Chapter 10

Conflicts of interest
10.1 Application

Application to insurance intermediaries

10.1.-4 
(1) Subject to § SYSC 10.1.-3R, this section applies to a firm carrying on insurance distribution activities in accordance with the tables in Part 3 of § SYSC 1 Annex 1. Certain rules are disapplied where the firm is subject to directly applicable provisions in the IDD Regulation (see § SYSC 10.1.-3R).

(2) Where a provision in this section applies to an insurance intermediary, it applies in relation to the carrying on of insurance distribution activities.

10.1.-3 
The rules and guidance in the table below do not apply to a firm when carrying on insurance distribution in relation to insurance-based investment products (see § SYSC 10.1A for the provisions of the IDD Regulation on conflicts of interest).

<table>
<thead>
<tr>
<th>Subject</th>
<th>Rule or guidance</th>
</tr>
</thead>
<tbody>
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<td>Types of conflict</td>
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<td>Conflicts policy</td>
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Application to a common platform firm

10.1.-2 
For a common platform firm:

(1) the MiFID Org Regulation applies, as summarised in § SYSC 1 Annex 1 3.2G, § SYSC 1 Annex 1 3.2-AR and § SYSC 1 Annex 1 3.2-BR; and

(2) the rules and guidance in the table below apply:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Applicable rule or guidance</th>
</tr>
</thead>
</table>
### Application to a MiFID optional exemption firm and to a third-country firm

10.1.-1 For a MiFID optional exemption firm and a third country firm, the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1).

### General application

10.1.1 (1) This section applies to a firm which provides services to its clients in the course of carrying on regulated activities or ancillary activities or providing ancillary services (but only where the ancillary services constitute MiFID business).

(2) This section also applies to a management company.

[Note: The provisions in SYSC 10.1 also implement articles 27 and 28 of the IDD, articles 74(1) and 88 of CRD and as applied under the discretion in the third paragraph of article 95(2) of the EU CRR, BCD article 22 and BCD Annex V paragraph 1]

10.1.1A This section also applies to:

(1) a full-scope UK AIFM of:
   (a) a UK AIF;
   (b) an EEA AIF managed or marketed from an establishment in the UK; and
   (c) a non-EEA AIF; and

(2) an incoming EEA AIFM branch which manages or markets a UK AIF.

### Requirements only apply if a service is provided

10.1.2 (1) The requirements in this section only apply where a service is provided by a firm. The status of the client to whom the service is provided (as a retail client, professional client or eligible counterparty) is irrelevant for this purpose.

[Note: recital 46 to the MiFID Org Regulation]

For the avoidance of doubt, a reference to “service” in this section includes all insurance distribution activities.
**SRD requirements**

10.1.2A The requirements in this section apply to an **SRD asset manager** with regard to its engagement activities covered by the **SRD**.

[Note: article 3g(3) of **SRD**]

**Identifying conflicts**

10.1.3 A **firm** must take all appropriate steps to identify and to prevent or manage conflicts of interest between:

(1) the **firm**, including its managers, employees and **appointed representatives** (or where applicable, **tied agents**), or any **person** directly or indirectly linked to them by control, and a **client** of the **firm**; or

(2) one **client** of the **firm** and another **client**;

that arise or may arise in the course of the **firm** providing any service referred to in §SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the **firm**’s own remuneration and other incentive structures.

[Note: article 23(1) of **MiFID** and articles 27 and 28(1) of the **IDD**]

**Types of conflicts**

10.1.4 For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may damage the interests of a **client**, a **management company** must take into account, as a minimum, whether the **firm** or a **relevant person**, or a **person** directly or indirectly linked by control to the **firm**:

(1) is likely to make a financial gain, or avoid a financial loss, at the expense of the **client**;

(2) has an interest in the outcome of a service provided to the **client** or of a transaction carried out on behalf of the **client**, which is distinct from the **client**’s interest in that outcome;

(2A) in the case of a **management company** providing **collective portfolio management services** for a **UCITS scheme**, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a **client** other than the **UCITS scheme**;

(3) has a financial or other incentive to favour the interest of another **client** or group of **clients** over the interests of the **client**;

(4) carries on the same business as the **client**; or in the case of a **management company**, carries on the same activities for the **UCITS scheme** and for another **client** or **clients** which are not **UCITS schemes**; or

(5) receives or will receive from a **person** other than the **client** an inducement in relation to a service provided to the **client**, in the form of monies, goods or services, other than the standard commission or fee for that service.
The conflict of interest may result from the firm or person providing a service referred to in SYSC 10.1.1 R or engaging in any other activity or, in the case of a management company, whether as a result of providing collective portfolio management services or otherwise.

