

Insurance Distribution Directive Implementation – Consultation Paper 3

Consultation Paper

CP17/33***

September 2017

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:

Robert Robinson
Financial Conduct Authority
25 The North Colonnade
Canary Wharf London E14 5HS

Telephone:

020 7066 0438

Email:

cp17-33@fca.org.uk

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returns you to the contents list



takes you to helpful abbreviations

Contents

1	Summary	3
2	The wider context	6
3	Additional requirements	9
Part I – Proposals for life insurance distribution business		12
4	Inducements	13
5	Suitability and appropriateness	15
6	Information and product disclosure	17
Part II – Proposals for all insurance distribution business and consequential changes		20
7	Conflicts of interest	21
8	Product oversight and governance	23
9	Perimeter Guidance	26
10	Regulatory processes	28
11	Additional changes to the Handbook	31
Annex 1		
	Questions in this paper	32
Annex 2		
	Cost benefit analysis	34
Annex 3		
	Compatibility statement	41
Annex 4		
	Abbreviations in this document	45
Appendix 1		
	Draft Handbook text	

1 Summary

Why we are consulting

- 1.1** In Consultation Paper (CP) 17/7¹, and in CP17/23², 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)

1 CP 17/7, *Insurance Distribution Directive Implementation – Consultation Paper 1*, March 2017: <https://www.fca.org.uk/publication/consultation/cp17-07.pdf>

2 CP 17/23, *Insurance Distribution Directive Implementation – Consultation Paper 2*, July 2017: <https://www.fca.org.uk/publication/consultation/cp17-23.pdf>



- 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.³ 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 2017⁶, 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. This

4 Draft delegated act on product oversight and governance requirements for insurance undertakings and insurance distributors: http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3675955_en.

5 Draft delegated act on conduct of business rules for the distribution of insurance-based investment products: http://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3670050_en.

6 See https://ec.europa.eu/info/law/insurance-distribution-directive-2016-97-eu/amending-and-supplementary-acts/implementing-and-delegated-acts_en

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.⁷ 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.⁸
- 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.

⁷ HM Treasury, *Transposition of the Insurance Distribution Directive*, 27 February 2017: <https://www.gov.uk/government/consultations/transposition-of-the-insurance-distribution-directive>.

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** IBIPs⁹ and pensions¹⁰ 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)

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.

- product oversight and governance (Chapter 8)
- regulatory processes (Chapter 9)

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.¹¹ 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)

11 See, for example CP 17/16, *Advising on Pension Transfers*, June 2017: <https://www.fca.org.uk/publication/consultation/cp17-16.pdf> and our work on MS16/1, *Retirement Outcomes Review*, July 2016: <https://www.fca.org.uk/publication/market-studies/retirement-outcomes-review.pdf>.



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.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.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

¹³ See Article 30 (1) of the IDD.

¹⁴ See Article 30(2) of the IDD.



- additional criteria related to the assessment of IBIPs as non-complex

5.6 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

5.7 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

5.8 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 funds¹⁵
 - 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?

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'.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.¹⁷ 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).¹⁸ 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>.

18 Responsibilities of Providers and Distributors for the Fair Treatment of Customers ('RPPD'): https://www.handbook.fca.org.uk/handbook/document/rppd/RPPD_Full_20160321.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.¹⁹ 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 instrument²⁰ 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

²⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/594344/2016_02_23_IDD_Implementation.pdf

- 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.²¹ 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.

²¹ 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 IDD²⁴ 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?

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 17/7²⁵), 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?

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.²⁶ 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.²⁷ 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.

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 See for example *Guidance consultation Supervising retail investment advice: inducements and conflicts of interest*, September 2013: www.fca.org.uk/static/documents/guidance-consultations/gc13-05.pdf and *Commercial insurance intermediaries – Conflicts of interest and intermediary remuneration*, May 2014: <https://www.fca.org.uk/publication/thematic-reviews/tr14-09.pdf>.

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 allowed²⁸, 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.

29 MS14/1, *General insurance add-ons: provisional findings of market study and proposed remedies*, March 2014: <https://www.fca.org.uk/publication/market-studies/ms14-01.pdf>

30 Monthly PPI refunds and compensation: <https://www.fca.org.uk/consumers/payment-protection-insurance/monthly-ppi-refunds-and-compensation>

Annex 3

Compatibility statement

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 (LRRRA) 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 LRRRA.

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 (LRRRA)

- 24.** We have had regard to the principles in the LRRRA 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

CASS	Client Assets sourcebook
CBA	Cost benefit analysis
COBS	Conduct of Business Sourcebook
COMP	Compensation sourcebook
CP	Consultation Paper
the Commission	European Commission
EEA	European Economic Area
EIOPA	European Insurance and Occupational Pensions Authority
EU	European Union
FCA	Financial Conduct Authority
FEES	Fees manual
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions
IBIP	Insurance-based investment product
ICOBS	Insurance: Conduct of Business sourcebook
IDD	Insurance Distribution Directive
IMD	Insurance Mediation Directive
LRRA	Legislative and Regulatory Reform Act 2006
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive II



PERG	Perimeter Guidance
PPI	Payment Protection Insurance
POG	Product oversight and governance
PRIN	Principles for Businesses
PROD	Product Intervention and Product Governance sourcebook
PROF	Professional Firms Sourcebook
RAO	Regulated Activities Order
RDR	Retail Distribution Review
RIP	Retail Investment Product
RPPD	The Responsibilities of Providers and Distributors for the Fair Treatment of Customers
SUP	Supervision
SYSC	Senior Management Arrangements, Systems and Controls
the Treasury	Her Majesty's Treasury

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:

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
General Provisions (GEN)	Annex C
Fees manual (FEES)	Annex D
Conduct of Business sourcebook (COBS)	Annex E
Client Assets sourcebook (CASS)	Annex F
Product Intervention and Product Governance sourcebook (PROD)	Annex G

(1)	(2)
Compensation sourcebook (COMP)	Annex H
Supervision manual (SUP)	Annex I
Professional Firms sourcebook (PROF)	Annex J

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.

<i>IDD Regulation</i>	Commission Delegated Regulation (EU) ... of ..., supplementing the <i>IDD</i> , of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products.
<i>IDD POG Regulation</i>	Commission Delegated Regulation (EU) ... of ..., supplementing the <i>IDD</i> , of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors.
<i>primary place of business</i>	(in relation to <i>insurance distribution activity</i>) the location from where the main business is managed.

Amend the following definitions as shown.

<i>close links</i>	...
	(2) (except where (1) applies and except in <i>SUP 3</i> (Auditors) and <i>SUP 4</i> (Actuaries) <u>and <i>SUP 12.4.8CR</i> (Close links)</u>) (in accordance with paragraph 3(2) in Schedule 6 to the <i>Act</i> (Close links)) the relationship between a <i>person</i> ("A") and another <i>person</i> ("CL") which exists if:
	...
	(3) ...
	(4) <u>(in <i>SUP 12.4.8CR</i> (Close links)) a situation in which two or more</u>

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;
 - ~~(iii)~~ the *EEA firm’s Home State regulator* has informed it that
 - (iv) 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
 - (v) 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).

...

<i>manufacture</i>	<p>(1) <u>(in relation to PROD 1.3 and PROD 3)</u> creating, developing, issuing and/or designing an <i>investment</i>, including when advising corporate <i>issuers</i> on the launch of new <i>investments</i>.</p> <p>[Note: recital 15 to the <i>MiFID Delegated Directive</i>]</p> <p>(2) <u>(in relation to PROD 1.4 and PROD 4)</u> creating, developing, designing and/or underwriting a <i>contract of insurance</i>.</p>
<i>manufacturer</i>	<p>(1) <u>(in relation to PROD 1.3 and PROD 3)</u> a <i>firm</i> which creates, develops, issues, and/or designs <i>investments</i>, including when advising corporate <i>issuers</i> on the launch of new <i>investments</i>.</p> <p>(2) <u>(in relation to PROD 4)</u> a <i>firm</i> which <i>manufactures contracts of insurance</i> for sale to <i>customers</i>.</p> <p>[Note: <u>in respect of (1)</u> recital 15 to the <i>MiFID Delegated Directive</i>, <u>in respect of (2)</u> article 2 of the <i>IDD POG Regulation</i>]</p>
<i>protected non-investment insurance mediation distribution</i>	<i>insurance mediation activities</i> <i>insurance distribution activities</i> which are covered by the <i>compensation scheme</i> , as defined in <i>COMP 5.7.1R</i> .
<i>service conditions</i>	<p>(in accordance with paragraph 14 of Schedule 3 to the Act (EEA Passport Rights)) the conditions that:</p> <p>...</p> <p>(d) if the <i>firm</i> falls within paragraph (e) (i) of that definition, one month has elapsed beginning with the date on which the <i>firm's Home State regulator</i> informed the <i>firm</i> that it had sent the regulator's notice to the <i>FCA</i> or the <i>PRA</i> (as the case may be).</p>

[*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 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

...

Part 2		Application of the common platform requirements	
...			
	What?		
...			
2.8A	R	(1)	Subject to (2) and , (3) <u>and (5)</u> , in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> (including any relevant definitions in <i>MiFID</i> , <i>MiFIR</i> and the <i>MiFID Org Regulation</i>) apply to a <i>firm's</i> business other than <i>MiFID business</i> or <i>structured deposits regulated activities</i> as if they were <i>rules or guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm).
		...	
		(5)	<u>The requirements in article 72 of the <i>MiFID Org Regulation</i> do not apply to a <i>firm</i> to the extent that article 19 of the <i>IDD Regulation</i> applies to the <i>firm</i>.</u>
...			

2.9	G	The application of the provisions on the conflicts of interest in <i>SYSC 10</i> is set out in <i>SYSC 10.1. 2G</i> and <i>SYSC 10.1.1A R-SYSC 10.1.-4G</i> to <i>SYSC 10.2.1R</i> .
...		
Part 3	Tables summarising the application of the common platform requirements to different types of firm	
3.1	G	...
<u>3.1A</u>	<u>G</u>	The <i>IDD Regulation</i> is directly applicable to a <i>firm</i> when <u>carrying on <i>insurance distribution</i> in relation to <i>insurance based investment products</i>. Articles 3 – 7 of the <i>IDD Regulation</i> are set out in <i>SYSC 10.1A</i> for information for these <i>firms</i>.</u>
...		

...

Provision SYSC 9	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, full- scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
9.1.2R	...	...	...	...
SYSC 9.1.2AR	Rule	Rule	Rule	Rule

<u>SYSC 9.1.2BG</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
<u>SYSC 9.1.2DR</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>
...				

...

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10				
...				
Provision SYSC 10	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
<u>SYSC 10.1.-4G</u>	<u>Guidance in relation to insurance distribution activities</u>	<u>Guidance in relation to insurance distribution activities</u>	<u>Guidance in relation to insurance distribution activities</u>	<u>Guidance in relation to insurance distribution activities</u>
<u>SYSC 10.1.-3R</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
SYSC 10.1.-2G	...	...	...	...

...				
SYSC 10.1.2G	Guidance, but not applicable in relation to insurance distribution activities.	Guidance, but not applicable in relation to insurance distribution activities.	<u>Guidance in relation to insurance distribution activities.</u> Otherwise, <u>Not not</u> applicable	Guidance, but not applicable in relation to insurance distribution activities.
SYSC 10.1.3R	Rule	Rule	<u>Rule in relation to insurance distribution activities.</u> Otherwise <u>Not not</u> applicable	Rule
SYSC 10.1.4R	Not applicable	Rule <u>but not applicable in relation to insurance distribution activities</u>	Not applicable	Guidance - but applies as a rule in relation to the production or arrangement of investment research, or the production or dissemination of non-independent research, in accordance with <i>COBS 12.2</i> <u>Not applicable in relation to insurance distribution activities</u>

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

SYSC 10.1.6AG	Not applicable	Not applicable	Guidance <u>but not applicable in relation to insurance distribution activities</u>	Guidance <u>but not applicable in relation to insurance distribution activities.</u>
<u>SYSC 10.1.6AAR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
...				
SYSC 10.1.8R	Rule in relation to <i>insurance distribution activities</i> . Otherwise, not applicable	Rule	<u>Rule in relation to insurance distribution activities.</u> <u>Otherwise, Not not applicable</u>	Rule
...				
SYSC 10.1.9AR	<u>Rule in relation to insurance distribution activities.</u> <u>Otherwise, Not not applicable</u>	<u>Rule in relation to insurance distribution activities.</u> <u>Otherwise, Not not applicable</u>	<u>Rule in relation to insurance distribution activities.</u> <u>Otherwise, Not not applicable</u>	Guidance <u>but applies as a rule in relation to insurance distribution activities.</u>
SYSC 10.1.10R	<u>Rule in relation to insurance distribution activities.</u> <u>Otherwise, Not not applicable</u>	Rule	<u>Rule in relation to insurance distribution activities.</u> <u>Otherwise, Not not applicable</u>	Guidance - but applies as a rule: (a) in relation to the production or arrangement of investment research, or the production

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

<u>AR</u>	<u>distribution activities</u>	<u>insurance distribution activities</u>	<u>insurance distribution activities</u>	<u>insurance distribution activities</u>
...				
<u>SYSC 10.1.27</u>	...	...	...	...
<u>SYSC 10.1A</u>	<u>EU</u> Directly applicable to a <u>firm carrying on insurance distribution in relation to insurance based investment products</u>	<u>EU</u> Directly applicable to a <u>firm carrying on insurance distribution in relation to insurance based investment products</u>	<u>EU</u> Directly applicable to a <u>firm carrying on insurance distribution in relation to insurance based investment products</u>	<u>EU</u> Directly applicable to a <u>firm carrying on insurance distribution in relation to insurance based investment products</u>

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

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 9		
<u>SYSC 9.1.2R</u>	...	...
<u>SYSC 9.1.2AR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
<u>SYSC 9.1.2BG</u>	<u>Guidance in relation to insurance distribution activities</u>	<u>Guidance in relation to insurance distribution activities</u>
<u>SYSC 9.1.2DR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
SYSC 10		

<u>SYSC 10.1.-4G</u>	<u>Guidance</u>	<u>Guidance</u>
<u>SYSC 10.1.-3G</u>	<u>Rule</u>	<u>Rule</u>
<u>SYSC 10.1.-2G</u>	...	...
...		
<u>SYSC 10.1.4BR</u>	<u>Rule</u>	<u>Rule</u>
<u>SYSC 10.1.4CR</u>	<u>Rule</u>	<u>Rule</u>
...		
<u>SYSC 10.1.6R</u>	Rule	Guidance <u>but applies as rule in relation to insurance distribution activities</u>
<u>SYSC 10.1.6AAR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>
...		
<u>SYSC 10.1.7AR</u>	<u>Rule</u>	<u>Rule</u>
<u>SYSC 10.1.8R</u>	Rule	Rule
SYSC 10.1.8AR	Rule	Rule
...		
<u>SYSC 10.1.9AR</u>	<u>Rule in relation to insurance distribution activities.</u> <u>Otherwise Not not applicable</u>	<u>Rule in relation to insurance distribution activities.</u> <u>Otherwise Not not applicable</u>
<u>SYSC 10.1.10R</u>	Rule	Guidance <u>but rule in relation to insurance distribution activities.</u>
<u>SYSC 10.1.11R</u>	Rule	Guidance <u>but rule in relation to insurance distribution activities.</u>
<u>SYSC 10.1.11AAR</u>	<u>Rule in relation to insurance distribution activities</u>	<u>Rule in relation to insurance distribution activities</u>

...		
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2 Senior management arrangements

2.1 Apportionment of responsibilities

...

