

PS12/5

Financial Services Authority

Distribution of retail investments

RDR Adviser Charging and Solvency II
disclosures – feedback to CP11/25
and final Adviser Charging rules

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This Policy Statement reports on the main issues arising from Consultation Paper 11/25 (*Distribution of Retail Investments: RDR Adviser Charging and Solvency II disclosures*) and publishes final rules.

Please address any comments or enquiries to:

Jenny Frost
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 0348
Fax: 020 7066 0349
Email: cp11_25@fsa.gov.uk

Copies of this Policy Statement are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

CBA	Cost benefit analysis
CLD	Consolidated Life Directive
COBS	Conduct of Business sourcebook
CP	Consultation Paper
DWP	Department for Work and Pensions
FSMA	Financial Services and Markets Act 2000
GPP	Group personal pension scheme
HMRC	HM Revenue & Customs
PS	Policy Statement
PSD	Product Sales Data
RDR	Retail Distribution Review
Solvency II	Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance

1

Overview

Introduction

- 1.1 In November 2011 we published Consultation Paper (CP) 11/25¹, which covered:
- issues on facilitating the payment of adviser charges under the Retail Distribution Review (RDR) rules;
 - whether product providers should, when reporting data under our data requirements such as Product Sales Data (PSD), report investment amounts on a basis net or gross of any adviser charges being facilitated; and
 - minor changes to the disclosure requirements in Chapters 13 to 16 of the Conduct of Business sourcebook (COBS) to implement Solvency II² Directive (Solvency II) requirements.
- 1.2 We received 14 responses to the CP. This Policy Statement (PS) reports on the feedback received, and contains final rules for the first two issues in Appendix 1 and near final rules for the Solvency II changes in Appendix 2.

Equality and diversity

- 1.3 As noted in CP11/25, we have assessed the equality and diversity impact of our proposals and do not believe that they will give rise to any issues. No comments were received from respondents on this.

1 CP11/25, November 2011 – *Distribution of retail investments: RDR Adviser Charging and Solvency II disclosures*.

2 Directive 2009/138/EC, 25 November 2009, on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

Structure of this paper

- 1.4 In this paper we summarise the responses to CP11/25 and give our response to the issues raised:
- Chapter 2 – facilitation of payment of adviser and consultancy charges under the RDR adviser charging rules;
 - Chapter 3 – whether, once the RDR rules are in force, product providers should report investment amounts net or gross of adviser charges being facilitated; and
 - Chapter 4 – implementation of certain disclosure requirements of Solvency II.
- 1.5 We are making only minor changes to the rules and guidance we consulted on, so have not amended the Compatibility Statement in Annex 1 of the CP, which is still valid.

Timetable

- 1.6 The new rules will come into effect as follows:
- a) rules on the facilitation of payment of adviser charges – on 31 December 2012, at the same time as the main RDR Adviser Charging rules; and
 - b) the rule on reporting investment amounts where payment of adviser charges or consultancy charges is being facilitated – this will apply to firms' first full reporting period after 31 December 2012.
- 1.7 The Solvency II disclosure rules are 'near final', as they include new Glossary definitions to be made with the main Solvency II rules. They will be made at the same time as the main Solvency II rules, which we expect to be at the end of this year; we currently expect them to come into effect on 1 January 2014.

Who should read this PS?

- 1.8 This PS will be of interest to firms advising on retail investment products and to product providers offering these products. The Solvency II changes to the COBS product disclosure rules will be of interest primarily to insurers.
- 1.9 Consumers and consumer bodies will be interested in all the chapters.

2

RDR – facilitation of payment of adviser and consultancy charges

Introduction

- 2.1 The RDR rules on Adviser Charging (which apply to individual advice to retail clients on retail investment products, including individual advice provided to members of group personal pension schemes (GPPs)³) allow a client to pay adviser charges direct to an adviser or to agree that the provider should pay them from the investment. An adviser charge can be deducted from the investment as a lump sum or, if an ongoing service is provided or the product is a regular payment one, as a series of regular payments.
- 2.2 In CP11/25 we consulted on new guidance to clarify issues that had been raised by the industry on:
- facilitation of the payment of adviser and consultancy charges by product providers, in accordance with Sections 6.1B and 6.1D of COBS; and
 - the position regarding refunds where a client cancels the product, in accordance with the cancellation rights set out in COBS 15, and payment of the adviser or consultancy charge is being facilitated by the product provider.
- 2.3 We had 14 responses, from four trade bodies, the Financial Services Consumer Panel, five insurers, one bank, two investment managers and a life and pensions administrator. Respondents generally supported the new guidance, so we have not made any changes to it.

3 'Group personal pension scheme' includes group stakeholder pension schemes and group self-invested personal pension schemes.

