

PS12/24

Financial Services Authority

Consumer redress scheme in respect of unsuitable advice to invest in Arch cru funds

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This Policy Statement reports on the main issues arising from Consultation Paper CP12/9 (*Consumer redress scheme in respect of unsuitable advice to invest in Arch cru funds*) and publishes final rules.

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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

ACD	Authorised Corporate Director
BNYM	BNY Mellon Trust and Depositary (UK) Limited
CBA	Cost benefit analysis
CFM	Capita Financial Managers Limited
COB	Conduct of Business rules in place until 31 October 2007
COBS	Conduct of Business Sourcebook
CP	Consultation paper
FOS	Financial Ombudsman Service
FSA	Financial Services Authority
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
HSBC	HSBC Bank plc
IFA	Independent Financial Adviser
IMA	Investment Management Association
MP	Member of Parliament
NAV	Net Asset Value
PII	Professional indemnity insurance
PS	Policy statement
RDR	Retail Distribution Review

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Overview

Introduction

- 1.1 In April 2012 we consulted on a redress scheme for consumers that have been given unsuitable advice to invest in Arch cru funds¹ (CP12/9). Under our proposals, firms that gave advice to invest in these funds would have to review that advice and provide redress to consumers where required. This Policy Statement (PS) sets out the feedback we received, our response, and how we intend to proceed.

Responses received

- 1.2 We received over 230 responses to CP12/9 from firms, trade bodies and individuals. The majority of respondents were opposed to our proposals. Consumers and MPs also wrote to us expressing concerns about the scheme.
- 1.3 However, we received no new evidence or arguments to suggest that the proposed scheme would not be an appropriate way of dealing with this issue or that we do not have the power to make rules to implement the scheme. In particular:
- we remain satisfied that the legal tests to make rules under the Financial Services and Markets Act (FSMA) s.404 are met;
 - we have not identified any significant changes in the environment to suggest that we should not proceed with a s.404 scheme (e.g. a large increase in consumer complaints); and
 - we have updated the Cost Benefit Analysis (CBA), which remains valid in light of the responses that we received.
- 1.4 But there is a concern that a redress scheme would add to the challenges faced by the Independent Financial Adviser (IFA) sector, which is preparing to implement the Retail Distribution Review (RDR). In particular, respondents were concerned that a scheme

1 The CF Arch cru Diversified Funds and the CF Arch cru Investment Funds.

would lead to higher Financial Services Compensation Scheme (FSCS) levies and Professional Indemnity Insurance (PII) costs and that a scheme as proposed would therefore be disproportionate.

- 1.5** In response to the feedback we received, we have amended some of the original proposals. We have decided to implement a modified s.404 scheme, which gives consumers the opportunity to ‘opt-in’ to have their sale reviewed, rather than requiring firms to review proactively all sales. This responds to criticism that consumers may not wish to seek redress from their advisers and should reduce the cost of the scheme for the wider sector as a result of FSCS levies. It will allow consumers to decide whether they want their IFA to review the way the Arch cru funds were sold to them and means that firms will avoid the costs of carrying out the scheme in cases where the consumer does not intend to claim redress. We have also amended the start date of the scheme from 1 January 2013 to 1 April 2013 to give firms more time to prepare for the scheme. Other amendments that we have made to the Scheme rules are set out in Chapter 3.
- 1.6** We expect that between 15% and 30% of consumers will opt in to the scheme. Based on this assumption we estimate that the redress scheme could deliver £20-40m² in redress. The exact amount of redress will depend on how many consumers opt in to the scheme, firm responses and prevailing market conditions. We estimate that the administrative costs to the Financial Services Authority (FSA) of implementing the scheme would be in the range of £0.6-0.9m³, and that the cost to firms will be in the range £0.6-2.7m. We believe that this scheme is proportionate, and more desirable than an alternative of supervisory action and a call on consumers to complain. The redress scheme will complement the separate voluntary settlement of £54m reached with Capita Financial Managers Limited (CFM), HSBC Bank plc (HSBC) and BNY Mellon Trust and Depositary (UK) Limited (BNYM).

Next steps

- 1.7** The consumer redress scheme will start on 1 April 2013, allowing firms time to prepare for implementation. Firms will have until 29 April 2013 to identify all consumers for whom the firm advised, arranged or managed investments in an Arch cru fund and identify all cases that fall within the scope of the scheme. Firms must write to all consumers within and outside the scope of the scheme by 29 April 2013. The letter will either explain to the consumer that the firm will review the advice it gave to them if they decide to opt in to the scheme, or it will explain that their case falls outside the scope of the scheme. If consumers do not receive a letter from the firm by 29 April 2013 they should call or write to the FSA to make us aware of this. Consumers that do not respond will receive up to two reminder letters following this first letter. They will have until 22 July 2013 to opt in to the scheme.

² The basis of this figure is set out in the CBA in Annex 2.

³ The figures are explained in greater detail in the CBA in Annex 2.

- 1.8** Firms must consider the cases of all relevant consumers who have opted in to the scheme and contact the consumers with the outcome of the review by 9 December 2013. If a redress determination is issued and the consumer accepts the redress offer, the scheme requires firms to pay redress within 28 days of receiving the consumer's response.

Structure of this Policy Statement

- 1.9** Chapter 2 of this paper explains what the s 404 consumer redress scheme will mean for both firms and consumers.
- 1.10** Chapter 3 of this paper summarises the responses to the Consultation Paper (CP).
- 1.11** Annexes to this PS contain a list of respondents to the CP, the updated CBA and the final handbook text.

Who should read this policy statement?

CONSUMERS

If you invested in relevant Arch cru funds then this PS may be of interest to you. We believe that many people who invested in these funds may have received unsuitable advice. The firm that advised you should write to you and ask if you would like it to review its advice to you. If you ask the firm to review the advice you received and the firm assesses that its advice was unsuitable, the firm will put you in the position that you would have been in had you received suitable advice. Chapter 2 of this PS explains in detail what the redress scheme means for firms and consumers.

FIRMS

All firms that advised, arranged or managed investments in an Arch cru fund should read this PS⁴. Chapter 2 explains what the scheme means for firms and consumers.

⁴ This includes firms that made arrangements with a view to transactions in the Arch cru funds.

Equality and diversity considerations

- 1.12** We are concerned that some users might be unable to access or complete the electronic suitability assessment template. If you have a disability that makes it difficult for you to complete the template or there is any other reason why you cannot complete the form, please contact our Customer Contact Centre on 0845 606 9966 (call rates may vary).

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Consumer redress scheme

- 2.1 This chapter explains our proposals for a consumer redress scheme and sets out what the scheme will mean for both firms and consumers. Frequently asked questions (FAQs) in relation to the scheme will also be available for both consumers and firms on our website: www.fsa.gov.uk.
- 2.2 The scheme will give consumers the choice about whether or not they wish their adviser to review the advice they received to invest in the Arch cru funds. For the consumers that opt in to the scheme, firms must identify those who were given unsuitable advice and provide redress to them where required. Redress will be calculated on the basis of putting consumers in the position they would have been in if the original advice had been suitable.

Scope – who does the scheme cover?

- 2.3 The scheme will apply to all firms that provided a personal recommendation to relevant consumers, including firms that were authorised by the FSA at the time, but have since had their permissions cancelled. This includes branches of EEA firms operating under a passport in the UK. The scheme will also apply to anyone who has assumed a liability of a firm for a failure to provide suitable advice in relation to Arch cru funds. Relevant consumers are those who were, at the time of the advice, a private customer for the purposes of the Conduct of Business rules (COB) or a retail client for the purposes of the Conduct of Business Sourcebook (COBS).
- 2.4 The scheme will not cover:
- ‘execution only’ sales;
 - investment as part of a discretionary management arrangement;
 - failures to provide advice to disinvest from Arch cru funds (where this might have been required as part of an ongoing arrangement); and

- consumers who have already referred a complaint to the FOS about advice to invest in an Arch cru fund, or accepted full and final settlement of a claim relating to such advice.

What does the scheme mean for me?

CONSUMERS

If the firm that advised you is no longer in business

If the firm that gave you advice no longer exists or is in default, you can contact the FSCS, who will consider whether you are due compensation. You can call the FSCS on freephone number: **0800 678 1100** or **020 7741 4100**.

<http://www.fscs.org.uk/contact-us/>

Redress scheme

If the firm that gave you advice still exists, our consumer redress scheme will start on 1 April 2013.

Initial contact

Firms will have four weeks from 1 April 2013 to write to all consumers that they advised, arranged or managed investments in relation to the Arch cru funds⁵ (including those consumers who invested on an execution only basis, or under discretionary management arrangements).

The letter that you receive from the firm will either explain that:

- a) the firm believes your case is covered by the scheme and that you need to contact the firm to confirm that you would like it to review the advice that you received; or
- b) the firm believes your case is not covered by the scheme, followed by an explanation why.

If you receive a letter explaining that the firm believes your case is not covered by the scheme and you disagree with what it has said, you can refer your case to the Financial Ombudsman Service (FOS). But you must refer your case to the FOS within six months of the date of the firm's letter. The FOS will determine whether or not the firm has applied the rules of the scheme correctly in deciding to exclude you.

⁵ This includes firms that made arrangements with a view to transactions in the Arch cru funds.

If you do not receive a letter from the firm by 29 April 2013, please contact us to make us aware of this on 0845 606 1234. We will contact the firm to follow this up. We might advise you to complain to the firm.

If you complain to the firm and do not receive a response within eight weeks from the date that the firm received your complaint, you will be able to refer your complaint to the FOS, who will then apply the scheme rules to your case.

Opting in to the scheme

If you would like the firm to review the advice that you received, you must let it know by 22 July 2013. The firm will write to you to confirm that it will review the advice that you received.

If you do not opt in to the scheme by 22 July 2013, you can still complain to the firm about the advice you received at a later date. However, time limits apply to making such a complaint and you risk being unable to claim compensation from your adviser if you delay.

Outcome of the review

If you tell the firm that you would like it to review the advice you received, the firm will write to you again (before 9 December 2013) to explain whether the original advice that you received was suitable or not suitable.

The firm may need to contact you to ask you for information to help it review the advice it provided to you or to help it calculate compensation. If it does contact you to request information, please provide this as soon as possible, so the firm can progress the review.

If the firm writes to you and informs you that the advice that you received was suitable, you can refer your case to the FOS if you disagree with the firm's findings.

If the firm writes to you and tells you that the advice you received was not suitable, the letter will tell you how much compensation you are entitled to. If you disagree with the firm's calculation (for example, if you think that the comparable suitable investment that the firm used was not appropriate) you can refer your case to the FOS.

If you would like to accept the firm's offer, you will need to respond to the firm within six months of the date of the letter and specify how you would like the compensation to be paid. The scheme requires firms to pay within 28 days of receiving your response. If the firm does not pay within 28 days, please contact us on 0845 606 1234 and we will follow this up with the firm.

Valuation of the Arch cru funds post-suspension

Since the suspension of the funds, approximately £103m has been distributed by Capita Financial Managers Limited (CFM) to consumers through six interim capital distributions on 28 February 2010, 30 July 2010, 23 December 2010, 26 July 2011, 14 December 2011, and 25 July 2012.

These interim capital distributions are made when assets within the Arch cru funds are sold and cash is returned to the funds. This is passed on to consumers through 'capital distributions'. The six interim capital distributions made so far have been paid whether or not consumers want to accept an offer under the CF Arch cru payment scheme.

Following the most recent distribution, the residual Net Asset Value (NAV) of the Arch cru funds is stated by CFM as being approximately £66.5m as at 30 September 2012.

CF Arch cru payment scheme

On 21 June 2011, we announced a £54m payment scheme for consumers who remained invested in the Arch cru funds at 31 May 2011. This was the result of detailed discussions between the FSA and CFM as Authorised Corporate Director (ACD) of the Arch cru funds, and BNYM and HSBC as depositaries. The payment scheme was established voluntarily by CFM, BNYM and HSBC.

The payment scheme was set up to provide money to consumers to reduce the difference between the current value of their investments in the Arch cru funds and the investments' value when the funds were suspended. Consumers applying to the payment scheme are not prevented from seeking compensation from parties other than CFM, BNYM, HSBC and their respective groups, although if they accept a payment, it is in full and final settlement of any claims against CFM, BNYM, HSBC and their respective groups. The deadline for applying to the payment scheme was extended on 29 October 2012 and consumers now have until 31 December 2013 to apply to the payment scheme.

Letters have been sent to consumers explaining the payment scheme and setting out details of how CFM has calculated each consumer's share of the £54m package.

If your adviser firm writes to you explaining that the sale was unsuitable, the firm will deduct the amount that you are eligible to receive from the CF Arch cru payment scheme from any compensation payment, regardless of whether or not you have received it.

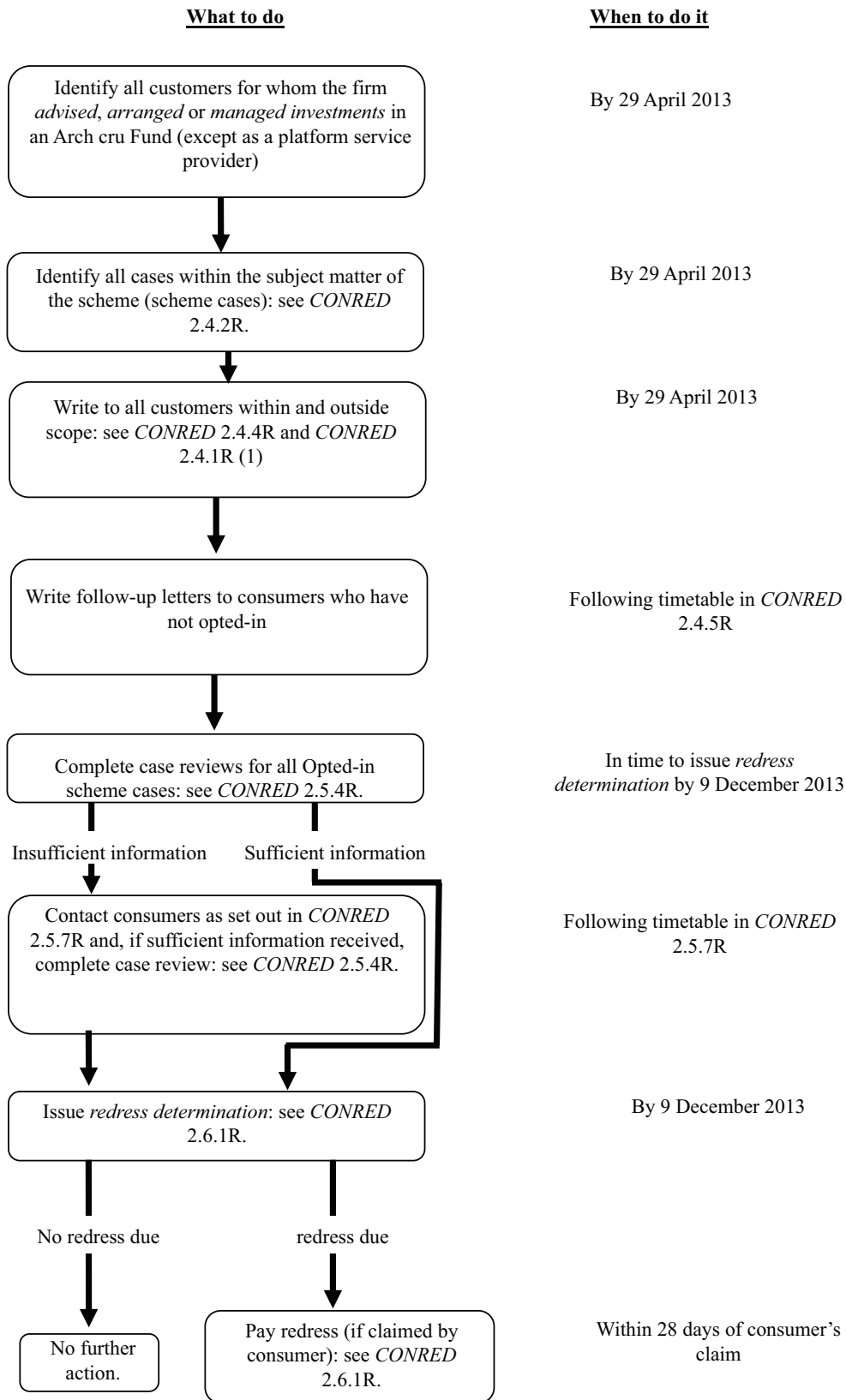
This is because we believe that consumers are responsible for making claims on the CF Arch cru payment scheme and that adviser firms should not face financial consequences in cases where consumers choose not to make a claim.

FIRMS

The scheme will start on 1 April 2013. We expect all firms to consider the cases of all relevant consumers who opt in to the scheme and issue a redress determination by 9 December 2013.

Firms must ensure that the steps required under our scheme rules are taken or supervised by the person appointed by the firm to oversee complaints handling⁶ where applicable, or by a person of appropriate experience and seniority (see CONRED 2.7). The following flow chart summarises the steps that firms are required to take under the scheme. Firms must follow the detailed rules and guidance set out in Appendix 1.

⁶ Under DISP 1.3.7R where that rule applies. See CONRED 2.7.



3

Summary of responses

3.1 This chapter sets out a summary of the feedback we received to our proposals in CP12/9.

The risks of investing in the Arch cru funds

3.2 In CP12/9 we explained that, based on the material that an IFA either had or should have had, a reasonably competent IFA should have concluded that the Arch cru funds were high-risk investments. The Arch cru funds should therefore only have been recommended to consumers who:

- were willing and able to take this level of risk (bearing in mind their financial situation and objectives); and
- had the knowledge and experience to invest in such funds.

3.3 A key failing that we saw in our file review was that firms had failed to ensure that the personal recommendation matched the risk the consumer was willing and able to take with this investment (either by itself or as part of a portfolio).

3.4 We asked:

Q1: Do you agree with our analysis of the risks of the Arch cru funds and the implications of this for advisers?

3.5 Several respondents raised concerns that our proposed consumer redress scheme would find investment advice unsuitable where an Arch cru fund was included as a small percentage of an investor's portfolio. In their view, we failed to take account of diversification into different asset classes and its role in reducing the volatility and overall risk of a portfolio. Respondents suggested that looking at an investment in isolation distorts the model created to accommodate a client's overall risk profile, particularly since some consumers who had Arch cru funds as part of their portfolio have seen substantial growth overall. Some respondents asked us what we meant in the CP12/9 when we said:

- 3.6 'An investment in these funds would therefore only have been suitable when recommended as a small, high risk portion of an investment portfolio. Any recommendation to invest a significant part of a consumer's available capital would in our view be unsuitable.'
- 3.7 A few respondents asked us what we meant by a 'small' portion of an investment portfolio.

Our response

Investment portfolio

In many cases, firms who advised their clients to invest in the Arch cru funds were also responsible for giving advice about that client's overall portfolio of investments. The scheme we have developed reflects the fact that sales of investment products will often be made in the context of advice on an overall investment portfolio. As such, firms completing the assessment template will be required to consider the suitability of the Arch cru investment in the context of the overall investment portfolio.⁷

'Small, high risk portion of an investment portfolio'

Some respondents asked us to clarify what we meant by a small portion of an investment portfolio. We are not able to state a percentage of a portfolio that would have been suitable for all consumers because the percentage will vary depending on the consumers' individual circumstances.

There are some consumers for whom any investment in an Arch cru fund would have been unsuitable (for example, those who were unwilling to take any risk with their capital), whereas for others some exposure may have been appropriate, so long as the risk of the overall portfolio matched the attitude to risk of the consumer and the loss of that investment would not have resulted in a materially detrimental effect on the consumer's standard of living.

Suitability

Under our rules, a firm must take reasonable steps to ensure that a personal recommendation is suitable for its client. When making the personal recommendation, the firm must obtain information about the client's investment objectives, financial situation, knowledge and experience and preferences and capacity for risk taking. The fact that the investment is recommended as a part of a portfolio does not reduce the risk inherent in the investment itself.

For an Arch cru investment to be suitable, a consumer must have been willing and able to take a high risk with the part of their capital which was invested in the Arch cru funds. Arguments about diversification or non-correlation have not led

⁷ See CF Arch cru Funds Template Instructions 8.5(2).

us to change our view that the inherent risks of the assets invested in by the Arch cru funds should have been made clear to the consumers concerned. Whatever claims are made about correlation, the fact is that private market assets represent a higher risk to invested capital than listed market ones. An investment in the Arch cru funds must therefore have represented a more risky part of an investor's portfolio than an investment in funds consisting of more mainstream assets. It could not have represented a low risk part of that portfolio.

The fact that the consumer's other investments may have gained in value does not mean that the advice to invest in the Arch cru funds was suitable. Our rules⁸ provide that a firm must take reasonable steps to ensure that a personal recommendation is suitable for its client. Suitability is assessed at the point the firm makes the recommendation, not at a future date. If an investment is unsuitable on day one, it is irrelevant that other investments in the portfolio have performed well.

Where a firm can show that despite the firm's failure to properly determine the risk to the investor's capital from an investment in the Arch cru funds, that investor would have made the investment (knowing that it was a high-risk investment), then the firm cannot be said to have caused the investor's losses. Based on our file review, we do not expect this to be true in many cases, and firms should note that consumers will be able to refer all redress determinations to the FOS for assessment.

- 3.8** The majority of firm respondents disagreed with our analysis that the funds were high risk and argued that the information and documentation that a reasonably competent IFA could be expected to gather (and which IFAs could reasonably rely on) all indicated that the funds were not high risk.
- 3.9** For example, respondents argued that the Investment Management Association (IMA) classification of the funds indicated that they were not a high-risk investment and the asset pricing presented by CFM indicated that the funds were of a low volatility. Some respondents told us that firms could not have predicted that the funds would be mismanaged at the time of sale and that the initial investment strategy changed over time.

Our response

We do not require IFAs to spot potential mismanagement, but we do require them to do appropriate due diligence on the investments they recommend to their clients. The management and advice aspects of this case are separate. We identified suitable sales in our file review where the consumers were willing and able to take the high risk associated with the funds, in the context of their overall portfolio.

⁸ Conduct of Business Sourcebook (COBS) 9.2.1 R. Conduct of Business sourcebook (COB) 5.3.5R.

We remain of the view that a reasonably competent IFA should have realised that:

- the marketing material provided to firms was limited;
- claims in the marketing material about the overall risk that consumers were taking (which was generally portrayed as being 'low' or 'medium') were not consistent with the investment strategy and the funds' underlying assets; and
- the funds were exposed to asset classes including unlisted debt and equity.

A reasonably competent IFA, based on the material the IFA either had or should have had, should have concluded that these funds were high-risk investments and therefore only recommended them to consumers who were willing and able to take this level of risk. We note that there is independent support for our view in the form of the conclusions of a recent case at the Upper Tribunal⁹ and a decision published by the Financial Ombudsman Service (FOS).¹⁰

Advisers cannot rely on an IMA sector classification as an indicator of the risk of a particular fund. Advisers should, as part of their due diligence, look at the kind of assets the fund manager intends to invest in, and the investment strategy.

