

CONSUMER DUTY (AMENDMENTS) INSTRUMENT 2023

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:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”) including as applied by paragraph 3 of Schedule 6 to the Payment Services Regulations 2017 (SI 2017/752) (“the PSRs”) and paragraph 2A of Schedule 3 to the Electronic Money Regulations 2011 (SI 2011/99) (“the EMRs”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137R (Financial promotion rules);
 - (c) section 137T (General supplementary powers);
 - (d) section 139A (Power of the FCA to give guidance);
 - (e) section 247 (Trust scheme rules); and
 - (f) section 261I (Contractual scheme rules);
 - (2) Regulation 120 (Guidance) of the PSRs;
 - (3) Regulation 60 (Guidance) of the EMRs; and
 - (4) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 July 2023 immediately after the Consumer Duty Instrument 2022 (FCA 2022/31).

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Principles for Businesses sourcebook (PRIN) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Consumer Duty (Amendments) Instrument 2023.

By order of the Board
30 March 2023

Annex A**Amendments to the Glossary of definitions**

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

closed product a product:

- (1) where there are existing contracts with *retail customers* entered into before 31 July 2023; and
- (2) which is not marketed or ~~*distributed*~~ distributed to *retail customers* (including by way of renewal) on or after 31 July 2023; ~~or~~.

existing product a product which:

- (1) was *manufactured*, marketed or ~~*distributed*~~ distributed before 31 July 2023; and
- (2) is marketed or ~~*distributed*~~ distributed to *retail customers* (including by way of renewal) on or after 31 July 2023.

Annex B

Amendments to the Principles for Businesses sourcebook (PRIN)

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

2A The Consumer Duty

2A.1 Application and purpose

Application

...

- 2A.1.3 G The application of *Principle 12* and *PRIN 2A* is set out in *PRIN 3*, including *PRIN 3.2.6R* to *PRIN 3.2.12G*. *Principle 12* ~~only~~ applies in relation to a firm's retail market business or where the firm communicates or approves financial promotions which are addressed to, or disseminated in such a way that they are likely to be received by, a retail customer. To the extent that *Principle 12* applies, *Principles 6* and *7* do not apply.

...

Purpose

...

- 2A.1.10 G (1) ...

...

- (4) There are particular provisions concerning *closed products* and *existing products* ~~*distributed*~~ distributed to retail customers before 31 July 2023 in *PRIN 2A.3* and *PRIN 2A.4*.

...

Guidance on responsibilities of firms in a product's distribution chain

...

- 2A.1.15 G A For example, where a firm's sole activity subject to obligations under *Principle 12* is communicating or approving a financial promotion, the rules and guidance in *PRIN 2A.3* (products and services), *PRIN 2A.4* (price and value), *PRIN 2A.6* (customer support) and *PRIN 2A.11* (sale and purchase of product books) are likely to have limited relevance.

Relevance of guidance about Principles 6 and 7

...

- 2A.1.17 G (1) In general terms, *Principle 12* and *PRIN 2A* ~~imposes~~ impose a higher and more exacting standard of conduct in relation to a *firm's retail market business activities* relative to what *Principles 6* or *7* would have otherwise required. *Principle 12* and *PRIN 2A* also ~~has~~ have a broader application in relation to a *firm's retail market business activities* relative to *Principles 6* and *7*, with a greater focus on consumer protection outcomes for *retail customers*, including where those *retail customers* do not stand in a *client* relationship with that *firm* in the distribution chain.

...

...

2A.5 Consumer Duty: retail customer outcome on consumer understanding

Application

- 2A.5.1 R (1) Other than *PRIN 2A.5.15R*, this section applies to:
- (a) all *firms to whom Principle 12* and *PRIN 2A* apply, involved in the production, *approval* or distribution of *retail customer* communications, regardless of whether the *firm* has a direct relationship with a *retail customer*, and including where a *firm* produces, *approves* or distributes *financial promotions* or other advertisements, sales-related communications, and post-sale communications (and references to a *firm's* communications or a *firm* communicating are to be read accordingly);

...

- (2) *PRIN 2A.5.15R*; applies to all *firms* ~~within scope of~~ to whom Principle 12 and *PRIN 2A* apply ~~in relation to a firm's retail market business.~~

...

2A.6 Consumer Duty: retail customer outcome on consumer support

Application

- 2A.6.1 R (1) Other than in *PRIN 2A.6.6R*, this section applies:
- (a) to all *firms to whom Principle 12* and *PRIN 2A* apply, who are responsible for interacting directly with, and providing support to, *retail customers*, such as through its customer services functions and including where the *firm* outsources its interactions with *retail customers* to a third party (in whole or part);

...

- (2) *PRIN 2A.6.6R* applies to all *firms* ~~within scope of~~ to whom Principle 12 and PRIN 2A apply in relation to a firm's retail market business.

...

3 Rules about application

3.1 Who?

...

- 3.1.10 R (1) Only *Principles 1, 2, 3, 9, 11, 12* and *PRIN 2A*, ~~and to the extent that Principle 12 and PRIN 2A do not apply~~ Principle 7, apply to a *TP UCITS* qualifier and a *TP AIFM* qualifier, and only with respect to the activities in *PRIN 3.2.2R* (Communication and approval of financial promotions).
- (2) Where Principle 12 and PRIN 2A do not apply, Principle 7 also applies to a TP UCITS qualifier and a TP AIFM qualifier with respect to the activities in PRIN 3.2.2R.

...

3.2 What?

...

Principle 12 and PRIN 2A: additional application provisions

- 3.2.6 R (1) *Principle 12* and *PRIN 2A* apply to a *firm's retail market business* ~~only~~, including in respect of *existing products* and *closed products*.
- (2) (a) Subject to (b), Principle 12 and PRIN 2A apply to a firm with respect to the communication or approval of a financial promotion (see PRIN 3.2.2R), but only if the financial promotion is addressed to, or disseminated in such a way that it is likely to be received by, a retail customer.
- (b) Principle 12 and PRIN 2A do not apply to the communication or approval of a financial promotion to the extent that the financial promotion relates to an activity that is excluded from the definition of retail market business by virtue of limbs (1) to (6) of that definition.
- (3) If the firm is a credit union, and except insofar as Principle 12 and PRIN 2A apply by virtue of (2), then Principle 12 and PRIN 2A do not apply to the following activities:
- (a) payment services and activities connected to the provision of payment services, except where the activity is an ancillary

activity in relation to a regulated activity other than issuing electronic money; and

- (b) activities connected to or ancillary activities in relation to issuing electronic money, but only insofar as the activity is not an ancillary activity in relation to another regulated activity.

3.2.7 R Where Principle 12 and PRIN 2A apply to the activities of a firm's retail market business involves firm operating in a distribution chain, *Principle 12* and *PRIN 2A* apply only to the extent that the *person* is responsible in the course of ~~that retail market business~~ carrying out those activities for determining or materially influencing *retail customer* outcomes.

...

3.2.9 G ~~Where an activity is carried on within the scope of an exemption in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 it is not an activity to which *Principle 12* and *PRIN 2A* apply. [deleted]~~

...