicated: [deleted]~~
- ~~(a) on paper or on any other *durable medium* available and accessible to the *customer*;~~
 - ~~(b) in a clear and accurate manner, comprehensible to the *customer*; and~~
 - ~~(c) in an official language of the *State of the commitment* or in any other language agreed by the parties.~~
- (2) ~~The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.~~
- (3) ~~In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see *ICOBS 3.1.14R*).~~
- (4) ~~If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.~~

~~[Note: article 13 of the *Insurance Mediation Directive*]~~

After ICOBS 4.1 (General requirements for insurance intermediaries) insert the following new section ICOBS 4.1A. This new section amends the text formerly in ICOBS 4.1.9R and also

adds new provisions. All the text is re-stated in this position or is new and not underlined.

4.1A Means of communication to customers

Application

- 4.1A.1 R This section applies to all information required to be provided to a *customer* in this chapter and in other chapters or sections where stated.

Means of communication to customers; non-telephone sales

- 4.1A.2 R (1) A *firm* must communicate information to a *customer* using any of the following:
- (a) paper; or
 - (b) a *durable medium* other than paper; or
 - (c) a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.
- (2) The *firm* must communicate the information in (1):
- (a) in a clear and accurate manner, comprehensible to the *customer*;
 - (b) in an official language of the *State of the risk* or in any other language agreed by the parties; and
 - (c) free of charge.

[**Note:** article 23(1), (2), (4) and (5) of the *IDD*]

- 4.1A.3 R Where the information is communicated using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, also send the *customer* a paper copy.

[**Note:** article 23(3) of the *IDD*]

- 4.1A.4 R A *firm* must ensure that a *customer's* choice or consent to receive the information by means of a website (whether a *durable medium* or where the *website conditions* are satisfied) is an active and informed choice or consent.

- 4.1A.5 G (1) For the purposes of *ICOBS* 4.1A.4R for example an option to allow a change to the e-mail address to be used or an option to allow information to be provided by means of a website should be presented in a way that is clear, fair and not misleading.
- (2) The following are examples of circumstances not evidencing active or informed choice or consent:
- (a) a pre-ticked box (suggesting that option has been selected) which appears in a more prominent place than an un-ticked box allowing

another option to be selected; and

- (b) the *customer* electing to be informed by a website without being first given other options.

- 4.1A6 R On *renewal* of a *policy* a *firm* may rely on a *customer's* previous choice or consent as appropriate where:
- (1) there is evidence that the *customer* has regular access to the internet;
 - (2) the provision of information in that medium is appropriate in the context in which the business between the *firm* and the *customer* is carried on; and
 - (3) the *customer* is made aware, for example in the renewal documentation, of the option to receive the information on paper in a way that is clear, fair and not misleading.

Means of communications to customers: telephone sales

- 4.1A.7 R In the case of telephone selling:
- (1) the information must be given in accordance with the distance marketing disclosure *rules* (see *ICOBS* 3.1.14R); and
 - (2) if prior to the conclusion of the contract the information is provided:
 - (a) orally; or
 - (b) on a *durable medium* other than paper;

the *firm* must also provide the information to the *customer* in accordance with *ICOBS* 4.2A.1R immediately after the conclusion of the *contract of insurance*.

[**Note:** article 23(7) of the *IDD*]

Amend the following as shown.

4.2 Additional requirements for protection policies for insurance intermediaries and insurers

...

Ensuring customers can make an informed decision

- 4.2.2 G ~~In considering a *customer's* information needs for the purposes of *Principle 7*, a *firm* should have regard to the importance of information for a *customer's* purchasing decision when deciding when and how to give it.~~
[deleted]

- 4.2.3 G ~~If a firm provides elements of status disclosure information orally as part of an interactive dialogue, it should do so for all elements of the information. In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see ICOBS 3.1.14R). [deleted]~~

Disclosing the limits of the service provided

- 4.2.4 R (1) In a sale that does not involve a *personal recommendation*, a firm must take reasonable steps to ensure a *customer* (C) understands ~~he is~~ that C is responsible for deciding whether a *policy* meets ~~his~~ C's demands and needs.
- (2) ~~If this is done orally, the information must be provided to the customer in writing or any other durable medium no later than immediately after the conclusion of the contract. [deleted]~~

...

Status disclosure for insurers

- 4.2.5 R (1) Prior to the conclusion of an initial contract and, if necessary, on its amendment or *renewal*, an *insurer* must disclose to the *customer* at least:
- (a) the statutory status disclosure statement (see *GEN* 4);
 - (b) whose *policies* it offers; and
 - (c) whether it is providing a *personal recommendation* or information.
- (2) ~~If this is done orally, the disclosure must be provided in writing or any other durable medium no later than immediately after the conclusion of the contract. [deleted]~~
- 4.2.6 G ~~Insurers cannot carry on an insurance mediation activity in respect of a third party's products unless they can show a natural fit or necessary connection between their insurance business and the third party's products~~ Insurers are reminded that they are not permitted to carry out business which does not directly arise from their insurance business (see the restriction of business in INSPRU 1.5.13R and rule 9 of the PRA Rulebook PRA Rulebook: Solvency II firms: Conditions Governing Business).

4.3 **Fee Remuneration disclosure**

Remuneration disclosure: insurance intermediaries

- 4.3.-7 R In good time before the conclusion of the initial contract of insurance and, if necessary, on its amendment or renewal an insurance intermediary must

provide the *customer* with information:

- (1) on the nature of the *remuneration* received in relation to the *contract of insurance*:
- (2) about whether in relation to the contract it works on the basis of:
 - (a) a *fee*, that is *remuneration* paid directly by the *customer*; or
 - (b) a *commission* of any kind, that is the *remuneration* included in the *premium*; or
 - (c) any other type of *remuneration*, including an economic benefit of any kind offered or given in connection with the contract; or
 - (d) on the basis of a combination of any type of *remuneration* set out above in (a), (b) and (c).

[Note: article 19(1)(d) and (e) of the *IDD*]

Remuneration disclosure: insurers

- 4.3.-6 R In good time before the conclusion of a *contract of insurance*, an *insurance undertaking* must provide its *customer* with information on the nature of the *remuneration* received by its *employees* in relation to the *contract of insurance*.

[Note: article 19(4) of the *IDD*]

Remuneration disclosure: general

- 4.3.-5 R The *remuneration* referred to in this section includes *remuneration* that is not guaranteed or which is contingent on meeting certain targets.
- 4.3.-4 G The information required to be disclosed by *ICOBS* 4.3.-7R and *ICOBS* 4.3.-6R includes the type of *remuneration* and, taking into account the clear, fair and not misleading rule (*ICOBS* 2.2.2R), should also include the source of the *remuneration*.
- 4.3.-3 G When considering what information to provide about the *remuneration*, a *firm* should include all *remuneration* which the *insurance intermediary* or the *employee* of an *insurance undertaking* receives, or may receive in relation to the distribution of the *contract of insurance*. This includes *remuneration*:
- (1) provided indirectly by the *insurer* or another *firm* within the distribution chain; or
 - (2) provided by way of a bonus (whether financial or non-financial) paid to the *firm* by the *insurer* or another *firm*, or provided by the *firm* to its *employees*, where this bonus is contingent on the achievement of a target to which the distribution of the particular *contract of insurance* could contribute. For example, this can include cash bonuses paid for

achieving a sales target and additional annual leave for achieving a high customer service score on sales calls, profit share arrangements, overrides or other enhanced commissions.

- 4.3.-2 R If any payments, other than ongoing *premiums* and scheduled payments, are made by the *customer* under the *contract of insurance* after its conclusion, a *firm* must make the disclosures under this section, for each such payment.

[Note: articles 19(3) and (5) of the IDD]

- 4.3.-1 G Examples of the type of payments made are those for mid-term adjustments, administration fees and cancellation fees.

Fee disclosure: additional requirements

- 4.3.1 R (1) ~~A~~ Where a *fee* is payable, the *firm* must ~~provide~~ inform its *customer* with details of the amount of any ~~fees~~ other than ~~premium monies~~ for an ~~insurance mediation activity~~ the *fee*.
- (2) ~~The details~~ information in (1) must be given before the *customer* incurs liability to pay the *fee*, or before conclusion of the ~~contract~~ contract of insurance, whichever is earlier.
- (3) To the extent that ~~an actual *fee* cannot~~ it is not possible for an amount to be given, a *firm* must give the basis for its calculation.

[Note: articles 19(2) and (5) of the IDD]

- 4.3.2 G The *fee* disclosure requirement extends to all such *fees* that may be charged during the life of a *policy*.

[Note: article 19(3) of the IDD]

...

5 Identifying client needs and advising

...

5.2 ~~Statement of demands~~ Demands and needs

Application: who? what?

- 5.2.1 R ~~This section applies to: an *insurance distributor* when carrying on *insurance distribution activities*.~~
- (1) ~~an *insurance intermediary* in relation to any *policy* (other than a *connected travel insurance contract*); and~~
- (2) ~~an *insurer* when it has given a *personal recommendation* to a *consumer* on a *payment protection contract* or a *pure protection contract*.~~

~~Statement of demands~~ Demands and needs

- 5.2.2 R (1) Prior to the conclusion of a ~~contract~~ contract of insurance, a firm must specify, ~~in particular~~ on the basis of information ~~provided by~~ obtained from the customer, the demands and the needs of that *customer* ~~as well as the underlying reasons for any advice given to the customer on that policy~~.
- (2) The details must be modulated according to the complexity of the ~~policy~~ contract of insurance proposed and the type of customer.
- (3) A statement of the demands and needs must be communicated to the customer prior to the conclusion of a contract of insurance.

[Note: ~~article 12(3) of the Insurance Mediation Directive~~ articles 20(1) and 20(2) of the IDD]

- 5.2.2A G A firm may obtain information from the customer in a number of ways including, for example, by asking the customer questions in person or by way of a questionnaire prior to any contract of insurance being proposed.

- 5.2.2B R When proposing a contract of insurance a firm must ensure it is consistent with the customer's insurance demands and needs.

[Note: recital 44 to, and article 20(1) of, the IDD]

- 5.2.2C G ICOBS 5.2.2BR applies whether or not advice is given and in the same way regardless of whether that contract is sold on its own, in connection with another contract of insurance, or in connection with other goods or services.

- 5.2.2D R The sale of a contract of insurance must always be accompanied by a demands and needs test on the basis of information obtained from the customer.

[Note: recital 44 to, and article 20(1) of, the IDD]

Means of communication to customers

- 5.2.3 R (1) ~~A statement of demands and needs must be communicated:~~
- (a) ~~on paper or on any other durable medium available and accessible to the customer;~~
 - (b) ~~in a clear and accurate manner, comprehensible to the customer;~~
~~and~~
 - (c) ~~in an official language of the State of the commitment or in any other language agreed by the parties.~~
- (2) ~~The information may be provided orally where the customer requests it, or where immediate cover is necessary.~~

- (3) ~~In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see ICOBS 3.1.14R).~~
- (4) ~~If the information is provided orally, it must be provided to the customer in accordance with (1) immediately after the conclusion of the contract of insurance. [deleted]~~

~~[Note: article 13 of the Insurance Mediation Directive]~~

~~Statement~~ Format of the statement of demands and needs: non-advised sales

- 5.2.4 G ~~The~~ Once the firm has obtained information from the customer and ensured the contract of insurance is consistent with the demands and needs, the format of a statement of demands and needs is flexible. Examples of approaches that may be appropriate where a personal recommendation has not been given include:

...

- (2) producing a demands and needs statement in product documentation that will be appropriate for anyone wishing to buy the product, for whose demands and needs the contract is consistent. For example, "This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future"; and
- (3) giving a customer a record of all his the customer's demands and needs that have been discussed; ~~and~~
- (4) providing a key features document.

Means of communication to customers

- 5.2.5 R The information to be provided to customers in ICOBS 5.2 must be given in accordance with ICOBS 4.1A (Means of communication to customers).

[Note: article 23(1) of the IDD]

5.3 Advised sales

Suitability

- 5.3.1 R A firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgement judgement.

Suitability guidance for protection policies

- 5.3.2 G (1) In taking reasonable care to ensure the suitability of advice on a payment protection contract or a pure protection contract a firm

should:

- (a) establish the *customer's* demands and needs. ~~It should do this by~~ using information readily available ~~and accessible~~ to the *firm* and by obtaining further relevant information from the *customer*, including details of existing insurance cover; it need not consider alternatives to ~~policies~~ policies nor *customer* needs that are not relevant to the type of ~~policy~~ policy in which the *customer* is interested;

...

...

...

Advice on the basis of a fair analysis

5.3.3 R If an *insurance intermediary* informs a *customer* that it gives:

- (1) advice on the basis of a fair analysis, it must give that advice on the basis of an analysis of a sufficiently large number of *contracts of insurance* available on the market to enable it to make a recommendation; or
- (2) a personal recommendation on the basis of a fair and personal analysis, it must give that personal recommendation on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation;

and in each case, it must be in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer's needs.

[Note: ~~article 12(2) of the Insurance Mediation Directive~~ article 20(3) of the IDD]

Personalised explanation

5.3.4 R Where a firm provides a personal recommendation (other than in relation to a connected travel contract) the firm must, in addition to the statement of demands and needs, provide the customer with a personalised explanation of why a particular contract of insurance would best meet the customer's demands and needs.

[Note: article 20(1) third paragraph of the IDD]

Means of communication

5.3.5 R A firm must provide the information in this section in accordance with ICOBS 4.1A (Means of communication to customers).

[Note: article 23(1) of the IDD]

...

Insert, as the first section of Chapter 6 (Product Information), the following new section *ICOBS* 6.-1. The new section amends the text formerly in *ICOBS* 6.1.1R to *ICOBS* 6.1.4R. All the text is re-stated in this position. Underlining indicates new text and striking through indicates deleted text.

6 Product Information

6.-1 Producing and providing product information

Responsibilities ~~of~~ for producing and providing information as between insurers and insurance intermediaries: general

- 6.-1.1 R An *insurer* is responsible for producing, and an *insurance intermediary* for providing to a *customer*, the information required by this chapter and by the distance communication *rules* (see *ICOBS* 3.1). However, an *insurer* is responsible for providing information required on mid-term changes, and an *insurance intermediary* is responsible for producing price information if it agrees this with an *insurer*.
- 6.-1.2 R If there is no *insurance intermediary*, the *insurer* is responsible for producing and providing the information.
- 6.-1.3 R An *insurer* must produce information in good time to enable the *insurance intermediary* to comply with the *rules* in this chapter, or promptly on an *insurance intermediary's* request.
- 6.-1.4 R These general *rules* on the responsibilities of *insurers* and *insurance intermediaries* are modified by *ICOBS* 6 Annex 1 if one of the *firms* is not based in the *United Kingdom*, and in certain other situations.

Responsibility for producing the standardised insurance product information document

- 6.-1.5 R The *IPID* must be drawn up by the *manufacturer* of the *policy*.

[Note: article 20(6) of the IDD]

6.1 General Providing product information to customers: general

~~Responsibilities of insurers and insurance intermediaries~~

- 6.1.1 R ~~An insurer is responsible for producing, and an insurance intermediary for providing to a customer, the information required by this chapter and by the~~

~~distance communication rules (see ICOPS 3.1). However, an insurer is responsible for providing information required on mid-term changes, and an insurance intermediary is responsible for producing price information if it agrees this with an insurer. [deleted]~~

- 6.1.2 R ~~If there is no insurance intermediary, the insurer is responsible for producing and providing the information. [deleted]~~
- 6.1.3 R ~~An insurer must produce information in good time to enable the insurance intermediary to comply with the rules in this chapter, or promptly on an insurance intermediary's request. [deleted]~~
- 6.1.4 R ~~These general rules on the responsibilities of insurers and insurance intermediaries are modified by ICOPS 6 Annex 1 if one of the firms is not based in the United Kingdom, and in certain other situations. [deleted]~~

Ensuring customers can make an informed decision: the appropriate information rule

- 6.1.5 R (1) ~~A firm must take reasonable steps to ensure that a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed.~~
- (2) The information must be provided to the customer:
- (a) whether or not a personal recommendation is given; and
- (b) irrespective of whether a policy is offered as part of a package with:
- (i) a non-insurance product or service (see ICOPS 6A.3 (Cross-selling)); or
- (ii) another policy.
- (3) Appropriate information is both objective and relevant information, and includes IPID information.
- (4) Where the firm is proposing a policy (including if appropriate on renewal) 'in good time' means in good time prior to the conclusion of the policy.

[Note: articles 20(1) first paragraph and 20(4) of the IDD]

- 6.1.6 G The appropriate information rule applies:
- (1) at all of the different stages of a contract and includes pre-conclusion and post-conclusion, and so includes matters such as and also when mid-term changes and renewals are proposed. It also applies to the price of the policy;

- (2) in the same way to any *policy*, regardless of whether that *policy* is sold on its own, in connection with another *policy*, or in connection with other goods or services; and
- (3) to the price of the *policy*.

6.1.6A G ~~The appropriate information *rule* applies in the same way to any *policy*, regardless of whether that *policy* is sold on its own, in connection with another *policy*, or in connection with other goods or services. [deleted]~~

What level of information needs to be provided?

6.1.6B R A firm must ensure that the level of appropriate information provided takes into account the complexity of the *policy* and the type of *customer*.

[Note: article 20(4) of the *IDD*]

- 6.1.7 G The level of information required will vary according to matters such as:
- (1) the knowledge, experience and ability of a typical *customer* for the *policy*;
 - (2) the *policy* terms, including its main benefits, exclusions, limitations, conditions and its duration;
 - (3) the *policy*'s overall complexity;
 - (4) whether the *policy* is bought in connection with other goods and services including another *policy* (also see *ICOBS* 6A.3 (cross selling));
 - (5) distance communication information requirements (for example, under the distance communication *rules* less information can be given during certain telephone sales than in sales made purely by written correspondence (see *ICOBS* 3.1.14R); and
 - (6) whether the same information has been provided to the *customer* previously and, if so, when.

Appropriate information for commercial customers

- 6.1.7A G A firm dealing with a *commercial customer*:
- (1) may choose to provide some of or all of the appropriate information in an *IPID* (see *ICOBS* 6.1.10AR), a *policy summary* or a similar summary if it considers this to be a comprehensible form in which to provide that information; and
 - (2) should include the *IPID* information (regardless of whether an *IPID* itself is provided).

- 6.1.8 G ~~In determining what is “in good time”, a *firm* should consider the importance of the information to the *customer’s* decision-making process and at the point at which the information may be most useful. Distance communication timing requirements are also relevant (for example the distance communication *rules* enable certain information to be provided post-conclusion in telephone and certain other sales (see *ICOBS* 3.1.14R and *ICOBS* 3.1.15R)).~~ [deleted]

...

- 6.1.10 G ~~A *firm* dealing with a *consumer* may wish to provide information in a *policy summary* or as a *key features document* (see *ICOBS* 6 Annex 2).~~ [deleted]

How must IPID information be provided?

- 6.1.10A R A *firm*, when dealing with a *consumer* must provide the *IPID* information by way of an *IPID* for each *policy* (other than a *pure protection contract*).

[Note: articles 20(4) and 20(5) of the *IDD*]

- 6.1.10B G The *IPID* information:

- (1) needs to be provided on paper or on another *durable medium*;
- (2) in the case of telephone selling, a *firm* may provide the *IPID* in accordance with the distance communication timing requirements and provide the *IPID* to the *customer* immediately after the conclusion of the *policy*.

in accordance with *ICOBS* 6.6 (Means of communication).

[Note: article 23(7) of the *IDD*]

How must appropriate information other than IPID information be provided?

- 6.1.10C G (1) Appropriate information other than *IPID* information includes, among other matters, any other information required by the appropriate information rule (*ICOBS* 6.1.5R), specific price disclosure requirements (*ICOBS* 6.1.13R), guaranteed assets protection (GAP) products (*ICOBS* 6A.1.4G), *Solvency II Directive* disclosure requirements (*ICOBS* 6.2.2R) and renewals (*ICOBS* 6.5).
- (2) A *firm* needs to consider the form in which it provides appropriate information (see *ICOBS* 6.1.5R).
- (3) A *firm* can provide the other information in (1) together with the *IPID* as long as the *IPID* remains a stand-alone document.

[Note: article 20(4) and article 20(7) last paragraph of the *IDD*]

~~Providing evidence of cover~~ Interaction between information provision requirements and the customer's best interests rule and Principle 7

- 6.1.11 G To comply with the *customer's best interest rule* and *Principle 7* (communication with clients) a *firm* should:
- (1) include consideration of the information needs of the *customers* including:
 - (a) what they need to understand the relevance of any information provided by the *firm*; and
 - (b) at which point in the sales process will the information be most useful to the *customer* to enable them to make an informed decision;
 - (2) Under *Principle 7* a *firm* should provide evidence of cover promptly after inception of a *policy*. ~~Firms will need to take into account the type of customer and the effect of other information requirements, for example those under the distance communication rules (ICOBS 3.1).~~
taking into account the type of *customer* and the effect of other information requirements, for example, those under the distance communication rules (ICOBS 3.1); and
 - (3) in relation to a *group policy*, provide appropriate information to the *customer*, telling the *customer* to pass it on to each *policyholder*.

~~Group policies~~

- 6.1.12 G ~~Under *Principle 7*, a *firm* that sells a *group policy* should provide appropriate information to the *customer* to pass on to other *policyholders*. It should tell the *customer* that he should give the information to each *policyholder*. [deleted]~~

[Editor's note: The renewal provisions in ICOBS 6.1.12AR and ICOBS 6.1.12BG are moved to a new section, ICOBS 6.5.]

~~Renewals~~

- 6.1.12A R (1) ~~This rule applies when a *firm* proposes to a *consumer* the renewal of a *general insurance contract*, which is not a *group policy*, and which has a duration of 10 months or more. [deleted]~~
- (2) ~~In this rule, 'renewal' means carrying forward a *policy*, at the point of expiry and as a successive or separate operation of the same nature and duration as the *policy*, with the same *insurance intermediary* or the~~

~~same insurer.~~

- (3) The *firm* must provide to the *consumer* the following information in good time before the renewal:
 - (a) the *premium* to be paid by the *consumer* on renewal;
 - (b) in a way that is consistent with the presentation of (a) so that they can be easily compared:
 - (i) except where (ii) applies, the *premium* for the *policy* which the *firm* proposes to renew, as set out at the inception of that *policy*;
 - (ii) where one or more mid-term changes were made to the *policy* which the *firm* proposes to renew, an amount calculated by annualising (or otherwise adjusting as appropriate to the duration of the proposed *policy*) the *premium* in effect following the most recent mid-term change, excluding all fees or charges associated with those mid-term changes;
 - (c) a statement alongside (a) and (b) indicating that the *consumer*:
 - (i) should check that the level of cover offered by the renewal is appropriate for their needs; and
 - (ii) is able, if they so wish, to compare the prices and levels of cover offered by alternative providers.
- (4) Where the proposed renewal will be the fourth or subsequent renewal the *consumer* has entered into in respect of the *policy*, the *firm* must include the following statement, to appear alongside the matters required by (3)(a), (b) and (c)(i) (but omitting (c)(ii)): “You have been with us a number of years. You may be able to get the insurance cover you want at a better price if you shop around.”
- (5) The *firm* must communicate the information in (3) and (4):
 - (a) clearly and accurately;
 - (b) in writing or another *durable medium*; and
 - (c) in a way that is accessible and which draws the *consumer’s* attention to it as key information.

6.1.12B G A *firm* should have regard to the record-keeping obligations referred to in ICOPS 2.4.1G and ensure that it has appropriate systems and controls in place with respect to: [deleted]

- (a) ~~the adequacy of its records so it may fulfil its regulatory and statutory obligations; and~~
- (b) ~~the sufficiency of its records to enable the FCA to monitor the firm's compliance with the requirements under the regulatory system.~~

~~Price disclosure: connected goods and services~~ What additional information must be disclosed for packaged products and other relevant requirements?

6.1.13 R (1) If a *policy* is bought by a *consumer* in connection with other goods or services a *firm* must, before conclusion of the contract, disclose its *premium* separately from any other prices and whether buying the *policy* is compulsory.

(2) In the case of a *distance contract*, disclosure of whether buying the *policy* is compulsory may be made in accordance with the timing requirement under the distance communication *rules* (see *ICOBS* 3.1.8R, *ICOBS* 3.1.14R and *ICOBS* 3.1.15R).

(3) This *rule* does not apply to policies bought in connection with other goods or services provided as part of a *packaged bank account*.

6.1.13A G ~~*Firms*~~ In addition to the requirements in *ICOBS* 6.1 (Product information) *firms* are reminded that:

(1) when offering a *policy* as part of a *packaged bank account* the *firm* may be subject to the requirements of regulation 13 (payment accounts packages with another product or service) of the *Payment Accounts Regulations*;

(2) *ICOBS* 6A.3 (Cross-selling) contains *rules* in relation to packages which include both *insurance* and non-*insurance* products or services.

~~Exception to the timing rules: distance contracts and voice telephony communications~~

6.1.14 R ~~Where a *rule* in this chapter requires information to be provided in writing or another durable medium before the conclusion of a contract, a *firm* may instead provide that information in accordance with the distance communication timing requirements (see *ICOBS* 3.1.14R and *ICOBS* 3.1.15R). [deleted]~~

...

6.4 Pre- and post-contract information: protection policies

...

Policy summary

- 6.4.4 R A *firm* must provide a *consumer* with a *policy summary* in good time before the conclusion of a ~~contract~~ pure protection contract.

Complaints and compensation information

- 6.4.4A R In relation to a *payment protection contract*, a *firm* must provide a *consumer* with information about:

- (1) how the *consumer* can complain to the *insurance undertaking* and that complaints may subsequently be referred to the *Financial Ombudsman Service* (or other applicable named complaints scheme); and
- (2) the *consumer's* entitlement to compensation from the *compensation scheme* (or other applicable compensation scheme), or that there is no compensation scheme, in the event where the *insurance undertaking* is unable to meet its liabilities;

in good time before the conclusion of the *policy*.

...

After *ICOBS* 6.4 (Pre-and post-contract information: protection policies) insert the following new section *ICOBS* 6.5. The new section amends the text formerly in *ICOBS* 6.1.12AR and *ICOBS* 6.1.12BG. All the text is re-stated in this position and is not underlined. Underlining indicates new text.

6.5 Renewals

Renewals

- 6.5.1 R (1) This ~~rule~~ section applies when a *firm* proposes to a *consumer* the renewal of a *general insurance contract*, which is not a *group policy*, and which has a duration of 10 months or more.
- (2) In this ~~rule~~ section, ‘renewal’ means carrying forward a *policy*, at the point of expiry and as a successive or separate operation of the same nature and duration as the *policy*, with the same *insurance intermediary* or the same *insurer*.
- (3) The *firm* must provide to the *consumer* the following information in good time before the renewal:
- (a) the *premium* to be paid by the *consumer* on renewal;
 - (b) in a way that is consistent with the presentation of (a) so that they can be easily compared:

- (i) except where (ii) applies, the *premium* for the *policy* which the *firm* proposes to renew, as set out at the inception of that *policy*;
 - (ii) where one or more mid-term changes were made to the *policy* which the *firm* proposes to renew, an amount calculated by annualising (or otherwise adjusting as appropriate to the duration of the proposed *policy*) the *premium* in effect following the most recent mid-term change, excluding all fees or charges associated with those mid-term changes;
 - (c) a statement alongside (a) and (b) indicating that the *consumer*:
 - (i) should check that the level of cover offered by the renewal is appropriate for their needs; and
 - (ii) is able, if they so wish, to compare the prices and levels of cover offered by alternative providers.
 - (4) Where the proposed renewal will be the fourth or subsequent renewal the *consumer* has entered into in respect of the policy, the *firm* must include the following statement, to appear alongside the matters required by (3)(a), (b) and (c)(i) (but omitting (c)(ii)): “You have been with us a number of years. You may be able to get the insurance cover you want at a better price if you shop around.”
 - (5) The *firm* must communicate the information in (3) and (4):
 - (a) clearly and accurately;
 - (b) in writing or another *durable medium*; and
 - (c) in a way that is accessible and which draws the *consumer’s* attention to it as key information.
- 6.5.2 G A *firm* should have regard to the record-keeping obligations referred to in *ICOBS* 2.4.1G and ensure that it has appropriate systems and controls in place with respect to:
- (1) ~~(a)~~ the adequacy of its records so it may fulfil its regulatory and statutory obligations; and
 - (2) ~~(b)~~ the sufficiency of its records to enable the *FCA* to monitor the *firm’s* compliance with the requirements under the *regulatory system*.
- 6.5.3 G A *firm* should ensure it complies with the other requirements in *ICOBS* that are relevant, such as providing product information to customers (see *ICOBS* 6.1), including the requirement to provide an *IPID* (see *ICOBS* 6.1.10AR).

After *ICOBS* 6.5 (Renewals) insert the following new section *ICOBS* 6.6. The text is not underlined.

6.6 Means of communication

Means of communication

- 6.6.1 R The information in *ICOBS* 6, unless modified in this chapter, must be given in accordance with *ICOBS* 4.1A (Means of communication to customers).

[**Note:** article 23(1) of the *IDD*]

Amend the following as shown.

6 Annex 1R Responsibilities of insurers and insurance intermediaries in certain situations

This annex belongs to ~~*ICOBS* 6.1.4R~~ *ICOBS* 6.-1.4R

The table in this annex modifies the general rule on the responsibilities of *insurers* and *intermediaries* for producing and providing to a *customer* the information required by this chapter. The table does not include the responsibilities of *insurers* and *intermediaries* for producing the *IPID* (*ICOBS* 6.-1.4R).

	Situation	Insurance intermediary's responsibility	Insurer's responsibility
(1)	...		
(2)	<p><i>Insurance intermediary</i> does not operate from <i>UK</i> establishment, is not <i>authorised</i>, is selling <i>connected contracts</i> or is <i>authorised professional firm</i> carrying on <i>non-mainstream regulated activities</i></p> <p><i>Insurer</i> operates from <i>UK</i> establishment</p> <p><i>Customer</i> habitually</p>	None	Production and providing (but <u>for <i>pure protection contracts</i> no <i>policy summary</i> is required unless the <i>insurance intermediary</i> does not operate from a <i>UK</i> establishment</u>)

	<i>resident in the EEA</i>		
...			
(6)	Where <i>ICOB</i> 6.1.12AR <i>ICOB</i> <u>6.5.1R</u> applies	...	...

6 Annex 2R Policy summary for consumers (pure protection contracts and / or commercial customers)

This annex belongs to ~~ICOB 6.1.10G~~ ICOB 6.1.7AG and *ICOB 6.4.4R*

1	Format		
1.1	R	(1)	...
		(2)	A <i>policy summary</i> must be in a separate document, or within a prominent separate section of another document clearly identifiable as containing key information that the <i>consumer</i> should read.
1.2	G	...	
<u>1.3</u>	<u>G</u>	<u>A reference to <i>consumer</i> has the meaning <i>commercial customer</i> if a <i>policy summary</i> is used for the purposes set out in <i>ICOB</i> 6.1.7AG (appropriate information for commercial customers).</u>	
...			

After *ICOB 6 Annex 2* (Policy summary for consumers) insert the following new Annex.
The text is not underlined.

6 Annex 3R Providing product information by way of a standardised insurance information document:

[**Note:** the *IDD IPID Regulation* is directly applicable to *IDD insurance intermediaries*, *IDD insurance undertakings* and *IDD ancillary insurance intermediaries*.]

This annex belongs to *ICOB 6.1.10AR*.

- 1 Effect of provisions marked ‘EU’
- 1.1 R (1) Provisions in this section marked “EU” apply in relation to a *firm* to

which the *IPID Regulation* is not directly applicable, as if they were *rules*.

- (2) In this annex, a word or phrase found in a provision marked “EU” and referred to in column (1) of the table below has the meaning indicated in the corresponding row of column (2) of the table.

(1)	(2)
“Directive (EU) 2016/97”	<i>IDD</i>
“durable medium”	<i>durable medium</i>
“insurance product”	<i>a policy (other than a pure protection contract)</i>
“manufacturer”	<i>manufacturer</i>
“non-life insurance product”	<i>a policy (other than a pure protection contract)</i>
“shall”	must

2 What information needs to be contained in the IPID?

2.1 R The *IPID* must contain the following information:

- (1) information about the type of *insurance*;
- (2) a summary of the *insurance* cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and summary of excluded risks;
- (3) the means of payment of premium and the duration of payments;
- (4) main exclusions where claims cannot be made;
- (5) obligations at the start of the contract;
- (6) obligations during the term of the contract;
- (7) obligations in the event that a claim is made;
- (8) the term of the contract including the start and end dates of the contract;
- (9) the means of terminating the contract.

[**Note:** article 20(8) of the *IDD*]

- 2.2 G A *firm*, when providing the information in the *IPID*, should consider:
- (1) the *rules* and *guidance* on providing appropriate information to *customers* in *ICOBS* 6.1;
 - (2) the order of the information and priority of the information to be provided; and
 - (3) the information needs of the *firm's* typical *customer* for the *policy*.
- 2.3 G A *firm* that manufactures the *policy* should, when drawing up the *IPID*, have regard to the target market and intended distribution strategy.

Name and company logo of the manufacturer

- 2.4 EU 1(1) The name of the manufacturer of the non-life insurance product, the Member State where that manufacturer is registered, its regulatory status, and, where relevant, its authorisation number shall immediately follow the title 'insurance product information document' at the top of the first page.
- 2.5 EU 1(2) The manufacturer may insert its company logo to the right of the title.

[**Note:** article 1 of the *IDD IPID Regulation*]

Reference to complete pre-contractual and contractual information

- 2.6 EU 2 The insurance product information document shall state prominently that complete pre-contractual and contractual information about the non-life insurance product is provided to the customer in other documents. That statement shall be placed immediately below the name of the manufacturer of the non-life insurance product.

[**Note:** article 2 of the *IDD IPID Regulation*]

3 How must the *IPID* be presented and formatted?

- 3.1 R The *IPID* must:
- (1) be a short and stand-alone document;
 - (2) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;

- (3) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- (4) be written in the official languages, or in one of the official languages, used in the part of the Member State where the *policy* is offered or, if agreed by the *consumer* and the *insurance distributor*, in another language;
- (5) be accurate and not misleading;
- (6) contain the title ‘insurance product information document’ at the top of the first page;
- (7) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

[**Note:** article 20(7)(a) to (g) of the *IDD*]

Length

3.2	EU	3	The insurance product information document shall be set out on two sides of A4-sized paper when printed. Exceptionally, if more space is needed, the insurance product information document may be set out on a maximum of three sides of A4-sized paper when printed. Where a manufacturer uses three sides of A4-sized paper, it shall, upon request by the competent authority, be able to demonstrate that more space was needed.
-----	----	---	---

[**Note:** article 3 of the *IDD IPID Regulation*]

Presentation and order of content

3.3	EU	4(1)	The information of the insurance product information document listed in in Article 20(8) of Directive (EU) 2016/97 shall be presented in different sections and in accordance with the structure, lay-out, headings and sequence as set out in the standardised presentation format in the Annex to this Regulation, using a font size with an x-height of at least 1,2 mm.
3.4	EU	4(2)	The length of the sections may vary, depending on the amount of information that is to be included in each section. Information about add-ons and optional covers shall not be preceded by ticks, crosses or exclamation marks.
3.5	EU	4(3)	Where the insurance product information document is presented using a durable medium other than paper, the size of the components in the layout may be changed, provided that the layout, headings and sequence of the standardised presentation format, as well as the relative prominence and size of the different elements, are retained.

- 3.6 EU 4(4) Where the dimensions of the durable medium other than paper are such that a layout using two columns is not feasible, a presentation using a single column may be used, provided that the sequence of the sections is as follows:
- (a) ‘What is this type of insurance?’
 - (b) ‘What is insured?’
 - (c) ‘What is not insured?’
 - (d) ‘Are there any restrictions on cover?’
 - (e) ‘Where am I covered?’
 - (f) ‘What are my obligations?’
 - (g) ‘When and how do I pay?’
 - (h) ‘When does the cover start and end?’
 - (i) ‘How do I cancel the contract?’.
- 3.7 EU 4(5) The use of digital tools, including layering and pop-ups shall be permitted, provided that all the information referred to in Article 20(8) of Directive (EU) 2016/97 is provided in the main body of the insurance product information document and that the use of such tools does not distract the customer’s attention from the content of the main document.
- Information provided through layering and pop-ups shall not include marketing or advertising material.