Volatility is not a good measure of risk when applied to assets which are not traded on a daily basis, and is in any case a backward-looking measure. An adviser should not base recommendations to invest solely on the volatility of a particular investment.

We are not applying hindsight or expecting IFAs to spot potential mismanagement – we expect IFAs to have made an assessment of the risk of the type of assets that the fund managers stated the funds would be invested in, not what they actually invested in if this was different. In our view, it should have been apparent at any point to a reasonably competent adviser that the Arch cru funds intended to invest in non-mainstream higher-risk assets. We do not believe that the investment strategy of any of the funds changed materially in this respect during the period concerned.

3.10 A number of firm and consumer respondents questioned our function regarding Collective Investment Schemes.

⁹ www.tribunals.gov.uk/financeandtax/Documents/decisions/First_Financial_Advisors_Ltd_v_FSA.pdf

¹⁰ www.financial-ombudsman.org.uk/publications/technical_notes/archcru-final-decision-feb12.pdf

Our response

Our function regarding Collective Investment Schemes is to authorise funds if they meet the requirements for authorisation set out in the Open Ended Investment Companies Regulations 2001 (SI 2001/1228). What this means is that we assess a fund's proposition before its launch and decide at that point as to whether the proposed fund will comply with the rules applicable at that time.

We also review a fund's prospectus as part of the authorisation process (or whenever there is a change that requires notification to the FSA) to ensure that it includes the information required under the Regulations. We do supervise fund managers and ACDs, but given the resources available it cannot be assumed that there will never be a failure of a fund as a result. In other words, IFAs cannot delegate the requirement on them to carry out due diligence to the FSA.

We do not provide risk ratings for funds, nor do we check the risk ratings which fund managers apply to their funds. Any such risk ratings are matters of opinion not fact, so IFAs cannot rely on them in advising their clients. IFAs must form their own opinion of the risk of any investment, and advise clients based on this opinion. If an IFA is unable to form an opinion based on the information available, then the correct response is not to advise a client to invest in that product.

Evidence of consumer detriment – review of sales files

- 3.11** Before we issued CP12/9, we appointed external file reviewers to assess the extent of unsuitable advice. We also asked an external statistician to advise on a sample design for the file review that would deliver results that would establish with reasonable certainty:
- the percentage of transactions that involved unsuitable advice; and
 - whether unsuitable advice was widespread across firms.
- 3.12** When we issued CP12/09 we had identified 795 firms that we believed had sold Arch cru funds. The sampling process applied to these firms resulted in a sample of 24 firms and 179 files provided by those firms.
- 3.13** The statistician's report, which was included as an Annex to CP12/9 described the sample design process in detail. The headline results of the file review were that:
- only 22 (12%) sales were found to be suitable;
 - 17 sales (10%) were rated as unclear; and
 - in 140 sales (78%), the advice was found to be unsuitable.

- 3.14 We believe that the file review exercise clearly demonstrated a high level of unsuitable advice and inadequate disclosure by the firms reviewed, as well as a lack of apparent due diligence conducted into the Arch cru funds. In CP12/9 we asked:

Q2: Do you have any comments on the file review?

- 3.15 Respondents who disagreed with our analysis that the funds were high risk (see our response to Q1) also disagreed with the results of the file review and argued that we have not provided sufficient evidence to support the conclusion that the funds were widely mis-sold. (In the file review 93% of sales rated as unsuitable were so rated because of a mismatch between the risk that the consumer was willing and able to take and the risk in their overall portfolio and the results were based on the Arch cru funds being at least medium-high risk investments.)
- 3.16 A number of respondents expressed concern about the size of the sample of firms that the FSA had used for the file review and queried whether the sample was based on a balanced cross-section of firms taking into account size, number of consumers and the overall level of investment. Some respondents queried our sampling approach and thought that the sample size was too small to conclude that there had been widespread mis-selling.

Our response

We obtained independent advice on our sampling approach and the responses we received have not led us to believe that the sampling approach was flawed. The purpose of the statistician's report was primarily to establish the scale of mis-selling, it was not intended to be used to establish the number of firms or clients affected in total. Our estimate of the total population of consumers (and firms) comes from our wider regulatory and supervisory activity with firms, and not from the calculation deriving from the sample of 24 firms whose files were reviewed.

Our initial estimate of the population of firms and consumers was based on data we already held. We have updated this in light of further information from firms. At the time of the statistician's report, we had reason to believe a total of 795 firms had sold Arch cru products on an advised basis. Since then it has emerged that some of these firms sold Arch cru on an execution-only basis or not at all – and we have also identified that other firms who were not on the original list also sold Arch cru products. A number of firms have also cancelled their authorisations since the consultation paper was issued. We have updated our CBA figures in the light of further understanding about the population of firms (see Annex 2) and our revised assumptions are that 550-600 firms recommended Arch cru funds to consumers.

Of the 24 firms in our sample, 20 substantially mis-sold Arch cru products and of the 179 files reviewed, 140 were mis-sales. As the statistician's report makes clear, the results of the sample are representative of firms which were on our original list of sellers. We have assumed that the selling behaviour of firms not on our original list was similar to the behaviour of firms on the list and that the results can therefore be used to draw inferences about the wider populations of firms and transactions. We have seen no evidence to suggest that this assumption is flawed.

Losses suffered by consumers who received unsuitable advice

- 3.17** To assess the losses suffered by consumers who were unsuitably advised to invest in the Arch cru funds, we considered what investment they would have made had they received suitable advice. We do not have consumer-level data on attitude to risk for the entire population of consumers, but in CP12/9 we grouped consumers who received unsuitable advice into three broad categories based on the type of investment they would have made if they had received suitable advice:
- consumers who should not have been advised to take any capital risk with their investment;
 - consumers who could have been suitably advised to take a small amount of risk with their capital; and
 - consumers who, if suitably advised, could have taken some risk with their capital.
- 3.18** We used the information that we had about capital inflows and outflows into the funds at an aggregate level and individual sales data to model the difference between the performance over the relevant period of the Arch cru funds and the comparator investments. In estimating the losses that unsuitably advised consumers may have suffered in aggregate and that may be addressed by a consumer redress scheme, we also took into account the current NAV of the Arch cru funds, the distributions paid to consumers from the funds to date, claims at the FSCS, and the amounts available to consumers under the CF Arch cru payment scheme.
- 3.19** We have updated these figures since we issued the Consultation Paper and the aggregate losses to consumers are now estimated as £140.5m.
- 3.20** Based on the analysis in CP12/9 we believe that the losses suffered by consumers because of unsuitable advice are significant. In CP12/9 we asked:

Q3: *Do you have any comments on our assessment of the losses experienced by consumers as a result of unsuitable advice to invest in Arch cru?*

- 3.21** A number of firm respondents disagreed with our assessment of the losses experienced and explained that consumers might have suffered loss on the Arch cru investment, but achieved a positive return on the overall portfolio. Some respondents therefore argued that they should be permitted to offset gains made by consumers in relation to other investments in their portfolio against the losses suffered due to the Arch cru investment. Firms also argued that it would be impossible to compare the funds with other assets in cases where the Arch cru funds were recommended as a diversifier to more conventional assets as part of an overall portfolio approach.

Our response

Our rules require firms to identify suitable investments for their clients, and each investment in a portfolio must be suitable given the level of risk the consumer is willing and able to take, taking into account a consumer's financial objectives, situation and knowledge and experience of investments.

Arguments about diversification or non-correlation have not led us to change our view that the inherent risks of the assets invested in by the Arch cru funds should have been made clear to the consumers concerned. The fact that the consumer's other investments may have gained in value does not mean that the advice was suitable.

We believe that in most cases, these investments were included in a portfolio as a low or medium-risk investment, and not because the assets were non-correlated with more mainstream investments. An appropriate comparator for the purposes of estimating losses in most cases is therefore a low or medium-risk investment.

- 3.22** A few respondents noted that we have assessed the categories of consumers' risk ratings with reference to indices designed and compiled by the IMA, but we have said that IFAs should not have relied on IMA classifications.

Our response

When we estimated consumer losses in aggregate, we blended a number of industry standard comparators together to create a hybrid that would approximate how an alternative fund that was suitable for the consumer would have performed during the relevant timeframe.

In calculating redress for an individual consumer, if a firm is able to identify an alternative investment that they could have recommended that would be more appropriate for that consumer than the comparators that we have identified, the firm can use this investment as the comparator for the purposes of the redress

calculation. The firm will be required to explain when they complete the template their reasons for selecting an alternative comparator.

Options for obtaining consumer redress

3.23 In CP12/9 we considered the advantages and disadvantages of a number of options to deliver consumer redress:

- Option 1: Supervisory action on a firm by firm basis.
- Option 2: Issue guidance on complaints handling to firms.
- Option 3: Reach an agreement with firms.
- Option 4: Issue a call to action to consumers.
- Option 5: A s. 404 consumer redress scheme as applied to a number of firms.

3.24 Further analysis of these options and the relative costs and benefits of each of them were discussed in more detail in our initial cost benefit analysis. We concluded that, while a s.404 redress scheme was the most costly option, it was likely to deliver more redress than the alternative options, because it does not depend on consumer action. In CP12/9 we asked:

Q4: Do you agree with our assessment of the options available for delivering consumer redress?

3.25 A number of consumer respondents supported our assessment of the options and agreed that a s.404 scheme is the best option to secure redress for consumers who were given unsuitable advice to invest in Arch cru funds. However, the majority of firms and industry bodies did not agree with our assessment of the options and thought that there was insufficient analysis of the other options in the CP12/9.

3.26 Some firm respondents thought that option 2, issuing guidance on complaints handling to firms, was preferable to a s.404 scheme because:

- firms should already be dealing with Arch cru cases as part of their routine complaints handling procedures;
- firms should be in the process of making an assessment based on root cause analysis requirements as to how they will deal with Arch cru cases; and
- affected consumers have been contacted by the CF Arch cru payment scheme on at least five occasions – it is unlikely that they are not aware of their rights in terms of the payment scheme and ability to complain about the actions of other parties.

- 3.27** A number of firm respondents thought that a s.404 scheme would impose unnecessary costs on the industry because consumers can complain to firms and then to the FOS if they feel that they were given poor advice. However, other respondents agreed that it was unlikely that consumers would complain and suggested that this was because consumers did not consider IFAs to be responsible for their losses. A number of responses from consumers expressed this view.
- 3.28** A few respondents suggested that the data indicated that the bulk of transactions were concentrated in a small number of firms, therefore supervisory action might be more appropriate than a s.404 scheme.

Our response

We have considered all of the options again in light of the responses received and we have also updated our CBA. We have also considered further options, including supervisory action combined with issuing a call to action to consumers and a s.404 scheme that gives consumers the opportunity to opt in to the scheme at the outset.

Complaints handling guidance

We have considered the suggestions in the responses that issuing complaints handling guidance would be preferable to a s.404 scheme. However, this option would not deliver a significant level of redress because it relies on consumers bringing complaints to firms and (from previous experience) the response rate when consumers are called on to complain is usually low.

Since the CP was issued, the number of complaints that the FOS has received has not increased significantly. Approximately 1,800 consumers have made claims to the FSCS in relation to IFA firms that are already in default. It may be that consumers are reluctant to complain against a firm that is still operating, but are less reluctant to pursue compensation once the firm is in default.

Supervisory action

We have also reconsidered targeted supervisory action in response to comments from respondents. We would not be able to apply this option to all of the firms, given the large number of firms and our limited resources. Our review of the data does not indicate that the bulk of transactions were concentrated in a small number of firms, which limits the effectiveness of this option. Supervisory action would therefore mean that a large number of unsuitable sales would not be reviewed and so this option would not achieve a fair outcome for all consumers.

The section 404 power and the tests to be met

- 3.29 In CP12/9 we explained that where the conditions in s.404 of FSMA are met, we have the power to make a consumer redress scheme requiring firms to review their sales and, where relevant, to pay redress to consumers.
- 3.30 Those conditions are, in summary, that:
- it appears to us that there may have been a widespread or regular failure by firms to comply with requirements applicable to carrying on an activity (here, providing a personal recommendation in relation to investment in Arch cru funds);
 - it appears to us that, as a result, consumers have suffered (or may suffer) a loss which a court would remedy; and
 - we consider that such a scheme is desirable for the purpose of securing redress, having regard to other ways in which consumers may obtain redress.
- 3.31 We concluded that the file review provides strong evidence that there has been a widespread failure by firms to comply with requirements to provide suitable advice in relation to investment in Arch cru funds. This is further supported by information we have received from the FOS and from firms.
- 3.32 We obtained legal advice¹¹ that supported our view that where a consumer relied on unsuitable advice in making an investment in any of the Arch cru funds, then the consumer should, in principle, be entitled to recover from the adviser the full amount of the loss arising from that advice, regardless of the actions of other parties.
- 3.33 Finally, we concluded that the proposed scheme was both desirable and consistent with our general duties and would deliver a greater total amount of redress to a greater number of consumers than the other available options. In CP12/9 we asked:

Q5: Do you agree with our assessment that the legal tests for making a consumer redress scheme have been met?

- 3.34 The majority of respondents disagreed with our assessment that the legal tests for making a consumer redress scheme have been met.

Our response

Before we issued the CP, we took advice from a QC (which is published on our website) which confirms that the FSA has applied the correct legal standards in proposing the scheme, and that the draft scheme complies with the requirements of s.404 in FSMA.

11 The legal advice that we received is available on our website: www.fsa.gov.uk/static/pubs/consumer-info/arch-cru-section-404.pdf

Widespread failure

- 3.35** A number of respondents took the view that s. 404 powers were granted for use in rare cases of wide-scale systematic mis-selling where consumer detriment is significantly widespread or regular, such as Payment Protection Insurance (PPI). Respondents told us that discussions in Parliament at the time that FSMA amendments were debated referred to previous mis-selling cases such as personal pensions, mortgage endowments, bank charges and PPI which affected hundreds of thousands or millions of consumers.
- 3.36** A few respondents interpreted the widespread test as relating to the population of firms undertaking a regulated activity (e.g. advising on investments). They disputed whether the number of firms found to be mis-selling the Arch cru funds was sufficiently large compared to the entire population of adviser firms to warrant the description 'widespread'. Some respondents also argued that using s.404 powers for Arch cru consumers could set an inappropriate regulatory precedent going forward.

Our response

The 'widespread test' in FSMA requires the FSA to establish, based on the evidence before it:

- a) the activity in question;
- b) how many firms are in the population undertaking the activity;
- c) how many firms in the population undertaking the particular regulated activity have failed to comply with the requirements; and
- d) taking into account the above, determine whether it appears that the failure is 'widespread'.

Section 404 relates to the failure of authorised persons to comply with requirements applicable to carrying on any activity. The relevant population of firms is the population of firms who *advised on Arch cru investments* rather than the entire population of firms undertaking the regulated activity of advising on investments.

Our file review provides strong evidence that there has been widespread mis-selling among the firms that sold the Arch cru funds. We are satisfied that the legal tests for the s.404 have been met and do not agree with suggestions in the responses that using s.404 powers for the Arch cru funds would set an inappropriate regulatory precedent going forward.

Consumers have suffered a loss that the court would remedy

- 3.37 Many firm and consumer respondents believed it is not clear that all of the losses experienced by consumers resulted from advice given by IFAs. Respondents suggested that losses to the funds were caused by other parties such as the fund manager and firms who were involved in the promotion, oversight and management of the funds. We received a number of letters from MPs asking us to provide further information about the basis of the CF Arch cru payment scheme and respondents also asked us to publish further details.
- 3.38 The majority of respondents thought that it was disproportionate to place the bulk of the redress burden onto the IFA community when other parties should be held (more) responsible.

Our response

The CF Arch cru matter is a complex case involving many parties, some of whom were responsible for the management of the Arch cru funds, and some for the selling of the funds. Some of these parties are regulated by us and some are not, and some are in the UK and some are not.

Where an investor relied on unsuitable advice from an IFA in making an investment in any of the Arch cru funds, the investor is entitled to recover from the firm the full amount of loss arising from that advice, regardless of the actions of other parties. We have chosen to allow firms that provided unsuitable advice to deduct amounts due to consumers under the CF Arch cru payment scheme but there is no legal requirement for us to do this.

Desirability – such a scheme is desirable for the purpose of securing redress, having regard to other ways in which consumers may obtain redress

- 3.39 A number of respondents disagreed with our view that a s.404 scheme was desirable and argued that consumers already have a well-publicised route to compensation (they can complain to the firms and the FOS if they are unhappy with the advice that they received).

Our response

It is important to bear in mind that the desirability test is wider than the CBA and also captures the following:

- A comparison of the advantages and disadvantages (not just costs, but broader issues) of a consumer redress scheme against other available options for securing consumer redress. A key factor is the total number of firms across the population of firms that recommended the Arch cru funds that provided unsuitable advice,

and the distribution of sales of the Arch cru funds across that population (i.e. whether sales are concentrated in a top tier of firms). The evidence that we have indicates that the distribution of sales is not heavily skewed towards a small number of currently authorised firms.

- Our general duties in section 2 of FSMA (in particular, the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits which are expected to result from the imposition of that burden or restriction). We have had regard to the burdens on firms under the proposed scheme and we consider that these are proportionate to the benefits arising in terms of increased market confidence and consumer protection, which would not be available under a complaints-led scheme.
 - Our statutory objectives (particularly our consumer protection and market confidence objectives). The CP that preceded FSMA 2010 threw some light on the legislative rationale for s.404: 'there should be routes to collective redress that can deal with claims more efficiently, reduce the time that claimants may have to wait, and reduce the volume of individual cases dealt with by the courts or the Financial Ombudsman Service (FOS)'. By acting to ensure appropriate redress for consumers, we will contribute directly to consumer participation and confidence in financial markets.
-

The principles and scope of the proposed consumer redress scheme

3.40 In CP12/9 we set out the principles and scope of the consumer redress scheme. In summary:

- The scope of the scheme extends to all cases where the firm made a personal recommendation to a consumer in relation to Arch cru funds, including firms that were authorised by the FSA at the time but have since had their permissions cancelled. This includes branches of EEA firms operating under a passport in the UK.
- The scheme will apply to anyone who has assumed a liability in respect of a failure to provide suitable advice in relation to the Arch cru funds.
- Execution-only sales, investment as part of a discretionary management arrangement and failures to provide advice to disinvest from Arch cru funds (where this might have been required as part of an ongoing arrangement) are not within the scope of the scheme.
- Consumers who have already complained to the FOS about advice to invest in an Arch cru fund, or who have accepted full and final settlement of a claim relating to such advice are not within the scope of the scheme.
- The FOS and the FSCS will be bound by the scheme. Financial limits that currently apply to both organisations will also apply when they apply the scheme. Consumers

who do not opt-in to the scheme before 22 July 2013 will still retain their right to complain to the firm and then to the Financial Ombudsman Service after 22 July 2013, but the usual time-limits will apply to such a complaint.

3.41 We asked:

Q6 Do you agree with our proposed principles and scope, including our interpretation and application of the relevant laws?

3.42 A number of consumers and firms asked us whether consumers advised to invest through a trust arrangement into a Canada Life Bond invested in the Insinger de Beaufort cautious portfolio were included in the scheme. A few firms asked us whether platform providers and other firms where the sales were execution only would have to write to consumers to explain that they did not fall within the scope of the scheme.

Our response

To implement a consumer redress scheme, it must appear to us that there is evidence of a widespread or regular failure. Our proposed scheme deals with the suitability of advice to invest in the Arch cru funds. We have not gathered evidence in relation to failures to provide ongoing advice about the suitability of remaining in the Arch cru funds when the fund manager changed from Insinger de Beaufort. It would be very difficult to obtain such evidence from a significant number of firms in practice, compared to evidence of unsuitable advice, which can easily be obtained from file reviews of Arch cru sales.

Consumers who were advised to invest in the funds when Insinger de Beaufort was the manager are excluded from the scheme, but may be able to complain to the IFA about the initial advice that they received or advice that they may have received to stay invested when the fund's manager and strategy changed, or a failure to advise to disinvest where the adviser was under an obligation to do so.

CONRED 2.1.3 in Appendix 1 clarifies how the rules apply to platform service providers. In summary, where a firm was only acting as a platform provider in relation to a consumer's investment, then it is not required to carry out any part of the redress scheme in relation to that consumer.

Implementation of the scheme

3.43 In the CP, we described how the proposed scheme should be implemented, the relevant timescales, communications to consumers, how the assessment template should be

completed and how redress should be calculated, reporting requirements and record-keeping requirements.

3.44 We asked:

Q7 Do you have any comments on the implementation of the proposed scheme?

Q8 In particular do you have any views on our proposed approach to calculating redress in relation to taking into account of the value of the residual assets of the funds, and payments available to consumers under the CF Arch cru payment scheme?

3.45 Some industry respondents raised strong concerns that the scheme might cause firms to breach their insurance policies. However, in the CP we stated that if a firm is prevented by an application of a condition of its professional indemnity insurance policy from issuing a redress determination to a consumer, the firm may refer the case to the FSA and we will either review the case ourselves or appoint someone to carry out the review on the firm's behalf. The cost of carrying out this review will be charged to the firm.

3.46 A number of firms told us that the implementation of the scheme would impose unreasonable timescales at a time when significant burdens are being introduced on firms with the introduction of the Retail Distribution Review and proposals to increase FSCS levies. Some firms asked us whether it might be possible to pay redress to consumers over an extended period of time. A number of consumers were concerned about the completion of the assessment by firms considering the high level of unsuitable advice identified. Some consumers thought that firms might try to obstruct the process and delay the payment of redress.

3.47 Some firms expressed concerns that under the rules of the scheme, consumers could receive a windfall gain if future litigation is successful.

Our response

We have considered the representations from firms regarding the timing of the scheme and, to allow firms longer to prepare for the scheme, have decided to change the start date of the scheme from 1 January 2013 to 1 April 2013.

We have considered suggestions that firms should be permitted to pay redress to consumers over an extended period of time but have taken the view that consumers should not be made to wait to receive all of the monies that they are entitled to. If firms are given the flexibility to make a series of payments in the future this could be difficult to monitor and could lead to poor outcomes

for consumers. For example it could be burdensome for consumers if payments are missed. Requiring the redress payment to be made within 28 days provides certainty to consumers.

We appreciate that some consumers are concerned that firms might not complete the assessment correctly. If consumers are not satisfied with the review that the firm has carried out, they can refer their case to the FOS for an independent review (but must do so within six months of receiving the redress determination letter from the firm).

A number of consumers still retain their shares in the Arch cru funds so could theoretically benefit from an increase in the value of the funds or suffer greater loss through a diminution in the value of their shareholding. The risk that consumers would receive a windfall gain was taken into account when the Consultation Paper was issued but it is impossible to predict with certainty the outcome of future litigation. It is not common accounting practice to include the value of potential litigation 'wins' in valuations of funds' assets.

We continue to believe that, because the majority of investments are in tax wrappers of various kinds, the operational difficulties and risks to consumers outweigh the benefits of the scheme requiring a transfer in ownership.

