

# **Insurance Distribution Directive implementation – Feedback to CP17/7 and near-final rules**

**Policy Statement**

PS17/21

September 2017

## This relates to

Consultation Paper CP17/7  
which is available on our website at  
[www.fca.org.uk/publications](http://www.fca.org.uk/publications)

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# 1 Overview

## Introduction

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**1.1** This Policy Statement (PS) sets out our response to the feedback received to Consultation Paper 17/7 (CP17/7)<sup>1</sup>, which was the first of three consultation papers on the Insurance Distribution Directive (IDD). It also sets out our near-final rules implementing the following areas of the IDD:

- application of the Directive
- professional and organisational requirements
- complaints handling and out-of-court redress
- changes to conduct of business rules (for non-investment insurance contracts)
- the regulatory regime for Ancillary Insurance Intermediaries (AIIIs)

**1.2** We are publishing near-final rules because some of the rules proposed rely on domestic legislation that has not yet been made. Also, given the interdependencies on the terms within our Handbook Glossary and certain overlapping requirements between CP17/7 and the later consultations, we believe it is preferable to make final rules. Publishing near-final rules gives firms more time to continue their plans for IDD implementation. We intend to publish our final rules alongside the third policy statement. This is likely to be in January 2018.

## Who does this affect?

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**1.3** This PS will interest insurance and reinsurance companies, intermediaries, other firms and customers in the insurance market, and bodies representing these groups. It will also be of interest to designated professional bodies (DPBs) and their members who conduct insurance distribution activities.

## Is this of interest to consumers?

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**1.4** Consumers have a clear interest in financial markets that operate fairly and transparently. This includes the way in which firms implement the new IDD requirements, particularly in relation to the conduct of business requirements. The conduct of business rules extend the requirement on firms to act in their customers' best interests.

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<sup>1</sup> CP17/7, *Insurance Distribution Directive Implementation – Consultation Paper I*, March 2017: [www.fca.org.uk/publication/consultation/CP17/7.pdf](http://www.fca.org.uk/publication/consultation/CP17/7.pdf)



## Context

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- 1.5** The Insurance Mediation Directive (IMD) was transposed in the UK on 15 January 2005. It specified conditions for the initial authorisation and ongoing regulatory requirements for insurance and reinsurance intermediaries. It was designed to encourage cross-border competition between intermediaries and also to ensure appropriate levels of protection for insurance customers across the European Union (EU).
- 1.6** Following a review of the Directive, the EU Commission began a process to revise the IMD. Its replacement, the IDD entered into force on 23 February 2016. The UK is required to comply with the IDD by 23 February 2018.
- 1.7** On 27 February 2017, HM Treasury published a consultation on changes to legislation required to implement the IDD. We published CP17/7 shortly after HM Treasury's consultation. We published our second consultation paper (CP17/23 ) in July. We intend to publish our third consultation paper by the end of September.

## Summary of feedback and our response

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- 1.8** We received 86 responses to our consultation from a wide variety of stakeholders. These included authorised firms, trade bodies, compliance consultants and consumer groups.
- 1.9** Based upon the feedback received we are going to implement the rules as set out in CP17/7, although we have made the following changes:
- In ICOBS, we have revised our guidance on the choice given to customers on how they receive information.
  - In ICOBS, we have included guidance on the means of providing information on renewal to customers who took out their policy before 23 February 2018.
- 1.10** We are also considering whether further guidance is needed on the IDD rule which prohibits remuneration of a firm that conflicts with the duty to act in their customers' best interests.

## What do you need to do next?

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- 1.11** Firms affected by these changes will need to ensure compliance from 23 February 2018.

## 2 Application of the Directive

### Introduction

**2.1** In this chapter we respond to feedback on our proposals for how the rules and requirements transposing the IDD apply to different types of firms and customers.

### Our proposals

**2.2** In CP17/7, we proposed to:

- extend our rules to apply to insurance undertakings where the existing rules did not cover minimum requirements of the IDD
- extend the application of the ICOBS rules so that certain provisions apply to the distribution of insurance for large commercial risks where the risk is situated in the EEA and also to intermediaries who are not in direct contact with the customer
- maintain the existing position that the ICOBS rules do not apply to reinsurance distribution
- maintain the existing customer classification in ICOBS

**2.3** We asked whether respondents had any comments on our proposed approach to the application of the IDD.

### Feedback received

**2.4** The majority of respondents were in favour of these proposals. However, some trade bodies commented that the definition of 'large risks' is not fit for purpose. A small number queried the extent to which the rules implementing Chapter V of the IDD (conduct of business requirements) will apply to insurance undertakings who do not deal directly with customers.

**2.5** Many respondents also raised more general points about IDD implementation:

- A number raised concerns about the limited time available to implement the new requirements. Some requested an extension to the 23 February 2018 deadline.
- Some commented that the FCA should try to use existing rules and principles wherever possible, even if the exact wording did not match IDD requirements, and avoid implementing new rules unless absolutely necessary.
- A minority opposed our proposal to go beyond the minimum requirements of the IDD in certain areas.



## Our response

We welcome the broad support for our proposals, and will implement them as set out in CP17/7. We note the comments made in relation to the definition of 'large risks'. However, this definition derives from the Solvency II Directive, and we have no discretion to amend this.

We appreciate that the timeline for implementing the requirements is challenging. As the IDD is EU law it is not possible for us to grant any extension to the timeline for implementation. We highlighted this in CP17/7 and made clear that firms should already have plans in place to ensure they comply with the requirements from 23 February 2018. We will develop our supervision priorities, including how we ensure firms are complying with the IDD requirements, through our business planning process. This will be communicated to firms using our supervision channels.

Where possible we have relied on existing rules to implement the IDD. There are a number of areas where our rules, although similar to the IDD, do not transpose the IDD requirements. In those cases we have proposed new rules. The IDD is a minimum harmonising directive which recognises that some countries may consider it necessary to go beyond the minimum requirements. Where we have proposed to go beyond the IDD minimum requirements we have done so to protect customers and/or promote a level playing field between competing firms.

The comments in relation to Chapter V of the IDD are dealt with in our replies to questions 6-12 in Chapter 5 of this PS.

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## 3 Professional and organisational requirements

### Introduction

- 3.1** In this chapter we respond to the feedback received on our proposals for implementing the IDD professional and organisational requirements for insurance distributors, covering both investment-based and non-investment insurance contracts. We also cover changes to prudential requirements for intermediaries.

### Employee knowledge and competence

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#### Our proposals

- 3.2** The IDD requires all insurance distributors and their employees to have the appropriate knowledge and ability to perform their roles. This must be supported by a minimum of 15 hours of continuing professional training or development (CPD) in each 12 months. The IDD sets out at a high-level the areas of knowledge and ability which employees should possess, including minimum product knowledge and knowledge of the claims process.
- 3.3** In CP17/7 we proposed to incorporate the IDD minimum 15 hours' CPD and minimum knowledge areas into the Senior Management Arrangements, Systems and Controls sourcebook (SYSC). For firms subject to the Training and Competence sourcebook (TC) we proposed to continue with the current minimum 35 hours of CPD required where that applies to insurance distributors.<sup>2</sup>
- 3.4** We also proposed to introduce guidance that the form and content of the CPD can be modulated according to the nature and complexity of the employee's role.
- 3.5** The IDD only requires insurance and reinsurance undertakings to establish, maintain and keep appropriate records to demonstrate compliance with the knowledge and ability requirements. In order to maintain consistency across the market, we proposed to extend this requirement to insurance intermediaries.
- 3.6** We asked whether respondents agreed with our proposed approach to incorporating the IDD knowledge and competence requirements. If they disagreed, we asked them to explain why.

#### Feedback received

- 3.7** The majority of respondents were in favour of our proposals. Most others made no comment. Many respondents particularly welcomed our proposed guidance on the form and content of CPD.
- 3.8** Some respondents argued that 15 hours was insufficient and that we should go further, such as introducing minimum qualification requirements. However, others

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<sup>2</sup> Broadly, these rules apply to firms who provide advice on life policies.



questioned whether CPD is an effective tool at all and argued that greater discretion should be given to firms to determine training needs.

**3.9** A small number of respondents argued that our proposal to extend record keeping to intermediaries would create additional costs.

**3.10** We also received requests to clarify our proposals in a number of areas:

- the application to staff not directly involved in the distribution of insurance
- how the required 15 hours fits with the existing 35 hours for retail investment advisors under TC
- whether the 12 month period for completing 15 hours' CPD must begin on the IDD implementation date or the date a new employee commences work, or whether firms can have one fixed date for all their employees to complete CPD. Some respondents suggested a strong preference for the latter (most likely using their accounting reference date)
- whether there is a prescribed mix of structured and unstructured CPD

### Our response

We welcome the broad support which we received for our proposals, and will implement them as set out in CP17/7.

The proposal for 15 hours of CPD is the minimum requirement of the IDD and therefore must be implemented. Whilst we do have the option to go beyond the minimum requirements and implement either more hours of CPD or a mandatory qualification, we do not believe that there is a strong case to do so at this time.

As set out in the cost-benefit analysis in CP17/7, we do not believe that extending the requirement to establish, maintain and keep up-to-date records to intermediaries will create additional costs. Intermediaries will need to maintain records of employee competence and CPD. Even if we did not extend the requirements on record keeping to include them, firms would still need records to be able to monitor their own compliance with the rules.

In response to the queries we received, we set out the following clarifications:

- We believe the proposed rules are clear and apply to employees who are either directly involved in the carrying out of the firm's insurance distribution activities, those responsible for the supervision of such employees and those within the management structure with responsibility for the firm's insurance distribution activities. Some claims handling on behalf of an insurer is excluded from the scope of the IDD where it meets the conditions in Article 39B of the Regulated Activities Order.



This is not subject to the IDD knowledge and ability requirement. However, we remind firms that they may have to take into account and comply with the competent employees rules.

- We have amended TC so that the 35 hours of CPD should include the 15 hours required by the IDD.
- The rules do not specify a starting date for the 12 month period. Firms can use their accounting reference date if they wish. However, firms should ensure that measures are in place to comply with the IDD requirements from 23 February 2018. This may mean doing a pro-rata amount of CPD in the first period after implementation, or completing the full 15 hours in that time. Firms may also, if they wish, take into account CPD undertaken during the same 12 month period at a new employee's former workplace. However, they should ensure that reasonable measures are in place to verify the completion of the previous CPD.
- We do not intend to prescribe a mix of structured and unstructured CPD. Firms should consider what is most appropriate to ensure that their employees have the required knowledge and competence.

Due to amendments proposed to SYSC by another consultation paper, we have placed the IDD requirements into a newly created chapter SYSC 28.

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## Professional indemnity insurance

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### Our proposals

**3.11** The IDD requires that all intermediaries have in place professional indemnity insurance (PII) or a comparable guarantee. The minimum levels of cover are:

- €1,250,000 applying per claim per year, and
- €1,850,000 per year in aggregate for all claims

**3.12** Our Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) and the Interim Prudential sourcebook for Investment Businesses (IPRU-INV) already require insurance intermediaries to have PII (or a comparable guarantee) in place. We proposed to increase the current minimum levels in line with the IDD requirements.

**3.13** MIPRU and IPRU-INV also set out additional requirements, such as a maximum excess and some specific aspects of cover that the PII must provide.<sup>3</sup> We proposed to retain these additional requirements.

**3.14** We asked whether respondents agreed with our proposed PII requirements. If not, we asked them to explain why.

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3 MIPRU 3.2.4R.



### Feedback received

- 3.15** The majority of respondents were in favour of our proposals. Most others made no comment.
- 3.16** Some respondents believed that the minimum levels of cover are too low to offer robust protection to customers and that we should increase them.
- 3.17** A small number of respondents queried whether it remained appropriate for the minimum levels of cover to be expressed in euros rather than pounds sterling. Others queried if we would change this in the future.

### Our response

We welcome the broad support which we received for our proposals, and will implement them as set out in CP17/7. Our existing rules go beyond the IDD minimum in imposing additional requirements on the PII cover intermediaries must hold. For example, our rules require a level of total cover per year based on the annual income of the firm where higher than the flat minimum amount. We believe that these additional requirements offer stronger protections for customers.

We understand the reasons why some respondents queried our continued use of figures in euros. However, the IDD minimum requirements are specified in this currency. Given inevitable fluctuations it would not be possible for us to provide a figure in pounds sterling which would be guaranteed to meet the IDD minimum requirements. Instead our rules require that, where a policy is denominated in any currency other than euros, a firm must take reasonable steps to ensure that the limits of indemnity are, when the policy is affected and at renewal, at least equivalent to those required. We will consider this as part of ongoing work reviewing our Handbook following the UK's departure from the EU.

We are aware that the European Insurance and Occupational Pensions Authority (EIOPA) must review the minimum PII requirements by 31 December 2017, and may amend the minimum levels. We will consider this in due course.

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### Other matters

- 3.18** The IDD requires that firms who distribute products through insurance intermediaries ensure that these intermediaries are registered with the appropriate competent authority, unless they are exempted from the scope of the Directive.<sup>4</sup>
- 3.19** MIPRU 5.2 currently requires that insurers use only the mediation services of authorised or exempt insurance intermediaries. In line with the IDD requirements, we proposed to extend this requirement to intermediaries.

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<sup>4</sup> For example, an out-of-scope ancillary insurance intermediary. This is discussed in Chapter 6.

**3.20** We received no comments on this proposal.

### Our response

We will implement this requirement as set out in CP17/7.

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**3.21** We also asked a discussion question in relation to potential changes to the rules in our Client Assets sourcebook (CASS). We set out the feedback received and our response in Consultation Paper 17/23.<sup>5</sup>



## 4 Complaints and out-of-court redress

### Introduction

- 4.1** In this chapter we provide our response to the feedback we received on our proposed approach to the IDD complaints and out-of-court redress rules.

### Our proposals

- 4.2** The IDD requires firms to put in place a process for handling complaints from all customers. There is a further requirement for out-of-court redress procedures to be available to customers in accordance with other EU legislation. Unlike the IMD, the IDD places responsibility on the home Member State to ensure that complaints and out-of-court redress processes are available to customers.
- 4.3** In CP17/7 we proposed to rely on the existing rules in our Dispute Resolution: Complaints sourcebook (DISP) to implement the IDD requirements. This included the existing jurisdiction of the Financial Ombudsman Service (FOS). We consider that the out-of-court redress arrangements required by the IDD are intended to provide an alternative dispute resolution process for the benefit of retail consumers. This is consistent with acts such as the Alternative Dispute Resolution Directive (ADR).<sup>6</sup>
- 4.4** We proposed to introduce a requirement for insurance distribution business conducted by EEA branches of UK firms to put in place a complaints process and to adhere to an ADR entity in the EEA state in which they are established to resolve consumer disputes.
- 4.5** We asked whether respondents agreed with our proposals for implementing the IDD requirements in relation to complaints and out-of-court redress. If not, we asked them to explain why.

### Feedback received

- 4.6** The majority of respondents either supported our proposals or gave no response.
- 4.7** Most respondents who specifically commented on our proposals concerning out-of-court redress were in favour of retaining the existing FOS jurisdiction and opposed any change. However, a small number of respondents believed that we should extend the FOS jurisdiction further to cover more small and medium-sized enterprises (SMEs).

### Our response

We welcome to positive response to our proposals and will implement them as set out in CP17/7. We note the comments on extending the FOS jurisdiction to SMEs, we do not intend to make a change as part of our implementation of IDD.

