

NON-WORKPLACE PENSIONS INSTRUMENT 2022

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in or under the following sections of 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 provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 December 2023.

Amendments to the Handbook

- D. The modules of the FCA’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) below.

(1)	(2)
Glossary of definitions	Annex A
Conduct of Business sourcebook (COBS)	Annex B
Product Intervention and Product Governance sourcebook (PROD)	Annex C

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex D to this instrument.

Notes

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

Citation

- G. This instrument may be cited as the Non-Workplace Pensions Instrument 2022.

By order of the Board
24 November 2022

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>cash-like investments</i>	<i>cash</i> or <i>near cash</i> , units in a <i>regulated money market fund</i> , or units in a fund authorised as a money market fund for the purposes of the <i>UK</i> version of Regulation (EU) No 2017/1131 of the European Parliament and the Council of 14 June 2017 on money market funds, which is part of <i>UK</i> law by virtue of the <i>EUWA</i> .
<i>default option</i>	an <i>investment</i> or group of <i>investments</i> offered for inclusion in a <i>non-workplace pension</i> and designed to meet the needs, objectives and characteristics of a typical <i>non-advised client</i> in the target market.
<i>lifestyling</i>	an investment strategy that aims, as the <i>member of a pension scheme</i> approaches retirement, progressively to reduce the potential for significant variation caused by market conditions in the value of the member's accrued rights.
<i>non-advised client</i>	(in <i>COBS 19</i> and <i>PROD 6</i>) a <i>retail client</i> in relation to whom a <i>firm</i> has not been able to determine, on reasonable grounds, that the client has received, or will receive, a <i>personal recommendation</i> or investment management services for the purposes of <i>COBS 19.12.5R</i> .
<i>non-workplace pension</i>	the individual arrangements of a member of a <i>non-workplace pension scheme</i> who is a <i>retail client</i> with the scheme's <i>operator</i> .
<i>non-workplace pension scheme</i>	a <i>personal pension scheme</i> or <i>stakeholder pension scheme</i> , in situations where the scheme will be used to provide members with benefits other than employment benefits.
<i>target date fund</i>	a <i>fund</i> whose investment strategy is adjusted over time based on when investors in the <i>fund</i> are expected to access their investment.

Amend the following definitions as shown.

<i>distribute</i>	...
	(3) (in relation to <i>PROD 1.4.3AG</i> , <i>1.4.3BR</i> and <i>1.4.3CG</i> , <i>PROD 1.6.1R</i> and <i>PROD 6</i>) <i>arranging a pathway investment</i> <u>or a default option</u> .

manufacture ...

- (3) (in relation to *COBS 19*, *PROD 1.6* and *PROD 6*) creating, developing, designing, issuing, operating and/or underwriting a *pathway investment* or a *default option*.

...

manufacturer ...

- (5) (in relation to *COBS 19*, *PROD 1.6* and *PROD 6*) a *firm* which creates, develops, designs, issues, operates and/or underwrites a *pathway investment* or a *default option*.

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.

19 Pensions supplementary provisions

...

19.10 Drawdown, investment pathways and cash warnings

Definitions

19.10.1 R In *COBS* 19.10:

- (1) “~~cash-like investments~~” includes ~~cash or near cash, units in a regulated money market fund, or units in a fund authorised as a money market fund for the purposes of the UK version of the European Parliament and Council Regulation on money market funds (2017/1131/EU), which is part of UK law by virtue of the EUWA;~~ [deleted]

...

...

Purpose

...

19.10.6 G This section specifies the circumstances where a *firm* dealing with a non-advised *retail client* in relation to the investment of the sums or assets in their drawdown fund must:

- (1) ...
- ...
- (3) ensure that *retail clients* investing wholly or predominantly in ~~cash-like investments~~ cash-like investments make an active decision to do so; ~~and~~
- (4) provide warnings to *retail clients* investing wholly or predominantly in ~~cash-like investments~~ cash-like investments;

...

...

Information, including cash warnings, for clients who have not decided to invest at least 50% of their drawdown fund in pathway investments

...