CF Arch cru payment scheme

We believe that the payment scheme provides a quick, certain and cost-effective way of consumers obtaining monies from the contributing parties. The alternative routes for consumers, including court action, could be expensive, lengthy and stressful and inevitably result in disputes about who may have been liable for what and the extent to which any party may have been liable. At the end of this process there would be no certainty of outcome for consumers and no certainty that there would be any funds available to pay any successful investor claims.

We have also been mindful of the complexity of the CF Arch cru matter, the different roles of the parties involved, the financial position of the firms contributing to the payment scheme and the ability of consumers to access monies from the payment scheme in the short term. The payment scheme alleviates these issues.

The two schemes are intended to provide monies to consumers in relation to the roles of different parties, one role relating to the management of the funds and the other relating to the sale of the funds. If there is no evidence to suggest that the IFA mis-sold the funds, the IFA will not be liable to pay the consumer redress under the s.404 redress scheme.

Cost benefit analysis

3.48 In Annex 1 of the CP we set out our analysis of the costs and benefits of the proposed consumer redress scheme and asked:

Q9 Do you have any comments, or evidence or analysis to add to our cost benefit analysis?

3.49 Some respondents challenged our CBA but there was no new evidence in the responses to suggest that we should re-valuate our assumptions or change our methodology.

Our response

We have updated our CBA figures in light of further understanding about the population of firms, including those either in default or at risk of default (original assumptions in brackets).

We estimate £141m of redress (£136m) is in scope for the s.404 scheme, with the scheme as originally proposed producing an estimated £112m (£110m) assuming that 80% of firms comply with the scheme. We believe that our revised scheme would produce total redress of around £20-40m.

Our revised assumptions are that there are now 550-600 selling firms in total and that up to 100 of these may fail as a result of the opt-in scheme, with FSCS paying £3m-7m of the total redress. However, we know that there are still firms that we have yet to identify and we now believe there to be approximately 110 firms who sold Arch cru funds that have already cancelled their permissions.

Administrative costs to both firms and the FSA of the originally proposed scheme have not changed since we issued the consultation paper. For our revised proposal, please see Annex 2.

In our original CBA we did not provide a combined estimate of the total redress that would be paid by the FSCS (through existing claims and the scheme).

We now estimate that £90m of claims have been lodged with FSCS to date. (However, it is important to note that the total redress will not equate to that figure since these claims will in most cases be for the original investment made without taking account of the CF Arch cru payment scheme, the interim capital distributions or the residual value of the fund assets). The FSCS has only just begun processing these claims and we estimate that the resulting redress could total around £30m for these existing claims.

In total, therefore, it is likely that a significant cost would fall on the FSCS whatever option we pursued, including doing nothing.

Impact on PII

- 3.50** A number of industry respondents argued that implementing the scheme would increase PII premiums for the whole IFA sector. Respondents argued that an increase in PII premiums combined with RDR, and increasing FSCS levies would have a negative effect on the market and would lead to reduced supply of advice.

Our response

We do not believe that changes in the pricing of PII for IFAs are solely due to the consultation on the s.404 scheme or other actions by the FSA. There is cyclicity in all insurance markets, and the economic circumstances (which reduce insurers' return on investments) and the rising costs of reinsurance will also have had a significant impact.

Ultimately, mis-selling will contribute to an increase in the costs of PII because insurers will recognise this in pricing risk – we do not think that it is appropriate to refrain from tackling that mis-selling simply because it will increase the costs of firms' insurance.

We have written to a number of PI insurers following concerns raised by firms in responses to the consultation paper reminding them of their obligations to have due regard to the interests of their customers.

We also reviewed the PI policies of the 24 firms that we sampled the sales of, and of these five policies had specific exclusions for Arch cru. Two firms had significantly high excesses specifically for Arch cru claims, so the evidence from the file review suggests that many firms will not be able to claim against their PII policies. If this is representative of the full population of firms, then the claims paid out by insurers will not be significant and so may not have a short-term impact on pricing.

Insurers may choose to re-price risk more generally if they believe that the FSA/FCA will make more interventions like this in the future. We believe that it would be perverse for the FSA/FCA to refrain from protecting consumers because this may lead to increased insurance premiums for firms.

Impact on the FSCS

- 3.51** Some respondents expressed strong concerns about the impact on levy payers if a number of firms that sold Arch cru default because of our scheme and the FSCS pays the compensation.

Our response

We have always made it clear that a number of firms that sold Arch cru may default because of our scheme. In CP12/9 we said that in the worst case scenario (where PII cover did not apply and firms had no access to other sources of capital) we anticipated that up to 30% of firms may breach their capital requirements if they have to provide redress for mis-sales, not including firms that are already in default.

We believe that 110 firms have already cancelled their permissions and FSCS have received 1800 claims against cancelled firms. We estimate that if the FSCS upholds these claims, the redress paid by the FSCS will be in the region of £30m. We estimate that a full s.404 scheme as originally proposed could lead to the FSCS paying around £30m in addition to the claims it has already received. We estimate that a s.404 scheme with an opt in for consumers might result in the FSCS paying £3-7m but this will depend on the level of firm failures which is difficult to assess because it is impossible to predict which consumers will opt in to the scheme. We estimate that supervisory action on the top 20 firms combined with a call to action to consumers would lead to a £20m cost falling on the FSCS, as many of the largest distributors would fail.

Any FSCS claims would likely be met by the investment intermediary sub-class, which is currently subject to a £100m threshold which is partly based on what we think the class can afford in any one levy year. We are currently consulting on increasing the threshold to £150m, after which claims would be subsidised through the proposed FCA retail pool. We expect any claims due to a scheme to fall into the 2013/14 levy year.

We note that a redress scheme does not change the liabilities of firms – it merely crystallises these more effectively than what consumers might otherwise do by complaining individually (in other words, if all consumers complained the same number of firms would default ultimately). It is the role of the FSCS to protect consumers when authorised firms cannot meet claims against them.

Scheme rules¹²

3.52 In summary, we have made the following amendments to the scheme rules in light of the responses that we received to the Consultation Paper:

- We have amended the scheme rules and assessment template to cater for a scenario where one piece of advice led the consumer to take out multiple investments in the relevant Arch cru funds.

¹² Arch cru funds consumer redress scheme instrument 2012.

- We have amended the redress determination template to include a paragraph that firms can use if they would like to make an offer to the consumer in full and final settlement of all claims arising out of advice to invest in Arch cru funds following which the consumer invested.
- We have clarified how the rules apply to platform firms.
- We have amended the template¹³ and instructions to clarify that, while the presence or absence of one or more of the evidential provisions will tend to show that the sale was unsuitable, it will be up to the firm to decide overall if the sale complied with the suitability requirements in our rules.
- We have amended the template and instructions to cater for scenarios where, despite the firm's failure to determine the risk to the consumer's capital from an investment in the Arch cru funds properly, that investor would have made the investment anyway (knowing that it was a high-risk investment). In such a case, the firm cannot be said to have caused the investor's losses.
- A number of respondents asked us whether we had taken into account the actions of other parties when drafting the rules, e.g. Capita Financial Managers Limited and Arch Financial Products LLP. We have amended the causation section of the template and the accompanying guidance to clarify that, irrespective of the actions of third parties, the firm is responsible for all losses that result from its failure to comply with the suitability requirements.

13 Arch cru product advice suitability assessment template.

Annex 1

List of non-confidential respondents

4 Square Advice Limited
Abbott, Diane
Absolute Financial Services LLP
Accalon Associates Ltd
Accountants Financial Services (Scotland) Ltd
Ace Financial Advisers Ltd
Adkins, Marguerite
Adkins, Robert
Affinity Independent Limited
AIFA
Alba Asset Management Ltd
Alex Hope Financial Solutions Ltd
Allen, Wendy (Hunter Barrington Ltd)
AmTrust Europe (Mills & Reeve LLP)
Anderson, John
Ashlea Financial Planning Ltd
Aviva Group
AWD Chase de Vere
Bennett, Barbara
Berkeley Associates & Company Ltd
Billingsley, R
Brideshead Independent Financial Services (Simply Biz)
Buchanan, Andrew
Build Your Wealth Ltd

Cadogan Wilson Ltd
Caleb Roberts Financial Management Ltd (Mark Jennings)
Caleb Roberts Financial Management Ltd (Rhian Watson)
Carter, Doreen
Cascade Wealth Management Limited
Castle Court Consulting
Cedar Lawns Associates
Chapman Associates
Charles Royle And Company
Chaucer Syndicates Ltd (Fishburns Law)
Cheshire Trafford UK Limited
Chesworth, Peter
Chetwood Wealth Management
Citrus Wealth Management Ltd
Citywide Financial Partners
Clarke, Margaret
Clocktower Fund Management
Collegiate Management Services Ltd
Compliance and Training Solutions Ltd
Compton Row Financial Ltd
Cooper, Angus
Cotterill, Joan
Cotterill, Ray
Cowper Johnson, Dinah
CTL Wealth Management (Simply Biz)
Cuddington, Charles
Cytlau, Robert
D. J. Cooke (Life & Pensions) Ltd (David Cooke)
D. J. Cooke (Life & Pensions) Ltd (Paul Cuffling)
D. P's Financial Advice & Services
Darby, Sheila
David Severn Consulting
Derbyshire Booth Financial Management Limited
Dowson, James
Dunham Financial Services Ltd
F A Watts (Investment Managers) Ltd

Financial Futures IFA Limited
Financial Ltd
Financial Ombudsman Service (FOS)
Financial Services Consumer Panel
Financial Services Practitioner Panel
First Financial Advisers Ltd
First Independents (TenetConnect Limited)
Foot Anstey LLP
Forth Financial Services Limited
Fowler, Geoffrey
Fowler, Pat
Fraser Heath Financial Management Ltd
Fraser Wealth Management Ltd
French, Mavis
Frost, Emma
Gardner Patrick (Hunter Barrington Ltd)
GR Associates
Green Financial Planning
H. S. Coleman (Insurance Services) Ltd
H.L Financial Ltd
Hampton Dean Ltd
Handscombe Financial Planning Limited
Hardy (Underwriting Agencies) Ltd
Hardy, Brian
Hardy's Financial Advisers
Hart Financial Consultancy Limited
Hay, J E (Mrs)
Heather Olver (as Power of Attorney for another individual)
Helm Godfrey Partners Ltd
Hill, B
Hill Grafford
Holborn Asset Management
Hope, Gary
Howell Shone IFA Ltd
Hughes, Christine
Hughes-Chamberlain, Mike (Hunter Barrington Ltd)

Hunter Barrington Ltd
IFA Centre
Illingworths Insurance And Financial Services
Imperial Financial Planning (TenetConnect Services Ltd)
Informed Choice Ltd
Institute of Financial Planning
International Insurance Company of Hanover Ltd
Ivan A Hargreaves & Co Limited
James Harvey Associates Ltd
Jones, C
Jones, S
Kerr Henderson (Financial Services) Ltd
Kibbey, A & G
Kilkee Financial Services Limited
Kingsland Financial Management (Janet Murphy)
Kingsland Financial Management (Phil Coles)
Lawrence Financial Services Limited (TenetConnect Limited) (David Smith)
Lawrence Financial Services Limited (TenetConnect Limited) (David Maguire)
Levy & Co (TenetConnect Limited)
Lewis, Clive
Lewis, Rhys
Lewis, Rose
Liberty Mutual Insurance
Lifetime Financial Services Ltd
Lighthouse Group Plc
Lovewell Blake Financial Planning Limited
Loves Financial Management Ltd
Luhaste, Alec
Lunt, P J
Manders, D M
Mann, Veronica
Mark Two People
Martin, Barry
Martin, Marion
MAS Consulting Ltd
Mason, Joyce

Max Horne Group LLP
McLeod Ross Financial Advisers
McParland & Partners Ltd Financial Management
Merchant, Pushpa
Merito Financial Services Limited
Metcalf Moat IFA Limited
Michael Jones Independent Financial Services Limited
Miller, R & J
Mills, Elsie
Mills, William
Morris, Gary
Morris, Jean
Morris, Jean (as power of attorney for Mrs E Piggott)
MPA Financial Services
MPI Financial Services LLP
Neale, Richard
Neil Gayler & Co. (TenetConnect Limited)
O'Toole, Eileen
Optima Financial Services Ltd (David Craik)
Optima Financial Services Ltd (Tony Harvie)
Orchard Wealth Cultivation Ltd
Page Russell Ltd
Paradigm Partners
Parker & Co (Shipley) Ltd
Paul Schwer Financial Services
Peacock Financial Management Ltd
Pearson, Pam
Peter G. Bodington & Associates
Peter Green Life & Pensions Ltd
Peter Hoare & Company (Insurance Brokers) Ltd
Phillip Bates & Co Financial Services Ltd (Alan Mellor)
Phillip Bates & Co Financial Services Ltd (Phillip Bates)
Poole, Graham
PQR Financial Planning Limited
Price, Zita
Prism Financial Advice Limited

Professional Solutions Group Limited
PSP Insurance & Financial Solutions Limited
Pye, David (Hunter Barrington Ltd)
QBE Insurance (Europe) Limited
Rabbitts, Paul & Sue
Rackham, Windsor
Radford, Barbara
Radical Financial Services Limited
Radley Financial Consultancy
Richards, W E (Mr) & J E (Mrs)
Roberts, Frank
Rosekilly, Roy
Sagoo, G
Sanders, Hilda
Sanders, Mike
Sargent, Lisa
Sargent, Michael
Shoesmith, Christine
Shoesmith, Dave
Silver Planet Life Investment Taxation Solutions Ltd (Simply Biz)
Simon Kershaw and Associates Ltd
Simply Biz Services PLC
Slinn, Iain (Executor to the late Miss Kathleen Beck-Slinn's Estate)
Smaller Businesses Practitioner Panel
Smith, Alan
Smith, David (Hunter Barrington Ltd)
Smith, Melvin
Southam Financial Services
Sovereign IFA Ltd
Spa Underwriting Services Ltd
SquareSeven Financial Planning
Strategic Investment Planning
Taylor, Joan
Templar Financial Planning Limited
The Financial Consultancy
The Safe Insurance Agency Ltd

Thornton Claverley IFA Limited
Threesixty Services LLP
Throgmorton F.S.
Throgmorton Private Capital Ltd
Turriss Wealth Management
ValidPath Ltd
Vaughan, Randal
Watkins, Tudno (Dr)
WH Ireland Wealth Management
Whiting & Partners Wealth Management Ltd
Wigmore Associates Ltd
Willets, Pat
Williams, Pauline
Willow Financial Management LLP
Wiltshire, Graham
Woodland Financial Planning
World Vision
Wright, Joyce

Annex 2

Cost benefit analysis

The purpose of this CBA is to assess, in quantitative terms where possible and in qualitative terms where not, the economic costs and benefits of a s.404 redress scheme with an opt-in for consumers in respect of unsuitable advice to invest in Arch cru funds. We have revised this CBA in the light of new evidence received from respondents to CP12/9 and other sources.

Market failure analysis

Retail investment market

The retail investment market suffers from information asymmetries between the retail investor and investment funds. IFAs help retail consumers overcome these by navigating through thousands of available funds to find those that match their client's needs.

But financial advice can also be subject to market failures, including:

- conflicts of interest between consumers (the principals) and their advisers (the agents), as advisers' and consumers' incentives are not completely aligned; and
- consumers being unaware, or not having a thorough understanding, of the services they should expect from their IFA, leading them to take incorrect decisions.

We have rules in place, including those set out in our Conduct of Business sourcebook to address the market failures that exist in the provision of financial advice.

But if firms do not meet these requirements, then the market failures will not be corrected. The risk is widespread mis-selling and loss to consumers. Where this does occur, we do have the powers to put things right, including by imposing a consumer redress scheme under s.404 of FSMA.

Cost benefit analysis

Proposed option: a consumer redress scheme with an opt-in for consumers

Our aim is to put consumers who received a personal recommendation to invest in Arch cru funds back in the position they would have been had they received suitable advice. In effect this means firms paying redress – a transfer in economic terms – to consumers. This section sets out the costs and benefits of requiring this transfer under a consumer redress scheme.

Amount of redress

The total redress to be paid by IFAs to consumers will depend on: i) the number of consumers who decide to opt in to the scheme; ii) the total number of unsuitable sales; and iii) the average amount of redress from each unsuitable sale. These, in turn, depend on the information summarised here:

- Overall sales volume of Arch cru funds, both by value and number of sales. There were total inflows of approximately £470m into the Arch Cru funds from 29 June 2006 until the funds were suspended on 13 March 2009, with outflows of approximately £172m. As set out in Chapter 3 of CP12/9, we estimate that 2% of these investments were not in scope of our scheme.
- Proportion of unsuitable sales. Based on the review of a total of 179 files across a random sample of 24 Arch cru distributors stratified by level of sales, it was found that 90% of sales by value were unsuitable.¹
- Likely redress amount. To assess the likely redress amount, we considered what investments consumers would have made had they received suitable advice. During the file review exercise, it was found that the majority of unsuitable outcomes were due to a mismatch between the risk the customer was willing and able to take, and the risks of the fund itself. Paragraph 3.32 of CP12/9 set out key assumptions and limitations in estimating losses. We applied an assumption to the total loss figure, that in aggregate our originally proposed scheme would return 80% of the total losses to consumers. This is in recognition of the difficulties of supervising every firm's compliance with the scheme's requirements.

Based on the information and evidence that is available at present, we estimate, after taking into account the interim capital distributions², the remaining value of the Arch cru funds³ and the CF Arch cru Payment Scheme⁴ that the aggregate redress amount from the originally proposed scheme would be about £110m. Assuming that 15-30% of consumers would opt in to the revised scheme, we believe that it could deliver around £20-40m in redress. This

1 As noted in Chapter 3 of CP 12/9, and discussed in Annex 4 of CP 12/9 (the statistician's report).

2 £103m to date (September 2012)

3 £66.5m based on CFM's published September 2012 NAVs.

4 £54m announced in June 2011

redress figure is also subject to market fluctuations and could change significantly by the time a scheme is introduced. We estimate that £3-7m (of the £20-40m) will be paid by the FSCS.

Benefits

Requiring firms to pay redress to consumers where a product or service has gone wrong improves consumer confidence in financial services. We believe that consumer confidence is likely to be most improved where the total amount of redress paid most closely matches the total loss consumers experienced.

Of the options we have considered, a consumer redress scheme with an opt-in for consumers will allow consumers to choose whether they wish to pursue their IFA for redress and will avoid the cost for firms of carrying out the scheme in those cases where the consumer does not intend to claim the redress. The scheme will benefit Arch cru consumers who have been mis-sold, which is consistent with our consumer protection objective. But we also think that a scheme could improve consumer confidence more generally, which might lead to greater participation in the financial services market.

We also think there could be other indirect benefits of the proposed redress scheme. In particular, the costs to firms of paying redress could help reduce the incentives to mis-sell and lead to an increase in suitable advice.

Compliance costs

We estimate the total administrative costs of the proposed s.404 consumer redress scheme with an opt in for consumers are £1.4-4m. Table 1 provides the breakdown of this administrative cost between the FSA, FSCS and firms.

Table 1

Direct costs to the FSA	£0.6m-£0.9m
Firms' compliance costs	£0.6m-£2.7m
FSCS handling costs	£0.2-£0.4m
Total administrative costs	£1.4-£4m

Costs to the FSA: The estimate for the supervisory resource requirement for the scheme is around £0.9m at maximum. These costs include reporting and firm monitoring, resources to collate data and analyse it, and follow-up work.

Costs to firms: Compliance costs to firms will vary depending on how many consumers opt in and how the firm is going to carry out file reviews. Reviewing the files in-house is estimated to cost around £300 per file. The costs of appointing an external contractor to

review the files are estimated at up to £700 per file.⁵ Some respondents suggested that the costs of appointing an external contractor to review the files might be higher than £700 per file but no evidence was provided to back up this assertion. The higher estimate assumes all firms will appoint external contractors.

In addition, firms will incur costs of £500 per case if consumers refer their case to the Financial Ombudsman Service (FOS). This is included in the cost to firms. We are assuming that 5% of cases will be referred to the FOS. In total, compliance costs to firms of the scheme are estimated to be in the range between £0.6m and £2.7m.

The FSCS will incur the costs of handling cases which relate to firms in default. Based on 17% of all cases being handled by the FSCS, we estimate that administrative costs to the FSCS will total around £0.2-0.4m.

Market impacts

We expect a significant proportion of the firms affected by the s.404 consumer redress scheme to have already cancelled their permissions, and/or to default as a result of the scheme. An analysis of currently authorised known sellers indicates that around 17% of these firms may potentially breach their regulatory capital requirements as a result of the revised scheme: the costs associated with this have been factored into our analysis as set out above.

The proportion of firms that may potentially breach their capital requirements is subject to significant uncertainty. This is because:

- The analysis is based on the capital position (as submitted in each firm's most recent regulatory returns) of the currently authorised firm population that we are aware have sold Arch cru funds. We also know that some firms have already cancelled their permissions, so we may have under-estimated costs that fall on the FSCS due to the compensation claims against cancelled firms.
- In our analysis, we have not taken into account that some firms may be able to claim on their professional indemnity insurance. We require firms to have sufficient professional indemnity insurance (PII) in place, however, a firm's ability to recover money under its PII policy for its liability under an Arch cru scheme will depend on individual circumstances. So the actual proportion of currently authorised firms that may breach their regulatory capital requirements under the revised s.404 consumer redress scheme could be lower than 17%.
- Firms may not fail simply because the redress amount exceeds capital – it is possible that some firms may have the ability to raise further capital over and above what they currently hold.

⁵ We have not included an estimate of the fees firms may pay where the FSA (or a competent party) carries out the review, as we are unable to estimate how many cases this may apply to.

In any case, it is likely that the FSCS will face significant costs associated with claims against firms that have already cancelled their permissions. These costs will, in turn, be passed on to the rest of the industry. In addition, where firms fail, any claims about activities of the firm unrelated to the Arch cru funds may also fall on the FSCS to meet. We are not able to estimate the extent of such claims. However, we understand that the FSCS currently has approximately 1,800 claims against around 60 cancelled firms that sold the Arch cru funds.

For the remaining authorised firms, firms may pass on some costs incurred to consumers – either directly from applying the scheme or from FSCS levies – in the form of higher prices over time. It is difficult to estimate the exact extent of the pass-through as it will depend on a variety of factors, including the degree of competition in the market, but it seems likely that a significant proportion will be passed on to consumers.

Appendix 1

Made rules (legal instrument)

ARCH CRU FUNDS CONSUMER REDRESS SCHEME INSTRUMENT 2012**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers);
 - (4) section 157(1) (Guidance);
 - (5) section 395(5) (The Authority’s procedures);
 - (6) section 404(3) (Consumer redress schemes);
 - (7) section 404A (Rules under s404: supplementary); and
 - (8) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2013.

Making the Consumer Redress Schemes sourcebook (CONRED)

- D. The Financial Services Authority makes the rules and gives the guidance in Annex A to this instrument.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex B
Fees manual (FEES)	Annex C
Decision Procedure and Penalties manual (DEPP)	Annex D

Notes

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

Citation

- G. This instrument may be cited as the Arch cru Funds Consumer Redress Scheme Instrument 2012.