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6 Directive 2013/11/EU

## 5 Conduct of business requirements

### Introduction

**5.1** In this chapter we provide our response to the feedback received on our proposals for implementing the IDD conduct of business requirements for non-investment insurance policies. These rules are implemented in our Insurance: Conduct of Business sourcebook (ICOBS) and cover:

- the IDD General Principles (ICOBS 2)
- general pre-contract disclosures (ICOBS 4)
- disclosures relating to conflicts of interest and transparency (ICOBS 4)
- the means of providing information (ICOBS 4)
- standards for advised and non-advised sales (ICOBS 5)
- cross-selling (ICOBS 6A)

### IDD general principles (ICOBS 2)

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#### Our proposals

**5.2** The IDD introduces general principles that apply to all insurance distributors. These are overarching requirements, which apply in a similar way to our 'Principles for Businesses'. In summary, the IDD general principles say that:

- firms must act honestly, fairly and professionally in accordance with their customers' best interests
- firms must communicate in a way which is clear, fair and not misleading. Marketing materials must be clearly identifiable as such
- remuneration of a firm or its employees, and performance management of employees, must not conflict with the duty to act in accordance with their customers' best interests

**5.3** We proposed to incorporate the IDD requirements by:

- including a new rule in ICOBS 2 requiring insurance distributors to act honestly, fairly and professionally in accordance with the best interests of their customers (the customer's best interest rule). We created a new glossary term – the customer's best interests rule – to refer to this rule
- amending the current ICOBS 2 rules on communications and financial promotions including to require that all marketing communications be clearly identifiable as such. This included an amendment to the definition of a financial promotion



- including a new rule – SYSC 19F – to prohibit remuneration and performance management practices that would conflict with the customer's best interests rule

- 5.4** We also proposed to amend the application provisions in ICOBS 1 so that the IDD general principles would apply to all parties in the distribution chain.
- 5.5** We asked whether respondents agreed with our proposed amendments to ICOBS 2. If not, we asked them to explain why.

### Feedback received

- 5.6** Most respondents either supported our proposals or provided neutral responses. Many respondents welcomed the proposals as being a standard which 'quality' firms should achieve. However, a number of respondents questioned whether it is necessary to introduce new rules. They argued that our existing Principles for Businesses were sufficient to implement the IDD requirements.
- 5.7** A large number of respondents, although generally supportive, were concerned that the new rules were very broad and open to interpretation. This was particularly the case for the new rule in SYSC, restricting remuneration which conflicts with the customer's best interests rule.
- 5.8** Many respondents welcomed our application of the IDD general principles to all parties in the distribution chain. Others questioned whether wholesale brokers will be able to comply with the requirements because they do not have direct communication with the end customer. In particular, respondents queried how the new customer's best interest duty will apply to wholesale intermediaries, and who we consider the customer of a wholesale firm to be.
- 5.9** Some said the customer's best interest rule focused too much on individual customers. A few also stated that the rule may contradict their responsibilities to their shareholders.
- 5.10** We received some queries about the meaning of 'marketing communications'.

### Our response

We will implement the rules as set out in CP17/7. We welcome support from those who said the proposals reflect good practice.

There are many similarities between the new rules and our existing rules. However, the overlap is not complete. For example, Principle 6 requires a firm to 'pay due regard' to its customers' interests, whereas the IDD requires that firms act in their customers' best interests. It is necessary to copy out the IDD text in order to implement the Directive.

Following the feedback received we are considering guidance on the SYSC 19F requirement to ensure clarity and consistency across the market and we aim to indicate our approach later this year. This will allow us to consider feedback received from our second consultation on the application of these requirements to life insurance business.

We understand that firms have duties to their shareholders. However, this situation is not new, nor is it unique to general insurance. Our Conduct of Business sourcebook (COBS) already has a rule requiring firms to act in their client's best interests. The IDD is clear that firms must act honestly, fairly and professionally in accordance with the best interests of their customers.

In response to the queries we received, we set out the following clarifications:

- In ICOBS, 'customer' is defined as being a policyholder or prospective policyholder. This definition applies to the new customers' best interests rule.
- We appreciate that wholesale intermediaries are not in direct contact with the customer during the sale process. The application of the new rules to wholesale firms for the sale of individual policies will vary depending on the circumstances and the activities which the firm performs. In CP17/7 we said that a wholesale intermediary who concludes a contract placed with them by a retail broker will need to act in accordance with the customer's best interests rule. This may involve placing some reliance on information provided by other firms in the distribution chain. In CP17/7 we set out that our rules apply to activities which these firms carry out beyond the sale of an individual policy. Wholesale firms should consider the requirements of the new rules in SYSC 19F when determining their remuneration structures. They should also consider the new rules proposed in regards to product oversight and governance. These are discussed in CP17/23, and will be further considered in our third consultation paper.
- We do not believe that the proposed rule focuses too much on the best interests of the individual customer. Our rules in our General Provisions sourcebook (GEN) state that words should be considered to mean both the singular and plural.<sup>7</sup> This is currently the case for the client's best interests rule in COBS. We do not see that there is conflict between acting in the best interests of a customer and the firm's wider customer-base.
- We have considered the meaning of 'marketing communications' when implementing other directives. The term is not defined in the IDD and we are retaining it in our rules as undefined, so it has its natural meaning. We have chosen not to provide a definition because we judged that this may result in a meaning beyond that intended by the IDD. The Directive is not prescriptive and does not require every communication to specifically state that it is or is not marketing. Firms should review their communications from the perspective of the product's target market and consider whether it would be clear to the typical customer that the communication is marketing rather than pure information.



## Changes to ICOBS 4

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### Introduction

- 5.11** The IDD makes a number of changes to the pre-contract disclosures that firms are required to make. In summary, these cover:
- changes to general pre-contract disclosures
  - changes to the disclosures covering conflicts of interest and transparency
  - introduction of disclosures concerning the firm's remuneration
  - changes to the rules on how information is provided
- 5.12** We asked a single question covering the changes to ICOBS 4. This was whether or not respondents agreed with our proposed amendments to ICOBS 4. If they disagreed, we asked them to explain why.

### General pre-contract disclosures

#### Our proposals

- 5.13** The general pre-contract disclosures cover information about the firm and its services. The IDD develops the existing IMD disclosures and extends these to apply to insurers which distribute products directly to customers. In summary, these include:
- firms must disclose whether they are an insurer or an intermediary
  - firms must disclose whether or not they provide advice
  - intermediaries must disclose whether they act for the customer or the insurer
- 5.14** We proposed to implement these requirements by amending the existing ICOBS rules.

#### Feedback received

- 5.15** Although a number of respondents expressed general concern about customers being 'overloaded' with information, we received very few responses to these specific proposals.
- 5.16** A small number of respondents queried how the requirement for intermediaries to disclose whether they act for the customer or insurer would work where the intermediary performs a number of roles in relation to the same contract.

### Our response

We will implement the rules as set out in CP17/7.

We recognise that some intermediaries may act for both the insurer and the customer at different times. For example, a broker may act for the customer when searching the market for a suitable policy, and for the insurer when receiving a claim notification. However, we do not believe that this will be difficult for firms to explain or for customers to understand. We remind firms that they should ensure they make all the required disclosures in a way which is likely to be useful to the customer. This can also help avoid customers being overloaded with information.



## Conflicts of interest and transparency disclosures (including remuneration disclosures)

### Our proposals

**5.17** The IDD requires changes to the existing disclosures covering conflicts of interest for an intermediary. It will also introduce new requirements to disclose information concerning the firm's remuneration (for both insurers and intermediaries). In summary, the changes say that:

- intermediaries must make disclosures about shareholding links between the intermediary and any insurers
- where intermediaries do not provide advice on the basis of a fair and personal analysis of the market, they must disclose the names of insurers with whom they may place business
- intermediaries must disclose the nature of their remuneration in relation to the insurance contract and whether they work on the basis of a fee, commission or some other form of remuneration (or a combination thereof)
- insurers must disclose the nature of the remuneration paid to their employees
- all firms must disclose fees payable by the customer in cash terms. This includes fees which may become payable (such as for mid-term adjustments)

**5.18** We proposed to implement these requirements through a combination of amending the existing ICOBS rules and introducing new rules. We also proposed a number of amendments to terms defined in the Handbook Glossary. In order to ensure consistency of application, we proposed guidance on the remuneration disclosure requirements. We also set out a table of illustrative examples within CP17/7.

### Feedback received

**5.19** Although the majority of respondents gave a neutral response to these proposals, many expressed concern about excessive information 'overloading' the customer. Respondents questioned whether customers would engage with the disclosures concerning remuneration. They also asked whether there was any benefit to intermediaries having to disclose the names of insurers with whom they may place business. A small number requested that non-advised sales be exempted from the new rules on remuneration disclosure.

**5.20** Some respondents queried whether intermediaries would be required to make disclosures about the remuneration of other parties in the distribution chain. In particular one asked whether insurers that do not distribute products direct to customers would be within the scope of the rules.

**5.21** A small number of respondents commented that the rules were not clear. They were concerned that intermediaries would need to disclose both their own remuneration and that of their employees.

**5.22** Respondents generally welcomed the guidance on remuneration disclosures. However, one pointed out a potential inconsistency between the text of the consultation paper and the draft rules. This concerned paragraph 5.23 which says that 'measures such as rewards for adherence to quality standards' are not included in the remuneration disclosures, but ICOBS 4.3.-3G says 'additional annual leave for achieving



a high customer service score on sales calls' are included. The respondent preferred the approach in the consultation text.

- 5.23** A reference to a non-existent provision (ICOBS 4.1.6BR) was also pointed out in the amendment to ICOBS 4.1.8G.

### Our response

We will implement the rules as set out in CP17/7.

We understand the concerns expressed by respondents about customers being overloaded with information. However, the proposals represent the minimum requirements of the IDD.

In response to the queries we received, we set out the following clarifications:

- The rules require firms who are in contact with the customer<sup>8</sup> to make disclosures about remuneration they receive. Firms do not need to make disclosures about the remuneration of other firms in the distribution chain.
- We do not believe there is a discrepancy between the text of the consultation and the draft rules. Our intention is that the disclosure rules apply to remuneration, including non-monetary benefits, which is received either specifically for the sale of the insurance contract or for achieving a target to which the sale of the insurance contract contributes or may contribute.
- We have corrected the cross-reference in ICOBS 4.1.8G.

- 5.24** We also asked respondents whether they had any comments on the table of illustrative examples concerning remuneration disclosures which we provided in CP17/7. The majority of firms welcomed the illustrative examples or gave no response.

- 5.25** Some respondents requested further examples covering other scenarios and also covering the disclosures required of insurers.

### Our response

We are pleased with the support received for these illustrative examples.

The examples are intended to be illustrations which firms should consider when designing their disclosure regime. It is not our intention to provide examples to cover every situation. Firms are responsible for disclosing the required information in a way which is clear to their customers.

<sup>8</sup> ICOBS1 Annex 1 part 2 paragraph 4

## Means of providing information

### Our proposals

- 5.26** The IDD sets out rules on the media in which information should be provided to customers. We proposed to amend the glossary (including new terms) and to introduce a new section in ICOBS 4 setting out these requirements. In summary, the requirements say that:
- information must be clear and accessible, on paper and provided free of charge
  - firms can provide information through the means of a durable medium other than paper (such as by email) where it is appropriate and the customer has chosen it
  - firms can provide information through a website where certain conditions are met and the customer has chosen it
- 5.27** We are clear that, in order to provide information through means other than paper, the customer must be given a choice and must opt for the other means. We proposed guidance setting out that asking for consent without putting forward the other option would not be sufficient, and neither would be defaulting to a non-paper format.
- Feedback received**
- 5.28** The majority of respondents opposed these proposals as they interpreted them as making paper the 'default' means of providing information. Many respondents argued that this would be a backward step, contrary to modern consumer expectations, increasing costs and having a detrimental environmental impact.
- 5.29** Some respondents argued that the way we had written our guidance on the need for the choice between paper and other media to be an active choice went beyond the requirements of the IDD. Some argued that firms should be able to pre-tick the box opting for information in non-paper form so long as the possibility to opt for paper was available.
- 5.30** A number of firms queried how these rules would apply to existing customers and renewal processes, many of which do not involve real-time interaction with customers.
- 5.31** We also received a query about whether firms could include a request to customers to consider the environmental impact before opting for paper documents.

### Our response

We understand the arguments in favour of information being provided in electronic form. The IDD requires that paper copies be available free of charge. However, the proposed implementation does not intend to make paper the default option. This was not made sufficiently clear in the consultation. We reiterate that the requirement is for the customer to be given a choice and that paper does not need to be the default option.

We do not generally favour the use of pre-ticked boxes, but we accept that a pre-ticked box in favour of non-paper means is not prohibited by the IDD, provided the customer is given the alternatives with equal prominence. We have amended the guidance in ICOBS 4.1A.5G(1) to reflect scenarios where the option to receive information on paper is not



offered with equal prominence to receiving it electronically. Our intention is that customers should be clearly able to choose.

We understand the difficulties faced by firms conducting renewals and agree it would be disproportionate for firms to contact all existing customers to obtain their preferences. We have included a new rule which allows firms to rely on the customer's existing choice or consent to receive the information by means of a medium other than paper, when renewing a policy. However, firms must amongst other requirements take steps to inform the customer of the option to receive the information in a different form (for example, by including this in the renewal notice).

Firms may put an environmental notice alongside the option to receive paper documents if they wish. However, this should not in any way inhibit a customer's ability to opt for paper documents.

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## Other matters

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**5.32** In CP17/7 we asked whether respondents had any comments about our proposed change to the definition of 'durable medium'. These were:

- to remove references to items such as floppy discs and DVDs from the definition
- to include specific requirements which apply to the term 'durable medium' when used in ICOBS

**5.33** We received very little feedback on this proposal.

### Our response

We will implement the proposed changes.

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## Changes to ICOBS 5

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### *Introduction*

- 5.34** The IDD makes a number of changes to the standards for advised and non-advised sales. In summary, these are:
- a new explicit requirement that all contracts proposed must be consistent with the customer's demands and needs. This includes both advised and non-advised sales
  - a requirement that firms who advise must provide a personalised recommendation explaining why the product recommended best meets the customer's needs
- 5.35** We asked a single question covering whether or not respondents agreed with our proposed changes to ICOBS 5. If they disagreed, we asked them to explain why.

### **Standards for non-advised sales**

#### **Our proposals**

- 5.36** In CP17/7 we proposed a new rule requiring that all products offered must be consistent with the customer's demands and needs. We also proposed to incorporate language from the IDD recitals, and to amend our existing guidance on the use of static statements of demands and needs, to clarify that the process of identifying customer needs must be an active one. A firm cannot simply provide a generic statement of demands and needs without some matching of an individual customer's needs to the products offered. However, we recognised the importance of distinguishing between advised and non-advised sales, and made it clear that we did not expect non-advised sales to go beyond the customer's high-level demands and needs.
- 5.37** We also set out a table of illustrative examples within the consultation paper.
- #### **Feedback received**
- 5.38** The majority of respondents either supported our proposals or gave a neutral response. Many stated that firms should already be acting in a manner compliant with these requirements, and so no change in practice should be necessary. However, others were concerned that the proposals blurred the line between advised and non-advised sales. Some expressed concern that customers may believe they were being given advice when in fact they were not.
- 5.39** Some respondents queried how the demands and needs requirements will apply to particular products, services and business models. Particular questions were raised about renewals, packaged bank accounts and price comparison websites.
- 5.40** A small number of respondents questioned whether the new rules were compatible with certain sales channels, such as selling by post or online, which are inherently less interactive than telephone sales.



## Our response

We will implement the rules as set out in CP17/7, although with one amendment. We welcome the recognition from a number of respondents that these proposals are aimed at making explicit what was already required by the existing rules. Firms need to identify the demands and needs of the specific customer and match those to the products offered.

We understand the concern about blurring the distinction between advised and non-advised sales. However, we believe our rules maintain this distinction appropriately, especially when considered alongside the changes to standards for advised sales. We remind firms that they must disclose to the customer whether or not they are providing advice. In CP17/7 we commented that a well-worded and timely disclosure can help the customer understand the scope (and any limitations) of the service the firm is providing.