[**Note:** article 4 of the *IDD IPID Regulation*]

Plain language

- 3.8 EU 5 The insurance product information document shall be drafted in plain language, facilitating the customer’s understanding of the content of that document, and shall focus on key information which the customer needs to make an informed decision. Jargon shall be avoided.

[**Note:** article 5 of the *IDD IPID Regulation*]

Headings and information thereunder

- 3.9 EU 6(1) The sections of the insurance product information document shall have the following headings and the following information thereunder:

- (a) the information on the type of insurance referred to in Article 20(8)(a) of Directive (EU) 2016/97 shall be included under the heading ‘What is this type of insurance?’, at the top of the document;
- (b) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is insured?’. Each piece of information listed in this section shall be preceded by a green ‘tick’ symbol;
- (c) the information on the insured sum referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is insured?’;
- (d) the information on geographical scope, where applicable, referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘Where am I covered?’. Each piece of information listed in this section shall be preceded by a blue ‘tick’ symbol;
- (e) the information on a summary of the excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be included under the heading ‘What is not insured?’. Each piece of information in this section shall be preceded by a red ‘X’ symbol;
- (f) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be included under the heading ‘Are there any restrictions on cover?’. Each piece of information listed in this section shall be preceded by an orange exclamation mark symbol;
- (g) the information on the relevant obligations referred to in points (e), (f) and (g) of Article 20(8) of Directive (EU) 2016/97 shall be included under the heading ‘What are my obligations?’;
- (h) the information on the means and duration of payment of premiums referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be included under the heading ‘When and how do I pay?’;
- (i) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be included under the heading ‘When does the cover start and end?’;
- (j) the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be included under the heading ‘How do I cancel the

contract?’.

6(2) The use of sub-headings is permitted, where necessary.

[**Note:** article 6 of the *IDD IPID Regulation*]

Use of icons

- | | | |
|------|----|--|
| 3.10 | EU | <p>7(1) Each section shall further be headed by icons that visually represent the content of the respective section heading, as follows:</p> <ul style="list-style-type: none"> (a) the information on the main risks insured referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an umbrella, which shall be white on a green background or green on a white background; (b) the information on the geographical scope of the insurance cover referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of a globe, which shall be white on a blue background or blue on a white background; (c) the information on excluded risks referred to in Article 20(8)(b) of Directive (EU) 2016/97 shall be headed by an icon of an X symbol within a triangle, which shall be white on a red background or red on a white background; (d) the information on the main exclusions referred to in Article 20(8)(d) of Directive (EU) 2016/97 shall be headed by an exclamation mark (!) within a triangle, which shall be white on an orange background or orange on a white background; (e) the information on the obligations at the start of the contract, during the term of the contract and in the event that a claim is made, referred to in points (e), (f) and (g) of 20(8) of Directive (EU) 2016/97, respectively, shall be headed by an icon of a handshake, which shall be white on a green background or green on a white background; (f) the information on the means and duration of payments referred to in Article 20(8)(c) of Directive (EU) 2016/97 shall be headed by an icon of coins, which shall be white on a yellow background or yellow on a white background; (g) the information on the term of the contract referred to in Article 20(8)(h) of Directive (EU) 2016/97 shall be headed by an icon of an hourglass, which shall be white on a blue background or blue on a white background; |
|------|----|--|

		(h)	the information on the means of terminating the contract referred to in Article 20(8)(i) of Directive (EU) 2016/97 shall be headed by an icon of a hand with an open palm on a shield, which shall be white on a black background, or black on a white background.
3.11	EU	7(2)	All icons shall be displayed in a manner consistent with the standardised presentation format in the Annex.
3.12	EU	7(3)	The icons referred to in paragraphs 1 and 2 may be presented in black and white where the insurance product information document is printed or photocopied in black and white.

[**Note:** article 7 of the *IDD IPID Regulation*]

Template for the standardised presentation format

3.13	EU	ANNEX
------	----	-------

Xxxxxx Insurance

Insurance Product Information Document

Company: <Name> Insurance Company

Product: <Name> Policy

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]

What is this type of insurance?

[Description of Insurance]



What is insured?

- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx
- ✓ Xxxxx



What is not insured?

- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx
- ✗ Xxxxx



Are there any restrictions on cover?

- ! Xxxxx
- ! Xxxxx
- ! Xxxxx
- ! Xxxxx
- ! Xxxxx



Where am I covered?

- ✓ Xxxxxx



What are my obligations?

- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx



When and how do I pay?

Xxxxxx



When does the cover start and end?

Xxxxxx



How do I cancel the contract?

Xxxxxx

[Note: Annex to the *IDD IPID Regulation*]

6A Product specific rules**6A.1 Guaranteed asset protection (GAP) contracts**

...

Ensuring the customer can make an informed decision

6A.1.4 R (1) ...

- (2) This information must be communicated in a clear and accurate manner and ~~in writing on paper~~ or another *durable medium*, ~~and made available and accessible to the customer~~ in accordance with ICOBS 4.1A.

...

...

After ICOBS 6A.2 (Optional additional products) insert the following new chapter ICOBS 6A.3. The text is not underlined.

6A.3 Cross-selling

Requirements where insurance is the primary product

6A.3.1 R When offering a non-insurance ancillary product or service as part of a package or the same agreement with an insurance product, a *firm* must:

- (1) inform the *customer* whether it is possible to buy the different components separately and, if so must provide the *customer* with an adequate description of:
 - (a) the different components;
 - (b) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with the components taken separately; and
- (2) provide the *customer* with separate evidence of the costs and charges of each component.

[**Note:** articles 24(1) and (2) of the *IDD*]

Requirements where insurance is the ancillary product

6A.3.2 R When offering an insurance product ancillary to and as part of a package or in the same agreement with a non-insurance product or service, a *firm* must offer the *customer* the option of buying the non-insurance goods or services

separately.

6A.3.3 R *ICOBS* 6A.3.2R does not apply where the non-insurance product or service is any of the following:

- (1) *investment services or activities*;
- (2) a credit agreement as defined in point 3 of article 4 of the *MCD* which is:
 - (i) an *MCD credit agreement*; or
 - (ii) an *exempt MCD credit agreement*; or
 - (iii) a *CBTL credit agreement*; or
 - (iv) a credit agreement referred to in articles 72G(3B) and (4) of the *Regulated Activities Order*;
- (3) a payment account as defined in regulation 2(1) of the *Payment Accounts Regulations*.

[**Note:** article 24(3) of the *IDD*]

General

6A.3.4 R This section does not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

[**Note:** article 24(5) of the *IDD*]

6A.3.5 G In addition to the *rules* in *ICOBS* 6A.3 *firms* should still comply with the other *rules* in *ICOBS* relating to the offer and sale of insurance products that form part of the package or agreement, such as those applying to price disclosure (*ICOBS* 6.1.13R), optional additional products (*ICOBS* 6A.2) and specifying the demands and needs of the *customer* (*ICOBS* 5.2.1R).

[**Note:** article 24(6) of the *IDD*]

Annex M

Amendments to the Client Assets sourcebook (CASS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

For “ <i>mediation</i> ”, substitute “ <i>distribution</i> ” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.	
1A.1.1R(2)	one instance
1A.2.2R(2)(c)	one instance
5.1.6R	one instance
5.2.3R(1)(a)	one instance
5.5.30R(2)	one instance
5.8.2G	one instance
7.10.8R, heading	one instance
7.10.9G	one instance
7.10.10R	one instance
7.10.12R	one instance
7.10.32G(1)(a)	one instance
7.10.32G(2)	one instance
7.17.2R(2)(a)	one instance
7.17.2R(2)(b)(i)	one instance
7.17.2R(3)	one instance
8.1.1R(2)	one instance
8.2.1R(2)	one instance
9.1.1R(4)	one instance

1 Application and general provisions

...

1.2 General application: who? what?

...

- 1.2.5 R The *insurance client money chapter* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, which are ~~*insurance mediation activities*~~ *insurance distribution activities*, if:

- (1) the *firm's designated professional body* has made rules which implement article 4 10.6 of the ~~*Insurance Mediation Directive*~~ *IDD*;

...

1.2.5A G (1) In the *client money chapter* and the *insurance client money chapter*, an *insurance undertaking* acts as such when it carries on the business of *effecting or carrying out contracts of insurance*.

(2) An *insurance undertaking* does not act as such when it enters into a *reinsurance contract* as a client of the *reinsurer*.

...

5 **Client money: ~~insurance mediation~~ distribution activity**

5.1 **Application**

Application

5.1.1 R (1) CASS 5.1 to CASS 5.6 apply, subject to (2), (3) and CASS 5.1.3R to CASS 5.1.6R, to a *firm* that receives or holds *money* in the course of or in connection with its ~~*insurance mediation activity*~~ *insurance distribution activity*.

(2) CASS 5.1 to CASS 5.6 do not, subject to (3), apply:

...

(b) ~~to a *firm* in carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or [deleted]~~

...

(e) with respect to *money* held by a *firm* which:

(i) is an *approved bank*; and

(ii) has requisite capital under article ~~4(4)(b)~~ 10(6)(b) of the ~~*Insurance Mediation Directive*~~ *IDD*;

...

(3) A *firm* may elect to comply with:

(a) ~~CASS 5.1 to CASS 5.6 in respect of *client money* which it receives in the course of carrying on *insurance mediation activity* in respect of *reinsurance contracts*; and [deleted]~~

(b) CASS 5.1, CASS 5.2 and CASS 5.4 to CASS 5.6 in respect of *money* which it receives in the course of carrying on an activity which would be ~~*insurance mediation activity*~~ *insurance distribution activity*, and which *money* would be *client money*, but for article 72D of the *Regulated Activities Order* (Large risks contracts where risk situated outside the EEA);₂

but the election must be in respect of all the *firm*'s business which

consists of that activity.

...

...

Purpose

5.1.7 G (1) ... The rules in CASS 5.1 to CASS 5.6 also give effect to the requirement in article 4.4 10.6 of the ~~Insurance Mediation Directive~~ IDD that all necessary measures should be taken to protect clients against the inability of an *insurance intermediary* to transfer *premiums* to an *insurance undertaking* or to transfer the proceeds of a claim or *premium* refund to the insured.

(2) There are two particular approaches which firms can adopt which reflect options given in article 4.4 10.6 ...

5.1.8 G ~~Firms which carry on designated investment business which may, for example, involve them handling client money in respect of life assurance business should refer to the non-directive client money chapter which includes provisions enabling firms to elect to comply solely with that chapter or with the insurance client money chapter in respect of that business. Firms that also carry on MiFID or equivalent third country business may elect to comply solely with the MiFID client money chapter with respect of client money in respect of which the non-directive client money chapter or the insurance client money chapter apply. A firm which carries on MiFID business or designated investment business in relation to life assurance business may, in accordance with CASS 7.10.3R and in relation to that business only, either comply with CASS 7 or elect to comply with the insurance client money chapter.~~

...

5.2 Holding money as agent of an insurance undertaking

...

Requirement for written agreement before acting as agent of an insurance undertaking

5.2.3 R (1) A *firm* must not agree to:

(a) *deal in investments as agent for an insurance undertaking in connection with ~~insurance mediation~~ an insurance distribution activity*; or

...

...

...

5.8 Safe keeping of client's documents and other assets

5.8.1 R Application

- (1) CASS 5.8 applies to a *firm* (including in its capacity as trustee under CASS 5.4) which in the course of ~~*insurance mediation activity*~~ *insurance distribution activity* takes into its possession for safekeeping any *client title documents* (other than documents of no value) or other tangible assets belonging to *clients*.
- (2) CASS 5.8 does not apply to a *firm* when:
 - (a) carrying on an ~~*insurance mediation activity*~~ *insurance distribution activity* which is in respect of a *reinsurance contract*; or

...

...

7 Client money rules

...

7.10 Application and purpose

...

‘Opt-outs’ for non-~~IMD~~ IDD business

- 7.10.11 G For a *firm* whose business is not governed by the ~~*Insurance Mediation Directive*~~ *IDD*, it is possible to ‘opt out’ on a one-way basis. However, in order to maintain a comparable regime to that applying to *MiFID business*, all ‘*MiFID* type’ business undertaken outside the scope of *MiFID* should comply with the *client money rules* or be ‘opted out’ on a two-way basis.

...

9 Information to clients

...

9.4 Information to clients concerning custody assets and client money

9.4.1 G (1) ...

- (2) *COBS* 6.1 (Information about the firm and compensation information (non-MiFID and non-insurance distribution provisions)) applies to a *firm* in relation to its *designated investment business*, other than *MiFID*, *equivalent third country* or *optional exemption business* or

insurance distribution activities, for a retail client.

...

- 9.4.2A G (1) *Firms to which COBS 6.1ZA applies are reminded of the requirements under article 49 of the MiFID Org Regulation (which are directly applicable to some firms and which are also applied to firms in other circumstances under COBS 6.1ZA.3R) to provide certain information to a client when the firm is holding the client's financial instruments or funds (see COBS 6.1ZA.9EU) and the requirement under COBS 6.1ZA.10AR when a firm doing insurance distribution activities is holding client money and has elected to comply with the client money chapter.*
- (2) *COBS 6.1ZA (Information about the firm and compensation information (MiFID and insurance distribution provisions)) applies to a firm in relation to its MiFID, equivalent third country or optional exemption business or its insurance distribution activities for a client.*

...

TP 1 Transitional Provisions

TP 1.1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...
3	CASS 5.1 to CASS 5.6	R	Apply in relation to money (and where appropriate <i>designated investments</i>) held by a firm on 14 January 2005 (being <i>money</i> or <i>designated investments</i> to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such <i>money</i> (or <i>designated investments</i>) relate to business carried on before 14 January 2005 and which would, if	Indefinitely	14 January 2005

			conducted on or after 14 January 2005, be an <i>insurance mediation activity</i> and if conducted on or after [1 October 2018], be an <i>insurance distribution activity</i> .		
<u>3A</u>	<u>CASS 5.1 to CASS 5.6</u>	<u>R</u>	Apply in relation to <i>money</i> (and where <i>appropriate designated investments</i>) held by a <i>firm</i> on [23 February 2018] (being <i>money</i> or <i>designated investments</i> to which CASS 5.1 to CASS 5.6 would not otherwise apply) to the extent that such <i>money</i> (or <i>designated investments</i>) relate to business carried on before [1 October 2018] and which would, if conducted on or after [1 October 2018], be <i>reinsurance distribution</i> .	<u>Indefinitely</u>	<u>[1 October 2018]</u>

Annex N

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

After PROD 1.3 (Application of PROD 3) insert the following new section PROD 1.4. The text is not underlined.

1.4 Application of PROD 4

1.4.1 R *PROD* 4 applies to:

- (1) an *insurance intermediary*; and
- (2) an *insurer*,

with respect to:

- (3) *manufacturing* insurance products; and
- (4) *distributing* insurance products.

[**Note:** articles 1(2) and 25 of the *IDD*]

1.4.2 G In *PROD* an insurance product may be read as being a reference to the product for distribution to *customers* generally and is not intended to refer to each individual *contract of insurance* being sold or underwritten (unless the context indicates otherwise).

1.4.3 R *PROD* 4 does not apply in relation to the *manufacturing* or *distributing* of:

- (1) a *contract of large risks*, or
- (2) a *reinsurance contract*.

[**Note:** article 25(4) of the *IDD*]

When an intermediary may be considered to be manufacturing

1.4.4	EU	<p>3(1) For the purposes of Article 25(1) of Directive (EU) 2016/97, insurance intermediaries shall be considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.</p> <p>3(2) A decision-making role shall be assumed, in particular, where insurance intermediaries autonomously determine the essential features and main elements of an insurance product, including its coverage, price, costs, risk, target market and compensation and guarantee rights, which are not substantially modified by the</p>
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insurance undertaking providing coverage for the insurance product.

- 3(3) Personalisation of and adaptation of existing insurance products in the context of insurance distribution activities for individual customers, as well as the design of tailor-made contracts at the request of a single customer, shall not be considered manufacturing.

[**Note:** article 3 of the *IDD POG Regulation*]

- 1.4.5 G The effect of *PROD 1.4.3EU* and *PROD 1.4.6R* is that an *insurance intermediary* needs to consider if it is *manufacturing* an insurance product and, if so, should comply with *PROD 4.2* (Manufacture of insurance products).

Effect of provisions marked “EU”

- 1.4.6 R (1) Subject to (2) and *PROD 1.4.3R*, provisions in this section and in *PROD 4* marked “EU” apply to *firms manufacturing or distributing* insurance products, but to whom the *IDD POG Regulation* does not apply, as if they were *rules*.
- (2) For the purposes of (1), a word or phrase used in the *IDD POG Regulation* and referred to in column (A) has the meaning indicated in Column (B) of the table below:

(a)	(b)
“Article 17(1) of Directive (EU) 2016/97”	<i>ICOBS 2.5.-1R</i> , in relation to a <i>non-investment insurance contract</i> , or <i>COBS 2.1.1R</i> , in relation to a <i>life policy</i>
“Article 25(1) of Directive (EU) 2016/97”	<i>PROD 4.2.1R</i> and <i>PROD 4.2.2R</i>
“Article 8(2)”	<i>PROD 4.2.30EU</i>
“competent authorities”	<i>FCA</i>
“customer” and “potential customer”	<i>customer</i>
“Directive (EU) 2016/97”	<i>IDD</i>
“insurance based investment products”	<i>insurance based investment products</i>
“insurance distribution activities” and “distribution activities”	<i>insurance distribution activities</i>
“insurance distributor”	<i>distributor</i>

“insurance intermediary”	<i>insurance intermediary</i>
“insurance undertaking”	<i>insurer</i>
“manufacturer” and “manufacturers within the meaning of Article 2 of this Delegated Regulation”	<i>manufacturer</i>
“manufacturing”	<i>manufacturing</i>
“shall”	must

- (3) In this sourcebook, where a reproduced provision of an article of the *IDD POG Regulation* refers to another part of the *IDD POG Regulation*, that other provision must also be read with reference to the table in (2).

Where?

- 1.4.7 R *PROD* 4 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

[**Note:** article 7(2) of the *IDD*]

EEA territorial scope rule: compatibility with European law

- 1.4.8 R (1) The territorial scope of *PROD* 4 is modified to the extent necessary to be compatible with European law.
- (2) This *rule* overrides every other *rule* in this sourcebook.

Electronic Commerce Directive: effect on territorial scope

- 1.4.9 G The *rules* and *guidance* on the *E-Commerce Directive* in *ICOBS* 1 Annex 1, Part 3, paragraph 1.2R and Part 4 paragraph 8, and in *COBS* 1 Annex 1, Part 2, paragraph 1.2R and Part 3, paragraph 7, apply equally in relation to the *rules* in *PROD* 4.

Interaction of *PROD* 4 and the *RPPD* Guide

- 1.4.10 G A *firm* to which *PROD* 4 applies need not apply the *guidance* in *RPPD* for matters covered by *PROD* if the *firm* has complied with *PROD* 4 (see also *PROD* 4.4.2G). *PROD* 4.4 includes *guidance* based on the *RPPD* which *firms* subject to *PROD* 4 should apply.

After *PROD* 3.3 (Distribution of products and investment services) insert the following new chapter *PROD* 4. The text is not underlined.

4 Product governance: IDD

4.1 General

Other requirements under the IDD

- 4.1.1 R This chapter does not affect the application of other requirements in the *FCA Handbook* applying to *firms* in relation to their *insurance distribution activities* including but not limited to:

- (1) disclosure (*ICOBS* 2.2, *ICOBS* 6.1, *COBS* 4 and *COBS* 14.2);
- (2) suitability (*COBS* 9 or 9A);
- (3) appropriateness (*COBS* 10A);
- (4) identification and management of conflicts of interest (*SYSC* 10.1 for intermediaries or *SYSC* 3.3 for insurers); and
- (5) inducements (*COBS* 2.3A).

[**Note:** article 25(3) of the *IDD*]

4.2 Manufacture of insurance products

Product governance arrangements

- 4.2.1 R A *firm* which *manufactures* any insurance product must maintain, operate and review a process for the approval of:

- (1) each insurance product; and
 - (2) significant adaptations of an existing insurance product,
- in each case before it is marketed or *distributed to customers*.

[**Note:** first subparagraph of article 25(1) of the *IDD*]

- 4.2.2 R The product approval process referred to in *PROD* 4.2.1R must be proportionate and appropriate to the nature of the insurance product.

[**Note:** second subparagraph of article 25(1) of the *IDD*]

- 4.2.3 G *Manufacturers* should take into account the following when considering whether the product approval process is proportionate and appropriate:

- (1) the complexity of the insurance product;

- (2) the degree to which publicly available information can be obtained;
- (3) the nature of the insurance product and the risk of consumer detriment related to it;
- (4) the characteristics of the target market; and
- (5) the scale and complexity of the relevant business of the *manufacturer* or *distributor*.

[**Note:** recital 2 to the *IDD POG Regulation*]

- 4.2.4 G For the purposes of *PROD 4.2.2R* proportionality means that the product approval process should be relatively simple for straightforward and non-complex products that are compatible with the needs and characteristics of the mass retail market. On the other hand, in the case of more complex products with a higher risk of consumer detriment more exacting measures should be required.

[**Note:** recital 2 to the *IDD POG Regulation*]

Product approval process

- 4.2.5 EU 4(1) Manufacturers shall maintain, operate and review a product approval process for newly developed insurance products and for significant adaptations of existing insurance products. That process shall contain measures and procedures for designing, monitoring, reviewing and distributing insurance products, as well as for corrective action for insurance products that are detrimental to customers. The measures and procedures shall be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the manufacturer.

[**Note:** article 4(1) of the *IDD POG Regulation*]

- 4.2.6 EU 4(2) The product approval process shall be set out in a written document (“product oversight and governance policy”), which shall be made available to the relevant staff.

[**Note:** article 4 (2) of the *IDD POG Regulation*]

- 4.2.7 EU 9 Relevant actions taken by manufacturers in relation to their product approval process shall be duly documented, kept for audit purposes and made available to the competent authorities upon request.

[**Note:** article 9 of the *IDD POG Regulation*]

- 4.2.8 EU 4(3) The product approval process shall
- (a) ensure that the design of insurance products:

- (i) takes into account the objectives, interests and characteristics of customers;
- (ii) does not adversely affect customers;
- (iii) prevents or mitigates customer detriment;
- (b) support a proper management of conflicts of interest.

[Note: article 4(3) of the *IDD POG Regulation*]

4.2.9

- 4(4) The manufacturers' body or structure responsible for the manufacturing of insurance products shall:
- (a) endorse and be ultimately responsible for establishing, implementing and reviewing the product approval process;
 - (b) continuously verify internal compliance with that process.

[Note: article 4(4) of the *IDD POG Regulation*]

4.2.10 EU

- 5(4) Manufacturers shall ensure that staff involved in designing and manufacturing insurance products has the necessary skills, knowledge and expertise to properly understand the insurance products sold and the interests, objectives and characteristics of the customers belonging to the target market.

[Note: article 5(4) of the *IDD POG Regulation*]

4.2.11 EU

- 4(5) Manufacturers designating a third party to design products on their behalf shall remain fully responsible for compliance with the product approval process.

[Note: article 4(5) of the *IDD POG Regulation*]

4.2.12 EU

- 4(6) Manufacturers shall regularly review their product approval process to ensure that that process is still valid and up to date. They shall amend the product approval process where necessary.

[Note: article 4(6) of the *IDD POG Regulation*]

Manufacture by more than one firm

4.2.13

EU

- 3(4) An insurance intermediary and an insurance undertaking that are both manufacturers within the meaning of Article 2 of this Delegated Regulation, shall sign a written agreement which specifies their collaboration to comply with the requirements for manufacturers referred to in Article 25(1) of Directive (EU) 2016/97, the procedures through which they shall agree on the identification of the target market and their respective roles in the product approval process.

[**Note:** article 3(4) of the *IDD POG Regulation*]

- 4.2.14 R In circumstances other than *PROD 4.2.13EU*, when *firms* collaborate to *manufacture* an insurance product, they must outline their mutual responsibilities in a written agreement.

Target market

- 4.2.15 R For each insurance product the product approval process must:
- (1) specify an identified target market;
 - (2) ensure that all relevant risks to the identified target market are assessed;
 - (3) ensure that the intended distribution strategy is consistent with the identified target market; and
 - (4) require the *manufacturer* to take reasonable steps to ensure that the insurance product is *distributed* to the identified target market.

[**Note:** third subparagraph of article 25(1) of the *IDD*]

- 4.2.16 EU 5(1) The product approval process shall for each insurance product identify the target market and the group of compatible customers. The target market shall be identified at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the insurance product.

[**Note:** article 5(1) of the *IDD POG Regulation*]

- 4.2.17 EU 5(2) Manufacturers may, in particular with regard to insurance-based investment products, identify groups of customers for whose needs, characteristics and objectives the insurance product is generally not compatible.

[**Note:** article 5(2) of the *IDD POG Regulation*]

- 4.2.18 EU 5(3) Manufacturers shall only design and market insurance products that are compatible with the needs, characteristics and objectives of the customers belonging to the target market. When assessing whether an insurance product is compatible with a target market, manufacturers shall take into account the level of information available to the customers belonging to that target market and their financial literacy.

[**Note:** article 5(3) of the *IDD POG Regulation*]

- 4.2.19 G The identification of the target market by the *manufacturer* should be understood as describing a group of *customers* sharing common characteristics at an abstract and generalised level in order to enable the *manufacturer* to adapt the features of the product to the needs,

characteristics and objectives of that group of *customers*.

- 4.2.20 G The identification of the target market should be distinguished from the individual assessment at the point of sale to determine whether a product meets the demands and needs and, where applicable, whether an *insurance based investment product* is suitable or appropriate for the individual *customer*.

[**Note:** recital 5 to the *IDD POG Regulation*]

- 4.2.21 G The level of granularity of the target market and the criteria used to define the target market and determine the appropriate distribution strategy should be relevant for the product and should make it possible to assess which *customers* fall within the target market. For simpler, more common products, the target market should be identified with less detail while for more complicated products or less common products, the target market should be identified with more detail taking into account the increased risk of consumer detriment associated with such products.

[**Note:** recital 6 to the *IDD POG Regulation*]

Product testing

- 4.2.22 EU 6(1) Manufacturers shall test their insurance products appropriately, including scenario analyses where relevant, before bringing that product to the market or significantly adapting it, or in case the target market has significantly changed. That product testing shall assess whether the insurance product over its lifetime meets the identified needs, objectives and characteristics of the target market. Manufacturers shall test their insurance products in a qualitative manner and, depending on the type and nature of the insurance product and the related risk of detriment to customers, quantitative manner.

[**Note:** article 6(1) of the *IDD POG Regulation*]

- 4.2.23 G For the purposes of *PROD 4.2.22EU*, *manufacturers* should include assessments of the performance and risk/reward profile of their insurance product where appropriate.

[**Note:** recital 8 to the *IDD POG Regulation*]

- 4.2.24 EU 6(2) Manufacturers shall not bring insurance products to the market if the results of the product testing show that the products do not meet the identified needs, objectives and characteristics of the target market.

[**Note:** article 6(2) of the *IDD POG Regulation*]

- 4.2.25 R *Manufacturers* must consider the charging structure proposed for each insurance product, including examination of the following:

- (1) whether the costs and charges of the insurance product are compatible with the needs, objectives and characteristics of the target market;
 - (2) where relevant, whether the charging structure of the insurance product is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand; and
 - (3) where relevant, whether the charges undermine the return expectations of the insurance product, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a *life policy*.
- 4.2.26 G (1) *PROD 4.2.25R* does not affect the *manufacturer's* freedom to set *premiums*.
- (2) In relation to a *non-investment insurance contract* a *firm* should consider whether, as a result of the charging structure it has put in place, the overall cost for the *customer* is consistent with its obligations under the *Principles* and *ICOBS*.
- (3) *PROD 4.2.25R* should be read in light of a *firm's* wider obligations under the *Handbook* which impose specific restrictions or requirements around what costs and charges may be permissible. For example, the *rules* in *COBS 20.2* govern what may be charged to a *with-profits policy* when considering its charging structure under *PROD 4.2.25R*.

Distribution channels and information disclosure to distributors

- 4.2.27 EU 8(1) Manufacturers shall carefully select distribution channels that are appropriate for the target market, thereby taking into account the particular characteristics of the relevant insurance products.

[**Note:** article 8(1) of the *IDD POG Regulation*]

- 4.2.28 G To ensure appropriate information for *customers*, *manufacturers* should select *distributors* that have the necessary knowledge, expertise and competence to understand the features of an insurance product and the identified target market.

[**Note:** recital 9 to the *IDD POG Regulation*]

- 4.2.29 R A *firm* which *manufactures* an insurance product, must make available to a *distributor*:

- (1) all appropriate information on the insurance product
- (2) all appropriate information on the product approval process; and

- (3) the identified target market of the insurance product.

[**Note:** fifth subparagraph of article 25(1) of the *IDD*]

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|--------|----|--|
| 4.2.30 | EU | <p>8(2) Manufacturers shall provide insurance distributors with all appropriate information on the insurance products, the identified target market and the suggested distribution strategy, including information on the main features and characteristics of the insurance products, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of interest to the detriment of the customer. That information shall be clear, complete and up to date.</p> |
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[**Note:** article 8(2) of the *IDD POG Regulation*]

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|--------|----|---|
| 4.2.31 | EU | <p>8(3) The information referred to in paragraph 2 shall enable the insurance distributors to:</p> <ul style="list-style-type: none"> (a) understand the insurance products; (b) comprehend the identified target market for the insurance products; (c) identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives; (d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in Article 17(1) of Directive (EU) 2016/97. |
|--------|----|---|

[**Note:** article 8(3) of the *IDD POG Regulation*]

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|--------|---|--|
| 4.2.32 | R | <p>(1) A <i>manufacturer</i> must make available to any <i>distributor</i> information about the target market assessment.</p> <p>(2) The information made available under (1) must be of an adequate standard to enable <i>distributors</i> to:</p> <ul style="list-style-type: none"> (a) comprehend the identified target market for the insurance products; and (b) be able to identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives. <p>(3) A <i>manufacturer</i> is not required to disclose [specific] information objectively considered to be commercially sensitive if the information it does make available would still allow <i>distributors</i> to meet (2)(a) and (b).</p> |
|--------|---|--|

Monitoring and review of insurance products

4.2.33 R A *firm* must understand the insurance products it offers or markets.

[**Note:** fourth subparagraph of article 25(1) of the *IDD*]

4.2.34 R A *firm* must regularly review the insurance products it offers or markets taking into account any event that could materially affect the potential risk to the identified target market. In doing so, the *firm* must assess at least the following:

(1) whether the insurance product remains consistent with the needs of the identified target market; and

(2) whether the intended distribution strategy remains appropriate.

[**Note:** fourth subparagraph of article 25(1) of the *IDD*]

4.2.35 EU 7(1) Manufacturers shall continuously monitor and regularly review insurance products they have brought to the market, to identify events that could materially affect the main features, the risk coverage or the guarantees of those products. They shall assess whether the insurance products remain consistent with the needs, characteristics and objectives of the identified target market and whether those products are distributed to the target market or is reaching customers outside the target market.

[**Note:** article 7(1) of the *IDD POG Regulation*]

4.2.36 EU 7(2) Manufacturers shall determine the appropriate intervals for the regular review of their insurance products, thereby taking into account the size, scale, contractual duration and complexity of those insurance products, their respective distribution channels, and any relevant external factors such as changes to the applicable legal rules, technological developments, or changes to the market situation.

[**Note:** article 7(2) of the *IDD POG Regulation*]

4.2.37 EU 7(3) Manufacturers that identify during the lifetime of an insurance product any circumstances related to the insurance product that may adversely affect the customer of that product shall take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event. Manufacturers shall promptly inform concerned insurance distributors and customers about the remedial action taken.

[**Note:** article 7(3) of the *IDD POG Regulation*]

4.2.38 EU 8(4) Manufacturers shall take appropriate steps to monitor that insurance distributors act in accordance with the objectives of the manufacturers' product approval process. They shall in particular

verify on a regular basis whether the insurance products are distributed on the identified target market. That monitoring obligation shall not extend to the general regulatory requirements with which insurance distributors have to comply when carrying out insurance distribution activities for individual customers. The monitoring activities shall be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.

[**Note:** article 8(4) of the *IDD POG Regulation*]

- 4.2.39 EU 8(5) Manufacturers considering that the distribution of their insurance products is not in accordance with the objectives of their product approval process shall take appropriate remedial action.

[**Note:** article 8(5) of the *IDD POG Regulation*]

4.3 Distribution of insurance products

- 4.3.1 R Where a *firm distributes* insurance products which it does not *manufacture* it must have in place adequate arrangements to obtain the information in *PROD 4.2.29R* from the *manufacturer*.

[**Note:** sixth sub-paragraph of article 25(1) of the *IDD*]

- 4.3.2 R Where a *firm distributes* insurance products which it does not *manufacture*, it must have in place adequate arrangements to understand:

- (1) the characteristics of each insurance product; and
- (2) the identified target market of each insurance product.

[**Note:** sixth sub-paragraph of article 25(1) of the *IDD*]

- 4.3.3 R A *distributor* must take all reasonable steps to obtain the information in *PROD 4.2.29R* when *distributing* insurance products *manufactured* by any *person* to which *IDD manufacturer* product governance requirements (*PROD 4.2*, equivalent requirements of another *EEA State* or directly applicable requirements of the *IDD POG Regulation*) do not apply.

- 4.3.4 G To comply with *PROD 4.3.2R*, *distributors* should put in place effective arrangements to ensure that they obtain sufficient, adequate and reliable information from the *manufacturer* about the insurance products to ensure that they will be *distributed* in accordance with the characteristics, objectives and needs of the target market.

- 4.3.5 EU 10(1) Insurance distributors shall have in place product distribution arrangements containing appropriate measures and procedures to obtain from the manufacturer all appropriate information on the insurance products they intend to offer to their customers and to

fully comprehend those insurance products, taking into account the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the distributor.

[**Note:** first sub-paragraph of article 10(1) of the *IDD POG Regulation*]

- 4.3.6 EU 10(2) The product distribution arrangements shall:
- (a) aim to prevent and mitigate customer detriment;
 - (b) support a proper management of conflicts of interest;
 - (c) ensure that the objectives, interests and characteristics of customers are duly taken into account.

[**Note:** article 10(2) of the *IDD POG Regulation*]

- 4.3.7 EU 10(3) The product distribution arrangements shall ensure that the insurance distributors obtain from the manufacturer the information to be communicated under Article 8(2).

[**Note:** article 10(3) of the *IDD POG Regulation*]

- 4.3.8 EU 10(4) Any specific distribution strategy set up or applied by insurance distributors shall be in accordance with the distribution strategy set up and the target market identified by the manufacturer.

[**Note:** article 10(4) of the *IDD POG Regulation*]

- 4.3.9 EU 10(5) The insurance distributors' body or structure responsible for insurance distribution shall endorse and be ultimately responsible for establishing, implementing and reviewing the product distribution arrangements and continuously verify internal compliance with those arrangements.

[**Note:** article 10(5) of the *IDD POG Regulation*]

- 4.3.10 EU 10(6) Insurance distributors shall regularly review their product distribution arrangements to ensure that those arrangements are still valid and up to date. They shall amend product distribution arrangements where appropriate. Insurance distributors that have set up or apply a specific distribution strategy shall, where appropriate, amend that strategy in view of the outcome of the review of the product distribution arrangements. When reviewing their product distribution arrangements, insurance distributors shall verify that the insurance products are distributed to the identified target market.
- Insurance distributors shall determine the appropriate intervals for the regular review of their product distribution arrangements, thereby taking into account the size, scale and complexity of the different insurance products involved.

To support product reviews carried out by manufacturers, insurance distributors shall upon request provide manufacturers with relevant sales information, including, where appropriate, information on the regular reviews of the product distribution arrangements.