Facilitation of the payment of adviser or consultancy charges

- 2.4 Facilitation takes place where the customer, instead of paying the adviser charge direct to the adviser, pays a single amount to the product provider, who then pays the adviser charge to the adviser on behalf of the customer. The rules for firms willing to facilitate payment of adviser charges are set out in COBS 6.1B.9R to COBS 6.1B.11G.
- 2.5 In the case of Consultancy Charging, the rules are set out in COBS 6.1D.9R and COBS 6.1D.10G. The former refers to ‘a firm that offers to facilitate, directly or through a third party, the payment of consultancy charges from an employee’s investment in a group personal pension scheme or group stakeholder pension scheme’.
- 2.6 Firms had sought clarification from us on whether the following methods of facilitating adviser charges were both covered by these rules:
- paying the full amount received from the customer into the product and then deducting the amount (or amounts) of the charge from it; or
 - deducting the initial charge from the amount received from the customer and then paying the remainder into the investment product.
- 2.7 The guidance confirms that both methods are a form of facilitation. It applies to vertically integrated firms as well as to firms facilitating payment of adviser or consultancy charges to advisers who are independent of their firm.
- 2.8 One respondent commented that firms need to consider which method of facilitation works best, for example, in the pension field, where there are contribution limits or tax relief is given at source. Another respondent asked for clarification that payment of both initial and ongoing charges can be facilitated from regular payment products – we confirm that this can be done, but payments for an initial charge will need to stop once it has been fully paid.
- 2.9 One respondent thought we should make clear that the new guidance applies where adviser or consultancy charges are being paid before the contract is effected. However, it is also relevant where charges start to be paid, or are changed, during the term of the contract, so we have not made any changes to this effect.
- 2.10 As noted above, we have not made any changes to the wording we consulted on.

Cancellation of a product where adviser or consultancy charges are being facilitated by the product provider

- 2.11 COBS 15 sets out the customer’s right of cancellation for different products within 14 or 30 days of concluding the contract or receiving the contractual terms and conditions, whichever is later. It also sets out the effects of cancellation, including the sums to be refunded on cancellation.

- 2.12** Where a product provider has agreed to facilitate payment of adviser or consultancy charges, the question arises of whether the refund to the customer on cancellation should be net or gross of these charges. We said in the CP that our view was that it could be either, subject to any relevant HM Revenue & Customs (HMRC) and Department for Work and Pensions (DWP) rules. So:
- A provider could choose whether to refund the monies received from the customer either net or gross of adviser charges for most products, provided this is made clear to the customer in advance as part of information on the effects of cancellation, in accordance with COBS 15.2.5R.
 - Where the customer is not required to pay an adviser charge if they do not purchase a product (i.e. the charge is contingent), and the provider has already paid the charge to the adviser, the refund can be made net and the customer would then need to contact the adviser for a refund. If the adviser charge has not yet been paid to the adviser, the refund could be made either gross or net, subject to any HMRC or DWP rules. Again, the position would need to be set out in the information on the effects of cancellation.
 - Where a consultancy charge is facilitated through a group personal pension that is an auto-enrolment scheme, the DWP rules apply instead of the FSA cancellation rules. The DWP rules require refunds to be paid gross, so if a consultancy charge has already been paid to the adviser, the provider would need to seek a refund of the charges from the adviser.
 - If an adviser charge for individual advice to a member of a GPP is being facilitated through the product, the refund to the customer on cancellation would also need to be paid gross. The provider would need to seek a refund of any charges already paid from the adviser, who would then need to contact the customer regarding payment of any outstanding adviser charge.
- 2.13** The only change we proposed to the cancellation rules was an amendment to COBS 15.2.5R. This set out the information to be provided to a customer on the effects of cancellation where payment of adviser or consultancy charges is being facilitated. We said that it was up to product providers and advisers to agree what should happen in practice and to ensure that the position was made clear to customers. This flexible approach was supported by all but one of the respondents, who thought we should prescribe a single approach, with refunds being paid gross and adviser charges clawed back from the adviser.
- 2.14** The Financial Services Consumer Panel suggested that a standard wording for communications to customers on the effects of cancellation would be helpful. However, we do not mandate wordings for cancellation notices, and the flexibility permitted by the new requirement means that the wordings used will need to vary depending on the approach adopted. The overarching requirement for communications to be clear, fair and not misleading will apply to the wordings in the same way as to other communications to customers.

- 2.15 One respondent raised a number of queries on GPPs, and suggested that we should add guidance to say advisers must not retain charges if the product is cancelled but must return to providers any payments they have received. We have not made any amendments to the rules, as the position on GPPs is as follows:
- terms of business between provider and adviser are not covered by our rules;
 - if an employee opts out of a GPP under auto enrolment, the contract is treated as never having existed, so the employee cannot be required to pay any consultancy charges. How charges are dealt with in these circumstances will need to be covered in the agreement between the employer and adviser; and
 - if an adviser charge for individual advice (as opposed to a consultancy charge for advice/services to the employer) is being facilitated, the refund to the customer will need to be made gross. So the adviser will need to repay the provider any charge he has received (which will need to be covered by the agreement between them) and then ask the customer for the amount owing, which should be covered by the agreement between adviser and customer.
- 2.16 We have not amended the wording we consulted on.