In response to the queries we received, we set out the following clarifications:

- Demands and needs requirements already apply to renewals. We do not envisage the application of the new provisions being significantly different. Firms should already be identifying and specifying a customer's demands and needs, so they already have the information with which to satisfy themselves that a contract is consistent with those needs.
- The requirements apply to price comparison websites (carrying on insurance distribution activities) in the same way as to other insurance intermediaries. The identification of customer demands and needs, and the matching of these with products, takes place before conclusion of the contract. Price comparison websites are well positioned to ask their customers questions and identify their needs through the answers given.
- In CP17/7 we set out our expectations that firms would match a customer's demands and needs to matters such as the main perils covered, the level of excess and whether the product proposed is consistent with the way the customer uses the item insured. We illustrated this point through the use of examples (for example, not offering an 'social, domestic and pleasure' motor policy to someone who drives for business). We understand that packaged bank accounts present a different situation from other insurance sales as, in some circumstances, it may be in the customer's best interests to take out such an account despite being ineligible for some of the benefits. However, the IDD requirement is clear that any contract proposed must be consistent with a customer's demands and needs. This does not prevent a firm from offering a product with elements that do not meet the customer's needs, but it seems very unlikely that a packaged bank account where the customer cannot benefit from the majority of the insurance elements will meet the customer's demands and needs. Customers cannot have a need for a product for which they are ineligible.

- We believe the new rules are compatible with online selling, as long as the right questions are asked. It may be that sales conducted through non-interactive means, such as by generic mailshot, are less likely to be compatible with this IDD minimum requirement. If a firm cannot adequately identify the customer's needs then it is unlikely that they will be able to ensure that products proposed are consistent with the customer's demands and needs.
- 

**5.41** We also asked respondents whether they had any comments on the table in CP 17/7 of illustrative examples concerning the demands and needs requirements.

#### **Feedback received**

**5.42** The majority of firms welcomed the illustrative examples, or gave no response.

**5.43** Some respondents considered the scenarios to be helpful in relation to retail products but requested further examples covering other products.

**5.44** Some respondents pointed out that the final scenario was stated as being 'compliant' but the commentary indicated it was both compliant and not.

#### **Our response**

We are pleased with the support received for these illustrative examples. Firms may wish to take them into account when designing their sales processes. We reiterate that these examples apply to both advised and non-advised sales, and that the new rules apply equally to add-on products as to core products.

We understand the request for further guidance. However, the examples were not intended to be exhaustive. They are purely to illustrate how the new requirements work. It is for firms to determine how to comply with the new requirements in their own businesses.

We agree that the final scenario was unclear. The second column should have said "Yes (for motor policy)/No (for add-ons)". Firms should take this into consideration accordingly.

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### **Standards for advised sales**

#### **Our proposals**

**5.45** We proposed to create a new rule requiring firms to provide the customer with a personalised recommendation explaining why the recommended product would best meet the customer's needs. We explained our view that, to comply with this and the requirement to act in the customer's best interests, if the firm does not offer a product which meets the customer's needs it should say so.

**5.46** The IDD defines advice as being a personal recommendation. This is different from the current definition of regulated advice within the Regulated Activities Order (RAO).<sup>9</sup> We proposed to apply the IDD requirements only where a personal recommendation



is given, but to maintain our existing rules for other advised sales. We do not expect these proposals to be impacted by HM Treasury's decision to amend the definition of advice within the RAO.

### Feedback received

- 5.47** We received very few comments with regard to this proposal.
- 5.48** One respondent queried whether the requirement for a 'personalised recommendation' meant that the customer must receive bespoke communications (which would add significant costs).
- 5.49** Another queried whether it was necessary to explicitly state any needs which the product did not meet.

### Our response

We will implement the rules as set out in CP17/7.

The IDD does not set out a prescriptive format for the personalised recommendation. Firms may provide this to the customer in any format consistent with the IDD, provided it clearly explains to the customer the recommendation being made and why the product best meets their needs.

There is also nothing in the IDD which specifically requires the firm to set out which needs have not been met. However, firms are required to identify and specify the customer's demands and needs, and to explain why the product proposed is the best match to those needs. These requirements will, in effect, lead to any unmet needs being highlighted.

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## Cross-selling (ICOBS 6A)

### Our proposals

- 5.50** The IDD recognises that there are heightened risks of mis-selling where insurance is sold alongside other products, and so introduces new requirements. In summary, these are:
- Where insurance is the primary product, firms must inform the customer whether it is possible to buy the elements of the package separately. Where this is possible they must provide an adequate description of the components (including costs and charges).
  - Where insurance is ancillary to another good or service, the insurance must not be compulsory. The customer must be able to purchase the good or service without the insurance.
  - These provisions do not apply where the package consists only of insurance contracts or where the insurance is ancillary to certain other financial products, such



as some bank accounts or mortgages. They do not affect the sales of multi-risk policies.

**5.51** We proposed to incorporate these IDD requirements. We also proposed to retain our existing rules relating to GAP insurance and packaged bank accounts, and to retain the existing prohibition on opt-out selling.

**5.52** We asked whether respondents agreed with our proposed amendments to ICOBS Chapter 6 to incorporate the IDD cross-selling requirements. If not, we asked respondents to explain why.

### **Feedback received**

**5.53** Most respondents either supported our proposals or provided neutral responses.

**5.54** A small number of respondents expressed the view that we had interpreted ‘ancillary’ too broadly in applying the rules to products which bundle some insurance elements and some non-insurance elements, such as dental plans. Concern was expressed that the cost of separately administering the insurance elements could make these packages unviable.

**5.55** A small number of respondents expressed concern about insurance which is currently sold as ‘free’ to a customer (because it is included within the overall price of an ancillary product – such as free insurance with a new car) becoming unviable if made optional. They said it would attract higher-risk customers who have difficulty obtaining affordable insurance elsewhere in the market.

**5.56** A small number of respondents were concerned the requirements would impact insurance packages assembled by brokers and increase information disclosure requirements in relation to these sales.

### **Our response**

We welcome the broad support for these proposals and will implement them as set out in CP17/7.

We do not agree that our interpretation of ‘ancillary’ is too broad. The wording of the IDD is clear that the rules apply to insurance sold ‘as part of the same package or the same agreement’. The requirement is to offer the good or service separately without the insurance. This does not mean that the insurance element must be offered as a standalone item or be separately administered. Firms may continue to offer packages which include insurance, so long as it is possible to purchase the non-insurance elements of the package on the same terms without the insurance.

We confirm that insurance which is badged as being free to the customer is included within the new rules. The customer must be offered the ability to purchase the good or service separately to the insurance.

We also confirm that the cross-selling rules of ICOBS 6A only apply where there is a non-insurance good or service in the same package



or agreement and as a result they do not impact insurance-only packages or the sales of multi-risk policies.

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## Other matters

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- 5.57** In CP17/7 we asked two discussion questions in relation to the new Insurance Product Information Document (IPID). We set out the feedback received and our response in CP17/23.

## 6 Ancillary insurance intermediaries

### Introduction

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- 6.1** In this chapter we provide details of the feedback we received on our proposals for regulating ancillary insurance intermediaries (AIs).
- 6.2** The IDD introduces AIs as a new category of insurance intermediary. These are firms where:
- the principal professional activity is not insurance distribution
  - the firm only distributes insurance products which are complementary to goods and services they provide as their primary professional activity
- 6.3** In CP17/7 we distinguished between three different categories of AI:
- **In-scope AIs** – Firms who meet the definition of being an AI and are within the UK's regulatory perimeter. This includes firms within scope of the IDD and firms, such as motor vehicle dealers, within the UK regulatory perimeter but undertaking insurance distribution activities that may be outside of the IDD.
  - **Connected travel insurance (CTI) providers** – Firms, such as travel agents, tour operators and airlines, whose primary business is to make travel arrangements for customers, but who distribute insurance that is complementary to those services.
  - **Out-of-scope AIs** – Firms who are outside the UK regulatory perimeter by virtue of the connected contracts exemption.<sup>10</sup> Common examples include electronic goods and furniture retailers.

### The regime for in-scope AIs

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#### Our proposals

- 6.4** In CP17/7 we proposed to generally align the regime for in-scope AIs with the regime for insurance intermediaries. This means that in-scope AIs would be subject to the same professional, organisational and conduct of business requirements as insurance intermediaries.
- 6.5** The rationale for this approach is that we believe it is important to have, as far as possible, a single set of standards across the industry. In particular:
- We do not consider that products sold by AIs have a lower risk of customer detriment than others. Indeed, our previous reviews into markets such as

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<sup>10</sup> See article 72B of the Regulated Activities Order.



Guaranteed Asset Protection (GAP) and mobile phone insurance have found that these ancillary insurance products can present a high risk of customer detriment.

- Where insurance is sold alongside a primary product such as a new car or a holiday, the customer is likely to be more focused on the primary product. As such, there is a greater risk of harm arising. This was identified in our Market Study on GI Add-ons.<sup>11</sup>
- The distinction between Alls and insurance intermediaries is not likely to be well understood by customers. It is unlikely that the firm's category will be a major factor in influencing customers' decisions about where to buy their insurance. Having two different standards of conduct would have the effect of lessening customer protections based on a distinction that customers are unlikely to understand or see as relevant.
- We are also conscious of the need to avoid market distortions by reducing the regulatory burden on some firms relative to their competitors.

**6.6** We asked two questions in relation to the regime for in-scope Alls.

#### **Feedback received**

**6.7** We asked whether respondents agreed with our proposal to extend the professional, organisational and prudential requirements to in-scope Alls. If not, we asked them to explain why.

**6.8** Most respondents either supported these proposals or made no comment.

**6.9** A number of respondents used this question to state their assumption that all Alls would be appointed representatives (ARs). Their subsequent responses were based on this assumption. Others requested further guidance on which products and firms were outside the regulatory perimeter.

**6.10** Some respondents argued that going beyond the minimum requirements of the IDD was not justified and could deter some Alls from continuing to distribute insurance products.

**6.11** A number of Designated Professional Bodies (DPBs) queried whether their members would be considered Alls and how these requirements would apply to them.

### **Our response**

We welcome the broad support for these proposals and will implement them. For the reasons set out in CP17/7 we believe that extending these rules to Alls is justified.

To be clear, there is no link between a firm being an All and an AR. Some Alls may choose to become ARs, and others may be authorised firms. An All is defined entirely by its conducting a primary professional activity other than insurance distribution and the insurance products it distributes.

<sup>11</sup> [www.fca.org.uk/publication/market-studies/ms14-01-final-report.pdf](http://www.fca.org.uk/publication/market-studies/ms14-01-final-report.pdf)

The regime for DPBs under Part XX of the Financial Services and Markets Act 2000 is separate from that for authorised firms. We will continue to work with these bodies to understand the implications of the IDD for their members. We plan to consult on changes to our PROF sourcebook in our third consultation paper.

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- 6.12** We asked whether respondents agreed with our proposal to align the conduct of business regime for in-scope Alls with that for insurance intermediaries. If not, we asked them to explain why.
- 6.13** Most respondents either supported these proposals or made no comment.
- 6.14** Some respondents argued that going beyond the minimum requirements of the IDD was not justified and could deter some Alls from continuing to distribute insurance products.

### Our response

We welcome the broad support for these proposals and will implement them. For the reasons set out in CP17/7 we believe that extending these rules to Alls is justified. We note that this is a continuation of the existing position under the IMD.

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## The regime for in-scope connected travel insurance providers

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### Our proposals

- 6.15** In CP17/7 we explained that a number of existing rules are disapplied in relation to connected travel insurance (CTI) providers. The reasons for this were explained in paragraph 6.20 of CP17/7. However, since CTI providers were first brought into the regulatory perimeter the market and regulatory context has changed considerably. For example, the growing use of price comparison websites means that market participants now include more specialist insurance intermediaries, and the IDD requirements now extend to insurers.
- 6.16** For these reasons, and the reasons set out in paragraph 6.5, we proposed to extend some of the IDD requirements to CTI providers.
- 6.17** We proposed to extend the minimum PII levels and the requirement for employees to undertake 15 hours of CPD per year to CTI providers. We also proposed to apply the following IDD conduct of business requirements to CTI providers:
- the requirements which apply to all firms regardless of whether they are in or out of scope, set out in article 1(4) of the IDD – namely the general principles, the demands and needs requirements, the cross-selling rules, the IPID and some of the pre-contract disclosures
  - the requirement to disclose whether or not they are providing advice



**6.18** We asked two questions in relation to the regime for in-scope Alls.

**Feedback received**

**6.19** We asked whether respondents agreed with our proposal to extend the professional and organisational requirements to CTI providers. If not, we asked respondents to explain why.

**6.20** The majority of respondents made no comment on this proposal. Most others supported the proposals.

**6.21** A small number of respondents opposed our approach, arguing that it was disproportionate to the risks created by the products and distribution channels involved.

**6.22** A small number of respondents also commented that our proposals could introduce a regulatory burden which would lead to firms exiting the market. These respondents suggested that firms may struggle to allow teams enough time to complete training.

**Our response**

We welcome the generally positive responses and will implement the requirements as proposed in CP17/7.

As stated above, we do not believe that this is a low-risk area. We also do not agree that the burden is excessive.

Firms should already be allowing their employees sufficient time for training in order to comply with the existing competent employees rule.

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**6.23** We asked whether respondents agreed with our proposed conduct of business regime for CTI providers. If not, we asked respondents to explain why.

**6.24** The majority of respondents made no comments on this proposal and most others supported the proposals.

**6.25** Some respondents argued that we should have gone further in aligning the regime for CTI providers with that for other authorised firms. However, a small number argued we had gone too far and could deter some Alls from continuing to distribute insurance products.

**Our response**

We welcome the generally positive responses and will implement the requirements as proposed in CP17/7.

For the reasons stated above, we believe that the rules are appropriate and proportionate.

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## The regime for out-of-scope Alls

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### Our proposals

- 6.26** Unlike the IMD, the IDD introduces requirements which apply to out-of-scope Alls. Responsibility for ensuring an out-of-scope All complies with these requirements sits with the authorised firm (insurer or intermediary) which uses the All to distribute their products. The All must comply with:
- the IDD general principles
  - the demands and needs requirements
  - the cross-selling rules
  - the IPID
  - certain general pre-contract disclosures
- 6.27** The IDD requires the authorised firm to put in place appropriate and proportionate measures to ensure the All complies with these requirements. We proposed to require out-of-scope Alls to comply with these rules to the same extent as an insurance intermediary to ensure consistency of consumer protection.
- 6.28** We currently expect all authorised firms to have sufficient oversight of their distribution chains to ensure their products are distributed appropriately through out-of-scope Alls. We consider that these IDD provisions will enhance the oversight requirements that already apply to authorised firms.
- 6.29** We asked whether respondents agreed with our proposals for authorised firms distributing through out-of-scope Alls. If not, we asked respondents to explain why.
- Feedback received**
- 6.30** The majority of respondents made no comments on this proposal, and most others supported the proposals.
- 6.31** Some respondents argued that all firms outside the scope of the IDD should nonetheless be required to be FCA authorised.
- 6.32** A small number of respondents drew comparisons with the regime for ARs and their principal firms. For some this comparison was favourable, but others believed our proposed rules went too far in requiring authorised firms to act like a principal to the out-of-scope All.
- 6.33** In particular, one respondent argued that we had gone beyond the requirements of the IDD. They argued that our rules stating ‘the insurance distributor must instead ensure that those requirements are met’ went beyond the language of the IDD.
- 6.34** A small number of respondents argued that our approach risked making the authorised firm overly responsible for the conduct of the out-of-scope All. This burden could be excessive and lead to firms exiting the market. Respondents stated that out-of-scope Alls already have monitoring mechanisms in place and that authorised insurers/intermediaries should not be required to build an additional layer of monitoring duplicating this.



## Our response

We welcome the generally positive responses and will implement the requirements as proposed in CP17/7.

Whilst we understand why firms have drawn a comparison between our proposals and the AR regime, it was not our intention that the regimes should be directly comparable. The AR regime involves strict liability of the principal for acts or omissions by the AR (within its scope of appointment). That is not the case for firms who distribute products through out-of-scope AIs. Instead, the authorised firm must put in place arrangements to ensure the AI complies with certain IDD requirements. This is consistent with the language of the IDD.

