How to respond

We are asking for comments on this Consultation Paper (CP) by 25 November 2017.

You can send them to us using the form on our website at: www.fca.org.uk/cp17-33-response-form.

Or in writing to:
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How to navigate this document onscreen

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takes you to helpful abbreviations

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Appendix 1 Draft Handbook text
1 Summary

Why we are consulting

1.1 In Consultation Paper (CP) 17/7, and in CP17/23, we set out our initial proposals on how we plan to implement the Insurance Distribution Directive (IDD) in the UK, and said we would issue a third CP with our remaining proposals. In this CP we set out our final proposals on how we plan to implement the IDD.

Who this applies to

1.2 This consultation will interest firms (including insurance and reinsurance companies, and insurance intermediaries) and bodies representing these groups. It will also be of interest to designated professional bodies whose members conduct insurance distribution activities.

1.3 Consumers have a clear interest in financial markets that operate fairly and transparently. The new requirements that will apply to firms following the implementation of the IDD are likely to be of interest to consumers, for example the rules about product design and conduct of business standards.

The wider context of this consultation

1.4 The IDD replaces the Insurance Mediation Directive (IMD). It aims to enhance consumer protection when buying insurance (including general insurance, life insurance and insurance-based investment products (IBIPs)) and to support competition between insurance distributors by creating a level playing field. Further background on the IDD can be found in Chapter 2.

What we want to change

1.5 We need to update our Handbook to reflect the requirements of the IDD delegated acts. We are seeking views on the following proposals:

- for life insurance distribution business, in relation to:
  - inducements requirements for IBIPs (Chapter 4)

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suitability and appropriateness requirements for IBIPs (Chapter 5)

disclosure requirements for IBIPs and mandatory occupational pensions (Chapter 6)

• for all insurance distribution business, including life and non-investment business, in relation to:
  - conflicts of interest (Chapter 7)
  - product oversight and governance (Chapter 8)
  - changes to the Perimeter Guidance (Chapter 9)
  - regulatory processes (Chapter 10)
  - additional changes, including consequential amendments, to other parts of the Handbook (Chapter 11)

Outcomes we are seeking

1.6 Our proposed approach builds on the rules and guidance already in place and is consistent with the approach we took when implementing IMD. Generally we have sought to introduce the minimum standards of the IDD into our Handbook through intelligent copy-out. However, in some places we have gone beyond the minimum standards, and this is explained in more detail in Chapter 3.

1.7 Our proposed approach should provide an enhanced regime that ensures a level playing field for sellers of insurance, helping to prevent arbitrage with competing products and providing better protection for consumers when buying insurance. This should ultimately result in:
  • consistent consumer protections across different distribution channels, preventing regulatory distortions of competition
  • products being sold to consumers that better meet their needs, alongside improved product information, enabling consumers to have greater confidence in their insurance purchasing decisions

Measuring success

1.8 Successful outcomes will include products being sold that better meet consumer needs, supported by improved product information enabling consumers to make better-informed purchasing decisions. We expect to be able to assess this through better consumer outcomes seen in our supervision process and a reduction in complaints.

3 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.
Next steps

1.9 We want to know what you think of our proposals. We ask questions throughout this CP which are also collated in Annex 1. Please send us your comments by 25 November 2017 using the online response form on our website or by writing to us at the address on page 2 of this CP.

1.10 We will consider all feedback and aim to publish a summary of responses and a Policy Statement in January 2018.

1.11 Given the timeframe for implementation set out in the IDD and the timing of the publication of the delegated acts by the European Commission (the Commission), this consultation is published while CP 17/23 remains open for comments. This CP also has a shorter period for responses. However, we have tried to make this manageable for respondents by previously signposting in CP 17/23 the issues that would be covered in this CP. Stakeholders should read this CP together with CP 17/23.
2  The wider context

2.1 The IMD became law in the UK on 15 January 2005. Following a review of the IMD by the Commission, the directive was amended and recast as the IDD. The IDD entered into force on 23 February 2016 and firms must follow its requirements from 23 February 2018.

2.2 Like the IMD, the IDD covers the authorisation, passporting arrangements and regulatory requirements for insurance and reinsurance intermediaries. However, the application of the IDD is wider, covering organisational and conduct of business requirements for insurance and reinsurance undertakings. The IDD also introduces requirements in new areas. These include product oversight and governance (POG), and enhanced conduct rules for IBIPs, where its stated intention is to more closely align the customer protections with those provided by the Markets in Financial Instruments Directive II (MiFID II).

European legislation

2.3 The IDD empowers the Commission to adopt delegated acts related to the POG requirements and in relation to the distribution of IBIPs. The Commission published two draft IDD regulations for consultation on 20 July 2017 (the consultation exercise closed on 20 August 2017):

- the delegated act on POG requirements for insurance undertakings and insurance distributors (we refer to this as the draft POG Regulation)\(^4\)
- the delegated act on conduct of business rules for the distribution of insurance-based investment products (we refer to this as the draft IDD Regulation)\(^5\)

2.4 This CP has been prepared using the draft POG and IDD Regulations. These regulations were adopted by the Commission on 21 September 2017\(^6\), shortly before publication of this CP. Now that the regulations have been adopted they will be notified to the European Parliament and the Council and subject to scrutiny. In order to aid firms’ preparations, rather than waiting for this process to be concluded, we are consulting based on the draft regulations and will consider whether any additional changes are necessary as a result of the final versions in due course.

2.5 Both delegated acts are directly applicable regulations. Therefore the requirements will apply directly to those firms within the scope of those regulations without the need for implementation in the UK. However, due to the links between the IDD provisions and the draft regulations, and the way in which firms utilise COBS, we propose to reproduce the provisions of the POG and IDD Regulations in our Handbook.

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supports our aim to have a single point of reference in our Handbook for firms seeking to understand the IDD requirements. Our approach also means that the provisions of the draft regulations will also apply as rules for firms conducting insurance distribution business that is not within the scope of the directly-applicable regulations but to whom our rules apply.

Q1: Do you agree with our proposal to reproduce the POG and IDD regulations in the Handbook, and to apply the provisions of the draft regulations as rules to a wider range of firms?

UK legislation

2.6 Her Majesty’s Treasury (the Treasury) has consulted on legislative changes to enable the implementation of the IDD in the UK. Some of our Handbook changes are contingent on changes being made to legislation by the Treasury, in relation to registration (including any necessary revisions to our Perimeter Guidance), passporting, and sanctions.

2.7 In this consultation we explain various changes we propose to make which are based on the draft statutory instrument the Treasury published in February 2017. However, this draft statutory instrument was produced for the purposes of consultation and so may be subject to change. Therefore, if there are any areas affected by such changes we may need to revise our proposals which may also require us to consult again when the Treasury finalises its statutory instrument. However, we think it is beneficial to consult at this stage and share our proposals with stakeholders as early as possible.

How our proposals link to our objectives

Consumer protection

2.8 We expect our proposals to maintain or raise existing consumer protection standards for the sale of insurance products. For example, the IDD aims to reinforce our existing consumer protection standards by requiring firms to design products that meet consumer needs. Where we are proposing to apply additional requirements we consider that this will help to promote consumer protection and avoid distorting competition between different firms.

Competition

2.9 The proposals will promote effective competition in the interests of consumers by ensuring an appropriate regulatory regime across the market, preventing distortions arising from a different regulatory burden on some firms.

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8 We do not include our proposals for amending certain parts of the Handbook, including DEPP and EG, and will instead issue a further consultation covering this later in the year.
What we are doing

2.10 In CP 17/23 we indicated that, given the short period between publication of the draft delegated acts and the date on which the IDD comes into force, we have adopted an approach to consultation which has sought to give firms as much time as possible to consider changes to their processes by publishing three CPs.

- The first CP, CP 17/7, dealt with conduct requirements for non-investment insurance business and, for all insurance business, various requirements including those relating to training and competence, professional indemnity insurance, complaints handling and out-of-court redress.

- The second CP, CP 17/23, covered implementation of most outstanding Level 1 matters and our proposals in relation to the insurance product information disclosure requirements. As the delegated acts will take the form of directly-applicable regulations, our priority was to publish proposals for transposing those Level 1 aspects of the IDD. For those areas to which the delegated acts relate, we encouraged firms to read the CP in conjunction with the draft delegated acts to consider the full scope of their proposed obligations under the IDD.

- This CP covers our approach to the delegated acts and includes proposals where appropriate for alignment with MiFID II standards. It also includes our proposals relating to areas within the Treasury’s consultation on changes to UK legislation to transpose the IDD (see paragraph 2.6). This CP should be read in conjunction with CP 17/23 because our proposals across the two CPs need to be considered together. For ease of consultation, our Handbook text included in Appendix 1 is prepared as if the amendments proposed in CP 17/23 have been made and so are not identified by underlining/strike through.

Equality and diversity considerations

2.11 We have considered the equality and diversity issues that may arise from our proposals. Overall, we do not consider that the proposals adversely impact any of the groups with protected characteristics under the Equality Act 2010. However, we will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the meantime, we welcome any input to this consultation on such matters.
3 Additional requirements

3.1 As explained in Chapter 2, we are generally proposing to replicate the minimum standards of the IDD into our Handbook. However, in some cases we are proposing changes that go beyond the IDD minimum requirements. These are where we are proposing to:

- apply the IDD standards to a wider range of firms or businesses than required by the directive and delegated acts, so that we achieve consistency of regulatory standards
- maintain standards above the IDD minimum requirements to preserve existing UK regulatory standards
- introduce standards above the IDD minimum requirements, particularly in relation to alignment with MiFID II, again to achieve consistency of regulatory standards

3.2 Where we propose to apply additional requirements we consider that this will help to promote consumer protection, avoid regulatory arbitrage and avoid distorting competition between firms.

3.3 There will be some additional costs for firms arising from going beyond the minimum requirements of the IDD. However, we consider that the benefits outweigh the costs and so these costs will not impair the attractiveness of the UK as a location for financial services. Customers will want to use firms that are adhering to regulatory standards that support those firms’ efforts to act in their customers’ best interests, focus on good outcomes for customers and to act with integrity.

3.4 In this chapter we explain our overall proposed approach. Further information about the proposals which go beyond the IDD minimum requirements is set out in each chapter and also in the cost benefit analysis (CBA) in Annex 2 of this CP.

Application to a wider range of firms

3.5 In general, when introducing new rules we seek to apply consistent regulatory standards to avoid arbitrage across key areas of the financial services market. This means in some areas we are consulting on applying IDD standards to firms dealing with similar products, even where not required by the directive. In CP 17/23 we outlined our specific proposals to apply some IDD requirements to a wider range of firms in the UK.

3.6 As an example, we propose to apply the product governance requirements to firms which may not be within scope of the IDD. We consider that these new requirements should apply to all firms involved in insurance product manufacture and distribution to create a level playing field of consumer protections, and to promote effective competition in the interests of consumers by avoiding regulatory distortions.

3.7 In addition to our proposals on the overall IDD requirements, we also propose to apply the related requirements of the IDD Regulation and the POG Regulation to the same wider range of firms. This is intended to ensure that all firms included in our
implementation of the IDD are also covered by the related requirements of the IDD and POG Regulations. We have proposed new rules in the Handbook to apply the requirements of the IDD Regulation and of the POG Regulation as if they were rules to firms conducting insurance distribution business that are not covered by the directly applicable requirements.

Maintaining existing standards

3.8 In some areas, we already have existing rules which set higher standards of consumer protection than are required by the IDD. For example, the rules for adviser charging for retail investment products go further than the IDD inducements rules. We propose to maintain relevant existing consumer protection standards through our implementation of the IDD because we consider the higher standards of consumer protection remain necessary.

Markets in Financial Instruments Directive (MiFID) II alignment

3.9 IBIPs and pensions within scope of the IDD are generally viewed as being in the same relevant market as, and therefore often substitutable for, MiFID II investment products. Historically, although they are not subject to MiFID I, we applied many of our Conduct of Business Sourcebook (COBS) rules, which were derived from MiFID I, to these other products. IBIPs and pension products are also within the scope of our definition of a ‘retail investment product’ (RIP) and are, therefore, subject to the rules put in place by the Retail Distribution Review (RDR).

3.10 Applying a broadly consistent regulatory regime helps maintain an appropriate level of protection for consumers and a consistent framework for firms, therefore promoting effective competition in the interests of consumers.

3.11 Our aim is to ensure the Handbook is as user-friendly as possible for firms. Therefore, we propose to incorporate the IDD requirements in COBS alongside equivalent MiFID II requirements. This should help firms conducting mixed business to consult single sections of the Handbook, so they can more easily access the relevant rules. In the main, we are proposing that the new rules will appear within the new COBS ‘A’ chapters that have been created to implement MiFID II. Where we see material differences between the IDD and MiFID II, we signpost these in each chapter of this CP.

Pensions

3.12 This CP will be relevant for firms selling pensions that take the legal form of an insurance contract, such as an insurance-based Group Personal Pension or a contract-based pension scheme. While these pensions are not IBIPs, they will be subject to certain requirements of the IDD and firms selling them need to consider the following chapters of this CP:

- disclosures about mandatory insurance-based occupational pensions (Chapter 6)

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9 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 and general insurance.

10 The IBIP definition in the IDD excludes pension products.
3.13 In general we are not consulting on applying any additional standards at the current time, given the significant changes in the pension landscape and broader work we have planned in this area. However, there are three areas where, in order to maintain overall consistency of approach and apply appropriate levels of consumer protection, we propose to go beyond the minimum requirements of the directive for pensions that take the legal form of an insurance contract:

- we propose to maintain existing inducements standards (see Chapter 4), which go beyond the IDD minimum standards
- we are proposing to apply the same requirements for managing of conflicts of interest (see Chapter 7) for all types of insurance business
- we are proposing to improve alignment with the MiFID II product oversight and governance rules by introducing some requirements based on MiFID II provisions (see Chapter 8)

Part I – Proposals for life insurance distribution business
4 Inducements

4.1 This chapter sets out our proposed Handbook changes on inducements including in relation to the inducements requirements of the IDD Regulation. As we have previously explained, firms will need to consider these alongside the matters previously consulted on for Level 1 on inducements in CP 17/23.

IDD requirements

4.2 As noted in Chapter 3, we aim to apply a broadly consistent regulatory regime for IBIPs and MiFID II investments. However, there are some differences between the approach proposed in the IDD (including in the IDD Regulation) and the approach set out in MiFID II. As summarised in CP 17/23 the IDD uses different terminology within the assessment of inducements. MiFID II requires that the inducement is designed to enhance the quality of the relevant service to the client, while the IDD requires that the inducement does not have a detrimental impact on the quality of the relevant service.

4.3 As we explained in CP 17/23, where the IDD requirements differ from those in MiFID II or our current rules, we intend to copy out the IDD requirements in addition to the COBS 2.3A requirements for MiFID II.12 We believe this is necessary for the ‘detrimental impact’ test referred to in the previous paragraph as, while the concepts are broadly aligned, they could be viewed as setting different standards.

4.4 The IDD Regulation sets out non-exhaustive criteria for insurance intermediaries and undertakings to assess whether inducements (and inducement schemes) have a detrimental impact, having regard to all relevant factors which may increase or decrease this risk and any organisational measures taken to prevent it.

Proposals

4.5 As discussed in CP 17/23, we have proposed to:

• apply the inducement rules in COBS 2.3A (rather than our existing rules in COBS 2.3) to firms distributing IBIPs

• introduce any new requirement (the ‘detrimental impact’ test as described above)

• maintain the existing requirements in COBS 2.3, without change, for life insurance business other than IBIPs

• retain the RDR rules (including where amended by PS17/14), including COBS 6.1A on adviser charging

12 The current inducements rules in COBS 2.3 apply to designated investment business which includes life policies. Following MiFID II implementation, the core inducement rules for MiFID, equivalent third country and Article 3 firm (optional exemption) business will be found in the new COBS 2.3A from 3 January 2018.
4.6 We now also propose, in line with paragraph 4.3 above, to reproduce within COBS 2.3A the relevant provisions on inducements of the IDD Regulation, and apply the requirements as rules for firms which are subject to our existing rules but not within scope of the IDD. This will ensure appropriate consumer protection and that all firms are subject to a consistent inducements regime. Where we apply provisions of the copied out IDD Regulation as rules to firms, we have ‘translated’ some words and phrases used into Glossary terms as part of a new COBS 1.3 in the draft rules instrument in Appendix 1.

4.7 We indicated in CP 17/23 that we were considering the extent to which we should align inducement rules for IBIPs with MiFID II requirements in COBS 2.3A, where MiFID II includes additional detail compared to the IDD. We stated that we were considering whether to apply the MiFID II additional requirements relating to sales involving more than one distributor firm, record keeping and ongoing assessments that firms must make to ensure that inducements enhance the quality of services. We propose that these requirements should apply for IBIPs. We are not proposing to apply all of the COBS 2.3A record keeping obligations to IBIPs and instead the high-level requirements within SYSC 3 and 9 will continue to apply.

4.8 We have also proposed a change in COBS 6.1A in relation to the rule covering minor non-monetary benefits. In order to ensure this requirement properly reflects the IDD inducements test for IBIPs, we propose to amend the rules to include the ‘detrimental impact’ test.

4.9 However, as we also explained in CP 17/23, we do not propose to apply certain of the COBS 2.3A MiFID II-based requirements relating to investment research as we consider that these provisions are not relevant for business covered by this CP.

Q2: Do you agree with our further proposals in relation to the inducements requirements for IBIPs? Where possible, please distinguish between the minimum IDD requirements and areas where we have exercised discretion.
5  Suitability and appropriateness

5.1 This chapter sets out our proposed changes to COBS in relation to the suitability and appropriateness requirements of the IDD, including in relation to the IDD Regulation.

IDD requirements

5.2 The IDD requires firms to assess either the suitability or appropriateness of an IBIP for the customer depending on whether advice (a personal recommendation) is provided. For advised sales, the firm must assess whether the IBIP is suitable for the client.\(^\text{13}\) For non-advised sales, the customer's investment knowledge and experience should be assessed to determine whether the IBIP provided is appropriate for them.\(^\text{14}\) The IDD Regulation sets out further requirements.

5.3 In CP 17/23 we proposed integrating the IDD requirements for assessing the suitability and appropriateness of IBIPs alongside their MiFID II counterparts in the new COBS 9A and COBS 10A chapters. This chapter covers our additional proposals related to the supplementary requirements of the IDD Regulation, which includes some more specific requirements than our current rules.