Cost benefit analysis

- 2.17 When proposing new rules, or amendments to rules, we are obliged (under section 155 of the Financial Services and Markets Act 2000 (FSMA)) to publish a cost benefit analysis (CBA), unless we believe the proposals will give rise to no costs or to an increase in costs of minimal significance.
- 2.18 In the CP we said the proposed new guidance on facilitation would not impose any new costs on firms, as it simply confirmed that both methods of facilitation of payment of adviser or consultancy charges were covered by our rules on facilitation.
- 2.19 The amendment to COBS 15.2.5R requires a retail client to be informed whether the refund on cancellation will be gross or net of the adviser or consultancy charge, and that the client may be liable for payment of outstanding charges. We said in the CP that since product providers will need to make changes in any case to cater for adviser and consultancy charging, we did not expect the costs of amending their disclosure of the retail client's right to cancel or withdraw to be significant.
- 2.20 Respondents generally supported our analysis.

3

Reporting of investment amounts net or gross of adviser and consultancy charges

- 3.1** The new guidance explained in Chapter 2 confirms that both of the following two methods can be used by product providers to facilitate payment of adviser or consultancy charges under the RDR rules on facilitation:
- paying the full amount received from the customer into the product and then deducting the amount (or amounts) of the charge from it; or
 - deducting the initial charge from the amount received from the customer and then paying the remainder into the investment product.
- 3.2** We consulted in Chapter 3 of the CP on whether product providers that facilitate payment of adviser or consultancy charges should report amounts invested gross or net of adviser/consultancy charges for the purpose of Product Sales Data (PSD).
- 3.3** All the respondents to the CP were happy with our proposed approach, which was that the amount to be reported should be the amount actually invested in the product. They agreed that this was a pragmatic solution and would not involve significant new costs. We have made only a minor change to the wording we consulted on, for inclusion in the Supervision manual (SUP 16), which incorrectly referred only to adviser charges instead of both adviser charges and consultancy charges.
- 3.4** The new rule will apply to firms' first full reporting period after 31 December 2012.

4

Solvency II – amendments to COBS disclosure requirements

Introduction

- 4.1 In Chapter 4 of CP11/25 we consulted on the changes required to implement the disclosures required by Article 185 of Solvency II.⁴ CP11/25 covered only the changes required to Chapters 1, 13, 14, 15 and 16 of COBS. It did not cover changes to other parts of COBS.
- 4.2 1 January 2013 remains the date at which the responsibilities of supervisors and the European Insurance and Occupational Pensions Authority (EIOPA) will become effective (i.e. transposition of Solvency II must be complete by 1 January 2013), and 1 January 2014 is when we expect the Solvency II disclosure requirements to be effective for firms.
- 4.3 The rules contained in Appendix 2 are near final rules. This is because they include new Glossary definitions that will not be made until the main Solvency II rules are finalised – ‘Solvency II’, ‘Solvency II undertaking’ and ‘SFCR’ (referring to the report on the solvency and financial condition of the insurer). They will be made at the same time as the main Solvency II rules, which we expect to be at the end of 2012.
- 4.4 The general application of the Solvency II disclosure requirements is the same as for the Consolidated Life Directive (CLD), so for the most part we proposed simply replacing the references to the CLD in COBS 1 Annex 1 (Application) with references to the relevant provisions in Solvency II, but make no other changes to the application.

⁴ Directive 2009/138/EC of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II).

- 4.5 The disclosures required by Article 185 ('Information for policyholders') of Solvency II incorporate and extend those required by the current CLD. Most of the additional Solvency II disclosure information is already required by our rules. Where this is the case we proposed to replace the references to the CLD in COBS 13, 14, 15 and 16 with references to the relevant provisions in Solvency II.
- 4.6 We received 11 responses to the CP questions on Chapter 4, all of which agreed with our general approach, although some respondents sought clarification of the intention and scope of two of the Directive's provisions. We include this in our feedback below.