In our view, the rules we proposed are proportionate to the risks. The fact that products sold by out-of-scope AIs are usually simple does not mean that they present a low risk of harm to consumers. Indeed, the work highlighted in CP17/7 indicates that they sometimes present a higher risk of harm.<sup>12</sup> We also note that consumers of these products may not have the same access to the Financial Ombudsman Service in relation to how the product was sold as customers who purchase from authorised firms. For these reasons we believe strong consumer protections are required. Out-of-scope AIs will be required to adhere to the requirements in the same way as authorised firms (regarding the areas set out in paragraph 6.26 above).

We do not intend to prescribe how authorised firms comply with these new rules. They are required to put in place appropriate measures to monitor AIs' compliance on an ongoing basis. This may not necessarily entail duplication as it may be that firms can place some reliance on the AI's own monitoring. However, firms will need to satisfy themselves that the arrangements they have in place are sufficient to ensure that the AI is compliant.

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<sup>12</sup> For example, our reviews into mobile phone insurance.



## Annex 1

# List of non-confidential respondents

à la carte healthcare limited

ACCA (the Association of Chartered Certified Accountants)

ARAG plc

Association of British Insurers

Association of Financial Mutuals

Association of Mortgage Intermediaries

Association of Professional Financial Advisers (APFA)

Automobile Association Insurance Services Limited

Aviva

AXA UK Group

Balens Limited

BBA

BGL Group Limited

Bridge Insurance Brokers Limited

British Vehicle Rental and Leasing Association (BVRLA)

Building and Land Guarantees Ltd

Bupa Insurance Limited

Compliance Management Services Ltd

Council for Licensed Conveyancers

Coversure Insurance Services Ltd

Create Solutions Ltd

David Peters, Audit and Compliance Investigations

Direct Line Group



Eastwood & Partners Ltd

Explorer Insurance Services Ltd

Federica Cenciotti

Finance & Leasing Association

Financial Services Consumer Panel

FirstPort Insurance Services Limited

Griffiths & Armour

Hedon Insurance Consultants

Holiday Extras Ltd

HomeServe Membership Limited

IBA Insurance Services Ltd

ICAS

Institute and Faculty of Actuaries

Institute of Chartered Accountants in England and Wales (ICAEW)

International Underwriting Association

Jardine Lloyd Thompson Group plc

Kingsbridge Insurance Brokers

Larkmont

Law Society of Northern Ireland

Lexham Insurance Consultants Ltd

Liverpool Victoria

Lloyd's Market Association (LMA)

Lloyds Banking Group

London & International Insurance Brokers' Association (LIIBA)

Malcolm Lee Consulting Limited

Managing General Agents' Association (MGAA)

Mat Bramley

Midway Insurance Services Ltd

Moneysupermarket Group

MRIB

Murphy Brokers Ltd

National Franchised Dealers Association

National House-Building Council (NHBC)

Original Insurance Services Ltd

P J Sutton (Insurances) Ltd t/a Douglas Insurance Service

Polaris UK Ltd

Practice Plan Ltd

Robert Solly T/A Haden Welbeck

Royal & Sun Alliance Insurance plc

Royminster Ltd

RWA Compliance Service Limited

Simplyhealth

Society of Lloyd's

Solicitors Regulation Authority

Sort Me My Financial Services Ltd

Sovereign Health Care

TBO Services Ltd Trading As The Insurance Octopus

The Association of Medical Insurers and Intermediaries (AMII)

The British Insurance Brokers' Association (BIBA)

The Broker Network Limited

The Chartered Insurance Institute

The Insurance Law Committee of the City of London Law Society

The Law Society of Scotland

The National Farmers' Union Mutual Insurance Society Limited



threesixty services LLP

Towergate Insurance Limited

Travel Insurance Facilities Group

Virgin Money plc

West Bromwich Building Society

Your Life Solutions

## Annex 2

### Abbreviations used in this paper

<b>AII</b>	Ancillary Insurance Intermediary
<b>AR</b>	Appointed Representative
<b>CASS</b>	Client Assets sourcebook
<b>CBA</b>	Cost-Benefit Analysis
<b>CCE</b>	Connected Contracts Exclusion
<b>COBS</b>	Conduct of Business sourcebook
<b>CP</b>	Consultation Paper
<b>CPD</b>	Continuing Professional Development
<b>CTI</b>	Connected Travel Insurance contract
<b>DISP</b>	Dispute Resolution: Complaints sourcebook
<b>DPB</b>	Designated Professional Body
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FOS</b>	Financial Ombudsman Service
<b>GAP</b>	Guaranteed Asset Protection
<b>HMT</b>	HM Treasury
<b>IBIPs</b>	Insurance-based Investment Products
<b>ICOBS</b>	Insurance: Conduct of Business sourcebook
<b>IDD</b>	Insurance Distribution Directive
<b>IMD</b>	Insurance Mediation Directive



<b>IPID</b>	Insurance Product Information Document
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>MiFID II</b>	Markets in Financial Instruments Directive II (and associated delegated acts)
<b>MIPRU</b>	Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries
<b>PERG</b>	The Perimeter Guidance manual
<b>PII</b>	Professional Indemnity Insurance
<b>PROF</b>	Professional Firms sourcebook
<b>RAO</b>	Regulated Activities Order 2001
<b>SME</b>	Small to Medium Enterprise
<b>SUP</b>	Supervision manual
<b>SYSC</b>	Senior Management Arrangements, Systems and Controls sourcebook
<b>TC</b>	Training and Competence sourcebook

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

All our publications are available to download from [www.fca.org.uk](http://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](mailto: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

## Near-final rules

**INSURANCE DISTRIBUTION DIRECTIVE (NON-INVESTMENT INSURANCE  
CONTRACTS CONDUCT OF BUSINESS, KNOWLEDGE AND REDRESS)  
INSTRUMENT 2017**

**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 137R (Financial promotion rules);
    - (c) section 137T (General supplementary powers);
    - (d) section 138C (Evidential provisions);
    - (e) section 138D (Action for damages); and
    - (f) section 139A (Power of the FCA to give guidance); 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 (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 23 February 2018.

**Amendments to the Handbook**

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

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Training and Competence sourcebook (TC)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex E
Insurance: Conduct of Business sourcebook (ICOBS)	Annex F
Dispute Resolution: Complaints sourcebook (DISP)	Annex G



**Notes**

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

**Citation**

- F. This instrument may be cited as the Insurance Distribution Directive (Non-Investment Insurance Contracts Conduct of Business, Knowledge and Redress) Instrument 2017.

By order of the Board  
[*date*] 2018

## Annex A

## Amendments to the Glossary of definitions

For “ <i>IMD</i> ”, substitute “ <i>IDD</i> ” in the following definitions. The text in this section is not underlined.	
<i>EEA authorisation</i> (a)	two instances
<i>EEA firm</i> (e)	three instances
<i>participant firm</i> (1)(a)(v)	two instances
<i>top-up cover</i>	two instances

For “ <i>Insurance Mediation Directive</i> ”, substitute “ <i>IDD</i> ” in the following definitions. The text in this section is not underlined.	
<i>EEA authorisation</i> (a)	one instance
<i>EEA right</i> (b)(i)	one instance
<i>Single Market Directives</i> (d)	one instance

For “ <i>mediation</i> ”, substitute “ <i>distribution</i> ” in the following definitions. The text in this section is not underlined.	
<i>category B3 firm</i> (a)	one instance (first line of (a) only)
<i>charge</i> (2)(b)	one instance
<i>client money</i> (2)	one instance
<i>commission</i> (b)	one instance
<i>connected contract</i> (g)	one instance
<i>exempt insurance intermediary</i> (a); (b); (c)	one instance; one instance; one instance
<i>group policy</i> (b)(ii)	one instance
<i>third party processor</i> (1); (2)	one instance; one instance
<i>UK insurance intermediary</i>	one instance

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

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

*IDD*      Insurance Distribution Directive, Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).

<http://eur-lex.europa.eu/eli/dir/2016/97/oj>

<i>IDD ancillary insurance intermediary</i>	<p>any natural or legal person, other than a <i>credit institution</i> or an <i>investment firm</i> who, for <i>remuneration</i>, takes up or pursues the activity of <i>insurance distribution</i> on an ancillary basis, provided that all the following conditions are met:</p> <ul style="list-style-type: none"> <li>(a) the principal professional activity of that natural or legal person is other than <i>insurance distribution</i>;</li> <li>(b) the natural or legal person only distributes certain insurance products that are complementary to a good or service; and</li> <li>(c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity.</li> </ul> <p>[Note: article 2(1)(4) of the <i>IDD</i>]</p>
<i>IDD insurance intermediary</i>	<ul style="list-style-type: none"> <li>(a) as defined in article 2(1)(3) of the <i>IDD</i>, any natural or legal person, other than an <i>IDD insurance undertaking</i> or an <i>IDD reinsurance undertaking</i> or their employees and other than an <i>IDD ancillary insurance intermediary</i> who, for <i>remuneration</i>, takes up or pursues the activity of <i>insurance distribution</i>; or</li> <li>(b) an <i>IDD ancillary insurance intermediary</i>.</li> </ul> <p>[Note: article 2(1)(3) and (4) of the <i>IDD</i>]</p>
<i>IDD insurance undertaking</i>	<p>an undertaking as defined in article 13(1) of the <i>Solvency II Directive</i>.</p> <p>[Note: article 2(1)(6) of the <i>IDD</i>]</p>
<i>IDD reinsurance intermediary</i>	<p>any natural or legal person, other than an <i>IDD reinsurance undertaking</i> or its employees who, for <i>remuneration</i>, takes up or pursues the activity of <i>reinsurance distribution</i>.</p> <p>[Note: article 2(1)(5) of the <i>IDD</i>]</p>
<i>IDD reinsurance undertaking</i>	<p>an undertaking as defined in article 13(4) of the <i>Solvency II Directive</i>.</p> <p>[Note: article 2(1)(7) of the <i>IDD</i>]</p>
<i>insurance distribution</i>	<p>(as defined in article 2(1) of the <i>IDD</i>) 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</p>

administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

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

- (a) the provision of information on an incidental basis in the context of another professional activity where the provider does not take any additional steps to assist in concluding or performing an insurance contract;
- (b) the management of claims of an *IDD insurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims;
- (c) the mere provision of data and information on potential policyholders to an *IDD insurance intermediary* or *IDD insurance undertaking* where the provider does not take any additional steps to assist in the conclusion of an insurance contract;
- (d) the mere provision of information about an insurance product, an *IDD insurance intermediary* or an *IDD insurance undertaking* to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance contract; and
- (e) (in *MIPRU 5*), the services of an *IDD ancillary insurance intermediary* where all the following conditions are met:
  - (i) the insurance is complementary to the good or service supplied by a provider, where such insurance covers:
    - (A) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or
    - (B) damage to, or loss of, baggage and other risks linked to travel booked with that provider;

- (ii) the amount of the premium paid for the insurance product does not exceed EUR 600 calculated on a pro rata annual basis; and
- (iii) by way of derogation from (ii), where the insurance is complementary to a service referred to in (i) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.

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

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

- (a) *dealing in investments as agent* (article 21);
- (b) *arranging (bringing about) deals in investments* (article 25(1));
- (c) *making arrangements with a view to transactions in investments* (article 25(2));
- (d) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (e) *advising on investments (except P2P agreements)* (article 53(1));
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

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

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

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

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

- (a) the provision of information on an incidental basis in the context of another professional activity where the

purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;

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

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

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

*branch*

...

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

branch, unless the intermediary lawfully sets up such permanent presence in another legal form.

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

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

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

*consumer*

...

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

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

*contracts of large risks*

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

...

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

*customer*

(A) in the *PRA Handbook Rulebook*:

...

(B) in the *FCA Handbook*:

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

...

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

3A (in relation to *ICOBS 2* (general matters) and in respect of that chapter also *ICOBS 1* (application)) a *person* who is a *policyholder*, or a prospective *policyholder*.

...

*director*

(1)

...

(a) ...

(b) ...

(c) (in *SYSC*, *MIPRU 2* (Insurance ~~mediation~~ distribution activity responsibility, knowledge, ability and good repute), *SUP 10A* (FCA Approved persons) and *SUP 10C* (FCA senior management regime for approved persons in relevant authorised persons) a *partnership*;



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

In ICOBS:

- (i) the instrument used must be appropriate in the context of the business conducted between the insurance distributor and the customer; and
- (ii) the customer must be given the choice between information on paper and the instrument used, and must choose the latter medium.

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

[Note: article 2(f) of, and Recital 20 to, the *Distance Marketing Directive*, ~~article 2(12) of the *Insurance Mediation Directive*~~ articles 2(1)(18), 23(4) and 23(6) of the

IDD, article 4(1)(62) of *MiFID* and article 3(1) of the *MiFID Org Regulation*, articles 75(2) and 81(1) of the *UCITS Directive*, article 20(3) of the *UCITS implementing Directive* and article 7 of the *UCITS implementing Directive No 2*]

*fee*

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

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

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

*financial promotion*

...

- (4) (in ICOBS), in addition to (1), any marketing communication within the meaning of article 17(2) of the IDD.

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

*Home State*

...

- (5) (in relation to an ~~IMD insurance intermediary~~ *IDD insurance intermediary* or an ~~IMD reinsurance intermediary~~ *IDD reinsurance intermediary*):
  - (a) where the ~~insurance intermediary~~ *intermediary* is a natural person (P), the *EEA State* in which ~~his~~ *P's* residence is situated

~~and in which he carries on business;~~

- (b) where the ~~insurance intermediary~~ intermediary is a legal person, the *EEA State* in which its registered office is situated or, if under its national law it has no registered office, the *EEA State* in which its head office is situated.

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

...

*Host State*

...

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

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

*insurance intermediary*

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

*investment firm*

...

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

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

*personal recommendation*

...

[Note: article 2(1)(15) of the *IDD* and article 52 of the *MiFID implementing Directive*]

...

*remuneration*

- (1) (except in *ICOBS* and where (2) applies) any form of remuneration, including salaries, discretionary pension benefits and benefits of any kind;

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

- (2) ...

- (3) (in *ICOBS*) any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or

incentive offered or given in respect of insurance distribution activities.

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

*UK firm*

(1) (except in *REC*) (as defined in paragraph 10 of Schedule 3 to the *Act* (EEA Passport Rights)) either a person;

(a) whose head office is in the *United Kingdom* and who has an *EEA right* to carry on activity in an *EEA State* other than the *United Kingdom*; or

(b) whose *EEA right* to carry on an activity in an *EEA State* other than the *United Kingdom* derives from the *IDD* and who has a registered office in the *United Kingdom*

...

*website conditions*

...

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

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

*IMD insurance intermediary*

(as defined in article 2(5) of the *IMD*) any natural or legal person who, for remuneration, takes up or pursues *insurance mediation*.

*IMD insurance undertaking*

(as defined in article 2(1) of the *Insurance Mediation Directive*) an undertaking which has received official authorisation in accordance with article 14 of the *Solvency II Directive*.

*IMD reinsurance intermediary*

(as defined in article 2(6) of the *Insurance Mediation Directive*) any natural or legal person who, for remuneration, takes up or pursues *reinsurance mediation*.

*IMD reinsurance undertaking*

(as defined in article 2(2) of the *Insurance Mediation Directive*) an undertaking, other than an *IMD insurance undertaking* or a non-member-country *insurance undertaking*, the main business of which consists in accepting risks ceded by an *IMD insurance undertaking*, a non-member country *insurance undertaking* or other *IMD reinsurance undertaking*.

*Insurance Intermediaries  
Order*

the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No. 2) (Insurance Intermediaries) Order 2003 (SI 2003/1476).

*insurance mediation*

(as defined in article 2(3) of the *IMD*) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when undertaken by an *IMD insurance undertaking* or an employee of an *IMD insurance undertaking* who is acting under the responsibility of the *IMD 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 *IMD insurance undertaking* on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as *insurance mediation*.

*insurance mediation activity*

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

- (a) *dealing in investments as agent* (article 21);
- (b) *arranging (bringing about) deals in investments* (article 25(1));
- (c) *making arrangements with a view to transactions in investments* (article 25(2));
- (d) *assisting in the administration and performance of a contract of insurance* (article 39A);
- (e) *advising on investments (except P2P agreements)* (article 53(1));
- (f) *agreeing to carry on a regulated activity* in (a) to (e) (article 64).

