

**CONDUCT OF BUSINESS SOURCEBOOK (WITH-PROFITS BUSINESS)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 139(4) (Miscellaneous ancillary matters);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2012.

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the Conduct of Business Sourcebook (With-Profits Business) Instrument 2012.

By order of the Board
23 February 2012

Annex A

Amendments to the Glossary of definitions

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

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

<i>strategic investment</i>	<p>an investment which:</p> <p>(a) is made for a strategic purpose;</p> <p>(b) is made for an expected duration consistent with that purpose and is, or has the potential to be, illiquid or hard to value; and</p> <p>(c) is significant in value in proportion to the size of the <i>with-profits fund</i>.</p>
<i>terms of reference</i>	<p>the terms of reference of a <i>firm's with-profits committee</i>, or the terms of appointment of the person or persons acting as the <i>with-profits advisory arrangement</i>, satisfying the requirements set out in COBS 20.5.3R.</p>
<i>with-profits advisory arrangement</i>	<p>(a) an independent person; or</p> <p>(b) if appropriate, one or more <i>non-executive directors</i> appointed to provide independent judgment to the <i>governing body</i> of a <i>firm</i>;</p> <p>which satisfies the requirements of its <i>terms of reference</i>.</p>

Amend the following as shown.

<i>required percentage</i>	<p>the <i>required percentage</i> referred to in COBS 20.2.17R is, for each <i>with-profits fund</i>:</p> <p>(a) the percentage (if any) required in respect of that fund by:</p> <p style="padding-left: 40px;">(i) the <i>firm's</i> articles of association, registered rules or other equivalent instrument; or</p> <p style="padding-left: 40px;">(ii) a relevant order made by a court of competent jurisdiction;</p> <p>(b) if (a) does not apply, the percentage specified in the <i>firm's PPFM</i>, if that percentage <u>that reflects the <i>firm's</i> established practice, if it has one</u>;</p> <p>(c) if (a) and (b) do not apply, not less than 90 per cent.</p>
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*with-profits
committee*

a committee; ~~of the governing body, including non-executive members,
of the governing body and possibly some external non-directors with
appropriate skills and experience~~

- (a) the majority of the members of which are independent of the firm,
or, where there is an equal number of independent and non-
independent members, which is chaired by a person who is one of
the independent members; and
- (b) which satisfies the requirements of its terms of reference.

Annex B

Amendments to the Conduct of Business sourcebook (COBS)

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

- 20.1.4 R The following do not apply to a *non-directive friendly society*:
- (1) *COBS 20.3 (Principles and Practices of Financial Management);*
~~and~~
 - (2) *COBS 20.4 (Communications with with-profits policyholders);*
and
 - (3) *COBS 20.5 (With-profits governance).*
- ...
- 20.2.1 G (1) *With-profits business*, by virtue of its nature and the extent of discretion applied by *firms* in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of *policyholders*. Potential conflicts of interest may arise between shareholders and *with-profits policyholders*, between *with-profits policyholders* and non-profit *policyholders* within the same fund, between *with-profits policyholders* and the members of mutually-owned *firms*, between *with-profits policyholders* and management, and between different classes of *with-profits policyholders*, for example those with and without guarantees. The *rules* in this section address specific situations where the risk may be particularly acute. ~~However, a *firm* should give careful consideration to any aspect of its operating practice that has a bearing on the interests of its *with-profits policyholders* to ensure that it does not lead to an undisclosed, or unfair, benefit to *shareholders*.~~
- (2) *With-profits policyholders* have an interest in the whole and in every part of the *with-profits fund* into which their *policies* are written and from which the amounts payable in connection with their *policies* are to be paid. Those amounts include those required to satisfy their contractual rights and such other amounts as the *firm* is required to pay in order to treat them fairly (including but not limited to the amounts required to satisfy their reasonable expectations).
 - (3) The fair treatment of *with-profits policyholders* requires the *firm's* pay-outs on individual *with-profits policies* to be fair (see *COBS 20.2.3R et seq.*) and, if the *firm* makes a distribution from the *with-profits fund* into which their *policies* are written, the receipt by the *with-profits policyholders* of at least the *required*

percentage (see COBS 20.2.17R).