Changes to COBS 13 Preparing product information

- 4.7 We proposed the following changes to COBS 13:
- Amending COBS 13.1.2R to say that the information for policyholders required by Solvency II must be provided in an official language of the State of the commitment⁵ or another language if requested by the policyholder, where this is permitted by the law of the relevant Member State, or where the policyholder is free to choose the law applicable. We also specified that the information must be provided in a clear and accurate manner and in writing. The information requirement applies to 'life policies', and also for pure protection contracts where a firm opts up from the Insurance: Conduct of Business sourcebook (ICOBS) to COBS.
 - Deleting COBS 13.1.3R(4). This currently excludes the requirement to provide the CLD information if the policy is a reinsurance contract or a pure protection contract. COBS 13.1.2R already limits application of the Directive information to 'life policies' (and pure protection contracts where a firm opts up to COBS).
 - Adding a requirement to COBS 13 Annex 1 because Solvency II now requires 'a concrete reference to the report on the solvency and financial condition as laid down in Article 51, allowing the policyholder easy access to this information'. So we have added this to the Annex. Firms will be best placed to establish the most appropriate method, for example, state that the report is available on the firm's website.
 - Making changes to the COBS 13 Annex 2 Projection requirements. These stimulated the most comment. We discuss this in paragraphs 4.12 to 4.17.

COBS 14 – Providing product information to clients

- 4.8 We are removing the specific exclusion for reinsurance contracts in COBS 14.2.1R and the related one for key features documents and key features illustrations in COBS 14.2.7R, because reinsurance contracts are already excluded via the definition of 'life policy'. This is in line with the deletion of COBS 13.1.3R(4) explained above.

⁵ The country of the client's habitual residence in the case of an individual policyholder.

COBS 16 – reporting information to clients

- 4.9 Article 185 of Solvency II includes this requirement: *‘In the case of insurances with profit participation, the insurer shall inform the policyholder annually in writing of the status of the claims of the policyholder, incorporating the profit participation.’* We said we considered that providing an annual update about the amount of any bonus that has become payable under the contract is already covered by our existing rule in COBS 16.6.3R.
- 4.10 Article 185 goes on to say: *‘Furthermore, where the insurer has provided figures about the potential future development of the profit participation, the insurer shall inform the policyholder of differences between the actual development and the initial data.’* Two respondents were concerned that the projections already required by COBS 13 Annex 2 might mean that they had to track and report the development of the bonuses. However, this is not the case. A projection required by our rules is an illustration of the future performance of a policy; it does not offer any guarantees, and does not give any indication of future bonuses.
- 4.11 As proposed in the CP, we have inserted a new rule at COBS 16.6.3AR for when a long-term insurer activates the Article 185 requirement by choosing to provide information about likely future bonuses (in addition to providing our normal standard deterministic projection). This new rule requires them to report the difference between the actual bonuses so far payable and the figures previously provided.

Solvency II’s requirement for projections

- 4.12 Three respondents sought clarification of the impact of Solvency II on projections. Article 185 requires that: *‘Where, in connection with an offer for or conclusion of a life insurance contract, the insurer provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurer shall provide the policyholder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The insurer shall inform the policyholder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policyholder shall not derive any contractual claims from the specimen calculation.’*
- 4.13 We said we believed that this requirement was met by our existing rules in COBS 13 Annex 2 (projections) and COBS 13.3.2R (material risks).
- 4.14 Two respondents were concerned that the word ‘conclusion’ implied the end of a contract. However, in line with its use in the CLD and other directives, it means the start of a contract. A projection would not in any case be relevant at the end of a contract.

- 4.15 One respondent questioned whether existing business can still be projected at two different rates. As stated above this part of Article 185 applies only to projections for new contracts and does not affect existing business.
- 4.16 Our current rule in COBS 13 Annex 2 paragraph 1.7R allows projections to be on any reasonable basis for products maturing in six months or less. To implement Article 185 we proposed restricting the application of this rule to projections for existing policies by a new rule COBS 13 Annex 2 paragraph 1.7A R. One respondent suggested that this was unnecessary since COBS 13.4.1R would also require this in any case. However, we have retained this rule to reflect the actual wording of the Directive.
- 4.17 A respondent sought confirmation that this change did not affect retirement wake-up letters sent some months before intended retirement date. Pension wake-up letters relate to existing business, so this rule change will not affect them.

Cost benefit analysis

- 4.18 When proposing new rules, or amendments to rules, we are obliged (under section 155 of FSMA) to publish a CBA, unless we consider that the proposals will give rise to no costs or to an increase in costs of minimal significance.
- 4.19 In general, firms agreed with our CBA. There were queries from some firms in relation to the questions on the rules raised above. These queries do not cause us to amend our CBA, however, as, for the reasons explained, they were based on a mis-interpretation of the draft rules. One firm made a general comment on the CBA, asking us to be aware of all the other changes being made to firms' systems and documents as a result of regulatory change. We understand this concern, and the early publication of these disclosure changes will mean that firms can make the necessary changes to their documentation when it is convenient to do so, perhaps at the same time as making other changes.

Annex 1

List of non-confidential respondents to CP11/25

Association of British Insurers

Association of Financial Mutuals

Association of Independent Financial Advisers

Aviva

Capita Life and Pensions

Financial Services Consumer Panel

Hargreaves Lansdown

Lloyds Banking Group

Prudential

Scottish Life

Society of Pension Consultants

St James's Place

We also received two confidential responses.