[**Note:** article 10(6) of the *IDD POG Regulation*]

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| 4.3.11 | EU | 11 | Insurance distributors becoming aware that an insurance product is not in line with the interests, objectives and characteristics of its identified target market or becoming aware of other product-related circumstances that may adversely affect the customer shall promptly inform the manufacturer and, where appropriate, amend their distribution strategy for that insurance product. |
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[**Note:** article 11 of the *IDD POG Regulation*]

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| 4.3.12 | G | <i>Manufacturers</i> and <i>distributors</i> should take appropriate action in order to avert the risk of consumer detriment when they consider that the insurance product is not, or is no longer, aligned with the interests, objectives and characteristics of the identified target market. |
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[**Note:** recital 12 to the *IDD POG Regulation*]

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| 4.3.13 | EU | 12 | Relevant actions taken by insurance distributors in relation to their product distribution arrangements shall be duly documented, kept for audit purposes and made available to the competent authorities upon request. |
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[**Note:** article 12 of the *IDD POG Regulation*]

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|--------|----|-------|---|
| 4.3.14 | EU | 10(1) | Insurance distributors shall set out the product distribution arrangements in a written document and make it available to their relevant staff. |
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[**Note:** second sub-paragraph of article 10(1) of the *IDD POG Regulation*]

4.4 Additional expectations for manufacturers and distributors of insurance products

- | | | |
|-------|---|---|
| 4.4.1 | G | In addition to <i>PROD</i> 4.1, <i>PROD</i> 4.2 and <i>PROD</i> 4.3, <i>firms</i> should also consider what needs to be done to comply with obligations found elsewhere in the <i>FCA Handbook</i> , including under the <i>Principles</i> and in <i>SYSC</i> . In considering this <i>firms</i> should consider any relevant <i>guidance</i> . |
| 4.4.2 | G | <i>PROD</i> 1.4.10G provides that, where <i>PROD</i> 4 applies, a <i>firm</i> need not apply the <i>guidance</i> in <i>RPPD</i> for matters covered by <i>PROD</i> , if that <i>firm</i> has complied with <i>PROD</i> 4. However, <i>PROD</i> 4 and the <i>IDD POG Regulation</i> does not cover all parts of the <i>RPPD</i> or wider obligations in the <i>FCA Handbook</i> and the following <i>guidance</i> , some of which is reproduced from |

the *RPPD*, remains relevant.

- 4.4.3 G *Manufacturers* should consider whether the design of an insurance product is driven by features that benefit the *customer* and not by a business model which relies on poor *customer* outcomes to be profitable.
- 4.4.4 G When providing information to *distributors*, a *manufacturer* should:
- (1) make it clear if that information is not intended for *customer* use;
 - (2) ensure the information is sufficient, appropriate and comprehensible in substance and form, including considering whether it will enable *distributors* to understand it enough to give suitable advice (where advice is given) and to extract any relevant information and communicate it to the end *customer*. As part of meeting this standard, the *manufacturer* may wish to consider, with regard to each *distribution* channel or type of *distributor* what information *distributors* of that type already have, their likely level of knowledge and understanding, their information needs and what form or medium would best meet those needs (which could include discussions, written material or training as appropriate).
- 4.4.5 G When reviewing the insurance products it *manufactures*, a *firm* should communicate to the *customer* and/or *distributor* contractual “breakpoints” such as the end of a long tie-in period that may have a material impact on a *customer* that the *customer* cannot reasonably be expected to recall or know about already.
- 4.4.6 G *Manufacturers* should act fairly and promptly when handling claims or when paying out on an insurance product that has been surrendered or reached maturity. In doing this, the *manufacturer* should meet any reasonable *customer* expectations that it may have created with regard to the outcomes or how the process would be handled.
- 4.4.7 G In ensuring that they have obtained sufficient information about the insurance products they *distribute* and in ensuring they understand the insurance products *distributed*, *distributors*:
- (1) should consider whether they understand the materials provided by the *manufacturer* or *distributor* earlier in the sales chain;
 - (2) should ask the *manufacturer* to supply additional information or training where this seems necessary to understand the insurance product adequately;
 - (3) should not *distribute* the insurance product if they do not understand it sufficiently; and
 - (4) when providing information to another *distributor* in a distribution chain, should consider how the further *distributor* will use the information, such as whether it will be given to *customers*. *Firms* should consider what information the further *distributor* requires

and the likely level of knowledge and understanding of the further *distributor* and what medium may suit it best for the transmission of information.

Annex O

Amendments to the Supervision manual (SUP)

Part 1: Handbook changes

In this Annex, underlining indicates new text and strikethrough indicates deleted text, unless otherwise stated.

For “*Insurance Mediation Directive*”, substitute “*IDD*” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

11.8.1R(4)	one instance
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For “*IMD*”, substitute “*IDD*” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

11.8.1R(4)	one instance
------------	--------------

For “*mediation*”, substitute “*distribution*” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

10A.1.16R(2)(a)	one instance
-----------------	--------------

10A.1.18R(5)	one instance
--------------	--------------

10A.6.5G	one instance
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10A.7.5G	two instances
----------	---------------

10A.7.6G	two instances
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10A.9.14G	two instances
-----------	---------------

10A.9.15G	two instances
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10C.5.7G heading	one instance
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10C.5.7G	one instance
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Amend the following as shown.

3 Auditors

3.1 Application

...

3.1.2 R Applicable sections (see *SUP* 3.1.1R)

...		
(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor

(1)	...	...	...
...			
(10)	<i>Insurance intermediary (other than an exempt insurance intermediary) to which the insurance client money chapter (except for CASS 5.2 (Holding money as agent)) applies (see Note 4)</i>	...	...
...			
...			
<p>Note 4 = The <i>client money</i> audit requirement in SUP 3.1.2R(10) therefore applies to all <i>insurance intermediaries</i> except:</p> <ul style="list-style-type: none"> those which do not hold <i>client money</i> or other client assets in relation to <i>insurance mediation activities</i> <u><i>insurance distribution activities</i></u>; or those which only hold up to, but not exceeding, £30,000 of <i>client money</i> under a statutory trust arising under CASS 5.3. <p><i>Insurance intermediaries</i> which, in relation to <i>insurance mediation activities</i> <u><i>insurance distribution activities</i></u>, hold no more than that amount of <i>client money</i> only on a statutory trust are <i>exempt insurance intermediaries</i>.</p>			
...			

...

12 Appointed representatives

...

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

...

Appointed representative carrying on insurance distribution

Good repute

- 12.4.8A R Before a *firm* appoints a *person* as an appointed representative to carry on ~~*insurance mediation activity*~~ *insurance distribution activity*, it must in relation to ~~*insurance mediation activity*~~ *insurance distribution activity* ensure that the *person* will comply on appointment, and will continue to comply with, the provisions of ~~*MIPRU 2.3.1R and MIPRU 2.3.3R*~~ (~~Knowledge and ability, and good repute~~) *SYSC 28.3 (Good repute)* as if the *appointed representative* were a *firm*.

[**Note:** article 10(3) of the *IDD*]

- 12.4.8A R A *A firm that has appointed an appointed representative to carry on insurance distribution activity must ensure that the appointed representative:*
- (1) *establishes, maintains and keeps appropriate records to demonstrate compliance with SYSC 28.3 (Good repute); and*
 - (2) *provides the name of the person responsible for the record-keeping requirement in (1) to the firm.*

Knowledge and ability requirements

- 12.4.8A G B *SYSC 28.1 (Minimum knowledge and ability requirements for carrying out insurance distribution activities), SYSC 28.2 (Knowledge and ability requirements) and SYSC 28.4 (Record-keeping requirements) apply in relation to a firm's relevant employees. This includes its appointed representatives and their employees.*

[**Note:** articles 10(1), 10(2) and last paragraph of article 10(8) of the *IDD*]

- 12.4.8B G ~~In assessing, under SUP 12.4.8AR, whether an appointed representative, or prospective appointed representative, has established the knowledge and ability requirements for persons within its management structure and for those directly involved in its insurance distribution activity, a firm should refer to TC: [deleted]~~

Close links

- 12.4.8C R Before a *firm* appoints an *appointed representative* who does not already appear on the *Financial Services Register* ("A") to carry on *insurance distribution activity*, it must obtain from A the following information:
- (1) *the identities of shareholders or members, whether natural or legal persons, that have a holding in A that exceeds 10% and the amount of those holdings;*

- (2) the identities of *persons* who have *close links* with A; and
- (3) that those holdings or *close links* do not prevent the effective supervision of A by the *firm*.

[**Note:** article 3(6) of the *IDD*]

- 12.4.9 G (1) An appointed representative must not commence an ~~*insurance mediation activity*~~ *insurance distribution activity* until ~~he is~~ they are included on the *Financial Services Register* as carrying on such activities (see *SUP* 12.5.2G(3)).
- (2) If an appointed representative's scope of appointment is to include an ~~*insurance mediation activity*~~ *insurance distribution activity*, the principal must notify the *FCA* of the appointment before the appointed representative commences that activity (see *SUP* 12.7.1R(1)).
- (3) As an exception, pre-notification is not required if the appointed representative is already included on the *Financial Services Register* as carrying on ~~*insurance mediation activities*~~ *insurance distribution activities* in another capacity (for example, as the appointed representative of another *principal*).
- 12.4.10 G (1) The *FCA* has the power to decide not to include on the *Financial Services Register* (or to remove from the *Financial Services Register*) an appointed representative whose scope of appointment includes an ~~*insurance mediation activity*~~ *insurance distribution activity*, if it appears to the *FCA* that he is not a fit and proper *person* to carry on those activities (article 95 of the *Regulated Activities Order*).

...

...

12.5 Contracts: required terms

...

- 12.5.2 G ...
- (3) If the scope of appointment covers, in relation to a *contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance or advising on investments*, regulation 3(4) of the *Appointed Representatives Regulations* makes it a requirement that the contract between the *firm* and the *appointed representative* contains a provision providing that the *appointed representative* is not permitted or required to carry on such business unless included in the *Financial Services Register* as carrying on ~~*insurance mediation activities*~~ *insurance distribution activities*.

...

12.5.10 R ...

Required contract terms for appointed representatives carrying on insurance distribution activity

12.5.11 R A firm must ensure that, if appointing an *appointed representative* to carry on *insurance distribution activity*, its written contract requires the *appointed representative* to inform the *firm* of any change to the information obtained by the *firm* from the *appointed representative* in accordance with SUP 12.4.8CR.

[Note: second paragraph of article 3(6) of the IDD]

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

Obligations of firms under the approved persons regime

12.6.8 G (1) Some of the *controlled functions*, as set out in SUP 10A.4.1R, apply to an *appointed representative* of a *firm*, other than an *introducer appointed representative*, just as they apply to a *firm* (see SUP 10A.1.15R). These are the *governing functions* and the *customer function*. In the case of an *appointed representative* that also has a *limited permission*, an *FCA required function* may apply to it. As explained in SUP 10A.1.16R and SUP 10A.3.2G respectively:

...

(b) although the *customer function* applies to an *appointed representative*, the descriptions of the functions themselves do not extend to *home finance mediation activity*, ~~*insurance mediation activity*~~ *insurance distribution activity* or *credit-related regulated activity*;

...

(2) The *approved persons* regime applies differently to an *appointed representative* whose scope of appointment includes ~~*insurance mediation activity*~~ *insurance distribution activity* in relation to *non-investment insurance contracts* or *credit-related regulated activity* but no other *regulated activity* and whose principal purpose is to carry on activities other than *regulated activities*. These appointed representatives need only one *person* performing one of the *governing functions*. This means that only one *director* (or equivalent) of these appointed representatives must be approved

under section 59 of the *Act* for the performance of the *director function*, the *chief executive function*, the *partner function* or the *director of unincorporated association function*, whichever is the most appropriate (see *SUP* 10A.1.16R).

...

....

Obligations of firms under the training and competence rules

- 12.6.10 G (1) The *rules* and *guidance* relating to training and competence in SYSC 3 and SYSC 5 and in TC for a *firm* carrying on retail business extend to any *employee* of the *firm* in respect of whom the relevant *rules* apply. ~~For these purposes, an *employee* of a *firm* includes:~~
- (2) The specific knowledge and ability requirements in SYSC 28.2 and TC 4.2 for a *firm* with Part 4A permission to carry on insurance distribution activities apply to a relevant employee (as defined in SYSC 28.1.2R and TC 4.2.3R) of the *firm*.
- (3) For the purposes of (1) and (2), an *employee* or a relevant employee of a *firm* includes an individual who is:
- (1) ~~an individual who is~~ an *appointed representative* of a *firm*; and
- (a)
- (2) ~~an individual who is~~ employed or appointed by an *appointed representative* of a *firm* (whether under a contract of service or for services) in connection with the business of the *appointed representative* for which the *firm* has accepted responsibility.
- (b)

...

- 12.6.11 G A *firm* should take reasonable care to ensure that:
- (1) it has satisfied:
- (a) SYSC 3 or SYSC 4 to 9 and where applicable, SYSC 28.2; and
- (b) TC₁
- in respect of the relevant staff of the *appointed representative*; and
- (2) ...

...

12.7 Notification requirements

Notification of appointment of an appointed representative

- 12.7.1 R (1) This *rule* applies to a *firm* which intends to appoint:
- (a) an *appointed representative* to carry on ~~*insurance mediation activities*~~ *insurance distribution activities*; or

...

...

...

- 12.7.2 G A *firm's* notice under SUP 12.7.1R should give details of the *appointed representative* and the *regulated activities* which the *firm* is, or intends to, carry on through the *appointed representative*, including:

...

- (4) any restrictions imposed on the *regulated activities* for which the *firm* has accepted responsibility; and
- (5) where the *appointed representative* is not an individual, the name of the individuals who are responsible for the management of the business carried on by the *appointed representative* so far as it relates to ~~*insurance mediation activity*~~ *insurance distribution activity*.

...

Notification of changes in information given to the FCA

- 12.7.7 R (1) If:
- (a)
- (i) the scope of appointment of an appointed representative is extended to cover ~~*insurance mediation activities*~~ *insurance distribution activities* for the first time; and
- (ii) the appointed representative is not included on the *Financial Services Register* as carrying on ~~*insurance mediation activities*~~ *insurance distribution activities* in another capacity; or
- (b) the scope of appointment of an appointed representative ceases to include ~~*insurance mediation activity*~~ *insurance distribution activity*;

the *appointed representative's principal* must give written notice to the *FCA* of that change before the appointed representative begins to carry on ~~*insurance mediation activities*~~ *insurance distribution activities* under the contract (see SUP 12.4) or as soon as the scope of appointment of the appointed representative ceases to include

~~insurance mediation activities~~ insurance distribution activities.

...

12.8 Termination of a relationship with an appointed representative or EEA tied agent

...

Removal of an appointed representative from the Register

- 12.8.5 G The *FCA* has the power to remove from the *Financial Services Register* an appointed representative, whose scope of appointment covers ~~insurance mediation activities~~ insurance distribution activities (see *SUP* 12.4.9G and *SUP* 12.4.10G).

...

13 Exercise of passport rights by UK firms

...

13.3 Establishing a branch in another EEA State

...

The conditions for establishing a branch

- 13.3.2 G A *UK firm* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the relevant conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

...

- (3) (a) if the *UK firm's EEA right* derives from the ~~*Insurance Mediation Directive*~~ or the *MCD*, one month has elapsed beginning on the date on which the *UK firm* received notice that the *appropriate UK regulator* had given a *consent notice* as described in *SUP* 13.3.6G(1) (~~see *SUP* 13.3.2AG~~);
- (aa) if the *UK firm's EEA right* derives from the *IDD*, either:
- (i) the *Host State regulator* has notified the *appropriate UK regulator* of the *applicable provisions*; or
- (ii) one month has elapsed beginning with the date on which the *appropriate UK regulator* gave the *consent notice* as described in *SUP* 13.3.5G(2);

(b) ...

- 13.3.2A G If the *UK firm* is passporting under the *Insurance Mediation Directive* and the *EEA State* in which the *UK firm* is seeking to establish a *branch* has not notified the European Commission of its wish to be informed of the intention of *persons* to establish a *branch* in its territory in accordance with article 6(2) of that directive, *SUP 13.3.2G(2)* and *SUP 13.3.2G(3)* do not apply. Accordingly, the *UK firm* may establish the *branch* to which its *notice of intention* relates as soon as the conditions referred to in *SUP 13.3.2G(1)* are satisfied. The list of *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FCA's* website at www.fca.org.uk. [deleted]
- 13.3.2B G An appointed representative appointed by a firm to carry on *insurance mediation activity* *insurance distribution activity* on its behalf may establish a *branch* in another *EEA State* under the *Insurance Mediation Directive* *IDD*. In this case, the *notice of intention* in *SUP 13.3.2G(1)* should be given to the appropriate *UK regulator* by the firm on behalf of the appointed representative.
- 13.3.2C G An exempt professional firm which is included in the record of unauthorised persons carrying on *insurance mediation activity* *insurance distribution activity* maintained by the *FCA* under article 93 of the *Regulated Activities Order* may establish a *branch* in another *EEA State* under the *Insurance Mediation Directive* *IDD* (see *PROF 7.2*).

...

Issue of a consent notice to the Host State regulator

- 13.3.5 G ...
- (2) If the *UK firm's EEA right* derives from the *Insurance Mediation Directive* *IDD* and *SUP 13.3.2G(2)* applies, the appropriate *UK regulator* will give the *Host State regulator* a consent notice within one month of the date on which it received the *UK firm's notice of intention* unless it has reason to doubt the adequacy of the *UK firm's* resources or its administrative structure. In cases where *SUP 13.3.2G(2)* does not apply (see *SUP 13.3.2AG*), the *UK firm* may establish a *branch* as soon as it satisfies the conditions referred to in *SUP 13.3.2G*. The *Host State regulator* then has a further one month to notify the applicable provisions.

...

...

- 13.3.6 G (1) If Save where (1A) applies, if the appropriate *UK regulator* gives a consent notice, it will inform the *UK firm* in writing that it has done so.

(1A) If the UK firm's EEA right derives from the IDD, where the appropriate UK regulator has given a consent notice and the Host State regulator has acknowledged receipt of that notice, the appropriate UK regulator must give written notice to the UK firm concerned that the Host State regulator has received the consent notice.

...

(6) Where a consent notice is given under the IDD, it will include the following information:

- (a) the name, address and, where applicable, the registration number of the insurance intermediary;
- (b) the EEA State within the territory of which the insurance intermediary plans to establish a branch;
- (c) the category of insurance intermediary and, if applicable, the name of the insurer represented;
- (d) the relevant classes of insurance, if applicable;
- (e) the address within the Host State from which documents may be obtained; and
- (f) the name of any person responsible for the management of the branch.

13.3.7 G ...

(2) If the appropriate UK regulator decides to refuse to give a consent notice, then paragraph 19(12) of Part III of Schedule 3 to the Act requires the appropriate UK regulator to give the UK firm a decision notice within three months of the date on which it received the UK firm's notice of intention (two months in the case of a UK firm which is a UCITS management company or an AIFM and one month in the case of a UK firm which is an insurance intermediary). The UK firm may refer the matter to the Tribunal.

...

...

13.4 Providing cross border services into another EEA State

...

The conditions for providing cross border services into another EEA State

13.4.2 G A UK firm or an AIFM exercising an EEA right to market an AIF under AIFMD, cannot start providing cross border services into another EEA

State under an *EEA right* unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the *Act* and, if it derives its *EEA right* from *AIFMD*, *MiFID* or the *UCITS Directive*, paragraph 20(4B) of Part III of Schedule 3 to the *Act*. If a *UK firm* derives its *EEA right* from the *MCD*, it cannot start providing *cross border services* into another *EEA State* under an *EEA right* unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the *Act* and paragraph 20(4BB) of Part III of Schedule 3 to the *Act*. It is an offence for a *UK firm* which is not an *authorised person* to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). The conditions are that:

...

- (3) if the *UK firm* is passporting under the *Insurance Mediation Directive* IDD, and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of persons to provide cross border services in its territory in accordance with article 6(2) of that directive, one month has elapsed beginning with the date on which the *UK firm* has received written notice from the appropriate *UK regulator* as described in ~~SUP 13.4.5G~~ SUP 13.4.5AG (paragraph 20 (3B)(e) (b) of Schedule 3 to the *Act*); or

...

13.4.2A G An appointed representative appointed by a firm to carry on ~~insurance mediation activity~~ insurance distribution activity on its behalf may provide cross border services in another *EEA State* under the *Insurance Mediation Directive* IDD. In this case, the notice of intention in SUP 13.4.2G(1) should be given to the appropriate *UK regulator* by the firm on behalf of the appointed representative.

13.4.2B G An exempt professional firm which is included in the record of unauthorised persons carrying on ~~insurance mediation activity~~ insurance distribution activity maintained by the *FCA* under article 93 of the *Regulated Activities Order* may provide cross border services in another *EEA State* under the *Insurance Mediation Directive* IDD (see PROF 7.2).

...

Issuing a consent notice or notifying the Host State regulator

13.4.4 G ...

- (2A) (a) If the *UK firm's EEA right* derives from the *Insurance Mediation Directive*, and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of persons to provide cross border services in its territory in accordance with article 6(2) of that directive, IDD, paragraph 20(3B)(a) of Part III of Schedule 3 to the *Act* requires the

appropriate UK regulator to send a copy of the notice of intention to the Host State regulator within one month of receipt. Otherwise, the UK firm may start providing cross border services as soon as it satisfies the relevant conditions (see SUP 13.4.2G).

- (b) ~~The list of the EEA States that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the Insurance Mediation Directive is published on the FCA's website at www.fca.org.uk.~~

...

...

- 13.4.5 G ~~When~~ Save where SUP 13.4.5AG applies, when the appropriate UK regulator sends a copy of a notice of intention, or if it gives a consent notice to the Host State regulator, it must inform the UK firm in writing that it has done so (paragraphs 20(3B)(b), 20(3D)(a)(iii) and (4) and 20C(9) of Schedule 3 to the Act).

- 13.4.5A G If a UK firm's EEA right derives from the IDD, when the Host State regulator has acknowledged receipt of the copy of the notice of intention, the appropriate UK regulator must:

- (a) inform the UK firm in writing that the Host State regulator has received the notice of intention and that the firm may begin providing the services to which the notice of intention relates; and
- (b) notify the firm of the applicable provisions (if any).

[Note: paragraph 20 (3B)(b) of Schedule 3 to the Act]

...

13.5 Notices of intention

...

Specified contents: notice of intention to provide cross border services

- 13.5.2 R A UK firm wishing to provide cross border services into a particular EEA State for the first time under an EEA right other than under the auction regulation must submit a notice in the form set out in:

...

- (3) SUP 13 Annex 5R if the UK firm is passporting under the ~~Insurance Mediation Directive~~ IDD

...

...

13.6 Changes to branches

- 13.6.1 G (1) Where a *UK firm* is exercising an *EEA right*, other than under ~~the Insurance Mediation Directive (see SUP 13.6.9AG)~~ or the *CRD*, and has established a *branch* in another *EEA State*, any changes to the details of the branch are governed by the *EEA Passport Rights Regulations*.

...

...

Firms passporting under the ~~Insurance Mediation Directive~~ IDD

- 13.6.9A G ~~A *UK firm* exercising its *EEA right* under the *Insurance Mediation Directive* to establish a *branch* in another *EEA State* is not required to supply a change to the details of *branches* notice.~~
- (1) If a *UK firm* has exercised an *EEA right* under the *IDD* and established a *branch* in another *EEA State*, the *UK firm* must not make any material change to the *relevant details* of the *branch* (see SUP 13 Annex 1R), unless it has satisfied the requirements in regulation 17(C)(2).
- (2) The requirements in regulation 17(C)(2) are that:
- (a) the *UK firm* has given a notice to the *appropriate UK regulator* stating the details of the proposed change; and
- (b) the period of one *month*, beginning with the date on which the *UK firm* gave the notice, has elapsed.

...

Changes arising from circumstances beyond the control of a *UK firm*

- 13.6.10 G ...
- (3) This *guidance* is not applicable to *MiFID investment firms*, *firms* passporting under the *MCD* or IDD or *AIFMs*.

The process

- 13.6.11 G When the *appropriate UK regulator* receives a notice from a *UK firm* other than a *MiFID investment firm* (see SUP 13.6.5G(1) and SUP 13.6.7G(1)), a *UK firm* exercising an *EEA right* under the *MCD* (see SUP 13.6.9DG), a *UK firm* exercising an *EEA right* under the *IDD* (see SUP 13.6.9AG) or an *AIFM* (see SUP 13.6.9CG) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one *month* from

the day on which it received the notice.

...

The process: the IDD

- 13.6.20 G (1) When the appropriate UK regulator receives a notice from a UK firm exercising an EEA right under the IDD it will, under regulation 17(C)(3), inform the Host State regulator of the proposed change as soon as reasonably practicable, and in any event, within one month of receiving the notice from the UK firm.
- (2) The UK firm may make the change once a period of one month has elapsed beginning with the day on which it gave notice.

13.7 Changes to cross border services

- 13.7.1 G (1) Where a UK firm is exercising an EEA right under the UCITS Directive, MiFID, the Insurance Directives, ~~or AIFMD~~ or the IDD and is providing cross border services into another EEA State, any changes to the details of the services are governed by the EEA Passport Rights Regulations.

...

...

Firms passporting under the CRD and Insurance Mediation Directive

- 13.7.11 G A UK firm providing cross border services under the CRD ~~or Insurance Mediation Directive~~ is not required to supply a change to the details of cross border services notice.

Firms passporting under the IDD

- 13.7.11 A G (1) A UK firm which has exercised an EEA right under the IDD to provide a cross border service must not make any material change to the relevant details unless it has satisfied the requirements in regulation 17(C)(2).
- (2) The requirements in regulation 17(C)(2) are that:
- (a) the UK firm has given a notice to the appropriate UK regulator stating the details of the proposed change; and
- (b) the period of one month, beginning with the date on which the UK firm gave the notice, has elapsed.

...

13.8 Changes of details: provision of notices to the appropriate UK regulator

- 13.8.1 R (1) A *firm* must complete and submit the following notices in accordance with the procedures in SUP 13.5 for notifying the establishment of a *branch* or the provision of *cross border services*:
- (a) a notice of a change to a *branch* or a *tied agent* referred to in SUP 13.6.5G(1), SUP 13.6.5BG(1), SUP 13.6.5DG, SUP 13.6.5EG, SUP 13.6.5FG, SUP 13.6.7G(1), SUP 13.6.8G, SUP 13.6.9AG, SUP 13.6.9BR, SUP 13.6.9CG, SUP 13.6.9DG and SUP 13.6.10G(1); or
 - (b) a notice of change to *cross border services* referred to in SUP 13.7.3G(1), SUP 13.7.3AG(1), SUP 13.7.3DG, SUP 13.7.3EG, SUP 13.7.3GR, SUP 13.7.5G(1), SUP 13.7.6G, SUP 13.7.11AG, SUP 13.7.13BG, SUP 13.7.14G and SUP 13.7.15G.

...

After SUP 13.11 (Record keeping) insert the following new section SUP 13.11A. The text is not underlined.

13.11A Enhanced supervision of UK firms exercising rights under the IDD

- 13.11A. G 1 (1) Under article 7(2) of the *IDD*, ensuring compliance with the obligations in Chapter V (Information requirements and conduct of business rules) and Chapter VI (Additional requirements in relation to insurance based investment products) of the *IDD* by a *UK firm* exercising an *EEA right* under the *IDD* to establish a *branch* is the responsibility of the *Host State*. Ensuring compliance with all other obligations is the responsibility of the *UK*. Ensuring compliance with the obligations in the *IDD* by *UK firms* providing *cross border services* is the responsibility of the *UK*.
- (2) However, article 7(1) of the *IDD* provides that responsibility for compliance can be altered in a particular situation. That is where an *IDD insurance intermediary's primary place of business* is located in a *Host State*. In that case, the *Home State* and *Host State regulators* may agree that the *Host State regulator* will act as the *Home State regulator* in relation to certain provisions. Those provisions are Chapters IV (Organisational requirements), V (Information requirements and conduct of business rules), VI (Additional requirements in relation to insurance based investment products) and VII (Sanctions and other measures) of the *IDD*.
- 13.11A. G If a *UK firm* is exercising an *EEA right* derived from the *IDD* in a *Host*

- 2 *State* which is its *primary place of business*, the *FCA* can enter into a special agreement with the *Host State regulator*. The agreement can subject the *UK firm* to enhanced supervision by the *Host State regulator*. Section 203B of the *Act* enables the *FCA*'s ability to enter into this sort of agreement (an "Article 7(1) Agreement").

Amend the following as shown.

13A Qualifying for authorisation under the Act

13A.1 Application and purpose

...

- 13A.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

- (c) authorised in Gibraltar under the ~~*Insurance Mediation Directive*~~ IDD; or

...

...

...

13A.4 EEA firms establishing a branch in the United Kingdom

The conditions for establishing a branch

- 13A.4.1 G (1) Before an *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) exercises an *EEA right* to establish a *branch* in the *United Kingdom* ~~other than under the *Insurance Mediation Directive*~~, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1) of Part II of Schedule 3 to the *Act*.

...

...

- 13A.4.2 G ~~Where an *EEA firm* exercises its *EEA right* to establish a *branch* in the *United Kingdom* under the *Insurance Mediation Directive*, the *Act* requires it to satisfy the *establishment conditions*, as set out in paragraph 13(1A) of Part II of Schedule 3 to the *Act*. [deleted]~~

...

The notification procedure

13A.4.4 G ...

- (2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA firm* passporting under ~~the Insurance Mediation Directive~~, MIFID or AIFMD, these provisions are set out in SUP 13A Annex 1 (Application of the Handbook to Incoming EEA Firms).

...

13A.4.4 -B G When the *appropriate UK regulator* receives a consent notice from the *EEA firm's Home State regulator* in respect of an *EEA firm* within paragraph 5(e) of Part I of Schedule 3 to the *Act*, it will, under paragraph 13(3C):

- (1) acknowledge receipt; and
- (2) notify the *EEA firm's Home State regulator* of the *applicable provisions* (if any),

before the end of the period of one *month* beginning with the *day* on which the *appropriate UK regulator* received the consent notice.

...

13A.5 EEA firms providing cross border services into the United Kingdom

...

The notification procedure

- 13A.5.4 G (1) Unless the *EEA firm* (other than an *EEA firm* that received authorisation under article 18 of the *auction regulation*) is passporting under the ~~*Insurance Mediation Directive*~~ *IDD*, if the *appropriate UK regulator* receives a regulator's notice or, where no notice is required, is informed of the *EEA firm's* intention to provide *cross border services* into the *United Kingdom*, the *appropriate UK regulator* will, under paragraphs 14(2) and 14(3) of Part II of Schedule 3 to the *Act*, notify the *EEA firm* of the *applicable provisions* (if any) within two *months* of the *day* on which the *appropriate UK regulator* received the regulator's notice or was informed of the *EEA firm's* intention.
- (1A) When the *FCA* receives a regulator's notice from the *EEA firm's Home State regulator* that the *EEA firm* intends to exercise its *EEA right to provide cross border services* under the *IDD*, it will, under paragraph 14(3A) of Part II to Schedule 3 to the *Act*:

- (a) acknowledge receipt; and
- (b) notify the EEA firm's Home State regulator of the applicable provisions (if any).

- (2) Although the *appropriate UK regulator* is not required to notify the *applicable provisions* to an *EEA Firm* passporting under ~~the Insurance Mediation Directive~~, *MIFID* or *AIFMD* these provisions are set out in *SUP 13A Annex 1* (Application of the Handbook to Incoming EEA Firms).

...

13A.6 Which rules will an incoming EEA firm be subject to?

- 13A.6.2 G An *incoming EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation* and only provides services in the *United Kingdom*) or *incoming Treaty firm* carrying on business in the *United Kingdom* must comply with the *applicable provisions* (see *SUP 13A.4.4G*, *SUP 13A.4.4-BG*, *SUP 13A.4.6G*, and *SUP 13A.5.4G*) and other relevant *UK* legislation. For example where the business includes:

...

...

After SUP 13A.6 (Which rules will an incoming EEA firm be subject to?) insert the following new section SUP 13A.6A. The text is not underlined.

13A.6A Enhanced supervision of EEA firms passporting under the IDD

- 13A.6A. 1 G (1) The split of responsibility (between *Home* and *Host States*) for ensuring compliance with *IDD* requirements is as follows.
- (a) For incoming EEA *branches*:
 - (i) the *Host State* is responsible in relation to the obligations in Chapter V (Information requirements and conduct of business rules) and Chapter VI (Additional requirements in relation to insurance based investment products) (see article 7(2) of the *IDD*); and
 - (ii) the *Home State* is responsible in relation to all other obligations.

(b) For *EEA firms* providing *cross border services*, the *Home State* is responsible in relation to all *IDD* obligations.

(2) However, under article 7(1) of the *IDD*, if an *IDD insurance intermediary's primary place of business* is in a *Host State*, the *Host* and *Home State regulators* may agree that the *Host State regulator* will act as if it were the *Home State regulator* with regard to certain provisions. Those provisions are Chapters IV (Organisational requirements), V (Information requirements and conduct of business rules), VI (Additional requirements in relation to insurance based investment products) and VII (Sanctions and other measures) of the *IDD*. This sort of *Home* and *Host State regulator* agreement is referred to as an Article 7(1) *IDD Agreement*.

13A.6A. G Where the *FCA* is a *Host State regulator* it may enter into an article 7(1)
2 *IDD Agreement* in respect of an *incoming EEA firm*. The *FCA* is given this power by section 203A of the *Act* subject to the conditions set out in that section. If the *FCA* enters into such an agreement, the *EEA firm* will be subject to enhanced supervision by the *FCA* to the extent specified in the agreement.

...

Amend the following as shown.

13A Application of the Handbook to Incoming EEA Firms Annex 1G

...

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>SYSC</i>	... <i>SYSC</i> 19A, 19B, 19C and 19D do not	... <i>SYSC</i> 19A, 19B, 19C, 19D, 19E and

	<p>apply.</p> <p><i>SYSC 19F applies to a MiFID investment firm unless it is a UCITS investment firm or an AIFM investment firm.</i></p> <p><u>SYSC 28 does not apply.</u></p>	<p>19F do not apply.</p> <p><u>SYSC 28 does not apply.</u></p>
...		
<i>MIPRU</i>	<p>...</p> <p><i>MIPRU 2 (Responsibility for insurance mediation activity distribution and MCD credit <u>intermediation</u>) does not apply unless the firm has a top-up permission.</i></p> <p>...</p> <p><i>MIPRU 5 (Insurance undertakings distributors and mortgage lenders <u>home finance providers</u> using insurance <u>distribution</u> or mortgage <u>home finance</u> mediation services) does not apply unless the firm has a top-up permission.</i></p>	As column (2)
...		
<i>SUP</i>	...	...
	<p>SUP 12 (Appointed representatives)</p> <p>Applies only if the firm has permission to carry on designated investment business, insurance mediation <u>distribution</u> activity or mortgage mediation activity and wishes to appoint, or has appointed, an appointed representative (SUP 12.1.1R(1)).</p>	<p>SUP 12 (Appointed representatives)</p> <p>As column (2).</p>
...		

<i>COMP</i>	Applies, except in relation to the <i>passport activities</i> of a <i>MiFID investment firm</i> , an <i>IMD</i> <i>IDD insurance intermediary</i> , a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> , an <i>MCD mortgage credit intermediary</i> and an incoming <i>AIFM</i> carrying on either <i>AIFM management functions</i> for an <i>unauthorised AIF</i> or non-core services under article 6.4 of <i>AIFMD</i> (see the definition of “ <i>participant firm</i> ”). However, a <i>firm</i> specified above may be able to apply for <i>top-up cover</i> in relation to its <i>passport activities</i> (see <i>COMP</i> 14 (Participation by EEA Firms)).	Does not apply in relation to the <i>passport activities</i> of a <i>MiFID investment firm</i> , an <i>IMD</i> <i>IDD insurance intermediary</i> , an <i>MCD mortgage credit intermediary</i> or a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> or an incoming <i>EEA AIFM</i> regarding <i>AIFM management functions</i> carried on for an <i>unauthorised AIF</i> or non-core services under article 6.4. Applies in relation to the <i>passport activities</i> of a <i>UCITS scheme</i> and of an <i>AIFM</i> in relation to the management of an <i>authorised AIF</i> . Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see <i>COMP</i> 5).
...		

