**CONDUCT OF BUSINESS SOURCEBOOK (RETIREMENT RISK WARNINGS)
INSTRUMENT 2015**

Powers exercised

A.   The Financial Conduct 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 137A (The FCA's general rules);
(2)   section 137T (General supplementary powers); and
(3)   section 139A (Power of the FCA to give guidance).

B.   The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C.   This instrument comes into force on 6 April 2015.

Amendments to the FCA Handbook

D.   The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument.

Citation

E.   This instrument may be cited as the Conduct of Business Sourcebook (Retirement Risk Warnings) Instrument 2015.

By order of the Board of the Financial Conduct Authority
26 February 2015

Annex

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, the text is all new and is not underlined.

19.7   Retirement risk warnings

Definitions

19.7.1   R   In this section:

(1)   "payment out of uncrystallised funds" is an uncrystallised funds pension lump sum within the meaning of paragraph 4A of Schedule 29 of the Finance Act 2004;

(2)   "pension decumulation product" is a product used to access pension savings and includes a facility to enable a *retail client* to make a payment out of uncrystallised funds, a *drawdown pension* or *pension annuity*;

(3)   "pension savings" is the proceeds of the *client's personal pension scheme, stakeholder pension scheme*, or *occupational pension scheme*;

(4)   "retirement risk warnings" are the warnings required to be given to a *retail client* at step 3 of the process specified in this section;

(5)   "risk factors" are the attributes, characteristics, external factors or other variables that increase the risk associated with a *retail client's* decision to access their pension savings using a pension decumulation product;

(6)   "signpost" is the written or oral statement encouraging a *retail client* to use *pensions guidance* or to take regulated advice to understand their options at retirement which is at step 1 of the process specified in this section.

Application

19.7.2   R   This section applies to a *firm* communicating with a *retail client* in relation to accessing their pension savings using a pension decumulation product.

19.7.3   R   This section does not apply:

(1)   to a *firm* giving regulated advice to a *retail client* on options to access their pension savings;

(2)   if the *firm* has already provided the retirement risk warnings to the *retail client* in relation to their decision to access their pension savings and the *firm* has reasonable grounds to believe that the retirement risk warnings are still appropriate for the *client*.

Purpose

19.7.4 G (1) The purpose of this section is to ensure that a *firm*, which is communicating with a *retail client* about a pension decumulation product, gives appropriate retirement risk warnings at the point when the *retail client* has decided how to access their pension savings.

(2) If the *retail client* has not yet decided what to do the *firm* should consider whether it is required to signpost the *pensions guidance* under *COBS* 19.4.5R (signposting pensions guidance).

19.7.5 G This section amplifies *Principles* 6 and 7, but does not exhaust or restrict what they require. A *firm* will, in any event, need to ensure that its sales processes are consistent with the *Principles* and other *rules*.

19.7.6 G An illustration of the steps a *firm* is required to take is set out in *COBS* 19 Annex 1G.

Trigger: when does a firm have to follow the steps?

19.7.7 R A *firm* must follow the steps specified in this section at the point when the *retail client* has decided (in principle) to take one of the following actions (and before the action is concluded):

(1) buy a pension decumulation product; or

(2) vary their *personal pension scheme*, *stakeholder pension scheme*, *FSAVC*, *retirement annuity* contract or *pension buy-out contract* to enable the *client* to:

(a) access pension savings using a *drawdown pension*; or

(b) elect to make one-off, regular or ad-hoc payments out of uncrystallised funds; or

(3) receive a one-off, regular or ad-hoc payment out of uncrystallised funds; or

(4) access their pension savings using a *drawdown pension*.

Step 1: determine whether the client has received guidance or regulated advice

19.7.8 R (1) The first step is to ask the *retail client* whether they have received *pensions guidance* or regulated advice:

(a) if the *client* says that they have, the *firm* must proceed to step 2; or

(b) if the *client* says that they have not or is unsure, the *firm* must explain that the decision to access pension savings is an important one and encourage the *retail client* to use *pensions guidance* or to take regulated advice to understand their options at retirement.

(2)   If, after giving the explanation in *COBS* 19.7.8R(1)(b), the *retail client* does not want to access *pensions guidance* or take regulated advice, the *firm* must proceed to step 2.

Step 2: identify risk factors

19.7.9   R   Based on how the *retail client* wants to access their pension savings, at step 2 the *firm* must ask the *client* questions to identify whether any risk factors are present.

19.7.10   R   A *firm* must prepare the questions required by *COBS* 19.7.9R before taking the steps for the first time, and must keep the questions up to date.

19.7.11   G   To prepare for step 2, the *firm* should:

(1)   identify the main risk factors relevant to each pension decumulation product it offers to enable *retail clients* to access their pension savings; and

(2)   prepare questions to enable it to identify the presence of those risk factors for different *retail clients*.

19.7.12   G   Examples of the sorts of risk factors which relate to pension decumulation products are:

(1)   the *client's* state of health;

(2)   loss of any guarantees;

(3)   whether the *client* has a partner or dependants;

(4)   inflation;

(5)   whether the *client* has shopped around;

(6)   sustainability of income in retirement;

(7)   tax implications;

(8)   charges (if a *client* intends to invest their pension savings);

(9)   impact on means-tested benefits;

(10)   debt; and

(11)   investment scams.

Step 3: provide appropriate retirement risk warnings

19.7.13   R   At step 3, a *firm* must give the *retail client* appropriate retirement risk warnings in response to the *client's* answers to the *firm's* questions.

19.7.14   R   A *firm* must prepare the retirement risk warnings required by *COBS* 19.7.13R in good time before taking the steps for the first time, and must keep them up to date.

19.7.15   G   If after considering the *retail client's* answers it is unclear whether a risk factor is present, a *firm* should give the *client* the appropriate retirement risk warning.

Communicating the signpost and retirement risk warning

19.7.16   R   When communicating the signpost and retirement risk warnings, the *firm* must do so clearly and prominently.

19.7.17   R   Whatever the means of communication, the *firm* must ensure that the *retail client* cannot progress to the next stage of the sale unless the relevant signpost or retirement risk warning has been communicated to the *client*.

19.7.18   G   For an internet sale, a *firm* should display the required information on a screen which the *retail client* must access and acknowledge as part of the sales process. It would not be sufficient for the information to be accessible only by giving the *client* the option to click on a link or download a document.

Record keeping

19.7.19   R   *Firms* must record whether the *retail client* has received:

(1)   the retirement risk warnings at step 3 of the process specified in this section;

(2)   regulated advice; and

(3)   *pensions guidance*.

COBS 19 Annex 1G Retirement risk warnings – steps to take

This annex belongs to COBS 19.7.

COBS 19 Annex 1G
Retirement risk warnings – steps to take

Trigger
When a *retail client* decides to access their pension savings by taking one of the actions in *COBS* 19.7.7R

Step 1
Firm to ask whether the *client* has taken *pensions guidance* or received regulated advice

Yes

No or unsure

Firm to explain that the decision to access pension savings is an important one and encourage the *client* to use *pensions guidance* or to take regulated advice to understand their options at retirement

Client elects to proceed without *pensions guidance* or regulated advice

Client seeks *pensions guidance* or regulated advice

Step 2
Based on how the *client* wants to access their pension savings, the *firm* must ask the *client* questions to identify whether risk factors are present

Step 3
Firm to give the *client* appropriate retirement risk warnings in response to the *client's* answers to the *firm's* questions