2.1.6 G ...

Insurance distribution activities

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

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

...

3 Systems and controls

3.1 Systems and controls

...

3.1.10 G ...

Insurance distribution activities

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

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

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

...

3.3 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:

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

	(c)	a natural person who is directly involved in the provision of services to the insurance intermediary or insurer under an outsourcing agreement for the purpose of the carrying on by the insurance intermediary or insurer of insurance distribution activities.
<u>“remuneration”</u>		<u>remuneration</u>
<u>“shall”</u>		<u>must</u>

3.3.4 G The effect of SYSC 3.3.3R is that:

- (1) the provisions marked “EU” apply as *rules* to an *insurer* when carrying on *insurance distribution activities* other than *insurance distribution in relation to insurance based investment products*;
- (2) where SYSC 3.3.3R applies, an *insurer* is required to read the provisions marked “EU” as though the application of those provisions (and articles 27 and 28 of the *IDD*) is not limited to the distribution of *insurance based investment products*; and
- (3) the scope of the application of the *IDD Regulation* is extended from *insurance distribution* to *insurance distribution activities*.

Identifying conflicts

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

3.3.5

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

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

3.3.6 EU 3(1) For the purposes of identifying, in accordance with Article 28 of Directive (EU) 2016/97, the types of conflicts of interest that arise in the course of carrying out any insurance distribution activities related to insurance-based investment products and which entail a risk of

damage to the interests of a customer, insurance intermediaries and insurance undertakings shall assess whether they, a relevant person or any person directly or indirectly linked to them by control, have an interest in the outcome of the insurance distribution activities, which meets the following criteria:

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

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

3.3.7

EU

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

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

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

Managing conflicts

3.3.3

R

3.3.8

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 3.3.2R~~ SYSC 3.3.5R 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~~ SYSC 3.3.8R must be proportionate to the activities performed, the *policies* sold and the type of *insurance distributor* the *firm* is or uses.
- 3.3.9

[**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:
- 3.3.13

- (a) clearly disclose to the *client* the general nature or sources of the conflicts of interest (or both); and
 - (b) include sufficient detail in the disclosure, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the *insurance distribution activities* in the context of which the conflict of interest arises.
- (2) The disclosure must be made:
- (a) in a *durable medium*; and
 - (b) in good time before the conclusion of the *contract of insurance*.

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

3.3.14

EU

- 6(1) Insurance intermediaries and insurance undertakings shall avoid over-reliance on disclosure to ensure that disclosure to customers, pursuant to Article 28(2) of Directive (EU) 2016/97, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage conflicts of interest in accordance with Article 27 of Directive (EU) 2016/97 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.
- 6(2) For the purposes of a disclosure of conflicts of interest insurance intermediaries and insurance undertakings shall do all of the following:
- (a) provide a specific description of the conflict of interest in question;
 - (b) explain the general nature and sources of the conflict of interest;
 - (c) explain the risks to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
 - (d) clearly state that the organisational and administrative arrangements established by the insurance intermediary or insurance undertaking to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

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

Review of conflicts policy

- 3.3.15 EU 7(1) For the purposes of Article 27 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with 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*]

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

3.3.17

- (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:

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

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)	<u>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.</u>
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[**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

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

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

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

Application to a common platform firm

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

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

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

- (3) SYSC 10.1.4BR, 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

10.1.4A G Other *firms* (except *common platform firms*, ~~and~~ *UCITS management companies and insurance intermediaries*) should take account of the *rule* on the types of conflicts (see SYSC 10.1.4 R) in accordance with SYSC 1 Annex 1 3.3R.

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

(1) the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*; or

(2) (in the case of conflicts between A and another *client*) the other *client*

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

(3) it is distinct from A's interest in the outcome of the *insurance distribution activities*; and

(4) it has the potential to influence the outcome of the activities to the detriment of A.

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

(1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;

(2) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interest of the *client*;

(3) carries on the same business as the *client*;

(4) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service; or

(5) is substantially involved in the management or development of *policies*, in particular where such a *person* has an influence on the pricing of those *policies* or their distribution costs.

...

Record of conflicts

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

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

- 10.1.6A G *Other firms (other than common platform firms and insurance intermediaries) should also take account of the rule on records of conflicts (see SYSC 10.1.6 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 A 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]

...

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

Conflicts policy

- 10.1.10 R A *management company* and an insurance intermediary must establish, implement and maintain an effective *conflicts of interest policy* that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (1)
 - (2) Where the *management company* or insurance intermediary is a member of a *group*, the policy must also take into account any

circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

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

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

(a) 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~~

(a) (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

(aa) 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:

(b)

- effective procedures to prevent or control the exchange of information between *relevant persons*

(i) engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;

(ii) the separate supervision of *relevant persons* whose

principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;

(iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities; ~~and~~

(v) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate services or activities where such involvement may impair the proper management of conflicts of interest; and

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

(3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a *management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

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

(5) The procedures and measures provided for in paragraph (1)(b) must be appropriate to an insurance intermediary's size and activities, the group to which it may belong and to the risk of damage to the interests of the client.

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

10.1.11A G Other *firms* (except *common platform firms*, ~~and~~ *UCITS management companies* and insurance intermediaries) should take account of the *rules*

relating to *conflicts of interest policies* (see SYSC 10.1.10 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:

10.1A.5	EU	<p data-bbox="430 571 1412 728">5(1) The procedures and measures referred to in Article 4(2)(b) shall be appropriate to the size and activities of the insurance intermediary or insurance undertaking and of the group to which they may belong, and to the risk of damage to the interests of the customer.</p> <p data-bbox="430 728 1412 817">The procedures to be followed and measures to be adopted in accordance with Article 4(2)(b) shall include the following:</p> <ul style="list-style-type: none"> <li data-bbox="526 840 1412 1030">(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; <li data-bbox="526 1052 1412 1288">(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; <li data-bbox="526 1310 1412 1500">(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; <li data-bbox="526 1523 1412 1758">(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; <li data-bbox="526 1780 1412 1937">(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; <li data-bbox="526 1960 1412 2024">(f) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or
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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

- 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 Authorisation fees payable
1R

...

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

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

...

Part 6 - Change of legal status

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

...

...

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

4.2.7K R ...

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

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

...

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

...

Notes

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

...

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

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

Table 1	
...	
(3)	<i>Firms</i> should only include revenue streams that relate to <i>regulated activities</i> which are carried on 'in the <i>United Kingdom</i> '. In many cases, it will be quite straightforward to identify where an activity is carried on. But when there is a cross-border element, for example because a client is outside the <i>United Kingdom</i> or because some other element of the activity happens outside the <i>United Kingdom</i> , the question may arise as to where the activity is carried on. <i>PERG 2.4</i> generally and <i>PERG 4.11</i> regarding activities relating to <i>regulated mortgage contracts</i> , <i>PERG 5.12</i> regarding

	activities relating to insurance mediation activities <u>insurance distribution activities</u> and PERG 14.6 regarding <i>home reversion plans</i> and <i>home purchase plans</i> describe the legislation that is relevant to this question and gives the FCA's views on various scenarios.
...	

...

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

...

Compulsory jurisdiction - general levy

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

...

6 Financial Services Compensation Scheme Funding

6.1 Application

...

- 6.1.7A G In order to allocate a share of the amount of *specific costs* and *compensation costs* to be funded by an individual *participant firm*, the funding arrangements are split into 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 ~~IMD~~ insurance intermediary* *IDD insurance intermediary*, an *MCD mortgage credit intermediary* or *MiFID investment firm*, is a *participant firm*, the *FSCS* must give the *firm* such discount (if any) as is appropriate on the share of any levy it would otherwise be required to pay, taking account of the nature of the levy and the extent of the compensation coverage provided by the firm's *Home State* scheme.

...

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

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

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

**6 Annex Financial Services Compensation Scheme - classes
3AR**

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

...

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

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

...

...

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

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

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

...

[*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.

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

- (3) In this sourcebook, where a reproduced provision of an article of the *IDD Regulation* refers to another part of the *IDD Regulation*, that other provision must also be read with reference to the table in (2).

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

Interpretation – “in good time”

- 1.3.5 G (1) Certain 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.

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

- 2.3A.6 R (1) *COBS* 2.3A.5R does not apply to:
- (a) a fee, commission or non-monetary benefit which:
 - (i) (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
A | EU | <p>8(1) <u>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.</u></p> <p>8(2) <u>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.</u></p> <p><u>They shall, in particular, consider the following criteria:</u></p> <p>(a) <u>whether the inducement or inducement scheme could</u></p> |
|--------------|----|---|

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

...

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 ~~rule~~ *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:
4A

- (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.2.4A~~
6.1ZA.2.4B

R In good time before the conclusion of a *life policy* and, if necessary, on its amendment:

- (1) a *firm* must provide the *client* with at least the following information:
 - (a) its identity, address and whether it is an *insurance intermediary* or an *insurance undertaking*;
 - (b) whether it provides a *personal recommendation* about the insurance products offered;
 - (c) the procedures allowing *clients* and other interested parties to register *complaints* about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the *firm* and its *clients*; and
- (2) an *insurance intermediary* must also provide the *client* with the following information:

- (a) the fact that it is included in the *Financial Services Register* (or if it is not on the *Financial Services Register*, the register in which it has been included) and the means for verifying this;
- (b) whether it has a direct or indirect holding representing 10% or more of the voting rights or capital in a given *insurance undertaking* (that is not a *pure reinsurer*);
- (c) whether a given *insurance undertaking* (that is not a *pure reinsurer*) or its *parent undertaking* has a direct or indirect holding representing 10% or more of the voting rights or capital in the *firm*; and
- (d) whether it is representing the *client* or is acting for and on behalf of the *insurer*.

[**Note:** articles 18 and 19(1)(a) and (b) of the *IDD*]

~~6.1ZA.2.~~ ...

~~4B~~

~~6.1ZA.2.~~

~~4C~~

~~6.1ZA.2.~~ ...

~~4C~~

~~6.1ZA.2.~~

~~4D~~

...

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

6.1ZA.2. ...

5

6.1ZA.2. ...

6

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

~~6.1ZA.2.~~ R (1) Where a *firm* doing *insurance distribution activities* holds *client money* for a *retail client* and has elected to comply with the *client money chapter*, it must provide that *client* with the information specified in:

~~6A~~

- (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)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 R (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 R Where this section requires an *insurance distributor* to provide information to *clients* in relation to a *life policy* it must do so in accordance with COBS 7.4 (Means of communication to clients), unless COBS 6.1ZA.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	<p>9(1) <u>For the purposes of providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, insurance intermediaries or insurance undertakings shall determine the extent of the information to be collected from the customer or potential customer in light of all the features of the advice to be provided to the customer or potential customer.</u></p> <p>9(2) <u>Without prejudice to the fact that, in accordance with Article 20(1) of Directive (EU) 2016/97, any contract proposed shall be consistent with the customer's demands and needs, insurance intermediaries or insurance undertakings shall obtain from customers or potential customers such information as is necessary for them to understand the essential facts about the customer or potential customer and to have a reasonable basis for determining that their personal recommendation to the customer or potential customer satisfies all of the following criteria:</u></p> <ul style="list-style-type: none"> (a) <u>it meets the customer's or potential customer's investment objectives, including that person's risk tolerance;</u> (b) <u>it meets the customer's or potential customer's financial situation, including that person's ability to bear losses;</u> (c) <u>it is such that the customer or potential customer has the necessary knowledge and experience in the investment field relevant to the specific type of product or service.</u> <p>17(3) <u>Where information required for the purposes of Article 30(1) or (2) of Directive (EU) 2016/97 has already been obtained pursuant to Article 20 of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall not request it anew from the customer.</u></p>
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[Note: articles 9(1) and (2) and 17(3) of the *IDD Regulation*]

Professional clients: MiFID business

...

Obtaining information about knowledge and experience: MiFID business

...

Obtaining information about knowledge and experience: insurance based investment products

9A.2.6A	EU	17(1)	<p><u>For the purposes of Article 30(1) and (2) of Directive (EU) 2016/97, the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the 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:</u></p> <ul style="list-style-type: none"> (a) <u>the types of service, transaction, insurance-based investment product or financial instrument with which the customer or potential customer is familiar;</u> (b) <u>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;</u> (c) <u>the level of education, and profession or relevant former profession of the customer or potential customer.</u>
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[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)	<p><u>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.</u></p>
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[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

insurance based investment products)).

Identifying the subject of a suitability assessment: MiFID business

...

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

- | | | | |
|---------------------|----|----|---|
| 9A.2.15
<u>A</u> | EU | 13 | <p><u>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.</u></p> <p><u>The insurance intermediary or insurance undertaking shall record the policy established pursuant to the first paragraph.</u></p> |
|---------------------|----|----|---|

[Note: article 13 of the *IDD Regulation*]

Bundled packages: MiFID business and insurance based investment products

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|---------|---|--|
| 9A.2.16 | R | <p>Where a <i>firm</i> provides <i>investment advice</i> recommending a package of services or products bundled pursuant to <i>COBS 6.1ZA.2.12R</i> (for MiFID business) or <i>COBS 6.1ZA.2.12AR</i> to <i>COBS 6.1ZA.2.12ER</i> (for <i>insurance based investment products</i>), the <i>firm</i> must ensure that the overall bundled package is suitable for the <i>client</i>.</p> |
|---------|---|--|

[Note: second paragraph of article 25(2) of *MiFID*, second paragraph of article 30(1) *IDD*]

- | | | |
|---------|---|---|
| 9A.2.17 | G | <p>When considering the suitability of a particular <i>financial instrument</i> or <i>insurance based investment product</i> which is linked directly or indirectly to any form of loan, mortgage or <i>home reversion plan</i>, a <i>firm</i> should take account of the suitability of the overall transaction. The <i>firm</i> should have regard to any applicable suitability <i>rules</i> in <i>MCOB</i>.</p> |
|---------|---|---|

Switching: MiFID business

...

Switching: insurance based investment products

- | | | | |
|---------------------|----|------|--|
| 9A.2.18
<u>A</u> | EU | 9(7) | <p><u>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</u></p> |
|---------------------|----|------|--|

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 <u>A</u>	EU	9(6)	<p><u>When providing advice on an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, an insurance intermediary or insurance undertaking shall not make a recommendation where none of the products are suitable for the customer or potential customer.</u></p>
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[**Note:** article 9(6) of the *IDD Regulation*]

Guidance on assessing suitability: MiFID business and insurance based investment products

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|---------|---|------|---|
| 9A.2.21 | G | (1) | <p>A transaction may be unsuitable for a <i>client</i> due to the risks of the associated <i>financial instruments</i>, the type of transaction, the characteristics of the order or the frequency of the trading.</p> |
| | | (1A) | <p><u>An insurance based investment product may be unsuitable for a <i>client</i> due to the risks of the underlying investment assets, the type or characteristics of the product or the frequency of switching of underlying investment assets.</u></p> |
| | | (2) | <p>A series of transactions, each of which are suitable when viewed in isolation may be unsuitable if the recommendation or the decisions to trade are made with a frequency that is not in the best interests of the <i>client</i>.</p> |
| | | (3) | <p>In the case of <i>portfolio management</i>, a transaction might be unsuitable if it would result in an unsuitable portfolio.</p> |

[**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	<u>The insurance intermediary's or insurance undertaking's responsibility to perform the suitability assessment in accordance with Article 30(1) of Directive (EU) 2016/97 shall not be reduced due to the fact that advice on insurance-based investment products is provided in whole or in part through an automated or semi-automated system.</u>
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[**Note:** article 12 of the *IDD Regulation*]

9A.3 Information to be provided to the client

Explaining the reasons for assessing suitability: MiFID business

...