- 19.10.30 R Before carrying out the *retail client's* request referred to in COBS 19.10.8R, the *firm* must:
- (1) ...
 - (2) subject to COBS 19.10.32R, if carrying out the *retail client's* request referred to in COBS 19.10.8R would result in more than 50% of the *retail client's* drawdown fund being invested in ~~cash-like investments~~ cash-like investments:
 - (a) ensure that the *retail client* has made an active decision to invest in ~~cash-like investments~~ cash-like investments; and
- ...
- ...
- 19.10.31 G A *retail client's* signature on a pre-populated form, whether in paper or electronic format, is not, by itself, sufficient evidence of an active decision to invest in ~~cash-like investments~~ cash-like investments.
- 19.10.32 R
- (1) ...
 - (2) When ascertaining whether more than 50% of the *retail client's* drawdown fund is invested in ~~cash-like investments~~ cash-like investments, a *firm* may ignore sums or assets in relation to which a *discretionary investment manager* or a financial advisor has permission to *execute* investment decisions. A *firm* exercising this option must take the steps in COBS 19.10.30R(2) if the client's decision would result in more than 50% of the remainder of the drawdown fund being invested in ~~cash-like investments~~ cash-like investments.
 - (3) If it is not possible for the firm to identify the assets in a *retail client's* drawdown fund, despite making all reasonable efforts, a *firm* may take into account all investments in the *retail client's personal pension scheme* or *stakeholder pension scheme*. In such a case, a *firm* must take the steps in COBS 19.10.30R(2) if the client's decision would result in more than 50% of the value of the client's *personal pension scheme* or *stakeholder pension scheme* being invested in ~~cash-like investments~~ cash-like investments.
- 19.10.33 G To ascertain whether more than 50% of a *retail client's* drawdown fund is invested in ~~cash-like investments~~ cash-like investments, a *firm* should take reasonable steps to obtain up-to-date information, and should use the most recent information it has access to.

...

Cash warnings

...

19.10.38 R The cash warning must:

(1) ...

(2) using plain language, warn the *retail client* that:

(a) more than half of their eligible drawdown fund is invested in ~~cash-like investments~~ cash-like investments; and

...

...

...

Record keeping

...

19.10.47 G A *firm* to which the record-keeping rules in SYSC 3 (Systems and controls) or SYSC 9 (Record-keeping) apply should maintain a record of its compliance with the requirements in this section including:

(1) ...

...

(16) evidence of how each *retail client* who received an initial cash warning made an active choice, in accordance with COBS 19.10.30R(2)(a), to invest more than 50% of their drawdown fund in ~~cash-like investments~~ cash-like investments;

...

...

After COBS 19.11 (Pensions dashboards), insert the following new section. The text is all new and is not underlined.

19.12 Non-workplace pensions: default options and cash warnings

Definitions

19.12.1 R In COBS 19.12:

- (1) ‘cash warning’ is the warning in *COBS 19.12.31R*;
- (2) ‘distributes’ includes having an arrangement with a third party to arrange an *investment*, or to promote *platform services* that distribute *investments*;
- (3) ‘filtering tool’ means a tool whereby a *firm* makes the list of the *investments* it sells easier to search by allowing the *customer* to filter products based on factors presented by the *firm* and selected by the *customer*, and showing to the *customer* the *investments* that meet the factors selected by the *customer*; and
- (4) ‘pre-purchase questioning tool’ means a tool which involves putting a sequence of questions in order to extract information from a *person* to help them best select an *investment* that meets their needs. A decision tree is an example of a pre-purchase questioning tool. The process of going through the questions will usually narrow down the range of options that are available.

Application of default option rules

- 19.12.2 R *COBS 19.12.10R* to *COBS 19.12.22G* apply to an *operator* of a *non-workplace pension scheme* that:
- (1) offers, distributes or promotes *investments*, or promotes *platform services* that distribute *investments*, in relation to their inclusion in a *non-workplace pension* of the *operator*; or
 - (2) accepts, for inclusion in a *non-workplace pension*, *investments* which are offered, distributed or promoted by another *person* where that other *person*, or another *person* connected to it, also arranges for the *retail client* to enter into the *non-workplace pension* with the *operator*.
- 19.12.3 G The effect of *COBS 19.12.2R* is that *COBS 19.12.10R* to *COBS 19.12.22G*:
- (1) do not apply where an *operator* only *arranges* an *investment* for inclusion in, or the provision of *platform services* in respect of, a *retail client’s non-workplace pension*, at the request of the *retail client*. In these circumstances, therefore, the *operator* does not offer, distribute or promote any *investments*, nor does it promote *platform services* that distribute *investments*.
 - (2) apply where an *operator* accepts, for inclusion in a *retail client’s non-workplace pension*, an *investment* offered, distributed or promoted by a third party, including a *platform services provider* or an introducer, where that third party or someone connected to that third party also arranges for the *retail client* to enter into the *non-workplace pension* with the *operator* unless the *retail client* has received or will receive, either as part of transactional or ongoing advice, a *personal recommendation* in relation to the *investment* of

their contributions to, or assets in, the *non-workplace pension* (see *COBS 19.12.5R*).