5.4 For the assessment of suitability, Articles 9 to 14 of the IDD Regulation include requirements related to:

- the level and type of information firms should collect from customers to inform their suitability assessments. This includes requirements related to post-contractual advice on switching underlying investment assets
- taking reasonable steps to ensure information collected from customers is reliable and does not contain any obvious inaccuracies
- communicating the purpose of the suitability assessment to ensure there is no ambiguity or uncertainty about responsibilities
- use of automated and semi-automated systems to assess suitability and provide advice
- setting out a policy for assessing suitability of group insurance policies
- the contents of a suitability statement and approach to providing periodic updates on suitability

5.5 For the assessment of appropriateness, Articles 15 and 16 of the IDD Regulation include requirements related to:

- assessing the knowledge and experience of the customer

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\(^{13}\) See Article 30 (1) of the IDD.

\(^{14}\) See Article 30(2) of the IDD.
For the assessment of both suitability and appropriateness, Articles 17 to 19 of the IDD Regulation include requirements related to:

- information to be obtained from the customer including specific information on past product interactions the customer has had and any relevant professional experience or education
- providing a periodic report to the customer at least annually
- retaining relevant records regarding the assessment of suitability or appropriateness in way that enables subsequent review

We also note that the IDD Regulation does not specifically allow firms to assume that professional clients have the necessary knowledge and experience for the suitability or appropriateness tests. This differs from MiFID II where firms have the ability to assume that professional clients have the necessary knowledge and experience. As the IDD Regulation is directly applicable, we are not able to modify this requirement to align with MiFID II.

**Proposals**

We propose to:

- reproduce the IDD Regulation in our Handbook alongside the relevant suitability provisions in COBS 9A, appropriateness provisions in COBS 10A and record-keeping provisions in SYSC 3 (for insurers) and SYSC 10 (for intermediaries)
- apply these IDD Regulation requirements as rules for firms which are subject to our existing rules but to which the IDD Regulation does not apply directly. This will ensure appropriate consumer protection and that all firms are subject to consistent requirements
- where we apply provisions of the copied out IDD Regulation as rules to firms we have ‘translated’ some words and phrases used into Glossary terms as part of a new COBS 1.3
- providing guidance on SYSC 9.2 (which is consulted on in CP 17/23) to clarify the interaction of this rule with the retention period specified in the IDD Regulation
- update our guidance on assessing suitability at COBS 9A.2.21G to include IBIPs. This is 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 in relation to IBIPs which will enable a firm to rely on a suitability test or an appropriateness test conducted by another firm

**Q3:** Do you agree with our proposals in relation to the suitability and appropriateness requirements of the IDD Regulation?
6 Information and product disclosure

6.1 This chapter sets out our proposals to implement the IDD requirement relating to providing information to members of mandatory occupational pension schemes and to include additional disclosure requirements for life insurance policies (including IBIPs) based on existing requirements in COBS 6.1.

Additional COBS 6.1ZA disclosures

6.2 We have reviewed the combined requirements of the IDD and the IDD Regulation and have identified a number of existing FCA rules that are not in the IDD or IDD Regulation. In particular, our current rules require:

• firms, when providing retail clients with information on costs and charges, to include if applicable the total price to be paid, including:
  – all related charges and all taxes payable via the firm
  – an indication of any applicable foreign currency conversion rates and costs notice of the possibility that other costs, including taxes, may arise for the customer
  – the arrangements for payment or other performance

• detailed information to be provided about the firm and its services

• firms, when they hold funds for retail clients, to provide information about safeguarding those funds

• when this information should be provided and how this should be done

6.3 In CP 17/23 we indicated that, where our current requirements contain additional obligations, or greater detail, compared to the IDD, we would consider retaining these requirements in order to maintain current levels of consumer protection. We propose to maintain the current requirements referred to in paragraph 6.2 by introducing new rules for insurance distribution in COBS 6.1ZA which reflect the current requirements of COBS 6.1. The current COBS 6.1 rules will be retained for other designated investment business not impacted by MiFID II or the IDD.

Q4: Do you agree with our proposals for introducing new rules to retain existing disclosure requirements for life policies?

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15 This applies where a firm holds client money subject to CASS 7.
Communicating in good time

6.4 We are proposing to introduce guidance in COBS 1.3, based on the MiFID II guidance in COBS 1.2, to explain the meaning of ‘in good time’ for life insurance distribution business. 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.

Q5: Do you agree with our proposal to include guidance to clarify the meaning of ‘in good time’?

Mandatory insurance-based occupational pensions

6.5 Article 22(5) of the IDD 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. In these cases, the information requirements contained in Chapter V of the IDD must be met. These include, for example, providing the general registration details of the firm, a range of conflict of interest disclosures and product information.

6.6 The IDD does not define what would qualify as a ‘mandatory occupational pension arrangement’.\(^\text{16}\) There are different ways in which pension schemes may be structured in the UK. The legislative requirement to auto-enrol employees into a pension might mean that some UK schemes qualify. We would expect this requirement to have relevance where a scheme is structured in a way which involves a contract of insurance. For example, the disclosure could be required for a pension arrangement which is based on a group insurance contract to which individual members directly obtain rights or benefits. Where these pension arrangements take the form of individual insurance contracts issued to members, the IDD requirements would apply directly to the distribution of each new contract.

Proposal

6.7 We are proposing to implement the requirement in order to ensure that our rules operate appropriately for any arrangements that may qualify. Due to the way in which pensions arrangements are structured in the UK, insurance distributors subject to our rules may not have contact details for each employee who becomes a member of the pension arrangement, and may not be able to ensure they receive the IDD information. Therefore we are proposing to introduce a new rule in COBS 19 which will require insurance distributors responsible for the provision of these occupational pension arrangements, when carrying on insurance distribution, to make the relevant information available to pension operators/scheme trustees in the expectation of prompt onward provision to individual members upon enrolment.

6.8 The Commission may clarify the scope of this IDD provision as part of the transposition of the directive. If that should occur we may need to revisit our approach to transposing this requirement.

Q6: Do you agree with our approach to implementing the

\(^{16}\) This need not be the same as the definition of an occupational pension scheme in domestic law (section 1 of the 1993 Pension Schemes Act).
IDD disclosure requirements in relation to mandatory occupational pension arrangements?

Q7: Do you have any information regarding the availability or potential future availability of mandatory occupational pension schemes in the UK which would be within scope of the IDD?
Part II – Proposals for all insurance distribution business and consequential changes
7 Conflicts of interest

7.1 This chapter sets out our proposals in relation to the conflicts of interest requirements of the Level 2 IDD Regulation. Firms will need to consider these alongside the matters previously consulted on for Level 1 IDD requirements on conflicts of interest in CP 17/23.

IDD requirements

7.2 The IDD includes provisions designed to prevent conflicts of interests leading to consumer harm in the distribution of IBIPs. At a high level, firms are required to:

- • take all appropriate steps to identify conflicts of interest between themselves and their customers, or between one customer and another

- • take all reasonable steps to prevent conflicts of interest from damaging customer interests

- • where the arrangements put in place to manage conflicts of interest are not sufficient to ensure that the risks of damage to customer interest will be prevented, disclose to the customer the general nature or sources of any conflicts

Proposals

7.3 In CP 17/23 we proposed to implement the IDD requirements in relation to conflicts of interest to all types of insurance, rather than just to IBIP business. This would maintain the current scope of our rules and existing consumer protections. As flagged in CP 17/23, in this paper we also consider further amendments to SYSC 3 in the light of the IDD Regulation as outlined below to ensure consistency of approach.

7.4 The IDD Regulation provides for, amongst other things, the identification of conflicts of interest, the establishment and maintenance of a conflicts policy and the disclosure of conflicts. These provisions are closely aligned with those of MiFID II, but in some cases add insurance-specific requirements which we propose to reflect in our rules as further explained below.

7.5 We propose to reproduce the relevant provisions of the IDD Regulation in SYSC 3 (for insurers) and in SYSC 10 (for other firms to whom the regulation applies directly). For firms to whom the IDD Regulation does not apply directly we propose to apply the requirements as rules in SYSC 3 (for insurers) and in SYSC 10 to rely on the rules in place (as amended for MiFID II) with any necessary amendments to apply the IDD conflict of interest requirements.

7.6 We also propose to retain existing requirements in SYSC 10 that go beyond the IDD minimum requirements. In particular, our current rules (SYSC 10.1.4R) include an example of a type of conflict that is not referenced in the IDD Regulation (see for
example SYSC 10.1.4R(4): situations where the firm carries on the same business as the client.

**Q8:** Do you agree with our proposals in relation to conflicts of interest including our approach for the requirements of the IDD Regulation? Where possible, please distinguish between our proposals in respect of the minimum directive requirements and areas where we have exercised discretion.
8 Product oversight and governance

8.1 In this chapter we set out our proposed changes to implement the requirements of the POG Regulation. The requirements apply to all insurance products, including general insurance, IBIPs and insurance-based pensions.

IDD requirements

8.2 In CP 17/23 we explained that product governance relates to the systems and controls firms must have in place for the design, approval, marketing and ongoing management of products throughout their lifecycle. We already have broadly equivalent guidance for firms, set out in the Responsibilities of Product Providers and Distributors for the Fair Treatment of Customers (RPPD). This is based on high-level rules in the Principles for Businesses sourcebook and SYSC and therefore, we indicated that we do not expect the new IDD requirements to lead to significant change for many UK firms.

8.3 In CP 17/23 we consulted on introducing rules to implement the high-level measures in Article 25 of the IDD. We proposed to introduce a new chapter to the PROD sourcebook to implement the provisions for insurance business.

8.4 The POG Regulation builds on the provisions of Article 25 of the IDD to provide more detailed requirements for firms. In summary, firms that manufacture insurance products are required to:

- maintain, operate and review a product approval process for new products, and for existing products to which significant adaptations have been made, before such products are marketed or distributed
- ensure staff involved in product design and manufacture have the necessary skills, knowledge and expertise for their role
- specify a target market for each product including, where relevant, identifying groups of customers for whom the product is generally not compatible
- design products to be compatible with the needs, characteristics and objectives of the target market
- test the product before bringing it to the market
- select distribution channels that are consistent with the target market

17 The EIOPA technical advice to the Commission in support of the product governance delegated acts includes discussion on the concept of the ‘product lifetime’, noting that it covers the ‘entire life cycle of a product which begins at the moment when the product is being designed and only finishes once there is no product left on the market’. EIOPA, Technical Advice on possible delegated acts concerning the Insurance Distribution Directive, 1 February 2017: https://eiopa.europa.eu/Publications/Consultations/EIOPA%20Technical%20Advice%20on%20the%20IDD.pdf

• provide all appropriate information on products and the product approval process to distributors

• take reasonable steps to ensure the product is distributed to the target market

• monitor and regularly review products, at least to ensure the product remains consistent with the needs of the target market and the distribution strategy remains appropriate

8.5 Firms that distribute products which they do not manufacture are required to have adequate arrangements in place to obtain information about the product and the product approval process, and to understand the identified target market.

8.6 The POG Regulation also indicates where distributor firms may be regarded as product manufacturers. This includes where they have a decision-making role in the design and development of an insurance product. In such cases, they should agree with the insurer their share of responsibilities under the product manufacturer requirements.

Proposals

8.7 We propose to change the definition of manufacturing used for the scope of PROD 1.4 and 4 (on which we are consulting in CP 17/23) to take into account the relevant provisions of the POG Regulation. The design and development of an insurance product may be an unregulated activity when undertaken by an intermediary and so for PROD we expect to use our powers to make rules in relation to such activities.

8.8 We propose to reproduce the POG Regulation requirements in our Handbook. This is consistent with our proposed approach to set out all requirements for firms subject to the IDD in a single place. We also propose to apply the provisions of the POG Regulation as rules for firms to whom they are not directly applicable.

8.9 In addition, we are proposing to introduce new guidance to help firms understand our expectations of the IDD requirements based on the recitals to the POG Regulation to provide clarity on issues such as:

• cases where distributors have a role in product manufacture

• target market assessment

• product testing

• ongoing product reviews

8.10 In CP 17/23 we indicated that we were considering applying additional requirements drawn from MiFID II obligations and the continued application of existing RPPD guidance. While existing RPPD guidance and the IDD product governance provisions are similar, there are some differences. Removal of relevant existing guidance could lead to consumer harm, so we propose to retain it by copying it to the PROD

19 The EIOPA technical advice to the Commission in support of the product governance delegated acts and Recital 3 of the POG Regulation include further discussion to help explain this concept.
sourcebook. For example, we propose to include guidance that, in monitoring and reviewing products after sale, manufacturer firms should consider the need for communication of contractual breakpoints to customers and the need for fair and prompt claims handling.

8.11 In CP 17/23 we also indicated that we were considering the MiFID II product governance requirements against those of the IDD. 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 propose to improve alignment between the two by introducing requirements based on the additional MiFID II provisions, adapted where necessary for firms conducting insurance business. This will cover areas such as:

- product design considerations in assessing product charging structure and value for money
- ensuring manufacturers make available to any distributor information regarding the target market assessment undertaken
- information that distributors should seek from manufacturers

**Q9:** Do you agree with our proposed approach to product oversight and governance rules including:

a. the approach in relation to the POG Regulation
b. retaining current guidance under the RPPD
c. introducing new provisions based on MiFID PROD requirements?
9 Perimeter Guidance

9.1 In this CP we are proposing changes to the Perimeter Guidance (PERG) section of our Handbook. These changes are based on the Treasury’s draft statutory instrument which proposed changes to legislation in relation to the Regulated Activities Order (RAO).

9.2 While these changes are contingent on the final form of the Treasury’s statutory instrument, we are consulting now to provide firms with an early indication of our assessment of the changes to the regulatory perimeter. We will consider the Treasury’s Statutory Instrument when it is finalised and if it differs from the consultation version we will consider whether the draft PERG text should be changed.

Existing Provisions

9.3 PERG's purpose is to give guidance about the circumstances in which authorisation is required or exempt status available. PERG 2 provides guidance on the activities which are regulated under FSMA and available exclusions. It also contains a map in Annex 2 showing how the FCA's permission regime read across to regulated activities. PERG 5 contains guidance mainly on the scope of the regulated activities related to insurance mediation (now insurance distribution) and was first issued in connection with the former Financial Services Authority's transposition of the original IMD (and the regulation of certain insurance distribution business moving into FSMA at that time).

Proposals

9.4 We propose changes in PERG on various topics including the following:

- we are revising the chapter to align defined terms with changes proposed in CP 17/7 and CP 17/23 (eg changing insurance mediation to insurance distribution; IMD to IDD)

- we are revising existing, or including new, guidance to take account of changes proposed by the Treasury including:
  - to describe the new exclusion proposed by HMT in new Article 33B of the RAO. This offers a broad exclusion for persons who provide information about potential policyholders to insurance undertakings or insurance intermediaries and for providing specified information to potential policyholders
  - to revise the conditions which need to be met for persons seeking to rely on Article 72B (activities carried on by a provider of relevant good or service) of the RAO

• we are updating some of the guidance in PERG to make it more consistent with current regulation of insurance distribution activities (and the implementation of the IDD), eg removing certain descriptions which were relevant when certain insurance distribution business was brought into FSMA regulation at the same time as implementing the IMD and we are considering the continuing relevance of individual guidance which was issued historically by the FSA

9.5 We are also proposing to revise the guidance in PERG 5 to take into account the recent Financial Advice Market Review consultation which proposed changes to PERG as a result of the Treasury’s changes to the scope of Article 53 of the RAO.

Q10: Do you have any comments on the draft Perimeter Guidance?
10  Regulatory processes

10.1 The IDD sets certain standards that Member States must follow when regulating insurance distribution. The changes are based on the Treasury’s draft statutory instrument which proposes certain changes to FSMA legislation to take account of the IDD. We may need to consult again on the matters covered in this chapter when the Treasury finalises its statutory instruments.

10.2 This chapter sets out our proposed changes to:

- our application forms to align with these IDD requirements
- parts of our Handbook that cover changes to these IDD processes, eg passporting
- in addition our proposals for the requirements in respect of Appointed Representatives and members of Designated Professional Bodies

Registration

10.3 Article 3 of the IDD contains provisions relating to the registration of intermediaries. There is no requirement for firms that are already registered under the IMD to re-register. The authorisation process will remain substantively the same, with the exception that we will now be required to deal with a complete application within three months.

Appointed representatives

10.4 We are proposing amendments to SUP 12 to reflect requirements relating to the registration of appointed representatives and continued oversight by principal firms. The amendments include a requirement on the principal firm to collect additional information from the appointed representative in accordance with the registration requirements of the IDD. We are considering if further changes are required, including to the appointed representative notification forms, and intend to include any further changes in our quarterly consultation paper in December 2017 if necessary.

Professional bodies

Q11: Do you have any comments on our proposed approach to implementation of the IDD requirements in relation to registration?

Passporting

10.5 One of the purposes of the IDD is to ensure there is an effective single market for insurance distribution activities. As was the case with the IMD, the main way of achieving this aim is through ‘passporting’. This is the ability of a firm authorised in one European Economic Area (EEA) country to provide services in another EEA country without requiring additional authorisation.
10.6 A cross-border arrangement involves providing services to customers in another country through means such as the telephone and internet, without the firms having a permanent physical presence in the country concerned. It also includes services provided on a temporary basis, for example when visiting clients resident in other EEA states. The branch arrangement involves firms setting up a place of business in another country.

10.7 Article 6 of the IMD dealt with cross-border activity and the establishment of branches. Under the IMD, firms seeking to provide insurance mediation services, or undertake insurance mediation activities in another country had to notify their home regulator before they could use the passport. This regulator would then pass on the notification to the relevant regulator(s) in the country (or countries) where the firms wanted to do business. The IMD passporting provisions were transposed through a mixture of legislation (primarily amendments to Schedule 3 of the Financial Services and Markets Act 2000) and Handbook changes (primarily SUP 13). Together these ensured that insurance intermediaries made the required passporting notifications.

10.8 The IDD makes various changes to the passporting regime and in particular, sets out a more detailed process than was previously the case under the IMD. The differences between the IMD and the IDD include new powers for the FCA in relation to refusing a notification of an intention to establish a branch. The IDD also sets out in greater detail, the respective obligations of home and host Member States.

10.9 However, the activities that can be passported remain the same. Furthermore, the new notification regime will apply to firms passporting for the first time; existing passporting firms will not be required to submit a new notification (unless they intend to passport into a new Member State).