13A **Matters reserved to a Home State regulator**
Annex
2G

...		
Requirements in the interest of the general good		
2.	The <i>Single Market Directives</i> and the <i>Treaty</i> (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the <i>Home State regulator</i> . To summarise, the <i>FCA</i> or <i>PRA</i> , as <i>Host State regulator</i> , is entitled to impose requirements with respect to activities carried on within the <i>United Kingdom</i> if these can be justified in the interests of the “general good” and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the <i>Single Market Directives</i> :	
	(1)	the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i> , <i>CRD credit institution</i> , <i>UCITS management company</i> , <i>AIFM</i> or passporting <i>Solvency II firm</i> to the <i>Firm’s Home State regulator</i> in respect of prudential matters within the scope of the respective <i>Single Market Directives</i> . The <i>Insurance Mediation Directive</i> <i>IDD</i> and the <i>MCD</i> reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the <i>FCA</i> , as <i>Host State regulator</i> , is entitled to regulate only the conduct of the firm’s business (in the case of the <i>IDD</i> , business conducted through a <i>branch</i>)

		within the <i>United Kingdom</i> ;
	...	
...		
Requirements under <u>the MCD</u>		
...		
11M	...	
<u>Requirements under the IDD</u>		
11N	Under article 7(2) of the <i>IDD</i> , ensuring compliance with the obligations in Chapter V (articles 17 – 25) and Chapter VI (articles 27 – 30) of the <i>IDD</i> by incoming <i>EEA branches</i> is the responsibility of the <i>Host State</i> . Subject to article 7(1) (see 11P below), ensuring compliance with all other obligations is the responsibility of the <i>Home State</i> .	
11O	Subject to article 7(1) (see 11P below), ensuring compliance with the obligations in the <i>IDD</i> by <i>EEA firms</i> providing <i>cross border services</i> is the responsibility of the <i>Home State</i> .	
11P	Under article 7(1) of the <i>IDD</i> , if an <i>IDD insurance intermediary's primary place of business</i> is in a <i>Host State</i> , the <i>Home</i> and <i>Host State regulators</i> may agree that the <i>Host State regulator</i> will act as if it were the <i>Home State regulator</i> . This is only with regard to the provisions of Chapters IV, V, VI and VII of the <i>IDD</i> (see <i>guidance</i> in SUP 13A.6A).	
...		

...

14 Incoming EEA firms changing details, and cancelling qualification for authorisation

14.1 Application and purpose

...

- 14.1.3 G (1) Under the *Gibraltar Order* made under section 409 of the *Act*, a Gibraltar firm is treated as an *EEA firm* under Schedule 3 to the *Act* if it is:

...

- (c) authorised in Gibraltar under the *Insurance Mediation Directive* IDD; or

...

...

...

14.2 Changes to branch details

- 14.2.1 G Where an *incoming EEA firm* is exercising an *EEA right*, ~~other than under the *Insurance Mediation Directive*~~, and has established a *branch* in the United Kingdom, the *EEA Passport Rights Regulations* govern any changes to the details of that *branch*. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under *Schedule 3* to the *Act* is to be treated as varied accordingly. All references to regulations in *SUP 14* are to the *EEA Passport Rights Regulations*.

...

- 14.2.21 G ...

Firms passporting under the IDD

- 14.2.22 G As required by regulation 7C(1), where an *incoming EEA firm* passporting under the *IDD* has established a *branch* in the *UK*, it must not make a material change to any of the matters referred to regulation 2(9) unless it has complied with the relevant requirements in regulation 7C(4).
- 14.2.23 G The relevant requirements in regulation 7C(4) are that:
- (1) the *incoming EEA firm* has given notice to its *Home State regulator* stating the details of the proposed change; and
 - (2) the period of one month, beginning the day on which the *incoming EEA firm* gave the notice under (1), has elapsed.

14.3 Changes to cross border services

...

- 14.3.1 G Where an *incoming EEA firm* passporting under the *MiFID*, *UCITS Directive*, *MCD*, ~~or~~ *AIFMD* or *IDD* is exercising an *EEA right* and is providing *cross border services* into the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of those services. Where an *incoming EEA firm* has complied with the *EEA*

Passport Rights Regulations, then the *firm's permission* under *Schedule 3* to the *Act* is to be treated as varied.

...

14.3.14 G ...

Firms passporting under the IDD

14.3.15 G As required by regulation 7C(1), where an *incoming EEA firm* is providing *cross border services* under the *IDD* in the *UK*, it must not make a material change to any of the matters referred to regulation 3(4) unless it has complied with the relevant requirements in regulation 7C(4).

14.3.16 G The relevant requirements in regulation 7C(4) are that:

- (1) the *incoming EEA firm* has given notice to its *Home State regulator* stating the details of the proposed change; and
- (2) the period of one month, beginning the day on which the *incoming EEA firm* gave the notice under (1), has elapsed.

...

15 Notifications to the FCA

...

15.3 General notification requirements

...

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1) A *firm* must notify the *FCA* of:

...

- (g) a breach of the *AIFMD UK regulation*; or
- (h) a breach of any directly applicable EU regulation made under *AIFMD*; or
- (i) a breach of a directly applicable EU regulation made under the *IDD*;

...

...

Appendix 3 Guidance on passporting issues

...

App 3.3 Background

...

App 3.3.6 G ...

- (2) The European Commission has not produced an interpretative communication on the ~~Insurance Mediation Directive~~ IDD, AIFMD, the MCD or the UCITS Directive.

...

App 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive, MCD and ~~Insurance Mediation Directive~~ IDD to the Regulated Activities Order

App 3.9.1 G The following Tables 1, 2, 2ZA, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passported activities* under the CRD, MiFID, AIFMD, the UCITS Directive, the MCD and the ~~Insurance Mediation Directive~~ IDD. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

App 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the CRD, MiFID, AIFMD, the UCITS Directive, the MCD or the ~~Insurance Mediation Directive~~ IDD. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passported activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

...

Activities set out in ~~Article 2(3) of the IMD~~ articles 2.1(1) and 2.1(2) of the IDD

App 3.9.7 G

Table 2B: Insurance Mediation <u>Distribution Directive</u> Activities/ <u>Examples</u>		Part II RAO Activities	Part III RAO Investments
1.	Introducing, proposing <u>Proposing</u> or carrying out other work preparatory to the conclusion of contracts of insurance <u>or</u>	Articles 25, 53(1) and 64	Articles 75, 89 (see Note 1)

Table 2B: Insurance Mediation Distribution Directive Activities/Examples		Part II RAO Activities	Part III RAO Investments
	<u>reinsurance.</u>		
1A.	<u>Advising on contracts of insurance or reinsurance</u>	<u>Articles 53(1) and 64</u>	<u>Articles 75, 89</u>
2.	<u>Concluding contracts of insurance or reinsurance</u>	Articles 21, 25, 53(1) and 64	Articles 75, 89
3.	Assisting in the administration and performance of contracts of insurance or reinsurance, in particular in the event of a claim.	Articles 39A, 64	Articles 75, 89
4	<u>Provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.</u>	<u>Articles 21, 25, (where this involves the provision of advice) 53(1), and 64.</u>	<u>Articles 75, 89</u>

Note 1. Rights to or interests in *life policies* are *specified investments* under Article 89 of the *Regulated Activities Order*, but rights to or interests in *general insurance contracts* are not.

Note 2. Row 4 in Table 2B includes text that appears in article 2.1(1) of the *IDD*. These activities are not considered to be separate, discrete activities under the *IDD* but rather are included by way of an example of what constitutes *insurance distribution*. They have been included in this table for completeness, together with an indication of the Part II RAO activities and Part III RAO investments that may be relevant. This is to indicate, including for *firms* considering undertaking passport activities under the *IDD*, how these examples may relate to *regulated activities* and *specified investments*.

Part 2: Form amendments

Amend the following text as shown.

6 Applications to vary and cancel Part 4A permission and to impose, vary or cancel requirements

...

6 Annex 5D Variation of permission application form

This annex consists only of one or more forms.

...

Variation of Permission Application – ~~Home Finance & General Insurance Mediation Activities~~ Home Finance Mediation and General Insurance Distribution Activities

...

The form (Variation of Permission Application – Home Finance and General Insurance Distribution Activities) referred to in SUP 6 Annex 5D is amended as shown.

...

Variation of Permission (VOP) Application

Home Finance Mediation and General Insurance Mediation Distribution Activities

...

Purpose of this form

This form is **only** for firms wishing to change the scope of their permission for **Home Finance Mediation and/or General Insurance Mediation Distribution Business**. You must answer all sections.

...

2

Variation of Permission – Home Finance Mediation and General Insurance Mediation Distribution activities

Tell us what it is you wish to do to change your firm's permission.

2.1 Answer this section if you wish to do the following:

...

2

Variation of Permission – Home Finance Mediation and General Insurance Mediation Distribution activities (cont'd)

Tell us what it is you wish to do to change your firm's permission.

Limitation(s) on your firm's activity(ies)
...

...

...

3

Variation of Permission – Client Money

Tell us what it is you wish to do to change your firm's client money permission.

3.1 ...

3.2 What is the firm able to do now, and how does it wish to change its permission for client money?

Firm is currently able to:	Firm wishes to be able to:
<input type="checkbox"/> Hold and control client money for home finance business only	<input type="checkbox"/> Hold and control client money for home finance business only
<input type="checkbox"/> Hold and control client money for Insurance Mediation Distribution only	<input type="checkbox"/> Hold and control client money for Insurance Mediation Distribution only
<input type="checkbox"/> Control but not hold client money	<input type="checkbox"/> Control but not hold client money
<input type="checkbox"/> Not hold and not control client money	<input type="checkbox"/> Not hold and not control client money

3.3 ...

- Or, if you are applying to cease holding client money for Insurance ~~Mediation Distribution~~ as you have Risk Transfers in place, and you have NEVER held or controlled client money, please tick here to confirm the Risk Transfer Agreement in place with your Insurer covers ALL Client Money. This includes any claims monies received by your firm and any refund of premiums. ☐

...

5

Threshold Conditions

We need to know whether the firm will continue to satisfy the threshold conditions as a result of the change in its permission.

...

5.7 Conduct of Business Requirements – Mortgage Business (MCOB) and Insurance ~~Mediation Distribution~~ (ICOB ~~ICOB~~) Sourcebooks

5.7.1 Is the firm ready, willing and organised to comply with the relevant provisions in MCOB and/or ICOB ~~ICOB~~ (delete as appropriate), and, if relevant to this application, does the firm have in place the relevant customer documentation, such as Key Facts, and Initial Disclosure Requirements Documentation and the Insurance Product Information Document, for the permission you are applying for?

- ☐ Yes > Continue to next question.
☐ No > Explain why below.

...

Insurance ~~Mediation Distribution~~ Applications only:

- 5.9 ~~Firms~~ A firm carrying on insurance ~~mediation business~~ distribution activities are required to establish on reasonable grounds that must ensure that certain people are of good repute. These are all the people in its management structure and any staff directly involved in their insurance ~~mediation distribution~~ activity(ies) and those within the management structure responsible for any staff directly involved in those activities are of good repute. And they must It must also ensure that a reasonable proportion of people within their certain employees and persons possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately. These are persons and employees within the management structure who are responsible for its insurance ~~mediation activity~~ distribution activities, and all other people employees and other persons that are directly involved in it, demonstrate the knowledge and ability necessary to perform their duties and those within the management structure responsible for such employees and persons. Is the firm compliant with the Insurance ~~Mediation Distribution~~ Directive requirements?

...

5A

Insurance Distribution Activities: shareholders and close links

We are required by the Insurance Distribution Directive to collect information about shareholders and close links

This section applies only where a firm applies to add an insurance distribution activity for the first time.

5A.1 You must provide the following information for any individual shareholder or member who has a holding in the firm that exceeds 10%.

Name	Date of Birth	National Insurance Number	Address	% Holding

5A.2 You must provide the following information for any legal person who has a holding in the firm that exceeds 10%.

Name	Address	Incorporation details	Is the entity regulated?	% Holding
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	

			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	

5A.3 Does the firm have close links?

- ☐ No ▶ Continue to Section 6
☐ Yes ▶ Continue to Question 5A.4

5A.4 You must provide the information about the close links below and provide a structure chart which shows the nature of the relationship between the firm and each close link (please include details of the business of the close links).

☐ Structure chart provided on separate sheet

Natural persons

<u>Name</u>	<u>Date of Birth</u>	<u>National Insurance Number</u>	<u>Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Legal persons

Name	Address	Incorporation details	Is the entity regulated?
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

5A.5 Are you aware of any information to suggest that any holding (identified in 5A.1 and 5A.2 above) or close link is likely to prevent our effective supervision of the firm?

☐ No

☐ Yes ► Give details below

6

Approved Persons

If a firm changes its permission it may need new Controlled Functions and Approved Persons or it may no longer require certain Controlled Functions.

...

- 6.1 Each firm that carries on Insurance ~~Mediation~~ Distribution business must appoint an approved person who will be responsible for insurance ~~mediation~~ distribution at the firm. This responsibility must be allocated to a director or senior manager performing a governing function; or the apportionment and oversight function; or the significant management (other business operations) function.**

What is the name of the individual the firm has appointed to be responsible for insurance ~~mediation~~ distribution?

- 6.2 Have any individual(s) proposed to perform a new role, for the firm's Home Finance business or Insurance ~~Mediation~~ Distribution business, been assessed as competent to apply the knowledge and skills necessary to engage in or oversee the activities without supervision? And do they have the necessary qualifications (where relevant) and experience?**

...

The form (Waiver Application Form) referred to in SUP 8 Annex 2D (see SUP 8.3.3D) is amended as shown.

Waiver Application number
(for FCA/PRA use only)

Waiver - Application Form

...

Additional Details

Section A1

3 Group applications

...

4 What types of client would be affected if we granted your application? (tick all that apply) [†]

Retail Clients ☐

Professional Clients ☐

Eligible Counterparty ☐

Retail Customers (insurance ~~mediation~~ distribution activities only) ☐

Commercial Customers (insurance ~~mediation~~ distribution activities only) ☐

...

Amend the following text as shown.

...

10A Annex 4D Form A: Application to perform controlled functions under the approved person regime

This annex consists only of one or more forms. Note that there are separate forms for *Solvency II firms*, *large and small non-directive insurers*, *incoming EEA firms*, applicants for a *Part 4A permission* or variation of *permission* that would result in an initial authorisation under *MiFID*, applicants for a *Part 4A permission* that would result in the applicant becoming exempt under article 3 of *MiFID* and other *firms*.

...

[Editor's Note: General notes for completion of Form A are located below the list of forms.]

Form A: Notes for completion for Long Form A – UK and Overseas Firms (not Incoming EEA) for MiFID ~~authorisations~~ authorisation applications (~~January 2017~~)

Long Form A - UK and Overseas Firms (not Incoming EEA)

...

Short Form A for Solvency II firms (excluding incoming EEA firms and large non-directive insurers):

Short Form A - Solvency II firms only

Short Form A: UK and Overseas Firms (not incoming EEA) (~~March 2016~~)

Short Form A: Incoming EEA firms (~~March 2016~~)

...

Firm Specific questions

...

you will be asked to select a box if the individual is responsible for insurance ~~mediation~~ distribution.

This is not a *controlled function* in its own right. However, every *firm* that carries on ~~insurance mediation activities~~ insurance distribution activities must appoint an approved person(s) who will be responsible for ~~insurance mediation activities~~ insurance distribution activities at the *firm* (as detailed in *MIPRU 2.2*).

...

Please note that ~~insurance mediation~~ insurance distribution is not applicable to *appointed representatives*.

...

Insurance ~~Mediation~~ Distribution

This is not a controlled function in its own right. However, every *firm* that carries on ~~insurance mediation activities~~ insurance distribution activities must appoint an approved person(s) who will be responsible for ~~insurance mediation activities~~ insurance distribution activities at the *firm* (MIPRU 2.2).

...

Please note that ~~insurance mediation~~ insurance distribution is not applicable to *appointed representatives*.

Where a *firm* has appointed an ~~appointed representative~~ appointed representative to carry on ~~insurance mediation activity~~ insurance distribution activities on its behalf, the person responsible for the *firm's* ~~insurance mediation activity~~ insurance distribution activities will also be responsible for the ~~insurance mediation activity~~ insurance distribution activities carried on by an *appointed representative*.

The form (Form A: Notes for completion for Long Form A – UK and Overseas Firms (not Incoming EEA) for MiFID authorisation applications (~~January 2017~~)) referred to in SUP 10A Annex 4D is amended as shown.

Application for Authorisation

...

Apply for controlled functions

this section contains the notes you will need for Section 3 – Arrangement and controlled functions.

...

Insurance ~~mediation~~ distribution

This is not a controlled function in its own right. However, every firm that carries on insurance ~~mediation~~ distribution activities must appoint an approved person(s) who will be responsible for insurance ~~mediation~~ distribution activities at the firm (as detailed at MIPRU 2.2: <https://www.handbook.fca.org.uk/handbook/MIPRU/2/2.html>).

...

Please note that insurance ~~mediation~~ distribution is not applicable to appointed representatives.

Where a firm has appointed an appointed representative to carry on insurance ~~mediation~~ distribution activity on its behalf, the person responsible for the firm's insurance ~~mediation~~ distribution activity will also be responsible for the insurance ~~mediation~~ distribution activity carried on by an appointed representative.

...

The form (Long Form A – UK and Overseas Firms (not Incoming EEA)) referred to in SUP 10A Annex 4D is amended as shown.

...

Long Form A – UK and Overseas Firms (not Incoming EEA)

Application to perform controlled functions under the approved persons regime

FCA Handbook Reference: SUP 10A Annex 4D

PRA Handbook Reference: SUP 10B Annex 4D

21 March 2016 1 October 2018

Arrangements and controlled functions

Section 3

...

3.04

Job title (mandatory for *controlled functions* 28 & 29)

Please refer to notes on the requirements for submitting a CV

Insurance mediation distribution

Will the candidate be responsible for Insurance ~~mediation~~ distribution at the firm? [†]

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29))

YES

☐

NO

☐

...

The form (Long Form A – Solvency II firms only) referred to in SUP 10A Annex 4D is amended as shown.

...

Long Form A – Solvency II firms only¹

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

PRA Rulebook Reference: Solvency II firms: Senior Insurance Managers Regime - Applications and Notifications

...

New arrangements and controlled functions Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for ~~mediation~~ distribution at the *firm*? YES ☐ NO ☐

...

The form (Short Form A – Solvency II firms only) referred to in SUP 10A Annex 4D is amended as shown.

...

Short Form A – Solvency II firms only¹

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

PRA Rulebook Reference: Solvency II firms: Senior Insurance Managers Regime - Applications and Notifications

1 October 2018

...

Arrangements and controlled functions Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for ~~mediation~~ distribution at the *firm*? YES ☐ NO ☐

...

The form (Short Form A: UK and Overseas Firms (not incoming EEA) (~~March 2016~~)) referred to in SUP 10A Annex 4D is amended as shown.

...

Short Form A – UK and Overseas Firms (not Incoming EEA)

Application to perform controlled functions under the approved persons regime

FCA Handbook Reference: SUP 10A Annex 4D

PRA Handbook Reference: SUP 10B Annex 4D

~~21 March 2016~~ 1 October 2018

...

Arrangements and controlled functions

Section 3

...

3.04

Job title (mandatory for *controlled function* 28 & 29) [†]

Please refer to notes on the requirements for submitting a CV

Insurance mediation distribution

Will the candidate be responsible for Insurance ~~mediation~~ distribution at the firm?

(Note: Yes can only be selected if the individual is applying for (CF1, 3-8 or 29)

...

YES ☐ NO ☐

...

The form (Short Form A: Incoming EEA firms (~~March 2016~~)) referred to in SUP 10A Annex 4D is amended as shown.

...

Short Form A - Incoming EEA Only Application to perform controlled function under the approved persons regime

FCA Handbook Reference: SUP 10A Annex 4D
~~21 March 2016~~ 1 October 2018

...

Arrangements and controlled functions

Section 3

...

3.04

Job title (mandatory for *controlled functions* 29)

Please refer to notes on the requirements for submitting a CV

Insurance mediation distribution

Will the candidate be responsible for Insurance ~~mediation~~ distribution at the firm? [†]

(Note: Yes can only be selected if the individual is applying for (CF29)

...

YES

☐

NO

☐

...

The form (Long Form A – large non-directive insurers) referred to in SUP 10A Annex 4D is amended as shown.

...

Long Form A – Large non-directive insurers only¹

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

PRA Rulebook Reference: Large Non-Solvency II Firms: Senior Insurance Managers Regime – Applications and Notifications

~~7 March 2017~~ 1 October 2018

...

New arrangements and controlled functions Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the *firm*? YES ☐ NO ☐

...

The form (Short Form A – large non-directive insurers) referred to in SUP 10A Annex 4D is amended as shown.

...

Short Form A – Large non-directive insurers only¹

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

PRA Rulebook Reference: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications

~~7 March 2017~~ 1 October 2018

...

New arrangements and controlled functions Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the *firm*? YES ☐ NO ☐

...

The form (Long Form A – small non-directive insurers) referred to in SUP 10A Annex 4D is amended as shown.

Long Form A – Small non-directive insurers only¹

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

PRA Rulebook Reference: Non-Solvency II Firms - Senior Insurance Managers Regime - Application and Notifications

~~7 March 2016~~ 1 October 2018

...

New arrangements and controlled functions Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the *firm*? YES ☐ NO ☐

...

The form (Short Form A – small non-directive insurers) referred to in SUP 10A Annex 4D is amended as shown.

...

Short Form A – Small non-directive insurers only¹

Application to perform controlled functions

FCA Handbook Reference: SUP 10A Annex 4D

PRA Rulebook Reference: Non-Solvency II Firms - Senior Insurance Managers Regime - Applications and Notifications

~~7 March 2016~~ 1 October 2018

...

Arrangements and controlled functions Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the *firm*? YES ☐ NO ☐

...

The form (Long Form A – Incoming EEA only) referred to in SUP 10A Annex 4D is amended as shown.

...

Long Form A – Incoming EEA only

Application to perform controlled functions under the approved person regime
FCA Handbook Reference: SUP 10A Annex 4D

21 March 2016 1 October 2018

...

Arrangements and controlled functions Section 3

...

3.04

Job title (mandatory for *controlled function* 28 & 29)

Please refer to notes on the requirements for submitting a CV

Insurance ~~mediation~~ distribution

Will the candidate be responsible for Insurance ~~mediation~~ distribution at the firm? [†]

(Note: Yes can only be selected if the individual is applying for (CF29)

...

...

YES ☐ NO ☐

Amend the following text as shown.

...

10A Annex 8D Form E: Internal transfer of an approved person

~~This annex consists only of one or more forms.~~ This annex consists only of one or more forms. Note that there are separate forms for *Solvency II firms*, *large and small non-directive insurers* and other *firms*.

...

Form E for Solvency II firms:

...

Form E for firms which are not Solvency II firms (including large non-directive insurers) or small non-directive insurers (and are not Relevant Authorised persons):

Form E for firms which are not Solvency II firms (including large non-directive insurers) or small non-directive insurers (and are not Relevant Authorised persons)

...

SECTION 4 – ARRANGEMENTS AND CONTROLLED FUNCTIONS

...

...

4.04 Insurance ~~mediation~~ distribution

This is not a *controlled function* in its own right. However, every *firm* that carries on ~~*insurance mediation activities*~~ *insurance distribution activities* must appoint an *approved person(s)* who will be responsible for ~~*insurance mediation activities*~~ *insurance distribution activities* at the *firm* (as detailed at *MIPRU 2.2*).

...

Where a *firm* has appointed an *appointed representative* to carry on ~~*insurance mediation activity*~~ *insurance distribution activities* on its behalf, the person responsible for the *firm's* ~~*insurance mediation activity*~~ *insurance distribution activities* will also be responsible for the ~~*insurance mediation activity*~~ *insurance distribution activities* carried on by an *appointed representative*.

The form (Form E – Internal transfer of an approved person (for Solvency II firms only)) referred to in SUP 10A Annex 8D is amended as shown.

...

Form E

Internal transfer of an approved person (for Solvency II firms only¹)

FCA Handbook Reference: SUP 10A Annex 8D

PRA Rulebook Reference: Solvency II firms: Senior Insurance Managers Regime – Applications and Notifications

...

New ~~arrangement~~ arrangements and controlled functions **Section 4**

...

4.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the firm? YES ☐ NO ☐

...

The form (Form E – small non-directive insurers) referred to in SUP 10A Annex 8D is amended as shown.

...

Form E

Internal transfer of an approved person (small non-directive insurers only')

FCA Handbook Reference: SUP 10A Annex 8D

PRA Rulebook Reference: Non-Solvency II Firms - Senior Insurance Managers Regime - Applications and Notifications

...

New arrangements and controlled functions Section 4

...

4.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the firm? YES ☐ NO ☐

...

The form (Form E – large non-directive insurers) referred to in SUP 10A Annex 8D is amended as shown.

...

Form E

Internal transfer of an approved person (for large non-directive insurers only¹)

FCA Handbook Reference: SUP 10A Annex 8D

PRA Rulebook Reference: Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications

...

New arrangements and controlled functions Section 4

...

4.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the firm? YES ☐ NO ☐

...

The form (Form E for firms which are not Solvency II firms (including large non-directive insurers) or small non-directive insurers) referred to in SUP 10A Annex 8D is amended as shown.

...

Form E

Internal transfer of an approved person

FCA Handbook Reference: SUP 10A Annex 8D

PRA Handbook Reference: SUP 10B Annex 8D

~~21 March 2016~~ 1 October 2018

4.04

Job title (mandatory
for *controlled function*
28 & 29)†

Insurance mediation distribution

Will the candidate be
responsible for
Insurance ~~mediation~~
distribution at the firm?
(Note: Yes can only be
selected if the
individual is applying
for (CF1,3-8 or 29)

YES ☐ NO ☐

...

The form (Long Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only)) referred to in SUP 10C Annex 2D is amended as shown.

...

Long Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only

Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications

42 November 2017 1 October 2018

...

Arrangement Arrangements and Senior Management Functions Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the firm? YES ☐ NO ☐

...

The form (Short Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only) referred to in SUP 10C Annex 2D is amended as shown.

...

Short Form A – UK Relevant Authorised Persons and Third Country Relevant Authorised Persons only

Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

PRA Rulebook Reference: Senior Managers Regime - Applications and Notifications

~~23 February~~ 1 October 2018

...

Arrangement Arrangements and Senior Management Functions

Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the firm? YES ☐ NO ☐

...

The form (Short Form A (EEA Relevant Authorised Persons only) referred to in SUP 10C Annex 2D is amended as shown.

...

Short Form A – EEA Relevant Authorised Persons Only

Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

~~23 February~~ 1 October 2018

...

Arrangements and Senior Management Functions **Section 3**

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the firm? YES ☐ NO ☐

...

The form (Long Form A (EEA Relevant Authorised Persons only) referred to in SUP 10C Annex 2D is amended as shown.

...

Long Form A – EEA Relevant Authorised Persons only

Application to perform senior management functions

FCA Handbook Reference: SUP 10C Annex 2D

~~7 March 2017~~ 1 October 2018

...

Arrangement Arrangements and senior management functions Section 3

...

3.03 Job title

Insurance ~~mediation~~ distribution

Will the *candidate* be responsible for Insurance ~~mediation~~ distribution at the firm? YES ☐ NO ☐

...

Amend the following text as shown.

...

12 Annex 3R Appointed representative appointment form

This annex consists of only one ~~or more forms~~ form. Forms can be completed online now by visiting:

<https://www.fca.org.uk/firms/authorisation>

The ~~forms~~ form ~~are~~ can also to be found through the following address: -

~~Appointed representative appointment form~~ Add an appointed representative or tied agent form - SUP 12 Annex 3

...

The form (Add an appointed representative or tied agent form) referred to in SUP 12 Annex 3R is amended as shown.

...

Add an appointed representative or tied agent form
Notification under <i>SUP 12.7.1R</i> (i.e. the form in <i>SUP 12 Ann 3R</i>)

...

New Appointed Representative Details	Section B
--------------------------------------	-----------

...

9	Date of appointment (if an appointed representative carrying on insurance mediation <u>distribution</u> activities or a tied agent) or commencement of activities (if any other kind of appointed representative) [†] §	
---	---	--

...

13	Is the application in respect of: [†] §	
	(1) an appointed representative who will carry on insurance mediation <u>distribution</u> activities?	<input type="checkbox"/> <input type="checkbox"/>

...

The form (Appointed representative or tied agent form – change details) referred to in SUP 12 Annex 4R is amended as shown.

...

Appointed representative or tied agent - change details

Notification under *SUP 12.7.7R* (i.e. the form in *SUP 12 Ann 4R*)

...

Change Details of an Existing Appointed Representative

Section B

...

- 14** Is the change in respect of an appointed representative who is carrying on or proposes to carry on insurance ~~mediation~~ distribution activities or a tied agent? [†]

☐
☐

...

The form (Passporting: Notification of intention to establish a branch in another EEA state) referred to in SUP 13 Annex 1R is amended as shown.

...

Passporting

Notification of intention to establish a branch in another EEA state (excluding the Payment Services Directive and Electronic Money Directive)

(SUP 13 Annex 1R – Notification under SUP 13.5.1R)

...

3 Insurance ~~Mediation~~ Distribution Directive (IMD ~~IDD~~)

3.1 Please confirm that the *UK firm* wishes to passport under the ~~IMD~~ IDD by ticking the box below.

The <i>firm</i> intends to carry on insurance mediation <u>distribution</u> in the <i>EEA State</i> identified in section 2 by establishing a <i>branch</i> .	<input type="checkbox"/>
--	--------------------------

...

3.2 Intermediary's details⁺

Name

Address

Registration number (if applicable)

3.3 Please indicate the firm's category of intermediary⁺

<u>Insurance intermediary</u>	<input type="checkbox"/>
<u>Ancillary insurance intermediary</u>	<input type="checkbox"/>
<u>Reinsurance intermediary</u>	<input type="checkbox"/>

3.4 Please give the name of any insurer or reinsurer represented⁺

--

3.5 Please list the relevant classes of insurance in relation to which insurance distribution is carried on (if applicable) ⁺

[Note: see annexes 1 and 2 of *Solvency II Directive*]

...

12 Declaration

...

I enclose the following sections (mark the appropriate section)

...	
Section 3 – Insurance Mediation <u>Distribution</u> Directive	
...	

...

Amend the following text as shown.

...

13 Annex 5R Passporting: Insurance Mediation Distribution Directive

This annex consists of ~~only one or more forms~~. Forms can be completed ~~online now by:~~

~~<http://www.fsa.gov.uk/Pages/doing/index.shtml>~~

~~The forms are also to be found through the following address:~~

~~Passporting: Insurance Mediation Directive — SUP 13 Annex 5~~

only the Passporting Notification of intention to provide cross border services in another EEA State Insurance Distribution Directive (SUP 13 Annex 5R - Notification under SUP 13.5.2R) form

...

The form (Passporting Notification of intention to provide cross border services in another EEA state Insurance Mediation Directive (SUP 13 Annex 5R – Notification under SUP 13.5.2R) referred to in SUP 13 Annex 5R is amended as shown.

EEA ~~IMD~~ IDD Cross Border Services Form



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Passporting Notification of intention to provide cross border services in another EEA state ~~INSURANCE MEDIATION~~ DISTRIBUTION DIRECTIVE (SUP 13 Annex 5R – Notification under SUP 13.5.2R)

...

Purpose of this form

You should complete this form if you are a *UK firm* that wishes to exercise a passport right to provide *cross border services* in another *EEA State* under the ~~*Insurance Mediation Directive*~~ *Insurance Distribution Directive*. You should also use this form if you are a *UK firm* that wishes to notify us – the regulator – of changes to the details of your current *cross border services*.

If you are an Appointed Representative ('AR') then this form **must** be completed by the sponsoring firm on your behalf.

Important information you should read before completing this form

A *UK firm* can only use this form if it is entitled to provide *cross border services* into another *EEA State* subject to the conditions of the ~~*Insurance Mediation Directive*~~ *Insurance Distribution Directive* (see Schedule 3 of the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. *UK firms* should consult the legislation or take legal advice both in the *UK* and in the relevant *EEA State(s)* if they are in any doubt.

...

3 Insurance Mediation Distribution Directive (~~IMD~~ IDD)

3.1 You must confirm that the *UK firm* wishes to passport under the ~~IMD~~ IDD by ticking the box below.

The <i>firm</i> intends to carry on insurance mediation <u>insurance distribution</u> in the <i>EEA State(s)</i> identified in section 2 by providing <i>cross border services</i> .	<input type="checkbox"/>
---	--------------------------

3.2 Intermediary's details*

Name

Address

Registration number (if applicable)

3.3 Please indicate the firm's category of intermediary *

<u>Insurance intermediary</u>	<input type="checkbox"/>
<u>Ancillary insurance intermediary</u>	<input type="checkbox"/>
<u>Reinsurance intermediary</u>	<input type="checkbox"/>

3.2 3.4 If this form is in respect of one or more Appointed Representative(s) of the firm then please list below the name(s) and firm reference number(s) of those Appointed Representatives

Firm reference number	
Name of Company	
<u>Registration number (if applicable)</u>	
Address Line 1	
Address Line 2	
Address Line 3	
Address Line 4	
County	
Town	
Postcode/Zip	
EEA State	

Phone Number (including STD code)	
E-mail address	
Mobile number	
Fax number	
Category of intermediary	<u>Insurance intermediary</u> <input type="checkbox"/> <u>Ancillary insurance intermediary</u> <input type="checkbox"/> <u>Reinsurance intermediary</u> <input type="checkbox"/>

3.5 Please give the name of any insurer or reinsurer represented*

--

3.6 Please list the relevant classes of insurance in relation to which insurance distribution is carried on (if applicable) *

[Note: see annexes 1 and 2 of *Solvency II Directive*]

4 Declaration

...

I enclose the following sections (mark the appropriate section)*

...	
Section 3 – Insurance Mediation Distribution Directive	<input type="checkbox"/>
...	

--	--

...

Amend the following text as shown.

...

16 Annex Annual questionnaire for authorised professional firms
9R

This annex consists only of ~~one or more forms. Forms are to be found through the following address:~~ the Annual Questionnaire for Authorised Professional Firms

The form (Annual questionnaire for authorised professional firms) referred to in SUP 16 Annex 9R is amended as shown.

FIN –APF – Authorised Professional Firms Questionnaire

...

		A	B	C	D	E	F	G
4	Please indicate the percentage of the total income from the firm's regulated activities generated from the following activities:	Investment management	Corporate finance	Retail investment	Home finance mediation	Insurance mediation <u>distribution</u>	Credit-related regulated	Other

...

The form (Guidance notes for completion of annual questionnaire for authorised professional firms in SUP 16 Annex 9R) referred to in *SUP* 16 Annex 9AG is amended as shown.

...

16 Annex 9AG Guidance notes for completion of annual questionnaire for authorised professional firms in SUP 16 Annex 9R

...

4E Insurance ~~mediation~~ distribution

Please estimate the percentage of the total income from the *firm's regulated activities* derived from ~~insurance mediation~~ insurance distribution business to the nearest 1%.

...

The form (Retail Mediation Activities Return ('RMAR') referred to in SUP 16 Annex 18AR is amended as shown.

...

SECTION C: Client money and assets

	A	B	C
11 Does your firm receive or hold money in the course of or in connection with its insurance mediation <u>distribution</u> activity?			
13 How does your firm hold money received in the course of or in connection with its insurance mediation <u>distribution</u> activity? (select all that apply)			

...

...

SECTION E: PII Self-Certification

...

4 Professional Indemnity Insurance Details

	I	J	O	K
	IMD firms Insurance intermediaries should state their indemnity limits in Euros			
	Indemnity Limit (Single) in: Euros/Sterling/Unlimited	Limit of Indemnity: Single	Indemnity Limit (Aggregate) in: Euros/Sterling/Unlimited	Limit of Indemnity: Aggregate

...

...

**16 Annex
18BG****Notes for completion of the Retail Mediation Activities Return ('RMAR')****Introduction: General notes on the RMAR**

1. ...

...

5. The following table summarises the key abbreviations that are used in these notes:

...	
<i><u>IDD</u></i>	<i><u>The Insurance Distribution Directive</u></i>
<i>IMD</i>	<i>The Insurance Mediation Directive</i>
...	

Scope

6. The following *firms* are required to complete the sections of the *RMAR* applicable to the activities they undertake as set out in *SUP* 16.12:

- (a) *firms* with *permission* to carry on ~~*insurance mediation activity*~~ *insurance distribution activity* in relation to *non-investment insurance contracts*.

...

EEA firms

...

11. ~~*Firms*~~ *Firms* that only carry on reinsurance ~~*mediation*~~ *distribution* are not required to complete sections C or K.

Authorised professional firms

12. *Authorised professional firms* ('APFs') that are subject to *IPRU-INV* 2.1.3R (for their investment activity) or *MIPRU* 4.1.10R (for ~~*insurance mediation activity*~~ *insurance distribution activity* or *home finance mediation activity*) are not required to complete sections A, B2 or D. APFs that are members of the Law Society of England and Wales, the Law Society of Scotland or the Law Society of Northern Ireland are also not required to complete section C (see below).