Explaining the reasons for assessing suitability: insurance based investment products

9A.3.1A	EU	11	<u>Insurance intermediaries and insurance undertakings shall not create any ambiguity or confusion about their responsibilities in the process of assessing the suitability of insurance-based investment products in accordance with Article 30(1) of Directive (EU) 2016/97. Insurance intermediaries and insurance undertakings shall inform customers, clearly and simply, that the reason for assessing suitability is to enable them to act in the customer's best interest.</u>
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[**Note:** article 11 of the *IDD Regulation*]

Suitability reports: MiFID business and insurance based investment products

- | | | | |
|--------|---|-----|--|
| 9A.3.2 | R | (1) | This <i>rule</i> applies in relation to <i>investment advice</i> given to a <i>retail client</i> . |
| | | (2) | When providing <i>investment advice</i> , a <i>firm</i> must, before the transaction is concluded, provide the <i>client</i> with a <i>suitability report</i> in a <i>durable medium</i> : |
| | | (a) | specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the <i>client</i> ; |
| | | (b) | for an <i>insurance based investment product</i> : |
| | | (i) | specify, on the basis of the information obtained from the <i>client</i> , the <i>client's</i> 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) | <u>When providing advice on the suitability of an insurance-based investment product in accordance with Article 30(1) of Directive (EU) 2016/97, insurance intermediaries and insurance undertakings shall provide a statement to the customer (suitability</u> |
|---------|----|-------|---|

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 in

good time prior to the conclusion of the contract;

(2) otherwise, in good time before it provides its *investment advice*;

inform the *client* whether it will provide the *client* with a periodic assessment of the suitability of the *financial instruments* or the *insurance based investment products* recommended to the *client*.

[**Note:** article 24(4)(a)(iii) of *MiFID*, article 29(1)(a) of the *IDD*]

9A.3.7 G *COBS* 9A.3.6R supplements *COBS* 2.2A.2R (information disclosure before providing services (MiFID provisions and insurance distribution)).

Periodic assessments: MiFID business

9A.3.8 ...

9A.3.9 ...

Periodic assessments: insurance based investment products

9A.3.9A	EU	<p><u>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.</u></p>
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[**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.

[**Note:** article 25(3) of *MiFID*, first paragraph of article 30(2) of the *IDD*]

Assessing a client's knowledge and experience: MiFID business

...

Assessing a client's knowledge and experience: insurance based investment product

10A.2.3 A	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.
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[**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 A	EU	17(1)	<p><u>For the purposes of Article 30(1) and (2) of Directive (EU) 2016/97, the necessary information to be obtained by insurance intermediaries and insurance undertakings with regard to the customer's or potential customer's knowledge and experience in the relevant investment field shall include, where relevant, the 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:</u></p> <ul style="list-style-type: none"> (a) <u>the types of service, transaction, insurance-based investment product or financial instrument with which the customer or potential customer is familiar;</u> (b) <u>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;</u> (c) <u>the level of education, and profession or relevant former profession of the customer or potential customer.</u> <p>17(3) <u>Where information required for the purposes of Article 30(1) or (2)</u></p>
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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.
A

[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.
A

[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
0 knowledge in order to understand the risks involved in relation to the

product or service, there is no duty to communicate this to the *client*. If the *firm* does so, it must not do so in a way that amounts to making a *personal recommendation* unless it complies with the *rules* in COBS 9A (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	<p><u>An insurance-based investment product shall be considered as non-complex for the purposes of Article 30(3)(a)(ii) of Directive (EU) 2016/97 where it satisfies all of the following criteria:</u></p> <ul style="list-style-type: none"> (a) <u>it includes a contractually guaranteed minimum maturity value which is at least the amount paid by the customer after deduction of legitimate costs;</u> (b) <u>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;</u> (c) <u>it provides options to surrender or otherwise realise the insurance-based investment product at a value that is available to the customer;</u> (d) <u>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;</u>
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- (e) it does not in any other way incorporate a structure which makes it difficult for the customer to understand the risks involved.

[**Note:** article 16 of the *IDD Regulation*]

10A.5 Assessing appropriateness: guidance

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

- 10A.5.1 G A service should be considered to be provided at the initiative of a *client* (see *COBS* 10A.4.1R(1)(a)(iii) and (aa)(ii)), unless the *client* demands it in response to a personalised communication from or on behalf of the *firm* to that *client* which contains an invitation or is intended to influence the *client* in respect of a specific *financial instrument*, *insurance based investment product* or specific transaction.

[**Note:** recital 85 to *MIFID*]

- 10A.5.2 G A service can be considered to be provided at the initiative of a *client* notwithstanding that the *client* demands it on the basis of any communication containing a promotion for, or offer of, *financial instruments* or *insurance based investment products* made by any means and that by its very nature is general and addressed to the public or a larger group or category of *clients*.

[**Note:** recital 85 to *MIFID*]

Personalised communications: MiFID business and insurance based investment products

...

10A.6 When a firm need not assess appropriateness due to suitability assessment

- 10A.6.1 G A *firm* need not assess appropriateness if it is receiving or transmitting an order or carrying on *insurance distribution* in relation to an *insurance based investment product*, for which it has assessed suitability under *COBS* 9A (Suitability (MiFID, ~~equivalent third country and optional exemption~~ *business and insurance based investment products provisions*)).
- 10A.6.2 G A *firm* may not need to assess appropriateness if it is able to rely on a recommendation made by an *investment firm* or, in relation to an *insurance based investment product*, an *insurance distributor* (see *COBS* 2.4.5G (Reliance on other investment firms: MiFID and equivalent business) or *COBS* 2.4.5AR (Reliance on other insurance distributors)).

10A.7 Record keeping and retention periods for appropriateness records

- 10A.7.1 G 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 A 19(1) Without prejudice to the application of Regulation (EU) 2016/679 of the European Parliament and of the Council, insurance intermediaries and insurance undertakings shall maintain records of the assessment of suitability or appropriateness undertaken in accordance with Article 30(1) and (2) of Directive (EU) 2016/97. The records shall include the information obtained from the customer and any documents agreed with the customer, including documents that set out the rights of the parties and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. Such records shall be retained for at least the duration of the relationship between the insurance intermediary or insurance undertaking and the customer.
- 19(3) In the case of an assessment of appropriateness undertaken in accordance with Article 30(2) of Directive (EU) 2016/97, the record shall further include the following:
- (a) the result of the appropriateness assessment;
 - (b) any warning given to the customer where the insurance-based investment product was assessed as potentially inappropriate for the customer, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance intermediary or insurance undertaking accepted the customer's request to proceed with concluding the contract;
 - (c) any warning given to the customer where the customer did not provide sufficient information to enable the insurance intermediary or insurance undertaking to assess the appropriateness of the insurance-based investment product, whether the customer asked to proceed with concluding the contract despite the warning and, where applicable, whether the insurance intermediary or insurance undertaking accepted the customer's request to proceed with concluding the contract.

[Note: article 19(1) and (3) of the *IDD Regulation*]

Record keeping: MiFID business and insurance based investment products

- 10A.7.3 G A *firm* should refer to SYSC 3.3 (for insurers and managing agents) and SYSC 9 (for other *firms*) for its obligations in relation to record keeping. This requires 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 A 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

- | | | |
|--|---|---|
| <p><u>16A.4.2</u> EU</p> <p><u>A</u></p> | <p><u>18(1)</u></p> <p><u>18(2)</u></p> <p><u>18(3)</u></p> | <p><u>Without prejudice to Article 185 of Directive 2009/138/EC of the European Parliament and of the Council, the insurance intermediary or insurance undertaking shall provide the customer with a periodic report, on a durable medium, of the services provided to and transactions undertaken on behalf of the customer.</u></p> <p><u>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.</u></p> <p><u>The periodic report required under paragraph 1 shall be provided at least annually.</u></p> |
|--|---|---|

[**Note:** article 18 of the *IDD Regulation*]

...

18 Specialist Regimes

...

18.2 Energy market activity and oil market activity

...

- 18.2.2 G The provisions of *COBS* in the table are unlikely to be relevant to any *energy market activity* or *oil market activity* carried on by a *firm* which is *MiFID* or equivalent third country business:

COBS	Description
...	
7	Insurance mediation <u>distribution</u>
...	

...

18.3 Corporate finance business

...

- 18.3.2 G

COBS	Description
...	
7	Insurance mediation <u>distribution</u>
...	

...

18.4 Stock lending activity

...

- 18.4.2 G The provisions of *COBS* in the table are unlikely to be relevant in relation to any *stock lending activity* carried on by a *firm*:

COBS	Description
...	

7	Insurance mediation <u>distribution</u>
...	

...

18.11 Authorised professional firms

- 18.11.1 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);

~~applies~~ but only if the *designated professional body* of the firm does not have rules approved by the *FCA* under section 332(5) of the *Act*

that implement articles ~~12 and 13~~ 1(4), 17, 18, 19, 20, 23, 24(1) to (4) and (6), 29, and 30 of the ~~Insurance Mediation Directive~~ IDD and that apply to the *firm*;

- (4) *COBS* 8.1.3R (Client agreements) applies, except for the requirement to provide information on conflicts of interest; and
- (5) *COBS* 5.2 (E-commerce) applies.

18.11.2 G For *COBS* 18.11.2R(3) if a *rule* implements a requirement of the *IDD*, a
A note (“Note:”) follows the *rule* indicating which provision is being implemented.

18.11.3 R ...

...

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

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
COBS 2.3A.32R	Evidence that any fees, commissions and non-monetary benefits paid or received are designed to enhance the quality of, and (in	(1) List of all fees, commissions and non-monetary benefits received; and (2) record of how any fees, commissions or non-monetary benefits	When the relevant fee, commission or non-monetary benefit is paid or received	Not specified

	<u>relation to the distribution of an insurance based investment product</u>) do not have a detrimental impact on, the relevant service to the <i>client</i>	enhance the quality of, and (in relation to the distribution of an insurance based investment product) do not have a detrimental impact on, the services provided and the steps taken in order not to impair compliance with the duty to act honestly, fairly and professionally in the best interests of the <i>client</i>		
...				
<i>COBS</i> 9A.4.1G	Suitability (MiFID provisions)	<i>Client</i> information for <i>suitability report</i>	From date of <i>suitability report</i>	At least 5 years
<u><i>COBS</i> 9A.4.3EU</u>	<u>Suitability (insurance based investment products)</u>	<u><i>Client</i> information for <i>suitability report</i> - details in <i>COBS</i> 9A.4.3EU and <i>COBS</i> 9A.4.4EU</u>	<u>From date of <i>suitability report</i></u>	<u>For whichever is the longer of 5 years or the duration of the relationship with the <i>client</i></u>
<i>COBS</i> 10A.7.2EU	Appropriateness (MiFID provisions)	Records of appropriateness assessments	Date of assessment	At least 5 years

		including the results of such assessments and any warnings given to <i>clients</i>		
<u>COBS 10A.7.2AEU</u>	<u>Appropriateness (insurance based investment products)</u>	<u>Records of appropriateness assessments including the results of such assessments and any warnings given to <i>clients</i> - details in COBS 10A.7.2A</u>	<u>Date of assessment</u>	<u>For whichever is the longer of 5 years or the duration of the relationship with the <i>client</i></u>
...				
<i>COBS 16A.4.1EU</i>	<i>Periodic statements (MiFID provisions)</i>	A copy of a <i>periodic statement</i> sent to a <i>client</i>	From date of despatch to <i>client</i>	At least 5 years
<u>COBS 16A.4.2EU</u>	<u>Periodic statements (insurance based investment products)</u>	<u>A copy of a periodic statement sent to a <i>client</i></u>	<u>From date of despatch to <i>client</i></u>	<u>At least 5 years</u>
...				

[*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 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*.

...

[*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. Text that was included in CP17/23 has been reproduced for ease of reading. This Annex includes text based on the Commission draft delegated act with regard to product oversight and governance requirements for insurance undertakings and insurance distributors, published on 20 July 2017.]

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:

<u>(A)</u>	<u>(B)</u>
<u>“Article 17(1) of Directive (EU) 2016/97”</u>	<u><i>ICOBS 2.5.1R</i>, in relation to a <i>non-investment insurance contract</i>, or <i>COBS 2.1.1R</i>, in relation to a <i>life policy</i></u>
<u>“Article 25(1) of Directive (EU) 2016/97”</u>	<u><i>PROD 4.2.1R</i> and <i>PROD 4.2.2R</i></u>
<u>“Article 8(2)”</u>	<u><i>PROD 4.2.30EU</i></u>

<u>“competent authorities”</u>	<u>FCA</u>
<u>“customer” and “potential customer”</u>	<u>customer</u>
<u>“Directive (EU) 2016/97”</u>	<u>IDD</u>
<u>“insurance based investment products”</u>	<u>insurance based investment products</u>
<u>“insurance distribution activities” and “distribution activities”</u>	<u>insurance distribution activities</u>
<u>“insurance distributor”</u>	<u>distributor</u>
<u>“insurance intermediary”</u>	<u>insurance intermediary</u>
<u>“insurance product”</u>	<u>contract of insurance</u>
<u>“insurance undertaking”</u>	<u>insurer</u>
<u>“manufacturer” and “manufacturers within the meaning of Article 2 of this Delegated Regulation”</u>	<u>manufacturer</u>
<u>“manufacturing”</u>	<u>manufacturing</u>
<u>“shall”</u>	<u>must</u>

- (3) In this sourcebook, where a reproduced provision of an article of the *IDD POG Regulation* refers to another part of the *IDD POG Regulation*, that other provision must also be read with reference to the table in (2).

Where?

- 1.4.36 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 4(4) The manufacturers’ body or structure responsible for the manufacturing of insurance products shall:
- (a) endorse and be ultimately responsible for establishing, implementing and reviewing the product approval process;
 - (b) continuously verify internal compliance with that process.

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

- 4.2.10 EU 5(4) Manufacturers shall ensure that staff involved in designing and manufacturing insurance products has the necessary skills, knowledge and expertise to properly understand the insurance products sold and the interests, objectives and characteristics of the customers belonging to the target market.

[Note: article 5(4) of the *IDD POG Regulation*]

- 4.2.11 EU 4(5) Manufacturers designating a third party to design products on their behalf shall remain fully responsible for compliance with the product

approval process.

[**Note:** article 4(5) of the *IDD POG Regulation*]

- 4.2.12 EU 4(6) Manufacturers shall regularly review their product approval process to ensure that that process is still valid and up to date. They shall amend the product approval process where necessary.

[**Note:** article 4(6) of the *IDD POG Regulation*]

Manufacture by more than one firm

- 4.2.13 EU 3(4) An insurance intermediary and an insurance undertaking that are both manufacturers within the meaning of Article 2 of this Delegated Regulation, shall sign a written agreement which specifies their collaboration to comply with the requirements for manufacturers referred to in Article 25(1) of Directive (EU) 2016/97, the procedures through which they shall agree on the identification of the target market and their respective roles in the product approval process.

[**Note:** article 3(4) of the *IDD POG Regulation*]

- 4.2.14 R In circumstances other than *PROD 4.2.13EU*, when *firms* collaborate to *manufacture a contract of insurance*, they must outline their mutual responsibilities in a written agreement.

Target market

- 4.2.3 R For each *contract of insurance* the product approval process must:

4.2.15

- (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~~ information disclosure to distributors

- 4.2.27 EU 8(1) Manufacturers shall carefully select distribution channels that are appropriate for the target market, thereby taking into account the particular characteristics of the relevant insurance products.

