Product Intervention and Product Governance Sourcebook (PROD)

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Chapter 1

Product Intervention and Product Governance Sourcebook (PROD)

1.1 Application and purpose

Purpose

1.1.1 G The purpose of *PROD* is to improve *firms'* product oversight and governance processes and to set out the *FCA's* statement of policy on making *temporary product intervention rules*.

1.1.2 G Product oversight and governance refers to the systems and controls *firms* have in place to design, approve, market and manage products throughout the products' lifecycle to ensure they meet legal and regulatory requirements.

1.1.3 G Good product governance should result in products that:

(1) meet the needs of one or more identifiable target markets;

(2) are sold to *clients* in the target markets by appropriate *distribution* channels; and

(3) deliver appropriate *client* outcomes.

1.1.4 G Unless the contrary intention appears, a reference to Gibraltar-based firm in *PROD* has the same meaning as in the *Gibraltar Order*.

1.2 Application of PROD 2

1.2.1 R PROD 2 sets out the *FCA's* approach to issuing *temporary product intervention rules*. It is of relevance to all *firms*.

1.3 Application of PROD 3

General: Who? What?

1.3.1 R ■ PROD 3 applies to

(1) a *MiFID investment firm*;

(2) a *CRD credit institution*;

(3) a *MiFID optional exemption firm*; and

(4) branches of third country investment firms; with respect to:

(5) manufacturing financial instruments and *structured deposits*; and

(6) distributing financial instruments, *structured deposits* and *investment services*.

[**Note:** articles 1(3), 1(4), 16(3), 24(2) and 41(2) of *MiFID*]

1.3.-1A R A *TP firm* and a Gibraltar-based firm must also comply with the provisions in ■ PROD 1.3 and ■ PROD 3 in relation to a *pathway investment*, with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

Other firms manufacturing or distributing financial instruments or structured deposits

1.3.2 R (1) Subject to (2) other *firms* which *manufacture* or *distribute financial instruments* or *structured deposits* should take account of ■ PROD 3 as if it were *guidance* on the *Principles* and other relevant *rules* and as if "should" appeared in ■ PROD 3 rules instead of "must".

(2) Paragraph (1) does not apply to a *firm* to the extent that it is required to comply with *Principle* 12 (Consumer Duty) and ■ PRIN 2A in relation to a *product*.

Eligible counterparty business

1.3.3 R ■ PROD 3.3.1R does not apply to *eligible counterparty business*.

[**Note:** article 30(1) of *MiFID*]

Where?

1.3.4 R ■ PROD 3 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

1.3.5 R (1) ■ PROD 3 also applies to a *firm* with respect to activities from an establishment *overseas* with a *client* in the *United Kingdom*.

(2) But ■ PROD 3 does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:

(a) would fall within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*; or

(b) would not be regarded as being carried on in the *United Kingdom*.

1.3.6 R [deleted]

1.3.7 G [deleted]

1.3.8 G [deleted]

1.3.9 G [deleted]

1.3.10 G [deleted]

MiFID

1.3.11 G ■ PERG 13 contains general *guidance* on the *persons* and businesses to which the *UK* provisions which implemented *MiFID* apply.

1.3.12 G [deleted]

1.3.13 G [deleted]

1.3.14 G [deleted]

Interaction of PROD 3 and the RPPD Guide

1.3.15 G A *firm* to which ■ PROD 3 applies need not apply the *guidance* in *RPPD* for matters covered by *PROD* if the *firm* has complied with ■ PROD 3.

Manufacturing pathway investments and default options

1.3.16 G A *firm* that is within the scope of ■ PROD 3 (Product governance: MiFID) when it *manufactures pathway investments* or *default options* other than in

connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*, is also subject to ■ PROD 6 (Product governance: additional provisions for pathway investments and default options) as *guidance* with respect to that *manufacturing* activity (see ■ PROD 1.6.1R(3)).

1.4 Application of PROD 4

1.4.1 R ■ PROD 4 applies to:

(1) an *insurance intermediary*; and

(2) an *insurer*,

with respect to:

(3) manufacturing insurance products;

product governance and distribution arrangements for *legacy non-investment insurance products* (see ■ PROD 4.6); and

(4) distributing insurance products.

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

1.4.-1A R A *TP firm* and a *Gibraltar-based firm* must also comply with the provisions in:

(1) ■ PROD 1.4 and ■ PROD 4.5 (Additional expectations for manufacturers and distributors in relation to value measures data);

(2) ■ PROD 1.4 and■ PROD 4 in relation to a *pathway investment*;

■ PROD 1.4, ■ PROD 4 and (where applicable) ■ PROD TP 1 in relation to *non-investment insurance products* (including *legacy non-investment insurance products*) that are, or will be, marketed or *distributed*, or there are *policies* under the product that remain in force, in the *United Kingdom*.

1.4.1A R ■ PROD 4.5 (Additional expectations for manufacturers and distributors in relation to value measures data) applies regardless of when the product was first manufactured.

1.4.2 G In *PROD* an insurance product may be read as being a reference to the product for distribution to *customers* generally and is not intended to refer to each individual *contract of insurance* being sold or underwritten (unless the context indicates otherwise).

1.4.3 R ■ PROD 4 does not apply in relation to an insurance product that is:

(1) a *contract of large risks* where the insurance product meets the conditions in ■ PROD 1.4.-3AR; or

(2) a *reinsurance contract*.

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

1.4.-3A R The conditions in ■ PROD 1.4.3R(1) are that the insurance product is used exclusively for effecting *contracts of large risks* where there are no:

(1) policyholder(s); or

(2) (where relevant) *policy stakeholders*, including, in relation to a *multi-occupancy building insurance contract*, any *leaseholder*,

who in that context are natural *persons* acting for purposes outside of their trade, business or profession.

Manufacturing and distributing pathway investments and default options

1.4.3A G A *firm* that is within the scope of ■ PROD 4 (Product governance: IDD) when it *manufactures pathway investments* or *default options* other than in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*, is also subject to ■ PROD 6 (Product governance: additional provisions for pathway investments and default options) as *guidance* with respect to that *manufacturing* activity (see ■ PROD 1.6.1R(2)).

1.4.3B R Where a *firm*:

(1) manufactures or *distributes pathway investments* or *default options* in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*; and

(2) is not otherwise within the scope of the *rules* in *PROD* in relation to that *manufacturing* or *distribution* activity, then ■ PROD 4, ■ PROD 1.4.4R and ■ PROD 1.4.10G apply with respect to that *manufacturing* or *distribution* activity.

1.4.3C G The effect of ■ PROD 1.4.3BR is to apply ■ PROD 4 to any *firm*, such as a *SIPP* operator, which:

(1) manufactures or *distributes pathway investments* or *default options* in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*; and

(2) before the entry into force of ■ PROD 1.4.3BR, was not subject to the *rules* or *onshored regulations* in *PROD*.

When an intermediary may be considered to be manufacturing

1.4.4 R For the purposes of ■ PROD 4, an *insurance intermediary* will be considered a *manufacturer* where an overall analysis of their activity shows that it has a decision-making role in designing and developing an insurance product for the market.

For the purposes of (1), a decision-making role must be assumed, in particular, where an *insurance intermediary* autonomously determines the essential features and main elements of an insurance product, including its coverage, price, costs, risk, target market and compensation and guarantee rights, which are not substantially modified by the *insurance undertaking* providing coverage for the insurance product.

Personalisation of and adaptation of an existing insurance product in the context of *insurance distribution activities* for an individual *customer*, as well as the design of tailor-made contracts at the request of a single *customer*, will not be considered *manufacturing*.

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

1.4.5 G The effect of ■ PROD 1.4.4R and ■ PROD 1.4.6R is that an *insurance intermediary* needs to consider if it is *manufacturing* an insurance product or if it would be a *manufacturer* for a *legacy non-investment insurance product* for ■ PROD 4.6, and, if so, should comply with ■ PROD 4.2 (Manufacture of insurance products).

Scope of 'manufacturing'

1.4.5A G (1) ■ PROD 4.2 applies to *firms* that *manufacture* insurance products. The terms 'firm' and 'manufacturer' are used in that section interchangeably to refer to such persons.

(2) The *Glossary* term 'manufacture' includes 'designing, developing, creating and/or underwriting' which cover activities prior to the insurance product being approved for marketing and *distribution*, and on a continuing basis after such approval.

[deleted]

1.4.6 R

Effect and interpretation of PROD 1.4 and PROD 4 for certain manufacturers and distributors of pathway investments and default options

1.4.6A R A *firm* to which ■ PROD 1.4.3BR applies must

(1) [deleted]

(2) read terms or phrases found in ■ PROD 1.4 or ■ PROD 4 as follows:

(a) terms referred to in column (1) of the table below have the meaning indicated in the same row of column (2) of the table;

(b) terms relating to insurance or insurance products have the meaning of the corresponding term relevant in the context of *pathway investments* or *default options*; and

(c) terms or phrases which are only relevant to *firms manufacturing* or *distributing* insurance products may be disregarded.

This table belongs to PROD 1.4.6AR(2)(a).

(1)	(2)

(1)	(2)
"insurance-based investment products"	*pathway investment* or *default option*
"insurance product"	*pathway investment* or *default option*
"premiums"	costs and charges

Where?

1.4.7 R ■ PROD 4 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*:

(1) (for all insurance products and *pathway investments*) in the *United Kingdom*; and

(2) (in addition, for *non-investment insurance products*) overseas, in relation to an insurance product that is, or will be, marketed or *distributed*, or there are policies under the product that remain in force, in the *United Kingdom*.

[**Note**: in respect of (1), article 7(2) of the *IDD*]

1.4.8 R [deleted]

1.4.9 G [deleted]

Interaction of PROD 4 and the RPPD Guide

1.4.10 G A *firm* to which ■ PROD 4 applies need not apply the *guidance* in *RPPD* for matters covered by *PROD* if the *firm* has complied with ■ PROD 4 (see also ■ PROD 4.4.2G). ■ PROD 4.4 includes *guidance* based on the *RPPD* which *firms* subject to ■ PROD 4 should apply.

Modification of PROD 4.2 and PROD 4.3 for overseas non-investment insurance products

1.4.11 R ■ PROD 4 applies in relation to an *overseas non-investment insurance product* with the following modifications:

(1) The changes made to ■ PROD 4.2 and ■ PROD 4.3 in Annex E of the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 do not apply, unless otherwise specified in (2).

(2) The following *rules* and *guidance* in Annex E of the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 continue to apply:

(a) ■ PROD 4.2.1AG;

(b) ■ PROD 4.2.21AG;

(c) ■ PROD 4.2.34AG; and

(d) ■ PROD 4.2.36BR.

[**Note**: the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021 can be found at [https://www.handbook.fca.org.uk/instrument/2021/FCA_2021_19.pdf]]

1.4.12 G

(1) The effect of ■ PROD 1.4.11R is that, for an *overseas non-investment insurance product*, including where this is a *legacy non-investment insurance product* subject to ■ PROD 4.6, a *firm's* product approval process (and arrangements for ongoing monitoring) need only comply with:

(a) the requirements in ■ PROD 4.2 or ■ PROD 4.3 as they stood on 30 September 2021, except for those provisions in ■ PROD 1.4.11R(2); and

(b) any subsequent changes made by an instrument other than the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021.

■ PROD 1.4 and ■ PROD 4 as it stood on 30 September 2021 can be accessed by using the timeline on the *FCA Handbook* website. *Firms* will need to consider any further changes to *PROD* after this date to consider if they apply in relation to *overseas non-investment insurance products*.

(2) A *non-investment insurance product*:

(a) that will be or is available for *distribution* or marketing to *customers* who are *habitually resident* or, if applicable, where the *state of the risk* is, in the *United Kingdom*; or

(b) where, for any *policy* issued under the product, the *policyholder* is *habitually resident* in or, if applicable, the *state of the risk* is in, the *United Kingdom*,

will not be an *overseas non-investment insurance product* and the *firm* will need to meet all applicable requirements in ■ PROD 4 including ■ PROD 4.2.14AR in relation to providing fair value.

(3) A *firm* should also consider in relation to any *overseas non-investment insurance product* what is required to meet obligations

under other rules in the *FCA Handbook* including, for example, the *Principles* and *SYSC*.

Meaning of 'customer' in PROD 4 for non-investment insurance contracts: consideration of policyholders, and policy stakeholders (including leaseholders)

1.4.13 G *Firms* are reminded that in ■ PROD 4, in relation to *non-investment insurance contracts*, as the context requires, 'customer' includes:

(1) a *person* who is a *policyholder*, or a prospective *policyholder*, whether or not they make the arrangements preparatory to the conclusion of the *contract of insurance*; and

(2) a *policy stakeholder* including a *leaseholder*.

1.4.14 G For a *non-investment insurance product* that is or will be used to effect a *multi-occupancy building insurance contract*, when meeting the requirements under ■ PROD 4, including in particular whether the product provides fair value for the purposes of ■ PROD 4.2.14AR, a *firm* should consider the interests of:

(1) any *policyholder* making the arrangements preparatory to the conclusion of the *contract of insurance*;

(2) the *freeholder* and any other *policyholder* of the product; and

(3) leaseholders.

1.5 Application of PROD 5

General: Who? What?

1.5.1 R ■ PROD 5 applies to a *firm* which:

(1) offers to sell an *extended warranty* to a *customer*; or

(2) refers, invites or induces a *customer* to obtain an *extended warranty* from a person connected to the *firm*;

in connection with the entering into of a *rent-to-own agreement* with the *firm*.

1.5.2 G A *person* connected to the *firm* includes someone who has a relevant business relationship with the *firm*.

Where?

1.5.3 R ■ PROD 5 applies to a *firm* with respect to activities carried on from an establishment maintained by it, or its *appointed representative*, in the *United Kingdom*.

1.5.4 R [deleted]

1.5.5 G [deleted]

1.5.6 G [deleted]

1.5.7 G [deleted]

1.6 Application of PROD 6

1.6.1 R ■ PROD 6 applies to a *firm*:

(1) that *manufactures* or *distributes pathway investments* or *default options* in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*;

(2) within the scope of ■ PROD 4 when *manufacturing pathway investments* or *default options*, other than in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*, as *guidance* with respect to that *manufacturing* activity;

(3) within the scope of ■ PROD 3 when *manufacturing pathway investments* or *default options*, other than in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*, as *guidance* with respect to that *manufacturing* activity.

1.7 Application of PROD 7

Application of PROD 7

1.7.1 R

(1) ■ PROD 7 applies to:

(a) a *funeral plan provider*; and

(b) a *funeral plan intermediary*,

with respect to:

(c) manufacturing funeral plan products; and

(d) distributing funeral plan products.

1.7.2 R A *Gibraltar-based firm* must also comply with the provisions in ■ PROD 7 (Product governance: funeral plans).

Manufacturing a funeral plan product

1.7.3 G The *Glossary* term 'manufacture' includes 'designing, developing, creating and/or entering into or carrying out a *funeral plan contract* as provider' which cover activities prior to the *funeral plan product* being approved for marketing and *distribution*, and on a continuing basis after such approval.

1.7.4 R

(1) For the purposes of ■ PROD 7, a *funeral plan intermediary* is a *manufacturer* of a *funeral plan product* where an overall analysis of their activity shows that they have a decision-making role in designing and developing a *funeral plan contract* for the market.

(2) A decision-making role will be assumed, in particular, where a *funeral plan intermediary* autonomously determines the essential features and main elements of a *funeral plan contract*, including any of its price, costs, target market or guarantee rights, which are not substantially modified by the *funeral plan provider*.

(3) Personalisation of and adaptation of existing *funeral plan products* in the context of *funeral plan distributions* for individual *customers*, as well as the design of tailor-made contracts at the request of a single *customer*, are not manufacturing.

Territorial scope

1.7.5 R ■ PROD 7 applies to a *firm* with respect to activities carried on by it, or its *appointed representative*, in relation to:

(1) a *funeral plan product*; and

(2) a *subsisting funeral plan*.

Interaction of PROD 7 and the RPPD Guide

1.7.6 G The *RPPD* Guide does not apply to a *firm* to which ■ PROD 7 applies for matters covered by, and where the *firm* has complied with, ■ PROD 7.

Chapter 2

Statement of policy with respect to the making of temporary product intervention rules

2.1 Purpose

2.1.1 G This chapter explains the *FCA's* policy with respect to the making of *temporary product intervention rules* under sections 137D and 138M of the Act. This statement of policy replaces the "Statement of Policy for making temporary product intervention rules" published in Policy Statement PS13/03 (see https://www.fca.org.uk/publication/policy/fsa-ps13-03.pdf).

[**Note:** see section 138N of the *Act*]

2.1.2 G Product intervention *rules* are *rules* made under section 137D of the *Act* which apply to specific products (or types of products), product features or marketing practices relating to specific products.

2.1.3 G Product intervention *rules* may be made without consultation under section 138M of the *Act* but are limited to a maximum duration of 12 *months* and are referred to as "*temporary product intervention rules*".

2.2 General rule making and product intervention rules

2.2.1 G The *Act* empowers the *FCA* to make general *rules* as appear necessary or expedient for the purpose of advancing one or more of its *operational objectives*.

[**Note:** see section 137A of the *Act*]

2.2.2 G The *Act* also provides that the *FCA* may use its general rule-making power to make product intervention rules prohibiting *authorised persons* from, among other things, entering into specified agreements (section 137D of the *Act*). These *rules* may be made to advance:

(1) the consumer protection objective; or

(2) the competition objective; or

(3) the market integrity objective.

2.2.3 G Section 137D(2) of the *Act* sets out that the *FCA* may prohibit *authorised persons* from:

(1) entering into specified agreements with any *person* or specified person (specified person means a person who meets the description specified by *FCA rules*);

(2) entering into specified agreements with any *person* or specified person unless requirements specified in the *rules* have been satisfied;

(3) doing anything that would or might result in the entering into of specified agreements by *persons* or specified persons, or the holding by them of a beneficial or other kind of economic interest in specified agreements; and

(4) doing anything within paragraph (3) unless requirements specified in the *rules* have been satisfied.

2.2.4 G Section 137D of the *Act* makes it clear that a range of options would be available to us in making *rules* prohibiting *authorised persons* from entering into specified agreements.

2.2.5 G The extent of the *rules* which are made will generally depend on the type of intervention deemed necessary to address the issues identified, having regard to whether the intervention would be a proportionate response to the perceived risk to *consumers*, competition issues or market integrity issues.

2.2.6 G *Rules* may include:

(1) requiring certain product features to be included, excluded or changed; or

(2) requiring amendments to promotional materials; or

(3) the imposition of restrictions on sales or marketing of the product; or

(4) in more serious cases, a ban on sales or marketing of a product in relation to all or some types of *client*.

2.2.7 G Where the product is provided by a business outside of the *UK*, *rules* may be made targeting *regulated activities* by *authorised persons* in the *UK* that would lead to a specified agreement being formed.

[**Note:** see sections 137D(2)(c) and (d) of the *Act*]

2.3 Agreements made in breach of product intervention rules

2.3.1 G In relation to agreements entered into in breach of product intervention *rules*, section 137D(7) sets out that the *rules* may:

(1) provide for a relevant agreement or obligation to be unenforceable against any *person* or specified person;

(2) provide for the recovery of any money or other property paid or transferred under a relevant agreement or obligation by any *person* or specified person; and

(3) provide for the payment of compensation for any loss sustained by any *person* or specified person as a result of paying or transferring any money or other property under a relevant agreement or obligation.

2.3.2 G Where a *rule* provides for a relevant agreement or obligation to be unenforceable, the relevant agreement or obligation would only be unenforceable if the sale of the product was made after the introduction of the *rules* and there was a contravention of those *rules*. *Clients* with products bought after the introduction of *rules* incorporating unenforceability provisions would generally need to seek redress through the usual channels of complaints to the *firm* and to the *Financial Ombudsman Service*, or legal action against the *firm*.