13. The application of the capital requirements to APFs is set out in *IPRU-INV* 2.1.2R (for *retail investment activity*) and *MIPRU* 4.1.10R (for

*home finance mediation activity and ~~insurance mediation activity~~
insurance distribution activity*).

...

NOTES FOR COMPLETION OF THE RMAR

...

Section B: Profit & loss account

...

Guide for completion of individual fields

...	
Regulated business revenue	<p>This is the total of the <i>firm's</i> income during the reporting period in relation to its relevant <i>regulated activities</i>.</p> <p>For an <i>insurance intermediary</i> or a <i>home finance intermediary</i>, this should be calculated in the same way as 'annual income', as specified in <i>MIPRU</i> 4.3.3R (although in this context the period is not generally annual).</p> <p>This <i>rule</i> states: "For a <i>firm</i> which carries on <i>insurance mediation activity</i> <i>insurance distribution activity</i> or <i>home finance mediation activity</i>, annual income... is the amount of all brokerage, fees, <i>commissions</i> and other related income (for example, administration charges, overrides, profit shares) due to the <i>firm</i> in respect of or in relation to those activities".</p>
...	

Section C Client money and assets

...

Note 2: ~~*firms that only carry on insurance mediation activity in respect of reinsurance contracts are exempt from the client money rules, and are not therefore required to complete section C of the RMAR. However, a firm may make an election under CASS 5.1.1R(3) to comply with CASS 5.1 to CASS 5.6 in respect of client money it receives in the course of carrying on insurance mediation activity in relation to reinsurance contracts. Where a firm has made*~~

~~such an election it should also complete section C of the RMAR.~~ [deleted]

Note 3: a firm that receives or holds money for its *MiFID business* or *designated investment business* that is not *MiFID business* and holds money to which CASS 5 applies, may make an election under CASS 7.10.3R(1) or (2) to comply with CASS 7 for money it receives in the course of, or in connection with, its ~~insurance mediation activity~~ *insurance distribution activities*. Where a firm has made such an election, it should not complete section C of the RMAR, except to confirm that it holds money in connection with ~~insurance mediation activities~~ *insurance distribution activities* and has elected to comply with CASS 7.

...

Guide for completion of individual fields

Question	Guidance notes
Does your firm receive or hold money in the course of, or in connection with, its insurance mediation activity <i>insurance distribution activity</i> ?	...
...	...
How does your firm hold money received in the course of, or in connection with, its insurance mediation activity <i>insurance distribution activity</i> ?	...
...	

Section D Regulatory Capital

...

‘Higher of’ requirements

In this section there are separate calculations of regulatory capital and capital resources requirements for the different types of business covered by the data requirements. The calculations are the same, however, for both *home finance mediation activity* and ~~insurance mediation activity~~ *insurance distribution activity* relating to *non-investment insurance contracts*.

- (i) The left column of the form covers the appropriate capital resources and connected requirements in MIPRU 4 for firms carrying on *home finance mediation activity* (save for firms carrying on *home finance mediation activities* exclusively in relation to *second charge regulated mortgage contracts* or *legacy CCA mortgage contracts*, or both) or ~~insurance mediation activity~~ *insurance distribution activity* relating to *non-investment insurance contracts* (the requirements have to be completed

for all applicable categories), or both.

...

Guide for completion of individual fields

<p>Is the firm <u>firm</u> exempt from these capital resources requirements in relation to any of its retail mediation or <u>distribution</u> activities?</p>	<p>The <i>firm</i> should indicate here if any <i>Handbook</i> exemptions apply in relation to the capital resources requirements in <i>MIPRU</i> or <i>IPRU-INV</i> 13. Examples of <i>firms</i> that may be subject to exemptions include:</p> <ul style="list-style-type: none"> • Lloyd's <i>managing agents</i> (<i>MIPRU</i> 4.1.11R); • solo consolidated subsidiaries of banks or <i>building societies</i>; • small <i>credit unions</i> (as defined in <i>MIPRU</i> 4.1.8R); and • <i>investment firms</i> not subject to <i>IPRU-INV</i> 13 (unless they additionally carry on <i>home finance mediation activity</i> or <i>insurance mediation activity</i> <i>insurance distribution activity</i> relating to non-investment insurance contracts).
<p>Home finance <u>mediation</u> and non-investment insurance mediation <u>distribution</u></p>	
<p>Base requirement</p>	<p>The minimum capital requirements for <i>firms</i> carrying on <i>home finance mediation activity</i> and for <i>insurance mediation activity</i> <i>insurance distribution activity</i> relating to non-investment insurance contracts are set out in <i>MIPRU</i> 4.2.11R.</p>
<p>5% of annual income (firms holding client money)</p>	<p>For <i>firms</i> that hold <i>client money</i> or other <i>client</i> assets in relation to <i>insurance mediation activity</i> <i>insurance distribution activity</i> or <i>home finance mediation activity</i>, this should be calculated as 5% of the annual income (see <i>MIPRU</i> 4.2.11R(2)) from the <i>firm's</i> <i>insurance mediation activity</i> <i>insurance distribution activity</i>, <i>home finance mediation activity</i>, or both.</p>
<p>2.5% of annual income (firms not</p>	<p>For <i>firms</i> that do not hold <i>client money</i> or other <i>client</i> assets in</p>

holding client money)	relation to insurance mediation activity <u>insurance distribution activity</u> or <u>home finance mediation activity</u> , this should be calculated as 2.5% of the annual income (see <i>MIPRU</i> 4.2.11R(1)) from the <i>firm's</i> insurance mediation activity <u>insurance distribution activity</u> , <u>home finance mediation activity</u> , or both.
...	
Other <i>FCA</i> capital resources requirements (if applicable)	<p>The <i>FCA</i> may from time to time impose additional requirements on individual <i>firms</i>. If this is the case for your <i>firm</i>, you should enter the relevant amount here. This excludes capital resources requirements in relation to PII, which are recorded below.</p> <p>If the <i>firm</i> carries on <i>designated investment business</i> as well as <u>home finance mediation activity</u>, insurance mediation activity <u>insurance distribution activity</u> or both, requirements under <i>IPRU(INV)</i>, <i>IFPRU</i>, <i>GENPRU</i> or <i>BIPRU</i> and <i>MIPRU</i> must be considered to determine the appropriate requirement (see general notes (i) to (iii) above). If the resulting requirement for a <i>firm</i> is higher than the base <i>MIPRU</i> requirement then you should include the difference here.</p>
...	
Capital resources per <i>MIPRU</i> 4 (home finance <u>mediation activity</u> and non-investment insurance intermediation <u>distribution activity</u>)	
...	

Section E Professional indemnity insurance

...

The PII requirements for *authorised professional firms* ('APFs') that carry on *retail investment activities* are set out in *IPRU-INV* 2.3. APFs that carry on *home finance mediation activity* or ~~*insurance mediation activity*~~ *insurance distribution activity* are subject to the full requirements of *MIPRU* 3.

...

Guide for completion of individual fields

Part 1

Does your firm hold a comparable guarantee or equivalent cover in lieu of PII, or is it otherwise exempt from holding PII in respect of any regulated activities (tick as appropriate)?	<p>This question will establish whether a <i>firm</i> is exempt from the requirements and so is not required to hold PII.</p> <p>The conditions for comparable guarantees and exemptions from the PII requirements for <i>firms</i> carrying on insurance distribution or home finance mediation are set out in <i>MIPRU</i> 3.1.1R paragraphs (3) to (6).</p> <p>...</p>
...	

Part 2

...	
Limit of indemnity	<p>You should record here the indemnity limits on the <i>firm's</i> PII policy or policies, both in relation to single claims and in aggregate.</p> <p>Those firms subject to the Mortgage Credit Directive (<i>MCD</i>) (see <i>MIPRU</i> 3.2.9AR) or the <i>Insurance Mediation Directive</i> <i>Insurance Distribution Directive</i> (<i>IMD</i> <i>IDD</i>) requirements should state their limit in Euros; those that are not subject to the <i>MCD</i> or <i>IMD</i> <i>IDD</i> should select 'Sterling' from the drop-down list.</p> <p>...</p>
...	

Section F Threshold conditions

Close links

...

Sole traders, firms which have *permission* to carry on *retail investment activities* only, *firms* with *permission* only to *advise on P2P agreements* (unless that activity is carried on exclusively with or for *professional clients*) or *firms* which have *permission* to carry on only one, or only both of:

- (a) ~~insurance mediation activity~~ insurance distribution activity; or
- (b) *home finance activity*;

and are not subject to the requirements of *SUP* 16.4 or *SUP* 16.5 (requirement to submit annual controllers report; or annual close links reports), will submit these reports in *RMAR* section F instead.

...

Section G Training and competence

...

Section G: guide for completion of individual fields

General information		
...		
Non-investment insurance (retail customers)		
20	Which types of non-investment insurance advice were provided by the firm in the reporting period?	<p>For each type of advice, the <i>firm</i> should indicate whether or not advice has been provided on that basis / business type.</p> <p>Fair Analysis of the Market</p> <p>If an <i>insurance intermediary</i> informs a <i>customer</i> that it gives advice (<u>including a <i>personal recommendation</i></u>) on the basis of a fair analysis of the market, it must give that advice (<u>including a <i>personal recommendation</i></u>) on the basis of an analysis of a sufficiently large number of <i>contracts of insurance</i> available on the market to enable it to make a recommendation, in accordance with professional criteria, regarding which <i>contract of insurance</i> would be adequate to meet the <i>customer's</i> needs. (See <i>ICOBS</i> 5.3.3R, <i>ICOBS</i> 4.1.6R, <i>ICOBS</i> 4.1.7R and <i>ICOBS</i> 4.1.8G).</p>
...		

...

Section H Conduct of ~~business~~ Business ('COBS') Data

...

Guide for completion of individual fields

General COBS data	
...	
Of which, number of 'secondary' ARs as at the end of the reporting period	<p>An AR is a secondary AR if:</p> <ul style="list-style-type: none"> the activities for which it is exempt are limited to insurance mediation activities <u>insurance distribution activities</u> only; and its principal purpose is to carry on activities other than insurance mediation activities <u>insurance distribution activities</u>.
...	

...

Section J: Data required for calculation of fees

...

Personal investment firms and *firms* whose regulated activities are limited to one or more of: ~~insurance mediation activity~~ insurance distribution activity, *home finance mediation activity*, or *retail investment activity*, are required to complete section J of the *RMAR*.

...

The *guidance* in the following table sets out the *rules* which related to the data required in Section J of *SUP 16 Annex 18AR*.

	FCA Annual Income (£s)	FOS Relevant Annual Income (£s)	FSCS Annual Eligible Income (£s)
...			
General insurance mediation <u>distribution</u>
Life <u>distribution</u> and pensions intermediation
...			

...

...

The form (Data items for SUP 16.12) referred to in SUP 16 Annex 24R is amended as shown.

FSA031

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

...

Part 4 (Regulatory capital test to be completed by all firms)

29 ...

...

Professional Indemnity Insurance

33 ...

34 Does your firm conduct insurance ~~mediation~~ distribution activities?

...

FSA032

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

...

Professional Indemnity Insurance

...

34 Does your firm conduct insurance ~~mediation~~ distribution activities?

...

The form (Guidance notes for data items in SUP 16 Annex 24R) referred to in *SUP 16 Annex 25G* is amended as shown.

FSA031 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

...

Defined Terms

...

Description	Data element	Guidance
...		
Part 4	Regulatory capital test to be completed by all firms	
...		
Does your firm conduct insurance mediation <u>distribution</u> activities?	34A	Insurance mediation <u>distribution</u> activities are defined in the Handbook glossary.

FSA032 – Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)

...

Defined Terms

...

Description	Data element	Guidance
...		
Regulatory capital test(s)		
...		
Does your firm conduct insurance mediation <u>distribution</u> activities?	34A	This is either 'Yes' or 'No', and enables us to check that the PII cover meets the minimum requirements.
...		

The form (Guidance notes for the data item in SUP 16 Annex 29R) referred to in SUP 16 Annex 29AG is amended as shown.

Client Money and Asset Return (CMAR)

...

General

...

A *firm* is reminded that the effect of SUP 16.14.4R is that in relation to a *firm* to which CASS 5 (Client money: insurance ~~mediation~~ distribution activity) and CASS 7 (Client money rules) apply, that *firm* should not report in the *data item* shown in SUP 16 Annex 29R any *client money* that it holds in accordance with CASS 5.

...

Annex P

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Treating complainants fairly

1.1 Purpose and application

...

- 1.1.8 R ~~An insurance intermediary, that is not also an insurer, must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not an eligible complainant.~~
[deleted]

~~[Note: article 10 of the Insurance Mediation Directive]~~

...

Additional requirements for insurance and reinsurance distribution business in the UK

- 1.1.10-A R Where insurance distribution activities are carried on from an establishment maintained by it or its appointed representative in the United Kingdom, a firm must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not an eligible complainant.

[Note: article 14 of the IDD]

Additional IDD requirements for EEA branches of UK firms

- 1.1.10-B R Where insurance distribution or reinsurance distribution is carried on from a branch maintained by a UK firm or its appointed representative in another EEA State, the firm must:

- (1) have in place and operate appropriate and effective procedures for registering and responding to complaints from a customer; and
- (2) solely in relation to its insurance distribution business, adhere to one or more relevant ADR entities in that EEA State in respect of consumer disputes.

[Note: articles 7(2), 14 and 15(1) of the IDD]

...

Annex Q

Amendments to the Compensation sourcebook (COMP)

In this Annex, striking through indicates deleted text and underlining indicates new text, unless otherwise indicated.

1 Introduction and Overview

...

1.3 Claimants

...

1.3.3 G Areas of particular interest to claimants (see *COMP 1.1.3G*).

This Table belongs to *COMP 1.1.3G*.

...		
A2	...	...
(5)	a claim in connection with protected non-investment insurance mediation <u>protected non-investment insurance distribution</u>.	...
	...	
A3	...	...
(5)	a claim in connection with protected non-investment insurance mediation <u>protected non-investment insurance distribution</u>.	...
	...	
...		

...

3 The qualifying conditions for compensation

...

3.2 The qualifying conditions for paying compensation

...

3.2.4 R The FSCS may also pay compensation to a *firm*, who makes a claim in connection with ~~protected non-investment insurance mediation~~ protected

non-investment insurance distribution on behalf of its customers, if the FSCS is satisfied that:

...

...

4 Eligible claimants

...

4.2 Who is eligible to benefit from the protection provided by the FSCS?

...

Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

4.2.2 R This table belongs to COMP 4.2.1R

...	
(17)	Where the <i>claim</i> is in relation to protected non-investment insurance mediation <u>protected non-investment insurance distribution</u> , <i>bodies corporate, partnerships, mutual associations and unincorporated associations which are not small businesses.</i>
...	

...

4.3 Exceptions: Circumstances where a person coming within COMP 4.2.2R may receive compensation

...

Liability subject to compulsory insurance

4.3.6 R A person who comes within COMP 4.2.2R is eligible to claim compensation in respect of a *liability subject to compulsory insurance* if the *claim* is in connection with ~~protected non-investment insurance mediation~~ protected non-investment insurance distribution.

...

5 Protected claims

...

5.2 What is a protected claim?

5.2.1 R A protected claim is:

...

- (5) a *claim* in connection with ~~protected non-investment insurance mediation~~ protected non-investment insurance distribution (see COMP 5.7); or

...

...

5.7 Protected non-investment insurance ~~mediation~~ distribution

- 5.7.1 R ~~Protected non-investment insurance mediation~~ Protected non-investment insurance distribution is an ~~insurance mediation activity~~ insurance distribution activity where the *investment* concerned is a *relevant general insurance contract* or a *pure protection contract* but which is not a *long-term care insurance contract* or a *reinsurance contract*, provided that the conditions in COMP 5.7.2R are satisfied.

- 5.7.2 R COMP 5.7.1 R only applies if the conditions in (1) and (2) are satisfied

- (1) the ~~protected non-investment insurance mediation~~ protected non-investment insurance distribution was carried on from:

- (a) an establishment of the *relevant person* in the *United Kingdom*; or
- (b) a *branch* of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the ~~IMD~~ IDD; and

- (2) ...

...

- (b) a *branch* of a *UK firm* established in another *EEA State* in the exercise of an *EEA right* derived from the ~~IMD~~ IDD.

...

- 5.7.4 G The *FSCS* will not cover a *claim* in respect of an intermediary that is not a *relevant person*, for example a retailer selling extended warranties that are *connected contracts*. However, COMP 5.7.2R has the effect that a *claim* in respect of a *relevant person* further up the chain carrying on ~~protected non-investment insurance mediation~~ protected non-investment insurance distribution in accordance with COMP 5.7.2R(1)(a) may be covered by the *FSCS* if the claimant dealt initially with a *UK intermediary* that is not a *relevant person*.

...

8 Rejection of application and withdrawal of offer

...

8.2 Rejection of application for compensation

...

- 8.2.4 R For *claims* made in connection with *protected investment business*, *protected home finance mediation* or ~~*protected non-investment insurance mediation*~~ *protected non-investment insurance distribution*, the *FSCS* may disregard a defence of limitation where the *FSCS* considers that it would be reasonable to do so.

...

- 8.2.5 R For claims made in connection with *protected investment business* or ~~*protected non-investment insurance mediation*~~ *protected non-investment insurance distribution*, if a *relevant person* (or, where applicable, a *successor*), incorporated as a *company*, has been dissolved with the result that its liability to the claimant has been extinguished by operation of law, the *FSCS* must treat the claim, for the purposes of paying compensation, as if the *relevant person* or a *successor*, as appropriate, had not been dissolved.

...

10 Limits on the amount of compensation payable

...

10.2 Limits on compensation payable

...

10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
...		
<i>Protected non-investment insurance mediation</i> <i>Protected non-investment insurance distribution</i>	...	
...		

...

12 Calculating compensation

...

12.3 Quantification date

...

Protected non-investment insurance ~~mediation~~ distribution

- 12.3.8 R For a *claim* made in connection with ~~protected non-investment insurance mediation~~ protected non-investment insurance distribution, the *FSCS* must determine a specific date as the *quantification date*, and this date may be either on, before or after the date of determination of default.

...

12.4 The compensation calculation

...

Protected non-investment insurance ~~mediation~~ distribution

- 12.4.20 R The *FSCS* may pay compensation for any *claim* made in connection with ~~protected non-investment insurance mediation~~ protected non-investment insurance distribution only to the extent that the *FSCS* considers that the payment of compensation is essential in order to provide the claimant with fair compensation.
- 12.4.21 R The *FSCS* may decide to reduce the compensation that would otherwise be payable for a *claim* made in connection with ~~protected non-investment insurance mediation~~ protected non-investment insurance distribution if it is satisfied that:

...

...

14 Participation by EEA Firms

14.1 Application and Purpose

...

- 14.1.2 R This chapter also applies to an *incoming EEA firm* which is a *MiFID investment firm*, an ~~IMD insurance intermediary~~ IDD insurance intermediary, a *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*.

Purpose

- 14.1.3 G This chapter provides supplementary *rules* and *guidance*, and contains a

broad summary, in *guidance*, of *FSCS* cover, for an *incoming EEA firm* which is an ~~*IMD insurance intermediary*~~ *IDD insurance intermediary*, a *MiFID investment firm*, a *UCITS management company*, an *MCD mortgage credit intermediary* or an *AIFM*. It reflects in part the implementation of the *Investor Compensation Directive* and *UCITS Directive*.

- 14.1.4 G (1) An *incoming EEA firm*, which is an ~~*IMD insurance intermediary*~~ *IDD insurance intermediary*, an *MCD mortgage credit intermediary* or an *MiFID investment firm* is not a *participant firm* in relation to its *passport activities* unless it “tops-up” into the *compensation scheme*. This reflects section 213(10) of the *Act* (The *compensation scheme*) and regulation 2 of the *Electing Participants Regulations* (Persons not to be regarded as relevant persons). If an *incoming EEA firm* also carries on *non-passported activities* for which the *compensation scheme* provides cover, it will be a *participant firm* in relation to those activities and will be covered by the *compensation scheme* for those activities in the usual way.

...

...

- 14.1.5 G In relation to an *incoming EEA firm’s passport activities*, its *Home State* compensation scheme must provide compensation cover in respect of business within the scope of the *Investor Compensation Directive*, article 6(3) of the *UCITS Directive* and article 6(4) of *AIFMD*, whether that business is carried on from a *UK branch* or on a *cross border services* basis. ~~*Insurance mediation activity*~~ *Insurance distribution activity* is not within the scope of the *Investor Compensation Directive*.

...

14.2 Obtaining top-up cover

...

- 14.2.3 G A notice under *COMP* 14.2.1R should include details confirming that the *incoming EEA firm* falls within a prescribed category. In summary:

- (1) the *firm* must be:

...

- (b) an ~~*IMD insurance intermediary*~~ *IDD insurance intermediary*;
or

...

...

...

Annex R

Amendments to the Credit Unions sourcebook (CREDS)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

For “*insurance mediation*”, substitute “*insurance distribution*” in the following provisions. The new text is not shown as underlined and the deleted is not shown as struck through.

1.1.2G(2)	one instance
1.1.2G(3)	one instance
10.1.3G	two instances

10 Application of other parts of the Handbook to Credit unions

10.1 Application and purpose

...

10.1.3	G	Module	Relevance to Credit Unions
		...	
		Insurance: Conduct of Business sourcebook (ICOBS)	<p><i>ICOBS</i> applies to any <i>credit union</i> carrying on non-investment insurance <u>distribution</u> activities, such as arranging or advising on general insurance contracts to be taken out by members. But <i>ICOBS</i> does not apply to a <i>credit union</i> taking out an insurance policy <u>policy</u> for itself, such as a policy <u>policy</u> against default by members on their loans where the <i>credit union</i> is the beneficiary of the policy <u>policy</u>, since in this circumstance the <i>credit union</i> would not be acting as an insurance intermediary, but would itself be the customer. <i>Credit unions</i> are reminded that they are subject to the requirements of the appropriate legislation, including the Credit Unions Act 1979, relating to activities a <i>credit union</i> may carry on.</p>
		...	

Annex S

Amendments to the Professional Firms sourcebook (PROF)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Professional Firms

1.1 Application and Purpose

Application

1.1.1 R This sourcebook applies as follows:

...

- (4) *PROF 7* applies to every *designated professional body* and every *exempt professional firm* that is carrying on, or proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity*.

...

1.1.4 G This sourcebook outlines:

...

- (6) the arrangements made by the *FCA* for complying with its obligations under the ~~*Insurance Mediation Directive*~~ *IDD* in relation to:
- (a) maintaining a record of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity*; and
 - (b) *exempt professional firms* that wish to passport under the ~~*Insurance Mediation Directive*~~ *IDD*.

...

1.1.6 G The *rules* and *guidance* in this sourcebook are intended to:

...

- (4) explain the background to and the arrangements made by the *FCA* for:
- (a) the registration of *unauthorised persons*, including *exempt professional firms*, that carry on, or are proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution*

activity; and

- (b) *authorised professional firms* and *exempt professional firms* that wish to exercise their *EEA right* under the ~~*Insurance Mediation Directive*~~ *IDD* to establish a *branch* or provide *cross border services* in another *EEA State*.

...

3 The FCA's duties and powers

3.1 The FCA's duty to keep itself informed

...

- 3.1.2 G The *FCA* keeps itself informed in a number of ways. A *designated professional body* has a duty under section 325(4) of the *Act* to cooperate with the *FCA*. Article 94 of the *Regulated Activities Order* requires each *designated professional body* to provide the *FCA* with the information it needs to maintain a public record of *persons* that are registered with the *FCA* to conduct ~~*insurance mediation activity*~~ *insurance distribution activity*. The *FCA* has made arrangements with each of the *designated professional bodies* about the information they provide to it, to include information about:

...

- (6) the names and addresses of each of their *exempt professional firms* that carry on, or are proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity*, together with the details of the individuals within the management of the *exempt professional firms* who are responsible for the ~~*insurance mediation activity*~~ *insurance distribution activity* and, where relevant, the passporting information required by the *FCA* for the purposes of paragraph 25 of Schedule 3 to the *Act* (EEA Passport Rights).

...

3.2 The FCA's power to make a direction

...

- 3.2.5 G ...
- (3) Second, the *FCA* may exercise its direction power under section 328(6)(b) of the *Act* if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the ~~*Insurance Mediation Directive*~~ *IDD*. For example, the *FCA* might wish to do so if it was not receiving from a *designated professional body* the information it needs to maintain the *Financial Services Register* (see PROF 7.1).

...

4 Disclosure

4.1 Disclosure rules

...

- 4.1.3 R (1) An *exempt professional firm* must, before it provides a service which includes the carrying on of a *regulated activity* in the *United Kingdom*, other than an ~~*insurance mediation activity*~~ *insurance distribution activity*, with or for a *client*, disclose in writing to the *client* in a manner that is clear, fair and not misleading that it is not authorised under the *Act*.
- (2) An *exempt professional firm*, must, before it provides a service which includes the carrying on of an ~~*insurance mediation activity*~~ *insurance distribution activity* with or for a *client*, make the following statement in writing to the *client* in a way that is clear, fair and not misleading and no less prominent than any other information provided to the *client* at the same time:
- “[This firm is]/[We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on ~~*insurance mediation activity*~~ *insurance distribution activity*, which is broadly the advising on, selling and administration of insurance contracts. This part of our business, including arrangements for complaints or redress if something goes wrong, is regulated by [DPB]. The register can be accessed via the Financial Conduct Authority website at www.fsa.gov.uk/register/home.do www.fca.org.uk/firms/financial-services-register.”
- 4.1.4 G ...
- (2) The *FCA* considers that it is important that *clients* understand the implications for them of receiving services from an *exempt professional firm* that is not authorised under the *Act*. It is also important that *clients* understand the implications of the difference between authorisation under the *Act* and being on the register maintained by the *FCA*, so that the *exempt professional firm* can conduct ~~*insurance mediation activity*~~ *insurance distribution activity*, in relation to which activity the regulatory protections established by the *Act* for the benefit of *consumers* will not apply. The *FCA* therefore expects *designated professional bodies* to make rules covering the information to be provided to *clients*. These rules should require *exempt professional firms* to make a disclosure to *clients* containing the following elements:
- (a) where the *exempt professional firm* conducts a *regulated activity* other than an ~~*insurance mediation activity*~~ *insurance*

distribution activity, a statement that the *exempt professional firm* is not an *authorised person*;

...

- (e) where the *regulated activity* consists of ~~*insurance mediation activity*~~ *insurance distribution activity*, the statement contained at *PROF 4.1.3R(2)*.

- (3) *Exempt professional firms* should also ensure that any statement that makes reference to the *FCA* does not lead a *client* to suppose that the *FCA* has direct regulatory responsibility for the *exempt professional firm*. This could be a breach of *PROF 4.1.2R*. This consideration is particularly important in relation to ~~*insurance mediation activity*~~ *insurance distribution activity*, where *clients* may well fail to appreciate the difference between authorisation under the *Act* and being included on the register maintained by the *FCA* so as to permit the *exempt professional firm* to carry on ~~*insurance mediation activity*~~ *insurance distribution activity*.

...

5 Non-mainstream regulated activities

...

5.3 Reference to other sourcebooks and manuals

...

Conduct of ~~business~~ Business sourcebook

- 5.3.2 G *COBS 18.11* provides that *COBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, except for:

- (1) ...
- (2) (where these are ~~*insurance mediation activities*~~) ~~*COBS 7 (Insurance mediation)*~~ *insurance distribution activities*) the parts of *COBS* set out in *COBS 18.11.2R(3)(a)* to (i) which implement the *IDD* apply unless:
- (a) the *designated professional body* of the *firm* has made rules which implement some or all of articles ~~12 and 13~~ 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the *Insurance Mediation Directive IDD*;

...

...

...

Senior Management Arrangements, Systems and Controls

- 5.3.4 G ~~SYSC 3.2.6AR to SYSC 3.2.6JG and SYSC 6.3~~ (Financial crime), in relation to *money laundering*, ~~do~~ does not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*.

...

- 5.3.8 ...

Client Assets

- 5.3.9 G CASS 1.2.4R provides that with the exception of CASS 1 and the *insurance client money chapter*, CASS does not apply to *authorised professional firms* when carrying on *non-mainstream regulated activities*. CASS 1.2.5R further provides that if the *non-mainstream regulated activities* are ~~insurance mediation activity~~ *insurance distribution activity*, CASS 5 (the insurance client money chapter) does not apply to an *authorised professional firm*, if the *firm's designated professional body* has rules applicable to the *firm* which implement the ~~Insurance Mediation Directive~~ *IDD* and which are in the form approved by the *FCA* under section 332(5) of the *Act*.

Insurance: Conduct of Business sourcebook

- 5.3.10 G (1) *ICOBS* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* (see *ICOBS 1 Ann* ~~Annex~~ Annex 1, Part 1, paragraph 3.1R, except for:

...

- (d) provisions in *ICOBS* which implement articles ~~12 and 13~~ 1(4), 17, 18, 19, 20, 23, and 24 of the ~~Insurance Mediation Directive~~ *IDD* (see *ICOBS 2.2.2R* (communication to customers and financial promotions), *ICOBS 2.2.2AR* (marketing communications), *ICOBS 2.5.-1R* (the customer's best interests rule), *ICOBS 2.6* (Distribution of connected contracts through exempt persons), *ICOBS 4.1* (Information about the firm, its services and remuneration), *ICOBS 4.1A* (Means of communicating to customers), *ICOBS 4.3* (remuneration disclosure) ~~and~~, *ICOBS 5.2.3R* *ICOBS 5.2* (Demands and needs), *ICOBS 5.3.3R* (Advice on the basis of a fair analysis), *ICOBS 5.3.4R* (Personalised explanation), *ICOBS 6A.1.4R* (Ensuring the customer can make an informed decision) and *ICOBS 6A.3* (Cross-selling)), except to the extent that the *firm* is subject to equivalent *rules* of its *designated professional body* which have been approved by the *FCA*.

...

7 Insurance ~~mediation~~ distribution activity

7.1 Register of persons carrying on insurance ~~mediation~~ distribution activity

Background

- 7.1.1 G The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) Order 2003 (SI 2003/1476) and the Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order (SI 2018/XXXX) implements implement in part the provisions of the ~~Insurance Mediation Directive~~ IDD and ~~amends amend~~ the *Regulated Activities Order*.

The FCA's obligation to maintain a record

- 7.1.2 G Article 93 of the amended *Regulated Activities Order* requires the *FCA* to maintain an up-to-date record of every *unauthorised person*, whether an appointed representative or an *exempt professional firm* that carries on, or is proposing to carry on, ~~insurance mediation activity~~ insurance distribution activity and to whom the *general prohibition* does not apply in relation to the carrying on of such an activity. In relation to exempt professional firms the general prohibition does not apply by virtue of section 327 of the *Act*.
- 7.1.3G G The *FCA* is not to include an *exempt professional firm* in the register relating to *unauthorised persons* if:
- (1) under a direction given by the *FCA* under section 328(1) of the *Act*, section 327(1) of the *Act* does not apply in relation to the carrying on by it of ~~insurance mediation activity~~ insurance distribution activity; or
 - (2) the *FCA* has made an order under section 329(2) of the *Act* disapplying section 327(1) of the *Act* in relation to the carrying on by the *exempt professional firm* of ~~insurance mediation activity~~ insurance distribution activity.

Provision of information to the FCA

- 7.1.4 G Article 94 of the *Regulated Activities Order* obliges a *designated professional body* to provide the *FCA* with the information it needs to maintain the record referred to in *PROF 7.1.2G* of every *unauthorised person* that carries on, or proposes to carry on, ~~insurance mediation activity~~ insurance distribution activity and keep it up to date. This information needs to include the details referred to in *PROF 7.1.7G*. This is the responsibility of the *designated professional body* and not each *exempt professional firm*.

Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227)

- 7.1.5 G (1) The attention of *exempt professional firms* is drawn to the

significance of The Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227), as amended by The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476). The effect of these amendments is that *exempt professional firms* may not carry on certain regulated activities which relate to a contract of insurance in reliance on the *Part XX exemption* unless the *exempt professional firm* is included in the record of *unauthorised persons* carrying on ~~*insurance mediation activity*~~ *insurance distribution activity* maintained by the *FCA* under article 93 of the *Regulated Activities Order*.

- (2) Each *exempt professional firm* carrying on, or proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity* should ensure that at all material times the name of the firm and the requisite details are included in the record maintained by the *FCA*. Any such *exempt professional firm* carrying on, or proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity* whose name does not appear in the record maintained by the *FCA* is likely to be breaching the general prohibition which is a criminal offence under section 23 of the *Act*.

Financial Services Register

- 7.1.6 G In order to comply with its obligations to maintain a record of *unauthorised persons* that carry on, or are proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity*, the *FCA* has established an appropriate record which forms part of the record maintained by the *FCA* under section 347 of the *Act*. The record maintained by the *FCA* under section 347 of the *Act* is known as the *Financial Services Register*. The *Financial Services Register* therefore contains a record of each *authorised* and *unauthorised person* that carries on, or proposes to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity*.
- 7.1.7 G The information to be included on the record in relation to *exempt professional firms* will, as required by the ~~*Insurance Mediation Directive*~~ *IDD*, include details of:
- (1) the name and address of each *exempt professional firm* that carries on, or is proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity*;
 - (2) where the *exempt professional firm* is not an individual, the names of the individuals within the management of the *exempt professional firm* who are responsible for the ~~*insurance mediation activity*~~ *insurance distribution activity*; and
 - (3) each *EEA State* in which the *exempt professional firm* under an *EEA right* derived from the ~~*Insurance Mediation Directive*~~ *IDD*:

...

...

7.2 **Passporting under the ~~Insurance Mediation Directive~~ IDD**

- 7.2.1 G All *persons* that are on the register maintained by the *FCA* in accordance with article 3 of the ~~*Insurance Mediation Directive*~~ *IDD*, and so permitted to conduct ~~*insurance mediation activity*~~ *insurance distribution activity*, are entitled to exercise the *EEA right* conferred upon them by ~~article~~ articles 4 (freedom to provide services) and 6 (freedom of establishment) of the ~~*Insurance Mediation Directive*~~ *IDD* to establish a *branch* or provide services relating to ~~*insurance mediation activity*~~ *insurance distribution activity* in another *EEA State*. Both *authorised professional firms* and *exempt professional firms* that are so registered by the *FCA* get the benefit of these passporting rights.
- 7.2.2 G Any *authorised professional firm* or *exempt professional firm* that is contemplating the exercise of rights under ~~article~~ articles 4 (freedom to provide services) or 6 (freedom of establishment) of the ~~*Insurance Mediation Directive*~~ *IDD* to establish a *branch* or provide services relating to ~~*insurance mediation activity*~~ *insurance distribution activity* in another *EEA State* is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both *authorised professional firms* and *exempt professional firms* are *UK firms* for the purposes of the *Handbook*, including SUP 13.
- 7.2.3 G A *UK firm* proposing to establish a *branch* in another *EEA State* for the first time under an *EEA right* derived from the ~~*Insurance Mediation Directive*~~ *IDD* must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). These include the requirement that the firm must at the outset give the *FCA* a notice in the required form of its intention to establish the *branch*. SUP 13.3.2G to SUP 13.3.2CG and SUP 13.3.5G detail the procedure to be followed once such a *notice of intention* has been received by the *FCA*. SUP 13.5.1R (Specified contents: notice of intention to establish a branch) and SUP 13.6.9AG (Firms passporting under the ~~*Insurance Mediation Directive*~~ *IDD*) will also be relevant.
- 7.2.4 G A *UK firm* proposing to provide *cross border services* into another *EEA State* for the first time under an *EEA right* derived from the ~~*Insurance Mediation Directive*~~ *IDD* must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). The *UK firm* must at the outset give the *FCA* a notice in the required form of its intention to provide the *cross border services* into another *EEA State*. In this instance, the relevant procedure to be followed is outlined in SUP 13.4.2G, SUP 13.4.4G and ~~SUP 13.4.5G~~ SUP 13.4.5AG. SUP 13.5.2R (Specified contents: notice of intention to provide cross border services) and ~~SUP 13.7.11G~~ SUP 13.7.11AG will also be relevant.

...

[*Editor's note:* The text in this Annex takes into account the draft Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2018 (SI 2018/XXXX) as if it were made.]

Annex T

Amendments to the Enforcement Guide (EG)

In this Annex, striking through indicates deleted text and underlining indicates new text.

3 Use of information gathering and investigation powers

...