*reinsurance mediation*

(as defined in article 2.4 of the *Insurance Mediation Directive*) the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities when undertaken by a *IMD reinsurance undertaking* or an employee of a *IMD reinsurance*

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

[*Editor's note:* The text in this Annex takes into account the proposal for new SYSC chapters 23 to 27 in CP17/25 'Individual accountability – extending the Senior Managers and Certification Regime to all FCA firms' (July 2017) and CP17/26 'Individual accountability – extending the Senior Managers and Certification Regime to insurers' (July 2017) as if they were made.]

## 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

### 1.1A Application

...

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

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

...

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

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

(including an <i>overseas firm</i> that would have been an <i>IFPRU investment firm</i> if it had been a <i>UK domestic firm</i> )	21, 22, 28
--	------------

1.1A.2 G ...

(3) For *Solvency II firms*, the *FCA* considers that the requirements and ~~guidance~~ *guidance* in Chapters 2, 3, 12 to 18, 19F.2, 21 ~~and~~ 22 and 23 of *SYSC* are not inconsistent with:

...

...

**1.4 Application of SYSC 11 to SYSC 22 and 28**

What?

1.4.1 G ...

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

...

Actions for damages

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

...

**1 Annex 1 Detailed application of SYSC**

...

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

...

Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an	COLUMN B Application to all other firms apart from insurers, managing



	investment firm		authorised AIF	agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms
...				
SYSC 5.1.3G	...			
<u>SYSC 5.1.3AG</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				
SYSC 5.1.5AG	...			
<u>SYSC 5.1.5BR</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>	<u>Rule</u>
...				

...

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

SYSC 9.1.6G	...	...	...	...
<u>SYSC 9.1.6A</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				

...

### 3 Systems and controls

#### 3.1 Systems and Controls

...

Competent employees rule

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

3.1.7 G ...

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

...

#### 3.2 Areas covered by systems and controls

...

Records

...

3.2.21 G ...

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

...

### 5 Employees, agents and other relevant persons

#### 5.1 Skills, knowledge and expertise

...

Competent employees rule

...

5.1.3 G ...

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

...

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

...

**9 Record-keeping**

**9.1 General rules on record keeping**

Application to a common platform firm

9.1.-2 G ...

(2) ...

Subject	Applicable rule or guidance
...	...
Guidance on record-keeping	SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6G, <u>SYSC 9.1.6AG</u>

...

Guidance on record-keeping

...

9.1.6 G ...

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

...

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

## **19F.2      IDD remuneration incentives**

### Application

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

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

### Remuneration and the customer's best interests

- 19F.2.2      R      (1) *Insurance distributors* must not:
- (a) be *remunerated*; or
  - (b) *remunerate* or assess the performance of their *employees*;
- in a way that conflicts with their duty to comply with the *customer's best interests rule*.
- (2) In particular, an *insurance distributor* must not make any arrangements by way of *remuneration*, sales target or otherwise that could provide an incentive to itself or its *employees* to recommend a particular *contract of insurance* to a *customer* when the *insurance distributor* could offer a different *insurance contract* which would better meet the *customer's* needs.

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

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

## **28           Insurance distribution: specific knowledge requirements**

### **28.1        Minimum knowledge and ability requirements for carrying out insurance distribution activities**

#### Application

- 28.1.1      R      This chapter applies to a *firm* with *Part 4A permission* to carry on *insurance distribution activities*.

- 28.1.2 R In this chapter, relevant employees are employees or other *persons*:
- (1) directly involved in the carrying on of the *firm's insurance distribution activities*; or
  - (2) within the management structure responsible for the *firm's insurance distribution activities*; or
  - (3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

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

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

- 28.1.4 G *Rules* specified in this section relate to the requirements in:
- (1) SYSC 3.1.6R;
  - (2) SYSC 5.1.1R;
  - (3) SYSC 3.2.20R, SYSC 9.1.1R and SYSC 9.1.1AR;
  - (4) TC 4.2 (Specified requirements for firms carrying on insurance distribution activities); and
  - (5) article 22 of the *AIFMD level 2 regulation*.

## 28.2 Knowledge and ability requirements

### Knowledge and ability requirements

- 28.2.1 R
- (1) A *firm* must ensure that it and each relevant employee possesses appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.
  - (2) A *firm* must ensure that it and each relevant employee complies with continued professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.

- (3) A *firm* must ensure that each relevant employee completes a minimum of 15 hours of professional training or development in each 12 *month* period.
- (4) For the purposes of (3), a *firm* must take into account the:
  - (a) role and activity carried out by the relevant employee within the *firm*; and
  - (b) type of distribution and the nature of the products sold.

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

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

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

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

- (1) for *general insurance contracts*:
  - (a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks covered by such policies;
  - (b) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
  - (c) minimum necessary knowledge of claims handling;
  - (d) minimum necessary knowledge of complaints handling;
  - (e) minimum necessary knowledge of assessing customer needs;
  - (f) minimum necessary knowledge of the insurance market;
  - (g) minimum necessary knowledge of business ethics standards; and
  - (h) minimum necessary financial competence;
- (2) for insurance-based investment products as defined at article 2(1)(17) of the *IDD* (which in summary says that it is an insurance product which offers a maturity or surrender value, and where the maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations. This excludes products such as

non-investment insurance and certain life insurance):

- (a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
  - (b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;
  - (c) minimum necessary knowledge of financial risks borne by policyholders;
  - (d) minimum necessary knowledge of policies covering life risks and other savings products;
  - (e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;
  - (f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;
  - (g) minimum necessary knowledge of the insurance market and the saving products market;
  - (h) minimum necessary knowledge of complaints handling;
  - (i) minimum necessary knowledge of assessing customer needs;
  - (j) conflict of interest management;
  - (k) minimum necessary knowledge of business ethics standards; and
  - (l) minimum necessary financial competence; and
- (3) for *long-term insurance contracts*:
- (a) minimum necessary knowledge of policies including the terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
  - (b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant *Member State*;
  - (c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;

- (d) minimum necessary knowledge of insurance and other relevant financial services markets;
- (e) minimum necessary knowledge of complaints handling;
- (f) minimum necessary knowledge of assessing consumer needs;
- (g) conflict of interest management;
- (h) minimum necessary knowledge of business ethics standards; and
- (i) minimum necessary financial competence.

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

## 28.4 Record-keeping requirements

Record-keeping requirements

28.4.1 R A *firm* must:

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

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

28.4.2 R A *firm* must:

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

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

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



**28.5 Other requirements to consider**

28.5.1 G In addition to the requirements in SYSC 28:

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

Amend the following as shown.

**Sch 1 Record keeping requirements**

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u><i>SYSC 28.4.1R</i></u>	<u>Arrangements made to demonstrate compliance with knowledge and competence requirements in relation to the carrying out of <i>insurance distribution activities</i></u>	<u>As required to demonstrate compliance.</u>	<u>As required to demonstrate compliance</u>	<u>As required to demonstrate compliance</u>

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

### Amendments to the Training and Competence sourcebook (TC)

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

#### 1 Application and Purpose

##### 1.1 Who, what and where?

Who and what?

1.1.1 R ...

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

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

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

...

Insert the following new section after TC 4.1 (Specific modified requirements). All the text is new and is not underlined.

#### 4.2 Specified requirements for firms carrying on insurance distribution activities

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

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

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

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

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

4.2.4 R In TC 4.2 'employee':

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

4.2.5 R

Column 1	Column 2	
Relevant rules or guidance	Amendments either extending the scope, or adding and/or replacing rules and guidance in Column 1	
<i>TC 2.1.1R(1)</i>	<p>The provision is amended by adding after <i>TC 2.1.1R(1)</i>:</p> <p>'A <i>firm</i> must ensure that a relevant employee's appropriate knowledge and ability includes the requirements set out in <i>SYSC 28.2.3R</i> and is appropriate to the:</p> <ul style="list-style-type: none"> <li>(a) role and activity carried out by the relevant employee within the <i>firm</i>; and</li> <li>(b) type of distribution and the nature of the products sold.' </li></ul>	
<i>TC 2.1.15R; TC 2.1.17R; TC 2.1.24R and TC 2.1.25R</i>	<p>The <i>rules</i> apply as if references to <i>retail investment advisers</i> included 'relevant employees'.</p>	
<i>TC 2.1.15R</i>	(1)	<p>For <i>firms</i> whose relevant employees are not also <i>retail investment advisers</i>, the <i>rule</i> applies as if '35 hours' was a reference to '15 hours'.</p>
	(2)	<p>The <i>rule</i> is amended by adding at the end: 'Where the relevant employee is also a <i>retail investment adviser</i>, the minimum 35 hours appropriate continued professional development requirement in <i>TC 2.1.15R</i> must include a minimum 15 hours covering the</p>

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

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

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

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

Amend the following text as shown. Underlining indicates new text.

**TP 1 Designated Investment Business: Assessments of competence before commencement**

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

## Annex D

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

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

**2 Insurance and MCD mediation activity: responsibility, ~~knowledge, ability~~ and good repute**

...

**2.3 ~~Knowledge, ability and good~~ Good repute**

2.3.1 R A *firm* (other than a *connected travel insurance intermediary*) must establish on reasonable grounds that:

- (1) ~~a reasonable proportion of the *persons* within its management structure who are responsible for *insurance mediation activity*; and~~
- (2) ~~all other *persons* directly involved in its *insurance mediation activity*;~~

~~demonstrate the knowledge and ability necessary for the performance of their duties; and~~

- (3) all the *persons* in its management structure and any staff directly involved in *insurance mediation activity* are of good repute.

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

2.3.2 G ~~In determining a *person's* knowledge and ability, the *firm* should have regard to matters including, but not limited to, whether the:~~

- (1) ~~has demonstrated by experience and training that he is able or will be able to perform his duties related to the *firm's insurance mediation activity*; and~~
- (2) ~~satisfies the relevant requirements in the *FCA's Training and Competence sourcebook* and the *Senior Management Arrangements, Systems and Controls sourcebook*. [deleted]~~

...

2.3.5 G *Firms* are reminded that *Principle 3* requires *firms* to take reasonable care to organise and control their affairs responsibly and effectively. *Principle 3* is amplified by the *rule* which requires *firms* to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (*SYSC 3.1.1R* and *SYSC 4.1.1R*). A *firm's* systems and controls should enable it to satisfy itself of the suitability of anyone who acts for it (*SYSC 3.2.13G* and *SYSC 5.1.2G*). This includes the assessment of an individual's honesty and competence. ~~In addition, the *competent employees*~~

~~rule (SYSC 3.1.6R and SYSC 5.1.1R) sets out a high level competence requirement which every firm should follow.~~

### 3 Professional indemnity insurance

#### 3.1 Application and purpose

Application

3.1.1 R ...

(5) This chapter does not apply to:

...

(d) an *exempt CAD firm* to which *IPRU(INV) 9.2.5R* (Initial capital and professional indemnity insurance requirements - exempt CAD firms that are also ~~IMD~~ IDD insurance intermediaries) applies.

...

...

Purpose

3.1.3 G The purposes of this chapter are to:

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

...

...

#### 3.2 Professional indemnity insurance requirements

3.2.1 R ...

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

...

Minimum limits of indemnity: insurance intermediary

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



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

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

3.2.7A G ~~Article 4(7) of the *Insurance Mediation Directive* requires the *limits of indemnity* to be reviewed every five years to take into account movements in European consumer prices. These limits will therefore be subject to further adjustments on the basis of index movements advised by the European Commission.~~

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

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

...

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

### 5.1 Application and purpose

#### Application

- 5.1.1 R This chapter applies to a *firm* with a *Part 4A permission* to carry on:
- (1) *insurance business*; or
  - (1A) *insurance distribution activity*; or
  - (2) *home financing*; ~~;~~
  - (3) ~~and which uses, or proposes to use, the services of another person consisting of: [deleted]~~
- (a) ~~*insurance mediation*~~; or

- (b) ~~insurance mediation activity; or~~
- (c) ~~home finance mediation activity.~~

## Purpose

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

...

**5.2 Use of intermediaries**

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

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

unless *MIPRU 5.2.2R* is satisfied.

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

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

...

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

...

- (4) be registered in another *EEA State* for the purposes of the ~~Insurance Mediation Directive~~ IDD; or

- (5) in relation to ~~insurance mediation~~ insurance distribution activity, not be carrying on this activity on in the *EEA*; or

...

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

- 5.2.3 E (1) A *firm* should:
- (a) before using the services of the intermediary, check:
- (i) the *Financial Services Register*; or
- (ii) in relation to ~~insurance mediation~~ insurance distribution or reinsurance distribution carried on by an *EEA firm*, the register of its *Home State regulator*;
- for the status of the ~~person~~ person; and
- (b) use the services of that ~~person~~ person only if the relevant register indicates that the ~~person~~ person is registered for that purpose.
- (2) (a) Checking the *Financial Services Register* before using the services of the intermediary and using the services of that ~~person~~ person only if the *Financial Services Register* indicates that the ~~person~~ person is registered for that purpose may be relied on as tending to establish that:
- (i) the ~~person~~ person, in relation to the activity, has *permission*; or
- (ii) the ~~person~~ person, in relation to ~~insurance mediation~~ insurance distribution activity, ~~also~~ is an *exempt person* or an *authorised professional firm*.
- (b) In relation to ~~insurance mediation~~ insurance distribution or reinsurance distribution carried on by an *EEA firm*, checking the register of the *firm's Home State regulator* and using the services of the *EEA firm* only if the register indicates that the *firm* is registered for that purpose may be relied on as tending to establish that the *firm* is registered for the purposes of the *Insurance Mediation Directive* IDD.

...

## Annex E

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

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

**9 Financial resources requirements for an exempt CAD firm**

...

**9.2 GENERAL REQUIREMENTS**

...

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

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

...

...

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

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

...

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

...

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

the base amount in euro by the percentage change in that index. Therefore, the limits of indemnity will be subject to further adjustments that will apply to firms in accordance with the regulatory technical standards adopted under article 10(7) of the IDD.

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

...

### 13 Financial Resource Requirements for Personal Investment Firms

#### 13.1 APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

...

Requirement to hold professional indemnity insurance

13.1.5 R ...

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

...

Limits of indemnity

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

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

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

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

...

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

...

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

...

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

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

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

...

#### Limits of indemnity - additional requirements

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

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

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

...

...

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

...

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

intermediary must have:

...

...

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

...

...

...

**Annex F**

**Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)**

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

**1 Application**

**1.1 The general application rule**

The general application rule

1.1.1 R This sourcebook applies to a *firm* with respect to the following activities carried on in relation to a *non-investment insurance contract* from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*:

- (1) an ~~insurance mediation activity~~ insurance distribution activity;
- (2) *effecting and carrying out contracts of insurance*;
- (3) *managing the underwriting capacity of a Lloyd’s syndicate as a managing agent at Lloyd’s*;
- (4) *communicating or approving a financial promotion*;

and activities connected with them.

...