2.3.3 G Arrangements made before the introduction of the *rules* would not be affected by the unenforceability and compensation provisions. *Clients* holding contracts made before these *rules* were in place would still be able to seek redress through the usual channels of complaints to the *firm* and to the *Financial Ombudsman Service* or legal action against the relevant *firm*. These *clients* would need to establish their claim to redress in the usual way, for example by demonstrating that the advice they received was unsuitable, or that they bought the product after receiving a misleading *financial promotion*.

2.4 Temporary product intervention rules

2.4.1 G Normally the *FCA* must consult the public before making any *rules*. However, the *Act* allows a general exemption in section 138L where the *FCA* considers that the delay involved in complying with the requirement to consult would be prejudicial to the interests of *consumers*.

2.4.2 G There is also a specific exemption to the consultation requirement in relation to making *temporary product intervention rules* (section 138M of the *Act*). The *FCA* may make *temporary product intervention rules* without consultation if it considers that it is necessary or expedient not to comply with such a requirement to advance:

(1) the consumer protection objective, or

(2) the competition objective, or

(3) the market integrity objective.

2.4.3 G The *FCA's* discretion to act under section 138M is therefore wider than under section 138L.

2.4.4 G Decisions to make any *rules*, including *temporary product intervention rules*, will be taken by the *FCA* Board. In doing so, the *FCA* Board will have regard to all the available, relevant evidence, as well as the impact of the measure to be introduced by the *rule*.

2.4.5 G The *FCA* Board will consider whether the evidence is sufficient to support the proposed measure and whether the measure is a proportionate response to the issue identified.

2.4.6 G In publishing *temporary product intervention rules* the *FCA* will also publish the rationale for these *rules*.

2.5 Factors the FCA will consider when making temporary product intervention rules

2.5.1 G In general terms the *FCA* will consider a product intervention *rule* where we identify a risk of *consumer* detriment, a threat to market integrity or ineffective competition arising from a particular product, type of product, or practices associated with a particular product or type of product.

2.5.2 G In deciding whether the *rule* should be made as a *temporary product intervention rule*, the *FCA's* main consideration will generally be whether prompt action is deemed necessary in seeking to reduce or prevent *consumer* detriment or a threat to market integrity or ineffective competition arising from that product, type of product or practices.

2.6 General considerations for product intervention rules

2.6.1 G Together with the considerations in ■ PROD 2.5, when making temporary or permanent product intervention *rules*, the *FCA* will have regard to the regulatory principles set out in section 3B of the *Act*, (see ■ PROD 2.9).

2.6.2 G The *FCA* will also take into account general considerations that include, but are not limited to, whether the proposed *rules* are:

(1) an appropriate and effective means of addressing actual or potential *consumer* detriment associated with a particular product or group of products;

(2) a proportionate and deliverable means of addressing actual or potential detriment;

(3) compatible with the *FCA's* duty to promote effective competition in the interests of *consumers* (section 1B(4) of the *Act*);

(4) supported by sufficient and appropriate evidence;

(5) transparent in their aim and operation;

(6) likely to be beneficial for *clients* when taken as a whole; and

(7) compatible (where relevant) with other applicable law.

2.6.3 G In accordance with the Equality Act 2010, the *FCA* will have due regard to the need to:

(1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

(2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and

(3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it;

when making temporary or permanent product intervention *rules*.

2.7 Contextual considerations for product intervention rules

2.7.1 G When the *FCA* is considering whether to make temporary or permanent product intervention *rules* in response to an identified issue with a product, the following factors may be taken into account:

(1) The potential scale of detriment in the market. Issues involving products with a large or potentially large *client* base are more likely to require product intervention.

(2) The potential scale of detriment to individual *clients*. Issues that may lead to high detriment for individual *clients* are more likely to require product intervention.

(3) The social context. Issues that may lead to detriment for particular groups of *clients* (such as, in particular, vulnerable *client* groups) are more likely to require product intervention.

(4) The market context. Market mechanisms such as information disclosure and competition do not always work to protect *consumers*.

(5) Possible unintended consequences. Whether the use of product intervention *rules* or the timing of the intervention would in itself create undue risk of further *consumer* detriment, including harm to existing *clients* and in the market (although this will not necessarily comprise a full cost benefit analysis).

2

2.8 Competition considerations for temporary product intervention rules

2.8.1 G When making a temporary or permanent product intervention *rule*, the *FCA* will seek to promote effective competition in the interests of *consumers* where doing so is compatible with its consumer protection objective or integrity objective.

2.8.2 G In accordance with section 1E of the *Act* the *FCA* also has a competition objective and may make *rules*, including *temporary product intervention rules*, specifically to advance competition.

2.8.3 G Relevant competition-related considerations for the *FCA* in the context of temporary or permanent product intervention *rules* are likely to include:

(1) Whether there is reasonable scope for the *rules* under consideration to promote effective competition in the interests of *consumers*, for instance by addressing *consumer* behaviours that impair their ability to benefit from competition, by reducing information asymmetries or by correcting misaligned incentives.

(2) Whether the *rule* under consideration may have a negative impact on competition factors such as product innovation and barriers to entry for new market participants.

(3) Whether any negative impact on competition factors is proportionate, having regard to the aims of the *rule* under consideration.

(4) Whether alternative solutions may deliver the same intended outcome while having a more positive impact on competition.

(5) The overall effect of a proposed *rule* upon the operation of effective competition in the market for financial services, having regard to the interests of *consumers*.

2.9 Regulatory principles

2.9.1 G The *FCA* will have regard to the regulatory principles set out in section 3B of the *Act* when making *temporary product intervention rules*.

2.9.2 G As part of the *FCA's* consideration of issues including the desirability of facilitating innovation, we will consider the potential deterrent effect on entry to the market and innovation when making *temporary product intervention rules* against the potential for reducing anticipated *consumer* detriment.

2.10 Process for making temporary product intervention rules

2.10.1 G Once initial proposals have been discussed, a paper will be prepared at working group level for a committee (the Committee) with appropriate authority to propose *temporary product intervention rules* to the *FCA* Board.

2.10.2 G The Committee will either endorse the proposals and recommend that they are taken to the Board, or suggest rethinking or amending the proposals and coming back at a later date. A decision may be taken to use a different regulatory tool, or not to proceed.

2.10.3 G If the Committee decides that the proposals should go to the Board, the paper will be taken to the next available scheduled Board meeting, unless the matter is of great importance or there is an emergency, in which case the Board may convene specifically to consider the issue.

2.10.4 G If the Board makes a decision to act on the policy proposals the *FCA* will publish the *temporary product intervention rules* on its website and take the necessary follow-up actions.

2.11 Consulting the panels

2.11.1 G The *FCA* will generally seek the views of the Financial Services Practitioner Panel, the Smaller Businesses Practitioner Panel and the Financial Services Consumer Panel during the process for making *temporary product intervention rules* if there is sufficient time to do so.

2.12 Consulting the PRA

2.12.1 G Before any proposed product intervention *rules* are made (whether temporary or not) the *FCA* will consult the *PRA*.

2.13 Communication, publication and post-implementation review of temporary product intervention rules

2.13.1 G Before making a *temporary product intervention rule*, the Committee will consider how affected *firms* and *clients* are to be informed of the *rule* in good time.

2.13.2 G The *FCA* will publish a statement on its website explaining why it is introducing the *rule*. The *FCA* may choose to invite feedback, but this will not amount to a consultation exercise.

2.13.3 G The FCA may choose to review a *temporary product intervention rule* during the term for which the *rule* is in force. Such a review will generally depend on the perceived risk the *rule* seeks to mitigate. These reviews may be informed by market monitoring and feedback from stakeholders, including product *manufacturers*, *distributors* and *clients*.

2.13.4 G Where the *FCA* perceives potential uncertainty about how the *rule* operates, it may consider publishing *guidance*.

2.13.5 G Reviews are likely to consider whether a *rule* is functioning as intended, including whether:

(1) there have been any breaches of the *rule*; or

(2) there are any unintended consequences, such as an impact on products that were not intended to be caught by the *rule*; or

(3) there is evidence suggesting *firms* are avoiding or seeking to avoid the *rule* rather than complying with it, for instance where new products enter the market or new features are added to existing products that expose *clients* to the same or similar potential detriment; or,

(4) new evidence demonstrates that the *rule* is not necessary or detriment is unlikely.

2.13.6 G As a result of these reviews, where necessary, the *FCA* may:

(1) revoke a *temporary product intervention rule*; or

(2) amend the *rule*, for example where a *rule* specifies certain criteria under which the sale of a product may continue, change these criteria.

2.13.7 G Subsequent changes to a *temporary product intervention rule* will be communicated by issuing a new statement containing the revised *rule* and the rationale for the changes. Such changes will not extend the lifespan of the *temporary product intervention rule*.

2.13.8 G However, the *FCA* may consult on a new *rule* to replace the *temporary product intervention rule* from the date on which the *temporary product intervention rule* ceases to have effect. This exercise would be subject to the *FCA's* standard *rule*-making procedure including market failure analysis, cost benefit analysis and consultation to which all stakeholders, including *manufacturers*, *distributors* and *clients* would be invited to reply.

2.14 Revocation or replacement of rules

2.14.1 G When making *temporary product intervention rules* the *FCA* will state the duration of the *rule* and the date from which it will be effective. *Temporary product intervention rules* will have a maximum duration of 12 *months* from when the *rule* is made, but the *FCA* may decide on a shorter duration for a *rule*.

2.14.2 G The *FCA* may review or revoke *temporary product intervention rules* at any time before the end of the period for which they apply.

2.14.3 G *Rules* may be revoked or amended for a number of reasons, including but not limited to:

(1) new *rules* are introduced on a permanent basis following a consultation exercise; or

(2) industry initiatives are developed that specify sufficient minimum standards to address the sources of *consumer* detriment; or

(3) further evidence is submitted that demonstrates that *consumer* detriment will not occur; or

(4) demand for, or supply of, the relevant product disappears and is deemed unlikely to return; or

(5) the *FCA* identifies unforeseen negative effects of the *rule* which outweigh any positive impact upon consumer protection.

2.14.4 G Where *temporary product intervention rules* have been made, the *FCA* may not make further *temporary product intervention rules* containing the same, or substantially the same, provisions within 12 *months* beginning on the day on which the limited duration of the initial *rules* ends (whether or not the *rules* were revoked early). This period does not apply to *rules* that are not *temporary product intervention rules*, (i.e. *rules* which had been made subject to consultation, whether or not of set duration).

Chapter 3

Product governance: MiFID

3

3.1 General

[Note: ESMA has also issued guidelines: Guidelines on MiFID II product governance requirements, 05/02/2018, ESMA35-43-620]

Interpretation: financial instruments and structured products

3.1.1 R For the purposes of ■ PROD 3, references to *financial instruments* include *structured deposits*.

Proportionate application of rules

3.1.2 R (1) A *firm* must, when *manufacturing financial instruments* or deciding on the range of *financial instruments* and *investment services* it intends to *distribute* to *clients*, comply, in a way that is appropriate and proportionate, with the requirements set out in this chapter.

(2) In complying with these requirements, a *firm* must take into account:

(a) the nature of the *financial instrument* or *investment service*; and

(b) the target market for the *financial instrument*.

[**Note:** articles 9(1) and 10(1) of the *MiFID Delegated Directive*]

3.1.3 G A proportionate application of the requirements in this chapter may mean that complying with the *rules* could be relatively simple for simple *financial instruments* distributed on an *execution-only transaction* basis where such *financial instruments* would be compatible with the needs and characteristics of the mass retail market.

3.2 Manufacture of products

General

3.2.1 R A *manufacturer* must:

(1) ensure that the *financial instruments* it *manufactures* are designed to meet the needs of an identified target market of *end clients* within the relevant category of *clients* (see ■ COBS 3 for client categories);

(2) ensure that the strategy for *distribution* of the *financial instruments* is compatible with the identified target market; and

(3) take reasonable steps to ensure that the *financial instrument* is distributed to the identified target market.

[**Note:** article 24(2) of *MiFID*]

3.2.2 G Consideration of target market factors should permeate all aspects of product development and *distribution*, as well as ensuring the selection of appropriate *distribution* channels and the promotion of the *financial instruments* are accompanied by sufficient and correct information.

Product governance arrangements

3.2.3 R A manufacturer must maintain, operate and review a process for the approval of:

(1) each *financial instrument*, and

(2) significant adaptations of existing *financial instruments*,

in each case before they are marketed or *distributed* to *clients*.

[**Note:** article 16(3) of *MiFID*]

3.2.4 R For each *financial instrument* the product approval process must:

(1) specify an identified target market of *end clients* within the relevant category of *clients* (see ■ COBS 3 for client categories);

(2) ensure that all relevant risks to the identified target market are assessed; and

(3) ensure that the intended *distribution* strategy is consistent with the identified target market.

[**Note:** article 16(3) of *MiFID*]

3.2.5 G When designing *financial instruments*, a *firm* should have in place systems and controls to manage adequately the risks posed by *financial instrument* design.

Manufacture by more than one firm

3.2.6 R Where *firms* collaborate to *manufacture* a *financial instrument*, only one target market needs to be identified.

[**Note:** article 9(9) of the *MiFID Delegated Directive*]

3.2.7 R Where *firms* collaborate, including with entities which are not authorised and supervised in accordance with *UK* provisions implementing *MiFID* or *third country investment firms*, to create, develop, issue and/or design a *financial instrument*, they must outline their mutual responsibilities in a written agreement.

[**Note:** article 9(8) of the *MiFID Delegated Directive*]

Target market

3.2.8 R *Manufacturers* must identify the potential target market for each *financial instrument* at a sufficiently granular level and must:

(1) specify the type or types of *client* for whose needs, characteristics and objectives the *financial instrument* is compatible; and

(2) identify any group or groups of *client* for whose needs, characteristics and objectives the *financial instrument* is not compatible.

[**Note:** article 9(9) of the *MiFID Delegated Directive*]

3.2.9 G The level of granularity of the target market and the criteria used to define the target market and determine the appropriate *distribution* strategy should be relevant for the *financial instrument* and should make it possible to assess which *clients* fall within the target market. For simpler, more common *financial instruments*, the target market could be identified with less detail while for more complicated *financial instruments* such as bail-inable instruments or less common *financial instruments*, the target market should be identified with more detail.

[**Note:** recital 19 of the *MiFID Delegated Directive*]

3.2.10 R *Manufacturers* must determine for each *financial instrument* they *manufacture*, whether it meets the identified needs, characteristics and objectives of the target market, and in doing so must include an examination of the following elements:

(1) whether the *financial instrument's* risk/reward profile is consistent with the target market; and

(2) whether the design of the *financial instrument* is driven by features that benefit the *client* and not by a business model which relies on poor *client* outcomes to be profitable.

[**Note:** article 9(11) of the *MiFID Delegated Directive*]

3.2.11 R *Manufacturers* of *financial instruments* that are *distributed* through other *firms* must determine the needs and characteristics of the *clients* for whom the product is compatible based on:

(1) their theoretical knowledge of, and past experience with, the *financial instrument* or similar *financial instruments*;

(2) the financial markets, and

(3) the needs, characteristics and objectives of potential *end clients*.

[**Note:** article 9(9) of the *MiFID Delegated Directive*]

Product testing

3.2.12 R *Manufacturers* must undertake a scenario analysis of their *financial instruments* to assess:

(1) the risks of poor outcomes for *end clients* posed by the *financial instrument*; and

(2) in which circumstances those poor outcomes may occur.

[**Note:** article 9(10) *MiFID Delegated Directive*]

3.2.13 R In conducting the scenario analysis *manufacturers* must assess their *financial instruments* under negative conditions covering what would happen if, for example:

(1) the market environment deteriorated; or

(2) the *manufacturer* or a third party involved in *manufacturing* and/or the functioning of the *financial instrument* experiences financial difficulties or other counterparty risk materialises; or

(3) the *financial instrument* fails to become commercially viable; or

(4) demand for the *financial instrument* is much higher than anticipated, putting a strain on the *firm's* resources and/or on the market of the underlying *financial instrument*.

[**Note:** article 9(10) *MiFID Delegated Directive*]

3.2.14 R *Manufacturers* must consider the charging structure proposed for each *financial instrument*, including examination of the following:

(1) whether the *financial instrument's* costs and charges are compatible with the needs, objectives and characteristics of the target market;

(2) whether the charges undermine the *financial instrument's* return expectations, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a *financial instrument*; and

(3) whether the charging structure of the *financial instrument* is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand.

[**Note:** article 9(12) of the *MiFID Delegated Directive*]

3.2.15 R *Manufacturers* must consider whether the *financial instrument* may represent a threat to the orderly functioning, or to the stability, of financial markets before deciding to proceed with the launch of the *financial instrument*.

[**Note:** article 9(4) of the *MiFID Delegated Directive*]

Information disclosure to distributors

3.2.16 R A *manufacturer* must make available to any *distributor* of that *financial instrument*:

(1) all appropriate information on the *financial instrument*;

(2) all appropriate information on the product approval process;

(3) the identified target market of the *financial instrument*, including information about the target market assessment undertaken;

(4) information about the appropriate channels for *distribution* of the *financial instrument*;

and must ensure that the information is of an adequate standard to enable *distributors* to understand and recommend or sell the *financial instrument* properly.

[**Note:** article 16(3) of *MiFID II* and 9(13) of the *MiFID Delegated Directive*]

3.2.17 G When providing information to *distributors*, a *manufacturer* should make it clear if that information is not intended for *end client* use.

3.2.18 G *Manufacturers* may consider, for example, with regard to each *distribution* channel or type of *distributor* what information *distributors* of that type already have, their likely level of knowledge and understanding, their information needs and what form or medium would best meet those needs (which could include discussions, written material or training as appropriate).

Review of financial instruments

3.2.19 R (1) A *manufacturer* must regularly review the *financial instruments* it *manufactures* taking into account any event that could materially affect the potential risk to the identified target market.

(2) In doing so, a *manufacturer* must assess for each *financial instrument* at least the following:

(a) whether the *financial instrument* remains consistent with the needs, characteristics and objectives of the identified target market;

(b) whether the intended *distribution* strategy remains appropriate;

(c) whether the *financial instrument* is being *distributed* to the target market; and

(d) whether the *financial instrument* is reaching *clients* for whose needs, characteristics and objectives the *financial instrument* is not compatible.

[**Note:** article 16(3) of *MiFID II* and article 9(14) of the *MiFID Delegated Directive*]

3.2.20 G In carrying out the reviews in ■ PROD 3.2.19R *manufacturers* should collect and analyse appropriate management information to detect patterns in *distribution* as compared with the planned target market in order to assess the performance of the *distribution* channels through which a *financial instrument* is being *distributed*.

3.2.21 G (1) When reviewing the *financial instruments* it manufactures, a *firm* should communicate to the *end client* contractual "breakpoints" such as the end of a long tie-in period that may have a material impact on the *end client* that the *end client* cannot reasonably be expected to recall or know about already.

(2) If the *manufacturer* does not know the identity of the *end client*, it should communicate any contractual breakpoints to the *distributor*.

3.2.22 R *Manufacturers* must:

(1) review *financial instruments* prior to any further issue or re-launch if they are aware of any event that could materially affect the potential risk to *clients*; and

(2) identify crucial events that would affect the potential risk or return expectations of the *financial instrument*.

3.2.23 G Crucial events that would affect the potential risk or return expectations of the *financial instrument* include:

(1) the crossing of a threshold that will affect the return profile of the *financial instrument*; or

(2) the solvency of certain issuers whose securities and guarantees may impact the performance of the *financial instrument*.