- H. The sourcebook in Annex A to this instrument may be cited as the Consumer Redress Schemes sourcebook (or CONRED).

By order of the Board

13 December 2012

Annex A

Consumer Redress Schemes sourcebook (CONRED)

Insert the following new sourcebook in the block of the Handbook titled “Redress”, immediately after DISP. In this Annex, the entire text is new and is not underlined.

1 General

[To follow]

2 Arch cru Consumer Redress Scheme

2.1 Application and subject matter of the scheme

Application to firms which made personal recommendations

- 2.1.1 R (1) The whole of this chapter applies to a *firm* which made a *personal recommendation* in relation to an Arch cru fund, after which a *consumer* made an investment in the Arch cru fund, and to which the suitability requirements (specified at paragraph 5.1R of the instructions in *CONRED 2 Annex 13*) applied.
- (2) The Arch cru funds referred to in *CONRED* are any of the following sub-funds of the CF Arch cru Investment Funds and CF Arch cru Diversified Funds:
- (a) CF Arch cru Investment Portfolio;
 - (b) CF Arch cru Specialist Portfolio;
 - (c) CF Arch cru Income Fund;
 - (d) CF Arch cru Balanced Fund;
 - (e) CF Arch cru Global Growth Fund; or
 - (f) CF Arch cru Finance Fund.

Application to persons who have assumed a firm’s liabilities

- 2.1.2 R (1) The whole of this chapter also applies to a *person* who has assumed a liability (including a contingent one) in respect of a failure by a *firm* to whom this chapter applies.
- (2) A *person* in (1) must either:
- (a) perform such of the obligations as the *firm* is required to perform

under this chapter; or

(b) ensure that those obligations are performed by the *firm*;

and must notify the *FSA*, by 29 April 2013, by email to ArchCruProject@fsa.gov.uk, as to whether that *person* or the *firm*, or both, will be performing those obligations.

(3) References in this chapter to a *firm* are to be interpreted as referring to a *person* in (1) where the context so requires.

Wider application of certain provisions

2.1.3 R *CONRED 2.2, CONRED 2.4.1R(1), CONRED 2.8.1R, CONRED 2.8.2R, CONRED 2.8.3R and CONRED 2.8.4G* also apply to any *firm* which has carried out any of the following *regulated activities* for a *customer* in relation to an Arch cru fund:

- (1) *advising on investments*; or
- (2) *arranging (bringing about) deals in investments*; or
- (3) *making arrangements with a view to transactions in investments*; or
- (4) *managing investments*;

except for a *firm* which, at the relevant time, was a platform service provider; meaning it:

- (5) provided a service which involved *arranging and safeguarding and administering assets*;
- (6) distributed *retail investment products* which were offered to *retail clients* by more than one product provider; and
- (7) did not carry on the *regulated activities* of *advising on investments* or *managing investments*.

Duration of the scheme

2.1.4 R The consumer redress scheme created by this chapter comes into force on 1 April 2013 and has no end date.

Subject matter of the scheme

2.1.5 R The subject matter of the scheme is whether a *firm* complied with the suitability requirements (specified in paragraph 5.1R of *CONRED 2 Annex 13*) in cases where the conditions in *CONRED 2.4.2R* are satisfied (these are referred to in this chapter as “scheme cases”).

2.1.6 R A scheme case ceases to be within the subject matter of the scheme if the *firm*:

- (1) did not have sufficient information to determine the scheme case and has taken the required steps to obtain further information from the *consumer* but still does not have sufficient information (as more fully described in *CONRED 2.5.9R*); or
- (2) has not received an opt-in from the *consumer* by 22 July 2013 (or later, where the provision in *CONRED 2.5.1R(2)* in relation to exceptional circumstances applies); or
- (3) is unable to contact a *consumer* (as more fully described in *CONRED 2.8.3R(2)*).

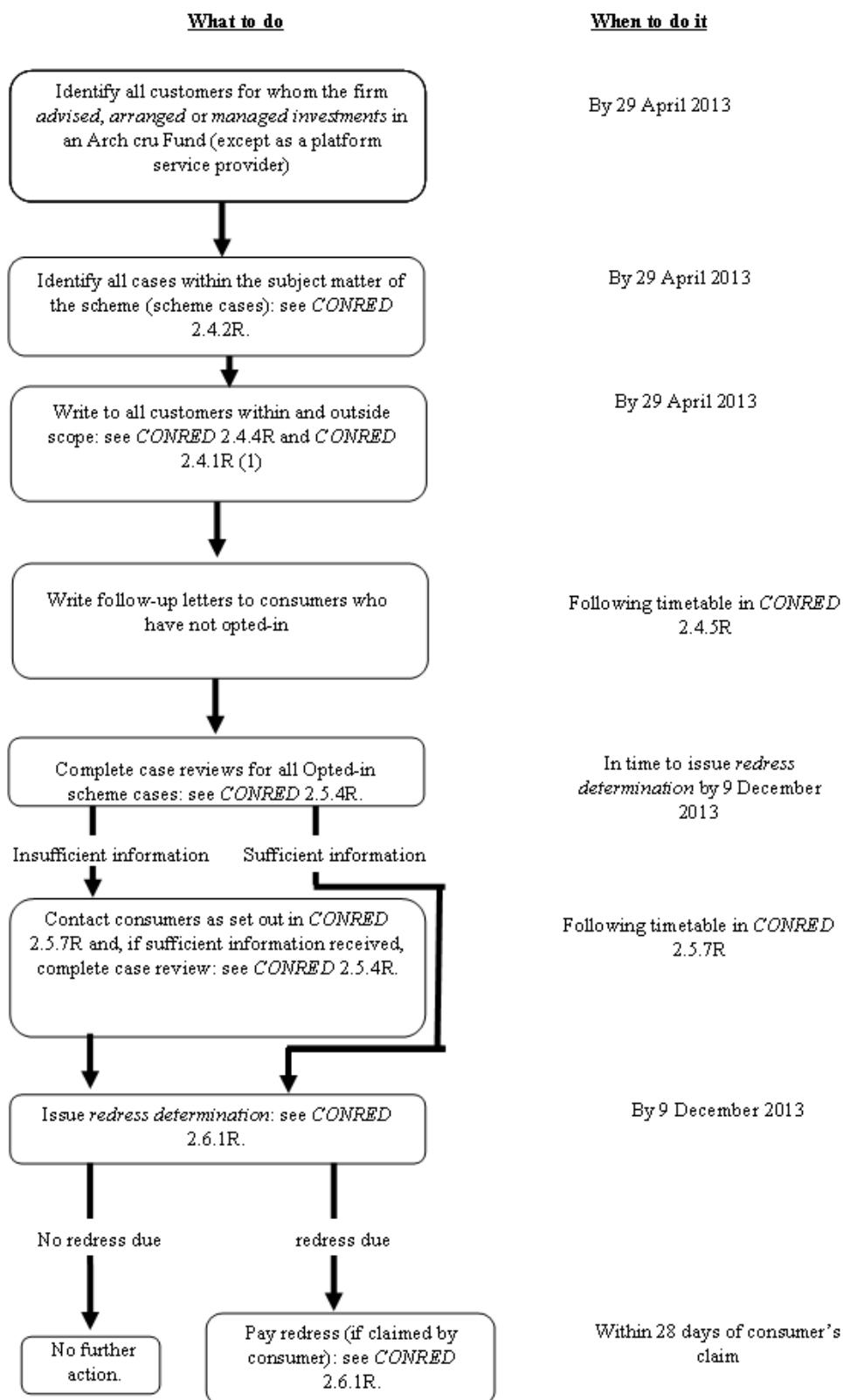
2.1.7 G Where the *firm* has not received, by 22 July 2013, a response from the *consumer* to the letter required by *CONRED 2.4.4R* or (where applicable) to the letter required by *CONRED 2.4.5R(1)* or (2), the *firm* should handle any complaint received from a *consumer* after this date in relation to the sale of Arch cru funds in accordance with the *complaint handling rules* in *DISP*, unless *CONRED 2.5.1R(2)* (in relation to exceptional circumstances) applies.

Defined terms

2.1.8 R Certain words and phrases specific to *CONRED* are defined in *CONRED Appendix 1* and the *Glossary*. All words in italics are defined in the *Glossary*.

2.2 Summary of the scheme

2.2.1 G



2.3 Notifications and reports to the FSA

- 2.3.1 R Notifications and other reports required by these *rules* to the *FSA* must be sent to the email address specified.
- 2.3.2 G If the *firm* is to send an encrypted email to the *FSA* it will need to download the public PGP key from the *FSA* website and import the key into its email client software.

2.4 Consumer redress scheme: identifying scheme cases and inviting consumers to request a review

Deadlines to complete the steps in this section

- 2.4.1 R (1) By 29 April 2013, a *firm* must take the first and second steps set out in this section and send a *redress determination* in the form set out in *CONRED 2 Annex 1R* to any *customer* in *CONRED 2.1.3R* who falls outside the subject matter of the scheme.
- (2) A *firm* must, by the deadlines set out in *CONRED 2.4.5R*, take the third step set out in this section.

First step: identify cases within subject matter of scheme

- 2.4.2 R The first step is to identify all cases within the subject matter of the scheme; ie, where each of the following conditions is satisfied (“scheme cases”):
- (1) the *firm* made a *personal recommendation* to a *consumer* to invest in an *Arch cru fund* specified above at *CONRED 2.1.1R(2)* and after that recommendation the *consumer* did so invest;
 - (2) the suitability requirements (specified at paragraph 5.1R of *CONRED 2 Annex 13*) applied to the recommendation;
 - (3) the law applicable to the obligations of the *firm* arising in connection with the *personal recommendation* is that of a UK territory (that is, England, Wales, Scotland or Northern Ireland) (see *CONRED 2.4.7R*);
 - (4) if the applicable law in (3) is that of England, Wales or Northern Ireland, the *consumer’s* investment in Arch cru funds was on or after 13 December 2006;
 - (5) if the applicable law in (3) is that of Scotland:
 - (a) the *consumer’s* investment in the Arch cru fund was on or after 13 December 2007; or
 - (b) where the *consumer’s* investment in the Arch cru fund was before 13 December 2007, the *consumer* did not know, and could not with reasonable diligence have known, before 13 December 2007,

that he had suffered loss;

- (6) the *consumer* has not, prior to 1 April 2013, accepted an offer of redress from the *firm* or other *person* in full and final settlement of all potential claims arising out of the recommendation in (1); and
- (7) the *consumer* has not, prior to 1 April 2013, asked the *Financial Ombudsman Service* to deal with a complaint against the *firm* arising out of the recommendation in (1).

- 2.4.3 E The adoption by a *firm* of any date earlier than the date of suspension (13 March 2009) as the date when the *consumer* knew, or could with reasonable diligence have known, that he had suffered loss, may be relied upon as tending to show contravention of *CONRED* 2.4.2R.

Second step: send initial letters to consumers

- 2.4.4 R The second step is, for all scheme cases, to send to the *consumer* a letter in the form set out in *CONRED* 2 Annex 2R inviting the *consumer* to opt-in to the scheme.

Third step: send follow-up letters to consumers

- 2.4.5 R The third step is to do the following:
- (1) for all scheme cases where the *firm* has not received an opt-in, by 27 May 2013, the *firm* should send the *consumer* an opt-in reminder (in the form set out in *CONRED* 2 Annex 3R) by 3 June 2013 (unless the *firm* has received an opt-in in the interim);
 - (2) for all scheme cases where the *firm* has not received, by 24 June 2013, an opt-in or (where applicable) by (1), the *firm* should send the *consumer* an opt-in reminder letter (in the form set out in *CONRED* 2 Annex 4R) by 1 July 2013 (unless the *firm* has received an opt-in in the interim); and
 - (3) for all scheme cases where the *firm* has not received, by 22 July 2013 an opt-in or, where applicable by (1) or (2), the *firm* should send the *consumer* a letter in the form set out in *CONRED* 2 Annex 5R by 29 July 2013 (unless the *firm* has received an opt-in in the interim when it must follow the steps in *CONRED* 2.5.1R (2)).

- 2.4.6 R For the purpose of *CONRED* 2.4.5R:
- (1) an ‘opt-in’ is an indication from, or on behalf of, a *consumer* that he wishes the *firm* to carry out a case review (as detailed in *CONRED* 2.5); and
 - (2) if a *firm* receives a *complaint* relating to the subject matter of the scheme from a *consumer* on or after 1 April 2013 and before 23 July 2013 it must treat the *complaint* as an ‘opt in’ to the scheme.

Applicable law

- 2.4.7 R For the purposes of *CONRED* 2.4.2R(3), the applicable law is:
- (1) where, in connection with the *personal recommendation*:
 - (a) the *consumer* has agreed to the *firm's terms of business*; and
 - (b) these include a clause providing for the application of the law of a particular UK territory (that is, England, Wales, Scotland or Northern Ireland);
 that UK territory; or
 - (2) if (1) does not apply: where the *firm* and the *consumer* are habitually resident in the same UK territory, and the *personal recommendation* is made there, that UK territory; or
 - (3) if neither (1) nor (2) applies: where the conditions in *CONRED* 2.4.8R apply, the UK territory in which the *consumer* is habitually resident; or
 - (4) if none of (1), (2) or (3) applies: the UK territory in which the *firm* made the *personal recommendation*.
- 2.4.8 R The conditions referred to in *CONRED* 2.4.7R(3) are that:
- (1) in the UK territory in which the *consumer* has his habitual residence, either:
 - (a) the contract under which the *personal recommendation* was provided was preceded by a specific invitation addressed to the *consumer*, or by advertising, and the *consumer* took all the steps necessary to engage the *firm*; or
 - (b) the *firm* or its agent received the *consumer's* order; and
 - (2) the *personal recommendation* was provided at least in part in that UK territory.

Reporting requirement: opted-in scheme cases

- 2.4.9 R By 29 July 2013, a *firm* must report to the *FSA* by email to archcruereview@fsa.gov.uk; or (if the email is encrypted) archcruereviewpgp@fsa.gov.uk with the following information:
- (1) the total number of scheme cases (cases falling within *CONRED* 2.4.2R);
 - (2) the total number of investments in Arch cru funds resulting from the *regulated activities* for a *customer* in *CONRED* 2.1.3R which fall outside the subject matter of the scheme (see *CONRED* 2.1.5R and *CONRED* 2.4.2R), with a summary explanation of the reason why in

each case; and

- (3) the total number of opted-in scheme cases.

[**Note:** for details of how to obtain an encryption key see *guidance* above at *CONRED 2.3.2G*]

2.5 Consumer redress scheme: case review

Deadline to complete the steps in this section

2.5.1 R A *firm*:

- (1) in respect of any scheme case where the *firm* has received an opt-in by 22 July 2013, must take the steps set out in this section by 9 December 2013; and
- (2) in respect of any scheme case where the *firm* has received an opt-in later than 22 July 2013, must take the steps set out in this section if the *consumer's* failure to comply with that time limit was caused by exceptional circumstances; in such a case, the deadline in (1) is extended according to the length of the delay caused by the *consumer's* failure to comply with the time limit.

2.5.2 G The *guidance* on exceptional circumstances at *CONRED 2.6.3G* is relevant to *CONRED 2.5.1R(2)*.

- ### 2.5.3 R
- (1) For any scheme case where the *firm* has received an opt-in, but the *firm*, does not consider *CONRED 2.5.2R(2)* requires it to take the steps set out in this section, and does not intend to do so, the *firm* must send the *consumer* a *redress determination* in the form set out in *CONRED 2 Annex 6R* within 14 days of receiving the opt-in.
 - (2) For any opted-in scheme case, the *firm* must send the *consumer*, within 14 days of receiving the opt-in, a letter in the form set out in *CONRED 2 Annex 7R*.

First step: case review of each opted-in scheme case

- ### 2.5.4 R
- The first step is to carry out a review (a case review) of each opted-in scheme case, by completing the template at *CONRED 2 Annex 12R*, in accordance with the *rules* set out in the instructions at *CONRED 2 Annex 13*.
- ### 2.5.5 E
- Non-compliance with any of the *evidential provisions* set out in the instructions at *CONRED 2 Annex 13* may be relied upon as tending to show contravention of *CONRED 2.5.4R*.
- ### 2.5.6 G
- In complying with *CONRED 2.5.4R*, *firms* should have regard to the *guidance* set out in the instructions at *CONRED 2 Annex 13*.

Second step: cases of insufficient information

- 2.5.7 R (1) The second step applies only in respect of an opted-in scheme case where a *firm* has attempted to comply with the first step (*CONRED* 2.5.4R) but does not have sufficient information to determine all of the following matters:
- (a) whether it has failed to comply with any of the suitability requirements specified at paragraph 5.1R of *CONRED* 2 Annex 13;
 - (b) if so, whether that failure has caused loss or damage to the *consumer*; and
 - (c) if so, what the redress should be in respect of its failure.
- (2) The second step is to:
- (a) send the *consumer* a letter in the form set out in *CONRED* 2 Annex 8R;
 - (b) if no reply is received by the *firm* within four weeks of a letter in (a) being dispatched, the *firm* must send a letter to the *consumer*, within one further week, in the form set out in *CONRED* 2 Annex 9R, and take all reasonable steps to contact the consumer by other means; and
 - (c) if a reply is received from a *consumer* but the information it contains is insufficient to determine all the matters in (1), the *firm* should take all reasonable steps to obtain further information from the *consumer*.

[**Note:** see also *CONRED* 2.8.7R.]

- 2.5.8 R A *firm* which, having carried out the second step, has acquired sufficient information to determine all of the outstanding matters must then complete the first step (*CONRED* 2.5.4R).
- 2.5.9 R Where a *firm* has carried out the second step in relation to an opted-in scheme case (falling within *CONRED* 2.4.2R) but still does not have sufficient information to determine all of the outstanding matters, the opted-in scheme case no longer falls within the subject matter of the consumer redress scheme created by this chapter. The *firm* must send the *consumer* a letter in the form set out in *CONRED* 2 Annex 10R promptly on completion of the second step.
- 2.5.10 G Opted-in scheme cases to which the second step (*CONRED* 2.5.7R) applies are likely to be exceptional, having regard to the record-keeping requirements applicable to *authorised persons* under *FSA rules* (notably *SYSC*).

Third step: redress determination

- 2.5.11 R The third step is to send the *consumer* a *redress determination* in the form of the letter set out in *CONRED 2 Annex 11R* in respect of each opted-in scheme case.

Taking steps by or on behalf of FSA

- 2.5.12 R The *FSA* may (on giving notice to the *firm*) take any of the steps in *CONRED 2.3* to *CONRED 2.5*, instead of the *firm*, or may appoint one or more competent persons to do so on behalf of the *FSA*, if there is a material failure by the *firm* to take any of the actions required under this chapter, including where the *firm* informs the *FSA* that it is unable or unwilling to take any of those actions because to do so would be in breach of a condition of its professional indemnity insurance. In such a case, the *firm* must:
- (1) not carry out (or, as the case may be, continue) any of the steps to be taken by the *FSA* or competent person, unless so directed by them; and
 - (2) render all reasonable assistance to the *FSA* or competent person (but any assistance, the rendering of which would invalidate the *firm's* professional indemnity insurance, is not reasonable for the purposes of this *rule*).
- 2.5.13 G The *FSA* would expect a *firm* to make reasonable efforts to obtain the consent of its professional indemnity insurer to take the relevant steps, in line with its obligations under *Principle 11* (Relations with regulators).
- 2.5.14 R If, where the *FSA* or a competent person takes any steps under *CONRED 2.5.12R*, the *FSA* proposes to make any determination of:
- (1) whether a failure by a *firm* has caused loss to a *consumer*; or
 - (2) what the redress should be in respect of the failure;
- the *FSA* must give the *firm* a *warning notice* specifying the proposed determination.
- 2.5.15 R
- (1) If the *FSA* decides to make a determination of the matters in *CONRED 2.5.14R*, the *FSA* must give the *firm* a *decision notice* specifying the determination.
 - (2) If the *FSA* decides to make such a determination, the *firm* may refer the matter to the *Tribunal*.
- 2.5.16 R Part XXVI of the *Act* (including the provisions as to final notices) applies in respect of notices given under *CONRED 2.5.14R* and *CONRED 2.5.15R*.
- 2.5.17 G Where, under *CONRED 2.5.12R*, the *FSA* (or a competent person) communicates with a *customer* (or *consumer*) instead of the *firm*, it will do so in its own name, making clear (in the case of a competent person) its authority from the *FSA* to do so.

- 2.5.18 G Where the *FSA* (or a competent person), instead of the *firm*, carries out the third step in *CONRED 2.5.11R*, it will do so no earlier than seven *days* after the issue of a final notice in respect of the *FSA*'s decision to make a determination of the matters in *CONRED 2.5.14R*, and will send the *firm* a copy of the *consumer*'s response to the *redress determination*.
- 2.5.19 G A fee is payable by the *firm* (or *person* falling within *CONRED 2.1.2R(1)*) in any case where the *FSA* exercises its powers under *CONRED 2.5.12R*: see the table at *FEES 3.2.7R*.
- 2.5.20 G The completion of the steps in *CONRED 2.3* to *CONRED 2.5* by, or on behalf of, the *FSA*, as provided in *CONRED 2.5.12R*, does not affect the ability of the *Ombudsman* to consider a *complaint*, in particular where the *firm* has not sent a *redress determination* in accordance with the time limits specified under the scheme.

2.6 Consumer redress scheme: paying redress

- 2.6.1 R A *firm* must pay the redress determined to be payable to a *consumer*, calculated in accordance with the requirement in section 10 of the instructions at *CONRED 2 Annex 13*:
- (1) within 28 *days* of receiving a claim from the *consumer* for the redress determined to be payable, following the issue of the *redress determination*; and
 - (2) in accordance with the instructions set out by the *consumer* in his response to the *redress determination* in which he makes the claim
- but a *firm* need not pay redress where the *consumer* did not send a claim for it within six months of the date of the *redress determination*, unless the *consumer*'s failure to comply with that time limit was as a result of exceptional circumstances, except where the *consumer* refers a *complaint* in respect of the *redress determination* to the *Financial Ombudsman Service* within the time limits provided in *DISP 2.8.2R* (or *DISP 2.8.2R(3)* applies).
- 2.6.2 R (1) Simple interest is payable on the redress determined to be payable from the end of the 28-*day* period referred to in *CONRED 2.6.1R(1)* until the date of payment, at a rate of 8% per annum.
- (2) After the expiry of 28 *days* following the *consumer*'s claim for the redress, the redress, including interest, may be recovered as a debt due to the *consumer* and, in particular, may:
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court; or
 - (b) be enforced in Northern Ireland as a money judgment under the

Judgments Enforcement (Northern Ireland) Order 1981; or

- (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff and whether or not the sheriff could himself have granted such judgment or order.

[**Note:** This *rule* is imposed by the *FSA* using the powers granted to it under section 404A(1)(m) of the *Act* to make *rules* providing for the enforcement of any redress under a consumer redress scheme.]