10.10 The IDD sets out the information to be provided by a firm in a passporting notification, including the category of intermediary. We propose to amend the relevant forms in SUP 13 to reflect the additional IDD requirements.

10.11 Article 7(1) of the IDD allows regulators, in cases where an insurance intermediary’s primary place of business is located in a host state rather than its home state, to enter into agreements with each other for the host regulator to act as if it were the home state regulator. This is a new provision with respect to financial services regulation. The Treasury has consulted on the legislation required in order to allow this process to take place if required.

Proposals

10.12 The Treasury has consulted on changes to Schedule 3 of the FSMA and the EEA Passport Rights Regulations to reflect the new provisions of the IDD. We propose to make changes to SUP 13, 13A, 14, and SUP Appendix 3 to reflect the IDD requirements.

10.13 In relation to Article 7(1) IDD we propose to update SUP to cross-refer to the new provision in FSMA.

Though there are some difference to the exclusions which provide for activities which fall outside of the scope of the directive (see Chapter 9 of this CP).
Q12: Do you agree with our proposed Handbook changes on passporting?

Professional firms

10.14 Our Professional Firms sourcebook (PROF) sets out rules and guidance that relate to both authorised and exempt professional firms.\(^{22}\) We are proposing to make some consequential amendments within PROF to reflect changes to defined terms within our Handbook and the Treasury’s draft statutory instrument. This will include a change to the disclosure we specify in PROF 4.1.3R which an exempt professional firm needs to give before it provides service which includes insurance distribution activity.

10.15 We are proposing to make amendments to the guidance in PROF 5 which sets out how the handbook applies for authorised professional firms carrying on non-mainstream regulated activities.\(^{23}\) The guidance in PROF 5 reflects application provisions elsewhere in the Handbook including for the rules within COBS and ICOBS that apply to the non-mainstream activities of authorised professional firms. As part of the changes being made to implement the IDD\(^{24}\), we have proposed that COBS 18.11 and ICOBS 1 Annex 1 are amended to ensure the relevant provisions of ICOBS and COBS that implement the IDD are applied to authorised professional firms.

10.16 Our existing approach is to apply a more limited range of rules in ICOBS and COBS to the non-mainstream regulated activities of authorised professional firms. Most of the rules in these sourcebooks which do apply to these firms are those which implement the IMD, and they apply only where rules made by the firm’s professional body do not implement the IMD. We propose to continue this approach. This will mean including those rules which implement the IDD in the list of rules which apply to non-mainstream activities, but continuing to allow for equivalent rules of the professional body to apply instead. The requirements which apply to non-mainstream activities currently include both the fair, clear and not misleading rule and the rules on communications with clients. Both will be used to implement the Article 17(2) IDD requirement that firms communicate in a way which is clear, fair and not misleading. In relation to insurance distribution activities these rules will in the future apply to authorised professional firms only where their professional body does not have an equivalent requirement to implement the IDD.

10.17 Our proposed changes are intended to align PROF with the changes already proposed to the application provisions of ICOBS 1 Annex 1 in CP 17/7 and those proposed for COBS 18.11 in this consultation.

Q13: Do you have any comments on our proposed approach to amend PROF and the application of the handbook for authorised professional firms?

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\(^{22}\) Authorised professional firm’ and ‘exempt professional firm’ are defined in the FCA handbook.

\(^{23}\) Our Handbook distinguishes between two types of activities conducted by authorised professional firms: mainstream and non-mainstream. Generally an authorised professional firm would need to comply with the rule as they apply to other intermediaries, in regards to their mainstream regulated activities.

\(^{24}\) In both this consultation and in CP17/7
11 Additional changes to the Handbook

11.1 This chapter sets out further proposed changes to the Handbook.

Consequential changes to the Handbook

11.2 In CP 17/7 and CP 17/23 we consulted on various changes to the Handbook which consist of aligning existing handbook material with the new terms we use as a result of implementing the IDD. The proposed consequential changes in this CP are largely administrative and do not reflect any change in policy.

11.3 We propose to amend the Handbook modules listed below:

- General Provisions (GEN)
- Fees manual (FEES)
- Client Assets sourcebook (CASS)
- Compensation sourcebook (COMP)

**Q14:** Do you agree with our proposed changes to the Handbook modules in paragraph 11.3?

Additional changes to SYSC

11.4 We propose to copy out into SYSC the requirements of Article 10(8) of the IDD which provide for insurance and reinsurance undertakings to approve, implement, and regularly review their internal policies and procedures for professional and organisational requirements (on which we consulted in CP 17/7\(^{25}\)), to identify a function to ensure their proper implementation (and make the name of the person responsible available to the appropriate regulators), and to maintain appropriate records. We expect that firms will in practice already comply substantially with these requirements under their more general obligations in SYSC but propose to copy them out for clarity (and apply them to all firms subject to SYSC 2 or 3) and to ensure full implementation of Article 10.

**Q15:** Do you agree with our proposal to incorporate the requirement of Article 10(8) of the IDD into SYSC?

\(^{25}\) See: https://www.fca.org.uk/publications/consultation-papers/cp17-7-insurance-distribution-directive-implementation
Annex 1
Questions in this paper

Q1: Do you agree with our proposal to reproduce the POG and IDD regulations in the Handbook, and to apply the provisions of the draft regulations as rules to a wider range of firms?

Q2: Do you agree with our further proposals in relation to the inducements requirements for IBIPs? Where possible, please distinguish between the minimum IDD requirements and areas where we have exercised discretion.

Q3: Do you agree with our proposals in relation to the suitability and appropriateness requirements of the IDD Regulation?

Q4: Do you agree with our proposals for introducing new rules to retain existing disclosure requirements for life policies?

Q5: Do you agree with our proposal to include guidance to clarify the meaning of 'in good time'?

Q6: Do you agree with our approach to implementing the IDD disclosure requirements in relation to mandatory occupational pension schemes?

Q7: Do you have any information regarding the availability or potential future availability of mandatory occupational pension schemes based on an insurance contract in the UK?

Q8: Do you agree with our proposals in relation to conflicts of interest including our approach for the requirements of the IDD Regulation? Where possible, please distinguish between our proposals in respect of the minimum directive requirements and areas where we have exercised discretion.

Q9: Do you agree with our proposed approach to product oversight and governance rules including:

a. the approach in relation to the POG Regulation

b. retaining current guidance under the RPPD

c. introducing new provisions based on MiFID PROD requirements?
Q10: Do you have any comments on the draft Perimeter Guidance?

Q11: Do you have any comments on our proposed approach to implementation of the IDD requirements in relation to registration?

Q12: Do you agree with our proposed Handbook changes on passporting?

Q13: Do you have any comments on our proposed approach to amend PROF and the application of the handbook for authorised professional firms?

Q14: Do you agree with our proposed changes to the Handbook modules in paragraph 11.3?

Q15: Do you agree with our proposal to incorporate the requirement of Article 10(8) of the IDD into SYSC?
Annex 2
Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, s.138I requires us to publish a CBA of proposed rules, defined as ‘an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made’. We provide monetary estimates for the impacts where we believe it is reasonably practicable to do so or estimates can reasonably be made. For others, we provide estimates of expected outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, taking into account other impacts we foresee. We are required to include estimates of those costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.

IDD delegated regulations

2. We are proposing to reproduce the IDD and POG Regulations in our Handbook to ensure the rules have legal effect for firms which are within the scope of our rules but not in scope of the regulations at EU level. This approach will also provide a single point of reference for regulated firms seeking to understand and comply with the IDD requirements.

3. We set out in CP 17/23 a CBA in relation to the rules intended to transpose the requirements of the IDD and additional proposals beyond the IDD minimum. The provisions of the IDD and POG Regulations fill out the obligations on firms under those requirements. There may be some costs associated with the requirements of the IDD and POG Regulations themselves and we have conducted a high-level CBA analysis taking account of them for our proposals as a whole. However, we have not undertaken a detailed CBA where we are simply reproducing these directly-applicable regulations for information. EIOPA’s impact assessment for the IDD will be of relevance to understand the costs and benefits of the directly applicable requirements and supplements our assessment where we are applying these requirements more broadly. We consider our proposal to reproduce the text of the regulations within the FCA Handbook may minimise costs to firms by providing a single point of reference. Where we extend the scope of the regulations beyond the IDD minimum requirements, the CBA of this is discussed below.
Life insurance business

4. Our proposals seek to apply broadly consistent conduct standards across sectors, including MiFID II requirements for investment business and IBIPs, as they are potentially capable of being substitutes for each other. Where this results in levelling up of the IDD requirements to MiFID II requirements, we expect the costs to be of minimal significance and as such have not quantified them. We have however conducted a high level CBA. In particular, firms which conduct mixed business are also likely to implement the higher MiFID II requirements for non-MiFID II business. This view was confirmed by a number of firms’ responses to a survey of firms ahead of CP 17/23. Our proposed approach has the benefit of creating consistent regulatory standards, a competitive level playing field between businesses operating in similar markets and improved customer understanding of the regulatory environment.

Inducements

5. Our proposals seek to apply consistent inducement standards across the market as far as possible. This will mitigate the risk of regulatory arbitrage, ensure a level playing field for competition between businesses operating in similar markets (albeit covered by different regulations) and reduce potential harm through providing an appropriate degree of consumer protection. Where we propose to apply MiFID II standards, we expect that most firms will already be looking to apply MiFID II standards to relevant business as they will also be undertaking MiFID business. Therefore, we do not expect that our proposed approach will generate significant additional costs. It will also deliver benefits by developing a level regulatory playing field as far as possible for substitutable products in order to support competition in these markets.

6. Where we are proposing to maintain existing super-equivalence (for example, by applying existing RDR requirements above the IDD minimum) we do not consider that retaining these requirements will result in additional costs for firms, as they should already be meeting these existing standards. However, our approach will retain the existing customer protection benefits that these requirements provide. For example, the RDR adviser charging rules aim to improve the quality of advice and reduce the incidence of mis-selling.

7. The IDD requirement to protect against the detrimental impact on the service quality for IBIPs is different from any requirements under MiFID II. Therefore we have proposed to implement the IDD minimum by copying out this requirement. However, we do not expect our proposals to result in significant additional costs for firms.

Suitability and appropriateness

8. We are proposing to reproduce the IDD Regulation in our Handbook, retain our current guidance on suitability and appropriateness for IBIPs, and ensure that related requirements of the IDD Regulation have legal effect for firms in scope of our rules but not in scope of the regulations at EU level. Although the requirements of the IDD Regulation may result in minor additional costs for firms, our proposals to reproduce the regulation for ease of reference and to retain current guidance provisions will minimise the costs as far as possible for firms. We also expect our proposals to provide broadly consistent regulatory requirements for firms conducting IBIPs and MiFID II business in the UK, which will support competition between these product classes in the interests of consumers.
Execution-only sales and product complexity

9. We propose to continue allowing execution-only sales of IBIPs. However, we do not have discretion over the criteria for assessing their complexity, which is an important pre-requisite for execution-only sales under the IDD. Maximising the scope for execution-only sales, and thus increasing the scope for firms to distribute products on a non-advised basis without an appropriateness test, means our proposals minimise the costs for industry. We expect that firms may incur costs, in terms of reduced profits, where IBIPs currently sold on an execution-only basis are removed due to the stricter complexity criteria contained in the IDD Regulation or the associated EIOPA guidelines. However, these costs are associated with the IDD minimum requirements and are not a result of our proposals. In addition, our proposed approach seeks to maximise the scope for execution-only sales, which minimises the costs for industry.

10. In terms of benefits, we expect that retaining access to execution-only sales where possible will benefit customers who are seeking a particular non-complex product. We also expect that consumers will benefit from the enhanced protections of the IDD in relation to complex products, as they will be subject to a suitability or appropriateness test going forward.

Information and product disclosure

11. We are proposing to copy-out the IDD minimum requirement for mandatory occupational pensions.

12. We also propose to retain existing guidance for costs and charges disclosure and the provision of information “in good time”. As these are current requirements for firms, we expect minimal additional costs to arise. We also anticipate that consumers will continue to benefit from clear costs and charges disclosure in relation to life insurance.

General and life insurance business

13. To inform the CBA in relation to the rules being applied more broadly to general and life insurance business, we undertook a survey of 67 firms to gain an understanding of their expected upfront and ongoing annual costs. 33 firms responded to the survey. Their responses have been used to estimate costs in the following analysis.

Conflicts of interest

14. The IDD sets out requirements on firms to identify and manage conflicts of interest and disclose to customers the general nature or sources of any conflicts in the distribution of IBIPs.

15. We propose to retain the current scope of our existing conflicts of interest provisions, which apply broadly to all types of insurance, including life and GI business, rather than limit application to IBIPs business only (i.e. the IDD minimum). By aligning with the MiFID II conflicts of interest requirements we are seeking to develop a level playing field which will provide the benefits of having a single compliance regime for distributor firms. A consistent regime across substitutable products and types of business helps minimise regulatory distortions on competition and delivers consistent levels of consumer protection.
Costs

16. Of the firms that responded to our survey, over two-thirds reported that they already have processes that meet the new requirements and will not incur significant additional costs.

17. For those firms that would incur costs associated with the proposed policy changes, the most common drivers cited were the need to review and amend (if necessary) existing processes for the disclosure of conflicts to clients, recruitment and staff training. Responses to our survey from firms that said they would incur additional costs suggest that one-off costs per firm, for different types of firm could be:

- distributor firms: between £0 and £10,000
- general insurance providers: between £15,000 and £46,000
- life providers: £3,000

18. Responses to our survey from firms that said they would incur additional costs suggest that ongoing costs for different types of firm could be:

- distributor firms: between £1,000 and £8,000 per annum for most firms, with one larger firm reporting an estimated cost of £500,000 per annum
- general insurance providers: between £15,000 and £65,000 per annum
- life providers: £0

Benefits

19. The new requirements provide for a more rigorous monitoring and disclosure of conflicts of interest and thus there would be additional benefits from the prevention of potential negative customer outcomes. We expect the additional requirements to have impacts in the following ways.

- The enhanced disclosure requirements will ensure that clients have more comprehensive, thorough and detailed information about the conflicts that the firm is unable to manage. This will enable the client to make a better informed decision as to whether they wish to continue with the transaction or service, and avoid potential negative outcomes resulting from unidentified conflicts of interest. The new disclosure requirements should therefore lead to better informed and more engaged clients.

- The requirement for firms to periodically review their conflicts of interest policies should ensure that policies are regularly updated to take account of new and emerging risks, which will as a consequence increase consumer protection.

- The annual reporting to senior management will ensure that the management body has full sight and scope of situations where conflicts of interest have arisen and help them to design policies that identify the circumstances which may constitute or give rise to conflicts of interest that entail a risk of damage to the interests of their clients.

20. Our proposal to retain the current scope of existing conflicts of interest provisions, rather than limit application to IBIPs business only, would create a level playing field for
competition purposes, as well as avoid situations (and associated potential detriment) where consumers engage with firms outside the scope of the IDD minimum requirements, but expect the same level of disclosure as present for insurance business.

21. We do not consider it reasonably practicable to quantify the additional benefits of extending the conflicts of interest requirements to non-IDD business. This is because there is no straightforward way of measuring detriment arising from current potential shortcomings in the approach to conflicts of interest among firms carrying out non-IDD business which the new requirements might address.

22. To provide an illustration of the potential detriment resulting from poorly managed conflicts of interest, there have been a number of enforcement cases associated with firms’ failures to manage conflicts of interest in recent years. We levied fines amounting to £45 million in 2014 and 2015 and a firm has paid out compensation to its customers of around £130 million. While these cases are not related to insurance business, it is possible that conflicts of interest could arise in the sector that could give rise to customer harm.

23. In addition, we have conducted a number of thematic reviews into the management of conflicts of interest across various parts of the financial services market, including in relation to insurance. A range of shortcomings have been identified, and communicated to firms or addressed through guidance. Although unquantified, this provides evidence of failings in this area that our proposals would help to address by strengthening the conflicts of interests framework.

**Product oversight and governance (POG)**

24. We propose to reproduce the POG Regulation requirements in our Handbook. We plan to apply these requirements to firms that manufacture or distribute insurance products which fall outside the IDD. We are also proposing to introduce new guidance to help firms understand our expectations of the new requirements.

**Costs**

25. We expect the cost of implementing the requirements to be fairly low for many firms, particularly those that are not involved in product manufacture. Existing rules and guidance should mean that firms are already meeting many of the required aspects. Of the firms that responded to our survey, over two-thirds reported that they already have processes that meet the new requirements and will not incur significant additional costs.

26. Where manufacturer firms do not already have sufficient product governance processes in place, there will be costs for compliance. For firms that incur costs we expect that the greatest contributor to one-off costs will be developing and implementing new processes, followed by legal and compliance costs. The greatest expected ongoing costs will be in product testing and compliance monitoring.

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26 The FCA fined Sesame and Barclays bank £1.6 million and £26 million respectively in 2014, and Aviva Investors £17.1 million in 2015. Aviva Investors also paid compensation to its customers. www.fca.org.uk/firms/being-regulated/enforcement/fines.

27. Based on responses to the compliance cost survey, where manufacturer firms do not have adequate product governance processes, one-off costs per firm, for different types of firm could be:

- general insurance providers: the three firms reporting that additional processes would be needed estimated one-off costs of £30,000, £41,000 and £345,000
- life providers: £11,000

28. Firms reported ongoing costs as follows:

- general insurance providers: the three firms reporting that additional processes would be needed estimated ongoing costs of £15,000, £200,000 and £475,000 per annum
- life providers: £0

29. Over 70% of distributors responding to our survey reported that they already have processes in place to meet the new requirements and do not expect to incur significant costs. Of those firms that did report expected costs to meet the new requirements, one-off costs are likely to range from £1,000 to £50,000 for most firms, with one larger firm reporting an estimated cost of £500,000. In relation to ongoing costs, cost estimates ranged from £0 to £4,500 for most firms, with one larger firm reporting an estimated cost of £400,000 per annum. We would expect the actual costs incurred by firms to be nearer the lower end of these ranges. Under current requirements, we already expect firms that distribute insurance products which they do not manufacture to obtain information about products. The IDD requirements specify certain information that must be gathered on the product approval process and target market as part of this process. We therefore would not expect the cost of these additional requirements to be significant. Product manufacturers will also be required to make this information available so costs for distributor firms should be low.