- 19.12.4 R *COBS 19.12.10R to COBS 19.12.22G* do not apply where an *operator* starts treating a *retail client's* workplace pension arrangements as a *non-workplace pension* after the *retail client* has become a deferred member of the relevant *qualifying scheme*, so long as the *firm* does not offer, distribute or promote to the *retail client* any *investments* or *platform services* other than those available in connection with the former workplace pension arrangements, including the *default arrangement* and any *investments* available on a self-select basis.

Exclusion from default option rules in relation to advised clients

- 19.12.5 R *COBS 19.12.10R to COBS 19.12.22G* do not apply in relation to a *non-workplace pension* where the *firm* has determined, on reasonable grounds, that the *retail client*:
- (1) has received or will receive, either as part of transactional or ongoing advice, a *personal recommendation* in relation to the investment of their contributions to, or assets in, the *non-workplace pension*; or
 - (2) has appointed an *investment manager* in relation to the investment of the *retail client's* contributions to, or assets in, the *non-workplace pension*.
- 19.12.6 G A *firm* will not have reasonable grounds to determine that a *retail client* has received, or will receive, a *personal recommendation* for the purpose of *COBS 19.12.5R(1)* if the determination is based solely on information that:
- (1) is over 12 *months* old;
 - (2) the *retail client* is in, or transferring from, an advised product; or
 - (3) the *retail client* provides *remuneration* to an *adviser* in relation to other *investments*.

Application of cash warning rules

- 19.12.7 R *COBS 19.12.23R to COBS 19.12.33G* apply to an *operator* of a *non-workplace pension scheme*.
- 19.12.8 R *COBS 19.12.23R to COBS 19.12.33G* do not apply in relation to a *non-workplace pension* where the *firm* has determined, on reasonable grounds, that the *retail client* has appointed an *investment manager* in relation to the investment of their contributions to, or assets in, the *non-workplace pension*.

Purpose

- 19.12.9 G (1) The purpose of this section is to specify the circumstances where a *firm* must:
- (a) offer a *default option* to a *non-advised client* in connection with their *non-workplace pension*; and
 - (b) provide warnings to a *retail client* who has invested, for a sustained period of time, over a certain percentage of their *non-workplace pension* in *cash-like investments*.
- (2) The *default option* rules in *COBS 19.12* are designed to help *non-advised clients* who are generally unable or unwilling to engage with *investment* decisions, or find it difficult to identify appropriate *investments* for inclusion in their *non-workplace pensions*, including where questionnaires or filtering tools are used. The purpose of the rules in *COBS 19.12* is to help these *non-advised clients* to choose an appropriate *investment* option.

Requirement to offer a default option

- 19.12.10 R A *firm* must offer its *retail clients* a *default option* for inclusion in the *non-workplace pensions* it operates for those clients.
- 19.12.11 R A *firm* must not:
- (1) offer more than one *default option* to each *retail client*; or
 - (2) make the decision as to which *default option* to offer to each *retail client* by depending on the *retail client's* answers to questions set out in a pre-purchase questioning tool or a filtering tool.
- 19.12.12 G A *firm* may, as a single *default option*, offer a series of different *target date funds* that depend on *retail clients' target retirement dates*.

When and where to offer a default option

- 19.12.13 R A *firm* must offer the *default option*:
- (1) at the time the *retail client* enters into the *non-workplace pension* operated by the *firm* (regardless of whether an initial cash contribution is made at this stage); and
 - (2) again at the time the *retail client* makes their initial cash contribution (if one has not already been made on entry) into the *non-workplace pension*,

unless the *retail client* is, at the point of entry into the *non-workplace pension* with the *firm*, only transferring in *investments* they already hold

elsewhere and will continue to use the investment strategy associated with those *investments* when making requests of the *firm*.