3.2.24 R When a crucial event affecting the potential risk or return expectation of the *financial instrument* occurs, a *manufacturer* must take appropriate action, which may consist of:

(1) the provision of any relevant information on the event and its consequences on the *financial instrument* to the *clients* or *distributors*

of the *financial instrument* if the *manufacturer* does not offer or sell the *financial instrument* directly to the *clients*;

(2) changing the product approval process;

(3) stopping further issuance of the *financial instrument*;

(4) changing the *financial instrument* to avoid unfair contract terms;

(5) considering whether the sales channels through which the *financial instrument* is sold are appropriate where the *manufacturer* becomes aware that the *financial instrument* is not being sold as envisaged;

(6) contacting the *distributor* to discuss a modification of the *distribution* process;

(7) terminating the relationship with the *distributor*; or

(8) informing the *FCA*.

3.2.25 R *Manufacturers* must review *financial instruments* at regular intervals to assess whether they function as intended.

3.2.26 R *Manufacturers* must determine how regularly to review their *financial instruments* based on relevant factors including factors linked to the complexity or the innovative nature of the investment strategies pursued.

[**Note:** article 9(15) of the *MiFID Delegated Directive*]

Conflicts of interest

3.2.27 R *Manufacturers* must establish, implement and maintain procedures and measures to ensure the *manufacture* of *financial instruments* complies with the requirements on proper management of conflicts of interest (see SYSC 10.1.7R), including *remuneration*.

3.2.28 R *Manufacturers* must ensure that the design of each *financial instrument*, including its features, does not:

(1) adversely affect *end clients*; or

(2) lead to problems with market integrity by enabling the *firm* to mitigate and/or dispose of its own risks or exposure to the underlying assets of the product where the *firm* already holds the underlying assets on own account.

[**Note:** article 9(2) of the *MiFID Delegated Directive*]

3.2.29 R Each time a *financial instrument* is *manufactured manufacturers* must analyse potential conflicts of interests.

3.2.30 R In analysing potential conflicts of interest *manufacturers* must assess whether the *financial instrument* creates a situation where *end clients* may be adversely affected if *end clients* take:

(1) an exposure opposite to the one previously held by the *manufacturer* itself; or

(2) an exposure opposite to the one that the *manufacturer* wants to hold after the sale of the product.

[**Note:** article 9(3) of the *MiFID Delegated Directive*]

Oversight and training requirements

3.2.31 R *Manufacturers* must ensure that their *management bodies* have effective control over their product governance process.

3.2.32 R The development and periodic review of product governance arrangements must be monitored by the *person* allocated the *compliance oversight function* of a *firm* in order to detect any risk of failure by the *manufacturer* to comply with applicable provisions of *PROD*.

[**Note:** article 9(6) and article 9(7) of the *MiFID Delegated Directive*]

3.2.33 R All relevant staff involved in the *manufacturing* of *financial instruments* must possess the necessary expertise to understand the characteristics and risks of the *financial instruments* they intend to *manufacture*.

[**Note:** article 9(5) of the *MiFID Delegated Directive*]

3.2.34 G *Firms* should have regard to SYSC 5.1, and in particular SYSC 5.1.5AB R, when considering whether their relevant staff have the necessary expertise.

Compliance reports

3.2.35 R Compliance reports to the *management body* must include information about the *financial instruments* that the *firm* has *manufactured*, including information on the *distribution* strategy.

3.2.36 R *Manufacturers* must make the compliance reports available to the *FCA* on request.

[**Note:** article 9(6) *MiFID Delegated Directive*]

3.3 Distribution of products and investment services

General

3.3.1 R A *distributor* must:

(1) understand the *financial instruments* it *distributes* to *clients*;

(2) assess the compatibility of the *financial instruments* with the needs of the *clients* to whom it *distributes investment services*, taking into account the *manufacturer's* identified target market of *end clients*; and

(3) ensure that *financial instruments* are *distributed* only when this is in the best interests of the *client* (see ■ COBS 2.1.1R(1)).

[**Note:** article 24(2) of *MiFID*]

3.3.2 G A *distributor* should consider what impact the selection of a given *manufacturer* could have on the *end client* in terms of charges or the financial strength of the *manufacturer*, or possibly, where information is available to the *distributor*, how efficiently and reliably the *manufacturer* will deal with the *distributor* or *end client* at the point of sale (or subsequently, such as when queries/complaints arise, claims are made, or a *financial instrument* reaches maturity).

3.3.2A G A *distributor* is reminded of its obligations under ■ ESG 4.1.16R to ■ ESG 4.1.19R in meeting its obligations under ■ PROD 3.3.1R.

Obtaining information from manufacturers

3.3.3 R *Distributors* must obtain from *manufacturers* subject to ■ PROD 3.2 information to gain the necessary understanding and knowledge of the *financial instruments* they intend to *distribute* in order to ensure that the *financial instruments* will be *distributed* in accordance with the needs, characteristics and objectives of the target market.

[**Note:** article 16(3) *MiFID* and article 10(2) *MiFID Delegated Directive*]

3.3.4 G In ensuring that they have obtained sufficient information about the *financial instruments* they *distribute* and in ensuring they understand the *financial instruments* or *investment services distributed*, *distributors*:

(1) should consider whether they understand the materials provided by the *manufacturer* or *distributor* earlier in the sales chain;

(2) should ask the *manufacturer* to supply additional information or training where this seems necessary to understand the *financial instrument* or *investment service* adequately;

(3) should not *distribute* the *financial instrument* or *investment service* if they do not understand it sufficiently; and

(4) when providing information to another *distributor* in a distribution chain, should consider how the further *distributor* will use the information, such as whether it will be given to *end clients*. *Firms* should consider what information the further *distributor* requires and the likely level of knowledge and understanding of the further *distributor* and what medium may suit it best for the transmission of information.

Distributing financial instruments manufactured by firms to whom PROD 3.2 does not apply including third country firms

3.3.5 R

(1) *Distributors* must take all reasonable steps to comply with ■ PROD 3.3 when *distributing financial instruments manufactured* by any *firm* to which product governance requirements in ■ PROD 3.2 do not apply.

(2) As part of this, *distributors* must put in place effective arrangements to ensure that they obtain sufficient, adequate and reliable information from the *manufacturer* about the *financial instruments* to ensure that they will be *distributed* in accordance with the characteristics, objectives and needs of the target market.

(3) This *rule* applies to *financial instruments* sold on either the primary or secondary market.

3.3.6 R

The obligation to obtain adequate and reliable information applies proportionately depending on:

(1) the degree to which publicly available information is obtainable; and

(2) the complexity of the *financial instrument*.

[**Note:** articles 10(1) and 10(2) of the *MiFID Delegated Directive*)

3.3.7 R

Where information relevant to the obligation in ■ PROD 3.3.5R is not publicly available, *distributors* must take all reasonable steps to obtain such relevant information from the *manufacturer* or its agent.

3.3.8 G

Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as disclosure requirements under the *transparency rules* or the *Prospectus Regulation*.

[**Note:** article 10(2) of the *MiFID Delegated Directive*]

Target market and distribution strategy

3.3.9 R *Distributors* must determine the target market for the respective *financial instrument*, even if the target market was not defined by the *manufacturer*.

[**Note:** article 10(1) of the *MiFID Delegated Directive*]

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3.3.10 R *Distributors* must identify the target market and their *distribution* strategy using:

(1) the information obtained from *manufacturers*; and

(2) information they have on their own *clients*.

3.3.11 G In identifying the target market and creating a *distribution* strategy, *distributors* should consider:

(1) the nature of the *financial instruments* to be offered or recommended and how they fit with *end clients'* needs and risk appetite;

(2) the impact of charges on *end clients*;

(3) the financial strength of the *manufacturer*; and

(4) where information is available on the *manufacturer's* processes, how efficiently and reliably the *manufacturer* will deal with the *end client* at the point of sale or subsequently, such as when complaints arise, claims are made or the *financial instrument* reaches maturity.

3.3.12 G The target market identified by *distributors* for each *financial instrument* should be identified at a sufficiently granular level.

3.3.13 G Where a *distributor* is part of a distribution chain, the information referred to in ■ PROD 3.3.10R(2) should include information on the intended *end client*.

3.3.14 R Where a *firm* acts both as a *manufacturer* and a *distributor*, only one target market assessment is required.

[**Note:** article 10(2) of the *MiFID Delegated Directive*]

3.3.15 R (1) *Distributors* must have in place adequate product governance arrangements to ensure that:

(a) the *financial instruments* and *investment services* they intend to *distribute* are compatible with the needs, characteristics and objectives of the identified target market; and

(b) the intended *distribution* strategy is consistent with the identified target market.

(2) *Distributors* must appropriately identify and assess the circumstances and needs of the *clients* they intend to focus on to ensure that their

clients' interests are not compromised as a result of commercial or funding pressures.

(3) *Distributors* must identify any groups of *end clients* for whose needs, characteristics and objectives the *financial instrument* or *investment service* is not compatible.

[**Note:** article 10(2) of the *MiFID Delegated Directive*]

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3.3.16 R *Distributors* must periodically review their product governance arrangements under ■ PROD 3.3.15R and must take appropriate actions where necessary to ensure they remain robust and fit for their purpose.

[**Note:** article 16(3) of *MiFID* and article 10(4) of the *MiFID Delegated Directive*]

3.3.17 G In the design of *investment services*, to help *clients* make an informed investment decision, *firms* should consider the support *clients* need before they reach the product selection part of the process.

3.3.18 R *Distributors* must have in place procedures and measures to ensure that when deciding the range of *financial instruments* and *investment services* to be *distributed*, and the target market, all applicable *rules* are complied with, including but not limited to:

(1) disclosure (see ■ COBS 4 and ■ COBS 14.3A);

(2) suitability (see ■ COBS 9A);

(3) appropriateness (see ■ COBS 10A);

(4) inducements (see ■ COBS 2.3A); and

(5) conflicts of interest (see ■ SYSC 10.1).

3.3.19 G *Distributors* should take particular care to ensure compliance with ■ PROD 3.3.18R when they intend to *distribute* new *financial instruments* or there are variations to the *investment services* they provide.

[**Note:** article 10(3) of the *MiFID Delegated Directive*]

Oversight and training requirements

3.3.20 R The development and periodic review of product governance arrangements must be monitored by the *person* allocated the *compliance oversight function* of a *firm* in order to detect any risk of failure by the *distributor* to comply with applicable provisions of *PROD*.

[**Note:** article 10(6) of the *MiFID Delegated Directive*]

3.3.21 R The *management body* of a *distributor* must have effective control over the *firm's* product governance process to determine:

(1) the range of *financial instruments* the *firm* offers or recommends; and

(2) the *investment services* provided to the respective target markets.

[**Note:** article 10(8) of the *MiFID Delegated Directive*]

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3.3.22 R All relevant staff must possess the necessary expertise to understand:

(1) the characteristics and risks of the *financial instruments* that the *firm* intends to *distribute*;

(2) the *investment services* provided by the *firm*; and

(3) the needs, characteristics and objectives of the identified target market.

[**Note:** article 10(7) of the *MiFID Delegated Directive*]

3.3.23 G *Firms* should have regard to ■ SYSC 5.1, and in particular ■ SYSC 5.1.5AB R, when considering whether their relevant staff have the necessary expertise.

Compliance reports

3.3.24 R Compliance reports to the *management body* must include information about the *financial instruments distributed* by the *firm* and the *investment services* provided.

3.3.25 R A *distributor* shall make the compliance reports available to the *FCA* on request.

[**Note:** article 10(8) of the *MiFID Delegated Directive*]

Post-sale review

3.3.26 R *Distributors* must regularly review the *financial instruments* they *distribute* and the *investment services* they provide, taking into account any event that could materially affect the potential risk to the identified target market.

3.3.27 R In carrying out the review in ■ PROD 3.3.26R, *distributors* must assess at least:

(1) whether the *financial instrument* or *investment service* remains consistent with the needs, characteristics and objectives of the identified target market; and

(2) whether the intended *distribution* strategy remains appropriate.

3.3.28 R If a *distributor* becomes aware that it has wrongly identified the target market for a specific *financial instrument* or *investment service*, or the *financial instrument* or *investment service* no longer meets the circumstances of the identified target market, it must take appropriate steps, including at least:

(1) reconsidering the target market; and/or

(2) updating its product governance arrangements.

3.3.29 G A *distributor* may need to take action under ■ PROD 3.3.28R in circumstances where the *financial instrument* becomes very illiquid or very volatile due to market changes.

[**Note:** article 16(3) of *MiFID* and article 10(5) of the *MiFID Delegated Directive*]

Information sharing

3.3.30 R To support the reviews carried out by *manufacturers* under ■ PROD 3.2.19R to ■ PROD 3.2.26R, a *distributor* must provide to the *manufacturer* of each *financial instrument* it *distributes*:

(1) information on sales; and

(2) where appropriate, information on the reviews carried out under ■ PROD 3.3.26R to ■ PROD 3.3.28R.

3.3.31 G (1) Information on sales should include information on any sales made outside the target market.

(2) In complying with ■ PROD 3.3.30R it is not necessary to report every sale to the *manufacturer*. *Distributors* should provide the data necessary for the *manufacturer* to review the *financial instrument* and check that it remains consistent with the needs, characteristics and objectives of the target market defined by the *manufacturer*. Relevant information could include:

(a) summary information of the types of *clients*;

(b) a summary of complaints received; and

(c) responses from *clients* to questions suggested by the *manufacturer* for the purposes of obtaining feedback from a *client* sample.

(3) In determining when providing information on the reviews carried out under ■ PROD 3.3.26R to ■ PROD3.3.28R is appropriate, a *distributor* should have regard to the requirements on the *manufacturer* in ■ PROD 3.2. Information on the reviews should be shared if the *manufacturer* requests it.

[**Note:** article 10(9) of and recital 20 to the *MiFID Delegated Directive*]

Responsibilities in chains of distributors

3.3.32 R (1) A *firm* which *distributes financial instruments* or *investment services* to *end clients* is responsible for ensuring that the obligations in this chapter are met in respect of any *financial instrument* or *investment service* it *distributes* to an *end client*.

(2) A *firm* which *distributes financial instruments* to *clients* which are not *end clients* must, in addition to complying with the rules in this

chapter, consider if they are also undertaking a *manufacturing* role and, if they are, also apply ■ PROD 3.2.

3.3.33 R A *distributor* which *distributes financial instruments* to other *distributors* must:

(1) ensure that relevant product information is passed from the *manufacturer* to the final *distributor* in the chain; and

(2) if the *manufacturer* requires information on product sales in order to comply with its obligations under ■ PROD 3.2, enable them to obtain it.

[**Note:** article 10(10) of the *MiFID Delegated Directive*]

Chapter 4

Product governance: IDD and pathway investments

4

4.1 General

Other requirements for insurance distribution activities

4.1.1 R This chapter does not affect the application of other requirements in the *FCA Handbook* applying to *firms* in relation to their *insurance distribution activities* including but not limited to:

(1) disclosure (■ ICOBS 2.2, ■ ICOBS 6.1, ■ COBS 4 and ■ COBS 14.2);

(2) suitability (■ COBS 9 or ■ COBS 9A);

(3) appropriateness (■ COBS 10A);

(4) identification and management of conflicts of interest (■ SYSC 10.1 for intermediaries or ■ SYSC 3.3 for insurers); and

(5) inducements (■ COBS 2.3A).

[**Note**: article 25(3) of the *IDD*]

4.2 Manufacture of insurance products

Product governance arrangements

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

(1) each insurance product; and

(2) significant adaptations of an existing insurance product,

in each case before it is marketed or *distributed* to *customers*.

[**Note**: first subparagraph of article 25(1) of the *IDD*]

4.2.1A G For the purposes of ■ PROD 4.2:

(1) whether a proposed change to the product would be a 'significant adaptation' should include consideration of the potential impact the adaptation may have on an existing or potential *customer* (when compared to the unadapted version of the product);

(2) a 'significant adaptation' in relation to a *non-investment insurance product* may include, but is not restricted to, a proposed change to the insurance coverage, costs, exclusions, excesses, limits or conditions and any other significant change to the terms and conditions.

4.2.2 R The product approval process referred to in ■ PROD 4.2.1R must be proportionate and appropriate to the nature of the insurance product.

[**Note**: second subparagraph of article 25(1) of the *IDD*]

4.2.3 G *Manufacturers* should take into account the following when considering whether the product approval process is proportionate and appropriate:

(1) the complexity of the insurance product;

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

(3) the nature of the insurance product and the risk of consumer detriment related to it;

(4) the characteristics of the target market; and

(5) the scale and complexity of the relevant business of the *manufacturer* or *distributor*.

[**Note**: recital 2 to the *IDD POG Regulation*]

4.2.3A G In addition to, and/or by way of elaboration of, the factors set out in ■ PROD 4.2.3G, for a *non-investment insurance product* a *firm* should take into account:

(1) the potential risk, and possible levels, of harm to *customers* if the product design is flawed, in particular, due to the potential scale of harm if the product is intended for a wide target market;

(2) the nature of the cover that the product is intended to provide;

(3) whether the distribution arrangements could mean *customers* are at a greater risk of not receiving fair value from the insurance product, for example where:

(a) the insurance product will be *distributed* with *additional products*;

(b) where the insurance product will be *distributed* on an ancillary basis to another product; or

(c) there is complexity in the distribution arrangements including the use of multiple parties in the distribution chain or reliance on persons not regulated under *FSMA* when selling the insurance product;

(4) the nature and complexity of the *firm's* existing or intended *customer* base, for example whether it includes or is likely to include;

(a) different types of *customers* with varying characteristics including in relation to their understanding of financial matters;

(b) a significant number of vulnerable *customers*;

(c) a significant number of *customers* of long *tenure*;

(5) any particularly notable features of, or relating to, existing products (including how it has been *distributed*).

4.2.4 G For the purposes of ■ PROD 4.2.2R proportionality means that the product approval process should be relatively simple for straightforward and non-complex products that are compatible with the needs and characteristics of the mass retail market. On the other hand, in the case of more complex products with a higher risk of consumer detriment more exacting measures should be required.

[**Note**: recital 2 to the *IDD POG Regulation*]

4.2.4A G (1) In relation to a *non-investment insurance product*, ■ PROD 4.2.2R does not allow a *firm* to assume a simple product approval process will be appropriate for a product intended for a mass retail market even if the product and/or distribution arrangements are straightforward and not complex. For example, the potential risks and levels of harm which could result even from a straightforward and non-complex

product, with simple distribution arrangements, intended for the mass market could mean that more exacting measures are required.

(2) An example of a straightforward and non-complex product could be cover for a single item (such as mobile phone insurance), or in relation to a single risk (such as ticket cancellation insurance), with straightforward distribution arrangements. However, there could be potential risks of such a product not providing fair value and therefore potentially leading to significant levels of harm. *Firms* should ensure the product approval process has the necessary measures to identify and mitigate any potential risks and harms.

Product approval process

4.2.5 R

(1) A *manufacturer* must maintain, operate and review a product approval process for newly developed insurance products and for significant adaptations of existing insurance products.

(2) The process in (1) must contain measures and procedures for designing, monitoring, reviewing and distributing insurance products, as well as for corrective action for insurance products that are detrimental to *customers*.

(3) The measures and procedures must be proportionate to the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the *manufacturer*.

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

4.2.5A R

For a *non-investment insurance product*, a *firm* must ensure a product approval process has all necessary measures and procedures for identifying whether the product is, or remains, appropriate to be marketed or *distributed* to *customers* in light of the requirements in ■ PROD 4.2.14A (Fair value for non-investment insurance products: individual insurance product and packages) to ■ PROD 4.2.14SR (Fair value for non-investment insurance products: additional provisions).