**1 Annex Application (see ICOBS 1.1.2R)**

**1**

<b>Part 1: Who?</b>			
<b>Modifications to the general application rule according to type of firm</b>			
1	Third party processors		
1.1	R	(1)	This <i>rule</i> applies where a <i>firm</i> (or its <i>appointed representative</i> ) (“A”) has outsourced <del>insurance mediation activities</del> <u>insurance distribution activities</u> to a <i>third party processor</i> .
		...	
2	Managing agents		



2.1	R	(1)	References to an <i>insurer</i> (including within the reference to <i>insurance distributor</i> ) apply equally to a <i>managing agent</i> unless the context requires otherwise.
		...	
3	Authorised professional firms		
3.1	R	This sourcebook (except for <i>ICOBS</i> 4.6) does not apply to an <i>authorised professional firm</i> with respect to its <i>non-mainstream regulated activities</i> except for:	
		(1)	the provisions on communications to <i>clients</i> and <i>financial promotions</i> (see <i>ICOBS</i> 2.2);
		(2)	the e-commerce provisions ( <i>ICOBS</i> 3.2);
		(3)	<del>status</del> <u>general information</u> disclosure requirements in relation to the complaints procedures (see <i>ICOBS</i> 4.1); and
		(4)	provisions implementing articles <del>12 and 13</del> 1(4), 17, 18, 19, 20(1) to (3), 23, and 24 of the <i>Insurance Mediation Directive IDD</i> (see <i>ICOBS</i> 2.2.2R (communication to customers and financial promotions), <i>ICOBS</i> 2.2.2AR (marketing communications), <i>ICOBS</i> 2.5.-1R (the customer's best interests rule), <i>ICOBS</i> 2.6 (Distribution of connected contracts through exempt persons), <i>ICOBS</i> 4.1 (Information about the firm, its services and remuneration), <i>ICOBS</i> 4.1A (Means of communicating to customers), <i>ICOBS</i> 4.3 (remuneration disclosure), <i>ICOBS</i> 5.2 (Demands and needs) <del>and</del> , <i>ICOBS</i> 5.3.3R (Advice on the basis of a fair analysis), <i>ICOBS</i> 5.3.4R (Personalised explanation), <i>ICOBS</i> 6A.1.4R (Ensuring the customer can make an informed decision) and, <i>ICOBS</i> 6A.3 (Cross-selling)), except to the extent that the <i>firm</i> is subject to equivalent rules of its <i>designated professional body</i> approved by the <i>FCA</i> .
...			
4	Appointed representatives		
4.1	R	(1)	An <i>insurer</i> must ensure that its <i>appointed representative</i> complies with this sourcebook as it applies to an <i>insurance intermediary</i> .
		(2)	However, if the <i>appointed representative</i> is acting as the <i>insurer's third party processor</i> then:
		(a)	this <i>rule</i> is subject to the <i>third party processors rule</i> (see paragraph 1.1R); and
		(b)	the <i>insurer</i> is not required to ensure that the <i>appointed representative</i> complies with the <i>rules</i> in this sourcebook on

			commission disclosure (see <i>ICOBS</i> 4.4) <del>or, unless they apply to an insurer, the rules on statements of demands and needs (see <i>ICOBS</i> 5.2).</del>
4.2	G	The cancellation requirements in chapter 7 do not apply to a <i>distance contract</i> entered into by an <i>appointed representative</i> to provide <del>mediation</del> <u>distribution</u> services. Regulations 9 (Right to cancel) to 13 (Payment for services provided before cancellation) of the <i>Distance Marketing Regulations</i> apply instead.	
...			
<b>Part 2: What?</b>			
<b>Modifications to the general application rule according to activities</b>			
1	Reinsurance		
1.1	R	This sourcebook does not apply to activities carried on in relation to a <i>reinsurance contract</i> .	
		[ <b>Note:</b> article 12(4) of the <i>Insurance Mediation Directive</i> <u>recital 51 to the <i>IDD</i></u> ]	
2	Contracts of large risks		
2.1	R	Subject to Part 3 of this Annex:	
		(1)	this sourcebook does not apply to <del>an insurance intermediary mediating a firm distributing a contract of large risks:</del>
		(4)	where the risk is located outside the <i>European Economic Area</i> ; <del>or</del> <u>and</u>
		(2)	<u>only <i>ICOBS</i> 2 (General matters) and <i>ICOBS</i> 6A.3 (Cross-selling) apply to a firm distributing a contract of large risks for a commercial customer where the risk is located within the <i>European Economic Area</i>.</u>
		[ <b>Note:</b> article 12(4) of the <i>Insurance Mediation Directive</i> <u>22(1) of the <i>IDD</i></u> ]	
2.2	G	<i>Principle 7</i> continues to apply so a <i>firm</i> should provide evidence of cover promptly after inception of a <i>policy</i> to its <i>customer</i> . In respect of a <i>group policy</i> , a <i>firm</i> should provide information to its <i>customer</i> to pass on to other <i>policyholders</i> and should tell the <i>customer</i> that <del>he should give</del> <u>the information should be given</u> to each <i>policyholder</i> .	
2.3	R	<i>ICOBS</i> 6.2.3R does not apply to <i>contracts of large risk risks</i> .	
		[ <b>Note:</b> article 184(1) of the <i>Solvency II Directive</i> ]	

...		
4	Chains of insurance intermediaries	
4.1	R	Where there is a chain of <i>insurance intermediaries</i> between the <i>insurer</i> and the <i>customer</i> , this sourcebook, <u>except ICOPS 2</u> , applies <del>only to the</del> <u>any</u> <i>insurance intermediary</i> in contact with the <i>customer</i> .
4.2	G	<u>ICOPS 2 applies to all <i>insurance intermediaries</i>, including those within a chain who are not in contact with the <i>customer</i>.</u>
...		
<b>Part 4: Guidance</b>		
...		
3	<del>Insurance Mediation Directive</del> <u>Insurance Distribution Directive</u> : effect on territorial scope	
3.1	G	The <del><i>Insurance Mediation Directive's</i></del> <u>IDD's</u> scope covers most <i>firms</i> carrying on most types of <del><i>insurance mediation</i></del> <u><i>insurance distribution</i></u> . <del>The rules in this sourcebook within the Directive's scope are those that require the provision of pre-contract information or the provision of advice on the basis of a fair analysis (see ICOPS 4 (Information about the firm, its services and remuneration), ICOPS 5.2 (Statement of demands and needs), ICOPS 5.3.3R (Advice on the basis of a fair analysis), ICOPS 6 (Product information) and ICOPS 6A.1.4R (Ensuring the customer can make an informed decision)).</del>
3.2	G	The <u>rules in this sourcebook within the Directive's scope are those implementing the minimum information and other requirements in articles 12 and 13 1(4), 17, 18, 19, 20, 23 and 24(1) to (3) and (6) of the Directive</u> <u>IDD</u> are set out in:
	(1)	<u>ICOPS 2.2.2R (communication to customers and financial promotions), ICOPS 2.2.2AR (marketing communications), ICOPS 2.5.-1R (the customer's best interests rule), ICOPS 2.6 (Distribution of connected contracts through exempt persons);</u>
	(2)	<u>ICOPS 4.1 (General requirements for insurance intermediaries and insurers), ICOPS 4.1A (Means of communicating to customers), ICOPS 4.3 (Remuneration disclosure);</u>
	(3)	<u>ICOPS 5.2 (Statement of demands and needs), ICOPS 5.3.4R (Personalised explanation), and ICOPS 5.3.3R (Advice on the basis of a fair analysis); and</u>
	(4)	<u>ICOPS 6A.1.4R (Ensuring the customer can make an informed decision) and ICOPS 6A.3 (Cross-selling).</u>

3.2A	G	<p><u>A Member State is entitled to impose additional requirements within the Directive’s scope in the ‘general good’. (See recital 52 to, and article 22 of, the IDD).</u></p>								
3.2B	G	<p>The additional requirements within the scope of the <i>IDD</i> and found in in this sourcebook are those that:</p> <table border="1" data-bbox="418 443 1442 875"> <tr> <td data-bbox="418 443 496 622">(1)</td> <td data-bbox="496 443 1442 622"> <p><u>deal with communication to customers and financial promotions, the customer’s best interests rule and additional responsibilities of insurance distributors (see <i>ICOB</i>S 2.2.2R, <i>ICOB</i>S 2.2.2AR, <i>ICOB</i>S 2.5.-1R and <i>ICOB</i>S 2.6); and</u></p> </td> </tr> <tr> <td data-bbox="418 622 496 875">(2)</td> <td data-bbox="496 622 1442 875"> <p><u>require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see <i>ICOB</i>S 4 (Information about the firm, its services and remuneration), <i>ICOB</i>S 5.2 (Demands and needs), <i>ICOB</i>S 5.3.3R (Advice on the basis of a fair analysis), <i>ICOB</i>S 6A.1.4R (Ensuring the customer can make an informed decision) and <i>ICOB</i>S 6A.3 (Cross-selling)).</u></p> </td> </tr> </table>	(1)	<p><u>deal with communication to customers and financial promotions, the customer’s best interests rule and additional responsibilities of insurance distributors (see <i>ICOB</i>S 2.2.2R, <i>ICOB</i>S 2.2.2AR, <i>ICOB</i>S 2.5.-1R and <i>ICOB</i>S 2.6); and</u></p>	(2)	<p><u>require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see <i>ICOB</i>S 4 (Information about the firm, its services and remuneration), <i>ICOB</i>S 5.2 (Demands and needs), <i>ICOB</i>S 5.3.3R (Advice on the basis of a fair analysis), <i>ICOB</i>S 6A.1.4R (Ensuring the customer can make an informed decision) and <i>ICOB</i>S 6A.3 (Cross-selling)).</u></p>				
(1)	<p><u>deal with communication to customers and financial promotions, the customer’s best interests rule and additional responsibilities of insurance distributors (see <i>ICOB</i>S 2.2.2R, <i>ICOB</i>S 2.2.2AR, <i>ICOB</i>S 2.5.-1R and <i>ICOB</i>S 2.6); and</u></p>									
(2)	<p><u>require the provision of pre-contract information or the provision of advice on the basis of a fair and personal analysis (see <i>ICOB</i>S 4 (Information about the firm, its services and remuneration), <i>ICOB</i>S 5.2 (Demands and needs), <i>ICOB</i>S 5.3.3R (Advice on the basis of a fair analysis), <i>ICOB</i>S 6A.1.4R (Ensuring the customer can make an informed decision) and <i>ICOB</i>S 6A.3 (Cross-selling)).</u></p>									
3.3	G	<p><del>In the FCA’s view, the responsibility for these minimum requirements rests with the Home State, but a Host State is entitled to impose additional requirements within the Directive’s scope in the ‘general good’. (See recital 19 to and article 12(5) of the <i>Insurance Mediation Directive</i>.</del></p> <p><u>The <i>IDD</i> places responsibility for requirements in this sourcebook within the Directive’s scope (both minimum and additional requirements) on the Home State, except in relation to business conducted through a branch, in which case the responsibility rests with the EEA State in which the branch is located (this is sometimes referred to as a ‘country of origin’ or ‘country of establishment’ basis) (see recital 22 to, and article 7(2) of, the <i>IDD</i>).</u></p> <p>Accordingly the general <i>rules</i> on territorial scope are <u>not modified so that by the <i>IDD</i> except:</u></p> <table border="1" data-bbox="418 1368 1442 1975"> <tr> <td data-bbox="418 1368 496 1547">(1)</td> <td data-bbox="496 1368 1442 1547"> <p><del>for a UK firm providing passported activities through a branch in another EEA State under the Directive, the rules implementing the Directive’s minimum requirements apply, but the territorial scope of the additional rules within the Directive’s scope is not modified;</del></p> </td> </tr> <tr> <td data-bbox="418 1547 496 1771">(2)</td> <td data-bbox="496 1547 1442 1771"> <p><del>for an EEA firm providing passported activities under the Directive in the United Kingdom, the rules implementing the Directive’s minimum requirements do not apply, but additional rules within the Directive’s scope have their unmodified territorial scope unless the Home State imposes measures of like effect;</del></p> </td> </tr> <tr> <td data-bbox="418 1771 496 1839">(2)</td> <td data-bbox="496 1771 1442 1839"> <p><u>for insurance distribution business carried on by insurers:</u></p> </td> </tr> <tr> <td data-bbox="418 1839 496 1975">(a)</td> <td data-bbox="496 1839 1442 1975"> <p><u>minimum and additional requirements apply to a UK firm unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the firm’s Host State regulator; and</u></p> </td> </tr> </table>	(1)	<p><del>for a UK firm providing passported activities through a branch in another EEA State under the Directive, the rules implementing the Directive’s minimum requirements apply, but the territorial scope of the additional rules within the Directive’s scope is not modified;</del></p>	(2)	<p><del>for an EEA firm providing passported activities under the Directive in the United Kingdom, the rules implementing the Directive’s minimum requirements do not apply, but additional rules within the Directive’s scope have their unmodified territorial scope unless the Home State imposes measures of like effect;</del></p>	(2)	<p><u>for insurance distribution business carried on by insurers:</u></p>	(a)	<p><u>minimum and additional requirements apply to a UK firm unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the firm’s Host State regulator; and</u></p>
(1)	<p><del>for a UK firm providing passported activities through a branch in another EEA State under the Directive, the rules implementing the Directive’s minimum requirements apply, but the territorial scope of the additional rules within the Directive’s scope is not modified;</del></p>									
(2)	<p><del>for an EEA firm providing passported activities under the Directive in the United Kingdom, the rules implementing the Directive’s minimum requirements do not apply, but additional rules within the Directive’s scope have their unmodified territorial scope unless the Home State imposes measures of like effect;</del></p>									
(2)	<p><u>for insurance distribution business carried on by insurers:</u></p>									
(a)	<p><u>minimum and additional requirements apply to a UK firm unless responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the firm’s Host State regulator; and</u></p>									

		(b)	<u>paragraph (1), and 3.3AG, below, apply in the same way unless the responsibility for any matter it covers is reserved by the <i>Solvency II Directive</i> to the firm's Home State regulator.</u>
		(3)	<del>an EEA firm acting as the principal of an appointed representative is required to ensure that its appointed representative complies with this sourcebook as it applies to a UK firm that is an authorised person.</del>
3.3A	R		<u>An EEA firm acting as the principal of an appointed representative carrying on insurance distribution activities from an establishment in the UK is required to ensure that its appointed representative complies with this sourcebook.</u>
4	Solvency II Directive non-life business: effect on territorial scope		
4.1	G		The <i>Solvency II Directive</i> 's scope covers <i>insurers</i> authorised under that Directive conducting <i>general insurance business</i> .
4.2	G		The <del>rules</del> <i>rules</i> in this sourcebook within the <del>Directive's</del> <i>Solvency II Directive</i> 's scope are those requiring the provision of pre-contract information or information during the term of the contract concerning the <i>insurer</i> or the insurance contract (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <del><i>ICOBS 4</i> (Information about the firm, its services and remuneration)</del> , <i>ICOBS 6</i> (Product information), <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision) and <i>ICOBS 8</i> (Claims handling) except those parts of <i>ICOBS 8.2</i> (Motor vehicle liability insurers) implementing the <i>Consolidated Motor Insurance Directive</i> .
4.3	G		The <del>Directive</del> <i>Solvency II Directive</i> specifies minimum information requirements and permits <i>EEA States</i> to adopt additional mandatory rules. (See articles 178, 180, 183, 184 of the <i>Solvency II Directive</i> .)
4.4	G		If the <i>State of the risk</i> is an <i>EEA State</i> , the <del>Directive</del> <i>Solvency II Directive</i> provides that the applicable information rules shall be determined by that state. Accordingly, if the <i>State of the risk</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the risk</i> is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the <del>Directive</del> <i>Solvency II Directive</i> explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the 'general good'. (See articles 156 and 180 of the <i>Solvency II Directive</i> .)
5	Solvency II Directive life business: effect on territorial scope		
5.1	G		The <i>Solvency II Directive</i> 's scope covers <i>long-term insurers</i> which are <i>Solvency II firms</i> conducting <i>long-term insurance business</i> .
5.2	G		The <i>rules</i> in this sourcebook within the Directive's scope are the cancellation <i>rules</i> (see <i>ICOBS 7</i> ) and those <i>rules</i> requiring the provision of pre-contract information or information during the term of the contract concerning the