- 19.12.14 G Where a *retail client*:
- (1) makes their initial cash contribution at the point of entry into the *non-workplace pension* with the *firm*, the *firm* will need to bring the existence of the *default option* to the attention of the *retail client* at that stage; and
 - (2) makes their initial cash contribution after the point of entry into the *non-workplace pension* with the *firm*, the *firm* will need to comply with COBS 19.12.13R by offering the *default option* both at the stage at which the *client* enters the *non-workplace pension* and again at the point they make their initial cash contribution.
- 19.12.15 R Additionally, where a *firm*, or any other *person* involved in the offer, distribution or promotion of *investments* for inclusion in a *non-workplace pension* of the *firm*:
- (1) sets out, in menus or otherwise, the other *investments* available to the *retail client* for inclusion in their *non-workplace pension*, the *firm* must set out the *default option* in a location most likely to bring it to the attention of that *retail client*;
 - (2) makes available pre-purchase questioning tools or filtering tools that enable a *retail client* to select *investments* for inclusion in their *non-workplace pension*, the *firm* must set out the *default option* alongside those tools.
- 19.12.16 G It is unlikely that complying with COBS 19.12.15R(1) would require a *firm* to set out the *default option* in every menu, or in every level of a menu, where other *investments* are set out.

How to present the default option

- 19.12.17 R A *firm* must present a *default option*:
- (1) when complying with COBS 19.12.13R, prominently and on a standalone basis; and
 - (2) when complying with COBS 19.12.15R, with at least equal prominence to any other *investment*, pre-purchase questioning tool or filtering tool made available to *retail clients* alongside the *default option*.
- 19.12.18 R When complying with COBS 19.12.13R and COBS 19.12.15R, a *firm* must ensure that it:

- (1) labels a *default option* in a sufficiently clear way to give an indication of the nature of it and also to distinguish it from the *firm's* other offerings;
- (2) sets out, in a clear and prominent way, the aims of the *default option*, explains that the *default option* has been designed to meet the needs, objectives and characteristics of a typical *non-advised client* in the target market for the *default option*, and sets out what the *manufacturer* considers those needs, objectives and characteristics to be; and
- (3) makes it clear that the *default option* is not tailored to the specific needs, objectives or characteristics of each *retail client*, and that if the *retail client*:
 - (a) considers that their needs, objectives and characteristics may fall outside those of the typical *non-advised client* in the target market as described by the *firm*, they may wish to consider other investment options;
 - (b) wishes to ensure that the *non-workplace pension* and any *investments* included in it (including the *default option*) are suitable for them, the *retail client* should consider seeking *investment advice*.

Preparing to offer a default option

- 19.12.19 R A *firm* must be in a position to offer a *default option* in good time before it has to offer the *default option* pursuant to COBS 19.12.10R, in order to allow for sufficient internal product governance.
- 19.12.20 G The *default option* may be *manufactured* by either the *operator* alone, by another *firm*, or by both, and *distributed* by either the *operator* alone, or by the *operator* and another *firm*.
- 19.12.21 G *Manufacturers* and *distributors* of *default options* must comply with the applicable product governance requirements in *PROD*. Where the manufacturing is done by another *firm* (either alone or with the *operator*), the *operator* is still responsible for the obligations under COBS 19.12.10R to COBS 19.12.18R.
- 19.12.22 G (1) Where *firms* decide to replace a *default option*, they may need to consider whether it would be appropriate to transfer existing clients to the new *default option*.
- (2) This may be the case, for example, if the transfer is required to prevent consumer harm and avoid risking non-compliance with our *rules*, for example *Principle 6*. This could be the case where *firms* determine that the *default option* no longer meets the applicable product governance requirements in *PROD* and existing clients are likely to suffer harm as a result.

- (3) If *firms* decide to transfer existing clients to a new *default option*, they will need to consider the information needs of their clients, and communicate to them appropriately and in good time, in a manner that is clear, fair and not misleading.
- (4) *Firms* are required to have appropriate contractual arrangements in place (including contractual powers that are fair and transparent and comply with the *CRA*) to enable them to transfer existing *clients* to a new *default option* and to comply with their obligations under the *regulatory system*.

Cash warnings: conditions

- 19.12.23 R At least once during every 3-month period, for each of the *non-workplace pensions* that *retail clients* have entered into with the *firm*, the *firm* must assess whether the following conditions are met at the time of the assessment:
- (1) more than 25% of the *non-workplace pension* is invested in *cash-like investments*, excluding any *cash-like investments* held in connection with *lifestyling* or within a *target date fund*;
 - (2) the amount of the cash holding in (1) is greater than £1,000;
 - (3) the conditions in (1) and (2) were also met in all the other assessments carried out during the 6-month period preceding the day of the assessment; and
 - (4) the *retail client* is more than 5 years away from:
 - (a) normal minimum pension age, as defined in primary legislation from time to time; or
 - (b) if lower, a protected pension age.
- 19.12.24 R For the purposes of *COBS* 19.12.23R, the start of the 3-month period is:
- (1) initially determined by reference to the date members enter into their *non-workplace pensions* with the *firm*; and
 - (2) after the initial 3-month period, by reference to the date when, for each *retail client*, the *firm* last carried out, or should have carried out, the assessment under the *rule*.