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

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

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

- 4.2.7
4.2.29 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*]

- 4.2.30 EU 8(2) Manufacturers shall provide insurance distributors with all appropriate information on the insurance products, the identified target market and the suggested distribution strategy, including information on the main features and characteristics of the insurance products, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of interest to the detriment of the customer. That information shall be clear, complete and up to date.

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

- 4.2.31 EU 8(3) The information referred to in paragraph 2 shall enable the insurance distributors to:
- (a) understand the insurance products;
 - (b) comprehend the identified target market for the insurance products;
 - (c) identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives;

- (d) carry out distribution activities for the relevant insurance products in accordance with the best interests of their customers as prescribed in Article 17(1) of Directive (EU) 2016/97.

[Note: article 8(3) of the *IDD POG Regulation*]

- 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:

4.2.34

- (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 POG Regulation*]

- 4.2.37 EU 7(3) Manufacturers that identify during the lifetime of an insurance product any circumstances related to the insurance product that may adversely affect the customer of that product shall take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event. Manufacturers shall promptly inform concerned insurance distributors and customers about the remedial action taken.

[**Note:** article 7(3) of the *IDD POG Regulation*]

- 4.2.38 EU 8(4) Manufacturers shall take appropriate steps to monitor that insurance distributors act in accordance with the objectives of the manufacturers' product approval process. They shall in particular verify on a regular basis whether the insurance products are distributed on the identified target market. That monitoring obligation shall not extend to the general regulatory requirements with which insurance distributors have to comply when carrying out insurance distribution activities for individual customers. The monitoring activities shall be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.

[**Note:** article 8(4) of the *IDD POG Regulation*]

- 4.2.39 EU 8(5) Manufacturers considering that the distribution of their insurance products is not in accordance with the objectives of their product approval process shall take appropriate remedial action.

[**Note:** article 8(5) of the *IDD POG Regulation*]

4.3 Distribution of 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.

[*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 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*.

...		
A2	...	...
	(5) a claim in connection with protected non-investment insurance mediation <u>protected non-investment insurance distribution</u>.	...
	...	
A3	...	...
	(5) a claim in connection with protected non-investment insurance mediation <u>protected non-investment insurance distribution</u>.	...
	...	
...		

...

3 The qualifying conditions for compensation

...

3.2 The qualifying conditions for paying compensation

...

- 3.2.4 R The *FSCS* may also pay compensation to a *firm*, who makes a claim in connection with ~~*protected non-investment insurance mediation*~~ *protected non-investment insurance distribution* on behalf of its customers, if the *FSCS* is satisfied that:

...

...

4 Eligible claimants

...

4.2 Who is eligible to benefit from the protection provided by the *FSCS*?

...

Persons not eligible to claim unless COMP 4.3 applies (see COMP 4.2.1R)

- 4.2.2 R This table belongs to COMP 4.2.1R

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

...

4.3 Exceptions: Circumstances where a person coming within COMP 4.2.2R may receive compensation

...

Liability subject to compulsory insurance

- 4.3.6 R A *person* who comes within COMP 4.2.2R is eligible to claim compensation in respect of a *liability subject to compulsory insurance* if the *claim* is:

...

- (2) a *claim* in connection with ~~*protected non-investment insurance*~~

~~mediation~~ protected non-investment insurance distribution.

...

5 Protected claims

...

5.2 What is a protected claim?

5.2.1 R A *protected claim* is:

...

- (5) a *claim* in connection with ~~protected non-investment insurance~~ mediation protected non-investment insurance distribution (see *COMP 5.7*).

...

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 ~~*IDD 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 R For *claims* made in connection with *protected investment business*, *protected home finance mediation* or ~~*protected non-investment insurance mediation*~~ *protected non-investment insurance distribution*, the *FSCS* may disregard a defence of limitation where the *FSCS* considers that it would be reasonable to do so.

...

- 8.2.5 R For claims made in connection with *protected investment business* or ~~*protected non-investment insurance mediation*~~ *protected non-investment insurance distribution*, if a *relevant person* (or, where applicable, a *successor*), incorporated as a *company*, has been dissolved with the result that its liability to the claimant has been extinguished by operation of law, the *FSCS* must treat the claim, for the purposes of paying compensation, as if the *relevant person* or a *successor*, as appropriate, had not been dissolved.

...

10 Limits on the amount of compensation payable

...

10.2 Limits on compensation payable

...

10.2.3 R Table Limits

This table belongs to COMP 10.2.1R

Type of claim	Level of cover	Maximum payment
...		
<i>Protected non-investment insurance mediation</i> <i>Protected non-investment insurance</i>	...	

<u>distribution</u>		
...		

...

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

...

...

...

[*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. It also takes into account the draft Insurance Distribution (Regulated Activities and Miscellaneous Amendments) Order 2017 as if it were made.]

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 12.4.8AR, whether an appointed representative, or prospective appointed representative, has established the knowledge and ability requirements for persons within its management structure and for those directly involved in its insurance distribution activity, a firm should refer to 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~~ they are included on the Financial Services Register as carrying on such activities (see SUP 12.5.2G(3)).
 - (2) If an appointed representative’s scope of appointment is to include an ~~insurance mediation activity~~ insurance distribution activity, the principal must notify the FCA of the appointment before the appointed representative commences that activity (see SUP 12.7.1R(1)).
 - (3) As an exception, pre-notification is not required if the appointed representative is already included on the Financial Services Register as carrying on ~~insurance mediation activities~~ insurance distribution activities in another capacity (for example, as the appointed representative of another principal).
- 12.4.10 G
- (1) The FCA has the power to decide not to include on the Financial Services Register (or to remove from the Financial Services Register) an appointed representative whose scope of appointment includes an ~~insurance mediation activity~~ insurance distribution activity, if it appears to the FCA that he is not a fit and proper person to carry on those activities (article 95 of the Regulated Activities Order).

...

...

12.5 Contracts: required terms

...

12.5.2 G ...

- (3) If the scope of appointment covers, in relation to a *contract of insurance, dealing in investments as agent, arranging, assisting in the administration and performance of a contract of insurance or advising on investments*, regulation 3(4) of the *Appointed Representatives Regulations* makes it a requirement that the contract between the *firm* and the *appointed representative* contains a provision providing that the *appointed representative* is not permitted or required to carry on such business unless included in the *Financial Services Register* as carrying on ~~*insurance mediation activities*~~ *insurance distribution activities*.

...

12.5.10 R ...

Required contract terms for appointed representatives carrying on insurance distribution activity

12.5.11 R A firm must ensure that, if appointing an appointed representative to carry on insurance distribution activity, its written contract requires the appointed representative to inform the firm of any change to the information obtained by the firm from the appointed representative in accordance with SUP 12.4.8C

[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)

(i) the scope of appointment of an appointed representative is extended to cover ~~insurance mediation activities~~ insurance distribution activities for the first time; and

(ii) the appointed representative is not included on the *Financial Services Register* as carrying on ~~insurance mediation activities~~ insurance distribution activities in another capacity; or

(b) the scope of appointment of an appointed representative ceases to include ~~insurance mediation activity~~ insurance distribution activity;

the *appointed representative's* principal must give written notice to the *FCA* of that change before the appointed representative begins to carry on ~~insurance mediation activities~~ insurance distribution activities under the contract (see *SUP 12.4*) or as soon as the scope of appointment of the appointed representative ceases to include ~~insurance mediation activities~~ insurance distribution activities.

...

12.8 Termination of a relationship with an appointed representative or EEA tied agent

...

Removal of an appointed representative from the Register

12.8.5 G The *FCA* has the power to remove from the *Financial Services Register* an appointed representative, whose scope of appointment covers ~~insurance mediation activities~~ insurance distribution activities (see *SUP 12.4.9 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* 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.

...

...

- 13.4.5 G 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, SUP 13.6.9DG and SUP 13.6.10G(1); or
- (b) a notice of change to cross border services referred to in SUP 13.7.3G(1), SUP 13.7.3AG(1), SUP 13.7.3DG, SUP 13.7.3EG, SUP 13.7.3GR, SUP 13.7.5G(1), SUP 13.7.6G, SUP 13.7.11AG, SUP 13.7.13BG, SUP 13.7.14G and SUP 13.7.15G.

...

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*~~

~~Directive~~ IDD; or

...

...

...

13A.4 EEA firms establishing a branch in the United Kingdom

The conditions for establishing a branch

- 13A.4.1 G (1) Before an *EEA firm* (other than an *EEA pure reinsurer* or an *EEA firm* that has received authorisation under article 18 of the *auction regulation*) exercises an *EEA right* to establish a *branch* in the *United Kingdom* other than under the ~~*Insurance Mediation Directive*~~ 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 G 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.
- 1 (a) For incoming *EEA branches*:
- (i) the *Host State* is responsible in relation to the obligations in Chapter V (Information requirements and conduct of business rules) and Chapter VI (Additional requirements in relation to insurance based investment products) (see article 7(2) of the *IDD*); and
 - (ii) The *Home State* is responsible in relation to all other obligations.
- (b) For *EEA firms* providing *cross border services*, the *Home State* is responsible in relation to all *IDD* obligations.
- (2) However, under article 7(1) of the *IDD*, if an *IDD insurance intermediary's primary place of business* is in a *Host State*), the *Host* and *Home State regulators* may agree that the *Host State regulator* will act as if it were the *Home State regulator* with regard to certain provisions. Those provisions are Chapters IV (Organisational requirements), V (Information requirements and conduct of business rules), VI (Additional requirements in relation to insurance based investment products) and VII (Sanctions and other measures) of the *IDD*. This sort of *Home* and *Host State regulator* agreement is referred to as an Article 7(1) *IDD*

Agreement.

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

13A **Application of the Handbook to Incoming EEA Firms**
Annex
1G

...

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		
<i>SYSC</i>	<p>...</p> <p><i>SYSC</i> 19A, 19B, 19C and 19D do not apply.</p> <p><i>SYSC</i> 19F applies to a <i>MiFID investment firm</i> unless it is a <i>UCITS investment firm</i> or an <i>AIFM investment firm</i>.</p> <p><u><i>SYSC</i> 28 does not apply.</u></p>	<p>...</p> <p><i>SYSC</i> 19A, 19B, 19C, 19D 19E and 19F do not apply.</p> <p><u><i>SYSC</i> 28 does not apply.</u></p>
...		
<i>MIPRU</i>	<p>...</p> <p><i>MIPRU</i> 2 (Responsibility for insurance mediation activity distribution and MCD credit <u>intermediation</u>) does not apply unless</p>	As column (2)

	<p>the <i>firm</i> has a <i>top-up permission</i>.</p> <p>...</p> <p><i>MIPRU 5</i> (Insurance undertakings distributors and mortgage lenders home finance providers using insurance <u>distribution</u> or mortgage home finance mediation services) does not apply unless the <i>firm</i> has a <i>top-up permission</i>.</p>	
...		
<i>SUP</i>	...	...
	<p>SUP 12 (Appointed representatives)</p> <p>Applies only if the <i>firm</i> has <i>permission</i> to carry on <i>designated investment business</i>, insurance mediation <u>distribution</u> activity or mortgage mediation activity and wishes to appoint, or has appointed, an <i>appointed representative</i> (<i>SUP 12.1.1R(1)</i>).</p>	<p>SUP 12 (Appointed representatives)</p> <p>As column (2).</p>
...		
<i>COMP</i>	<p>Applies, except in relation to the <i>passported activities</i> of a <i>MiFID investment firm</i>, a <i>CRD credit institution</i> (other than an electronic money institution within the meaning of article 1(3)(a) of the <i>E-Money Directive</i> that has the right to benefit from the mutual recognition arrangements under the <i>CRD</i>), an IMD <u>IDD insurance intermediary</u>, a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i>, an <i>MCD mortgage credit intermediary</i> and an incoming <i>AIFM branch</i> carrying on either <i>AIFM management functions</i> for an <i>unauthorised AIF</i> or non-core services under article 6.4 of <i>AIFMD</i> (see the definition of “<i>participant</i></p>	<p>Does not apply in relation to the <i>passported activities</i> of an <i>MiFID investment firm</i>, a <i>CRD credit institution</i>, an IMD <u>IDD insurance intermediary</u>, an <i>MCD mortgage credit intermediary</i> or a <i>UCITS management company</i> carrying on non-core services under article 6.3 of the <i>UCITS Directive</i> or an incoming <i>EEA AIFM</i> regarding <i>AIFM management functions</i> carried on for an <i>unauthorised AIF</i> or non-core services under article 6.4. Otherwise, <i>COMP</i> may apply, but the coverage of the <i>compensation scheme</i> is limited for non-UK activities (see <i>COMP 5</i>).</p>

	<i>firm</i> ”). However, a <i>firm</i> specified above may be able to apply for <i>top-up cover</i> in relation to its <i>passported activities</i> (see <i>COMP 14</i> (Participation by EEA Firms)).	
...		

13A **Matters reserved to a Home State regulator**
Annex
2G

...		
Requirements in the interest of the general good		
2.	The <i>Single Market Directives</i> and the <i>Treaty</i> (as interpreted by the European Court of Justice) adopt broadly similar approaches to reserving responsibility to the <i>Home State regulator</i> . To summarise, the <i>FCA</i> or <i>PRA</i> , as <i>Host State regulator</i> , is entitled to impose requirements with respect to activities carried on within the <i>United Kingdom</i> if these can be justified in the interests of the “general good” and are imposed in a non-discriminatory way. This general proposition is subject to the following in relation to activities passported under the <i>Single Market Directives</i> :	
	(1)	the <i>Single Market Directives</i> expressly reserve responsibility for the prudential supervision of a <i>MiFID investment firm</i> , <i>CRD credit institution</i> , <i>UCITS management company</i> , <i>AIFM</i> or passporting <i>Solvency II firm</i> to the <i>Firm’s Home State regulator</i> in respect of prudential matters within the scope of the respective <i>Single Market Directives</i> . The <i>Insurance Mediation Directive</i> <i>IDD</i> and the <i>MCD</i> reach the same position without expressly referring to the concept of prudential supervision. Accordingly, the <i>FCA</i> , as <i>Host State regulator</i> , is entitled to regulate only the conduct of the firm’s business (<u>in the case of the <i>IDD</i>, business conducted through a <i>branch</i></u>) within the <i>United Kingdom</i> ;
	...	
...		
Requirements under the MCD		

...	
11M	...
<u>Requirements under the IDD</u>	
<u>11N</u>	<u>Under article 7(2) of the <i>IDD</i>, ensuring compliance with the obligations in Chapter V (articles 17 – 25) and Chapter VI (articles 27 – 30) of the <i>IDD</i> by incoming EEA <i>branches</i> is the responsibility of the <i>Host State</i>. Subject to article 7(1) (see 11P below), ensuring compliance with all other obligations is the responsibility of the <i>Home State</i>.</u>
<u>11O</u>	<u>Subject to article 7(1) (see 11P below), ensuring compliance with the obligations in the <i>IDD</i> by <i>EEA firms</i> providing <i>cross border services</i> is the responsibility of the <i>Home State</i>.</u>
<u>11P</u>	<u>Under article 7(1) of the <i>IDD</i>, if an <i>IDD insurance intermediary's primary place of business</i> is in a <i>Host State</i>, the <i>Home</i> and <i>Host State regulators</i> may agree that the <i>Host State regulator</i> will act as if it were the <i>Home State regulator</i>. This is only with regard to the provisions of Chapters IV, V, VI and VII of the <i>IDD</i> (see <i>guidance in SUP 13A.6A</i>).</u>
...	

...