30. A number of distributor firms responding to the survey reported that they also have a role in product manufacture and so would also need to consider the manufacturer product governance requirements. Of these firms, only one said they expect to incur additional costs as a result. They estimated an initial cost of £50,000 but no significant additional ongoing costs.

Benefits

31. We expect the IDD product governance rules to lead to benefits for consumers, primarily by reducing consumer harm, particularly as the IDD is introducing requirements that apply as rules where, at present, many of our existing product governance provisions take the form of guidance. Some examples of insurance products where improved assessment of target markets, distribution strategies and product reviews may have helped reduce harm include:

- in our review of the governance of unit-linked insurance products, we found specific material problems in individual firms which may have led to consumer harm if left unchecked, including in relation to the management of outsource service providers and controls over permitted assets which could lead to investment in riskier assets than allowed\(^{28}\), and

\(^{28}\) TR13/8, The governance of unit-linked funds, October 2013: https://www.fca.org.uk/publication/thematic-reviews/tr13-08.pdf
• payment protection insurance (PPI) sold to people who could not claim on the product (for example self-employed customers or people with pre-existing medical conditions).

32. In 2014, the GI add-ons market study found that firm profits on some add-on products were high. For example, intermediaries reported that profits in excess of 70% were being earned on add-on home emergency insurance, and the market study estimated consumer overpayment for five products of £108m or more.\(^{29}\) Stronger product governance measures could have reduced this overpayment in these and other insurance product markets. For illustrative purposes, there has been £27.1bn in redress and compensation paid to date as a result of PPI mis-selling.\(^{30}\) If the product governance measures had been in place at the time, for each 0.1% reduction in mis-selling as a result of improved product design and target market focus, there would have been a reduction in consumer loss of £27.1m.

**Regulatory processes**

33. We are proposing to update our Handbook to ensure it complies with the IDD minimum requirements for registration, passporting and other measures. We do not anticipate significant costs to firms as a result of these changes, as they generally involve relatively small changes to our Handbook and primarily relate to the regulatory processes we follow rather than new requirements for firms.

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29 MS14/1, General insurance add-ons: provisional findings or market study and proposed remedies, March 2014: [https://www.fca.org.uk/publication/market-studies/ms14-01.pdf](https://www.fca.org.uk/publication/market-studies/ms14-01.pdf)

Compliance with legal requirements

1. This statement records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, the FCA is required by s.138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s.1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s.1B(5)(a) FSMA to have regard to the regulatory principles in s.3B FSMA. The FCA is also required by s.138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

3. This statement also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s.1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

4. In addition, this statement explains how we have considered the recommendations made by the Treasury under s.1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.

5. This statement also includes our assessment of the equality and diversity implications of these proposals.

6. Under the Legislative and Regulatory Reform Act 2006 (LRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This annex sets out how we have complied with requirements under the LRRA.

The FCA’s objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objectives of securing an appropriate degree of protection for consumers, and promoting effective competition in the interests of consumers.
8. The proposals will advance the objective of securing an appropriate degree of protection for consumers by:

- requiring firms to prevent conflicts of interests from adversely affecting the interests of customers
- requiring firms to ensure that products meet the needs of their target market
- requiring that, for non-advised sales of complex products, the firm considers whether the product is appropriate for the customer
- requiring that, where advice is given in relation to an IBIP, the advice is suitable

9. In preparing the proposals as set out in this consultation, we have had regard to the FCA’s duty to promote effective competition in the interests of consumers. The proposals will also promote effective competition by ensuring consistency of regulation across the market, preventing distortions arising from a lower regulatory burden on some firms.

10. We consider these proposals are compatible with the FCA’s strategic objective of ensuring that the relevant markets function well because they are aimed at providing appropriate protections for customers, and promoting competition between firms. For the purposes of the FCA’s strategic objective, ‘relevant markets’ are defined by s.1F FSMA.

11. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s.3B FSMA.

The need to use our resources in the most efficient and economical way

12. For the proposals in this CP, in the areas where we have discretion regarding how we implement the IDD, we have had regard to the burden on us in assessing how best to implement the requirements of the directive.

The principle that a burden or restriction should be proportionate to the benefits

13. As these proposals are primarily intended to implement the minimum requirements of the IDD, we have limited discretion over them. However, where possible we have sought to implement the minimum requirements in a way which is proportionate (for example, by using guidance to provide proportionate ways in which firms can comply with the minimum requirements). We have also limited instances of going beyond the IDD minimum requirements to those where we believe the benefits will outweigh the costs of regulation. The CBA in Annex 2 sets out our reasoning in this regard.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

14. We do not consider that the proposals are inconsistent with this principle, for the reasons set out in Chapter 3 of this CP.

The general principle that consumers should take responsibility for their decisions

15. Our proposals include enhancements to the disclosure regime for insurance business. We believe this will enable customers to make more informed decisions about their insurance arrangements.
The responsibilities of senior management

16. Our rules generally require managers to take responsibility for systems and controls to manage the risks of the business. The proposals in this CP support this. Processes established under the product oversight and governance requirements, for example, require managerial oversight. We expect these requirements to lead to improved product design and a reduction in consumer harm.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

17. We do not believe that our proposals discriminate against any particular business model or approach.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

18. We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide we will not normally make public our investigations, findings or conclusions, except in exceptional circumstances.

The principle that we should exercise of our functions as transparently as possible

19. We consider that by consulting on our proposals we are acting in accordance with this principle.

20. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s.1B(5)(b) FSMA). However, we do not believe these proposals impact these areas.

Expected effect on mutual societies

21. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

Equality and diversity

22. We are required under the Equality Act 2010 to ‘have due regard’ to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

23. The outcome of the assessment in this case is stated in paragraph 2.11 of the CP.
Legislative and Regulatory Reform Act 2006 (LRRA)

24. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals will be effective in helping firms understand and meet regulatory requirements more easily, in a manner that leads to improved outcomes for consumers and addresses the issues identified in the market. We also believe the proposals are proportionate and will result in an appropriate level of consumer protection when balanced with impacts on firms and competition.

25. We have had regard to the Regulators’ Code for the parts of the proposals that consist of general policies, principles or guidance, but this duty does not apply to regulatory functions exercisable through our rules.

Treasury recommendations about economic policy

26. We have had regard to the Treasury’s recommendations under s.1JA FSMA. Our proposals are consistent with these recommendations as they aim to improve outcomes for consumers who buy insurance products, while also supporting competition between firms operating in this market.
# Annex 4

## Abbreviations in this document

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CASS</td>
<td>Client Assets sourcebook</td>
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<tr>
<td>CBA</td>
<td>Cost benefit analysis</td>
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<tr>
<td>COBS</td>
<td>Conduct of Business Sourcebook</td>
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<td>COMP</td>
<td>Compensation sourcebook</td>
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<tr>
<td>CP</td>
<td>Consultation Paper</td>
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<tr>
<td>EEA</td>
<td>European Economic Area</td>
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<td>EIOPA</td>
<td>European Insurance and Occupational Pensions Authority</td>
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<td>EU</td>
<td>European Union</td>
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<td>FCA</td>
<td>Financial Conduct Authority</td>
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<td>FEES</td>
<td>Fees manual</td>
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<tr>
<td>FSA</td>
<td>Financial Services Authority</td>
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<tr>
<td>FSMA</td>
<td>Financial Services and Markets Act 2000</td>
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<tr>
<td>GEN</td>
<td>General Provisions</td>
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<tr>
<td>IBIP</td>
<td>Insurance-based investment product</td>
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<tr>
<td>ICOBS</td>
<td>Insurance: Conduct of Business sourcebook</td>
</tr>
<tr>
<td>IDD</td>
<td>Insurance Distribution Directive</td>
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<tr>
<td>IMD</td>
<td>Insurance Mediation Directive</td>
</tr>
<tr>
<td>LRRA</td>
<td>Legislative and Regulatory Reform Act 2006</td>
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<tr>
<td>MiFID</td>
<td>Markets in Financial Instruments Directive</td>
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<tr>
<td>MiFID II</td>
<td>Markets in Financial Instruments Directive II</td>
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</table>
We have developed the policy in this Consultation Paper 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.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 9644 or email: publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
Appendix 1
Draft Handbook text
INSURANCE DISTRIBUTION DIRECTIVE (No. 3) 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 137A (The FCA’s general rules);
(b) section 137B (FCA general rules: clients’ money, right to rescind, etc);
(c) section 137R (Financial promotion rules);
(d) section 137T (General supplementary powers);
(e) section 138C (Evidential provisions);
(f) section 138D (Action for damages);
(g) section 139A (Power of the FCA to give guidance); and
(h) section 332 (Rules in relation to persons to whom the general prohibition does not apply); 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 [date].

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:

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
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<tbody>
<tr>
<td>Glossary of definitions</td>
<td>Annex A</td>
</tr>
<tr>
<td>Senior Management Arrangements, Systems and Controls sourcebook (SYSC)</td>
<td>Annex B</td>
</tr>
<tr>
<td>General Provisions (GEN)</td>
<td>Annex C</td>
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<tr>
<td>Fees manual (FEES)</td>
<td>Annex D</td>
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<tr>
<td>Conduct of Business sourcebook (COBS)</td>
<td>Annex E</td>
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<tr>
<td>Client Assets sourcebook (CASS)</td>
<td>Annex F</td>
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<tr>
<td>Product Intervention and Product Governance sourcebook (PROD)</td>
<td>Annex G</td>
</tr>
</tbody>
</table>
Amendments to material outside the Handbook

E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex K to this instrument.

Notes

F. 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

G. 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

H. This instrument may be cited as the Insurance Distribution Directive (No. 3) Instrument 2018.

By order of the Board

[date]
[Editor’s note: the text in this Annex takes into account the near-final rules attached to PS17/21 ‘Insurance Distribution Directive implementation – Feedback to CP17/7 and near-final rules’ (September 2017) and the changes suggested by CP17/23 ‘Insurance Distribution Directive Implementation – Consultation Paper 2’ (July 2017) as if they were made. This Annex includes text based on the Commission draft delegated acts on the conduct of business rules for the distribution of insurance-based investment products and with regard to product oversight and governance requirements for insurance undertakings and insurance distributors, both published on 20 July 2017.]

Annex A

Amendments to the Glossary of definitions

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

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

**IDD Regulation**

Commission Delegated Regulation (EU) … of …, supplementing the *IDD*, 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.

**IDD POG Regulation**

Commission Delegated Regulation (EU) … of …, supplementing the *IDD*, of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors.

**primary place of business**

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

Amend the following definitions as shown.

**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]

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”:

(i) …

(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) has received notice (“a regulator’s notice”) from the firm’s Home State regulator that the firm intends to establish a branch in the United Kingdom;

(iii) the regulator’s notice contains such other information as may be prescribed;

(iv) 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

(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).

...
(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.

(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.

(2) (in relation to PROD 4) a firm which manufactures contracts of insurance for sale to customers.

[Note: in respect of (1) recital 15 to the MiFID Delegated Directive, in respect of (2) article 2 of the IDD POG Regulation]

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

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

... 

(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).
Annex B

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 indicated otherwise.

1 Application and purpose

...

1 Annex 1 Detailed application of SYSC

...

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<thead>
<tr>
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<th>Application of the common platform requirements</th>
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<tr>
<td>2.8A</td>
<td>R (1) Subject to (2) and (3) and (5), in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation (including any relevant definitions in MiFID, MiFIR and the MiFID Org Regulation) apply to a firm’s business other than MiFID business or structured deposits regulated activities as if they were rules or guidance in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm).</td>
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<td>(5) The requirements in article 72 of the MiFID Org Regulation do not apply to a firm to the extent that article 19 of the IDD Regulation applies to the firm.</td>
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2.9 G The application of the provisions on the conflicts of interest in SYSC 10 is set out in SYSC 10.1.2G and SYSC 10.1.1AR to SYSC 10.1.4G to SYSC 10.2.1R.

...  

Part 3 Tables summarising the application of the common platform requirements to different types of firm

3.1 G ...  

3.1A G The IDD Regulation is directly applicable to a firm when carrying on insurance distribution in relation to insurance based investment products. Articles 3 – 7 of the IDD Regulation are set out in SYSC 10.1A for information for these firms.

...  

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<th>COLUMN A++</th>
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<td>Application to a full-scope UK AIFM of an authorised AIF</td>
<td>Application to all other firms apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms</td>
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### Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

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</table>
or dissemination of non-independent research, in accordance with COBS 12.2; and (b) in relation to insurance distribution activities.

<p>| SYSC 10.1.11R | Rule in relation to insurance distribution activities. Otherwise, Not not applicable | Rule | Rule in relation to insurance distribution activities. 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 COBS 12.2; and (b) in relation to insurance distribution activities. |
| SYSC 10.1.11AG | Not applicable | Not applicable | Guidance but not applicable in relation to insurance distribution activities | Guidance but not applicable in relation to insurance distribution activities |
| SYSC 10.1.11A | Rule in relation to insurance | Rule in relation to | Rule in relation to | Rule in relation to |</p>
<table>
<thead>
<tr>
<th>Provision</th>
<th>COLUMN A (MiFID optional exemption firms)</th>
<th>COLUMN B (Third country firms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SYSC 9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SYSC 9.1.2R</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>SYSC 9.1.2AR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 9.1.2BG</td>
<td>Guidance in relation to insurance distribution activities</td>
<td>Guidance in relation to insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 9.1.2DR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
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<tr>
<td>SYSC 10</td>
<td></td>
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<tr>
<td>SYSC 10.1.-4G</td>
<td>Guidance</td>
<td>Guidance</td>
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<tr>
<td>SYSC 10.1.-3G</td>
<td>Rule</td>
<td>Rule</td>
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<tr>
<td>SYSC 10.1.-2G</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>…</td>
<td></td>
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</tr>
<tr>
<td>SYSC 10.1.4BR</td>
<td>Rule</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC 10.1.4CR</td>
<td>Rule</td>
<td>Rule</td>
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<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SYSC 10.1.6R</td>
<td>Rule</td>
<td>Guidance but applies as rule in relation to insurance distribution activities</td>
</tr>
<tr>
<td>SYSC 10.1.6AAR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
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<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SYSC 10.1.7AR</td>
<td>Rule</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC 10.1.8R</td>
<td>Rule</td>
<td>Rule</td>
</tr>
<tr>
<td>SYSC 10.1.8AR</td>
<td>Rule</td>
<td>Rule</td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SYSC 10.1.9AR</td>
<td>Rule in relation to insurance distribution activities, Otherwise Not not applicable</td>
<td>Rule in relation to insurance distribution activities, Otherwise Not not applicable</td>
</tr>
<tr>
<td>SYSC 10.1.10R</td>
<td>Rule</td>
<td>Guidance but rule in relation to insurance distribution activities.</td>
</tr>
<tr>
<td>SYSC 10.1.11R</td>
<td>Rule</td>
<td>Guidance but rule in relation to insurance distribution activities.</td>
</tr>
<tr>
<td>SYSC 10.1.11AAR</td>
<td>Rule in relation to insurance distribution activities</td>
<td>Rule in relation to insurance distribution activities</td>
</tr>
</tbody>
</table>
2 Senior management arrangements

2.1 Apportionment of responsibilities

2.1.6 Insurance distribution activities

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

3.1.10 Insurance distribution activities

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 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.

3.3 Additional requirements for insurance distribution

Application

3.3.1 …
Effect of provisions marked “EU”

3.3.2 G The *IDD Regulation* applies directly 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) Provisions in this section marked with the status letters “EU” apply to an insurer, to the extent which the *IDD Regulation* does not directly apply, 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 (1) above, the meaning indicated in Column (2) of the table below:

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“competent authority”</td>
<td>FCA</td>
</tr>
<tr>
<td>“customer”</td>
<td>client</td>
</tr>
<tr>
<td>“Directive (EU) 2016/97”</td>
<td>IDD</td>
</tr>
<tr>
<td>“insurance based investment products”</td>
<td>policies</td>
</tr>
<tr>
<td>“insurance distribution activities”</td>
<td>insurance distribution activities</td>
</tr>
<tr>
<td>“insurance intermediary”</td>
<td>insurance intermediary</td>
</tr>
<tr>
<td>“insurance undertakings”</td>
<td>insurer</td>
</tr>
<tr>
<td></td>
<td>any of the following:</td>
</tr>
<tr>
<td>“relevant person”</td>
<td>(a) a director, partner or equivalent, or</td>
</tr>
<tr>
<td></td>
<td>manager of the insurance intermediary or</td>
</tr>
<tr>
<td></td>
<td>insurer;</td>
</tr>
<tr>
<td></td>
<td>(b) an employee of the insurance</td>
</tr>
<tr>
<td></td>
<td>intermediary or insurer, as well as any</td>
</tr>
<tr>
<td></td>
<td>other natural person whose services are</td>
</tr>
<tr>
<td></td>
<td>placed at the disposal and under the</td>
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<td></td>
<td>control of the insurance intermediary or</td>
</tr>
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<td></td>
<td>insurer and who is involved in the</td>
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<td></td>
<td>insurance distribution activities;</td>
</tr>
<tr>
<td></td>
<td>and</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3.3.3 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

3.3.2 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 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

3.3.3 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 3.3.2 R SYSC 3.3.5 R from adversely affecting the interests of its clients.

[Note: article 27 of the IDD]
Proportionality

3.3.4 R The arrangements in SYSC 3.3.3R 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.

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 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: articles 4(2) and 5 of the IDD Regulation]

Disclosure of conflicts

3.3.5 R (1) If arrangements made under SYSC 3.3.3R 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 \textit{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 \textit{client}, to enable that \textit{client} to take an informed decision with respect to the \textit{insurance distribution activities} in the context of which the conflict of interest arises.

(2) The disclosure must be made:

(a) in a \textit{durable medium}; and

(b) in good time before the conclusion of the \textit{contract of insurance}.

[\textbf{Note:} article 28(2) and (3) of the \textit{IDD}]

\textbf{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.

\textbf{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.

[\textbf{Note:} article 6 of the \textit{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 this Article and take all appropriate measures to address any deficiencies.

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

Record keeping for insurance based investment product distribution

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 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 does not directly apply) 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]

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:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>General requirements</td>
<td>SYSC 9.1.1AR</td>
</tr>
<tr>
<td>Specific requirements for insurance distribution</td>
<td>SYSC 9.1.2AR, SYSC 9.1.2DR</td>
</tr>
</tbody>
</table>

General requirements

... 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 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 9.1.2A, 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** does not directly apply) 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 in relation to firms doing insurance distribution activities to which the **IDD Regulation** does not apply, as if it was a rule, 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 should read references in SYSC 9.1.2CEU to ‘the competent authority’ as meaning ‘the FCA’.