Appendix 1

Made Handbook text

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 5)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 156 (General supplementary powers); and
 - (c) section 157(1) (Guidance); and
- B. The rule-making powers referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 December 2012.

Amendments to the Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex A to this instrument.
- E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument

Citation

- F. This instrument may be cited as the Retail Distribution Review (Adviser Charging No 5) Instrument 2012.

By order of the Board
21 March 2012

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

6.1B Retail investment product provider and platform service provider requirements relating to adviser charging and remuneration

...

Requirements on firms facilitating the payment of adviser charges

6.1B.9 R A *firm* that offers to facilitate, directly or through a third party, the payment of *adviser charges* ~~from a retail client's retail investment product or otherwise, including~~ by means of a *platform service* must:

...

6.1B.9A G A *firm* facilitates the payment of *adviser charges* for the purposes of COBS 6.1B.9R if the *adviser charge* is not paid directly by the *retail client*, but is instead paid on behalf of the *retail client* via the *firm*.

6.1B.9B G A *firm* may facilitate the payment of *adviser charges* for the purposes of COBS 6.1B.9R by:

- (1) *selling all or part of the retail client's retail investment product to pay the adviser charge; or*
- (2) *disposing of or reducing all or part of the retail client's rights under the retail investment product (for example, by way of a part disposal which creates benefits under a life policy) to pay the adviser charge; or*
- (3) *separating out an amount or amounts for the payment of the adviser charge from the amount received from the retail client to be invested or from the premium in the case of a life policy; or*
- (4) *paying the adviser charge from the retail client's cash account.*

...

6.1D Product provider requirements relating to consultancy charging and remuneration

...

Requirements on firms facilitating the payment of consultancy charges

6.1D.9 R A *firm* that offers to facilitate, directly or through a third party, the payment of *consultancy charges* ~~from an employee's investment in a group personal~~

~~*pension scheme or group stakeholder pension scheme*~~ must:

...

- 6.1D.9A G A firm facilitates the payment of *consultancy charges* for the purposes of COBS 6.1D.9R if the *consultancy charge* is not paid directly by the employee, but is instead paid on behalf of the employee via the *firm*.
- 6.1D.9B G A firm facilitates the payment of *consultancy charges* for the purposes of COBS 6.1D.9R by:
- (1) selling all or part of, or rights under, the employee's investment in a *group personal pension scheme* or *group stakeholder pension scheme* to pay the *consultancy charge*; or
 - (2) disposing of or reducing all or part of the employee's rights under the *group personal pension scheme* or *group stakeholder pension scheme* (for example, by way of a part disposal which creates benefits under a *life policy*) to pay the *consultancy charge*; or
 - (3) separating out an amount or amounts for the payment of the *consultancy charge* from the amount received from the employer on behalf of the employee or from the premium in the case of a *life policy*.

...

15.2 The right to cancel

...

Disclosing a right to cancel or withdraw

- 15.2.5 R (1) The *firm* must disclose to the *consumer*:
- (a) in good time before or, if that is not possible, immediately after the *consumer* is bound by a contract that attracts a right to cancel or withdraw; and
 - (b) in a *durable medium*;
- the existence of the right to cancel or withdraw, its duration and the conditions for exercising it including information on the amount which the *consumer* may be required to pay, the consequences of not exercising it and practical instructions for exercising it indicating the address to which the notification of cancellation or withdrawal should be sent.
- (1A) If the *firm* offers to facilitate, directly or through a third party, the payment of *adviser charges* or *consultancy charges*, it must disclose to the *consumer* at the same time as it makes the disclosure in (1):

- (a) whether any refund will include an *adviser charge* or *consultancy charge*; and
- (b) that the *consumer* may be liable to pay any outstanding *adviser charges* or *consultancy charges*.

...

Annex B

Amendments to the Supervision manual (SUP)

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

16 Annex 21R REPORTING FIELDS

R This is the annex referred to in SUP 16.11.7R

...

2 SPECIFIC REPORTING FIELDS

(a) Retail investments

The following data reporting fields must be completed, where applicable, for all *retail investment* transactions, including *structured capital-at-risk products*:

Data reporting field	Illustrative code (where applicable)	Notes
...		
Total <i>premium/contribution</i> amount	Numeric £	Enter annualised amount rounded to nearest £ <u>If the <i>firm</i> facilitates the payment of an <i>adviser charge</i> or <i>consultancy charge</i>, enter the amount paid into the <i>retail investment product</i>, irrespective of whether this amount includes the <i>adviser charge</i> or <i>consultancy charge</i>.</u>
...		