- 2.6.3 G (1) An example of exceptional circumstances in *CONRED* 2.6.1R might be where the *consumer* has been or is incapacitated.
- (2) In considering whether circumstances are exceptional, *firms* may wish to have regard to the guidance on exceptional circumstances justifying the extension of the time limits, in the online technical resource titled “the six-month time limit” on the website of the *Financial Ombudsman Service*.

2.7 Supervision and delegation of scheme process by firms

- 2.7.1 R A *firm* must ensure that the steps required by this chapter are undertaken or supervised by the individual appointed by the *firm* under *DISP* 1.3.7R where that *rule* applies. In any other case, those steps must be taken or supervised by a person of appropriate experience and seniority.
- 2.7.2 G (1) Any *firm* intending to outsource any of the obligations imposed on it under this chapter should have due regard to the *rules* and *guidance* on outsourcing which are applicable to it, notably in *SYSC*.
- (2) A *firm* which outsources any of the obligations imposed on it under this chapter in respect of communications with *consumers* should ensure that those communications are clear as to the identity of the *firm*.

2.8 Provisions relating to communications with consumers

- 2.8.1 R Whenever a *firm* is required by a provision of this chapter to send a letter in a form set out in an Annex, it must do so enclosing any documents referred to, following the instructions in the standard form set out in the relevant Annex, complying with any instructions in that Annex to insert, delete, select or complete text.
- 2.8.2 R All letters to *consumers* required under this chapter must be printed on the letterhead of the *firm* and dispatched by recorded delivery mail.
- 2.8.3 R (1) Where a *firm* becomes aware that the contact details it holds for a *customer* (or *consumer*) are out of date, it must take all reasonable steps to obtain up-to-date contact details and, where appropriate, resend any

letter and repeat the steps to contact the *customer* (or *consumer*) required by this chapter.

- (2) If, having complied with (1), a *firm* is unable to contact a *customer* (or *consumer*), it need not take any further action pursuant to this chapter in relation to that *customer* (or *consumer*) unless (3) applies.
- (3) If, in reliance on (2), the *firm* has ceased taking action but subsequently becomes aware of up-to-date contact details for that *customer* (or *consumer*), the *firm* must, where appropriate, resend any letter and repeat the steps to contact the *customer* (or *consumer*) required by this chapter. Each applicable deadline for those actions by the *firm* is extended according to the length of the delay incurred by the application of (2).

- 2.8.4 G The reasonable steps in *CONRED* 2.8.3R(1) might include checking public sources of information, but without incurring excessive cost.
- 2.8.5 G The reasonable steps in *CONRED* 2.5.7R(2)(b) might include attempting to contact the *consumer* by telephone (at a reasonable hour when the *consumer* is likely to be available to receive the call) or by email.
- 2.8.6 R A *firm* must not make any communication to a *consumer* which seeks to influence, for the benefit of the *firm*, the outcome of the processes undertaken pursuant to this chapter, either by seeking to influence the content of information provided by the *consumer* in response to the *firm*'s requests made under *CONRED* 2.5.7R or otherwise.
- 2.8.7 R A *firm* must tailor the questionnaire at *CONRED* Annex 8R so that it does not request more information than is sufficient for it to determine all of the outstanding matters.

2.9 Consumer redress scheme: information requirements

Requests for information by the FSA

- 2.9.1 R In relation to any matter concerning or related to the consumer redress scheme created by this chapter, section 165 (FSA's power to require information: authorised persons etc) of the *Act* and any provision of Part XI (Information Gathering and Investigations) of the *Act* which relates to that section, apply to any *firm* (or *person* in *CONRED* 2.1.2R) which is not an *authorised person* as if it were an *authorised person*.

Reporting requirement: by 9 December 2013

- 2.9.2 R A *firm* must, by 9 December 2013, a *firm* must report to the FSA, by email to archcrureview@fsa.gov.uk or (if the email is encrypted) archcrureviewpgp@fsa.gov.uk, the following information:

- (1) the total number of opted-in scheme cases (cases falling within *CONRED 2.5.1R*);
- (2) the total number of completed templates;
- (3) the total number of incomplete templates, with an explanation as to why the templates have not been completed;
- (4) the total number of redress cases;
- (5) the total number of *redress determinations* sent to *consumers*;
- (6) the total number of *consumers* that have been paid redress to date;
- (7) the total amount of redress paid to date; and
- (8) the total amount of redress unpaid to date.

[Note: for details of how to obtain an encryption key see guidance above at *CONRED 2.3.2G*]

2.10 Record-keeping requirements

- 2.10.1 R (1) A *firm* must keep the following records:
- (a) the certificate of posting for each letter sent in accordance with this chapter;
 - (b) a copy of each letter sent in accordance with this chapter;
 - (c) a record of any attempts to contact the *consumer*, or obtain further information, in accordance with *CONRED 2.5.7R(2)(b)* or (c);
 - (d) the completed template (*CONRED 2 Annex 12R*) for each opted-in scheme case; and
 - (e) all information on the *consumer* file and any information received from a *consumer*.
- (2) A *firm* must keep the records required by (1) for a minimum of five years from the date of their creation or (for the records in (1)(e)) the date when the information is located on the *consumer* file or obtained.

2 Annex 1R Redress determination for customers outside subject matter of Arch cru consumer redress scheme

[Firm details]

[Date]

[Customer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

Redress determination in relation to your investment in the CF Arch cru *[insert fund name]*

Dear *[Insert name]*

- **We will not be taking any action to review the way the CF Arch cru *[insert fund name(s)]* was sold to you because specific circumstances exclude you from the scheme.**
- **If you want to query our decision you have to contact the Financial Ombudsman Service (FOS) within six months.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We will not be taking any action to review the way the funds were sold to you to see if you might be entitled to compensation for the following reason(s).

[We did not advise you to invest in the funds so your case does not fall within the scope of this scheme.] OR

[You were not a private customer or retail client at the time of our advice to you so you do not fall within the scope of this scheme.] OR

*[You previously complained about our advice to you to invest in the funds. We responded to this complaint in our letter of *[insert date of final response]* setting out our conclusions and you accepted this response in full and final settlement.] OR*

*[You previously complained about our advice to you to invest in the funds. We responded to this complaint in our letter of *[insert date of final response]* setting out our conclusions. You subsequently referred this complaint to the Financial Ombudsman Service.] OR*

[For England, Wales and Northern Ireland cases:]

*[The consumer redress scheme does not include cases where the investment in the CF Arch cru investment or diversified fund was made before 13 December 2006 (where the case is under the law of England and Wales or Northern Ireland). Your investment in the fund was made on *[insert date of investment]* so in our view does not fall within the scope of the compensation scheme.] OR*

[For Scotland Cases:]

[The consumer redress scheme does not include cases where the consumer should have reasonably become aware of a loss more than five years before the start date of the scheme (where the case is under the law of Scotland). In our view your case does not fall within the scope of the scheme because you should have been aware of a loss on [insert date].]

What you can do next

If you think we should review the way we sold the CF Arch cru *[insert fund name(s)]* to you, you have to contact the Financial Ombudsman Service (FOS) within six months of the date of this letter.

The FOS will decide whether we have applied the rules of the consumer redress scheme correctly in our decision to exclude you.

Enclosed is a leaflet explaining the role of the FOS, which you can contact at:
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Tel: 0800 023 4567 or 0300 123 9 123
Email: complaint.info@financial-ombudsman.org.uk

CF Arch cru payment scheme

You may still be able to apply to the CF Arch cru payment scheme for a payment. The scheme will run until 31 December 2013 and is separate to the consumer redress scheme.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

You should write to us directly if you have any other complaint about our services.

Yours sincerely

<signature>

<name of adviser or customer service>

2 Annex 2R Letter to consumers confirming existence of review and inviting request to opt-in

[Firm details]

[Date]

[Consumer details]

Fund name(s): *[insert fund name(s)]*

Amount(s) invested: *[insert amount(s) invested]*

Date(s) of advice given: *[insert date(s) of advice given]*

You have until 22 July 2013 to respond to this letter

Dear *[Insert name]*

- **You may be entitled to compensation on the basis of how we sold you an investment in the CF Arch cru *[insert fund name(s)]***
- **If you want us to review how your investment was sold you have to complete the enclosed form and return it to us by 22 July 2013.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We now have to ask our customers that invested in the funds whether they want us to review the way we sold the funds to them, to determine if they were mis-sold.

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Response required by 22 July 2013

If you want us to review the way we sold the CF Arch cru *[insert fund name(s)]* to you please complete the enclosed form and return it to us as soon as possible, but not later than 22 July 2013.

If you do not respond by 22 July 2013 we will not take any action to review our sale of the funds to you.

CF Arch cru payment scheme

If we pay you compensation, we will subtract from the final amount the current value of the funds and the money that you could claim from the CF Arch cru payment scheme. You should also consider applying to this scheme which will run until 31 December 2013 and is separate from the review process we are carrying out.

Why the FSA identified problems with advice to invest in certain Arch cru funds

The FSA has said the CF Arch cru investment and diversified funds were high-risk products and should only have been recommended to investors who fully understood, and were willing and able to accept the risks.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

If you have any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

Yours sincerely

<signature>

<name of adviser or customer service>

[I/We] have enclosed two copies of this letter. Please complete both copies below, returning one to [me/us] and keeping the other for your records.

Please tick the box below to confirm that you want us to review how we sold the CF Arch cru [insert fund name(s)] to you.

I want you to review the way you sold the CF Arch cru [insert fund name(s)] to me to see if I am entitled to compensation.

Signed:

Please print name:

Date:

Alternatively, call us on <phone number> or email us at <insert e-mail address> to confirm you want us to review the way we sold the funds to you.

2 Annex 3R First reminder letter to consumers inviting request for review**You have to respond to this letter by 22 July 2013**

Dear *[Insert name]*

- **You may be entitled to compensation if you invested in the CF Arch cru investment or diversified funds and they were mis-sold.**
- **You have until 22 July 2013 to complete the enclosed form and return it to us, if you want us to review the way we sold the funds to you.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We now have to ask our customers that invested in the funds whether they want us to review the way we sold the funds to them, to determine if they were mis-sold.

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Response required by 22 July 2013

If you want us to review the way we sold the CF Arch cru *[insert fund name(s)]* to you please complete the enclosed form and return it to us as soon as possible, but not later than 22 July 2013.

If you do not respond by 22 July 2013 we will not take any action to review our sale of the funds to you.

CF Arch cru payment

If we pay you compensation, we will subtract from the final amount the current value of the funds and the money that you could reclaim from the CF Arch cru payment scheme. You should also consider applying to this scheme which will run until 31 December 2013 and is separate from the review process we are carrying out.

Why the FSA identified problems with advice to invest in certain Arch cru funds

The FSA has said the CF Arch cru investment and diversified funds were high-risk products and should only have been recommended to investors who fully understood, and were willing and able to accept the risks.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

If you have any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

Yours sincerely,

<signature>

<name of adviser or customer service>

[I/We] have enclosed two copies of this letter. Please complete both copies below, returning one to *[me/us]* and keeping the other for your records.

Please tick the box below to confirm that you want us to review how we sold the CF Arch cru *[insert fund name(s)]* to you.

I want you to review the way you sold the CF Arch cru *[insert fund name(s)]* to me to see if I am entitled to compensation.

Signed:

Please print name:

Date:

Alternatively, call us on <phone number> or email us at <insert e-mail address> to confirm you want us to review the way we sold the funds to you.

2 Annex 4R Second reminder letter to consumers inviting request for review

Final reminder: We will not take any action to review the way we sold the CF Arch cru [insert fund name(s)] if you do not respond to this letter by 22 July 2013

Dear [Insert name]

- **You have until 22 July 2013 to complete the enclosed form and return it to us, if you want to find out if you are entitled to compensation.**
- **You may be entitled to compensation if you invested in the CF Arch cru investment or diversified funds and they were mis-sold.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We now have to ask our customers that invested in the funds whether they want us to review the way we sold the funds to them, to determine if they were mis-sold.

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Response required by 22 July 2013

If you want us to review the way we sold the CF Arch cru [insert fund name(s)] to you please complete the enclosed form and return it to us as soon as possible, but not later than 22 July 2013.

If you do not respond by 22 July 2013 we will not take any action to review our sale of the funds to you.

CF Arch cru payment scheme

If we pay you compensation, we will subtract from the final amount the current value of the funds and the money that you could claim from the CF Arch cru payment scheme. You should also consider applying to this scheme which will run until 31 December 2013 and is separate from the review process we are carrying out.

Why the FSA identified problems with advice to invest in certain Arch cru funds

The FSA has said the CF Arch cru investment and diversified funds were high-risk products and should only have been recommended to investors who fully understood, and were willing and able to accept the risks.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

If you have any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

Yours sincerely,

<signature>

<name of adviser or customer service>

[I/We] have enclosed two copies of this letter. Please complete both copies below, returning one to *[me/us]* and keeping the other for your records.

Please tick the box below to confirm that you want us to review how we sold the CF Arch cru *[insert fund name(s)]* to you.

I want you to review the way you sold the CF Arch cru *[insert fund name(s)]* to me to see if I am entitled to compensation.

Signed:

Please print name:

Date:

Alternatively, call us on <phone number> or email us at <insert e-mail address> to confirm you want us to review the way we sold the funds to you.

2 Annex 5R Final letter to consumers who have not sent a request for review

We will not be taking any action to review our sale of the CF Arch cru [insert fund name(s)] to you

Dear [Insert name]

- **We will not be reviewing the way we sold the CF Arch cru [insert fund name(s)] to you.**
- **You did not respond to our letters on [insert date of initial letter and subsequent letters] to say you wanted us to review the way we sold the funds to you and find out if you are entitled to compensation.**
- **We will only consider your case if you make a complaint to us or if you tell us you were not able to respond to our letters due to exceptional circumstances which caused the delay (for example if you were incapacitated by illness).**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We have asked our customers that invested in the funds whether they want us to review the way we sold the funds to them, to determine if they were mis-sold.

However, we will not be reviewing the way we sold the funds to you as you did not respond to our letters to say you wanted us to, **unless there are exceptional circumstances which caused the delay (for example if you were incapacitated by illness) or unless you complain to us..**

Exceptional circumstances

If you were not able to respond to our letters due to exceptional circumstances, please write to us and include evidence of the circumstances.

What you can do next

This letter does not affect your ability to complain to us or to take legal action.

CF Arch cru payment scheme

You may still be able to apply to the CF Arch cru payment scheme for a payment. The scheme will run until 31 December 2013 and is separate to the review process we are carrying out.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 6R Redress determination where firm considers opt-in ineffective

Redress determination in relation to advice to invest in Arch cru funds

We will not be taking any action to review our sale of the CF Arch cru [insert fund name(s)] fund to you

Dear [Insert name]

- **We will not be reviewing the way we sold the CF Arch cru [insert fund name(s)] to you as you contacted us after the 22 July 2013.**
- **We wrote to you on [insert date] stating that you had until 22 July 2013 to complete the enclosed form and return it to us, if you wanted us to review the way we sold the funds to you**
- **You contacted us after the 22 July 2013 deadline and we do not consider that the delay was due to exceptional circumstances. If you think the delay was due to exceptional circumstances, you can refer your complaint to the Financial Ombudsman Service.**
- **If you still want us to review the way we sold the funds to you, you can complain to us under our usual complaints procedure, details of which are attached.**

(Insert summary of consumer's explanation for the delay and the reasons why the firm does not consider it to be an exceptional circumstance (see the guidance in CONRED 2.6.3(G))

What you can do next

This letter does not affect your ability to complain to us or to take legal action.

If you think we should review the way we sold the CF Arch cru [insert fund name(s)] to you, you have to contact the Financial Ombudsman Service (FOS) within six months of the date of this letter.

The FOS will decide whether we have applied the rules of the scheme correctly in our decision to exclude you.

Enclosed is a leaflet explaining the role of the FOS, which you can contact at:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Tel: 0800 023 4567 or 0300 123 9 123

Email: complaint.info@financial-ombudsman.org.uk

If you still want us to review the way we sold the funds to you, you can complain to us under our usual complaints procedure, which is attached.

CF Arch cru payment scheme

You may still be able to apply to the CF Arch cru payment scheme for a payment. The scheme will run until 31 December 2013 and is separate to the review process we are carrying out.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 7R Letter to consumers confirming their case will be reviewed

Dear [Insert name]

Sale of the CF Arch cru [insert fund name(s)] to you will be reviewed

- **We will review the way we sold the CF Arch cru [insert fund name(s)] to you to see if you are entitled to compensation.**
- **We will tell you the outcome of our review by [insert date]. You do not have to respond to this letter.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We will review the way we sold the funds to you in line with the FSA requirements. *[We have contracted [Name of firm] to undertake this review on our behalf.]*

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

We will tell you the outcome of our review by *[insert date]*.

If you have any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 8R Initial letter requesting information/enclosing questionnaire

[Firm details]

[Date]

[Consumer details]

Fund name(s): [insert fund name(s)]

Amount(s) invested: [insert amount(s) invested]

Date(s) of advice given: [insert date(s) of advice given]

Further information required to review our sale of the CF Arch cru [insert fund name(s)] to you

Dear [Insert name]

- **You have to provide further information so we can review the way we sold the CF Arch cru [insert fund name(s)] to you.**
- **We wrote to you on [insert date] to confirm we will review our advice to you to invest in the above-named fund.**
- **Please send this information to us as soon as possible.**
- **If we do not hear from you we will not be able to review the way we sold the funds to you and see if you are entitled to compensation.**
- **Please contact us if you have difficulties providing this information.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We wrote to you on [insert date] to confirm we will review the way we sold the CF Arch cru [insert fund name(s)] to you. [We have contracted [Name of firm] to undertake this review on our behalf.]

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Further information required

We now require further information so we can review the way we sold the CF Arch cru [insert fund name(s)] to you.

[Please provide us with [insert information requested] OR Please complete the enclosed questionnaire.]

You have to send this information to us if you want us to continue reviewing the way we sold the funds to you.

If you have any difficulties providing this information or any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

If we do not hear from you we will not take any further action to review the way we sold the funds to you.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

Questionnaire

This questionnaire relates to your investment in the Arch cru [complete fund] based on the advice of [insert adviser name].

Please complete it as accurately as possible using information that reflects your circumstances as at [complete date], when you invested in the above-named fund.

Personal details

Name

Date of birth

Employment status at time of sale (employed/self-employed/retired/not working/other)

Annual income at time of sale £

[Second investor

Name

Date of birth

Employment status at time of sale (employed/self-employed/retired/not working/other)

Annual income at time of sale]

Amount(s) invested £_____

Arch cru fund(s) invested in [investment/specialised/income/balanced/global growth/finance]

Your investment objectives at the time

Were you saving for some specific purpose? Y/N

If yes, what was this? _____

Were you investing for growth (i.e. to accumulate capital to use later) Y/N

Were you investing for income (i.e. to receive regular payments) Y/N

If you were investing for income, what level of income did you require from the investment, per month or year? £_____ per _____

Was your aim to diversify your existing portfolio? Y/N

Was your aim to change the risk profile of your existing portfolio? Y/N

Did you have some other objective for this investment? Y/N

If yes, what was this? _____

Were you prepared to accept that you might get back less than what you originally invested?
Y/N

Your financial situation at the time

Please fill in as much as you can in the boxes below.

Amounts held in:

Cash £

Existing investments in Arch cru funds £

Other investments £

What was the source of the money invested in Arch cru funds on this occasion?

Switch from _____ above.

Your understanding of the investment at the time

What did you understand the risk of capital losses to be at the time you invested?

Please indicate on this line:

Low _____ High

What kind of assets did you understand that the Arch cru funds would invest in?

Tick all that apply:

Cash

Bonds

Listed UK equities

Listed overseas equities

Listed higher risk equities (e.g. emerging markets)

Property

Private (i.e. unlisted) equity

Private (i.e. unlisted) debt

Other assets

Your Arch cru investment

Which fund did you invest in? _____

Which share class? _____

Amount(s) invested £_____

Date(s) of investment

Was this a single investment or did you make regular contributions? If you made regular contributions, please provide details of the dates of these investments and the amounts invested.

Do you still have this investment? Yes
 No

If no, or if you withdrew some of your shares prior to the fund suspension, please list the dates of withdrawal(s) below and the number of shares that you hold now:

Date(s) of withdrawal	Amount of withdrawal (£)	Number of shares held today

Have you received capital distributions since the fund suspension?

If yes, please list the dates of the capital distributions and the amount of the distributions:

Date(s) of distribution	Amount of distribution (£)

2 Annex 9R Reminder letter*[Firm details]**[Date]**[Consumer details]*Fund name(s): *[insert fund name(s)]*Amount(s) invested: *[insert amount(s) invested]*Date(s) of advice given: *[insert date(s) of advice given]***Final reminder: Further information required from you to enable us to review our sale of the CF Arch cru *[insert fund name(s)]* to you**Dear *[Insert name]*

- **You have to provide further information so we can review the way we sold the CF Arch cru *[insert fund name(s)]* to you, as we stated in our letter of *[insert date]*.**
- **Please send us this information within 4 weeks.**
- **If we do not hear from you we will not take any further action to review the way we sold the funds to you to see if you are entitled to compensation.**
- **Please contact us if you have difficulties providing this information.**

The Financial Services Authority (FSA) has identified problems with advice to invest in the CF Arch cru investment and diversified funds.

We wrote to you on *[insert date]* to confirm we will review the way we sold the CF Arch cru *[insert fund name(s)]* to you. *[We have contracted *[Name of firm]* to undertake this review on our behalf.]*

If our review finds you were mis-sold the funds you may be entitled to compensation. This will aim to put you in the position you would have been in had you received suitable advice and not been mis-sold the funds.

Further information required

We now require further information so we can review the way we sold the CF Arch cru *[insert fund name(s)]* to you.

*[Please provide us with *[insert information requested]* OR Please complete the enclosed questionnaire.]*

Please send this information to us within four weeks of the date of this letter if you want us to continue reviewing the way we sold the funds to you.

If you have any difficulties providing this information or any queries about our review call us on <phone number>. We are available between <times and days that phones answered>.

If we do not hear from you within four weeks we will not take any further action to review the way we sold the funds to you.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 10R Redress determination where consumer has not provided requested information

Redress determination in respect of advice to invest in the Arch cru [insert fund name(s)]

[Firm details]

[Date]

[Consumer details]

Fund name(s): [insert fund name(s)]

Amount(s) invested: [insert amount(s) invested]

Date(s) of advice given: [insert date(s) of advice given]

We will not take any further action to review our sale of the CF Arch cru [insert fund name(s)] to you

Dear [Insert name]

- **We are not able to complete our review of the way we sold the funds to you as you did not provide the extra information we requested. You confirmed you wanted us to review our advice to you to invest in the above-named fund.**
- **We wrote to you on [insert dates of initial letter and subsequent letter] to tell you that we needed additional information from you to complete this review. We also attempted to contact you [insert details].**

What you can do next

This letter does not affect your ability to complain to us or to take legal action.

If you are dissatisfied with this outcome you have to contact the Financial Ombudsman Service (FOS) within six months of the date of this letter.

The FOS will decide whether we have applied the rules of the consumer redress scheme correctly.