Cash warnings: timing

- 19.12.25 R If all the conditions in *COBS* 19.12.23R are met, the *firm* must provide the *retail client* with a cash warning within an appropriate timeframe after the date when the assessment in that *rule* was carried out.
- 19.12.26 G For the purposes of *COBS* 19.12.25R, an ‘appropriate timeframe’ is likely to be within 3 months of carrying out the assessment in *COBS* 19.12.23R,

unless the current market conditions would make it inappropriate to warn the *retail client* about their cash holdings within that timeframe, although providing the cash warning later than 6 *months* after the date of the assessment is unlikely to be appropriate.

- 19.12.27 R If a *firm* has provided a cash warning pursuant to *COBS* 19.12.25R, the requirement in *COBS* 19.12.25R does not apply again until after 1 year of the *firm* providing the previous cash warning.
- 19.12.28 G Notwithstanding *COBS* 19.12.27R, a *firm* can choose to provide a new cash warning during the year following the previous cash warning, in which case *COBS* 19.12.27R would apply from the date when the new cash warning is provided.
- 19.12.29 G Where the condition in *COBS* 19.12.23R(4) is no longer met, a *firm* should consider whether it would be appropriate to keep providing the cash warning up until the time a *retail client* accesses their pension.
- 19.12.30 G A *firm* may send the cash warning with other client communications, provided that the cash warning is included in a document separate to those other client communications.

Cash warning: form and content

- 19.12.31 R The cash warning at *COBS* 19.12.25R must:
- (1) be provided in a *durable medium*;
 - (2) using plain language, warn the *retail client* that:
 - (a) more than 25% of their *non-workplace pension* is invested in *cash-like investments*; and
 - (b) the value of their *non-workplace pension* is at risk of being eroded by inflation;
 - (3) include a generic example (provided as an explanation, an illustration or both) of how inflation erosion would affect a £10,000 cash pot over 10 years, assuming 0% interest and using a measure of inflation generally accepted in the *United Kingdom*; and
 - (4) inform the *retail client* that they should consider whether their current investments are likely to grow sufficiently to meet their objectives.
- 19.12.32 G The *firm* should also:
- (1) inform the *retail client* that:
 - (a) the cash warning is not advice or a substitute for it; and
 - (b) the value of any *investment* can fall as well as rise;

- (2) explain to and/or illustrate for the *retail client* that different types of *investment* have a different balance of risk to potential gain; and
 - (3) include in the cash warning a statement to the effect that, where applicable, the *firm* makes available *investments* for inclusion in *non-workplace pensions*, including the *default option*.
- 19.12.33 G In the *FCA*'s view, the Consumer Prices Index is a national index of retail prices and so may be used as a measure of the current inflation rate for the purposes of *COBS* 19.12.31R(3).

Record keeping

- 19.12.34 G A *firm* to which the record-keeping rules in *SYSC* 3 (Systems and controls) or *SYSC* 9 (Record-keeping) apply will need to maintain a record of its compliance with the requirements in this *COBS* 19.12 section including, where relevant, how it has determined on reasonable grounds (including records of the evidence it has relied upon) that, in accordance with *COBS* 19.12.5R, a *retail client* is not a *non-advised client*.
- 19.12.35 R A *firm* must also maintain a record of:
- (1) the number of *non-advised clients* entering into a *non-workplace pension* with the *firm* each year;
 - (2) the number of those *retail clients* in (1) who chose the *default option*;
 - (3) the number of *retail clients* not included in (1) that choose the *default option* each year, distinguishing between *retail clients* who were *clients* of the *firm* before *COBS* 19.12.10R to *COBS* 19.12.22G came into force and those who became *clients* later;
 - (4) the volume of contributions made by *retail clients* to the *default option* each year;
 - (5) the volume of assets under management attributable to the *default option*;
 - (6) a description of the product approval process for the *default option* and of any reviews undertaken in compliance with *PROD* 6;
 - (7) in relation to cash warnings, differentiating between advised clients and *non-advised clients*, as well as between those *retail clients* who were *clients* of the *firm* before *COBS* 19.12.23R to *COBS* 19.12.33G came into force and those who became *clients* later:
 - (a) the dates when assessments were carried out, alongside the number of *retail clients* assessed on those dates;
 - (b) of the *retail clients* in 7(a), the number who met the conditions at *COBS* 19.12.23R; and

- (c) of the *retail clients* in 7(b), the number who continue to meet the conditions at *COBS* 19.12.23R in subsequent assessments.