Appendix 2

Near final rules

**CONDUCT OF BUSINESS SOURCEBOOK (SOLVENCY II AMENDMENT)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 138 (General rule-making power);
 - (b) section 145 (Financial promotion rules);
 - (c) section 156 (General supplementary powers); and
 - (d) section 157(1) (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 referred to above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [1 January 2014].

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Conduct of Business sourcebook (COBS) is amended in accordance with Annex B to this instrument.

Notes

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

Citation

- G. This instrument may be cited as the Conduct of Business Sourcebook (Solvency II Amendment) Instrument 2012.

By order of the Board
[date]

Annex A**Amendments to the Glossary of definitions**

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

Solvency II Directive information (in *COBS*) the Solvency II Directive information as outlined in *COBS* 13 Annex 1R.

Delete the following definition.

~~*Consolidated Life Directive information* (in *COBS*) the Consolidated Life Directive information (COBS 13 Annex 1R)~~

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Annex 1 Application (see COBS 1.1.2R)

...

Part 3: Guidance

...		
5.	Consolidated Life Solvency II Directive: effect on territorial scope	
5.1	G	The Consolidated Life Solvency II Directive 's scope covers long-term insurers authorised under that Directive conducting long-term insurance business Solvency II undertakings . The rules in this sourcebook within the Directive's scope are the cancellation rules (COBS 15) and those rules requiring the provision of pre-contract information or information during the term of the contract concerning the insurer or the contract of insurance. The Directive specifies minimum information and cancellation requirements and permits EEA States to adopt additional information requirements that are necessary for a proper understanding by the policyholder of the essential elements of the commitment.
5.2	G	If the State of the commitment is an EEA State, the Directive provides that the applicable information rules and cancellation rules shall be determined laid down by that state. Accordingly, if the State of the commitment is the United Kingdom, the relevant rules in this sourcebook apply. Those rules do not apply if the State of the commitment is another EEA State. The territorial scope of other rules, in particular the financial promotion rules, is not affected since the Directive explicitly permits EEA States to apply rules, including advertising rules, in the 'general good'. (See articles 33, 35, 36 and 47 of the Consolidated Life Directive 156, 180, 185 and 186 of the Solvency II Directive)
6	Distance Marketing Directive: effect on territorial scope	
...		
6.5	G	In the FSA's view:
		...
	(2)	for business within the scope of both the Distance Marketing Directive and the Consolidated Life Solvency II Directive , the territorial application of the Distance Marketing Directive takes precedence; in other words, the rules requiring pre-contract

		information and cancellation rules (<i>COBS 15</i>), derived from the <i>Consolidated Life Solvency II Directive</i> apply on a ‘country of origin’ basis rather than being based on the <i>state State of the commitment</i> ; (See articles 4(1) and 16 of the <i>Distance Marketing Directive</i> , noting that the <i>Distance Marketing Directive</i> was adopted after the <i>Consolidated Life Directive</i>)
	...	
7	Electronic Commerce Directive: effect on territorial scope	
...		
7.3	G	The effect of the Directive on this sourcebook is subject to the ‘insurance derogation’, which is the only ‘derogation’ in the Directive that the <i>FSA</i> has adopted for this sourcebook. The derogation applies to an <i>insurer</i> that is authorised under and carrying on an <i>electronic commerce activity</i> within the scope of the <i>Consolidated Life Solvency II Directive</i> and permits <i>EEA States</i> to continue to apply their advertising rules in the ‘general good’. Where the derogation applies, the <i>financial promotion rules</i> continue to apply for incoming <i>electronic commerce activities</i> (unless the <i>firm’s</i> ‘country of origin’ applies rules of like effect) but do not apply for outgoing <i>electronic commerce activities</i> . (See article 3(3) and Annex, fourth indent of the <i>Electronic Commerce Directive</i> ; Annex to European Commission Discussion Paper MARKT/2541/03)
...		

13.1 The obligation to prepare product information

...

13.1.2 R A *firm* must prepare the *Consolidated Life Solvency II Directive* information for each *life policy* it effects ~~in good time before that information has to be provided.~~

(1) in a clear and accurate manner and in writing; and

(2) in an official language of the *State of the commitment*, or in another language if the *policyholder* so requests and the law of the *State of commitment* so permits or the *policyholder* is free to choose the law applicable;

in good time before that information has to be provided.

[~~Note: article 36(1) of, and Annex III to, the *Consolidated Life Directive* article 185(1) and (6) of the *Solvency II Directive*~~]

Exceptions

13.1.3 R A *firm* is not required to prepare:

...

(3) a *key features illustration*

...

(d) for a *packaged product* which, at the end of its fixed term, provides for the return of the initial capital invested and a specified level of growth linked by a pre-set formula to the performance of a specified asset or index or a combination of assets or indices; ~~or~~

(4) ~~the Consolidated Life Directive information, if the policy is a reinsurance contract or a pure protection contract.~~

...