[Note: article 17(1) of the UCITS implementing Directive]

10.1.4A Other firms (except common platform firms, UCITS management companies and insurance intermediaries) should take account of the rule on the types of conflicts (see SYSC 10.1.4 R) in accordance with SYSC 1 Annex 1 3.3R.

10.1.4B For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of carrying on insurance distribution activities and whose existence may damage the interests of a client (“A”), a firm must assess whether:

(1) the firm or a relevant person, or a person directly or indirectly linked by control to the firm; or

(2) (in the case of conflicts between A and another client) the other client;

has an interest in the outcome of the insurance distribution activities, which meets the following criteria:

(3) it is distinct from A’s interest in the outcome of the insurance distribution activities; and

(4) it has the potential to influence the outcome of the activities to the detriment of A.

10.1.4C For the purpose of carrying out the assessment in SYSC 10.1.4BR, a firm must take into account, as a minimum, whether the firm or a relevant person, or a person directly or indirectly linked by control to the firm:

(1) is likely to make a financial gain, or avoid a financial loss, at the expense of the client;

(2) has a financial or other incentive to favour the interest of another client or group of clients over the interest of the client;

(3) carries on the same business as the client;

(4) receives or will receive from a person other than the client an inducement in relation to a service provided to the client, in the form of monies, goods or services, other than the standard commission or fee for that service; or

(5) is substantially involved in the management or development of policies, in particular where such a person has an influence on the pricing of those policies or their distribution costs.

10.1.5 The circumstances which should be treated as giving rise to a conflict of interest cover cases where there is a conflict between the interests of the
firm or certain persons connected to the firm or the firm’s group and the duty the firm owes to a client; or between the differing interests of two or more of its clients, to whom the firm owes in each case a duty. It is not enough that the firm may gain a benefit if there is not also a possible disadvantage to a client, or that one client to whom the firm owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such client.

[Note: recital 45 to the MiFID Org Regulation]

Record of conflicts

10.1.6 R
A management company and an insurance intermediary must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that firm in which a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

[Note: article 20(1) of the UCITS implementing Directive]

10.1.6A G
Other firms (other than common platform firms and insurance intermediaries) should also take account of the rule on records of conflicts (see ■ SYSC 10.1.6 R) in accordance with ■ SYSC 1 Annex 1 3.2BR, ■ SYSC 1 Annex 1 3.2CR and ■ SYSC 1 Annex 1 3.3R).

10.1.6AA R
An insurance intermediary must ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in ■ SYSC 10.1.6R.

10.1.6B G
A firm (other than a common platform firm and an insurance intermediary) should read ■ SYSC 10.1.6AAR as if “should” appeared in that rule instead of “must”.

Managing conflicts

10.1.7 R
A firm must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to prevent conflicts of interest as defined in ■ SYSC 10.1.3 R from adversely affecting the interests of its clients.

[Note: article 16(3) of MiFID and article 27 of the IDD]

Proportionality – insurance distribution activities

10.1.7A R
Where a firm carries on insurance distribution activities, the arrangements in ■ SYSC 10.1.7R must be proportionate to the activities performed, the policies sold and the type of insurance distributor the firm is or uses.

[Note: article 27 of the IDD]

Disclosure of conflicts

10.1.8 R
(1) If arrangements made by a firm under ■ SYSC 10.1.7 R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a client will be prevented, the firm must clearly
disclose the following to the client before undertaking business for the client:

(a) the general nature or sources of conflicts of interest, or both; and
(b) the steps taken to mitigate those risks.