4.2.6 R

The product approval process required under ■ PROD 4.2.1R must be set out in a written document ("product oversight and governance policy"), which must be made available to the relevant staff.

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

4.2.7 R

Relevant actions taken by a *manufacturer* in relation to its product approval process must be duly documented, kept for audit purposes and made available to the *FCA* upon request.

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

4.2.8 R

The product approval process must:

(1) ensure that the design of insurance products:

(a) takes into account the objectives, interests and characteristics of *customers*;

(b) does not adversely affect *customers*;

(c) prevents or mitigates *customer* detriment;

(2) support a proper management of conflicts of interest.

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

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4.2.9 R A *manufacturer's governing body* responsible for the *manufacturing* of insurance products must:

(1) endorse and be ultimately responsible for establishing, implementing and reviewing the product approval process;

(2) continuously verify internal compliance with that process.

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

4.2.10 R A *manufacturer* must ensure that staff involved in designing and manufacturing insurance products have the necessary skills, knowledge and expertise to properly understand the insurance products sold and the interests, objectives and characteristics of the *customers* belonging to the target market.

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

4.2.11 R A *manufacturer* designating a third party to design products on its behalf remains fully responsible for compliance with the product approval process.

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

4.2.12 R A *manufacturer* must regularly review its product approval process to ensure it is still valid and up to date. A *manufacturer* must amend the product approval process where necessary.

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

Manufacture by more than one firm

4.2.13 R Where there is more than one *firm* involved in the *manufacture* of an insurance product, the *firms* must have a written agreement which specifies:

(1) their collaboration to comply with the requirements for *manufacturers* referred to in ■ PROD 4.2, including in particular ■ PROD 4.2.1R, ■ PROD 4.2.2R, ■ PROD 4.2.29R, ■ PROD 4.2.33R and ■ PROD 4.2.34R;

(2) the procedures through which they will agree on the identification of the target market; and

(3) their respective roles in the product approval process.

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

4.2.14 R In circumstances other than ■ PROD 4.2.13R, when *firms* collaborate to *manufacture* an insurance product, they must outline their mutual responsibilities in a written agreement.

Fair value for non-investment insurance products: individual insurance product and packages

4.2.14A R For a *non-investment insurance product*, a *firm* must ensure that the product approval process identifies whether the product provides fair value to *customers* in the target market including whether it will continue to do so for a reasonably foreseeable period (including following *renewal*).

4.2.14B R (1) Where a *non-investment insurance product* is intended to be *distributed* with one or more *additional products*, a *firm* must identify whether:

(a) each component product; and

(b) the package as a whole,

will provide fair value to the *customer* including that it will continue to do so for a reasonably foreseeable period (including following *renewal*).

(2) The assessment referred to in (1) must include (but is not limited to) consideration of:

(a) the value of the core insurance product;

(b) the value of any *additional products*; and

(c) the overall price of the package to the *customer*, taking into account the proposed distribution arrangements.

(3) A *firm* is not required to assess the value of a component product under (1) where the component is a *non-investment insurance product* for which the *firm* is not a *manufacturer*.

Fair value for non-investment insurance products: record keeping and steps following value assessment

4.2.14C R (1) A *firm* must:

(a) be able to clearly demonstrate how any *non-investment insurance product*, *additional product* or package provides (and will provide for a reasonably foreseeable period) fair value; and

(b) make and retain a record of the value assessment required by ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR.

(2) Where a *firm* is unable to both:

(a) identify; and

(b) clearly demonstrate,

that the insurance product and, where relevant, the package will provide fair value, the *firm* must not market the product or permit the product to be *distributed* (whether directly or through another *person*), or must have ensured appropriate changes have been made so that fair value will be provided.

Fair value for non-investment insurance products: relevance through the product approval process

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4.2.14D R A *firm* must consider the value considerations in ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR throughout every stage of the product approval process in ■ PROD 4 including, in particular, when:

(1) identifying the target market and the interests, needs, objectives and characteristics of such *customers* (■ PROD 4.2.15R to ■ PROD 4.2.21AG);

(2) undertaking product testing (■ PROD 4.2.22R to ■ PROD 4.2.26G); and

(3) selecting any distribution channel (■ PROD 4.2.27R to PROD 4.2.32DR).

Fair value for non-investment insurance products: meaning of value

4.2.14E R In ■ PROD 4, 'value' means the relationship between the overall price to the *customer* and the quality of the product(s) and/or services provided. The assessment of value must include consideration of at least the following:

(1) the nature of the product including the benefits that will be provided, their quality, and any limitations (for example in the scope of cover, exclusions, excesses or other features);

(2) the type and quality of services provided to *customers*;

(3) the expected total price to be paid by the *customer* when buying or renewing the insurance product, and the elements that make up the total price. This will need to include consideration of at least the following:

(a) the pricing model used to calculate the risk premium:

(i) for the initial policy term; and

(ii) any future renewal;

(b) the overall cost to the *firm* of the insurance product (including the underwriting and operating of the product) and, where relevant, any other components of a package;

(c) the individual elements of the expected total price to be paid by the *customer* including, but not limited to, the price paid for:

(i) the insurance product, including any additional features which are part of the same *non-investment insurance contract*;

(ii) any *additional products*, including *retail premium finance*, offered alongside the insurance product;

(iii) the distribution arrangements, including the remuneration of any relevant *person* in the distribution arrangements, and

including where the final decision on setting the price is taken by another person);

(4) how the intended distribution arrangements support, and will not adversely affect, the intended value of the product.

4.2.14F R When considering the value of a *non-investment insurance product* under ■ PROD 4.2.14A and, where relevant, ■ PROD 4.2.14BR, a *firm* must not rely on individual *customers* to consider whether they are making fair value purchases in place of any part of the *firm's* own assessment, in particular where an insurance product is *manufactured* to be *distributed* either with *additional products* or on an ancillary basis to another good or service.

4.2.14FA R (1) For the purposes of ■ PROD 4.2.14ER, and any rules in ■ PROD 4 that rely on the meaning of 'value' in this *rule*, a *firm* is not required to take into account product distribution arrangements that relate to the *distribution* of the product to:

(a) a *customer* who is not *habitually resident* in the *United Kingdom*; or

(b) where the *state of the risk* is not the *United Kingdom*

(2) The effect of (1) includes that a *firm* is not required to obtain and assess information in relation to the *distribution* of the product to a *customer* who is not *habitually resident* in the *United Kingdom* or where the *state of the risk* is not the *United Kingdom*, from a *distributor* based outside of the *United Kingdom*, including, in particular, information pertaining to that *person's* remuneration for such *distribution*.

(3) A *non-investment insurance product* that is used for effecting a *multi-occupancy building insurance contract* is excluded from (1).

Fair value for non-investment insurance products: guidance on reasonably foreseeable period

4.2.14G G (1) *Firms* will need to consider the matters in ■ PROD 4.2.14ER and ■ PROD 4.2.14ME to identify if there is fair value both for the initial term of a *non-investment insurance product* and renewals for a reasonably foreseeable period. What may constitute a 'reasonably foreseeable period' will depend on the type of the *non-investment insurance product* (including the intended term of any *policy* and the underlying risk) and the expected length of time a *customer* in the target market will keep the product, including in particular where it would be reasonably expected that a *customer* would renew the product on a number of occasions.

(2) When considering whether a product will provide fair value for a reasonably foreseeable period, a *firm* should consider at least:

(a) any expected changes to the total price a *customer* would pay during the period that they hold the product (including at the first or any subsequent *renewal* or any other point in time);

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(b) any expected change to the insured risk over time, for example in the nature, financial value or a *customer's* usage of an underlying good to which the insurance relates;

(c) whether the number of expected claims that may be made, or financial value of any such claim, would be expected to change over time due to the nature of the product, the *customer's* needs or any relevant features of the insured risk, for example:

(i) as a result of expected depreciation in the value of the insured asset;

(ii) where the *customer's* need, or eligibility, for certain cover may change including as a result of features identified in (b) or where claims have been made;

(d) whether the total premiums expected to be paid over the length of time a *customer* would hold the product would exceed the benefits that could be received from claims for example due to cover limits applying across the foreseeable period (taking into account any deductions permitted by the contract such as any relevant policy excess for such claims);

(e) whether the benefits offered by the *policy* at inception may not be available at subsequent *renewals*, due to exclusions or claims limits, without any commensurate reduction in the premium;

(f) whether *customers* could be discouraged from or be unable to renew due to the level of ongoing premiums including increases at renewal meaning they may not be receiving the full intended benefits of the product (where these are intended to be spread across the reasonably foreseeable period).

Fair value for non-investment insurance products: general

4.2.14H G

(1) When considering the costs of, or associated with, any distribution arrangements, *firms* should consider the justification in value terms of any difference between the risk price and the total price paid by the *customer* including where the difference is mainly due to the costs (including remuneration) of any person in the distribution arrangements or where this is due to the combined costs (including remuneration) of multiple parties involved in the distribution arrangements.

(2) Where a *firm* identifies that an insurance product, package or individual component has poor value or there is an unreasonable relationship between either the cost to the *firm* and the price paid by the *customer*, or the price paid by the *customer* and product quality or service provided, the product or package will not be providing fair value. However, a *firm* should not assume there is fair value simply due to the absence of an unreasonable relationship in the costs or where they identify an absence of poor value. *Firms* will need to consider all relevant aspects of value in the particular context and consider whether overall there is fair value provided.

(3) Where a *non-investment insurance product* has negligible, or no obvious, benefit for the *customer* this will not be providing fair value regardless of the price of the product. For example, the product will not provide fair value where the cover under the *non-investment insurance contract* is significantly limited, whether by exclusions or

limits on the amount that would be paid in settlement, meaning that the *customer* is unlikely to be able to make a successful claim or where the *customer* could conclude it is not in their interests to make a claim due to the disproportionate time or effort which would be required, compared to the claim settlement which would be expected.

(4) When assessing whether a package provides fair value for the purposes of ■ PROD 4.2.14BR, a *firm* will need to consider both the components individually and the package as a whole to identify whether there is fair value. This should include whether there is a risk that the individual components do not provide the same level of value to the *customer* when combined in a package. For example, where the package includes more than one *non-investment insurance product*, a *firm* should consider the type and level of insurance cover provided by each of these products and whether this would result in duplicate insurance cover that could detrimentally affect the value of the package.

Fair value for non-investment insurance products: retail premium finance guidance

4.2.14I G

(1) Where the *manufacturer* will provide, or arrange for another *firm* to provide, the option for *customers* to buy a *non-investment insurance product* using *retail premium finance*, it will need to consider if the additional costs of, or relating to, the *retail premium finance* have a material detrimental effect on the value of the insurance product when the two products are taken together.

(2) When assessing the value of any particular *retail premium finance* under ■ PROD 4.2.14BR, a *manufacturer* should consider the relationship between:

the total price a *customer* would pay (including the applicable *APR*) for the *retail premium finance*; and

the quality of that *retail premium finance* including any relevant factors and features. For example, any benefit that a *customer* could have from using *retail premium finance* including the ability to spread the cost of a *non-investment insurance contract* instead of paying up front, taking into account the higher overall price the *customer* will have to pay.

Fair value for non-investment insurance products: information to be used

4.2.14J R

(1) When assessing value, a *firm* must use all necessary and appropriate data and information available to it.

(2) For the purposes of (1) the data and information a *firm* should consider using includes, but is not limited to:

(a) information available to the *firm* internally including:

(i) customer research;

(ii) claims information such as handling times, frequency, severity of claims costs (including total costs and average per claim), claims ratios, rates of and reasons for claim acceptance/

declinature, both expected for the product and/or any actual information from a comparable product; and

(iii) complaints data (including root cause analysis and handling times), both expected for the product itself and/or any actual information from a comparable product;

(b) public information or information obtainable by the *firm* from external sources including analysis of similar insurance products available from other *firms* and, where relevant, data published as part of the *FCA's* work on value measures in the general insurance market;

(c) information available to the *firm* specifically from persons in the distribution arrangements, including:

(i) remuneration and its impact on the value of the product, package or component part;

(ii) levels or quality of service provided by any person in the distribution arrangements; and

(iii) any results of monitoring and oversight of the processes of any persons in the distribution arrangement (for example, call monitoring or file checks) including in relation to other products that person *distributes*.

4.2.14K G The information that a *firm* will need to use for ■ PROD 4.2.14JR will depend on the nature of the particular *non-investment insurance product* and (where relevant) the package, the particular distribution arrangement(s), the target market, the nature of any actual customer base, and any existing information on customer outcomes (for example claims experiences, outcomes of claims and complaints related data).

Fair value for non-investment insurance products: compliance with fair value requirement

4.2.14L G The following *evidential provision* provides examples of arrangements the *FCA* considers will breach ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR.

4.2.14M E (1) A *firm* should not have a *non-investment insurance product* where the difference between the risk price to the *firm* and the total price paid by the *customer* bears no reasonable relationship to:

(a) the actual costs incurred by the *firm* or any another person involved in the distribution arrangements;

(b) the quality of any benefits (including of the insurance product or any *additional products*); or

(c) the costs or quality of any services provided in connection with the insurance product or additional products, by the *manufacturer* or any another person involved in the distribution arrangements.

(2) A *firm* should not increase the price of an insurance product based on:

(a) *policies* being subject to auto-renewal compared to *policies* that are not subject to auto-renewal;

(b) the *customer's* vulnerability or any protected characteristic(s) (unless the *firm* is clearly permitted to rely on them under the Equalities Act 2010); or

(c) where *customers* purchase the *policy* using *retail premium finance*,

unless the *firm* has an objective and reasonable basis for making the change.

(3) A *firm* should not use an estimated final price to the *customer* to assess value that does not represent the expected total price to the *customer* including any *additional products* the *firm* expects to be purchased by the *customer*. For example, where the *firm* is responsible for providing or making available *retail premium finance* (the costs of which will be part of the total price paid by the *customer*).

(4) Contravention of any of (1) to (3) may be relied on as tending to establish contravention of ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR.

Fair value for non-investment insurance products: distribution arrangements

4.2.14N R A *firm* must, as far as reasonably possible, ensure the distribution arrangements for a *non-investment insurance product* avoid or minimise the risk of negatively impacting the fair value of the insurance product or package. This includes, but is not limited to:

(1) avoiding or reducing the risks arising from:

(a) any remuneration of a party, or parties, involved in the distribution arrangements increasing, directly or indirectly, the total price paid by the *customer* without adequate monitoring or oversight of the nature, level and fairness justification for their inclusion; or

(b) providing discretion to another person to set the final price, for example through a net pricing arrangement, without adequate monitoring or oversight of the final price paid by the *customer*;

(2) ensuring that appropriate arrangements will be in place to identify if the actions of another person involved in the distribution arrangements would adversely affect the value of the insurance product or package; and

(3) reducing the scope for the overall effect of any distribution arrangements to detrimentally affect the value of the products or package including where the cumulative effects of the remuneration of multiple parties unreasonably add to the overall price paid by the *customer*.

4.2.14O G (1) Where the *firm* is considering the effects of the distribution arrangements on value it should consider whether the additional costs of any individual party in the arrangements that add to the

total price paid by the *customer* deliver any, or a proportional, additional benefit. If not, *firms* should consider how they can be satisfied that the arrangements are consistent with their obligations to be able to clearly demonstrate fair value to the *customer*.

(2) A benefit that could be consistent with fair value might include where the party's inclusion in the distribution arrangements increases access to the product for *customers* in the target market in a way that is proportionate to the additional cost involved.

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4.2.14P R A *firm* must obtain from any person in the distribution arrangements all necessary and relevant information to enable it to identify the remuneration associated with the distribution arrangements to allow it to assess the ongoing value of the product, including at least:

the type and amount of remuneration of each person in the distribution arrangement where this is part of the *premium* or otherwise paid directly by the *customer*, including in relation to *additional products* (other than where this relates to another *non-investment insurance product* for which the *firm* is not a *manufacturer*);

an explanation of the services provided by each person in the distribution arrangements; and

confirmation from any *firm* in the distribution arrangements that any remuneration is consistent with their regulatory obligations including ■ SYSC 19F.2 (IDD remuneration incentives).

4.2.14Q G *Firms* should take into account what is necessary to satisfy *PROD* requirements together with any wider legal obligations, for example, competition law to which they are subject.

Fair value for non-investment insurance products: additional provisions

4.2.14R R A *firm manufacturing* a *non-investment insurance product* must ensure the *manufacture* of an insurance product is driven by features that benefit the *customer* and not by a business model which relies on poor *customer* outcomes to be profitable.

4.2.14S R In relation to a *non-investment insurance product* to be sold in a package with *additional products*, a *firm* must not set or increase the price of those *additional products* to the *customer* in a way that detrimentally impacts the package delivering fair value, including where this is done to minimise the financial effects on the *firm* of reducing the price of, or making other changes to, an insurance product as a result of the fair value assessment.

Target market

4.2.15 R For each insurance product the product approval process must:

(1) specify an identified target market;

(2) ensure that all relevant risks to the identified target market are assessed;

(3) ensure that the intended distribution strategy is consistent with the identified target market; and

(4) require the *manufacturer* to take reasonable steps to ensure that the insurance product is *distributed* to the identified target market.

[**Note**: third subparagraph of article 25(1) of the *IDD*]

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4.2.15A R The effect of ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR, when taken together with ■ PROD 4.2.15R, is that a *firm* will need to be able to show that a *non-investment insurance product* offers fair value to the specified target market, taking into account in particular their needs, objectives, interests and characteristics.

4.2.16 R (1) A *firm's* product approval process must, for each insurance product, identify the target market and the group of compatible *customers*.

(2) The target market in (1) must be identified at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the insurance product.

[**Note:** article 5(1) of the *IDD POG Regulation*]

4.2.17 R A *manufacturer* may, in particular with regard to *insurance-based investment products*, identify groups of *customers* for whose needs, characteristics and objectives the insurance product is generally not compatible.

[**Note:** article 5(2) of the *IDD POG Regulation*]

4.2.17A R (1) For a *non-investment insurance product*, when identifying the target market a *firm* must identify if there are groups of *customers* for whom the product or package would not provide the intended level of value identified for ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR.

(2) A *firm* must take reasonable steps in its use of the distribution arrangements to ensure the product is not distributed to any such groups of *customers* identified in (1). The information required in ■ PROD 4.2.29R to be provided to *distributors* must include a clear description of these *customers*.

4.2.18 R (1) A *manufacturer* must only design and market insurance products that are compatible with the needs, characteristics and objectives of the *customers* belonging to the target market.

(2) When assessing whether an insurance product is compatible with a target market, a *manufacturer* must take into account the level of

information available to the *customers* belonging to that target market and their financial literacy.

[**Note:** article 5(3) of the *IDD POG Regulation*]

4.2.19 G The identification of the target market by the *manufacturer* should be understood as describing a group of *customers* sharing common characteristics at an abstract and generalised level in order to enable the *manufacturer* to adapt the features of the product to the needs, characteristics and objectives of that group of *customers*.

4.2.20 G The identification of the target market should be distinguished from the individual assessment at the point of sale to determine whether a product meets the demands and needs and, where applicable, whether an *insurance-based investment product* is suitable or appropriate for the individual *customer*.

[**Note:** recital 5 to the *IDD POG Regulation*]

4.2.21 G The level of granularity of the target market and the criteria used to define the target market and determine the appropriate distribution strategy should be relevant for the product and should make it possible to assess which *customers* fall within the target market. For simpler, more common products, the target market should be identified with less detail while for more complicated products or less common products, the target market should be identified with more detail taking into account the increased risk of consumer detriment associated with such products.

[**Note**: recital 6 to the *IDD POG Regulation*]

4.2.21A G In relation to a *non-investment insurance product*, a *firm* should consider whether the target market needs to be identified in more detail, even for a simpler, more common product, where there is a material risk of *customer* harm associated with it.