		<i>insurer or the contract of insurance</i> (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <del><i>ICOBS 4</i> (Information about the firm, its services and remuneration)</del> , <i>ICOBS 6</i> (Product information) and <i>ICOBS 8</i> (Claims handling) except <i>ICOBS 8.2</i> (Motor vehicle liability insurers)).
...		
5.4	G	If the <i>State of the commitment</i> is an <i>EEA State</i> , the Directive provides that the applicable information rules and cancellation rules shall be laid down by that state. Accordingly, if the <i>State of the commitment</i> is the <i>United Kingdom</i> , the relevant <i>rules</i> in this sourcebook apply. Those <i>rules</i> do not apply if the <i>State of the commitment</i> is another <i>EEA State</i> . The territorial scope of other <i>rules</i> , in particular the <i>financial promotion rules</i> , is not affected since the Directive explicitly permits <i>EEA States</i> to apply rules, including advertising rules, in the ‘general good’. (See articles 156, 180, 185 and 186 of the <i>Solvency II Directive</i> .)
...		
7		Distance Marketing Directive: effect on territorial scope
7.1	G	In broad terms, a <i>firm</i> is within the <i>Distance Marketing Directive</i> ’s scope when conducting an activity relating to a <i>distance contract</i> with a <i>consumer</i> . The <i>rules</i> in this sourcebook within the Directive’s scope are those requiring the provision of pre-contract information (see <i>ICOBS 2.2</i> (Communications to clients and financial promotions), <i>ICOBS 4</i> (Information about the firm, its services and remuneration), <i>ICOBS 6</i> (Product information), and <i>ICOBS 6A.1.4R</i> (Ensuring the customer can make an informed decision)), the cancellation <i>rules</i> (see <i>ICOBS 7</i> ) and the other specific <i>rules</i> implementing the Directive (see <i>ICOBS 3.1</i> ).
7.2	G	In the <i>FCA</i> ’s view, the Directive places responsibility for requirements within the Directive’s scope on the <i>Home State</i> except in relation to business conducted through a <i>branch</i> , in which case the responsibility rests with the <i>EEA State</i> in which the <i>branch</i> is located (this is sometimes referred to as a ‘country of origin’ or ‘country of establishment’ basis). (See article 16 of the <i>Distance Marketing Directive</i> .)
...		
7.5	G	In the <i>FCA</i> ’s view:
	(1)	the ‘country of origin’ basis of the Directive is in line with that of the <i>E-Commerce Directive</i> and the <i>IDD</i> ; (see <i>See</i> recital 6 to the <i>Distance Marketing Directive</i> .)
	(2)	for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Solvency II Directive</i> , the territorial application of the <i>Distance Marketing Directive</i> takes precedence; in other words, the <i>rules</i>

		<p>requiring pre-contract information and cancellation rules derived from the <i>Solvency II Directive</i> apply on a ‘country of origin’ basis rather than being based on the <i>State of the commitment</i>; (see <u>See</u> articles 4(1) and 16 of the <i>Distance Marketing Directive</i>.)</p>
	(3)	<p><del>for business within the scope of both the <i>Distance Marketing Directive</i> and the <i>Insurance Mediation Directive</i>, the minimum requirements in the <i>Insurance Mediation Directive</i> continue to be those applied by the <i>Home State</i>, but the minimum requirements in the <i>Distance Marketing Directive</i> and any additional pre-contract information requirements are applied on a ‘country of origin’ basis. (The basis for this is that the <i>Insurance Mediation Directive</i> was adopted after the <i>Distance Marketing Directive</i> and is not expressed to be subject to it.)</del></p>
8	Electronic Commerce Directive: effect on territorial scope	
...		
8.3	G	<p>Conversely, a <i>firm</i> that is a national of the <i>United Kingdom</i> or another <i>EEA State</i>, carrying on an <i>electronic commerce activity</i> from an <i>establishment</i> in another <i>EEA State</i> with or for a <i>person</i> in the <i>United Kingdom</i>, need not comply with the <i>rules</i> in this sourcebook. (See article 3(1) and (2) of the <i>E-Commerce Directive</i>.)</p>
...		
8.5	G	<p>Where the derogation applies, the <i>rules</i> on <i>financial promotion</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm</i>’s ‘country of origin’ applies rules of like effect), but do not apply for outgoing <i>electronic commerce activities</i>. (See article 3(3) and Annex, fourth indent of the <i>E-Commerce Directive</i>; Annex to European Commission Discussion Paper MARKT/2541/03.)</p>
8.6	G	<p>In the <i>FCA</i>’s view, the Directive’s effect on the territorial scope of this sourcebook (including the use of the ‘insurance derogation’):</p>
	(1)	is in line with the <i>Distance Marketing Directive</i> and the <i>IDD</i> ;
	(2)	overrides that of any other Directive discussed in this Annex to the extent that it is incompatible.
8.7	G	<p>The ‘derogations’ in the Directive may enable other <i>EEA States</i> to adopt a different approach to the <i>United Kingdom</i> in certain fields. (See recital 49 <del>52</del> to the <i>Insurance Mediation Directive</i> <i>IDD</i>, recital 6 to the <i>Distance Marketing Directive</i>, article 3 of, and the Annex to, the <i>E-Commerce Directive</i>.)</p>

[*Editor's note: ICOBS 2.2.2R and ICOBS 2.2.22AR depends on legislative amendments to section 137R of the Financial Services and Markets Act 2000 to take account of article 17(2) of the IDD and will only be made once the legislation has been passed.*]

## 2 General matters

...

### 2.2 Communication to clients and financial promotions

...

Clear, fair and not misleading rule

- 2.2.2 R When a *firm* communicates information, including a *financial promotion*, to a *customer* ~~or other policyholder~~, it must ~~take reasonable steps to communicate~~ ensure that it in a way that is clear, fair and not misleading.

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

Marketing communications

- 2.2.2A R A *firm* must ensure that, in relation to *insurance distribution*, marketing communications are always clearly identifiable as such.

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

...

The reasonable steps defence

- 2.2.5 R If, in relation to a particular communication or *financial promotion*, a *firm* takes reasonable steps to ensure it is fair, clear and not misleading then:
- (1) the *firm* will not contravene *ICOBS 2.2.2R* where:
    - (a) the recipient is a *customer* that does not make the arrangements preparatory to the conclusion of the *contract of insurance*; or
    - (b) the communication is made in relation to activities other than *insurance distribution*; and
  - (2) a contravention of the clear, fair and not misleading rule (*ICOBS 2.2.2R*) does not give rise to a right of action under section 138D of the *Act*.

## 2.3 Inducements



- 2.3.1 G (1) *Principle 8* requires a *firm* to manage conflicts of interest fairly, both between itself and its *customers* and between a *customer* and another *client*. This principle extends to soliciting or accepting inducements where this would conflict with a *firm's* duties to its *customers*. A *firm* that offers such inducements should consider whether doing so conflicts with its obligations under:
- (a) *Principles 1 and 6* to act with integrity and treat customers fairly; and
- (b) the customer's best interests rule.

...

...

**2.5 ~~Exclusion of liability, conditions and reliance on others~~ Acting honestly, fairly and professionally**

The customer's best interests rule

- 2.5.-1 R A firm must act honestly, fairly and professionally in accordance with the best interests of its customer.

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

Exclusion of liability and conditions

...

Reliance on others

- 2.5.3 G (1) Where it is compatible with the nature of the obligation imposed by a particular *rule*, including the customer's best interests rule, and with the *Principles*, in particular *Principles 1* (Integrity), *2* (Skill, care and diligence) and *3* (Management and control), *firms* may rely on third parties in order to comply with the *rules* in this sourcebook.

...

Other requirements

- 2.5.4 G Firms are reminded of their obligations in SYSC 19F.2 to ensure remuneration arrangements do not conflict with their duty to act in the customer's best interests.

After ICOBS 2.5 (Acting honestly, fairly and professionally) insert the following new section ICOBS 2.6. The text is not underlined.

## 2.6 Distribution of connected contracts through exempt persons

- 2.6.1 R (1) Where an *insurance distributor* is distributing through a *person* relying on the connected contracts exemption in article 72B of the *Regulated Activities Order*, the *insurance distributor* must ensure that the requirements in (2) are met;
- (2) The requirements referred to in (1) are:
- (a) SYSC 19F.2 (Remuneration and insurance distribution activities);
  - (b) ICOBS 2.2.2R and ICOBS 2.2.2AR (Clear, fair and not misleading rule and marketing communications);
  - (c) ICOBS 2.5.-1R (Customer's best interests);
  - (d) ICOBS 4.1.2R(1)(a) and (c) (Status disclosure: general information provided by insurance intermediaries or insurers);
  - (e) ICOBS 5.2 (Demands and needs); and
  - (f) ICOBS 6A.3 (Cross-selling).

[**Note:** article 1(4) first paragraph and article 1(4)(a) and (b) of the *IDD*]

- 2.6.2 G To comply with the relevant chapter of *SYSC* or *Principle 3*, an *insurance distributor* will need to have appropriate arrangements in place to ensure compliance with *ICOBS 2.6.1R*.

...

Amend the following as shown.

## 4 Information about the firm, its services, and remuneration

### 4.1 General requirements for insurance intermediaries and insurers

Application: who?

- 4.1.1 R This ~~section~~ chapter applies to an *insurance intermediary* and to an insurer carrying on *insurance distribution activities*.

Interaction with the customer's best interests rule and Principle 7

- 4.1.1A G To comply with the customer's best interests rule and Principle 7 (Communications with clients) a firm should include consideration of the information needs of the customer including:

- (1) what a customer needs in order to understand the relevance of any

information provided by the firm; and

- (2) at which point in the sales process will the information be most useful to the customer to enable them to make an informed decision.

Status disclosure: general information provided by insurance intermediaries or insurers

4.1.2 R ~~Prior to~~ In good time before the conclusion of an initial contract of insurance and, if necessary, on its amendment or renewal;

- (1) a firm must provide the customer with at least the following information:
- (1) ~~its name and~~ identity, address and whether it is an insurance intermediary or an insurance undertaking;
  - (a) whether it provides a personal recommendation about the insurance products offered;
  - (b) the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for the settlement of disputes between the firm and its customers; and
- (2) an insurance intermediary must also provide the customer with the following information:
- (2) ~~the fact that it is included in the Financial Services Register (or if it is not on the Financial Services Register, the register in which it has been included) and the means for verifying this;~~
  - (a) ~~whether it has a direct or indirect holding representing more than 10% or more of the voting rights or capital in a given insurance undertaking (that is not a pure reinsurer);~~
  - (b) ~~whether a given insurance undertaking (that is not a pure reinsurer) or its parent undertaking has a direct or indirect holding representing more than 10% or more of the voting rights or capital in the firm; and~~
  - (c) ~~the procedures allowing customers and other interested parties to register complaints about the firm with the firm and the Financial Ombudsman Service or, if the Financial Ombudsman Service does not apply, information about the out-of-court complaint and redress procedures available for~~

~~the settlement of disputes between the *firm* and its *customers*~~

(d) whether it is representing the *customer* or is acting for and on behalf of the *insurer*; and

(3) paragraph (2) does not apply in relation to a *connected travel insurance contract*.

[~~Note: article 12(1) of the *Insurance Mediation Directive* articles 18 and 19(1)(a) and (b) of the *IDD*~~]

Status disclosure exemption: introducers

- 4.1.3 R A *firm* whose contact with a *customer* is limited to effecting introductions (see *PERG* 5.6) need only provide its ~~name and~~ identity, address and whether it is a member of the same *group* as the *firm* to which it makes the introduction.
- 4.1.4 G If a *firm* goes further than putting a *customer* in contact with another *person* (for example, by *advising him* the *customer* on a particular *policy* available from the *firm*) the full status disclosure requirements will apply.

Status disclosure exemption: connected travel insurance

- 4.1.5 R ~~In relation to a *connected travel insurance contract*, a *firm* need only provide the procedures allowing customers and other interested parties to register complaints about the *firm* with the *firm* and the *Financial Ombudsman Service* or, if the *Financial Ombudsman Service* does not apply, information about the out of court *complaint* and redress procedures available for the settlement of disputes between the *firm* and its *customers*. [deleted]~~

Scope of service: insurance intermediaries

- 4.1.6 R (1) ~~Prior to~~ Where an *insurance intermediary* proposes or advises on a *contract of insurance* then in good time before the conclusion of an initial *contract of insurance* (other than a *connected travel insurance contract*) and, if necessary, on its amendment or *renewal*, a *firm* an *insurance intermediary* must ~~tell~~ provide the *customer* with at least information on whether the *firm*:
- (a) ~~it gives advice~~ a *personal recommendation*, on the basis of a fair and personal analysis ~~of the market~~; or
- (b) it is under a contractual obligation to conduct ~~*insurance mediation business*~~ *insurance distribution* exclusively with one or more *insurance undertakings*, in which case it must provide the names of those *insurance undertakings*; or
- (c) (i) it is not under a contractual obligation to conduct ~~*insurance mediation business*~~ *insurance distribution*

exclusively with one or more *insurance undertakings*;  
and

- (ii) it does not give advice a *personal recommendation* on the basis of a fair and personal analysis of the market;

in which case it must provide its *customer* with the name of those *insurance undertakings* with which the *insurance intermediary* may and does conduct business.

- (2) ~~A *firm* that does not advise on the basis of a fair analysis of the market must inform its *customer* that he has the right to request the name of each *insurance undertaking* with which the *firm* may and does conduct business. A *firm* must comply with such a request. [deleted]~~

[~~Note: article 12(1) of the *Insurance Mediation Directive* article 19(1)(c) of the *IDD*~~]

- 4.1.7 R ~~Prior to~~ Where the *firm* has given information in *ICOBS* 4.1.6R(1)(b) and (c), then in good time before the conclusion of an initial *contract of insurance* with a *consumer* a *firm* must also state whether it is giving:

- (1) a *personal recommendation* but not on the basis of a fair and personal analysis;
- (2) other advice on the basis of a fair analysis of the market; or
- (3) other advice not on the basis of a fair analysis of the market; or
- (4) just information.

Guidance on using panels to advise on the basis of a fair analysis

- 4.1.8 G (1) One way a *firm* may give advice on a fair analysis basis is by using ‘panels’ of *insurance undertakings* which are sufficient to enable the *firm* to give advice on a fair analysis basis and are reviewed regularly.
- (2) A *firm* which provides a service based on a fair analysis of the market (or from a sector of the market) should ensure that its analysis of the market and the available contracts is kept adequately up-to-date. For example, a *firm* should update its selection of contracts if aware that a contract has generally become available offering an improved product feature, or a better *premium*, compared with its current selection. The update frequency will depend on the extent to which new contracts are made available on the market. A *firm* is also required to ensure that the analysis is of a sufficiently large number of *contracts of insurance* available on the market (see *ICOBS* 5.3.3R).
- (3) The panel selection criteria will be important in determining whether the panel is sufficient to meet the ‘fair analysis’ criteria. Selection should be based on product features, *premiums* and services offered to

*customers*, not solely on the benefit offered to the *firm*.

- (4) Where a *firm* also provides *personal recommendations* based on a fair and personal analysis, paragraphs (1) to (3) may also be relevant to that part of the service which involves a fair analysis of the market.

~~Means of communication to customers~~

- 4.1.9 R (1) ~~All information to be provided to a *customer* in accordance with this chapter must be communicated: [deleted]~~
- (a) ~~on paper or on any other *durable medium* available and accessible to the *customer*;~~
- (b) ~~in a clear and accurate manner, comprehensible to the *customer*; and~~
- (c) ~~in an official language of the *State of the commitment* or in any other language agreed by the parties.~~
- (2) ~~The information may be provided orally where the *customer* requests it, or where immediate cover is necessary.~~
- (3) ~~In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see *ICOBS 3.1.14R*).~~
- (4) ~~If the information is provided orally, it must be provided to the *customer* in accordance with (1) immediately after the conclusion of the *contract of insurance*.~~

~~[Note: article 13 of the *Insurance Mediation Directive*]~~

After ICOBS 4.1 (General requirements for insurance intermediaries) insert the following new section ICOBS 4.1A. This new section amends the text formerly in ICOBS 4.1.9R and also adds new provisions. All the text is re-stated in this position or is new and not underlined.

**4.1A Means of communication to customers**

Application

- 4.1A.1 R This section applies to all information required to be provided to a *customer* in this chapter and in other chapters or sections where stated.

Means of communication to customers; non-telephone sales

- 4.1A.2 R (1) A *firm* must communicate information to a *customer* using any of the following:
- (a) paper; or

- (b) a *durable medium* other than paper; or
  - (c) a website (where it does not constitute a *durable medium*) where the *website conditions* are satisfied.
- (2) The *firm* must communicate the information in (1):
- (a) in a clear and accurate manner, comprehensible to the *customer*;
  - (b) in an official language of the *State of the risk* or in any other language agreed by the parties; and
  - (c) free of charge.