- 20.2.1A R A firm must take reasonable care to ensure that all aspects of its operating practice are fair to the interests of its with-profits policyholders and do not lead to an undisclosed, or otherwise unfair, benefit to shareholders or to other persons with an interest in the with-profits fund.
- 20.2.1B G (1) Notwithstanding that there may not be a rule in the remainder of this section addressing a particular aspect of a firm's operating practices, firms will need to ensure that they take reasonable care to ensure that all aspects of their operating practice comply with COBS 20.2.1AR.
- (2) For the avoidance of doubt COBS 20.2.1AR does not exhaust or restrict the scope of Principle 6. Firms will in any event need to ensure that their operating practices are consistent with Principle 6.
- 20.2.1C G When considering the provisions in this chapter a firm will need to ensure that, if applicable, it complies with the with-profits governance requirements in COBS 20.5.
- 20.2.1D G For the purposes of COBS 20.2.1AR the FSA expects a firm to be able to demonstrate that it has taken reasonable care to ensure its operating practices are fair, including being able to produce appropriate evidence to show that it has followed relevant governance procedures.
- ...
- 20.2.16 R A firm must not, in so far as is reasonably practicable, make a market value reduction to the face value of the units of an accumulating with-profits policy unless:
- (1) the market value of the with-profits assets in the relevant with-profits fund is, or is expected to be, significantly less than the assumed value of the assets on which the face value of the units of the policy has been based; ~~or~~ and
- (2) there has been, or there is expected to be, a high volume of surrenders, relative to the liquidity of the relevant with profits fund; and the market value reduction is no greater than is necessary to reflect the impact of the difference in value referred to in (1) ~~or (2)~~ on the relevant surrender payment out to the policyholder.
- 20.2.16A G If a firm is able to satisfy COBS 20.2.16R(1), then the volume of surrenders, transfers, or other exits from the with-profits fund that there has been, or is expected to be, is a factor that a firm may take into account when it is considering whether to make a market value reduction, and if so, its amount, subject to the limit in COBS 20.2.16R(2).

Conditions relevant to distributions

- 20.2.17 R A *firm* must:
- (1) not make a distribution from a *with-profits fund*, unless the whole of the cost of that distribution can be met without eliminating the regulatory surplus in that *with-profits fund*; and
 - (2) ensure that the amount distributed to *policyholders* from a *with-profits fund*, taking into account any adjustments required by COBS 20.2.17AR, is not less than the *required percentage* of the total amount distributed; and
 - (3) ~~if it adjusts the amounts distributed to *policyholders*, apply a proportionate adjustment to amounts distributed to shareholders, so that the distribution to *policyholders* will not be less than the *required percentage*.~~
- 20.2.17A R (1) Where a *firm* adjusts the amounts distributed to *policyholders*, either by market value reduction or otherwise, in a way that would result in a distribution to *policyholders* of less than the *required percentage*, taking both the relevant distributions and the adjustment into account, then the *firm* must apply a proportionate adjustment to amounts distributed to shareholders so that the distribution to *policyholders* will not be less than the *required percentage*.
- (2) The adjustments referred to in (1) include but are not limited to a situation where such an adjustment has the effect of retrospectively reducing past *policyholder* distributions.
- 20.2.17B G An example of the application of COBS 20.2.17AR, without limitation to its scope generally, is where a *firm* reduces, for any reason, the amounts of a bonus or of bonus units added to *policies* in force. The *firm* should treat this as effectively a ‘negative distribution’, calculated by making the same assumptions regarding discount rates and other relevant factors as would be used for positive bonus additions. The amount so calculated should then be taken into account in ensuring that the amount distributed to *policyholders* from a *with-profits fund* is not less than the *required percentage* for the purposes of COBS 20.2.17R.
- ...
- 20.2.21 R At least once a year (or, in the case of a *non-directive friendly society*, at least once in every three years) and whenever a *firm* is seeking to make a *retribution* of its *inherited estate*, a *firm’s governing body* must determine whether the *firm’s with-profits fund*, or any of the *firm’s with-profits fund*, has an *excess surplus*.
- 20.2.22 E (1) If a *with-profits fund* has an *excess surplus*, and to retain that surplus would be a breach of *Principle 6* (Customers’ interests) the *firm* should:

- (a) make a distribution from that *with-profits fund*; ~~or~~
- (b) carry out a *retribution*.

...

...

New business

- 20.2.28 R ~~If a A firm proposes to must not effect new *contracts of insurance* in an existing *with-profits fund*, it must only do so unless:~~
- (1) ~~on terms that are, in the reasonable opinion of the firm's governing body, is satisfied, so far as it reasonably can be, and can demonstrate, having regard to the analysis in (2), unlikely to have a material that the terms on which each type of contract is to be effected are likely to have no adverse effect on the interests of its existing the *with-profits policyholders* whose *policies* are written into that fund; and~~
 - (2) ~~the firm has:~~
 - (a) ~~carried out or obtained appropriate analysis, based on relevant evidence and proportionate to the risks involved, as to the likely impact on *with-profits policyholders*, having regard to relevant factors including:~~
 - (i) ~~the volumes of each type of contract that the firm expects to be effected; and~~
 - (ii) ~~the periods over which the contracts are expected to remain in force; and~~
 - (b) ~~provided the analysis referred to in (a) to its *with-profits committee* or, if applicable, its *with-profits advisory arrangement* and to its *governing body* for the purposes of (1).~~
- 20.2.28A G (1) Writing new *insurance business* into a *with-profits fund* is not, of itself, automatically adverse to the interests of *with-profits policyholders*. For example, new *insurance business* which defers the emergence or distribution of surplus to a limited extent for a number of *policyholders*, or which leads to a marginal change in the equity backing ratio, may, subject to satisfying the guidance in COBS 20.2.60G and COBS 20.2.29G, reasonably be considered not to have an adverse effect on the *with-profits policyholders* in a *with-profits fund*, if the firm's governing body is satisfied (and can demonstrate based on appropriate analysis) that each new line of *insurance business* is likely to be financially self-supporting over the periods during which the contracts are expected to remain in

force and is likely to add sufficient value to the *with-profits fund*.