Enclosed is a leaflet explaining the role of the FOS, which you can contact at:

Financial Ombudsman Service

South Quay Plaza

183 Marsh Wall

London E14 9SR

Tel: 0800 023 4567 or 0300 123 9 123

Email: complaint.info@financial-ombudsman.org.uk

If you still want us to review the way we sold the funds to you, you can complain to us under our usual complaints procedure, which is attached.

CF Arch cru payment scheme

You may still be able to apply to the CF Arch cru payment scheme for a payment. The scheme will run until 31 December 2013 and is separate to the review process we are carrying out.

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

2 Annex 11R Redress determination letter for scheme cases*[Consumer details]**[Firm details]**[Date]*Dear *[Insert name]***Redress determination in respect of advice to invest in the Arch cru *[insert fund name(s)]****[WHERE INFORMATION HAS BEEN SUFFICIENT TO REACH A CONCLUSION:]*

- **Our review found that our advice was suitable/unsuitable.**
- **We have found that you are/are not owed compensation for our advice to you on investing in the Arch cru *[insert fund name(s)]*.**
- ***[if owed compensation]* The amount you are owed is:**
- ***[if owed compensation]* We were required by the FSA to subtract from the total the current value of the funds and the amount you could receive under the separate CF Arch cru payment scheme – you have until 31 December 2013 to apply to that scheme;**

Why did we reach this decision?*[Insert reason: summarise the information in the template which led to the finding]**[If advice unsuitable, but firm believes it did not cause the consumer's loss:]*

Although we have decided the advice to you to invest in the Arch cru funds was unsuitable given your circumstances at the time, based on the evidence available we believe our unsuitable advice did not cause your loss. *[Insert further detail of the evidence.]*

[If advice unsuitable, but no compensation is payable according to calculator:]

Although we have decided the advice to you to invest in the Arch cru funds was unsuitable given your circumstances at the time, the redress calculator provided by the FSA shows that you suffered no financial loss as a result. This calculation is enclosed.

[If advice unsuitable, i.e. firm is applying FSA comparator in calculation, and compensation is payable as a result:]

We have applied the findings of the review to the calculator provided by the FSA. It has found you are owed £_____. This calculation is enclosed.

As part of our calculation, we assessed the position that you would be in now if you had taken out an investment that correctly matched the level of risk you wanted to take with your money. In your case, we estimated that at the time we advised you, the level of risk you were prepared to take was *[Insert explanation of the relevant point on the risk scale, setting out why the customer was rated in this way]* and so a relevant comparator investment for your case was *[insert description of relevant comparator as provided in FSA template instructions]*.

[If advice unsuitable and firm is not applying FSA comparator in calculation:]

As part of our calculation, we assessed the position that you would be in now if you had taken out an investment that correctly matched the level of risk you wanted to take with your money. In your case, we estimated that at the time we advised you, the level of risk you were prepared to take was *[Insert explanation of the relevant point on the risk scale, setting out why the customer was rated in this way]* and so a relevant comparator investment for your case was *[insert details of comparator]* because *[insert reason]*.

[Where compensation is payable]

The FSA has required us to subtract the current value of the funds and the amount you are eligible to receive under the separate CF Arch cru payment scheme, from the compensation payment. This was subtracted whether or not you have made a claim under the payment scheme.

You have until 31 December 2013 to apply to the payment scheme.

You should have already received letters explaining how the payment scheme works and details of how CFM calculated each investor's share of the £54m package.

You can apply to the CF Arch cru payment scheme whether you accept or refuse our offer.

[Firm may include this wording if it wishes:]

If you accept this payment, it will be in full and final settlement of all claims against *[me/us/name of firm which provided the advice]* arising out of the advice given by *[me/us/it]* to you to invest in the above-named fund.

[Where compensation is payable]

If you want to accept this payment please sign below and indicate how you would like to receive the funds. Please also provide a daytime telephone number in case we have to contact you to finalise the payment.

We intend to make payments within 28 days of the date of this letter.

If we do not pay or contact you within 28 days of receiving your acceptance, you can contact the FSA using the contact details below:

You are not obliged to accept this payment but if you want to you must **respond within six months of the date of this letter**, unless there are exceptional circumstances.

The review was completed by *[insert name of reviewing party]*.

Enclosed is a copy of the completed review template used to assess your case.

[In all cases:]

What you can do next

If you are dissatisfied with this outcome you may refer this determination to the Financial Ombudsman Service (FOS) within six months of the date of this letter.

The FOS will decide whether we have applied the rules of the consumer redress scheme correctly in our decision to exclude you.

Enclosed is a leaflet explaining the role of the FOS, which you can contact at:
Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Tel: 0800 023 4567 or 0300 123 9 123
Email: complaint.info@financial-ombudsman.org.uk

If you want to contact the FSA you can call its Consumer Helpline on 0845 606 1234 or email consumer.queries@fsa.gov.uk.

Yours sincerely,

<signature>

<name of adviser or customer service>

[I/We] have enclosed two copies of this letter. Please complete both copies below, returning one to [me/us] and keeping the other for your records.

Signed:

Please print name:

Please indicate below how you would like to receive the funds:

By cheque

By payment into (non-ISA) bank account
Sort code: Account number:

By payment into an existing tax wrapper such as an ISA or personal pension (if you select this option, we will contact you to discuss this, as there may be tax consequences that we should discuss.)

Please write your contact telephone number here:

2 Annex 12R Arch cru product advice suitability assessment template

Firm and case details

Assessor name	<i>Free text</i>
Assessment date	<i>Date box</i>
FRN	<i>Free text</i>
Firm name	<i>Free text</i>
Appointed representative (if applicable)	<i>Free text</i>
Adviser name (optional)	<i>Free text</i>
Firm STR reference	<i>Sales transaction review (STR) reference– firm to create and input manually</i>
Are you the firm that sold the investment?	<i>Yes*/No</i>
	<i>[*if no – insert original firm name]</i>

Consumer details

Was this advice given on a joint basis?	<i>[yes / no] *</i>
---	---------------------

	Consumer 1	* Consumer 2 (for joint investments)
Full name	<i>Free text</i>	<i>Free text</i>
Date of birth	<i>Date box</i>	<i>Date box</i>
Age at time of advice	<i>Free text</i>	<i>Free text</i>
Employment status	<i>Drop down</i>	<i>Drop down</i>
Annual income	<i>£</i>	<i>£</i>
Annual expenditure	<i>£</i>	<i>£</i>
Date of advice to consumer	<i>Date box</i>	

Transaction input

Enter transaction details for the Arch cru fund(s) invested in

Transaction date	Fund invested	Transaction type	Amount (£)
<i>Date box</i>	<i>Drop down</i>	<i>Drop down</i>	<i>£</i>
<i>Date box</i>	<i>Drop down</i>	<i>Drop down</i>	<i>£</i>
<i>Etc</i>			

Admission of failure in opted-in scheme case

Only complete this section for those cases where you admit the firm has failed to comply with a suitability requirement

The firm admits that it has failed to comply with a suitability requirement in the opted-in scheme case	<i>Yes*</i>
---	-------------

** A firm admitting a failure is only required to fill out the sections identified in the instructions*

Consumer's investment objectives

** text box on RH side appears if this option is chosen*

What consumer objectives were stated in the consumer file	Priority/ Yes/ No	
General lump sum investment for growth	Priority/ Yes/ No	
General lump sum investment for income	Priority*/ Yes*/ No	<i>* £ amount of income</i>
Tax efficiency	Priority/ Yes/ No	
Retirement planning	Priority/ Yes/ No	
Realignment of portfolio	Priority/ Yes/ No	
Other objective	Priority*/ Yes*/ No	<i>* insert details – free text boxes depending on the number of extra objectives</i>

Comments on consumer investment objectives:

Free text

Consumer attitude to risk

Consumer's attitude to risk

Free text

Firm's description of the consumer's attitude to risk

Free text

Comments on the firm's assessment of the consumer's attitude to risk

Free text

Consumer financial situation

Assess the consumer's portfolio so that you are able to determine the following: -

Consumer's investments (excluding main residence)		Total before investment (£)	Total after investment in Arch cru fund
Cash (including cash ISAs)		£	£
Investments		£	£
Arch cru fund 1	<i>Drop-down of six funds</i>	£	£
Arch cru fund 2 etc	<i>Drop-down of six funds</i>	£	£
Other		£	£
TOTAL		£ [SUM]	£ [SUM]

Comments on portfolio before and after sale

Free text

Comments on the consumer's capacity for loss

Free text

Suitability requirements

Does the available evidence show overall that:		Yes / No
(1)	The <i>consumer</i> was willing to take a high degree of risk with the sum invested	
(2)	The risk profile of the <i>consumer's</i> overall savings and investment portfolio after the sale was suitable for the level of risk he was willing to take to meet his investment objectives	
(3)	The <i>consumer's</i> portfolio was sufficiently diversified after the sale to meet his investment objectives	
(4)	The <i>consumer</i> was reliant on income from this investment	
(5)	The <i>consumer</i> had the capacity to bear the risk of investing [x%] of his savings and investments in the selected Arch cru fund	
(6)	The <i>firm</i> took reasonable steps to ensure the consumer had the experience and knowledge to invest in the selected Arch cru fund	
(7)	The recommendation is <u>not</u> suitable for the <i>consumer's</i> investment objectives or financial situation for some other reason (if 'yes' please explain below)	

Template rating

<i>Non-compliant / Compliant</i>

Firm rating

<i>Non-compliant / Compliant</i>

Describe the evidence and explain your overall conclusion on compliance with the suitability requirements:

<i>Free text</i>

Causation

Where a firm has failed to comply with the suitability requirements:

Based on the available evidence, is it more likely than not that the firm's failure to comply with the suitability requirements caused the consumer's loss?	<i>Yes / No</i>
---	-----------------

<p>Please explain your conclusion on causation with reference to the evidence on file</p>	<p><i>Free text</i></p>
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Redress

** indicates a field which may not be applicable in all cases. All other fields are mandatory.*

Complete for each Arch cru fund invested	Suitable investment benchmark	SI 5 value (£) *	SI selection and justification (SI 4 & SI 5 only) *
Fund 1	<i>1,2,3,4,5</i> <i>4 (Advice suitable)</i> <i>5 (Other)</i>	<i>Enter suitable investment benchmark value (£) for SI 5</i>	<i>Identify the suitable investment and provide reasons for its selection</i>
Fund 2 etc			

2 Annex 13 CF Arch cru funds template instructions

1 Limitations on use of template and instructions

- 1.1 G The Arch cru advice suitability assessment template reproduced at *CONRED 2 Annex 12R* (referred to in these instructions as the “template”) and the instructions in this Annex are only to be used for the purpose of complying with the requirements under *CONRED 2* to assess sales of the Arch cru funds identified at *CONRED 2.1.1R(2)*. They should not be used for any other purpose.

2 Using the template

- 2.1 G The template contains factors to take into account to determine whether there has been a failure to comply with the suitability requirements (specified at 5.1R, below) in an opted-in scheme case.
- 2.2 R The template is divided into sections which must be completed in full, except where indicated in these instructions.
- 2.3 R Before completing the template you must familiarise yourself with the features and risks of the Arch cru funds that a reasonably competent *firm* should have identified, as specified in *CONRED 2 Annex 15R*.
- 2.4 R Answer the questions in the template and complete your assessment by reference to the available evidence (information on the *consumer* file and any information received from a *consumer*), and the features and risks of the Arch cru funds that a reasonably competent *firm* should have identified, as specified in *CONRED 2 Annex 15R*.

3 Admission of failure to comply with suitability requirements

- 3.1 R Where you admit that the *firm* has failed to comply with a suitability requirement (specified at 5.1R, below) in an opted-in scheme case complete the following sections of the template:
- (1) *firm* and case details;
 - (2) *consumer* details;
 - (3) transaction input;
 - (4) admission of failure in an opted-in scheme case;
 - (5) causation; and
 - (6) redress.

4 Completing the template

- 4.1 R Fill in the following sections of the template as follows:
- (1) **Firm and case details:** enter the *firm*-specific information as it appears on the *FSA Register*.
 - (2) **Consumer details:** enter the *consumer* details and the date of the advice to the *consumer*. Advice was given on a joint basis if it was given to two people where the *personal recommendation* relates to a “joint” portfolio. This includes cases where the advice is directed at a couple but where the investment is in one spouse’s name for tax purposes.
 - (3) **Transaction input:** take the following steps:
 - (a) Select the date of investment in the “transaction date” box. If you cannot identify the date of investment from the *consumer* file, insert the date of advice as the approximate date of the investment.
 - (b) Select the Arch cru fund(s) invested in.
 - (c) Select the transaction type from the drop-down menu. The transaction types to select from are:
 - **Investment:** an investment into an Arch cru fund. Enter the amount invested, the share class, and the wrapper (if applicable).
 - **Partial withdrawal:** the sale of part of the *consumer’s* share capital in the *consumer’s* investment, excluding interim hardship withdrawals.
 - **Final withdrawal:** the sale of all of the *consumer’s* share capital in the *consumer’s* investment, excluding final hardship withdrawals.
 - **Income distribution:** any income distribution received by the *consumer* in respect of their shares in the *consumer’s* investment prior to the date of suspension of the Arch cru funds.
 - **Capital distribution:** any capital distribution received by the *consumer* in respect of their shares in the *consumer’s* investment after the date of the suspension.
 - **Capita offer:** the amount offered to the *consumer* under the *CF Arch cru payment scheme*.
 - **Interim hardship withdrawal:** interim distributions received by the *consumer* from the Capita Hardship Scheme (ie, the hardship scheme for investors in Arch

cru funds as set out by Capita Financial Managers Ltd in a letter to investors of 7 December 2009) after the date of the suspension.

- **Final hardship withdrawal:** the amount received by the *consumer* for any full surrender of the investment from the Capita Hardship Scheme (as described above) after the date of the suspension.
- (d) Input the amount corresponding to the transaction type.
- (4) **Admission of failure to comply with a suitability requirement in the opted-in scheme case:** Select “yes” or “no” and proceed with the steps outlined at 3.1R, above.
- (5) **Consumer investment objectives:** take the following steps:
- (a) Identify and select whether any of the objectives listed on the template is recorded (yes/no) and override the “yes” with “priority” if the *consumer* says, or the firm recorded that, this objective was a priority.
 - (b) If a *consumer* was investing a lump sum to obtain an income, identify and record what level of annual income the *consumer* wanted from the recommended Arch cru fund.
 - (c) The objective ‘Realignment of portfolio’ must be used when the *consumer’s* circumstances or overall investment objective has changed.
 - (d) If the *consumer* had other investment objectives not identified in the list above, record these objectives in the box provided and identify whether they were a priority.
 - (e) Complete the “Comments on consumer investment objectives” box where you have further comments on the *consumer’s* investment objectives relevant to your assessment.
- (6) **Consumer attitude to risk (“ATR”):** take the following steps:
- (a) In the “Consumer’s attitude to risk” box record the *firm’s* short description of the *consumer’s* ATR, using the headline description used on their risk scale (eg, “balanced”, “medium”, “5/10”).
 - (b) In the “Firm’s description of the consumer’s ATR” box record the *firm’s* description of the *consumer’s* ATR, using the *firm’s* own wording (eg, “balanced means the *consumer* will invest in x, y types of assets and wants to take x risk with their capital”).

- (c) In the “Comments on the firm’s assessment of the consumer’s ATR” box record any comments you have on the *firm’s* assessment of the *consumer’s* attitude to risk and whether the *firm’s* assessment was, in your view, a reasonable representation of the *consumer’s* ATR. You should also include any information about the *consumer’s* ATR in relation to this particular investment.
- (d) This section does not record information on the *consumer’s* capacity for loss (which is different to a *consumer’s* ATR). This information must be noted in the “Comments on the consumer’s capacity for loss” box in the “Consumer’s financial situation” section of the template.
- (e) Where there is evidence that the *consumer’s* ATR was wrongly assessed by the *firm*, complete the suitability section based on your assessment of the *consumer’s* ATR.
- (7) **Consumer financial situation:** take the following steps:
- (a) Record information on the *consumer’s* savings and investments portfolio before and after the *consumer’s* investment in the Arch cru funds in the boxes provided.
- (b) The template provides the following categories:
- Cash (including cash ISAs)
 - Investments
 - Arch cru funds (this is a drop-down menu).
- (c) When completing the table of the *consumer’s* investments, take into account the following:
- Where advice is being provided on a “joint” basis (see 4.1R(2), above), record the combined total of, for example, a married couple’s investments. Where advice is on a ‘single’ basis but the *consumer* is married or in a relationship include the value of the proportion of investments owned by the *consumer* (these will usually be in the *consumer’s* name). Where the *consumer’s* share of investments is unclear from the file you can assume the proportion owned by the *consumer* is 50%.
 - Only include pension policy values where the fund is held in a pension wrapper (eg a self-invested personal pension (*SIPP*) or a small self-administered scheme (*SASS*)).
 - Where the source of funds is existing investments, use

the surrender value of the investments.

- (d) In the “Comments on portfolio before and after sale” box record your observations about the level of diversification within the portfolio and how the advice to invest in the selected Arch cru fund has met the *consumer’s* investment objectives for their portfolio.

Your comments must include whether the evidence supports an assessment that the risk profile of the *consumer’s* overall portfolio was suitable given the *consumer’s* personal and financial circumstances and objectives before and after the advice to invest in an Arch cru fund. This information will be relevant later in the template.

- (e) In the “Comments on consumer’s capacity for loss” box, record the *firm’s* comments on the *consumer’s* capacity for loss (also referred to as the level of risk the *consumer* is able to take). This is different to the level of risk that the *consumer* was willing or would have preferred to take. In doing so, consider whether, in the light of the available evidence:

- the *consumer* was able to take any risk with the *consumer’s* capital or income;
- there would have been an impact on the *consumer* of a total or partial loss of capital;
- the *consumer* could, considering his personal and financial circumstances, afford to take this level of risk.

- (8) **Suitability requirements:** take the steps set out at 5.1 to 5.4, below.

- (9) **Causation:** take the steps set out at 9.1 to 9.5, below.

- (10) **Redress:** take the steps set out at 10.1 to 10.15, below.

5 Suitability requirements

5.1 R The following requirements are specified:

- (1) for a *personal recommendation* made on or before 31 October 2007, COB 5.3.5R(1);
- (2) for a *personal recommendation* made on or after 1 November 2007, COBS 9.2.1R(1);
- (3) the common law duty in contract or tort to exercise reasonable skill and care in advising the *consumer* on investments.

- 5.2 G The contract between the *firm* and the *consumer* may have included a specific term providing that the *firm* would exercise reasonable skill and care in advising the *consumer* on investments. If it did not do so, such a duty is likely to have been implied into the contract.
- 5.3 G The standard of care under the *FSA rules* and the common law is that of a reasonably competent *firm* carrying on a similar business to that of the *firm* assessed.
- 5.4 G *COB 5.2* and *COBS 9.2.1R(2)*, *COBS 9.2.2R* and *COBS 9.2.3R* indicate particular matters of which you should take account when assessing whether the *firm* failed to comply with the suitability requirements at 5.1R, above. In summary, these are the *consumer's*:
- (1) investment objectives;
 - (2) financial situation; and
 - (3) experience and knowledge of investments similar to the recommended Arch cru fund.

6 Assessing opted-in scheme cases

General

- 6.1 G The “Suitability section” in the template and associated additional provisions in these instructions contain examples which tend to show failure to comply or compliance with the suitability requirements (“example”).
- 6.2 G The suitability requirements arise from *FSA rules* and the common law. For the requirements specified, the standards required of the *firm* are broadly the same whether their origin is a *rule* or the common law.
- 6.3 R You must in each opted-in scheme case falling within *CONRED 2.4.2R*:
- (1) fairly consider and give appropriate weight to all information on the *consumer* file and any information received from a *consumer* of the *firm's* compliance or non-compliance with applicable suitability requirements at 5.1R, above; and
 - (2) decide, with reference to the examples in the suitability requirements section of the template, whether it is more likely than not that the *firm* failed to comply with the suitability requirements specified at 5.1R, above.
- 6.4 R In considering the information on the *consumer* file and any information received from a *consumer*, you must:
- (1) not assume that a *firm* complied with a suitability requirement (specified at 5.1R, above) solely on the basis that:

- (a) the *consumer* signed documentation that records his understanding or agreement to matters set out in that documentation;
 - (b) the *personal recommendation* was given to a *consumer* who had already invested in an Arch cru fund or a predecessor of that fund;
- (2) give more weight to evidence of the particular circumstances of a *personal recommendation* than to general evidence of the selling practices of the *firm* or its advisers at the relevant time;
 - (3) determine that an example in the suitability requirements section of the template is present on the “balance of probabilities” when it is more likely than not to have occurred.

Reliance on others

- 6.5 R You must take into account that:
- (1) the duty of a *firm* to advise on the suitability of investments cannot be delegated to, or discharged by reliance on, another;
 - (2) where the *firm* made a *personal recommendation* in reliance on the advice or opinions of *persons* other than the *firm*, a *firm* must not be regarded as complying with the suitability requirements at 5.1R, above, because of that reliance; and
 - (3) the suitability requirements at 5.1R, above, require a *firm* in all cases to form its own view of the suitability of the recommended Arch cru fund for the particular *consumer*, based on the information that the *firm* had, or ought reasonably to have obtained, regarding that Arch cru fund and its suitability for the *consumer's* circumstances.
- 6.6 R If, in relation to any rating, before coming to a view that the *firm* came to a reasonable, albeit erroneous, conclusion on the risks of the recommended Arch cru fund and sold the Arch cru fund on this basis, you must take into account:
- (1) that the *FSA's* guidance on the Responsibilities of Providers and Distributors for the Fair Treatment of Consumers (*RPPD*) says that a *firm* distributing products:
 - (a) should consider, when passing provider materials to *consumers*, whether it understands the information provided;
 - (b) should ask the provider to supply additional information or training where that seems necessary to understand the product or service adequately; and

- (c) should not distribute the product or service if it does not understand it sufficiently, especially if it intends to provide advice;
- (2) any due diligence: a *firm* providing a *personal recommendation* should have formed its own view on the risks of investing in an Arch cru fund, based on the information that it had or ought to have gathered about the fund;
- (3) that the reliance on other *rules* (*COB* 2.3.3R and *COBS* 2.4.6R) enable a *firm* to place reasonable reliance for some purposes on factual (ie, not opinion-based) information provided by an unconnected *authorised person*; but that these *rules* do not absolve a *firm* from forming its own view on the risks of investing in an Arch cru fund;
- (4) the features and risks of the recommended Arch cru fund set out in *CONRED* 2 Annex 15R; and
- (5) that *COBS* 2.4.8G states that “it will generally be reasonable ... for a *firm* to rely on information provided to it in writing by an unconnected *authorised person* ... unless it is aware or ought reasonably to be aware of any fact that would give reasonable grounds to question the accuracy of that information”. In the absence of those grounds, it will generally have been reasonable for a *firm* to have relied on factual statements provided by Arch or Cru on the Arch cru funds, such as information about the funds’ underlying assets.