10 Conflicts of interest

10.1 Application

Application to insurance intermediaries

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.
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).

<table>
<thead>
<tr>
<th>Subject</th>
<th>Rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Types of conflict</td>
<td>SYSC 10.1.4R, SYSC 10.1.4AG, SYSC 10.1.4BR and SYSC 10.1.4CR(1), (2) and (5).</td>
</tr>
<tr>
<td>Record of conflicts</td>
<td>SYSC 10.1.6R, SYSC 10.1.6AG, SYSC 10.1.6AAR and SYSC 10.1.6BG</td>
</tr>
<tr>
<td>Disclosure of conflicts</td>
<td>SYSC 10.1.8R(1)(b), (2)(b) – (2)(d) and SYSC 10.1.9AR</td>
</tr>
<tr>
<td>Conflicts policy</td>
<td>SYSC 10.1.10R</td>
</tr>
<tr>
<td>Contents of policy</td>
<td>SYSC 10.1.11R, SYSC 10.1.11AG, SYSC 10.1.11AAR and SYSC 10.1.11BG</td>
</tr>
</tbody>
</table>

**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:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision of services</td>
<td>SYSC 10.1.2G</td>
</tr>
<tr>
<td>Identifying conflicts</td>
<td>SYSC 10.1.3R</td>
</tr>
<tr>
<td>Types of conflicts</td>
<td>SYSC 10.1.5G</td>
</tr>
<tr>
<td>Managing conflicts</td>
<td>SYSC 10.1.7R</td>
</tr>
<tr>
<td>Conflicts policy</td>
<td>SYSC 10.1.12G</td>
</tr>
</tbody>
</table>

(3) SYSC 10.1.4BR, SYSC 10.1.4CR, SYSC 10.1.6R, SYSC 10.1.6AAR, SYSC 10.1.7AR, (Proportionality — insurance distribution activities)
and SYSC 10.1.8R, SYSC 10.1.9AR (Disclosure of conflicts), SYSC 10.1.10R, SYSC 10.1.11R and SYSC 10.1.11AAR 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 25 of MiFID implementing Directive]

(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 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.

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.

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;

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

(4) 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 10.1.6 R) 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 10.1.6AA R 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]

10.1.7A  R  Proportionality – insurance distribution activities

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]

...
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]

10.1.11 R Contents of policy

(1) The conflicts of interest policy must include the following content:

it must identify in accordance with SYSC 10.1.3 R, and SYSC 10.1.4 R, 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:

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

(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

include, for an insurance intermediary 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;

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;

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

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

(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.

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).

If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (1)(aa), an insurance intermediary must adopt such alternative measures and procedures as are necessary and appropriate.

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]
relating to conflicts of interest policies (see SYSC 10.1.10 R 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.

10.1.11A R

An insurance intermediary must 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).

10.1.11B 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 10.1.11AA R as if “should” appeared in that rule instead of “must”.

Insert the following new section after SYSC 10.1 (Application). All the text is new and not underlined.

10.1A IDD Regulation – Conflicts of interest

Application

10.1A.1 G The IDD Regulation applies directly 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 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.

| 10.1A.5 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 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
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: articles 4(2) and 5 of the IDD Regulation]

Disclosure of conflicts

10.1A.6 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

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]
[Editor’s note: the text in this Annex takes into account the near-final rules attached to PS17/21 ‘Insurance Distribution Directive implementation – Feedback to CP17/7 and near-final rules’ (September 2017) as if they were made.]

Annex C

Amendments to the General Provisions (GEN)

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 4.3.1 R 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.

...
Editor’s note: the text in this Annex takes into account the near-final rules attached to PS17/21 ‘Insurance Distribution Directive implementation – Feedback to CP17/7 and near-final rules’ (September 2017) as if they were made.]

Annex D

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 1R Authorisation fees payable

...  

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

<table>
<thead>
<tr>
<th>Activity Grouping</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
</tr>
<tr>
<td>A.19</td>
<td>General insurance mediation</td>
</tr>
<tr>
<td></td>
<td>distribution</td>
</tr>
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<td></td>
<td></td>
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</tbody>
</table>

Part 6 - Change of legal status

...  

(2) which is to:  

...  

(e) have the individuals within the firm that are responsible for insurance mediation activity insurance distribution activity 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

<table>
<thead>
<tr>
<th>Fee-block</th>
<th>Tariff base</th>
<th>Calculation where trading data are not available</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td></td>
</tr>
<tr>
<td>A19. General insurance mediation distribution</td>
<td>...</td>
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<td>...</td>
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</tbody>
</table>

... 

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

... 

Notes

(1) The Financial Services Register includes details of exempt professional firms carrying out insurance mediation activity and insurance distribution activity.

... 

4 Annex 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

<table>
<thead>
<tr>
<th>Annual income definition</th>
</tr>
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</table>

Where the relevant fee-block is fee-block A.19

For the purposes of calculating annual income for fee-block A.19, also include the
following:

(g) in relation to any activities in (a), for any insurance mediation activity insurance distribution activity carried out by the firm for which it receives payment from the insurer on a basis other than that in (a), the amount of premiums receivable on its contracts of insurance multiplied by 0.07;

PLUS:

(h) if the firm is an insurer in relation to the activities in (a), the amount of 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 Guidance on the calculation of tariffs set out in FEES 4 Annex 1AR Part 3 13G

Table 1

<p>| |</p>
<table>
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| (3) | Firms should only include revenue streams that relate to regulated activities which are carried on ‘in the United Kingdom’. 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 United Kingdom or because some other element of the activity happens outside the United Kingdom, the question may arise as to where the activity is carried on. PERG 2.4 generally and PERG 4.11 regarding activities relating to regulated mortgage contracts, PERG 5.12 regarding |
activities relating to insurance mediation activities insurance distribution activities and PERG 14.6 regarding home reversion plans and home purchase plans describe the legislation that is relevant to this question and gives the FCA’s views on various scenarios.

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

Compulsory jurisdiction - general levy

<table>
<thead>
<tr>
<th>Industry block</th>
<th>Tariff base</th>
<th>General levy payable by firm</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>17 - General insurance mediation distribution (excluding firms in blocks 13, 14 &amp; 15)</td>
<td>...</td>
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<td>...</td>
<td>...</td>
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</table>

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 twelve classes: the deposits class; the life and pensions provision class; the general insurance provision class; 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; and the home finance providers and administrators’ contribution 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 a CRD credit institution, an 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

<table>
<thead>
<tr>
<th>Class</th>
<th>Levy Limit (£ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<tr>
<td>B2: General insurance distribution</td>
<td>…</td>
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<tr>
<td></td>
<td></td>
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<tr>
<td>C2: Life distribution and pensions intermediation</td>
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</tr>
</tbody>
</table>

6 Annex Financial Services Compensation Scheme - classes

3AR

This table belongs to FEES 6.4.7AR and FEES 6.5.6AR

<table>
<thead>
<tr>
<th>Class</th>
<th>General Insurance</th>
</tr>
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<tr>
<td></td>
<td></td>
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<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>Class B2</td>
<td>General Insurance Intermediation Distribution</td>
</tr>
<tr>
<td></td>
<td></td>
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<tr>
<td>…</td>
<td></td>
</tr>
</tbody>
</table>
### 6 Annex 5R Classes participating in the retail pool and applicable limits

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

<table>
<thead>
<tr>
<th>Class</th>
<th>Attributable costs for this class in excess of levy limit allocated to the retail pool?</th>
<th>Retail pool levy limit (£ million)</th>
<th>Retail pool compensation costs levy or specific costs levy allocated to this class?</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
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<td>...</td>
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<td></td>
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<tr>
<td>Life distribution and pensions intermediation</td>
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<td></td>
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<tr>
<td>General insurance intermediation distribution</td>
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<td>...</td>
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<td>...</td>
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</tbody>
</table>
[Editor’s note: the text in this Annex takes into account the near-final rules attached to PS17/21 ‘Insurance Distribution Directive implementation – Feedback to CP17/7 and near-final rules’ (September 2017) and the changes suggested by CP17/23 ‘Insurance Distribution Directive Implementation – Consultation Paper 2’ (July 2017) as if they were made. This Annex includes text based on the Commission draft delegated act on the conduct of business rules for the distribution of insurance-based investment products published on 20 July 2017.]

Annex E

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. All the text is new and 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.

<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“advice”</td>
<td>personal recommendation</td>
</tr>
<tr>
<td>“competent authority”</td>
<td>FCA</td>
</tr>
<tr>
<td>“customer” and “potential customer”</td>
<td>client</td>
</tr>
<tr>
<td>“Directive (EU) 2016/97”</td>
<td>IDD</td>
</tr>
<tr>
<td>“Directive 2009/138/EC”</td>
<td>Solvency II</td>
</tr>
<tr>
<td>“durable medium”</td>
<td>durable medium</td>
</tr>
<tr>
<td>“financial instrument”</td>
<td>financial instrument [and (if the context requires) designated investment and structured deposit]</td>
</tr>
<tr>
<td>“insurance based investment product”</td>
<td>insurance based investment product</td>
</tr>
<tr>
<td>“insurance distribution”</td>
<td>“insurance distribution activities”</td>
</tr>
<tr>
<td>“insurance intermediary” and “intermediary”</td>
<td>insurance intermediary</td>
</tr>
<tr>
<td>“insurance product”</td>
<td>life policy</td>
</tr>
<tr>
<td>“insurance undertaking” and “undertaking”</td>
<td>insurer</td>
</tr>
<tr>
<td>“shall”</td>
<td>must</td>
</tr>
</tbody>
</table>

(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 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 of the 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.2.14AR.

(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.

2 Conduct of business obligations

... [Editor’s note: you should read the following amendments together with the proposals in CP17/23. The text from CP17/23 is included as though it were made without strike through or underlining.]

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; or

(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.3 G COBS 6.1A provides, amongst other things, that a firm must only be remunerated for a personal recommendation (and any other related services provided by the firm) by adviser charges.

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

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

(1) pay to or accept from any party (other than the client or a person on behalf of the client) any fee or commission; or

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

(3) (1) and (2) 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.
2.3A.6 R (1) **COBS** 2.3A.5R does not apply to:

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

(i) (I) is designed to enhance the quality of the relevant service to the **client** (see **COBS** 2.3A.8R);

(II) (for an *insurance based investment product*) in addition to (I), does not have a detrimental impact on the quality of the relevant service to the **client** (see **COBS** 2.3A.14A EU); 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* 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 investments including an appropriate number of financial instruments investments 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 investments 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 investments that are likely to meet the needs of the client, including an appropriate number of financial instruments investments 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 investments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments investments.

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

[Note: further guidance on this is contained in the FCA’s Finalised Guidance on ‘Supervising retail investment advice: inducements and conflicts of interest’ (FG14/1), available at: https://www.fca.org.uk/publication/finalised-guidance/fg14-01.pdf]

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

2.3A.10 R (1) Prior to the provision of the relevant service, the firm must disclose to the client the information set out in COBS 2.3A.6R(2) and, where applicable, COBS 2.3A.6R(4).

(2) For these purposes, minor non-monetary benefits may be described in a generic way, but other non-monetary benefits received or paid by the firm in connection with a service provided to the client must be priced and disclosed separately.

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

2.3A.11 R Where a firm is unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead discloses to the client the method of calculating the relevant amount, the firm must also inform the client of the exact amount of the payment or benefit received or paid on an ex-post basis.

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

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.2.7R to COBS 6.1ZA.2.9R and COBS 6.1ZA.2.10EU); and

(2) (for insurance based investment products) in COBS 6.1ZA.2.7R to COBS 6.1ZA.2.9R and COBS 6.1ZA.2.1AR.

[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]

Assessment of insurance based investment products for detrimental impact

2.3A.14 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]

COBS R 2.3A.14B 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.  ...
Record keeping: inducements

2.3A.32 R A firm must hold evidence that any fees, commission or non-monetary benefits paid or received by the firm are designed to enhance, and (in addition for the distribution of an insurance based investment product) do not have a detrimental impact on the quality of the relevant service to the client, by:

(1) keeping an internal list of all fees, commission and non-monetary benefits received by the firm from a third party in relation to the provision of the service; and

(2) recording how the fees, commission and non-monetary benefits paid or received by the firm, or that the firm intends to use:

(a) enhance the quality of the services provided to the relevant clients and the steps taken in order not to impair the firm’s compliance with the duty to act honestly, fairly and professionally in the best interests of the client; and,

(b) (for the distribution of an insurance based investment product in addition to (a)) do not have a detrimental impact on the relevant clients and the steps taken in order not to impair the firm’s compliance with the duty to act honestly, fairly and professionally in the best interests of the client.

[Note: article 11(4) of the MiFID Delegated Directive]

2.3A.35 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 rules on reliance on other investment firms or insurance distributors (COBS 2.4.4R and COBS 2.4.5AR) does not apply.

…

…

[Editor’s note: you should read the following amendments together with the proposals in CP17/23]

6.1ZA Information about the firm and compensation information (MiFID and insurance distribution provisions)

…

6.1ZA.2 Information about a firm and its services

Information about a firm and its services: MiFID business

…

6.1ZA.2. EU …

4

Information about a firm and its services: insurance distribution

6.1ZA.2. 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.2.14AR.

Status disclosure general information: insurance distribution

6.1ZA.2. R 4A
6.1ZA.2. 4B

(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]

Information concerning safeguarding of designated investments belonging to clients and client money: MiFID business

Information concerning safeguarding of designated investments belonging to clients and client money: insurance distribution

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.2.5EU and COBS 6.1.7R(1)(e):

in relation to that client money.

(2) For the purposes of COBS 6.1ZA.2.6AR(1)(b), COBS 1.2.3R applies though ‘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.2.14AR.

…

Costs and associated charges disclosure: insurance distribution

6.1ZA.2.10A R In addition to the information specified by COBS 2.2A.2R and COBS 6.1ZA.2.7R, 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.2.14AR.

…

Timing of disclosure: MiFID business
Timing of disclosure: specified rules for insurance distribution

6.1ZA.2. 14A

(1) A firm must provide a client with the information required by COBS 6.1ZA.2.4AR, COBS 6.1ZA.2.6AR and COBS 6.1ZA.2.10A 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.2. 15A

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.2.14A(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. 16A

(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.

…

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 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) (i) is capable of enhancing the quality of service provided to the client; and

(ii) (for an insurance based investment product) does not have a detrimental impact on the quality of the relevant service 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]

…

[Editor’s note: you should read the following amendments together with the proposals in CP17/23. The text from CP17/23 is included as though it were made without strike through or underlining.]

9A Suitability (MiFID provisions and insurance based investment products)

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 in relation to firms doing insurance distribution activities, but to which the IDD Regulation does not apply, as if they were rules.

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, financial instruments and insurance based investment products, or take decisions to trade, which 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 9(1) | 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. |
| 9(2) | 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: |
| | (a) it meets the customer’s or potential customer’s investment objectives, including that person’s risk tolerance; |
| | (b) it meets the customer’s or potential customer’s financial situation, including that person’s ability to bear losses; |
| | (c) 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. |

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: 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 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.

[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

9A.2.9A  EU  10 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:

(a) ensuring that customers are aware of the importance of providing accurate and up-to-date information;

(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;

(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;

(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.

[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

9A.2.11  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

9A.2.12  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]

Insufficient information: MiFID business

Insufficient information: insurance based investment products

9A.2.13  EU  9(5)  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.

[Note: article 9(5) of the IDD Regulation]

Insufficient information: MiFID business and insurance based investment products

9A.2.14  G  Although a firm may not be permitted to provide investment advice 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 10A (Appropriateness (for non-advised services in relation to MiFID provisions or non-advised sales of
Identifying the subject of a suitability assessment: MiFID business

Identifying the subject of a suitability assessment: insurance based investment products

9A.2.15 EU 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 investment advice recommending a package of services or products bundled pursuant to COBS 6.1ZA.2.12R (for MiFID business) or COBS 6.1ZA.2.12AR to COBS 6.1ZA.2.12ER (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, second paragraph of article 30(1) 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 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 costs and benefits of the switch, such that they are reasonably able to demonstrate that the benefits of switching are 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 EU 9(6) 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.

[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 client due to the risks of the associated financial instruments, the type of transaction, the characteristics of the order or the frequency of the trading.

(1A) An insurance based investment product may be unsuitable for a client 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.

(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 client.

(3) In the case of portfolio management, 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]

...
Automated or semi-automated systems: MiFID business

...  

Automated or semi-automated systems: insurance based investment products

9A.2.24 EU 12

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.

[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

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.

[Note: article 11 of the IDD Regulation]

Suitability reports: MiFID business and insurance based investment products

9A.3.2 R (1)

This rule applies in relation to investment advice given to a retail client.

(2) When providing investment advice, 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) specify, on the basis of the information obtained from the client, the client’s demands and needs; and
(ii) include 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 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 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.

(4) Where a firm provides a portfolio management service or has informed the client that it will carry out periodic assessment of suitability, the periodic report, provided under COBS 16A.2.1R, must contain an updated statement of how the client’s investments meet the preferences, objectives and other characteristics of the client.

[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 gives 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

9A.3.3A EU 14(1) 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:

(a) an outline of the advice given;

(b) information on how the recommendation provided is suitable for the customer, in particular how it meets:

(i) the customer’s investment objectives, including that person’s risk tolerance;

(ii) the customer’s financial situation, including that person’s ability to bear losses;

(iii) the customer’s knowledge and experience.

14(2) 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.

14(3) 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 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]

…

Providing a suitability report: MiFID business and insurance based investment products

9A.3.4 G …

9A.3.5 G Situations that are likely to require a retail client to seek a periodic review of their arrangements include where a client is likely to need to seek advice to bring a portfolio of investments back in line with the original recommended allocation where there is a probability that the portfolio could deviate from the target asset allocation.

[Note: recital 85 to the MiFID Org 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
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.3.9A 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 recording-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 10(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]

…

[Editor’s note: you should read the following amendments together with the proposals in CP17/23. The text from CP17/23 is included as though it were made without strike through or underlining.]

10A Appropriateness (for non-advised services) (MiFID provisions and insurance based investment products)

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 when the firm makes a personal recommendation or 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 to firms doing insurance distribution activities, but to which the IDD Regulation does not apply, as if they were rules.