- (2) Conversely, if the particular line of new *insurance business* is priced on loss-making terms or the terms are such that the new *insurance business* is not likely to generate sufficient value after covering all the costs associated with it (in either case when considered in aggregate over the periods over which the contracts are expected to remain in force), then in the *FSA*'s view, the terms of that *insurance business* are likely to have an adverse impact on *with-profits policyholders* interests in the relevant fund.
- (3) *Firms* will need to ensure that they comply with *COBS 20.2.28R* at all times, but in practice *firms* will be expected to pay particular attention when they are designing and pricing or re-pricing products, when they are preparing their financial plans that take into account their expected costs and levels of new business, and, in particular, when reviewing their financial performance, if that reveals that costs or levels of new business have varied significantly from those expected previously.
- (4) New business for the purposes of *COBS 20.2.28R* will not, in general, include increments on existing *policies* or business written as a result of the exercise of options by an existing *policyholder*.

20.2.29 G In some circumstances, it may be difficult or impossible for a *firm* to mitigate the risk of ~~a material~~ an adverse effect on its existing, or new, *with-profits* policyholders

- 20.2.30 G
- (1) When a *firm* prices the new *insurance business* that it proposes to effect in an existing *with-profits fund* it should estimate the volume of new *insurance business* that it is likely to effect and then build in adequate margins that will allow it to recover any acquisition costs to be charged to the *with-profits fund*.
 - (2) *COBS 20.2.28R* requires *firms* to obtain appropriate analysis and evidence and this should include at least a profitability analysis on a marginal cost basis.

...

Other rules and guidance on the conduct of *with-profits* business

...

- 20.2.36 G R
- If a ~~proprietary *firm* is considering using~~ A *firm* must not:
- (1) use *with-profits assets* to finance the purchase of ~~another business~~ a strategic investment, directly or by or through a *connected person*; or

- (2) ~~if a *firm* is considering whether it should retain such an investment referred to in (1);~~

~~it should consider whether unless its *governing body* is satisfied, so far as it reasonably can be, and can demonstrate, that the purchase or retention would be, or will remain, fair to is likely to have no adverse effect on the interests of its *with-profits policyholders* whose *policies* are written into the relevant fund. When a *firm* makes that assessment it should consider whether it would be more appropriate for the investment to be made using assets other than those in a *with-profits fund*.~~

20.2.36A R A *firm* must keep adequate records setting out the strategic purpose for which a *strategic investment* has been purchased or retained.

20.2.36B G (1) In order for a *firm* to comply with COBS 20.2.36R, a *firm's governing body* should consider:

- (a) the size of the investment in relation to the *with-profits fund*;
- (b) the expected rate of return on the investment;
- (c) the risks associated with the investment, including, but not limited to, liquidity risk, the capital needs of the acquired business or investment and the difficulty of establishing fair value (if any);
- (d) any costs that would result from divestment;
- (e) whether the *with-profits actuary* would regard the investment as having no adverse effect on the interests of *with-profits policyholders* as a class;
- (f) in the case of a proprietary *firm*, whether it would be more appropriate for the investment to be made using assets other than those in the *with-profits fund*; and
- (g) any other relevant material factors.

(2) A *firm* should also consider whether making or retaining the investment should be disclosed to *with-profits policyholders*.

(3) Examples of *strategic investments* include, but are not limited to, a significant investment in another business or significant real estate assets used within the business of the *firm*.

...

Major Significant changes in with-profits funds

...

20.2.41A R A firm must contact the FSA as soon as is reasonably practicable to make arrangements to discuss what actions may be required to ensure the fair treatment of with-profits policyholders if, in relation to any with-profits fund it operates:

- (1) the firm reasonably expects, or if earlier, there has been, a sustained and substantial fall in either the volume of new non-profit insurance contracts, or in the volume of new with-profits policies (effected other than by reinsurance), or in both, effected into the with-profits fund; or
- (2) the firm cedes by way of reinsurance most or all of the new with-profits policies which it continues to effect.