13.2 Product information: production standards, form and contents

...

13.2.3 G The ~~Consolidated Life Solvency II Directive information~~ can be included in a *key features document*, a *key features illustration* or any other *document*.

...

13.3 Contents of a key features document

...

Additional requirements for packaged products

13.3.2 R Table

...		
	'Questions and Answers'	...
[Note: in respect of 'Risks', article 185(4) of the <i>Solvency II Directive</i>]		

...

13 Annex 1R The ~~Consolidated Life Solvency II Directive Information~~

This annex belongs to COBS 13.1.2R (The ~~Consolidated Life Directive Information Solvency II Directive information~~)

Information about the firm	
(1)	The <i>firm</i> 's name and its legal form;
(2)	The name of the <i>EEA State</i> in which the head office and, where appropriate, agency or branch concluding the contract is situated; and
(3)	The address of the head office and, where appropriate, agency or branch concluding the contract; <u>and</u>
(3A)	<u>If the <i>SFCR</i> is available, a concrete reference to the <i>SFCR</i> allowing the <i>policyholder</i> easy access to this information.</u>
Information about the commitment	
(4)	Definition of each benefit and each option;
(5)	Term of the contract;
(6)	Means of terminating the contract;
(7)	Means of payment of <i>premiums</i> and duration of payments;
(8)	Means of calculation and distribution of bonuses;
(9)	Indication of surrender and paid-up values and the extent to which they are guaranteed;
(10)	Information on the <i>premiums</i> for each benefit, both main benefits and supplementary benefits, where appropriate;
(11)	For unit-linked <i>policies</i> , <u>the</u> definition of the units to which the benefits are linked;
(12)	Indication of the nature of the underlying assets for unit-linked <i>policies</i> ;
(13)	Arrangements for application of the cooling-off period <u>cancellation period or right to withdraw</u> ;
(14)	General information on the tax arrangements applicable to the type of <i>policy</i> ;
(15)	The arrangements for handling complaints concerning contracts by <i>policyholders</i> , lives assured or beneficiaries <i>beneficiaries</i> under contracts including, where <u>where</u> appropriate, the existence of a complaints body (usually the Financial Ombudsman Service), without prejudice to the right to take legal proceedings; and
(18)	Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the <i>insurer</i> proposes to choose.

	[Note: article 36(1) of, and Annex III to, the <i>Consolidated Life Directive</i> article 185(2) and (3) of the <i>Solvency II Directive</i>]
--	--

...

13 Annex 2R Projections

...

R	
Exceptions	
1.7	A projection <i>projection</i> for an in-force product may be prepared and presented on any reasonable basis if:
	(1) for a <u>the product that</u> will mature in six <i>months</i> or less; or
	(2) it is prepared in order to determine the maximum level of contributions permitted to be made to a <i>personal pension scheme</i> and the assumptions used to calculate the <i>projection</i> and contributions are disclosed.
	may be prepared and presented on any reasonable basis but only if, in the case of (2), the assumptions used to calculate the <i>projection</i> and contributions are disclosed with the relevant <i>projection</i>.
1.7A	<u>If a <i>projection</i> is prepared in connection with an offer for or conclusion of a <i>personal pension scheme</i>, three different rates of return must be used.</u>
[Note: article 185(5) of the <i>Solvency II Directive</i>]	

...

R	
5.	How to present a projection
5.1	...
	(e) ...
[Note: article 185(5) of the <i>Solvency II Directive</i>]	

R	
Additional requirements: pension schemes and products linked to other products	
5.2	...

[**Note:** article 185(5) of the *Solvency II Directive*]

...

14.2 Providing product information to clients

...

14.2.1 R A *firm* that sells:

...

- (2) a *life policy* ~~that is not a reinsurance contract~~ to a *client*, must provide the ~~Consolidated Life~~ *Solvency II Directive* information to that *client*;

...

[**Note:** in respect of (2) article ~~36(1) of, and Annex III to, the Consolidated Life Directive~~ 185(1) of the *Solvency II Directive*]

...

...

14.2.5 R A *firm* is not required to provide:

...

- (3) the ~~Consolidated Life~~ *Solvency II Directive* information, if another *person* is required to provide that information by the *rules* of another *EEA State*;

...

[**Note:** in respect of (3), article ~~36(4) of, and Annex III to, the Consolidated Life Directive~~ 185(8) of the *Solvency II Directive*]

...

14.2.7 R A *firm* is not required to provide a *key features document* or a *key features illustration* for:

...

- (2) a *life policy* ~~that is not a reinsurance contract~~ if:

...

...

[**Note:** in respect of (2), articles 4(1) and 16 of the *Distance Marketing Directive* and article ~~36 of the *Consolidated Life Directive*~~ 185 of the *Solvency II Directive*]

...