10A.2 Assessing appropriateness: the obligations

10A.2.1 R 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: demand 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.2.12R (for MiFID business) or COBS 6.1ZA.2.12AR to COBS 6.1ZA.2.12E (for insurance based investment products), the assessment made pursuant to COBS 10A.2.1R must consider whether the overall bundled package is appropriate.
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 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 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

10A.2.1 G If a firm is satisfied that the client has the necessary experience and 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 (Suitability (MiFID provisions and insurance based investment products)).

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 (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 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**]

…

Other non-complex financial instruments

…

Other non-complex insurance based investment products

10A.4.3 EU 16 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:

(a) it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs;

(b) it does not incorporate a clause, condition or trigger that allows 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;
10A.5 Assessing appropriateness: guidance

The initiative of the client: MiFID business and insurance based investment products

10A.5.1 A service should be considered to be provided 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: article 16 of the IDD Regulation]

10A.5.2 A service can be considered to be provided 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.7 Record keeping and retention periods for appropriateness records

10A.7.1 A firm is required to keep orderly records of its business and internal organisation, including all services and transactions undertaken by it. The records may be expected to include the client information a firm obtains to assess appropriateness and should be adequate to indicate what the assessment was.

Record keeping: MiFID business

…

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.
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 records kept for the purposes of this chapter to be retained for a period of at least five years.

[Editor’s note: you should read the following amendments together with the proposals in CP17/23. The text from CP17/23 is included as though it were made without strike through or underlining.]

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; or

(2) carrying on insurance distribution activities in relation 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 the 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 to firms doing insurance distribution activities, but to whom the IDD Regulation does not apply, as if they were rules.

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 (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

16A.4.2 EU A 18(1) 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.

18(2) The periodic report required under paragraph 1 shall provide a fair and balanced review of the services provided to and transactions 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:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Insurance mediation distribution</td>
</tr>
</tbody>
</table>

... 18.3 Corporate finance business

18.3.2 G

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Insurance mediation distribution</td>
</tr>
</tbody>
</table>

... 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:

<table>
<thead>
<tr>
<th>COBS</th>
<th>Description</th>
</tr>
</thead>
</table>
18.11 Authorised professional firms

18.11.1 R COBS applies to an authorised professional firm, except that its application in relation to non-mainstream regulated activities and financial promotion is modified as set out below.

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;
2. the financial promotion rules apply as modified below;
3. The rules in the following parts of COBS which implement the IDD apply:
   (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 provisions and insurance based investment products));
   (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);

apply 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(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 note (“Note:”) follows the rule indicating which provision is being implemented.

18.11.3 R …

…

19 Pensions supplementary provisions

…

19.3 Product disclosure to members of occupational pension schemes

AVCs

19.3.1 R …

Insurance distribution

19.3.2 R (1) Where a firm in carrying on insurance distribution,

(a) is responsible for the provision of mandatory occupational pension arrangements; and

(b) an employee becomes a member of such an arrangement without having taken an individual decision to join it, it must give the information in (2) to the scheme administrator, employer or trustee, as relevant, to pass to the employee.

(2) The information required by:

(a) COBS 6.1ZA.2.4BR;

(b) COBS 6.1ZA.2.4CR;

(c) COBS 6.1ZA.2.11A R to 11IR (as applicable);

(d) COBS 6.1ZA.2.12A to 12C;

(e) COBS 7.3.1R(3)R.
(f) **COBS 9A.3.2R(2)(b)(ii); and**

(g) **COBS 14.2.1R(2)(b).**

(3) The information in (2) must be given in way that it can be provided promptly after the enrolment of the employee in the arrangement concerned.

[Note: article 22(5) of the **IDD**]

...  

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) or **SYSC 9** (for other firms).

[Note: article 19 of the **IDD Regulation**]

Sch 1.3 G

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>COBS 2.3A.32R</strong></td>
<td>Evidence that any fees, commissions and non-monetary benefits paid or received are designed to enhance the quality of, and (in</td>
<td>(1) List of all fees, commissions and non-monetary benefits received; and (2) record of how any fees, commissions or non-monetary benefits</td>
<td>When the relevant fee, commission or non-monetary benefit is paid or received</td>
<td>Not specified</td>
</tr>
<tr>
<td>relation to the distribution of an insurance based investment product</td>
<td>enhance the quality of, and (in relation to the distribution of an insurance based investment product) do not have a detrimental impact on, the relevant service to the client</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

...  

<table>
<thead>
<tr>
<th><strong>COBS 9A.4.1G</strong></th>
<th><strong>Suitability (MiFID provisions)</strong></th>
<th><strong>Client information for suitability report</strong></th>
<th><strong>From date of suitability report</strong></th>
<th><strong>At least 5 years</strong></th>
</tr>
</thead>
</table>

| **COBS 9A.4.3EU** | **Suitability (insurance based investment products)** | **Client information for suitability report - details in COBS 9A.4.3EU and COBS 9A.4.4EU** | **From date of suitability report** | **For whichever is the longer of 5 years or the duration of the relationship with the client** |

<p>| <strong>COBS 10A.7.2EU</strong> | <strong>Appropriateness (MiFID provisions)</strong> | <strong>Records of appropriateness assessments</strong> | <strong>Date of assessment</strong> | <strong>At least 5 years</strong> |</p>
<table>
<thead>
<tr>
<th><strong>COBS</strong> 10A.7.2AEU</th>
<th><strong>Appropriateness</strong> (insurance based investment products)</th>
<th><strong>Records of appropriateness assessments including the results of such assessments and any warnings given to clients</strong></th>
<th><strong>Date of assessment</strong></th>
<th><strong>For whichever is the longer of 5 years or the duration of the relationship with the client</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>COBS</strong> 16A.4.1EU</td>
<td><strong>Periodic statements</strong> (MiFID provisions)</td>
<td>A copy of a periodic statement sent to a client</td>
<td>From date of despatch to client</td>
<td>At least 5 years</td>
</tr>
<tr>
<td><strong>COBS</strong> 16A.4.2EU</td>
<td><strong>Periodic statements</strong> (insurance based investment products)</td>
<td>A copy of a periodic statement sent to a client</td>
<td>From date of despatch to client</td>
<td>At least 5 years</td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex F

Amendments to the Client Assets sourcebook (CASS)

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

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.1.3R) to provide certain information to a client when the firm is holding the client’s financial instruments or funds (see _COBS_ 6.1ZA.2.5EU) and the requirement under _COBS_ 6.1ZA.2.6AR 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.

...
Annex G

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

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

[Editor’s note: CP17/23 consulted on, after PROD 1.3 (Application of PROD 3), inserting the following new section PROD 1.4. Changes since CP17/23 are marked with strikethrough and underline. Text that was included in CP17/23 has been reproduced for ease of reading.]

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 contracts of insurance; and

(4) distributing contracts of insurance.

[Note: articles 1(2) and 25 of the IDD]

1.4.2 R PROD 4 does not apply in relation to the manufacturing or distributing of a contract of large risks.

[Note: article 25(4) of the IDD]

When an intermediary may be considered to be manufacturing

1.4.3 EU 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.
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 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.

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 of the IDD POG Regulation]

1.4.4 G The effect of PROD 1.4.3EU and PROD 1.4.6R(1) is that an insurance intermediary needs to consider if it is also undertaking a manufacturing role and, if so, also comply with PROD 4.2 (Manufacture of contracts of insurance).

Effect of provisions marked “EU”

1.4.5 R (1) Subject to (2), provisions in this section and in PROD 4 marked “EU” apply to firms manufacturing or distributing contracts of insurance, but to whom the IDD POG Regulation does not apply, as if they were rules.

(2) Reference in Column (A) to a word or phrase used in the IDD POG Regulation for the purpose of (1) have the meaning indicated in Column (B) of the table below:

<table>
<thead>
<tr>
<th>(A)</th>
<th>(B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Article 17(1) of Directive (EU) 2016/97”</td>
<td>ICOBS 2.5.1R, in relation to a non-investment insurance contract, or COBS 2.1.1R, in relation to a life policy</td>
</tr>
<tr>
<td>“Article 25(1) of Directive (EU) 2016/97”</td>
<td>PROD 4.2.1R and PROD 4.2.2R</td>
</tr>
<tr>
<td>“Article 8(2)”</td>
<td>PROD 4.2.30EU</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>“competent authorities”</td>
<td>FCA</td>
</tr>
<tr>
<td>“customer” and “potential customer”</td>
<td>customer</td>
</tr>
<tr>
<td>“Directive (EU) 2016/97”</td>
<td>IDD</td>
</tr>
<tr>
<td>“insurance based investment products”</td>
<td>insurance based investment products</td>
</tr>
<tr>
<td>“insurance distribution activities” and “distribution activities”</td>
<td>insurance distribution activities</td>
</tr>
<tr>
<td>“insurance distributor”</td>
<td>distributor</td>
</tr>
<tr>
<td>“insurance intermediary”</td>
<td>insurance intermediary</td>
</tr>
<tr>
<td>“insurance product”</td>
<td>contract of insurance</td>
</tr>
<tr>
<td>“insurance undertaking”</td>
<td>insurer</td>
</tr>
<tr>
<td>“manufacturer” and “manufacturers within the meaning of Article 2 of this Delegated Regulation”</td>
<td>manufacturer</td>
</tr>
<tr>
<td>“manufacturing”</td>
<td>manufacturing</td>
</tr>
<tr>
<td>“shall”</td>
<td>must</td>
</tr>
</tbody>
</table>

(3) In this sourcebook, where a reproduced provision of an article of theIDD 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?

1.4.36 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

1.4.47 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

1.4.58 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

1.4.69 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. PROD 4.4 includes guidance based on the RPPD which firms subject to PROD 4 will need to apply.

[Editor’s note: CP17/23 consulted on, after PROD 3 (Product governance: MiFID), inserting the following new chapter PROD 4. Changes since CP17/23 are marked with strikethrough and underline. Text that was included in CP17/23 has been reproduced for ease of reading.]

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 contracts of insurance

Product governance arrangements

4.2.1 R A firm which manufactures any contracts of insurance must maintain,
operate and review a process for the approval of:

(1) each contract of insurance; and

(2) significant adaptations of an existing contract of insurance,

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 contract of insurance.

[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 contract of insurance;

(2) the degree to which publicly available information can be obtained;

(3) the nature of the contract of insurance 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 of 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 of 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 EU 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
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

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 a contract of insurance, they must outline their mutual responsibilities in a written agreement.

4.2.15 R For each contract of insurance 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 contract of insurance 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 of 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 of 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 4.2.23EU, manufacturers should include assessments of the performance and risk/reward profile of their contracts of insurance.

[Note: recital 8 of 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 contract of insurance, including examination of the following:

(1) whether the costs and charges of the contract of insurance are compatible with the needs, objectives and characteristics of the target market;

(2) where relevant, whether the charging structure of the contract of insurance 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 contract of insurance, 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 4.2.26R 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 4.2.26R 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 4.2.26R.

**Distribution channels and Information** disclosure to distributors

<table>
<thead>
<tr>
<th>EU</th>
<th>8(1)</th>
<th>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.</th>
</tr>
</thead>
</table>

**Note:** article 8(1) of the IDD POG Regulation

| G | To ensure appropriate information for customers, manufacturers should select distributors that have the necessary knowledge, expertise and competence to understand the features of a contract of insurance and the identified target market. |
|---|---|---|

**Note:** recital 9 of the IDD POG Regulation

| R | A firm which manufactures a contract of insurance, must make available to a distributor: |
|---|---|---|
| (1) | all appropriate information on the contract of insurance |
| (2) | all appropriate information on the product approval process; and |
| (3) | the identified target market of the contract of insurance. |

**Note:** fifth subparagraph of article 25(1) of the IDD

<table>
<thead>
<tr>
<th>EU</th>
<th>8(2)</th>
<th>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.</th>
</tr>
</thead>
</table>

**Note:** article 8(2) of the IDD POG Regulation

<table>
<thead>
<tr>
<th>EU</th>
<th>8(3)</th>
<th>The information referred to in paragraph 2 shall enable the insurance distributors to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>understand the insurance products;</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>comprehend the identified target market for the insurance products;</td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives;</td>
<td></td>
</tr>
</tbody>
</table>
(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]

4.2.32 R A manufacturer must make available to any distributor information about the target market assessment undertaken.

Review: Monitoring and review of contracts of insurance

4.2.5 R A firm must understand the contracts of insurance it offers or markets.

4.2.33 [Note: fourth subparagraph of article 25(1) of the IDD]

4.2.6 R A firm must regularly review the contracts of insurance 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 contract of insurance 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 P OG 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 contracts of insurance

4.3.1 R Where a firm distributes contracts of insurance which it does not manufacture it must have in place adequate arrangements to obtain the information in PROD 4.2.7R 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 contracts of insurance which it does not manufacture, it must have in place adequate arrangements to understand:

(1) the characteristics of each contract of insurance; and

(2) the identified target market of each contract of insurance.

[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 contracts of insurance 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 *contracts of insurance* 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]

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.

[Note: article 11 of the IDD POG Regulation]

4.3.12 G Manufacturers and distributors should take appropriate action in order to avert the risk of consumer detriment when they consider that the product is not, or is no longer, aligned with the interests, objectives and characteristics of the identified target market.

[Note: recital 12 of the IDD POG Regulation]

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.

[Note: article 12 of the IDD POG Regulation]

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.

[Note: second sub-paragraph of article 10(1) of the IDD POG Regulation]
4.4 **Additional expectations for manufacturers and distributors of contracts of insurance**

4.4.1 G In addition to PROD 4.1, PROD 4.2 and PROD 4.3, **firms** should also consider what needs to be done to comply with obligations found elsewhere in the **FCA Handbook**, including under the **Principles** and **SYSC**. In considering this firms should apply any relevant **guidance** including in the Responsibilities of Providers and Distributors for the fair treatment of customers (**RPPD**).

4.4.2 G **PROD 1.4.10G** provides that, where **PROD 4** applies, a **firm** need not apply the **guidance** in **RPPD** for matters covered by **PROD**, if that **firm** has complied with **PROD 4**. However, the **IDD POG Regulation** does not cover all parts of the **RPPD** or wider obligations in the **FCA Handbook** and the following **guidance**, some of which is reproduced from the **RPPD**, remains relevant.

4.4.3 G **Manufacturers** should consider whether the design of a **contract of insurance** 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. should 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 provider 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 **contracts of insurance** it manufactures, a **firm** should communicate to the **customer** 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 a **contract of insurance** that has been surrendered or reached maturity. In doing this, the provider 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 **contracts of insurance** they **distribute** and in ensuring they understand the
contracts of insurance 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 contract of insurance adequately;

(3) should not distribute the contract of insurance 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 H

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 1.1.3 G.

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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

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<td>(17)</td>
<td>Where the claim is in relation to a protected contract of insurance or protected non-investment insurance mediation protected non-investment insurance distribution, body corporate, partnerships, mutual associations and unincorporated associations which are not small businesses.</td>
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...

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:

...

(2) a claim in connection with protected non-investment insurance
mediated 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).

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 5.7.2 R 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.

6 Relevant persons and successors in default

... 

6.2 Who is a relevant person?

6.2.2 G (1) An incoming EEA firm, which is a credit institution, an IMD insurance intermediary, IDD insurance intermediary, a MiFID investment firm or an MCD mortgage credit intermediary, and its appointed representatives are not relevant persons in relation to the firm’s passported activities, unless it has top-up cover (See definition of "participant firm").

... 

6.3 When is a relevant person in default?

... 

6.3.4 R For claims arising in connection with protected investment business, protected home finance mediation or protected non-investment insurance mediation protected non-investment insurance distribution, the FSCS has the additional power to determine that a relevant person is in default if it is satisfied that a protected claim exists, and:

... 

6.3A When is a successor in default?

... 

6.3A.4 R For claims arising in connection with protected investment business, protected home finance mediation or protected non-investment insurance mediation protected non-investment insurance distribution, the FSCS has the additional power to determine that a successor is in default if it is satisfied that a protected claim exists and:
8 Rejection of application and withdrawal of offer

8.2 Rejection of application for compensation

8.2.4 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 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 Table Limits

This table belongs to COMP 10.2.1R

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<tr>
<th>Type of claim</th>
<th>Level of cover</th>
<th>Maximum payment</th>
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<td>Protected non-investment insurance mediation</td>
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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 credit institution, or an MiFID investment firm (or both), 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 for an incoming EEA firm which is a credit institution, an IMD insurance intermediary, IDD insurance intermediary, an MiFID investment firm, UCITS management company, an MCD mortgage credit intermediary or an AIFM. It reflects in part the implementation of the Deposit Guarantee Directive, Investors Compensation Directive, and UCITS Directive. This sourcebook applies in the usual way to an incoming EEA firm which is exercising EEA rights under the Solvency II Directive. Such a firm is not affected by the Deposit Guarantee Directive, the Investors Compensation Directive or the UCITS Directive.

14.1.4 G (1) An incoming EEA firm, which is a credit institution, 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 passported 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 passported activities, its Home State compensation scheme must provide compensation cover in respect of business within the scope of the Deposit Guarantee Directive, Investors 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 relating to non-investment insurance contracts is not within the scope of the Deposit Guarantee Directive and the Investor Compensation Directive.

14.2 Obtaining top-up cover
14.2.3 G A notice under COMP 14.2.1 R 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 I

Amendments to the Supervision manual (SUP)

Part 1

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

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 distribution activity, it must in relation to insurance distribution activity ensure that the person will comply on appointment, and will continue to comply with, the provisions of SYSC 23.2 (Knowledge and ability requirements), SYSC 23.3 SYSC 28.3 (Good repute) and SYSC 23.4 (Record-keeping requirements) as if the appointed representative is a firm.

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

12.4.8A R 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 A firm must meet the requirements in 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) in relation to its relevant employees which also includes...
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 12.4.8A R, 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 SYSC 23.2 (Knowledge and ability requirements) and 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 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 or 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 12.4.8C

[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.

(2) The specific knowledge and ability requirements in SYSC 23.2, 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 23.1.2R, 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:

(a) an appointed representative of a firm; and

(b) 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.
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 23.2
        SYSC 28.2; and

   (b)  TC,

        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) 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 12.4.9 G 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:

(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 had given a 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 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 a 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  ...  

(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.

... 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 appropriate UK regulator sends a copy of a notice of intention, it must:

(a) inform the UK firm in writing that it has done so 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 requisite 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 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, 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 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 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

13.7.11A 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 service 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 the date on which the UK firm gave the notice, has elapsed.