3.8B Information requests and investigations under the enhanced supervision of EEA firms under the Insurance Distribution Directive

Under the IDD, where an EEA firm's primary place of business is located in the United Kingdom rather than in its home member state, section 203A allows the FCA to enter into an agreement with that firm's Home State regulator to exercise certain functions as if the firm were a UK firm. This same power but in reverse allows by virtue of section 203B the FCA to agree that an EEA regulator can exercise certain functions in respect of a UK firm whose primary place of business is in that EEA member state (see also SUP 13.11A.2G). A firm will be notified of such an agreement without delay.

...

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

...

8.6 Exercising the power under section 55Q to vary or cancel a firm's Part 4A permission or to impose requirements on a firm in support of an overseas regulator: the FCA's policy

...

8.6.2 Relevant Community obligations which the FCA may need to consider include those under the Capital Requirements Directive, the *Solvency II Directive*, the Investment Services Directive/Markets in Financial Instruments Directive, the ~~Insurance Mediation Directive~~ Insurance Distribution Directive (IDD) and the *Market Abuse Regulation*. Each of these legislative acts imposes general obligations on the relevant EEA competent authority to cooperate and collaborate closely in discharging their functions under the legislative acts.

...

19 Non-FSMA powers

...

19.6 Regulated Activities Order 2001 (RAO)

...

- 19.6.1 The RAO sets out those activities which are regulated for the purposes of the *Act*. Part V of the RAO also requires the *FCA* to maintain a register of all those people who are not authorised by the *FCA* but who carry on insurance ~~mediation~~ distribution activities. Under article 95 RAO, the *FCA* has the power to remove from the register an appointed representative who carries on insurance ~~mediation~~ distribution activities if it considers that he is not fit and proper. The *FCA* will give the person a *warning notice* informing him that it proposes to remove his registration and a *decision notice* if the decision to remove his registration is taken. The decisions to give a *warning notice* or a *decision notice* will be taken by the *RDC* following the procedures set out in *DEPP* 3.2 or, where appropriate, *DEPP* 3.3. A person who receives a decision notice under article 95 RAO may refer the matter to the *Tribunal*.

Annex U

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Part 1: Comes into force on [23 February 2018]

5.8 The regulated activities: advising on contracts of insurance

...

- 5.8.3A G (1) The scope of the *regulated activity of advising on investments (except P2P agreements)* is narrower for a *person* who is authorised for the purposes of the *Act* to carry on certain *regulated activities* (as set out in (2)) than as described in *PERG 5.8.1G* and *PERG 5.8.2G*.
- (2) The narrower scope of *advising on investments (except P2P agreements)* referred to in (1) applies to a *person* who is authorised for the purposes of the *Act* to carry on any *regulated activity* other than (or in addition to):
- (a) *advising on investments (except P2P agreements); or*
- (b) *the regulated activity of agreeing to carry on a regulated activity in relation to (a).*
- (3) A *person* in (2) is not *advising on investments (except P2P agreements)* except to the extent that they are providing a *personal recommendation*.
- (4) *PERG 8.24.1* provides further *guidance* on this distinction. *PERG 8.30B* provides *guidance* on the definition of *personal recommendation* as it relates to the *regulated activity of advising on investments (except P2P agreements)*. In particular, *PERG 8.30B.2G(1) to (4)* sets out the different elements of the definition of *personal recommendation*.
- (5) The *guidance* in *PERG 5.8.4G* to *PERG 5.8.26G* about *advising on investments (except P2P agreements)* is still relevant to a *firm* authorised for the narrower scope of this activity. This is because that *guidance* is relevant to those elements of the definition of *personal recommendation* described in *PERG 8.30B.2G(1)* and (2).

Part 2: Comes into force on [1 October 2018]**1 Introduction to the Perimeter Guidance manual**

...

1.4 General guidance to be found in PERG

...

1.4.2 G Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
...		
<i>PERG 5:</i> Insurance mediation <u>distribution</u> activities	any <i>person</i> who needs to know whether he carries <u>they carry on</u> insurance mediation activities <u>insurance distribution activities</u> and is <u>are</u> , thereby, subject to <i>FCA</i> regulation. This is likely to include: insurance brokers insurance advisers <i>insurance undertakings</i> other <i>persons</i> involved in the sale or administration of <i>contracts of insurance</i> , where these activities are secondary to their main business.	the scope of relevant orders (in particular, the <i>Regulated Activities Order</i>) as respects activities concerned with the sale or administration of insurance
...		

...

1.5 What other guidance about the perimeter is available from the FCA?**1.5.1 G General guidance on the perimeter is also contained in various *FCA* documents (mainly fact sheets and frequently asked questions) that are available on the *FCA* website at www.fca.org.uk. ...**

...

- (7) *guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of the company appointed to manage a PPP or similar construction and operation project - <https://www.fca.org.uk/your-fca/documents/fsa-ppp-forum-letter>;

- (8) ~~guidance about the position under the Insurance Mediation Directive and the Regulated Activities Order of property managing agents—www.fca.org.uk/firms/insurers-insurance-intermediaries;~~
[deleted]

...

- (12) the FSA's views on whether members of the NHBC who provide insurance to buyers of properties in accordance with the Buildmark scheme carry out *insurance mediation*, contained in a letter to NHBC's solicitors and put onto the FSA's Freedom of Information Act register in December 2012
(<https://www.fca.org.uk/publication/foi/fsa-foi2707-info.pdf>).

1.5.1A G The *guidance* under PERG 1.5.1G(7) and (12) relates to the *Insurance Mediation Directive*, which has been repealed and replaced by the *Insurance Distribution Directive (IDD)*. The *guidance* relates to whether the *regulated activities* in question are carried on for remuneration and by way of business under the *Insurance Mediation Directive*. The FCA does not view the changes under the *IDD* as having affected the analysis of remuneration and the 'by way of business' test set out in this *guidance* and so it continues to be relevant (see also PERG 5.4).

...

2 Authorisation and regulated activities

...

2.3 The business element

...

2.3.2 G ...

- (2A) A person who carries on an ~~insurance mediation activity~~ *insurance distribution activity* will not be regarded as doing so by way of business unless ~~he takes up or pursues~~ that activity is taken up or pursued for remuneration. PERG 2.3.3G gives *guidance* on the factors that are relevant to the meaning of 'by way of business' in section 22 of the Act. PERG 5.4 (The business test) gives further *guidance* on the business element as applied to ~~insurance mediation activities~~ *insurance distribution activities*.

...

2.5 Investments and activities: general

...

Modification of certain exclusions as a result of MiFID, the ~~Insurance Mediation~~

Directives IDD and the Mortgage Credit Directive

- 2.5.3 G The application of certain of the exclusions considered in *PERG* 2.8 (Exclusions applicable to certain regulated activities) and *PERG* 2.9 (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who are subject to *MiFID*, the ~~*Insurance Mediation Directive*~~ *IDD* and the *MCD*. The reasons for this and the consequences of it are explained in *PERG* 2.5.4G for *MiFID*, *PERG* 5 (~~*Insurance Guidance on insurance mediation distribution*~~ activities), for the ~~*Insurance Mediation Directive*~~ *IDD*, and *PERG* 4.10A for the *MCD*.

...

Insurance ~~mediation~~ distribution or reinsurance ~~mediation~~ distribution

- 2.5.6 G The ~~*Insurance Mediation Directive*~~ *IDD* ~~has is~~, in part, ~~been~~ implemented through various amendments to the *Regulated Activities Order*. These include article 4(4A) (Specified activities: general) which precludes a *person* who, for remuneration, takes up or pursues ~~*insurance-mediation*~~ *insurance distribution* or ~~*reinsurance-mediation*~~ *reinsurance distribution*, in relation to a risk or commitment situated in an *EEA State*, from making use of certain exclusions. In other cases, some of the exclusions provided in relation to particular *regulated activities* are unavailable where the activity involves a *contract of insurance*. This is explained in more detail in *PERG* 5 (~~*Insurance Guidance on insurance mediation distribution*~~ activities).

...

2.6 Specified investments: a broad outline

...

- 2.6.7 G The *Regulated Activities Order* uses two further terms in relation to *contracts of insurance* to identify those contracts under which rights are treated as *contractually based investments*.

...

- (2) The second term is ‘*relevant investments*’. This term applies to:

(a) ...

(b) ...

This term is used in connection with the treatment, under various parts of the *Regulated Activities Order*, of *persons* carrying on ~~*insurance-mediation activities*~~ *insurance distribution activities* (see further *PERG* 5 (~~*Insurance Guidance on insurance mediation distribution*~~ activities) for further ~~*guidance on such activities*~~).

...

2.7 Activities: a broad outline

...

Effecting or carrying out contracts of insurance as principal

- 2.7.3 G The activities of *effecting a contract of insurance* or *carrying out a contract of insurance* are separate *regulated activities*, each requiring *authorisation*. But this only applies where they are carried on by a *person* who is acting as principal. This means that the activities of agents, such as loss adjusters, will not constitute this *regulated activity*. The activities of some agents may, however, be regulated as ~~*insurance mediation activities*~~ *insurance distribution activities* (see *PERG 5* (Guidance on insurance ~~*mediation*~~ *distribution* activities)).

- 2.7.4 G ...

PERG 5 (~~*Insurance*~~ Guidance on insurance ~~*mediation*~~ *distribution* activities) has more *guidance* on these *regulated activities* where they are ~~*insurance mediation activities*~~ *insurance distribution activities*.

...

Assisting in the administration and performance of a contract of insurance

- 2.7.8A G The activity of *assisting in the administration and performance of a contract of insurance* is a *regulated activity* that is identified in the *Insurance Mediation Directive* *IDD*. Further *guidance* on this activity is in *PERG 5.7* (The ~~*regulated activities*~~ *regulated activities*: assisting in the administration and performance of a contract of insurance).

...

2.8 Exclusions applicable to particular regulated activities

...

Dealing in investments as agent

- 2.8.5 G ...

(4) ...

More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in *PERG 5* (~~*Insurance*~~ Guidance on insurance ~~*mediation*~~ *distribution* activities).

...

Arranging deals in investments and arranging a home finance transaction

...

- 2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows:

...

- (6) Under article 30, arranging investment transactions in connection with lending on the security of *contracts of insurance* is excluded, from article 25(1) and (2) but only where a *person* is not carrying on ~~insurance mediation~~ insurance distribution or ~~reinsurancee mediation~~ reinsurance distribution.

...

- (10A) (1) Under article 33B, the mere provision of certain information is excluded from article 25(1) and (2). The information must be:
- (a) about a potential policyholder, and provided to either a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*), an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or an *IDD reinsurance intermediary*, or
 - (b) about certain insurance products or providers, and provided to a potential policyholder.
- (2) This is on the condition that the provider of the information takes no step other than to provide this information to assist in the conclusion of a *contract of insurance*.

...

- (13) ...

The exclusions referred to in (a), (b), (g), (h), (m) and (n) also apply to *arranging* activities related to *home finance transactions* (in that context, the exclusion in (n) covers any activity which is carried on by a *local authority*). More detailed *guidance* on the exclusions that relate to *contracts of insurance* is in *PERG 5* (~~Insurance~~ Guidance on insurance mediation distribution activities).

...

...

Managing investments

- 2.8.7 G The activities of *persons* appointed under a power of attorney are excluded under article 38 of the *Regulated Activities Order* from the *regulated*

activity of *managing investments*, if specified conditions are satisfied. The exclusion only applies where a *person* is not carrying on ~~*insurance mediation*~~ *insurance distribution* or ~~*reinsurance mediation*~~ *reinsurance distribution* and is subject to further limitations discussed below. In addition, the following exclusions (outlined in *PERG* 2.9) apply in specified circumstances where a *person* manages assets:

...

...

Advising on investments

...

2.8.12A G ...

(2) ...

More detailed *guidance* on certain of these exclusions is in *PERG* 4 (~~*Regulated Guidance on regulated*~~ activities connected with mortgages), *PERG* 5 (~~*Insurance*~~ *Guidance on insurance mediation distribution* activities), *PERG* 14.3 (*Activities relating to home reversion plans*), *PERG* 14.4 (*Activities relating to home purchase plans*) and *PERG* 14.4A (~~*Guidance on home reversion, home purchase and*~~ *Activities relating to regulated sale and rent back agreement activities* *agreements*).

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

Trustees, nominees or personal representatives

2.9.3 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

The exclusion is, however, disapplied where a *person* is carrying on ~~*insurance mediation*~~, *insurance distribution* or ~~*reinsurance mediation*~~ *reinsurance distribution*, or the *person* would be an *MCD firm*. This is due to article 4(4A) and 4(4B) of the *Regulated Activities Order*. *Guidance* on exclusions relevant to ~~*insurance mediation activities*~~ *insurance distribution activities* is in *PERG* 5 (~~*Insurance*~~ *Guidance on insurance mediation distribution* activities) and *guidance* on activities and exclusions relevant to the *MCD* is in *PERG* 4.10A (Activities regulated under the Mortgage Credit Directive).

...

Professions or business not involving regulated activities

- 2.9.5 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

The exclusion is, however, disapplied where a *person* is carrying on ~~*insurance mediation*~~ *insurance distribution* or ~~*reinsurance mediation*~~ *reinsurance distribution*. This is due to article 4(4A) of the *Regulated Activities Order*. Guidance on exclusions relevant to ~~*insurance mediation activities*~~ *insurance distribution activities* is in PERG 5 (~~*Insurance Guidance on insurance mediation distribution*~~ activities). The exclusion is also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see PERG 2.5.4G to PERG 2.5.5G (Investment services and activities)).

...

...

Group and joint enterprises

...

- 2.9.10 G These exclusions apply to intra-group dealings and activities and to dealings or activities involving participators in a joint enterprise which take place for the purposes of, or in connection with, the enterprise. The general principle here is that, as long as activities that would otherwise be *regulated activities* take place wholly within a group of companies, then there is no need for *authorisation*. The same principle applies to dealings or activities that take place wholly within a *joint enterprise* entered into for commercial purposes related to the participators' unregulated business. The exclusions in PERG 2.9.9G(2), (3), (4) and (7) are disapplied where they concern a *contract of insurance*. Guidance on exclusions relevant to ~~*insurance mediation activities*~~ *insurance distribution activities* is in PERG 5 (~~*Insurance Guidance on insurance mediation distribution*~~ activities). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see PERG 2.5.4G to PERG 2.5.5G (Investment services and activities)).

...

Sale of body corporate

...

- 2.9.12 G ...

These exclusions also apply to transactions that are entered into for the

purposes of the above transactions (such as transactions involving the offer of *securities* in the offeror as consideration or part consideration for the sale of the *shares* in the *body corporate*). These exclusions do not have effect in relation to shares in an *open-ended investment company*. The exclusions in PERG 2.9.11G(2), (3) and (4) are disapplied where they concern a *contract of insurance*. Guidance on exclusions relevant to ~~insurance mediation activities~~ insurance distribution activities is in PERG 5 (Guidance on insurance ~~mediation~~ distribution activities). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see PERG 2.5.4G to PERG 2.5.5G (Investment services and activities)).

...

Insurance ~~mediation~~ distribution activities

- 2.9.19 G The exclusions in this group apply to certain *regulated activities* involving certain *contracts of insurance*. The exclusions and the *regulated activities* to which they apply are as follows.
- (1) The first exclusion of this kind relates to certain activities carried on by a provider of non-motor goods or services, or services related to travel in connection with *general insurance contracts* ~~only that~~ satisfy a number of conditions.
- (a) The contracts must:
- (i) ~~be for five years duration or less and have an annual a~~ premium of: ~~no more than 500.~~
- (A) 600 euro or less (calculated on a pro rata annual basis); or
- (B) 200 euro or less, where the contracts of insurance are complementary to a service being provided by the provider and the duration of that service is equal to or less than three months,
- or equivalent amounts of sterling or another currency;
- (ii) ~~The contract must cover:~~
- (A) breakdown or loss of or damage to non-motor goods supplied by the provider; or
- (B) loss of or damage to baggage and other risks linked to certain travel services booked with the provider; or
- (C) the non-use of services supplied by the

provider.

- (b) The travel services must be the hire of an aircraft, vehicle or vessel which does not provide sleeping accommodation, or must relate to attendance at an event organised or managed by the provider.
- (c) Where the travel services relate to an event, the exclusion does not apply if the party seeking insurance is an individual (acting in ~~his~~ their private capacity) or a small business. A small business is a sole trader, *body corporate*, *partnership* or unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where it is a member of a group, the combined turnover of the group is used). Turnover means the amounts derived from the provision of goods and services falling within the business's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on those amounts.
- (d) There must not be any liability risk cover other than (in relation to travel risk) where this is ancillary to the main risk covered in a travel policy.
- (e) The insurance must be complementary to the goods or services being supplied by the provider in the course of ~~his~~ the provider's carrying on a business or profession not otherwise consisting of *regulated activities*, ~~and the policy must be in standard form.~~
- (f) This exclusion applies where the *regulated activities* concerned are:
 - ~~(a)~~ (i) *dealing in investments as agent;*
 - ~~(b)~~ (ii) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
 - ~~(c)~~ (iii) *assisting in the administration and performance of a contract of insurance; and*
 - ~~(d)~~ (iv) *advising on investments.*

(2) ...

...

- (4) The fourth exclusion applies where specified information is provided to a potential *policyholder*, or to a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*), an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or an *IDD reinsurance intermediary*, by a person who does not take

any other step to assist in the conclusion of a *contract of insurance* (see *PERG 2.8.6A(10A)G* and *PERG 5.6.4B-EG*).

*Guidance on these and other exclusions relevant to ~~insurance mediation activities~~ *insurance distribution activities* is in *PERG 5* (~~Insurance~~ Guidance on insurance ~~mediation~~ distribution activities).*

...

2.10 Persons carrying on regulated activities who do not need authorisation

...

Appointed representatives

- 2.10.5 G With one exception, a *person* is exempt if ~~he is~~ they are an *appointed representative* of an *authorised person*. In some circumstances, however, a *person* may be an *appointed representative* and not be exempt, if the *person* has a *limited permission* for certain *credit-related regulated activities*. See *SUP 12* (Appointed representatives). But where an *appointed representative* carries on ~~*insurance mediation*~~ *insurance distribution* or ~~*reinsurance mediation*~~ *reinsurance distribution*, ~~he~~ that person will not be exempt unless ~~he is~~ they are included on the register kept by the *FCA* under article 93 of the *Regulated Activities Order* (Duty to maintain a record of unauthorised persons carrying on insurance ~~mediation~~ distribution activities) (see *PERG 5.13* (Appointed representatives)).

...

Members of the professions

...

- 2.10.16 G A *person* carrying on *regulated activities* under the regime for members of the professions will be subject to rules made by the professional body designated by the Treasury. Such bodies are obliged to make rules governing the carrying on by their members of those *regulated activities* that they are able to carry on without *authorisation* under the *Act*. Where such a *person* is carrying on ~~*insurance mediation*~~ *insurance distribution* or ~~*reinsurance mediation*~~ *reinsurance distribution*, ~~he~~ that person must also be included on the register kept by the *FCA* under article 93 of the *Regulated Activities Order* (Duty to maintain a record of unauthorised persons carrying on insurance ~~mediation~~ distribution activities) (see *PERG 5.10* (Exemptions)).

...

2 Annex Regulated activities and the permission regime

2

...

2 Table

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
Insurance mediation <u>distribution</u> activity [see note 5A to Table 1]	
(pb) <i>dealing in investments as agent</i> (article 21)	<i>life policy</i> [see note 5B to Table 1]
...	

...

3 Table

Notes to Table 1
...
<p>Note 1B:</p> <p><i>Life policies are contractually based investments. Where the regulated activities listed as designated investment business in (e) to (g) and (j) are carried on in relation to a life policy, these activities also count as ‘insurance mediation activities <u>insurance distribution activities</u>’. The full list of insurance mediation activities <u>insurance distribution activities</u> is set out in (pb) to (pf). The regulated activities of agreeing to carry on each of these activities will, if carried on in relation to a life policy, also come within both designated investment business and insurance mediation activities <u>insurance distribution activities</u>.</i></p>
...
<p>Note 5A:</p> <p>Where they are carried on in relation to a <i>life policy</i>, the activities listed as insurance mediation activities <u>insurance distribution activities</u> in (pb) to (pf) (as well as the regulated activity of agreeing to carry on those activities) are also <i>designated investment business</i>.</p>
...

...

4 Guidance on regulated activities connected with mortgages

4.1 Application and purpose

...

Guidance on other activities

- 4.1.6 G A *person* may be intending to carry on activities related to other forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or *ISA* to repay an interest-only mortgage. Such a *person* should also consult the *guidance* in *PERG* 2 (Authorisation and regulated activities), *PERG* 5 (Guidance on insurance ~~mediation~~ distribution activities) and *PERG* 8 (Financial promotion and related activities). In addition, *PERG* 14 (Guidance on home reversion, and home purchase ~~and regulated sale and rent back agreement~~ activities) has *guidance* on *regulated activities* relating to *home reversion plans*, *home purchase plans* and *regulated sale and rent back agreements*.

...

4.10A Activities regulated under the Mortgage Credit Directive

...

The effect of article 4(4B) on arrangers: Remuneration under the MCD

- 4.10A.1 G *PERG* 5.4 (The business test for insurance ~~mediation~~ distribution) has
7 *guidance* on the meaning of remuneration in the ~~*Insurance Mediation Directive*~~ *IDD*. That *guidance* is also applicable to the meaning of remuneration for the purpose of *PERG* 4.10A.12G.

...

5 Guidance on insurance ~~mediation~~ distribution activities

5.1 Application and purpose

- 5.1.1 G This chapter applies principally to any *person* who needs to know whether ~~he carries~~ they carry on ~~insurance mediation activities~~ insurance distribution activities and is thereby subject to *FCA* regulation. As such it will be of relevance among others to:
- (1) insurance brokers;
 - (2) insurance advisers;
 - (3) *insurance undertakings*; and
 - (4) other *persons* involved in the sale and administration of *contracts of insurance*, even where these activities are secondary to their main business.

...

- 5.1.6 G The purpose of this *guidance* is to help *persons* consider whether they need *authorisation* or a variation of their *Part 4A permission*. Businesses ~~new to regulation~~ who act only as introducers of *insurance business* are directed in particular to *PERG 5.6.2G* (~~article 25(1): arranging (bringing about) deals in investments~~) to *PERG 5.6.9G* (~~Exclusion: Article 72C (Provision of information on an incidental basis))~~) and *PERG 5.15.6G* (~~Flow chart: Introducers~~) to help consider whether they require *authorisation*. This *guidance* also explains the availability to *persons* carrying on ~~*insurancee mediation activities*~~ *insurance distribution activities* of certain exemptions from regulation, including the possibility of becoming an *appointed representative* (see *PERG 5.13.1G* to *PERG 5.13.6G* (*Appointed representatives*)).

...

5.2 Introduction

- 5.2.1 G This *guidance* is based on the statutory instruments made as part of implementing the *IMD* in the *United Kingdom*. This legislation includes the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003* (S.I. 2003/1476), which amends among others the *Regulated Activities Order*, the *Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001* (S.I. 2003/1217), the *Non-Exempt Activities Order* and the *Business Order*. Other legislation that forms the basis of this *guidance* includes the *Financial Services and Markets Act 2000 (Exemption) (Amendment) (No.2) Order 2003* (S.I. 2003/1675), the *Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2003* (S.I. 2003/1676) and the *Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003* (S.I. 2003/1473). For ease of reference, references to the *Regulated Activities Order* below adopt the revised *Regulated Activities Order* numbering indicated in the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003*. [deleted]

...

Questions to be considered to decide if *authorisation* is required

- 5.2.3 G A *person* who is concerned to know whether ~~his~~ their proposed ~~*insurance mediation activities*~~ *insurance distribution activities* may require *authorisation* will need to consider the following questions (~~these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flow chart in~~ *PERG 5.15.2G* (~~Flow chart: regulated activities related to insurance mediation—do you need authorisation?~~)).
- (1) will the activities relate to *contracts of insurance* (see *PERG 5.3* (*Contracts of insurance*))?

- (2) if so, will I be carrying on any ~~insurance mediation activity~~ insurance distribution activity (see *PERG 5.5* (The regulated activities: dealing in contracts as agent) to *PERG 5.11* (Other aspects of exclusions))?
- (3) if so, will I be carrying on my activities by way of business (see *PERG 5.4* (The business test))?
- (4) if so, is there the necessary link with the *United Kingdom* (see *PERG 5.12* (Link between activities and the United Kingdom))?
- (5) if so, will any or all of my activities be excluded (see *PERG 5.3.7G* (Connected contracts of insurance) to *PERG 5.3.8G* (Large risks); ~~*PERG 5.6.5G*~~ *PERG 5.6.4AG* (Exclusion: article 72C Exclusions for the provision of information: article 33B and 72C on an incidental basis) to *PERG 5.6.23G* (Other exclusions); *PERG 5.7.7G* (Exclusions); *PERG 5.8.24G* (Exclusion: periodical publications, broadcasts and web-sites) to *PERG 5.8.26G* (Other exclusions); *PERG 5.11* (Other aspects of exclusions) and *PERG 5.12.9G* to *PERG 5.12.10G* (Overseas persons))?
- (6) if it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under Part XX of the *Act* (see *PERG 5.14.1G* to *PERG 5.14.4G* (Professionals))?
- (7) if not, am I exempt as an *appointed representative* (see *PERG 5.13* (Appointed representatives))?
- (8) if not, am I otherwise an exempt *person* (see *PERG 5.14.5G* (Other exemptions))?

If a *person* gets as far as question (8) and the answer to that question is ‘No’, that *person* requires *authorisation* and should refer to the *FCA* website page “[How to Apply](http://www.fca.org.uk/firms/authorisation/apply-authorisation) apply for authorisation”: www.fca.org.uk/firms/authorisation/apply-authorisation for details of the application process. The order of these questions considers firstly whether a *person* is carrying on ~~insurance mediation activities~~ insurance distribution activities before dealing separately with the questions ‘will I be carrying on my activities by way of business?’ (3) and ‘if so, will any or all of my activities ~~by~~ be excluded?’ (5).

- 5.2.4 G It is recognised pursuant to section 22 of the *Act* that a *person* will not be carrying on *regulated activities* in the first instance, including ~~insurance mediation activities~~ insurance distribution activities, unless ~~he is~~ the person is carrying on these activities by way of business. Similarly, where a *person*’s activities are excluded ~~he~~ that person cannot, by definition, be carrying on *regulated activities*. To this extent, the content of the questions above does not follow the scheme of the *Act*. For ease of navigation, however, the questions are set out in an order and form designed to help *persons* consider more easily, and in turn, issues relating to:

- (1) the ~~new~~ regulated activities;
- (2) the business test; and
- (3) the exclusions.

Approach to implementation of the ~~IMD~~ IDD

- 5.2.5 G The ~~IMD~~ IDD imposes requirements upon *EEA States* relating to the regulation of ~~insurance~~ insurance distribution and ~~reinsurance mediation~~ reinsurance distribution. The ~~IMD~~ IDD defines “~~insurance mediation~~ insurance distribution” and “~~reinsurance mediation~~” as including the activities of ~~introducing~~ advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance and reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. It includes the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media. Reinsurance distribution is similarly defined (excluding the price comparison website activities). (the The text of ~~IDD~~ article 2.3 articles 2.1(1), 2.1(2) and 2.2 ~~IMD~~ is reproduced in full in PERG 5.16.2G (article 2.3 of the Insurance Mediation Directive).).
- 5.2.6 G The *United Kingdom* ~~’s approach to implementing~~ Kingdom has implemented the ~~IMD~~ IDD (and the ~~IMD~~ before it) by domestic legislation is, in part, through secondary legislation, which ~~will apply~~ applies pre-existing *regulated activities* (slightly amended) in the *Regulated Activities Order* to the component elements of the ~~insurance mediation definition~~ insurance distribution and reinsurance distribution definitions in the ~~IMD~~ IDD (see *PERG 5.2.5G* and the text of ~~article 2.3 ~~IMD~~ IDD articles 2.1(1), 2.1(2) and 2.2~~ in *PERG 5.16.2G* (~~article 2.3 Insurance Mediation Directive~~)).
- 5.2.7 G The effect of the ~~IMD~~ and its implementation described in *PERG 5.2.5G* to *PERG 5.2.6G* is to vary the application of the existing *regulated activities* set out in *PERG 5.2.8G(1)* to *PERG 5.2.8G(3)*, *PERG 5.2.8G(5)* and *PERG 5.2.8G(6)*, principally by applying these *regulated activities* to *general insurance contracts* and *pure protection contracts* and by making changes to the application of the various exclusions to these *regulated activities*. These *regulated activities* applied prior to 14 January 2005 to qualifying contracts of insurance (as defined by article 3 of the *Regulated Activities Order* and referred to in the *Handbook* as *life policies* (which includes *pension policies*)). The legislation implementing the ~~IMD~~ introduced a new *regulated activity* set out in *PERG 5.2.8G(4)*, which potentially applies to all *contracts of insurance*. [deleted]

- 5.2.8 G ~~It follows that~~ As a result, each of the *regulated activities* below potentially ~~apply~~ applies to any *contract of insurance*:

...

- 5.2.9 G It is the scope of the *Regulated Activities Order* rather than the ~~IMD~~ IDD which will determine whether a *person* requires *authorisation* or exemption. However, the scope of the ~~IMD~~ IDD is relevant to the application of certain exclusions under the *Regulated Activities Order* (see, for example, the commentary on article 67 in *PERG* 5.11.9G (Activities carried on in the course of a profession or non-investment business)).

Financial promotion

- 5.2.10 G An *unauthorised person* who intends to carry on activities connected with *contracts of insurance* will need to comply with section 21 of the *Act* (Restrictions on financial promotion). This *guidance* does not cover *financial promotions* that relate to *contracts of insurance*. *Persons* should refer to the general *guidance* on *financial promotion* in *PERG* 8 (Financial promotion and related activities). (See in particular *PERG* 8.17A (Financial promotions concerning insurance ~~mediation~~ distribution activities) for information on *financial promotions* that relate to ~~insurance mediation activities~~ insurance distribution activities.)

5.3 Contracts of insurance

...

- 5.3.5 G The *Regulated Activities Order* does not define a *reinsurance* contract. The essential elements of the common law description of a *contract of insurance* are also the essential elements of a *reinsurance* contract. Whilst the ~~IMD~~ IDD addresses insurance and *reinsurance* separately, throughout this *guidance* the term ‘contract of insurance’ (italicised or otherwise) also applies to contracts of *reinsurance*.

...

Connected contracts of insurance

- 5.3.7 G Article 72B of the *Regulated Activities Order* (Activities carried on by a provider of relevant goods or services) excludes from *FCA* regulation certain *regulated activities* carried on by providers of non-motor goods or services and services related to travel in relation to *contracts of insurance* that satisfy a number of conditions. Details about the scope of this exclusion can be found at *PERG* 5.11.13G to ~~*PERG* 5.11.15G~~ *PERG* 5.11.14G (Activities carried on by a provider of relevant goods or services).

...

Specified investments

- 5.3.9 G For an activity to be a *regulated activity*, it must be carried on in relation to ‘specified investments’ (see section 22 of the *Act* (Regulated activities) and Part III of the *Regulated Activities Order* (Specified investments)). For the purposes of ~~*insurance mediation activity*~~ *insurance distribution activity*, *specified investments* include the following ‘*relevant investments*’ defined in article 3(1) of the *Regulated Activities Order* (Interpretation):

...

- 5.3.10 G A *person* will have rights under a *contract of insurance* when ~~he~~ that person is a *policyholder*. The question of whether a *person* has rights under a *contract of insurance* may require careful consideration in the case of group policies (with reference to the *Glossary* definition of *policyholder*). In the case, in particular, of *general insurance contracts* and *pure protection contracts*, the existence or otherwise of rights under such policies may be relevant to whether a *person* is carrying on ~~*insurancee mediation activities*~~ *insurance distribution activities*.

...

5.4 The business test

- 5.4.1 G A *person* will only need *authorisation* or exemption if ~~he is~~ carrying on a *regulated activity* ‘by way of business’ (see section 22 of the *Act* (Regulated Activities)).
- 5.4.2 G There is power in the *Act* for the Treasury to specify the circumstances in which a *person* is or is not to be regarded as carrying on *regulated activities* by way of business. The *Business Order* has been made using this power (partly reflecting differences in the nature of the different activities). As such, the business test for ~~*insurance mediation activity*~~ *insurance distribution activity* is distinguished from the standard test for ‘investment business’ in article 3 of the *Business Order*. Under article 3(4) of the *Business Order*, a *person* is not to be regarded as carrying on by way of business any ~~*insurance mediation activity*~~ *insurance distribution activity* unless ~~he~~ that person takes up or pursues that activity for remuneration. Accordingly, there are two principal elements to the business test in the case of ~~*insurancee mediation activities*~~ *insurance distribution activities*:

- (1) does a *person* receive remuneration for these activities?
- (2) if so, does he take up or pursue these activities by way of business?

- 5.4.3 G (1) As regards *PERG* 5.4.2G(1), the *Business Order* does not provide a definition of ‘remuneration’, ~~but~~, however ‘remuneration’ is defined in the *IDD*. Article 2(1)(9) of the *IDD* defines ‘remuneration’ to mean any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance

distribution activities.

(2) ~~in~~ In the FCA's view, 'remuneration' in the *Business Order* follows the meaning of the *IDD* definition of remuneration, and:

- (a) it has a broad meaning and covers both monetary and non-monetary rewards. This is regardless of who makes them. For example, where a *person* pays discounted premiums for ~~his~~ their own insurance needs in return for bringing other business to an *insurance undertaking*, the discount would amount to remuneration for the purposes of the *Business Order*; ;
- (b) ~~Remuneration~~ it can also take the form of an economic benefit which the *person* expects to receive as a result of carrying on ~~insurance mediation activities~~ insurance distribution activities; ;
- (c) ~~In the FCA's view, the remuneration~~ it does not have to be provided or identified separately from remuneration for other goods or services provided. Nor is there a minimum level of remuneration.

5.4.4 G As regards *PERG* 5.4.2G(2), in the *FCA's* view, for a *person* to take up or pursue ~~insurance mediation activity~~ insurance distribution activity by way of business, ~~he~~ the person will usually need to be carrying on those activities with a degree of regularity. The *person* will also usually need to be carrying on the activities for commercial purposes. That is to say, ~~he~~ the person will normally be expecting to gain a direct financial benefit of some kind. Activities carried on out of friendship or for altruistic purposes will not normally amount to a business. However, in the *FCA's* view:

...

5.4.5 G It follows that whether or not any particular *person* is acting 'by way of business' for these purposes will depend on ~~his~~ that person's individual circumstances. However, a typical example of where the applicable business test would be likely to be satisfied by someone whose main business is not ~~insurance mediation activities~~ insurance distribution activities, is where a *person* recommends or arranges specific insurance *policies* in the course of carrying on that other business and receives a fee or commission for doing so.

5.4.6 G Some typical examples of where the business test is unlikely to be satisfied, assuming that there is no direct financial benefit to the arranger, include:

- (1) arrangements which are carried out by a *person* ~~for himself~~ for their own benefit, or for members of ~~his~~ the person's family;
- (2) where employers provide insurance benefits for staff; and

- (3) where affinity groups or clubs set up insurance benefits for members.

5.4.7 G *PERG* 5.4.8G contains a table that summarises the main issues surrounding the business test as applied to ~~insurance mediation activities~~ *insurance distribution activities* and that may assist *persons* to determine whether they will need *authorisation* or exemption. The approach taken in the table involves identifying factors that, in the *FCA*'s view, are likely to play a part in the analysis. Indicators are then given as to the significance of each factor to the *person's* circumstances. By analysing the indicators as a whole, a picture can be formed of the likely overall position. The table provides separate indicators for the two elements of remuneration and by way of business. As a *person* has to satisfy both elements, a clear overall indication against either element being satisfied should mean that the test is failed. This approach cannot be expected to provide a clear conclusion for everyone. But it should enable *persons* to assess the relevant aspects of their activities and to identify where changes could, if necessary, be made so as to make their position clearer. The *person* to whom the indicators are applied is referred to in the table as 'P'.