Product testing

4.2.22 R (1) A *manufacturer* must test their its insurance products appropriately, including scenario analyses where relevant, before bringing that product to the market or significantly adapting it, or in case the target market has significantly changed.

(2) The product testing in (1) must assess whether the insurance product over its lifetime meets the identified needs, objectives and characteristics of the target market.

(3) A *manufacturer* must test its insurance products in a qualitative manner and, depending on the type and nature of the insurance product and the related risk of detriment to *customers*, quantitative manner.

[**Note:** article 6(1) of the *IDD POG Regulation*]

4.2.23 G For the purposes of ■ PROD 4.2.22R, *manufacturers* should include assessments of the performance and risk/reward profile of their insurance product where appropriate.

[**Note**: recital 8 to the *IDD POG Regulation*]

4.2.24 R A *manufacturer* must not bring insurance products to the market if the results of the product testing show that the products do not meet the identified needs, objectives and characteristics of the target market.

[**Note:** article 6(2) of the *IDD POG Regulation*]

4.2.25 R *Manufacturers* must consider the charging structure proposed for each insurance product, including examination of the following:

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

(2) where relevant, whether the charging structure of the insurance product is appropriately transparent for the target market, such as that it does not disguise charges or is too complex to understand; and

(3) where relevant, whether the charges undermine the return expectations of the insurance product, such as where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a *life policy*.

4.2.26 G (1) ■ PROD 4.2.25R does not affect the *manufacturer's* freedom to set *premiums*.

(2) In relation to a *non-investment insurance contract* a *firm* should consider whether, as a result of the charging structure it has put in place, the overall cost for the *customer* is consistent with its obligations under ■ PROD 4.2.14AR (and, where relevant, ■ PROD 4.2.14BR), the *Principles* and *ICOBS*.

(3) ■ PROD 4.2.25R should be read in light of a *firm's* wider obligations under the *Handbook* which impose specific restrictions or requirements around what costs and charges may be permissible. For example, the *rules* in ■ COBS 20.2 govern what may be charged to a *with-profits policy* when considering its charging structure under ■ PROD 4.2.25R.

Distribution channels and information disclosure to distributors

4.2.27 R A *manufacturer* must carefully select distribution channels that are appropriate for the target market, thereby taking into account the particular characteristics of the relevant insurance products.

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

4.2.28 G To ensure appropriate information for *customers*, *manufacturers* should select *distributors* that have the necessary knowledge, expertise and

competence to understand the features of an insurance product and the identified target market.

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

4.2.29 R A *firm* which *manufactures* an insurance product, must make available to a *distributor*:

(1) all appropriate information on the insurance product

(2) all appropriate information on the product approval process; and

(3) the identified target market of the insurance product.

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

4.2.29A G For a *non-investment insurance product*, the information required by ■ PROD 4.2.29R should include:

(1) all appropriate information to enable the *distributor* to understand the intended value of the insurance product established by the *firm*;

(2) any effect the *distributor* may have on the intended value that has not been fully taken into account by the *firm* when assessing value, and therefore which the *distributor* should take into account; and

(3) any type of *customer* for whom the insurance product is unlikely to provide fair value.

4.2.30 R (1) A *manufacturer* must provide a *distributor* with all appropriate information on the insurance products, the identified target market and the suggested distribution strategy, including information on the main features and characteristics of the insurance products, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of interest to the detriment of the *customer*.

(2) The information in (1) must be clear, complete and up to date.

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

4.2.31 R The information required under ■ PROD 4.2.30R must enable the *distributor* to:

(1) understand the insurance products;

(2) comprehend the identified target market for the insurance products;

(3) identify any *customers* for whom the insurance product is not compatible with their needs, characteristics and objectives;

(4) carry out *insurance distribution activities* for the relevant insurance products in accordance with the best interests of their *customers* as prescribed in ■ ICOBS 2.5-1R or ■ COBS 2.1.1R (as relevant).

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

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

The information made available under (1) must be of an adequate standard to enable *distributors* to:

comprehend the identified target market for the insurance products; and

be able to identify any customers for whom the insurance product is not compatible with their needs, characteristics and objectives.

A *manufacturer* is not required to disclose specific information objectively considered to be commercially sensitive if the information it does make available would still allow *distributors* to meet (2)(a) and (b).

Distribution channels: selecting channels for non-investment insurance products

4.2.32A R In relation to a *non-investment insurance product*, a *firm* must not use a distribution channel unless it is able to demonstrate clearly that the channel results in fair value to *customers* in the target market.

4.2.32B R In relation to a *non-investment insurance product*, whenever making a change to the distribution arrangements a *firm* must:

obtain all necessary information from the *distributor* or any other person who will be involved with the distribution arrangement, including that set out in ■ PROD 4.2.14PR; and

identify whether the proposed change to the distribution arrangements is consistent with the fair value requirement in ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR.

4.2.32C G For ■ PROD 4.2.32BR, a change to the distribution arrangements includes adding a further distribution channel.

4.2.32D G For a *non-investment insurance product* sold on an ancillary basis to another product or service, for example a motor vehicle, electrical good or a holiday, a *firm* should consider whether the proposed distribution channel would be appropriate in light of the risk that the *customer's* focus is on the core product rather than the insurance product.

Monitoring and review of insurance products

4.2.33 R A *firm* must understand the insurance products it offers or markets.

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

4.2.34 R A *firm* must regularly review the insurance products it offers or markets taking into account any event that could materially affect the potential risk to the identified target market. In doing so, the *firm* must assess at least the following:

(1) whether the insurance product remains consistent with the needs of the identified target market;

(2) (in relation to a *non-investment insurance product*) whether the insurance product remains consistent with the fair value assessment required under ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR; and

(3) whether the intended distribution strategy remains appropriate.

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

4.2.34A G 'Offers' and 'markets' in the requirements in ■ PROD 4.2.33R and ■ PROD 4.2.34R should be read to include 'renews' in relation to the *renewal* of existing *non-investment insurance products*.

4.2.34B R For a *non-investment insurance product*, a *firm* must undertake the regular review required by ■ PROD 4.2.34R:

(1) every 12 *months*; or

(2) more frequently where the potential risk associated with the product makes it appropriate to do so.

4.2.34C G For the purposes of ■ PROD 4.2.34BR, the factors that should be taken into account when considering if more frequent reviews would be appropriate include, but are not limited to:

(1) the nature and complexity of the product;

(2) the nature of the *customer* base, including whether there are significant numbers of *customers* of long *tenure* and/or vulnerable *customers*;

(3) any specific indicators seen in the *firm's* assessment of the product's value to the *customer*;

(4) any indicators of customer harm potentially emerging from the performance of the product (for example through claims and complaints data); and

(5) the nature and type of distribution arrangements being used.

4.2.34D R A *firm* must obtain all necessary and relevant information in order to enable it to properly understand and monitor a *non-investment insurance product* including verification of the information in ■ PROD 4.2.14PR.

4.2.34E G When reviewing *non-investment insurance products* a *firm* may group similar products together where this does not detrimentally affect the *firm's* ability to review each product appropriately. This includes the need to review whether any individual product, and where necessary a package, is providing fair value.

For the purposes (1) 'similar products' will be those products that are intended to deliver similar cover and outcomes for *customers* where the target markets are consistent.

A *firm* should consider the following factors when identifying whether it is appropriate to group products together for review:

(a) the risk of customer harm for each individual product;

(b) the complexity of each product;

(c) the nature of the target market and existing customer base for each product (including the extent to which this includes vulnerable *customers*);

(d) any specific indicators seen in the assessment of value under ■ PROD 4.2.14AR, and where relevant ■ PROD 4.2.14BR which may make it inconsistent to review that product alongside others;

(e) any specific indicators of customer harm emerging from the performance of each product; and

(f) the nature and type of distribution arrangements for each product.

A *firm* will need to ensure that the grouping of any reviews does not impair the *firm's* ability to identify any risk that a product is not delivering fair value or that there is any other issue which could give rise to customer harm in relation to each individual product.

4.2.35 R (1) A *manufacturer* must continuously monitor and regularly review insurance products it has brought to the market, to identify events that could materially affect the main features, the risk coverage or the guarantees of those products.

(2) A *manufacturer* must assess whether the insurance products remain consistent with the needs, characteristics and objectives of the identified target market and whether those products are distributed to the target market or are reaching *customers* outside the target market.

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

4.2.35A R (1) When reviewing a *non-investment insurance product*, a *firm* must consider:

(a) whether the insurance product, and where relevant the package, is providing the intended fair value to *customers*;

(b) any impact which the distribution arrangements are having on the value including whether the distribution channels remain appropriate; and

(c) whether the use of any *retail premium finance* arrangement remains appropriate including whether when distributed in a package with a *non-investment insurance product* it provides fair value.

(2) A *firm* in (1) must:

(a) ensure that it has sufficient, good quality management information; and

(b) use all appropriate and necessary data and information available to it (whether it holds this information already, the information is publicly available or it is able to obtain it from another person),

to enable it to consider and assess value including the value actually being provided by the insurance product.

(3) The information in (2) that a *firm* needs to consider whether to use includes, but is not limited to:

(a) information available to the *firm* internally including:

(i) customer research;

(ii) claims information (such as handling times, frequency, rates of and reasons for claim acceptance and declinature, severity of claims costs (including total costs and average per claim) and claims ratios); and

(iii) complaints data (including root cause analysis and handling times);

(b) public information or information obtainable by the *firm* from external sources including analysis of similar insurance products available from other *firms* and, where relevant, data published as part of the *FCA's* work on value measures in the general insurance market;

(c) information available to the *firm* (including what it would be reasonably able to obtain) in relation to any distribution arrangements through which the product is distributed, including:

(i) remuneration information;

(ii) levels and quality of service provided by the *distributor*;

(iii) ongoing monitoring and oversight reports relating to the *distributor's* processes, for example call monitoring or file reviews.

4.2.35B G The information that a firm will need to use for ■ PROD 4.2.35AR(2) will depend on the nature of the *non-investment insurance product*, (where relevant) the package, the particular distribution arrangement(s), the target market, the nature of the actual customer base, and the *firm's* existing information on *customer* outcomes (for example claims experiences, outcomes of claims and complaints related data).

4.2.35C G For ■ PROD 4.2.35AR(1), a *firm* should identify whether there is a risk to it continuing to provide fair value where there is a material change in the relationship between the price to the *customer* and the actual costs to the *firm* or another party involved in the ongoing service/distribution of the product.

4.2.36 R A *manufacturer* must determine the appropriate intervals for the regular review of their insurance products, thereby taking into account the size, scale, contractual duration and complexity of those insurance products, its respective distribution channels, and any relevant external factors such as changes to the applicable legal rules, technological developments, or changes to the market situation.

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

4.2.36A G In relation to a *non-investment insurance product*, when identifying the appropriate intervals for regular review, *firms* will need to consider the requirement in ■ PROD 4.2.34BR and also whether any event has happened or any issue has arisen requiring the insurance product to be reviewed outside of the minimum review period.

4.2.36B R For the purposes of showing the requirements in ■ PROD 4.2.1R and ■ PROD 4.2.5R are met, where a *firm* makes a change to a *non-investment insurance product* it must make and retain a record of:

(1) the assessment of whether that change would amount to a significant adaptation of the insurance product; and

(2) where the assessment in (1) is that the change would not be a significant adaptation, the reasons for that decision.

4.2.37 R Where a *manufacturer* identifies during the lifetime of an insurance product any circumstances related to the insurance product that may adversely affect the *customer* of that product, the *manufacturer* must take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event. A *manufacturer* must promptly inform concerned insurance *distributors* and *customers* about the remedial action taken.

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

4.2.37A R For a *non-investment insurance product*, the review process must:

(1) have the necessary measures to be able to identify if the insurance product is not providing fair value; and

(2) provide that appropriate actions be taken:

(a) for the mitigation and any potential remediation of the harm to existing *customers*; and

(b) to prevent harm to new *customers*.

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4.2.37B G In relation to a *non-investment insurance product*, the actions *firms* may need to take for the purposes of ■ PROD 4.2.37A include (and may involve a combination of), but are not limited to:

making changes to the product (such as amending policy terms or applying them more favourably to *customers* in the event of a claim);

offering existing *customers* the option to cancel the *non-investment insurance contract* without additional cost (for example by waiving cancellation fees or charges);

providing *customers* with a refund of the difference between the *premium* paid for the *non-investment insurance contract* and the *premium* for a fair value version of that product;

proposing alternative insurance products, whether offered by the *firm* or another provider, to existing *customers* or *distributors* which provide fair value and which would be compliant with other *FCA* requirements, for example, ■ ICOBS 5.2 (Demands and needs); and

withdrawing the insurance product from continued marketing or *distribution*.

4.2.37C G Where in the review required by ■ PROD 4.2.34R and ■ PROD 4.2.35UK a *firm* identifies a breach of any *rules* in place at the time, it should consider what may be necessary to provide appropriate mitigation and/or remediation of the harm including whether redress should be made. The *firm* should contact any affected *customers* where this is necessary to inform them of the issues and of the actions being taken.

4.2.38 R (1) A *manufacturer* must take appropriate steps to monitor that *distributors* act in accordance with the objectives of the *manufacturer's* product approval process.

(2) A *manufacturer* must in particular verify on a regular basis whether the insurance products are distributed on the identified target market. However, this monitoring obligation does not extend to the general regulatory requirements with which *distributors* have to comply when carrying out *insurance distribution activities* for individual *customers*.

(3) The monitoring activities in (1) must be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.

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

4.2.39 R Where a *manufacturer* considers that the distribution of its insurance products is not in accordance with the objectives of its product approval process it must take appropriate remedial action.

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

4.2.39A R In relation to a *non-investment insurance contract*, where a *firm* identifies that the *distribution* is detrimentally affecting the intended value of the insurance product it must take appropriate remedial measures including, but not limited to:

(1) amending the distribution arrangements, including ceasing to use certain *distributors* or distribution channels;

(2) amending remuneration structures;

(3) withdrawing the insurance product from continued marketing or *distribution*.

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4.3 Distribution of insurance products

4.3.1 R Where a *firm distributes* insurance products which it does not *manufacture* it must have in place adequate arrangements to obtain the information in ■ PROD 4.2.29R from the *manufacturer*.

[**Note**: sixth sub-paragraph of article 25(1) of the *IDD*]

4.3.2 R Where a *firm distributes* insurance products which it does not *manufacture*, it must have in place adequate arrangements to understand:

(1) the characteristics of each insurance product; and

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

[**Note**: sixth sub-paragraph of article 25(1) of the *IDD*]

4.3.2A R In relation to a *non-investment insurance product*, the arrangements in ■ PROD 4.3.2R must enable the *distributor* to understand:

(1) the outcome of the value assessment required by ■ PROD 4.2.14AR and, where relevant, ■ PROD 4.2.14BR; and

(2) any identified group of *customers* for whom the insurance product is not expected to provide fair value.

4.3.3 R A *distributor* must take all reasonable steps to obtain the information in ■ PROD 4.2.29R when *distributing* insurance products *manufactured* by any *person* to which product governance requirements in ■ PROD 4.2 do not apply.

4.3.4 G To comply with ■ PROD 4.3.2R, *distributors* should put in place effective arrangements to ensure that they obtain sufficient, adequate and reliable information from the *manufacturer* about the insurance products to ensure that they will be *distributed* in accordance with the characteristics, objectives and needs of the target market.

4.3.5 R A *firm* must have in place product distribution arrangements containing appropriate measures and procedures to obtain from the *manufacturer* all appropriate information on the insurance products it intends to offer to its *customers* and to fully comprehend those insurance products, taking into

account the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the *firm*.

[**Note:** first sub-paragraph of article 10(1) of the *IDD POG Regulation*]

4.3.6 R The product distribution arrangements required under ■ PROD 4.3.5R must:

(1) aim to prevent and mitigate *customer* detriment;

(2) support a proper management of conflicts of interest;

(2) ensure that the objectives, interests and characteristics of *customers* are duly taken into account.

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

4.3.6A R In relation to a *non-investment insurance product*, the product distribution arrangements in ■ PROD 4.3.2R must enable the *distributor* to identify:

(a) the value that the insurance product is intended to provide to the *customer*; and

(b) the impact that the distribution arrangements (including any remuneration it, or another person in the distribution chain to which it belongs, receives) has on the overall value of the insurance product to the *customer*.

Any distribution strategy set up or applied by the *distributor* must be consistent with the aim of providing fair value to the *customer*.

For the purposes of (1) and (2) a *firm* must consider at least the following:

(a) the benefits the product is intended to provide to the *customer*;

(b) the characteristics, objectives, interests and needs of the target market;

(c) the interaction between the price paid by the *customer* and the extent and quality of any services the *distributor* (or any person connected to it) provides;

(d) whether any remuneration it receives in relation to the insurance product would result in the product ceasing to provide fair value to the *customer*;

(e) any potential detrimental effect on the intended value where the insurance product is to be *distributed* as part of a package with, or as part of the same agreement which provides, another product or service; and

(f) where the distribution strategy involves offering, or arranging for the *customer* to be offered, *retail premium finance*, the *firm* must ensure that, taking into account the costs (including any charges/interest) of the *retail premium finance*, the *customer* does not pay a price that means, if seen as a package, the *customer* will not receive fair value.

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4.3.6B G

(1) Where a *distributor* intends to *distribute* a *non-investment insurance product* alongside:

(a) one or more other *non-investment insurance products* (whether from the same or another *manufacturer*); or

(b) any other *additional product*,

then the *distributor* should be able to demonstrate these arrangements are consistent with the aim of providing fair value to a customer and any package does not have a detrimental effect on the intended value of any *non-investment insurance product*.

(2) For the purposes of (1), where more than one *non-investment insurance product* is part of a package, a *distributor* should consider at least whether the products:

(a) have consistent target markets; and

(b) provide cover in respect of the same risk and subject matter which could result in duplicate cover that could detrimentally affect the intended value of each individual product.

(3) A *distributor* should ensure they have obtained, and taken account of, all relevant information from a *manufacturer* in relation to any *non-investment insurance product* in the package in order to understand the value, the relevant target market and any other relevant characteristic of that product.

(4) The arrangements a *distributor* is required to have in place under ■ PROD 4.3 are separate from the processes and arrangements the *firm* should have in place at the point of sale, including to comply with the *customer's best interests rule* and to determine whether a product being proposed is consistent with the demands and needs of a particular *customer*.

4.3.6C G

When assessing the impact that the distribution arrangements may have, a *distributor* should consider the effects of any *retail premium finance* it offers to *customers* including the relationship between:

(1) the total price a *customer* would pay for the *retail premium finance* (including any charges for the credit whether in the *APR* or otherwise and fees); and

(2) the quality of that *retail premium finance* including any relevant factors and features. For example, any benefit that such a *customer* could have from using *retail premium finance*, including the ability to spread the cost of a *non-investment insurance contract* instead of paying up front, taking into account the higher overall price the *customer* will have to pay.

4.3.6D G

The following evidential provision provides examples of arrangements the *FCA* considers will breach ■ PROD 4.3.6AR.

4.3.6E E

(1) A *firm's* distribution arrangements including any distribution strategy it sets up, should not result in:

(a) the *firm* receiving a level of remuneration which does not bear a reasonable relationship to the *firm's* actual costs, or their contribution, level of involvement or the benefit added by them, to the arrangements for the distribution of the product, including where the *firm* provides little or no benefit beyond that which the *customer* would receive if they obtained the insurance product through another distribution channel;

(b) the *firm* having remuneration arrangements which give an incentive to propose or recommend an insurance product which either does not meet the *customer's* needs (or not as well as another product would) or is not in accordance with the *customer's best interests rule*;

(c) where the insurance product is distributed as part of a package, the overall price of the package not bearing a reasonable relationship to the overall benefits provided by the package; or

(d) the level of any remuneration (for which the *firm* is responsible for setting) not being reasonably reflective of the costs actually incurred.