20.2.41B G (1) The aim of the discussions in COBS 20.2.41AR is to:

- (a) allow the FSA to comment on the adequacy of the firm's planning; and
 - (b) seek agreement with the firm on any other appropriate actions to ensure with-profits policyholders are treated fairly.
- (2) If the firm is no longer effecting a material volume of new with-profits policies (other than by reinsurance) into a with-profits fund; or if it is ceding by way of reinsurance most or all of the new with-profits policies which it continues to effect, then it may also be appropriate to consider whether, in the particular circumstances of the firm, it should be regarded as ceasing to effect new contracts of insurance for the purposes of COBS 20.2.54R(3).
- (3) In the discussions the FSA will have with regard to COBS 20.2.28R (New business), if the volumes of new business are expected to be profitable and, in relation to non-profit insurance business, it is demonstrated that a fair distribution to with-profits policyholders out of the fund can be achieved and the economic value of any expected future profits is likely to be available for distribution during the lifetime of the with-profits business for the purposes of COBS 20.2.60G, then, in the FSA's view, it is likely to be reasonable for a firm to be satisfied that there will be no adverse effect for with-profits policyholders, and accordingly that such business may continue to be written.

...

20.2.42 R A firm that is seeking to make a reattribution of its inherited estate must:

- (1) identify at the earliest appropriate point a policyholder advocate, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of

~~*policyholders, to negotiate with the firm on behalf of relevant with-profits policyholders*~~ first discuss with the FSA (as part of its determination under COBS 20.2 .21R):

- (a) its projections for capital required to support existing business, which must include an assessment of:
 - (i) the firm's future risk appetite for the *with-profits fund* and other relevant business; and
 - (ii) how much of the margin for prudence can be identified as excessive and removed from the projected capital requirements; and
- (b) its projections for capital required to support future new business, which must include an assessment of:
 - (i) new business volumes;
 - (ii) product terms; and
 - (iii) pricing margins;
- (2) following the discussions referred to in (1), identify at the earliest appropriate point a *policyholder advocate*, who is free from any conflicts of interest that may be, or may appear to be, detrimental to the interests of *policyholders*, to negotiate with the *firm* on behalf of relevant *with-profits policyholders* and seek the approval of the FSA for the appointment of the *policyholder advocate* as soon as he is identified, or appoint a *policyholder advocate* nominated by the FSA if its approval is not granted; and

...

...

20.2.44 G The precise role of the *policyholder advocate* in any particular case will depend on the nature of the *firm* and the *retribution* proposed. A *firm* will need to discuss, with a view to agreeing, with the FSA the precise role ...

...

20.2.45 R A *firm* must:

- (1) notify the FSA of the terms on which it proposes to appoint a *policyholder advocate* (whether or not the candidate was nominated by the FSA);
- (2) ensure that the terms of appointment for the *policyholder advocate*:

- (a) include a description of the role of the *policyholder advocate* as agreed with the *FSA* under *COBS 20.2.44G*;
- (aa) stress the independent nature of the *policyholder advocate's* appointment and function, and are consistent with it;
- ...
- (e) specify when and how the *policyholder advocate's* appointment may be terminated; ~~and~~
- (f) allow the *policyholder advocate* to communicate freely and in confidence with the *FSA*;
- (g) require the *policyholder advocate* to communicate with *policyholders*:
 - (i) as soon as is practicable after his appointment, having regard to (h)(i) and (iii); and
 - (ii) thereafter no less frequently than every six months for the duration of the *policyholder advocate's* appointment; and
- (h) require the *policyholder advocate*:
 - (i) to make reasonable endeavours to agree with the *firm* the contents of any proposed *policyholder communications*;
 - (ii) to allow sufficient time for the process in (i) in order to meet any timescales in (g); and
 - (iii) to provide copies of the final draft of the intended *policyholder communications*, whether or not agreement has been reached in accordance with (i) above, both to the *firm* and to the *FSA* at least seven days in advance of the date on which the *policyholder advocate* intends to make the *communications*.

...

- 20.2.54 R A *firm* will be taken to have ceased to effect new *contracts of insurance* in a *with-profits fund*:
- (1) when any decision by the *governing body* to cease to effect new *contracts of insurance* takes effect; or
 - (2) where no such decision is made, when the *firm* is no longer:

- (a) actively seeking to effect new *contracts of insurance* in that fund; or
 - (b) effecting new *contracts of insurance* in that fund, except by increment; or
- (3) if the firm:
- (a) (i) is no longer effecting a material volume of *with-profits policies* (other than by *reinsurance*), into the *with-profits fund*; or
 - (ii) is ceding by way of *reinsurance* most or all of the new *with-profits policies* which it continues to effect; and
 - (b) cannot demonstrate that it will treat *with-profits policyholders* fairly if it does not cease to effect new *contracts of insurance*.
- 20.2.55 R ~~A firm must contact the FSA to discuss whether it has, or should be taken to have, ceased to effect new *contracts of insurance* if:~~
- (1) ~~it is no longer effecting a material volume of new *with-profits policies* in a particular *with-profits fund*, other than by *reinsurance*; or~~
 - (2) ~~it cedes by way of *reinsurance* most of the new *with-profits policies* which it continues to effect.~~
- G For the purposes of COBS 20.2.54R(3) the FSA will have regard to, amongst other things, the factors set out in COBS 20.2.41BG(3).
- 20.2.56 R The run-off plan required by ~~this section~~ COBS 20.2.53R must:
- (1) ~~demonstrate~~ include an up-to-date plan to demonstrate how the firm will ensure a fair distribution of the closed *with-profits fund*, and its *inherited estate* (if any); and
 - (2) be approved by the *firm's governing body*.
- 20.2.57 G (1) A firm should also include the information described in Appendix 2.15 (Run-off plans for closed with-profits funds) of the Supervision manual in its run-off plan.
- (2) A firm should periodically review and update its run-off plan and submit updated versions to the FSA when requested to do so.
- ...
- 20.2.60 G (1) If *non-profit insurance business* is written in a *with-profits fund*, a firm should take reasonable steps to ensure that the

economic value of any future profits expected to emerge on the *non-profit insurance business* is available for distribution during the lifetime of the *with-profits business*.