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 G Where an *incoming EEA firm* is exercising an *EEA right*, ~~other than under the *Insurance Mediation Directive*~~, and has established a *branch* in the United Kingdom, the *EEA Passport Rights Regulations* govern any changes to the details of that *branch*. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under *Schedule 3* to the *Act* is to be treated as varied accordingly. All references to regulations in *SUP 14* are to the *EEA Passport Rights Regulations*.

...

Appendix 3 Guidance on passporting issues

...

App 3.3 Background

...

- App 3.3.6 G ...
- (2) The European Commission has not produced an interpretative communication on the ~~*Insurance Mediation Directive*~~ IDD, AIFMD, the *MCD* or the *UCITS Directive*.

...

App 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive, MCD and ~~Insurance Mediation Directive~~ IDD to the Regulated Activities Order

- App 3.9.1 G The following Tables 1, 2, 2ZA, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passporting activities* under the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive*, the *MCD* and the ~~*Insurance Mediation Directive*~~ IDD. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.
- App 3.9.2 G The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the *CRD*, *MiFID*, *AIFMD*, the *UCITS Directive*, the *MCD* or the ~~*Insurance Mediation Directive*~~ IDD. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a

passported activity will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

...

Activities set out in ~~Article 2(3) of the IMD~~ articles 2(1) and 2(2) of the IDD

App 3.9.7 G

Table 2B: Insurance Mediation <u>Distribution</u> Directive Activities		Part II RAO Activities	Part III RAO Investments
1.	Introducing, proposing <u>Proposing</u> or carrying out other work preparatory to the conclusion of contracts of insurance <u>or reinsurance</u> .	Articles 25, 53(1) and 64	Articles 75, 89 (see Note 1)
<u>1A.</u>	<u>Advising on contracts of insurance or reinsurance</u>	<u>Articles 53(1) and 64</u>	<u>Articles 75, 89</u>
2.	<u>Concluding contracts of insurance or reinsurance</u>	Articles 21, 25, 53(1) and 64	Articles 75, 89
3.	Assisting in the administration and performance of contracts of insurance <u>or reinsurance</u> , in particular in the event of a claim.	Articles 39A, 64	Articles 75, 89
<u>4</u>	<u>Provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.</u>	<u>Articles 21, 25 and 64</u>	<u>Articles 75, 89</u>

Table 2B: Insurance Mediation <u>Distribution</u> Directive Activities	Part II RAO Activities	Part III RAO Investments
Note 1. Rights to or interests in <i>life policies</i> are <i>specified investments</i> under Article 89 of the <i>Regulated Activities Order</i> , but rights to or interests in <i>general insurance contracts</i> are not.		

[Editor's note: the text in this part of the Annex takes into account changes suggested by CP 17/32 'Quarterly Consultation No 18, chapter 4 Changes relating to the Insurance Distribution Directive and also COBS 16' (September 2017) as if they were made.]

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⁺

<u>Insurance intermediary</u>	<input type="checkbox"/>
<u>Ancillary insurance intermediary</u>	<input type="checkbox"/>
<u>Reinsurance intermediary</u>	<input type="checkbox"/>

3.4 Please give the name of any insurer or reinsurer represented⁺

--

3.5 Please list the relevant classes of insurance in relation to which insurance distribution is carried on (if applicable) ⁺

[Note: see annexes 1 and 2 of *Solvency II*]

...

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 ⁺

<u>Insurance intermediary</u>	<input type="checkbox"/>
<u>Ancillary insurance intermediary</u>	<input type="checkbox"/>
<u>Reinsurance intermediary</u>	<input type="checkbox"/>

3.2 3.4 If this form is in respect of one or more Appointed Representative(s) of the firm then please list below the name(s) and firm reference number(s) of those Appointed Representatives

Firm reference number	
Name of Company	
<u>Registration number (if applicable)</u>	
Address Line 1	
Address Line 2	
Address Line 3	
Address Line 4	

County	
Town	
Postcode/Zip	
EEA State	
Phone Number (including STD code)	
E-mail address	
Mobile number	
Fax number	
<u>Category of intermediary</u>	<u>Insurance intermediary</u> <input type="checkbox"/> <u>Ancillary insurance intermediary</u> <input type="checkbox"/> <u>Reinsurance intermediary</u> <input type="checkbox"/>

3.5 Please give the name of any insurer or reinsurer represented⁺

--

3.6 Please list the relevant classes of insurance in relation to which insurance distribution is carried on (if applicable)⁺

[Note: see annexes 1 and 2 of *Solvency II*]

The form (Annual Questionnaire for Authorised Professional Firms) referred to in SUP 16 Annex 9R is amended as shown.

FIN –APF – Authorised Professional Firms Questionnaire

...

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

...

The form (Guidance notes for completion of annual questionnaire for authorised professional firms in SUP 16 Annex 9R) referred to in *SUP* 16 Annex 9AG is amended as shown.

...

16 Annex 9AG Guidance notes for completion of annual questionnaire for authorised professional firms in SUP 16 Annex 9R

...

4E Insurance ~~mediation~~ distribution

Please estimate the percentage of the total income from the *firm's regulated activities* derived from ~~insurance mediation~~ insurance distribution business to the nearest 1%.

...

The form (Data items for SUP 16.12) referred to in *SUP* 16 Annex 24R is amended as shown.

FSA031

Capital Adequacy (for exempt CAD firms subject to IPRU(INV) Chapter 9)

...

Part 4 (Regulatory capital test to be completed by all firms)

29 ...

...

Professional Indemnity insurance

33 ...

34 Does your firm conduct insurance ~~mediation~~ distribution activities?

...

FSA032

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

...

Professional indemnity insurance

...

34 Does your firm conduct insurance ~~mediation~~ distribution activities?

The form (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

...

Description	Data element	Guidance
...		
Part 4	Regulatory capital test to be completed by all firms	
...		
Does your firm conduct insurance mediation <u>distribution</u> activities?	34A	Insurance mediation <u>distribution</u> activities are defined in the Handbook glossary.

FSA032

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

Defined Terms

...

Description	Data element	Guidance
...		
Part 4	Regulatory capital test to be completed by all firms	
...		
Does your firm conduct insurance mediation <u>distribution</u> activities?	34A	This is either 'Yes' or 'No', and enables us to check that the PII cover meets the minimum requirements.

[*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.fsa.gov.uk/register/home.do www.fca.org.uk/firms/financial-services-register.”
- 4.1.4 G ...
- (2) The *FCA* considers that it is important that *clients* understand the implications for them of receiving services from an *exempt professional firm* that is not authorised under the *Act*. It is also important that *clients* understand the implications of the difference between authorisation under the *Act* and being on the register maintained by the *FCA*, so that the *exempt professional firm* can conduct ~~*insurance mediation activity*~~ *insurance distribution activity*, in relation to which activity the regulatory protections established by the *Act* for the benefit of *consumers* will not apply. The *FCA* therefore expects *designated professional bodies* to make rules covering the information to be provided to *clients*. These rules should require *exempt professional firms* to make a disclosure to *clients* containing the following elements:
- (a) where the *exempt professional firm* conducts a *regulated activity* other than an ~~*insurance mediation activity*~~ *insurance distribution activity*, a statement that the *exempt professional*

firm is not an authorised person;

...

- (e) where the *regulated activity* consists of ~~*insurance mediation activity*~~ *insurance distribution activity*, the statement contained at *PROF 4.1.3R(2)*.

- (3) *Exempt professional firms* should also ensure that any statement that makes reference to the *FCA* does not lead a *client* to suppose that the *FCA* has direct regulatory responsibility for the *exempt professional firm*. This could be a breach of *PROF 4.1.2R*. This consideration is particularly important in relation to ~~*insurance mediation activity*~~ *insurance distribution activity*, where *clients* may well fail to appreciate the difference between authorisation under the *Act* and being included on the register maintained by the *FCA* so as to permit the *exempt professional firm* to carry on ~~*insurance mediation activity*~~ *insurance distribution activity*.

...

5.3 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:

...

- (d) provisions in *ICOBS* which implement articles ~~12 and 13~~ 1(4), 17, 18, 19, 20, 23, and 24 of the ~~Insurance Mediation Directive~~ *IDD* (see *ICOBS* 2.2.2R (communication to customers and financial promotions), *ICOBS* 2.2.2AR (marketing communications), *ICOBS* 2.5.-1R (the customer's best interests rule), *ICOBS* 2.6 (Distribution of connected contracts through exempt persons), *ICOBS* 4.1 (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~~ implement in part the provisions of the ~~*Insurance Mediation Directive*~~ IDD and ~~amends~~ amend the *Regulated Activities Order*.

The FCA's obligation to maintain a record

- 7.1.2 G Article 93 of the amended *Regulated Activities Order* requires the *FCA* to maintain an up-to-date record of every *unauthorised person*, whether an appointed representative or an *exempt professional firm* that carries on, or is proposing to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity* and to whom the *general prohibition* does not apply in relation to the carrying on of such an activity. In relation to exempt professional firms the *general prohibition* does not apply by virtue of section 327 of the *Act*.
- 7.1.3G G The *FCA* is not to include an *exempt professional firm* in the register relating to *unauthorised persons* if:
- (1) under a direction given by the *FCA* under section 328(1) of the *Act*, section 327(1) of the *Act* does not apply in relation to the carrying on by it of ~~*insurance mediation activity*~~ *insurance distribution activity*; or
 - (2) the *FCA* has made an order under section 329(2) of the *Act* disapplying section 327(1) of the *Act* in relation to the carrying on by the *exempt professional firm* of ~~*insurance mediation activity*~~ *insurance distribution activity*.

Provision of information to the FCA

- 7.1.4 G Article 94 of the *Regulated Activities Order* obliges a *designated professional body* to provide the *FCA* with the information it needs to maintain the record referred to in *PROF 7.1.2G* of every *unauthorised person* that carries on, or proposes to carry on, ~~*insurance mediation activity*~~ *insurance distribution activity* and keep it up to date. This information needs to include the details referred to in *PROF 7.1.7 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~~ insurance distribution activity maintained by the *FCA* under article 93 of the *Regulated Activities Order*.

- (2) Each *exempt professional firm* carrying on, or proposing to carry on, ~~insurance mediation activity~~ insurance distribution activity should ensure that at all material times the name of the firm and the requisite details are included in the record maintained by the *FCA*. Any such *exempt professional firm* carrying on, or proposing to carry on, ~~insurance mediation activity~~ insurance distribution activity whose name does not appear in the record maintained by the *FCA* is likely to be breaching the general prohibition which is a criminal offence under section 23 of the *Act*.

Financial Services Register

- 7.1.6 G In order to comply with its obligations to maintain a record of *unauthorised persons* that carry on, or are proposing to carry on, ~~insurance mediation activity~~ insurance distribution activity, the *FCA* has established an appropriate record which forms part of the record maintained by the *FCA* under section 347 of the *Act*. The record maintained by the *FCA* under section 347 of the *Act* is known as the *Financial Services Register*. The *Financial Services Register* therefore contains a record of each *authorised* and *unauthorised person* that carries on, or proposes to carry on, ~~insurance mediation activity~~ insurance distribution activity.
- 7.1.7 G The information to be included on the record in relation to *exempt professional firms* will, as required by the ~~Insurance Mediation Directive~~ IDD, include details of:
- (1) the name and address of each *exempt professional firm* that carries on, or is proposing to carry on, ~~insurance mediation activity~~ insurance distribution activity;
 - (2) where the *exempt professional firm* is not an individual, the names of the individuals within the management of the *exempt professional firm* who are responsible for the ~~insurance mediation activity~~ insurance distribution activity; and
 - (3) each *EEA State* in which the *exempt professional firm* under an *EEA right* derived from the ~~Insurance Mediation Directive~~ IDD;

...

...

7.2 **Passporting under the ~~Insurance Mediation Directive~~ IDD**

- 7.2.1 G All *persons* that are on the register maintained by the *FCA* in accordance with article 3 of the ~~Insurance Mediation Directive~~ IDD, and so permitted to conduct ~~insurance mediation activity~~ insurance distribution activity, are entitled to exercise the *EEA right* conferred upon them by ~~article~~ articles 4 (freedom to provide services) and 6 (freedom of establishment) of the

~~Insurance Mediation Directive~~ IDD to establish a *branch* or provide services relating to ~~insurance mediation activity~~ insurance distribution activity in another *EEA State*. Both *authorised professional firms* and *exempt professional firms* that are so registered by the *FCA* get the benefit of these passporting rights.

- 7.2.2 G Any *authorised professional firm* or *exempt professional firm* that is contemplating the exercise of rights under ~~article~~ articles 4 (freedom to provide services) or 6 (freedom of establishment) of the ~~Insurance Mediation Directive~~ IDD to establish a *branch* or provide services relating to ~~insurance mediation activity~~ insurance distribution activity in another *EEA State* is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both *authorised professional firms* and *exempt professional firms* are *UK firms* for the purposes of the *Handbook*, including SUP 13.
- 7.2.3 G A *UK firm* proposing to establish a *branch* in another *EEA State* for the first time under an *EEA right* derived from the ~~Insurance Mediation Directive~~ IDD must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). These include the requirement that the firm must at the outset give the *FCA* a notice in the required form of its intention to establish the *branch*. SUP 13.3.2G to SUP 13.3.2CG and SUP 13.3.5G detail the procedure to be followed once such a *notice of intention* has been received by the *FCA*. SUP 13.5.1R (Specified contents: notice of intention to establish a branch) and SUP 13.6.9AG (Firms passporting under the ~~Insurance Mediation Directive~~ IDD) will also be relevant.
- 7.2.4 G A *UK firm* proposing to provide *cross border services* into another *EEA State* for the first time under an *EEA right* derived from the ~~Insurance Mediation Directive~~ IDD must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the *Act* (EEA Passport Rights). The *UK firm* must at the outset give the *FCA* a notice in the required form of its intention to provide the *cross border services* into another *EEA State*. In this instance, the relevant procedure to be followed is outlined in SUP 13.4.2G, SUP 13.4.4G and ~~SUP 13.4.5G~~ SUP 13.4.5AG. SUP 13.5.2R (Specified contents: notice of intention to provide cross border services) and ~~SUP 13.7.11G~~ SUP 13.7.11AG will also be relevant.

[*Editor's note:* the text in this Annex takes into account the 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 CP17/28 'Financial Advice Market Review (FAMR): implementation Part II and insistent clients' (August 2017), as if they were made. The text, where relevant, is based on the statutory instrument attached to HM Treasury's consultation on the Transposition of the Insurance Distribution Directive, published on 27 February 2017.]

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*.

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

...

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

1.5.1 G ...

...

- (7) *guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of the company appointed to manage a PPP or similar construction and operation project - <https://www.fca.org.uk/your-fca/documents/fsa-ppp-forum-letter>;
- (8) ~~*guidance* about the position under the *Insurance Mediation Directive* and the *Regulated Activities Order* of property managing agents - www.fca.org.uk/firms/insurers/insurance-intermediaries;~~
[deleted]

...

- (12) the FSA's views on whether members of the NHBC who provide insurance to buyers of properties in accordance with the Buildmark scheme carry out *insurance mediation*, contained in a letter to NHBC's solicitors and put onto the FSA's Freedom of Information Act register in December 2012
(<https://www.fca.org.uk/publication/foi/fsa-foi2707-info.pdf>).

1.5.1A G The *guidance* under PERG 1.5.1G(7) and (12) relates to the *Insurance Mediation Directive*, which has been repealed and replaced by the *Insurance Distribution Directive (IDD)*. The *guidance* relates to whether the *regulated activities* in question are carried on for remuneration and by way of business under the *Insurance Mediation Directive*. The FCA does not view the changes under the *IDD* as having affected the analysis of remuneration and the 'by way of business' test set out in this *guidance* and so it continues to be relevant.