(2) Contravention of any of (1) may be relied upon as tending to establish contravention of ■ PROD 4.3.6AR.

4.3.6EA R

For the purposes of ■ PROD 4.3.6AR and ■ PROD 4.3.6BR, a *firm* is not required to take into account product distribution arrangements that relate to the *distribution* of the product to:

a *customer* who is not *habitually resident* in the *United Kingdom*; or

where the *state of the risk* is not the *United Kingdom*.

The effect of (1) includes that a *firm* is not required to assess the impact of a *person's* remuneration in relation to the *distribution* of the product to a *customer* who is not *habitually resident* in the *United Kingdom*, or where the *state of the risk* is not the *United Kingdom*, when identifying the impact of the distribution arrangements on the value being provided to the *customer*.

(3) A *non-investment insurance product* that is used for effecting a *multi-occupancy building insurance contract* is excluded from (1).

4.3.7 R

A *firm* must ensure that its product distribution arrangements contain the necessary measures to obtain from the *manufacturer* the information to be communicated under ■ PROD 4.2.30R.

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

4.3.8 R

Any specific distribution strategy set up or applied by a *firm* must be in accordance with the distribution strategy set up and the target market identified by the *manufacturer*.

[**Note:** article 10(4) of the *IDD POG Regulation*]

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4.3.9 R The *firm's governing body* responsible for *insurance distribution activities* must endorse and be ultimately responsible for establishing, implementing and reviewing the product distribution arrangements and continuously verify internal compliance with those arrangements.

[**Note:** article 10(5) of the *IDD POG Regulation*]

4.3.10 R

(1) A firm must regularly review its product distribution arrangements to ensure that those arrangements are still valid and up to date. The firm must amend product distribution arrangements where appropriate.

(2) A *firm* that has set up or applies a specific distribution strategy must, where appropriate, amend that strategy in view of the outcome of the review of the product distribution arrangements. When reviewing its product distribution arrangements, a *firm* must verify that the insurance products are distributed to the identified target market.

(3) A *firm* must determine the appropriate intervals for the regular review of its product distribution arrangements, thereby taking into account the size, scale and complexity of the different insurance products involved.

(4) To support product reviews carried out by *manufacturers*, a *firm* must, upon request, provide *manufacturers* with relevant sales information, including, where appropriate, information on the regular reviews of the product distribution arrangements.

[**Note:** article 10(6) of the *IDD POG Regulation*]

4.3.10A R A *firm* must review its product distribution arrangements in relation to a *non-investment insurance product* at least every 12 *months*.

4.3.10B R For the purposes of ■ PROD 4.3.10R, a *distributor* must provide on request to a *manufacturer* of a *non-investment insurance product*:

(1) information on the *distributor's* remuneration in connection with the distribution of the insurance product;

(2) information on any ancillary product or service that the *distributor* provides to the *customer* (including insurance add-ons, non-insurance *additional products* and *retail premium finance*), which may affect the *manufacturer's* intended value of the insurance product; and

(3) confirmation that the distribution arrangements are consistent with the obligations of the *firm* under the *FCA Handbook* including in particular in ■ SYSC 10 (Conflicts of interest) and ■ SYSC 19F.2 (IDD remuneration incentives).

4.3.11 R A *firm* becoming aware that an insurance product is not in line with the interests, objectives and characteristics of its identified target market or becoming aware of other product-related circumstances that may adversely affect the *customer* must promptly inform the manufacturer manufacturer

and, where appropriate, amend their distribution strategy for that insurance product.

[**Note:** article 11 of the *IDD POG Regulation*]

4.3.11A R

(1) For a *non-investment insurance product*, a *distributor* must take appropriate remedial and mitigating action, including to amend its product distribution arrangements, where it identifies:

(a) the insurance product (or, where relevant, the package) is not providing fair value for *customers*; or

(b) any aspects of a product or package that may mean it does not offer fair value; or

(c) the distribution arrangements including remuneration structures may mean the *customer* is not being provided with fair value.

(2) The actions which the *distributor* takes for (1) must:

(a) aim to mitigate the situation and prevent further occurrences of any possible harm to *customers*, including, where appropriate, amending the distribution strategy for that product (and, where relevant, the package); and

(b) include informing any relevant *manufacturers* promptly about any concerns they have and any action the *distributor* is taking.

4.3.11B G

For the purposes of ■ PROD 4.3.11AR the steps a *distributor* may need to take include, but are not limited to:

(1) amending its remuneration structures;

(2) amending the distribution arrangements;

(3) improving the quality of, or ceasing, any service or benefits it provides;

(4) where the failure to provide fair value is due to the costs or quality of *additional products*, renegotiating the terms of the current arrangements relating to the *additional products*, or selecting alternative providers or *distributors* of them, in order to provide for a fair outcome;

(5) ceasing to distribute certain insurance products (or where relevant, packages), or ceasing to use certain distribution channels;

(6) contacting existing *customers* to inform them of the issues and of the measures being taken to rectify them; and

(7) providing redress to *customers*.

4.3.12 G

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

[**Note**: recital 12 to the *IDD POG Regulation*]

4.3.13 R Relevant actions taken by a *firm* in relation to its product distribution arrangements must be duly documented, kept for audit purposes and made available to the *FCA* upon request.

[**Note:** article 12 of the *IDD POG Regulation*]

4.3.14 R A *firm* must set out the product distribution arrangements in a written document and make it available to its relevant staff.

[**Note:** second sub-paragraph of article 10(1) of the *IDD POG Regulation*]

4.4 Additional expectations for manufacturers and distributors of insurance products

4.4.1 G In addition to ■ PROD 4.1, ■ PROD 4.2 and ■ PROD 4.3, *firms* should also consider what needs to be done to comply with obligations found elsewhere in the *FCA Handbook*, including under the *Principles* and in *SYSC*. In considering this *firms* should consider any relevant *guidance*.

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

4.4.3 G *Manufacturers* should consider whether the design of an insurance product is driven by features that benefit the *customer* and not by a business model which relies on poor *customer* outcomes to be profitable.

4.4.4 G When providing information to *distributors*, a *manufacturer* should:

(1) make it clear if that information is not intended for *customer* use;

(2) ensure the information is sufficient, appropriate and comprehensible in substance and form, including considering whether it will enable *distributors* to understand it enough to give suitable advice (where advice is given) and to extract any relevant information and communicate it to the end *customer*. As part of meeting this standard, the *manufacturer* may wish to consider, with regard to each *distribution* channel or type of *distributor* what information *distributors* of that type already have, their likely level of knowledge and understanding, their information needs and what form or medium would best meet those needs (which could include discussions, written material or training as appropriate).

4.4.5 G When reviewing the insurance products it *manufactures*, a *firm* should communicate to the *customer* and/or *distributor* contractual "breakpoints" such as the end of a long tie-in period that may have a material impact on a *customer* that the *customer* cannot reasonably be expected to recall or know about already.

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4.4.6 G *Manufacturers* should act fairly and promptly when handling claims or when paying out on an insurance product that has been surrendered or reached maturity. In doing this, the *manufacturer* should meet any reasonable *customer* expectations that it may have created with regard to the outcomes or how the process would be handled.

4.4.7 G In ensuring that they have obtained sufficient information about the insurance products they *distribute* and in ensuring they understand the insurance products *distributed*, *distributors*:

(1) should consider whether they understand the materials provided by the *manufacturer* or *distributor* earlier in the sales chain;

(2) should ask the *manufacturer* to supply additional information or training where this seems necessary to understand the insurance product adequately;

(3) should not *distribute* the insurance product if they do not understand it sufficiently; and

(4) when providing information to another *distributor* in a distribution chain, should consider how the further *distributor* will use the information, such as whether it will be given to *customers*. *Firms* should consider what information the further *distributor* requires and the likely level of knowledge and understanding of the further *distributor* and what medium may suit it best for the transmission of information.

4.5 Additional expectations for manufacturers and distributors in relation to value measures data

Application and definitions

4.5.1 R ■ PROD 4.5 applies to a *firm* which *manufactures* or *distributes* a *general insurance contract* product which is the subject of a reporting requirement within ■ SUP 16.27 (General insurance value measures reporting).

4.5.2 R In this section:

"value measures product" means	a product which is the subject of a reporting requirement within SUP 16.27, regardless of when that product was first *manufactured*.
"value measures information" means	both the individual value measures data reported to the *FCA* by a *firm* as well as the value measures data relating to other *firms* published by the *FCA*, including that based on value measures data reported to it under SUP 16.27.

Manufacturers of value measures products

4.5.3 R A *firm* which *manufactures* (in whole or in part) a value measures product must comply with the requirements in ■ PROD 4.5.4R.

4.5.4 R The requirements on *manufacturers* referred to in ■ PROD 4.5.3R are:

(1) that in relation to existing value measures products the *firm* has effective procedures in place to ensure that, on a continuing basis, the product offers fair value to *customers* in the target market, taking into account, among other things:

(a) the needs of the target market;

(b) the *firm's* reasonable assessment of the value expectations of *customers* in the target market;

(c) the value measures information, within a reasonable period;

(d) any particular features of the product or the terms and conditions that may give rise to concerns about poor value;

(e) appropriate product testing including scenario analysis and testing on *consumers*; and

(f) the charging structure of the product including examination of whether the costs and charges are compatible with how useful the product is to *consumers* and the transparency of costs and charges.

[**Note**: The requirement in ■ PROD 4.5.4R(1)(c) applies from 1 July 2021, when ■ SUP 16.27 entered into force.]

(2) that in relation to new products and significant adaptations to existing products, the *firm's* product approval process in ■ PROD 4.2.1R, product testing in ■ PROD 4.2.22R including considerations in ■ PROD 4.2.25R and the review of products in ■ PROD 4.2.34R also incorporate the procedures and considerations in (1) above.

(3) *manufacturers* that identify any aspects of a product that may mean the product does not offer fair value, must:

(a) take appropriate action to mitigate the situation and/or prevent further occurrences of any possible detriment to customers;

(b) inform any relevant distributors promptly about remedial action being taken; and

(c) where relevant, not bring new products to market or make any proposed changes.

(4) *manufacturers* must regularly review the products it offers or markets to ensure they continue to offer fair value taking into account any event that could materially affect whether this remains the case.

(5) where the *firm* is required to submit a value measures report by ■ SUP 16.27.7R, that the *firm* takes all reasonable steps to set up arrangements with *firms* entering into *contracts of insurance* as principal in relation to those products, to enable it to obtain the value measures data required to be included in the value measures report.

(6) where there is more than one *manufacturer* they must all outline in writing their mutual responsibilities arising under ■ PROD 4.5.3R and ■ 4.5.4R.

4.5.5 G ■ PROD 4.5.4R(1)(f) does not affect the *manufacturers'* freedom to set premiums.

Distributors of value measures products

4.5.6 R Where a *firm distributes* a value measures product that it does not *manufacture* it must comply with the requirements in ■ PROD 4.5.7R.

4.5.7 R The requirements on *distributors* referred to in ■ PROD 4.5.6R are:

(1) that in relation to existing products it distributes, and any new products it proposes to distribute, the *firm* has procedures in place to consider, on a continuing basis, whether the product offers fair value

to *customers* in the target market, taking into account the factors in ■ PROD 4.5.4R(1)(a) to (f);

(2) where the *firm* is required to submit a value measures report by ■ SUP 16.27.7R, that the *firm* takes all reasonable steps to have arrangements with the *manufacturer* of the value measures products and/or *firms* or persons entering into *contracts of insurance* as principal in relation to those products, to enable it to obtain the value measures data required to be included in the value measures report;

(3) *distributors* that identify any aspects of a product that may mean the product does not offer fair value, must:

(a) take appropriate action to mitigate the situation and/or prevent further occurrences of any possible detriment to *customers*, including, where appropriate, amending their distribution strategy for that product; and

(b) inform any relevant *manufacturers* promptly about any concerns they have and any action the *distributor* is taking.

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4.6 Application of PROD 4.2 and 4.3 for legacy non-investment insurance products

Application

4.6.1 R ■ PROD 4.6 applies to:

(1) the *manufacturer* of a *legacy non-investment insurance product*, which includes:

(a) an *insurance intermediary* which has a decision-making role (in whole or in part) in relation to the *manufacture* of a *legacy non-investment insurance product*;

(b) an *insurer* that is responsible for the *manufacture* of a *legacy non-investment insurance product* including whoever currently underwrites the *legacy non-investment insurance product*; and

(2) a *firm* that *distributes* (including the renewal of an existing *policy*) a *legacy non-investment insurance product*.

4.6.2 R For a product falling within (2)(b) of the definition of a *legacy non-investment insurance product*, any reference to distribution or renewal is to be treated as including the ongoing collection of premiums in relation to a *policy* that remains in force.

Purpose

4.6.3 G The purpose of this section is to set out the product governance distribution arrangements for, and how ■ PROD 4 applies to, *legacy non-investment insurance products*.

Manufacturers of legacy non-investment insurance products

4.6.4 R A *manufacturer* of a *legacy non-investment insurance product* must apply the product approval process in ■ PROD 4.2 to that insurance product.

4.6.5 G For the purposes of ■ PROD 4.6.4R a *manufacturer* will need to demonstrate it has arrangements to meet the following:

(1) general product approval process requirements (■ PROD 4.2.5R to ■ PROD 4.2.14R);

(2) fair value assessment (■ PROD 4.2.14AR to ■ PROD 4.2.14SR);

(3) target market requirements (■ PROD 4.2.15R to ■ PROD 4.2.21AG);

(4) product testing (■ PROD 4.2.22R to ■ PROD 4.2.26G);

(5) distribution channels and information disclosure to distributors requirements (■ PROD 4.2.27R to ■ PROD 4.2.32DG); and

(6) monitoring and review of insurance products (■ PROD 4.2.33R to ■ PROD 4.2.39AR).

4.6.6 G *Firms* should take into account all relevant factors, including those in ■ PROD 4.2.3G and ■ PROD 4.2.3AG, when identifying the necessary product approval process and arrangements including, in particular:

(a) previous product governance arrangements including reviews which the *firm* (or another person) has undertaken and the extent to which these would or would not have complied with *PROD* requirements; and

(b) the potential level of harm which could result from the product in question.

Firms should ensure the product approval process has the necessary measures to identify whether the insurance product is, or remains, appropriate to be marketed or *distributed* to *customers*.

4.6.7 R (1) A *firm* must determine whether the *legacy non-investment insurance product* should continue to be marketed and *distributed* (including renewals for existing *customers*).

(2) Where a *firm* does not approve the continued marketing and distribution of the product, including where the *firm* has been unable to identify that the product, or where relevant, the package provides fair value for the purposes of ■ PROD 4.2.14AR or, where relevant, ■ 4.2.14BR, it must immediately:

(a) cease marketing or distributing the product or package (whether directly or indirectly), including any renewal for an existing *customer*; and/or

(b) make such changes as are necessary for the product or package to provide fair value.

Distributors of legacy non-investment insurance products

4.6.8 R (1) A *firm* which *distributes*, or will distribute, a *legacy non-investment insurance product* must meet the requirements in ■ PROD 4.3 in relation to that insurance product.

(2) A *firm* must put in place the necessary arrangements for the purposes of (1), including for:

(a) obtaining any necessary information from the *manufacturer*;

(b) providing any necessary or relevant information to the *manufacturer*;

(c) understanding the product, identified target market and value assessment;

(d) ensuring adequate oversight, including the ability to obtain necessary or relevant information, of any other persons involved in the distribution with whom the distributor has a direct relationship; and

(e) the regular review of the product distribution arrangements including to take appropriate action in order to avert the risk of consumer detriment.

Chapter 5

Extended warranties sold with rent-to-own agreements: customer information and deferred opt-in

5.1 Ensuring the customer can make an informed decision

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5.1.1 R

(1) A *firm* must give the *customer* the information in (3), at the same time and in the same *document*, when it offers to sell them an *extended warranty*.

(2) A *firm* must ensure that any other *person* to whom it has referred the *customer* or invited or induced the *customer* to obtain an extended warranty from gives the *customer* the information in (3), at the same time and in the same *document*, when that *person* offers to sell the *customer* an *extended warranty*.

(3) The information is:

(a) the total cost of the *extended warranty*, separate from any other prices, in the following terms:

(i) weekly;

annually; and

over the duration of the *rent-to-own agreement*;

(b) the significant features and benefits, significant and unusual exclusions or limitations of the *extended warranty*, with cross-references to the relevant warranty document provisions;

(c) a statement that *extended warranties* may be available from other *persons*;

(d) an explanation of how the *extended warranty* interacts with and compares against any other products sold or offered for sale in connection with the *rent-to-own agreement* (e.g. theft and accidental damage insurance);

(e) an explanation of how the *extended warranty* interacts with and compares against any standard manufacturer's warranty that may apply to the *goods* which are the subject of the *rent-to-own agreement*, given in a way that enables the *customer* to make a clear comparison between the two;

(f) when the *extended warranty* can be concluded, as described in ■ PROD 5.2.1R; and

(g) the date the information in (a) to (f) is provided to the *customer*.

(4) The information in (3) must be communicated in a way that is:

(a) fair, clear and not misleading;

(b) in writing or another *durable medium*; and

(c) made available and accessible to the *customer*.

(5) The information in (3) must be drawn to the *customer's* attention and must be clearly identifiable as key information that the *customer* should read.

5.1.2 G

(1) A *firm* that sells *extended warranties* that constitute *contracts of insurance* must also comply with the *rules* in ■ ICOBS 6 (Product Information).

(2) *Firms* should also take into account the Supply of Extended Warranties on Domestic Electrical Goods Order 2005. Other consumer protection legislation may also be relevant.

5.2 Deferred opt-in for extended warranties

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5.2.1 R

(1) A *firm* must:

(a) not conclude the sale of an *extended warranty*; and

(b) ensure that no other *person* to whom the *firm* has referred the *customer* concludes the sale of an *extended warranty*;

until at least two clear *days* have passed since the required information was provided to the *customer* (■ PROD 5.1.1R).

(2) The period in (1) is one clear *day* after providing the information if the *customer*:

(a) initiates the conclusion of the sale of the *extended warranty*;

(b) consents to the conclusion of the sale of the *extended warranty* earlier than provided for in (1); and

(c) confirms that they understand the restriction in (1).

5.2.2 G

For example, if a *firm* provided the required information to the *customer* on Monday, it would not (absent the *customer's* consent) be able to conclude the sale of the *extended warranty* until Thursday.

5.2.3 G

Before the conclusion of the sale of an *extended warranty*, a *firm* should have regard to the information needs of its *customers* and consider whether it would be in the *customer's* interest to receive the information in ■ PROD 5.1.1R again, for example if a long time has passed between the provision of the information and the conclusion of the sale.

Chapter 6

Product governance: additional provisions for pathway investments and default options

6.1 General

6.1.1 R This chapter does not affect the application of other requirements in the *FCA Handbook* or *onshored regulations* applying to *firms* within the scope of this chapter. *Firms* within the scope of ■ PROD 1.3 (Application of PROD 3), ■ PROD 1.4 (Application of PROD 4), ■ PROD 3 (Product governance: MiFID) and ■ PROD 4 (Product governance: IDD) must continue to comply with those provisions.

6.2 Manufacture of pathway investments

6.2.1 R A *manufacturer* must review its *pathway investments* at least annually to ensure that the *pathway investments*:

(1) remain consistent with the needs, characteristics and objectives of their identified target market, taking into account the *investment pathway* options in ■ COBS 19.10.17R(1); and

(2) are being *distributed* to their target market.