7 Assessing compliance with the suitability requirements

- 7.1 R When assessing whether a *firm* complied with the suitability requirements specified at 5.1R, above, you must take into account the following:
- (1) the *consumer’s* investment objectives, including his willingness to bear the risks associated with the recommended Arch cru fund;
 - (2) the *consumer’s* financial situation, including his financial ability to bear the risks associated with the recommended Arch cru fund consistent with his investment objectives;
 - (3) the *consumer’s* ability, in the light of the following, to understand the risks associated with the recommended Arch cru fund:
 - (a) the experience and knowledge of the *consumer* relevant to an investment in the recommended Arch cru fund; and
 - (b) any correspondence between the *firm* and the *consumer* (which may include references to promotional materials, such as fund factsheets or offer documents or prospectuses) regarding the recommended Arch cru fund.

- 7.2 R When assessing the reasonableness of a *firm's* conduct in relation to a *personal recommendation*, you must:
- (1) assess the *firm's* conduct against what was reasonable at the time when the *firm* made the *personal recommendation*; and
 - (2) conclude that the conduct of the *firm* assessed was reasonable only where that *firm* displayed the degree of skill, care and diligence that would at that time have been exercised in the ordinary and proper course of a similar business to that of the *firm*.

Consumer instructions

- 7.3 R In all cases, you must take into account any specific instructions the *consumer* gave the *firm* about the sale.
- 7.4 G Specific instructions include, for example, where the *consumer* asked the *firm* to advise only on the sum to be invested and not on the *consumer's* pension arrangements.
- 7.5 G As the Arch cru funds are high-risk investments, the *firm* should have asked for further information about the *consumer's* wider portfolio, and have taken this into account when making its *personal recommendation* to the *consumer* to invest in an Arch cru fund.
- 7.6 G If there is clear evidence on file that the *consumer* has given specific instructions that the *firm* is not to review the *consumer's* entire portfolio, but to advise on this investment only, the suitability assessment could involve a narrower review, focusing on the *consumer's* objectives in relation to the specific amount to be invested. However, any *personal recommendation* should still have taken into account how the specific investment would fit within the *consumer's* overall savings and investments portfolio.

8 Suitability section

Filling in the suitability requirements section

- 8.1 G The suitability requirements section is used to record your assessment of whether or not the *firm* complied with the suitability requirements specified at 5.1R, above.
- 8.2 R To complete the suitability requirements section you must take the following steps for an opted-in case falling within *CONRED 2.5.1R* (an “opted-in scheme case”):
- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the data section of the template (“the available evidence”);
 - (2) determine whether the available evidence shows overall that any or all of examples (1) to (7) is present or not;

- (3) indicate whether any or all of examples (1) to (7) is present, or not, by selecting “yes” or “no”;
- (4) conclude, taking into account the available evidence, whether the *firm* complied with the suitability requirements specified at 5.1R, above; and
- (5) insert your commentary on whether or not the *firm* complied with the suitability requirements specified at 5.1R, above, with reference to the example(s) that support your conclusion. Your comments can refer to relevant sections of the fund summary in *CONRED 2* Annex 15R.

8.3 G If an example is present, this will tend to show the *firm’s* compliance or non-compliance with the suitability requirements. The presence of the example is not definitive as to whether a *firm* has complied with the suitability requirements. There may be other factors which mean that the *firm* has, despite the presence of the example, complied, or not complied, with the suitability requirements at 5.1R, above.

8.4 G The template sale rating will automatically default to “Compliant” or “Non-compliant” depending on your answer to the example questions in the template. The “Non-compliant” rating indicates that the *personal recommendation* does not comply with the suitability requirements at 5.1R, above.

8.5 G This table contains *rules, evidential provisions, and guidance* for determining whether the available evidence shows overall that an example is present, or not:

(1)	The consumer was willing to take a high degree of risk with the sum invested	
	R	Compare:
	(1)	the information on the <i>consumer</i> file, and any information received from the <i>consumer</i> and, in particular, the information recorded in the template on the <i>firm’s</i> assessment of the <i>consumer’s</i> attitude to risk (ATR), focusing on the degree of risk the <i>consumer</i> was willing to take with this investment (not, for the purposes of this question, the degree of risk the <i>consumer</i> was able to take); with
	(2)	the high degree of risk a <i>consumer</i> must have been willing to take for a <i>personal recommendation</i> to invest in an Arch cru fund to be suitable.
	E	Answer “no” to this question where:
	(1)	the <i>consumer</i> was not willing to take a high degree of risk with the sum invested (by reference to the risk scale used by the <i>firm</i>); or

	(2)	the <i>consumer</i> was not willing to put his capital at risk for the potential of a higher return and had expressed a preference for lower-risk investments.
	G	This question relates to the level of risk a client is willing to take with the sum invested.
(2)	The risk profile of the consumer's overall savings and investment portfolio after the sale was suitable for the level of risk he was willing to take to meet his investment objectives	
	R	Take the following steps:
	(1)	refer to the information recorded on the <i>consumer's</i> stated attitude to risk in the template;
	(2)	with reference to the firm's risk scale, identify the risk level in the <i>consumer's</i> portfolio after the sale; and
	(3)	compare the level of risk in the <i>consumer's</i> overall portfolio after the sale with the level of risk the <i>consumer</i> was willing to take to meet his investment objectives.
	E	Answer "no" where the risk profile of the <i>consumer's</i> portfolio was higher than the level of risk he was willing to take to meet his investment objectives.
	G	This question relates to how the investment fits into the client's portfolio of investments.
(3)	The consumer's portfolio was sufficiently diversified after the sale to meet his investment objectives	
	R	Take the following steps:
	(1)	refer to the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded on the <i>consumer's</i> investment objectives section of the template;
	(2)	identify the concentration of Arch cru funds in the <i>consumer's</i> portfolio after the sale; and
	(3)	taking into account in particular:
	(a)	the concentration of Arch cru funds;
	(b)	the liquidity in the <i>consumer's</i> portfolio;
	(c)	the exposure to different asset classes; and
	(d)	the level of stability of returns or security of invested

			capital in the portfolio;
			determine whether the <i>consumer's</i> portfolio was sufficiently diversified to meet his investment objectives.
E	(1)		Answer “no” where the <i>consumer</i> has a large portfolio of savings and investments but his preferences regarding risk-taking indicate that he would prefer to diversify and invest in a wide range of assets and he has invested a high concentration of his assets in Arch cru funds and the risk of this investment is not offset by the potential return offered by the Arch cru funds.
	(2)		Answer “yes” where the <i>consumer</i> wanted a significant portion of his capital to be invested in higher-risk or alternative investments and has a low proportion of Arch cru funds. This may be recorded in specific instructions the <i>consumer</i> gave the <i>firm</i> .
(4)	The consumer was reliant on income from this investment		
E	(1)		Answer “yes” where a <i>consumer</i> needed a minimum level of income from this fund (for example, to pay household bills and expenses).
	(2)		Answer “no” where a <i>consumer</i> did not need a specific level of income from the fund, for example, because it was not essential to maintain his standard of living.
G	(1)		Whether a <i>consumer</i> had a need for income from this investment may be reflected in the information on the <i>consumer</i> file and any information received from a <i>consumer</i> about the <i>consumer's</i> household income and whether the income from this investment was necessary for household expenses and personal outlays or whether it was “disposable income” (which is money left over after bills and household expenses are paid).
	(2)		The Arch cru funds that offered income shares are the Investment Portfolio, Specialist Portfolio and Income Fund. These funds aimed to pay income on a half-yearly basis but did not provide a set level of income.
(5)	The consumer had the capacity to bear the risk of investing [x%] of his savings and investments in the selected Arch cru fund		
R	(1)		Take the following steps:
	(a)		refer to the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded on the <i>consumer's</i> financial situation in the data section of the template;

			(b)	identify the concentration of Arch cru funds in the <i>consumer's</i> portfolio after the sale; and
			(c)	taking into account in particular:
			(i)	the concentration of Arch cru funds;
			(ii)	the source and extent of the <i>consumer's</i> assets;
			(iii)	the liquidity in the <i>consumer's</i> portfolio;
			(iv)	the exposure to different asset classes;
			(v)	the level of stability of returns or security of invested capital in the portfolio; and
			(vi)	the impact the loss of the capital invested would have on his standard of living overall;
				determine whether the concentration of Arch cru funds in the <i>consumer's</i> portfolio was suitable for his financial situation.
	E	(1)		Answer “no” where any loss of the investment would have had a materially detrimental effect on the <i>consumer's</i> standard of living.
		(2)		Answer “yes” where the investment was speculative: the <i>consumer</i> had no need for the capital and would not be using it to maintain his standard of living.
		(6) The firm took reasonable steps to ensure the consumer had the necessary experience and knowledge to invest in the selected Arch cru fund		
	R	Take the following steps:		
		(1)		refer to the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded on the template;
		(2)		identify the <i>consumer's</i> level of investment experience and knowledge of investments both:
			(a)	in relation to investments similar to Arch cru funds; and
			(b)	generally;
		(3)		identify the steps that the <i>firm</i> took to establish that the <i>consumer</i> could appreciate the nature of the risks they were taking with his investment in the Arch cru fund;
		(4)		taking into account, in particular:

		(a)	information about the <i>consumer's</i> existing portfolio and the nature, volume, and frequency of the <i>consumer's</i> transactions in investments;
		(b)	how long the <i>consumer</i> had been an investor;
		(c)	the <i>consumer's</i> experience with, and knowledge of, high-risk investments similar to Arch cru funds;
		(d)	the <i>consumer's</i> profession (if any);
		(e)	insofar as it was clear, fair and not misleading, information the <i>firm</i> gave the <i>consumer</i> over and above any Capita Financial Managers Limited, Arch Financial Products LLP or Cru Investment Managers Limited produced documentation (if that was provided);
		(f)	how the <i>firm</i> communicated the risks of investing and the underlying assets in the selected Arch cru fund listed in <i>CONRED 2 Annex 15R</i> ; and
		(g)	the overall impression that the <i>consumer</i> would reasonably have had of those features and risks, particularly in the light of:
		(i)	the entirety of the communications referred to in (1);
		(ii)	the extent to which such communications were consistent in their presentation of those features and risks; and
		(iii)	the <i>consumer's</i> relevant experience and knowledge;
			conclude whether the <i>firm</i> had a reasonable basis for believing that the <i>consumer</i> had the necessary experience and knowledge to understand the risks involved in investing in Arch cru funds.
	E	Answer "no" where:	
		(1)	the <i>firm</i> did not communicate in substance the risks and features of the selected Arch cru fund listed in <i>CONRED 2 Annex 15R</i> ; and
		(2)	one or more of the following is present:
		(a)	prior to the <i>personal recommendation</i> , the <i>consumer</i> had experience and knowledge of investing in capital protected products only;
		(b)	prior to the <i>personal recommendation</i> , the <i>consumer</i> had no experience and knowledge of investments in bonds or shares traded on public markets;

		(c)	prior to the <i>personal recommendation</i> , the <i>consumer</i> had no experience and knowledge of investing in high-risk investments.
	G	A <i>firm</i> may rely on the simplified prospectus to disclose the risks in <i>CONRED 2 Annex 15R</i> , but disclosure will not be “clear” if, in particular:	
		(1)	the information was contradicted by the <i>firm</i> in correspondence between the firm and the consumer (which may include references to promotional materials, such as monthly reports, fund factsheets or offer documents or prospectuses); or
		(2)	given the <i>consumer’s</i> experience and knowledge, it is unlikely that the <i>consumer</i> would have understood the risks as disclosed in the prospectus without further explanation from the <i>firm</i> .
(7)	The recommendation is <u>not</u> suitable for the consumer’s investment objectives or financial situation for some other reason		
	R	Take the following steps:	
		(1)	refer to the information on the <i>consumer</i> file, any information received from a <i>consumer</i> and the information recorded on the <i>consumer’s</i> financial situation in the template;
		(2)	refer to the risks and features of the Arch cru funds in <i>CONRED 2 Annex 15R</i> ; and
		(3)	consider whether there is any reason, other than the reasons at questions (1) to (6) why the <i>personal recommendation</i> to invest in an Arch cru fund was unsuitable for the <i>consumer’s</i> investment objectives or financial situation.
	E	Answer “yes” where:	
		(1)	the <i>consumer’s</i> financial situation was likely to change in the near future so that he would not be able to bear the risks of this investment; or
		(2)	the <i>consumer</i> had existing debts which it would have been in his best interests to repay before making this investment; or
		(3)	following the <i>personal recommendation</i> , the <i>consumer</i> did not have an adequate emergency fund and cash reserve; or
		(4)	the <i>consumer</i> would need the money invested within five years of investment in the fund; or
		(5)	any of the risks or features of the Arch cru fund set out in <i>CONRED 2 Annex 15R</i> were unsuitable for the <i>consumer’s</i> financial situation;

			or
		(6)	an existing product in the <i>consumer's</i> portfolio could have been changed to meet the <i>consumer's</i> investment objective with less cost or less risk.
	G	(1)	The features and risks of the Arch cru fund may have been unsuitable for the <i>consumer's</i> investment objectives if any of the following applies:
			(a) the <i>consumer</i> did not want to invest through an offshore vehicle or in non-UK assets;
			(b) the <i>consumer</i> did not want an investment that did not have a transparent secondary market for its underlying assets;
			(c) the <i>consumer</i> did not want to invest through <i>collective investment schemes</i> ;
			(d) the <i>consumer</i> was not prepared to put capital at risk in stock markets;
			(e) the <i>consumer</i> did not want to be exposed to risks associated with <i>commodities</i> or <i>derivatives</i> ;
			(f) the <i>consumer</i> did not want an investment that invested in <i>illiquid assets</i> ;
			(g) the <i>consumer</i> did not want an investment that was exposed to non-traditional asset classes;
			(h) the <i>consumer</i> did not want an investment where the investment manager employed investment techniques such as gearing, that would not normally have been used in more commonly encountered <i>UCITS</i> .
		(2)	In relation to whether the <i>consumer's</i> financial situation was likely to change in the near future so that the <i>consumer</i> would not be able to bear the risks of this investment, consider whether the <i>consumer</i> was expecting a change in his personal circumstances, such as the birth of a child, redundancy or retirement and the impact this was likely to have on his financial situation.
		(3)	In relation to whether the <i>consumer</i> had existing debts which it would have been in his best interests to repay before making this investment, consider the particular circumstances of the debt, including:
			(a) the size of the debt (excluding mortgage debt);
			(b) whether the debt had an early repayment penalty or fixed

			repayment schedule;
		(c)	the interest rate on the debt in relation to what they could reasonably expect in relation to the performance of the investment.
		(4)	An adequate emergency fund should be at least three times monthly outgoings but, depending on the <i>consumer's</i> circumstances, this could be more. The <i>consumer</i> should also have held sufficient 'cash reserves' to meet known or reasonably anticipated future expenses, such as the payment of care fees, or spending on home improvements, or a new car or dependents.

Outcome: overall assessment on suitability requirements

- 8.6 R Take the following steps to determine whether the *firm* complied with the suitability requirements:
- (1) review the information on the *consumer* file, any information received from a *consumer* and the features and risks of the Arch cru fund in *CONRED 2 Annex 15R*;
 - (2) determine whether the *firm* took reasonable steps to ensure that the *personal recommendation* was suitable, and select the appropriate outcome in the Firm sale rating box "Compliant" or "Non-Compliant"; and
 - (3) in all cases, insert your commentary on whether or not the *firm* complied with the suitability requirements specified at 5.1R, above, with reference to the example(s) that support your conclusion. Your comments can refer to relevant sections of the fund summary in *CONRED 2 Annex 15R*.
- 8.7 E For the purposes of 8.2R(2) above, in any case where you have answered:
- (1) "no" to any of the questions in sub-paragraphs (1), (2), (3), (5) or (6) of paragraph 8.5; and/or
 - (2) "yes" to either of the questions in sub-paragraphs (4) and (7) of paragraph 8.5;
- this will tend to indicate that the *personal recommendation* was "Non-Compliant".
- 8.8 G The presence of an example in the suitability section of the template is not determinative as to whether a *firm* has complied with the suitability requirements. There may be other factors which mean that the *firm* has, despite the presence of the example, complied, or not complied, with the suitability requirements.

- 8.9 G Where the *personal recommendation* is to invest in more than one Arch cru fund and one investment is suitable but the other is not suitable, the *firm* should conclude overall that the *personal recommendation* does not comply with the suitability requirements. The template will take into account the suitable part of the investment in the redress section.

9 Causation section

- 9.1 G The causation section is used to record your assessment of whether or not the *consumer's* loss was caused by the *firm's* failure to comply with the suitability requirements specified at 5.1R, above. The causation section proceeds on an assumption that the *consumer* suffered a loss. Whether or not there was actually a loss is dealt with in the redress section.
- 9.2 R Complete the causation section where you have concluded that the *firm* has failed to comply with the suitability requirements specified at 5.1R, above.
- 9.3 R To fill in the causation section you must:
- (1) review the information on the *consumer* file, any information received from a *consumer* and the information recorded in the template (“available evidence”);
 - (2) determine whether the *firm's* failure to comply with the suitability requirements caused the *consumer's* loss; and
 - (3) explain your conclusion on causation with reference to the available evidence.
- 9.4 R In assessing the available evidence, you must have regard to:
- (1) the impact of the *firm's* failure(s) on the *consumer's* decision to invest in the Arch cru fund(s) in all the circumstances of the *consumer's* case;
 - (2) the position at law that, irrespective of the actions of third parties, the *firm* is responsible for all losses that flow from its failure to comply with the suitability requirements; and
 - (3) the position at law that no actions of Capita Financial Managers Limited; Arch Financial Products LLP; cru Investment Management Limited; HSBC Bank plc and BNY Mellon Trust and Depository (UK) Limited break the chain of causation, so that the *firm* is still responsible for all losses that flow from its failure to comply with the suitability requirements.
- 9.5 E You should conclude “yes” (that the *firm's* failure caused the *consumer's* loss) unless you are satisfied on the basis of the available evidence that the *consumer* did not rely on the *personal recommendation* in making the decision to invest.

10 Redress Section

- 10.1 R Complete the redress section in each opted-in scheme case where you have determined that the *consumer's* loss was caused by the *firm's* failure to comply with any of the suitability requirements at 5.1R, above.
- 10.2 G The redress section is used to identify and record an investment benchmark to compare the position the *consumer* is in with the position they would have been in if the *firm* had complied with the suitability requirements.
- 10.3 R For a redress case where a *personal recommendation* resulted in more than one investment in one or more Arch cru funds, complete the redress section for each of the *consumer's* investments in Arch cru funds.
- 10.4 R Take the following steps in each redress case:
- (1) select the Arch cru fund that the *consumer* invested in;
 - (2) having regard to what investment the *consumer* would have invested if the *firm* had complied with the suitability requirements at 5.1R above, and other requirements applicable to it at the time (referred to in this chapter as a “suitable investment”), either:
 - (a) select investment benchmark “1”, “2”, or “3”; or
 - (b) select investment benchmark “4” (suitable investment); or
 - (c) select investment benchmark “5” (other);
 - (3) where investment benchmark 4 or 5 is selected:
 - (a) determine what would have been a suitable investment in accordance with the instructions at (for investment benchmark 4) 10.6R, below, and (for investment benchmark 5) 10.7R and 10.8R, below; and
 - (b) record the suitable investment identified and the reasons for selecting it in the ‘SI selection justification’ box (for investment benchmark 4, this will be the selected Arch cru fund); and
 - (4) submit a redress calculation request to the *FSA* following the instructions at 10.13R, above.
- 10.5 E For the purposes of paragraph 10.4R(2), above:
- (1) have regard to the investment benchmarks in *CONRED 2* Annex 14R;

- (2) consider which investment benchmark best reflects the risks and features of a suitable investment;
 - (3) subject to 10.7R, above, select that investment benchmark; and
 - (4) record your reasons for the selection of that investment benchmark in the Comments box.
- 10.6 R You may select investment 4 (suitable investment) only if you are satisfied on the basis of the information on the *consumer* file, and information received from the *consumer*, that the *consumer* would have made an investment in the Arch cru fund if the *firm* had complied with the suitability requirements.
- 10.7 R You may select investment benchmark 5 (other) only where you are able to identify a specific investment:
- (1) which would have been a suitable investment; and
 - (2) in which a *consumer* could have made an investment at all times from the date on which the *consumer's* investment was made to the date of calculation.
- 10.8 G For the purposes of 10.7R, above, a *firm* might be able to identify a specific investment in circumstances where:
- (1) at the time when the *firm* made the *personal recommendation* to the *consumer* to invest in Arch cru funds, the *firm* also recommended other specific investments which would have been suitable for the *consumer*; or
 - (2) the *firm* recommended that a *consumer* disinvest from a specific investment, which was suitable for the Consumer, in order to invest in Arch cru funds.
- 10.9 R In cases where you have selected investment benchmark 5 (other) you must, following the instructions at 10.12R, below, and determine and record the value which sums initially invested by the *consumer* in the *consumer's* investment would have had at the date of calculation if such sums had been invested in investment benchmark 5.
- 10.10 R In a redress case where the *consumer* retained any shares in the *consumer's* investment at the date of suspension, redress is equal to the sum of A – B – C – D where:
- (1) “A” is the value of sums initially invested by the *consumer* at the date of calculation if they had been invested in a suitable investment;
 - (2) “B” is the net asset value of the *consumer's* investment in the Arch cru fund at the date of calculation;

- (3) “C” is the value of income distributions received by the *consumer* by the date of suspension; and
- (4) “D” is the value of sums under the *CF Arch cru payment scheme* that the *consumer* is, or was, eligible to receive (whether or not it has been received) where the *consumer* has retained shares in the *consumer’s* investment.
- 10.11 R In a redress case where the *consumer* has sold all of the shares in the *consumer’s* investment prior to the date of suspension, redress is equal to the sum of $A - C - E + I$ where:
- (1) “A” is the value of sums initially invested by the *consumer* at the date of the sale of the *consumer’s* share capital if they had been invested in a suitable investment;
- (2) “C” is the value of income distributions received by the *consumer* prior to the date of sale;
- (3) “E” is the capital realised on the sale of the *consumer’s* share capital; and
- (4) “I” is simple interest on the result of $A - C - E$ at the Bank of England base rate prevailing from time to time over the relevant period + 1%/365 for each day between the date of the sale of the *consumer’s* share capital and the date of the *redress determination*.
- 10.12 R When calculating the value of “A”, “D” and “E” to take into account the net effect of any partial sale of the *consumer’s* share capital during the term of the *consumer’s* investment:
- (1) deduct the amount of any sale of shares or distribution (including interim or final hardship withdrawals) in respect of the *consumer’s* investment at the date that the sale or capital distribution is made; and
- (2) for each sale or capital distribution, account for:
- (a) the growth rate from the time of the original investment, or previous sale or capital distribution, until the time of sale or capital distribution;
- (b) the value of the residual investment after any sale or capital distribution; and
- (c) the growth rate from the time of sale or capital distribution up to the date of calculation.
- 10.13 R To submit a redress calculation request, send a completed copy of the template to the *FSA* by email to archcruereview@fsa.gov.uk or (if the email is encrypted) archcruereviewpgp@fsa.gov.uk.