- (1A) Where a *with-profits fund* contains assets which may not be readily realisable, the *firm* should take reasonable steps to ensure that the economic value of those assets is made available as part of a fair distribution to *with-profits policyholders*.
- (2) Where it is agreed by its *with-profits policyholders*, and subject to meeting the requirements for effecting new *contracts of insurance* in an existing *with-profits fund* (COBS 20.2.28R), a *mutual* may make alternative arrangements for continuing to carry on *non-profit insurance business*, and a *non-directive friendly society* may make alternative arrangements for continuing to carry on non-insurance related business.

...

Governance arrangements for with-profits business

- 20.3.2 G ~~In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (SYSC 3.2.6R or SYSC 6.1.1R), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records any applicable PPFM. These arrangements should:~~
- ~~(1) be appropriate to the scale nature and complexity of the *firm's with profits business*;~~
 - ~~(2) include the approval of the *firm's PPFM* by its *governing body*; and~~
 - ~~(3) involve some independent judgment in assessing compliance with its PPFM and addressing conflicting rights and interests of *policyholders* and, if applicable, *shareholders*, which may include but is not confined to:~~
 - ~~(a) establishing a *with profits committee*;~~
 - ~~(b) asking an independent person with appropriate skills and experience to report on these matters to the *governing body* or to any *with profits committee*; or~~
 - ~~(c) for small *firms*, asking one or more non-executive members of the *governing body* to report to the *governing body* on these matters. [deleted]~~
- 20.3.3 G If a *person* or committee who provides independent judgement wishes to make a statement or report to *with profits policyholders*, in addition to any annual report made by a *firm* to those *policy holders*, a *firm* should

~~facilitate this.~~ [deleted]

After COBS 20.4 insert the following new section. The text is not underlined.

20.5 With-profits governance

Requirement to appoint a with-profits committee or advisory arrangement

- 20.5.1 R A *firm* must, in relation to each *with-profits fund* it operates:
- (1) appoint:
 - (a) a *with-profits committee*; or
 - (b) a *with-profits advisory arrangement* (referred to in this section as an ‘advisory arrangement’), but only if appropriate, in the opinion of the *firm’s governing body*, having regard to the size, nature and complexity of the fund in question;
 - (2) ensure that the *with-profits committee* or advisory arrangement operates in accordance with its *terms of reference*; and
 - (3) make available a copy of any *terms of reference* on the *firm’s* website, or if the *firm* does not have a website, at the request of *policyholders*.
- 20.5.2 G
- (1) Ultimate responsibility for managing a *with-profits fund* rests with the *firm* through its *governing body*. The role of the *with-profits committee* or advisory arrangement is, in part, to act in an advisory capacity to inform the decision-making of a *firm’s governing body*. The *with-profits committee* or advisory arrangement also acts as a means by which the interests of *with-profits policyholders* are appropriately considered within a *firm’s* governance structures. The *with-profits committee* or advisory arrangement should address issues affecting *policyholders* as a whole or as separately identifiable groups of *policyholders* generally rather than dealing with individual *policyholder* complaints or taking management decisions with respect to a *with-profits fund*.
 - (2) If a *firm* considers that it is appropriate to appoint an advisory arrangement, a *firm’s governing body* will need to decide whether it is appropriate to appoint an independent person or one or more *non-executive directors* to carry out the role. The *FSA* expects *firms* to make this determination according to the nature, size and complexity of the fund in question. So the larger or more complex the fund is, the more likely it would be that it would be appropriate to appoint an independent person.
 - (3) Where a *firm* has appointed a *with-profits committee* to one of its *with-profits funds* it may also decide to appoint that *with-profits committee* to some or all of its other *with-profits funds*, even if the *firm* would not

have determined it appropriate to appoint a *with-profits committee* to those other funds when considered individually having regard to their size, nature or complexity.