6.2.2 G A *firm* to which the record-keeping rules in ■ SYSC 3 (Systems and controls) or ■ SYSC 9 (Record-keeping) apply should maintain, in relation to its *manufacture* of *pathway investments*, a record of the process undertaken to approve each *pathway investment*, and of the review conducted for each *pathway investment* to comply with ■ PROD 6.2.1R.

6.3 Distribution of pathway investments

6.3.1 R A *firm* must not *distribute* a *pathway investment* unless it is compatible with the needs, characteristics and objectives of those *retail clients* that fall within the *pathway investment's* target market, taking into account the *investment pathway* options in ■ COBS 19.10.17R(1).

6.3.2 R When carrying out the compatibility assessment referred to in ■ PROD 6.3.1R, *firms* must take into account:

(1) the price and complexity of the *pathway investment*; and

(2) where the *firm* is referring *retail clients* to be transferred to the *personal pension scheme* or *stakeholder pension scheme* operated by another *firm*, they must also take into account:

(a) the charges and other product features of that other *firm's* drawdown product;

(b) the financial strength of that other *firm*; and

(c) the reliability and efficiency of that other *firm* in relation to its dealings with *retail clients*.

6.3.3 R A *firm* must review the distribution arrangements for the *pathway investments* it distributes at least on a two-yearly basis to ensure:

(1) the distribution arrangements are still valid and up to date; and

(2) the *pathway investments* remain compatible with, and are being *distributed* to, their target market in accordance with ■ PROD 6.3.1R.

6.3.4 G A *firm* to which the record-keeping rules in ■ SYSC 3 or ■ SYSC 9 apply should maintain, in relation to its *distribution* of *pathway investments*, a record of the process undertaken to select each *pathway investment*, and of the review conducted for each *pathway investment* to comply with ■ PROD 6.3.3R.

Obligations on firms where retail clients are not acting in their interests

6.3.5 R Where a *firm* (A) refers *retail clients* to another *firm* (B), where B can offer a *pathway investment* to the *retail client* if the *retail client* transfers to the *personal pension scheme* or *stakeholder pension scheme* operated by B, both A and B must comply with ■ PROD 6.3.6R.

6.3.6 R Where:

(1) A becomes aware of a pattern of *retail clients* choosing to stay with A and not transferring to B; and

(2) A considers that this choice is unlikely to be in the interests of those *retail clients*, having regard to their objectives and characteristics; then

(3) A must promptly inform B of its concerns in (1) and (2); and

(4) A and B must each take reasonable steps to minimise the potential harm to *retail clients*.

6.3.7 G Reasonable steps for the purposes of ■ PROD 6.3.6R may include A and B making it easier for *retail clients* to transfer to the *personal pension scheme* or *stakeholder pension scheme* operated by B.

6.4 Manufacture of default options

6.4.1 R When designing a *default option*, a *manufacturer* should take into account, among other considerations, the fact that ■ COBS 19.12 requires *operators* to offer the *default option* to *non-advised clients* for inclusion in their *non-workplace pensions*. As a result, the *default option* must be designed to be compatible with the needs, characteristics and objectives of a typical *non-advised client* in the *default option's* target market.

6.4.2 R A *manufacturer* must also ensure that:

when specifying the investment strategy of the *default option*, and its costs and charging structure, it takes into account what the *manufacturer* considers, on reasonable grounds, to be the likely needs, objectives and characteristics of a typical *non-advised client* in the target market;

the investment strategy of the *default option*:

(a) takes into account the target retirement age of a typical *non-advised client* in the target market, and their likely strategy for accessing their pension;

(b) includes *lifestyling*, unless *lifestyling* is not appropriate for the needs, objectives and characteristics of the typical *non-advised client* in the target market or the *default option* is based on *target date funds*; and

(c) seeks growth, while managing risks, through an appropriate and diversified asset allocation; and

the *default option* has appropriate and competitive price and charges, which bear a reasonable relationship with the services being provided.

6.4.3 G *Manufacturers* are expected to take reasonable steps to understand the likely needs, objectives and characteristics of a typical *non-advised client* in the *default option's* target market. This could include carrying out sufficient research and consumer testing in support of its conclusions. What amounts to a typical *non-advised client* may be based on the needs, objectives or characteristics that are most commonly seen among *non-advised clients* within the target market.

6.4.4 R *Manufacturers* must review their *default options* at least once every 3 years to ensure that they:

(1) remain consistent with the needs, characteristics and objectives of a typical *non-advised client* in the target markets; and

(2) are being *distributed* to their target markets.

6.5 Distribution of default options

6.5.1 R A *firm* must not *distribute* a *default option* unless it is compatible with the needs, characteristics and objectives of the *retail clients* to whom the *firm* distributes the *default option*.

6.5.2 R When carrying out the compatibility assessment in PROD 6.5.1R, a *firm* must also take into account:

(1) the *manufacturer's* compliance with the requirements in PROD 6.4; and

(2) the financial strength of the *manufacturer*.

6.5.3 R A *firm* must review the distribution arrangements for the *default options* it distributes at least every 3 years.

Chapter 7

Product governance: funeral plans

7.1 General

Other requirements

7.1.1 G This chapter does not affect the application of other requirements in the *FCA Handbook* applying to *funeral plan providers* or *firms* in relation to *funeral plan distributions*, including but not limited to:

(1) Identification and management of conflicts of interest (■ SYSC 10.1 (Conflicts of interest));

(2) Funeral plan remuneration incentives (■ SYSC 19F.3 (Funeral plan remuneration incentives));

(3) Structure arrangements (■ FPCOB 3 (Structure provisions- arrangements underpinning a funeral plan contract));

(4) Disclosure (■ FPCOB 6 (Information about the firm and its services) and ■ FPCOB 9 (Product information));

(4) Remuneration (■ FPCOB 6.4 (Charging for funeral plan distribution) and ■ FPCOB 6.5 (Payments to funeral plan intermediaries)).

7.2 Manufacture of funeral plans

Product governance arrangements: product approval

7.2.1 R A *manufacturer* must maintain, operate and review a process for the approval of:

(1) a *funeral plan product*; and

(2) any significant adaptation of an existing *funeral plan product*,

in each case before it is marketed or distributed to *customers*.

7.2.2 G (1) ■ PROD 7.2.1R(1) includes any *funeral plan product* whether a new product *manufactured* on or after 29 July 2022 or any *existing funeral plan product*. In relation to an *existing funeral plan product*, references in ■ PROD 7.2 and ■ 7.3 to 'marketing' or 'distributing' includes reference to any future activity regardless of whether the product has previously been made available for marketing or distribution.

(2) For the purposes of ■ PROD 7.2.1R(2):

(1) whether a proposed change to the product would be a 'significant adaptation' should include consideration of the potential impact that the adaptation may have on an existing or potential *customer* (when compared to the unadapted version of the product);

(1) a 'significant adaptation' in relation to a *funeral plan product* may include, but is not restricted to, a proposed change to the undertaking to provide funeral arrangements, services added or removed, level of monetary benefits (other than adjustments for inflation or other cost variations) costs, and any other significant change to the terms and conditions.

Product governance arrangements: identifying the necessary approval process

7.2.3 R The product approval process in ■ PROD 7.2.1R must be proportionate and appropriate to the nature of the *funeral plan product*.

7.2.4 G A *manufacturer* should take into account the following when considering whether the product approval process is proportionate and appropriate:

(1) the complexity of the *funeral plan product*;

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

(3) the nature of the *funeral plan product* and the risk of consumer detriment related to it;

(4) the characteristics of the target market;

(5) the scale and complexity of the relevant business of the *manufacturer* or *distributor*;

(6) the potential risk, and possible levels, of harm to *customers* if the product design is flawed, in particular, due to the potential scale of harm if the product is intended for a wide target market;

(7) the nature of the cover that the product is intended to provide;

(8) whether the distribution arrangements could mean *customers* are at a greater risk of not receiving fair value from the product;

(9) any particularly notable features of, or relating to, existing products (including how it has been distributed); and

(10) the nature and complexity of the *firm's* existing or intended *customer* base, for example whether it includes or is likely to include:

(a) different types of *customers* with varying characteristics including in relation to their understanding of financial matters; and

(b) a significant number of vulnerable *customers*.

Product approval process: outcomes, measures and procedures

7.2.5 R A *manufacturer* must have a product approval process that:

(1) ensures the design of a *funeral plan product*:

(a) identifies how funeral arrangements will be provided;

(b) delivers fair value;

(c) takes into account the intended *customers* including their objectives, interests, needs and characteristics;

(d) does not adversely affect *customers*; and

(e) is driven by features that benefit the *customer* and not by a business model which relies on poor *customer* outcomes to be profitable;

(2) prevents or mitigates *customer* detriment; and

(3) supports a proper management of conflicts of interest.

7.2.6 R The product approval process must contain appropriate measures and procedures for:

(1) the design, distribution, monitoring and review of a *funeral plan product*;

(2) identifying whether the product is, or remains, appropriate to be marketed or distributed to *customers*; and

(3) taking corrective and/or mitigating action for *funeral plan products* where actual or potential *customer* detriment is identified.

Product approval process: written policy and record keeping

7.2.7 R A *manufacturer* must set out the product approval process in a written document ("product oversight and governance policy"), which is made available to the relevant staff.

7.2.8 R A *manufacturer* must make and retain a record of any relevant actions taken in relation to the product approval process. The record must be made available to the *FCA* upon request.

Product approval process: governing body responsibility

7.2.9 R A *manufacturer's governing body* must:

(1) endorse and be responsible for establishing, implementing and reviewing the product approval process; and

(2) verify internal compliance with that process on an ongoing basis.

Product approval process: staff competence

7.2.10 R A *manufacturer* must ensure that any of its staff involved in the *manufacture* of a *funeral plan product* has the necessary skills, knowledge and expertise to properly carry out this role and, in particular, to understand the *funeral plan product* and the interests, objectives and characteristics of the *customers* belonging to the target market. (Also see ■ SYSC 5.1.1R (competent employee rule)).

7.2.11 R Where a *manufacturer* uses a third party to undertake any part of the *manufacture* of the *funeral plan product* on its behalf, the *manufacturer* remains fully responsible for compliance with the product approval process.

Product approval process: review of process

7.2.12 R (1) A *manufacturer* must regularly review its product approval process to ensure that the process is still appropriate and up to date.

(2) Where the process is identified to no longer be appropriate, the *manufacturer* must:

(a) amend the product approval process;

(b) review any product approved since the approval process was last deemed to be appropriate to:

(i) ensure these products were correctly approved for marketing and/or distribution; and

(ii) take all necessary steps for the mitigation and remediation of any actual or potential harm to *customers*.

Product approval process: manufacture by more than one manufacturer

7.2.13 R

(1) Where two or more *firms* collaborate to *manufacture* a *funeral plan product*, the *firms* must outline their mutual responsibilities in a signed written agreement.

(2) The written agreement in (1) must specify:

(a) their respective roles in the product approval process; and

(b) how they will collaborate to comply with the requirements in ■ PROD 7.2 (Manufacture of funeral plans), including the procedures through which they will agree on the identification of the target market.

Product approval process: fair value

7.2.14 R

A *manufacturer* must only approve a *funeral plan product* where it provides fair value to *customers* in the target market.

7.2.15 R

(1) A *manufacturer* must:

(a) be able to clearly demonstrate how any *funeral plan product* provides fair value; and

(b) make and retain a record of the value assessment required by ■ PROD 7.2.14R.

(2) Where a *manufacturer* is unable to both:

(a) identify; and

(b) clearly demonstrate,

that the *funeral plan product* will provide fair value, the *manufacturer* must not:

(c) market the *funeral plan product*; or

(d) permit the *funeral plan product* to be *distributed* (whether directly or through another *person*),

unless the *manufacturer* has ensured appropriate changes have been made so that fair value will be provided.

Product approval process: meaning of value

7.2.16 R

In ■ PROD 7 "value" means the relationship between the total price to the *customer* and the quality of the product(s) and/or services provided. The assessment of value must include consideration of at least the following:

(1) the nature of the product, including the benefits that will be provided, their quality, and any limitations (for example, in the scope of the funeral arrangements or other features);

(2) the type and quality of services provided to *customers*;

(3) the expected total price to be paid by the *customer* when buying the *funeral plan product*, and the elements that make up the total price. This will need to include consideration of at least the following:

(a) the overall cost to the *manufacturer* of the *funeral plan product* of:

(i) operating the product, including the costs of the trust or *premiums* paid towards an *insurance policy* to meet the requirements in ■ FPCOB 3 (Structure provisions - arrangements underpinning a funeral plan contract); and

(ii) the delivery of funeral benefits under it; and

(b) the individual elements of the expected total price to be paid by the *customer* including, but not limited to:

(i) the *funeral plan product*;

(ii) the costs of the distribution arrangements, including the remuneration of any relevant *person* in the distribution arrangements, and including where a *manufacturer* delegates the final decision on setting the price to another *person*; and

(4) how the intended distribution arrangements support, and will not adversely affect, the intended value of the product.

7

7.2.17 R A *manufacturer* must not rely on individual *customers* to consider whether they are making fair value purchases in place of any part of the *manufacturer's* own assessment.

Product approval process: compliance with fair value requirement

7.2.18 G The following *evidential provision* provides examples of arrangements that the *FCA* considers will breach ■ PROD 7.2.14R.

7.2.19 E (1) A *manufacturer* should not have a *funeral plan product* where:

(a) the difference between the cost of delivering the *funeral plan contract* obligations to the *manufacturer* and the total price paid by the *customer* bears no reasonable relationship to:

(i) the actual costs incurred by the *manufacturer* or any other *person* involved in the distribution arrangements;

(ii) the quality of any benefits (including of the *funeral plan product*); or

(b) any difference between the cost of the funeral arrangements under the *funeral plan product* and the cost of the equivalent funeral arrangements purchased without a *funeral plan contract* does not have an objective and reasonable basis.

(2) Contravention of any of (1) may be relied on as tending to establish contravention of ■ PROD 7.2.14R.

Product approval process: information to be used when assessing a product for approval

7.2.20 R When assessing whether a product should be approved for the purposes of ■ PROD 7.2.1R, a *manufacturer* must use the full range of data and information available to it including, but not limited to:

(1) information available to the *manufacturer* internally including:

(a) *customer* research;

(b) the performance of the *funeral plan product* or other *funeral plan products* of the *manufacturer*, including for example:

(i) how the estimated costs of funerals compare to actual costs;

(ii) number of *customers* cancelling the *funeral plan contracts*;

(iii) number of missed instalment plan payments by the *customer*; and

(iv) number of *funeral plan contracts* expected to be claimed but have not been redeemed;

(c) complaints data (including root cause analysis and handling times), both expected for the product itself and/or any actual information from a comparable product;

(2) public information or information obtainable by the *manufacturer* from external sources, including analysis of similar *funeral plan products* available from other *firms*; and

(3) information available to the *manufacturer* specifically from *persons* in the distribution arrangements or external funeral provider, including:

(a) any remuneration and its impact on the value of the product;

(b) levels or quality of service provided by any *person* in the distribution arrangements;

(c) any results of monitoring and oversight of the processes of any *persons* in the distribution arrangement (for example, call monitoring or file checks), including in relation to other products that *person distributes*; and

(d) the wholesale and retail prices of a funeral not paid for using a *funeral plan contract* (whether paid for in advance or after the death of a *person*).

Product approval process: product backing arrangements

7.2.21 R A *manufacturer* must only approve a *funeral plan product* where it has established adequate processes and procedures to ensure:

(1) any *funeral plan contracts* entered into using that product will have the necessary and robust trust or *insurance* arrangements required to comply with ■ FPCOB 3 (Structure provisions – arrangements underpinning a funeral plan contract); and

(2) at a product level, there is sufficient oversight and management of those trust or *insurance* arrangements to mitigate the risk of *customer* harm.

Product approval process: identifying the target market

7.2.22 R A *manufacturer* must ensure that for each *funeral plan product* the product approval process:

(1) specifies an identified target market;

(2) assesses all relevant risks to the identified target market;

(3) identifies that a *funeral plan product* offers fair value to the specified target market, taking into account in particular their needs, objectives, interests and characteristics;

(4) permits only the approval of *funeral plan products* that are compatible with the needs, characteristics and objectives of the *customers* belonging to the target market;

(5) verifies that the intended distribution strategy is consistent with the identified target market; and

(6) requires reasonable steps are taken to ensure that the *funeral plan product* is distributed to the identified target market.

7.2.23 R A *manufacturer* must identify the target market at a sufficiently granular level, taking into account the characteristics, risk profile, complexity and nature of the *funeral plan product*.

7.2.24 R A *manufacturer* must identify groups of *customers* for whose needs, characteristics and objectives the *funeral plan product* is generally not compatible.

7.2.25 R When assessing whether a *funeral plan product* is compatible with a target market, a *manufacturer* must take into account:

(1) the level of information available to the *customers* belonging to that target market and their financial literacy; and

(2) vulnerable *customers*.

7.2.26 G (1) The identification of the target market should describe a group of *customers* sharing common characteristics at an abstract and generalised level in order to enable the *manufacturer* to adapt the features of the product to the needs, characteristics and objectives of that group of *customers*.

(2) The identification of the target market should be distinguished from the individual assessment at the point of sale to determine whether a product meets the demands and needs of the individual *customer*.

Product approval process: product testing

7.2.27 R (1) A *manufacturer* must test a *funeral plan product* appropriately, including scenario analyses, in a qualitative manner and quantitative manner.

(2) The product testing in (1) must assess whether the *funeral plan product* over its lifetime meets the identified needs, objectives and characteristics of the target market.

(3) The requirement in (1) must be carried out:

(a) before approving the product for marketing or distribution;

(b) when the product is being significantly adapted; and

(c) where the target market has significantly changed.

7.2.28 R A *manufacturer* must not bring a *funeral plan product* to the market if the results of the product testing show that the product does not provide fair value including where it would not meet the identified needs, objectives and characteristics of the target market.

Distribution channels: selecting channels

7.2.29 R A *manufacturer* must carefully select distribution arrangements, including specific distribution channels that are appropriate for the target market, taking into account the particular characteristics of the relevant *funeral plan product*.

7.2.30 R

(1) When selecting any distribution arrangements, including any particular distribution channel, a *manufacturer* must be able to demonstrate clearly that these arrangements:

(a) result in fair value to the *customer*;

(b) are consistent with the requirements in ■ FPCOB 6.4 (charging for funeral plan distribution); and

(c) prevent or mitigate the risk of *customer* detriment arising from the distribution of the product, for example by verifying that any proposed distributor has the necessary knowledge, expertise and competence; and

(d) do not pose a significant risk of a distribution channel failing to meet the requirements in *FPCOB*.

(2) A *manufacturer* must not use a distribution channel unless it is able to demonstrate the requirements in (1) are met.

7.2.31 G *Manufacturers* should only select *distributors* that have the necessary knowledge, expertise and competence to understand the features of a *funeral plan product* and the identified target market.

7.2.32 R Whenever making a change to the distribution arrangements, including adding a further distribution channel, a *manufacturer* must:

(1) obtain all necessary information from the *distributor* or any other *person* who will be involved with the distribution arrangement, including that set out in ■ PROD 7.2.35R; and

(2) identify whether the proposed change to the distribution arrangements is consistent with the fair value requirement in ■ PROD 7.2.14R.

Distribution channels: information disclosure to distributors

7.2.33 R

(1) A *manufacturer* must make available to a *distributor* all appropriate information on the:

(a) *funeral plan product*, including to enable the *distributor* to understand the intended value established by the *manufacturer*;

(b) product approval process;

(c) identified target market of the *funeral plan product*, including any type of *customer* for whom the *funeral plan product* is unlikely to provide fair value; and

(d) suggested distribution strategy.