Amend the following as shown.

TP 2 Other Transitional Provisions

[*Editor's note:* TP 2 takes into account the changes made by FCA 2022/38, which comes into force on 30 March 2023.]

(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
...					
2.45	...				
<u>2.46</u>	<u>COBS</u> 19.12.10R, <u>COBS</u> 19.12.15R	R	<u>COBS</u> 19.12.10R and <u>COBS</u> 19.12.15R do not apply in relation to a <i>firm's</i> existing <i>non-advised clients</i> as of <u>1 December 2023</u> , provided the <i>firm</i> does not enter into new <i>non-workplace pensions</i> with <i>non-advised clients</i> after <u>1 December 2023</u> .	From <u>1 December 2023</u> indefinitely	<u>1 December 2023</u>
<u>2.47</u>	<u>COBS</u> TP 2.46R, <u>COBS</u> 19.12.10R, <u>COBS</u> 19.12.15R	G	The effect of <u>COBS</u> TP 2.46 is that a <i>firm</i> will not be required to offer a <i>default option</i> in accordance with <u>COBS</u> 19.12.10R and <u>COBS</u> 19.12.15R where the <i>firm</i> has legacy only business. A <i>firm</i> has legacy only business for the purpose of <u>COBS</u> TP 2.46 where it does not enter into a new <i>non-workplace pension</i> with <i>non-advised clients</i> after <u>1 December 2023</u> . For the avoidance of doubt, where a <i>firm</i> does not enter into new <i>non-workplace</i>	From <u>1 December 2023</u> indefinitely	<u>1 December 2023</u>

(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
			<p><u>pensions with non-advised clients after 1 December 2023, but still continues to offer, distribute or promote new investments, or promote platform services that distribute new investments to (or top-up existing investments for) existing non-advised clients to include in their existing non-workplace pension, the firm will still be considered to have 'legacy only business'. As a result, it will not be required to offer a default option in that situation.</u></p>		
2.48	<u>COBS 19.12.23, COBS 19.12.24(1)</u>	<u>R</u>	<p><u>For the purposes of COBS 19.12.23R and 19.12.24(1), the start of the 3-month period is initially determined, in respect of existing members on 1 December 2023, by reference to that date, and not by reference to the date they entered into their non-workplace pensions with the firm.</u></p>	<p><u>From 1 December 2023 to 1 March 2024</u></p>	<p><u>1 December 2023</u></p>

Annex C

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

In this Annex underlining indicates new text, unless otherwise stated.

1 Product Intervention and Product Governance Sourcebook (PROD)

...

1.3 Application of 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

...

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* or *onshored regulations* in *PROD* in relation to that *manufacturing* or *distribution* activity, then *PROD 4*, *PROD 1.4.4UK* 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*.

...

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) comply with provisions marked “UK” in *PROD* 1.4 and *PROD* 4 as if they were *rules*; and
 - (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)
...	...
“insurance-based investment products”	<i>pathway investment or default option</i>
...	...
“insurance product”	<i>pathway investment or default option</i>

...	...
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...

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.

...

6 **Product governance: additional provisions for pathway investments and default options**

...

After PROD 6.3 (Distribution of pathway investments), insert the following new sections. The text is not underlined.

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:
- (1) 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;

- (2) 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
 - (3) 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.

Annex D

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text.

8 Financial promotion and related activities

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8 Annex Examples of what is and is not a personal recommendation and advice

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...

(F) Miscellaneous		
(1) Example	(2) Is there a personal recommendation?	(3) Is this regulated advice for someone other than a firm with an appropriate authorisation?
...		
(36) A <i>firm</i> gives a cash warning to a <i>retail client</i> in accordance with the requirements in <i>COBS</i> 19.10.38R and the <i>guidance</i> in <i>COBS</i> 19.10.39G, <u>or in accordance with the requirements in <i>COBS</i> 19.12.31R and the <i>guidance</i> in <i>COBS</i> 19.12.32G.</u>	No. This is not a recommendation to <i>buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular investment</i> ; or exercise or not exercise any right conferred by such an investment to <i>buy, sell, subscribe for, exchange or redeem</i> such an <i>investment</i> .	No. This is not advice on the merits of <i>buying, holding or selling</i> a particular <i>investment</i> .