(3) Paragraph (1) does not apply to changes occasioned by circumstances beyond the control of the UK firm.

…

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, 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.

…

Insert the following new section after SUP 13.11 (Record keeping). The text is not underlined.
13.11A Enhanced supervision of UK firms exercising rights under the IDD

13.11A.1 G (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.2 G If a UK firm is exercising an EEA right derived from the IDD in a Host 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 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...
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 IDD, 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 (1) Where an EEA firm exercises its EEA right to establish a branch in the United Kingdom under the Insurance Mediation Directive IDD, 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.

(2) For the purposes of paragraph 13(1A)(ba) of Part II of Schedule 3 to the Act, the information to be included in the regulator’s notice has been prescribed under regulation 2 of the EEA Passport Rights Regulations.

... 

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 When the appropriate regulator receives a regulator’s 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 regulator received the regulator’s 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(3AZA) 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:

...

Insert the following new section after SUP 13A.6 (Which rules will an incoming EEA firm be subject to?). The text is not underlined.

13A.6A Enhanced supervision of EEA firms passporting under the IDD

13A.6A. 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
Where the FCA is a Host State regulator it may enter into an article 7(1) IDD Agreement in respect of an incoming EEA firm. The FCA is given this power by section 203 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.

### Application of the Handbook to Incoming EEA Firms

<table>
<thead>
<tr>
<th>Module of Handbook</th>
<th>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</th>
<th>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</th>
</tr>
</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
<tr>
<td>SYSC</td>
<td>SYSC 19A, 19B, 19C and 19D do not apply. SYSC 19F applies to a MiFID investment firm unless it is a UCITS investment firm or an AIFM investment firm. SYSC 28 does not apply.</td>
<td>SYSC 19A, 19B, 19C, 19D, 19E and 19F do not apply. SYSC 28 does not apply.</td>
</tr>
<tr>
<td>MIPRU</td>
<td>MIPRU 2 (Responsibility for insurance mediation activity distribution and MCD credit intermediation) does not apply unless</td>
<td>As column (2)</td>
</tr>
<tr>
<td>...</td>
<td>...</td>
<td>...</td>
</tr>
</tbody>
</table>
the firm has a top-up permission.

…

*MIPRU 5 (Insurance distributors and mortgage lenders)*  
home finance providers using insurance distribution or mortgage home finance mediation services) does not apply unless the firm has a top-up permission.

…

**SUP**

**SUP 12 (Appointed representatives)**

Applies only if the firm has permission to carry on designated investment business, insurance mediation distribution activity or mortgage mediation activity and wishes to appoint, or has appointed, an appointed representative (SUP 12.1.1R(1)).

…

**COMP**

Applies, except in relation to the passported activities of a MiFID investment firm, a CRD credit institution (other than an electronic money institution within the meaning of article 1(3)(a) of the E-Money Directive that has the right to benefit from the mutual recognition arrangements under the CRD), an IDD insurance intermediary, a UCITS management company carrying on non-core services under article 6.3 of the UCITS Directive, an MCD mortgage credit intermediary and an incoming AIFM branch carrying on either AIFM management functions for an unauthorised AIF or non-core services under article 6.4 of AIFMD (see the definition of “participant

Does not apply in relation to the passported activities of an MiFID investment firm, a CRD credit institution, an IDD insurance intermediary, an MCD mortgage credit intermediary or a UCITS management company carrying on non-core services under article 6.3 of the UCITS Directive or an incoming EEA AIFM regarding AIFM management functions carried on for an unauthorised AIF or non-core services under article 6.4. Otherwise, COMP may apply, but the coverage of the compensation scheme is limited for non-UK activities (see COMP 5).
firm”). However, a firm specified above may be able to apply for top-up cover in relation to its passported activities (see COMP 14 (Participation by EEA Firms)).

13A Matters reserved to a Home State regulator

Annex 2G

Requirements in the interest of the general good

2. The Single Market Directives and the Treaty (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the Home State regulator. To summarise, the FCA or PRA, as Host State regulator, is entitled to impose requirements with respect to activities carried on within the United Kingdom 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 Single Market Directives:

(1) the Single Market Directives expressly reserve responsibility for the prudential supervision of a MiFID investment firm, CRD credit institution, UCITS management company, AIFM or passporting Solvency II firm to the Firm’s Home State regulator in respect of prudential matters within the scope of the respective Single Market Directives. The Insurance Mediation Directive IDD and the MCD reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the FCA, as Host State regulator, is entitled to regulate only the conduct of the firm’s business (in the case of the IDD, business conducted through a branch) within the United Kingdom;

Requirements under the MCD
Requirements under the IDD

11N Under article 7(2) of the IDD, ensuring compliance with the obligations in Chapter V (articles 17 – 25) and Chapter VI (articles 27 – 30) of the IDD by incoming EEA branches is the responsibility of the Host State. Subject to article 7(1) (see 11P below), ensuring compliance with all other obligations is the responsibility of the Home State.

11O Subject to article 7(1) (see 11P below), ensuring compliance with the obligations in the IDD by EEA firms providing cross border services is the responsibility of the Home State.

11P Under article 7(1) of the IDD, if an IDD insurance intermediary’s primary place of business is in a Host State, the Home and Host State regulators may agree that the Host State regulator will act as if it were the Home State regulator. This is only with regard to the provisions of Chapters IV, V, VI and VII of the IDD (see guidance in SUP 13A.6A).

14 Incoming EEA firms changing details, and cancelling qualification for authorization

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 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.

Appendix 3 Guidance on passporting issues

App 3.3 Background

App 3.3.6 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 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 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) and 2(2) of the IDD

App 3.9.7 G

<table>
<thead>
<tr>
<th>Table 2B: Insurance Mediation Distribution Directive Activities</th>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance.</td>
<td>Articles 25, 53(1) and 64</td>
<td>Articles 75, 89 (see Note 1)</td>
</tr>
<tr>
<td>1A. Advising on contracts of insurance or reinsurance</td>
<td>Articles 53(1) and 64</td>
<td>Articles 75, 89</td>
</tr>
<tr>
<td>2. Concluding contracts of insurance or reinsurance</td>
<td>Articles 21, 25, 53(1) and 64</td>
<td>Articles 75, 89</td>
</tr>
<tr>
<td>3. Assisting in the administration and performance of contracts of insurance or reinsurance, in particular in the event of a claim.</td>
<td>Articles 39A, 64</td>
<td>Articles 75, 89</td>
</tr>
<tr>
<td>4. 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.</td>
<td>Articles 21, 25 and 64</td>
<td>Articles 75, 89</td>
</tr>
</tbody>
</table>
Table 2B: Insurance Mediation Distribution Directive Activities

<table>
<thead>
<tr>
<th>Part II RAO Activities</th>
<th>Part III RAO Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note 1. Rights to or interests in <em>life policies</em> are <em>specified investments</em> under <em>Article 89</em> of the <em>Regulated Activities Order</em>, but rights to or interests in <em>general insurance contracts</em> are not.</td>
<td></td>
</tr>
</tbody>
</table>
Part 2

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

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 Distribution Directive (IDD)

... 

3.2 Intermediary’s details*

Name
Address
Registration number (if applicable)

3.3 Please indicate the firm’s category of intermediary+

| Insurance intermediary | ☐ |
| Ancillary insurance intermediary | ☐ |
| Reinsurance intermediary | ☐ |

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]
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 IDD Cross Border Services Form

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)

3 Insurance Distribution Directive (IDD)

3.2 Intermediary’s details*

Name
Address
Registration number (if applicable)

3.3 Please indicate the firm’s category of intermediary +

<table>
<thead>
<tr>
<th>Insurance intermediary</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancillary insurance intermediary</td>
<td></td>
</tr>
<tr>
<td>Reinsurance intermediary</td>
<td></td>
</tr>
</tbody>
</table>

3.3.4 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

<table>
<thead>
<tr>
<th>Firm reference number</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Company</td>
<td></td>
</tr>
<tr>
<td>Registration number (if applicable)</td>
<td></td>
</tr>
<tr>
<td>Address Line 1</td>
<td></td>
</tr>
<tr>
<td>Address Line 2</td>
<td></td>
</tr>
<tr>
<td>Address Line 3</td>
<td></td>
</tr>
<tr>
<td>Address Line 4</td>
<td></td>
</tr>
<tr>
<td>County</td>
<td></td>
</tr>
<tr>
<td>-------------</td>
<td>---</td>
</tr>
<tr>
<td>Town</td>
<td></td>
</tr>
<tr>
<td>Postcode/Zip</td>
<td></td>
</tr>
<tr>
<td>EEA State</td>
<td></td>
</tr>
<tr>
<td>Phone Number (including STD code)</td>
<td></td>
</tr>
<tr>
<td>E-mail address</td>
<td></td>
</tr>
<tr>
<td>Mobile number</td>
<td></td>
</tr>
<tr>
<td>Fax number</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category of intermediary</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance intermediary</td>
<td>✅</td>
</tr>
<tr>
<td>Ancillary insurance intermediary</td>
<td></td>
</tr>
<tr>
<td>Reinsurance intermediary</td>
<td></td>
</tr>
</tbody>
</table>

### 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]
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**

... 

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Please indicate the percentage of the total income from the firm’s regulated activities generated from the following activities:</td>
<td>Investment management</td>
<td>Corporate finance</td>
<td>Retail investment</td>
<td>Home finance mediation</td>
<td>Insurance mediation distribution</td>
<td>Credit-related regulated</td>
</tr>
</tbody>
</table>

...
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 (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?

...  Professional indemnity insurance

**FSA032**

*Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)*

...  Professional indemnity insurance

...  Does your firm conduct insurance mediation distribution activities?
The form (Data items for data items in SUP 16.24R) 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  

...  

<table>
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<th>Description</th>
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<th>Guidance</th>
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</thead>
<tbody>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part 4</strong></td>
<td>Regulatory capital test to be completed by all firms</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does your firm conduct insurance mediation distribution activities?</td>
<td>34A</td>
<td>Insurance mediation distribution activities are defined in the Handbook glossary.</td>
</tr>
</tbody>
</table>

**FSA032**

**Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 13)**

Defined Terms  

...  

<table>
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<tr>
<th>Description</th>
<th>Data element</th>
<th>Guidance</th>
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</thead>
<tbody>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Part 4</strong></td>
<td>Regulatory capital test to be completed by all firms</td>
<td></td>
</tr>
<tr>
<td>...</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does your firm conduct insurance mediation distribution activities?</td>
<td>34A</td>
<td>This is either ‘Yes’ or ‘No’, and enables us to check that the PII cover meets the minimum requirements.</td>
</tr>
</tbody>
</table>
Editor’s note: the text in this Annex takes into account the near-final rules attached to PS17/21 ‘Insurance Distribution Directive implementation – Feedback to CP17/7 and near-final rules’ (September 2017) and the changes suggested by CP17/23 ‘Insurance Distribution Directive Implementation – Consultation Paper 2’ (July 2017) as if they were made.

Annex J

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.

3.1 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).

4.1 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.fca.org.uk/register/home.do www.fca.gov.uk/register/home.do www.fca.org.uk/firms/financial-services-register.”

4.1.4 G …

4.1.4 (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.

…

5.3 Reference to other sourcebooks and manuals

…

Conduct of 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 will 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 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 1, Part 1, 3.1R, except for:

... 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(General requirements for insurance intermediaries and insurers), ICOBS 4.1A (Means of communicating to customers), ICOBS 4.3 (remuneration disclosure) and, ICOBS 5.2.3R, ICOBS 5.2, ICOBS 5.3.4R (Personalised explanation), ICOBS 5.3.3R (Advice on the basis of a fair analysis), 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.

7.1 Register of persons carrying on insurance mediation 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...
2017 (SI 2017/[TBC]) implements in part the provisions of the Insurance Mediation Directive IDD and amends 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 7.1.7 G. 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.
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 Passorting 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 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.
Annex K

Amendments to the Perimeter Guidance manual (PERG)

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

1.4 General guidance to be found in PERG

…

1.4.2 G Table: list of general guidance to be found in PERG.

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<thead>
<tr>
<th>Chapter:</th>
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<th>About:</th>
</tr>
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<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PERG 5:</td>
<td>any person who needs to know whether they carry on insurance mediation activities and is, thereby, subject to FCA regulation. This is likely to include: insurance brokers, insurance advisers, insurance undertakings, other persons involved in the sale or administration of contracts of insurance, where these activities are secondary to their main business.</td>
<td>the scope of relevant orders (in particular, the Regulated Activities Order) as respects activities concerned with the sale or administration of insurance</td>
</tr>
<tr>
<td>…</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

…

1.5 What other guidance about the perimeter is available from the FCA?

1.5.1 G …
(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](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](http://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](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.

…

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 …

(2) …

(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 insurance distribution activities (see 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 …
(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 reinsurance mediation reinsurance distribution.

…

(10A) Under article 33B, activities which consist of the provision of information about a potential policyholder to relevant insurer (as defined in article 39B(2) of the RAO) or insurance intermediary, or about certain insurance products or providers to a potential policyholder, is excluded from article 25(1) and (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 …
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 agreements activities).

2.9 Regulated activities: exclusions applicable in certain circumstances

Trustees, nominees or personal representatives

2.9.3 G ...

(9) ...

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 ...

(5) ...

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 (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)).
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 must have an annual premium of no more than 500 

(aa) 600 euro or less (calculated on a pro rata annual basis); or

(bb) 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:

(aa) breakdown or loss of or damage to non-motor goods supplied by the provider; or

(bb) loss of or damage to baggage and other risks linked to certain travel services booked with the provider; or

(cc) 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 or her 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 RAO) or insurance intermediary, by a person who does not take any other step to assist in the conclusion of a contract of insurance (see PERG 2.8.6AG).

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

…

2.10.5 G With one exception, a person is exempt if he is 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 SUP 12 (Appointed representatives). But where an appointed representative carries on insurance mediation insurance distribution or reinsurance mediation reinsurance distribution he will not be exempt unless he is 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 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 PERG 5.10 (Exemptions)).

2 Annex Regulated activities and the permission regime

2 Table

<table>
<thead>
<tr>
<th>Regulated activity</th>
<th>Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Insurance mediation distribution activity [see note 5A to Table 1]</th>
</tr>
</thead>
<tbody>
<tr>
<td>(pb) dealing in investments as agent (article 21)</td>
</tr>
<tr>
<td>life policy [see note 5B to Table 1]</td>
</tr>
</tbody>
</table>
3 Table

**Notes to Table 1**

<table>
<thead>
<tr>
<th>Note 1B:</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>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 distribution activities’. The full list of insurance mediation activities insurance distribution activities 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 insurance distribution activities.</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Note 5A:</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Where they are carried on in relation to a life policy, the activities listed as insurance mediation activities insurance distribution activities in (pb) to (pf) (as well as the regulated activity of agreeing to carry on those activities) are also designated investment business.</em></td>
</tr>
</tbody>
</table>

**4.1 Application and purpose**

<table>
<thead>
<tr>
<th>Guidance on other activities</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>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 PERG 2 (Authorisation and regulated activities), PERG PERG 5 (Guidance on insurance mediation distribution activities) and PERG PERG 8 (Financial promotion and related activities). In addition, PERG 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</em></td>
</tr>
</tbody>
</table>
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 PERG 5.4 (The business test for insurance mediation distribution) has 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 This chapter applies principally to any person who needs to know whether he carries 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 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 5.15.6 G (Flow chart: Introducers) to help consider whether they require authorisation. This guidance also explains the availability to persons carrying on insurance 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


Questions to be considered to decide if authorisation is required

5.2.3 G A person who is concerned to know whether his 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 (Exclusions for the provision of information; article 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 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 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 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 text of IDD articles 2.3 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 has implemented the IMD IDD (and the IMD before it) by domestic legislation, which applies to apply pre-existing regulated activities (slightly amended) in the Regulated Activities Order to the component elements of the insurance mediation insurance distribution and reinsurance distribution definition in the IMD IDD (see PERG 5.2.5G and the text of IDD articles 2.3 2.1(1), 2.1(2) and 2.2 IMD 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 5.2.5 G to PERG 5.2.6 G 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:

1. dealing in investments as agent (article 21 (Dealing in investments as agent));
2. arranging (bringing about) deals in investments (article 25(1) (Arranging deals in investments));
3. making arrangements with a view to transactions in investments (article 25(2) (Arranging deals in investments));
4. assisting in the administration and performance of a contract of insurance (article 39A (Assisting in the administration and performance of a contract of insurance));
5. advising on investments (except P2P agreements) (article 53(1) (Advising on investments));
(6) agreeing to carry on any of the above regulated activities (article 64 (Agreeing to carry on specified types of activity)).

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.

…

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 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 the 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 insurance 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 the person takes up or pursues that activity for remuneration. Accordingly, there are two principal elements to the business test in the case of insurance 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 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 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 can also take the form of an economic benefit which the person expects to receive as a result of carrying on insurance mediation activities or insurance distribution activities.

(c) In the FCA’s view, the remuneration 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 or insurance distribution activity by way of business, he 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 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:

(1) it is not necessarily the case that services provided free of charge will not amount to a business; for example, advice (including advice available on a website) may be provided free of charge to potential policyholders but in the course of a business funded by commission payments; and

(2) the ‘by way of business’ test may very occasionally be satisfied by an activity undertaken on an isolated occasion (provided that the activity would be regarded as done ‘by way of business’ in other respects, for example, because of the size of reward received or its relevance to other business activities).

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 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 or 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 or for their own benefit, or for members of his 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 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 Table: Carrying on insurance mediation distribution activities ‘for remuneration’ and ‘by way of business’

<table>
<thead>
<tr>
<th>Factor</th>
<th>Indicators that P does not carry on activities ‘for remuneration’</th>
<th>Indicators that P does carry on activities ‘for remuneration’</th>
</tr>
</thead>
<tbody>
<tr>
<td>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)</td>
<td>P does not receive any direct remuneration specifically identified as a reward for P’s carrying on insurance mediation activities insurance distribution activities.</td>
<td>P receives direct remuneration specifically identified as being a reward for P’s carrying on insurance mediation activities insurance distribution activities.</td>
</tr>
<tr>
<td>Indirect remuneration (such as any form of economic benefit as may be explicitly or implicitly agreed between P and the insurer/broker or P’s customer – including, for example, through the</td>
<td>P does not obtain any form of indirect remuneration through an economic benefit other than one which is not likely to have a material effect on P’s ability to make a profit</td>
<td>P obtains an economic benefit that: (a) is explicitly or implicitly agreed between P and the insurer/broker or P’s customer; and (b) has the potential to</td>
</tr>
</tbody>
</table>
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 insurance distribution activities as part of other services.

from his their other activities.

go beyond mere cost recovery through fees or other benefits received for providing a package of services that includes insurance mediation activities insurance distribution activities but where no particular part of the fees is attributable to insurance mediation activities insurance distribution activities. This could include where insurance mediation activities insurance distribution activities are likely to: 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 provide P with a materially increased opportunity to provide other goods or services; or be a major selling point for P’s other business activities; or be essential for P to provide other goods or services.