(2) The information in (1) must:

(a) include information on the main features and characteristics of the *funeral plan products*, their risks and costs, including implicit costs, and any circumstances which might cause a conflict of interest to the detriment of the *customer*;

(b) be clear, complete and up to date.

7.2.34 R

(1) The information a *manufacturer* has to make available to any *distributor* under ■ PROD 7.2.33R(1) must be of an adequate standard to enable *distributors* to:

(a) understand the *funeral plan products*;

(b) comprehend the identified target market for the *funeral plan products*;

(c) identify any *customers* for whom the *funeral plan products* are not compatible with their needs, characteristics and objectives; and

(d) carry out distribution activities for the relevant funeral plans in accordance with the *best interests of their customers* as prescribed in ■ FPCOB 2.1.2R.

(2) A *manufacturer* is not required to disclose specific information objectively considered to be commercially sensitive if the information it does make available would still allow *distributors* to meet ■ PROD 7.2.34R(1) and ■ PROD 7.2.35R(1)(a) and (b).

Distribution channels: obtaining information from distributors

7.2.35 R

A *manufacturer* must obtain from any *person* in the distribution arrangements all necessary and relevant information to enable it to identify the remuneration associated with the distribution arrangements to allow it to assess the ongoing value of the product, including at least:

(1) the type and amount of remuneration of each *person* in the distribution arrangement where this is part of the *funeral plan contract* price or otherwise paid directly by the *customer*, including in relation to *additional products*;

(2) an explanation of the services provided by each *person* in the distribution arrangements; and

(3) confirmation from any *firm* in the distribution arrangements that any remuneration is consistent with their regulatory obligations, including ■ SYSC 19F.3 (Funeral plan remuneration incentives).

7.2.36 G

(1) Where the *manufacturer* is considering the effects of the distribution arrangements on value, it should consider whether the additional costs of any individual party in the arrangements that add to the total price paid by the *customer* deliver any, or a proportional, additional benefit. If not, a *manufacturer* should consider how it can be satisfied that the arrangements are consistent with its obligations to be able to clearly demonstrate fair value to the *customer*.

(2) A benefit that could be consistent with fair value might include where the party's inclusion in the distribution arrangements increases access to the product for *customers* in the target market in a way that is proportionate to the additional cost involved.

7

Monitoring and review of funeral plan products

7.2.37 R

A *manufacturer* must regularly review the *funeral plan products* it offers or markets taking into account any event that could materially affect the potential risk to the identified target market, the main features or the guarantees of the *funeral plan product*. In doing so, the *manufacturer* must assess at least the following:

(1) whether the *funeral plan product* remains consistent with:

(a) the identified target market, including their interests, needs, characteristics and objectives;

(b) the fair value assessment required under ■ PROD 7.2.14R; and

(2) whether the intended distribution strategy remains appropriate, including whether those products are being distributed to the target market or are reaching *customers* outside the target market.

7.2.38 R

A *manufacturer* must ensure that the review process:

(1) has the necessary measures to be able to identify if the *funeral plan product* is not providing fair value; and

(2) provides that appropriate actions be taken:

(a) for the mitigation and any potential remediation of the harm to existing *customers*; and

(b) to prevent harm to new *customers*.

Monitoring and review of funeral plan products: minimum review period

7.2.39 R

A *manufacturer* must undertake the regular review:

(1) every 12 *months*; or

(2) more frequently where the potential risk associated with the *funeral plan product* makes it appropriate to do so.

7.2.40 R When determining the appropriate interval for review of a *funeral plan product*, a *manufacturer* must take into account:

(1) the nature of the *customer* base, including whether there are significant numbers of vulnerable *customers*;

(2) any specific indicators seen in the *manufacturer's* assessment of the product's value to the *customer*;

(3) the nature and type of distribution arrangements being used;

(4) any indicators of *customer* harm potentially emerging from the performance of the product (for example, through redemptions of *funeral plan contracts*, missed instalment plan payments by the *customer*, and/or the number of *funeral plan contracts* expected to be redeemed but have not been redeemed and complaints data); and

(5) any relevant external factors, such as changes to the applicable legal rules, technological developments, or changes to the market situation.

Product monitoring and review: monitoring through lifetime of the plan

7.2.41 R (1) A *manufacturer* must identify during the lifetime of a *funeral plan product* any circumstances related to the funeral plan product that may adversely affect a *customer* of that product.

(2) Where a *manufacturer* identifies an event that may adversely affect a *customer* of the product, the *manufacturer* must:

(a) take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event; and

(b) promptly inform concerned *distributors* and *customers* about the remedial action taken.

Product monitoring and review: monitoring distribution arrangements

7.2.42 R (1) A *manufacturer* must take appropriate steps to monitor:

(a) that a *funeral plan product distributor* acts in accordance with the objectives of the *manufacturer's* product approval process; and

(b) any impact which the distribution arrangements are having on the value including whether the distribution channels remain appropriate.

(2) A *manufacturer* must verify on a regular basis whether the *funeral plans products* are distributed on the identified target market.

(3) The monitoring activities must be reasonable, taking into consideration the characteristics and the legal framework of the respective distribution channels.

7.2.43 G ■ PROD 7.2 does not require the *manufacturer* to monitor a *distributor's* compliance with general regulatory requirements when carrying out *funeral plan distributions* for individual *customers*.

7.2.44 R A *manufacturer* must:

(1) ensure that it has sufficient, good quality management information; and

(2) use the full range of data and information available to it (whether it holds this information already, the information is publicly available, or it is able to obtain it from another *person*),

to enable it to properly understand and monitor the *funeral plan product*.

7.2.45 G A *manufacturer* should identify whether there is a risk to its continuing to provide fair value where there is a material change in the relationship between the price to the *customer* and the actual costs to the *manufacturer* or another party involved in the ongoing service/distribution of the product.

Product monitoring and review: considering changes to funeral plan products

7.2.46 R For the purposes of showing that the requirement in ■ PROD 7.2.1R is met, where a *manufacturer* makes a change to a *funeral plan product*, it must make and retain a record of:

(1) the assessment of whether that change would amount to a significant adaptation of the *funeral plan product*; and

(2) where the assessment in (1) is that the change would not be a significant adaptation, the reasons for that decision.

Product monitoring and review: remedial and mitigating action

7.2.47 R *Manufacturers* considering that the distribution of their *funeral plan products* is not in accordance with the objectives of their product approval process must take appropriate remedial action including but not limited to:

(1) amending the distribution arrangements, including ceasing to use certain *distributors* or distribution channels;

(2) amending remuneration structures;

(3) withdrawing the *funeral plan product* from continued marketing or distribution; or

(4) paying redress as appropriate.

7.3 Distribution of funeral plans

Distribution arrangements: general requirements

7.3.1 R A *distributor* must have in place product distribution arrangements containing appropriate measures and procedures to:

aim to prevent and mitigate *customer* detriment;

be consistent with the aim of providing fair value to the *customer*;

support a proper management of conflicts of interest; and

ensure that the objectives, interests and characteristics of *customers* are duly taken into account.

Distribution arrangements: obtaining and understanding information

7.3.2 R (1) A *distributor* must ensure the product distribution arrangements contain effective measures and procedures to:

(a) obtain from the *manufacturer* all appropriate information sufficient, adequate and reliable about the *funeral plan products* they intend to offer to their *customers* to ensure that they will be distributed in accordance with the characteristics, objectives and needs of the target market; and

(b) fully comprehend those *funeral plan products*, taking into account the level of complexity and the risks related to the products as well as the nature, scale and complexity of the relevant business of the *distributor*.

(2) The information in (1) must be sufficient to understand:

(a) the characteristics of each *funeral plan product*;

(b) the outcome of the value assessment required by PROD 7.2.14R, including:

(i) the value that the *funeral plan product* is intended to provide to the *customer*; and

(ii) the impact that the distribution arrangements (including any remuneration it, or another *person* in the distribution chain to which it belongs, receives) has on the overall value of the *funeral plan product* to the *customer*; and

(c) the identified target market of each *funeral plan product*, including any identified group of *customers* for whom the *funeral plan product* is not expected to provide fair value.

7.3.3 R For the purposes of ■ PROD 7.3.2R, a *distributor* must consider at least the following:

(1) the benefits the product is intended to provide to the *customer*;

(2) the characteristics, objectives, interests and needs of the target market;

(3) the interaction between the price paid by the *customer* and the extent and quality of any services the *distributor* (or any *person* connected to it) provides; and

(4) whether any remuneration it receives in relation to the *funeral plan product* would result in the product ceasing to provide fair value to the *customer*.

7

Distribution arrangements: events indicating contravention of fair value

7.3.4 G The following *evidential provision* provides examples of what the *FCA* considers will breach ■ PROD 7.3.1R.

7.3.5 E (1) A *firm's* distribution arrangements, including any distribution strategy it sets up, should not result in:

(a) the *firm* receiving a level of remuneration which does not bear a reasonable relationship to the *firm's* actual costs, or their contribution, level of involvement or the benefit added by them, to the arrangements for the distribution of the product, including where the *firm* provides little or no benefit beyond that which the *customer* would receive if they obtained the *funeral plan product* through another distribution channel;

(b) the *firm* having remuneration arrangements which give an incentive to propose or recommend a *funeral plan product* which either does not meet the *customer's* needs (or not as well as another product would) or is not in accordance with the *customer's best interests rule*; and

(c) the level of any remuneration (for which the *firm* is responsible for setting) not being reasonably reflective of the costs actually incurred.

(2) Contravention of any of (1) may be relied upon as tending to establish contravention of ■ PROD 7.3.1R.

Distribution arrangements: disclosing information to manufacturers

7.3.6 R A *distributor* must, upon request, provide *manufacturers* with:

(1) information on the *distributor's* remuneration in connection with the distribution of the *funeral plan product*;

(12) information on any additional product or service that the *distributor* provides to the *customer*, which may affect the *manufacturer's* intended value of the product;

(3) relevant sales information, including, where appropriate, information on the regular reviews of the product distribution arrangements; and

(4) confirmation that the distribution arrangements are consistent with the obligations of the *firm* under the *FCA Handbook*, including in particular in ■ SYSC 10.1 (Conflicts of interest) and ■ SYSC 19F.3 (Funeral plan remuneration incentives).

Distribution arrangements: record keeping

7.3.7 R A *distributor* must set out the product distribution arrangements in a written document and make it available to their relevant staff.

7.3.8 R A *distributor* must ensure that all relevant actions taken by it or any other party in relation to their product distribution arrangements are:

(1) duly documented;

(2) kept for audit purposes; and

(3) made available to the *FCA* upon request.

Distribution arrangements: senior management responsibility

7.3.9 R A *distributor's governing body* must:

(1) endorse and be ultimately responsible for establishing, implementing and reviewing the product distribution arrangements; and

(2) verify internal compliance with those arrangements on an ongoing basis.

Distribution arrangements: consistency with target market

7.3.10 R A *distributor* must ensure that any specific distribution strategy that it sets up or applies is consistent with:

(1) the distribution arrangements set up by the *manufacturer*; and

(2) the target market identified in ■ PROD 7.2 (Manufacture of funeral plans), including any *customers* to whom the product should not be distributed.

Distribution arrangements: review of distribution arrangements

7.3.11 R

(1) A *distributor* must regularly review, at least every 12 *months*, its product distribution arrangements to ensure that those arrangements are still valid and up to date.

(2) When determining the appropriate intervals for the regular review of their product distribution arrangements, a *distributor* must take into account the size, scale and complexity of the *funeral plan product* involved.

7.3.12 R When reviewing the product distribution arrangements, a *distributor* must verify that the *funeral plan products* are distributed to the identified target market.

Distribution arrangements: amending distribution arrangements after review

7.3.13 R A *distributor* must amend the product distribution arrangements, where appropriate, in view of the outcome of the review of the product distribution arrangements.

7.3.14 R When a *distributor* becomes aware:

(1) that a *funeral plan product* is not in line with the interests, objectives and characteristics of its identified target market; or

(2) of other product-related circumstances that may adversely affect the *customer*,

it must promptly:

(3) inform the *manufacturer*; and

(4) where appropriate, amend the distribution arrangements for that *funeral plan product*.

7.3.15 R

(1) A *distributor* must take appropriate remedial and mitigating action, including to amend its product distribution arrangements, where it identifies:

(a) a product is not providing fair value for *customers*;

(b) any aspects of a product that may mean it does not offer fair value; or

(c) the distribution arrangements, including remuneration structures, may mean the *customer* is not being provided with fair value.

(2) The actions which the *distributor* takes for (1) must:

(a) aim to mitigate the situation and prevent further occurrences of any possible harm to *customers*, including, where appropriate, amending the distribution strategy for that product; and

(b) include informing any relevant *manufacturers* promptly about any concerns they have and any action the *distributor* is taking.

7.3.16 G For the purposes of ■ PROD 7.3.15R, the steps a *distributor* may need to take include (but are not limited to):

(1) amending its remuneration structures;

(2) amending the distribution arrangements;

(3) improving the quality of, or ceasing, any service or benefits it provides;

(4) where the failure to provide fair value is due to the costs or quality of additional products, renegotiating the terms of the current arrangements relating to the additional products, or selecting alternative providers or *distributors* of them, in order to provide for a fair outcome;

(5) ceasing to distribute certain products, or ceasing to use certain distribution channels;

(6) contacting existing *customers* to inform them of the issues and of the measures being taken to rectify them; and

(7) providing redress to *customers*.

7.4 Product governance requirements for subsisting funeral plans

Product governance arrangements

7.4.1 R This section applies to a *funeral plan provider* in relation to a *subsisting funeral plan*.

7.4.2 R A *funeral plan provider* must ensure that, in relation to its *subsisting funeral plans*, there are adequate product governance arrangements in place, containing appropriate measures and procedures, to ensure a subsisting funeral plan is carried out in way that complies with the *firm's* regulatory obligations under the *FCA Handbook*.

Monitoring and review of funeral plan products

7.4.3 R A *firm* must:

(1) regularly review its *subsisting funeral plans*, taking into account any event that could cause material harm to the *customers*; and

(2) ensure the review process in (1), provides that appropriate actions be taken for the mitigation and any potential remediation of the harm to existing *customers*.

Monitoring and review of funeral plan products: minimum review period

7.4.4 R (1) A *firm* must undertake the regular review at least every 12 *months*.

(2) When determining the appropriate interval for review of a *funeral plan product*, a *firm* must take into account:

(a) the nature of the *customer* base, including whether there are significant numbers of vulnerable *customers*;

(b) any indicators of *customer* harm potentially emerging from the performance of the product; and

(c) any relevant external factors such as changes to the applicable legal rules, technological developments, or changes to the market situation.

Product monitoring and review: remedial and mitigating action

7.4.5 R

(1) A *firm* must identify during the lifetime of a *subsisting funeral plan* any circumstances related to it that may adversely affect a *customer*.

(2) Where a *firm* identifies an event that may adversely affect a *customer* holding the *funeral plan contract*, the *firm* must:

(a) take appropriate action to mitigate the situation and prevent further occurrences of the detrimental event; and

(b) promptly inform concerned *customers* about the remedial action taken.

Product Intervention and Product Governance Sourcebook

PROD TP 1
Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.1	PROD 4.5R (in particular, PROD 4.5.1R, PROD 4.5.2R, PROD 4.5.4R(5) and PROD 4.5.7R(2)).	R	For the purposes of giving effect to the *rules* in PROD 4.5R only, any reference to being subject to a reporting requirement within SUP 16.27R must be read as if SUP 16.27R came into force on 1 January 2021.	From 1 January 2021 to 1 July 2021	1 January 2021
1.2	*Rules* in PROD 4.2 that will be made or amended by the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance Auto-renewal and Home and Motor Insurance Pricing Instrument 2021	R	Where an existing *non-investment insurance product*: (1)has, before 1 October 2021, been approved for marketing and distribution in compliance with PROD 4.2; and (2)remains available for distribution (including renewals) or, if not still being marketed or *distributed*, there are *policies* under the product that remain in force,	From 1 October 2021 up to and including 30 September 2022	1 October 2021

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			the *manufacturer* must, within 12 *months* of 1 October 2021, review the product and ensure it meets the fair value requirements in PROD 4.2.		
1.3	PROD TP 1.2	G	The effect of PROD TP1.2 and the requirements in PROD 4.2.14AR to PROD 4.2.14SR is that where the *firm* is unable to identify that the product or package provides fair value it will need to immediately: (1) cease any distribution of the product, whether directly or through another person, immediately; and/or (2) take any necessary steps to ensure the product will provide fair value in future.	From 1 October 2021 up to and including 30 September 2022	1 October 2021
1.4	*Rules* in PROD 4.3 that will be made or amended by the Non-Investment Insurance: Product Governance, Premium Finance, General Insurance	R	Where a *firm*, to which PROD 4.3 applies, *distributes* an existing *non-investment insurance product* which was approved for marketing or distribution	From 1 October 2021 up to and including 30 September 2022	1 October 2021

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
	Auto-renewal and Home and Motor Insurance Pricing Instrument 2021		before 1 October 2021 under PROD 4.2, it must, within 12 *months* of 1 October 2021, update its distribution arrangements to comply with the requirements in column (2).		
1.5	PROD 4.6.7R	R	A *firm* has 12 *months* from 1 October 2021 to make the determination required by the rule in column (2).	From 1 October 2021 up to and including 30 September 2022	1 October 2021
1.6	PROD 4.6.8R	R	A *firm* must put in the place the necessary product distribution arrangements required by the *rule* in column (2) within 12 *months* of 1 October 2021.	From 1 October 2021 up to and including 30 September 2022	1 October 2021
1.7	PROD TP 1.2 to PROD TP 1.6	G	A *firm* to which any of PROD TP 1.2 to PROD TP 1.6 apply may elect to apply the *guidance* in PROD 4.2.34EG in relation to the reviews required.	From 1 October 2021 up to and including 30 September 2022	1 October 2021
1.8	PROD 4	G	A *TP firm* or a *Gibraltar-based firm* may rely on processes and arrangements that have been applied to a *non-investment insurance prod-*	Indefinitely	1 October 2021

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			uct which was approved for marketing or distribution before 1 October 2021 where these comply with requirements equivalent to those in PROD 4 in: (1)(for a *TP firm*) the *TP firm's Home State* (or, where applicable, the *EEA state* where it has the establishment from which the service is provided); or (2)(for a *Gibraltar-based firm*) Gibraltar.		

Product Intervention and Product Governance Sourcebook

PROD TP 2
Transitional Provisions for Funeral Plan Products

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
2.1	*Rules* in PROD 7.2 in relation to an *existing funeral plan product*	R	Where an *existing funeral plan product*: (1)has, before 29 July 2022, been available for marketing and distribution; and (2)remains available for distribution, a *manufacturer* must ensure that the requirements in PROD 7.2 have been met and that it remains appropriate for that product to continue to be marketed and distributed from 29 July 2022.	From 29 July 2022	29 July 2022
2.2	PROD 7.2 and PROD TP 2.1	G	The effect of PROD TP 2.1 and the requirements in PROD 7.2 is that where the *manufacturer* is unable to demonstrate it has satisfied these requirements, then the *manufacturer* will need to: (1)cease any distribution of the product, whether directly or through another person, immediately; and/or		

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
			(2)take any necessary steps to ensure the product meets the requirements in PROD 7.2, including that it offers fair value before marketing or distributing the product from 29 July 2022.		
2.3	PROD 7.2	G	When identifying the necessary product approval process and arrangements and whether the requirements in PROD 7.2 are met, a *manufacturer* may take into account any previous product governance arrangements, including reviews which the *manufacturer* (or where there is more than one *manufacturer*, any other *manufacturer*) has undertaken and the extent to which these would or would not have complied with *PROD* requirements.	From 29 July 2022	29 July 2022