Terms of reference of with-profits committee or advisory arrangement

- 20.5.3 R A *firm* must ensure that the *terms of reference* contain, as a minimum, terms having the following effect:
- (1) the role of the *with-profits committee* or advisory arrangement is, as relevant, to assess, report on, and provide clear advice and, where appropriate, recommendations to the *firm's governing body* on:
 - (a) the way in which each *with-profits fund* is managed by the *firm* and, if a *PPFM* is required, whether this is properly reflected in the *PPFM*;
 - (b) if applicable, whether the *firm* is complying with the principles and practices set out in the *PPFM*;
 - (c) whether the *firm* has addressed effectively the conflicting rights and interests of *with-profits policyholders* and other *policyholders* or stakeholders including, if applicable, shareholders, in a way that is consistent with *Principle 6* (treating customers fairly); and
 - (d) any other issues with which the *firm's governing body*, *with-profits committee* or advisory arrangement considers *with-profits policyholders* might reasonably expect the *with-profits committee* or advisory arrangements to be involved;
 - (2) that the *with-profits committee* or advisory arrangement must:
 - (a) decide on the specific matters it will consider in order to enable it to carry out its role described in (1)(a) to (d) as appropriate to the particular circumstances of the *with-profits fund(s)*; and
 - (b) in any event give appropriate consideration to the following non-exhaustive list of specific matters:
 - (i) the identification of surplus and *excess surplus*, the merits of its distribution or retention and the proposed distribution policy;
 - (ii) how bonus rates, smoothing and, if relevant, market value reductions have been calculated and applied;
 - (iii) if relevant, the relative interests of *policyholders* with and without valuable guarantees;
 - (iv) the *firm's* with-profits customer communications such as annual *policyholder* statements and product literature and

whether the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the annual report made by a *firm*;

- (v) any significant changes to the risk or investment profile of the *with-profits fund* including the management of material illiquid investments and the *firm's* obligations in relation to *strategic investments*;
 - (vi) the *firm's* strategy for future sales supported by the assets of the *with-profits fund* and its impact on surplus;
 - (vii) the impact of any management actions planned or implemented;
 - (viii) relevant management information such as customer complaints data (but not necessarily information relating to individual customer complaints);
 - (ix) the drafting, review, updating of and compliance with run-off plans, court schemes and similar matters; and
 - (x) the costs incurred in operating the *with-profits fund*;
- (3) that any person appointed as a member of the *with-profits committee* or as a person carrying out the advisory arrangement must have the appropriate skills, knowledge and experience to perform, or contribute to, as appropriate, the role set out in (1) and (2);
- (4) if the *firm* appoints a *with-profits committee*:
- (a) that there must be three or more members;
 - (b) that the quorum for any meeting (or decision by written procedure) must be at least half of the number of, and no less than two, members; and
- (5) that the *with-profits committee* or advisory arrangement must:
- (a) advise the *governing body* on the suitability of candidates proposed for appointment as the *with-profits actuary*; and
 - (b) assess the performance of the *with-profits actuary* at least annually, and report its view to the *governing body* of the *firm*.
- 20.5.4 G (1) The *FSA* expects that a *with-profits committee* will meet at least quarterly and ad hoc if required.

- (2) The *FSA* expects that, in general, a *with-profits committee* or advisory arrangement will work closely with the *with-profits actuary*, and obtain his opinion and input as appropriate.

Role of with-profits committee or advisory arrangement in the *firm's* governance20.5.5 R A *firm* must:

- (1) ensure that its *governing body*, in the context of its consideration of issues referred to in COBS 20.5.3R(1)(a) to (d) and (2)(b)(i) to (x):
 - (a) obtains, as relevant, assessments, reports, advice and/or recommendations of the *with-profits committee* or advisory arrangement, if the *governing body*, the *with-profits committee* or advisory arrangement considers that significant issues concerning the interests of *with-profits policyholders* need to be considered by the *firm*;
 - (b) allows the *with-profits committee* or advisory arrangement sufficient time to enable it to provide fully considered input on the issues to be considered;
 - (c) considers fully and gives due regard to the input of the *with-profits committee* or advisory arrangement when determining issues concerning the management of the *with-profits funds* and the interests of *with-profits policyholders*;
 - (d) if the *governing body* decides to depart in any material way from the advice or recommendations of the *with-profits committee* or advisory arrangement, sets out fully its reasons and allows the *with-profits committee* or advisory arrangement a reasonable period to consider them and respond; and
 - (e) considers any further representations from the *with-profits committee* or advisory arrangement and, if appropriate, sets out fully any additional reasons if it continues to depart from the *with-profits committee* or advisory arrangement's advice or recommendation;
- (2) provide a *with-profits committee* or advisory arrangement with sufficient resources as it may reasonably require to enable it to perform its role effectively;
- (3) notify the *FSA* of the decision of the *governing body* to depart from the advice or recommendation of the *with-profits committee* or advisory arrangement if the *with-profits committee* or advisory arrangement considers that the issue is sufficiently significant and requests of the *governing body* that the *FSA* be informed; and
- (4) consult the *with-profits actuary* on the appointment of a new member of the *with-profits committee* or of the person or persons carrying out the advisory arrangement.