(2) The disclosure must:

(a) be made in a durable medium;
(b) clearly state that the organisational and administrative arrangements established by the firm to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the client will be prevented;
(c) include specific description of the conflicts of interest that arise in the provision of insurance distribution activities, investment services or ancillary services;
(d) explain the risks to the client that arise as a result of the conflicts of interest; and
(e) include sufficient detail, taking into account the nature of the client, to enable that client to take an informed decision with respect to the service in the context of which the conflict of interest arises.

(3) This rule does not apply to the extent that SYSC 10.1.21 R applies.

[Note: 23(2) and (3) of MiFID and article 28(2) and (3) of the IDD]
organisation of the firm and the nature, scale and complexity of its business.

(2) Where the management company or insurance intermediary is a member of a group, the policy must also take into account any circumstances, of which the firm is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

[Note: article 18(1) of the UCITS implementing Directive]

Contents of policy

10.1.11 R

(1) The conflicts of interest policy must include the following content:

(a) it must identify in accordance with SYSC 10.1.3 R, SYSC 10.1.4 R, SYSC 10.1.4R and SYSC 10.1.4CR (as applicable), by reference to the specific services and activities carried out by or on behalf of the management company or insurance intermediary, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more clients; and

(b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

(2) The procedures and measures provided for in paragraph (1)(b) must:

(a) be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest of the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of clients;

(aa) (for an insurance intermediary) be designed to ensure that the insurance distribution activities are carried out in accordance with the best interests of the client and are not biased due to conflicting interests of the insurance intermediary or another client; and

(b) include, for an insurance intermediary, where appropriate, the following, and for a management company, such of the following as are necessary and appropriate for the management company to ensure the requisite degree of independence:

(i) effective procedures to prevent or control the exchange of information between relevant persons engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(ii) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the firm;

(iii) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the
remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(iv) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out services or activities;

(v) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate services or activities where such involvement may impair the proper management of conflicts of interest; and

(vi) (for insurance intermediaries) a gifts and benefits policy which determines clearly under which conditions gifts and benefits can be accepted or granted and which steps are to be taken when accepting and granting gifts and benefits.

(3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a management company must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

(4) If one or more of the measures and procedures in paragraph (2) is not appropriate for the purposes of paragraph (2)(aa), an insurance intermediary must adopt such alternative measures and procedures as are necessary and appropriate.

(5) The procedures and measures provided for in paragraph (1)(b) must be appropriate to an insurance intermediary’s size and activities, the group to which it may belong and to the risk of damage to the interests of the client.

[Note: articles 18(2), 19(1) and 19(2) of the UCITS implementing Directive]

10.1.11A Other firms (except common platform firms, UCITS management companies and insurance intermediaries) should take account of the rules relating to conflicts of interest policies (see SYSC 10.1.10 R and SYSC 10.1.11 R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.

10.1.11AA An insurance intermediary must assess and periodically review, on at least an annual basis, the conflicts of interest policy established in accordance with SYSC 10.1.10R and SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).

10.1.11AB A common platform firm, in relation to its insurance distribution activities, must:

- take into account the factors set out in SYSC 10.1.4BR(4) and SYSC 10.1.4CR(5) when complying with article 33 of the MiFID Org Regulation (as applied as a rule by SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)); and
include the measure set out in SYSC 10.1.11R(2)(b)(vi) in the list of measures to be adopted, where necessary, when complying with article 34 (3) of the MiFID Org Regulation (as applied as a rule by SYSC 1 Annex 1 3.2-AR or 3.2-BR(2)).

10.1.11B G A firm (other than a common platform firm and an insurance intermediary) should read SYSC 10.1.11AAR as if “should” appeared in that rule instead of “must”.

10.1.12 G In drawing up a conflicts of interest policy which identifies circumstances which constitute or may give rise to a conflict of interest, a firm should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the firm or a person directly or indirectly linked by control to the firm performs a combination of two or more of those activities.

[Note: recital 47 to the MiFID Org Regulation]

10.1.13 G [deleted]

10.1.14 G [deleted]

10.1.15 G [deleted]

Application of conflicts of interest rules to non-common platform firms when producing investment research or non-independent research

10.1.16 R The rules relating to:

(1) types of conflict (see SYSC 10.1.4 R);

(2) records of conflicts (see SYSC 10.1.6 R); and

(3) conflicts of interest policies (see SYSC 10.1.10 R and SYSC 10.1.11 R);

also apply to a firm which is not a common platform firm when it produces, or arranges for the production of, investment research that is intended or likely to be subsequently disseminated to clients of the firm or to the public, and when it produces or disseminates non-independent research, in accordance with COBS 12.2.

