

**Product Intervention and Product Governance Sourcebook (PROD)**

## Chapter 1

# Product Intervention and Product Governance Sourcebook (PROD)

## 1.1 Application and purpose

### Purpose

- 1.1.1 **G** The purpose of *PROD* is to improve *firms'* product oversight and governance processes and to set out the *FCA's* statement of policy on making *temporary product intervention rules*.
- 1.1.2 **G** Product oversight and governance refers to the systems and controls *firms* have in place to design, approve, market and manage products throughout the products' lifecycle to ensure they meet legal and regulatory requirements.
- 1.1.3 **G** Good product governance should result in products that:
- (1) meet the needs of one or more identifiable target markets;
  - (2) are sold to *clients* in the target markets by appropriate *distribution channels*; and
  - (3) deliver appropriate *client* outcomes.
- 1.1.4 **G** Unless the contrary intention appears, a reference to Gibraltar-based firm in *PROD* has the same meaning as in the *Gibraltar Order*.



**1.2 Application of PROD 2**

1.2.1

**R**

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

## 1.3 Application of PROD 3

### General: Who? What?

1.3.1

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■ PROD 3 applies to

- (1) a *MiFID investment firm*;
- (2) a *CRD credit institution*;
- (3) a *MiFID optional exemption firm*; and
- (4) *branches of third country investment firms*; with respect to:
- (5) *manufacturing financial instruments and structured deposits*; and
- (6) *distributing financial instruments, structured deposits and investment services*.

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

1.3.-1A

R

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

### Other firms manufacturing or distributing financial instruments or structured deposits

1.3.2

R

Other *firms* which *manufacture or distribute financial instruments or structured deposits* should take account of ■ PROD 3 as if it were *guidance* on the *Principles* and other relevant *rules* and as if "should" appeared in ■ PROD 3 rules instead of "must".

### Eligible counterparty business

1.3.3

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

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

### Where?

1.3.4

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

- 1.3.5 **R** (1) ■ PROD 3 also applies to a *firm* with respect to activities from an establishment *overseas* with a *client* in the *United Kingdom*.
- (2) But ■ PROD 3 does not apply to those activities if the office from which the activity is carried on were a separate *person* and the activity:
  - (a) would fall within the *overseas persons* exclusions in article 72 of the *Regulated Activities Order*; or
  - (b) would not be regarded as being carried on in the *United Kingdom*.

1.3.6 **R** [deleted]

1.3.7 **G** [deleted]

1.3.8 **G** [deleted]

1.3.9 **G** [deleted]

1.3.10 **G** [deleted]

**MiFID**

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

1.3.12 **G** [deleted]

1.3.13 **G** [deleted]

1.3.14 **G** [deleted]

**Interaction of PROD 3 and the RPPD Guide**

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

**Manufacturing pathway investments**

1.3.16 **G** A *firm* that is within the scope of ■ PROD 3 (Product governance: MiFID) when it *manufactures pathway investments* 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) as *guidance* with respect to that *manufacturing* activity (see ■ PROD 1.6.1R(3)).

## 1.4 Application of PROD 4

- 1.4.1** **R** ■ PROD 4 applies to:
- (1) an *insurance intermediary*; and
  - (2) an *insurer*,
- with respect to:
- (3) *manufacturing* insurance products; and
  - (4) *distributing* insurance products.
- [Note: articles 1(2) and 25 of the *IDD*]
- 1.4.-1A** **R** A *TP firm* and a Gibraltar-based firm must also comply with the provisions in:
- (1) ■ PROD 1.4 and ■ PROD 4.5 (Additional expectations for manufacturers and distributors in relation to value measures data).
  - (2) ■ PROD 1.4 and ■ PROD 4 in relation to a *pathway investment*.
- 1.4.1A** **R** ■ PROD 4.5 (Additional expectations for manufacturers and distributors in relation to value measures data) applies regardless of when the product was first manufactured.
- 1.4.2** **G** In *PROD* an insurance product may be read as being a reference to the product for distribution to *customers* generally and is not intended to refer to each individual *contract of insurance* being sold or underwritten (unless the context indicates otherwise).
- 1.4.3** **R** ■ PROD 4 does not apply in relation to the *manufacturing or distributing* of:
- (1) a *contract of large risks*, or
  - (2) a *reinsurance contract*.
- [Note: article 25(4) of the *IDD*]