20.5.6 G (1) COBS 20.5.5R(2) requires that a *firm* provides a *with-profits committee* or advisory arrangement with sufficient resources. A *with-profits*

committee or advisory arrangement should be able to obtain external professional, including actuarial, advice, at the expense of the *firm*, if the *with-profits committee* or advisory arrangement considers the advice to be necessary to perform its role effectively. In a proprietary firm the *with-profits committee* or advisory arrangement should be able to request that the cost of the external professional advice either is not chargeable to the *with-profits fund* in question, or is shared with the *with-profits fund*, according to whether the issue under consideration is wholly or partly to the benefit of the *firm* rather than *policyholders*. A *with-profits committee* or advisory arrangement should also be adequately supported by the *firm's* own internal resources and support functions. This may include the *firm* ensuring that relevant employees, including the *with-profits actuary*, are made sufficiently available, and provide relevant information and input, to assist the *with-profits committee* in its role, as required.

- (2) If the *with-profits committee* or advisory arrangement wishes to make a statement or report to *with-profits policyholders* in addition to the annual report made by a *firm*, the effect of COBS 20.5.5R(2) is that a *firm* will need to facilitate this.
- (3) In order to comply with SYSC 3.2.20R the FSA expects *firms* to keep full records of all requests of, and material produced by, the *with-profits committee* or advisory arrangement, and of all decisions and reasons of the *governing body* as described in COBS 20.5.5R(1)(d) and (e).
- (4) For the purposes of COBS 20.5.5R(3), the FSA expects that it will only be in exceptional circumstances that a *with-profits committee* or alternative arrangement will consider a departure from a recommendation or advice to be sufficiently significant to warrant its making a request of the *governing body* that the FSA be informed.

Assessment of independence by governing body

- 20.5.7 G (1) The FSA expects the *governing body* of the *firm* to decide whether a member of the *with-profits committee* or a person (other than a *non-executive director*) carrying out the advisory arrangement is independent. The FSA expects a *firm's governing body* to adopt the following approach and have regard to the following factors when making this assessment:
- (a) the *governing body* should determine whether the person is independent in character and judgment and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the person's judgment; and
 - (b) the *governing body* should state its reasons if it determines that a person is independent notwithstanding the existence of relationships or circumstances which may appear relevant to its determination, including if the person:

- (i) has been an employee of the *firm* or group within the last five years; or
- (ii) has, or has had within the last three years, a material business relationship with the *firm* either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the *firm*; or
- (iii) has received or receives additional remuneration from the *firm*, participates in the *firm's* share option or a performance-related pay scheme, or is a member of the *firm's* pension scheme; or
- (iv) has close family ties with any of the *firm's* advisers, directors or senior employees; or
- (v) has significant links with the *firm's* directors through involvement in other companies or bodies; or
- (vi) represents a significant shareholder; or
- (vii) has served on the *governing body* for more than nine years from the date of their first election.

(2) If a *firm* appoints one or more *non-executive directors* to carry out the advisory arrangement, the *FSA* expects the *governing body* of the *firm* to be satisfied that that person or persons is or are adequately able to provide independent judgment.

Governance arrangements in relation to the PPFM

20.5.8 G In complying with the *rule* on systems and controls in relation to compliance, financial crime and money laundering (*SYSC 3.2.6R*), a *firm* should maintain governance arrangements designed to ensure that it complies with, maintains and records, any applicable *PPFM*. These arrangements should:

- (1) be appropriate to the scale, nature and complexity of the *firm's with-profits business*; and
- (2) include the approval of the *firm's PPFM* by its *governing body*.

Amend the following as shown.

TP 2 Other Transitional Provisions

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provisions: coming into force

...					
2.9	<i>COBS 20.2.1G to COBS 20.2.23R, COBS 20.2.26R to COBS 20.2.41G, COBS 20.2.53R to COBS 20.2.60G (Treating with profits policy holders fairly)</i>	R	The provisions listed in column (2) do not apply to a <i>firm</i> if, and to the extent that, they are inconsistent with an arrangement that was formally approved by the <i>FSA</i> , a <i>previous regulator</i> or a court of competent jurisdiction, on or before 20 January 2005.
...					
2.11	<i>COBS TP 2.9</i>	G	The <i>rules and guidance</i> on treating with-profits policyholders fairly (<i>COBS 20.2.1G - COBS 20.2.41G; COBS 20.2.53R - COBS 20.2.60G</i>) may be contrary to, or inconsistent with, some arrangements that were formally approved by the <i>FSA</i> , a <i>previous regulator</i> or a court...
...					
<u>2.18</u>	<u><i>COBS 20.2.53R to COBS 20.2.60G, SUP App 2.15G</i></u>	<u>R</u>	<p><u>(1) Unless (2) applies, and subject to (3), a <i>firm</i> that has ceased to effect new <i>contracts of insurance</i> in a <i>with-profits fund</i> must submit to the <i>FSA</i> a run-off plan of the type described in <i>COBS 20.2.53R(2); COBS 20.2.56R, and COBS 20.2.57G, if it has not done so already, by 31 December 2012, regardless of when it closed to new business.</i></u></p> <p><u>(2) Paragraph (1) does not apply to a <i>firm</i> if, and to the extent that, to comply would be contrary to or inconsistent with an arrangement that was formally approved by a court of competent</u></p>	<u>From 1 April 2012 indefinitely</u>	<u>1 November 2007 and 1 April 2012</u>