15.2 The right to cancel

Cancellable contracts

15.2.1 R *A consumer* has a right to cancel any of the following contracts with a *firm*:

...

[**Note:** article ~~35 of the *Consolidated Life Directive*~~, 186 of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

...

15.2.3 R The cancellation period begins:

...

[**Note:** article ~~35 of the *Consolidated Life Directive*~~, 186 of the *Solvency II Directive* and article 6(1) of the *Distance Marketing Directive*]

...

16.6 Communications to clients – life insurance, long term care insurance and income withdrawals

...

16.6.2 R (1) ~~The *policyholder* must be informed if~~ If during the term of a *life policy* entered into on or after 1 July 1994, there is any proposed change in the following information; ~~referred to in paragraphs (1) to (12) of the *Consolidated Life Directive* information (*COBS 13 Annex 1R*) the *long term insurer* must inform the *policyholder* of the effect of the change before the change is made,~~

(a) the *policy* conditions;

(b) the name of the *insurer*, its legal form or the address of its head office and, where appropriate, of the agency or branch which concluded the contract; and

(c) the information in (8) to (13) of *COBS 13 Annex 1R* (The *Solvency II Directive* information) in the event of a change in the *policy* conditions or amendment of the law applicable to the contract.

- (2) A notification in (1) must be made:
- (a) in a clear and accurate manner and in writing; and
 - (b) in an official language of the *State of commitment* or in another language if the *policyholder* so requests and the law of the *State of commitment* so permits or the *policyholder* is free to choose the law applicable.

[Note: article 36(2) of the *Consolidated Life Directive* 185(5) and (6) of the *Solvency II Directive*]

- 16.6.3 R If a *life policy* entered into on or after 1 July 1994 provides for the payment of bonuses and the amounts of bonuses are unspecified, the *long-term insurer* must, in every calendar year except the first, either:
- (1) notify the *policyholder* in writing of the amount of any bonus which has become payable under the contract, and which has not previously been notified under this *rule*; or
 - (2) give the *policyholder* in writing sufficient information to enable him to determine the amount of any such bonus.

[Note: in respect of (1), article 185(5) of the *Solvency II Directive*]

- 16.6.3A R If a *firm* provides figures about potential future bonuses for a *with-profits policy* entered into on or after [1 January 2014], it must inform the *policyholder* annually in writing of any differences between the actual bonuses payable to date and the figures previously provided.

[Note: article 185(5) of the *Solvency II Directive*]

...

TP 2 Other transitional provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision dates in force	Handbook provisions coming into force
...					
2.5	COBS 13 [deleted]	R	<p>(1) A firm is not required to prepare a <i>key features document</i>, a <i>key features illustration</i> or the <i>Consolidated Life Directive information</i> for a product if:</p> <p>(a) the rules would have required the <i>firm</i> to prepare <i>key features</i> for the product if they were still in force; and</p> <p>(b) the <i>firm</i> prepares <i>key features</i> in accordance with the rules as if they were still in force.</p> <p>(2) A firm is not required to prepare a <i>standardised deterministic projection</i> or an <i>alternative projection</i> for a product in accordance with <i>COBS 13.5.1R</i> or <i>COBS 13.5.2R</i> if the <i>firm</i> prepares its <i>projections</i> for <i>life policies</i>, <i>key features schemes</i>, <i>simplified prospectus schemes</i> and <i>stakeholder pension schemes</i> in accordance with the rules as if they were still in force.</p> <p>(3) For the purposes of this rule, ‘the rules’ are the <i>rules</i> on product disclosure and the customer’s right to</p>	From 1 November 2007 until 31 October 2008	1 November 207

			cancel or withdraw (<i>COB 6</i>) that were in force on 31 October 2007.		
...					
2.6	<i>COBS 14.1</i> and <i>COBS 14.2</i> [deleted]	R	<p>A <i>firm</i> is not required to provide a <i>key features document</i>, a <i>key features illustration</i> or the <i>Consolidated Life Directive information</i> for a product if:</p> <p>(1) the rules would have required the <i>firm</i> to provide a <i>key features document</i> for that product if they were still in force;</p> <p>(2) the <i>firm</i> is satisfied, on reasonable grounds, that providing a <i>key features document</i> in accordance with the rules, as if they were still in force, will not cause:</p> <p>(a) a <i>client</i> to suffer any prejudice; or</p> <p>(b) the <i>firm</i> to breach its obligations under one or more of the <i>Principles</i>; and</p> <p>(3) the <i>firm</i> provides a <i>key features document</i> for the product in accordance with the rules as if they were still in force.</p> <p>For these purposes, ‘the rules’ means the rules on product disclosure and the customer’s right to cancel or withdraw (<i>COB 6</i>) that were in force on 31 October 2007.</p>	From 1 November 2007 until 31 October 2008	1 November 207
...					

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The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: www.fsa.gov.uk

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