...

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 activities~~ 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 ...

(2) ...

More detailed *guidance* on certain of these exclusions is in ~~PERG~~ *PERG* 4 (~~Regulated~~ Guidance on regulated activities connected with mortgages), ~~PERG~~ *PERG* 5 (~~Insurance~~ Guidance on insurance mediation distribution activities), ~~PERG~~ *PERG* 14.3 (Activities relating to home reversion plans), ~~PERG~~ *PERG* 14.4 (Activities relating to home purchase plans) and ~~PERG~~ *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~~ *PERG* 5 (~~Insurance~~ Guidance on insurance mediation distribution activities) and *guidance* on activities and exclusions relevant to the *MCD* is in ~~PERG~~ *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~~ *PERG* 2.5.4G to ~~PERG~~ *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 participants 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 participants' unregulated business. The exclusions in ~~PERG~~ *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~~ *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~~ *PERG* 2.5.4G to ~~PERG~~ *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~~ *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~~ *PERG* 5 (Guidance on insurance ~~mediation~~ *distribution* activities). The exclusions are also disapplied for *persons* who, when carrying on the relevant *regulated activity*, are *MiFID investment firms* or *third country investment firms* (see ~~PERG~~ *PERG* 2.5.4G to ~~PERG~~ *PERG* 2.5.5G (Investment services and activities)).

...

Insurance ~~mediation~~ *distribution* activities

- 2.9.19 G The exclusions in this group apply to certain *regulated activities* involving certain *contracts of insurance*. The exclusions and the *regulated activities* to which they apply are as follows.
- (1) The first exclusion of this kind relates to certain activities carried on by a provider of non-motor goods or services or services related to travel in connection with *general insurance contracts* ~~only that~~ satisfy a number of conditions.
- (a) The contracts must:
- (i) ~~be for five years duration or less and must have an annual~~ a 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~~ their private capacity) or a small business. A small business is a sole trader, *body corporate, partnership* or unincorporated association which had a turnover in the last financial year of less than £1,000,000 (but where it is a member of a group, the combined turnover of the group is used). Turnover means the amounts derived from the provision of goods and services falling within the business's

ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on those amounts.

- (d) There must not be any liability risk cover other than (in relation to travel risk) where this is ancillary to the main risk covered in a travel policy.
- (e) The insurance must be complementary to the goods or services being supplied by the provider in the course of ~~his~~ the provider's carrying on a business or profession not otherwise consisting of *regulated activities*, ~~and the policy must be in standard form.~~
- (f) This exclusion applies where the *regulated activities* concerned are:
 - ~~(a)~~ (i) *dealing in investments as agent;*
 - ~~(b)~~ (ii) *arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments;*
 - ~~(c)~~ (iii) *assisting in the administration and performance of a contract of insurance; and*
 - ~~(d)~~ (iv) *advising on investments.*

(2) ...

...

- (4) The fourth exclusion applies where specified information is provided to a potential *policyholder*, or to a relevant insurer (as defined in article 39B(2) of the *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

...

Appointed representatives

- 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

...

2 Table

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
Insurance mediation <u>distribution</u> activity [see note 5A to Table 1]	
(pb) <i>dealing in investments as agent</i> (article 21)	<i>life policy</i> [see note 5B to Table 1]

...	
-----	--

...

3 Table

Notes to Table 1
...
<p>Note 1B:</p> <p><i>Life policies are contractually based investments. Where the regulated activities listed as designated investment business in (e) to (g) and (j) are carried on in relation to a life policy, these activities also count as ‘insurance mediation distribution activities’. The full list of insurance mediation activities <u>insurance distribution activities</u> is set out in (pb) to (pf). The regulated activities of agreeing to carry on each of these activities will, if carried on in relation to a life policy, also come within both designated investment business and insurance mediation activities <u>insurance distribution activities</u>.</i></p>
...
<p>Note 5A:</p> <p>Where they are carried on in relation to a <i>life policy</i>, the activities listed as insurance mediation activities <u>insurance distribution activities</u> in (pb) to (pf) (as well as the regulated activity of agreeing to carry on those activities) are also designated investment business.</p>
...

...

4.1 Application and purpose

...

Guidance on other activities

...

- 4.1.6 G A person may be intending to carry on activities related to other forms of investment in connection with mortgages, such as advising on and arranging an endowment policy or ISA to repay an interest-only mortgage. Such a person should also consult the guidance in ~~PERG~~ 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

agreements.

...

4.10A Activities regulated under the Mortgage Credit Directive

...

The effect of article 4(4B) on arrangers: Remuneration under the MCD

- 4.10A.1 G *PERG 5.4* (The business test for insurance ~~mediation~~ distribution) has
7 *guidance* on the meaning of remuneration in the ~~*Insurance Mediation Directive*~~ *IDD*. That *guidance* is also applicable to the meaning of remuneration for the purpose of ~~PERG~~ PERG 4.10A.12G.

...

5 Guidance on insurance ~~mediation~~ distribution activities

5.1 Application and purpose

- 5.1.1 G This chapter applies principally to any *person* who needs to know whether he carries on ~~*insurance mediation activities*~~ *insurance distribution activities* and is thereby subject to *FCA* regulation. As such it will be of relevance among others to:
- (1) insurance brokers;
 - (2) insurance advisers;
 - (3) *insurance undertakings*; and
 - (4) other *persons* involved in the sale and administration of *contracts of insurance*, even where these activities are secondary to their main business.

...

- 5.1.6 G The purpose of this *guidance* is to help *persons* consider whether they need *authorisation* or a variation of their *Part 4A permission*. Businesses ~~new to regulation~~ who act only as introducers of *insurance business* are directed in particular to *PERG 5.6.2G* (article 25(1): ~~arranging (bringing about) deals in investments~~) to *PERG 5.6.9G* (~~Exclusion: article 72C (Provision of information on an incidental basis))~~) and *PERG 5.15.6 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 .4G* to ~~*PERG 5.13.6G*~~ (*Appointed representatives*)).

...

5.2 Introduction

- 5.2.1 G This *guidance* is based on the statutory instruments made as part of implementing the *IMD* in the *United Kingdom*. This legislation includes the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003* (S.I. 2003/1476), which amends among others the *Regulated Activities Order*, the *Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001* (S.I. 2003/1217), the *Non-Exempt Activities Order* and the *Business Order*. Other legislation that forms the basis of this *guidance* includes the *Financial Services and Markets Act 2000 (Exemption) (Amendment) (No.2) Order 2003* (S.I. 2003/1675), the *Financial Services and Markets Act 2000 (Financial Promotion) (Amendment) Order 2003* (S.I. 2003/1676) and the *Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003* (S.I. 2003/1473). For ease of reference, references to the *Regulated Activities Order* below adopt the revised *Regulated Activities Order* numbering indicated in the *Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003*. [deleted]

...

Questions to be considered to decide if authorisation is required

- 5.2.3 G A person who is concerned to know whether his their proposed *insurance mediation activities insurance distribution activities* may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flow chart in *PERG 5.15.2G* (Flow chart: regulated activities related to insurance mediation—do you need authorisation?):
- (1) will the activities relate to *contracts of insurance* (see *PERG 5.3* (Contracts of insurance))?
 - (2) if so, will I be carrying on any *insurance mediation activity insurance distribution activity* (see *PERG 5.5* (The regulated activities: dealing in contracts as agent) to *PERG 5.11* (Other aspects of exclusions))?
 - (3) if so, will I be carrying on my activities by way of business (see *PERG 5.4* (The business test))?
 - (4) if so, is there the necessary link with the *United Kingdom* (see *PERG 5.12* (Link between activities and the United Kingdom))?
 - (5) if so, will any or all of my activities be excluded (see *PERG 5.3.7G* (Connected contracts of insurance) to *PERG 5.3.8G* (Large risks); ~~*PERG 5.6.5G*~~ *PERG 5.6.4AG* (Exclusions for the ~~article 72C~~ provision of information: article 33B and 72C on an incidental basis) to *PERG 5.6.23G* (Other exclusions); *PERG 5.7.7G* (Exclusions); *PERG 5.8.24G* (Exclusion: periodical publications,

broadcasts and web-sites) to *PERG 5.8.26G* (Other exclusions); *PERG 5.11* (Other aspects of exclusions) and *PERG 5.12.9G* to *PERG 5.12.10G* (Overseas persons))?

- (6) if it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under *Part XX* of the *Act* (see *PERG 5.14.1G* to *PERG 5.14.4G* (Professionals))?
- (7) if not, am I exempt as an *appointed representative* (see *PERG 5.13* (Appointed representatives))?
- (8) if not, am I otherwise an exempt *person* (see *PERG 5.14.5G* (Other exemptions))?

If a *person* gets as far as question (8) and the answer to that question is ‘No’, that *person* requires *authorisation* and should refer to the *FCA* website [page ‘How to Apply 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 be excluded?’ (5).

- 5.2.4 G It is recognised pursuant to *section 22* of the *Act* that a *person* will not be carrying on *regulated activities* in the first instance, including ~~*insurance mediation activities*~~ *insurance distribution activities*, unless ~~he is~~ the person is carrying on these activities by way of business. Similarly, where a *person’s* activities are excluded ~~he~~ that person cannot, by definition, be carrying on *regulated activities*. To this extent, the content of the questions above does not follow the scheme of the *Act*. For ease of navigation, however, the questions are set out in an order and form designed to help *persons* consider more easily, and in turn, issues relating to:

- (1) the ~~new~~ *regulated activities*;
- (2) the business test; and
- (3) the exclusions.

Approach to implementation of the ~~IMD~~ IDD

- 5.2.5 G The ~~IMD~~ IDD imposes requirements upon *EEA States* relating to the regulation of ~~*insurance*~~ *insurance distribution* and ~~*reinsurance mediation*~~ *reinsurance distribution*. The ~~IMD~~ IDD defines *insurance mediation distribution* and “~~reinsurance mediation~~” as including the activities of ~~introducing~~ advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance and reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. It includes the provision of information concerning one or more insurance

contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media. *Reinsurance distribution* is similarly defined (excluding the price comparison website activities). ~~(the~~ The text of *IDD* 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 is, in part,~~ through secondary legislation, which applies ~~will 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 ~~he~~ that person is a *policyholder*. The question of whether a *person* has rights under a *contract of insurance* may require careful consideration in the case of group policies (with reference to the *Glossary* definition of *policyholder*). In the case, in particular, of *general insurance contracts* and *pure protection contracts*, the existence or otherwise of rights under such policies may be relevant to whether a *person* is carrying on ~~insurancee mediation activities~~ insurance distribution activities.

...

5.4 The business test

- 5.4.1 G A *person* will only need *authorisation* or exemption if ~~he is~~ carrying on a *regulated activity* ‘by way of business’ (see *section 22* of the *Act* (Regulated Activities)).
- 5.4.2 G There is power in the *Act* for the Treasury to specify the circumstances in which a *person* is or is not to be regarded as carrying on *regulated activities* by way of business. The *Business Order* has been made using this power (partly reflecting differences in the nature of the different activities). As such, the business test for ~~insurancee 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 ~~insurancee mediation activity~~ insurance distribution activity unless ~~he~~ the person takes up or pursues that activity for remuneration. Accordingly, there are two principal elements to the business test in the case of ~~insurancee mediation activities~~ insurance distribution activities:
- (1) does a *person* receive remuneration for these activities?
 - (2) if so, does he take up or pursue these activities by way of business?
- 5.4.3 G (1) As regards *PERG 5.4.2G*(1), the *Business Order* does not provide a definition of ‘remuneration’, ~~but~~ however ‘remuneration’ is defined in the *IDD*. Article 2(1)(9) of the *IDD* defines ‘remuneration’ to mean any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities.
- (2) ~~in~~ In the FCA’s view, ‘remuneration’ in the *Business Order* follows the meaning of the *IDD* definition of remuneration, and:
- (a) it has a broad meaning and covers both monetary and non-monetary rewards. This is regardless of who makes them.

For example, where a *person* pays discounted premiums for ~~his~~ the person's 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~~ 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~~ 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~~ insurance distribution activity by way of business, ~~he~~ the person will usually need to be carrying on those activities with a degree of regularity. The *person* will also usually need to be carrying on the activities for commercial purposes. That is to say, ~~he~~ the person will normally be expecting to gain a direct financial benefit of some kind. Activities carried on out of friendship or for altruistic purposes will not normally amount to a business. However, in the *FCA's* view:

- (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~~ insurance distribution activities, is where a *person* recommends or arranges specific insurance *policies* in the course of carrying on that other business and receives a fee or commission for doing so.

5.4.6 G Some typical examples of where the business test is unlikely to be satisfied, assuming that there is no direct financial benefit to the arranger, include:

- (1) arrangements which are carried out by a *person* ~~for himself~~ for their own benefit, or for members of ~~his~~ the person's family;

- (2) where employers provide insurance benefits for staff; and
- (3) where affinity groups or clubs set up insurance benefits for members.

5.4.7 G *PERG* 5.4.8G contains a table that summarises the main issues surrounding the business test as applied to ~~insurance mediation activities~~ insurance distribution activities and that may assist *persons* to determine whether they will need *authorisation* or exemption. The approach taken in the table involves identifying factors that, in the *FCA*'s view, are likely to play a part in the analysis. Indicators are then given as to the significance of each factor to the *person*'s circumstances. By analysing the indicators as a whole, a picture can be formed of the likely overall position. The table provides separate indicators for the two elements of remuneration and by way of business. As a *person* has to satisfy both elements, a clear overall indication against either element being satisfied should mean that the test is failed. This approach cannot be expected to provide a clear conclusion for everyone. But it should enable *persons* to assess the relevant aspects of their activities and to identify where changes could, if necessary, be made so as to make their position clearer. The *person* to whom the indicators are applied is referred to in the table as 'P'.