5.4.8 G Table: Carrying on insurance ~~mediation~~ *distribution* activities 'for remuneration' and 'by way of business'

Carrying on insurance mediation <i>distribution</i> activities 'for remuneration' and 'by way of business'		
'For remuneration'		
Factor	Indicators that P does not carry on activities 'for remuneration'	Indicators that P does carry on activities 'for remuneration'
Direct remuneration, whether received from the customer or the insurer/broker (cash or benefits in kind such as tickets to the opera, a reduction in other insurance premiums, a remission of a debt or any other benefit capable of being measured in money's worth)	P does not receive any direct remuneration specifically identified as a reward for his <i>P's</i> carrying on insurance mediation activities <i>insurance distribution activities</i> .	P receives direct remuneration specifically identified as being a reward for his <i>P's</i> carrying on insurance mediation activities <i>insurance distribution activities</i> .
Indirect remuneration (such as any form of economic benefit as may be explicitly or implicitly)	P does not obtain any form of indirect remuneration through an economic benefit	P obtains an economic benefit that: (a) is explicitly or implicitly agreed

<p>agreed between P and the insurer/broker or P's customer – including, for example, through the acceptance of P's terms and conditions or mutual recognition of the economic benefit that is likely to accrue to P). An indirect economic benefit can include expectation of making a profit of some kind as a result of carrying on insurance mediation activities <u>insurance distribution activities</u> as part of other services.</p>	<p>other than one which is not likely to have a material effect on P's ability to make a profit from his <u>P's</u> other activities.</p>	<p>between P and the insurer/broker or P's customer; and (b) has the potential to go beyond mere cost recovery through fees or other benefits received for providing a package of services that includes insurance mediation activities <u>insurance distribution activities</u> but where no particular part of the fees is attributable to insurance mediation activities <u>insurance distribution activities</u>. This could include where insurance mediation activities <u>insurance distribution activities</u> are likely to:</p> <p>play a material part in the success of P's other business activities or in P's ability to make a profit from them; or</p> <p>provide P with a materially increased opportunity to provide other goods or services; or</p> <p>be a major selling point for P's other business activities; or</p> <p>be essential for P to provide other goods or services.</p> <p>P charges his customers a greater amount for other goods or services</p>
---	--	--

		<p>than would be the case if P were not also carrying on insurance mediation activities <u>insurance distribution activities</u> for those customers and this:</p> <p>is explicitly or implicitly agreed between P and the insurer/broker or P's customer; and</p> <p>has the potential to go beyond mere cost recovery.</p>
Recovery of costs	<p>P receives no benefits of any kind (direct or indirect) in respect of his insurance mediation activities <u>insurance distribution activities</u> beyond the reimbursement of his actual costs incurred in carrying on the activity (including receipt by P of a sum equal to the insurance premium that P is to pass on to the insurer or broker).</p>	<p>P receives benefits of any kind (direct or indirect) in respect of his insurance mediation activities <u>insurance distribution activities</u> which go beyond the reimbursement of his actual costs incurred in carrying on the activity.</p>
'By way of business'		
Factor	Indicators that P does not carry on activities "by way of business"	Indicators that P does carry on activities "by way of business"
...		
Holding out	<p>P does not hold himself <u>him or herself</u> out as providing a professional service that includes insurance mediation activities <u>insurance distribution activities</u> (by</p>	<p>P holds himself <u>him or herself</u> out as providing a professional service that includes insurance mediation activities <u>insurance distribution</u></p>

	'professional' is meant <u>meaning</u> 'not the services of a layman').	<u>activities.</u>
Relevance to other activities/business	Insurance mediation activities Insurance distribution activities: have no relevance to P's other activities; or have some relevance but could easily be ceased without causing P any difficulty in carrying on his <u>their</u> main activities; or would be unlikely to result in a material reduction in income from P's main activities if ceased.	Insurance mediation activities Insurance distribution <u>activities:</u> are essential to P in carrying on his <u>their</u> main activities; or would cause a material disruption to P carrying on his <u>their</u> main activities if ceased; or would be likely to reduce P's income by a material amount.
Commercial benefit	P receives no direct or indirect pecuniary or economic benefit. P is a layman and acting in that capacity. P would not obtain materially less income from his <u>P's</u> main activities if they did not include insurance mediation activities <u>insurance distribution activities.</u>	P receives a direct or indirect pecuniary or economic benefit from carrying on insurance mediation activities insurance distribution activities – such as a fee, a benefit in kind or the likelihood of materially enhanced sales of other goods or services that P provides. P would obtain materially less income from his <u>P's</u> main activities if they did not include insurance mediation activities insurance distribution <u>activities.</u>

...

5.6 The regulated activities: arranging deals in, and making arrangements with

a view to transactions in, contracts of insurance

...

5.6.4 G ...

Exclusions for provision of information: article 33B and 72C

5.6.4A G Articles 33B and 72C of the *Regulated Activities Order* provide exclusions relating to the provision of information from the *regulated activity of arranging*.

Exclusion: article 33B (Provision of information – contracts of insurance)

5.6.4B G In broad terms, article 33B of the *Regulated Activities Order* excludes from article 25 (*arranging*) activities that consist of:

- (1) the provision of information about a potential policyholder to:
 - (a) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or
 - (b) an insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or
 - (c) an *IDD reinsurance intermediary*; or
- (2) the provision of information to a potential policyholder about:
 - (a) a *contract of insurance*; or
 - (b) a relevant insurer (as defined in article 39B(2) of the *Regulated Activities Order*) or insurance intermediary (as defined in article 2(1)(3) of the *IDD*) or *IDD reinsurance intermediary*,

where the provider of the information does not take any step other than the provision of information to assist in the conclusion of a *contract of insurance*.

5.6.4C G The exclusion in *PERG 5.6.4BG* will be of assistance to persons who would otherwise be carrying on the *regulated activity of arranging*. This exclusion is intended to give effect to article 2.2 of the *IDD* (the text of which is reproduced in *PERG 5.16.2G(2)*) which refers to the ‘mere’ provision of this information without taking any additional steps not being considered to constitute *insurance distribution*. In the *FCA*’s view, the effect of this, and the reference in article 2.2(c) of the *IDD* to ‘data and information on potential policyholders’, is that the exclusion in *PERG 5.6.4BG* covers those situations where a *person* provides existing information they hold on potential policyholders (for example their name and contact details) but does not extend to information they obtain from other means such as pre-purchase questioning.

- 5.6.4D G A person seeking to rely on article 33B cannot provide information other than the information specified in that article. That person also cannot take a step other than the provision of the specified information where such a step would assist in the conclusion of a *contract of insurance*. For example, a person who forwards a proposal form to an *insurance undertaking* would not be able to benefit from the exclusion. Similarly, where a person does more than provide information (for example, by helping a potential policyholder fill in an application form) they would be unable to rely on this exclusion.
- 5.6.4E G This exclusion does not cover the activity of advising a customer under article 53(1) of the *Regulated Activities Order* (Advising on investments (other than P2P agreements)) (see *PERG 5.8* and *PERG 8.24*).

Exclusion: article 72C (Provision of information on an incidental basis)

- 5.6.5 G ~~The Article 72C of the *Regulated Activities Order* provides an important~~ another potential exclusion in relation to article 25, however, only for persons whose principal business is other than ~~*insurance mediation activities*~~ *insurance distribution activities*. In contrast to article 33B, article 72C also provides an exclusion for *regulated activities* other than *arranging*.

...

- 5.6.8 G This exclusion applies to a *person* whose profession or business does not otherwise consist of *regulated activities*. In the *FCA*'s view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. So, the exclusion may be of relevance to *exempt professional firms*. It might also, for example, be relied on by doctors, vets and dentists as well as many businesses in the non-financial sector, even if they have *permission* to carry on *regulated activities* or are *appointed representatives*. This is assuming that their activities for which they are seeking to use the exclusion in article 72C are limited to providing information in a way which is incidental to their main profession or business. ~~The~~ In contrast to article 33B, this exclusion only extends to information given to the *policyholder* or potential *policyholder* and not to the *insurance undertaking*. Unlike article 33B, article 72C does not specify what information may be provided within the scope of the exclusion. An intermediary who forwards a proposal form to an *insurance undertaking* would not be able to take the benefit of the exclusion. Similarly, where a *person* does more than provide information (for example, by helping a potential *policyholder* fill in an application form), ~~he~~ they cannot take the benefit of this exclusion. Nor does it cover the activity of advising a customer under article 53 of the *Regulated Activities Order* (Advising on investments).

- 5.6.9 G The exclusion ~~will~~ may be of assistance to introducers who would otherwise be carrying on the *regulated activity* of *making arrangements with a view to transactions in investments* (~~assuming, as mentioned in PERG 5.6.8G, that they provide information only to policyholders or potential policyholders, and not to the intermediary or insurance undertaking to whom they introduce these policyholders or potential policyholders~~). In order to assist such *introducers* determine whether or not they are likely to require *authorisation*, a simplified flowchart is included in ~~PERG 5.15.6G~~ (Flow chart: introducers). Introducers may also find the guidance at PERG 5.9.2G (The regulated activities: agreeing to carry on a regulated activity) and PERG 5.6.4BG to PERG 5.6.4EG helpful. PERG 5.6.17G (Exclusion from article 25(2) for introducing) has *guidance* to assist *persons* to determine whether their introducing activities amount to *making arrangements with a view to transactions in investments*.

Exclusion from article 25(2): arrangements enabling parties to communicate

...

- 5.6.11 G In the FCA's view, the crucial element of the exclusion in article 27 is the inclusion of the word 'merely'. When a publisher, broadcaster or internet website operator goes beyond what is necessary ~~for him~~ to provide ~~his~~ its service of publishing, broadcasting or otherwise facilitating the issue of promotions, ~~he~~ it may well bring ~~himself~~ itself within the scope of article 25(2). Further detailed *guidance* relating to the scope of the exclusion in article 27 is contained in PERG 2.8.6G(2) (Arranging deals in investments and arranging a home finance transaction) and PERG 8.32.6G to PERG 8.32.11G (Arranging deals in investments).

Exclusion from article 25(2): transactions to which the arranger is a party

...

- 5.6.15 G In some cases, a *person* may make arrangements to enter into a *contract of insurance* as *policyholder* on its own behalf and also arrange that another *person* become a *policyholder* under the same *contract of insurance*. If so, the *person* should be aware that the effect of the narrower exclusion in article 28 as part of implementation of the ~~IMD~~ IDD is that ~~he~~ they may be *arranging* on behalf of the other *policyholder*. This may be relevant, for example, to a *company* which arranges insurance for itself (not *arranging*) as well as other *companies* in a *group* or loan syndicate (potentially *arranging*).

...

Exclusion from article 25(2) for introducing

- 5.6.17 G Article 33 of the *Regulated Activities Order* (Introducing) excludes arrangements which would otherwise fall under article 25(2) where:

...

- (2) the *person* to whom introductions are to be made is:
- (a) an *authorised person*; or
 - (b) an *exempt person* acting in the course of business comprising a *regulated activity* in relation to which ~~he is~~ they are exempt; or
 - (c) a *person* who is not unlawfully carrying on *regulated activities* in the *United Kingdom* and whose ordinary business involves ~~him~~ the person in engaging in certain activities;

...

...

- 5.6.18 G The effect of *PERG* 5.6.17G(4) is that some *persons* who, in making introductions, are *making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order*, cannot use the introducing exclusion. This is usually the case if, ~~in general terms,~~ the arrangements for making introductions relate to *contracts of insurance* (*PERG* 5.6.19G has further *guidance* on when arrangements for introductions may be regarded as relating to *contracts of insurance*). However, this does not mean that all introducers whose introductions relate directly or indirectly to *contracts of insurance* will necessarily require *authorisation* if they cannot use the ~~exclusion~~ exclusions in ~~article~~ articles 33B or 72C of the *Regulated Activities Order* for merely passing information. For ~~this to be the case,~~ a *person* to need authorisation, they must first be carrying on the business of *making arrangements with a view to transactions in investments*. In the *FCA*'s view, the following points will be relevant in determining whether this is the case.

...

...

5.8 The regulated activities: advising on contracts of insurance

...

- 5.8.3 G Each of these aspects is considered in greater detail in the table in *PERG* 5.8.5G. Where an activity is identified as not amounting to *advising on investments* (except P2P agreements) it could still form part of another *regulated activity*. This will depend upon whether a *person*'s activities, viewed as a whole, amount to *arranging*. Additionally, it should be borne in mind that the provision of advice or information may involve the communication of a *financial promotion* (see *PERG* 8 (Financial promotion and related activities)).

...

Advice given to a person in ~~his~~ their capacity as an investor or potential investor

- 5.8.6 G For the purposes of article 53(1), advice must be given to a *person* in ~~his~~ that person's capacity as an investor or potential investor (which, in the context of *contracts of insurance*, will mean as *policyholder* or potential *policyholder*). So, article 53(1) will not apply where advice is given to *persons* who receive it as:

- (1) an adviser who will use it only to inform advice ~~given by him~~ they give to others; or
- (2) a journalist or broadcaster who will use it only for journalistic purposes.

- 5.8.7 G Advice will still be covered by article 53(1) even though it may not be given to any particular *policyholder* (for example, advice given in a periodical publication or on a website). Such advice would, however, be unlikely to be a *personal recommendation* (see PERG 5.8.3AG, PERG 8.24.1G and PERG 8.30BG).

...

Advice must relate to the merits (of buying or selling a contract of insurance)

...

- 5.8.13 G The requirements imposed by the ~~IMD~~ IDD (see PERG 5.2.5G (Approach to implementation of the ~~IMD~~ IDD)) and the text of ~~article 2.3~~ IMD IDD articles 2.1(1), 2.1(2) and 2. 2 in PERG 5.16.1G (article 2.3 of the Insurance Mediation Directive) are narrower than the scope of the *Regulated Activities Order* (see PERG 5.2.7G (Approach to implementation of the ~~IMD~~ IDD)). ~~This is that, unlike~~ Unlike the *Regulated Activities Order*, they do not relate to the assignment of *contracts of insurance*. This is of relevance to, amongst others, *persons* involved in the 'second-hand' market for *contracts of insurance* such as traded endowment policies and certain viatical instruments (that is, arrangements by which a terminally ill person can obtain value from ~~his~~ their *life policy*) (see also PERG 5.6.12G (Exclusion from article 25(2): transactions to which the arranger is a party)). *Persons* advising on or arranging assignments of these *contracts of insurance* are therefore potentially carrying on *regulated activities* although they may be able to take the benefit of article 67 of the *Regulated Activities Order* (Activities carried on in the course of a profession or non-investment business) in certain circumstances (see PERG 5.11.9G to PERG 5.11.12G (Activities carried on in the course of a profession or non-investment business)).

...

Medium used to give advice

- 5.8.20 G With the exception of:

- (1) periodicals, broadcasts and other news or information services (see *PERG 5.8.24G* to *PERG 5.8.25G* (Exclusion: periodical publications, broadcasts and web-sites)); and
- (2) situations involving an overseas element (see, generally, *PERG 5.12* (Link between activities and the United Kingdom) and, in particular, *PERG 5.12.8G* (Where is insurance ~~mediation~~ distribution carried on?))²

the use of the medium itself to give advice should make no material difference to whether or not the advice is caught by article 53(1).

...

5.9 The Regulated Activities: agreeing to carry on a regulated activity

...

- 5.9.2 G To the extent that an exclusion applies in relation to a *regulated activity*, ‘agreeing’ to carry on an activity within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order* (Specified activities: general). So, for example, a vet can, without carrying on a *regulated activity*, enter into an agreement with an *insurance undertaking* to distribute marketing literature provided that the vet can rely on the exclusion in article 72C (Provision of information on an incidental basis) or article 33B (Provision of information – contracts of insurance) in relation to the activity of distributing the literature (see also ~~*PERG 5.6.6 G*~~ *PERG 5.6.4AG* and to *PERG 5.6.9G* which cover exclusions (Exclusion: article 72C (Provision for the provision of information on an incidental basis))). However, ~~to be able to rely on the exclusion in article 72C, the vet must not be viewed as providing information to the insurance undertaking. More specifically, an unauthorised introducer can enter into standing arrangements with insurance undertakings or brokers to make introductions, provided that these arrangements do not envisage subsequent provision of information to these insurance undertakings or brokers with a view to arranging (bringing about) deals in investments or making arrangements with a view to transactions in investments.~~

5.10 Renewals

- 5.10.1 G It must be emphasised that activities which concern invitations to renew *policies* and the subsequent effecting of renewal of *policies* are likely to fall within ~~*insurance mediation activity*~~ *insurance distribution activity*. Those considering the need for *authorisation* or variation of their *permissions* will wish to consider whether a process of tacit renewal operates: that is, where a *policyholder* need take no action if ~~he wishes~~ they wish to maintain ~~his~~ their insurance cover by having ~~his~~ their *policy* ‘renewed’. This process will typically result in the issue of a new *contract of insurance*, not an extension of the period of the existing one. It may involve the activities of *advising on*

investments, arranging and dealing in investments as agent. More specifically, preparing a ‘tacit renewal’ letter on behalf of an *insurance undertaking* is likely to amount to *arranging*. Where it contains a recommendation to renew existing cover this is likely to constitute *advising on investments (except P2P agreements)* (under article 53(1) of the *Regulated Activities Order*). If the contract takes effect on the date stipulated in the renewal letter, a contract is concluded with the effect that the letter writer may be *dealing in investments as agent*. The process may also involve a *regulated activity* under article 64 (Agreeing to carry on a regulated activity).

5.11 Other aspects of exclusions

5.11.1 G This part of the *guidance* deals with:

...

(2) exclusions which are disapplied where a *person* carries on *insurance mediation distribution*; and

...

5.11.2 G ~~There are a number of ‘pre-IMD’~~ Several exclusions that would have the effect of restricting the scope of the *regulated activities* referred to in this *guidance*. ~~Several of these are disapplied or modified as part of implementation of the IMD in order to properly implement IDD.~~

Exclusions disapplied where activities relate to contracts of insurance

5.11.3 G ~~The exclusions outlined in (1) to (7) were available to intermediaries (and in some cases insurance undertakings) acting in connection with life policies before 14 January 2005. In essence, however, the following exclusions do not apply if they concern transactions relating to contracts of insurance:~~

...

5.11.4 G The restrictions placed on the exclusions listed in *PERG 5.11.3G* ~~on 14 January 2005~~ have the following effects: ~~;~~

...

(2) *Unauthorised persons* may, however, be able to rely on the ~~exclusion~~ exclusions for the provision of information in article 33B or provision of information on an incidental basis in article 72C to ~~continue to~~ avoid the need for *authorisation* (see ~~*PERG 5.6.5G*~~ *PERG 5.6.4AG* to *PERG 5.6.9G* which cover exclusions ~~(Exclusion: article 72C (Provision for the provision of information on an incidental basis)))~~).

- (3) *Authorised persons* who themselves introduce clients or customers to others for the purposes of *buying or selling* any kind of *contract of insurance* are likely to require a variation of their *Part 4A permission* ~~permission~~ to carry out *arranging* activities, as neither article 33 nor, generally, article 72C (see *PERG 5.6.5G* to *PERG 5.6.9G* (Exclusion: article 72C (Provision of information on an incidental basis))) will apply ~~where this activity amounts to arranging~~. Article 33B could apply, but the authorised person would need to be merely providing information and taking no additional steps to assist in the conclusion of the contract of insurance.

5.11.5 G *Insurance undertakings* are referred to *MIPRU 5* (*Insurance undertakings distributors* and *mortgage lenders home finance providers* using insurance *distribution* or *mortgage home finance* mediation services) as regards their obligations relating to the use of intermediaries generally.

5.11.6 G (1) The ~~removal of the~~ exclusion for *groups* and *joint enterprises* in article 69 of the *Regulated Activities Order* (*Groups* and *joint enterprises*) ~~does not apply to transactions relating to contracts of insurance~~. This will affect ~~may have implications for~~ a *company* providing services for:

- (a) other members of its *group*; or
- (b) other participants in a *joint enterprise* of which it is a participant.

...

- (3) In the *FCA*'s view, particular issues arise in applying the 'by way of business' test to *group companies*. Recital 11 of the ~~*Insurance Mediation Directive*~~ *IDD* states that the Directive should apply to *persons* whose activity consists in providing insurance ~~mediation or reinsurance distribution~~ services to third parties ~~for remuneration~~. This Recital 11 suggests that the Directive is intended to apply only where the service is provided to a third party. The expression 'third party' is not defined in the Directive. The *FCA* considers that a *group company* that is providing services solely for the benefit of other *group companies* would not normally be regarded as providing services to a third party. The *group company* also needs to be receiving remuneration for the activities (see *PERG 5.4.2G(1)*). The *FCA* also considers that, ~~as a result~~, a *group company* providing services solely for the benefit of other *group companies* should not normally be regarded as satisfying the requirement that it be remunerated for providing insurance ~~mediation~~ *distribution* services to third parties. Were a *group company* to be remunerated other than by another *group company*, however, the situation may be different. For example, if the *group company* receives commission from an insurer or broker, the fact would tend to suggest that the *company*

has been rewarded for providing a service to the insurer or broker. In the *FCA* 's view, it is appropriate to apply this principle to a *group* as defined in section 421 (Group) of the *Act*.

- (4) The *FCA* considers that similar principles to those applied to a *group company* in (2) may be applied to the participants in a *joint enterprise*. This would be where one participant in the *joint enterprise* is providing services solely for the benefit of another participant and for the purposes of the *joint enterprise* and who provides insurance ~~mediation~~ distribution services to one or more participants for the purposes of or in connection with the *joint enterprise*.

Exclusions disapplied in connection with insurance ~~mediation~~ distribution

- 5.11.7 G Article 4(4A) of the *Regulated Activities Order* (Specified activities: general) disapplies certain exclusions where a *person*, for remuneration, takes up or pursues *insurance* ~~mediation~~ distribution or *reinsurance* distribution (as defined in ~~article 2.3~~ articles 2.1(1), 2.1(2) and 2.2 of the ~~IMD~~ IDD (see *PERG* 5.2.5G (Approach to implementation of the ~~IMD~~ IDD) and *PERG* 5.16.2G (~~Text of article 2.3 of the Insurance Mediation Directive~~)) in relation to a risk or commitment located in an *EEA state* State. The relevant exclusions which are disapplied are:

...

...

Activities carried on in the course of a profession or non-investment business

...

- 5.11.10 G Although the article 67 exclusion is disapplied (by article 4(4A) of the *Regulated Activities Order* (Specified investments: general)) when a *person* takes up or pursues *insurance* ~~mediation~~ insurance distribution or ~~reinsurance mediation~~ reinsurance distribution as defined by ~~articles 2.3~~ articles 2.1(1), 2.1(2) and 2.2 of the ~~IMD~~ IDD, there may be cases where a *person* is not carrying on activities that amount to *insurance* ~~mediation~~ insurance distribution. For example, where a *person*'s activities amount simply to the provision of information on an incidental basis in the context of another professional activity, these may fall outside the scope of ~~article 2.3~~ articles 2.1(1) and 2.1(2) of the ~~IMD~~ IDD (see *PERG* 5.16.2G (~~article 2.3 of the Insurance Mediation Directive~~)) and the exclusion in article 67 may then operate to exclude these activities. Also, it is possible that a professional *person*'s activities may not amount to a *regulated activity* at all. For example, a doctor who provides a medical report to an *insurer* may be regarded as making arrangements with a view to providing an expert medical opinion rather than with a view to transactions in *contracts of insurance*. In such cases, article 67 will not be needed.

- 5.11.11 G Article 67 may also apply to activities relating to assignments of insurance

policies, as, in the FCA's view, article ~~2.3~~ 2.1(1) of the ~~IMD~~ IDD applies essentially to the creation of new *contracts of insurance* and not the assignment of rights under existing *policies*. As such, where a solicitor or licensed conveyancer arranges an assignment of a *contract of insurance*, the exclusion in article 67 remains of potential application. For similar reasons, trustees advising on or arranging assignments of *contracts of insurance* may, in certain circumstances, be able to rely on the exclusions in article 66 of the *Regulated Activities Order*.

- 5.11.12 G For article 67 to apply in these cases, in addition to *PERG* 5.11.9G(1) and (2), the activity in question must not be remunerated separately from other services (article 67(2) of the *Regulated Activities Order*).

Activities carried on by a provider of relevant goods or services

- 5.11.13 G Article 72B (see also *PERG* 5.3.7G (Connected contracts of insurance)) may be of relevance to *persons* who supply non-motor goods or services or provide services related to travel in the course of carrying on a profession or business which does not otherwise consist of carrying on *regulated activities*. In the FCA's view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. For example, a travel agent might carry on ~~insurance mediation activities~~ insurance distribution activities in relation to some *contracts of insurance* that satisfy the conditions of article 72B and some that do not. The former contracts will be excluded from regulation even though the travel agent must seek *authorisation* or become an *appointed representative* to be permitted to sell the latter contracts. The exclusion applies to ~~insurance mediation activities~~ insurance distribution activities when carried on in relation to 'connected contracts of insurance'. In broad terms, a 'connected contract of insurance' is a *contract of insurance* which:

- (1) is not a contract of long-term insurance (as defined by article 3 of the *Regulated Activities Order* (Interpretation));
- (2) ~~has a total duration (including rights to renewal) of five years or less;~~ [deleted]
- (3) has an annual *premium* ~~(or the equivalent of annual premium)~~ of:
 - (a) ~~€500~~ 600 euro or less (calculated on a pro rata annual basis); or
 - (b) 200 euro or less, where the contract of insurance is complementary to a service being provided by the provider and the duration of that service is equal to or less than three months,

or equivalent amounts of sterling or another currency;

- (4) covers:
 - (a) the risk of breakdown, loss of, or damage to, non-motor goods supplied by the provider; ~~or~~
 - (b) travel risks; or
 - (c) the risk of the non-use of services;
- (5) does not cover any liability risks (except, in the case of a contract which covers travel risks, where the cover is ancillary to the main cover provided by the contract); and
- (6) is complementary to the non-motor goods being supplied or service being provided by the provider; ~~÷ and~~
- (7) ~~is of such a nature that the only information that a person requires in order to carry on one of the insurance mediation activities is the cover provided by the contract.~~ [deleted]

...

- 5.11.15 G ~~In the FCA's view, the condition in PERG 5.11.13G (7) is likely to be satisfied where the insurance mediation activities relate to a standard form contract of insurance, the terms of which (other than the cost of the premium) are not subject to negotiation.~~ [deleted]

...

5.12 Link between activities and the United Kingdom

Introduction

...

- 5.12.3 G The table in PERG 5.12.4G is a very simplified summary of territorial issues relating to overseas insurance intermediaries carrying on the business of ~~insurance mediation activities~~ insurance distribution activities in or into the *United Kingdom* for remuneration.
- 5.12.4 G Table: Territorial issues relating to overseas insurance intermediaries carrying on ~~insurance mediation activities~~ insurance distribution activities in or into the *United Kingdom*

...		
For EEA-based intermediaries this table assumes that the insurance mediation activities <u>insurance distribution activities</u> are within the scope of the <i>Insurance Mediation Directive</i> <u>IDD</u> .		

Where are insurance ~~mediation~~ distribution activities carried on?

- 5.12.5 G *Persons carrying on ~~insurance mediation activities~~ insurance distribution activities from a registered office or head office in the United Kingdom will clearly be carrying on regulated activities in the United Kingdom. However, a person may be considered to be carrying on regulated activities in the United Kingdom even where not carrying on the activity from a registered office or head office in the United Kingdom. This is explained further in PERG 5.12.6G to PERG 5.12.8G.*

...

- 5.12.8 G *Otherwise, where the cases in PERG 5.12.7G(1) do not apply, it is necessary to consider further the nature of the activity in order to determine where ~~insurance mediation~~ insurance distribution is carried on. Persons that arrange contracts of insurance will usually be considered as carrying on the activity of arranging in the location where these activities take place. As for dealing activities, the location of the activities will depend on factors such as where the acceptance takes place, which in turn will depend on the method of communication used. In the case of advising, this is generally considered to take place where the advice is received.*

Overseas persons

- 5.12.9 G *Article 72 of the Regulated Activities Order (Overseas persons) provides a potential exclusion for persons with no permanent place of business in the United Kingdom from which regulated activities are conducted or offers to conduct regulated activities are made. Where these persons carry on ~~insurance mediation activities~~ insurance distribution activities in the United Kingdom, they may be able to take advantage of the exclusions in article 72 of the Regulated Activities Order. In general terms, these apply where the overseas person either:*

...

- 5.12.10 G *The overseas person exclusion is available to persons who do not have a permanent place of business in the United Kingdom and so is of relevance to third country intermediaries (that is, non EEA-based intermediaries) who carry on ~~insurance mediation activities~~ insurance distribution activities in, or into, the United Kingdom (for example with or through authorised insurance brokers and insurance undertakings operating in the Lloyd's market).*

How should persons be authorised?

- 5.12.11 G *UK-based persons must obtain Part 4A permission in relation to their ~~insurance mediation activities~~ insurance distribution activities in the United Kingdom as one of the following:*

- (1) *a body corporate whose registered office is situated in the United Kingdom; or*

- (2) a *partnership* or unincorporated association whose head office is situated in the *United Kingdom*; or
- (3) an individual (that is, a sole trader) whose residence is situated in the *United Kingdom*.

The *United Kingdom* will, in each case, be the *Home State* for the purposes of the ~~IMD~~ IDD for insurance or reinsurance intermediaries (see further in connection with the *E-Commerce Directive* in PERG 5.12.15G to PERG 5.12.17G (E-Commerce Directive)).

- 5.12.12 G Non-UK-based *persons* wishing to carry on ~~insurance mediation activities~~ insurance distribution activities in the *United Kingdom* must:

...

Passporting

- 5.12.13 G The effect of the ~~IMD~~ IDD is that any *EEA*-based insurance intermediaries doing business within the Directive's scope must first be registered in their home *EEA State* before carrying on ~~insurance mediation~~ insurance distribution in that *EEA State* or other *EEA States*. For these purposes, an *EEA*-based insurance intermediary is either:

- (1) a legal *person* with its registered office or head office in an *EEA State* other than the *United Kingdom*; or
- (2) a natural *person* resident in an *EEA State* other than the *United Kingdom*.

Registered *EEA*-based insurance intermediaries wishing to establish branches in the *United Kingdom* or provide services on a cross-border basis into the *United Kingdom* can do so by notifying their *Home State regulator* which in turn notifies the *FCA*. This enables the intermediary to acquire passporting rights for business within the Directive's scope (so excluding ~~insurance mediation activities~~ insurance distribution activities relating to *connected contracts* or *connected travel insurance contracts*) under Schedule 3 to the *Act* (~~EEA passporting rights~~) (see Schedule 3(13) and (14) of the *Act* as amended by the Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003). SUP 13A (Qualifying for authorisation under the *Act*) has general *guidance* on the exercise of passporting rights by *EEA firms*.

- 5.12.14 G On the other hand, non-*EEA*-based insurance intermediaries wishing to establish a branch in the *UK* for the purpose of carrying on ~~insurance mediation activities~~ insurance distribution activities may only do so with *Part 4A permission*.

E-Commerce Directive

- 5.12.15 G ...

- 5.12.16 G The *E-Commerce Directive* does not remove the ~~IMD~~ IDD requirement for persons taking up or pursuing ~~insurance mediation~~ insurance distribution for remuneration to be registered in their *Home State*. Nor does it remove the requirement for *EEA*-based intermediaries to acquire passporting rights in order to establish branches in the *United Kingdom* (see *PERG* 5.12.7G (~~Where is insurance mediation carried on?~~) in relation to *electronic commerce activity* carried on from an establishment in the *United Kingdom*) or provide services on a cross-border basis into the *United Kingdom* where the relevant activity is carried on in the *United Kingdom*. An example of *electronic commerce activity* provided on a cross-border basis into the *United Kingdom* could be a recommendation in a (solicited) e-mail from an *EEA*-based intermediary to a *UK*-based customer to *buy* a particular *contract of insurance*.
- 5.12.17 G Put shortly, the *E-Commerce Directive* relates to services provided into the *United Kingdom* from other *EEA States* and from the *United Kingdom* into other Member States. In broad terms, such cross-border insurance ~~mediation~~ distribution services provided by an *EEA firm* into the *United Kingdom* (via *electronic commerce activity* or distance means) will generally be subject to ~~IMD~~ IDD registration in, and conduct of business regulation of, the intermediary's *EEA State* of origin. By contrast, insurance ~~mediation~~ distribution services provided in the *United Kingdom* will be subject to *UK* conduct of business regulation, although the requirement for registration will again depend upon the intermediary's *EEA State* of origin.

5.13 Appointed representatives

...

Business for which an appointed representative is exempt

- 5.13.3 G An *appointed representative* can carry on only those *regulated activities* which are specified in the *Appointed Representatives Regulations*. The *regulated activities* set out in the table in *PERG* 5.13.4G are included in those regulations. As set out in the table, the ~~insurance mediation activities~~ insurance distribution activities that can be carried on by an *appointed representative* differ depending on the type of *contracts of insurance* in relation to which the activities are carried on.

- 5.13.4 G Insurance ~~mediation~~ distribution activities able to be carried on by an appointed representative. This table belongs to *PERG* 5.13.3G.

...

~~Persons who are not already~~ Becoming an appointed representative
representative

- 5.13.5 G A person ~~who is not already an appointed representative~~ may wish to become ~~one~~ an appointed representative in relation to one or more of the

~~regulated activities~~ insurance distribution activities specified in the *Appointed Representatives Regulations* (see table in *PERG 5.13.4G*). If so, ~~he the person~~ must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities* and who accepts responsibility for the *appointed representative's* actions when acting for ~~him them~~. *SUP 12.4* (What must a firm do when it appoints an appointed representative or an EEA tied agent?) and *SUP 12.5* (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made. In particular, an *appointed representative* will not be able to commence an ~~insurance mediation activity~~ insurance distribution activity until ~~he is~~ that appointed representative is included on the *Financial Services Register* for such activities.

Persons who are already appointed representatives

- 5.13.6 G Where a *person (A)*, who is already an *appointed representative*, ~~and he~~ proposes to start to carry on any ~~insurance mediation activities~~ insurance distribution activities, ~~he A~~ will need to consider the following matters.
- (1) ~~He A~~ must become *authorised* if ~~his the proposed insurance mediation activities~~ insurance distribution activities that A proposes to carry on include activities that do not fall within the table in *PERG 5.13.4G* (for example, *dealing as agent in pure protection contracts*) ~~and he wishes to carry on these activities~~. The Act does not permit any *person* to be exempt for some activities and *authorised* for others (although a *person* with only a *limited permission* for certain *credit-related regulated activities* may also be an *appointed representative* for other *regulated activities* specified in the *Appointed Representatives Regulations* (see *SUP 12.2.3G*)). ~~He A~~ will, therefore, need to apply for *permission* to cover all the *regulated activities* that ~~he A propose~~ proposes to carry on.
 - (2) If ~~he A~~ proposes to carry on ~~other regulated activities~~ that are specified in the *Appointed Representatives Regulations* in relation to *contracts of insurance* (see the table in *PERG 5.13.4G*), ~~he A~~ may be able to do so as an *appointed representative* bearing in mind the following.
 - (a) ~~He A~~ will need to be appointed by an *authorised person* prepared to accept responsibility for ~~his A's insurance mediation activities~~ insurance distribution activities when acting for ~~him the authorised person~~. The *authorised person* must have *permission* to carry on these *regulated activities*.
 - (b) If these ~~insurance mediation activities~~ insurance distribution activities are to be carried on for the same *authorised person* who has already appointed ~~him A~~ for ~~his~~ other *regulated activities*, the contract between them will need to be amended to reflect the additional activities.

Other amendments to the contract will be required (see SUP 12.5.6AR).

- (c) ~~The effect of amendments to the Appointed Representatives Regulations is that an A appointed representative cannot commence an insurance mediation activity~~ insurance distribution activity until ~~he~~ he A is included on the *Financial Services Register* as carrying on such activities.
- (d) ...
- (e) If ~~the A's~~ activities of ~~the appointed representative~~ are limited to introducing, ~~he~~ he A should consider the specific *Handbook* provisions relating to *introducer appointed representatives* (see SUP 12 (What must a firm do when it appoints an appointed representative or an EEA tied agent?)).

5.14 Exemptions

Professionals

- 5.14.1 G *Professional firms* (broadly firms of solicitors, accountants and actuaries) may carry on ~~insurance mediation activities~~ insurance distribution activities in the course of their professional activities. *Exempt professional firms* carrying on ~~insurance mediation activities~~ insurance distribution activities may continue to be able to use the *Part XX exemption* to avoid any need for *authorisation*. *PROF 2* (Status of exempt professional firm) contains *guidance* on the *Part XX exemption*. They will, however, need to be shown on the *Financial Services Register* as carrying on ~~insurance mediation activities~~ insurance distribution activities, in order to benefit from this exemption. The task of registration is the responsibility of the *designated professional bodies* who will need to inform the *FCA* both of member firms carrying on ~~insurance mediation activities~~ insurance distribution activities and individuals within *firms'* management responsible for these activities.