- 10.14 G If the *firm* is to send an encrypted email to the *FSA* it will need to download the public PGP key from the *FSA* website and import the key into its email client software.
- 10.15 G Following receipt of the redress calculation request the *FSA* will send the firm a summary detailing the redress payable for each *consumer's* investment and the total redress payable to the *consumer* in the redress case.

2 Annex 14R Investment benchmarks

1.1R The following investment benchmarks apply:

Comparator 1:	this comparator is a return equal to the Bank of England official Bank Rate (the ‘base rate’).
Comparator 2:	this comparator is a return equal to a 50/50 combination of the APCIMS Conservative Index and the IMA Mixed Investment 20-60% Shares sector. This comparator has a listed equity exposure of 20-60% (IMA) and 32.5% (APCIMS).
Comparator 3:	this comparator is a return equal to a 50/50 combination of the APCIMS Balanced Index and the IMA Mixed Investment 40-85% Shares sector. This comparator has a listed equity exposure of 40-85% (IMA) and 67.5% (APCIMS).

1.2G Further details of the sectors and indices referred to in the *rule* above can be found at the websites of the relevant organisations:

<http://www.apcims.co.uk/private-investor-indices/about-the-indices/>

<http://www.investmentfunds.org.uk/fund-sectors/sector-definitions/>

2 Annex 15R Risks and features of Arch cru funds

1	The Arch cru funds consist of two open-ended investment companies, the CF Arch cru Diversified Funds and the CF Arch cru Investment Funds, and their respective sub-funds, sold to consumers during the following periods:													
	<p>Investment funds</p> <p>Diversified funds</p>	<table border="0"> <tr> <td data-bbox="627 409 940 477">Investment Portfolio</td> <td data-bbox="946 409 1399 477">July 2006 to March 2009</td> </tr> <tr> <td data-bbox="627 486 940 553">Specialist Portfolio</td> <td data-bbox="946 486 1399 553">July 2006 to March 2009</td> </tr> <tr> <td data-bbox="627 562 940 629">Balanced Fund</td> <td data-bbox="946 562 1399 629">September 2007 to March 2009</td> </tr> <tr> <td data-bbox="627 638 940 705">Global Growth Fund</td> <td data-bbox="946 638 1399 705">September 2007 to March 2009</td> </tr> <tr> <td data-bbox="627 714 940 781">Income Fund</td> <td data-bbox="946 714 1399 781">September 2007 to March 2009</td> </tr> <tr> <td data-bbox="627 790 940 857">Finance Fund</td> <td data-bbox="946 790 1399 857">October 2008 to March 2009</td> </tr> </table>	Investment Portfolio	July 2006 to March 2009	Specialist Portfolio	July 2006 to March 2009	Balanced Fund	September 2007 to March 2009	Global Growth Fund	September 2007 to March 2009	Income Fund	September 2007 to March 2009	Finance Fund	October 2008 to March 2009
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Global Growth Fund	September 2007 to March 2009													
Income Fund	September 2007 to March 2009													
Finance Fund	October 2008 to March 2009													
2	Dealings in the Arch cru funds were suspended by the <i>authorised corporate director</i> , Capita Financial Managers Ltd (“Capita”), on 13 March 2009.													
3	The Arch cru funds aimed to achieve their objectives by investing in a broad range of mainstream and non-mainstream assets.													
4	The Arch cru funds, through transferable securities, ultimately invested in the following asset classes, in various combinations:													
	(a)	unlisted equity;												
	(b)	unlisted debt instruments;												
	(c)	non-UK investments;												
	(d)	venture capital or project finance investments;												
	(e)	private markets, private equity, private finance;												
	(f)	private and structured finance;												
	(g)	asset-backed lending;												
	(h)	investments in developing countries;												
	(i)	collateralised debt and collateralised cash flow financings;												
	(j)	life settlements; and												
	(k)	commodities.												

5	Information about each Arch cru fund and its sub-funds is set out below.	
CF Arch cru Diversified Fund		
6	The Diversified Fund was incorporated in June 2002 and originally named “Insinger de Beaufort Manager Selection ICVC”.	
7	The Diversified Fund was re-named the CF Arch cru Diversified Funds in mid-2007. The firms involved in the diversified fund were:	
	Authorised corporate director (ACD)	Capita
	Investment manager	Arch
	Depository	HSBC Bank PLC
	Marketing and distribution	Cru Investment Management Limited Arch Financial Products LLP
Income fund		
	<u>Promotions</u>	
8	The Income Fund was promoted to advisers as an investment in the IMA “Cautious Managed” sector and “a strong alternative to cash based investments and bond based investments”.	
	<u>Features</u>	
9	The features of the Income Fund as described to advisers are:	
	(a)	its objective is long-term capital and income growth.
	(b)	it offers both net income and net accumulation shares. For income shareholders, net income was to be distributed half-yearly. For net accumulation shareholders, net income was retained and accumulated for the benefit of shareholders and reflected in the price of the shares;
	(c)	from October 2007, its aims were to provide returns of cash + 3% per annum from a diversified pool of assets;
	(d)	it can invest in a range of assets including:
	(i)	<i>collective investment schemes</i> (which invest principally in equities), <i>transferable securities</i> , cash, deposits and money market instruments; and
	(ii)	non-mainstream assets including: private equity; private finance;

		structured finance and commodities;
	(e)	from October 2007, the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity;
	(f)	Transactions in <i>derivatives</i> will only be used for the purposes of hedging and will not affect the risk profile of the fund.
	<u>Risks</u>	
10	It is the <i>FSA</i> 's view that an investment in the income fund is likely to be high risk and, as such, investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.
Balanced fund		
	<u>Promotions</u>	
11	The balanced fund was promoted to advisers as investment in the IMA “Balanced Managed” sector and:	
	(a)	may be suitable for investors with a low-level risk appetite;
	(b)	may be a strong alternative to cash based investments and bond based investments.
	<u>Features</u>	

12	The features of the Balanced Fund, as described to advisers, are:	
	(a)	its objective is long-term capital growth;
	(b)	it offers net accumulation shares;
	(c)	from May 2008, its aims were to provide returns of cash + 4% per annum particularly over the medium term;
	(d)	it can invest in a range of assets including:
	(i)	<i>collective investment schemes</i> (which invest principally in equities), <i>transferable securities</i> , cash, deposits and money market instruments; and
	(ii)	non-mainstream assets including: private equity; private finance; structured finance and commodities;
	(e)	it will have a UK overweight portfolio;
	(f)	transactions in <i>derivatives</i> will only be used for the purposes of hedging and will not affect the risk profile of the fund.
	<u>Risks</u>	
13	It is the FSA's view that an investment in the balanced fund is likely to be high risk and investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.

Global Growth fund	
	<u>Promotions</u>
14	The Global Growth Fund was promoted to advisers as an investment in the IMA “Global Growth” sector and:
	(a) may be suitable for investors with a low-level risk appetite;
	(b) to deliver decent absolute returns through a broad exposure to the major asset classes;
	(c) investing in equity and bond funds and also other assets.
	<u>Features</u>
15	The features of the Global Growth Fund, as described to advisers, are:
	(a) its objective is long-term capital growth;
	(b) it offers net accumulation shares;
	(c) from May 2008, its aims were to provide returns of 6% per annum more than cash returns;
	(d) it can invest in a range of assets including:
	(i) <i>collective investment schemes</i> (which invest principally in equities), <i>transferable securities</i> , cash, deposits and money market instruments; and
	(ii) non-mainstream assets including: private equity; private finance; structured finance and commodities;
	(e) from October 2007, the investment classes are described as bonds, equities and other assets to demonstrate low volatility and correlation with equities and bonds to improve diversity;
	(f) transactions in <i>derivatives</i> will only be used for the purposes of hedging and will not affect the risk profile of the fund.
	<u>Risks</u>
16	It is the FSA’s view that an investment in the Global Growth Fund is likely to be high risk and investors must understand and be willing to accept the following investment risks:
	(a) risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b) exchange rate risk – some of the assets are located overseas and would,

		therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.
Finance Fund		
	<u>Promotions</u>	
17	The Finance Fund was promoted to advisers as an investment in the IMA “Cautious Managed” sector and:	
	(a)	providing “steady returns, low risk”;
	(b)	aiming to beat both cash and bond returns;
	(c)	as a superior investment to cash deposits and bonds.
	<u>Features</u>	
18	The features of the finance fund, as described to advisers, are:	
	(a)	its objective is steady capital appreciation over the medium to long-term through exposure to a diversified portfolio of private finance-related instruments;
	(b)	it offers net accumulation shares;
	(c)	from November 2008, its aims were to provide returns of cash + 3% per annum;
	(d)	from November 2008, the investment category is defined as private finance, including bridging finance and term lending;
	(e)	it can invest in a range of assets including:
	(i)	<i>collective investment schemes</i> (which invest principally in equities), <i>transferable securities</i> , cash, deposits and money market instruments;

		and
	(ii)	non-mainstream assets including: private equity; private finance; structured finance and commodities;
	(f)	transactions in <i>derivatives</i> will only be used for the purposes of hedging and will not affect the risk profile of the fund;
	(g)	it will have a UK overweight portfolio.
	<u>Risks</u>	
19	It is the <i>FSA</i> 's view that an investment in the Finance Fund is likely to be high risk, and investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.
CF Arch cru investment fund		
20	The investment fund was incorporated on 29 June 2006. It has two sub-funds: the investment portfolio and specialist portfolio.	
21	The firms involved in the investment fund were:	
	Authorised corporate director (ACD)	Capita Financial Managers Limited
	Investment manager	Arch Financial Products LLP
	Depository	Bank of New York Mellon Trust and

	Depository (UK) Ltd Marketing and distribution	Cru Investment Management Limited Arch Financial Products LLP
Investment Portfolio		
	<u>Promotions</u>	
22	The Investment Portfolio was promoted to advisers as an investment in the IMA “Cautious Managed” sector and “an excellent replacement for cash based and bond based investments.”	
	<u>Features</u>	
23	The features of the Investment Portfolio as described to advisers are:	
	(a)	its objective is to generate consistent returns to provide wealth preservation and capital appreciation;
	(b)	it offers net accumulation and net income shares;
	(c)	in March 2007, its aims were to provide consistent returns of LIBOR + 4% with a significant focus on risk management, this was revised to cash + 4% in August 2007;
	(d)	from March 2007, investment classes are stated as being public market securities and private investments. In September 2007 it is stated that the premise since inception of the fund was that public markets did not represent sufficient future reward for the fund.
	<u>Risks</u>	
24	It is the <i>FSA</i> ’s view that an investment in the Investment Portfolio is likely to be high risk and investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas, and would therefore be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing

		countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.
Specialist Portfolio		
	<u>Promotions</u>	
25	The Specialist Portfolio was promoted to advisers as an investment in the IMA “Active Managed” sector and “an excellent replacement for cash based and bond based investments.”	
	<u>Features</u>	
26	The features of the Specialist Portfolio as described to advisers are:	
	(a)	its objective is “to seek capital growth from an aggressively managed portfolio which may take high cash weightings at times when the investment manager lacks confidence in the outlook for equities, bonds and other asset classes. There is a moderate risk to capital”;
	(b)	it offers net accumulation and net income shares;
	(c)	in March 2007, its aims were to provide consistent returns of LIBOR + 6% with a significant focus on risk management; this was revised to cash + 6% in August 2007;
	(d)	from March 2007, investment classes are stated as being public market securities and private investments which are leveraged up to 25%. In September 2007, the fund is described as having a low correlation with traditional public investments such as bonds and equities.
	<u>Risks</u>	
27	It is the FSA’s view that an investment in the Specialist Portfolio is likely to be high risk and investors must understand and be willing to accept the following investment risks:	
	(a)	risk to invested capital and return, in general – the risk that the investment may fall in value;
	(b)	exchange rate risk – some of the assets are located overseas and would, therefore, be affected by exchange rate movements;
	(c)	credit risk – the risk of failure of an entity or counterparty to an underlying investment. For some of the assets, this risk was greater than for more

		mainstream listed assets;
	(d)	governance risk – where equity or debt instruments are not listed on an exchange, then there may be a higher associated corporate governance risk than with listed assets. Similarly, where assets are located in developing countries, the same increased risk may apply;
	(e)	liquidity risk – the risk associated with the fund manager being unable to realise assets quickly without significantly affecting the position of investors; and
	(f)	valuation risk – assets not traded on a recognised market can be difficult to value accurately.

Schedule 1 Record keeping requirements

Sch 1.1G

- 1 The aim of the *guidance* in the following table is to give the reader a quick overall view of the relevant record-keeping requirements.
- 2 It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>CONRED</i> 2.10.1R(1)(a)	Arch cru consumer redress scheme	Certificate of posting for each letter sent	When letter sent	Five years
<i>CONRED</i> 2.10.1R(1)(b)	Arch cru consumer redress scheme	Copy of each letter sent	When letter sent	Five years
<i>CONRED</i> 2.10.1R(1)(c)	Arch cru consumer redress scheme	Record of attempts to contact consumer or obtain further information	When attempts made	Five years
<i>CONRED</i> 2.10.1R(1)(d)	Arch cru consumer redress scheme	Completed template for each opted-in scheme case	When template completed	Five years
<i>CONRED</i> 2.10.1R(1)(e)	Arch cru consumer redress scheme	All information on the consumer file and information received from the consumer	When located on consumer file or obtained	Five years

Schedule 2 Notification requirements

Sch 2.1G

Handbook reference	Matters to be notified	Contents of notification	Trigger event	Time allowed
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<p><i>CONRED</i> 2.4.9R</p>	<p>Information on the total number of scheme cases; opted-in scheme cases, and investments in Arch cru funds</p>	<p>(1) total number of scheme cases;</p> <p>(2) The number of such investments resulting from the <i>regulated activities</i> for a <i>customer</i> in <i>CONRED</i> 2.1.3R; and the number of such investments falling outside the scheme with an explanation of the reason why, in each case;</p> <p>(3) the total number of opted-in scheme cases.</p>	<p>None: notification required in all cases</p>	<p>Until 29 July 2013</p>
<p><i>CONRED</i> 2.9.2R</p>	<p>Information on the number of opted-in scheme cases; completed and incomplete templates and the results of such; the total number of redress cases; the total number of <i>redress determinations</i> sent to <i>consumers</i>; the total number of <i>consumers</i> paid redress and the amount of such; and the total amount of redress unpaid to date.</p>	<p>(1) the total number of opted-in scheme cases;</p> <p>(2) the total number of completed templates;</p> <p>(3) the total number of incomplete templates, with an explanation as to why the templates have not been completed;</p> <p>(4) the total number of redress cases;</p> <p>(5) the total number of redress determinations sent to</p>	<p>None: notification required in all cases</p>	<p>Until 9 December 2013</p>

		<p><i>consumers</i>;</p> <p>(6) the total number of <i>consumers</i> paid redress to date;</p> <p>(7) the total amount of redress paid to date; and</p> <p>(8) the total amount of redress unpaid to date.</p>		
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Schedule 3 Fees and other required payments

There are no provisions for fees in *CONRED*. As noted in *CONRED* 2.5.19G, a fee is payable in any case where the *FSA* exercises its powers under *CONRED* 2.5.12R to take steps instead of a firm, or appoint one or more competent persons to do so. This fee is as specified in the table at *FEES* 3.2.7R.

Schedule 4 Powers exercised

Sch 4.1G

The following powers and related provisions in or under the *Act* have been exercised by the *FSA* to make the *rules* in *CONRED*:

	Section 138 (General rule-making power)
	Section 149 (Evidential provisions)
	Section 156 (General supplementary powers)
	Section 395(5) (The Authority's procedures)
	Section 404(3) (Consumer redress schemes)
	Section 404A (Rules under s404: supplementary)
	Paragraph 17 (1) (Fees) of Schedule 1 (The Financial Services Authority)

Sch 4.2G

The following powers and related provisions in or under the *Act* have been exercised by the

FSA to give the *guidance* in *CONRED*:

Section 157(1) (Guidance)

Schedule 5 Rights of action for damages

Sch 5.1G The table below sets out the *rules* in *CONRED* contravention of which by an *authorised person* may be actionable under section 150 of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.

Sch 5.2G If a “Yes” appears in the column headed “For private person?”, the rule may be actionable by a *private person* under section 150 (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). A “Yes” in the column headed “Removed” indicates that the *FSA* has removed the right of action under section 150(2) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.

Sch 5.3G The column headed “For other person?” indicates whether the *rule* may be actionable by a *person* other than a *private person* (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Sch 5.4G

Rule	Right of action under section 150		
	For private person?	Removed?	For other person?
All <i>rules</i> in <i>CONRED</i> with the status letter ‘E’	No	No	No
All other <i>rules</i> in <i>CONRED</i>	Yes	No	No

Schedule 6 Rules that can be waived

Sch 6.1G As a result of regulation 10 of the Regulatory Reform (Financial Services and Markets Act 2000) Order 2007 (SI 2007/1973) the *FSA* has power to waive all its *rules*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FSA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

Appendix 1 Key definitions

[Note: the following definitions relevant to *CONRED* are extracted from the *Glossary*.]

<i>CF Arch cru payment scheme</i>	the requirements included in the <i>permissions</i> of Capita Financial Managers Limited, BNY Mellon Trust & Depository (UK) Limited and HSBC Bank plc at their request under section 44 of the <i>Act</i> on 31 August 2011.
<i>consumer</i>	<p>(a) <u>where the <i>personal recommendation</i> was made on or before 31 October 2007, a <i>private customer</i> for the purposes of <i>COB 2</i> and <i>COB 5</i>, as defined by the version of the <i>Handbook</i> then in force;</u> or</p> <p>(b) <u>where the <i>personal recommendation</i> was made on or after 1 November 2007, a <i>retail client</i> in accordance with <i>COBS 3.4.1R</i>.</u></p>
<i>firm</i>	<p>(a) <u>an <i>authorised person</i>; or</u></p> <p>(b) <u>a <i>person</i> who was an <i>authorised person</i> when the relevant activity took place but has since ceased to be one.</u></p>
<i>personal recommendation</i>	<p>a recommendation which is <i>advice on investments</i> and:</p> <p>(a) <u>where given on or before 31 October 2007, was given to a <i>specific person</i>; or</u></p> <p>(b) <u>where given on or after 1 November 2007, was presented as suitable for the <i>person</i> to whom the recommendation was made, or was based on a consideration of the circumstances of that <i>person</i>, other than a recommendation issued exclusively through distribution channels or to the public.</u></p>

Annex B

Amendments to the Glossary of definitions

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

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

CF Arch cru payment scheme the requirements included in the *permissions* of Capita Financial Managers Limited, BNY Mellon Trust & Depository (UK) Limited and HSBC Bank plc at their request under section 44 of the *Act* on 31 August 2011.

Amend the following as shown.

consumer ...

(7) (in CONRED):

- (a) where the *personal recommendation* was made on or before 31 October 2007, a *private customer* for the purposes of *COB 2* and *COB 5*, as defined by the version of the *Handbook* then in force; or
- (b) where the *personal recommendation* was made on or after 1 November 2007, a *retail client* in accordance with *COBS 3.4.1R*.

firm ...

(6) (in CONRED):

- (a) an *authorised person*; or
- (b) a *person* who was an *authorised person* when the relevant activity took place but has since ceased to be one.

personal recommendation (except in CONRED) a recommendation that is *advice on investments*, or *advice on a home finance transaction* and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

[**Note:** article 52 of the *MiFID implementing Directive*]

(in CONRED) a recommendation which is *advice on investments* and:

- (a) where given on or before 31 October 2007, was given to a specific *person*; or
- (b) where given on or after 1 November 2007, was presented as suitable for the *person* to whom the recommendation was made, or was based on a consideration of the circumstances of that *person*, other than a recommendation issued exclusively through distribution channels or to the public.

Annex C

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text.

3.2.7 R Table of application, notification and vetting fees

(1) Fee payer	(2) Fee payable	Due date
...		
(zn) An <i>issuer</i> who proposes to make a material change to the contractual terms of a <i>regulated covered bond</i> under <i>RCB 3.5.4D</i>	
<p><u>(zo) In the case of persons in respect of which the FSA has given notice of its intention to take, or appoint a competent person to take, any steps under CONRED 2.5.12R, either:</u></p> <p><u>(i) a Firm (as defined in CONRED 2.1.1R(1);</u> <u>or</u></p> <p><u>(ii) a person falling within CONRED 2.1.2R(1).</u></p>	<p><u>An amount equal to:</u></p> <p><u>(1) a sum determined by the number of hours, or part of an hour, taken by the FSA in relation to work conducted in taking steps under CONRED 2.5.12R recorded on the FSA's systems, multiplied by the rate in FEES 3 Annex 9(11)R; or</u></p> <p><u>(2) any amount invoiced to the FSA by a competent person in relation to any work carried out by that competent person in connection with its appointment by the FSA under CONRED 2.5.12R.</u></p>	<p><u>Within 30 days of the date of the invoice.</u></p>
...		

Annex D

Amendments to the Decision Procedure and Penalties manual (DEPP)

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

2 Statutory notices and the allocation of decision making

...

2 Annex 1G Warning notices and decision notices under the Act and certain other enactments

...

Section of the Act	Description	Handbook reference	Decision maker
...			
385(1)/386(1)	...		
<u>404A(8)(a)</u>	<u>In connection with a consumer redress scheme, when the FSA is proposing to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a consumer, or what the redress should be in respect of the failure</u>	<u>CONRED</u>	<u>Executive procedures</u>
<u>404A(8)(a)</u>	<u>In connection with a consumer redress scheme, when the FSA is deciding to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a</u>	<u>CONRED</u>	<u>Executive procedures</u>

	<u>consumer, or what the redress should be in respect of the failure</u>		
...			

4 Decisions by FSA staff under executive procedures

...

4.1.7 G *Statutory notice decisions* to be taken under *executive procedures*, and not falling within the responsibility of a *senior staff committee*, will be taken by an individual *FSA* staff member. The decision will be:

- (1) made by an executive director of the *FSA* Board or his delegate (who will be of at least the level of associate);
- (2) on the recommendation of an *FSA* staff member of at least the level of associate; and
- (3) with the benefit of legal advice from an *FSA* staff member of at least the level of associate;

except for decisions made in relation to consumer redress schemes pursuant to provisions of the Consumer Redress Schemes sourcebook (*CONRED*), where (1) will apply, but not (2) or (3).

...

Appendix 2

Designation of Handbook Provisions

FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website¹ for further details about this process.

We plan to designate the Handbook Provisions which we are creating or amending within this Policy Statement as follows. These designations are draft and are subject to change prior to the new regulators exercising their legal powers.

Handbook Provision	Designation
New sourcebook: Consumer Redress Schemes Sourcebook (CONRED)	FCA
Fees Manual (FEES) 3.2.7R (zn) and (zo)	FCA
Decision Procedure and Penalties manual (DEPP) 2 Annex 1G and 4.1.7G	FCA

¹ One-minute guide <http://media.fsahandbook.info/latestNews/One-minute%20guide.pdf>

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