5.4.8 G Table: Carrying on insurance ~~mediation~~ distribution activities 'for remuneration' and 'by way of business'

Factor	Indicators that P does not carry on activities 'for remuneration'	Indicators that P does carry on activities 'for remuneration'
Direct remuneration, whether received from the customer or the insurer/broker (cash or benefits in kind such as tickets to the opera, a reduction in other insurance premiums, a remission of a debt or any other benefit capable of being measured in money's worth)	P does not receive any direct remuneration specifically identified as a reward for his <u>P's</u> carrying on insurance mediation activities <u>insurance distribution activities</u> .	P receives direct remuneration specifically identified as being a reward for his <u>P's</u> carrying on insurance mediation activities <u>insurance distribution activities</u> .
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	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	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

<p>acceptance of P's terms and conditions or mutual recognition of the economic benefit that is likely to accrue to P). An indirect economic benefit can include expectation of making a profit of some kind as a result of carrying on insurance mediation activities <u>insurance distribution activities</u> as part of other services.</p>	<p>from his <u>their</u> other activities.</p>	<p>go beyond mere cost recovery through fees or other benefits received for providing a package of services that includes insurance mediation activities <u>insurance distribution activities</u> but where no particular part of the fees is attributable to insurance mediation activities <u>insurance distribution activities</u>. This could include where insurance mediation activities <u>insurance distribution activities</u> are likely to: 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> <p>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 <u>insurance distribution activities</u> for those customers and this: is explicitly</p>
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		or implicitly agreed between P and the insurer/broker or P's customer; and has the potential to go beyond mere cost recovery.
Recovery of costs	P receives no benefits of any kind (direct or indirect) in respect of his insurance mediation activities <u>insurance distribution activities</u> beyond the reimbursement of his actual costs incurred in carrying on the activity (including receipt by P of a sum equal to the insurance premium that P is to pass on to the insurer or broker).	P receives benefits of any kind (direct or indirect) in respect of his insurance mediation activities <u>insurance distribution activities</u> which go beyond the reimbursement of his actual costs incurred in carrying on the activity.
'By way of business'		
...		
Holding out	P does not hold himself <u>him or herself</u> out as providing a professional service that includes insurance mediation activities <u>insurance distribution activities</u> (by 'professional' is meant <u>meaning</u> 'not the services of a layman').	P holds himself <u>him or herself</u> out as providing a professional service that includes insurance mediation activities <u>insurance distribution activities</u> .
Relevance to other activities/business	insurance mediation activities <u>Insurance distribution activities</u> : have no relevance to P's other activities; or have some relevance but could easily be ceased without causing P any difficulty in	insurance mediation activities <u>Insurance distribution activities</u> : are essential to P in carrying on his <u>their</u> main activities; or would cause a material disruption

	carrying on his <u>their</u> main activities; or would be unlikely to result in a material reduction in income from P's main activities if ceased.	to P carrying on his <u>their</u> main activities if ceased; or would be likely to reduce P's income by a material amount.
Commercial benefit	<p>P receives no direct or indirect pecuniary or economic benefit.</p> <p>P is a layman and acting in that capacity.</p> <p>P would not obtain materially less income from his <u>P's</u> main activities if they did not include insurance mediation activities <u>insurance distribution activities</u>.</p>	<p>P receives a direct or indirect pecuniary or economic benefit from carrying on insurance mediation activities <u>insurance distribution activities</u> – such as a fee, a benefit in kind or the likelihood of materially enhanced sales of other goods or services that P provides.</p> <p>P would obtain materially less income from his <u>P's</u> main activities if they did not include insurance mediation activities <u>insurance distribution activities</u>.</p>

...

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.

- 5.6.4F 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), ~~he~~ they cannot take the benefit of this exclusion. Nor does it cover the activity of advising a customer under article 53 of the *Regulated Activities Order* (Advising on investments).

- 5.6.9 G The exclusion ~~will~~ may be of assistance to introducers who would otherwise be carrying on the *regulated activity* of *making arrangements with a view to transactions in investments* (~~assuming, as mentioned in PERG 5.6.8G, that they provide information only to policyholders or potential policyholders, and not to the intermediary or insurance undertaking to whom they introduce these policyholders or potential policyholders~~). In order to assist such ~~introducers~~ determine whether or not they are likely to require *authorisation*, a simplified flowchart is included in ~~PERG 5.15.6 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 ~~his~~ its service of publishing, broadcasting or otherwise facilitating the issue of promotions, ~~he~~ it may well bring ~~himself~~ itself within the scope of article 25(2). Further detailed *guidance* relating to the scope of the exclusion in article 27 is contained in PERG 2.8.6G(2) (Arranging deals in investments and arranging a home finance transaction) and PERG 8.32.6G to PERG 8.32.11G (Arranging deals in investments).

Exclusion from article 25(2): transactions to which the arranger is a party

...

- 5.6.15 G In some cases, a *person* may make arrangements to enter into a *contract of insurance* as *policyholder* on its own behalf and also arrange that another *person* become a *policyholder* under the same *contract of insurance*. If so, the *person* should be aware that the effect of the narrower exclusion in article 28 as part of implementation of the ~~IMD~~ IDD is that ~~he~~ they may be *arranging* on behalf of the other *policyholder*. This may be relevant, for example, to a *company* which arranges insurance for itself (not *arranging*) as well as other *companies* in a *group* or loan syndicate (potentially *arranging*).

...

Exclusion from article 25(2) for introducing

- 5.6.17 G Article 33 of the *Regulated Activities Order* (Introducing) excludes arrangements which would otherwise fall under article 25(2) where:

...

- (2) the *person* to whom introductions are to be made is:
- (a) an *authorised person*; or
 - (b) an *exempt person* acting in the course of business comprising a *regulated activity* in relation to which ~~he is~~ they are exempt; or
 - (c) a *person* who is not unlawfully carrying on *regulated activities* in the *United Kingdom* and whose ordinary business involves ~~him~~ the person in engaging in certain activities;

...

...

- 5.6.18 G The effect of *PERG* 5.6.17G(4) is that some *persons* who, in making introductions, are *making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order*, cannot use the introducing exclusion. This is 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*).

...

Advice must relate to the merits (of buying or selling a contract of insurance)

...

5.8.13 G The requirements imposed by the ~~IMD~~ IDD (see *PERG 5.2.5G* (Approach to implementation of the ~~IMD~~ IDD)) and the text of IDD articles ~~2.3~~ 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~~ 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)).

...

Medium used to give advice

5.8.20 G With the exception of:

- (1) periodicals, broadcasts and other news or information services (see *PERG 5.8.24G* to *PERG 5.8.25G* (Exclusion: periodical publications, broadcasts and web-sites)); and
- (2) situations involving an overseas element (see, generally, *PERG 5.12* (Link between activities and the United Kingdom) and, in particular, *PERG 5.12.8G* (Where is insurance ~~mediation~~)).

distribution carried on?));

the use of the medium itself to give advice should make no material difference to whether or not the advice is caught by article 53(1).

...

5.9 The Regulated Activities: agreeing to carry on a regulated activity

...

- 5.9.2 G To the extent that an exclusion applies in relation to a *regulated activity*, ‘agreeing’ to carry on an activity within the exclusion will not be a *regulated activity*. This is the effect of article 4(3) of the *Regulated Activities Order* (Specified activities: general). So, for example, a vet can, without carrying on a *regulated activity*, enter into an agreement with an *insurance undertaking* to distribute marketing literature provided that the vet can rely on the exclusion in article 72C (Provision of information on an incidental basis) or article 33B (Provision of information – contracts of insurance) in relation to the activity of distributing the literature (see also ~~PERG 5.6.6 G~~ PERG 5.6.4AG and to PERG 5.6.9G which cover exclusions (~~Exclusion: article 72C (Provision for the provision of information on an incidental basis)))~~). However, ~~to be able to rely on the exclusion in article 72C, the vet must not be viewed as providing information to the insurance undertaking. More specifically, an unauthorised introducer can enter into standing arrangements with insurance undertakings or brokers to make introductions, provided that these arrangements do not envisage subsequent provision of information to these insurance undertakings or brokers with a view to arranging (bringing about) deals in investments or making arrangements with a view to transactions in investments.~~

5.10 Renewals

- 5.10.1 G It must be emphasised that activities which concern invitations to renew *policies* and the subsequent effecting of renewal of *policies* are likely to fall within ~~insurance mediation activity~~ insurance distribution activity. Those considering the need for *authorisation* or variation of their *permissions* will wish to consider whether a process of tacit renewal operates: that is, where a *policyholder* need take no action if he wishes 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'~~ Several exclusions that would have the effect of restricting the scope of the *regulated activities* referred to in this *guidance*. ~~Several of these~~ are disapplied or modified 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 5.6.5G*~~ *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*~~ 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* 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 ~~2.5~~ 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, ~~or~~

provide services related to travel in the course of carrying on a profession or business which does not otherwise consist of carrying on *regulated activities*. In the FCA's view, the fact that a *person* may carry on *regulated activities* in the course of the carrying on of a profession or business does not, of itself, mean that the profession or business consists of *regulated activities*. This is provided that the main focus of the profession or business does not involve *regulated activities* and that the *regulated activities* that are carried on arise in a way that is incidental and complementary to the carrying on of the profession or business. For example, a travel agent might carry on ~~insurance mediation activities~~ insurance distribution activities in relation to some *contracts of insurance* that satisfy the conditions of article 72B and some that do not. The former contracts will be excluded from regulation even though the travel agent must seek *authorisation* or become an *appointed representative* to be permitted to sell the latter contracts. The exclusion applies to ~~insurance mediation activities~~ insurance distribution activities when carried on in relation to 'connected contracts of insurance'. In broad terms, a 'connected contract of insurance' is a *contract of insurance* which:

- (1) is not a contract of long-term insurance (as defined by article 3 of the *Regulated Activities Order* (Interpretation));
- (2) ~~has a total duration (including rights to renewal) of five years or less;~~ [deleted]
- (3) has an annual *premium* ~~(or the equivalent of annual premium)~~ of:
 - (a) ~~€500~~ 600 euro or less (calculated on a pro rata annual basis); or
 - (b) 200 euro or less, where the contract of insurance 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

...

- 5.12.3 G The table in *PERG 5.12.4G* is a very simplified summary of territorial issues relating to overseas insurance intermediaries carrying on the business of ~~*insurance mediation activities*~~ *insurance distribution activities* in or into the *United Kingdom* for remuneration.

- 5.12.4 G Table Territorial issues relating to overseas insurance intermediaries carrying on ~~*insurance mediation activities*~~ *insurance distribution activities* in or into the *United Kingdom*

...		
For <i>EEA</i> -based intermediaries this table assumes that the <i>insurance mediation activities</i> <i>insurance distribution activities</i> are within the scope of the <i>Insurance Mediation Directive</i> <u>IDD</u> .		

Where are insurance ~~mediation~~ distribution activities carried on?

- 5.12.5 G Persons carrying on ~~*insurance mediation activities*~~ *insurance distribution activities* from a registered office or head office in the *United Kingdom* will clearly be carrying on *regulated activities* in the *United Kingdom*. However, a person may be considered to be carrying on *regulated activities* in the *United Kingdom* even where not carrying on the activity from a registered office or head office in the *United Kingdom*. This is explained further in *PERG 5.12.6G* to *PERG 5.12.8G*.

...

- 5.12.8 G Otherwise, where the cases in *PERG 5.12.7G(1)* do not apply, it is necessary to consider further the nature of the activity in order to determine where ~~insurance mediation~~ insurance distribution is carried on. *Persons* that arrange *contracts of insurance* will usually be considered as carrying on the activity of *arranging* in the location where these activities take place. As for dealing activities, the location of the activities will depend on factors such as where the acceptance takes place, which in turn will depend on the method of communication used. In the case of advising, this is generally considered to take place where the advice is received.

Overseas persons

- 5.12.9 G Article 72 of the *Regulated Activities Order* (Overseas persons) provides a potential exclusion for *persons* with no permanent place of business in the *United Kingdom* from which *regulated activities* are conducted or offers to conduct *regulated activities* are made. Where these *persons* carry on ~~insurance mediation activities~~ insurance distribution activities in the *United Kingdom*, they may be able to take advantage of the exclusions in article 72 of the *Regulated Activities Order*. In general terms, these apply where the *overseas person* either:

...

...

- 5.12.10 G The *overseas person* exclusion is available to *persons* who do not have a permanent place of business in the *United Kingdom* and so is of relevance to third country intermediaries (that is, non *EEA*-based intermediaries) who carry on ~~insurance mediation activities~~ insurance distribution activities in, or into, the *United Kingdom* (for example with or through authorised insurance brokers and insurance *undertakings* operating in the Lloyd's market).

How should persons be authorised?

- 5.12.11 G *UK*-based *persons* must obtain *Part 4A permission* in relation to their ~~insurance mediation activities~~ insurance distribution activities in the *United Kingdom* as one of the following:
- (1) a *body corporate* whose registered office is situated in the *United Kingdom*; or
 - (2) a *partnership* or unincorporated association whose head office is situated in the *United Kingdom*; or
 - (3) an individual (that is, a sole trader) whose residence is situated in the *United Kingdom*.

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

Directive in PERG 5.12.15G to PERG 5.12.17G (E-Commerce Directive)).

- 5.12.12 G Non-UK-based *persons* wishing to carry on ~~*insurance mediation activities*~~ *insurance distribution activities* in the *United Kingdom* must:

...

Passporting

- 5.12.13 G The effect of the ~~*IMD*~~ *IDD* is that any *EEA*-based insurance intermediaries doing business within the Directive's scope must first be registered in their home *EEA State* before carrying on ~~*insurance mediation*~~ *insurance distribution* in that *EEA State* or other *EEA States*. For these purposes, an *EEA*-based insurance intermediary is either:

- (1) a legal *person* with its registered office or head office in an *EEA State* other than the *United Kingdom*; or
- (2) a natural *person* resident in an *EEA State* other than the *United Kingdom*.

Registered *EEA*-based insurance intermediaries wishing to establish branches in the *United Kingdom* or provide services on a cross-border basis into the *United Kingdom* can do so by notifying their *Home State regulator* which in turn notifies the *FCA*. This enables the intermediary to acquire passporting rights for business within the Directive's scope (so excluding ~~*insurance mediation activities*~~ *insurance distribution activities* relating to *connected contracts* or *connected travel insurance contracts*) under Schedule 3 to the Act (~~*EEA passporting rights*~~) (see Schedule 3(13) and (14) of the Act as amended by the *Insurance Mediation Directive (Miscellaneous Amendments) Regulations 2003*). SUP 13A (Qualifying for authorisation under the Act) has general *guidance* on the exercise of passporting rights by *EEA firms*.

- 5.12.14 G On the other hand, non-*EEA*-based insurance intermediaries wishing to establish a branch in the *UK* for the purpose of carrying on ~~*insurance mediation activities*~~ *insurance distribution activities* may only do so with Part 4A permission.

E-Commerce Directive

- 5.12.15 G ...

- 5.12.16 G The *E-Commerce Directive* does not remove the ~~*IMD*~~ *IDD* requirement for *persons* taking up or pursuing ~~*insurance mediation*~~ *insurance distribution* for remuneration to be registered in their *Home State*. Nor does it remove the requirement for *EEA*-based intermediaries to acquire passporting rights in order to establish branches in the *United Kingdom* (see PERG 5.12.7G (~~*Where is insurance mediation carried on?*~~) in relation to *electronic commerce activity* carried on from an establishment in the *United Kingdom*) or provide services on a cross-border basis into the *United Kingdom* where

the relevant activity is carried on in the *United Kingdom*. An example of *electronic commerce activity* provided on a cross-border basis into the *United Kingdom* could be a recommendation in a (solicited) e-mail from an *EEA*-based intermediary to a *UK*-based customer to *buy* a particular *contract of insurance*.

- 5.12.17 G Put shortly, the *E-Commerce Directive* relates to services provided into the *United Kingdom* from other *EEA States* and from the *United Kingdom* into other Member States. In broad terms, such cross-border insurance ~~mediation~~ distribution services provided by an *EEA firm* into the *United Kingdom* (via *electronic commerce activity* or distance means) will generally be subject to ~~IMD~~ IDD registration in, and conduct of business regulation of, the intermediary's *EEA State* of origin. By contrast, insurance ~~mediation~~ distribution services provided in the *United Kingdom* will be subject to *UK* conduct of business regulation, although the requirement for registration will again depend upon the intermediary's *EEA State* of origin.

5.13 Appointed representatives

...

Business for which an appointed representative is exempt

- 5.13.3 G An *appointed representative* can carry on only those *regulated activities* which are specified in the *Appointed Representatives Regulations*. The *regulated activities* set out in the table in *PERG 5.13.4G* are included in those regulations. As set out in the table, the ~~insurance mediation activities~~ insurance distribution activities that can be carried on by an *appointed representative* differ depending on the type of *contracts of insurance* in relation to which the activities are carried on.
- 5.13.4 G Insurance ~~mediation~~ distribution activities able to be carried on by an appointed representative. This table belongs to *PERG 5.13.3G*.

...