...

- 5.14.3 G *Professional firms* should be aware of the disapplication of the exclusions for trustees (article 66) and activities carried on in the course of a profession or non-investment business (article 67) outlined in *PERG 5.11.7G* (Exclusions disapplied in connection with ~~insurance mediation~~ insurance distribution) where their activities would amount to ~~insurance mediation~~ insurance distribution. Where they do not, they will still be able to rely upon article 67. Otherwise, the ~~Nonexempt Activities Order~~ Non-Exempt Activities Order imposes limitations on the extent to which *professional firms* can give advice to individuals. In particular, a *professional firm* cannot ~~recommend~~ make a recommendation to a private client ~~that he to~~

buy a life policy, unless ~~he~~ it is endorsing a corresponding recommendation given to the client. The recommendation ~~he~~ it endorses must be one given by an authorised person permitted to advise on life policies, or an exempt person for these purposes. No such restrictions apply, however, in relation to contracts of insurance other than life policies.

...

Other exemptions

- 5.14.5 G In addition to certain named *persons* exempted by the *Exemption Order* from the need to obtain *authorisation*, the following bodies are exempt in relation to ~~*insurance mediation activities*~~ *insurance distribution activities* that do not relate to *life policies*:

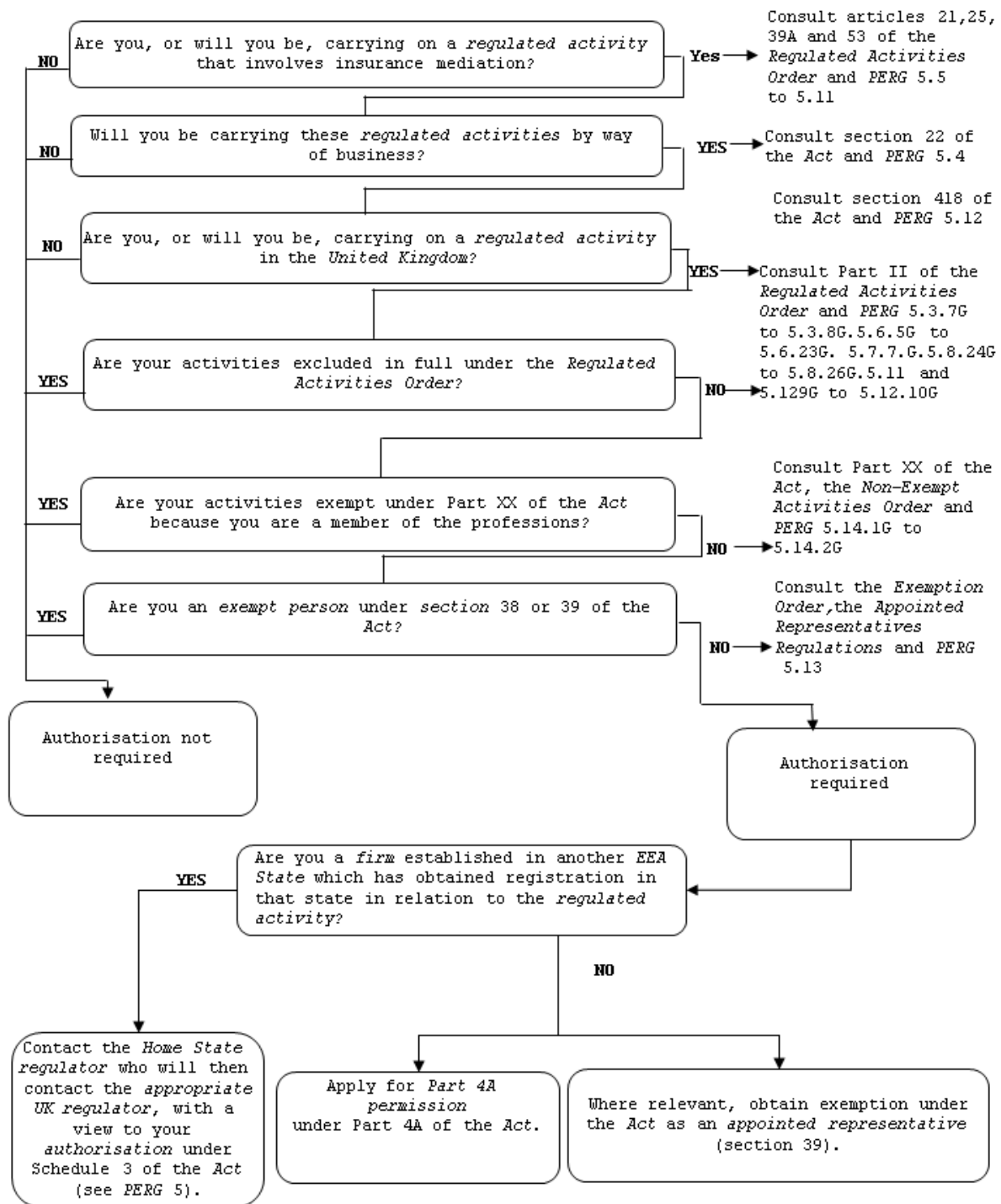
...

5.15 Illustrative tables

- 5.15.1 G ~~This flow chart sets out the matters a person will need to consider to see if he will need *authorisation* for carrying on *insurance mediation activities*. It is referred to in PERG 5.2.3G (Questions to be considered to decide if *authorisation* is required).~~ [deleted]
- 5.15.2 G ~~Flow chart: regulated activities related to *insurance mediation activities*—do you need *authorisation*?~~ [deleted]

[Editor's note: the flow chart that follows is deleted but is not shown struck through]

Regulated activities related to insurance mediation
activities – do you need authorisation?



5.15.3 G The table in PERG 5.15.4G is designed as a short, user-friendly guide but should be read in conjunction with the relevant sections of the text of this *guidance*. It is not a substitute for consulting the text of this *guidance* or seeking professional advice as appropriate (see PERG 5.1.6G on the effect

of this *guidance*). References in this table to articles are to articles of the *Regulated Activities Order*. In this table, it is assumed that each of the activities described is carried on by way of business (see *PERG* 5.4). Save where otherwise indicated, it is assumed that the intermediary is carrying on activities in respect of *policies* where ~~he~~ the intermediary is not the *policyholder*. Also, that this table does not provide an exhaustive list of all of the exclusions or exemptions that are of relevance to each type of activity. For a full explanation of the exclusions and exemptions under the *Regulated Activities Order* and their applicability see generally *PERG* 5.3.7G to *PERG* 5.3.8G, ~~*PERG* 5.6.5G~~ *PERG* 5.6.4AG to *PERG* 5.6.23G, *PERG* 5.7.7G, *PERG* 5.8.24G to *PERG* 5.8.26G, *PERG* 5.11, *PERG* 5.12.9G to *PERG* 5.12.10G, *PERG* 5.13 and *PERG* 5.14. This ~~table~~ Table is referred to in *PERG* 5.7.5G (The regulated activities: assisting in the administration and performance of a contract of insurance).

5.15.4 G Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
MARKETING AND EFFECTING INTRODUCTIONS		
Passive display of information - for example, medical insurance brochures in doctor's surgery (whether or not remuneration is received for this activity)	No.	Merely displaying information does not constitute making arrangements under article 25(2) (see <i>PERG</i> 5.6.4G).
Recommending a broker/insurance undertaking and providing Providing a customer with contact details <u>or information about a broker / insurance undertaking</u> (whether by phone, fax, e-mail, face-to-face or any other means of communication)	Yes, but article 33B or 72C <u>articles 33B or 72C</u> may be available.	This will constitute making arrangements under article 25(2). But, the exclusion <u>exclusions</u> in article 72C <u>articles 33B or 72C</u> will apply if all the intermediary does is supply information to the customer and the <u>relevant</u> conditions of article 72C <u>those exclusions</u> are otherwise met (see <i>PERG</i> 5.6.5G <i>PERG</i> 5.6.4AG to <i>PERG</i> 5.6.9G). Generally, this will not amount to advice under article 53(1) unless there is an implied recommendation of a particular <i>policy</i> (see <i>PERG</i> 5.8.4G), in which case article 72C <u>articles 33B and 72C</u> would not be available.

Providing an <i>insurance undertaking</i> /broker with contact details of customer	Yes, <u>but article 33B may be available.</u>	This will constitute making arrangements under article 25(2) when undertaken in the context of regular or ongoing arrangements for introducing customers. Article 72C will not apply because the information is supplied to someone other than the policyholder or potential policyholder. <u>Article 33B applies to the provision of information about a potential policyholder to an insurance undertaking or an insurance or reinsurance intermediary, and so may apply here if the relevant conditions are met. It will only apply if the provider of the customer information does not take any step other than providing the information to assist in the conclusion of a contract of insurance.</u>
Marketing on behalf of <i>insurance undertaking</i> to intermediaries only (for example, broker consultants)	Yes.	This amounts to work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). <u>Article 33B does not apply because the information provided to the intermediary doesn't relate to a potential policyholder, and isn't provided to a policyholder.</u> Article 72C is not available because this activity does not involve provision of information to the <i>policyholder</i> or potential <i>policyholder</i> only.
Telemarketing services (that is, companies specialising in marketing an <i>insurance undertaking's</i> products/services to prospective customers)	Yes.	This amounts to introducing and/or other work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). This could also involve article 25(1) <i>arranging</i> where the telemarketing company actually <i>sells</i> a particular <i>policy</i> , and could involve <i>advising on investments</i> . <u>Article 33B is unlikely to apply, as the telemarketing company is likely to be actively persuading the customer rather than merely providing information.</u> Article 72C will not be available where the provision of information is more than incidental to

		the telemarketing company's main business of . <u>Articles 33B and 72C will not be available</u> where the telemarketing company is <i>advising on investments</i> .
PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE		
Discussion with client about need for insurance generally/need to take out a particular type of insurance	Generally, no. Article <u>Articles 33B or 72C</u> available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to <i>arranging</i> . If so, article <u>articles 33B or 72C</u> might be of application (see <i>PERG 5.6.5G</i> to <i>PERG 5.6.9G</i>).
Advising on the level of cover needed	Generally, no. Article <u>Articles 33B or 72C</u> available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to making arrangements under article 25(2) (see <i>PERG 5.8.3G</i>). If so, article <u>articles 33B or 72C</u> might be of application (see <i>PERG 5.6.5G</i> <u><i>PERG 5.6.4AG</i></u> to <i>PERG 5.6.9G</i>).
Pre-purchase questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several <i>policies</i> which suit the answers given)	Yes. Subject to article 72 C exclusion where available.	This will constitute <i>arranging</i> although article 72C may be of application (see <i>PERG 5.6.5G</i> <u><i>PERG 5.6.4AG</i></u> to <i>PERG 5.6.9G</i>). If there is no express or implied recommendation of a particular <i>policy</i> , this activity will not amount to advice under article 53(1) (see <i>PERG 5.8.15G</i> to <i>PERG 5.8.19G</i>).
Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies	Possibly. Article 72C available.	This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve <i>advising on investments (except P2P agreements)</i> (see <i>PERG 5.8.8G</i> (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i> , and does not involve <i>advising on investments (except P2P agreements)</i> , article 72C may be of application (see <i>PERG 5.6.5G</i> to <i>PERG 5.6.9G</i>), and where

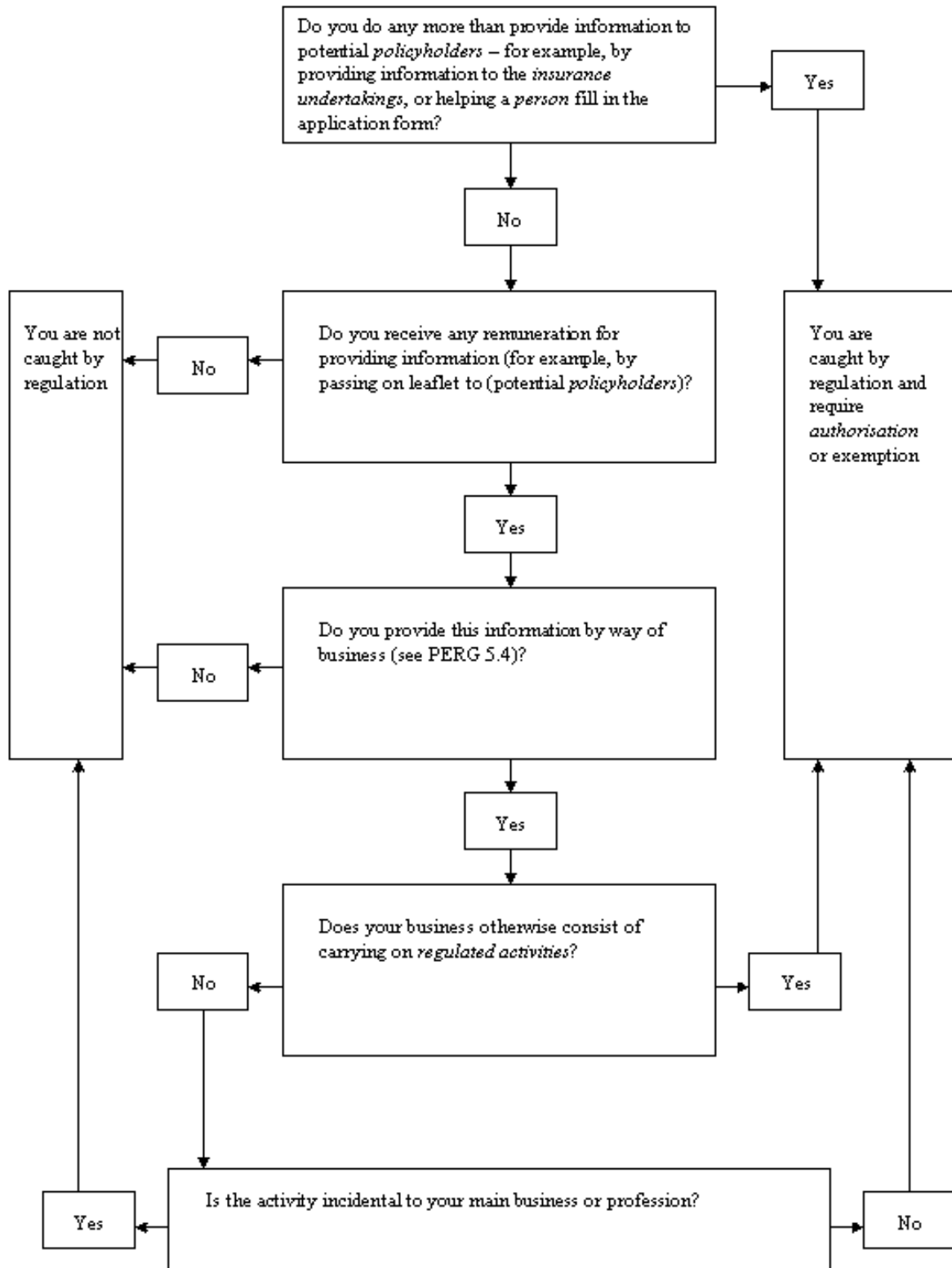
		information is provided by a professional in the course of a profession, article 67 may apply (see <i>PERG 5.11.9G</i> to <i>PERG 5.11.12G</i>). <u>Article 33B will not be available where this involves taking steps other than the provision of information.</u>
Advising that a customer take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53(1) (see <i>PERG 5.8.4G</i> to <i>PERG 5.8.5G</i>).
Advising that a customer does not take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53(1) (see <i>PERG 5.8.4G</i> to <i>PERG 5.8.5G</i>).
Advice by journalists in newspapers, broadcasts etc.	Generally, no because of the article 54 exclusion.	Article 54 provides an exclusion for advice given in newspapers etc (see <i>PERG 5.8.24G</i> to <i>PERG 5.8.25G</i>).
Giving advice to a customer in relation to his buying a consumer product, where insurance is a compulsory secondary purchase and/or a benefit that comes with <i>buying</i> the product	Not necessarily but depends on the circumstances.	Where the advice relates specifically to the merits of the consumer product, it is possible that references to the accompanying insurance may be seen to be information and not advice. If, however, the advice relates, in part, to the merits of the insurance element, then it will be <i>regulated activity</i> .
ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS		
Providing information to customer who fills in application form	Possibly. Subject to article 67 or 72C, <u>and article 33B,</u> exclusions where available.	This activity may amount to <i>arranging</i> although the exclusions in article 67 (see <i>PERG 5.11.9G</i> to <i>PERG 5.11.12G</i>) and article 72C (see <i>PERG 5.6.5G</i> <i>PERG 5.6.4AG</i> to <i>PERG 5.6.9G</i>) may be of application. <u>Article 33B could also apply, depending on the type of information provided.</u>
Helping a potential <i>policyholder</i> fill in an	Yes.	This activity amounts to <i>arranging</i> . Article Articles 33B and 72C will not apply because this activity goes

application form		beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see PERG 5.6.5G <u>PERG 5.6.4AG</u> to <u>PERG 5.6.9G</u>).
Receiving completed proposal forms for checking and forwarding to an <i>insurance undertaking</i> (for example, an administration outsourcing service provider that receives and processes proposal forms)	Yes.	This amounts to <i>arranging</i> . Article <u>Articles 33B and 72C</u> does do not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see PERG 5.6.5G <u>PERG 5.6.4AG</u> to <u>PERG 5.6.9G</u>).
Assisting in completion of proposal form and sending to <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> . Article <u>Articles 33B and 72C</u> does do not apply because this activity goes beyond the mere provision of information (see PERG 5.6.5G <u>PERG 5.6.4AG</u> to <u>PERG 5.6.9G</u>).
NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE		
...		

- 5.15.5 G ~~The flow chart in PERG 5.15.6G sets out the matters a person whose introducing activities potentially amount to making arrangements with a view to transactions in investments will need to consider if he can use the exclusion in article 72C (Provision of information on an incidental basis). It is referred to in PERG 5.1.6G (Purpose of guidance) and PERG 5.6.9G (Exclusion: article 72C (Provision of information on an incidental basis)).~~
[deleted]

- 5.15.6 G ~~Flow Chart: Introducers.~~ [deleted]

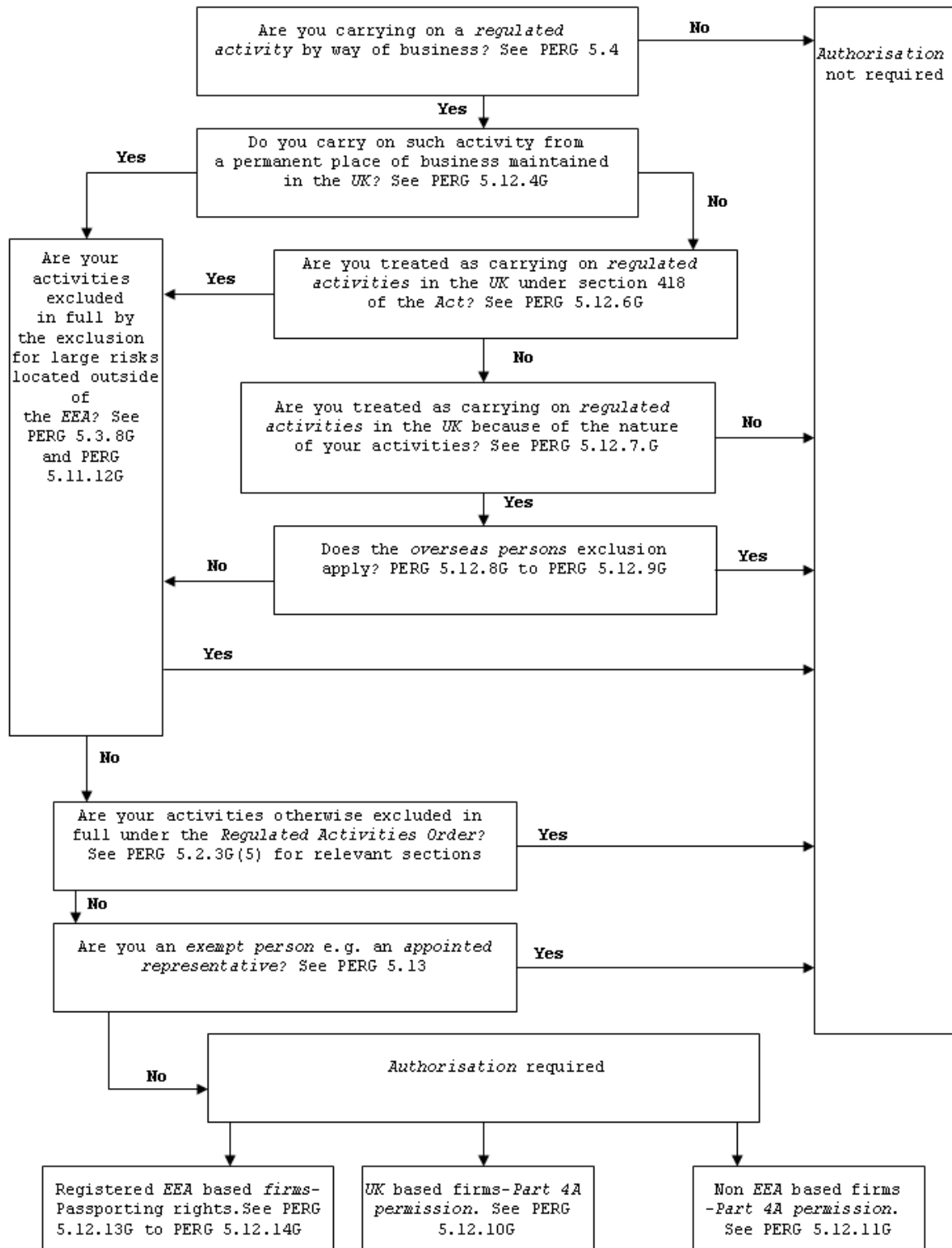
[Editor's note: the flow chart that follows is deleted but is not shown struck through]



5.15.7 G The flow chart in *PERG 5.15.8G* sets out the questions a *person* needs to consider in determining whether or not his *regulated activities* are carried on ‘in the *United Kingdom*’. [deleted]

5.15.8 G Flow chart: am I carrying on regulated activities in the United Kingdom? [deleted]

[Editor's note: the flow chart that follows is deleted but is not shown struck through]



5.16 Meaning of ~~'insurance mediation'~~ 'insurance distribution' and 'reinsurance'

distribution’

5.16.1 G *PERG* 5.16.2G sets out the text of article ~~2.3~~ 2.1(1), 2.1(2) and 2.2 of the *Insurance Mediation Directive* *IDD*. It is referred to in *PERG* 5.2.5G and ~~*PERG* 5.2.5G~~ *PERG* 5.2.6R (Approach to implementation of the ~~IMD~~ *IDD*), *PERG* 5.8.13G (Advice must relate to the merits of buying or selling a contract of insurance), *PERG* 5.11.7G (Exclusions disapplied in connection with insurance ~~mediation~~ distribution) and *PERG* 5.11.10G (Activities carried on in the course of a profession or non-investment business).

5.16.2 G (1) Text of article ~~2.3~~ 2.1(1) of the Insurance ~~Mediation~~ Distribution Directive

“‘Insurance ~~mediation~~ distribution’ means the activities of ~~introducing~~ advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, ~~or~~ of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

~~These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.~~

~~The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.”~~

(2) Text of article 2.1(2) of the Insurance Distribution Directive

“‘Reinsurance distribution’ means the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim”.

(3) Text of article 2.2 of the Insurance Distribution Directive

“For the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution:

- (a) the provision of information on an incidental basis in the context of another professional activity where:
 - (i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;
 - (ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- (b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;
- (c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
- (d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.”

...

8 Financial promotion and related activities

...

8.7 Engage in investment activity

...

8.7.2 G ...

- (3) *contracts of insurance other than life policies (see PERG 8.17A (Financial promotions concerning insurance ~~mediation~~ distribution activities)).*

...

...

8.13 Exemptions applying to financial promotions concerning deposits and certain contracts of insurance

...

- 8.13.4 G Intermediaries involved with *arranging* and advising on *deposits* may be *unauthorised persons* as such activities do not amount to *regulated activities* (other than where they involve giving basic advice on a *stakeholder product* (article 52A of the *Regulated Activities Order* (Giving basic advice on a stakeholder product))) and so do not require *authorisation* under section 19 of the *Act*. However, the combination of the exemptions in Part V together with certain of the exemptions in Part IV (such as generic promotions – see *PERG* 8.12.14G – and follow-up communications – see *PERG* 8.12.10G) should mean that it will often be possible for such *persons* to avoid any need to seek *approval* for their *financial promotions* from an *authorised person*. Guidance on the application of these exemptions to *financial promotions* about ~~*insurance mediation activities*~~ *insurance distribution activities* is in *PERG* 8.17A (Financial promotions concerning insurance ~~*mediation*~~ *distribution* activities).

...

8.17A Financial promotions concerning insurance ~~*mediation*~~ *distribution* activities

- 8.17A.1 G The application of section 21 of the *Act* and of exemptions in the *Financial Promotion Order* to invitations or inducements about ~~*insurance mediation activities*~~ *insurance distribution activities* will vary depending on the type of activity. The implementation of the ~~*Insurance Mediation Directive*~~ *IDD* has not led to any changes in the definitions of a *controlled investment* or a *controlled activity* under the *Financial Promotion Order*. So:

...

...

8.31 Exclusions for advising on investments

...

- 8.31.5 G Certain of the exclusions in the *Regulated Activities Order* that apply to the *regulated activity* of *advising on investments* are not available where the advice either relates to a *contract of insurance* or amounts to ~~*insurance mediation*~~ *insurance distribution* or ~~*reinsurance mediation*~~ *reinsurance distribution*. This results from the requirements of the ~~*Insurance Mediation Directive*~~ *IDD* and is explained in more detail in *PERG* 5 (~~*Insurance*~~ *Guidance on insurance* ~~*mediation*~~ *distribution* activities).

8.32 Arranging deals in investments

...

- 8.32.12 G Where *persons* are making arrangements concerning *contracts of insurance*

or are carrying on ~~insurance mediation~~ insurance distribution or ~~reinsurance mediation~~ reinsurance distribution, certain exclusions to article 25 are not available. This results from the requirements of the ~~Insurance Mediation Directive~~ IDD and is explained in more detail in *PERG* 5.6 (~~Insurance mediation activities~~ The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

8.33 Introducing

...

- 8.33.6 G The exclusions in ~~Articles~~ articles 29 and 33 of the *Regulated Activities Order* are not available where the *investment* is a *contract of insurance* (unless, as regards article 33, the relevant arrangements meet the requirements of article 33B). However, certain other exclusions do apply. This results from implementation of the requirements of the ~~Insurance Mediation Directive~~ IDD and is explained in more detail in *PERG* 5.6 (The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance).

...

8.34 The business test

...

- 8.34.3 G The ‘by way of business’ test for *insurance distribution activities* is distinguished from the standard test for ‘investment business’ in article 3 of the *Business Order*. The business test for *persons carrying on insurance distribution activities* is in article 3(4) of the *Business Order*. See *PERG* 5.4 (The business test).

...

10 Guidance on activities related to pension schemes

10.1 Background

- Q1. What is the purpose of these questions and answers (“Q&As”) and who should be reading them?

...

The Q&As complement the general *guidance* on regulated activities in Chapter 2 of our Perimeter Guidance Manual (“PERG”), the general guidance on insurance ~~mediation~~ distribution activities in Chapter 5 of *PERG* (*PERG* 5), the guidance about the scope of the *Markets in Financial Instruments Directive* in Chapter 13 of *PERG* (*PERG* 13) and the relevant legislation. In addition, Chapter 12 of *PERG* (*PERG* 12) has further guidance about the regulated activities relating to

the operation and sale of personal pension schemes that came into force on 6 April 2007.

...

10.2 General issues

Q6. How do I know if I am carrying on activities by way of business?

...

In addition, article 3(4) of the *Business Order* provides that any person who carries on an ~~insurance mediation activity~~ insurance distribution activity by way of business must be remunerated for doing so. Guidance on the application of the ~~by way of business~~ 'by way of business' test to insurance ~~mediation~~ distribution activities is in Chapter 5.4 of *PERG*.

...

10.4 Pension scheme service providers other than trustees

...

Q34. When will regulated activities form a necessary part of my pension administration services so that I can use the exclusion in article 67?

...

There are further conditions that must be met for the exclusion to apply:

you must not be remunerated for the ~~regulated activity~~ regulated activity separately from the remuneration you get from providing pension administration services; and

you must not be a person who is required to be regulated by the *Insurance Mediation Directive* IDD.

...

Q35. I provide pension administration services to a corporate pension scheme trustee who is a member of the same group as me. Does this mean that the exclusion for services provided to other group members in article 69 will apply to me?

Yes, provided the services:

may properly be regarded as being provided solely to the trustee (as will be the case where the trustee has delegated or outsourced the carrying out of regulated activities to you but remains responsible to the members for the performance of those activities) and not to the members; and

do not relate to *contracts of insurance*.

If the services do relate to ~~contracts of insurance~~ contracts of insurance, you are

still unlikely to need authorisation because you will only be carrying out ~~insurance mediation activities~~ insurance distribution activities by way of business if you are remunerated for providing services to third parties. Members of your *group* are not considered to be third parties.

...

10.4A The application of EU Directives

...

Q41C. As a professional trustee of a pension scheme, am I affected by the implementation of the ~~Insurance Mediation Directive~~ IDD?

No. A pension scheme trustee may perform tasks on behalf of the other trustees (such as signing proposal forms or giving dealing instructions to insurers or brokers or notifying claims on the death of a scheme member). But ~~he~~ that trustee will not be providing an insurance ~~mediation~~ distribution service to them. This is because, under the policy, ~~he~~ the trustee will share equal rights and equal responsibility with his co-trustees and so may be regarded as acting solely in the capacity of policyholder rather than intermediary. Also, the pension scheme trustee will not be providing an insurance ~~mediation~~ distribution service on behalf of the members as the members will not be policyholders.

Q41D. As a pension scheme administration service provider, am I affected by the implementation of the ~~Insurance Mediation Directive~~ IDD?

You may be. Detailed guidance about the potential effect of the ~~Insurance Mediation Directive~~ IDD on the normal activities of administration service providers is in Q31 to Q41 and the table in PERG 10 Annex 3.

...

10.5 Employers and affinity groups (such as trade unions)

...

Q44. As an employer, I may offer my staff a stakeholder pension scheme or a personal pension scheme. If I do so, will I satisfy the ~~'by way of business'~~ 'by way of business' test?

...

In addition, if your scheme is an insurance-based scheme, such as a *group personal pension scheme*, your activity will potentially involve ~~insurance mediation activity~~ insurance distribution activity. If so, to satisfy the ~~by way of business~~ 'by way of business' test, you would also need to be remunerated.

...

...

10 **Table summarising regulatory position of pension scheme trustees and**
Annex 3 **service providers**

Potential regulated activity	When will such regulated activities be carried on?
...	
<i>Dealing in investments as agent</i> (article 21 of the <i>Regulated Activities Order</i>)	...
	Article 67 of the <i>Regulated Activities Order</i> provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who deal in investments as agent as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a person is carrying on insurance mediation <u>insurance distribution or reinsurance distribution</u> . Service providers may be able to make limited use of this exclusion - for instance, where providing payroll services (see Q34).
	Article 69 of the <i>Regulated Activities Order</i> excludes persons who are dealing in investments other than contracts of insurance as agent for other members of their <i>group</i> . However, service providers who are carrying on insurance mediation activities <u>insurance distribution activities</u> solely for, and are remunerated solely by, another group member, will not satisfy the 'by-way-of-business' test (see Q35).
<i>Arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments</i> (article 25 of the <i>Regulated Activities Order</i>)	...
	Article 67 of the <i>Regulated Activities Order</i> provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who are arranging as a necessary part

	of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a <i>person</i> is carrying on <i>insurance mediation</i> <i>insurance distribution</i> or <i>reinsurance distribution</i> . Service providers may be able to make limited use of this exclusion – for instance, where providing payroll services (see Q34).
	...
	However, service providers who are carrying on <i>insurance mediation activities</i> <i>insurance distribution activities</i> solely for, and are remunerated solely by, another group member will not satisfy the ‘by-way-of-business’ test (see Q35).
	...
<i>Assisting in the administration and performance of a contract of insurance</i> (article 39A of the Regulated Activities Order)	...
	Where a person is assisting in the administration and performance of a contract of insurance solely for, and is remunerated solely by, another <i>group</i> member, he <u>that person</u> will not satisfy the ‘by-way-of-business’ test because he is <u>they are</u> not carrying on <i>insurance mediation activities</i> <i>insurance distribution activities</i> for a third party and so does not require to be authorised or exempt (see Q35).
	...
<i>Advising on investments (except P2P agreements)</i> (article 53(1) of the Regulated Activities Order)	<p>Trustees of pension schemes will not be advising on investments provided the advice is given only:</p> <ul style="list-style-type: none"> • to a fellow trustee for the purposes of the trust; or • to a member about his <u>their</u> interest in the trust fund, <p>and provided that the trustee:</p> <ul style="list-style-type: none"> • does not receive additional

	<p>remuneration for advising on investments; and</p> <ul style="list-style-type: none"> is not required to be regulated under the Insurance Mediation Directive <i>IDD</i> (which should not be the case either because he <u>the trustee</u> does not provide mediation services to his co-trustees or because he <u>the trustee</u> is not remunerated specifically for giving advice) (see Q23(5) and Q30). <p>Service providers would be advising on investments if they provide advice to the trustees on the merits of the trust making particular investments (see Q39 and Q40).</p>
	<p>Article 67 of the Regulated Activities Order <i>Regulated Activities Order</i> provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who are advising on investments as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a person is carrying on insurance mediation <i>insurance distribution or reinsurance distribution</i>. Service providers may be able to make limited use of this exclusion – for instance, where providing actuarial advice to the trustees of an occupational pension scheme (see Q34).</p>

...

12 Guidance for persons running or advising on personal pension schemes

...

12.2 Establishing, operating or winding up a personal pension scheme

...

Q6. What is my position as an operator of a personal pension scheme if I delegate day-to-day functions such as administration of the scheme or the management or custody of the scheme assets to another person?

...

Chapter 10.4 of PERG has general guidance about the circumstances in which

persons who administer pension schemes on behalf of the operator or trustees may be carrying on a regulated activity including an ~~insurance mediation activity~~ insurance distribution activity.

...

12.3 Rights under a personal pension scheme

...

Q21. What exclusions may be available for advising on investments in connection with acquiring or disposing of rights under a personal pension scheme?

...

If the rights relate to a contract of insurance, the adviser (A) can still make use of the exclusion so long as ~~he~~ A is not carrying on an activity that requires him to be regulated under the ~~Insurance Mediation Directive~~ IDD. And that is only likely to be the case if the advice relates to the merits of ~~his~~ A's client directly acquiring rights under a contract of insurance (for example, because ~~he~~ the client is also a trustee of the scheme). Advice about acquiring a beneficial interest in a contract of insurance held under trust will not be subject to regulation under the Directive.

...

13 Guidance on the scope of MiFID and CRD IV

...

13.6 CRD IV

...

Q59. If we are subject to the ~~Insurance Mediation Directive~~ IDD, does this make any difference to the requirements which apply?

Yes. If the only *investment services* that you are authorised to provide are investment advice or receiving and transmitting orders or both, without holding client money or securities, you can still be an *exempt CAD firm*. However, you are subject to different base capital requirements. Broadly speaking, article 31(2) of the *CRD* requires you to have professional indemnity insurance of euro ~~1,000,000~~ 1,250,000 for any one claim and euro ~~1,500,000~~ 1,850,000 in aggregate (this is the ~~IMD~~ IDD requirement), plus coverage in one of the following forms:

- base capital of euro 25,000; or
- professional indemnity insurance of euro 500,000 for any one claim and euro 750,000 in aggregate; or
- a combination of base capital and professional indemnity insurance resulting in an equivalent level of coverage to the options above.

For the rules transposing these requirements and supporting guidance, see the

final paragraph of the answer to Q58.

As mentioned in Q58, when you hold client money or securities for purposes unconnected with providing investment advice or receiving and transmitting orders in relation to MiFID financial instruments, in our view you can still be an *exempt CAD firm*. This might include, for instance, when you hold client money for those to whom you provide insurance mediation services.

You should also bear in mind that if you are a firm to whom article 2 or article 3 MiFID applies (see *PERG* 13.5), you are not subject to the *CRD*.

...