Additional requirements for a management company

10.1.17 R A management company, when identifying the types of conflict of interests for the purposes of SYSC 10.1.4 R, must take into account:

(1) the interests of the firm, including those deriving from its belonging to a group or from the performance of services and activities, the
interests of the clients and the duty of the firm towards the UCITS scheme or EEA UCITS scheme it manages; and

(2) where it manages two or more UCITS schemes or EEA UCITS schemes, the interests of all of them.

[Note: article 17(2) of the UCITS implementing Directive]

For a management company, references to client in SYSC 10.1.4 R and in the other rules in this section should be construed as referring to any UCITS scheme or EEA UCITS scheme managed by that firm or which it intends to manage, and with or for the benefit of which the relevant activity is to be carried on.

Structure and organisation of a management company

A management company must be structured and organised in such a way as to minimise the risk of a UCITS scheme's, EEA UCITS scheme's or client's interests being prejudiced by conflicts of interest between the management company and its clients, between two of its clients, between one of its clients and a UCITS scheme or an EEA UCITS scheme, or between two such schemes.

[Note: articles 12(1)(b) and 14(1)(d) of the UCITS Directive]

Avoidance of conflicts of interest for a management company

A management company must try to avoid conflicts of interest and, when they cannot be avoided, ensure that the UCITS schemes and EEA UCITS schemes it manages are fairly treated.

[Note: articles 12(1)(b) and 14(1)(d) of the UCITS Directive]

Disclosure of conflicts of interest for a management company

(1) Where the organisational or administrative arrangements made by a management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the UCITS scheme or EEA UCITS scheme it manages or of its Unitholders will be prevented, the senior personnel or other competent internal body of the firm must be promptly informed in order for them to take any necessary decision to ensure that in all cases the firm acts in the best interests of the scheme and of its Unitholders.

(2) A management company must report situations referred to in (1) to the Unitholders of the UCITS scheme or EEA UCITS scheme it manages by any appropriate durable medium and give reasons for its decision.

[Note: articles 20(2) and 20(3) of the UCITS implementing Directive]

Collective portfolio management investment firms

A collective portfolio management investment firm which manages investments other than for an AIF or UCITS for which it has been appointed
as manager, must obtain approval from its client before it invests all or part of the client’s portfolio in units or shares of an AIF or UCITS it manages.

[Note: article 12(2)(a) of the UCITS Directive and article 12(2)(a) of AIFMD]

### Additional requirements for an AIFM

10.1.23 **An AIFM must take all reasonable steps to identify conflicts of interest that arise, in the course of managing AIFs, between:**

1. the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and an AIF managed by the AIFM or the investors in that AIF; or
2. an AIF or the investors in that AIF, and another AIF or the investors in that AIF; or
3. an AIF or the investors in that AIF, and another client of the AIFM; or
4. an AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or
5. two clients of the AIFM.

[Note: article 14(1) first paragraph of AIFMD]

10.1.24 **An AIFM must take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, manage, monitor and (where applicable) disclose those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors, and to ensure that the AIFs it manages are fairly treated.**

[Note: article 12(1)d of AIFMD]

10.1.25 **An AIFM must:**

1. maintain and operate effective organisational and administrative arrangements, with a view to taking all reasonable steps designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors;
2. segregate, within its own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest; and
3. assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the AIF’s investors.

[Note: article 14(1) second and third paragraphs of AIFMD]

10.1.26 **If the organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with**
reasonable confidence, that risks of damage to investors’ interests will be prevented, the AIFM must:

(1) clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf; and

(2) develop appropriate policies and procedures.

[Note: article 14(2) of AIFMD]

Subordinate measures for alternative investment fund managers

Articles 30 to 37 of the AIFMD level 2 regulation provide detailed rules supplementing the provisions of article 14 of AIFMD.