[**Note:** article 23(1), (2), (4) and (5) of the *IDD*]

- 4.1A.3 R Where the information is communicated using a *durable medium* other than paper or by means of a website, the *firm* must, upon request and free of charge, also send the *customer* a paper copy.

[**Note:** article 23(3) of the *IDD*]

- 4.1A.4 R A *firm* must ensure that a *customer's* choice or consent to receive the information by means of a website (whether a *durable medium* or where the *website conditions* are satisfied) is an active and informed choice or consent.

- 4.1A.5 G (1) For the purposes of *ICOBS* 4.1A.4R for example an option to allow a change to the e-mail address to be used or an option to allow information to be provided by means of a website should be presented in a way that is clear, fair and not misleading.
- (2) The following are examples of circumstances not evidencing active or informed choice or consent:
- (a) a pre-ticked box (suggesting that option has been selected) which appears in a more prominent place than an un-ticked box allowing another option to be selected; and
  - (b) the *customer* electing to be informed by a website without being first given other options.

- 4.1A6 R On *renewal* of a *policy* a *firm* may rely on a *customer's* previous choice or consent as appropriate where:
- (1) there is evidence that the *customer* has regular access to the internet;
  - (2) the provision of information in that medium is appropriate in the context in which the business between the *firm* and the *customer* is carried on; and
  - (3) the *customer* is made aware, for example in the renewal documentation, of the option to receive the information on paper in a way that is clear, fair and not misleading.

Means of communications to customers: telephone sales

- 4.1A.7 R In the case of telephone selling:
- (1) the information must be given in accordance with the distance marketing disclosure *rules* (see *ICOBS* 3.1.14R); and
  - (2) if prior to the conclusion of the contract the information is provided:
    - (a) orally; or
    - (b) on a *durable medium* other than paper;

the *firm* must also provide the information to the *customer* in accordance with *ICOBS* 4.2A.1R immediately after the conclusion of the *contract of insurance*.

[**Note:** article 23(7) of the *IDD*]

Amend the following as shown.

## 4.2 Additional requirements for protection policies for insurance intermediaries and insurers

...

Ensuring customers can make an informed decision

- 4.2.2 G ~~In considering a *customer's* information needs for the purposes of *Principle 7*, a *firm* should have regard to the importance of information for a *customer's* purchasing decision when deciding when and how to give it. [deleted]~~
- 4.2.3 G ~~If a *firm* provides elements of status disclosure information orally as part of an interactive dialogue, it should do so for all elements of the information. In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure *rules* (see *ICOBS* 3.1.14R). [deleted]~~

Disclosing the limits of the service provided

- 4.2.4 R (1) In a sale that does not involve a *personal recommendation*, a *firm* must take reasonable steps to ensure a *customer* (C) understands ~~he is that C is~~ responsible for deciding whether a *policy* meets ~~his C's~~ demands and needs.
- (2) ~~If this is done orally, the information must be provided to the *customer* in writing or any other *durable medium* no later than immediately after the conclusion of the contract. [deleted]~~



...

## Status disclosure for insurers

- 4.2.5 R (1) Prior to the conclusion of an initial contract and, if necessary, on its amendment or *renewal*, an *insurer* must disclose to the *customer* at least:
- (a) the statutory status disclosure statement (see *GEN* 4);
  - (b) whose *policies* it offers; and
  - (c) whether it is providing a *personal recommendation* or information.
- (2) ~~If this is done orally, the disclosure must be provided in writing or any other *durable medium* no later than immediately after the conclusion of the contract. [deleted]~~
- 4.2.6 G ~~*Insurers* cannot carry on an *insurance mediation activity* in respect of a third party's products unless they can show a natural fit or necessary connection between their insurance business and the third party's products *Insurers* are reminded that they are not permitted to carry out business which does not directly arise from their insurance business (see the restriction of business in *INSPRU* 1.5.13R and rule 9 of the ~~PRA Rulebook~~ *PRA Rulebook*: Solvency II firms: Conditions Governing Business).~~

### 4.3 Fee Remuneration disclosure

#### Remuneration disclosure: insurance intermediaries

- 4.3.-7 R In good time before the conclusion of the initial *contract of insurance* and if necessary, on its amendment or *renewal* an *insurance intermediary* must provide the *customer* with information:
- (1) on the nature of the *remuneration* received in relation to the *contract of insurance*:
    - (a) a *fee*, that is *remuneration* paid directly by the *customer*; or
    - (b) a *commission* of any kind, that is the *remuneration* included in the *premium*; or
    - (c) any other type of *remuneration*, including an economic benefit of any kind offered or given in connection with the contract; or
    - (d) on the basis of a combination of any type of *remuneration* set out

above in (i), (ii) and (iii).

**[Note: article 19(1)(d) and (e) of the IDD]**

Remuneration disclosure: insurers

4.3.-6 **R** In good time before the conclusion of a contract of insurance an insurance undertaking must provide its customer with information on the nature of the remuneration received by its employees in relation to the contract of insurance.

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

Remuneration disclosure: general

4.3.-5 **R** The remuneration referred to in this section includes remuneration that is not guaranteed or which is contingent on meeting certain targets.

4.3.-4 **G** The information required to be disclosed in ICOBS 4.3.-7R and ICOBS 4.3.-6R includes the type of remuneration and, taking into account the clear, fair and not misleading rule (ICOBS 2.2.2R), should also include the source of the remuneration.

4.3.-3 **G** When considering what information to provide about the remuneration, a firm should include all remuneration which the insurance intermediary or the employee of an insurance undertaking, receives or may receive in relation to the distribution of the contract of insurance. This includes remuneration:

(1) provided indirectly by the insurer or another firm within the distribution chain; or

(2) provided by way of a bonus (whether financial or non-financial) paid to the firm by the insurer or another firm or provided by the firm to its employees where this bonus is contingent on the achievement of a target to which the distribution of the particular contract of insurance could contribute. For example, this can include cash bonuses paid for achieving a sales target and additional annual leave for achieving a high customer service score on sales calls, profit share arrangements, overriders or other enhanced commissions.

4.3.-2 **R** If any payments, other than ongoing premiums and scheduled payments, are made by the customer under the contract of insurance after its conclusion, a firm must make the disclosures under this section, for each such payment.

**[Note: articles 19(3) and (5) of the IDD]**

4.3.-1 **G** Examples of the type of payments made are those for mid-term adjustments, administration fees and cancellation fees.

Fee disclosure: additional requirements

4.3.1 **R** (1) A Where a fee is payable, the firm must provide inform its customer with

~~details of the amount of any fees other than premium monies for an insurance mediation activity~~ the fee.

- (2) The ~~details~~ information in paragraph (1) must be given before the *customer* incurs liability to pay the *fee*, or before conclusion of the ~~contract~~ contract of insurance, whichever is earlier.
- (3) To the extent that ~~an actual fee cannot~~ it is not possible for an amount to be given, a *firm* must give the basis for its calculation.

[**Note:** articles 19(2) and (5) of the *IDD*]

- 4.3.2 G The *fee* disclosure requirement extends to all such *fees* that may be charged  
R during the life of a *policy*.

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

## 5 Identifying client needs and advising

...

### 5.2 Statement of demands Demands and needs

Application: who? what?

- 5.2.1 R This section applies to: an insurance distributor when carrying on insurance distribution activities other than in relation to a connected travel insurance contract
- (1) ~~an insurance intermediary in relation to any policy (other than a connected travel insurance contract); and~~
- (2) ~~an insurer when it has given a personal recommendation to a consumer on a payment protection contract or a pure protection contract.~~

~~Statement of demands~~ Demands and needs

- 5.2.2 R (1) Prior to the conclusion of a ~~contract~~ contract of insurance, a *firm* must specify, ~~in particular~~ on the basis of information provided by obtained from the customer, the demands and the needs of that *customer* ~~as well as the underlying reasons for any advice given to the customer on that policy.~~
- (2) The details must be modulated according to the complexity of the *policy contract of insurance* proposed and the type of customer.
- (3) A statement of the demands and needs must be communicated to the customer prior to the conclusion of a contract of insurance.

[~~Note: article 12(3) of the *Insurance Mediation Directive* articles 20(1) and 20(2) of the *IDD*~~]

5.2.2A G A firm may obtain information from the customer in a number of ways including, for example, by asking the customer questions in person or by way of a questionnaire prior to any contract of insurance being proposed.

5.2.2B R When proposing a contract of insurance a firm must ensure it is consistent with the customer's insurance demands and needs.

[~~Note: recital 44 to, and article 20(1) of, the *IDD*~~]

5.5.2C G ICOBS 5.2.2BR applies whether or not advice is given and in the same way regardless of whether that contract is sold on its own, in connection with another contract of insurance, or in connection with other goods or services.

5.2.2D R The sale of a contract of insurance must always be accompanied by a demands and needs test on the basis of information obtained from the customer.

[~~Note: recital 44 to, and article 20(1) of, the *IDD*~~]

#### Means of communication to customers

- 5.2.3 R ~~(1) A statement of demands and needs must be communicated:~~
- ~~(a) on paper or on any other durable medium available and accessible to the customer;~~
  - ~~(b) in a clear and accurate manner, comprehensible to the customer; and~~
  - ~~(c) in an official language of the State of the commitment or in any other language agreed by the parties.~~
- ~~(2) The information may be provided orally where the customer requests it, or where immediate cover is necessary.~~
- ~~(3) In the case of telephone selling, the information may be given in accordance with the distance marketing disclosure rules (see *ICOBS* 3.1.14R).~~
- ~~(4) If the information is provided orally, it must be provided to the customer in accordance with (1) immediately after the conclusion of the contract of insurance. [deleted]~~

[~~Note: article 13 of the *Insurance Mediation Directive*~~]

#### ~~Statement~~ Format of the statement of demands and needs: non-advised sales

5.2.4 G The Once the firm has obtained information from the customer and ensured the contract of insurance is consistent with the demands and needs, the

format of a statement of demands and needs is flexible. Examples of approaches that may be appropriate where a *personal recommendation* has not been given include:

...

- (2) producing a demands and needs statement in product documentation that will be appropriate for anyone ~~wishing to buy the product, for whose demands and needs the contract is consistent~~. For example, “This product meets the demands and needs of those who wish to ensure that the veterinary needs of their pet are met now and in the future”; and
- (3) giving a *customer* a record of all ~~his~~ the customer’s demands and needs that have been discussed; ~~and~~
- (4) ~~providing a key features document.~~

#### Means of communication to customers

- 5.2.5 R The information to be provided to *customers* in *ICOBS 5.2* must be given in accordance with *ICOBS 4.1A* (Means of communication to customers).

[Note: article 23(1) of the *IDD*]

### **5.3 Advised sales**

#### Suitability

- 5.3.1 R *A firm* must take reasonable care to ensure the suitability of its advice for any *customer* who is entitled to rely upon its ~~judgment~~ judgement.

#### Suitability guidance for protection policies

- 5.3.2 G (1) In taking reasonable care to ensure the suitability of advice on a *payment protection contract* or a *pure protection contract* a *firm* should:
- (a) establish the *customer’s* demands and needs. ~~It should do this by~~ using information readily available ~~and accessible~~ to the *firm* and by obtaining further relevant information from the *customer*, including details of existing insurance cover; it need not consider alternatives to ~~policies~~ policies nor *customer* needs that are not relevant to the type of ~~policy~~ policy in which the *customer* is interested;

...

...

...

## Advice on the basis of a fair analysis

- 5.3.3 R If an *insurance intermediary* informs a *customer* that it gives:
- (1) advice on the basis of a fair analysis, it must give that advice on the basis of an analysis of a sufficiently large number of *contracts of insurance* available on the market to enable it to make a recommendation; or
  - (2) a personal recommendation on the basis of a fair and personal analysis, it must give that personal recommendation on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation;
- and in each case, it must be in accordance with professional criteria, regarding which contract of insurance would be adequate to meet the customer's needs.
- [**Note:** article 12(2) of the *Insurance Mediation Directive* article 20(3) of the IDD]

Personalised explanation

- 5.3.4 R Where a firm provides a personal recommendation the firm must, in addition to the statement of demands and needs, provide the customer with a personalised explanation of why a particular contract of insurance would best meet the customer's demands and needs.
- [**Note:** article 20(1) third paragraph of the *IDD*]

Means of communication

- 5.3.5 R A firm must provide the information in this section in accordance with *ICOBS* 4.1A (Means of communication to customers).
- [**Note:** article 23(1) of the *IDD*]

...

**6A Product specific rules****6A.1 Guaranteed asset protection (GAP) contracts**

...

## Ensuring the customer can make an informed decision

- 6A.1.4 R (1) ...
- (2) This information must be communicated in a clear and accurate manner and ~~in writing on paper or another durable medium, and made available and accessible to the customer~~ in accordance with *ICOBS* 4.1A.

...

...

After ICOBS 6A.2 (Optional additional products) insert the following new chapter ICOBS 6A.3. The text is not underlined.

### **6A.3 Cross-selling**

Requirements where insurance is the primary product

- 6A.3.1 R When offering a non-insurance ancillary product or service as part of a package or the same agreement with an insurance product, a *firm* must:
- (1) inform the *customer* whether it is possible to buy the different components separately and, if so must provide the *customer* with an adequate description of:
    - (a) the different components;
    - (b) where applicable, any way in which the risk or insurance coverage resulting from the agreement or package differs from that associated with the components taken separately; and
  - (2) provide the *customer* with separate evidence of the costs and charges of each component.

[**Note:** articles 24(1) and (2) of the *IDD*]

Requirements where insurance is the ancillary product

- 6A.3.2 R When offering an insurance product ancillary to and as part of a package or in the same agreement with a non-insurance product or service, a *firm* must offer the *customer* the option of buying the non-insurance goods or services separately.
- 6A.3.3 R *ICOBS* 6A.3.2R does not apply where the non-insurance product or service is any of the following:
- (1) *investment services or activities*;
  - (2) a credit agreement as defined in point 3 of article 4 of the *MCD* which is:
    - (i) an *MCD credit agreement*; or

- (ii) an *exempt MCD credit agreement*; or
  - (iii) a *CBTL credit agreement*; or
  - (iv) a credit agreement referred to in articles 72G(3B) and (4) of the *Regulated Activities Order*;
- (3) a payment account as defined in regulation 2(1) of the *Payment Accounts Regulations*.

[**Note:** article 24(3) of the *IDD*]

#### General

- 6A.3.4 R This section does not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

[**Note:** article 24(5) of the *IDD*]

- 6A.3.5 G In addition to the *rules* in *ICOBS 6A.3 firms* shall still comply with the other *rules* in *ICOBS* relating to the offer and sale of insurance products that form part of the package or agreement, such as those applying to price disclosure (*ICOBS 6.1.13R*), optional additional products (*ICOBS 6A.2*) and specifying the demands and needs of the *customer* (*ICOBS 5.2.1R*).

[**Note:** article 24(6) of the *IDD*]



## Annex G

## Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

## 1 Treating complainants fairly

### 1.1 Purpose and application

...

- 1.1.8 R ~~An insurance intermediary, that is not also an insurer, must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not an eligible complainant.~~  
[deleted]

[~~Note: article 10 of the Insurance Mediation Directive~~]

...

#### Additional requirements for insurance and reinsurance distribution business in the UK

- 1.1.10-A R Where insurance distribution activities are carried on from an establishment maintained by it or its appointed representative in the United Kingdom, a firm must have in place and operate appropriate and effective procedures for registering and responding to complaints from a person who is not an eligible complainant.

[Note: article 14 of the IDD]

#### Additional IDD requirements for EEA branches of UK firms

- 1.1.10-B R Where insurance distribution or reinsurance distribution is carried on from a branch maintained by a UK firm or its appointed representative in another EEA State, the firm must:
- (1) have in place and operate appropriate and effective procedures for registering and responding to complaints from a customer; and
  - (2) solely in relation to its insurance distribution business, adhere to one or more relevant ADR entities in that EEA State in respect of consumer disputes.

[Note: articles 7(2), 14 and 15(1) of the IDD]

...