~~Persons who are not already~~ Becoming an appointed 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, ~~he~~ the person must be appointed under a written contract by an *authorised person*, who has *permission* to carry on those *regulated activities* and who accepts responsibility for the *appointed representative's* actions when acting for ~~him~~ them. *SUP 12.4* (What must a firm do when it appoints an appointed representative or an EEA tied agent?) and *SUP 12.5* (Contracts: required terms) set out the detailed requirements that must be met for an appointment to be made. In particular, an *appointed representative* will not

be able to commence an ~~insurance mediation activity~~ insurance distribution activity until he is 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 disappplied 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 it~~ is endorsing a corresponding recommendation given to the *client*. The recommendation ~~he it~~ endorses must be one given by an *authorised person* permitted to advise on *life policies*, or an *exempt person* for these purposes. No such restrictions apply, however, in relation to *contracts of insurance* other than *life policies*.
- ...
- 5.14.5 G In addition to certain named *persons* exempted by the *Exemption Order* from the need to obtain *authorisation*, the following bodies are exempt in relation to ~~insurance mediation activities~~ insurance distribution activities that do not relate to *life policies*:

...

5.15 Illustrative tables

5.15.1 G ~~This flow chart sets out the matters a person will need to consider to see if he will need authorisation for carrying on insurance mediation activities. It is referred to in PERG 5.2.3G (Questions to be considered to decide if authorisation is required).~~ [deleted]

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

5.15.3 G The table in PERG 5.15.4G is designed as a short, user-friendly guide but should be read in conjunction with the relevant sections of the text of this *guidance*. It is not a substitute for consulting the text of this *guidance* or seeking professional advice as appropriate (see PERG 5.1.6G on the effect of this *guidance*). References in this table to articles are to articles of the *Regulated Activities Order*. In this table, it is assumed that each of the activities described is carried on by way of business (see PERG 5.4). Save where otherwise indicated, it is assumed that the intermediary is carrying on activities in respect of *policies* where he 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 G Types of activity – are they regulated activities and, if so, why?

Type of activity	Is it a regulated activity?	Rationale
MARKETING AND EFFECTING INTRODUCTIONS		
Passive display of information - for example, medical insurance brochures in doctor's surgery (whether or not remuneration is received for this activity)	No.	Merely displaying information does not constitute making arrangements under article 25(2) (see PERG 5.6.4G).

<p>Recommending a broker/insurance undertaking and providing <u>Providing a customer with contact details or information about a broker / insurance undertaking</u> (whether by phone, fax, e-mail, face-to-face or any other means of communication)</p>	<p>Yes, but article <u>articles 33B or 72C</u> may be available.</p>	<p>This will constitute making arrangements under article 25(2). But, the exclusion <u>exclusions</u> in article 72C <u>articles 33B or 72C</u> will apply if all the intermediary does is supply information to the customer and the <u>relevant</u> conditions of article 72C <u>those exclusions</u> are otherwise met (see PERG 5.6.5 G <u>PERG 5.6.4AG to PERG 5.6.9 G</u>). Generally, this will not amount to advice under article 53(1) unless there is an implied recommendation of a particular <i>policy</i> (see <u>PERG 5.8.4G</u>), in which case article 72C <u>articles 33B and 72C</u> would not be available.</p>
<p>Providing an <i>insurance undertaking</i>/broker with contact details of customer</p>	<p>Yes, but <u>article 33B</u> may be <u>available</u>.</p>	<p>This will constitute making arrangements under article 25(2) when undertaken in the context of regular or ongoing arrangements for introducing customers. Article 72C will not apply because the information is supplied to someone other than the policyholder or potential policyholder. <u>Article 33B applies to the provision of information about a potential policyholder to an insurance undertaking or 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.</u></p>
<p>Marketing on behalf of <i>insurance undertaking</i> to intermediaries only (for example, broker consultants)</p>	<p>Yes.</p>	<p>This amounts to work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). <u>Article 33B does not apply because the information provided to the intermediary doesn't relate to a potential policy holder.</u> Article 72C is not available because this activity does not involve provision of</p>

		information to the <i>policyholder</i> or potential <i>policyholder</i> only.
Telemarketing services (that is, companies specialising in marketing an <i>insurance undertaking's</i> products/services to prospective customers)	Yes (<u>unless article 33B applies and no advice is given</u>).	This amounts to introducing and/or other work preparatory to the conclusion of <i>contracts of insurance</i> and so constitutes making arrangements under article 25(2). This could also involve article 25(1) <i>arranging</i> where the telemarketing company actually <i>sells</i> a particular <i>policy</i> , and could involve <i>advising on investments</i> . <u>Article 33B 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.</u> Article 72C will not be available where the provision of information is more than incidental to the telemarketing company's main business or. <u>Articles 33B and 72C will not be available</u> where the telemarketing company is <i>advising on investments</i> .
PRE-PURCHASE DISCUSSIONS WITH CUSTOMERS AND ADVICE		
Discussion with client about need for insurance generally/need to take out a particular type of insurance	Generally, no. Article <u>Articles 33B or 72C</u> available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to <i>arranging</i> . If so, <u>articles 33B or 72C</u> might be of application (see <i>PERG 5.6.5G</i> to <i>PERG 5.6.9G</i>).
Advising on the level of cover needed	Generally, no. Article <u>Articles 33B or 72C</u> available if needed.	Not enough, of itself, to constitute making arrangements under article 25(2), but you should consider whether, viewed as a whole, your activities might amount to making arrangements under article 25(2) (see <i>PERG 5.8.3G</i>). If so, articles <u>articles 33B or 72C</u> might be of application (see <i>PERG 5.6.5G</i> <i>PERG 5.6.4AG</i> to <i>PERG 5.6.9G</i>).
Pre-purchase	Yes.	This will constitute <i>arranging</i>

questioning in the context of filtered sales (intermediary asks a series of questions and then suggests several <i>policies</i> which suit the answers given)	Subject to article 72C exclusion where available.	although article 72C may be of application (see PERG 5.6.5G <u>PERG 5.6.4AG</u> to <u>PERG 5.6.9G</u>). If there is no express or implied recommendation of a particular <i>policy</i> , this activity will not amount to advice under article 53(1) (see <u>PERG 5.8.15G</u> to <u>PERG 5.8.19G</u>).
Explanation of the terms of a particular <i>policy</i> or comparison of the terms of different policies	Possibly. Article 72C available.	This is likely to amount to making arrangements under article 25(2). In certain circumstances, it could involve <i>advising on investments</i> (except <i>P2P agreements</i>) (see <u>PERG 5.8.8G</u> (Advice or information)). Where the explanation is provided to the potential <i>policyholder</i> , and does not involve <i>advising on investments</i> (except <i>P2P agreements</i>), article 72C may be of application (see <u>PERG 5.6.5G</u> to <u>PERG 5.6.9G</u>), and where information is provided by a professional in the course of a profession, article 67 may apply (see <u>PERG 5.11.9G</u> to <u>PERG 5.11.12G</u>). <u>Article 33B will not be available where this involves taking steps other than the provision of information.</u>
Advising that a customer take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53(1) (see <u>PERG 5.8.4G</u> to <u>PERG 5.8.5G</u>).
Advising that a customer does not take out a particular <i>policy</i>	Yes.	This amounts to advice on the merits of a particular <i>policy</i> under article 53(1) (see <u>PERG 5.8.4G</u> to <u>PERG 5.8.5G</u>).
Advice by journalists in newspapers, broadcasts etc.	Generally, no because of the article 54 exclusion.	Article 54 provides an exclusion for advice given in newspapers etc (see <u>PERG 5.8.24G</u> to <u>PERG 5.8.25G</u>).
Giving advice to	Not	Where the advice relates

a customer in relation to his <i>buying</i> a consumer product, where insurance is a compulsory secondary purchase and/or a benefit that comes with <i>buying</i> the product	necessarily but depends on the circumstances.	specifically to the merits of the consumer product, it is possible that references to the accompanying insurance may be seen to be information and not advice. If, however, the advice relates, in part, to the merits of the insurance element, then it will be <i>regulated activity</i> .
ASSISTING CUSTOMERS WITH COMPLETING/SENDING APPLICATION FORMS		
Providing information to customer who fills in application form	Possibly. Subject to article 67 or 72C ₁ and <u>article 33B</u> , exclusions where available.	This activity may amount to <i>arranging</i> although the exclusions in article 67 (see <i>PERG</i> 5.11.9G to <i>PERG</i> 5.11.12G) and article 72C (see <i>PERG</i> 5.6.5G <i>PERG</i> 5.6.4AG to <i>PERG</i> 5.6.9G) may be of application. <u>Article 33B could also apply, depending on the type of information provided.</u>
Helping a potential <i>policyholder</i> fill in an application form	Yes.	This activity amounts to <i>arranging</i> . Articles <u>Articles 33B and 72C</u> will not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see <i>PERG</i> 5.6.5G <i>PERG</i> 5.6.4AG to <i>PERG</i> 5.6.9G).
Receiving completed proposal forms for checking and forwarding to an <i>insurance undertaking</i> (for example, an administration outsourcing service provider that receives and processes proposal forms)	Yes.	This amounts to <i>arranging</i> . Articles <u>Articles 33B and 72C</u> does not apply because this activity goes beyond the mere provision of information to a <i>policyholder</i> or potential <i>policyholder</i> (see <i>PERG</i> 5.6.5G <i>PERG</i> 5.6.4AG to <i>PERG</i> 5.6.9G).

Assisting in completion of proposal form and sending to <i>insurance undertaking</i>	Yes.	This activity amounts to <i>arranging</i> . Articles <u>Articles 33B and 72C</u> does not apply because this activity goes beyond the mere provision of information (see PERG 5.6.5 G <u>PERG 5.6.4AG</u> to <u>PERG 5.6.9G</u>).
NEGOTIATING AND CONCLUDING CONTRACTS OF INSURANCE		
...		

...

5.15.5 G ~~The flow chart in *PERG 5.15.6 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)).~~ [deleted]

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 5.2.5G~~ PERG 5.2.6R (Approach to implementation of the ~~IMD~~ IDD), *PERG 5.8.13G* (Advice must relate to the merits of buying or selling a contract of insurance), *PERG 5.11.7G* (Exclusions disapplied in connection with insurance ~~mediation~~ distribution) and *PERG 5.11.10G* (Activities carried on in the course of a profession or non-investment business).~~

5.16.2 G (1) Text of article 2.31(1) of the Insurance ~~Mediation~~ Distribution Directive

“‘Insurance ~~mediation~~ distribution’ means the activities of ~~introducing~~ advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, ~~or~~ of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media. These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.

The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation.”

- (2) Text of article 2.1(2) of the Insurance Distribution Directive
“‘Reinsurance distribution’ means the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim”.
- (3) Text of article 2.2 of the Insurance Distribution Directive
“For the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution:
 - (a) the provision of information on an incidental basis in the context of another professional activity where:
 - (i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;
 - (ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
 - (b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;
 - (c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any

additional steps to assist in the conclusion of an insurance or reinsurance contract;

- (d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.”

...

8.7 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

...

- 8.34.3 G The ‘by way of business’ test for *insurance distribution activities* is distinguished from the standard test for ‘investment business’ in article 3 of the *Business Order*. The business test for *persons carrying on insurance distribution activities* is in article 3(4) of the *Business Order*. See *PERG 5.4 (The business test)*.

...

10 Guidance on activities related to pension schemes

10.1 Background

- Q1. What is the purpose of these questions and answers (‘Q&As’) and who should be reading them?

...

The Q&As complement the general *guidance* on regulated activities in Chapter 2 of our Perimeter Guidance Manual (*PERG*), the general guidance on insurance ~~mediation~~ distribution activities in Chapter 5 of *PERG* (*PERG 5*), the guidance about the scope of the *Markets in Financial Instruments Directive* in Chapter 13 of *PERG* (*PERG 13*) and the relevant legislation. In addition, Chapter 12 of *PERG* (*PERG 12*) has further guidance about the regulated activities relating to the operation and sale of personal pension schemes that came into force on 6 April 2007.

...

10.2 General issues

- Q6. How do I know if I am carrying on activities by way of business?

...

In addition, article 3(4) of the *Business Order* provides that any person who carries on an ~~insurance mediation activity~~ insurance distribution activity by way of business must be remunerated for doing so. Guidance on the application of the ‘by way of business’ 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~~ 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~~ 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~~ insurance distribution 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

Potential regulated activity	When will such regulated activities be carried on?
...	
<i>Dealing in investments as agent</i> (article 21 of the <i>Regulated Activities Order</i>)	...
	Article 67 of the <i>Regulated Activities Order</i> provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who deal in investments as agent as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a person is carrying on insurance mediation <u>insurance distribution or reinsurance distribution</u> . Service providers may be able to make limited use of this exclusion - for

	instance, where providing payroll services (see Q34).
	Article 69 of the <i>Regulated Activities Order</i> excludes persons who are dealing in investments other than contracts of insurance as agent for other members of their <i>group</i> . However, service providers who are carrying on insurance mediation activities <u>insurance distribution activities</u> solely for, and are remunerated solely by, another group member, will not satisfy the ‘by way of business’ test (see Q35).
<i>Arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments (article 25 of the Regulated Activities Order)</i>	...
	Article 67 of the <i>Regulated Activities Order</i> provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who are arranging as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a <i>person</i> is carrying on insurance mediation <u>insurance distribution or reinsurance distribution</u> . Service providers may be able to make limited use of this exclusion – for instance, where providing payroll services (see Q34).
	...
	However, service providers who are carrying on insurance mediation activities <u>insurance distribution activities</u> solely for, and are remunerated solely by, another group member will not satisfy the ‘by way of business’ test (see Q35).
...	
<i>Assisting in the administration and performance of a contract of insurance (article 39A of the</i>	...

<i>Regulated Activities Order)</i>	
	Where a person is assisting in the administration and performance of a contract of insurance solely for, and is remunerated solely by, another <i>group</i> member, he will not satisfy the 'by way of business' test because he is not carrying on <i>insurance mediation activities</i> <i>insurance distribution activities</i> for a third party and so does not require to be authorised or exempt (see Q35).
...	
<i>Advising on investments (except P2P agreements) (article 53(1) of the Regulated Activities Order)</i>	<p>Trustees of pension schemes will not be advising on investments provided the advice is given only:</p> <ul style="list-style-type: none"> • to a fellow trustee for the purposes of the trust; or • to a member about his interest in the trust fund, <p>and provided that the trustee:</p> <ul style="list-style-type: none"> • does not receive additional remuneration for advising on investments; and • is not required to be regulated under the Insurance Mediation Directive <i>IDD</i> (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). <p>Service providers would be advising on investments if they provide advice to the trustees on the merits of the trust making particular investments (see Q39 and Q40).</p>
	Article 67 of the <i>Regulated Activities Order</i> provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who are 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

	<p>person is carrying on insurance mediation <u>insurance distribution or reinsurance distribution</u>. Service providers may be able to make limited use of this exclusion – for instance, where providing actuarial advice to the trustees of an occupational pension scheme (see Q34).</p>
--	--

...

12 Guidance for persons running or advising on personal pension schemes

...

12.2 Establishing, operating or winding up a personal pension scheme

...

Q6. What is my position as an operator of a personal pension scheme if I delegate day-to-day functions such as administration of the scheme or the management or custody of the scheme assets to another person?

...

Chapter 10.4 of *PERG* has general guidance about the circumstances in which persons who administer pension schemes on behalf of the operator or trustees may be carrying on a regulated activity including an ~~insurance mediation activity~~ insurance distribution activity.

...

12.3 Rights under a personal pension scheme

...

Q21. What exclusions may be available for advising on investments in connection with acquiring or disposing of rights under a personal pension scheme?

...

If the rights relate to a contract of insurance, the adviser 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*.

...