**Manufacturing and distributing pathway investments**

**1.4.3A** **G** A firm that is within the scope of ■ PROD 4 (Product governance: IDD) when *manufactures pathway investments* 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) 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* 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* in connection with its operating of a *retail client's personal pension scheme* or *stakeholder pension scheme*; and

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

**When an intermediary may be considered to be manufacturing**

**1.4.4** **UK** For the purposes of [■ PROD 4.2.1R, ■ PROD 4.2.2R, ■ PROD 4.2.29R, ■ PROD 4.2.34R, ■ PROD 4.3.1R and ■ PROD 4.3.2R], insurance intermediaries shall be considered manufacturers where an overall analysis of their activity shows that they have a decision-making role in designing and developing an insurance product for the market.

3(2)A decision-making role shall be assumed, in particular, where insurance intermediaries autonomously determine the essential features and main elements of an insurance product, including its coverage, price, costs, risk, target market and compensation and guarantee rights, which are not substantially modified by the insurance undertaking providing coverage for the insurance product.

3(3)Personalisation of and adaptation of existing insurance products in the context of insurance distribution activities for individual customers, as well as the design of tailor-made contracts at the request of a single customer, shall not be considered manufacturing.

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

**1.4.5** **G** The effect of ■ PROD 1.4.4UK and ■ PROD 1.4.6R is that an *insurance intermediary* needs to consider if it is *manufacturing* an insurance product and, if so, should comply with ■ PROD 4.2 (Manufacture of insurance products).

**Effect of provisions marked “UK” for certain manufacturers and distributors of insurance products**

1.4.6

**R**

- (1) Subject to (2) and ■ PROD 1.4.3R, provisions in this section and in ■ PROD 4 marked “UK” apply to *firms manufacturing or distributing insurance products*, but to whom the *IDD POG Regulation* does not apply, as if they were *rules*.
- (2) For the purposes of (1), a word or phrase used in the *IDD POG Regulation* and referred to in column (A) has the meaning indicated in Column (B) of the table below:

(a)	(b)
“Article 8(2)”	PROD 4.2.30UK
“customer” and “potential customer”	<i>customer</i>
“insurance-based investment products”	<i>insurance-based investment products</i>
“insurance distribution activities” and “distribution activities”	<i>insurance distribution activities</i>
“insurance distributor”	<i>distributor</i>
“insurance intermediary”	<i>insurance intermediary</i>
“insurance undertaking”	<i>insurer</i>
“manufacturer” and “manufacturers within the meaning of Article 2 of this Delegated Regulation”	<i>manufacturer</i>
“manufacturing”	<i>manufacturing</i>
“shall”	must

- (3) In this sourcebook, where a reproduced provision of an article of the *IDD POG Regulation* refers to another part of the *IDD POG Regulation*, that other provision must also be read with reference to the table in (2).

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

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*; 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)
"ICOB 2.5-1R and COBS 2.1.1R"	COBS 2.1.1R
"ICOB"	relevant conduct of business obligations
"PROD 4.2 requirements of the IDD POG Regulation)"	PROD 4.2
"insurance-based investment products"	<i>pathway investment</i>
"insurance distributor"	<i>distributor</i>
"insurance distribution activities"	<i>distribution activities</i>
"insurance intermediary and an insurance undertaking"	<i>firms</i>
"insurance product"	<i>pathway investment</i>
"'manufacturer' and 'manufacturers' within the meaning of Article 2 of this Delegated Regulation"	<i>manufacturer</i>
"manufacturing"	<i>manufacturing</i>
"premiums"	costs and charges
"shall"	must

**Where?**

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

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

**1.4.8** **R** [deleted]

**1.4.9** **G** [deleted]

**Interaction of PROD 4 and the RPPD Guide**

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

1.5 Application of PROD 5

General: Who? What?

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

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

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

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

Where?

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

1.5.4 **R** [deleted]

1.5.5 **G** [deleted]

1.5.6 **G** [deleted]

1.5.7 **G** [deleted]



## 1.6 Application of PROD 6

### 1.6.1

**R**

■ PROD 6 applies to a *firm*:

- (1) that *manufactures or distributes pathway investments* 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*, 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*, 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*.