P charges his customers a greater amount for other goods or services than would be the case if P were not also carrying on insurance mediation activities insurance distribution activities for those customers and this: is explicitly
or implicitly agreed between P and the insurer/broker or P’s customer; and has the potential to go beyond mere cost recovery.

<table>
<thead>
<tr>
<th>Recovery of costs</th>
<th>P receives no benefits of any kind (direct or indirect) in respect of his insurance mediation activities insurance distribution activities 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).</th>
<th>P receives benefits of any kind (direct or indirect) in respect of his insurance mediation activities insurance distribution activities which go beyond the reimbursement of his actual costs incurred in carrying on the activity.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>‘By way of business’</th>
<th></th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Holding out</th>
<th>P does not hold himself or herself out as providing a professional service that includes insurance mediation activities insurance distribution activities (by ‘professional’ is meant meaning ‘not the services of a layman’).</th>
<th>P holds himself him or herself out as providing a professional service that includes insurance mediation activities insurance distribution activities.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Relevance to other activities/business</th>
<th>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</th>
<th>insurance mediation activities Insurance distribution activities: are essential to P in carrying on his their main activities; or would cause a material disruption</th>
</tr>
</thead>
<tbody>
<tr>
<td>carrying on his their main activities; or would be unlikely to result in a material reduction in income from P’s main activities if ceased.</td>
<td>to P carrying on his their main activities if ceased; or would be likely to reduce P’s income by a material amount.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Commercial benefit</td>
<td>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 P’s main activities if they did not include insurance mediation activities insurance distribution activities.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>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 P’s main activities if they did not include insurance mediation activities insurance distribution activities.</td>
<td></td>
</tr>
</tbody>
</table>

...  

5.6 The regulated activities: arranging deals in, and making arrangements with a view to transactions in, contracts of insurance  

...  

5.6.4 G Article 25(2) may, for instance, include activities of persons who help potential policyholders fill in or check application forms in the context of ongoing arrangements between these persons and insurance undertakings. A further example of this activity would be a person introducing customers to an intermediary either for advice or to help arrange an insurance policy. The introduction might be oral or written. By contrast, the FCA considers that a mere passive display of literature advertising insurance (for example, leaving leaflets advertising insurance in a dentist’s or vet’s waiting room and doing no more) would not amount to the article 25(2) activity.  

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 to a relevant insurer or an insurance intermediary about a potential policyholder;

2. the provision of information to a potential policyholder about:
   a. a contract of insurance, or investment of the kind specified in article 89 so far as is relevant to such a contract, or
   b. a relevant insurer (as defined in article 39B(2) of the RAO) or insurance 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 This exclusion will be of assistance to persons who would otherwise be carrying on the regulated activity of arranging, assuming that they provide only the information specified in PERG 5.6.4BG(1) or (2) to potential policyholders, or to the intermediary or relevant insurer (as defined in article 39B(2) of the RAO) (as applicable). 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 The reference to ‘potential policyholder’ means that the exclusion in article 33B would not be available where a person is providing information in relation to an existing contract of insurance.

5.6.4E G A person seeking to rely on article 33B cannot provide information other than is 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 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.

5.6.4 F 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.

5.6.6 G In broad terms, article 72C of the Regulated Activities Order excludes from the activities of arranging and assisting in the administration and performance of a contract of insurance activities that:

1. consist of the provision of information to the policyholder or potential policyholder;

2. are carried on by a person carrying on any profession or business which does not otherwise consist of regulated activities; and

3. amount to the provision of information that may reasonably be regarded as being incidental to that profession or business.

…

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), 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 5.15.6 G (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 5.6.4FG 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 its service of publishing, broadcasting or otherwise facilitating the issue of promotions, he it may well bring himself 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 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 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 exclusions in articles 33B or 72C of the Regulated Activities Order for merely passing information. For this to be the case, a person 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.

…

Other exclusions

5.6.23 G The Regulated Activities Order contains some other exclusions which have the effect of narrowing or limiting the application of regulated activities within article 25 by preventing certain activities from amounting to regulated activities. These are referred to in PERG 5.11.8G (Exclusions applying to more than one regulated activity).

…

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)).

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 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).

... Advice given to a person in his 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).

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 IDD articles 2.1(1), 2.1(2) and 2.2 IMD in PERG 5.16.1G 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 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 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)).

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?));

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  

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  

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 to maintain his insurance cover by having his 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’ 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 to properly implement IDD as part of implementation of the IMD.

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 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 5.6.4AG to PERG 5.6.9G which cover exclusions (Exclusions: 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 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.

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 distribution services to third parties for remuneration. This 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 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 articles 2.3 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. 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 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 2.1(1), 2.1(2) and 2.2 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 of...
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 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;

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

Table Territorial issues relating to overseas insurance intermediaries carrying on insurance mediation activities insurance distribution activities in or into the United Kingdom

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<td>For EEA-based intermediaries this table assumes that the insurance mediation activities insurance distribution activities are within the scope of the Insurance Mediation Directive IDD.</td>
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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 \textit{PERG} 5.12.7G(1) do not apply, it is necessary to consider further the nature of the activity in order to determine where \textit{insurance mediation insurance distribution} is carried on. \textit{Persons} that arrange \textit{contracts of insurance} will usually be considered as carrying on the activity of \textit{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 \textit{Regulated Activities Order (Overseas persons)} provides a potential exclusion for \textit{persons} with no permanent place of business in the \textit{United Kingdom} from which \textit{regulated activities} are conducted or offers to conduct \textit{regulated activities} are made. Where these \textit{persons} carry on \textit{insurance mediation activities} \textit{insurance distribution activities} in the \textit{United Kingdom}, they may be able to take advantage of the exclusions in article 72 of the \textit{Regulated Activities Order}. In general terms, these apply where the \textit{overseas person} either:

\textit{...}

\textit{...}

5.12.10 G The \textit{overseas person} exclusion is available to \textit{persons} who do not have a permanent place of business in the \textit{United Kingdom} and so is of relevance to third country intermediaries (that is, non EEA-based intermediaries) who carry on \textit{insurance mediation activities} \textit{insurance distribution activities} in, or into, the \textit{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 \textit{persons} must obtain \textit{Part 4A permission} in relation to their \textit{insurance mediation activities} \textit{insurance distribution activities} in the \textit{United Kingdom} as one of the following:

1. a \textit{body corporate} whose registered office is situated in the \textit{United Kingdom}; or

2. a \textit{partnership} or unincorporated association whose head office is situated in the \textit{United Kingdom}; or

3. an individual (that is, a sole trader) whose residence is situated in the \textit{United Kingdom}.

The \textit{United Kingdom} will, in each case, be the \textit{Home State} for the purposes of the \textit{IMD IDD} for insurance or reinsurance intermediaries (see further in connection with the \textit{E-Commerce}
Passorting

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 representatives

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, 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 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 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 out 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 12.2.3 G)). He A will, therefore, need to apply for permission to cover all the regulated activities that he they propose 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 them. 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 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 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 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 is endorsing a corresponding recommendation given to the client. The recommendation he 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.

…

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 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).

5.15.2 Flow chart: regulated activities related to insurance mediation activities—do you need authorisation? [deleted]

5.15.3 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 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 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 Types of activity – are they regulated activities and, if so, why?

<table>
<thead>
<tr>
<th>Type of activity</th>
<th>Is it a regulated activity?</th>
<th>Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARKETING AND EFFECTING INTRODUCTIONS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Passive display of information - for example, medical insurance brochures in doctor’s surgery (whether or not remuneration is received for this activity)</td>
<td>No.</td>
<td>Merely displaying information does not constitute making arrangements under article 25(2) (see PERG 5.6.4G).</td>
</tr>
<tr>
<td><strong>Recommending a broker/insurance undertaking and providing Providing a customer with contact details or information about a broker/insurance undertaking (whether by phone, fax, e-mail, face-to-face or any other means of communication)</strong></td>
<td>Yes, but article articles 33B or 72C may be available.</td>
<td>This will constitute making arrangements under article 25(2). But, the exclusion exclusions in article 72C articles 33B or 72C will apply if all the intermediary does is supply information to the customer and the relevant conditions of article 72C those exclusions are otherwise met (see PERG 5.6.5 G PERG 5.6.4AG to PERG 5.6.9 G). Generally, this will not amount to advice under article 53(1) unless there is an implied recommendation of a particular policy (see PERG 5.8.4G), in which case article 72C articles 33B and 72C would not be available.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Providing an insurance undertaking/broker with contact details of customer</strong></td>
<td>Yes, but article 33B may be available.</td>
<td>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. Article 33B applies to the provision of information about a potential policyholder to an insurance undertaking or insurance 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.</td>
</tr>
<tr>
<td><strong>Marketing on behalf of insurance undertaking to intermediaries only (for example, broker consultants)</strong></td>
<td>Yes.</td>
<td>This amounts to work preparatory to the conclusion of contracts of insurance and so constitutes making arrangements under article 25(2). Article 33B does not apply because the information provided to the intermediary doesn’t relate to a potential policy holder. Article 72C is not available because this activity does not involve provision of</td>
</tr>
<tr>
<td><strong>Telemarketing services (that is, companies specialising in marketing an insurance undertaking’s products/services to prospective customers)</strong></td>
<td><strong>Yes (unless article 33B applies and no advice is given).</strong></td>
<td><strong>This amounts to introducing and/or other work preparatory to the conclusion of contracts of insurance and so constitutes making arrangements under article 25(2). This could also involve article 25(1) arranging where the telemarketing company actually sells a particular policy, and could involve advising on investments. Article 33B may apply to arranging activities, but only if the telemarketing company takes no steps in addition to providing information to assist in concluding the contract. Article 72C will not be available where the provision of information is more than incidental to the telemarketing company’s main business or, Articles 33B and 72C will not be available where the telemarketing company is advising on investments.</strong></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE</strong></td>
<td><strong>Discussion with client about need for insurance generally/need to take out a particular type of insurance</strong></td>
<td><strong>Generally, no. Article 33B or 72C available if needed.</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>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 arranging. If so, articles 33B or 72C might be of application (see PERG 5.6.5G to PERG 5.6.9G).</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Advising on the level of cover needed</strong></td>
<td><strong>Generally, no. Article 33B or 72C available if needed.</strong></td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>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 PERG 5.8.3G). If so, articles articles 33B or 72C might be of application (see PERG 5.6.5G PERG 5.6.4AG to PERG 5.6.9G).</strong></td>
</tr>
<tr>
<td><strong>Pre-purchase</strong></td>
<td><strong>Yes.</strong></td>
<td><strong>This will constitute arranging</strong></td>
</tr>
<tr>
<td>Question</td>
<td>Response</td>
<td>Explanation</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>--------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>questioning in the context of</td>
<td>Subject to article 72 C exclusion where available.</td>
<td>Although article 72C may be of application (see PERG 5.6.5G to PERG 5.6.4AG to PERG 5.6.9G). If there is no express or implied recommendation of a particular policy, this activity will not amount to advice under article 53(1) (see PERG 5.8.15G to PERG 5.8.19G).</td>
</tr>
<tr>
<td>filtered sales (intermediary</td>
<td></td>
<td></td>
</tr>
<tr>
<td>asks a series of questions and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>then suggests several policies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>which suit the answers given</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explanation of the terms of a</td>
<td>Possibly. Article 72C available.</td>
<td>This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve advising on investments (except P2P agreements) (see PERG 5.8.8G (Advice or information)). Where the explanation is provided to the potential policyholder, and does not involve advising on investments (except P2P agreements), article 72C may be of application (see PERG 5.6.5G to PERG 5.6.9G), and where information is provided by a professional in the course of a profession, article 67 may apply (see PERG 5.11.9G to PERG 5.11.12G). Article 33B will not be available where this involves taking steps other than the provision of information.</td>
</tr>
<tr>
<td>particular policy or comparison of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>the terms of different policies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advising that a customer take</td>
<td>Yes.</td>
<td>This amounts to advice on the merits of a particular policy under article 53(1) (see PERG 5.8.4G to PERG 5.8.5G).</td>
</tr>
<tr>
<td>out a particular policy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advising that a customer does</td>
<td>Yes.</td>
<td>This amounts to advice on the merits of a particular policy under article 53(1) (see PERG 5.8.4G to PERG 5.8.5G).</td>
</tr>
<tr>
<td>not take out a particular policy</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advice by journalists in</td>
<td>Generally, no because of the article 54 exclusion.</td>
<td>Article 54 provides an exclusion for advice given in newspapers etc (see PERG 5.8.24G to PERG 5.8.25G).</td>
</tr>
<tr>
<td>newspapers, broadcasts etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Giving advice to</td>
<td>Not</td>
<td>Where the advice relates</td>
</tr>
<tr>
<td>Providing information to customer who fills in application form</td>
<td>Possibly. Subject to article 67 or 72C2 and article 33B2 exclusions where available.</td>
<td>This activity may amount to <em>arranging</em> although the exclusions in article 67 (see PERG 5.11.9G to PERG 5.11.12G) and article 72C (see PERG 5.6.5G to PERG 5.6.9G) may be of application. Article 33B could also apply, depending on the type of information provided.</td>
</tr>
<tr>
<td>Helping a potential <em>policyholder</em> fill in an application form</td>
<td>Yes.</td>
<td>This activity amounts to <em>arranging</em>. Articles 33B and 72C will not apply because this activity goes beyond the mere provision of information to a <em>policyholder</em> or potential <em>policyholder</em> (see PERG 5.6.5G to PERG 5.6.9G).</td>
</tr>
<tr>
<td>Receiving completed proposal forms for checking and forwarding to an <em>insurance undertaking</em> (for example, an administration outsourcing service provider that receives and processes proposal forms)</td>
<td>Yes.</td>
<td>This amounts to <em>arranging</em>. Articles 33B and 72C does not apply because this activity goes beyond the mere provision of information to a <em>policyholder</em> or potential <em>policyholder</em> (see PERG 5.6.5G to PERG 5.6.9G).</td>
</tr>
<tr>
<td>Assisting in completion of proposal form and sending to insurance undertaking</td>
<td>Yes.</td>
<td>This activity amounts to arranging. Articles 33B and 72C do not apply because this activity goes beyond the mere provision of information (see PERG 5.6.5G to 5.6.9G).</td>
</tr>
</tbody>
</table>

NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE

5.15.5 G The flow chart in PERG 5.15.6 G 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 5.1.6 G (Purpose of guidance) and PERG 5.6.9 G (Exclusion: article 72C (Provision of information on an incidental basis)).

5.15.6 G Flow Chart: Introducers. [deleted]

5.15.7 G The flow chart in PERG 5.15.8 G 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]

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 5.2.6R (Approach to implementation of the IMD), 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(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, 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.”

…

8.7 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)).

…

8.13.4 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 29 and 33 of the Regulated Activities Order are not available where the investment is a contract of insurance. 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
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’ 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 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, 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 will not be providing an insurance mediation or distribution service to them. This is because, under the policy, he 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 or 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’ 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. If so, to satisfy the ‘by way of business’ test, you would also need to be remunerated.

…

10 Annex 3 **Table summarising regulatory position of pension scheme trustees and service providers**

<table>
<thead>
<tr>
<th>Potential regulated activity</th>
<th>When will such regulated activities be carried on?</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>Dealing in investments as agent (article 21 of the Regulated Activities Order)</td>
<td>…</td>
</tr>
</tbody>
</table>

Article 67 of the Regulated Activities Order 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 insurance distribution or reinsurance distribution. Service providers may be able to make limited use of this exclusion - for
instance, where providing payroll services (see Q34).

<table>
<thead>
<tr>
<th>Article 69 of the <em>Regulated Activities Order</em> excludes persons who are dealing in investments other than contracts of insurance as agent for other members of their group. However, service providers who are carrying on insurance mediation activities insurance distribution activities solely for, and are remunerated solely by, another group member, will not satisfy the ‘by way of business’ test (see Q35).</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments</strong> (article 25 of the <em>Regulated Activities Order</em>).</td>
</tr>
<tr>
<td>...</td>
</tr>
<tr>
<td>Article 67 of the <em>Regulated Activities Order</em> 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 <strong>person</strong> is carrying on insurance mediation insurance distribution or reinsurance distribution. Service providers may be able to make limited use of this exclusion – for instance, where providing payroll services (see Q34).</td>
</tr>
<tr>
<td>...</td>
</tr>
<tr>
<td>However, service providers who are carrying on insurance mediation activities insurance distribution activities solely for, and are remunerated solely by, another group member will not satisfy the ‘by way of business’ test (see Q35).</td>
</tr>
<tr>
<td>...</td>
</tr>
<tr>
<td><strong>Assisting in the administration and performance of a contract of insurance</strong> (article 39A of the...</td>
</tr>
<tr>
<td>...</td>
</tr>
</tbody>
</table>
**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 group member, he will not satisfy the ‘by way of business’ test because he is not carrying on insurance mediation activities or insurance distribution activities for a third party and so does not require to be authorised or exempt (see Q35).

... 

**Advising on investments (except P2P agreements) (article 53(1) of the Regulated Activities Order)**

Trustees of pension schemes will not be advising on investments provided the advice is given only:

- to a fellow trustee for the purposes of the trust; or
- to a member about his interest in the trust fund,

and provided that the trustee:

- does not receive additional remuneration for advising on investments; and
- is not required to be regulated under the Insurance Mediation Directive (IDD) (which should not be the case either because he does not provide mediation services to his co-trustees or because he is not remunerated specifically for giving advice) (see Q23(5) and Q30).

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).

**Article 67 of the Regulated Activities Order** 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** activity, **insurance distribution** activity or **reinsurance distribution** activity. 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).

### 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 can still make use of the exclusion so long as he 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 client directly acquiring rights under a contract of insurance (for example, because he 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.

### 13.6

**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.