			<p><u>jurisdiction, on or before 1 April 2012.</u></p> <p><u>(3) A firm required by (1) above to produce a run-off plan:</u></p> <p><u>(a) should consider the guidance in SUP App 2.15.6G, 2.15.7G(11), 2.15.13G, 2.15.14G and 2.15.15G to continue to apply to it, as appropriate;</u></p> <p><u>(b) may demonstrate compliance with the guidance in SUP App 2.15.2G, 2.15.3G, 2.15.4G and 2.15.5G by reference to existing documents created by or for the firm, provided that it submits copies of relevant extracts to the FSA;</u></p> <p><u>(c) may disregard the remaining provisions in SUP App 2.15G if to do so would be consistent with meeting the requirements of COBS 20.2.56R(1); and</u></p> <p><u>(d) may otherwise tailor the run-off plan to reflect the fact that the fund in question has already been closed.</u></p>		
<u>2.19</u>	<u>COBS 20.2.53R to COBS 20.2.60G</u>	<u>G</u>	<p><u>The effect of COBS TP 2.18 is that firms which were not required to submit a run-off plan to the FSA because they ceased to effect new contracts of insurance before 1 November 2007 or because of previous transitional provisions in COBS, will need to submit a version of a run-off plan to the FSA, taking into account the fact that the fund has already closed, by 31 December 2012. However, this will not apply to the extent that</u></p>	<u>From 1 April 2012 indefinitely</u>	<u>1 November 2007 and 1 April 2012</u>

			<u>it would be inconsistent with a formally approved court scheme.</u>		
<u>2.20</u>	<u>COBS 20.2.28R</u>	R	<u>Firms which continue to effect new contracts of insurance in reliance on decisions made by the firm's governing body complying with COBS 20.2.28R prior to 1 April 2012 are deemed to be compliant with COBS 20.2.28R until 1 July 2012.</u>	<u>From 1 April 2012 to 1 July 2012</u>	<u>1 April 2012</u>
<u>2.21</u>	<u>COBS 20.2.36R to COBS 20.2.36AR</u>	R	<u>Firms which retain strategic investments in reliance on decisions made by the firm's governing body appropriately taking into account COBS 20.2.36G prior to 1 April 2012 are deemed to be compliant with COBS 20.2.36R and 20.2.36AR until 1 October 2012.</u>	<u>From 1 April 2012 to 1 October 2012</u>	<u>1 April 2012</u>
<u>2.22</u>	<u>COBS 20.5.1R to 20.5.5R</u>	R	<u>Firms' existing governance arrangements are deemed to comply with the provisions in COBS 20.5.1R to 20.5.5R until 1 July 2012.</u>	<u>From 1 April 2012 to 1 July 2012</u>	<u>1 April 2012</u>

...

Schedule 1 Record keeping requirements

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>COBS 19.2.3R</u>	Promotion of personal pension scheme
<u>COBS 20.2.36AR</u>	<u>strategic investments</u>	<u>A description of the strategic purpose for which a strategic investment has been purchased or retained</u>	<u>Before making a strategic investment or when reviewing whether to retain a strategic investment</u>	<u>Until the firm ceases to hold the strategic investment in question</u>

...				
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Schedule 2 Notification requirements

Handbook reference	Matters to be notified	Contents of notification	Trigger Event	Time allowed
...				
<i>COBS</i> 21.2.8R	...			
<u><i>COBS</i> 20.5.5R(3)</u>	<u>The decision of a <i>firm's governing body</i> to depart from the advice or recommendation of the <i>with-profits committee</i> or advisory arrangement.</u>	<p><u>A description of:</u></p> <p><u>(1) the decision of, and reasons given by, the <i>firm's governing body</i>;</u></p> <p><u>(2) the recommendation and advice of the <i>with-profits committee</i> or advisory arrangement;</u></p> <p><u>together with a copy of the <i>firm's</i> records of the decision, reasons, advice and recommendations.</u></p>	<u>The <i>with-profits committee</i> or advisory arrangement considers that the issue is sufficiently significant and requests of the <i>governing body</i> that the <i>FSA</i> be informed.</u>	<u>As soon as reasonably practicable</u>

Annex C**Amendments to the Supervision manual (SUP)**

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

- 4.3.17 R A *firm* must require and allow any *actuary* appointed to perform the *with-profits actuary* function to perform his duties and must:
- ...
- (4); ~~and~~
- (5) pay due regard to his advice...(the committee of management); and
- (6) ensure that where a conflict of interest may arise in relation to the role of the *with-profits actuary* and the advice he gives, for example due to the *firm's* reporting lines or remuneration process, that potential conflict is identified and managed in order to minimise the possible effect of the potential conflict on the advice given.