

Chapter 10

Conflicts of interest



10.1A Insurance-based investment products – Conflicts of interest

Application

10.1A.1 G

This section applies, in addition to *rules* in ■ SYSC 10.1, to a *firm* when carrying on *insurance distribution* in relation to *insurance-based investment products*. Where a *firm* carries on other *insurance distribution activities* in relation to a *life policy* or *non-investment insurance contract*, the requirements in ■ SYSC 10.1 will apply.

Identifying conflicts

10.1A.2 R

- (1) For the purposes of identifying, in accordance with ■ SYSC 10.1.3R and ■ SYSC 10.1.8R, the types of conflicts of interest that arise in the course of carrying out any *insurance distribution activities* related to *insurance-based investment products* and which entail a risk of damage to the interests of a *client*, a *firm* must assess whether it, a *relevant person* or any *person* directly or indirectly linked to it by *control*, has an interest in the outcome of the *insurance distribution activities*, which meets the following criteria:
 - (a) it is distinct from the *client's* interest in the outcome of the *insurance distribution activities*;
 - (b) it has the potential to influence the outcome of the *insurance distribution activities* to the detriment of the *client*.
- (2) A *firm* must proceed in the same way for the purposes of identifying conflicts of interest between one *client* and another.
- (3) For the purposes of the assessment in (1), a *firm* must take into account, by way of minimum criteria, the following situations:
 - (a) the *firm*, a *relevant person* or any *person* directly or indirectly linked to it by *control* is likely to make a financial gain, or avoid a financial loss, to the potential detriment of the *client*;
 - (b) the *firm*, a *relevant person* or any *person* directly or indirectly linked to it by *control* has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interest of the *client*;
 - (c) the *firm*, a *relevant person* or any *person* directly or indirectly linked by *control* to the *firm* is substantially involved in the management or development of *insurance-based investment products*, in particular where such a *person* has an influence on the pricing of those *policies* or their distribution costs.

[Note: article 3 of the IDD Regulation]

Conflicts policy

10.1A.3

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- (1) For the purposes of ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR, in so far as those *rules* apply to *insurance-based investment products*, a *firm* must establish, implement and maintain an effective conflicts of interest policy set out in writing and appropriate to its size and organisation and the nature, scale and complexity of its business.
- (2) Where the *firm* 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 4(1) of the *IDD Regulation*]**Contents of policy**

10.1A.4

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The conflicts of interest policy required in ■ SYSC 10.1A.3R must include the following content:

- (1) with reference to the specific *insurance distribution activities* carried out, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of one or more *clients*;
- (2) procedures to be followed and measures to be adopted in order to manage such conflicts and prevent them from damaging the interests of the *client*.

[Note: article 4(2) of the *IDD Regulation*]

10.1A.4

EU

10.1A.5

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- (1) The procedures and measures required in ■ SYSC 10.1A.4R(2) must be appropriate to the size and activities of the *firm* and of the group to which it may belong, and to the risk of damage to the interests of the *client*.
- (2) The procedures to be followed and measures required in ■ SYSC 10.1A.4R(2) must include, where appropriate, the following:
 - (a) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of conflict of interest where the exchange of that information may damage the interests of one or more *clients*;
 - (b) 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*;
 - (c) the removal of any direct link between payments, including *remuneration*, to *relevant persons* engaged in one activity and payments, including *remuneration*, to different *relevant persons*

principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

- (d) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which *insurance distribution activities* are carried out by the *firm* or its managers or employees or any *person* directly or indirectly linked to it by control;
- (e) measures to prevent or control the simultaneous or sequential involvement of a *relevant person* in separate *insurance distribution activities* where such involvement may impair the proper management of conflicts of interest;
- (f) 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) Where the *firm* can demonstrate that the measures and procedures referred to in (1) and (2) are not appropriate to ensure that the *insurance distribution activities* are carried out in accordance with the best interest of the *client* and are not biased due to conflicting interests of the *firm*, an *insurance undertaking* or another *client*, the *firm* must adopt adequate alternative measures and procedures for that purpose.

[Note: article 5 of the *IDD Regulation*]

Disclosure of conflicts

10.1A.6

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- (1) A *firm* must avoid over-reliance on disclosure to ensure that disclosure to *clients* under ■ SYSC 10.1.8R, in so far as those *rules* apply to *insurance-based investment products*, is a measure of last resort that can be used only where the effective organisational and administrative arrangements established by the *firm* to prevent or manage conflicts of interest in accordance with ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR, in so far as those *rules* apply to *insurance-based investment products* are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.
- (2) For the purposes of a disclosure of conflicts of interest a *firm* must:
 - (a) provide a specific description of the conflict of interest in question;
 - (b) explain the general nature and sources of the conflict of interest;
 - (c) explain the risks to the *client* that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks;
 - (d) clearly state that the organisational and administrative arrangements established by the *firm* to prevent or manage the conflict of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the *client* will be prevented.

[Note: article 6 of the *IDD Regulation*]

10.1A.7	<div><div>R</div><div><p>Review of conflicts policy</p><p>For the purposes of ■ SYSC 10.1.3R, ■ SYSC 10.1.7R and ■ SYSC 10.1.7AR a <i>firm</i> must assess and periodically review, on an at least annual basis, the conflicts of interest policy established in accordance with ■ SYSC 10.1A.3R and take all appropriate measures to address any deficiencies.</p><p>[Note: article 7(1) of the <i>IDD Regulation</i>]</p></div></div>
10.1A.8	<div><div>R</div><div><p>Record keeping</p><p>(1) A <i>firm</i> must keep and regularly update a record of the situations in which a conflict of interest entailing a risk of damage to the interests of a <i>client</i> has arisen or, in the case of an ongoing service or activity may arise.</p><p>(2) A <i>firm</i> must ensure its senior management receives on a frequent basis, and at least annually, written reports on the situations referred to in (1).</p><p>[Note: article 7(2) of the <i>IDD Regulation</i>]</p></div></div>